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THE DIGEST

OF

BRITISH COLUMBIA CASE LAW

1849-1904

BEING

THE CASES REPORTED

IN

VOLUMES I. TO X. INCLUSIVE

DETERMINED IN THE

BRITISH COLUMBIA LAW REPORTS

OF THE

SUPREME AND COUNTY COURTS AND IN ADMIRALTY
AND ON APPEAL

TOGETHER WITH

TABLES OF CASES CONTAINED IN DIGEST THOSE AFFIRMED OR REVERSED ON APPEAL TO THE SUPREME COURT OF CANADA AND THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, AND OF CASES JUDICIALLY NOTICED, FOLLOWED, DISAPPROVED OR OVER-RULED, OR OF CASES SPECIALLY CONSIDERED AND OF THE STATUTES REFERRED TO.

COMPILED BY ORDER OF
THE LAW SOCIETY OF BRITISH COLUMBIA.

BY

J. EDWARD BIRD,
BARRISTER-AT-LAW

ASSISTED BY

ARTHUR C. BRYDON JACK AND GEORGE E. McCROSSAN,
BARRISTERS-AT-LAW.

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PREFATORY NOTE.

The Profession will find reported in this Digest memoranda of several cases, more particularly the earlier cases, which have not been reported in the British Columbia Reports, but which have been appealed to the Supreme Court of Canada and the Judicial Committee of the Privy Council from the British Columbia Courts. In such cases a summary of the decisions on appeal has been taken and reference made to the particular reports in each respective case. The table of cases on appeal at the end of the Digest will be found to include such cases, and also any cases which have been taken direct to the Supreme Court of Canada by way of stated case.

The Editors have to thank the Honourable Mr. Justice Martin for courtesies extended in permission granted to use the table of Judges published herein, and desire to acknowledge the assistance of the Digest of Mineral Law in his "Mining Cases."

Our thanks are also due to the West Publishing Company of St. Paul, Minnesota, who kindly loaned to us their classification scheme for their American Digest, which has been followed as nearly as possible herein.

J. EDWARD BIRD.

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Supreme Court, Colony of Vancouver Island.

THE HON. DAVID CAMERON, Chief Justice and Judge in Admiralty, appointed December 2nd, 1853, resigned October 11th, 1865.

THE HON. JOSEPH NEEDHAM, Chief Justice and Judge in Admiralty, appointed October 11th, 1865, resigned March 29th, 1870.

THE HON. MATHEW BAILLIE BEGBIE, appointed Judge September 2nd, 1858, of the Colony of British Columbia, and the union of the two Colonies having been effected on 17th November, 1866, under the name of British Columbia, the Courts were merged on the 29th March, 1870, and Mr. Justice Begbie became the first Chief Justice of British Columbia, and also Judge in Admiralty. He received Knighthood on 24th November, 1874, died on 11th June, 1894.

THE HON. HENRY PERING PELLEW CREASE, first Puisne Judge; received Knighthood 1st January, 1896, retired 20th January, 1896.

THE HON. JOHN HAMILTON GRAY, appointed 3rd July, 1872, died 5th June, 1889.

THE HON. JOHN FOSTER MCCREIGHT, appointed 26th November, 1880, retired November 17th, 1897.

THE HON. ALEXANDER ROCKE ROBERTSON, appointed 26th November, 1880, died 1st December, 1881.

THE HON. GEORGE ANTHONY WALKEM, appointed 23rd May, 1882, retired February, 1904.

THE HON. MONTAGUE WILLIAM TYRWHITT DRAKE, appointed 14th August, 1889, retired 14th August, 1904.

THE HON. THEODORE DAVIE, appointed Chief Justice and Judge in Admiralty, 23rd February, 1895, died 7th March, 1898.

THE HON. ANGUS JOHN MCCOLL, appointed 13th October, 1896, Puisne Judge, appointed 23rd August, 1898, Chief Justice and Judge in Admiralty, died 16th January, 1902.

THE HON. PAULUS ÆMILIUS IRVING, appointed 18th December, 1897.

THE HON. ARCHER MARTIN, appointed 12th September, 1898, Puisne Judge, appointed 4th March, 1902, Judge in Admiralty.

THE HON. GORDON HUNTER, appointed 4th March, 1902, Chief Justice.

THE HON. LYMAN POORE DUFF, appointed 26th February, 1904.

THE HON. AULAY MORRISON, appointed 28th September, 1904.

Supreme Court as at Present Constituted.

THE HON. GORDON HUNTER, Chief Justice.

THE HON. PAULUS ÆMILIUS IRVING, Puisne Judge.

THE HON. ARCHER MARTIN, Judge in Admiralty and Puisne Judge.

THE HON. LYMAN POORE DUFF, Puisne Judge.

THE HON. AULAY MORRISON, Puisne Judge.

Court of Appeal.

Or Full Court, as it is called, consists of the Judges of the Supreme Court or any three of them sitting en banc.

Judges of the County Courts.

ATLIN.—HIS HON. F. McB. YOUNG.

CARIBOO.—HIS HON. CLEMENT FRANCIS CORNWALL.

KOOTENAY.—HIS HON. JOHN ANDREW FORIN.

NANAIMO.—HIS HON. ELI HARRISON.

NEW WESTMINSTER.—HIS HON. W. NORMAN BOLE.

KOOTENAY & YALE.—HIS HON. W. H. P. CLEMENT.

VANCOUVER.—HIS HON. ALEXANDER HENDERSON.

VICTORIA.—HIS HON. PETER SECORD LAMPMAN.

YALE.—HIS HON. WILLIAM WARD SPINKS.

ATTORNEY-GENERALS OF BRITISH COLUMBIA.

HON. J. F. MCCREIGHT, Q.C., Attorney-General, from December, 1871, to 23rd December, 1872.

HON. G. A. WALKEM, Q.C., Attorney-General, from December, 1872, to 27th January, 1876.

HON. A. C. ELLIOTT, Attorney-General, from 1st February, 1876, to 25th June, 1878.

HON. G. A. WALKEM, Attorney-General, from 26th June, 1878, to 13th June, 1882.

HON. J. R. HETT, Attorney-General, from 13th June, 1882, to 30th January, 1883.

HON. A. E. B. DAVIE, Q.C., Attorney-General from 29th January, 1883, to August, 1889.

HON. THEO. DAVIE, Q.C., Attorney-General, from 3rd August, 1889, to June, 1892.

HON. THEO. DAVIE, Q.C., Attorney-General, from 2nd July, 1892, to 4th March, 1895.

HON. D. M. EBERTS, Q.C., Attorney-General, from 4th March, 1895, to 8th August, 1898.

HON. JOS. MARTIN, Q.C., Attorney-General, from 15th August, 1898, to 7th August, 1899.

HON. ALEX. HENDERSON, Q.C., Attorney-General, from 7th August, 1899, to 28th February, 1900.

HON. JOS. MARTIN, K.C., Attorney-General, from 28th February, 1900, to 15th June, 1900.

HON. D. M. EBERTS, K.C., Attorney-General, from 15th June, 1900, to 4th June, 1903.

HON. A. E. MCPHILLIPS, K.C., Attorney-General, from 4th June, 1903, to 5th November, 1903.

HON. CHAS. WILSON, K.C., Attorney-General, from 5th November, 1903.

TA

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1. *Failure to Keep Log.*

1. Penalty.] — The action was for the condemnation of the ship for a contravention

of Article V. of the schedule to the Behring Sea Award Act (Imp.), 1894, in that her master did not enter accurately in the official log book the date and place of each fur seal fishing operation, and the number and sex of the seals captured each day, in accordance with the rules for entries in the official log, i.e., "as soon as possible after the occurrence," etc., as required by section 281 of the Merchant Shipping Act, 1854 (Imp.), which is made applicable to every vessel engaged in the fur seal fishing, by sub-section 3 of section 1 of the Award Act, supra:—Held, (1) that the contravention charged was not one in which the ship could be said to be "employed," within the meaning of section 1, sub-section 2, of the Award Act; (2) That the penalty provided for infringement of section 281 of the Merchant Shipping Act, relating to the particular subject of keeping a log, alone applies to the offence, and is incompatible with the forfeiture provided by sub-section 2 of the Award Act for contraventions thereof in which the ship is employed. The words "as soon as possible" mean within a reasonable time, and, upon the evidence, it did not appear that there had been unreasonable delay. Action dismissed, with reference to assess damages caused by the arrest. *The Beatrice*, 4 B. C. R. 347.

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2. *Fire Arms.*

1. Discrepancy in Ammunition.] — The arms and ammunition of the ship were inspected by an officer of the U. S. S. Grant, and a record of all those produced was entered in the official log. The ship commenced sealing on 1st August, and on 10th August was boarded by an officer of the U. S. S. Rush, whose attention was called to four skins which had holes in them, apparently caused by gaffs. The officers of the Rush, after examination, concluded that these seals had been shot. The guns and ammunition were again examined and checked, and some small discrepancy was discovered, which was explained afterwards. The ship was ordered to Ounalaska and a further count of the ammunition made. While there two of the crew deserted, taking away one of the boats and some provisions. The captain denied any infraction of the Act:—Held, on the evidence, since it was not clear that the holes in the seal skins were caused by shots, or if they were that the shots were from the ship, and since the discrepancy in regard to the ammunition was accounted for as being apparently attributable to error in the counting, that the action should be dismissed with costs. A counterclaim was made against the Crown for damages for loss of the boat and provisions whilst at Ounalaska under seizure:—Held, that as the master was in command and had full control of the crew, he alone was responsible for the loss, and the counterclaim was dismissed. *The Aurora*, 5 B. C. R. 178.

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3. *Prohibited Zone.*

1. Circumstances of suspicion.] — The ship on 27th July, 1895, was given a clearance for Behring Sea on a sealing expedition by the American customs officer at Copper Island, after making a manifest of things on board of her. She was boarded in the Behring Sea on 2nd September by the U. S. S. Rush, and searched for indications of an infraction of the Act, particularly regarding the prohibition against the use of fire arms in the taking of seals, under Article VI. of the schedule. In one seal skin, out of 336 then on board, a hole was discovered which might have been caused by a bullet or buck shot. There was a discrepancy both in number and kind between the ammunition stated in the manifest and that found upon the seizure, and there were fewer loaded shells. The captain of the ship was called as a witness and denied infraction of the Act:—Held, on the evidence, since it was not clear that the hole in the seal skin was caused by a shot, or, if it was, that the shot was from the ship; and since the discrepancy in regard to the ammunition was accounted for as being apparently attributable to error in the manifest, that the action should be dismissed, but as there were circumstances of suspicion warranting the seizure, without costs. In the Vice-Admiralty Court. *The E. B. Marvin*, 4 B. C. R. 330.

2. Evidence — *Statement of Officer.*] — The Court will take judicial cognizance, without further proof, of an Imperial Order-in-Council, upon production of a copy purporting to have been printed by the Queen's Printer in London. The statement of the captain or officer in command of a warship making seizure under s.-s. 5 of s. 1 of the Act, purporting to be signed by such officer, is admissible in evidence upon proceedings for condemnation without proof of signature. The Minnie was arrested 22 miles within the 30-mile prohibited zone, fully manned and equipped for taking seals, and with one seal skin on board:—Held, that the evidence for the defence set out in the judgment was insufficient to satisfy the onus cast on the ship by s. 1, s.-s. 5 (A) to shew that she was not used or employed in contravention of the Act. *The Minnie*, 3 B. C. R. 161.

3. Onus of proof.] — On 30th August, 189 , the ship Oscar and Hattie, a fully equipped sealer, was seized in Gotzieb Harbour in Behring Sea, while taking in a supply of water:—Held, affirming the judgment of the Court below, that when a British ship is found in the prohibited waters of Behring Sea, the burden of proof is upon the owner or master to rebut by positive evidence that the vessel is not there used or employed in contravention of the Seal Fishery (Behring's Sea) Act, 1891, 54 & 55 Vic. (Imp.) c. 19, s. 1, s.-s. 5:—Held, also, reversing the judgment of the Court below, that there was positive and clear evidence that the Oscar and Hattie was not used or employed at the time of her seizure in contravention of 54 and 55 Vic. c. 19, s. 1, s.-s. 5. [Appeal from the Exchequer Court of Canada (admiralty district of British Columbia), (1).] *The Ship Oscar and Hattie* v. *Her Majesty the Queen*, taken from 23 S. C. R. 396 (apparently not reported in B. C. R.).

4. Onus of proof.] — The ship having been arrested within the prohibited zone with seals and implements for taking them on board, upon the trial of an action for her condemnation for infraction of the Act, the captain was not called as a witness by the defence, and the only excuse for not calling

him was that he had gone fishing. The account and explanation of the conduct of the ship given in evidence by the mate and some of the crew was inconsistent with reasonable inferences against the ship pointed to by entries in the log: — Held, following The Minnie, 3 B. C. 161; 4 Exch. (Can.) 151, that under the Act the clearest evidence of bonâ fides is required to exonerate the master of a ship found in prohibited waters with skins and implements for taking them on board, from the imputation of an infringement of the provisions of the Act. That, on the evidence, the onus was not discharged, and the Court was not satisfied that the ship had not attempted to take seals in prohibited waters, and that she must be condemned:—Held, also, that as no seals appeared to have been actually caught or killed in prohibited waters, it was a proper case for the exercise of the discretion to release the ship on payment of a fine in lieu of forfeiture. In the Vice-Admiralty Court. *The Shelby*, 4 B. C. R. 342.

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4. *Position of Ship.*

1. Ignorance of position.] — In an action for condemnation of the ship for infraction of the Act and regulations, it was proved that she captured seals and was also seized within the prohibited zone. To an objection that Article I. of the Schedule of the Act only applies to British subjects, and that there was no proof that the master or any one on board was a British subject:—Held, that the proceedings being for forfeiture of the ship, the fact that she was proved to be a British ship brought her within the Act, and that proof of the master being a British subject would only be necessary to a charge against him for a personal offence under s. 1. The fact that the master, by reason of insufficient observations, inaccurate chronometers, was unaware of the position of the ship at the time the seals were taken, held no defence, as to catch seals without knowing where he was could not be considered as taking reasonable precautions. Owners employing ignorant and inefficient navigators cannot plead such ignorance as a defence. *The Vica*, 5 B. C. R. 174.

2. Master's responsibility.]—The ship having been seized, and evidence given that she had taken seals within the prohibited zone:—Held, a master takes upon himself the responsibility of his position, and if through error, want of care, or inability to ascertain his true position, he drifts within the prohibited zone and takes seals there, he thereby commits a breach of the regulations. No attempt to take seals should be made unless the master is certain of his position. *The Beatrice*, 5 B. C. R. 171.

3. Stress of weather.] — A sealing schooner, equipped for sealing and with skins on board, was driven into the prohibited waters of the Behring Sea by stress of weather. A current, of which the master was ignorant, had falsified his reckoning, so that he was unaware of his position. The schooner was seized by a Russian war ship for infraction of the Act. Upon action by the Crown to condemn the schooner:—Held, that the presence of the schooner at the point in question was sufficiently accounted for to rebut the statutory presumption that she had infringed the Act. *Re Ainoka*, 3 B. C. R. 121.

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5. *Vis Major.*

1. Inference of culpability.] — In an action for condemnation of the ship, seized fourteen miles within the prohibited zone with freshly killed seals on board, evidence was given for the defence, that the ship had been carried into the prohibited waters by vis major, and that her master was ignorant of her true position by reason of being unable to obtain observations:—Held, insufficient to discharge the inference of culpable infraction of the Act, and that it was no excuse to say that the state of the weather was such that the master could not ascertain his position. *The Ainoka*, 5 B. C. R. 168.

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6. *Wrongful Seizure.*

1. Measure of damages.]—The measure of damages recoverable for a wrongful seizure under colour of an infringement of the Behring Sea Award Act, 1894 (Imp.), is the whole injury caused by such seizure. *The Beatrice*, 5 B. C. R. 110.

IV. JURISDICTION.

1. Where owner in Province.]—The Admiralty Court has no jurisdiction over claims by owner, or consignee of goods, for damages done thereto by negligence or breach of duty by the owner, master, or crew of the ship, if it is shewn that, at the time of the institution of the cause, that any such owner or part owner is resident within the Province:—Held, that entry of an appearance is not a waiver of the objection to the jurisdiction. *Rithet* v. *Ship Barbara Boscowitz and Porter*, 3 B. C. R. 445.

2. As to costs.]—Where both parties in the wrong. *Lee* v. *The Olympian*, 2 B. C. R. 84.

See COLLISION.

V. SEIZURE AND SALE.

1. Marshal's sale.] — Where the purchaser of a ship at a marshal's sale refuses to complete his purchase, the ship may be put up for sale again without an order for re-sale, and the defaulting purchaser will be ordered by the Court to pay the deficiency, if any, on such re-sale, and the costs caused by his default. Judicial sales are not within the Statute of Frauds. In the Exchequer Court: In Admiralty. *Hackett, et al.*, v. *The ship Blakeley; Ex parte Jones*, 9 B. C. R. 439.

2. Possession fees.] — Where in an admiralty action a marshal is in possession of a ship simultaneously under warrants issued in different actions, more than one set of possession fees will not be allowed. *Simback* v. *The Saga*, 6 B. C. R. 522.

3. Seizure under fi. fa. of property in hands of receiver.]—Where property alleged to be part of the equipment of a ship in the possession of a receiver appointed in an action in rem in the Exchequer Court to enforce a mortgage of the ship, such property cannot be seized by a sheriff under a writ of fieri facias issued on a judgment recovered against the registered owner of the ship in the Supreme Court; and the Supreme Court has no jurisdiction on the application of the Sheriff to grant an order directing the trial of an interpleader issue between the mortgagees and the judgment creditors. *Williamson* v. *Bank of Montreal*, 6 B. C. R. 486.

VI. TIME.

1. Court Guided by Civic Time.] — In the service of process, as well as in its sittings and in the public hours of its registry, the Court will be guided by the civic time in use in the town where the Court sits, unless it is shewn that such time is in fact incorrect. *Vermont Steamship Co.* v. *The Abby Palmer* (*No. 2*), 10 B. C. R. 381.

See also COLLISION—SALVAGE—SHIPPING.

ADMISSIBILITY.

1. Of preliminary depositions of a material witness absent from Canada.] —*R.* v. *Morgan*, 2 B. C. R. 329.

See CRIMINAL LAW, VIII.

See also CRIMINAL LAW, VIII.—EVIDENCE.

ADMISSION.

See CRIMINAL LAW, VIII.—EVIDENCE—INTERNATIONAL LAW—PLEADING, II.

ADOPTION.

1. Custody of infants.—*Per* DRAKE, J. —1. A person who has adopted and brought up a child obtains thereby no legal right to its custody.—2. The child being a female under sixteen, the age of consent or election as to custody, her choice should not be considered, but her welfare and well being only; and that same were, on the facts, furthered by continuing the custody of the Refuge Home.—3. If the child had been over the age of consent, the Court would have no right to determine who should have the custody or control of her, but only to set her at liberty if detained in unlawful custody against her will. — 4. The Court has power under Supreme Court Act, s. 10, and Rule B. C. 751, to award costs upon a rule nisi for habeas corpus. Upon appeal to the Full Court, *per* WALKEM and IRVING, JJ., dismissing the appeal. Adoption is not recognized by the law of England, and a foster-parent has no more legal right to the custody of the child of their adoption than a stranger. *Per* WALKEM, J.—The Court has jurisdiction to award costs in habeas corpus proceedings. *Per* IRVING, J.—The Court has no jurisdiction to award costs in habeas corpus proceedings, but the Full Court has jurisdiction to award costs of appeal. *Per* DAVIE, C.J., dissenting (allowing the appeal with costs). Although the adoption of a child into a family may confer no right to its custody, as against a parent, it constitutes a legal status capable of being maintained against a mere invader of the household, and the adoptive father is a person in loco parentis for the purpose of recovering the child if taken out of his custody by a stranger. *In re Quai Shing, an infant*, 6 B. C. R. 86.

ADULTERY.

See DIVORCE.

ADVANCEMENT.

See WILLS.

ADVERSE ACTION.

1. Affidavit and plan — *Filing of condition precedent to.*]—*Paulson* v. *Beaman*, 9 B. C. R. 184.

See MINES AND MINERALS, III., IV.

2. Co-owners—*Effect of judgment on.*]—*Fry* v. *Botsford*, 9 B. C. R. 234.

See MINES AND MINERALS, XXXVI.

3. Fraud — *Proper remedy in case of.*] — *Hand* v. *Warren*, 7 B. C. R. 42.

See MINES AND MINERALS, XXI.

4. Judgment in — *Not a judgment in rem.*]—*Fry* v. *Botsford*, 9 B. C. R. 234.

See MINES AND MINERALS, III.

5. Time—*For filing affidavit in, may be extended.*]—*Hand* v. *Warren*, 7 B. C. R. 42.

See MINES AND MINERALS, III., IV.

See also ADVERSE CLAIM — ADVERSE PROCEEDINGS—MINES AND MINERALS, III.

ADVERSE CLAIM.

1. Adverser must give affirmative proof.]—*Caldwell* v. *Davys*, 7 B. C. R. 156.

See MINES AND MINERALS, III., XIX.

2. Appeal—*From order extending time to commence proceedings to enforce.*] — *Re Maple Leaf & Lanark Mineral Claims*, 2 B. C. R. 323.

See APPEAL, V.

3. Evidence — *Necessity for affirmative evidence in adverse claim.*]—*Ryan* v. *McQuillan*, 6 B. C. R. 431; *Caldwell* v. *Davys*, 7 B. C. R. 156.

See MINES AND MINERALS, XIX.

4. Filing of—*Condition precedent to right of action.*]—*Kilbourn* v. *McGuigan*, 5 B. C. R. 233.

See MINES AND MINERALS, III.

5. Joinder of parties in.] — *Dunlop* v. *Haney*, 6 B. C. R. 169.

See PRACTICE, I. 1, S.

6. Motion to vacate writ in.]—*Troup* v. *Kilbourne*, 5 B. C. R. 547.

See MINES AND MINERALS, III.

See also ADVERSE ACTION—ADVERSE PROCEEDINGS—MINES AND MINERALS, III.

ADVERSE PROCEEDINGS.

1. Holder of certificate of improvements not bound to adverse any subsequent applicant for a certificate.]—*In re The American Boy Mineral Claim*, 7 B. C. R. 268.

See MINES AND MINERALS, III., IX. 3.

2. Nature of.]—*Clark* v. *Haney*, 8 B. C. R. 130.

See MINES AND MINERALS, III.

3. Onus of proof in.] — *Caldwell* v. *Davys*, 7 B. C. R. 156; 6 B. C. R. 431.

See MINES AND MINERALS, III.

4. Prima facie case — *Plaintiff in adverse action establishes such when he proves miner's certificate, prior location and record and overlapping of claims in dispute.*] — *Schomberg* v. *Holden*, 6 B. C. R. 419.

See MINES AND MINERALS, III.

5. Writ of summons in adverse action—*Renewal of.*]—*Haney* v. *Dunlop*, 6 B. C. R. 451.

See MINES AND MINERALS, III.

See ADVERSE ACTION — ADVERSE CLAIM — MINES AND MINERALS, III.—PRACTICE, I. 1.

ADVERTISEMENT.

1. For laborers—*By want advertisement not necessarily a promise of employment and where not, does not contravene Alien Labour Act.*] — *Downie* v. *Vancouver Engineering Works, Ltd.*, 10 B. C. R. 367.

See ALIENS.

AFFIDAVIT.

1. Adverse claim—*Affidavit of, made by adverse plaintiff's husband does not ipso facto vitiate the proceedings, but question is one of bona fides under Act.*]—*Aldous* v. *Hall Mines*, 6 B. C. R. 394.

See MINES AND MINERALS, III., IV.

2. Agent.]—An affidavit sworn before a notary public in Manitoba who had been acting as agent for defendant's solicitor, is insufficient under Rule 417. *McLellan* v. *Harris et al.*, 6 B. C. R. 257.

3. Ante litem solicitor—*Affidavit sworn before.*]—The affidavit of a party to a suit sworn before an ante litem solicitor in his employ, acquainted with the facts of the case, although not the solicitor on the record, is insufficient under Rule 417. *Dunsmuir* v. *Klondike & Columbian Goldfields, Ltd.*, 6 B. C. R. 200.

4. Assessment roll—*Necessity for affidavit verifying.*]—*Murne* v. *Morrison*, 1 B. C. R. pt. II., 120.

See MUNICIPAL CORPORATIONS, IX.

5. Bail—*Affidavit to hold to.*]—*Kempton* v. *McKay*, 4 B. C. R. 196; *Williams* v. *Richards*, 3 B. C. R. 510.

See PRACTICE, II.

6. Capias ad respondendum — *Sufficiency of affidavit for.*]—*Williams* v. *Richards*, 3 B. C. R. 510; *Walt* v. *Barber*, 6 B. C. R. 461; *Robertson* v. *Beers*, 7 B. C. R. 76.

See ARREST.

7. Capias ad respondendum — *Statement of cause of action—Certainty of.*]—Service of affidavits to be served with an ex parte order only applies when the ex parte order itself has to be served. It is not necessary to serve on defendant a copy of ex parte order for a ca. re. *Macaulay* v. *O'Brien*, 5 B. C. R. 510.

See ARREST.

8. Capias ad respondendum—*Necessary contents of affidavit for.*]—Not necessary to show defendant leaving country with intent to defraud creditors. *Macaulay* v. *O'Brien*, 5 B. C. R. 510, supra.

See ARREST.

9. Capias ad respondendum—*Partners —New firm suing on cause of action accrued to old firm.*]—Insufficiency of affidavit in support of writ where failed to disclose change in constitution of firm and firm name. *Lenz & Leiser* v. *Kirschberg*, 6 B. C. R. 533.

See ARREST.

10. Capias ad respondendum — *Statement of cause of action should appear in affidavit leading to.*]—Where stated defendant to be indebted in a sum as appears in particulars annexed as an exhibit hereto:—Held, insufficient. *Robertson* v. *Beers*, 6 B. C. R. 461.

See ARREST.

11. Capias ad respondendum — *Necessary contents of affidavit leading to.*]—*Wehrfritz* v. *Russell*, 9 B. C. R. 79.

See ARREST.

12. Certificate of work—*Irregularities in affidavit leading to certificate of work cured by issuance of.*]—*Laur* v. *Parker*, 7 B. C. R. 418.

See MINES AND MINERALS, IX. 3.

13. Chamber summons—*Filing affidavit before issue of.*]—Rule 572 requiring every summons in Chambers to give notice of the affidavits to be read in support of it is imperative. *Leiser* v. *Cavalsky et al.*, 3 B. C. R. 196.

14. Commission—*Affidavit leading to order for, must state names of witnesses.*] —*Hermann* v. *Lawson*, 3 B. C. R. 353.

See PRACTICE, II., XIV.

15. Cross-examination — *On affidavit whether right of deponent to expense of attendance. Emerson* v. *Irving*, 4 B. C. R. 56.

See PRACTICE, II.

16. Cross-examination — *On affidavit.*] —Rules 385 and 429 taken together compel production for cross-examination on affidavit of a deponent if required by opposite party before such affidavit can be used. *Russell* v. *Saunders*, 7 B. C. R. 173; *Westphalen* v. *Edmunds*, 7 B. C. R. 175.

See PRACTICE, II.

17. Cross-examination—*On affidavit—On motion for summary judgment.*]—*Ward* v. *Dominion Steamboat Line Co.*, 9 B. C. R. 231.

See JUDGMENT.

18. Documents—*Discretion of Court to order deponent to make affidavit of documents before delivery of statement of defence to enable plaintiff to give particulars of fraud alleged in claim.*]—*Beauchamp* v. *Muirhead*, 6 B. C. R. 418.

See PRACTICE, XI. 7.

19. Documents—*Affidavit of—Sufficiency of general description of books of accounts in.*]—Supplementary affidavit claiming privilege filed subsequent to issue of Chamber summons for further and better affidavit. *Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 104.

See PRACTICE, XI. 7.

20. Election petition—*Omission to file affidavit of time and manner of serving notice of presentation of.*]—*Stoddart* v. *Prentice*, 7 B. C. R. 498.

See ELECTIONS.

21. Evidence — *Language of deponent—Affidavit must be drawn up and sworn to in the language of the deponent.*]—An affidavit drawn up in a language not understood by the deponent cannot be read in Court; it must be drawn up and sworn to in the language of the deponent, but a sworn translation of it may be read in Court. *Re Ah Gway, Ex parte Chin Su*, 2 B. C. R. 343 (not followed by Walkem, J., in *Re Fong Yuk et al.*, 8 B. C. R. 118).

22. Execution Act—*Intituling of affidavits in proceedings under.*]—*McKay* v. *Clark*, 2 B. C. R. 213.

See EXECUTION.

23. Exhibit—*To affidavit leading to writ of ca. re. containing particulars of claim—Held, insufficient. Watt* v. *Barber*, 6 B. C. R. 461; see Ca. re, supra.

See ARREST.

24. Ex juris writ—*Grounds of defendant's belief—Affidavit leading to order for ex juris writ.*]—Should shew grounds of deponent's belief that plaintiff has good cause of action. *Northern Counties Investment Trust* v. *Nathan*, 7 B. C. R. 136.

See PRACTICE, XXXVIII. 5.

25. Ex juris writ—*Affidavit leading to order for should be reasonably precise as to essential facts which constitute the cause of action, and if there are omissions of substance order should not be made. Tate* v. *Hennessy*, 7 B. C. R. 262.

See PRACTICE, XXXVIII. 5.

26. Ex juris writ—*Affidavit leading to—Based on information and belief.*]—*Northern Investment Trust* v. *Nathan*, 7 B. C. R. 136.

See INFORMATION AND BELIEF, INFRA.

27. Ex juris writ—*Practice.*]—An affidavit for an order for substitutional service of a writ of summons, issued for service outside the jurisdiction, must show that the defendant is evading service of it. *Hull Bros.* v. *Schneider*, 3 B. C. R. 32.

28. Foreign Oaths' Act.]—An affidavit sworn out of the Province of British Columbia before a notary public, and certified under his hand and official seal, is admissible under the B. C. Oaths' Act, 1892, sec. 12. The copy of the affidavit to accompany a summons for judgment under Order XIV., Rule 2, must be a true copy. The affidavit was sworn before a notary public and the copy had no indication of the notarial seal upon the original:—Held, fatal, and the motion was dismissed. *First National Bank* v. *Ragnes*, 3 B. C. R. 87.

29. Foreigner—*Affidavit by.*]—An affidavit drawn in a language not understood by deponent may be read in Court if it appears from jurat that it was first read over and interpreted to deponent. (*In re Ah Gway, supra*, not followed.) *In re Fong Yuk* and *the Chinese Immigration Act*, 8 B. C. R. 118. See also *In re Ah Gway*, 2 B. C. R. 343, supra.

30. Garnishment—*Affidavit leading to a garnishee summons must verify plaintiff's cause of action, and a garnishee is entitled to question validity of proceedings at hearing.*]—Defect in affidavit where irregularity only may be cured by garnishees making payment into Court which operates as waiver by them of right to object. Plaintiff may specify in one affidavit several debts proposed to be garnished. *Harris* v. *Harris*, 8 B. C. R. 307.

See GARNISHMENT.

31. Inferences — *Reasonable inferences from facts deposed to may be given effect to as if stated, Cranstoun v. Bird*, 5 B. C. R. 140.

See PRACTICE, II.

32. Information and belief—*Admissibility of affidavit based on. Chong v. McMorran*, 8 B. C. R. 261.

See PRACTICE, I. 8.

33. Information and belief.]—Affidavit founded on leading to an order for an ex juris writ containing allegations of fact which must necessarily have been founded on information and belief only, must state source of information. *Tate et al. v. Hennessey et al.*, 8 B. C. R. 220.

34. Injunction—*Affidavit leading to.*]—Defendant must falsify affidavit of plaintiff leading to injunction order, to be entitled to have it dissolved: as, if it appears upon affidavits of plaintiff upon his own showing, a good case for the interference of Court, and that there is upon all the facts before the Court a reasonable prospect of his succeeding at trial, Court will not enquire further into rights of the parties upon the motion to dissolve. *Ward & Co. v. Clark*, 3 B. C. R. 356.

See INJUNCTION.

35. Jurat — *In affidavit not complete. Brown v. Jowett*, 4 B. C. R. 44.

See CRIMINAL LAW, V.

36. Justification—*Affidavit of.*] — *R. v. Ah Gin*, 2 B. C. R. 207.

See CHATTEL MORTGAGES.

37. Mechanic's Lien—*Sufficiency of affidavit for—Sworn before a commissioner—Whether good.*]—*Holden v. Bright Prospects Gold Mining Co.*, 6 B. C. R. 439.

See MECHANIC'S LIEN.

38. Mechanic's Lien—*Requisites of affidavit for—For mechanic's lien—Stat. B. C. 1888, cap. 74, sec. 9—Statements in affidavit for lien—Residence of contractors—Particulars of work and materials—"Owing."*]—The filing of an affidavit fulfilling all the requirements of Stat. B. C. 1888, cap. 74, sec. 9, is a pre-requisite to the validity of a mechanic's lien. The following defects in such affidavit held fatal:—(1) Omission to state the residence of the owner of the property. (2) Omission to sufficiently state the residence of the contractors. Statement of residence as in "Victoria" held insufficient. (3) Omission to state in detail the particulars and items of the work done and materials furnished in respect of which the lien is sought. (4) Omission to state that the amount claimed was "due," and when it became due. Statement that it was "owing" held insufficient. *Smith v. McIntosh, Carne et al.*, 3 B. C. R. 26.

39. Mechanic's Lien—*Sufficiency of affidavit for.*]—*Haggerty v. Grant*, 2 B. C. R. 173.

See MECHANIC'S LIEN.

40. Particulars of a claim annexed to affidavit by way of exhibit held insufficient to support writ of ca. re.]—(See Ca. re. supra.) *Walt v. Barber*, 6 B. C. R. 461.

See ARREST.

41. Replevin—*Filing affidavit necessary before issuing writ of.*]—*McGregor v. McGregor*, 6 B. C. R. 258.

See REPLEVIN.

42. Solicitor—*Affidavit necessary to obtain examination of solicitor shewing that he has some interest in subject matter of action.*]—*Leadbeater v. Crow's Nest Pass Coal Co.*, 10 B. C. R. 206.

See PRACTICE, XI. 5.

43. Substitutional service — *Affidavit leading to order for—Requisites of.*]—*Centre Star v. Rossland*, 10 B. C. R. 262.

See PRACTICE, XXVII.

44. Substitutional service—*Affidavit leading to order for substitutional service of an ex juris writ must shew defendant is evading service.*]—*Hall Bros. v. Schneider*, 3 B. C. R. 23. See Ex juris writ, supra.

See PRACTICE, XXXVIII. 5.

45. Trial—*Application to examine party before trial under Rule 708 must be supported by affidavit.*]—*Elson v. C. P. R.*, 6 B. C. R. 71.

See PRACTICE, XI. 5.

46. Voters' list—*Affidavit to be placed on, may be sworn outside of Province.*]—*In re Provincial Elections Act*, 10 B. C. R. 114.

See ELECTIONS.

47. Winding-up—*Affidavit in support of petition for.*]—*In the Kootenay, &c., Co.*, 6 B. C. R. 112.

See COMPANY, IX.

See also MINES AND MINERALS, IV.—PRACTICE, II.

AFFIRMATIVE EVIDENCE.

See MINES AND MINERALS, III., XIX.

AFFRAY.

See CRIMINAL LAW.

AGENCY.

1. An action does not lie against an agent to recover money paid to him as such.]—*Williams v. Wilson*, 3 B. C. R. 613.

See VENDOR AND PURCHASER.

2. Authority of agent to bind principal.]—*Galbraith & Sons* v. *Hudson's Bay Co.*, 7 B. C. R. 431.

See CONTRACT, V.

3. Carriers — *Liability of, for loss by their agents.*] — *Hamilton* v. *Hudson's Bay Co.*, 1 B. C. R., pt. II., 176.

See CARRIERS.

4. Certificate of agent—*As to work done.*]—*Galbraith & Sons* v. *Hudson's Bay Co.*, 7 B. C. R. 431.

See CONTRACT, III. 1.

5. Constituting — *What is necessary to constitute agency.*]—*Hayden* v. *Smith & Angus*, 1 B. C. R., pt. II., 312.

See CONTRACT, I. 2.

6. Determination of—*May be determined by lapse of time.*]—*McLeod* v. *Waterman*, 10 B. C. R. 42.

See PRINCIPAL AND AGENT.

7. Evidence — *Admissible to show unnamed principals.*]—*Smith* v. *Mitchell*, 3 B. C. R. 450.

See VENDOR AND PURCHASER.

8. Extent — *Of powers of mine owner's representative.*]—*LeRoi Co.* v. *Northport Co.*, 10 B. C. R. 138.

See CONTRACT, I. 1.

9. Implied powers of life insurance agent to bind company.]—*The Confederation Life Insurance Co.* v. *McInnes*, 4 B. C. R. 126.

See RELEASE.

10. Indemnity—*Of Agent where innocent.*]—*Board of School Trustees of Victoria* v. *Muirhead & Mann*, 4 B. C. R. 148.

See INDEMNITY.

11. Knowledge—*Of agent—Not to be imputed to principal.*]—*R.* v. *Clark*, 2 B. C. R. 191.

See CRIMINAL LAW, XIII.

12. Liability of agent—*When acting under authority.*]—*Conghlan* v. *Wilmot*, 4 B. C. R. 20.

See CONTRACT, III. 1.

13. Liability of agent — *For tort of principal.*]—*Board of School Trustees of Victoria* v. *Muirhead & Mann*, 4 B. C. R. 148.

See INDEMNITY.

14. Locating claim by agent—*Will be compelled to transfer to principal.*]—*Fero* v. *Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, V.

15. Mortgagee—*Agent of—Duty to obtain accurate valuation.*]—*Wolley* v. *Lowenberg et al.*, 3 B. C. R. 416.

See PRINCIPAL AND AGENT.

16. Partnership—*Authority of partner to execute chattel mortgage.*]—*McClary Mfg. Co.* v. *Howland*, 9 B. C. R. 479.

See CHATTEL MORTGAGE.

17. Proof of agency.] — *Courtnay* v. *Canadian Development Co.*, 8 B. C. R. 53.

See CARRIERS.

18. Sale of lands—*Agent for — Cannot bind principal contrary to instructions.*]—*Hobbs* v. *Esquimalt and Nanaimo Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

19. Scope of—*As to an act of State.*]—*Cranstoun* v. *Bird*, 4 B. C. R. 569.

See INTERNATIONAL LAW.

20. Solicitor—*General agent of—Service on, where merely general agents but never acted as agent in particular suit, held insufficient.*]—*Barnes* v. *Gray*, 6 B. C. R. 219.

See PRACTICE, XXVII.

21. Solicitor—*Agent of—Affidavit sworn before is insufficient.*] — *McLellan* v. *Harris*, 6 B. C. R. 257.

See AFFIDAVITS.

22. Solicitor—*Mere agent of has no right to practice in Supreme Court.*]—*In Estate of Demers*, 1 B. C. R., pt. II., 334.

See SOLICITOR.

23. Trespass—*Unauthorized trespass — Respondeat superior.*] — *Adams* v. *National Electric Tramway Co.*, 3 B. C. R. 199.

See RAILWAYS.

24. Tortious Act of agent—*Respondeat superior.*]—*Harris* v. *Brunette Saw Mill Co.*, 3 B. C. R. 172.

See MASTER AND SERVANT, III.

See also CONTRACT, V. — PRINCIPAL AND AGENT—VENDOR AND PURCHASER.

AGREEMENT.

1. Breach of agreement—*Action to restrain.*]—*Baxter* v. *Jacobs*, 1 B. C. R., pt. II., 370.

See INJUNCTION.

2. Jury—*Whether agreement to try without.*]—Action having been brought down to trial without jury, and postponed, and the evidence of a witness subsequently taken de bene esse:—Held, facts did not constitute an agreement to try without a jury. *Ferguson* v. *Thain*, 3 B. C. R. 447.

See JURY.

3. Land—*Agreement for sale of according to plan.*]—*Thompson* v. *Courtney*, 2 B. C. R. 89.

See SPECIFIC PERFORMANCE.

4. Land — *Agreement for sale of, made subject to happening of a contingent event as condition precedent — Liability of purchaser on voluntary agreement, contingent event not having happened.*]—*Manley* v. *MacIntosh*, 10 B. C. R. 84

See VENDOR AND PURCHASER.

5. Land—*Statute of Frauds—Parol agreement respecting purchase of land for use of partnership.*]—*Brown* v. *Grady*, 6 B. C. R. 190.

See FRAUDS, STATUTE OF.

6. Mineral claim — *Agreement for sale of—Effect of, on rights of partners.*]—*Wells* v. *Petty*, 5 B. C. R. 353.

See MINES AND MINERALS, XXXI. 6.

7. Novation—*Must be an express agreement relieving party previously liable to constitute a novation.*]—*Gurney* v. *Braden*, 3 B. C. R. 474.

See NOVATION.

8. Payment—*An agreement to "pay what is right" too illusory.*]—*Crossdale* v. *Hall*, 3 B. C. R. 384.

See CONTRACT, II. 2.

9. Pre-emption—*Agreement for sale of pre-emption claim.*]—*Turner et al.* v. *Curran et al.*, 2 B. C. R. 51.

See CONTRACT, II. 3.

10. Specific performance of — *An agreement for sale issued by agent and deposit accepted—Agent acting contrary to his instructions.*]—*Hobbs* v. *Esquimalt and Nanaimo Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

11. Statute of Frauds—*Agreement for sale of land—Error in description of property —Latent ambiguity—Parol evidence to explain.*]—*Borland* v. *Coole*, 10 B. C. R. 403.

See FRAUDS, STATUTE OF.

12. Street railway—*Agreement between and municipality.*]—Whether company compelled to operate to city limits as extended after agreement made. *Yates et al.* v. *B. C. Electric Ry. Co., Ltd.*, 7 B. C. R. 323.

See RAILWAYS.

13. Stock—*Agreement to accept.*]—Specific performance will not be ordered where the other party has failed to deliver stock. *Miller* v. *Averill*, 10 B. C. R. 205.

See SPECIFIC PERFORMANCE.

14. Verbal—*Interest of free miner in his mineral claim is an interest in land and agreement not in writing respecting it cannot be enforced.*]—*Fero* v. *Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, XXI. 2.

15. Waiver—*Agreement to bring action in Ontario Court not binding where party has waived right to claim benefit of.*]—*Howay and Reid* v. *Dominion Permanent Loan Co.*, 6 B. C. R. 551.

See PRACTICE, XXXVI.

See also CONTRACT—FRAUDS, STATUTE OF —PARTNERSHIP — SPECIFIC PERFORMANCE — VENDOR AND PURCHASER.

AGRICULTURAL SETTLER.

1. Agricultural purposes—*Actual settlers for.*]—By 47 Vic, c. 14, s.s. f (B.C.), certain land conveyed to the E. & N. Ry. Co. was, for four years from the date of the Act, thrown open to actual "settlers for agricultural purposes," coal and timber excepted. H. and W. respectively claimed a right of pre-emption under this Act:—Held, affirming the decision of the Court below, that the Act did not confer a right of pre-emption to lands not within the pre-emption laws of the province; that only "unreserved and unoccupied lands" came within those laws and the lands claimed had long before been reserved for a town site; and that the claimants were not upon the lands as "actual settlers for agricultural purposes," but had entered with express notice that the lands were not open for settlement. *David Hoggan* v. *The Esquimalt and Nanaimo Railway Co. and Samuel Waddington* v. *The Esquimalt and Nanaimo Railway Co.* (Appeals from the decisions of the Supreme Court of British Columbia affirming the judgment at the trial for the defendants in each case respectively. Taken from 20 S. C. R. 235. Apparently not reported in B. C. R.)

ALDERMAN.

1. Property—*Qualification of.*]—*Falconer* v. *Langley*, 6 B. C. R. 444.

See MUNICIPAL CORPORATIONS, V.

2. Voting—*Method to restrain from voting where disentitled by statute.*]—*Coughlan et al.* v. *The Corporation of the City of Victoria et al.*, 3 B. C. R. 57.

See INJUNCTION.

See also MUNICIPAL CORPORATIONS, V.

ALIENATION.

Of affection. *See* DIVORCE.

1. Power of—*Must accompany power of dedication.*] — *The C. P. R. Co.* v. *City of Vancouver*, 2 B. C. R. 306.

See DEDICATION.

2. Taxation—*What is alienation for purposes of.*]—*Victoria Lumber Co.* v. *The Queen*, 3 B. C. R. 16.

See TAXATION, III. 8.

ALIENS.

1. Alien Labor Act—*Advertisement.*]—The Company published in a Seattle newspaper this advertisement: "Wanted. First-class machinists. Apply Vancouver Engineering Works, Limited, Vancouver, B.C." :—Held, the advertisement did not contain a promise of employment within the meaning of the Alien Labour Act, as amended by 1 Edw. VII., cap. 13, sec. 4. *Downie* v. *Vancouver Engineering Works, Limited*, 10 B. C. R. 367.

2. Constitutional Law—*Employment of Chinamen underground — Interference with subject of aliens—Rights of aliens—Whether intra vires of Provincial Legislature to pass Statute in regard to aliens.*]—*In re The Coal Mines Regulation Amendment Act*, 1890, 5 B. C. R. 306.

See CONSTITUTIONAL LAW, II. 5.

3. Foreign contract — *Jurisdiction and remedies to inforce in B. C.*]—The Supreme Court of B. C. has jurisdiction to entertain an action for a breach in British Columbia of a contract between aliens, made and to be performed abroad, and to apply all the remedies open to suitors in this Court. *Baxter* v. *Jacobs, Moss et al.*, 1 B. C. R., pt. II., 373.

See ARREST.

4. Naturalization of.]—*In re the Coal Mines Regulation Act and Amendment Act*, 1903, 10 B. C. R. 408.

See CONSTITUTIONAL LAW, II. 5.

5. Temporary resident — *Arrest of on ca. re.*]—*Macaulay* v. *O'Brien*, 5 B. C. R. 510.

See ARREST.

ALIMONY.

1. Foreign judgment for—*Action for arrears of—Whether or not it lies.*]—Plaintiff, in 1891, recovered a consent judgment against the defendant in Ontario for alimony and maintenance, the judgment being a confirmation subject to certain provisions, of an agreement previously made for the maintenance of the wife and children. *Held*, that an action lay on the judgment for arrears of alimony and maintenance. *Nouvion* v. *Freeman* (1889), L. R. 15 App. Cas. 1, specially referred to. *Hadden* v. *Hadden*, 6 B. C. R. 340.

See also DIVORCE.

ALTERATION.

1. Buildings — *Altering wooden.*]—*Regina* v. *On Hing*, 1 B. C. R., pt. II., 148.

See MUNICIPAL CORPORATIONS, II. 5.

2. Promissory note—*Altering after signature.*]—*The B. C. Land and Investment Agency, Ltd.* v. *Ellis et al.*, 6 B. C. R. 82.

See BILLS AND NOTES.

AMBIGUITY.

1. Arbitration—*Ambiguity of submission to—Jury should find as to real intention of parties.*]—*MacAdam* v. *Kickbush*, 10 B. C. R. 358.

See PRACTICE, XX.

2. Evidence—*To explain latent ambiguity.*]—*Borland* v. *Coote*, 10 B. C. R. 493.

See VENDOR AND PURCHASER.

3. Statement of claim—*Ambiguous.*]—*E. and N. Ry. Co.* v. *New Vancouver Coal Co.*, 9 B. C. R. 162.

See PLEADINGS, IX. 2.

AMENDMENT.

1. By adding party defendant.]—*Chong et al.* v. *McMorrow*, 8 B. C. R. 261.

See PLEADINGS, III.

2. Of conviction.]—*Houghton's Case*, 1 B. C. R., pt. I., 89.

See CERTIORARI.

3. Of notice of motion for discharge of defendant arrested under order for a ca. re.]—*Coursier* v. *Madden*, 6 B. C. R. 125.

See ARREST.

4. Of order where name of presiding Judge omitted.]—*Gordon* v. *Cotton*, 3 B. C. R. 499.

See PRACTICE, VIII.

5. Of petition — *At trial.*] — *Martin* v. *Deane*, 7 B. C. R. 128.

See ELECTIONS.

6. Of plea—*Asked for first time in full Court may be granted.*]—*Jones* v. *Davenport*, 7 B. C. R. 452.

See PLEADINGS, III.

7. Of pleadings—*Exceeding order for—Waiver of right to object.*]—*Centre Star* v. *The Rossland Miners' Union et al.*, 9 B. C. R. 325.

See PRACTICE, XXXVI.

8. Of pleadings — *At close of trial.*]—*Foley* v. *Webster et al.*, 2 B. C. R. 137.

See PLEADINGS, III.

9. Of pleadings—*At trial.*]—*Tuck* v. *The Corporation of the City of Victoria*, 2 B. C. R. 179.

See PLEADINGS, III.

10. Of pleadings—*After notice of trial—Terms on which will be granted—Postponement where opposite party not prepared to meet issues raised.*] — *Walley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 197.

See PLEADINGS, III.

11. Of pleadings—*At close of case—Improper refusal.*]—In an action on an alleged promissory note in the Territorial Court of the Yukon, the plaintiff's counsel at the close of his case, asked leave to amend the claim by inserting counts on an account stated, and leave was refused. The trial proceeded and the claim on the note was dismissed and a reference was ordered for the purpose of taking accounts, and an order to that effect was taken out on the 30th May, without specifying the date from which the accounts were to be taken. On taking the accounts the referee, at the direction of the Judge, and as to which it did not appear that plaintiffs had notice, took the accounts as beginning at a date unsatisfactory to plaintiffs, and the referee's report was confirmed by the Judge:—Held, on appeal, that as the plaintiffs should have been allowed to amend their pleadings, and although the order of the 23rd May, being final so far as the claim on the note was concerned, and an appeal from it had not been brought in time, yet as an amendment had been improperly refused, and the Judge in giving his judgment of the 23rd May, had not made it clear to the plaintiffs what his judgment really decided, the case should be examined on the merits. Held, on the merits, that the judgment of DUGAS, J., must be confirmed. *Belcher* v. *McDonald*, 9 B. C. R. 377.

See FRAUDULENT CONVEYANCE.

12. Of statement of claim—*Propriety of amending after long delay in proceeding with action.*]—*Clark et al.* v. *Eholt & Carson*, 3 B. C. R. 442.

See PRACTICE, I. 6.

13. Of style of cause.]—*B. C. Furniture Co.* v. *Tugwell*, 7 B. C. R. 361.

See PRACTICE, XXIX.

14. Of writ—*Amendment of indorsement of address on writ.*]—*Dundas et al.* v. *McKenzie*, 10 B. C. R. 174.

See PRACTICE, XXXVIII. 1.

15. Of writ—*Amendment of indorsement by insertion of plaintiff's address.*]—*Short* v. *Federation Brand Salmon Co.*, 6 B. C. R. 385.

See PATENTS.

16. Of writ—*Service of amended writ.*]—*Baxter* v. *Jacobs, Moss et al.*, 1 B. C. R., pt. II., 373.

See ARREST.

17. Of writ—*Special indorsement—Re service of amended writ—Appearance already filed stands as to amended writ.*]—*More et al.* v. *Paterson et al.*, 2 B. C. R. 302.

See PRACTICE, XXXVIII. 10.

18. Of writ—*By adding address of party.*]—*Matthews* v. *The Corporation of the City of Victoria*, 5 B. C. R. 284.

See PRACTICE, XXXVIII. 3.

19. Of writ—*By turning action into an information.*] — *Anderson* v. *Corporation of City of Victoria et al.*, 1 B. C. R., pt. II., 107.

See MUNICIPAL CORPORATIONS, VII.

20. Principles governing.]—*Belcher* v. *McDonald*, 9 B. C. R. 388.

See APPEAL, VIII. 11.

21. Terms of.]—*Gordon* v. *The City of Victoria*, 6 B. C. R. 129.

See PRACTICE, I. 11.

See also PLEADINGS, III.—PRACTICE, I. 11 (b), IX. 5, XXXVIII. 3.

ANCIENT LIGHTS.

1. Right to—*How acquired — Unity of possession—Prescription Act.*] — *Feigenbaum* v. *Jackson et al.*, 8 B. C. R. 417.

See PRESCRIPTION.

ANIMALS.

1. Dog — *Mischievous Animals Act.*]—In an action for damages for injuries caused by the bite of a dog, section 30 of the Mischievous Animals Act (C. S. 1888, c. 5), does not preclude the defendant from showing the peaceful character of the dog, or his ignorance of its vicious disposition, but only raises a rebuttable presumption against him. *Nevill* v. *Laing*, 2 B. C. R. 100.

ANTECEDENT DEBT.

1. Security taken for—*Pressure—Preference.*]—*Bolt et al.* v. *Hart et al.*, 2 B. C. R. 32.

See CHATTEL MORTGAGE.

ANNUITY.

See WILLS.

APOLOGY.

Allegations of willingness to publish should be struck out.]—*Hoste* v. *Victoria Times Publishing Co.*, 1 B. C. R., pt. II., 365.

See PLEADINGS, I.

APPARATUS.

1. Causing injury—*To entitle plaintiff to judgment under Employer's Liability Act, must show that it was reasonably and practically necessary to use.*]—*Davies* v. *Le Roi Mining and Smelting Co.*, 7 B. C. R. 6.

See MASTER AND SERVANT, IV. 2.

APPEAL.

I. Appeal Generally.

1. Argument of counsel on — *Should exhaust case on opening.*] — *Warmington* v. *Palmer et al.*, 8 B. C. R. 344.

See Master and Servant, IV. 2.

2. Assessment—*No appeal lies from decision of Supreme Court Judge reviewing assessment of Court of Revision.*]—*In re Vancouver Incorporation Act*, 1900, *and B. T. Rogers*, 9 B. C. R. 373.

See Municipal Corporations, IX.

3. Benchers—*Appeal from decision of.*]—*In re J. J. Blake*, 6 B. C. R. 276.

See Solicitor and Client.

4. Ca. re.—*Order appealed from not disclosing irregularities complained of.*]—Where an application to rescind an order for a capias on the ground of irregularities in the issue of the writ is dismissed, if the order dismissing is not drawn up so as to disclose the irregularities complained of they will not be considered in appeal. *Tiet jen* v. *Revesbeck*, 1 B. C. R., pt. II., 365.

5. Certiorari proceedings — *Appeal from—Costs of.*]—*Regina* v. *Little*, 6 B. C. R. 321.

See Practice, IX. 8.

6. Committal.]—*Bullock* v. *Collins*, 8 B. C. R. 23.

See Arrest.

7. County Court—*Appeal from—Scope of.*]—*The Confederation Life Assurance Co.* v. *McInnes*, 4 B. C. R. 126.

See Release.

8. Court of Revision—*Appeal from.*]—*In re Smith Assessment Appeal*, 6 B. C. R. 154.

See Municipal Corporations, IX.

9. Cross appeal.]—A cross motion to an appeal applying for a new trial, having been served by respondent, and adjournments obtained by her to obtain affidavits in support of it, which were subsequently filed, the Court on objection by defendants, refused to permit the plaintiff to withdraw such application. *Atkins* v. *Coy*, 5 B. C. R. 6.

10. Divorce—*No appeal in matters of divorce.*]—*Scott* v. *Scott*, 4 B. C. R. 316.

See Divorce.

11. Effect of decision on.]—*Dunlop* v. *Haney*, 7 B. C. R. 307.

See Res Judicata.

12. Gold Commissioner—*Appeal from.*]—*Jenny Lind Co.* v. *Bradley-Nicholson Co.*, 1 B. C. R., pt. II., 185.

See Waters and Watercourses, VI.

13. Habeas corpus—*Appeal in cases of.*]—*Re George Bowack*, 2 B. C. R. 216.

See Habeas Corpus.

14. Interlocutory order — *Action decided pending appeal.*]—Where, pending an appeal from an interlocutory order the action itself has been decided, the Full Court will not hear the appeal. *Fawcett* v. *Canadian Pacific Railway Company*, 8 B. C. R. 219.

15. Judge by consent trying issue summarily.]—Where the interested parties in garnishee proceedings agree that a County Judge may decide the matter in a summary way, he is in effect an arbitrator, and no appeal lies from his decision. *Eade* v. *Winser & Son* (1878), 47 L. J., C. P. 584, followed. *Harris* v. *Harris et al.*, 8 B. C. R. 307.

16. Judgment given on appeal which should have been entered at the trial.]—*Yorkshire Guarantee and Securities Corporation* v. *Fulbrook & Innes et al.*, 9 B. C. R. 270.

See Trial.

17. Small Debts Court.] — An appeal from the Small Debts Court is by way of a rehearing, and witnesses may be called, although not called at the trial. *Malkin* v. *Tobin; Martin, Garnishee*, 7 B. C. R. 386.

18. Small Debts Court — *Extension of time for appealing from.*]—*Chase* v. *Sing*, 6 B. C. R. 454.

See Prohibition

19. Solicitor—*Authority of to accept service where engagement had terminated pending time for appealing from.*]—*Arthur* v. *Nelson*, 6 B. C. R. 316.

See PRACTICE, XXVII.

20. Summary conviction.]—*Re Kwong Wo*, 2 B. C. R. 336.

See INTOXICATING LIQUORS.

21. Summary conviction.]—*Regina* v. *Bowman*, 6 B. C. R. 271.

See CRIMINAL LAW, IV.

22. Summary conviction—*Appeal from conviction of two justices, Criminal Code, sec.* 782, 783 *and* 884.]—*Reg.* v. *Wirth and Reed*, 5 B. C. R. 114.

See CRIMINAL LAW, IV., XVIII.

23. Summary conviction — *Finality of appeal to County Court.*]—*Rex* v. *Beamish*, 8 B. C. R. 171.

See CRIMINAL LAW, IV.

24. Summary conviction—*Payment of fine—Whether bar to right of.*]—*Rex* v. *Neuberger*, 9 B. C. R. 272.

See CRIMINAL LAW, IV.

25. Summary conviction — *Power of County Court Judge to award costs against a person not a party to the proceedings before the justices.*]—*Re W. Bole*, 2 B. C. R. 208.

See PROHIBITION.

26. Summary conviction — *Sufficiency of notice of appeal.*]—*Rex* v. *Mah Yin*, 9 B. C. R. 319.

See CRIMINAL LAW, IV.

27. Trial pending when appeal brought on.]—Where a motion to dissolve an interlocutory injunction has been refused and notice of appeal given before trial, but not brought on to be heard until after the trial has commenced, but not concluded, the Full Court will not interfere. *Dunlop* v. *Haney*, 7 B. C. R. 455.

28. Water Clauses Consolidation Act—*Appeal under is trial de novo.*]—*Ross* v. *Thompson et al.*, 10 B. C. R. 177.

See WATERS AND WATERCOURSES, V.

29. Winding-up order—*Appeal to rescind.*]—*In re Kootenay Brewing Co.*, 7 B. C. R. 131.

See JUDGES.

30. Writ of error—*Appeal by way of.*]—*Grecer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXII.

II. ABANDONMENT AND WAIVER.

1. Notice abandoning before order drawn up.]—After judgment allowing the appeal and adjournment of the Court, but before the order was drawn up, the matter was spoken to before the Court upon a subsequent day, in presence of counsel for both parties, by special leave, and it appearing that a notice (of which respondents' counsel was not instructed) abandoning the appeal had been served by appellants' solicitor upon respondents' solicitor on the morning of, but before, the argument of the appeal:—Held, that the appeal was at an end upon the giving of the notice abandoning it, and the order allowing the appeal not having been drawn up no order would be issued, but the appeal should stand as if struck out of the paper. *Re The Maple Leaf and Lanark Mineral Claims*, 2 B. C. R. 323.

2. Obeying mandatory order—*Whether waiver of right of appeal.*]—A party obeying a mandatory injunction, for disobedience of which he is liable to attachment, cannot be said to have exercised any election, or thus to have waived his right of appeal. *Consolidated Railway Co.* v. *Victoria*, 5 B. C. R. 266.

3. Practice.] — An interlocutory appeal which has not, pursuant to the Supreme Court Amendment Act, 1896, sec. 16, as read with Rule 678, been set down two days before the day for the hearing of the appeal, will be treated as abandoned. *Fraser River Co.* v. *Gallagher*, 5 B. C. R. 82.

4. Setting down — *Extension of time—Mining laws—Form of case on appeal—C. S. B. C., 1888, cap. 82, sec. 29.*]—The provision in sec. 29 of cap. 82, C. S. B. C. 1888, that appeals from judgments of mining Courts "may be in the form of a case settled and signed by the parties" is not imperative, but such appeals may be brought in the same form as in ordinary cases. Defendants gave notice of appeal from a judgment of a County Court in a mining cause rendered 11th of March, 1896, within the time provided by section 29, *supra*, for the next Court, but being unable to procure the notes of the trial Judge, did not set it down for that Court. In December, 1896, they obtained the notes, and in January, 1897, gave notice of moving the Full Court to extend the time for setting down the appeal, shewing that the Registrar refused to enter the appeal without appeal books containing the Judge's notes being fyled:—Held, by the Full Court (WALKEM, DRAKE and MCCOLL, JJ.): That the appellants were bound to set the appeal down for argument at the next Full Court, or to move that Court for an extension of time for setting it down, and that the neglect to take either course constituted an abandonment. *Kinney* v. *Harris*, 5 B. C. R. 229.

5. Taxation of costs on abandonment of appeal.]—*Fry et al.* v. *Botsford et al.*, 9 B. C. R. 165.

See PLEADINGS, IV.

6. Taxation of costs on abandonment of appeal.]—*Fry et al.* v. *Botsford et al.*, 9 B. C. R. 207.

See PRACTICE, IX. 6.

7. Time—*Setting down.*]—Supreme Court Amendment Act, 1896, sec. 16, regulating the time for setting down and bringing on appeals for hearing, is imperative, and an appeal set down for the Full Court next after the entry of the order appealed from, being more than twelve days thereafter, is out of time and will be struck out. Appearance of counsel to take such an objection is not an appearance upon the appeal so as to waive the irregularity. In re McRae, Forster v. Davis, 25 Ch. D. 16, distinguished; Bevilockway v. Schneider, 3 B. C. 88, not followed. The Court will not extend the time for appealing except on substantial grounds. *Tollemache* v. *Hobson*, 5 B. C. R. 223.

8. Time—*Setting down—Supreme Court Amendment Act, 1896, sec. 16—B. C. Rule 678.*]—The Supreme Court Amendment Act, 1896, sec. 16, regulating the time for appeals, must be read with Rule 678, and an interlocutory appeal which has not been set down two days before the day for the hearing of the appeal will be treated as abandoned, and will be dismissed on motion by the respondents. Semble, a motion to quash the appeal is proper practice. Quære, whether "days," in Rule 678, mean clear days. *Regina* v. *Aldous*, 5 B. C. R. 220.

9. Unargued points.] — Points not argued, although included in the notice of appeal, will be considered abandoned. *Warmington* v. *Palmer & Christie*, 8 B. C. R. 344.

10. Waiver by taking benefit under order appealed from—*Arrest.*] — Defendant having been arrested under a ca. re., applied to a Judge for his discharge on the ground that he had not intended to leave the jurisdiction. The Judge made the order imposing as a term that the defendant should bring no action in respect of the arrest. The defendant served the order on the sheriff, and was discharged thereunder:—Held, by the Divisional Court, following Wilcox v. Odden, 15 C. B. N. S. 837 (per WALKEM and DRAKE, JJ., MCCREIGHT, J., *dubitante*), that the defendant having taken a benefit under the order, could not appeal from the term restraining him from bringing an action in respect of the arrest. *Spencer* v. *Cowan*, 5 B. C. R. 151.

(*See* PRACTICE AND PROCEDURE, INFRA, 9, 11.)

III. APPEAL ON QUESTIONS OF COSTS.

1. Trial costs of adjournment.]—Defendants got an order at the trial for inspection of a vein in the plaintiff's claim which they alleged was the continuation of a vein, the apex of which was within the limits of their own claim. And the plaintiffs alleging that such order necessitated inspection by them of other similar places on this property with a view to furnishing evidence to rebut that which might be adduced by reason of plaintiff's inspection, and therefore an adjournment for that purpose, were allowed the adjournment, but only on terms that all costs occasioned thereby should be borne by them in any event:—Held, on appeal, that such costs should abide the result of the issues to which the inspection related. *Iron Mask* v. *Centre Star*, 7 B. C. R. 66.

IV. AGAINST FINDINGS OF FACT.

1. County Court — *Scope of—C. C. Amendment Act, 1892, sec. 3.*]—On appeal from a judgment of the County Court to two Judges of the Supreme Court, MCCREIGHT and DRAKE, JJ.:—Held, that under the County Court Amendment Act, 1892, sec. 3, no question of law being distinctly raised before, or referred to by the County Court Judge, no such question was open on appeal, and that the findings of fact could not be considered. *The Confederation Life Assurance Co.* v. *McInnes*, 4 B. C. R. 126.

2. County Court—*Appeal on matters of fact and law.*]—*Boultbee* v. *Rolls*, 4 B. C. R. 137.

See ESTOPPEL.

3. Evidence—*Weight of—County Court.*]—Defendant appealed from the judgment of the County Court, upon the grounds that the verdict was against the weight of evidence, of misdirection, and that a nonsuit moved for on the trial should have been granted. The objection as to misdirection was not taken below:—Held, that the only point of law open to defendant on the appeal, under 55 Vict. (B. C.), cap. 10, sec. 3, was the question of nonsuit, and that the Appeal Court had no power to consider the weight of evidence. *Mason* v. *Oliver*, 2 B. C. R. 328.

4. Negligence — *Contributory — Defective machinery—Excessive damages—New trial—Full Court—Practice—Argument—Appeal—Grounds of—Particulars.*]—On an appeal from the judgment of IRVING, J., reported in 7 B. C. 414, the Full Court (MARTIN, J., dissenting), ordered a new trial on the grounds that the damages were excessive, that the plaintiff by his recklessness had contributed to the accident, and that there was no evidence to support the finding that the plant was defective. Points not argued, although included in the notice of appeal, will be considered as abandoned. Grounds of appeal should be so particularized that the opposite party will know beforehand what he has to meet and when "misdirection" is alleged particulars should be stated. *Warmington* v. *Palmer & Christie*, 8 B. C. R. 344.

V. DIVISIONAL COURT.

1. Ex juris writ—*Appeal from order setting aside.*]—No appeal lies to the Divisional Court from an order setting aside an order giving leave to issue a writ of summons for service out of the jurisdiction. *Fuller* v. *Yerxa*, 1 B. C. R. pt. 2, 330.

2. Interlocutory matter—*Leave to issue concurrent writs.*]—There is no appeal to the Divisional Court from the refusal of an ex parte application for leave to issue concurrent writs of summons against defendants, who are citizens and residents of the United States, as such application is not an interlocutory matter within sec. 60, Supreme Court Act. Semble, such application is not a proceeding in an action. *Tai Yun Co.* v. *Blum et al.*, 2 B. C. R. 348.

3. Jurisdiction.]—(2) The Divisional Court, on a motion for new trial, has power to enter a final judgment for defendant when there is no evidence to sustain the verdict. *Kerr & Begg* v. *Cotton*, 2 B. C. R. 246.

4. Jurisdiction—*Criminal procedure*—53 *Vict. (Can.) cap.* 37, *sec.* 23.]—No appeal lies to the Divisional Court from an order appointing commissioners to take evidence under sec. 23, sub-sec. 2, Criminal Law Amendment Act, 1890, supra. *Regina* v. *Johnstone*, 2 B. C. R. 87.

5. Jurisdiction—*Judgment appealed from final or interlocutory.*]—On an appeal to the Divisional Court from a judgment dismissing the action upon an argument upon a point of law on the pleading as to the sufficiency of a plea in bar to the whole action:—Held, *per* DAVIE, C.J., CREASE and MCCREIGHT, JJ.,—That the judgment appealed from was not a final judgment, as it would not have been so had the point been decided the other way, and that the Divisional Court had jurisdiction, following *Salaman* v. *Warner* (1891), 1 Q. B. 734. *Robert Ward & Co.* v. *John Clark, et al.*, 4 B. C. R. 71.

6. Jurisdiction — *Order setting aside award and giving leave to apply for further directions — Final or interlocutory.*] — Held, *per* CREASE, MCCREIGHT and WALKEM, JJ., overruling an objection to the jurisdiction of the Divisional Court to entertain an appeal from an order setting aside an award, which gave the parties liberty to apply for further directions, that same was not a final but an interlocutory order. *Wood* v. *Gold*, 3 B. C. R. 281.

7. New trial — *Motion for security for costs.*] — Held, *per* BEGBIE, C.J., CREASE and WALKEM, JJ., overruling DRAKE, J., an application to the Divisional Court for a new trial is an appeal within the meaning of Order LVIII., Rule 15, and a Judge has, under it, jurisdiction to order the applicant to give security for costs of the motion. *Wilson* v. *Perrin*, 2 B. C. R. 350.

8. Res judicata — *Appeal.*]—The Divisional Court is not concluded by a prior judgment of that Court given upon an interlocutory appeal in the same case. An action in the Supreme Court can only be finally determined in the last resort in this Province by a decision of the highest Court of final resort therein, namely, the Full Court, from which an appeal lies, as of right, to the Supreme Court of Canada. *Edison General Electric Co.* v. *Edmonds et al.*, 4 B. C. R. 354.

9. Supreme Court Act, sec. 67—*Order under the Mineral Act*, 1891, "*In the matter of mineral claim,*" *and not in any pending cause in Court—Appealability.*]—The order of a Judge extending the 30 days provided by the Mineral Act (1891) Amendment Act, 1892, within which to commence proceedings in a court of competent jurisdiction to enforce adverse claim, is appealable to the Divisional Court under sec. 67 Supreme Court Act, though not made in any pending cause. *Re The Maple Leaf and Lanark Mineral Claims*, 2 B. C. R. 323.

VI. FRESH EVIDENCE AND NEW GROUNDS.

1. Costs—*Not allowed on appeal succeeding on law point not taken at trial.*]—*Byron N. White Co.* v. *The Sandon Water Works and Light Co., Ltd.*, 10 B. C. R. 361.

See PRACTICE, IX. 6.

2. Defence.]—The Full Court will not allow a defence to be raised for the first time based on non-compliance with the directions of the Mineral Laws relating to location. *Hogg* v. *Farrell*, 6 B. C. R. 387.

3. Documentary evidence—*Rule* 674—*Attempt to introduce as fresh evidence on appeal, evidence rejected at the trial.*]—Documentary evidence was rejected at the trial, and the propriety of the rejection was not made a ground of the appeal:—Held, that the Court would not allow the evidence to be read on the appeal as fresh evidence under Rule 874. *Harper* v. *Cameron*, 2 B. C. R. 365.

4. Introducing evidence—*Proof of acquittal for perjury alleged to have been committed at civil trial not allowed on appeal in civil action.*]—*Borland* v. *Coote*, 10 B. C. R. 393.

See VENDOR AND PURCHASER.

5. Introduction of—*Practice in re.*]—Practice settled as to applications for leave to introduce on appeal further evidence which might have been adduced at trial. *Mariau* v. *Sproat et al.*, 9 B. C. R. 335.

6. Judge's notes — *Evidence omitted from.*]—Where a party desires to introduce on an appeal, evidence alleged to have been omitted from the Judge's notes of evidence, he should first apply to the Judge appealed from to amend his notes. *Rendell* v. *McLellan*, 9 B. C. R. 328.

7. Jurisdiction — *Point not taken in Court below.*]—Unless objection is taken to the jurisdiction of the Court below at the trial, it will not be considered in appeal. *Gelinas et al.* v. *Clark*, 8 B. C. R. 42.

8. Point not raised in Court below.]—Per DRAKE, J.—The question of ultra vires not having been raised in the Court below, was not open on appeal. *McKay Bros.* v. *Victoria Yukon Trading Company*, 9 B. C. R. 37.

9. Point not raised in pleadings, or in notice of appeal, not capable of being dealt with by Appeal Court.]—*Manley* v. *Callow*, 8 B. C. R. 165.

See MINES AND MINERALS, VI.

VII. JURISDICTION.

1. Full Court—*Reference of motion for judgment to by trial Judge—Jurisdiction.*]—The Full Court is an Appellate Court and has no jurisdiction to hear a motion for judgment on the findings of a jury referred to it by a trial Judge. *McKelvey* v. *Le Roi Mining Company, Limited*, 8 B. C. R. 268.

2. Costs.]—Jurisdiction to deprive a party of costs for "good cause." The Full Court has no original jurisdiction of the kind. Per DRAKE J., in *Gibson* v. *Cook*, 5 B. C. R. 534.

See DIVISIONAL COURT, SUPRA — PRACTICE AND PROCEDURE, INFRA, 3.

VIII. PRACTICE AND PROCEDURE.

1. *Appeal Book.*

1. Amended and original pleadings in appeal book.]—*Fry* v. *Botsford*, 9 B. C. R. 234.

See MINES AND MINERALS, VI.

2. An objection to the hearing of an appeal on the ground that the appeal books are defective and erroneous is not a preliminary objection within sec. 83 of Supreme Court Act. *Rogers et al.* v. *Reid*, 7 B. C. R. 139.

3. Pagination of.]—Appeal books should be numbered at the top of pages. *Haggarty* v. *The Lenora Mount Sicker Copper Co.*, 9 B. C. R. 6.

4. Preparation of—*Appeal books not prepared in accordance with regulations—No costs allowed for—Registrar directed not to receive.*] — *Morgan* v. *The British Yukon Navigation Co., Ltd.*, 10 B. C. R. 112.

See SHIPPING.

5. Respondent is entitled to a copy of appeal book. *Banks* v. *Woodworth*, 7 B. C. R. 385.

6. Use of—*Same appeal books in similar actions.*]—*Bodi* v. *Crow's Nest Pass Coal Co., Ltd.*, 9 B. C. R. 332.

See PRACTICE, III.

7. Where not deposited in time—*Mode of making application to extend time for.*]—*Haley* v. *McLaren*, 7 B. C. R. 184.

See PRACTICE, III.

(*See* also TIME, INFRA.)

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2. *Costs of Appeal.*

1. Abandonment—*Taxation of costs on.*]—*Fry et al.* v. *Botsford et al.*, 9 B. C. R. 207.

See PRACTICE, IX. 6.

2. Certiorari proceedings—*Costs of.*]—The old rule that the Crown neither pays nor receives costs, is no longer in force, and the Court will grant the costs of a successful appeal to the Crown if asked for. *Reg.* v. *Little*, 6 B. C. R. 321.

3. Discretion of Court in regard to—"*Court.*"]—Under Rule 751 the discretion as to costs in an action tried with a jury is exerciseable by the Judge or Court of the first instance only; the Full Court has no power to make any order thereon, except upon appeal upon the question whether or not "good cause" has been shewn for depriving the successful party of his costs. *Gibson* v. *Cook*, 5 B. C. R. 534.

4. Foreign corporation — *Security for costs—C. S. B. C.* 1888, *cap.* 21, *sec.* 71.]—A foreign corporation appealing to the Full Court from a judgment against it at the trial, cannot be ordered to give security for payment of the costs of the action found against it by the judgment appealed from, as well as security for the costs of the appeal. *Nelson and Fort Sheppard Ry.* v. *Jerry*, 5 B. C. R. 167.

5. Interlocutory appeals payable forthwith.]—In interlocutory appeals when a party is allowed costs of the appeal, the costs are payable forthwith. *Star* v. *White*, 9 B. C. R. 9, 1 M. M. Cas. 468.

6. Jurisdiction of Full Court in regard to.]—*Gibson* v. *Cook et al.*, 5 B. C. R. 534.

See JURISDICTION, SUPRA.

7. Refund of—*Order of Court effectuating judgment of Court of Appeal—Costs—Refund of, on reversal of judgment.*]—Plaintiff recovered a judgment, which on appeal to the Full Court was reversed with costs to the defendant. Plaintiff paid these costs. On appeal, the Supreme Court of Canada restored the original judgment with costs, but made no order to refund the costs paid by the plaintiff. Order made for defendant to refund the costs following *Rodger* v. *Comptoir D'Escompte de Paris*, L. R. 3, P. C. 465, *Davies* v. *McMillan*, 3 B. C. R. 72.

8. Where partially successful only.]—*Re Yorkshire Guarantee and Securities Corporation and the Assessment Act*, 4 B. C. R. 258.

See CONSTITUTIONAL LAW, II. 8.

9. Where appellant partially successful.]—*Centre Star Mining Co., Ltd.*, v. *Rossland Miners' Union et al.*, 9 B. C. R. 531.

See PRACTICE, IX. 6.

10. Where both parties to blame.]—*Canadian Development Co.* v. *Le Blanc et al.*, 8 B. C. R. 173.

See COLLISION.

11. Where a party is successful on a point of law not taken at trial he is not entitled to costs.] — *The Byron N. White Co.* v. *The Sandon Water Works and Light Co., Ltd.*, 10 B. C. R. 361.

See PRACTICE, IX.

12. Where succeeds on point not taken below.]—No costs of appeal will be given to the appellant who succeeds on a point not taken below. *Aldous* v. *Hall Mines*, 6 B. C. R. 394.

13. Summary conviction — *Power of County Court Judge to award costs against person not a party to the proceedings before Justices.*]—*Re W. N. Bole*, 2 B. C. R. 208.

See PROHIBITION.

See also PRACTICE, IX. G—SECURITY FOR COSTS, INFRA.

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3. *Discretion and Powers of Court.*

1. Court of ultimate appeal — *Power of, to set aside previous decision.*] — *Noble Five* v. *Last Chance*, 9 B. C. R. 516.

See MINES AND MINERALS, VI.

2. Full Court—*Finality of decision.*]—The plaintiff company, as judgment creditor of the Westminster & Vancouver Tramway Company, brought the action against the defendants, as shareholders therein, to compel them to contribute and pay to the plaintiff company, out of the amounts respectively unpaid up by them upon their shares in the company, a sum sufficient to satisfy the judgment. The statement of defence raised an objection in point of law to the whole claim, that the Tramway Company was not within the Act, as not being a "railway" company. Upon argument thereon, DRAKE, J., decided the point of law in favour of the defendants. Upon appeal by the plaintiff company, the Divisional Court (CREASE and WALKEM, JJ., MCCREIGHT, J., dissenting), affirmed the judgment of DRAKE, J. Upon motion then made to him by the plaintiff company under Supreme Court Rule 234, DRAKE, J., made an order dismissing the action as being substantially disposed of by the decision of the point of law. Upon appeal by the plaintiff company from the order, upon the grounds: (1) that the point of law was wrongly decided, and (2) that its decision did not dispose of the action; the Divisional Court (DAVIE, C.J., MCCREIGHT, and WALKEM, JJ.), overruling an objection that the Court was concluded on the point of law by the decision of the prior Divisional Court:—Held, that an action in the Supreme Court can only be finally determined in the last resort in this Province by a decision of the highest Court of final resort therein, namely the Full Court, from which an appeal lies, as of right, to the Supreme Court of Canada, and that both this and the former judgment of the Divisional Court are interlocutory and inconclusive. 2. That the action should be remitted to be set down for trial so as to admit of an appeal to the Full Court from the judgment thereon with an expression of opinion. *Edison General Electric Co.* v. *Edmonds et al.*, 4 B. C. R. 354.

3. Right to make any order which may appear just.]—*Foot* v. *Mason*, 3 B. C. R. 146.

4. Right to draw inferences.]—That under Rule 446, the Court of Appeal, notwithstanding an apparent misdirection of the jury, can draw such inferences of fact as are not inconsistent with the verdict. *Harris* v. *Brunette Saw Mill Co.*, 3 B. C. R. 172.

5. Supreme Court of Canada—*Powers of Court after appeal to.*]—Held, *per* MCCREIGHT, J., on original motion, and *per* DRAKE, J., on appeal:—(1) This Court cannot make an order in the action controlling proceedings under its judgment after perfecting of appeal to Supreme Court of Canada:—Held, *per* WALKEM, J., on second application to him, and *per* BEBBIE, C.J., and DRAKE, J., on appeal. Registration of judgment against lands is not superseded by appellant giving security. *Foley* v. *Webster*, 2 B. C. R. 251.

(*See* also JURISDICTION, SUPRA.)

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4. *Leave to Appeal.*

(*See* PRIVY COUNCIL, INFRA.)

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5. *Notice of Appeal.*

1. Divisional Court — *Non-statement of Court appealed to or grounds of appeal—Irregularity — Waiver — Amendment.*] — The non-statement in a notice of appeal of the Court intended to be appealed to is an irregularity. The attendance of respondent's counsel in the proper Court upon the notice is a waiver of such irregularity, though he takes preliminary objection to it. The omission to state the grounds of the appeal in a notice to the Divisional Court is fatal to the notice. Amendment, by inserting the grounds allowed on terms. *Bevilockway* v. *Schneider*, 3 B. C. R. 88.

2. Filing of notice — *Supreme Court Act, sec. 79—Filing of notice of appeal.*]—Under section 79 of the Supreme Court Act, the provision as to the fourteen clear days applies to the service, and not to the filing of the notice of appeal. *Archibald* v. *McDonald et al.*, 7 B. C. R. 125.

3. Grounds—*Law point on face of pleadings.*]—On an appeal to the Divisional Court from a judgment dismissing the action upon an objection duly set out to the sufficiency of a plea in bar to the action, the grounds of appeal were not set out in the notice of appeal: Held, (*per* DAVIE, C.J., CREASE, and MCCREIGHT, JJ.): That as the point of law for argument on the appeal fully appeared on the face of the objection in point of law raised on the pleadings, it was not necessary to set it forth in the notice of appeal. *Robert Ward & Co.* v. *John Clarke*, 4 B. C. R. 73.

4. Grounds of—*Particulars.*]—Points not argued, although included in the notice of appeal, will be considered as abandoned. Grounds of appeal should be so particularized that the opposite party will know beforehand what he has to meet, and when "misdirection" is alleged particulars should be stated. *Warmington* v. *Palmer and Christie*, 8 B. C. R. 344.

5. Omission to state Court appealed to.]—The non-statement in a notice of appeal of the Court intended to be appealed to

is an irregularity. The attendance of respondent's counsel in the proper Court upon the notice is a waiver of such irregularity, though he takes preliminary objection to it. *Bevilockway* v. *Schneider*, 3 B. C. R. 88.

6. Omission to state grounds.]—The omission to state the grounds of appeal, in a notice to the Divisional Court, is fatal to the notice. Amendment, by inserting the grounds, allowed on terms. *Bevilockway* v. *Schneider*, 3 B. C. R. 88.

7. Service on agent of the solicitor for the proposed defendants.] — Held, sufficient. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233.

8. Service of notice—*Effect of.*]—(1) The giving of notice of intention to appeal is the bringing of the appeal, within sec. 61 Supreme Court, B. C. Act, and when such notice is given within eight days from the perfecting of the order appealed from, it is no objection that the appeal is not either set down or argued within that time. *Re Ellard*, 2 B. C. R. 235.

9. Service of— *Need not be made on liquidators.*] — *In re The Oro Fino Mines, Ltd.*, 7 B. C. R. 388.

See COMPANY, IX. 5.

10. Sufficiency of grounds in.]—*Ward & Co.* v. *John Clark et al.*, 4 B. C. R. 71.

See ARREST.

11. Summary Conviction Act—*Notice of under.*]—*Rex* v. *Jordan*, 9 B. C. R. 33.

See PROHIBITION.

12. Summary Conviction—*Sufficiency of notice in.*]—*Rex* v. *Mah Yin*, 9 B. C. R. 319.

See CRIMINAL LAW, XVIII.

13. Two appeals included in one notice.]—*Sehl* v. *Tugwell*, 7 B. C. R. 359.

See PRACTICE, III.

See, also, PRELIMINARY OBJECTIONS. INFRA —TIME, INFRA.

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6. Preliminary Objections.

1. Appeal book—*Objection to.* —An objection to the hearing of an appeal on the ground that the appeal books are defective and erroneous is not a preliminary objection within section 83 of the Supreme Court Act. *Rogers et al.* v. *Reed*, 7 B. C. R. 139.

2. Extension of time to meet.]—On the respondent's succeeding on a preliminary objection as to the appeal being out of time, the appellant will not be given an opportunity of procuring material to support an application for an extension of such time. He should be prepared with such material on the argument. *Reinhard* v. *McClusky*, 5 B. C. R. 226.

3. Jurisdiction of Court below.]—Unless objection is taken to the jurisdiction of the Court below at the trial, it will not be considered in appeal. *Gelinas et al.* v. *Clark*, 8 B. C. R. 42.

4. Notice of.]—No preliminary objection will be heard unless proper notice has been given. Failure to set down an appeal is an irregularity only, within section 83 of the Supreme Court Act. *Baker* v. *Kilpatrick*, 7 B. C. R. 127.

5. Omitting to give notice of.]—Supreme Court Amendment Act, 1896, sec. 16, regulating the time for setting down and bringing on appeals for hearing is imperative, and an appeal set down for the Full Court next after the entry of the order appealed from, being more than twelve days thereafter, is out of time and will be struck out. Omitting to give notice of a preliminary objection to an appeal is not a sufficient ground for depriving a respondent who succeeds in dismissing the appeal thereon of his costs. *Tollemache* v. *Hobson*, 5 B. C. R. 223.

(NOTE.—Since this decision, it was provided by Supreme Court Amendment Act, 1897, sec. 12: "No motion to quash or dismiss an appeal, and no preliminary objection thereto, shall be heard by the Full Court unless notice specifying the grounds thereof shall have been served upon the opposite party at least one clear day before the time set for the hearing of the appeal.")

6. Time to take.] — At the close of the appellant's argument, counsel for the respondents moved to quash the appeal on the ground that notice thereof was given before the signing or entry of the order for judgment. The order had been entered since giving of the notice of appeal:—Held, that this was a preliminary objection, and should have been taken before the appellant opened, and that notice thereof should have been given in pursuance of the Supreme Court Amendment Act, 1897, sec. 12. *MacDonald* v. *Trustees of the Pandora Street (Victoria) Congregation of the Methodist Church*. 5 B. C. R. 521.

7. Waiver—*Of preliminary objection as to time by application for security for costs.*] *Lung* v. *Sung*, 8 B. C. R. 423.

See SECURITY FOR COSTS, INFRA.

See also TIME, INFRA.

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7. Reference Back and Re-argument.

1. Counsel not agreed as to terms of order—*Divisional Court—Remitting motion to Chambers for re-argument and to procure written judgment.*]—On an appeal to the Divisional Court from an order of WALKEM, J., in Chambers, refusing an application for discovery, counsel could not agree as to what had taken place in Chambers, or upon what were the reasons for the dismissal of the motion. The Court referred the motion back to WALKEM, J., for report and re-argument before him if necessary. *Beaven* v. *Fell*, 3 B. C. R. 362.

2. Judgment — *Re-argument and varying before order drawn up.*]—On an appeal to the Divisional Court from an order discharging defendant from arrest under a writ of ca. sa., the Court (CREASE, WALKEM and DRAKE, JJ.), while disagreeing with the grounds upon which the defendant had been discharged:—Held, that he was entitled to be discharged upon a point not taken by counsel, and delivered a judgment dismissing the appeal without costs. The next day, before the order was drawn up, counsel for plaintiff brought authorities to the attention of the Court contrary to the view upon which the appeal was dismissed, and asked leave to re-argue. Held, that it is in the discretion of the Court to vacate an order before it is drawn up. *Kimpton* v. *McKay*, 4 B. C. R. 196.

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8. *Security for Costs.*

1. Amount of.]—The amounts for which security for costs of appeals will be ordered, considered. *Rogers* v. *Reed*, 7 B. C. R. 79.

2. Application for, to whom made.]—Applications for security for costs of appeal to the Full Court should be made to a Judge in Chambers and not to the Full Court. *Rogers* v. *Reed*, 7 B. C. R. 183.

3. Failure to furnish in time.] — A winding-up order is a final order. The respondent in an appeal from a winding-up order, after the time limited by sub-section 3 of section 27 of the Companies' Winding-up Act, 1808, for furnishing security, had expired, demanded security for the costs of the appeal:—Held, by the Full Court (reversing IRVING, J.), that respondent had waived his right to have the appeal dismissed on the ground that the security was not originally furnished in time. *In re The Florida Mining Company, Limited*, 8 B. C. R. 388.

4. Foreign corporation.] — A foreign corporation appealing to the Full Court from a judgment against it at the trial, cannot be ordered to give security for payment of the costs of the action found against it by the judgment appealed from, as well as security for the costs of the appeal. *Nelson & Fort Sheppard Railway Company* v. *Jerry and The Paris Belle Mining Company (Foreign)*, 5 B. C. R. 167.

5. Foreign plaintiff.] — Security given by, should stand pending appeal. *Bird et al.* v. *Veith et al.*, 7 B. C. R. 511.

See PRACTICE, IX. 6, 18.

6. New trial—*Motion for.*] — Held, *per* BEGBIE, C.J., CREASE and WALKEM, JJ., overruling DRAKE, J. An application to the Divisional Court for a new trial is an appeal within the meaning of Order LVIII., Rule 15, and a Judge has, under it, jurisdiction to order the applicant to give security for costs of the motion. *Wilson* v. *Perrin*, 2 B. C. R. 350.

7. Order for to provide for stay.]—An order for security for costs of an appeal to the Full Court should provide for a stay of proceedings until security is given. Remarks by IRVING and MARTIN, JJ., as to the practice. *Kettle River Mines, Limited*, v. *Bleasdell, et al.*, 8 B. C. R. 350.

8. Respondent entitled to, as of right.]—Upon an appeal to the Divisional or Full Court the respondent is, under Rule 684, entitled, as of right and without shewing special circumstances, to an order for the appellant to give security for the costs of appeal. *Robert Ward & Co.* v. *John Clark, Jr., and Hennigar*, 4 B. C. R. 501.

9. Waiver.]—A respondent by applying for security for the costs of appeal does not waive his right to object that the appeal was not brought in time. *Sung* v. *Lung*, 8 B. C. R. 423.

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9. *Setting down Appeal.*

1. Failure amounting to irregularity only—*Time—Setting down—Rule 678 — Supreme Court Amendment Act, 1897, s. 7, s.-s. 5; s. 12, s.-s. 1*]—Held, by the Full Court: That the omission to set down an appeal two days before the day for hearing, as prescribed by S. C. Rule 678, is an irregularity only, and should be relieved against under s. 12, s.-s. 1, and s. 7, s.-s. 5, of the Supreme Court Amendment Act, 1897: *Reg.* v. *Aldous*, 5 B. C. 220; *Tollemache* v. *Hobson, Ibid*, 223; and *Kinney* v. *Harris, Ibid*, 229, discussed. *Cowan* v. *Macaulay*, 5 B. C. R. 495.

2. Failure to set down on appeal is an irregularity only, within s. 83 of the Supreme Court Act.] *Baker* v. *Kilpatrick*, 7 B. C. R. 127.

3. Judge's notes—*Failure to obtain.*]—Defendants gave notice of appeal from a judgment of a County Court in a mining cause, rendered 11th March, 1896, within the time provided by section 29, *supra*, for the next Court, but being unable to procure the notes of the trial Judge, did not set it down for that Court. In December, 1896, they obtained the notes, and in January, 1897, gave notice of moving the Full Court to extend the time for setting down the appeal, shewing that the Registrar refused to enter the appeal without appeal books containing the Judge's notes being filed:—Held, by the Full Court (WALKEM, DRAKE and MCCOLL, JJ.): That the appellants were bound to set the appeal down for argument at the next Full Court, or to move that Court for an extension of time for setting it down, and that neglect to take either course constituted an abandonment. *Kinney* v. *Harris*, 5 B. C. R. 229.

4. Judge's notes — *Failure to obtain.*]—Notice of an appeal from a judgment of SPINKS, CO.J., was served on 20th September, 1895. The appeal was never set down for argument in the Supreme Court, and no further step was taken by the appellant for over a year, when respondent served on the appellant's solicitor notice of motion to dismiss the appeal. In answer to the motion the appellant produced an affidavit that the reason for not proceeding with the appeal was that he had been unable to obtain the notes

taken at the trial by the learned County Court Judge:—Held, *per* WALKEM and DRAKE, JJ., dismissing the appeal, that the appellant had no excuse for not setting down the appeal within the time limited by Rule 678. Leave to extend the time for appealing refused. *Per* MCCREIGHT, J., (dissenting), that the Court under the circumstances should now extend the time for appealing, upon payment of costs of the motion. *Gething* v. *Atkins*, 5 B. C. R. 138.

See also ABANDONMENT, SUPRA — TIME, INFRA.

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10. *Stay of Proceedings.*

1. Order for security should provide for.]—An order for security for costs of an appeal to the Full Court should provide for a stay of proceedings until security is given. Remarks by IRVING and MARTIN, JJ., as to the practice. *Kettle River Mines Limited* v. *Blesdell et al.*, 8 B. C. R. 350.

2. Preservation of subject matter of litigation pending appeal. — *Dunlap* v. *Haney*, 7 B. C. R. 300.

See INJUNCTION.

3. Supreme Court of Canada—*Security for debt and costs to stay execution.*] — Whether the registration of a certificate of the judgment against the lands of the judgment debtor is thereby superseded. *Foley* v. *Webster*, 2 B. C. R. 251.

See EXECUTION.

See also SECURITY FOR COSTS, SUPRA.

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11. *Time for Appealing.*

1. County Court appeals — *Time for bringing — County Court Amendment Act, 1896—Section 6.*] — *Reinhard* v. *McClusky*, 5 B. C. R. 226.

2. Extension of—*Application for, to whom made.*]—Appeal books were not deposited in time and on an application to extend the time, it was—Held, by the Full Court, that such application should be made as soon as possible to a Judge in Chambers if the Full Court is not sitting at the time, but if so sitting that the better course is to apply at once to the Full Court. *Haley* v. *McLaren*, 7 B. C. R. 184.

3. Extension of time for perfecting appeal—*How applications should be made.*] —An appeal was not entered in time for the sittings of the Full Court for which the notice of appeal had been given, and on an application to the Full Court to extend the time for leave to enter the appeal for next sittings, it was—Held, that when the Full Court is sitting such an application is properly made to it. *Mecredy* v. *Quann*, 9 B. C. R. 117.

4. Extension of time for giving notice—*Jurisdiction — Security for costs—Application for—No waiver of right to object that appeal not brought in time.*]—The Court has no jurisdiction to extend the time limited by section 76 of the Supreme Court Act as amended by B. C. Stat. 1899, cap. 20, for giving notice of appeal. A respondent by applying for security for the costs of appeal does not waive his right to object that the appeal was not brought in time. *Sung* v. *Lung*, 8 B. C. R. 423.

5. Extension of time.]—Rule 743, providing that a Judge may extend the time for doing any act although the application is not made until after the time appointed is not consistent with C. S. B. C., c. 31, s. 31, providing that every appeal to the Divisional Court shall be brought within eight days, unless the time shall be extended by a Judge, and the Court has power to extend the time for moving for a new trial after the lapse of the eight days provided by the statute. *British Columbia Iron Works Co.* v. *Buse et al.*, 3 B. C. R. 170.

6. Extension of time for.]—The appellant was advised by counsel, up to a period considerably beyond the time for appealing from the judgment of an inferior Court, to acquiesce in it, but he had since been advised by other counsel to appeal, and that special hardship would probably result to him if the judgment were allowed to stand:—Held, by the Full Court, insufficient ground for extending the time for appealing. *Trask* v. *Pellent*, 5 B. C. R. 1.

7. Extension—*Time—From when begins to run.*]—At the trial judgment was given for the suppliants, and the order for judgment was duly entered. Upon application by the Crown to extend the time of appealing from the judgment on the ground that the solicitor misapprehended the effect of section 16 of the Supreme Court Amendment Act, 1896, DRAKE, J., refused the application, holding that the formal judgment not having been entered on the order for judgment, the time for appealing had not commenced to run; and intimated that the certificate of judgment granted to the suppliants under section 16 of the Crown Procedure Act, C. S. B. C. 1888, cap. 32, should not have been obtained *ex parte*. Upon motion to the Full Court that the appeal might be brought on notwithstanding the non-entry of the formal judgment, or for a stay of proceedings until it was entered, or in the alternative to extend the time for appealing:—Held, *per* MCCREIGHT, WALKEM, and MCCOLL, JJ.: (1) After consulting the other Judges. That the time for appealing from a final judgment commences to run when the decree or order for judgment is put into intelligible shape, so that the parties may clearly understand what they have to appeal from, and not from the entry of the formal judgment upon the order of the Court. (2) After examining the Manager of the Bank of B. N. A. as to the bonâ fides of an assignment of the judgment to it: That no grounds had been shewn by the Crown to warrant an extension of the time. After the passing of the Supreme Court Amendment Act, 1897, the Crown gave a new notice of appeal to the next Court, and the suppliants moved the Full Court to quash the appeal, the Crown making a cross-motion to extend the time if necessary. Held, per MCCREIGHT, DRAKE and MCCOLL, JJ.: That the former decision of

the Full Court had finally determined the rights of the parties, and the appeal should be quashed. *Koksilah Quarry Co.* v. *The Queen*, 5 B. C. R. 600.

8. Extension of time — *Equitable circumstances.*] — Where there are no special equitable circumstances calling for the intervention of the Court, the time for appealing from an order will not at the hearing be extended to cure an objection that the appeal is out of time. The appearance of counsel to take such an objection is not an appearance upon the appeal so as to waive the objection, Forster v. Davis, 25 Ch. D. 16, distinguished. *Edison General Electric Company* v. *Westminster and Vancouver Tramway Company, the Bank of British Columbia et al.*, 5 B. C. R. 34.

9. Extension of time — *Grounds for — County Court.*]—*Gething* v. *Atkins*, 5 B. C. R. 138.

10. Extension of time—*Grounds of.*]—Preliminary objection being taken that the appeal was out of time, the Court, without deciding the point, directed the argument on the merits to proceed so that their discretion might be informed with a view of extending the time in order to cure the objection if justice required. *Wilson* v. *Marvin*, 3 B. C. R. 327.

11. Extension of time—*Grounds of.*]—Section 16 of the Supreme Court Amendment Act, 1896, (made applicable to County Court appeals by the County Court Act Amendment Act, 1896, s. 6), supersedes Supreme Court Rule 684, and exclusively governs as to the time for bringing appeals from final judgments. The time for bringing such an appeal will not be extended unless strong circumstances in favour of such extension are shewn. *Reinhard* v. *McCluskey*, 5 B. C. R. 226.

12. Extension of time—*Grounds for.*]—The appellant was advised by counsel, up to a period considerably beyond the time for appealing from the judgment of an inferior Court, to acquiesce in it, but he had since been advised by other counsel to appeal, and that special hardship would probably result to him if the judgment were allowed to stand:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and WALKEM, J.J.), insufficient ground for extending the time for appealing. *Trask* v. *Pellent*, 5 B. C. R. 1.

13. Extension of time—*Terms of.*]—An ex parte order varying the terms of an order made upon summons is irregular, but is not a nullity. By an order made upon summons, the action was dismissed for want of prosecution, unless the plaintiffs gave security for costs within a week. On the last day of the week limited, an ex parte order was made extending the time for two days. Upon appeal to the Divisional Court from that order, it appeared that the plaintiffs had not up to then given the security ordered:—Held, (1) That the ex parte order was irregular. (2) Objection that the action was out of Court overruled. (3) The Divisional Court under Rule 674 had jurisdiction to make any order which might appear just. Order made that plaintiff be at liberty to proceed with the action upon terms of giving the security within 48 hours and payment of costs. *Foot* v. *Mason*, 3 B. C. R. 146.

14. Extension of time—*Ex parte order extending time—Irregularity.*]—Court making order extending time on hearing of appeal. *Beer Bros.* v. *Collister*, 3 B. C. R. 145.

15. Extension of time—*Ex parte order —Extending.*]—An order extending the time for appealing to the Divisional Court is irregular if made ex parte. The Divisional Court has jurisdiction, and, in a proper case, ought to cure irregularities or want of time in the bringing of an appeal, by making an order at the hearing of the appeal extending the time for appealing and thereupon proceeding to hear same, following re Manchester Economic Building Society, 24 Ch. D. 488. *Varrelmann* v. *The Phanix Brewery Company (Limited liability)*, 3 B. C. R. 143.

16. Final judgment.] — A final judgment was pronounced and entered on 27th July; notice of appeal to the January sitting of the Full Court was given on 24th October. A sitting of the Full Court commenced according to statute on 3rd November:—Held, *per* IRVING and MARTIN (HUNTER, C.J., dissenting), overruling a preliminary objection with costs, that the appeal was brought in time. *Traders National Bank of Spokane* v. *Ingram et al.*, 10 B. C. R. 442.

17. Final judgment.] — At the trial judgment was given for the suppliants, and the order for judgment was duly entered. Upon application by the Crown to extend the time of appealing from the judgment on the ground that the solicitor misapprehended the effect of s. 16 of the Supreme Court Amendment Act, 1896, DRAKE, J., refused the application, holding that the formal judgment not having been entered on the order for judgment, the time for appealing had not commenced to run; and intimated that the certificate of judgment granted to the supplicants under s. 16 of the Crown Procedure Act, C. S. B. C. 1888, c. 32, should not have been obtained ex parte. Upon motion to the Full Court that the appeal might be brought on notwithstanding the non-entry of the formal judgment or for a stay of proceedings until it was entered, or, in the alternative, to extend the time for appealing:—Held, per MCCREIGHT, WALKEM and MCCOLL, JJ.: 1. (After consulting the other Judges), That the time for appealing from a final judgment commences to run when the decree or order for judgment is put into intelligible shape, so that the parties may clearly understand what they have to appeal from, and not from the entry of the formal judgment upon the order of the Court. 2. (After examining the Manager of the Bank of B. N. A. as to the bonâ fides of an assignment of the judgment to it) That no grounds had been shown by the Crown to warrant an extension of the time. *The Koksilah Quarry Co., Ltd. Lbty.* v. *The Queen*, 5 B. C. R. 600.

18. From when time begins to run — *Supreme Court Act, s. 76 — Meaning of "refusal of a motion or application."*]—The time for bringing an appeal from a trial judgment runs from the date of signing, entry or perfection thereof, as the case may be, and not from the date of pronouncement. The International Financial Society v. City of Moscow Gas Company (1887), 7 Ch. D. 241, discussed. *Short* v. *The Federation Brand Salmon Canning Co.*, 7 B. C. R. 35.

19. Full Court—*Application to—For extension.*]—An appeal was not entered in time for the sittings of the Full Court for which the notice of appeal had been given, and on an application to the Full Court to extend the time for leave to enter the appeal for next sittings, it was—Held, that when the Full Court is sitting such an application is properly made to it. *Mecredy* v. *Quann*, 9 B. C. R. 117.

20. Garnishee.] — An order deciding a garnishee issue was dated the 26th March, settled by the Judge on the 15th July, and entered on the 25th day of July; notice of appeal was served on the 9th July:—Held, the appeal was brought in time. *Manley* v. *Mackintosh*, 10 B. C. R. 84.

21. In mining cases — *Practice—Time—Extending—Abandonment—Form of case on appeal—C. S. B. C.* 1888; *cap.* 82, *sec.* 29.] —Owing to the nature of the subject matter the Court requires stronger grounds for extending the time for appealing from judgments in mining cases than in other matters. The provision in sec. 29, cap. 82, C. S. B. C. 1888, that appeals from the judgments of Mining Courts "may be in the form of a case settled and signed by the parties," is not imperative, but such appeals may be brought in the same form as in ordinary cases. *Atkins* v. *Coy*, 5 B. C. R. 6.

22. Judgment — *Part final, part interlocutory.*] — Per HUNTER, C.J., and DRAKE, J.:—In an action embracing several causes of action there may be a judgment or order which is final as to one cause of action and interlocutory as to others, and a party dissatisfied with the part which is final must appeal within the time limited for appealing from final orders, and cannot question its correctness in an appeal from the judgment at the conclusion of the whole action. *Belcher* v. *McDonald*, 1 B. C. R. 377.

23. Judgment.] — Held by Full Court that a judgment is appealable from the moment that it is pronounced, and an objection to the hearing of an appeal, otherwise regular, that the judgment appealed from had not been entered, overruled. *Lang* v. *Victoria*, 6 B. C. R. 117.

24. Jurisdiction.]—The Court has no jurisdiction to extend the time limited by section 76 of the Supreme Court Act, as amended by B. C. Stat., 1899, cap. 20, for giving notice of appeal. *Sung* v. *Lung*, 8 B. C. R. 423.

25. New trial—*Motion for—Extending—C. S. B. C. cap.* 81, *secs.* 61, 67—*Rule* 743—*Extending time for appeal to Divisional Court after lapse of the eight days.*]—Rule 743, providing a Judge may extend the time for doing any act, although the application is not made until after the time appointed, is not inconsistent with C. S. B. C., and the Court has power to extend the time for moving for a new trial after the lapse of eight days, as provided by the Statute. *British Columbia Iron Works Co.* v. *Ruse et al.*, 3 B. C. R. 170.

26. Practice — *Preliminary objection — Notice of—Supreme Court Amendment Act* 1897, *sec.* 12.]—On the hearing of an appeal, at the close of the appellant's argument, counsel for the respondents moved to quash the appeal on the ground that notice thereof was given before the signing or entry of the order for judgment. The order had been entered since giving of the notice of appeal:—Held, that this was a preliminary objection, and should have been taken before the appellant opened, and that notice thereof should have been given in pursuance of Supreme Court Amendment Act, 1897 sec. 12. *MacDonald* v. *Methodist Church*, 5 B. C. R. 521.

27. Preliminary objection — *Evidence to rebut.*]—Appellant must be prepared with his evidence to rebut preliminary objection that his appeal is out of time. *Reinhard* v. *McCluskey*, 5 B. C. R. 226.

28. Setting down *—Omission—Irregularity.*]—Held (by the Full Court):—That the omission to set down the appeal two days before the day for hearing, as prescribed by S. C. Rule 678, is an irregularity only, and should be relieved against under section 12, sub-sec. 1, and sec. 7, sub-sec. 5 of the Supreme Court Amendment Act, 1897, (a) Reg. v. Aldous, 5 B. C. 229, Tollemache v. Hobson, ibid. 223, and Kinney v. Harris, ibid. 229, discussed. *Cowan* v. *Macaulay*, 5 B. C. R. 495.

29. Setting down — *Supreme Court Amendment Act*, 1896, *sec.* 16, *S. C. Rule* 678.]—Supreme Court Amendment Act, 1896, sec. 16, regulating the time for setting down and bringing on appeals for hearing is imperative, and an appeal set down for the Full Court, next after the entry of the order appealed from, being more than twelve days thereafter, is out of time and will be struck out. Appearance of counsel to take such an objection is not an appearance upon the appeal so as to waive the irregularity: In re McRae, Forster v. Davis, 25 Ch. D. 16, distinguished. Bevilockway v. Schneider, 3 B. C. 88, not followed. The Court will not extend the time for appealing except on substantial grounds. *Tollemache* v. *Hobson*, 5 B. C. R. 223.

30. The Supreme Court Amendment Act, 1899, limiting the time for appealing against interlocutory orders to eight days does not apply to an order perfected before the Act came into force. In an action commenced in the Vancouver Registry the notice of appeal which was given after the Act came into force should have been given for the Full Court sitting at Vancouver. *Williamson* v. *Bank of Montreal*, 6 B. C. R. 480.

31. The Supreme Court Act Amendment Act, 1896, sec. 16 (a), regulating the time for appeals must be read with Rule 678 (b), and an interlocutory appeal which has not been set down two days before the day for the hearing of the appeal will be treated as abandoned, and will be dismissed on motion by the respondents. Semble, a motion to quash the appeal is proper practice. Quære, whether "days" in Rule 678, means clear days. *Regina* v. *Aldous*, 5 B. C. R. 220.

32. Final judgment.] — The time for bringing an appeal from a final judgment runs from the date of signing, entry or perfection thereof, as the case may be, and not from the date of pronouncement. The International

Financial Society v. City of Moscow Gas Company (1877), 7 Ch. D. 241, discussed. *Short* v. *The Federation Brand Salmon Canning Co.*, 7 B. C. R. 35.

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12. *When lies.*

1. Benefit taken under order appealed from.]—Defendant, having been arrested under a ca. re., applied to a Judge for his discharge on the ground that he had not intended to leave the jurisdiction. The Judge made the order, imposing as a term that the defendant should bring no action in respect of the arrest. The defendant served the order on the sheriff and was discharged thereunder:—Held, by the Divisional Court, following Wilcox v. Odden, 15 C. B. N. S. 837 (per WALKEM and DRAKE, JJ., MCCREIGHT, J., dubitante), that the defendant, having taken a benefit under the order, could not appeal from the term restraining him from bringing an action in respect of the arrest. *Spencer* v. *Cowan*, 5 B. C. R. 154.

2. Chamber order from.] — An order made in Chambers upon a summons duly sworn, no one appearing contra, is not an ex parte order, and an appeal will lie from it to the Full Court notwithstanding. (Rule 577 Hudson's Bay Co. v. Hazlett, 4 B. C. R. 351, distinguished). *Biggar* v. *Corporation of City of Victoria*, 6 B. C. R. 130.

3. Ex parte order.]—Appeal is not the proper proceeding by which to set aside an. *Garesche, Green & Co.* v. *Holladay*, 1 B. C. R. pt. II., 83.

See PRACTICE, III.

4. Final order—*Demurrer.*]——An order allowing a demurrer to a pleading is a final order for the purpose of an appeal. *The Attorney-General of British Columbia* v. *The Canadian Pacific Railway Co. et al.*, 1 B. C. R. pt. II., 330.

5. From assessment—*Municipal Clauses Act sec.* 135.]—An appeal lies from a decision of a Court of a revision in relation to the assessment of a private street to a Judge of the Supreme Court. *In re Smith Assessment Appeal*, 6 B. C. R. 154.

6. From an ex parte order refusing leave to issue—*Concurrent writs.*]—There is no appeal to the Divisional Court from the refusal of an ex parte application for leave to issue concurrent writs of summons against defendants, who are citizens and residents of the United States, as such application is not an interlocutory matter within sec. 60, Supreme Court Act. Semble, such application is not a proceeding in an action. *Tai Yun Co.* v. *Blum et al.*, 2 B. C. R. 348.

7. From an ex parte order.] — The Divisional Court will not entertain an appeal from an ex parte order made by a Judge. The proper practice is in the first instance to move before the Judge making such an order to rescind same. *Hudson's Bay Company* v. *Hazlett*, 4 B. C. R. 351.

8. Judgment a compromise.] — Plaintiffs' counsel, on a motion for judgment after trial, was given the option of having an issue ordered as to a point on which evidence was not sufficiently directed or of taking judgment against one defendant with costs and dismissing the action against the other defendant without costs, and elected to take the latter course:—Held, IRVING, J., dissenting, that such judgment was in effect a compromise and therefore unappealable. *Sun Life* v. *Elliott et al.*, 7 B. C. R. 189.

9. Order to be appealed must be issued.]—In order to maintain an appeal from an order, it must have been drawn up and issued. If the party upon whose summons the order is made refuses to draw it up, the other party may obtain a similar order upon summons on his own account. If the order made is not within the terms of the summons, then the party in whose favor it is made may draw it up. *McColl* v. *Leamy et al.*, 3 B. C. R. 360.

10. Party interested.] — Section 12 of the Rivers and Streams Act, provides that if a "party interested" is dissatisfied with the judgment of the County Court Judge he may appeal to the Supreme Court:—Held, that "party interested" means one who was a party to the proceedings before the Judge appealed from. *In re Smith*: *In the matter of the Rivers and Streams Act*, 9 B. C. R. 329.

11. Small Debts Court — *Extension of time for appealing.*]—*Chase* v. *Sing*, 6 B. C. R. 454.

See PROHIBITION.

12. Special Commissioner sitting as County Judge.]—The special commissioner appointed under the Bennett-Atlin Commission Act, 1899, cannot confer the right of appeal to the parties to a dispute tried before him by purporting to sit as a County Court Judge. *Johnson* v. *Miller*, 7 B. C. R. 46.

13. Summary Convictions Act—*From County Court sitting as Appellate Court.*]—No appeal lies from the County Court sitting as an Appellate Court from the decision of a magistrate under the Provincial Summary Convictions Act. *Re Lambert*, 7 B. C. R. 396.

14. Ultra vires order of local Judge.]—Appeal to Supreme Court Judge is the proper proceeding by which to set aside an ultra vires order of Local Judge. *Tate et al.* v. *Hennessey et al.*, 7 B. C. R. 262.

See PRACTICE, III.

See also TIME, SUPRA.

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13. *Miscellaneous.*

1. Cross-motion.] — A cross-motion to the appeal applying for a new trial having been served by respondent, and adjournments obtained by her to obtain affidavits in support of it, which were subsequently filed, the Court, on objection by defendants, refused to permit the plaintiff to withdraw such application. *Atkins* v. *Coy*, 5 B. C. R. 6.

2. Dismissal.]—The Full Court (IRVING, J., dissenting), dismissed an appeal from orders refusing injunctions on the ground that there were several points of importance which should be decided at the trial. *Yale Hotel Co., etc.*, v. *V. V. E.*, 9 B. C. R. 66.

3. Judgment — *Entering for purpose of appeal.*]—*Lang* v. *The City of Victoria*, 6 B. C. R. 104.

See PRACTICE, VIII.

4. Special sittings.] — Per IRVING and MARTIN, JJ., (DRAKE, J., dissenting): Special sittings of the Full Court may be held either at Victoria or Vancouver to hear appeals in actions irrespectively of where the writs of summons were issued. *The Yale Hotel Company, Limited* v. *The Vancouver Victoria, and Eastern Railway and Navigation Company. The Grand Forks and Kettle River Railway Company* v. *The Vancouver Victoria and Eastern Railway and Navigation Company*, 9 B. C. R. 66.

See also PRACTICE, III.

IX. PRIVY COUNCIL.

1. Divisional Court — *Leave when granted.*]—The Divisional Court will not in its discretion allow an appeal to be brought from that Court to the Privy Council except in a matter of general public interest. *Gordon* v. *Cotton*, 3 B. C. R. 287.

2. Leave—*Constitution of Court granting.*]—Leave to appeal to Privy Council from a judgment of the Supreme Court of British Columbia may be granted by any quorum of the Full Court, although not constituted of the same Judges as those who delivered the judgment proposed to be appealed from. *Queen* v. *Victoria Lumber Company*, 5 B. C. R. 305.

3. Leave—*Civil right.*]—Judgment was given for the defendant company in an action for damages for the death of plaintiff's horses, caused, as alleged, by the non-fencing of the defendant's railway line, and an appeal by the plaintiff to the Full Court was dismissed. The value of the horses was proved at $110. The action was based on the 54 Vict. (B. C.) cap. 1, providing that Dominion railways should be liable in damages to the owner of any cattle killed by their engines or trains unless their line was fenced as provided by the Provincial Fence Act, 1888. The judgment held the Act to be unconstitutional. The plaintiff applied for leave to appeal to the Privy Council under the P. C. Rules, 1887, Rule 1 (*a*) on the ground that the judgment indirectly involved a claim respecting a civil right of the value of £300:—Held, by the Full Court (*per* MCCREIGHT, J., DRAKE and MCCOLL, JJ., concurring), that the expression "civil right" required to found an appeal, as being indirectly involved, contemplates such rights as easements and franchises, and other rights of a similar nature. (2) That the plaintiff's only interest in the matter was the $110 damages. *Madden* v. *The Nelson & Fort Sheppard Railway Company*, 5 B. C. R. 670.

4. Leave to appeal to.]—Court will not grant leave (except in special circumstances) to appeal to Her Majesty, when the same question is already under appeal to Her Majesty in another proceeding, though not between the same parties. *Reg.* v. *Little*, 6 B. C. R. 321.

5. Leave—*To appeal to.*]—*In the Provincial Elections Act and In re Tomey Homma*, 8 B. C. R. 76.

See ELECTIONS.

X. YUKON TERRITORIAL APPEALS.

1. Jurisdiction—*Case pending at time of Act.*] — The Act 62 & 63 Vict. c. 2, s. 7, which gives a right of appeal to the Supreme Court of British Columbia in cases from the Yukon Territory as therein specified, applies to an action pending when the Act came into force, but tried and decided afterwards. *Courtney et al.* v. *The Canadian Development Co.*, 7 B. C. R. 377.

2. Jurisdiction to hear case prior to Act.]—The Act 62 & 63 Vict., c. 2, giving the right of appeal to the Judge of the Supreme Court of British Columbia sitting together as a Full Court in cases from the Yukon as therein specified, does not apply to a case tried before the Act came into force and decided after. *Canadian and Yukon Prospecting and Mining Company Limited* v. *Casey et al.*, 7 B. C. R. 373.

3. Time—*No jurisdiction to extend.*]—By the Yukon Territory Act (62 & 63 Vict. c. 2), the Supreme Court of British Columbia sitting together as a Full Court is constituted a Court of Appeal from final judgments of the Territorial Court, and notice of appeal shall be given within twenty days after judgment. From interlocutory orders or judgments there is no appeal:—Held, by the Supreme Court of British Columbia, sitting as a Full Court, that it has no jurisdiction to extend the time for appealing. *Belcher* v. *McDonald*, 9 B. C. R. 377.

4. Time — *Terms of extension.*] — The Court may extend on terms the time for appealing to the Full Court from the Territorial Court of the Yukon. The respondent is entitled to a copy of the appeal book. *Banks* v. *Woodworth*, 7 B. C. R. 385.

See also CRIMINAL LAW, IV. — MINES AND MINERALS, VI.—PRACTICE, III., IX. 6, 18.

APEX.

1. Injunction to restrain mining of vein where apex in plaintiff's claim.]—*Centre Star* v. *Iron Mask*, 6 B. C. R. 355.

See MINES AND MINERALS, XVI.

APPEARANCE.

1. Amended writ—*Stands as if entered to writ as amended.*]—*More et al.* v. *Paterson et al.*, 2 B. C. R. 302.

See PRACTICE, IV.

2. Conditional appearance.] — Where plaintiff obtains leave to serve notice of writ on a foreign defendant, the latter is not bound to appear or enter a conditional appearance before he can apply to set the writ aside. *Garesche, Green & Co.* v. *Holladay*, 1 B. C. R. pt. II., 83.

See PRACTICE, IV.

3. Conditional — *Entering.*] — Whether operates as an objection to a motion to set aside writ. *Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, IV.

4. Conditional appearance.]— Defendant who had entered an appearance expressed to be conditional and for purpose of moving to set aside writ for irregularity, upon dismissal of that motion moved to set aside two ex parte orders containing an interim injunction, on ground that they ought not to be made ex parte after appearance:—Held, that conditional appearance was not necessary to motion to set aside writ—and did not survive after purposes of the motion—that the conditional appearance was a nullity, and that appearance of counsel on motion was a sufficient submission to jurisdiction to permit motion to be heard. *Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, IV.

5. Entry of—*Does not waive objection to jurisdiction.*]—*Rithet* v. *Ship "Barbara Boscowitz," et al.*, 3 B. C. R. 445.

See ADMIRALTY, IV. 1.

6. Injunction.] — Necessity for entry of, before bringing motion to dissolve an injunction on merits. *Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, IV.

7. Irregular.]—Waiver of irregularity in entry of appearance by service of notice of motion, though in itself not a sufficient notice. *Fletcher* v. *McGillivray*, 3 B. C. R. 49.

See PRACTICE, IV.

8. Irregular.] — Where irregular appearance has been entered plaintiff cannot treat it as a nullity and sign judgment as in default, but must move to set aside. *Gordon* v. *Roadley*, 6 B. C. R. 305.

See PRACTICE, IV.

9. Jurisdiction.] — An appearance does not waive right to object to the jurisdiction if notice of the objection be given to plaintiff. *Loring* v. *Sonnemaa*, 5 B. C. R. 135.

See PRACTICE, IV.

10. Leave—*When leave necessary to enter.*]—After judgment in default of an appearance none can be entered without leave. *Chong Man Chock* v. *Hai Fung*, 8 B. C. R. 67.

See PRACTICE, IV.

11. Protest — *Under.*] — Irregularity of. *Fletcher* v. *McGillivray*, 3 B. C. R. 49.

See PRACTICE, IV.

12. Protest—*Entry of under.*] — Notice appended to an appearance that it is filed under protest is a sufficient notice for the purpose. *Fletcher* v. *McGillivray*, 3 B. C. R. 57.

See PRACTICE, IV.

13. Waiver of defect in writ by entry of. *Fletcher* v. *McGillivray*, 3 B. C. R. 43.

See PRACTICE, IV.

14. Winding-up—*Proceedings.*] —Entry of appearance necessary in, to entitle to costs. *In the matter of the Winding-up Act and In the matter of the Albion Iron Works Co., Ltd.*, 10 B. C. R. 351.

See PRACTICE, IX.

See also PRACTICE, IV.

APPENDIX.

1. To rules—*Are part thereto.*] — *In re Porter Estate*, 10 B. C. R. 275.

See TAXATION.

2. To rules—*Forms in may be used.*]—*Attorney-General of B. C., ex rel. The City of Vancouver* v. *C. P. R. Co.*, 10 B. C. R. 108.

See PLEADING.

APPOINTMENT.

1. Of new Master—*Operates ipso facto as rescission of former appointment.*] — It being unnecessary to rescind any former appointment by express writing. *Jardine* v. *Bullen*, 7 B. C. R. 471.

See ELECTIONS.

2. Of officials.]—*Tuck* v. *The Corporation of Victoria*, 2 B. C. R. 179.

See MUNICIPAL CORPORATIONS, VI.

APPREHENDED INJURY.

See WATERS AND WATERCOURSES.

APPRENTICE.

See MASTER AND SERVANT.

APPROPRIATION OF PAYMENTS.

See ASSIGNMENTS.

ARBITRATION AND AWARD.

1. Agreement for arbitration may be waived.]—*Howay & Reed* v. *Dominion Permanent Loan Co.*, 6 B. C. R. 551.

See PRACTICE, XXXVI.

2. Arbitrators — *Are functi officio on making their award.*] — An award for misconduct of the umpire having been set aside by the Court, which refused to refer it back to the arbitrators, the umpire afterward sent in a purported resignation to the Registrar of the Court:—Held, on motion to appoint a new arbitrator, that the arbitrators were *functi officio* on making their award, and that the proposed order could not be made. *In re Joseph Bros. & I. Miller*, 1 B. C. R., pt. II., 38.

3. Compensation — *Land covered with water — Construction of Crown grants — Setting aside award — Time within which application should be made—Imp. 9 & 10 Wm. III., c. 15.*]—The arbitrators appointed under the "Victoria Water Works Act, 1873," in making an award of damages to be allowed to W. for lands required for the water works, took into consideration, in their award and estimate, the value of certain land covered with water (Beaver Lake): — Held, by the Court (CREASE and GRAY, JJ.), that the arbitrators were right in so doing.—1. *Semble*, the number of acres mentioned in the early Vancouver Island Crown grants is not the measure of the extent granted, but merely the measure of price: — Held (without deciding that the Imperial Statute 9 & 10 Wm. III., c. 15, was in force in British Columbia), that the time limited by section 2 of that Act was the time within which applications to this Court to set aside awards should be made.—2. Remarks as to setting aside awards on the grounds of misconduct on the part of the arbitrators. *In re Ward and The Victoria Water Works*, 1 B. C. Reports, page 114.

4. Compensation.] — The right to compensation cannot be determined by arbitrators appointed under section 133 of the Vancouver Incorporation Act, 1900, 4*a*; their jurisdiction is limited to the finding of the amount of compensation. An award of such arbitrators cannot be enforced summarily under section 13 of the Arbitration Act. *In re Northern Counties Investment Trust, Limited, and the City of Vancouver*, 8 B. C. R. 338.

5. Cost of — *Deduction from amount of award—B. C. Stat. 1892, c. 64, s. 3 (1).*]—A Judge sitting in Chambers has no jurisdiction to order the costs of the successful party in an arbitration proceeding under B. C. Acts, 1873, No. 20, and 1892, c. 64, s. 3 (1), to be deducted from the amount awarded by the arbitrators. *Re Dwyer and the Victoria Waterworks Arbitration*, 6 B. C. R. 165.

6. Improper conduct of arbitrators—*Referring back award.*]—On an application to set aside an award made upon an arbitration to ascertain the value of certain property for the purpose of assessment, it appeared that certain of the arbitrators respectively heard evidence in the absence of each other and of the witnesses, and that they took into consideration the financial ability of the owners as an element in their determination:—Held, that such conduct invalidated the award, but that same should not be set aside but referred back for consideration under section 10 of the Arbitration Act, 1893. *Re Trythall*, 5 B. C. R. 50.

7. Jury should find whether matters in dispute had been submitted to arbitration by intention of parties.]—*MacAdam* v. *Kickbush*, 10 B. C. R. 358.

See PRACTICE, XX.

8. Misconduct of arbitrator—*Setting aside award — Arbitrator functus officio on making award.*]—An arbitrator nominated by one of the parties permitted a witness to make statements to him with reference to the matters in dispute in the absence of the parties and of the other arbitrators:—Held, *per* DRAKE, J., affirmed by the Divisional Court (CREASE, MCCREIGHT and WALKEM, JJ.) Award invalid for such misconduct, upon motion to refer back the award, and to appoint a fresh arbitrator in place of the arbitrator found guilty of misconduct. Held, *per* DRAKE, J., that there was no power to make such an appointment. *Wood* v. *Gold*, 3 B. C. R. 281.

9. Time for applying to set aside award.]—*In re M. C. Ward and The Victoria Water Works*, 1 B. C. R. pt. I., 114.

See PRACTICE, XXXII.

10. Waiver of objection to misconduct.]—A party to an arbitration does not waive his right to object to an award on the ground of misconduct on the part of an arbitrator by failing to object as soon as he becomes suspicious, and before the award is made; he is entitled to wait until he gets such evidence as will justify him in impeaching the award. Where two out of three arbitrators go on and hold a meeting and make an award at a time when the third arbitrator cannot attend, it amounts to an exclusion of the third arbitrator and the award is invalid. A party by attending at such a meeting and not objecting (although he knew of the third arbitrator's inability to attend) does not waive his right to object afterwards. *Per* HUNTER, C.J.—It is not necessary that there should be absolute proof of misconduct before an award will be set aside on that ground: it is enough if there is a reasonable doubt raised in the judicial mind that all was fair in the conduct of the arbitrators. *In re Doherer and Magaw's Arbitration*, 10 B. C. R. 48.

ARBITRATOR.

(*See* ARBITRATION AND AWARD.)

ARCHITECT.

1. Estimates—*Reasonable care required in preparation of.*]—In making his estimates of the cost of a building an architect is only required to use a reasonable degree of care and skill, and if he does this he is not liable for any loss caused by error in the estimates. *Grant* v. *Dupont*, 8 B. C. R. 7; affirmed 8 B. C. R. 223.

ARGUMENT.

1. Counsel should exhaust case on opening.]—*Warmington* v. *Palmer et al.*, 8 B. C. R. 344

See MASTER AND SERVANT, IV. 2.

2. Counsel not agreed as to terms of order—*Reference back for re-argument. Beaven* v. *Fell*, 3 B. C. R. 362.

See APPEAL, VIII. 7.

3. Variance of order not drawn up—*Re-argument on.*]—*Kimpton* v. *McKay*, 4 B. C. R. 196.

See APPEAL, VIII. 7.

ARRAY.

1. Challenge to the.]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XV.

ARREST.

1. Affidavit—*Particulars of claim in.*]—An affidavit to hold to bail stated the facts constituting the plaintiff's cause of action, setting out the amounts in respect of the different matters sued for, and, in a separate paragraph, stated "that the defendant is justly and truly indebted to the plaintiff in the sum of $2,447.81": Held, bad, that it would not be inferred that such indebtedness was in respect of the causes of action previously set forth. A statement of a cause of action in respect of premiums which the plaintiff was compelled to pay for the defendant upon a policy of insurance deposited by him with plaintiff as collateral security, held bad, for want of allegation that such payment was made by defendant's request. An objection that the affidavit to hold to bail did not shew that the writ of summons had been issued overruled. *Williams* v. *Richards*, 3 B. C. R. 511.

2. Affidavit to hold to bail—*Statement of cause of action—Sufficiency of.*]—An affidavit to hold to bail in an action for money lent and goods sold and delivered did not shew that the money lent was due and unpaid, or that the goods were delivered:—Held, insufficient. *Mee Wah* v. *Chin Gee*, 1 B. C. R. pt. II., p. 367.

3. Affidavit leading to—*Sufficiency of.*]—K. in 1895 gave two promissory notes to the firm of Lenz & Leiser, and in 1896 one member of the firm died, and the partnership business was continued under the same firm name by the surviving partner, and the dead partner's widow. In 1898 the firm sued K. on the notes, and he was arrested on a writ of ca. re., the affidavit leading to the order being made by the surviving partner, who swore that he was a member of the firm of Lenz & Leiser, and that K. was indebted to the firm on the notes, but no mention was made of the notes having been given to the old firm:—Held, on summons to discharge the defendant from custody, that the affidavit was insufficient, as it did not disclose that the firm of Lenz & Leiser is a new and different firm from that in existence when the cause of action accrued. *Lenz & Leiser* v. *Kirschberg*, 6 B. C. R. 333.

4. Affidavit—*Sufficiency of particulars of claim in.*]—The plaintiff's cause of action should appear in the affidavit leading to an order for a writ of ca. re., and a statement in the affidavit that the defendant is indebted to plaintiff in a sum as appears in an exhibit to the affidavit, is insufficient. Proceedings to discharge from custody a person arrested under a writ of capias should be by summons, and where objections are taken to the proceedings on the ground of irregularity, the specific irregularities should be set out. *Watt* v. *Barber*, 6 B. C. R. 461.

5. Affidavit—*Sufficiency of—Affidavit required for.*]—Under section 7 of the Execution Act, the provisions of 1 and 2 Vict. (Imp.) govern the form of the affidavit for ca. re., and an affidavit to hold defendant to bail to answer an action for an ordinary debt is sufficient without the allegations required by section 10 in an affidavit for a ca. sa. Section 9 of the Act providing that "No person shall be arrested or held to bail for non-payment of money unless a special order for the purpose be made on an affidavit establishing the same circumstances as are necessary for obtaining a writ of ca. sa. under this Act, and in such case the arrest, when allowed, shall be made by a writ of attachment corresponding as nearly as may be to a writ of ca. sa.," has relation only to arrests for non-payment under judgments and orders of the Court analogous to process for contempt, and does not apply to ordinary bailable process for debt. Upon appeal to the Divisional Court (CREASE, WALKEM and DRAKE, JJ.): Held, affirming DAVIE, C.J., upon the same grounds, that the affidavit required by 1 and 2 Vict. cap. 10, for ca. re., was sufficient to support that writ and the ca. sa. *Kimpton* v. *McKay*, 4 B. C. R. 196.

6. Affidavit leading to—*Sufficiency of.*]—The affidavits leading to an order for ca. re. must shew that there is a debt due from the defendant to the plaintiff. It is not sufficient to shew that there is a debt due from the defendant to one who bears the same name as the plaintiff. A statement in an affidavit that deponent has caused a writ of summons to be issued against defendant, without stating in what action the writ was issued, is not sufficient to shew that plaintiff and deponent are one and the same person. *Wehrfritz* v. *Russell and Sullivan*, 9 B. C. R. 79.

7. Affidavit—*Sufficiency of.*]—Affidavits to hold to bail for money lent and goods sold and delivered did not shew that the money lent was due and unpaid, or that the goods

were delivered:—Held, insufficient. *Mee Wah v. Chin Gee*, 1 B. C. R. pt. II., 367.

8. Aliens—*Liability of, to process.*]—No alteration as to the parties to the record after the writ of capias ad respondendum has issued entitles the person capiased to have the order set aside unless he has been prejudiced by such alteration. There is no rule requiring a plaintiff who has amended the writ of summons by adding parties to serve any defendant who has appeared with the amendment. In the absence of agreement ad hoc with his obligee, a party is liable at the latter's suit on a good cause of action to all the remedies, including arrest and imprisonment, allowed by law, and it is immaterial that the parties are aliens, or that the particular remedy sought is not allowed in the foreign jurisdiction. *Baxter* v. *Jacobs, Moss et al.* (2), 1 B. C. R. pt. II., 373.

9. Appeal—*Lies direct from committal order.*]—Defendant received from plaintiff several sums of money, part of which were to be invested and part expended on plaintiff's farm. Defendant placed these moneys to his wife's credit, made no investment, kept no accounts and could not account at all for a large portion, although he said it had been expended on the farm. Before the plaintiff got judgment and while the action was pending defendant allowed his wife and sister-in-law to get judgments against him:—Held, by the Full Court, reversing DRAKE, J., that the defendant had not incurred the debt by fraud or false pretences within the meaning of section 15 of the Arrest and Imprisonment for Debt Act. An appeal lies direct from an order committing a debtor to gaol and no preliminary motion to the Judge for discharge is necessary. *Bullock* v. *Collins*, 8 B. C. R. 23.

10. Appearance—*Necessity of entry before applying for discharge.*]—A writ of ca. re. must state the nature of the action. It is not necessary for a person arrested under a writ of ca. re. to enter an appearance before applying for his discharge. The defendant having asked for costs the order for his discharge provided that no action should be brought against the plaintiff or the sheriff by reason of the capias or the arrest. *Wehrfritz* v. *Russell and Sullivan*, 9 B. C. R. 50.

11. Deposit in lieu of bail—*Return of.*]—A. O., a government contractor, arrested on a capias, deposited a sum of money in lieu of bail and for costs, which was paid into Court. On an application to have the money delivered up to him, he shewed that his intended absence was for a two months' visit to Ottawa and New York on business, in connection with his contract with the Dominion Government; that he intended to return to this Province; that the exact amount of the debt could be ascertained; that he had signed a cheque for a large part of the debt, and the balance, as soon as ascertained, would be paid:—Held, that the security must be delivered up to the defendant, as his absence was merely for some temporary purpose, and without any intention to delay or defraud his creditors, and he had every intention of returning to the Province. *Hartney* v. *Onderdonk*, 1 B. C. R., pt. II., 88.

12. Discharge—*Motion for*—*Maintenance money.*]—On a motion to discharge defendant from arrest under a writ of ca. sa. for non-payment by the plaintiff of the weekly sum of $3.50 in advance to the sheriff for defendant's maintenance money under Rule 976, it appeared that the plaintiff had offered to pay the amount to the sheriff, who refused to accept it on the ground that he had money of plaintiff's in his hands sufficient to cover it:—Held, by the Divisional Court (DAVIE, C.J., and MCCREIGHT, J., affirming DRAKE, J.), a sufficient answer to the application. *Baird* v. *Clark*, 3 B. C. R. 669.

13. Discharge—*Application—Mode of.*]—Defendant applied to the Court upon affidavits denying his intention to leave the Province, for an order setting aside a Judge's order for a writ of ca. re., and the writ of ca. re. issued thereunder upon which he had been arrested:—Held, 1. The application should have been to discharge the defendant under section 6 of 1 & 2 Vict. cap. 110, but an amendment of the notice of motion was allowed. 2. A proposed transit through foreign territory on a journey from one part of the Province to another does not constitute a leaving of the Province sufficient to warrant an arrest. Semble: An application to discharge a party arrested under a writ of ca. re. need not be made by order nisi, but may be made by notice of motion. *Cournier* v. *Madden*, 6 B. C. R. 125.

14. Execution—*Failure to file precipe for writ of.*]—*Per* DAVIE, C.J.: Rule 463, providing "No writ of execution shall be issued without the party issuing it, or his solicitor, filing a precipe for that purpose," is imperative, and the plaintiff was not absolved from compliance by tendering a precipe for a writ of ca. sa. to the officer of the Court and accepting his statement that it was not necessary. Under section 7 of the Execution Act the provisions of 1 & 2 Vict. (Imp.) govern the form of the affidavit for ca. re., and an affidavit to hold defendant to bail to answer an action for an ordinary debt is sufficient without the allegations required by section 10 in an affidavit for a ca. sa. Section 9 of the Act, providing that "No person shall be arrested or held to bail for non-payment of money unless a special order for the purpose be made on an affidavit establishing the same circumstances as are necessary for obtaining a writ of ca. sa. under this Act, and in such case the arrest, when allowed, shall be made by a writ of attachment corresponding as nearly as may be to a writ of ca. sa.," has relation only to arrests for non-payment under judgments and orders of the Court analogous to process for contempt, and does not apply to ordinary bailable process for debt. On appeal to the Divisional Court (CREASE, WALKEM and DRAKE, JJ.): The Court held the defendant was entitled to be discharged on a point not taken by counsel, and delivered a verbal judgment dismissing the appeal without costs. The next day, before the order was drawn up, counsel for plaintiff brought authorities to the attention of the Court contrary to the view upon which the appeal was dismissed, and asked leave to re-argue:—Held, that it is in the discretion of the Court to vacate an order before it is drawn up. Upon re-argument, Held, affirming DAVIE, C.J., upon the same grounds, that the affidavit required by 1 & 2 Vict. cap. 10, for ca. re. was sufficient to support that writ, and the ca. sa. (2) Overruling DAVIE, C.J., that the non-filing of the precipe for the ca. sa. was an omission attributable to the act of the officer of the Court, and should be

relieved against under Supreme Court Rule 950, and the appeal from order discharging defendant allowed with costs. *Kimpton* v. *McKay*, 4 B. C. R. 196.

15. Maintenance money.]—The language of Rule 977 is imperative, and if the maintenance money of a judgment debtor imprisoned on a ca. sa. is not paid by the judgment creditor as therein provided, he is entitled to his discharge as of right. *Jensen* v. *Sheppard*, 3 B. C. R. 126.

16. Satisfaction of judgment by arrest on ca. sa.]—Plaintiffs having recovered judgment in an action against defendant, J. C., brought this action on behalf of themselves, and his other creditors against him, J. C., Jr., and H., to set aside prior judgments recovered by the two latter against him upon the ground that there were fraudulent and collusive as against the plaintiff's judgment. Pending this action the plaintiffs arrested J. C. on a ca. sa., under their judgment, and defendants herein pleaded such arrest, and that J. C. remained in custody thereunder, as a satisfaction of that judgment and bar to this action. Upon issue in law and argument of the point:—Held, *per* WALKEM, J., dismissing the action: That though the arrest and detention of J. C. on the ca. sa. did not extinguish the debt, it operated meanwhile as a satisfaction of the judgment, and was a good defence to the present action, the object of which was to establish a remedy by fi. fa., which was suspended. On appeal to the Divisional Court (DAVIE, C.J., CREASE and MCCREIGHT, JJ.) Held, (1) That the judgment appealed from was not a final judgment, as it would not have been so had the point been decided the other way, and that the Divisional Court had jurisdiction, following Salaman v. Warner, (1891) 1 Q. B. 734. (2) That the disability of the plaintiff was limited to this, that he could not resort to any mode of execution on the judgment other than the ca. sa., or any charge under 1 & 2 Vict. (Imp.) cap. 110, but that he had a status to impeach the prior judgments as interfering with other remedies left to him under his judgment, *e.g.*, registration thereof under the Execution Act against the judgment debtor's lands, which is not an execution. (3) That the right of execution might be restored by the death or escape of J. C., or his taking gaol limits under section 12 of the Execution Act, and that the action might be maintained for a declaration of right independently of any claim to present relief. Semble, That the action might be maintained by plaintiff on behalf of the other creditors of J. C., who were strangers to the ca. sa., independently of his personal status. *Robert Ward & Co.* v. *John Clark, Jr.*, and *Hennisser*, 4 B. C. R. 71.

17. Waiver of—*Irregularities by giving bail.*]—Statements in affidavit as to debt and intention to leave considered. A defendant arrested under a writ of ca. re. admits by implication his intention to leave the Province by denying his intention to leave it permanently. By the giving of bail, a defendant so arrested waives his right to object to irregularities in the writ. *Robertson et al.* v. *Beers*, 7 B. C. R. 76.

18. Waiver of objections to writ by giving bail.]—After the issue of the writ in an action a summons was taken out entitled "In the matter of an intended action:" Held, by Irving, J., dismissing the summons, that it was wrongly entitled. A Judge has power to direct a summons to be issued and be returnable in a registry other than where the writ was issued. By the giving of special bail, a defendant arrested on a capias waives his right to object to the writ. *Tanaka et al.* v. *Russell*, 9 B. C. R. 24.

19. Writ of ca. re.—*Motion to set aside for irregularities.*]—Upon motion to set aside a writ of ca. re., and the arrest of defendant thereunder for irregularity:—Held: 1. A statement of the plaintiff's cause of action, in his affidavit to hold the defendant to bail, that the defendant "is justly and truly indebted to me in the sum of $1,323.80, as follows, namely: $2,000 for money received by him to my use, being the price of eight kegs of whiskey, of my property, which he sold for $2,000, and received the said sum, less the amount of $676.20, due by me to the said T. O'B.," was sufficient, as the defendant was liable whether the plaintiff authorized or requested the sale or not, as, if the defendant converted the whiskey, it was open to the plaintiff to waive the tort and sue for the proceeds. 2. The amount due was not uncertain by reason of the credit of $676.20, without saying "and no more." 3. It is not necessary to serve on the defendant a copy of an order for a ca. re. 4. Rule 979 requiring service of affidavits on which an ex parte order is obtained, only applies when the ex parte order itself has to be served. 5. The non-cancellation of the law stamps on the process by the officers of the Court, is not fatal to the process: Smith v. Logan, 17 P. R. 219, distinguished. 6. A variation in the statement of defendant's address, viz.: as "Yukon" in the writ, and "Victoria" in the affidavit to hold to bail, is immaterial. 7. An alien passing through the jurisdiction may be arrested on a ca. re. upon a cause of action arising in a foreign country. 8. In the absence of proof it will be assumed that the law of the foreign country is the same as that here. 9. It is not necessary in an affidavit for ca. re. to shew that the defendant is leaving the country with intent to defraud creditors. *McCaulay* v. *O'Brien*, 5 B. C. R. 510.

ARREST OF JUDGMENT.

Writ of error—*Reservations of questions of law*—*Communications between Judge and jury in jury room*—*Criminal Procedure Act.*]—*Grecr* v. *The Queen*, 2 B. C. R.112.

See CRIMINAL LAW, XXII.

ARREST OF SHIP.

1. Practice where arrest of property made to answer extravagant claim—*Practice is improper and one which the Court will discourage.*]—*Vermont Steamship Co.* v. *The Abby Palmer*, 10 B. C. R. 383.

See ADMIRALTY, I. 1.

ARTICLES OF INCORPORATION.

See COMPANY.

ARTIFICIAL OUTLET.

See WATERS AND WATERCOURSES.

ASSAULT.

See CERTIORARI.

ASSESSMENT.

1. Assessment Act—*Does not apply to land in municipalities.*] — *McLeod* v. *Waterman*, 10 B. C. R. 42.

See TAXATION, II.

2. Assessment Act—*Wild lands — Duty of assessor fixing average value.*]—*In re the Assessment Act, and the Nelson & Fort Sheppard Ry. Co.*, 10 B. C. R. 519.

See TAXATION, III.

3. By-law — *Assessment by-law, application of Municipal Act.*]—*Bell-Irving and City of Vancouver*, 4 B. C. R. 300.

See MUNICIPAL CORPORATIONS, II.

4. Court of Revision—*No appeal from Judge's decision reviewing.*] — *In re Vancouver Incorporation Act, 1900, & B. T. Rogers*, 9 B. C. R. 373.

See MUNICIPAL CORPORATIONS, IX.

5. Dominion Government — *Land and improvements belonging to Dominion Government—Occupant of.*]—*Victoria* v. *Bowes*, 8 B. C. R. 363.

See MUNICIPAL CORPORATIONS, IX.

6. Land and improvements — *Valuation.*]—The measure of value for purposes of taxation prescribed by sec. 113 of the Municipal Clauses Act is the actual cash selling value, and not the cost. *In re J. D. Dunsmuir and the Municipal Clauses Act*, 8 B. C. R. 361.

7. Land—*Valuation for taxation—Actual cash selling value.*]—*In re Vancouver Incorporation Act, 1900, and B. T. Rogers*, 9 B. C. R. 495.

See MUNICIPAL CORPORATIONS, IX.

8. Legality of municipal assessment.] *Vedder* v. *Chadsey*, 1 B. C. R. pt. II., 76.

See MUNICIPAL CORPORATIONS, IX.

9. Roll—*Person being on assessment roll as owner of property—Liability of for taxes.*] —*Coquitlam* v. *Hoy*, 6 B. C. R. 546.

See MUNICIPAL CORPORATIONS, IX.

10. Roll—*Of municipality — Coquitlam* v. *Hoy*, 6 B. C. R. 458.

See MUNICIPAL CORPORATIONS, IX.

11. Roll—*Necessity for affidavit verifying assessment roll.*]—*Murne* v. *Morrison*, 1 B. C. R. pt. II., 120.

See MUNICIPAL CORPORATIONS, IX.

12. Shares—*Assessment on shares purporting to be fully paid up, not valid.*]—*Kettle River Mines, Ltd.* v. *Bleasdel et al.*, 7 B. C. R. 507.

See COMPANY, VI.

13. Streets — *Assessment of private streets.*]—*In re Smith Assessment Appeal*, 6 B. C. R. 154.

See MUNICIPAL CORPORATIONS, IX.

14. Valuation—*Basis of—For taxation.*] —*In re Municipal Clauses Act & J. O. Dunsmuir*, 8 B. C. R. 361.

See MUNICIPAL CORPORATIONS, IX.

See also MUNICIPAL CORPORATIONS, IX.—TAXATION.

ASSESSMENT OF DAMAGES.

1. Where no evidence on which damages could be calculated, further enquiry directed.] — *Parks* v. *Blackwood*, 2 B. C. R. 346.

See PRACTICE, XX.

See also DAMAGES.

ASSESSMENT WORK.

1. Time—*Extension of for doing.*]—*Peters* v. *Sampson*, 6 B. C. R. 405.

See MINES AND MINERALS, VII.

2. Where done outside of a claim—*Effect of.*]—*Lawe* v. *Parker*, 7 B. C. R. 418.

See MINES AND MINERALS, VII.

ASSESSORS.

1. In salvage cases] — *Vermont Steamship Co.* v. *The Abby Palmer*, 10 B. C. R. 380.

See ADMIRALTY, II.

See also MUNICIPAL CORPORATIONS, IX.

ASSETS.

1. Company's assets—*Fraudulent sale by directors.*]—*Daniel* v. *Gold Hill Mining Co. et al.*, 6 B. C. R. 495.

See COMPANY, II.

ASSIGNEE.

1. Removal of, where private interest conflicts with trust.]—*Re Wickinson*, 2 B. C. R. 263.

See ASSIGNMENTS FOR BENEFIT OF CREDITORS.

ASSIGNMENTS.

1. Appropriation by parol assignment.]—Defendant under contract to build for one Walker, purchased the materials from plaintiffs, who subsequently got judgment against him, and who garnished the moneys due from Walker to defendant under the contract. Moneys due the contractor were to be paid on the certificate of the architect Grant. Before the garnishee proceedings defendant had accepted the following order drawn upon him by Nicholas & Barker, to whom he was indebted on a sub-contract: "Please pay to Champion & White the sum of $270, and charge the same to my account for plastering Place Block, Hastings Street W., in full to date," which order the defendant thus indorsed in favour of Grant: "Please pay that order and charge to my account on contract for Robert Walker Block on Hastings Street City:"—Held, in interpleader by the Full Court, affirming MCCOLL, C.J., that apart from the order there was a parol assignment specifically appropriating to the assignment the sum in question, of the moneys to arise out of the contract. *B. C. Mills Lumber and Trading Co.* v. *Mitchell Walker, Garnishee, and Champion & White, Claimants*, 8 B. C. R. 71.

2. Compulsion—*Assignment by.*] — *Doll et al.* v. *Hart et al.*, 2 B. C. R. 32.

3. Debt—*Assignment of — Attachment of where no notice given.*]—*Gray et al.* v. *Hoffar*, 5 B. C. R. 56.

See GARNISHMENT.

4. Equitable assignment] — A money order containing expressions shewing the account upon which the payment is to be made, is an equitable assignment and not a bill of exchange. *Johnson et al* v. *Braden*, 1 B. C. R. pt. II., 265.

See MECHANIC'S LIEN.

5. Errors—*Assignment of.*]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXII.

6. Illegality of.]—*Per* BOLE, Co.J.: It is necessary to the validity of an assignment in writing of a chose in action under C. S. B. C., 1888, cap. 19, that express notice thereof shall have been given to the debtor, trustee or other person, from whom the assignor would have been entitled to receive or claim the chose in action. *Per* WALKEM and MCCREIGHT, JJ., on appeal (without expressing an opinion on the other point): That the assignment in question was void for illegality, it appearing that it was made in consideration of the assignee refraining from taking criminal proceedings against the assignor. That, as the question of illegality was not raised on the pleadings, a new trial should be granted on payment of costs, to give the assignee an opportunity of adducing evidence to contradict the illegality of the consideration. *The Meriden Britannia Co.* v. *Bowell*, 4 B. C. R. 520.

See CHATTEL MORTGAGE.

7. Invalid—*An assignment after breach of condition in deed is.*]—*Clark* v. *The Corporation of the City of Victoria*, 10 B. C. R. 31.

See DEEDS.

8. Nominal plaintiff—*Assignment to.*]—*Boggs* v. *The Bennett-Lake and Klondike Navigation Co., Ltd.*, 8 B. C. R. 353.

See PRACTICE. XI. 5 (d).

9. Notice — *Cause of action.*] — Where a debt has been assigned by way of mortgage, but no notice in writing of the assignment has been given to the debtor, the cause of action still remains in assignor. *Okell Morris & Co.* v. *Dickson*, 9 B. C. R. 151.

10. Notice—*Equities of priority of.*]—K. by deed assigned to plaintiff a proportion of certain sums to be earned and received by him from the City of Vancouver under a certain contract. He afterwards, to secure advances made to him by defendant, assigned to her all sums due or to become due to him under the same contract. The plaintiff gave verbal notice of the deed to her to the chairman of the Board of Works, and to the City Solicitor of Vancouver. The defendant subsequently gave formal written notice of her assignment to the City Clerk, and plaintiff afterwards gave a similar notice of her deed: —Held, *per* BOLE, Co.J., giving judgment for defendant, that priority of notice governs the priority of right. 2. That neither the notice of the plaintiff's assignment to the City Solicitor nor that to the chairman of the Board of Works, was notice to the city. *Per* MCCREIGHT and WALKEM, JJ., on appeal. That by his deed to plaintiff, K. made himself a trustee for the plaintiff of the proportion of earnings to be received by him from the city, which he thereby assigned to her, and that the plaintiff had therefore an equity thereto which over-rode the subsequent assignment thereof to the defendant, and that the priority of notice of the latter assignment was immaterial. *Per* MCCREIGHT, J., That, upon the evidence, the defendant having had actual notice of the existence of the deed to the plaintiff, had constructive notice of its terms. 2. That the fact that the solicitor whom she employed to draw the assignment to her also drew the deed to the plaintiff, fixed the defendant with constructive notice of such deed through the knowledge of the solicitor, though acquired in a different and previous transaction. *Clark* v. *Kendall*, 4 B. C. R. 503.

11. Oral equitable assignment.]—An oral equitable assignment of a chose in action is valid, and takes priority of a subsequent attaching order of the debt so assigned. *Todd & Son* (Judgment Creditors) v. *Phœnix* (Judgment Debtor), *The United Fire Insurance Co.* (Garnishees) *and Lowenberg, Harris & Co.* (Claimants), 3 B. C. R. 302.

12. Order to pay money—*Whether bill of exchange.*]—An order to pay money in which the drawee is mentioned is a bill of

exchange, and by sec. 7, C. S. B. C. 1888, c. 19, (Assignment of Choses in Action Act) is excepted from the operation of the Act, and does not operate as an assignment. When the drawee is not mentioned, the order is not a bill of exchange and is an assignment within the Act. Johnston v. Braden, 1 B. C. R. pt. II., 269, followed. The action being within the jurisdiction of the County Court, County Court costs only allowed. *McPherson v. Johnston and Glaholm*, 3 B. C. R. 465.

13. Salary—*Of public officer—Not assignable.*]—*Cane* v. *Macdonald*, 10 B. C. R. 444.

See PARTNERSHIP, IV.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

1. Acceptance—*Of keys by landlord after an assignment for benefit of creditors—Claim of preference for rent after—Whether surrender of premises.*]—*Gold* v. *Ross*, 10 B. C. R. 80.

See LANDLORD AND TENANT.

2. Assignee—*Position of, as to impeachment of conveyance by assignor.*]—Apart from statutory provision, an assignee for the benefit of creditors is in no better position than his assignor, to impeach previous conveyances by the assignor, and cannot be treated as occupying the place of the creditors for that purpose. *McKenzie et al.* v. *Bell Irving*, 2 B. C. R. 241.

3. Exemption—*When precluded from claiming.*]—Debtors assigned, under the Creditors' Trust Deeds Act, all their personal property, credits and effects that might be seized and sold under execution, and afterwards claimed, as exempt, chattels to the amount of $500:—Held, on an originating summons for directions, that by the form of assignment the claimants were precluded from claiming exemption. Trustees' remuneration in this case fixed at five per centum. *In re Ley et al.*, 7 B. C. R. 94.

4. Partnership—*Assignment for benefit of creditors by surviving partners—Action by general creditor, for account—Injunction and receiver against partners and assignees—What must be shewn on application for receiver—Practice as to endorsement on writ.*]—The firm of O. Brothers comprised three partners. One of them died, leaving L., his executrix. Three months afterwards, the surviving partners executed an assignment for the benefit of their creditors. Immediately thereupon, H., a general creditor who had not signed or acquiesced in the deed, brought an action for an account, not only against the two surviving partners, but also against L., as representing the estate of the deceased partner:—Held, that H. was entitled to an order for an injunction and receiver against the surviving partners and the trustees of the deed of assignment. Semble, since the Judicature Act, the formal matters which used to be essential on an application for a receiver or injunction are no longer necessary; but the substantial matters necessary to be proved continue as before. Thus the application may be made in a case sounding in damages or the like; but the applicant must still, as heretofore, show some claim upon the subject matter of the suit, or some special relation with the defendant against whom the injunction is asked. Semble, it is improper to endorse on the writ a claim that a particular person may be appointed receiver. *The Hudson Bay Company* (for themselves and all the creditors of Oppenheimer Bros.) plaintiffs, v. *A. R. Green and G. A. Sargison, Lina Oppenheimer, the Executrix of Godfrey Oppenheimer, deceased, and Oppenheimer Bros., defendants*, 1 B. C. R. 247.

5. Partnership assets only for benefit of creditors—*Whether good.*]—An assignment by a firm for benefit of creditors which was construed by the Court to be an assignment of partnership assets only, may be a good and valid assignment within the meaning of the Creditors' Trust Deeds Act. *Eastman* v. *Pemberton*, 7 B. C. R. 459.

6. Preference—*Salary and piece work.*]—The plaintiff contracted with cannery proprietors (*a*) to supply labour and pack salmon at a stated price per case, *i.e.*, by piece work, and (*b*) to act as foreman of the laborers supplied by him at a salary of $50 per month. The proprietors having assigned for the benefit of creditors plaintiff sought to enforce the preference given by s. 36 of the Creditors' Trust Deeds Act in respect to both the salary and the piece work:—Held, that the preference must be restricted to the salary. *Tam* v. *Robertson*, 9 B. C. R. 505.

7. Removal of trustees.]—There is inherent jurisdiction in Courts of Equity to remove trustees and appoint new ones in proper cases. A trustee for creditors who is also employed as solicitor to manage an insolvent estate, is a person whose interest conflicts with his duty to the creditors as trustee. The constitutionality of a Statute will only be considered where necessary to a decision of the question before the Court. *Re Dickinson*, 2 B. C. R. 262.

8. Wages—*Priority—One month—Computation—Interpretation Act, amendment of, 1902, sec. 4.*]—By the Creditors Trust Deeds Act, 1901, an assignee is required to pay in priority to the claims of ordinary creditors the wages of persons in the employ of the assignor at the time of the assignment, or "within one month before." The assignment was made on 27th November, 1901:—Held, that a workman who was in the employ of the assignor previous to and including 26th October, 1901, was not entitled to a preference. *In re Clayoquot Fishing and Trading Co.*, 9 B. C. R. 80.

ASSIZE.

1. Assize Court Act, 1885—*Plea to jurisdiction—Validity of Commission of Oyer and Terminer—Power of Lieutenant-Governor to issue—Venue.*]—*Regina* v. *Malott*, 1 B. C. R. pt. II., 207.

See CRIMINAL LAW, VI.

2. Assize Court Act, 1885—*Change of venue.*]—*Sproule* v. *The Queen*, 1 B. C. R. pt. II., 219.

See CRIMINAL LAW, VI.

ATHEIST.

1. Incompetent to testify.]—*Gray et al.* v. *Macallum*, 2 B. C. R. 104.

See EVIDENCE.

ATTACHMENT OF DEBTS.

1. Debt—*Depending on unperformed condition—Attaching.*]—*Gray et al* v. *Hoffar*, 5 B. C. R. 56.

See GARNISHMENT.

2. Garnishee—*Disputing liability.*]—Where a garnishee disputes his liability to a judgment debtor, the Court has no power to order execution against him, but will direct an issue to try the question, and where the garnishee's alleged indebtedness is to a third party, such party must be summoned, and if necessary an issue ordered to try his liability to the judgment debtors. *Mount Royal Milling Co.* v. *Kwong Man Yuen* (Judgment Debtor), and *James Leamy* (Garnishee), 2 B. C. R. 171.

3. Order.]—Second attaching order may be taken where first set aside.]—*King* v. *Boulthee*, 7 B. C. R. 318.

See GARNISHMENT.

See also GARNISHMENT.

ATTACHMENT OF GOODS.

1. Where there has been no order made for the payment of money, the Court will not restrain the removal of property out of the jurisdiction by the owner. *Baxter* v. *Jacobs, et al.*, 1 B. C. R., pt. II., 370.

See also EXECUTION—WOODMAN'S LIEN.

ATTACHMENT OF THE PERSON.

1. Committal, and not attachment, is the appropriate remedy for breach of a prohibitory injunction.]—*The Golden Gate Mining Co.* v. *The Granite Creek Mining Co.*, 5 B. C. R. 145.

See CONTEMPT.

2. Committal—*Where attachment in lieu of for disobedience to injunction.*] — *The Canadian Pacific Navigation Co., Ltd.*, v. *The City of Vancouver*, 2 B. C. R. 298.

See INJUNCTION.

See also ARREST—CONTEMPT—INJUNCTION.

ATTORNEY.

1. Admission of foreign attorney.]—*Gwillim* v. *Law Society of B. C.*, 6 B. C. R. 147.

See SOLICITOR.

2. Legal advisers—*Attorneys included in the term legal advisers.*]—*Drake & Jackson* v. *Corporation of Victoria*, 1 B. C. R. pt. II., 165.

See MUNICIPAL CORPORATIONS, VI.

ATTORNEY AND CLIENT.

See SOLICITOR AND CLIENT.

ATTORNEY-GENERAL.

See PUBLIC RIGHTS.

1. Duty of—*In cases of disputed rights to remove obstacles in the way of trial of those rights—Receiving an indemnity as to costs.*]—*Anderson* v. *Corporation of City of Victoria et al.*, 1 B. C. R. pt. II., 107.

See MUNICIPAL CORPORATIONS, VII.

2. A certificate of work cannot be impeached in any proceeding to which the Attorney-General is not a party. *Cleary et al.* v. *Boscowitz*, 8 B. C. R. 225.

3. Particulars.] — Attorney-General is bound to furnish particulars of what officers have acted for the Crown.]—*The Attorney-Gen. of B. C. ex rel., The City of Vancouver* v. *The C. P. Ry. Co.*, 10 B. C. R. 184.

See PLEADINGS, VIII.

4. Prerogative right of Crown to stop suit between subjects.]—It is a prerogative right of the Crown to stop a suit between subjects in the subject matter of which it is alleged that the Crown is or may be interested and in respect of which suit has been brought in behalf of the Crown to have its interest declared. If the Crown right alleged is a right in behalf of the Province then the Attorney-General of the Province is the proper officer to exercise the prerogative. Observations by MARTIN, J., on the history of the Supreme Court of British Columbia. *Attorney General for British Columbia and the New Vancouver Coal Mining and Land Company, Limited* v. *The Esquimalt and Nanaimo Railway Company*, 7 B. C. R. 221.

5. Suit by—*To set aside certificate of improvements.*] — *Attorney-General* v. *Dunlop*, 7 B. C. R. 312.

See MINES AND MINERALS, IX. 3.

ATTORNEY, POWER OF.

See PRINCIPAL AND AGENT.

ATTORNMENT.

See LANDLORD AND TENANT.

AUCTION.

See VENDOR AND PURCHASER.

AUTHORITY.

See SOLICITOR.

See PRINCIPAL AND AGENT—SOLICITOR.

AUTOMATIC.

1. Smelting of ores.]—*The Le Roi Co., Ltd.*, v. *The Northport Smelting and Refining Co., Ltd., et al.*, 10 B. C. R. 138.

See CONTRACT, I. 1.

AVERAGE.

2. Value of ores may form basis of an account.]—*The Le Roi Co., Ltd.*, v. *The Northport Smelting and Refining Co., Ltd., et al.*, 10 B. C. R. 138.

See CONTRACT, I. 1.

AWARD.

See ARBITRATION AND AWARD.

1. Compensation — *Under sec. 133 of Vancouver Incorporation Act, 1900.*]—*In re Northern Counties Investment Trust, Ltd., and the City of Vancouver*, 8 B. C. R. 338.

See MUNICIPAL CORPORATIONS, XI.

2. Jurisdiction.] — No jurisdiction in Court to refer back to arbitrators or appoint a fresh arbitrator after award made. *Wood* v. *Gold*, 3 B. C. R. 281.

3. Set aside—*For misconduct.*] —*Joseph Bros* v. *J. Miller*, 1 B. C. R. pt. II., 38.

See ARBITRATION AND AWARD.

BAIL.

1. Affidavit to hold to.] — *Kimpton* v. *McKay*, 4 B. C. R. 196.

See ARREST.

2. Affidavit to hold to—*Sufficiency of.*] —*Hartney* v. *Onderdonk*, 1 B. C. R. pt. II., 88; *Mee Wah* v. *Chin Gee*, 1 B. C. R. pt. II., 307.

See ARREST.

3. Affidavit to hold to.] — Need not show that writ of summons issued. *Williams* v. *Richards*, 3 B. C. R. 510.

4. Capias proceeding in.]—*Hartney* v. *Onderdonk*, 1 B. C. R. pt. II., 88.

See ARREST.

5. Criminal law.]—A Judge who has committed a prisoner for trial for perjury under R. S. C. cap. 154, sec. 4 (*a*) is not thereby functus officio, but may subsequently admit the prisoner to bail. *In re Victor M. Ruthven*, 6 B. C. R. 115.

6. Retention of — *Pending appeal.*] — *Vermont Steamship Co.* v. *The Abby Palmer*, 10 B. C. R. 383.

See ADMIRALTY.

7. Waiver — *Of irregularities in writ by giving.*]—*Robertson et al.* v. *Beers*, 7 B. C. R. 76.

See ARREST.

See also AFFIDAVIT—ARREST—CRIMINAL LAW, V.

BALLOTS.

1. The Court or a Judge thereof has no jurisdiction under s. 154 of the Provincial Elections Act, to order the Deputy Provincial Secretary to produce ballots for the purpose of a recount before a County Court Judge, under s. 43 of the Amendment to said Act in 1899. *In re Fernie Election Petition*, 10 B. C. R. 151.

BANKERS.

1. Liability of, for payment on unauthorized indorsement.]—*Hinton Electric Co.* v. *Bank of Montreal*, 9 B. C. R. 545.

See BILLS AND NOTES.

2. Lien on partner's separate account —*Where firm account overdrawn.*]—Banker has no lien on such account. *Richards* v. *Bank of B. N. A.*, 8 B. C. R. 143, 209.

BANKRUPTCY.

See COMPANY, IX.

BANKS AND BANKING.

1. Banker's lien—*Overdrawn accounts—Partner's separate account.*] — Where the members of a firm have separate private accounts with the bankers of the firm, and a balance is due to the bankers from the firm, the bankers have no lien for such balance on the separate accounts. *Richards* v. *Bank of B. N. A.*, 8 B. C. R. 143, 209.

3. Security under section 74 — *Advances made to bookkeeper of sawmill owner — Right of bank as against chattel mortgagee.*] — Where the bookkeeper of a mill owner, to enable the owner to carry out a contract, bought logs with advance made for this purpose by a bank, which logs were cut up at such owner's mill, and the bookkeeper indorsed the owner's notes to the Bank:—Held, by the Full Court, reversing MARTIN, J., that the logs, and lumber manufactured

therefrom, did not come under a chattel mortgage covering all lumber which might at any time be brought on the premises, and that the bank was not prevented by the Bank Act from taking the usual security in respect of the logs. *Merchants Bank of Halifax* v. *Houston & Ward*, 1 B. C. R. 465.

See also BILLS AND NOTES.

BARBED WIRE.

1. Fence.]—Company maintained along its line of railway a barbed wire boundary fence without any pole, board or other coping connecting the posts; plaintiff's horse, picketed in their field adjoining, became frightened from some cause unexplained, and ran into the fence, receiving injuries on account of which it had to be killed:—Held, that the fence was not inherently dangerous and therefore the company was not liable. The test is whether the fence is dangerous to ordinary stock under ordinary conditions, and not whether it is dangerous to a bolting horse. *Plath and Ballard* v. *The Grand Forks & Kettle River Valley Ry. Co.* 10 B. C. R. 299.

BARBER SHOP.

1. Keeping open on Sunday—*Exercising calling—Vancouver Incorporation Act—Sunday observance.*]—*Re Lambert*, 7 B. C. R. 396.

See SUNDAY.

BARRISTER AND SOLICITOR.

1. Fees.]—A barrister's fees being in the nature of an honorarium, the acceptance of employment as counsel in an arbitration by a barrister was not the acceptance of such an office as to disqualify a member of legislature from sitting and voting. *Barnard* v. *Walkem*, 1 B. C. R., pt. I., 120.

2. Fees—*Right of barrister to sue for counsel fee—Counsel in this Province have the right to maintain an action for their fees.*]—Where a solicitor contrary to his client's expectation does not pay over to a counsel, fees received from his client, the client is still liable to the counsel. *British Columbia Land and Investment Agency, Limited* v. *Wilson*, 9 B. C. R. 412.

3. Land agent.]—A land agent, not being a barrister or solicitor, has no right to practice in the Supreme Court, whether under the "Land Registry Act," or otherwise. In the matter of the "Land Registry Act, 1870," and the estate of Bishop Modeste Demers, deceased, and of E. M. Johnson, and of August Brabant, petitioner. *In re Johnstone et al.*, 1 B. C. R. pt. II., 334.

4. Striking off rolls—*Appeal from decision of Benchers—Re-instatement—R. S. B. C c.* 24, *ss.* 42 *and* 48.]—B., a barrister and solicitor, was suspended from practice for six months by the Benchers in 1894, for wrongfully retaining the moneys of a client. On the expiration of the period of suspension, the client not having yet received her money from B., again complained to the Law Society, and on the hearing of the complaint in 1896 B. was disbarred and struck off the roll of solicitors:—Held, on appeal to the Judges of the Supreme Court, as visitors of the Law Society: (1) That B. was not obliged to apply to the Benchers for reinstatement under section 48 of the Legal Professions Act before bringing his appeal; (2) That the Benchers by suspending B. in 1894 had not exhausted their powers, but that they had power to disbar and strike B. off the rolls if they found that he was still wrongfully retaining his client's money, and not a fit and proper person to remain on the roll: (3) That the Judges will not allow an appeal which would have the effect of reinstating a barrister or solicitor while still in default in respect to the transaction for which he was debarred or struck off. *In re John Joseph Blake*, 6 B. C. R. 276.

5. University graduate—*Legal professions Act, sec.* 37, *sub-sec.* 5.]—To come within the exception in sub-section 5 of section 37 of the Legal Professions Act, it is not necessary that the applicant should have been a graduate at the time he commenced to study law, or that his term of study or service was shortened because he was a graduate. An applicant who obtained his degree after call or admission would come within the exception. *Calder* v. *The Law Society*, 9 B. C. R. 56.

6. University graduate—*Legal Professions Act, s.* 37, *s.s.* 5.]—To come within the exception in s.s. 5 of s. 37 of the Legal Professions Act, the applicant must have had his term of study or service shortened because he was a graduate. *King* v. *The Law Society of British Columbia*, 8 B. C. R. 356.

See also SOLICITOR AND CLIENT.

BEHRING SEA AWARD ACT.

1. Application of, to British ship where master and crew not British subjects—*Ignorance of position arising from incapacity of master, no defence—British ship within Act, whether master or crew British subjects or not.*]—In an action for condemnation of the ship for infraction of the Act and regulations, it was proved that she captured seals, and was also seized, within the prohibited zone. To an objection that by article I. of the schedule, the Act only applies to British subjects, and that there was no proof that the master or any one on board was a British subject:—Held, that the proceedings being for forfeiture of the ship, that the fact that she was proved to be a British ship brought her within the Act, and that proof of the master being a British subject would only be necessary for the purpose of a charge against him for a personal offence under section 1. The fact that the master, by reason of insufficient observations, inaccurate chronometers, etc., was unaware of the position of the ship, at the time the seals were taken, held no defence; since to catch seals without knowing where he was, could not be considered as taking reasonable precautions. Owners employing ignorant and inefficient navigators cannot plead such ignorance as a defence. *The "Viva,"* 5 B. C. R. 174.

2. Fire arms—*Prohibition against use of — Circumstances of suspicion — Rebuttal — Costs.*]—The ship, on 21th of July, 1895, was given a clearance for Behring Sea on a sealing expedition by the American customs officer at Copper Island, after making a manifest of things on board of her. She was boarded in the Behring Sea on 2nd September by the U. S. S. Rush, and searched for indications of an infraction of the Act, particularly regarding the prohibition against the use of firearms in the taking of seals, under Article VI. of the schedule. In one sealskin out of 336 then on board, a hole was discovered which might have been caused by a bullet or buckshot. There was a discrepancy both in number and kind between the ammunition stated in the manifest, and that found upon the seizure, and there were fewer loaded shells. The captain of the ship was called as a witness, and denied infraction of the Act:—Held, on the evidence, since it was not clear that the hole in the sealskin was caused by a shot, or, if it was, that the shot was from the ship; and since the discrepancy in regard to the ammunition was accounted for as being apparently attributable to error in the manifest, that the action should be dismissed, but, as there were circumstances of suspicion warranting the seizure, without costs. *The E. B. Marvin*, 4 B. C. R. 330.

3. Fire arms—*Prohibition against use of — Circumstances of suspicion — Rebuttal — Costs—Counter-claim.*]—The arms and ammunition of the ship were inspected by an officer of the U. S. S. Grant, and a record of all those produced was entered in the official log. The ship commenced sealing on 1st August, and on 10th August was boarded by an officer of the U. S. ship Rush, whose attention was called to four skins which had holes in them apparently caused by gaffs. The officers of the Rush after examination concluded that these seals had been shot. The guns and ammunition were again examined and checked, and some small discrepancy was discovered which was explained afterwards. The ship was ordered to Ounalaska, and a further count of the ammunition was made. While there two of the crew deserted, taking away one of the boats and some provisions. The captain denied any infraction of the Act:—Held, upon the evidence, since it was not clear that the holes in the sealskins were caused by shots, or if they were that the shots were from the ship, and since the discrepancy in regard to the ammunition was to error in the counting, that the action should be dismissed with costs. A counterclaim was made against the Crown for damages for loss of the boat and provisions whilst at Ounalaska under seizure:—Held, that as the master was in command, and had full control of the crew, he alone was responsible for the loss, and the counterclaim was dismissed. *The Aurora*, 5 B. C. R. 178.

4. Ignorance of position no defence.]—The ship having been seized and evidence given that she had taken seals within the prohibited zone:—Held, a master takes upon himself the responsibility of his position, and if through error, want of care, or inability to ascertain his true position, he drifts within the prohibited zone and takes seals there, he thereby commits a breach of the regulations. No attempt to take seals should be made unless the master is certain of his position. *The Beatrice*, 5 B. C. R. 171.

5. Log—*Neglect to keep log as provided by — Whether ship liable to forfeiture as "employed" in such contravention—Construction of words "as soon as possible."*]—The action was for the condemnation of the ship for a contravention of Article V. of the schedule to the Behring Sea Award Act (Imp.), 1894, in that her master did not enter accurately in the official log book the date and place of each fur seal fishing operation, and the number and sex of the seals captured upon each day, in accordance with the rules for entries in the official log, &c., "as soon as possible after the occurrence," etc., as required by section 281 of the Merchant Shipping Act, 1854, (Imp.), which is made applicable to every vessel engaged in the fur seal fishing by s.s. 3 of s. 1 of the Award Act, *supra*:—Held, (1) that the contravention charged was not one in which the ship could be said to be "employed" within the meaning of s. 1, s.s. 2 of the Award Act. (2) That the penalty provided for infringement of s. 281 of the Merchant Shipping Act, relating to the particular subject of keeping a log, alone applies to the offence, and is incompatible with the forfeiture provided by s.s. 2 of the Award Act for contraventions thereof in which the ship is employed. The words "as soon as possible" mean within a reasonable time, and, upon the evidence, it did not appear that there had been unreasonable delay. Action dismissed, with reference to assess damages caused by the arrest. *The Beatrice*, 4 B. C. R. 347.

6. Position—*Ignorance of, no defence.*]—In an action for the condemnation of the ship, seized fourteen miles within the prohibited zone with freshly killed seals on board, evidence was given for the defence that the ship had been carried into the prohibited waters by vis major, and that her master was ignorant of her true position by reason of being unable to obtain observations:—Held, insufficient to discharge the inference of culpable infraction of the Act, and that it was no excuse that the state of the weather was such that the master could not ascertain his position. *The Ainoko*, 5 B. C. R. 168.

7. Prohibited waters—*Presence of ship within — Vis major.*] — A sealing schooner, equipped for sealing and with skins on board, was driven into the prohibited waters of the Behring Sea by stress of weather. A current, of which the master was ignorant, had falsified his reckoning, so that he was unaware of his position. The schooner was seized by a Russian warship for infraction of the Act. Upon action by the Crown to condemn the schooner:—Held, that the presence of the schooner at the point in question was sufficiently accounted for to rebut the statutory presumption that she had infringed the Act. *Re Ainoka*, 3 B. C. R. 121.

8. Prohibited waters.]—The ship having been arrested within the prohibited zone with seals, and implements for taking them on board, upon the trial of an action for her condemnation for infraction of the Act, the captain was not called as a witness by the defence, and the only excuse for not calling him was that he had gone fishing. The account and explanation of the conduct of the ship given in evidence by the mate and some of the crew, was inconsistent with reasonable reference against the ship pointed to by entries in the log:—Held, following The

Minnie, 3 B. C. R. 161, 4 Exch. (Can.) 151, that under the Act the clearest evidence of bonâ fides is required to exonerate the master of a ship found in prohibited waters with skins and implements for taking them on board, from the imputation of an infringement of the provisions of the Act. That on the evidence, the onus was not discharged, and the Court was not satisfied that the ship had not attempted to take seals in prohibited waters, and that she must be condemned:—Held, also, that as no seals appeared to have been actually caught or killed in prohibited waters, it was a proper case for the exercise of the discretion to release the ship on payment of a fine in lieu of forfeiture. *The Shelby*, 4 B. C. R. 342.

9. Wrongful seizure under.] — The measure of damages recoverable for a wrongful seizure under colour of an infringement of the Behring Sea Award Act, 1894, (Imp.), is the whole injury caused by such seizure. *The Beatrice*, 5 B. C. R. 110.

See also ADMIRALTY, III.

BENCHERS.

1. Powers of benchers of law society as to striking solicitor off the rolls.]—*In re Blake*, 6 B. C. R. 276.

See SOLICITOR AND CLIENT.

See also BARRISTER AND SOLICITOR — SOLICITOR.

BENEFICIARY.

1. Life insurance.]—A beneficiary under a life policy domiciled in British Columbia, but proceeds of the policy payable outside the Province, is not liable for succession duty. *Re Templeton*, 6 B. C. R. 180.

See TAXATION, III.

BENEFIT SOCIETY.

1. Claim for sick benefits.]—In an action for sick benefits against an I. O. O. F. lodge, it appearing that plaintiff followed no occupation, being a retired merchant, a nonsuit was entered: *Rose* v. *Columbia Lodge, No.* 2, 1 B. C. R. pt. II., 349.

BENNETT-ATLIN COMMISSION ACT.

1. Appeal by consent from commissioner purporting to sit as County Court Judge—*Whether competent.*] — The special commissioner appointed under the Bennett-Atlin Commission Act, 1899, cannot confer the right of appeal to the parties to a dispute tried before him by purporting to sit as a County Court Judge. *Johnson* v. *Miller*, 7 B. C. R. 46.

BIAS.

1. Political bias of prosecution—*No ground for change of venue.*] — In criminal libel, in order to obtain a change of venue, it is not sufficient to allege that the prosecution is interested in politics in the place where the libel is alleged to have been committed, and that therefore the defendant cannot obtain a fair trial. *Reg.* v. *Nicol*, 7 B. C. R. 278.

BILLS AND NOTES.

1. Alteration.]—*Per* DRAKE, J.—Where a promissory note is signed or endorsed, leaving a blank space for the rate of interest in an existing clause providing for interest, any party in possession of the note has under s. 20 of the Bills of Exchange Act, 1890, made applicable to promissory notes by s. 88, prima facie authority to fill in any rate of interest; but if the note when signed and endorsed had no clause providing for interest, the addition of such a clause, requiring interest, is an alteration not contemplated when the note was made or endorsed, and avoids it: Held, on the facts, that the note in question, when made and endorsed, contained an interest clause leaving a blank for the rate, and that the plaintiffs were entitled to recover the amount of the note with interest at eighteen per cent. as charged. The evidence of a handwriting expert upon the question of whether the interest clause was written in before, at the time of, or after the signature and endorsement of the note, was admitted. Upon appeal the Full Court (DAVIE, C.J., WALKEM and MCCOLL, JJ.) dismissed the appeal. *The British Columbia Land and Investment Agency, Limited*, v. *Ellis, et al.*, 6 B. C. R. 82.

2. Attachment of debts—*Rule* 497.]—A promissory note not yet due constitutes a debt owing and accruing, and is attachable to answer a judgment debt within the meaning of Rule 497. *Girard* v. *Cyrs*, 5 B. C. R. 45.

3. Blank spaces on bill — *Alteration after endorsement—Estoppel—Material alteration—Waiver of demand—Bills of Exchange Act, 1890, s. 20.*]—A promissory note, containing spaces for the name of the payee and the rate of interest, was endorsed for the accommodation of the maker and handed to him in that condition. The maker inserted the name of the payee, and 12 per cent. as the rate of interest: — (1) Held, that the endorsers were estopped from denying that they had given the maker authority to fill in the blanks, and that the insertions by the maker were not alterations avoiding the note: (2) The object of presentment being to demand payment, waiver of demand is also waiver of presentment. *Burton* v. *Goffin*, 5 B. C. R. 454.

4. Endorsement.] — As the leave of the Court is (by Rule 6) expressly required to be obtained before the issue of a writ for service outside the jurisdiction, the Court must, before sanctioning it, be satisfied that the endorsement disclosed a reasonable cause of action. The promissory note as set out in the special endorsement shewed the name of Wilson, one of the defendants, sued as endorser, endorsed under that of the plaintiff,

the payee of the note:—Held, primâ facie evidence that Wilson was not liable on the note to the plaintiff, and that the plaintiff was not the holder of the note, and motion to issue the ex juris writ refused: *Tai Yune* v. *Blum, et al.*, 3 B. C. R. 21.

5. Fraudulent Endorsement.]—Section 19 of the Stamp Act, 1853 (Imperial), which exonerates bankers from liability if they pay on what purports to be an authorized indorsement, is inapplicable to British Columbia, and hence did not come into force by virtue of the English Law Act. Even if it were brought into force, it was annulled by the repugnant legislation of the Bills of Exchange Act, although not mentioned in the repealing schedule to the Act. The Canadian Bills of Exchange Act was intended to modify and alter as well as to codify the law relating to bills of exchange, cheques and promissory notes. A local manager of an incorporated company, who was authorized only to indorse cheques for deposit with the Bank of British Columbia, indorsed and cashed at the Bank of Montreal cheques payable to the company drawn on that bank:—Held, the Bank of Montreal was liable to the company for the amount of the cheques so cashed. *Hinton Electric Co.* v. *Bank of Montreal*, 9 B. C. R. 545.

6. Money order.]—A money order containing expressions shewing the account upon which the payment is to be made, is an equitable assignment and not a bill of exchange. *Johnson, et al.*, v. *Braden, et al.*, 1 B. C. R. pt. II. p. 265.

7. Order naming the drawee — *C. S. B. C.* (1888), *c.* 19, *s.* 7.]—An order to pay money due the drawee in which the drawee is mentioned is a bill of exchange, and by s. 7, C. S. B. C. 1888, c. 19 (Assignment of Choses in Action Act), is excepted from the operation of that Act, and does not operate as an assignment. When the drawer is not mentioned, the order is not a bill of exchange, and is an assignment within the Act. Johnson v. Braden, 1 B. C. R. pt. II., 269, followed. *McPherson* v. *Johnson & Glaholm*, 3 B. C. R. 465.

8. Parol evidence.]—Parol evidence will not be received to shew that a person who indorsed a promissory note to another for valuable consideration stipulated at the time that he was not to be liable on the indorsement. Smith v. Squires (1901), 13 Man. 360, followed. *Emerson* v. *Erwin, et al.*, 10 B. C. R. 101.

9. Presentation for payment of note payable at particular place — *Necessity for, as against maker.*]— *Croft* v. *Hamlin, et al.*, 2 B. C. R. 333.

BILLS OF EXCHANGE.

1. Bills of Exchange Act, s. 24.] — *Hinton Electric Co.* v. *Bank of Montreal*, 9 B. C. R. 545.

See BILLS AND NOTES.

2. Bills of Exchange Act, s. 20—*Interpretation of.*]—*The B. C. Land and Investment Agency, Ltd.*, v. *Ellis et al.*, 6 B. C. R. 82.

See BILLS AND NOTES.

3. Equitable assignment—*Bill of Exchange distinguished from.*]—*Johnston et al.* v. *Braden et al.*, 1 B. C. R. 265

See MECHANIC'S LIEN.

4. Order to pay money in which name of drawee is mentioned is a bill of exchange.]—*McPherson* v. *Johnston et al.*, 3 B. C. R. 465.

See ASSIGNMENTS.

See also BILLS AND NOTES.

BILL OF LADING.

1. Ship — *Exception in, applicable to matters occurring during the voyage—Breach of obligation to provide reasonably fit ship—Clause limiting liability of ship owners — Scope of.*]—The plaintiff shipped six cases of dry goods on board the defendant's ship for carriage from Vancouver to Skagway, and thence to Dawson, under a bill of lading which provided that all claims for damage to or loss of any of the merchandise, must be presented within one month. The grating on the outside of the hull of the ship and at the mouth of the pipe in which the sea-cock was placed was defective and rendered the ship unseaworthy, the result being that salt water entered the after-hold and damaged the plaintiff's goods. Plaintiff did not present his claim within a month, but subsequently sued for damages:—Held, by the Full Court (reversing IRVING, J.), MCCOLL, C.J., dissenting, that the stipulation in the bill of lading to the effect that no claim for loss should be void unless presented to the company within a month, did not apply to damage occasioned by the defendants not providing a seaworthy ship. *Drysdale* v. *Union Steamship Company*, 8 B. C. R. 298.

BILL OF SALE.

1. Bills of Sale Act—*Effect of, as between creditors and legatees.*]—*Harper* v. *Harper et al.*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

2. By way of mortgage.]—*Doll et al.* v. *Hart et al.*, 2 B. C. R. 32.

See CHATTEL MORTGAGE.

3. Fraud — *On creditors.*] — *Robson* v. *Suter*, 1 B. C. R. pt. II., 375.

See PRACTICE, XX.

4. Fraud—*Particeps fraudis.*] — *Boultbee* v. *Rolls*, 4 B. C. R. 137.

See ESTOPPEL.

5. Fraud — *Fraudulent preference.*] — *Stewart* v. *Wilson*, 3 B. C. R. 369.

See CHATTEL MORTGAGE.

6. Of book debts.]—*Robertson* v. *Empey et al.*, 10 B. C. R. 466.

See CHATTEL MORTGAGE.

7. Of mineral claim.]—*Gibson* v. *McArthur*, 7 B. C. R. 59.

See MINES AND MINERALS, XXXI. 6.

8. Possession — *Where bonâ fide taken, Bills of Sale Act inapplicable.*] — *McClary Manuf. Co.* v. *Howland, Sons & Co., et al.*, 9 B. C. R. 479.

See CHATTEL MORTGAGE.

9. Preference.]—K., a trader in insolvent circumstances, sold all his stock-in-trade to D., who knew that two of K.'s creditors had recovered judgment against him. The goods so sold were afterwards seized by the sheriff under executions issued on judgments recovered after the sale. On the trial of an interpleader issue in the County Court, the jury found that K. had sold the goods with intent to prefer the creditors who then had judgments, but that D. did not know of any such intent. The County Court Judge gave judgment against D., holding that the goods seized were now his goods, and that judgment was affirmed by the Court in banc. D. afterwards brought an action against the sheriff for trespass in seizing the goods, and obtained a verdict, which was set aside by the Court in banc, the majority of the Judges holding that the County Court judgment was a complete bar to the action. On appeal to the Supreme Court of Canada:—Held, reversing the decision of the Supreme Court of British Columbia, that the evidence showed that D. purchased the goods from K. in good faith for his own benefit, and the statute against fraudulent preferences did not make the sale void: Held, also, that the County Court judgment, being a decision of an inferior Court of limited jurisdiction, could not operate as a bar in respect of a cause of action in the Supreme Court and beyond the jurisdiction of the County Court to entertain: Held, further, that if such judgment could be set up as a bar, it should have been specially pleaded by way of estoppel, in which plea all the facts necessary to constitute the estoppel must have been set out in detail, and from the evidence in the case no such estoppel could have been established. *Davies* v. *McMillan*, taken from 1893, Canada Law Times, vol. XIII., page 267 (apparently not reported in B. C. R.)

10. Pressure — *Where given through — Validity of.*]—*Cascaden et al.* v. *McIntosh et al.*, 2 B. C. R. 268.

See FRAUDULENT CONVEYANCE.

11. Pressure—*Rebutting preference—Nature of.*]—*Matheson* v. *Pollock*, 3 B. C. R. 74.

See SALES.

See also CHATTEL MORTGAGE — FRAUDULENT CONVEYANCE—SALES.

BISHOP.

Columbia, Bishop of—*Constitution and authority.*] — Held, by BEGBIE, C.J., on an application for an injunction, that though the letters patent from which the Bishop of Columbia derives his authority do not confer upon him any effective coercive jurisdiction over his clergy, he could still enforce obedience by having recourse to the Civil Courts. This Court will, on proper application, supply coercive jurisdiction to enforce the sentence of an ecclesiastical tribunal of assessors, appointed in accordance with the provisions of the Church Discipline Act (3 & 4 V. c. 86), so far as its provisions are applicable to this country, when the finding of such tribunal is not unreasonable and the proceedings before it are conducted in a way consonant with the principles of justice, as understood in a Court of Equity. Subsequently, at the hearing, GRAY, J., made the injunction perpetual. Constitution and authority of the Bishop of Columbia. General Status of the Church of England in British Columbia. *Bishop of Columbia* v. *Cridge*, 1 B. C. R. pt. I., 5.

BLACKJACK.

1. A game in which chances are not alike favourable to the players.]—Certain persons played the game called black jack in a room to which the public had access, there being no constant dealer: Held, that lessee of room was legally convicted of keeping a common gaming house. *Reg.* v. *Petrie*, 7 B. C. R. 176.

BLACK LEG.

1. Libelous epithet.]—*Hugo* v. *Todd*, 1 B. C. R. pt. II., 369.

See LIBEL AND SLANDER.

BLACK LISTS.

1. Poster advertising accounts for sale.]—Defendant, a debt collector, printed a poster containing the names of persons from whom he was employed to make collections, shewing the amounts and the nature of the accounts, set opposite the respective names under the heading, in large letters, "Accounts for sale. Victoria, B.C. The British Columbia Commercial Agency offer the following accounts for sale at their office," etc. This poster, which showed the name of the plaintiff as debtor for a drug bill of $9.67, defendant sent to him, and to each of the persons on the list, together with a circular stating, "You may still have your name lifted by paying the amount on or before the 27th inst., after which date the posters will positively be issued." An interim injunction having been granted to restrain further publication: Held, *per* BEGBIE, C.J., on motion to continue the injunction till the hearing: That the poster was libellous, and the innuendo implied was not merely that the plaintiff was justly indebted in the sum mentioned, but that he was dishonest and insolvent: Held, *per* BEGBIE, C.J., on motion to dissolve injunction: The Court will interfere by interlocutory injunc-

tion restraining until the trial the publication of what clearly appears to be a libel. On appeal to Divisional Court, held, *per* CREASE, J., that the poster was libellous. It was, in fact, in the eyes of the public a black list, implying that all ordinary efforts to obtain payment had failed, and that the debtor was either dishonest or insolvent. That, though in England the Courts have not of late restrained publications before the question of libel had been submitted to a jury, there is undoubted power to do so under C. S. B. C. c. 31, s. 14, and appeal should be dismissed: Held, *per* DRAKE, J.: That as the jurisdiction is one never admitted before the Judicature Act, and the exercise of it may prejudice the trial of the action, as being a conclusive opinion that the matter complained of is defamatory, it should be very sparingly used and in practice confined to trade libels, and appeal should be allowed. *Wodjenden* v. *Giles*, 2 B. C. R. 279.

BLAZING.

1, Necessity of, in location of mineral claim.]—*Aldous* v. *Hall Mines*, 6 B. C. R. 394; *Snyder* v. *Ransom*, 10 B. C. R. 182.

See MINES AND MINERALS, XXIX.

BOARD AND LODGING.

1. Lien of innkeepers for.]—*Frank* v. *Berryman*, 3 B. C. R. 506.

See INNKEEPERS.

BOARDS OF HEALTH.

See HEALTH.

BOND.

1. In replevin proceedings.] — *Dunsmuir* v. *The Klondike & Columbian Gold Fields et al.*, 6 B. C. R. 200.

See REPLEVIN.

See also APPEAL — CERTIORARI — RECOGNIZANCE.

BOOK DEBTS.

1, Exemption of, from execution.]—Book debts are not within the exemption of the following provision of the Homestead Act, C. S. B. C. 1888, c. 57, s. 10: "The following personal property shall be exempt from forced seizure and sale by any process at law or in equity: that is to say, the goods and chattels of any debtor . . . to the value of $500," as not being within the description of personal property capable of seizure, or capable of being dealt with conformably to the provisions of the Act relating to the mode of claiming the exemption. *Hudson's Bay Company* v. *Hazlett*, 4 B. C. R. 450.

2. Mortgage of.] — *Robinson* v. *Empey et al.*, 10 B. C. R. 466.

See CHATTEL MORTGAGE.

BOUNDARIES.

1. Estoppel.]—In an action for the declaration of title to a piece of land claimed by plaintiff as part of lot 376, and by defendant as part of 202. Defendant's title was derived through B., to whom, in 1870, a Crown grant was issued, granting that lot, "numbered 202 on the official plan," said to contain "150 acres, more or less." In 1876-77 the Lands and Works Department having caused an official survey of the adjoining lots to be made, found the official plan by which the boundaries of B.'s lot was defined to be incorrect, and with a view to retain the acreage proper to each grant, and to make the boundaries run true to the cardinal points, gave the defendant, without notifying him, in the new official plan or survey, a new southern boundary. Three years after the completion of this survey, defendant filed in the Land Registry Office, a plan of the greater part of lot 202, according to a private survey made by his own directions, in which he implicitly followed, as to his southern boundary, the survey of 1876-77. In 1881 a Crown grant to lot 376—the boundaries thereof being as determined by the survey of 1876-77—was issued to plaintiff: Held, that the defendant having, by filing his map in 1880, adopted the survey of 1876-77, was precluded, as against the plaintiff, from treating that survey as a nullity. *Johnston* v. *Clarke*, 1 B. C. R., pt. II., 56.

2. Estoppel.]—In an action for the declaration of title to a piece of land claimed by plaintiff as part of Lot 376, and by defendant as part of 202. Defendant's title was derived through B., to whom, in 1870 a Crown grant was issued, granting that lot, "numbered 202 on the official plan, said to contain 150 acres, more or less." In 1876-77 the Lands or Works Department having caused an official survey of the adjoining lots to be made, found the official plan by which the boundaries of B.'s lot were defined to be incorrect, and with a view to retain the acreage proper to each grant, and to make the boundaries run true to the cardinal points, moved his s. e. corner post four chains north, and his s. w. corner post two chains south, and without notifying the defendant gave him, in the new official plan or survey, a new southern boundary. This adjustment of B.'s southern boundary gave to Lot 376 the gore of land now in question. Three years after the completion of this survey, defendant filed in the Land Registry Office a plan of the greater part of Lot 202, according to a private survey made by his own directions, in which he implicitly followed, as to his southern boundary, the survey of 1876-77. In 1881 a Crown grant to Lot 376—the boundaries thereof being as determined by the survey of 1876-77—was issued to plaintiff. On an appeal to the Full Court from the judgment of BEGBIE, C.J. (*ante*, p. 56):—Held, (in this affirming the decision of BEGBIE, C.J.), that in questions relating to boundaries and descriptions of land the rule is that the work on the ground governs, and that the gore had been originally included in the grant to B., as part of 202. Held (in this reversing the decision of BEG-

BIE, C.J.), that the filling of the map in 1880 did not under the circumstances (if at all) estop the defendant from claiming land not included therein, and that the defendant was entitled to the gore of land originally granted as part of Lot 262. *Johnston* v. *Clarke*, 1 B. C. R. pt. II., 81.

3. Interference.]—The "City of Victoria Official Map Act, 1880," and amending Acts, have reference to streets only:—Held, therefore, that nothing in those Acts could justify an interference by private individuals with the boundaries of a lot held by purchase and 20 years' possession. *Crowther* v. *Beaven*, 1 B. C. R. pt. 2, 116.

4. Plan — *Boundaries as defined by plan govern.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

BRANCHES OF RAILWAY.

1. Definition of a branch of railway.]—*Edmonds et al.* v. *C. P. R. Co.*, 1 B. C. R. pt. II., 272; *C. P. R. Co.* v. *Edmonds*, 1 B. C. R. pt. II., 295.

See RAILWAYS, I.

2. Extension not distinguished from.] —*C. P. R. Co.* v. *Major*, 1 B. C. R. pt. II., 287.

See RAILWAYS, I.

BREACH.

1. Of agreement — *Injunction causing.*] —*Attorney-General of B. C.* v. *C. P. R. Co. et al.*, 1 B. C. R. pt. II., 350.

See INJUNCTION.

2. Of conditions in deed.] — *Clark* v. *The Corporation of the City of Vancouver*, 10 B. C. R. 31.

See DEEDS.

3. Of contract—*Damages for.*] — *Miller* v. *Averill*, 10 B. C. R. 205.

See CONTRACT, VI.

4. Of undertaking not to proceed till trial.]—Proceedings before formal judgment drawn up, but after judgment delivered, do not amount to. *Dunlop* v. *Haney*, 7 B. C. R. 300.

See INJUNCTION.

See also CONTRACT—DAMAGES.

BRIDGES.

4. Duty of municipality to keep in repair.]—Corporations undertaking to manage highways are not insurers against latent defects, they are only bound to take reasonable care. No action could be maintained at common law for an injury arising from the non-repair of a highway, but a duty may be cast by statute upon a corporation to repair, and if that is clearly done it will be answerable in an action of negligence. The Municipal Act, 1892, B. C., sec. 104, sub-sec. 90, gave the defendant corporation power to raise money by way of road tax, and to pass by-laws dealing with roads, streets and bridges:—Held, that no duty to keep the streets in repair was thereby cast on defendants. *Lindell* v. *Corporation of the City of Victoria*, 3 B. C. R. 400.

2. Repair — *Liability concerning.*] — The company had a right under its Statutory Charter (8, 12 of 57 V. c. 63), to construct, maintain and operate a street railway along certain highways and bridges. One of the bridges over which the company had lawfully run its cars under the Act was destroyed, and the City commenced the construction of another in its place which was of insufficient strength to carry the cars. Upon motion for a mandatory injunction to compel the City to construct the bridge of sufficient strength to maintain the car traffic of the company:—Held, *per* DRAKE, J., that, as the company had a right to run over any bridge at that point, they had a right to the injunction. Upon appeal to the Full Court (McCREIGHT, WALKEM and McCOLL, JJ.), it was objected that the appellants had obeyed the order complained of, and thereby waived their right of appeal. Held, (*per* curiam) that a party obeying a mandatory injunction, for disobedience of which he is liable to attachment, cannot be said to have exercised any election, or to have waived any right. Upon the main question, Held, *per* McCREIGHT, J. (WALKEM and McCOLL, JJ., concurring), That the company were merely grantees of the right of way and as such had no right to compel their grantors to repair the bridge, and that in the absence of a special agreement to do so the right did not exist. The City were not liable for non-repair even if it amounted to a nuisance. *The Consolidated Railway Company* v. *The City of Victoria*, 5 B. C. R. 266.

See also MUNICIPAL CORPORATIONS, VIII.

BRIEF.

1. Taxation of on appeal.] — *Edison Co.* v. *W. and V. Tramway Co. et al.*, 5 B. C. R. 34.

See PRACTICE, IX. 7.

See also PRACTICE, IX. 20.

BRITISH NORTH AMERICA ACT.

See CONSTITUTIONAL LAW.

BROKERS.

1. Agent for mortgagee—*Duty of, to obtain accurate valuation.*] — *Walley* v. *Lowenburg, Harris & Co.*, 3 B. C. R. 416.

See PRINCIPAL AND AGENT.

2. Introduction of purchaser—*Subsequent sale through other agent—Commission.*]—Where a broker, on the instruction of the vendor, introduces a purchaser, he is entitled to his commission even though the sale be effected wholly through another agent. *Osler v. Moore*, 8 B. C. R. 115.

3. Margins—*Broker and principal dealing on.*]—*B. C. Stock Exchange, etc., v. Irving*, 8 B. C. R. 185.

See GAMING.

See also PRINCIPAL AND AGENT.

BUILDING CONTRACT.

1. Unsatisfactory work being done—*Right of aggrieved party to take over and finish the work.*]—Where a building contract is so far performed that the parties cannot be restored to their original position, and unsatisfactory work is being done: if the party aggrieved, in the absence of agreement ad hoc, interferes with the work so as to make it difficult to determine the value of that already done, he does so at the risk of having to pay the other party more than he has really earned, apart from the question of damages. *Moore v. B. C. Pottery Co.*, 2 B. C. R. 45.

BURDEN OF PROOF.

1. Mining law—*Location line—Onus of proof.*]—*Bleekir et al. v. Chisholm et al.*, 8 B. C. R. 148.

See MINES AND MINERALS, XXIX.

2. Where facts in party's knowledge.]—*The Hudson's Bay Co. v. Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

See also EVIDENCE — MINES AND MINERALS, XIX.

BUSH FIRE.

1. Liability for damages for.]—A fire started in brush and fallen timber by the defendant, for the purpose of clearing his land, spread on to the plaintiff's lands adjoining:—Held, in an action for damages, applying the principle of Rylands v. Fletcher (1868) L. R. 3 H. L. 330, that the defendant maintained the fire at his own risk and was responsible for the damage caused by it. Costs on County Court scale allowed, as action should have been brought there. *Crewe v. Mottershaw*, 9 B. C. R. 246.

BY-LAW.

1. Attestation—*Effect of, where not attested by Mayor and City Clerk.*]—*Traves v. City of Nelson*, 7 B. C. R. 48.

See MUNICIPAL CORPORATIONS, II.

2. Barber—*By-law prohibiting from exercising calling on Sunday — Invalid.*] — *Re Lambert*, 7 B. C. R. 396.

See SUNDAY.

3. Construction of—*Court will give it a sensible construction notwithstanding grammatical effect.*] — *Esquimalt Water Works Co. v. The City of Victoria*, 10 B. C. R. 193.

See MUNICIPAL CORPORATIONS, II.

4. Debenture by-law.]—The lender of money to a municipality on its debentures is bound at his own risk to see that the proceedings leading up to their creation and issue are legal and regular. Certain by-law declared bad for non-compliance with statutory requirements. *Wiltshire v. The Township of Surrey et al.* 2 B. C. R. 79.

See MUNICIPAL CORPORATIONS, IV.

5. Evidence of, allowed to prove status of petitioners.]—*Jardine v. Bullen*, 7 B. C. R. 471.

See ELECTIONS.

6. License fees — *Power of Council to fix.*]—*Regina v. Jim Sing*, 4 B. C. R. 338.

See MUNICIPAL CORPORATIONS, II.

7. License—*Varying already granted.*]—*In re Clay*, 1 B. C. R. pt. II., 300.

See INTOXICATING LIQUORS.

8. Lodging-house keeper — *By-law requiring to take out licenses.*] —*Re Gun Long*, 7 B. C. R. 457.

See MUNICIPAL CORPORATIONS, II.

9. Money by-law—*Provisions of imperative requiring to set out amount of debt and interest.*] — *Bell-Irving and City of Vancouver*, 4 B. C. R. 300.

See MUNICIPAL CORPORATIONS, II.

10. Non-compliance with by-law makes lease void.]—*Hickey v. Sciulto*, 10 B. C. R. 187.

See LANDLORD AND TENANT.

11. Reasonableness of.] — *Regina v. Russell*, 1 B. C. R. pt. I., 256.

See SUNDAY.

12. Road — *By-law closing.*] — *Styles v. The City of Victoria*, 8 B. C. R. 406.

See MUNICIPAL CORPORATIONS, II.

13. Sale — *Prohibiting sale on Sunday — Reasonableness of.*]—*Regina v. Petersky*, 4 B. C. R. 385.

See SUNDAY.

14. Time for motion to quash.] — *Kane v. The City of Kaslo*, 4 B. C. R. 486; 6 B. C. R. 163.

See MUNICIPAL CORPORATIONS, II. 3.

15. Ultra vires—*Objection of not available on appeal unless taken before magistrate.*]—*Regina* v. *Bowman*, 6 B. C. R. 271.

See SUNDAY.

16. Unreasonableness as a ground of attack.]—*Regina* v. *Petersky*, 4 B. C. R. 385.

See CRIMINAL LAW, IV.

17. Validity of—*Where good in part and bad in part.*]—*Regina* v. *Jim Sing*, 4 B. C. R. 338.

See MUNICIPAL CORPORATIONS, II.

18. Variation in—*From statute authorizing.*]—*Poole* v. *The City of Victoria*, 2 B. C. R. 271.

See MUNICIPAL CORPORATIONS, II.

See also CERTIORARI—INTOXICATING LIQUORS—MUNICIPAL CORPORATIONS, II.—SUNDAY.

CALLING.

1. Exercising calling or trade on Sunday.]—*Re Lambert*, 7 B. C. R. 396.

See SUNDAY.

CANADA POLICE ACT.

1. The Canada Police Act of 1869 is ultra vires.]—*Keefer* v. *Todd*, 1 B. C. R. pt. II., 249.

See CONSTITUTIONAL LAW, V.

CANADIAN PACIFIC RAILWAY.

1. Incorporation Act—Sub-section 19 of section 7 of the Railway Consolidation Act, 1879, forbidding the extension of any line beyond the terminus, is by section 18 of the company's charter (Stat. Can. 1881), imported into that act, and it is not inconsistent with the general power of the Company given thereby to construct branches from any point along their line to any other point in Canada. Semble, that a continuation of the line of the C. P. R. from Port Moody, its original terminus on the Pacific Coast, southwards along the coast line to Coal Harbour, was an extension, and not the building of a branch. (*Per* BEGBIE, C.J.). *Edmonds* v. *C. P. R. Co.*, 1 B. C. R. pt. II., 272. Upheld on appeal (GRAY, J., dissenting), *ibid.* 295.

NOTE.—The judgment of the majority of the Court was overruled by the Supreme Court of Canada, in *C. P. R. Co.* v. *Major*, 13 S. C. R. p. 233. (See also 1 B. C. R. pt. II., 287.

2. Foreshore—*Right of company to exclusive use of.*]—*C. P. R.* v. *City of Vancouver*, 2 B. C. R. 306.

3. Service of process on.] — *Jordan* v. *McMillan*, 8 B. C. R. 27.

See PRACTICE, XXVII.

4. Power of.]—*C. P. R. Co.* v. *Major*, 1 B. C. R. pt. II., 287.

See RAILWAYS, I.

See also RAILWAYS.

CANCELLATION OF INSTRUMENTS.

1. Bail, cancellation of.] — *Hartney* v. *Onderdonk*, 1 B. C. R. pt. II., 88.

See ARREST.

2. Lease—*Action to cancel.*]—A lease of land for 25 years containing a covenant by the lessee not to assign without leave, was executed contemporaneously with an agreement by the lessee to purchase from the lessor a building on the land, which agreement contained a covenant by the lessee to pay the purchase money by instalments and to insure, and gave the lessor the right to cancel the agreement "upon breach of any of the covenants herein contained." The only reference to the agreement in the lease was contained in a proviso, "the first month's rent to be paid on the execution of an agreement of even date," etc. The lessee sub-let the premises for ten years, and did not pay the instalments of purchase money under the agreement, or insure. The action was to cancel the agreement, lease and sub-lease for such breaches. The sub-lessee set up in his defence that the lease and sub-lease were registered and that the agreement was not, and claimed the benefit of the Land Registry Act, s. 35 (a):—Held, per DAVIE, C.J. 1. That the covenants in the lease and agreement were incorporated with each other and dependent, and that the breaches of the covenants in the agreement avoided the lease; citing Paget v. Marshall, 28 C. D. 255. 2. Quære, whether the sub-lessee was a purchaser of any registered real estate, or registered interest in real estate, within the meaning of section 35, supra. 3. That on the evidence, the sub-lessee had actual notice of the agreement and could not invoke section 35, supra. Upon appeal to the Full Court:—Held, *per* MCCREIGHT, WALKEM and DRAKE, JJ., overruling DAVIE, C.J., as to the cancellation of the lease and sub-lease: 1. That the sub-lease is not a breach of a covenant in a lease not to assign. 2. That the agreement and its covenants were independent of the lease and its covenants. *Griffiths* v. *Canoalca*, 5 B. C. R. 67.

3. Jury—*No right to in action for.*]—Rule 330, providing "causes or matters referred to in Rule 81 of these rules shall be tried by a Judge without a jury," is imperative, and as one of the matters referred to in Rule 81, is "the rectification, setting aside or cancellation of deeds or other written instruments," any action claiming such relief must be tried without a jury, though the issues involved might otherwise be proper for trial by a jury. *Stewart* v. *Warner*, 4 B. C. R. 298.

4. Liquor license — *Cancellation of retail.*]—*In re Close & Berry*, 2 B. C. R. 131.

See INTOXICATING LIQUORS.

5. Lis pendens — *Cancellation of.*] — *Merrick et al.* v. *Morrison et al.*, 7 B. C. R. 442.

See LIS PENDENS.

6. Lis pendens — *Cancellation of.*] — *Towne* v. *Brighouse*, 6 B. C. R. 225.

See VENDOR AND PURCHASER.

7. Pre-emption — *Cancellation of, by Crown grant.*]—*Moriarty* v. *Wedhams*, 1 B. C. R. pt. II., 145.

See TAXATION, III.

8. Promissory notes—*Action to cancel—Unsound mind.*]—Action to cancel promissory notes as being obtained by defendant, without consideration, from plaintiff, while he was, to defendant's knowledge, of unsound mind and incapable of transacting business; and to set aside a judgment by default of appearance obtained December 10th, 1888, in an action by defendant against the plaintiff upon the notes. The jury found that the plaintiff, at the time of the contract represented by the notes in question, was of unsound mind; (2) That the transaction was not fair and bonâ fide; (3) That there was no consideration; (4) That the transaction was without deliberation; (5) Without independent advice; (6) That the defendant at the time of making the notes was aware that the plaintiff was of unsound mind. The jury also stated that they were all for a verdict for the plaintiff. Upon motion, the judgment held: (1) That the plaintiff was not estopped by the default judgment in Cameron v. Harper. (2) That the issues were not res judicata by a decision in chambers, in Cameron v. Harper, affirmed by the Divisional Court, refusing to set aside the default judgment and admit plaintiff to defend and set up in that action the plaintiff's case herein. (3) That the answers and general verdict of the jury included a finding that the plaintiff was in fact non compos mentis at the time of and ever since the transaction impeached, and that he was consequently not estopped by conduct. (4) A finding by inquisition of the insanity of the plaintiff was not a necessary preliminary to this action. Upon motion for new trial and appeal, *per* BEGBIE, C.J., WALKEM and DRAKE, JJ. (sitting both as a Full Court and Divisional Court), judgment of CREASE, J., affirmed. (2) The verdict of a jury should not be disturbed as being against evidence unless it is one which the jury on the evidence could not reasonably have formed. (3) An action lies to set aside a judgment in another action. (4) Where documentary evidence is rejected at the trial, and the propriety of the rejection is not made a ground of appeal, the Court will not allow that evidence to be read on appeal as fresh evidence under Rule 874. (5) *Per* WALKEM, J.—Insanity once established is presumed to continue. (6) *Per* DRAKE, J.—Where a contract is attacked the defence of ratification must be pleaded to admit evidence of ratification. *Harper* v. *Cameron*, 2 B. C. R. 365.

CAPIAS AD RESPONDENDUM.

1. Affidavit—*Sufficiency of.*] — *Robertson et al.* v. *Beers*, 7 B. C. R. 76.

See ARREST.

2. Application for discharge before entry of appearance.]—*Wehrfritz* v. *Russell*, 9 B. C. R. 50.

See ARREST.

3. Cause of action—*Must be set out in affidavit leading to writ of.* 3 B. C. R. 510.

See ARREST.

4. Form of writ — *In.*] — *Wehrfritz* v. *Russell*, 9 B. C. R. 50.

See ARREST.

5. Motion to discharge.] — *Williams* v. *Richards*, 3 B. C. R. 510.

See ARREST.

6. Person arrested on may be lodged by sheriff in Westminster jail.]—*Carson* v. *Carson*, 10 B. C. R. 83.

See ARREST.

7. Sheriff—*Refusal of, to receive maintenance money—Effect of.*]—*Ward* v. *Clark*, 3 B. C. R. 969.

See ARREST.

8. For other cases see also *Mee Wah* v. *Chin Gee*, 1 B. C. R. pt. II., 367; *Hartney* v. *Onderdonk*, 1 B. C. R. pt. II., 88; *Kimpton* v. *McKay*, 4 B. C. R. 96; *Coursier* v. *Madden*, 6 B. C. R. 125; *Lentz et al.* v. *Kirschberg*, 6 B. C. R. 533.

(*See* ARREST.)

CAPIAS AD SATISFACIENDUM.

1. Practice in.] — *Kimpton* v. *McKay*, 4 B. C. R. 96; *Ward & Co.* v. *Clark et al.*, 4 B. C. R. 71.

See ARREST.

CAPITAL.

1. Of company—*Increase of, except by special resolution, is invalid.*] — *Twigg* v. *Thunder Hill Co.*, 3 B. C. R. 101.

2. Of company—*Increase of, not registered.*]—*Re Thunder Hill Co.*, 4 B. C. R. 61.

See COMPANY, VI., 4.

See also COMPANY, 6.

CARRIERS.

1. Contract by extra provincial companies — *Validity of.*] — *Boyle* v. *Victoria Yukon Trading Co.*, 9 B. C. R. 213.

See JUDGMENT.

2. Baggage—*Limitation of liability, re.*]—Defendant company sold plaintiff a ticket for Dawson, from Bennett, and containing the proviso that baggage liability was limited to wearing apparel only, and that each ticket was allowed 150 lbs. of baggage free, and not exceeding $100 in value. Plaintiff paid $10 excess baggage. Part of the baggage, including lady's apparel, men's suits and wolf robes, to the value of $855, was lost. Plaintiff sued for full amount, and defendants pleaded that their liability under the contract was limited to $100:—Held, by CRAIG, J., and by the Full Court (IRVING, J., dissenting), that defendants were liable for more than $100, but under the Carriers' Act for not more than $500. Held, also on appeal, that the contention that defendants were not liable for certain articles, not the wearing apparel of the plaintiff himself, was not now open to defendants, as that point was not raised in the pleadings or taken at the trial. Remarks as to what is included in the term "wearing apparel." *Wensky* v. *Canadian Development Co.*, 8 B. C. R. 190.

3. Bill of lading—*Limitation of liability in.*]—The plaintiff shipped six cases of dry goods on board the defendants' ship for carriage from Vancouver to Skagway, and thence to Dawson, under a bill of lading which provided that all claims for damage to or loss of any of the merchandise, must be presented within one month. The grating on the outside of the hull of the ship and at the mouth of the pipe in which the sea-cock was placed was defective, and rendered the ship unseaworthy, the result being that salt water entered the afterhold and damaged the plaintiff's goods. Plaintiff did not present his claim within a month, but subsequently sued for damages:—Held, by the Full Court (reversing IRVING, J.), MCCOLL, C.J., dissenting, that the stipulation in the bill of lading to the effect that no claim for loss should be valid unless presented to the company within a month, did not apply to damage occasioned by the defendants not providing a seaworthy ship. *Drysdale* v. *Union Steamship Co.*, 8 B. C. R. 228.

4. Goods—*Towage of scow.*]—Defendants' steamer, which previously had been employed carrying freight and passengers between White Horse and Dawson, had gone out of commission on 23rd September, 1898, and on that day while on her way down Lake Lebarge to winter quarters, she took in tow the plaintiffs' scow, loaded with goods. After proceeding some way the weather became bad, and in endeavouring to get into shelter the scow foundered, and the whole cargo was lost. In an action for damages against the owners of the steamer, evidence was tendered by the owners that those in charge of the steamer had been practically warned not to do any towing, but this evidence (being objected to by plaintiffs) was ruled out. At the trial: DUGAS, J., held that the defendants were common carriers and therefore liable:—Held, by the Full Court on appeal from the Territorial Court of the Yukon (reversing DUGAS, J.), that the appeal should be allowed with costs, and that the plaintiffs could have a new trial upon payment of the costs of the first trial. *Courtney et al.* v. *The Canadian Development Company*, 8 B. C. R. 53.

5. Passenger—*Travelling without permission.*]—The relation of common carrier and passenger does not exist when a person travels on the locomotive of a coal train without the permission of some officer who has authority to give such permission, and is injured; such a person has no right of action unless injured through the dolus as distinguished from the culpa of the carrier. Nightingale had a contract with defendant company to repair a bridge, and while riding on the locomotive of the company's coal train on his way to the work, he was killed by reason of the train falling through a bridge. The engineer in charge of the train (there being no conductor) had no authority to take passengers, and had instructions not to allow people to travel on the engine without permission from some competent authority, but the company's officers and servants, and other persons authorized by the manager and master mechanic, used to ride on the coal train. A few days before the accident Nightingale and the defendants' manager had gone down to the bridge on the engine of a coal train and returned the same way the same day. In an action by Nightingale's representative to recover damages from the company for his death, the jury held that the company had undertaken to carry Nightingale as a passenger:—Held, on appeal, setting aside judgment in plaintiff's favour, that there was no evidence to support such a finding, and that Nightingale was a "mere licensee." *Per* HUNTER, C.J.—The power which a Judge has to take a case away from the jury should be exercised only when it is clear that plaintiff could not hold a verdict in his favour; if the matter is reasonably open to doubt the Judge should let the case go to the jury, and then decide, if necessary, whether there is any evidence on which the verdict can be supported. *Nightingale* v. *Union Colliery Company of British Columbia, Limited Liability*, 9 B. C. R. 453.

6. Shipping receipt—*Goods—Parol evidence to explain.*]—The Hudson's Bay Co. and the other defendants, the Pioneer Line, were common carriers—the company plying the Enterprise between Victoria and New Westminster, and the Pioneer Line, the Irving between New Westminster and Yale, so as to form a continuous line of steamers between Victoria and Yale. The receipts from traffic passing over both sections of the route were divided between the defendants. The plaintiff ordered goods from the company, which were to be forwarded by them to his agent at Yale. The Company having filled the order, shipped the goods on the Enterprise and took the following receipt from the purser: "Shipped in good order by H. B. Co., on board the Enterprise. . . . bound for New Westminster, the following packages (the dangers of fire and navigation excepted) consigned to Gavin Hamilton, of 150 mile house, and marked," &c.:—Held, as to this receipt, that parol evidence was admissible to shew that the company had agreed to carry beyond New Westminster, viz., to Yale, as it did not contradict, but only supplemented, the language of the receipt; also that the exception of liability in cases of fire does not protect the carrier where loss from fire is due to his, or his agents' or servants' negligence. At New Westminster, the goods were transferred from the Enterprise to the Irving. Next day, while the Irving was on her way to Yale, a fire broke out in some hay stowed near her boiler. The hay consisted of about 20 tons, and besides being uncovered so nearly filled the

whole space between decks, forward from the engine room to within 8 feet of the boilers, that it was found impossible to do any good with the fire hose. The fire under these circumstances, spread rapidly, and burnt the vessel and her cargo (including plaintiff's goods). Held, that the stowage of the hay was bad stowage, due to negligence, to which the loss of plaintiff's goods was fairly attributable; and therefore that the B. B. Co. was liable to the plaintiff for breach of their contract to carry his goods to Yale, as their liability extended beyond their own line or section of route, and throughout the whole distance over which they undertook to carry; and that they were, moreover, responsible for the negligence of the Pioneer Line, as the latter were their agents for the carriage of the goods; That the Pioneer Line having accepted the goods for carriage to Yale, thereby undertook a duty they neglected, viz., "to use due care and diligence in the safe keeping and "punctual conveyance of the goods," that this obligation was cast upon them by the common law as well as by the Dominion Act respecting carriers by water; and that having failed to fulfil it had been privy to the loss of the goods through their own negligence, they were liable as well as the other defendants for such loss; That interest, at the legal rate, might be allowed as damages for delay in delivering the goods. *Hamilton* v. *Hudson's Bay Company and Irving and Briggs*, 1 B. C. R., pt. II., page 1.

7. Special contract—*Variation of, by bill of lading — Carriage of goods — Owner's risk.*]—The defendant company as a common carrier, in June, 1889, contracted with the plaintiff, a Dawson merchant, to carry for him from Puget Sound and British Columbia ports general merchandise, the rates being according to tariff annexed to contract. Three of the terms of the contract were: "Date of shipment—Throughout season of 1899. Consignees—T. G. Wilson, Dawson City. Quantity—Exclusive contract for season of 1899." Annexed to the contract was the freight tariff giving the rates to be charged on the different classes of goods "with guaranteed delivery of shipments during the season of 1899." The company decided not to receive after 20th August, any more freight with guaranteed delivery during 1899, and so notified one Pitts, a wholesaler of Victoria, of whom the plaintiff was a customer. Pitts afterwards shipped goods to Dawson consigned to the "Canadian Bank of Commerce, notify T. G. Wilson," and received from the company bills of lading marked with a special condition thus: "This shipment is made and accepted at owner's risk of delivery during 1899, and the carriers are released by all parties in interest from all claims and liability arising out of or occasioned by non-delivery during 1899." The company failed to deliver the goods, and Wilson sued for damages caused him by being deprived of the goods:—Held, by the Full Court (reversing CRAIG, J.), that the goods were not carried under the exclusive contract for the season of 1899, by which delivery was guaranteed that same season, but that they were carried under the terms of the bills of lading, and the company was not liable for the loss. As the plaintiff's cause of action, if any, would be against the company for refusing to carry under the original contract, a new trial was granted with leave to plaintiff to amend his pleadings. *Wilson* v. *C. D. Co.*, 9 B. C. R. 82.

CASE STATED.

1. By magistrate.]—*Reg.* v. *Ah Pow*, 1 B. C. R. pt. 1., 147.

See GAMING.

2. By magistrate—*Conviction under Immigration Act.*]—*Cooksley* v. *Nakashiba*, 8 B. C. R. 117.

See CRIMINAL LAW, IV. 1.

3. Elections—*Case stated in proceeding by petition under.*]—*Jardine* v. *Bullen*, 6 B. C. R. 220.

See ELECTIONS.

4. Time limit for transmission of.]—*Cooksley* v. *Nakashiba*, 8 B. C. R. 117.

See CRIMINAL LAW, IV. 1.

CAUSE OF ACTION.

See also PLEADINGS, IX. 3 — PRACTICE, II., XII.

CERTIFICATE.

1. Action—*Filing of certificate of, within time limited, imperative.*]—*Dunn* v. *Holbrook*, 7 B. C. R. 503.

See MECHANIC'S LIEN.

2. Agent—*Certificate of agent as to work done—Effect of.*]—*Galbraith & Sons* v. *Hudson's Bay Co.*, 7 B. C. R. 431.

See CONTRACT, III. 1.

3. Engineer—*Certificate of, for purpose of payment of contractor—Setting aside of.*]—*Walkley et al.* v. *City of Victoria*, 7 B. C. R. 481.

See CONTRACT, II. 1.

4. Free miner—*Effect of lapse in certificate of, on partnership rights.*]—*McVerhanie* v. *Archibald*, 6 B. C. R. 200

See MINES AND MINERALS, XXII., IX. 2.

5. Free miner—*Effect of lapse of certificate of.*]—*Grutchfield* v. *Harbottle*, 7 B. C. R. 186.

See MINES AND MINERALS, XXII., IX. 2.

6. Free miner—*Effect of lapse of certificate of.*]—*Grutchfield* v. *Harbottle*, 7 B. C. R. 344.

See MINES AND MINERALS, IX. 2.

7. Free miner—*Effect of special certificate.*]—*Woodbury Mines, Ltd.*, v. *Poyntz*, 10 B. C. R. 181.

See MINES AND MINERALS, XXII.

8. Improvements — *Whether certificates of, a bar to an adverse claim.*]—*Nelson & Fort Sheppard Ry. Co.* v. *Jerry et al.*, 5 B. C. R. 396.

See MINES AND MINERALS, III., IX., 3; XXIII.

9. Improvements — *Action to set aside certificate of.*]—*Hand* v. *Warren*, 7 B. C. R. 42.

See MINES AND MINERALS, IX. 3.

10. Improvements—*Holder of certificate of—Not bound to adverse.*]—*In re American Boy*, 7 B. C. R. 268.

See MINES AND MINERALS, IX. 3, XXIII.

11. Improvements — *Crown suit to set aside.*]—*Attorney-General* v. *Dunlop*, 7 B. C. R. 312.

See MINES AND MINERALS, IX. 3, XXIII.

12. Improvements — *Adverse claimant must commence action before certificate of has been obtained.*]—*Nelson & Fort Sheppard Ry. Co.* v. *Dunlop*, 7 B. C. R. 411.

See MINES AND MINERALS, IX. 3, XXIII.

13. Improvements—*Form of application by co-owners for certificate of.*]—*Fry et al.* v. *Botsford et al.*, 9 B. C. R. 234.

See MINES AND MINERALS, IX. 3, XXIII.

14. Improvements—*Who may apply for certificate of.*]—*Bentley et al.* v. *Botsford et al.*, 8 B .C. R. 128.

See MINES AND MINERALS, IX. 3, XXIII.

15. Indefeasible title—*Certificate of.*]—*In re Trimble*, 1 B. C. R. pt. II., 321; 3 B. C. R. 601.

See REGISTRATION OF DEEDS.

16. Judgment.]—The issue of a certificate of judgment for registration against the lands of the judgment debtor is not a proceeding in and should not be styled in the action. *Per* WALKEM, J. *Foley* v. *Webster*, 2 B. C. R. 251.

17. Judgment—*Certificate of, registered against lands not superseded by security being given for appeal to Supreme Court of Canada. Foley* v. *Webster, supra*, 2 B. C. R. 251.

18. Registrar—*Motion to vary certificate of.*]—*Van Volkenburg* v. *Western Canadian Ranching Co.*, 6 B. C. R. 284.

See CHATTEL MORTGAGE.

19. Shares—*Certificate of, purporting to be fully paid—Purchaser not liable for assessment.*]—*Kettle River Mines, Ltd.*, v. *Bleasdel et al.*, 7 B. C. R. 507.

See COMPANY, VI.

20. Substituted certificate—*Before admissible as evidence loss of original must be proved.*]—*Pavier* v. *Snow*, 7 B. C. R. 80.

See MINES AND MINERALS, IX. 4, XXV. 2.

21. Title — *Certificate of, based on tax sale, validity of.*]—*Kirk* v. *Kirkland et al.*, 7 B. C. R. 12.

See REGISTRATION OF DEEDS.

22. Title—*Certificate of, based on tax sale deed.*]—*Carroll* v. *The Corporation of the City of Vancouver*, 10 B. C. R. 179.

See MUNICIPAL CORPORATIONS, IX.

23. Title—*Certificate of, to be read with plan.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

24. Work—*Certificate of, is conclusive evidence of title.*]—*Peters* v. *Sampson*, 6 B. C. R. 405.

See MINES AND MINERALS, IX. 4, XLIX.

25. Work—*Certificate of, cures mistake in giving approximate compass bearing of number two post.*]—*Callahan* v. *Coplen*, 6 B. C. R. 523.

See MINES AND MINERALS, IX. 4, XLIX.

26. Work — *Certificate of — Effect of.*]—*Caldwell et al.* v. *Davys*, 7 B. C. R. 156.

See MINES AND MINERALS, IX. 4, XLIX.

27. Work — *Non-production of certificate of, not sufficient evidence of abandonment.*]—*Cranston et al.* v. *The English Canadian Co.*, 7 B. C. R. 266.

See MINES AND MINERALS, I. IX. 4, XLIX.

28. Work—*Certificate of—Whether cures mistake in giving compass bearing of post number two.*]—*Callahan* v. *Coplen*, 7 B. C. R. 422.

See MINES AND MINERALS, IX. 4, XLIX.

29. Work—*Certificate of — Cures irregularity in affidavit.*]—*Lawr* v. *Parker*, 7 B. C. R. 418.

See MINES AND MINERALS, IX. 4, XLIX.

30. Work—*Defect in title cured by preceding certificate of.*]—*Gelinas et al.* v. *Clark*, 8 B. C. R. 42.

See MINES AND MINERALS, IX. 4, XLIX, XLIV.

31. Work—*Impeachment of certificate of.*]—*Cleary et al.* v. *Boscowitz*, 8 B. C. R. 225.

See MINES AND MINERALS, IX. 4, XLIX.

See also MINES AND MINERALS—REGISTRATION OF DEEDS.

CERTIORARI.

1. Amendment of conviction.]—A minute of conviction for an offence under a by-law, and summary conviction drawn up in accordance therewith by the convicting magistrate, and returned by him to the County Court,

directed the accused to be imprisoned with hard labour, in default of payment of the fine imposed or sufficient distress to meet it. The magistrate had no jurisdiction to impose hard labour. In answer to a rule nisi to shew cause why a certiorari should not issue to bring up the conviction, and why it should not be quashed without the writ actually issuing, the magistrate brought in on affidavit a copy of the conviction altered by him after it was returned to the County Court by cutting out the sentence of hard labour:—*Held*, dismissing the rule nisi, on the authority of Regina v. Hartley, 20 Ont. 481, that the magistrate had a right so to amend the conviction and that the Court would not look behind it. Quære, *per* McCREIGHT, J.:—Whether the certiorari, if issued, should not be directed both to the County Court Judge and convicting Justice. Certiorari is not taken away by section 80 of the Summary Conviction Act, 1889, (B. C.), in regard to objections going to the jurisdiction of the convicting Justices, by an appeal from the conviction to the County Court. *Regina* v. *McAnn*, 4 B. C. R. 587.

2. Amendment of conviction—37 *V. (D.), c.* 42—*Effect of words in schedule—Construction of statutes.*]—Words printed on a schedule to an Act of Parliament, and which appear to contradict the body of the Act, are to be rejected as of no effect. Semble, on the return to a certiorari the Justices are entitled, and may be required, to amend their conviction on matters of form. But it is not open to them, on pretence of amending a conviction, to omit any vital part of what the conviction really contained, nor to introduce any new facts which are of vital importance to support the conviction. Semble, though the Court will not look at the depositions before the Justice to see whether they were justified in their conclusion as to any matter of fact found in the conviction, yet the Court may look at the depositions where it is alleged that they contained nothing whatever to justify the finding of the alleged fact, or the conclusion on a point of mixed law and fact, *e.g.*, as to the infliction of grievous bodily harm. Thus, in the present case, the actual conviction was for "striking on the head with a stick and cutting" the complainant. Semble it would not be permissible, under colour of amending the conviction, to omit in the return all mention of "cutting." The original conviction did not allege any consent by the accused, such consent being necessary to give the magistrate jurisdiction. Semble, it would not be permissible, under colour of amending, to state as a fact in the returned conviction that the accused had given consent. And semble, the Court would examine the depositions to see whether (as alleged by the applicant), they contained no evidence whatever of any cut being inflicted, or any cutting instrument being used, or whether the injuries proved in the evidence did in law amount to grievous bodily harm. *Houghton's Case*, 1 B. C. R. pt. 89.

3. Application for—*Should be to single Judge.*]—The Full Court will not hear a motion for a rule nisi to quash a conviction; the motion should be made to a single Judge. *Rex* v. *Tanghe*, 10 B. C. R. 297.

4. Application for rule nisi — *As to contradiction of statement of facts.*]—*Re W. N. Bole*, 2 B. C. R. 208.

See PROHIBITION.

5. By-law—*Validity of, may be determined in proceedings by way of, instead of appeal or motion to quash.*]—*In re Traves*, 7 B. C. R. 48.

See MUNICIPAL CORPORATIONS, II.

6. Chinese Regulation Act—*Conviction under.*]—*Reg.* v. *Wing Chong*, 1 B. C. R. pt. II., 150.

See CONSTITUTIONAL LAW, III.

7. Chinese—*Certiorari to quash conviction for employment of Chinamen underground granted.*]—*Reg.* v. *Little*, 6 B. C. R. 78.

See MASTER AND SERVANT, V.

8. Costs of.]—The old rule in certiorari proceedings that the Crown neither pays nor receives costs, is no longer in force, and the Court will grant the costs of a successful appeal to the Crown if asked for. The Court will not (except in special circumstances) grant leave to appeal to Her Majesty, when the same question is already under appeal to Her Majesty, in another proceeding, although not between the same parties. *Regina* v. *Little*, 6 B. C. R. 321.

9. Fire limits — *Certiorari to bring up conviction for having wooden building within.*]—*Reg.* v. *On Hing*, 1 B. C. R. pt. II., 148.

See MUNICIPAL CORPORATIONS, II. 5.

10. Magistrate—*Motion for rule nisi on ground of interest of convicting magistrate.*]—*Reg.* v. *Hart*, 2 B. C. R. 264.

See JUSTICES OF THE PEACE.

11. Magistrate — *View by.*] — *Re Sing Kee*, 8 B. C. R. 20.

See CRIMINAL LAW, XVIII.

12. Obstructing police officer.] — A person charged with obstructing a peace officer in the execution of his duty may be tried summarily by a magistrate without the consent of the accused. *Rex* v. *Jack et al.*, 9 B. C. R. 19.

13. Magistrate—*Trying two informations together.*]—Where a magistrate is trying two distinct but similar informations against an accused, a conviction by him in the second case, without regard to the evidence adduced in the first case, is not invalid merely because he reserved his decision in the first case, which he afterwards dismissed, until the conclusion of the second case. *The Queen* v. *McBerny* (1897), 3 C. C. C. 339, distinguished. *Rex* v. *Sing*, 9 B. C. R. 254.

14. Return—*Certiorari on return of writ of error.*]—*Sproule* v. *The Queen*, 1 B. C. R. pt. II., 219.

15. Right of convicting Justice to return amended conviction.]—*Regina* v. *McAnn*, 4 B. C. R. 587.

16. Second application after dismissal of first.]—When an application for a writ of certiorari has been dismissed the Court will not entertain another application for the same purpose, although the first was dismissed on a preliminary objection. *Rex* v. *Geiser*, 9 B. C. R. 503.

17. Security for costs—*Rule requiring recognizance with sufficient sureties—Necessity for affidavit of justification. Regina* v. *Ah Gin*, 2 B. C. R. 207.

18. Selling liquor to Indians.] — *Re Sing Ker*, 8 B. C. R. 20.

See CRIMINAL LAW, XVIII.

19. Service on Justices.]—The Statute 13 Geo. II., c. 8, s. 5, requiring six days previous notice to convicting Justices of motion for certiorari, is in force in this Province. The service upon the justices of a rule nisi for a certiorari returnable more than six days after service, will not be treated as a compliance with the statute, following Regina v. Justices of Glamorgan, 5 T. R. 279. The convicting Justices after service on them of the rule nisi, substituted and brought in on its return a good warrant of commitment in place of that objected to, which was admittedly bad for not following the conviction:—Held, that they were entitled to do so. *Re Charles Plunkett*, 3 B. C. R. 484.

20. Water rights—*Irregularly applied for—Proper mode to prevent is by certiorari or prohibition.*]—*Carson* v. *Martley*, 1 B. C. R., pt. II., 281.

See WATERS AND WATERCOURSES, VI.

CESTUI QUE TRUST.

See TRUSTEES AND EXECUTORS.

CHALLENGE OF JURY.

See CRIMINAL LAW, XV.

CHAMBERS.

1. Abandonment of summons—*By delay.*]—*Baker* v. *The "Province,"* 5 B. C. R. 45.

See PRACTICE, V.

2. Costs of applications in—*Generally.*]—*Victoria* v. *Bowes*, 8 B. C. R. 15.

See PRACTICE, V.

3. County Court—*Summons in—Is proper practice.*]—*Wilkerson* v. *City of Victoria*, 3 B. C. R. 366.

See PRACTICE, V.

4. Entitling of—*Summons entitled "in an intended action" after issue of writ—Effect of.*]—*Tanaka et al.* v. *Russell*, 9 B. C. R. 24.

See ARREST.

5. Material — *Used on — Imperative to mention in summons affidavit to be used in support.*]—*Leiser* v. *Cavalsky et al.*, 3 B. C. R. 196.

See PRACTICE, V.

6. One summons may embrace several applications.]—*Wade* v. *Wren et al.*, 9 B. C. R. 274.

7. Order in—*Moving to rescind instead of appealing. Garesche, Green Co.* v. *Holladay*, 1 B. C. R. pt. II., 83.

8. Order in—*Made after service, but in absence of opposite party—Re-opening of.*]—*Griffiths* v. *Canonica*, 5 B. C. R. 48.

See PRACTICE, V.

9. Receiver orders—*Must be made by local Judge in.*]—*Wakefield* v. *Turner*, 6 B. C. R. 216.

See RECEIVERS.

10. Registry.]—Where it is desired to make an application, under section 32 of the Supreme Court Act, as amended in 1901, c. 14, s. 13, to a Judge at Victoria, Vancouver or New Westminster, the summons must be issued at the place at which it is returnable. *Centre Star Mining Co., Limited*, v. *Rossland and Great Western Mines, Limited, and East Le Roi Mining Co., Limited*, 10 B. C. R. 136.

11. Return.] — Jurisdiction of Judge to make summons returnable at registry other than where writ issued. *Tanaka et al.* v. *Russell*, 9 B. C. R. 24.

See ARREST.

12. Venue.]—A plaintiff who wishes to name some place other than that named in the original statement of claim as the place of trial, must obtain leave to do so on a summons which clearly shews that it is desired to change the venue and not on a summons simply to amend statement of claim. *Wade* v. *Uren et al.*, 9 B. C. R. 274.

See also PRACTICE, V., IX. 1.

CHAMPERTY AND MAINTENANCE.

1. Between solicitor and client.] — Plaintiffs, advocates in the Yukon, sued defendant for a lump sum for professional services in obtaining a judgment for the defendants against one H., it being alleged by the plaintiffs that they were to charge $600 if the amount was collected, and by the defendant that they were to get 10 per. cent. if collected by them:—Held, in appeal, reversing CRAIG, J., and dismissing the action, *per* DRAKE, J., that by Yukon law an advocate cannot legally obtain a lump sum for professional services except under r. 524 of the North-West Territories Judicature Ordinance of 1893. *Per* MARTIN, J., that the plaintiffs failed to prove any agreement. *Robertson et al.* v. *Bossuyt*, 8 B. C. R. 301.

2. English laws in force in B. C.]—The laws of maintenance and champerty as they existed in England on 19th Nov., 1858, are in force in British Columbia, and an agreement for a champertous consideration is absolutely null and void. The defence that an agreement is champertous and therefore void, is open to others than those who are parties to the agreement. *Per* HUNTER, C.J.:—It is not open to a man to stand by and assist another to fight the battle for specific property to

which he himself claims to be entitled, and in the event of the latter's defeat, claim to fight the battle over again himself. He is not bound to intervene, but if he does not he must accept the result so far as concerns the title to the property. At the trial plaintiff obtained judgment declaring that defendant was a trustee for him of an undivided one-quarter interest in two mineral claims; on appeal by defendant, plaintiff's interest was reduced to one-fortieth. The Court allowed defendant the costs of the appeal, but allowed no costs of the trial to either side. *Briggs and Giegerich* v. *Fleutot*, 10 B. C. R. 309.

CHANGE OF VENUE.

See VENUE.

CHARITABLE USES.

Statute as to, not in force in British Columbia.]—*In re Pearse Estate*, 10 B. C. R. 280.

See WILLS.

CHARGING ORDER.

1. Priority under. 9 B. C. R. 30.

See GARNISHMENT.

CHARGE.

1. Deed in fee should not be registered as a.]—*Hudson's Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

2. Judge's charge to jury—*Rules for, considered.*]—*Love* v. *The New Fairview Corp. Ltd.*, 10 B. C. R. 330.

See NEGLIGENCE.

3. Judge's charge to jury—*Must point out bearing of facts in evidence.*]—*Rex* v. *Wong On & Wong Gow*, 10 B. C. R. 555.

See PRACTICE, XVI.

4. Judge's charge to jury—*Should define the crime and explain it.*]—*Rex* v. *Wong On & Wong Gow*, 10 B. C. R. 555.

See CRIMINAL LAW, XIV.

5. Judge's charge.]—It is not a misdirection for Judge to tell jury his own opinion on the evidence before them. In his charge the Judge stated that he himself would pay very little attention to certain corroborative evidence, but he also told them the matter was entirely for them to decide:—Held, not a misdirection, *Harry et al.* v. *The Packers' Steamship Co.*, 10 B. C. R. 258.

See also JUDGES—MORTGAGES.

CHATTEL MORTGAGES.

1. Affidavit—*Jurat.*]—A bona fide demand by a creditor upon his insolvent debtor for payment or security is pressure sufficient to rebut any inference of "intent to prefer" in the execution of a mortgage in response to the demand, and takes the transaction out of the prohibition of the Fraudulent Preferences Act, C. S. B. C. 1888, c. 15, s. 2, following Stephens v. McArthur, 19 S. C. R. 446. The Bills of Sale Act, C. S. B. C. 1888, c. 8, s. 3, as to the affidavit of execution to be filed with the instrument, provides "the affidavit aforesaid may be in the form in the schedule hereto annexed marked 'A.'" In this form, and also in the affidavit filed with the chattel mortgage in question, no mention was made in the jurat of the place of swearing the affidavit:—Held, (per curiam), that the affidavit was sufficient as complying with the Statute. *Per* DAVIE, C.J.—Apart from its statutory sufficiency it would be presumed, from the fact that the affidavit was on the face of it sworn before a commissioner for taking affidavits in British Columbia, that the official acted within the territorial limits of his authority and not elsewhere. *Brown and Erb* v. *Jowett*, 4 B. C. R. 44.

2. Amount payable under.]—A bill of sale contained a recital that a certain sum was due from the mortgagor to the mortgagee, and a covenant by the mortgagor to pay that sum and also any other sum which on taking an account might appear to be due thereon:—Held, that the mortgagor was not estopped by the recital from claiming that the debt due at the date of the bill of sale was larger than the sum therein named. An express covenant overrides and excludes an implied covenant. *Rithet et al.* (*Trustees of Henry Saunders*) v. *Beaven et al.* (*Trustees of Green, Worlock & Co.*), 5 B. C. R. 457.

3. Banks—*Rights of, as against chattel mortgages.*]—*Merchants Bank of Halifax* v. *Houston & Ward*, 7 B. C. R. 465.

See BANKS AND BANKING.

4. Bidding in at sale by mortgagee—*Accounts—Goodwill of business—Practice as to varying decree.*]—Mortgagees put up stock in trade of a butcher business for sale under their mortgages, bid it in and took possession with the assent of the mortgagor, paid off arrears of wages and rent, and carried on the business with the mortgagor in their employ for some months. In an action by the mortgagor to avoid the sale, held by DRAKE, J., (1) That it was void and the property could be redeemed; (2) That in the taking of accounts mortgagor could not be charged with arrears of wages paid by the mortgagees, this payment having not been previously expressly assented to by the mortgagor:—Held, further, on appeal from judgment of DRAKE, J. (on motion to vary the Registrar's certificate): (1) That a sum stated by the mortgagees to be the value of the good will for the purposes of an amalgamation scheme between them and another company, could not be charged against them in the accounts; (2) If it appears on the taking of accounts that the decree is not drawn in such a way as to include all proper subjects, the proper practice is to apply to the Court to direct further and other accounts to be taken; (3) On a motion to vary a certificate the parties are confined to the decree. *Van Volkenburg* v. *Western Canadian Ranching Company*, 6 B. C. R. 284.

5. Book debts.]—V. and C. sold their grocery business, including all their stock in trade and book debts, to H. & B., who shortly afterwards gave a chattel mortgage to E. covering the stock-in-trade of the grocery business, and also all books debts due to H. & B. in the business carried on by them as grocers: Held, reversing HUNTER, C.J., that the book debts originally due to V. & C., and assigned by them to H & B., were covered by the chattel mortgage. *Robinson* v. *Empey et al.*, 10 B. C. R. 466.

6. Condition outside the instrument.]—A bill of sale given subject to a condition not appearing therein is void as against creditors. *Doll* v. *Hart*, 2 B. C. R. 32.

7. Creditors—*To defeat.*] — *Anderson* v. *Shorey*, 1 B. C. R. pt. II., 325.

See FRAUDULENT CONVEYANCE.

8. Fraudulent preference.]—To constitute pressure which will authorize an assignment by way of security, there must be a legitimate and bona fide attempt by the creditor to get payment of his debt, or security therefor. It is not bona fide pressure for a creditor, knowing of his debtor's insolvency, to take an assignment of all his property. A bill of sale given subject to a condition not appearing therein is void as against creditors. *Doll et al.* v. *Hart et al.*, 2 B. C. R. 32.

9. Possession being taken within 21 days—*Effect of.*]—Where the goods comprised in a bill of sale are within twenty-one days after execution of the bill of sale bona fide taken possession of by the grantee, the Bills of Sale Act does not apply and it is immaterial even though the bill of sale was given subject to a defeasance not contained in it. D. B., A. O. B. and T. G. W. carried on business in partnership as hardware merchants under the name of the Greenwood Hardware Company, the money being supplied by D. B. and A. O. B., and the business being managed by W. The firm became indebted to both the McClary Company and the Howland Company, and the latter under threat of commencing an action, obtained on the 27th day of June, 1900, a bill of sale by way of mortgage of all the firm's assets and immediately took possession. The bill of sale was executed on behalf of the firm by W., and also by W. personally, D. B. and A. O. B. both being absent: when A. O. B. returned he protested against the execution of the bill of sale, but subsequently withdrew his protest, and consented to a sale of the goods on the understanding that plaintiffs and defendants should share pro rata in the proceeds. The arrangement that plaintiffs and defendants should share in the proceeds was not carried out. On the 27th July, 1900, the McClary Company recovered a judgment in respect of their claim against the firm and obtained judgment under Order XIV., the judgment being entered up against D. B. and A. O. B., and also against the Greenwood Hardware Company, although not a party to the action, and an execution issued was returned nulla bona. The McClary Company thereupon sued to have the bill of sale set aside on the ground that it was fraudulent and void as being given with the intent to defeat and delay creditors, and that W. had no authority to give it on behalf of the firm. Under an order of Court the goods were sold and the proceeds paid into Court to abide the result of the action. The Howland Company recovered a judgment in January, 1901, against the firm for the amount of its indebtedness to them and an execution issued thereunder was returned nulla bona. At the trial in July, 1902, MARTIN, J., dismissed the plaintiffs' action, holding that the bill of sale was not a fraudulent preference, but was given bona fide under pressure:—Held, on appeal, affirming decision of MARTIN, J., that the bill of sale was not a fraudulent preference, but was given bona fide under pressure. Per HUNTER, C.J., and DRAKE, J.: W. had implied authority to execute the bill of sale. Per IRVING, J.: W. was not the agent of his partners to execute the bill of sale, but they had either ratified his act or become estopped from denying his authority. Per HUNTER, C.J.: The plaintiffs had no locus standi to attack the bill of sale on the ground that it was executed without proper authority. Per DRAKE, J.: The McClary Company's judgment against the firm was invalid, and hence the company had no locus standi to attack the bill of sale. *The McClary Manufacturing Co.* v. *H. S. Howland, Sons & Company, and the Greenwood Hardware Company*, 9 B. C. R. 479.

10. Preference.] — Wilson Bros., creditors of P. and Y., a firm of general storekeepers, demanded security for their overdue account, and agreed to supply further goods and not register the instrument if it was given. Plaintiffs objected that it would be unfair to other creditors to accede, but finally did so on the terms proposed, and gave the security by bill of sale on part of their stock of goods. The debtors were at the time in insolvent circumstances, but it was not proved that Wilson Bros. were aware of it:—Held, the bill of sale was not made with intent to give Wilson Bros. a preference over the other creditors of plaintiffs, but was made under pressure sufficient to take the transaction out of the statute. *Stewart* v. *Wilson*, 3 B. C. R. 369.

See also BILLS OF SALE—FRAUDULENT CONVEYANCE—FRAUDULENT PREFERENCE.

CHILDREN.

1. Custody of.]—*In re Soy King*, 7 B. C. R. 291.

See INFANTS.

2. Custody of — *Where wife leaves husband unjustifiably.*]—*In re C. T. McPhalen*, 10 B. C. R. 40.

See PRACTICE, IX. 12.

CHINESE.

1. Employment of, underground.] — *In re The Coal Mines Regulation Act*, 10 B. C. R. 408.

See CONSTITUTIONAL LAW, II. 5.

2. Employment below ground.]—*Attorney-General* v. *Wellington Colliery Co.*, 10 B. C. R. 397.

See INJUNCTION.

4. Employment in coal mines.]—*Reg.* v. *Little*, 6 B. C. R. 78.

See MASTER AND SERVANT, V.

4. Immigration Act—*Chinese*—63 & 64 *Vict. c.* 32 — *Prostitute—Evidence—Affidavits of Chinamen in English language.*]—Evidence of the general reputation of a house in which a Chinese immigrant has lived is admissible in habeas corpus proceedings directed against the collector of customs, who is detaining such immigrant for deportation to China on the ground that she is a prostitute. An affidavit drawn up in a language not understood by the deponent, may be read in Court if it appears from the jurat that it was first read over and interpreted to deponent. In re Ah Gway (1893), 2 B. C. R. 343, not followed. *In re Fong Yuk, etc.*, 8 B. C. R. 118.

5. Immigration Act.]—*In re Lee San*, 10 B. C. R. 270.

See HABEAS CORPUS.

6. Interference with the rights of.]—*Reg.* v. *Wing Chong*, 1 B. C. R. pt. II., 150.

See CONSTITUTIONAL LAW, III.

7. Marriage between — *By Christian minister, void where ceremony not understood.*]—*In re Ah Lie*, 1 B. C. R., pt. I., 261.

See MARRIAGE.

8. Regulation Act—*Ultra vires.*] — *Reg.* v. *Wing Chong*, 1 B. C. R. pt. II., 150; *Reg.* v. *Gold Commissioners of Victoria District*, 1 B. C. R. pt. II., 260.

See CONSTITUTIONAL LAW, II. 5.

9. Provincial laws — *Discriminating against.*]—*Tai Sing* v. *Maguire*, 1 B. C. R. pt. I., 101.

See CONSTITUTIONAL LAW, III.

10. Trade license — *Right of, to a.*] — *Reg.* v. *Corporation of Victoria*, 1 B. C. R., pt. II., 331.

See MUNICIPAL CORPORATIONS, X.

11. Tax Act—*Validity of.*]—*Tai Sing* v. *Maguire*, 1 B. C. R. 101.

See CONSTITUTIONAL LAW, III.

12. Taxation intended as a restriction of.]—*Reg.* v. *Mee Wah*, 3 B. C. R. 403.

See CONSTITUTIONAL LAW, II. 8.

CHOLERA.

1. Detention of person exposed to infection.]—*Mills* v. *The City of Vancouver et al.*, 10 B. C. R. 99.

See HEALTH.

CHOSE IN ACTION.

1. Assignment of, without notice — *Cause of action in assignor.* 9 B. C. R. 151.

See ASSIGNMENTS.

2. Bills of Exchange — *Excepted from operation of Act.*]—*McPherson* v. *Johnston et al.*, 3 B. C. R. 465.

See ASSIGNMENTS.

3. Oral equitable assignment of — *Validity of.*]—Priority of subsequent attaching order. *Todd & Son* v. *Phœnix*, 3 B. C. R. 302.

See ASSIGNMENTS.

CHURCH DISCIPLINE ACT.

1. Status of Church of England in British Columbia.]—*Bishop of Columbia* v. *Cridge*, 1 B. C. R. pt. I., 5.

See INJUNCTION.

CIVIL RIGHTS.

1. Appeal — *As a ground of appeal to Privy Council.*]—*Madden* v. *The Nelson & Fort Sheppard Ry. Co.*, 5 B. C. R. 670.

See APPEAL, IX.

See also CONSTITUTIONAL LAW, II., 8, 9.

CLAIM AND COUNTERCLAIM.

1. Treated as distinct actions up to execution.]—*Smith* v. *Hansen*, 2 B. C. R. 153.

See PRACTICE, VI.

See also PLEADING, V.

CLASS LEGISLATION.

See CONSTITUTIONAL LAW, III.

CLEAR OF ENCUMBRANCE.

In re Sir James Douglas, 1 B. C. R. pt. I., 84.

See REGISTRATION OF DEEDS.

CLERGYMAN.

1. Marriage—*Not bound to perform.*]—*In re Ah Lie*, 1 B. C. R., pt. I., 261.

See MARRIAGE.

CLERK.

1. Of municipality is persona designata for tax sale purposes.]—*Tracy* v. *District of North Vancouver*, 10 B. C. R. 235.

See MUNICIPAL CORPORATIONS, IX. 16.

2. Preference—*Clerks have no preferential claim in case of an equitable execution.*] —*Muirhead* v. *Lawson*, 1 B. C. R. pt. II., 113.

See CARRIERS.

See also MASTER AND SERVANT.

CLIENTS.

1. Action—*Settlement of, by client—Lien for solicitor—Costs.*]—*Rideout* v. *McLeod*, 6 B. C. R. 161.

See SOLICITOR AND CLIENT.

2. Money of — *Wrongfully retained by solicitor.*]—*In re Blake*, 6 B. C. R. 276.

See SOLICITOR AND CLIENT.

CLOUD ON TITLE.

1. Lis pendens is.]—*Townend* v. *Graham*, 6 B. C. R. 539.

See VENDOR AND PURCHASER.

See also REGISTRATION OF DEEDS — VENDOR AND PURCHASER.

CLUB.

1. Taxation—*Not liable for, by municipality.*]—*The City of Victoria* v. *The Union Club*, 3 B. C. R. 363.

See INTOXICATING LIQUORS.

COAL.

1. Coal Lands — *Purchase of, from Crown.*]—*Peck et al.* v. *The Queen*, 1 B. C. R. pt. II., 11.

See MINES AND MINERALS, 11.

2. Coal Mines Regulation Act — *Summary conviction—Prohibition without penalty —Quashing conviction.*]—The Coal Mines' Regulation Act, by s. 4, provided: "No boy under the age of twelve years, and no woman or girl of any age, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground." By section 12, if any person contravene or fails to comply with, etc., "any provision of this Act with respect to the employment of women, girls, young persons, boys or children, he shall be guilty of an offence against this Act." By section 95, "every person who is guilty of an offence against this Act, shall be liable to a penalty not exceeding, if he is . . . manager, $100. In 1890, section 4 was amended by inserting the words "and no Chinamen," after the word "age." The defendant was convicted before two Justices of the Peace of having employed a Chinaman in a coal mine under ground, and was fined $100. Upon application for certiorari to quash the conviction:—Held, by DRAKE, J., confirmed by the Full Court, DAVIE, C.J., WALKEM and IRVING, JJ.: That a contravention of the amendment to section 4 prohibiting the employment of Chinamen was not made an offence under the Act for which any penalty is imposed, and that the Penal Act should not be extended beyond the reasonable construction which the words used would bear. The Interpretation Act, s. 8, s.-s. 21, providing that "any wilful contravention of any act which is not made an offence of some other kind shall be a misdemeanour, and punishable accordingly," did not assist the conviction. *Regina* v. *Little*, 6 B. C. R. 78.

See also MINES AND MINERALS, 11.

COAST.

1. Meaning of.]—*Mowat* v. *North Vancouver*, 9 B. C. R. 205.

CODICIL.

1. Where obtained by undue influence — *Probate refused.*] — *McHugh* v. *Dooley et al.*, 10 B. C. R. 537.

See WILLS.

COLLECTION.

1. Agency for — *Publication of black debts sheets.*]—*Wolfenden* v. *Giles*, 2 B. C. R. 279.

See LIBEL AND SLANDER.

COLLISION.

1. Damages—*How assessed — Non-observance of Canadian sailing rules — Practice — Costs—Preliminary Act—Order* 19, *r.* 28, *of the English Rules.*]—Plaintiffs' claim for $408 was dismissed, and defendants on their counterclaims got judgment for $735. Plaintiffs appealed: — Held, by the Full Court, that the appeal must be limited to the judgment on the counterclaim as the claim was not for an appealable amount. Plaintiffs in a collision case having failed to file a preliminary Act:—Held, by DUGAS, J., and affirmed by the Full Court, that no evidence could be given in support of the plaintiff's claim. The ship Canadian, navigated by an American pilot, was making a landing against a current of about six miles an hour. The ship Merwin, also navigated by an American pilot, was coming down stream. Both vessels before collision gave blasts which were interpreted by each ship according to American regulations:—Held, by DUGAS, J., that under the circumstances the Canadian was alone to blame:—Held, in appeal by WALKEM and DRAKE, JJ., that both vessels were to blame,

and that the appeal should be allowed without costs. By IRVING, J., that both vessels were to blame, and that it be referred back to assess the damages to the Canadian, and then the damages should be apportioned according to the Admiralty Rule. By MARTIN, J., that the appeal should be dismissed. Observations as to the necessity for complying with the Canadian navigation rules in Canadian waters. *Canadian Development Co.* v. *Le Blanc, et al.*, 8 B. C. R. 173.

2. Negligence.]—Articles 11 and 15 (*d*) of the Collision Regulations of February 9th, 1897, do not apply to the case of a ship made fast to a lawful wharf in a harbour:—Held, on the facts, that a vessel which ran into another so moored was guilty of negligence. *Bank Shipping Co.* v. *The City of Seattle*, 10 B. C. R. 513.

3. Onus of proof.]—It appeared from the preliminary Acts that the defendant ship was under weigh and the plaintiffs' ship at anchor at the time of the collision: — Held, upon proof of the interest and right to sue the plaintiffs, that the onus was on the defendant ship to show that the collision was not caused by her negligence. (2) That mortgagees of a ship, in possession, have a right of action for damage done to her. 3. That where both parties are to blame for a collision, though in different degrees, the loss and costs will be divided equally among them. *William Curtis Ward and Frederick Bernard Pemberton, Executors of the late Joseph Despard Pemberton, against the ship Yosemite*, 3 B. C. R. 311.

4. Overtaking ship.]—Where a steamer proceeding on a course north seventy-two degrees west, and a barque sailing on the starboard tack within about seven points of the wind whose direction is east north-east, the barque is not an overtaken ship within the meaning of the regulations. In admiralty. *Smith, et al.*, v. *The Steamship Empress of Japan*, 8 B. C. R. 122.

4. Overtaking ship.]—Where a steamer J. and C. cleared from the same wharf at Nanaimo Harbour at about the same time, the J. first. Each backed from the wharf in a different direction from the other, and each executed a manœuvre in the harbour for the purpose of making exit to the sea by a narrow channel between an island situated at the mouth of the harbour and a shoal, and approached its entrance and each other in directions convergent and almost at right angles, the J. being on the starboard side of the C. The relative courses and speed of the vessels were such that unless altered by one or the other a collision was imminent. Both vessels kept their courses, but a few seconds before the collision took place, the C. stopped and reversed her engines, notwithstanding which she struck the J., which was then crossing her bow, forward of amidships, almost at right angles:—Held, 1. That the J. was not an overtaking ship within the meaning of Article 20, or bound to keep out of the C.'s way. 2. That the C. had the J. on her starboard side, within the meaning of Article 16, and was bound to keep out of the way. 3. That the C. was solely responsible for the collision. *The Cutch*, 2 B. C. R. 357.

6. Party to blame.]—Whoever interferes with the free use of a public landing or wharf, erected on land acquired for that purpose only, by a municipality under Act of Parliament, is a wrong-doer, and the municipality has no power to license such interferences. In Admiralty, where two colliding vessels are both to blame, each must bear one-half the total damage, but the Court has a discretion as to costs. *Lee* v. *The Olympian*, 2 B. C. R. 84.

7. Party to blame.] — Plaintiffs' claim for $408 was dismissed, and defendants on their counterclaim got judgment for $735. Plaintiffs appealed:—Held, by the Full Court, that the appeal must be limited to the judgment on the counterclaim, as the claim was not for an appealable amount. Plaintiffs in a collision case having failed to file a preliminary Act:—Held, by DUGAS, J., and affirmed by the Full Court, that no evidence could be given in support of the plaintiffs' claim. The ship Canadian, navigated by an American pilot, was making a landing against a current of about six miles an hour. The ship Merwin, also navigated by an American pilot, was coming down stream. Both vessels before collision gave blasts, which were interpreted by each ship according to American regulations:—Held, by DUGAS, J., that under the circumstances the Canadian was alone to blame:—Held, in appeal, by WALKEM and DRAKE, JJ., that both vessels were to blame, and that the appeal should be allowed without costs. By IRVING, J., that both vessels were to blame, and that it be referred back to assess the damages to the Canadian, and then the damages should be apportioned according to the Admiralty rule. By MARTIN, J., that the appeal should be dismissed. Observations as to the necessity for complying with the Canadian navigation rules in Canadian waters. *Canadian Development Co.* v. *Le Blanc, et al.*, 8 B. C. R. 173.

8. Salvage.]—Although salvor and salvee are both to blame for a collision, the salvor may be awarded salvage. *Zambesi* v. *Dotard*, 2 B. C. R. 91.

See also ADMIRALTY AND SALVAGE.

COLLUSION.

1. Allegation of, necessary, as a matter of fact.]—*Attorney-General* v. *C. P. R. Co. et al.*, 1 B. C. R., pt. II., 350.

See PLEADING, 1.

2. Company—*Collusion in sale of assets of.*]—*Daniel* v. *Gold Hill Mining Co.*, 6 B. C. R. 495.

See COMPANY, II. 1.

3. Creditors—*To defeat.*]—*Holten et al.* v. *Vandall et al.*, 7 B. C. R. 331.

See FRAUDULENT CONVEYANCE.

4. Evidence — *Sufficiency of evidence of collusion to create fraudulent preference.* 4 B. C. R. 460.

See JUDGMENT.

5. Engineer — *Collusion as a ground for setting aside certificate of corporation engineer.*] — *Walkley et al.* v. *City of Victoria*, 7 B. C. R. 481.

See CONTRACT, II.

See also FRAUDULENT CONVEYANCE.

COMBINATION.

1. Producing new results.] — *Short* v. *Federation Brand Salmon Canning Co.*, 7 B. C. R. 197.

See PATENTS.

COMMERCE.

1. Interference with.] — *Reg.* v. *Wing Chong*, 1 B. C. R., pt. II., 150.

See CONSTITUTIONAL LAW, II. 9.

COMMISSION.

1. Commission agent — *Introduction of purchaser — Subsequent sale through other agent.*]—Where a broker, on the instruction of the vendor, introduces a purchaser, he is entitled to his commission, even though the sale be effected wholly through another agent. *Osler* v. *Moore*, 8 B. C. R. 115.

2. Collector—*Right of collector of municipality to a commission on tax sale.*]—*North Vancouver* v. *Keene*, 10 B. C. R. 276.

See MUNICIPAL CORPORATIONS, IX.

3. Evidence — *Affidavit for commission to take.*]—*Tallemache* v. *Hobson*, 5 B. C. R. 214.

See EVIDENCE.

4. Evidence — *Commission to take in County Court—Preponderance of convenience.*] —*Thompson et al.* v. *Henderson*, 9 B. C. R. 540.

See COURTS, I. 3.

5. Evidence—*To examine witness abroad.*] —*Hermann* v. *Lawson*, 3 B. C. R. 353.

See EVIDENCE.

6. Evidence—*To take in criminal cases.*] —*Reg.* v. *Johnson et al.*, 2 B. C. R. 87.

See CRIMINAL LAW, VIII.

7. Evidence — *Second commission to same place.*]—*Gill* v. *Ellis*, 5 B. C. R. 137.

See EVIDENCE.

8. Evidence — *Right of non-resident defendant to—Commission to take.*] — *Cranston* v. *Bird*, 5 B. C. R. 140.

See EVIDENCE.

See also BROKER—EVIDENCE.

COMMISSIONER.

1. Where purporting to sit as a County Court Judge—*Appeal from decision of.*]—*Johnson* v. *Miller*, 7 B. C. R. 46.

See also AFFIDAVIT.

COMMISSIONER OF LANDS AND WORKS.

1. Mandamus does not lie to compel, to issue a Crown grant — *Remedy is by petition of right.*]—*Clarke et al.* v. *The Chief Commissioner of Lands and Works*, 1 B. C. R., pt. II., 328.

See MANDAMUS.

2. Rectification of Crown grant — *Application to, for.*]—*In re the American Boy Mineral Claim*, 7 B. C. R. 268.

See MINES AND MINERALS, XV.

COMMITMENT.

1. Defective commitment.] — *Ex parte Ettamass*, 2 B. C. R. 232.

See HABEAS CORPUS.

2. Jurisdiction of Justices — *Inquiry commenced by one and completed by two.*]—*Re Nunn*, 6 B. C. R. 464.

3. Justice may substitute good warrant of, for bad.]—*Re Charles Plunkett*, 3 B. C. R. 484.

See CERTIORARI.

See also CRIMINAL LAW.

COMMITTAL.

1. By bench warrant.]—*In re Victor M. Ruthven*, 6 B. C. R. 115.

See CRIMINAL LAW, V.

2. For breach of injunction order.]—*The Can. Pac. Navigation Co.* v. *City of Vancouver*, 2 B. C. R. 298; *De Cosmos* v. *The Vic. and Esquimalt Tel. Co.*, 3 B. C. R. 347.

See INJUNCTION.

3. For contempt.]—*Stoddart* v. *Prentice*, 6 B. C. R. 308.

See CONTEMPT.

4. Order for—*Must be absolute not conditional.*]—*Wallace* v. *Ward*, 9 B. C. R. 450.

See COURTS, I. 3.

5. Order for—*Service of, before arrest.*] —*Wallace* v. *Ward*, 9 B. C. R. 450.

See COURTS, I. 3.

See also JUDGMENT DEBTOR.

COMMON CARRIER.

1. Liability for manslaughter.]—*Reg.* v. *Union Colliery Co.*, 7 B. C. R. 247.

See CRIMINAL LAW, XII.

See also CARRIERS.

COMMON GAMING HOUSE.

1. Black jack—*Unlawful gaming.*]—*Reg.* v. *Petric*, 7 B. C. R. 176.

See CRIMINAL LAW, XI.

2. Gaming — *Keeping common gaming house.*]—*Reg.* v. *Ah Pow*, 1 B. C. R., pt. I., 147.

See CRIMINAL LAW, XI.

See also GAMING.

COMMON EMPLOYMENT.

1. Doctrine of—*Employer's Liability Act*, 10 B. C. R. 9; *Hosking* v. *Le Roi*, 9 B. C. R. 551.

See MASTER AND SERVANT, IV. 2.

See also EMPLOYERS' LIABILITY ACT—MASTER AND SERVANT—NEGLIGENCE.

COMPANY.

I. CORPORATE NAME.

1. Similarity.]—The opinion of the Registrar as to the similarity of the names of different companies is not conclusive under the Investment and Loan Societies Amendment Act, 1898, c. 7, s. 2. *British Columbia Permanent* v. *Wootton*, 6 B. C. R. 382.

2. Similarity.] — The plaintiff company was registered in British Columbia, in 1892, as "The Canada Permanent Loan & Savings Company (Foreign)," and carried on business under that name until January, 1898, when it obtained a license under the Companies Act, 1897, to carry on business as "The Canada Permanent Loan & Savings Company," and the defendant company was incorporated in April, 1898, as "The British Columbia Permanent Loan & Savings Company:"—Held, in an action for an injunction to restrain the defendant company from carrying on business under its name, that the two names were not so similar as to be calculated to deceive the public. *Canada Permanent* v. *British Columbia Permanent*, 6 B. C. R. 377.

II. DIRECTORS.

1. Fraudulent dealings of directors.] —In an action to set aside a sale of a mineral claim, on the ground that the sale was a sham sale for the benefit of the purchaser and the directors, and that the stated consideration was not paid, and the trial Judge found that the sale was made at a price so inadequate as to shew an intention to benefit the purchaser at the expense of the shareholders:—Held, on appeal that on the finding of the trial Judge the sale should be set aside. *Per* IRVING and MARTIN, JJ.: The provisions of section 2 of the Companies Act Amendment Act, 1893, respecting the mode of sale of a company's assets, are enabling and not restrictive. *Daniel* v. *Gold Hill Mining Company (Foreign) et al.*, 6 B. C. R. 495.

2. Regularity of proceedings.] — A person who bonâ fide takes a security in the ordinary course of business from an incorporated company is not bound to inquire into the regularity of the directors' proceedings leading up to the giving of the security; he is entitled to assume that everything has been done regularly. In this respect a shareholder stands on the same footing as a stranger. *Jackson* v. *Cannon*, 10 B. C. R. 73.

III. POWERS.

1. Borrowing powers — *Mortgage by directors of—Ratification of by shareholders —The Companies Act, 1890, and amendments of 1892 and 1904.*]—A mortgage made by the directors of a company prior to the consent of its shareholders, without which consent there was no power to borrow, may be ratified by the shareholders. *Adams and Burns* v. *Bank of Montreal*, 8 B. C. R. 314.

2. Contract not under seal of company.]—A contract by a corporation to ship all goods consigned to them at Victoria from a certain point, by plaintiff's steamers, is not void as being in restraint of trade. Such contract is not void for want of mutuality by reason of not being under the corporate seal of the plaintiffs. Semble, a contract by a trading corporation dealing with a subject within the scope of the objects of its memorandum of association need not be under its corporate seal. The advantages to the defendants provided for in the contract set out below constituted a sufficient consideration to support it. *The Canadian Pacific Navigation Company* v. *The Victoria Packing Company*, 3 B. C. R. 490.

3. Debentures—*Of company creating a charge against all property of company are capable of registration.*]—*In re The Land Registry Act*, 10 B. C. R. 370.

See REGISTRATION OF DEEDS.

4. Partnership—*Power of company to contract with individual.*] — The defendant company, having power by its memorandum of association inter alia, to carry on and enter into contracts for the purposes of the business of bookbinders, entered into an agreement with the plaintiff whereby it purchased and amalgamated his bookbindery business with its own, the joint concern to be carried on and profits and losses divided between the plaintiff and the company, in certain proportions, the plaintiff to be manager and foreman at a salary. The company not

having paid plaintiff the purchase money as agreed, refused to furnish proper accounts or otherwise perform the stipulations of the agreement. In an action for a rescission of the agreement, an account, payment and a receiver:—Held, *per* CREASE, J.: That the agreement in question constituted a partnership, and that the remedy by rescission was inapplicable, as it was contracted in good faith, and business carried on under it; but that a dissolution should be ordered with accounts and a receiver. On appeal to the Full Court. Held, *per* MCCREIGHT, J., (WALKEM, J., concurring): That the order for accounts and a receiver should be affirmed, but the contract rescinded instead of ordering a dissolution. Quære, whether the agreement constituted a partnership or not. *Per* DRAKE, J. (dissenting): That an incorporated company has no power to enter into a partnership with an individual, and that neither such an agreement nor any of its incidents could be enforced against it. *Roeide v. The News-Advertiser Publishing Company*, 4 B. C. R. 7.

5. Trustees and shareholders — *Right to exercise corporate acts and make by-laws —In whom vested—Companies Act*, 1890.]—The shareholders in a company incorporated under the Companies Act, 1890, have no power to interfere in the ordinary management of the company by the trustees who have the exclusive right of exercising its corporate powers and making by-laws. *Dunsmuir v. Colonist Pubs. Co.*, 9 B. C. R. 290.

IV. PROMOTERS.

1. Trustees of — *Distribution of share capital among promoters—Right of shareholders to question—Directors—Removal of—Parties—Estoppel—Selling shares at a discount.*]—The action was brought by a public company to remove two of its trustees for refusing to obey an order of the Court made in a previous action directing them to join with the other trustees in assessing, as not being bonâ fide fully paid up, certain founders' shares marked "fully paid up," in order to raise funds for carrying on the company: Held, by the Full Court upon appeal from the judgment of DAVIE, C.J.: (1) That the defendant trustees should be removed. (2) That they were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action. The promoters of the company agreed to allot 127,500 out of its total capital of 250,000, $10 shares, all marked fully paid up, to one of their number C. in consideration of his procuring A. to advance $25,000 to the company, and of certain other services; and by the same instrument, C. agreed to transfer 85,000 of such shares to A. in consideration of the $25,000:—Held, that A. was a purchaser of the 85,000 shares from C., who held them as fully paid up, and that A. could not be treated as a purchaser from the company of the shares, at a discount, and could not be forced at the instance of another shareholder, to contribute to its funds any part of the difference between the $25,000 which he paid for them, and their face value. E. purchased at auction certain of the shares which had been placed in escrow, in the hands of trustees, by agreement between the promoters, to be sold by such trustees to raise funds to carry on the company. Held, (1) that E. had no status to question the distribution of the share capital among the promoters, or to subject their shares to assessment for the purpose of the company, as not being bonâ fide fully paid up. (2) That proceedings to remove directors must be brought by the company, and that an action for that purpose by one shareholder does not lie, and the fact that E. framed his action as on behalf of himself and all shareholders of the company, other than those attacked, was immaterial. *Fraser River Mining Co. v. Gallagher*, 5 B. C. R. 82.

2. Unregistered—*Liability of promoters —Agency.*]—Defendants, promoters of a public company, signed a memorandum of association for incorporation under the Companies' Act, 1862, (Imp.), and instructed the company to be incorporated, which was not done. At a meeting of the promoters subsequently held, at which some of the defendants were present, and others not, one B. was directed to incur certain expenses, the subject of the action:—Held, giving judgment against the defendants present at the meeting, and in favour of those not proved to have been present; that the defendants still occupied the position of promoters, and were, as such, not each other's agents or liable for each other's acts. *Hung Man v. Ellis et al.*, 3 B. C. R. 486.

V. RESPONSIBILITY FOR ACT OF AGENT.

1. Agency for. of its officers—*Evidence of acts of, as binding to the company without proof of express authorization.*]—Statements made by the officers of the company to the plaintiff, indicating to him that he was dismissed from its service, are admissible in evidence upon an issue raised by a denial of the dismissal, without proof that the company authorized the same, or by resolution authorizing the dismissal of the plaintiff. *Varrelmann v. The Phœnix Brewing Company, Limited Liability*, 3 B. C. R. 135.

2. Act of servant.]—A servant of the defendant corporation employed to cut timber on its lands, knowingly trespassed and cut timber off plaintiff's land which adjoined, and the defendants' manager, general foreman and other servants, knowingly took and included it in defendants' boom and hauled it away. It was afterwards cut up and sold along with defendants' lumber. Evidence was given for plaintiff and denied by defendants that the trespass was committed by instructions of the manager. The jury found a verdict for the plaintiff:—Held, *per* DRAKE, J., on motion for judgment: If a servant of a company commits a tort in the course of his employment and for the benefit of his employer, whether by his direct orders or not, the employer is liable, even if the act was unknown to or actually forbidden by him. On appeal and motion for a new trial:—Held, *per* CREASE, J., following Clark v. Molyneux, 3 Q. B. D. 237: the whole of a summing up must be considered in order to determine whether it afforded a fair guide to the jury, and too much weight must not be allowed to isolated and detached expressions. Held, *per* WALKEM, J.: That it was misdirection by the trial Judge to tell the jury that they had only to consider the question of damages, as the question of agency of the servant for the master by ratification or otherwise had to be left to him. That the defendants were

liable for the tortious acts of their manager and foreman on the ground that they had the entire control of their business. *Harris* v. *Brunette Saw Mill Co.*, 3 B. C. R. 172.

VI. SHARES.

1. Distribution of share capital.]—The action was brought by a public company to remove two of its trustees for refusing to obey an order of the Court made in a previous action directing them to join with the other trustee in assessing, as not being bonâ fide fully paid up, certain founders' shares marked fully paid up, in order to raise funds for carrying on the company:—Held, by the Full Court, upon appeal from the judgment of DAVIE, C.J.: 1. That the defendant trustees should be removed. 2. That they were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action. The promoters of the company agreed to allot 127,500 out of its total capital of 250,000 $10 shares, all marked fully paid up, to one of their number C., in consideration of his procuring A. to advance $25,000 to the company, and of certain other services, and by the same instrument C. agreed to transfer 85,000 of such shares to A. in consideration of the $25,000:—Held, that A. was a purchaser of the 85,000 shares from C., who held them as fully paid up, and that A. could not be treated as a purchaser from the company of the shares at a discount, and could not be forced at the instance of another shareholder to contribute to its funds any part of the difference between the $25,000 which he paid for them and their face value. E. purchased at auction certain of the shares which had been placed in escrow, in the hands of trustees, by agreement between the promoters to be sold by such trustees to raise funds to carry on the company. Held, 1. That E. had no status to question the distribution of the share capital among the promoters, or to subject their shares to assessment for the purposes of the company as not being bonâ fide fully paid up. 2. That proceedings to remove directors must be brought by the company, and that an action for that purpose by one shareholder does not lie, and the fact that E. framed his action as on behalf of himself and all shareholders of the company, other than those attacked, was immaterial. *The Fraser River Mining and Dredging Company, Limited Liability* v. *Gallagher, Crockett and Edwards* (by original action). And *Gallagher Crockett and Edwards* v. *The Fraser River Mining and Dredging Company, Limited Liability, et al.* (By counterclaim), 5 B. C. R. 82.

2. Issuing shares at a discount—*Company—Paid up shares—Payment in cash—Price of property sold to company—Companies Act, ss. 50 and 51.*]—A company incorporated to take over a business carried on by defendants in partnership, entered into possession, and in payment for his relative interest in the business each defendant received a corresponding number of shares at par value:—Held, that the payment for the shares was "a payment in cash" within the meaning of s. 50 of the Companies Act, and as the purchase price was fair, the shares were fully paid up. *Turner* v. *Cowan*, 9 B. C. R. 301.

3. Issuing at discount.]—A portion of the shares in a joint stock company, purporting on the face of their certificates to be of a certain par value, and paid up, were allotted to three promoters. One of them sold part of his allotment at a discount, and had them transferred by the company direct to the purchasers, who were not aware that the shares were not really paid up:—Held, in an action by the company, that the purchasers were not liable for the discount on such shares, inasmuch as the company was bound by its statement in the certificates that the shares were "fully paid and non-assessable." *Kettle River Mines, Ltd.* v. *Bleasdel et al.*, 7 B. C. R. 507.

4. Issuing shares at discount—*Special resolution.*]—A public company, incorporated under the Companies' Act, 1862 (Imp.), having power by its memorandum of association to increase its capital of $50,000, passed a resolution for the issue at a discount of new shares of the face value of $375,000 falsely marked "fully paid up," which were substituted for the original $50,000 of shares, which were fully paid up. The resolution was not a special resolution, as required. The company became insolvent. Upon motion by the liquidator to settle the list of contributories, the holders of the new shares maintained that they never had any legal existence, and were void for all purposes:—Held, that the issue of shares were invalid and voidable by the shareholders, but not as against creditors upon a winding-up, and that the shareholders who had not repudiated before the winding-up commenced, but had acquiesced in the issue of the shares in the manner adopted, should be put on the list of contributories in respect of the actually unpaid portion of their face value. *Re Thunder Hill Mining Company*, 4 B. C. R. 61.

5. Payment in shares.]—A company incorporated to take over a business carried on by defendants in partnership, entered into possession, and in payment for his relative interest in the business each defendant received a corresponding number of shares at par value:—Held, that the payment for the shares was a "payment in cash" within the meaning of s. 50 of the Companies Act, and as the purchase price was fair, the shares were fully paid up. *Turner et al.* v. *Cowan et al.*, 9 B. C. R. 301. Affirmed 9 B. C. R. 354.

6. Public company—*Companies' Act, 1862 (Imp.)—Issuing shares at a discount—Ratification—Laches—Estoppel.*]—A company incorporated under the Companies' Act, 1862 (Imperial), assumed power: (1) By its memorandum of association to issue shares at a discount; (2) By its articles of association, in other respects Table A. to the Act, "that these articles may be altered, etc. . . at any meeting of the company by a resolution, etc., passed by a majority," etc. . . : Held, both powers invalid (1) as contrary to law, and (2) as contrary to s. 51 of the Act, which require a special resolution for the alteration of articles. By a resolution passed at a general meeting of the company, the whole of the general issue of shares of the company, which were expressed to be, and were in fact, fully paid up, was cancelled, the capital of the company was increased from $50,000 to $375,000, and new shares of the face value of the latter amount, falsely marked on their face, "fully paid up," were issued and divided among the original shareholders in lieu and in

sole consideration of their former shares: —Held, ultra vires as the issue of shares at a discount, following Ooregum Gold Mining Company v. Roper, 66 L. T. 427; and also void as an increase of capital not authorized by special resolution of the company. The applicant accepted, under the idea that they were valid, and sold a portion of the new shares issued to him: — Held, not such an acquiescence as estopped the applicant from repudiating the remainder as against the company. Remarks on the duties of the registrar of public companies. Order made rectifying the register by removing the name of the applicant therefrom as a shareholder in regard to the new shares, and restoring it in regard to the original shares. *Twigg* v. *Thunder Hill Mining Co.*, 3 B. C. R. 101.

7. Preference stock — *Company—Memorandum incorporating agreement by reference — Preference shares — Meaning of — Special voting powers—Companies Act*, 1890.]—The provisions of the Companies Act of 1890, that the members and stockholders of a company incorporated under it shall be subject to the conditions and liabilities in the Act imposed and to none others, and that in the election of trustees each stockholder shall be entitled to as many votes as he owns shares of stock, do not render it ultra vires of a company to validly stipulate in its memorandum of association that a certain limited class of stockholders shall have the privilege of electing a majority of trustees, and such stipulation may be contained in a document incorporated merely by reference in the memorandum of association. *Per* DRAKE and MARTIN, JJ.: Preference stock means stock that has any advantage over other stock, and is not confined to stock having a preference in regard to the payment of dividends, but *Per* HUNTER, C.J., and MARTIN, J.: The preference stock mentioned in section 1 of the Companies Act Amendment Act, 1891, means stock having a preference in regard to the payment of dividends and not merely superior voting powers. Judgment of DRAKE, J., affirmed, HUNTER, C.J., dissenting. *Dunsmuir* v. *Colonist Printing and Publishing Co.*, 9 B. C. R. 275.

VII. SHAREHOLDERS.

1. Liability of.]—The plaintiff company, as judgment creditor of the Westminster & Vancouver Tramway Company, brought the action against the defendants, as shareholders therein, to compel them to contribute and pay to the plaintiff company, out of the amounts respectively unpaid by them upon their shares in the company, a sum sufficient to satisfy the judgment. The statement of defence raised an objection in point of law to the whole claim, that the tramway company was not within the Act, as not being a "railway" company. Upon argument thereon, DRAKE, J., decided the point of law in favour of the defendants. Upon appeal by the plaintiff company, the Divisional Court (CREASE and WALKEM, JJ., MCCREIGHT, J., dissenting), affirmed the judgment of DRAKE, J. Quere, (per DAVIE, C.J., and MCCREIGHT, J.): Whether the action as brought lay for want of privity between the parties; and whether a winding up of the company, and call upon the defendants as contributories, was not the only remedy of the plaintiff company. *Edison General Electric Co.* v. *Edmonds, et al.*, 4 B. C. R. 354.

2. The owner of shares in an incorporated mining company is not an owner of any part of a mining claim owned by it, within *s.* 29, c. 25, Mineral Act, 1891. *Granger* v. *Fotheringham*, 3 B. C. R. 590.

VIII. SPECIAL CASES.

1. Domicile of foreign company.] — The defendants—a foreign company—had a place of business in Victoria, where it carried on a trading business, although its principal place of business and head office, where the meetings of the governor, chief traders, and shareholders were held, were in England. The plaintiff, as administrator (appointed by the Court here) to the intestate estate of McL.—a deceased servant of the company—served a writ on one of the company's managers at Victoria. On an application to have the writ set aside:—Held, that inasmuch as by the company's rules the power to appoint, pay, and dismiss was with the English office, and as, by agreement, the deceased's account was kept at that office, and the balance due him from time to time was payable there, the English office must be regarded as the domicile of the company, and the company could not be sued here by the plaintiff as administrator of the deceased. *Wilson* v. *Hudson's Bay Company*, 1 B. C. R., pt. II., 102.

2. Foreign company—*Security for costs by.*]—*Alaska Steamship Co.* v. *Macaulay*, 7 B. C. R. 338.

See PRACTICE, IX., 18.

3. Foreign company — *Application to register title deeds to land.*]—The registrar is not justified in refusing to register a non-registered foreign company as the owner of land. *Ex parte New Vancouver Coal Mining & Land Co.*, 2 B. C. R. 8.

4. Public company — *Act of incorporation of—Crown Franchises Regulation Act—Not applicable to Dominion companies.*] — The defendant railway company was originally incorporated in 1897 by a provincial Act, and in 1898 by a Dominion Act; its objects were declared to be works for the general advantage of Canada, and thereafter to be subject to the legislative authority of the Parliament of Canada and the provisions of the Railway Act:—Held, by IRVING, J., setting aside an order allowing the Provincial Attorney-General to bring an action at the instance of a relator under the Crown Franchises Regulation Act, that the said Act did not apply to the company. *Attorney-General* v. *V., V. & E. Ry. & N. Co.*, 9 B. C. R. 338.

IX. WINDING-UP.

1. *Generally.*

1. Discontinuance on settlement.] — In an application for a winding-up order, petitioners may discontinue proceedings on settlement of their claims; and creditors, other than the petitioners, who have not themselves petitioned, are not entitled to be substituted for such petitioners, for the purpose of continuing the proceedings. *Doyle* v. *Atlas Canning Co.*, 5 B. C. R. 279.

2. Estoppel.]—Upon the petition for a winding-up order, it appeared that the application was made by a creditor who had given the company an extension of time, not yet expired, for payment of the debt. The affidavit in support of the petition was made by a person who deposed upon information and belief, and upon cross-examination thereon it appeared that he had no personal knowledge of the matters deposed to:—Held, per DAVIE, C.J. 1. That the affidavit must be treated as a nullity. 2. That all that the Winding-up Act requires, as essential to a winding-up order, is a petition setting forth sufficient facts; and that, although the rules require a verifying affidavit, the rules are not to be treated as imperative, but directory only. 3. That declarations of insolvency made by the officers of a company do not operate as an acknowledgment of insolvency by the company sufficient to satisfy s. 5 of the Act, but that such acknowledgment must be a corporate one. 4. That the debt, though not yet payable, was sufficient to support the petition. Upon appeal to the Full Court, per DRAKE, J., MCCREIGHT and MCCOLL, JJ., concurring: 1. There must be evidence to enable the Court to act, and as the affidavit was insufficient, there was no support for the order. 2. The distinction between the language of s. 6 of the Act, which refers to a creditor whose debt is "then due," and that of s. 8, in which the term is "creditor" only, is not unmeaning, and a creditor whose debt is not yet due, is a good petitioning creditor for winding-up under s. 8. The company had called its creditors together, and a deed was executed whereby the company assigned certain property to trustees to answer the creditors' claims, and the creditors agreed to extend the time for payment:—Held, that the creditors who had executed the deed, of whom the petitioner was one, were estopped from presenting a winding-up petition until the period of extension had expired. *In re Atlas Canning Company*, 5 B. C. R. 661.

3. Insolvent—*When deemed to be.*]—By s. 5 (*c*) of the Winding-up Act (Dominion) a company is deemed insolvent "if it exhibits a statement shewing its inability to meet its liabilities:—Held, that the inability to meet liabilities, means liabilities to creditors as distinguished from liabilities to shareholders. On the hearing of a petition based on such a statement, the statement must be accepted as correct. Remarks as to company balance sheets. *In re United Canneries of British Columbia, Limited*, 9 B. C. R. 528.

4. Order for, essentials of.]—To the making of a winding-up order it is essential: 1. That the petition upon its face make a sufficient case for the winding-up; and 2. That the petition should be supported by a sufficient affidavit filed before its presentation. Leave to file a supplementary affidavit refused. *In re The Companies' Winding-up Acts and The Kootenay Brewing, Malting and Distilling Company*, 6 B. C. R. 112.

5. Order for, when granted.] — An order for compulsory winding-up may be made under s. 5 of the Companies Winding-up Act, 1898 (Provincial), notwithstanding the winding-up is opposed by the company. In winding-up proceedings it appeared: (1) That shares had been unlawfully issued at a discount and at different percentages of their face value. 2. That the substratum was gone and that the company was unable to carry on business. 3. That there was a question as to the liability of the company to the principal shareholder, who had always been in practical control of the company:—Held, affirming IRVING, J., that it was just and equitable that the company should be wound up. *In re The Florida Mining Company, Limited*, 9 B. C. R. 108.

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2. *Compulsory.*

1. Discretion of Court.]—The Court has a discretion to grant or withhold a winding-up order under s. 9 of R. S. Canada, 1886, c. 129. Re Maple Leaf Dairy Co. (1901), 2 O. L. R. 580, followed. A company will not be compulsorily wound up at the instance of unsecured creditors, where it is shewn that nothing can be gained by a winding-up, as for example, where there would not be any assets to pay liquidation expenses. On the hearing of a winding-up petition, which was dismissed, the petitioner did not avail himself of an opportunity to examine the officers of the company:—Held, on appeal, that it was too late then to grant an inquiry. *In re Okell & Morris Fruit Preserving Company, Limited*, 9 B. C. R. 153.

2. Dominion Act.] — A company incorporated under the Companies Act, 1890 (B. C.), may be put into compulsory liquidation and wound up under the Dominion Winding-up Amendment Act of 1889. *In re B. C. Iron Works Company, Limited Liability*, 6 B. C. R. 536.

3. Voluntary winding-up — *Interference by Court in.*]— The Court will not interfere with a voluntary winding-up of a company by its shareholders, and order a compulsory liquidation, unless it is shewn that the rights of the petitioner will be prejudiced by the voluntary winding-up. Service on the liquidator of a notice of appeal on behalf of the company from a compulsory winding-up order is not necessary. A respondent by applying to increase the amount of security for costs waives his right to object that the security was not originally furnished in time. *In re the Oro Mines, Limited*, 7 B. C. R. 388.

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3. *Contributories.*

1. Holders of new shares.]—A public company, incorporated under the Companies' Act, 1862, (Imp.) having power by its memorandum of association to increase its capital of $50,000, passed a resolution for the issue at a discount of new shares of the face value of $375,000, falsely marked "fully paid up," which were substituted for the original $50,000 of shares, which were fully paid up. The resolution was not a special resolution, as required by section 51, and the increase of capital was not registered. The company became insolvent. Upon motion by the liquidator to settle the list of contributories, the holders of the new shares maintained that they never had any legal existence, and were void for all purposes:—Held, that the issue of shares was invalid and voidable by the shareholders, but not as against creditors upon the winding-up, and that the shareholders who had not repudiated before the winding-up commenced, but had acquiesced in the issue of the shares in the manner adopted, should be put on the list of contributories in respect of the actually unpaid portion of their face value.

Re Thunder Hill Mining Company, 4 B. C. R. 61

2. Notice to creditors.]—B., a registered holder of shares in a limited company, transferred them to S., but B. being in arrear for some calls, the transfer was not registered. In August, 1881, B. obtained an order from CREASE, J., that, on certain payments being made, the company should take his name off the register and substitute S.'s name. The order was served on the secretary of the company, and payments were made by B. under the order. The register was not rectified in pursuance of the order. In February, 1883 —the company having suspended business for over two years—a winding-up order was made, and in March, 1884, B. appeared on a summons before the C. J. to shew cause why he should not be on the contributories' list. The C. J. held that B. not having taken steps to enforce the rectification, had abandoned the order of August, and directed his name to be placed on the list. In an appeal to the Full Court:—Held (reversing the decision of the C. J.), that there were no laches on the part of B., and that his name must be removed from the list of contributories; and Held, that entries made in the books of the Registrar-General are not notice to creditors of transfer. *Ex parte John Bibby, In re Enterprise Gold and Silver Mining Company, Limited*, 1 B. C. R., pt. II., 94.

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4. Costs.

1. Creditors and debenture holders.] —Held, that creditors and debenture holders who neglected to enter an appearance to a winding-up petition as required by r. 56 of the Winding-up Rules passed by the Judges on 1st October, 1896, but who appeared by counsel on the return of the petition, which was dismissed with costs, were not entitled to costs. The fact that their counsel was heard without objection by petitioner's counsel makes no difference. *In the matter of the Winding-up Act and in the matter of the Albion Iron Works Company, Limited*. 10 B. C. R. 351.

(*See* also PRACTICE, IX., 1.

2. Where liquidator personally liable.]—Where an action is brought by the liquidator of a company in liquidation in his own name, he is personally liable for costs; the fact that he obtained leave from the Court to sue will not relieve him of his liability in this respect. *Jackson* v. *Cannon*, 10 B. C. R. 73.

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5. Liquidator.

1. Liability for costs.]—Where an action is brought by the liquidator of a company in liquidation in his own name, he is personally liable for costs; the fact that he obtained leave from the Court to sue will not relieve him of his liability in this respect. A person who bonâ fide takes a security in the ordinary course of business from an incorporated company is not bound to inquire into the regularity of the directors' proceedings leading up to the giving of the security; he is entitled to assume that everything has been done regularly. In this respect a shareholder stands on the same footing as a stranger. *Jackson* v. *Cannon*, 10 B. C. R. 73.

2. As a shareholder.]—All creditors of an insolvent company having agreed upon and recommended the appointment of E. as liquidator of the company:—Held, that the fact that E. was a shareholder of the company was not a valid objection to his appointment. *Re The New Westminster Gas Company*, 5 B. C. R. 618.

3. Valuation of security by.] — The Court has no power to confirm a sale by a mortgagee from the company until the security has been valued, and offered to the liquidator at that value. *Re Thunder Hill Mining Co.*, 3 B. C. R. 351.

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6. Secured Creditors.

1. Registration of prior judgments.] —The fact that prior to a winding-up order judgments against the company being wound up were registered, will not disentitle a mortgage or a debenture holder of his right to obtain leave to proceed with an action to enforce his security. *In the matter of the Winding-up Act and In the matter of the Giant Mining Company, Limited*, 10 B. C. R. 327.

2. Regularity of proceedings — *Right to assume.*]—A person who bonâ fide takes a security in the ordinary course of business from an incorporated company is not bound to inquire into the regularity of the directors' proceedings leading up to the giving of the security; he is entitled to assume that everything has been done regularly. In this respect a shareholder stands on the same footing as a stranger. *Jackson* v. *Cannon*, 10 B. C. R. 73.

3. Right of one of several creditors holding joint security, to value his interest therein and rank on the estate for the balance—*The Companies' Winding-up Act*, (*Can.*) *s.* 62.]—A mortgage had been made by the company to a trustee, for B. and certain other of its creditors jointly, as security for their claims against it. Upon a winding-up B., when called upon to value his security under s. 62 of the Winding-up Act, swore that it was only of nominal value, and offered to assign his interest in the mortgage to the liquidator for nothing. The liquidator desired to have the whole security valued, so that he could take it over and rank all the creditors represented by it on the estate accordingly, and upon their being unable to agree as to their value, DRAKE, J., struck such creditors off the list and relegated them to their security. Upon appeal, held, per DAVIE, C.J., and MCCREIGHT, J. (WALKEM, J., concurring), over-ruling DRAKE, J., that the principle of the Act is that of election and not forfeiture; that the appellant had the right to value his own interest in the security, and to maintain his claim upon the estate, except as reduced by that valuation. That the right of the liquidator was limited to requiring an assignment of B.'s interest in the security, or permitting its retention at the value placed upon it, and the Court had no right to forfeit the claim of B. upon the estate and relegate him to a security he considered valueless. *Re Thunder Hill and Bowker*, 5 B. C. R. 21.

4. Right to enforce security.] — A secured creditor has a right to apply for and obtain leave to bring an action to enforce his security. It is not optional for a secured creditor to either prove his claim in a wind-

ing-up or else proceed with an action to enforce it, and if he does commence an action it is still compulsory on him to proceed before the liquidator unders ss. 63, et seq., of the Act. *In re The Lenora Mount Sicker Copper Mining Company, Limited*, 9 B. C. R. 471.

5. Valuation of security.]—A creditor having valued his security against a company upon a winding up cannot withdraw such valuation and enforce the security, but the liquidator is entitled to obtain an assignment and delivery thereof to himself at that valuation. Under s. 62 of the Winding-up Act (Can.), it is compulsory on the creditor to value his security, leaving it to the liquidator to take it, or allow the creditor to keep it, at that valuation. *In the matter of the British Columbia Pottery Co., and the Winding-up Act (Can.)*, 4 B. C. R. 525.

6. Valuation of security — *Companies Winding-up (Can.) Act—Sale by mortgagee—Assets of company—Power of Court to confirm right of liquidators to take over security at a valuation.*]—The Court has no power to confirm a sale by a mortgagee from the company until the security has been valued and offered to the liquidator at that value. *Re Thunder Hill Mining Co.*, 3 B. C. R. 351.

7. Valuation of security.]—A mortgage had been made by the company to a trustee, for B. and certain other of its creditors jointly, as security for their claims against it. Upon a winding-up, B., when called upon to value his security under section 62 of the Winding-up Act, swore that it was only of nominal value, and offered to assign his interest in the mortgage to the liquidator for nothing. The liquidator desired to have the whole security valued, so that he could take it over and rank all the creditors represented by it on the estate accordingly, and upon their being unable to agree as to the value, Mr. Justice Drake struck such creditors off the list and relegated them to their security. Upon appeal to the Full Court:—Held, *per* DAVIE, C.J., and MCCREIGHT, J. (WALKEM, J., concurring) overruling DRAKE, J.: That the principle of the Act is that of election and not forfeiture. That the appellant had the right to value his own interest in the security and to maintain his claim upon the estate, except as reduced by that valuation. That the right of the liquidator was limited to requiring an assignment of B.'s interest in the security, or permitting its retention at the value placed upon it; and that the Court had no right to forfeit the claim of B. upon the estate and relegate him to a security he considered valueless. *In the matter of the Winding-up Act, and Amendment Acts*, and *In the matter of the Thunder Hill Mining Co. Limited*, 5 B. C. R. 21.

COMPASS.

1. Bearing of—*Mistake in — Regarding number two post on mineral claim—Whether cured by certificate of work.*] — *Callahan v. Coplen*, 7 B. C. R. 422.

See MINES AND MINERALS, IX. 4: XLIX.

COMPENSATION.

1. For expropriated lands. 1 B. C. R. 14.

See ARBITRATION AND AWARD.

COMPOSITION DEED.

1. Sewer — *For owner putting sewer through his land.*]—*Arnold v. The Corporation of the City of Vancouver*, 10 B. C. R. 198.

See MUNICIPAL CORPORATIONS, VIII. 9.

See also ASSIGNMENTS FOR BENEFIT OF CREDITORS.

COMPROMISE.

1. Acceptance of compromise judgment, waives right to appeal.]—*Sun Life v. Elliott et al.*, 7 B. C. R. 189.

See APPEAL, II.

2. Of an action by clients—*Solicitor's lien for costs.*]—*Rideout v. McLeod*, 6 B. C. R. 161.

See SOLICITOR AND CLIENT.

COMPULSION.

See CHATTEL MORTGAGE.

See FRAUDULENT CONVEYANCE.

CONCURRENT WRITS.

1. Application for leave to issue concurrent writs of summons.]—*Tai Yun Co. v. Blum et al.*, 2 B. C. R. 348.

See APPEAL, VIII.

CONDITIONAL APPEARANCE.

1. Irregularity of.]—*Fletcher v. McGillivray*, 3 B. C. R. 40; *Fletcher v. McGillivray* 3 B. C. R. 49.

See PRACTICE, IV.

2. Service out of jurisdiction.]—*Garesche, Green & Co. v. Holladay*, 1 B. C. R. pt. II., 83.

See PRACTICE, IV.

See also APPEARANCE—PRACTICE, IV.

CONDITIONAL SALE.

1. Condition not appearing in document—*Effect of.*]—*Doll et al. v. Hart et al.*, 2 B. C. R. 32.

See CHATTEL MORTGAGE.

2. Deed, condition in—*Effect of breach of.*]—*Clark v. The Corporation of the City of Vancouver*, 10 B. C. R. 31.

See DEEDS.

3. Sales.]—*Esnouf* v. *Gurney*, 4 B. C. R. 144.

See SALES.

CONDITION PRECEDENT.

1. Agreement for sale—*Made subject to happening of a contingent event is a.*]—*Manley* v. *Mackintosh*, 10 B. C. R. 84.

See VENDOR AND PURCHASER.

2. Certificate of work done, when is a.]—*Galbraith & Sons* v. *Hudson's Bay Co.*, 7 B. C. R. 431.

See CONTRACT, IV. 1.

3. Costs.]—Payment of costs of motion to dismiss action where order for security not complied with is a. *Cowan* v. *Patterson*, 3 B. C. R. 353.

See PRACTICE, IX. 18.

4. Lieutenant-Governor in Council—*—Authority of, to divert water, is a.*]—*Byron N. White Co.* v. *The Salmon Water Works and Light Co. Ltd.*, 10 B. C. R. 361.

See WATERS AND WATERCOURSES, I.

5. Pleading of.]—*Hopkins* v. *Gooderham*, 10 B. C. R. 250.

See MASTER AND SERVANT, II. 1.

CONDONATION OF CRUELTY.

Town v. *Town*, 7 B. C. R. 122.

See DIVORCE.

CONDUCT MONEY.

1. Affidavit — *Whether payable on cross-examination on.*]—*Emerson* v. *Irving*, 4 B. C. R. 56.

See PRACTICE, II., XI. 5.

2. Discovery—*On examination for—Time to raise objection to.*] — *Centre Star Mining Co., Ltd.*, v. *Rossland*, 9 B. C. R. 190.

See PRACTICE, XI 5.

CONFESSION.

1. Admissibility of.]—*Rex* v. *Royds*, 10 B. C. R. 407.

See CRIMINAL LAW, VIII.

CONFLICT OF LAWS.

1. Mechanics' lien—*Priority for wages.*] —The provisions of the Mechanics' Lien Act, as to priority of mechanics' liens upon property charged, being inconsistent with Dominion Railway Act as to priority of mortgages upon railways, it is not to be construed to apply to railways within control of Federal Parliament. *Larsen* v. *Nelson and Fort Shephard Ry.*, 4 B. C. R. 151.

2. Probate—*Foreign will.*]—Contracts of marriage made in a foreign country, the domicile of the parties, by terms of which, in accordance with the laws of that country, the alienation by a testator (one of said parties) of his real estate away from his wife is forbidden, will prevent a contrary disposition of the same even though according to the lex rei sitae, there be no such restriction. By the comity of nations the contract travels abroad, and as between the parties, and their representatives attaches to the testator's real estate in places other than the domicile. Marriage carried out in consideration of such contract and in accordance with the laws of the domicile, will, in its incidents touching the real estate of one of the parties, as between them and their representatives be respected and sustained, as to those incidents in countries other than the domicile, when no direct local legislation to the contrary. *In re Klaukies Will*, 1 B. C. R., pt. I., 76.

3. Supremacy of Imperial over conflicting Provincial Statute on same subject.]—The question of supremacy in relation to subjects of legislation, as distributed by the B. N. A. Act, arises only as between the Dominion Parliament and the Provincial Legislatures. The Imperial Parliament is sovereign to both. *Metherell* v. *The Medical Council of B. C.*, 2 B. C. R. 186.

CONJECTURE.

1. As to cause of accident, is insufficient to sustain an action for damages.]—*Stamer* v. *Hall Mines*, 6 B. C. R. 579.

See MASTER AND SERVANT, IV.

CONSENT.

1. Appeal by.]—*Iron Mask* v. *Centre Star*, 7 B. C. R. 66.

See TRIAL.

2. To judgment—*Effect of a motion for summary judgment.*]—*Diamond Glass Co.* v. *Odell Morris Co.*, 9 B. C. R. 48.

CONSEQUENTIAL DAMAGES.

Wm. Hamilton Mfg. Co. v. *Vic. Lumber Co.*, 4 B. C. R 101.

See CONTRACT, VI.

CONSIDERATION.

1. Absence of.] — *Manley* v. *Mackintosh*. 10 B. C. R. 84.

See VENDOR AND PURCHASER.

2. Advantages to defendants constitute a consideration to support a contract.]—*The Canadian Pacific Navigation Co.* v. *The Victoria Packing Co.*, 3 B. C. R. 490.

See CONTRACT, II. 1.

3. For contract for insurance.]—*Barrett et al.* v. *Elliott et al.*, 10 B. C. R. 461.

See INSURANCE, I.

4. Immoral consideration.]—*Holten et al.* v. *Vandall et al.*, 7 B. C. R. 331.

See FRAUDULENT CONVEYANCES.

5. Immoral consideration.]—*Guibault et al.* v. *Brothier et al.*, 10 B. C. R. 449.

See PLEADINGS, IX. 3.

6. Mineral claim — *For purchase of.*]—*Pope* v. *Cole*, 6 B. C. R. 205.

See MINES AND MINERALS, XXXI. 6.

7. Subsequent receipt for, and lease back.]—*Esnouf* v. *Gurney*, 4 B. C. R. 144.

See SALES.

CONSOLIDATION.

1. Of actions.]—*Silla* v. *Crow's Nest Pass Coal Co., Ltd.*, 10 B. C. R. 224; 9 B. C. R. 332.

See PRACTICE, I. 3, 9.

2. Of water records.] — *In re Water Clauses Consolidation Act*, 10 B. C. R. 356.

See WATERS AND WATERCOURSES, V.

CONSTABLE.

1. Held, to be a bona fide traveller.]—*Reg.* v. *Harris*, 2 B. C. R. 177.

See INTOXICATING LIQUORS.

CONSPIRACY.

1. Injunction granted in the terms of the order made by FARWELL, J., in Taff Vale Railway Co. v. Amalgamated Society of Railway Servants (1901), A. C. 426. *Le Roi Mining Company, Limited*, v. *Rossland Miners Union, No. 38, Western Federation of Miners, et al.*, 8 B. C. R. 370.

2. To defraud.]—*Reg.* v. *Clark*, 2 B. C. R. 191.

See CRIMINAL LAW, XIII. 1.

CONSTITUTIONAL LAW.

I. APPLICATION OF IMPERIAL ACTS, 134.

II. BRITISH NORTH AMERICA ACT.
1. *Constitution of Courts*, 134.
2. *Educational*, 136.
3. *Insurance*, 136.
4. *Intoxicating liquors*, 136.
5. *Naturalization and aliens*, 137.
6. *Navigation*, 137.
7. *Railways*, 138.
8. *Taxation*, 138.

III. CLASS DISCRIMINATION, 141.

IV. DIVORCE, 142.

V. MISCELLANEOUS, 142.

I. APPLICATION OF IMPERIAL ACTS.

1. Imperial Statute — *Provision in.*]—Whether repealed by Canadian Statute, dealing with same subject, containing no such provision. *Reg.* v. *Ah Pow*, 1 B. C. R., pt. 1., 147.

II. BRITISH NORTH AMERICA ACT.

1. *Constitution of Courts.*

1. Courts—*Power of Province to legislate as to jurisdiction of.*]—The power given to the Provincial governments by the B. N. A. Act, s. 92, s.-s. 14, to legislate regarding the constitution, maintenance and organization of provincial courts includes the power to define the jurisdiction of such courts territorially as well as in other respects, and also to define the jurisdiction of the Judges who constitute such Courts. The Acts of the Legislature of British Columbia, C. S. B. C. c. 25, s. 14, authorizing any County Court Judge to act as such in certain cases in a district other than that for which he is appointed, and 53 V. c. 8, s. 9, which provides that until a County Court Judge of Kootenay is appointed the Judge of the County Court of Yale shall act as and perform the duties of the County Court Judge of Kootenay, are intra vires of the said legislature under the above section of the B. N. A. Act. The Speedy Trials Act, 51 V. c. 47 (D.), is not a statute conferring jurisdiction, but is an exercise of the power of Parliament to regulate criminal procedure. By this act jurisdiction is given to "any Judge of a County Court" to try certain criminal offences.:— Held, that the expression "any Judge of a County Court" in such Act, means any Judge having, by force of the provincial law regulating the constitution and organization of County Courts, jurisdiction in the particular locality in which he may hold a "speedy trial." The statute would not authorize a County Court Judge to hold a "speedy trial" beyond the limits of his territorial jurisdiction without authority from the Provincial legislature so to do. Held, *per* TASCHEREAU, J.—It is doubtful if Parliament had power to pass those sections of the Act 54 & 55 V. c. 25, which empower the Governor-General in Council to refer certain matters to this Court for an opinion. *In re County Courts of British Columbia* (special case referred by Governor-General in Council to Supreme Court of Canada, taken from 21 S. C. R. 446).

2. Magistrates—*Civil jurisdiction of.*]—A Provincial statute providing that stipendiary magistrates and police magistrates shall have jurisdiction to hear and determine actions of any kind of debt where the sum demanded does not exceed $100 is intra vires. *In re a certain statute of the Province of British Columbia, intituled "An Act to confer limited civil jurisdiction upon Stipendiary Magistrates and Police Magistrates."* 5 B. C. R. 246.

3. Power of the Provincial Legislature over jurisdiction and procedure in civil matters in the Supreme Court of British Columbia — *Power of Legislature to delegate to the Lieut.-Governor-in-Council the right to make rules governing such procedure.*]—The Provincial Legislature had by an Act passed in 1881, declared that the sittings of the Supreme Court for reviewing nisi prius decisions, motions for new trials, &c., should be held only once in each year, and on such day as should be fixed by Rules of Court, and that the Lieutenant-Governor in Council should have power to make such Rules of Court:—Held, *(per* BEGBIE, C.J., CREASE, and GRAY, JJ.), 1. That the Supreme Court of British Columbia is not a Provincial Court within the meaning of the British North America Act, s. 92, s.-s. 14, and that the Provincial Legislature had not power to make laws regulating its procedure or any power to diminish or repeal its powers, authorities or jurisdiction, nor to allot any jurisdiction to any particular Judge thereof, nor to alter or add to any of the existing terms and conditions of the tenure of office by the Judges, whether as to residence or otherwise. 2. That even if it had such power it had no right to delegate its exercise to the Lieutenant-Governor in Council. 3. That the power resided in the Dominion Parliament. *Sewell* v. *British Columbia Towing Co., The "Thrasher Case."* 1 B. C. R. pt. I., 153.

NOTE.—The matters in question having been referred to and argued before the Supreme Court of Canada under s. 52 of the Supreme and Exchequer Courts Act, judgment was delivered on 15th May, 1883, holding that the Provincial Legislature of British Columbia had the powers in question, *ibid.* 1 B. C. R. pt. I., 243-244.

See TAXES—INTEREST.

4. Power of Provincial Legislature—*Constitution of Courts.*]—It is competent to the Provincial Legislature to create Mining Courts and to fix their jurisdiction, but not to appoint officers thereof with judicial functions. *Burk* v. *Tunstal*, 2 B. C. R. 12.

5. Speedy trial—*County Court Amendment Act*, 1890.]—Plaintiff in error was tried and convicted for housebreaking and larceny before the Judge of the County Court of Kootenay, there being no County Judge commissioned for the latter county by the Governor-General of Canada. By the "Speedy Trials Act" (C. S. Can. c. 175), as amended by 51 V. c. 46, the expression "Judge" in the Province of British Columbia, was defined to mean the Chief Justice or a Puisne Judge of the Supreme Court, or a Judge of a County Court; but by 52 Vict., c. 47, this definition of a Judge is revealed, and in lieu thereof it is provided that in the Province of British Columbia the expression "Judge" means and includes the Chief Justice or a puisne Judge of the Supreme Court, or any Judge of a County Court. By the Provincial Statute, 53 V. c. 8, s. 9, the "County Courts Amendment Act, 1890," it is enacted as follows: — "Until a County Court Judge of Kootenay is appointed, the Judge of the County Court of Yale shall act as and perform the duties of the County Court Judge of Kootenay, and shall, while so acting, whether sitting in the County Court District of Kootenay or not, have, in respect of all actions, suits, matters or proceedings being carried on in the County Court of Kootenay, all the powers and authorities that the Judge of the County Court of Kootenay, if appointed and acting in the said district, would have possessed in respect of such actions, suits, matters and proceedings; and for the purposes of this Act, but not further or otherwise, the several districts as named by sections 3 and 4 of the County Courts Act, over which the County Court of Yale and the County Court of Kootenay, respectively, have jurisdiction, shall be united:"—Held, on appeal, quashing the conviction, per BEGBIE, C.J., WALKEM and DRAKE, JJ., that the Judge had no jurisdiction to try the plaintiff in error either by virtue of the Speedy Trials Act and Amending Acts, or by s. 9 of the County Courts Amendment Act, 1890 (B. C.), which section so far as it purports to appoint the County Court Judge of Yale to act as and perform the duties of the County Court Judge of Kootenay, is ultra vires of the Provincial Legislature. Per CREASE and McCREIGHT, JJ., dissenting, that the Judge had jurisdiction by virtue of the Speedy Trials Act and amending Acts. Hudson v. Tooth, 3 Q. B. D. 46, Valin v. Langlois, 3 S. C. R. 1, and Crowe v. McCurdy, 18 N. S. 301, considered. *Piel Kwark-an, Plaintiff in Error,* v. *Her Majesty the Queen, Defendant in Error,* 2 B. C. R. 53.

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2. *Educational.*

1. School teachers — *Salaries of.*] — A Provincial enactment providing that a certain proportion of the salaries of public school teachers employed in a municipality shall be paid by the municipality, is intra vires. *The Attorney-General of British Columbia* v. *The Corporation of the City of Victoria*, 2 B. C. R. 1.

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3. *Insurance.*

1. Constitutionality of Insurance Act.]—H. was the authorized agent at Vancouver of the Equity Fire Insurance Company, a company incorporated in Ontario, but which was not registered or licensed under the provisions of any British Columbia statute, or of the Insurance Act of Canada. H. was convicted under the provisions of the Insurance Act for carrying on an insurance business without a license:—Held, by DRAKE, J., on appeal, confirming the conviction, that the Act is intra vires of the Parliament of Canada. *Regina* v. *Holland*, 7 B. C. R. 281.

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4. *Intoxicating Liquors.*

1. Liquor License Act.]—The Liquor License Regulation Act, 1891 (B. C.) s. 4, is intra vires of the Provincial Legislature, and is consistent with sub-sections 73, 78 and 92, of section 96 of the Municipal Act, 1891. *Sauer (App.)* v. *Walker (Resp.)*, 2 B. C. R. 93.

5. Naturalization and Aliens.

1. Chinese Regulation Act.]—On the return to a writ of certiorari:—Held, that the "Chinese Regulation Act, 1884," is ultra vires of the Provincial Legislature, on the following grounds. 1. It is an interference with the rights of aliens. 2. It is an interference with trade and commerce. 3. It is an infraction of the existing treaties between the Imperial Government and China. 4. It imposes unequal taxation. *Regina* v. *Wing Ching*, 1 B. C. R. pt. II., 150.

2. Chinese Tax Act — *Chinese Tax Act*, 1878—*Ultra vires B. N. A. Act*, 1867, *ss.* 91-92 — "*Aliens*" — "*Trade and commerce*" — *Taxation.*]—Held, the Chinese Tax Act, 1878, is ultra vires of the Provincial Legislature. *Tai Sing* v. *McGuire*, 1 B. C. R., pt. I., 101.

3. Coal Mines Act — *Employment of Chinamen—Constitutional law.*]—The provision in s. 4 of the Coal Mines Regulation Act, as amended by the Coal Mines Regulation Amendment Act, 1890, s. 1, that "No Chinaman shall be employed in, or allowed to be for the purpose of employment in, any mine to which this Act applies, below ground," is within the constitutional power of the Provincial Legislature as being a regulation of coal mines, and is not ultra vires as an interference with the subject of aliens. *In re the Coal Mines Regulation Amendment Act*, 1890, 5 B. C. R. 396.

4. Chinamen—*Employment in mines.*]—An enactment by a Provincial Legislature that no Chinaman shall be employed in mines is beyond its competence, inasmuch as by the British North America Act, 1867, s. 91, s.-s. 25, legislation with respect to "naturalization and aliens" is reserved exclusively to the Parliament of the Dominion. (Appeal from a decision dated July 13th, 1898, of the Supreme Court of British Columbia, affirming a judgment of DRAKE, J., of May 14th, 1898). The facts appear in the judgment. *Union Colliery Co. of British Columbia* v. *Bryden* (Atty-Gen. for British Columbia, intervening). Taken from 68 L. J. P. C. 118.

5. Coal Mines Act — *Employment of Chinamen.*]—Rule 34 of s. 82 of the Coal Mines Regulations Act, as enacted by the Legislature in 1903, and which prohibits Chinamen from employment below ground, and also in certain other positions in and around coal mines, is in that respect ultra vires. So held, per HUNTER, C.J., and IRVING, J., MARTIN, J., dissenting. Union Colliery Co. v. Bryden (1899), A. C. 580, applied and distinguished from Cunningham v. Tomey Homma (1903), A. C. 151. *In re the Coal Mines Regulation Act and Amendment Act*, 1903, 10 B. C. R. 408.

6. Navigation.

1. Navigable waters.] — The Crown in the right of the Province, has no right to authorize obstruction to the public right of user of navigable waters, or to legalize continuance of existing obstruction. *McEwen* v. *Anderson*, 1 B. C. R., pt. II., 308.

2. Public harbours—*Control of.*]—It is a prerogative right of the Crown to stop a suit between subjects, in the subject matter of which it is alleged that the Crown is, or may be interested, and in respect of which suit has been brought in behalf of the Crown to have its interest declared. If the Crown right alleged is a right in behalf of the Province, then the Attorney-General of the Province is the proper officer to exercise the prerogative. Observations by MARTIN, J., on the history of the Supreme Court of British Columbia. *Attorney-General for British Columbia and the New Vancouver Coal Mining and Land Company, Limited*, v. *The Esquimalt and Nanaimo Railway Company*, 7 B. C. R. 221.

7. Railways.

1. Cattle guards.]—A provincial statute (54 Vict. B. C. c. 1) provided that every railway company operating a railway in the Province under the authority of the Parliament of Canada should be liable to damages to the owner of any cattle injured or killed on their railway by their engines or trains, unless there be a fence on each side of the railway similar to some one of the fences mentioned in s. 3 of the (Provincial) Fence Act, 1888:—Held, ultra vires. *Hadden* v. *The Nelson and Fort Sheppard Railway Company*, 5 B. C. R. 541.

2. Conflict of legislative powers.] — Upon an appeal from a judgment of SPINKS, Co.J., discharging a mechanic's lien for work done upon a provincial railway, which had been declared to be for the general benefit of Canada:—Held, per CREASE, J.: The requirement of the various sections of the Dominion Acts, governing the railways in question, are so at variance with the recognition of mechanics' liens thereon under a provincial statute, that it is impossible for the two to stand together, and therefore the Dominion Legislature must prevail. Per MCCREIGHT, J.: The language of the Mechanics' Lien Act, B.C. 1891, c. 4, is insufficient to confer a lien upon a railway in respect of work done thereon. The provisions of the Act as to the priority of the mechanics' liens upon the property charged being inconsistent with the provisions of the Dominion Railway Act, 1888, as to the priority of mortgages upon railways, it is to be inferred that the Provincial Legislature did not intend the Act, and it is not to be construed to apply to railways within the control of the Dominion Parliament. *Larsen* v. *Nelson and Fort Sheppard Railway Co., et al.*, 4 B. C. R. 151.

8. Taxation.

1. Assessment Act—*Mortgages.*] — The Assessment Act (C. S. B. C., 1888, c. 111, s. 31), imposes a provincial revenue tax upon all personal property including by the interpretation clause "mortgages." The appellants were assessed for the amount of mortgages registered by them, seven-eighths of which amount was represented by money borrowed by the company in England upon its debentures, which was further secured by a deposit of the mortgages held in British Columbia to an amount sufficient to cover the outstanding indebtedness from time to time:—Held, (1) That the tax was direct and intra

vires of the Provincial Legislature; (2) That the appellants were entitled to an exemption under s. 3, s.-s. 19 (a), in respect of the amount of their indebtedness for the borrowed money. *Re Yorkshire Guarantee and Securities Corporation (Limited) and the Assessment Act*, 4 B. C. R. 258.

2. Chinese Regulation Act.]—On the return to a writ of certiorari:—Held, that the Chinese Regulation Act, 1884, is ultra vires of the Provincial Legislature on the following grounds:—1. It is an interference with the rights of aliens; 2. It is an interference with trade and commerce; 3. It is an infraction of the existing treaties between the Imperial Government and China; 4. It imposes unequal taxation. *Regina* v. *Wing Chong*, 1 B. C. R., pt. II., 153.

3. Chinese Taxing Act.] — Held, the Chinese Tax Act, 1878—ultra vires B. N. A. Act, 1867—is ultra vires of the Provincial Legislature. *Tai Sing* v. *Maguire*, 1 B. C. R., pt. I., 101.

4. Dominion official — *Income tax.*] — The imposition of a tax upon the income of a Dominion official is ultra vires of the Provincial Legislature. *Regina* v. *Bourell*, 4 B. C. R. 498.

5. Municipal Act — *Laundries.*] — The Municipal Act, 1885, s. 10, extended the powers of municipalities so as to include "licensing and regulating washhouses and laundries," and s. 11 enacts that municipalities may "hereafter levy and collect from every person who keeps or carries on a public washhouse or laundry, such sum as shall be fixed on by by-law, not exceeding $75 for every six months." On appeal from a conviction for carrying on a public laundry without a license:—Held, (1) Taxation by means of license fees, and the tax in question, is indirect and not direct taxation; (2) All indirect taxation, except that authorized by s. 92, s.-s. 9, B. N. A. Act, providing "in each Province the Legislature may exclusively make laws in relation to shop, tavern, saloon, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes, is ultra vires of the Provincial Legislature; (3) The words "and other licenses," only included industries ejusdem generis with those specified, and do not include a washhouse; (4) The most reasonable rule to adopt to ascertain whether a certain matter or thing is within the meaning of a statute as being ejusdem generis with things specified therein "and others" is to look to the object or mischief aimed at by the statute. All similar things that come within that object, though not in the abstract ejusdem generis, are so for the purposes of the statute; (5) If it appears that a tax is not bonâ fide within the purpose provided for, but is imposed with the real purpose of discriminating against a class, it is not within the justification of the enabling statute, and, on the facts, the tax in question was intended not for the purpose of raising a revenue, but as a restriction on the Chinese. *Regina* v. *Mee Wah*, 3 B. C. R. 403.

6. Chinese tax—*Distribution of legislative power—British North America Act—Interference with trade and commerce—Provincial taxation — Inequality of taxation.*] — A provincial statute required every Chinese person over twelve years of age to take out a license every three months for which he was to pay the sum of $10 in advance to Her Majesty. The statute also required every employer of Chinese labour to furnish a list of all Chinese employed by him, &c., under a penalty of $100 for every Chinaman employed, to be recovered by distress:—Held (per GRAY, J.), the statute was ultra vires of the Provincial Legislature under the British North America Act, (1) as dealing with a subject affecting trade and commerce, (2) as providing for unequal taxation, and discrimination against a class of persons, and being calculated for exclusion, and not being bonâ fide taxation. *Tai Sing* v. *Maguire*, 1 B. C. R., pt. I., p. 101.

7. Coal Mines Regulation Amendment Act, 1890 (*Stat. B. C.*), *s.* 1, *ultra vires — Rights of aliens — Interference with trade and commerce—B. N. A. Act, s.* 91.]—The provision in s. 4 of the Coal Mines Regulation Act, as amended by the Coal Mines Regulation Amendment Act, 1890, s. 1, that "No Chinamen shall be employed in, or allowed to be for the purpose of employment in, any mine to which this Act applies, below ground," is within the constitutional power of the Provincial Legislature as being a regulation of coal mines, and is not ultra vires, as an interference with the subject of aliens. *In re the Coal Mines Regulation Amendment Act*, 1890, 5 B. C. R. 306.

8. Game Act — *Preservation of game intra vires of powers of Province.*]—A clause in a provincial statute which contained other provisions for the protection of game within the Province, provided: "No person shall at any time purchase, or have in possession with intent to export or cause to be exported or carried out of the limits of this Province, or shall at any time or in any manner export, or cause to be exported or carried out of the Province, any, or any portion of the (game) animals or birds mentioned in this Act in their raw state;"—Held, affirming a conviction of defendant for having deer hides in his possession in their raw state with intent to export same; that, as the preservation of game within the Province is within the competence of the Provincial Legislature, the prohibition against export did not render the enactment ultra vires as interference with trade and commerce, such provision being subsidiary and incidental to the general purpose of the statute. *Regina* v. *Boscowitz*, 4 B. C. R. 132.

9. Interference with trade and commerce.] — Provincial statute and by-law thereunder authorizing stoppage of persons, freight, cargoes, boats, &c., coming from place infected with pestilential disease. *Canadian Pacific Navigation Co.* v. *The City of Vancouver*, 2 B. C. R. 193.

10. Liquor License Regulation Act. B. C., 1891.]—The Liquor License Regulation Act, B. C., 1891, s. 4, providing for the closing of saloons between 11 p.m. on Saturday night, and 1 a.m. on Monday morning, is intra vires of the Provincial Legislature as a police regulation, and is not an interference with trade and commerce. *Sauer* v. *Walker*, 2 B. C. R. 93.

11. Special tax on non-resident traders—*Power of Provincial Legislature to authorize municipality to impose.*] — P. was convicted before a justice of the peace for soliciting in Victoria orders for the sale by retail of goods to be supplied by a firm doing business outside the Province of British Columbia. By the Municipal Act, 1891, B. C., 54 Vict. c. 29, s. 166, "every municipality shall, in addition to the powers of taxation by law conferred thereon, have the power to issue licenses for the purposes following, and to levy and collect by means of such licenses the amounts following:" (12) "From every person who, either on his own behalf, or as agent for another or others, sells, solicits, or takes orders for the sale by retail of goods, wares or merchandise, to be supplied or furnished by any person or firm doing business outside the Province, and not having a permanent or licensed place of business within the Province, of a sum not exceeding $50 for every six months." By the by-law, following the language of *s.-s.* 12, *supra*, except that the words "permanent or licensed place of business," are substituted for "permanent and licensed place of business," the license was fixed at $50:—Held, (1) the statute, by-law and license tax thereunder are not as contended, ultra vires—(a) for interference with trade and commerce, or (b) for unlawful discrimination against traders outside the province; (2) The imposition of the license tax in question is within the powers relegated to provincial control by the B. N. A. Act, s. 92, *s.-s.* 16; (3) The word "and" in the statute, *supra*, should be construed "or." *Poole* v. *City of Victoria*, 2 B. C. R. 271.

12. Wide Tire Act—*Constitutional law—Costs—Costs allowed in action for penalties.*]—The Wide Tire Act, 1889, c. 22, is intra vires of the Provincial Legislature. *The Queen* v. *Howe*, *McNeil* v. *Howe*, 2 B. C. R. 36.

III. Class Discrimination.

1. Chinese tax.]—Held, by the Divisional Court, consisting of Begbie, C.J., Crease, Gray and McCreight, JJ., that s. 14 of the Chinese Regulation Act, 1884, declaring "that no free miner's certificate shall be issued to any Chinese except upon payment of fifteen dollars," was an attempt to impose a differential tax on the Chinese, and, therefore, ultra vires of the Provincial Legislature. *Regina* v. *Gold Commissioner of Victoria District*, 1 B. C. R., pt. 2, p. 260.

2. Class legislation — *Discriminating against a class—Ultra vires.*]—It is not competent to a Provincial Legislature or to a municipality, to deny certain nationalities or individuals the right to take out municipal trade licenses, *e.g.*, to a Chinaman the right to a pawnbroker's license. *Regina* v. *Corporation of Victoria* (*Re Mock Fee, et al.*), 1 B. C. R., pt. II., 331. See also *Re Russell*, 1 B. C. R., pt. I., p. 256.

3. Invalidity of — *Class legislation.*] — It is not competent to the Provincial Legislature or to a municipality, to deprive, generally, particular nationalities or individuals of the capacity to take out municipal trade license; e.g., a Chinaman has a right to apply for a pawnbroker's license. *Regina* v. *Corporation of Victoria, at the Prosecution of Mock Fee and another*, 1 B. C. R., pt. II., 331.

4. Japanese — *Right of naturalized Japanese to be registered as a voter.* 7 B. C. R. 368; 8 B. C. R. 76.

See Election.

5. Laundries — *Taxation — Municipal license fees—Direct or indirect tax—Construction of statute—Words ejusdem generis.*]—The Municipal Act, 1885, s. 10, extended the powers of municipalities so as to include "licensing and regulating wash-houses and laundries," and s. 11 enacts that "municipalities may hereafter levy and collect from every person who keep or carries on a public washhouse or laundry, such sum as shall be fixed on by by-law, not exceeding $75 for every six months." On appeal from a conviction for carrying on a public wash-house, or laundry, without a license:—Held, (1) taxation by means of license fees, and the tax in question, is indirect and not direct taxation; (2) All indirect taxation, except that authorized by *s.* 92, *s.-s.* 9, B. N. A. Act, providing "in each province the Legislature may make laws in relation to [9] shop, tavern, saloon, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes," is ultra vires of the Provincial Legislature; (3) The words "and other licenses" only includes industries ejusdem generis with those specified, and do not include a wash-house; (4) If it appears that a tax is not bonâ fide within the purpose provided for, but is imposed with the real purpose of discriminating against a class, it is not within the justification of the enabling statute, and on the facts, the tax in question was intended not for the purpose of raising a revenue, but as a restriction on the Chinese. *Regina* v. *Mee Wah*, 3 B. C. R. 403.

IV. Divorce.

1. Jurisdiction of Full Court on appeals in such actions — *Statutes — Construction of.*] — In construing statutes the Legislature must be presumed to contemplate dealing only with subjects within its legislative control, and as Provincial Legislatures have no power to confer divorce jurisdiction upon any Court, the language of the Supreme Court Act, C. S. B. C. (1888) *c.* 25, s. 87, providing that "an appeal shall lie to the Full Court from every judgment, decree or order, made by a Judge of the Supreme Court, whether final or interlocutory, and whether such judgment, decree, or order, shall be in respect of a matter specified in the rules of Court or not," cannot be construed to confer upon the Full Court of British Columbia any appellate jurisdiction in divorce matters. The Imperial Act, 20 & 21 Vict. *c.* 85, s. 55, giving an appeal to the Full (Divorce) Court from all decisions of a single Judge thereof, is inapplicable to the Full Court of British Columbia. *Scott* v. *Scott*, 4 B. C. R. 316.

V. Miscellaneous.

1. Canada Police Act.]—On an application to set aside a writ of replevin under

the B. C. statute, 1873, c. 24:—Held, the affidavit under s. 4 need not state that the deponent is "the servant or agent" of the claimant: — Held, that the delivery to the Sheriff of the bond required by s. 5 is not a necessary preliminary to the issuing of the writ of replevin, but to the Sheriff's acting upon such writ. Although the Peace Preservation Act, 1869, 32-33 Vict. (Can.) c. 24, makes no provision for the appointment of a "commissioner under that Act, yet its provisions can be enforced here by a commissioner appointed for the Province under the Canada Police Act, 31 Vict. c. 28, as such Police Commissioner is a justice of the peace in respect of the "criminal laws and other laws of the Dominion." The Peace Preservation Act, 1869, and the Canada Police Act, 1868, can be enforced in this Province as they are intra vires of the Parliament of Canada, under s. 101 and s.-s. 10 (a), (c), s. 92, of B. N. A. Act, 1867. The word "provincial," in s.-s. 14, s. 92, B. N. A. Act, 1867, is to be read in its political, and not in its geographical sense. The Court of a police commissioner is a "Court of record for British Columbia" within the meaning of s. 2 of B. C. Replevin Act. *Keefer* v. *Todd*, 1 B. C. R., pt. 2, 249.

2. The constitutionality of a statute will only be considered where necessary to a decision of a question before the Court. *Re Dickinson*, 2 B. C. R. 262.

3. Delegation of legislative power—*Public Health Act*, 1888.]—Power of Lieutenant-Governor-in-council to dismiss municipal health officer appointed by by-law. *The Attorney-General of B. C.* v. *Milne*, 2 B. C. R. 196.

4. Fraudulent Preference Act — *Constitutionality of.*]—*Anderson* v. *Shorey*, 1 B. C. R., pt. II., 325.

See FAUDULENT PREFERENCE.

5. Homestead Act, 1870—*Constitutionality of.*]—*Johnson* v. *Harris*, 1 B. C. R., pt. I., 93.

See EXEMPTION.

6. Lieutenant-Governor-in-Council—*Right of Lieutenant-Governor-in-Council to issue commission of oyer and terminer. Reg.* v. *Malott*, 1 B. C. R., pt. II., 207, 212. See also *Sproul* v. *Reginam*, 1 B. C. R., pt. II., 219.

7. Provincial Election Act — *Right of Japanese to be registered as voter.*]—*In re Tomey Homma*, 8 B. C. R. 76.

See ELECTIONS.

CONSTRUCTION.

1. Of by-law. *Not to be held meaningless or absurd.*]—*Esquimalt Water Works Co.* v. *The City of Victoria*, 10 B. C. R. 193.

See MUNICIPAL CORPORATIONS, II. 1.

2. Of a contract.]—*Wm. Hamilton Co.* v. *Mc. Lumber Mfg. Co.*, 4 B. C. R. 101.

See CONTRACT, III.

3. Of a document—*If unambiguous, for Judges, but if ambiguous jury is to find true intention of parties.*]—*MacAdam* v. *Kickbush*, 10 B. C. R. 358.

See PRACTICE, XX. 2.

4. Of municipal license law — "*And*" *for* "*or.*"]—*Poole* v. *The City of Victoria*, 2 B. C. R. 271.

See MUNICIPAL CORPORATIONS, X. 1.

5. Of statutes — *Section dealing with a particular subject matter prevails over general section.*]—*Hudson's Bay Co* v. *Kearns & Rowling*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

6. Of wills.] — *In re Henry Jerome*, deceased, 1 B. C. R., pt. I., 89; *Manson* v. *Ross*, 1 B. C. R., pt. II., 49.

See WILLS.

CONSTRUCTIVE NOTICE.

1. Prior unregistered charge.] — The Registrar registered a conveyance from K. to R. as a charge, without either the title deeds or certificate of title being produced or accounted for by R. They were, in fact, outstanding in the hands of plaintiffs, as prior equitable mortgagees of the lands. Express notice to R. of the equitable mortgage was not proved, but he enquired of K. for the title deeds and certificate, and they were not accounted for. The action was for foreclosure of the equitable mortgage: — Held, *per* WALKEM, J. — The Act devolves upon the Registrar the duty of satisfying himself of the prima facie title of an applicant, as a pre-requisite to its registration either by requiring production of the title deeds, or an affidavit satisfactorily explaining their non-production, and that the registration of R.'s conveyance was invalid, as against the plaintiffs, for want of the authorization of the Registrar upon the basis required by the Act, and that, as an unregistered purchaser, he was not protected by section 35 against the plaintiffs' prior unregistered charge. On appeal to the Full Court (*per* DAVIE, C.J., CREASE, J., concurring, overruling WALKEM, J.): 1. The purchaser of a registered title is within the protection of s. 35 whether he registered his own conveyance or not. 2. The principle of Lee v. Clutton, 45 L. J. Ch. 43, 46 L. J. Ch. 484 is applicable to the British Columbia Land Registry Act. The policy of the Act is to free the purchaser of a registered title from the imputation of constructive notice, and in the absence of express notice such a purchaser of lands for valuable consideration will, under s. 35, have priority over a prior unregistered charge, notwithstanding that he knew that the title deeds were in the possession of persons other than the vendor and abstained from enquiry. To take such a purchaser out of the protection of s. 35, he must be guilty of conduct equivalent to fraud, and, as fraud is never presumed, it will not be imputed by inference, or in the absence of proof of express notice of the facts, the knowledge of which constitutes the fraud. *Per* MCCREIGHT, J. (dissenting): The Act has not absolved a purchaser from the duty to

enquire for the title deeds, but accentuates it, particularly in regard to the certificate of title, and neglect to enquire indicates a design, inconsistent with bonâ fides, to avoid knowledge. Constructive notice of a prior unregistered charge is sufficient to take the purchaser out of the protection of s. 35, and, on the facts, notice thereof must be imputed to the purchaser and his title postponed to such charge. *The Hudson's Bay Co.* v. *Kearns & Rowling*, 4 B. C. R. 536.

2. Through solicitor.]—K. by deed assigned to plaintiff a proportion of certain sums to be earned and received by him from the City of Vancouver, under a certain contract. He, afterwards, to secure advances made to him by defendant, assigned to her all sums due or to become due to him under the same contract. The plaintiff gave verbal notice of the deed to her to the Chairman of the Board of Works and to the City Solicitor of Vancouver. The defendant subsequently gave formal written notice of her assignment to the City Clerk, and plaintiff afterwards gave a similar notice of her deed:—Held, per BOLE, Co.J., giving judgment for defendant, that priority of notice governs the priority of right. 2. That neither the notice of the plaintiff's assignment to the City Solicitor, nor that to the Chairman of the Board of Works, was notice to the City. Per MCCREIGHT and WALKEM, JJ., on appeal: That by his deed to plaintiff, K. made himself a trustee for the plaintiff of the proportions of earnings to be received by him from the city, which he thereby assigned to her, and that the plaintiff had therefore an equity thereto which over-rode the subsequent assignment thereof to the defendant, and that the priority of notice of the latter assignment was immaterial. Per MCCREIGHT, J.: That, upon the evidence, the defendant having had actual notice of the existence of the deed to the plaintiff, had constructive notice of its terms. 2. That the fact that the solicitor whom she employed to draw the assignment to her also drew the deed to the plaintiff fixed the defendant with constructive notice of such deed through the knowledge of the solicitor, though acquired in a different and previous transaction. *Clark* v. *Kendall*, 4 B. C. R. 503.

CONTAGION.

1. Contagious diseases.]—*The Canadian Pacific Navigation Co.* v. *City of Vancouver*, 2 B. C. R. 193.

See HEALTH.

2. Detention of person exposed to infection.]—*Mills* v. *The City of Vancouver et al.*, 10 B. C. R. 99.

See HEALTH.

CONTEMPT.

1. A criminal offence.] — Contempt of Court being a criminal offence, on the hearing of an application to commit nothing will be inferred, and it is necessary to prove the charge with particularity. *In re Scaife, Potts* v. *The City of Victoria and the Consolidated Railway Company*, 5 B. C. R. 153.

2. Constructive contempt.] — The Supreme Court has no power to decide the validity of the appointment of one of its members. The Court has power summarily to commit for constructive contempt notwithstanding ss. 290, 292 and 293, of the criminal code, but the Court will not exercise the power where the offence is of a trifling nature, but only when necessary to prevent interference with the course of justice. A statement in a newspaper editorial to the effect that one of the parties to a pending suit will lose the case, is a contempt of Court. A statement to the effect that a Judge of the Court having taken an active part in a general election, would have to devote his spare moments to schooling himself into forgetfulness of his political career, is not a contempt. A statement to the effect that the spectacle of such Judge trying election cases is not edifying, and that it does not produce a good impression in the public mind, is not a contempt. A party to a suit has status to move to commit a stranger to the suit, for constructive contempt, although no affidavit is filed by him or on his behalf to the effect that the alleged contempt is calculated to prejudice him in his suit. Any person may bring to the notice of the Court any alleged contempt. *Stoddart* v. *Prentice*, 6 B. C. R. 508.

3. Injunction — *Disobedience to — Committal—Proper remedy—Waiver—Contempt.*] Upon motion for a writ of attachment against the manager of the defendant company for disobeying an injunction restraining the company, its agents, servants, &c., from blasting or depositing rock upon the plaintiffs' mineral claim, it was objected: (1) Under rule 451, that there was no memorandum of the consequence of his disobedience endorsed on the order. (2) That the notice of motion for attachment was not personally served on the manager, but only on the solicitor for the defendant company. Counsel had appeared for the manager and obtained several adjournments of the motion to obtain affidavits on the merits, which finally, were not forthcoming:—Held, per BOLE, L.J., S. C., overruling the objections: 1. That Rule 451 does not apply to prohibitory injunctions. 2. That the want of personal service of the notice of motion upon the manager was waived by the adjournments at his request. Upon appeal to the Full Court:—Held, (per MCCREIGHT, WALKEM and DRAKE, JJ.), allowing the appeal. That committal and not attachment is the appropriate remedy for breach of a prohibitory injunction. That personal service of a notice of motion is an essential pre-requisite to committal, and that the party applying in a case proper for committal is not absolved from the necessity for such personal service by moving for attachment instead of committal. Browning v. Sabin, 5 Ch. D. 511, distinguished. That the objection of want of personal service of the notice was not waived by the adjournments. *The Golden Gate Mining Company* v. *The Granite Creek Mining Company*, 5 B. C. R. 145.

4. Injunction — *Disobedience to.*] — *The Canadian Pacific Navigation Co., Ltd.*, v. *City of Vancouver*, 2 B. C. R. 298.

See INJUNCTION.

5. Injunction.] — Persons not named in an injunction are not liable to be committed for breach of it, unless, with knowledge of the

injunction, they interfere and commit the act enjoined, in which case they are liable for contempt of Court. *DeCosmos* v. *The Victoria and Esquimalt Telephone Co. (Ltd.)*, 3 B. C. R. 347.

6. Law society—*Unlicensed practitioner.*]—Upon motion by the Law Society of British Columbia to commit the defendant, it appeared that the offence charged was that he had written two letters on behalf of clients, the first threatening that proceedings would be instituted for slander unless detraction was made, and the other stating that he had instructions to proceed against R. for taking certain goods without authority, and for trespassing and forcibly removing goods subject to a lien. The defendant adduced evidence that he was a solicitor of Manitoba carrying on business in British Columbia as a debt collector, and had made application to be admitted in British Columbia, that no fees had been charged against or paid by the person to whom the letter was written, and that he had disclaimed being a solicitor entitled to practice in British Columbia, and had refused to accept legal business offered to him:—Held, per DAVIE, C.J. That the first letter did not constitute an offence, and that any presumption of practising which may have been raised by the second letter was rebutted by the evidence adduced by the defendant. Motion dismissed without costs. *In re C——*, 5 B. C. R. 530.

7. Observations in newspaper pending suit—*Application to commit—Criminal Code, ss.* 290, *et seq.—R. S. B. C.*, 1897, *c.* 56, *s.* 10.]—The Supreme Court has no power to decide the validity of the appointment of one of its members. The Court has power summarily to commit for constructive contempt notwithstanding ss. 290, 292 and 293, of the Criminal Code; but the Court will not exercise the power where the offence is of a trifling nature, but only when necessary to prevent interference with the course of justice. A statement in a newspaper editorial to the effect that one of the parties to a pending suit will lose the case, is a contempt of Court. A statement to the effect that a Judge of the Court having taken an active part in a general election, would have to devote his spare moments to schooling himself into forgetfulness of his political career, is not a contempt. A statement to the effect that the spectacle of such Judge trying election cases is not edifying, and that it does not produce a good impression in the public mind, is not a contempt. A party to a suit has status to move to commit a stranger to the suit for constructive contempt, although no affidavit is filed by him or on his behalf to the effect that the alleged contempt is calculated to prejudice him in his suit. Any person may bring to the notice of the Court any alleged attempt. *Stoddart* v. *Prentice*, 6 B. C. R. 308.

8. Order of Local Judge.]—An ex parte restraining order made by a Local Judge must be obeyed until set aside. *Leberry* v. *Branden*, 7 B. C. R. 403.

9. Publication tending to influence litigation—*Evidence.*]—Contempt of Court being a criminal offence, on the hearing of an application to commit, nothing will be inferred, and it is necessary to prove the charge with particularity. *In re Scaife*, 5 B. C. R. 153.

CONTINGENT EVENT.

1. Agreement of sale and purchase made subject to the happening of a contingent event as a condition precedent. Liability of purchaser on voluntary promise to pay a debt of vendor, the contingent event not having happened,. *Manley* v. *Mackintosh*, 10 B. C. R. 84.

See VENDOR AND PURCHASER.

CONTRACT.

I. FORMATION.

1. *Generally.*

1. Agent—*Scow taken in tow by steamer contrary to orders of owners of steamer—Liability of owners—New trial.*]—Defendants' steamer, which previously had been employed carrying freight and passengers between White Horse and Dawson, had gone out of commission on 23rd September, 1898, and on that day, and while on her way down Lake Lebarge to winter quarters, she took in tow the plaintiffs' scow loaded with goods. After proceeding some way the weather became bad, and in endeavouring to get into shelter the scow foundered, and the whole cargo was lost. In an action for damages against the owners of the steamer, evidence was tendered by the owners that those in charge of the steamer had been particularly warned not to do any towing, but this evidence (being objected to by plaintiffs) was ruled out. At the trial, DUGAS, J., held that the defendants were common carriers, and therefore liable:—Held, by the Full Court on appeal (reversing DUGAS, J.), that the appeal should be allowed with costs, and that the plaintiffs could have a new trial upon payment of the costs of the first trial. *Courtnay, et al.*, v. *The Canadian Development Company*, 8 B. C. R. 53.

2. Carriers—*Special contract limiting liability.*]—*Wilson* v. *The Canadian Dev. Co., Ltd.*, 9 B. C. R. 82.

See CARRIERS.

3. Document containing written instructions—*Parol evidence to explain.*] — D. delivered to H. a document containing written instructions to sell a coal mine on certain terms, and a promise to pay H. a commission of five per cent. on the selling price, the commission to include all expenses; H. proceeded to sell the mine and incurred certain expenses:—Held, per WALKEM, J., that evidence was admissible to shew that contemporaneously with the delivery of the document to H. he stated that the mine could not be sold at the price named, and that D. agreed to pay his expenses if a sale was not made:—Held, (on new trial), per MCCOLL, J., that such evidence was inconsistent with the written instructions, and therefore not admissible:—Held, on appeal that the question whether the written instructions constituted the whole contract should have been submitted to the jury. *Harris* v. *Dunsmuir*, 6 B. C. R. 505.

4. Smelting contract — *Automatic sampling.*]—A contract between mine owners and smelter owners provided inter alia that the ores supplied by the former to the latter should be sampled within one week after shipment. The evidence shewed that "automatic" or machine sampling had displaced the old method of "grab" or "shovel" sampling, and had been in vogue for about twenty years:—Held, per HUNTER, C.J., and WALKEM, J., that the contract was entered into on the footing that the sampling was to be done automatically. Per DRAKE and IRVING, JJ.: The contract permitted any mode of sampling so long as it was done properly, and the true value of the ore was arrived at. A mine owner's representative at a smelter for the purpose of watching the weighing and sampling of ores, so that the mine owner may be satisfied as to the correctness of the weight and sampling, has no authority to consent to a method of sampling not allowed by the contract. Where the smelter returns of ore of average character sampled either negligently or in a manner not contemplated by contract, shew a value below the average, the probable value of the ore will be estimated by the Court by taking the average value of a certain number of lots immediately before and after the lots in dispute. *The Le Roi Company, No. 2, Limited,* v. *The Northport Smelting and Refining Company, Limited, and the Le Roi Mining Company, Limited*, 10 B. C. R. 138.

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2. Letters and Correspondence.

1. Acceptance — *New terms.*] — On 2nd October, O. handed the company's purchasing agent the following letter: "Gentlemen,—I can offer you 30 cars of timothy hay at $10.50 per ton on cars at Chewlah, subject to acceptance in five days, delivery within six months. P.S.—I also agree to furnish seven cars of timothy hay at $10 per ton if above offer for 30 cars is accepted," and on 5th October, the Company mailed to O., as answer, as follows: "Dear Sir,—We would now inform you that we will accept your offer on timothy hay as per your letter to us of the 2nd inst. Please ship as soon as possible the orders you already have in hand, and also get off the seven cars at 10, as early as possible, as our stock is very low. Try and ship us three or four cars so as to catch the next freight here from Northport. We will advise you further as to the shipment of the 30 cars. Should we not be able to take all in before your roads break up, we presume you will have no objection to allowing balance to remain over until the farmers can haul it in. Do the best you can to get some empty cars at once, as we must have three or four cars by next freight." This letter was received by O. on 8th October:—Held, per MCCOLL, C.J., and MARTIN, J., that the company's reply was not a complete acceptance. Per WALKEM and IRVING, JJ., that it was a complete acceptance. *Oppenheimer* v. *The Brackman & Ker Milling Co., Ltd.*, 9 B. C. R. 343.

2. Agency—*Estoppel.*]—Prior to the issue of a Crown grant to the defendants (as trustees for the C. P. R. Co.), of some 6,000 acres, the plaintiff with others, who, notwithstanding a reserve placed upon the land, had settled upon some lots near Granville, petitioned the C. C. L. & W. that clemency would be shewn them, and that they might be allowed to purchase their improved lands on fair terms. While the negotiations for the issue of the Crown grant to the company were being carried on between the C. C. and B. (the agent of the company), the C. C. requested B. to authorize him (the C. C.) "to inform all such persons as shall be found to have located in a bona fide manner previous to 4th August, and who have made substantial improvements thereon," that the company would sell to each such locatee his respective lot at $200. To this B. replied, somewhat varying the conditions, but giving the C. C. no authority to communicate with plaintiff and other petitioners. On the same day that the Crown grant issued, the C. C. announced to the petitioners that the company would convey to them their respective lots on terms somewhat different from those mentioned, either in his letter to B. or in B.'s letter to him. The company afterwards refused to convey to the plaintiff his lot. On motion for judgment:—Held, that the C. C. was neither the agent of the plaintiff nor a trustee for him, and that there was no concluded agreement of which the plaintiff could claim performance; and although the plaintiff had substantially complied with the conditions proposed, his action must be dismissed, but without costs. As there was no evidence that the defendants were aware of the plaintiff's improvements:—Held, that the doctrine of estoppel did not apply. *Hayden* v. *Smith & Angus*, 1 B. C. R., pt. II., 312.

3. Building contract.] — Negotiations were carried on by letter between the parties, whereby all the terms and conditions of a building contract between them were settled and assented to; and one of the letters to the plaintiff contained the following words: "An agreement and bond in the terms of your offer will be prepared and submitted to you for execution as soon as the contract for the erection of the buildings has been awarded." The contract was awarded, and the bond (viz., as a guarantee for the performance of the agreement) was executed, but no formal agreement was ever executed:—Held, that there was a

binding agreement between the parties. *The Koksilah Quarry Company, Limited Liability* v. *The Queen*, 5 B. C. R. 525.

II. Consideration and Validity.

1. *Generally.*

1. Agreement between solicitor and client.] — Plaintiff being unable to raise money to pay off a mortgage upon his lands, applied to a solicitor, who in consideration of certain interest and commissions, agreed to advance the necessary amount, and also to obtain time from defendant's unsecured creditors, and took as security a conveyance of plaintiff's equity of redemption in the property, with a short period for payment and redemption. Upon the evidence it appeared that there was no fraud or improper dealing on the defendant's part:—Held, there is no principle upon which any agreement a solicitor and client choose to make in the circumstances of the particular case, is to be invalidated, if no deception is practised and no advantage taken, merely because of the existence of the relationship. *Bell* v. *Cochane*, 5 B. C. R. 211.

2. Alderman — *Contract of, with person who has contract with municipality—Whether a disqualification of.*]—*Coughlan & Mayo* v. *City of Victoria*, 3 B. C. R. 57.

See Injunction.

3. Chinamen — *Contract for deportation of, not illegal.*]— *In re Lee San*, 10 B. C. R. 270.

See Habeas Corpus.

4. Consideration—*Accord and satisfaction—Mineral Law.*]—An agreement for the sale of mineral claims provided for payment by instalments and contained a proviso that "failure to make any of the above payments to render this agreement void as to all parties thereto, and the said (vendees) can quit at any time without being liable for any further payments thereunder from such time on." At the request of the vendees the vendors, without consideration, extended the time for payment of one of the instalments. After the original but before the extended period for making the payment, the vendees notified the vendors that they had quit. In an action to recover the amount of the instalment:—Held, by the Full Court (McCreight, Drake and McColl, JJ., overruling Walkem, J.), that the liability of the defendants, the vendees, to pay the instalment in question was absolute upon the day named in the original agreement and remained unaffected by the voluntary concession of further time to pay. *Webb* v. *Montgomery*, 5 B. C. R. 323.

5. Contract according to sample—*Uncertainty.*]—Where a contract provides for the manufacture according to specifications of an article "equal in every respect to a sample to be produced," and no sample is produced and agreed upon, the contract is void for uncertainty, and no action can be brought for breach of it by either party. *Kerr & Begg* v. *Cotton*, 2 B. C. R. 246.

6. Corporation — *Seal — Mutuality — Restraint of trade — Consideration.*]—A contract by a corporation to ship all goods consigned to them at Victoria from a certain point by plaintiff's steamers, is not void as being in restraint of trade. Such a contract is not void for want of mutuality by reason of not being under the corporate seal of the plaintiffs:—Semble, a contract by a trading corporation dealing with a subject within the scope of the objects of its memorandum of association need not be under its corporate seal. *C. P. N. Co.* v. *Victoria Packing Co.*, 3 B. C. R. 490.

7. Engineer — *Fraud — Collusion —Certificate as to work.*]—On an examination for discovery of an ex-officer of a corporation, the corporation's counsel attended and objected to certain questions being put:—Held, that the deposition was admissible at the trial. Where under a contract which made the right of the contractors to receive payment for the construction of certain works dependent upon the certificate of an engineer who was also sole arbitrator of all disputes, the engineer unjustifiably delayed the issue of the certificate for seven months and acted in a shifting and vacillating though not fraudulent manner, and probably caused heavy loss to the contractors by his mistakes:—Held, in the absence of collusion on the part of the corporation their certificate could not be set aside. Impropriety of certain acts of the corporation remarked upon. *Walkley et al.* v. *City of Victoria*, 7 B. C. R. 481.

8. Failure of consideration.] — If A. shews B. a mineral claim, stating that he is the owner, and B. thereupon buys, takes conveyance, and pays the price, B. may recover back the price if it turns out that A. has no title, even though there is no covenant for title in the deed, and no wilful misrepresentation. *Pope* v. *Cole*, 6 B. C. R. 205.

9. Mineral law—*Partnership* — "*In on it.*"] — Plaintiff having discovered "mineral afloat" communicated its situation to the defendant upon a verbal agreement by the latter, that in the event of his thereby discovering the ledge, and discovering a mineral claim, the plaintiff should be "in on it."—Held, by Walkem, J., at the trial, dismissing the action, that the transaction took place, but that the words "in on it" were too indefinite to found a contract:—Held, by the Full Court (Davie, C.J., McCreight and Drake, JJ.), overruling Walkem, J., that the words "in on it" imported an agreement to give the plaintiff an interest in the nature of a partnership or co-ownership; that, in the absence of anything in a partnership contract to the contrary, the presumption of law is that the partnership shares are equal, and that the contract was not void for uncertainty. *Wells* v. *Petty*, 5 B. C. R. 353.

10. Municipal corporation — *Contract of, must be under seal to bind corporation.*] — *Tracy* v. *District of North Vancouver*, 10 B. C. R. 235.

See Municipal Corporations, III.

11. Municipal Corporation—*Seal—C. S. B. C.* 1888, *c.* 88, *ss.* 71-78—*Municipal Act*, 1892, *ss.* 21, 82—*Estoppel—Ratification.*] —Section 82 of the Municipal Act, 1892, providing: "Each municipal corporation shall

have a corporate seal, and the council shall enter into all contracts under the same seal, which shall be affixed to all contracts by virtue of an order of the council," is imperative, and applies to all contracts of the corporation. That the contract was in fact wholly executed, and the work completed and accepted by the corporation, and part payment therefor made, and that the clerk of the corporation had acknowledged an order by the contractor in favour of the plaintiffs: — Held, not to operate to cure the objection that the contract was not under seal. *United Trust Company* v. *Chilliwack*, 5 B. C. R. 128.

12. Parol — *Contract by—Validity of.*]—*Esnouf* v. *Gurney*, 4 B. C. R. 144.

See SALES.

13. Pre-emption claim.] — An agreement for the sale of a pre-emption claim is void by s. 26 of the Land Act, 1888. *Turner and Jones* v. *Curran, et al.*, 2 B. C. R. 51.

14. Public policy — *Evading secrecy of tenders for municipal work.*]—Tenders were invited for certain municipal public works. Defendant having already put in a tender, met the plaintiff, who also proposed to tender for the work. It was agreed between them that the defendant should withdraw his tender and put in another at a higher figure, and that the plaintiff should tender at a still higher price; that in the event of the defendant's tender being accepted, the profits of the contract should be equally divided between them. The defendant's tender was accepted. In an action to declare a partnership:—Held, that the agreement constituted a partnership, and was not void as against public policy. *Stevenson* v. *Boyd*, 5 B. C. R. 626.

15. Public policy — *Unlawful consideration.*] — A member of a partnership, having after dissolution, real property of the firm standing in his own name, fraudulently mortgaged same and converted the proceeds to his own use. A criminal prosecution was instituted against him, charging that he, as trustee, unlawfully converted, etc., and he was committed for trial. Before trial he agreed to make good the value of the interests converted, by deed under seal containing covenants, to which a number of other persons were sureties. The agreement was made on the understanding that the trustee should not be further prosecuted, which was carried out:—Held, by DAVIE, C.J., at the trial, giving judgment for the plaintiff: 1. That 20 and 21 Vic. (Imp.) c. 54, s. 12, permitting such an agreement, introduced into this province by No. 70 of R. L. B. C. 1871, is still in force. 2. That s. 12, by implication, validated the contract of suretyship to the agreement of the trustee. 3. It was immaterial that the trustee might have been prosecuted with effect under provisions of the Criminal Code not limited to defaults of trustees as such; for his crime, if any, was as a trustee. Upon appeal the Full Court reversed the judgment: Per MCCREIGHT and DRAKE, JJ.: That 20 & 21 Vict. c. 54, s. 12, is not in force in Canada. That its re-enactment by 32 & 33 Vict. c. 21, s. 87, and c. 164, s. 72, Rev. Stat. Can. was repealed by the Criminal Code, which, while retaining the defalcation of trustees as a crime, omitted the section permitting the restoration by them of trust property notwithstanding, etc. Per MCCREIGHT, J.: That as the trusteeship did not arise under an express trust within s. 363 of the Criminal Code, as interpreted by s. 4 (bb), there was no criminal offence as charged, capable of being compounded, and the agreement would therefore be valid, following Davies v. Otty, 35 Beav. 208, but, as the trustee might have been prosecuted with effect without charging him as trustee, and the consideration of the agreement was to stifle all charges against him, that it was void as a compounding of such other charges. WALKEM, J., concurred with MCCREIGHT, J. *Major* v. *McCraney, et al.*, 5 B. C. R. 571.

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2. *Illusory Promise.*

1. Illusory — *Promise to form company and allot reasonable amount of stock to be amicably determined.*]—Where on a sale of mineral claims the purchaser promises and agrees to form a company to take over the claims, and that the vendor shall have in such company a reasonable amount of stock, to be amicably determined between them, and then refuses to form a company, the vendor has no right of action, as the agreement is illusory. *Briggs* v. *Newswander, et al.*, 8 B. C. R. 402.

2. Illusory promise—*Agreement to pay such sum as W. H. shall consider right—Release.*]—Plaintiff had performed services for a mining company for over three years, when the following resolution was passed: "Resolved, and carried unanimously, that Mr. H. E. C. be requested to accompany Messrs. H. and M. to England, and assist them in negotiating the sale of the mines, and that he be paid for his expenses, $70 by each of the aforesaid thirteen interests, and such further sum as Mr. W. H. shall consider right upon the sale of the mines, in consideration of his services to the partnership." The plaintiff proceeded to England accordingly, and in the result, a sale of the mines was effected. W. H. declined to allow plaintiff anything, and the defendants refused to pay him anything for his services, either before, or consequent on, the resolution. At the trial the jury found a verdict, and judgment was entered for the plaintiff for $1,350 for the former, and $4,350 for the latter services. On appeal to the Full Court (MCCREIGHT, WALKEM and DRAKE, JJ.): Held, (1) that the resolution affected subsequent services only, and that it contained no contract upon which the plaintiff could recover anything. (2) Its acceptance constituted an agreement by the plaintiff to abide by the decision of W. H. to the exclusion of any right of action for the subsequent services upon a quantum meruit, and that the judgment as to the $4,350 should be set aside. (3) A vested right of action can only be discharged by payment, release under seal, or record and satisfaction, and, as plaintiff had at the date of resolution such a right in respect of his prior services, the resolution could not be construed as effecting it, and that the judgment for $1,300 should stand. *Croasdaile* v. *Hall*, 3 B. C. R. 384.

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3. *Illegality.*

1. Corporation—*Contract with, to ship goods by certain steamers not void as being*

in restraint of trade.]—*The C. P. N. Co. v. Victoria Packing Co.*, 3 B. C. R. 490.

2. Illegal consideration — *Compounding criminal offence.*] — Held, per WALKEM and MCCREIGHT, JJ., on appeal: That the assignment in question was void for illegality, it appearing that it was made in consideration of the assignee refraining from taking criminal proceedings against the assignor. That as the question of illegality was not raised on the pleadings a new trial should be granted on payment of costs, to give the assignee an opportunity of adducing evidence to contradict the illegality of the consideration. *The Meriden Britannia Co. v. Bowell*, 4 B. C. R. 520.

3. Illegality—*Agreement for sale of pre-emption claim before Crown grant—Land Act, 1888, s. 26.*]—By s. 26, supra, "No transfer of any surveyed or unsurveyed land pre-empted under this Act shall be valid until after a Crown grant of the same shall have issued:"—Held, *per* MCCREIGHT, J.: Agreements for such transfer are illegal, and no action can be brought thereon. *Turner & Jones v. Curran, et al.*, 2 B. C. R. 51.

III. CONSTRUCTION.

1. *Generally.*

1. Conflict of laws as to.]—*In re Klaukie's Will*, 1 B. C. R. 76.

See WILLS.

2. Corporate seal—*Pleading—Ambiguity—Interpretation — Admission — Solicitor—Retainer.*]—Plaintiffs by their statements of claim alleged that they were solicitors in partnership, and that they were duly appointed to be the "legal advisers" of the defendant corporation, and were afterwards continuously and exclusively employed as the solicitors of the corporation. This allegation was not put in issue by the defendant's pleadings. In conformity with a resolution of the mayor and council, the municipal clerk, by a letter under the corporate seal addressed to the plaintiffs, informed them that they had been appointed to be the "legal advisers" of the corporation. Semble, this might be insisted upon as an appointment under seal. The designation "legal advisers," being ambiguous, may be interpreted to mean "solicitors" or "attorneys," by reference to the circumstances of the parties at the time of the appointment, and the acts of the parties subsequently, and was so interpreted. An appointment to be solicitor of a corporation operates as a general retainer. *Drake & Jackson v. Corporation of Victoria*, 1 B. C. R., pt. II., p. 165.

3. Execution—*Assignment for benefit of creditors—Exemption from—Option to claim, when exercisable—Construction.*] — *Billing v. Stewart et al.*, 4 B. C. R. 94.

See EXEMPTION.

4. Extras — *Authority of agent — Setting aside findings of jury.*]—The plaintiff, a Vancouver builder, contracted to erect a building in Vancouver for the defendants, a Milwaukee company, the contract providing that no extras would be allowed unless their value was agreed upon and indorsed on the contract. On the instructions of S., who intended to occupy the building for the purposes of a bottling company, of which he was a member, and bottle defendants' beer amongst other things, the plaintiff made alterations and additions, but no indorsement was made on the contract:—Held, by IRVING, J., dismissing plaintiff's action, and affirmed by the Full Court, that such indorsement was a condition precedent to plaintiff's right to recover. *McKinnon v. The Pabst Brewing Co.*, 8 B. C. R. 265.

5. Incomplete verdict — *For work done—Authority of agents.*] — In an action for work done and materials provided for certain steamers, the jury did not answer all the questions submitted, and the trial Judge gave judgment for the plaintiffs for the amount claimed for certain work covered by the certificate of an agent of the defendants, but discharged the jury as being unable to agree in respect of the other matters, and reserved further considerations:—Held, on appeal, that on the findings as they stood the plaintiffs could not recover any amount other than the one allowed. *Galbraith & Sons v. Hudson's Bay Company*, 7 B. C. R. 431.

6. Mineral claims — *Purchase of — Agreement to form company.*]—Where on a sale of mineral claims, the purchaser promises and agrees to form a company to take over the claims, and that the vendor shall have in such company a reasonable amount of stock, to be amicably determined between them, and then refuses to form a company, the vendor has no right of action, as the agreement is illusory. *Briggs v. Newsweander, et al.*, 8 B. C. R. 402.

7. Municipal contract — *Specified price or lump sum.*]—The City of Victoria called for tenders for the construction of certain sewers, setting forth in specifications and bills of quantities the amount and character of the excavations and work to be done, and requiring persons tendering to put their prices against each item in the specifications and bills of quantities, which were to form essential parts of the contract. Plaintiffs tendered, filling in their prices for each item as required, and offering to do the work for a lump sum of $7,032.00, which represented their total. The specifications called for interim and final certificates of work done to be granted by W., an engineer employed by the corporation. The contract as executed was "to execute all works described in the specifications, bills of quantities and form of tender, which are hereby made parts of this contract, in strict accordance with all the conditions and stipulations therein set forth, in the best and most workmanlike manner, for the sum of $7,032." It turned out that the bills of quantities largely over-estimated the work. Plaintiffs obtained the contract and performed the work, and sued to recover the lump sum and extras, less amounts paid them by the defendant corporation, and to compel W., the engineer, to grant them a final certificate. Per DRAKE, J.: That the contract was for a lump sum. On appeal to the Full Court (CREASE, MCCREIGHT and WALKEM), JJ.: That the contract was to do the work by quantities at specified prices, and was not controlled by the lump sum mentioned. That there was no privity between the plaintiffs and W., and their right of action against him, if any, was for damages for fraudulently and in collusion with the defendant corporation, refusing his certificate.

Coughlan & Mayo v. *Wilmot and The Corporation of the City of Victoria*, 4 B. C. R. 20.

8. Mutuality—*Vested interest—Power of municipality to pass by-law infringing its own contract.*]—A saloon keeper paying the stipulated fee to a municipality for a stipulated period of license to sell, &c., has a contract which the municipality cannot infringe upon by subsequent by-law. *In re Clay & the City of Victoria*, 1 B. C. R., pt. II., 300.

9. Option—*First refusal—Appeal books—Pagination of.*]—A contract stipulating that the first party shall have the hauling of all ore shipped up to 15,000 tons, and not less than 10,000, as required by the second party, does not bind the second party to supply more than 10,000 tons. The pages of appeal books should be numbered at the top of the pages. *Haggerty* v. *Lenora*, 9 B. C. R. 6.

10. Parol evidence—*To vary written contract—Admissibility of.*] — *Emerson* v. *Erwin et al.*, 10 B. C. R. 101.

See BILLS AND NOTES.

11. Pre-emption claim—*Transfer of.*]—Plaintiff having a pre-emption claim to certain land, signed an undated deed conveying the same to the defendant, but it was agreed, in view of s. 26 of the Land Act prohibiting the transfer of pre-emption claims, that the deed should remain in the hands of a third party until after the issue of a Crown grant, and that the date should then be inserted and delivery made. The transaction was completed accordingly:—Held, per DRAKE, J., at the trial, that the word "transfer" in s. 26 means a parting with a title, and that the deed did not operate until after the issue of the Crown grant, and did not constitute a transfer before Crown grant within the meaning of the Act: —Held, by the Full Court (affirming DRAKE, J.), that the parties had avoided doing that which the Act prohibited, and that the conveyance was valid and effectual. *Hjorth* v. *Smith*, 5 B. C. R. 369.

12. Railway — *Interpretation of contract for—Construction of.*]—*C. P. R. Co.* v. *Major*, 1 B. C. R., pt. II., 287.

See RAILWAYS, I.

13. Uncertainty—*Agreement to print a book by specifications—"Equal to sample" to be produced—No sample produced—Effect of.*] — Where the contract provides for the manufacture according to specification of an article, "equal in every respect to a sample to be produced," and no sample is produced and agreed upon, the contract is void for uncertainty, and no action can be brought for breach of it by either party. *Kerr & Begg* v. *Cotton*, 2 B. C. R. 246.

14. "Valid in Canada"—*Interpretation of phrase.*]—*Barrett et al.* v. *Elliott et al.*, 10 B. C. R. 461.

See INSURANCE, II.

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2. *Conditions and Terms.*

1. Acceptance — *Variation in terms.*] — On 2nd October, O. handed the company's purchasing agent the following letter: "Gentlemen,—I can offer you 30 cars of timothy hay at $10.50 per ton on cars at Chewelah, subject to acceptance in five days, delivery within six months. P.S.—I also agree to furnish seven cars of timothy hay at $10 per ton if above offer for 30 cars is accepted;" and on 5th October, the company mailed to O. an answer as follows: "Dear Sir,—We would now inform you that we will accept your offer on timothy hay as per your letter to us of the 2nd instant. Please ship as soon as possible the orders you already have in hand, and also get off the seven cars at $10 as early as possible, as our stock is very low. Try and ship us three or four cars so as to catch the next freight here from Northport. We will advise you further as to the shipment of the 30 cars. Should we not be able to take it all in before your roads break up, we presume you will have no objection to allowing balance to remain over until the farmers can haul it in. Do the best you can to get some empty cars at once, as we must have three or four cars by next freight." This letter was received by O. on 8th October:—Held, per MCCOLL, C.J., and MARTIN, J., that the company's reply was not a complete acceptance. Per WALKEM and IRVING, JJ., that it was a complete acceptance. *Oppenheimer* v. *The Brackman & Kerr Milling Company, Limited*, 9 B. C. R. 343.

2. Covenant to indemnify.]—Whether demand upon plaintiff to pay under the contract indemnified against is a pre-requisite to his cause of action on the covenant. *Baker* v. *Daly*, 3 B. C. R. 289.

3. Contract for tunnelling—*Certificate—Condition precedent.*]—Plaintiff agreed with Smith to do tunnelling in mineral claims in which Smith and McLeod were interested, and the agreement was contained in correspondence, part of which read: "I'll pay you on the completion of each 80 feet of tunnelling. All you need to do is to have McLeod to certify that you have done the work." McLeod did not give a certificate. In an action by plaintiff to enforce a mechanic's lien, it was held by BOLE, Co.J., and affirmed by the Full Court (IRVING, J., dissenting), that the obtaining of the certificate was a condition precedent to the plaintiff's right to recover. *Leroy* v. *Smith, et al.*, 8 B. C. R. 263.

4. Debtor and creditor — *Accord and satisfaction—Agreement to accept land in payment of debt—Solicitors' authority—Agent's authority.*]—One C., a commercial traveller in plaintiffs' employ, called on defendant and pressed for payment of an overdue promissory note. Defendant offered to give a parcel of land in payment, and C. in company with defendant inspected the land. C. wrote plaintiffs submitting to proposition, and giving a specific description of certain land. Plaintiffs wrote a solicitor instructing him to prepare a conveyance thereof. The solicitor, finding that there had been a misdescription in the letter to plaintiffs, accepted a conveyance of the land actually shewn by defendant to C.:—Held, in an action on the note, that plaintiffs were bound as by an accord and satisfaction and could not recover. Judgment of IRVING, J., reversed. *Pither & Leiser* v. *Manley*, 9 B. C. R. 257.

5. Practice—*Terms of contract to be looked at to determine whether writ for service ex juris should issue.*] — *Oppenheimer et al.* v. *Sperling et al.*, 7 B. C. R. 96

See PRACTICE, XXXVIII. 5.

6. Proposal in writing—*Acceptance by parol—Evidence as to terms—Whether admissible.*]—D. delivered to H. a document containing written instructions to sell a coal mine on certain terms, and a promise to pay H. a commission of five per cent. on the selling price, the commission to include all expenses. H. proceeded to sell the mine and incurred certain expenses:—Held, per WALKEM, J., that evidence was admissible to shew that contemporaneously with the delivery of the document to H., he stated that the mine could not be sold at the price named, and that D. agreed to pay his expenses if a sale was not made:—Held (on new trial), per MCCOLL, J., that such evidence was inconsistent with the written instructions, and therefore not admissible:—Held, on appeal that the question whether the written instructions constituted the whole contract should have been submitted to the jury. *Harris* v. *Dunsmuir*, 6 B. C. R. 505.

7. Smelting contract—*Automatic sampling.*]—A contract between mine owners and smelter owners provided inter alia that the ores supplied by the former to the latter should be sampled within one week after shipment. The evidence shewed that "automatic" or machine sampling had displaced the old method of "grab" or "shovel" sampling, and had been in vogue for about twenty years: — Held, per HUNTER, C.J., and WALKEM, J., that the contract was entered into on the footing that the sampling was to be done automatically. Per DRAKE and IRVING, JJ.: The contract permitted any mode of sampling so long as it was done properly and the true value of the ore was arrived at. A mine owner's representative at a smelter for the purpose of watching the weighing and sampling of ores so that the mine owner may be satisfied as to the correctness of the weight and sampling, has no authority to consent to a method of sampling not allowed by the contract. Where the smelter returns of ore of average character, sampled either negligently or in a manner not contemplated by contract, shew a value below the average, the probable value of the ore will be estimated by the Court by taking the average value of a certain number of lots immediately before and after the lots in dispute. *The Le Roi Company, No. 2, Limited*, v. *The Northport Smelting and Refining Company, Limited, and the Le Roi Mining Company, Limited*, 10 B. C. R. 138.

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3. *Implication.*

1. Construction of boiler for special purposes — *Implied warranty.*] — Plaintiffs contracted to construct for defendants, according to specifications, a marine boiler capable of standing 120 lbs. pressure to the square inch, to be used in a steam tug. The boiler, as delivered, did not comply with the specifications, but it was accepted upon a statement by plaintiffs "that if it was not right they would make it right." The boiler burst, and besides direct damage, the defendants were obliged to hire another tug to carry on its work. The defendants admitted the plaintiffs' claim for goods sold and delivered, and counterclaimed, alleging breach of express warranty of the boiler, claiming direct and consequential damages:—Held, per DRAKE, J., at the trial upon the counterclaim, that, on the evidence, the injury was caused by defective construction of the boiler, and that its steam pressure capacity was not as agreed. That the contract as to the form of the boiler was waived, but that the agreement to "make it all right," etc., amounted to a general warranty of fitness for the purpose. On appeal to the Full Court, held per CREASE, MCCREIGHT and WALKEM, JJ.: That apart from any, in this case doubtful, express warranty, there is an implied warranty by a manufacturer of goods for a particular purpose, that they are fit for that purpose, and that, upon the evidence, the defendants were entitled to recover for the breach of such warranty. *William Hamilton Manufacturing Company* v. *The Victoria Lumber and Manufacturing Co.*, 4 B. C. R. 101. [Note—Overruled by the Supreme Court of Canada: see *The Victoria Lumber & Manufacturing Co.* v. *William Hamilton Manufacturing Co.*, 26 S. C. R. 96.]

2. Crown—*In contract with, terms not to be implied.*]—*De Cosmos* v. *The Queen*, 1 B. C. R., pt. II., 26.

See PETITION OF RIGHT.

3. Sale of land—*Warranty.*]—An agreement to sell land "according to a plan deposited in the Land Registry Office and numbered 319," does not import a warranty that the plan is deposited in accordance with the provisions of the Land Registry Act. *Thompson* v. *Courtney*, 2 B. C. R. 89.

IV. PERFORMANCE.

1. *Generally.*

1. Action for work done—*Findings of jury.*]—In an action for work done and materials provided for certain steamers, the jury did not answer all the questions submitted, and the trial Judge gave judgment for the plaintiffs for the amount claimed for certain work covered by the certificate of an agent of the defendants, but discharged the jury as being unable to agree in respect of the other matters, and reserved further considerations:—Held, on appeal, that on the findings as they stood, the plaintiffs could not recover any amount other than the one allowed. *Galbraith & Sons* v. *Hudson's Bay Company*, 7 B. C. R. 431.

2. Agreement between solicitor and client.]—Is not invalid where no deception is practised and no advantage taken. *Bell* v. *Cochrane*, 5 B. C. R. 211.

3. Condition precedent—*Building contract.*]—The plaintiff, a Vancouver builder, contracted to erect a building in Vancouver for the defendants, a Milwaukee company, the contract providing that no extras would be allowed unless their value was agreed upon and indorsed on the contract. On the instructions of S., who intended to occupy the building for the purpose of a bottling company, of

which he was a member, and bottle defendants' beer, amongst other things, the plaintiff made alterations and additions, but no indorsement was made on the contract:—Held, by IRVING, J., dismissing plaintiff's action, and affirmed by the Full Court, that such indorsement was a condition precedent to plaintiff's right to recover. *McKinnon* v. *The Pabst Brewing Co.*, 8 B. C. R. 265.

4. Hiring — *Municipal corporation—Corporate seal.*]—A person duly elected at a meeting of the municipal council, to municipal office, pursuant to a statute giving the municipal corporation power so to appoint its officers, becomes thereby the servant of the corporation without further evidencing or ratification of the contract of hiring, either by writing under the corporate seal or otherwise, and can maintain an action for damages for not being received into the employment. *Tuck* v. *The Corporation of the City of Victoria*, 2 B. C. R. 179.

5. Municipal corporation — *Contract with must be under seal.*]—*United Trust Co.* v. *Chilliwack*, 5 B. C. R. 128.

See MUNICIPAL CORPORATIONS, III.

6. Payment in stock—*Failure to make.*]—Plaintiff contracted with defendant to do work at a certain price per day and to take in part payment stock in a mining company. On completion of the work defendant failed to deliver the stock:—Held, that on defendant's failure to deliver the stock, plaintiff was entitled to damages for breach of contract and could not be compelled to accept stock. *Miller* v. *Averill*, 10 B. C. R. 205.

7. Purchase money—*Recovery of under agreement for sale.* 3 B. C. R. 613.

See VENDOR AND PURCHASER.

8. Sale of land—*Reservations of minerals—Unilateral mistake—Principal and agent—Ratification — Specific performance — Damages.*]—An agreement for a sale of lands containing no reservation of the minerals thereunder, issued by the land agent of a railway company to an intending purchaser, accompanied by a deposit, does not bind the company to convey the minerals if the agent had instructions to reserve them, on the ground that there was unilateral mistake against which the Court will relieve. *Hobbs* v. *Esquimalt and Nanaimo Railway Company*, 6 B. C. R. 228.

9. Taking over work after part performance.]—*Moore* v. *B. C. Pottery Co.*, 2 B. C. R. 45.

10. Term of, whether condition precedent or not — *Mechanics' lien.*]—Plaintiff agreed with Smith to do tunnelling in mineral claims in which Smith and McLeod were interested, and the agreement was contained in correspondence, part of which read: "I'll pay you on the completion of each 80 feet of tunnelling. All you need to do is to have McLeod to certify that you have done the work." McLeod did not give a certificate. In an action by plaintiff to enforce a mechanics' lien, it was held by BOLE, Co. J., and affirmed by the Full Court (IRVING, J., dissenting), that the obtaining of the certificate was a condition precedent to the plaintiff's right to recover. *Leroy* v. *Smith et al.*, 8 B. C. R. 263.

11. Title — *Misrepresentation — Want of consideration.*]—If A. shews B. a mineral claim, stating that he is the owner, and B. thereupon buys, takes conveyance, and pays the price, B. may recover back the price if it turns out that A. has no title, even though there is no covenant for title in the deed and no wilful misrepresentation. *Pope* v. *Cole*, 6 B. C. R. 265.

12. Transfer of pre-emption claim — *Land Act, 1888, sec. 26 — Evading—"Transfer"—Public policy.*] — Defendant having a pre-emption claim to certain land, signed an undated deed conveying the same to the plaintiff, but it was agreed, in view of section 26 of the Land Act, prohibiting the transfer of pre-emption claims, that the deed should remain in escrow until after the issue of the Crown grant, and that the date should then be inserted and delivery made. The transaction was completed accordingly:—Held, *per* DRAKE, J., at the trial, that the word "transfer," in s. 26, means the parting with the title, and as the deed did not operate until after the issue of the Crown grant, it did not constitute a transfer before Crown grant within the meaning of the Act:—Held, by the Full Court (affirming DRAKE, J.), that the parties had avoided doing that which the Act prohibited, and the conveyance was valid and effectual. *Hjorth* v. *Smith*, 5 B. C. R. 369.

13. Vested right — *Discharge of.*] — Plaintiff had performed services for a mining company for over 3 years when the following resolution was passed: "Resolved and carried unanimously that Mr. H. E. Croasdaile be requested to accompany Messrs. Hall and McDonald to England and assist them in negotiating the sale of the mines, and that he be paid for his expenses $70 by each of the aforesaid 13 interests, and such further sum as Mr. Winslow Hall shall consider right, upon the sale of the mines, in consideration of his general services to the partnership." The plaintiff proceeded to England accordingly, and in the result a sale of the mines was effected. W. H. declined to allow plaintiff anything, and the defendants refused to pay him anything for his services, either before or consequent on the resolution. At the trial the jury found a verdict, and judgment was entered for the plaintiff for $1,350 for the former, and $4,350 for the latter services. On appeal to the Full Court, MCCREIGHT, WALKEM and DRAKE, JJ.:—Held, (1) that the resolution affected subsequent services only, and that it contained no contract upon which the plaintiff could recover anything. (2) Its acceptance constituted an agreement by the plaintiff to abide by the decision of W. H. to the exclusion of any right of action for the subsequent services upon a quantum meruit, and that the judgment as to the $4,350 should be set aside. (3) A vested right of action can only be discharged by payment, release under seal, or accord and satisfaction, and, as plaintiff had at the date of the resolution such a right in respect of his prior services, the resolution could not be construed as affecting it and that the judgment for $1,300 should stand. *Per* DRAKE and WALKEM, JJ.: On motion for a new trial for misdirection, the objections must be specified. *Croasdaile* v. *Hall*, 3 B. C. R. 384.

2. Privity and Parties.

1. Alien—*Jurisdiction of Court and remedies to enforce where made between foreigners in, and to be performed in a foreign country.*]—In the absence of an agreement ad hoc with his obligee, a party is liable at the latter's suit on a good cause of action to all the remedies, including arrest and imprisonment, allowed by law, and it is immaterial that the parties are aliens, or that the particular remedy sought is not allowed in the foreign jurisdiction. The Court has jurisdiction by reason of the residence of the parties within the jurisdiction, though the contract and breach arose outside the jurisdiction, and the parties are aliens. *Baxter* v. *Jacobs, Moss et al.*, 1 B. C. R., pt. II., p. 373.

2. Municipal corporation—*Liability of for act of contractor.*]—*Steves* v. *District of South Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS, I. 2.

3. Ore contract — *Hauling of ore shipments.*]—A contract stipulating that the first party shall have the hauling of all ore shipped up to 15,000 tons and not less than 10,000, as required by the second party, does not bind the second party to supply more than 10,000 tons. The pages of appeal books should be numbered at the top of the pages. *Haggerty* v. *Lenora Mount Sicker Copper Mining Company, Limited*, 9 B. C. R. 6.

4. Privity.] — An arrangement made between the Minister of the Crown and a railway company pending negotiations for the grant by the Crown to the company of certain lands, that the company should give certain locatees thereon option to purchase the lots occupied by them from the company at a named upset price, is not enforceable by the locatees, against the railway company, for want of privity, as the Minister of the Crown could not be considered as the agent of the locatees. *Hayden* v. *Smith & Angus*, 1 B. C. R., pt. II., p. 312.

5. Privity—*Tender in form of lump sum to do specified work at specified prices—Mistake—Right of contractor to compel engineer to give final certificate.*]—The City of Victoria called for tenders for the construction of certain sewers, setting forth in specifications and bills of quantities the amount and character of the excavations and work to be done, and requiring persons tendering to put their prices against each item in the specifications and bills of quantities, which were to form essential parts of the contract. Plaintiffs tendered, filling in their prices for each item as required, and offering to do the work for a lump sum of $7,032, which represented their total. The specifications called for interim and final certificates of work done to be granted by W., an engineer employed by the corporation. The contract, as executed, was "to execute all works prescribed in the specifications, bills of quantities and form of tender, which are hereby made parts of this contract, in strict accordance with all the conditions and stipulations therein set forth, in the best and most workmanlike manner, for the sum of $7,032." It turned out that the bills of quantities largely over-estimated the work. Plaintiffs obtained the contract and performed the work, and sued to recover the lump sum and extras, less amounts paid them by the defendant corporation, and to compel W., the engineer, to grant them a final certificate: — Held, *per* DRAKE, J.—That the contract was for a lump sum. On appeal to the Full Court (CREASE, MCCREIGHT and WALKEM, JJ.): That the contract was to do the work by quantities at specified prices, and was not controlled by the lump sum mentioned. That there was no privity between the plaintiffs and W., and their right of action against him, if any, was for damages for fraudulently, and in collusion with the defendant corporation, refusing his certificate. *Coughlan & Mayo* v. *Wilmot and the Corporation of the City of Victoria*, 4 B. C. R. 20.

3. Time.

Time — *Voluntary concession of.*] — An agreement for the sale of mineral claims provided for payment by instalments and contained a proviso that "failure to make any of the above payments to render this agreement void as to all parties thereto, and the said (vendees) can quit at any time without being liable for any further payments thereunder from such time on." At the request of the vendees the vendors, without consideration, extended the time for payment of one of the instalments. After the original, but before the extended period for making the payment, the vendees notified the vendors that they had quit. In an action to recover the amount of the instalment: — Held, by the Full Court (MCCREIGHT, DRAKE and MCCOLL, JJ.), overruling WALKEM, J., that the liability of the defendants, the vendees, to pay the instalment in question, was absolute upon the day named in the original agreement, and remained unaffected by the voluntary concession of further time to pay. *Webb* v. *Montgomery*, 5 B. C. R. 323.

V. RATIFICATION.

1. Agreement for sale of land—*Reservation as to minerals—Sale by agent.*]—An agreement for a sale of lands containing no reservation of the minerals thereunder, issued by the land agent of a railway company to an intending purchaser, accompanied by a deposit, does not bind the company to convey the minerals if the agent had instructions to reserve them, on the ground that there was a unilateral mistake against which the Court will relieve. *Hobbs* v. *Esquimalt and Nanaimo Railway Company*, 6 B. C. R. 228.

2. Master and servant—*Contract of hiring by election to office—Wrongful refusal to receive into employment.*] — A person duly elected, at a meeting of a municipal council, to municipal office, pursuant to a statute giving the municipal corporation power so to appoint its officers, becomes thereby the servant of the corporation without further evidencing or ratification of the contract of hiring, either by writing under the corporate seal or otherwise, and can maintain an action for damages if not received into the employment in pursuance of the contract of hiring implied by such appointment. (2) The defendants having refused to receive plaintiff, appointed as above, into the employment, he sued for wrongful

dismissal:—Held, that his action should have been for the wrongful refusal to receive into the employment; but amendment allowed at the trial. *York* v. *The Corporation of the City of Victoria*, 2 B. C. R. 179.

3. Municipal corporation — *Seal—Estoppel.*]—Section 82 of the Municipal Act, 1892, providing: "Each municipal corporation shall have a corporate seal, and the council shall enter into all contracts under the same seal, which shall be affixed to all contracts by virtue of an order in council," is imperative, and applies to all contracts of the corporation. That the contract was in fact wholly executed, and the work completed and accepted by the corporation, and part payment therefor made, and that the clerk of the corporation had acknowledged an order by the contractor in favour of the plaintiffs:—Held, not to operate to cure the objection that the contract was not under seal. *United Trust Company* v. *Chilliwack*, 5 B. C. R. 128.

4. Pleading—*Where contract is attacked, ratification of must be pleaded as a defence in order to admit evidence of it.*] — *Harper* v. *Cameron*, 2 B. C. R. 365.

See CANCELLATION OF INSTRUMENTS.

VI. RESCISSION AND BREACH.

1. Agreement for lease—*Whether action lies for damages for not giving possession. McLennan* v. *Millington*, 5 B. C. R. 345.

2. Building contract.]—Where a building contract is so far performed that the parties cannot be restored to their original position, and unsatisfactory work is being done, if the party aggrieved, in the absence of agreement ad hoc, interferes with the work so as to make it difficult to determine the value of that already done, he does so at the risk of having to pay the other party more than he has really earned, apart from the question of damages. *Moore* v. *The British Columbia Pottery Company*, 2 B. C. R. 45.

3. Consequential damages.]—Plaintiffs contracted to construct for defendants, according to specifications, a marine boiler, capable of standing 120 lbs. pressure to the square inch, to be used in a steam tug. The boiler, as delivered, did not comply with the specifications, but it was accepted upon the statement by plaintiffs "that if it was not right they would make it right." The boiler burst, and besides direct damage, the defendants were obliged to hire another tug to carry on its work. The defendants admitted the plaintiffs' claim for goods sold and delivered, and counterclaimed, alleging breach of express warranty of the boiler, claiming direct and consequential damages:—Held, *per* DRAKE, J., at the trial upon the counterclaim that, on the evidence, the injury was caused by defective construction of the boiler, and that its steam pressure capacity was not as agreed. That the contract as to the form of the boiler was waived, but that the agreement to "make it all right," etc., amounted to a general warranty of fitness for the purpose. That the defendants were entitled to recover the cost of putting the boiler in the condition originally agreed upon, but not the amount paid for hire of another tug during the delay, on the ground that such liability was not contemplated by the contract. Plaintiffs appealed to the Full Court, and defendants cross-appealed, claiming that the judgment should be increased by allowing the consequential damages claimed: Held, *per* CREASE, MCCREIGHT and WALKEM, JJ.—That apart from any, in this case doubtful, express warranty, there is an implied warranty by a manufacturer of goods for a particular purpose that they are fit for that purpose, and that, upon the evidence, the defendants were entitled to recover for the breach of such warranty. That on the facts, the consequential damage which ensued from the bursting of the boiler must be taken to have been within the contemplation of the parties to the contract, as an accident to the boiler would, in the known circumstances of the defendants, necessitate the hire by them of another tug. *William Hamilton Manufacturing Company* v. *Victoria Lumber and Manufacturing Company*, 4 B. C. R. 101.

NOTE.—Overruled by S. C. Can. See *Vic. Lumber and Mfg. Co.* v. *Wm. Hamilton Mfg. Co.*, 26 S. C. R. 96

4. Contemporaneous documents relating to same matter—*Rescission—Sub-lease—Covenant not to assign.*]—A lease of land for 25 years, containing a covenant by lessee not to assign without leave, was executed contemporaneously with an agreement by the lessee to purchase from the lessor a building on the land, which agreement contained a covenant by the lessee to pay the purchase money by instalments and to insure, and give the lessor the right to cancel the agreement, "upon breach of any of the covenants herein contained." The only reference to the agreement in the lease was contained in a proviso, "the first month's rent to be paid on the execution of an agreement of even date," etc. The lessee sub-let the premises for ten years, and did not pay the instalments of purchase money under the agreement, or insure. The action was to cancel the agreement, lease and sub-lease, for such breaches. The sub-lessee set up in his defence that the lease and sub-lease were registered, and that the agreement was not, and claimed the benefit of the Land Registry Act, s. 35, which provides that "no purchaser or mortgagee for valuable consideration of any registered real estate, or registered interest in real estate, shall be affected by any notice expressed, implied or constructive, of any unregistered title, interest or disposition affecting such real estate other than a leasehold interest in possession for a term not exceeding three years, any rule of law or equity notwithstanding:"—Held, *per* DAVIE, C.J. (1) That the covenants in the lease and agreement were incorporated with each other, and dependent, and that the breaches of the covenants in the agreement avoided the lease; Citing Paget v. Marshall, 28 Ch. D. 255. (2) Quære, whether the sub-lessee was a purchaser of any registered real estate, or registered interest in real estate, within the meaning of s. 35, supra. (3) That on the evidence the sub-lessee had actual notice of the agreement and could not invoke s. 35 supra. Upon approval of the Full Court:—Held, *per* MCCREIGHT, WALKEM and DRAKE, JJ., overruling DAVIE, C.J., as to the cancellation of the lease and sub-lease: (1) That a sub-lease is not a breach of a covenant in a lease not to assign. (2) That the agreement and its covenants were independent of

the lease and its covenants. *Griffiths* v. *Canonica*, 5 B. C. R. 67.

5. Payment in stock — *Failure to deliver.*]—Plaintiff co.tracted with defendant to do work at a certain price per day and to take in part payment stock in a mining company. On completion of the work defendant failed to deliver the stock:—Held, that on defendant's failure to deliver the stock, plaintiff was entitled to damages for breach of contract and could not be compelled to accept stock. *Miller* v. *Averill*, 10 B. C. R. 265.

6. Rescission—*Recovering back purchase money — Principal and agent.*] — An action does not lie against a person to recover back money received by him as agent for another, but lies only against the principal, and the Court will not in such an action go into the question of whether the agent paid over the money to his principal or not. In an action for the rescission of an agreement for the sale of lands, it was proved that the vendee tendered a conveyance for execution to the agent of the vendor, who was not proved to have been authorized under seal to execute deeds for the vendor:—Held, insufficient to bind the vendor. The vendee at the time of the agreement knew that the vendor had not then a title, but that he was the holder of an agreement from his vendors to give a deed when required upon payment of his purchase money:—Held, that the vendor was entitled to a reasonable time to make title, and that there was, on the facts, a waiver on the part of the vendee of his right to call for a conveyance. *Williams* v. *Wilson and Morrow*, 3 B. C. R. 613.

7. Unlawful consideration—*Agreement to restore trust funds.*]—A member of a partnership having, after dissolution, real property of the firm standing in his own name, fraudulently mortgaged same and converted the proceeds to his own use. A criminal prosecution was instituted against him, charging that he, as trustee, unlawfully converted, etc., and he was committed for trial. Before trial he agreed to make good the value of the interests converted, by the deed under seal containing covenants, to which a number of other persons were sureties. The agreement was made on the understanding that the trustee should not be further prosecuted, which was carried out:—Held by DAVIE, C.J., at the trial, giving judgment for the plaintiff: (1) That 20 and 21 Vic. (Imp.), c. 54, s. 12, permitting such an agreement, introduced into this Province by No. 70 R. L. B. C., 1871, is still in force. (2) That s. 12, by implication, validated the contract of suretyship to the agreement of the trustee. (3) It was immaterial that the trustee might have been prosecuted with effect under provisions of the Criminal Code, not limited to defaults of trustees as such; for his crime, if any, was as a trustee. Upon appeal the Full Court reversed the judgment. *Per* McCREIGHT and DRAKE, JJ., that 20 & 21 Vic. c. 54, s. 12, is not in force in Canada. That its re-enactment by 32 & 33 Vic. c. 21, s. 37, and c. 164, s. 72, Rev. Stat. Canada., was repealed by the Criminal Code which, while retaining the defalcation of trustees as a crime, omitted the section permitting the restoration by them of trust property notwithstanding, etc. *Per* McCREIGHT, J.: That as the trusteeship did not arise under an express trust within s. 363 of the Criminal Code, as interpreted by s. 4 (bb), there was no criminal offence as charged capable of being compounded, and the agreement would therefore be valid, following Davies v. Otty, 35 Beav. 208, but as the trustee might have been prosecuted with effect without charging him as trustee, and the consideration of the agreement was to stifle all charges against him, that it was void as a compounding of such other charges. *Major* v. *McCraney*, 5 B. C. R. 571.

8. Rights of parties after rescission.] —*Christie* v. *Fraser et al.*, 10 B. C. R. 291.

See INJUNCTION.

VII. MISCELLANEOUS.

1. Foreign will—*Marriage contract construed according to the law of the foreign country in which it was made, restricting right to devise real estate away from wife of testator—Land Registry Ordinance, 1870.*]—Contracts of marriage made in a foreign country, the domicile of the parties by the terms of which, in accordance with the laws of that country, the alienation by a testator (one of the parties to the contract) of his real estate away from his wife and family is forbidden, will prevent a contrary devise of the same, even though, according to the lex loci rei sitæ, there be no such restriction. By the comity of nations the contract travels abroad, and, as between the parties to it and their representatives, attaches to the testator's real estate in places other than the domicile. Marriage carried out in consideration of such a contract, and in accordance with the laws of the domicile, will, in its incidents touching the real estate of one of the parties, as between those parties and their representatives be respected and sustained, as to those incidents, in a country other than the domicile when there is no direct legislation there to the contrary. *In re Klaukie's Will*, 1 B. C. R. pt. I., p. 76.

2. Novation — *Accord and satisfaction — Release.*]—*Gurney* v. *Braden*, 3 B. C. R. 474.

3. Partnership—*What amounts to a contract of.*]—*Roddie* v. *The News-Advertiser*, 1 B. C. R. 7

See PARTNERSHIP, I. 2.

4. Railway—*Contract for construction of —Interpreted.*]—*The C. P. R. Co.* v. *Major*, 1 B. C. R., pt. II., 287.

See RAILWAYS, I.

5. Towage—*Concealment of circumstances affecting.*]—*Dunsmuir* v. *The Owners of the Ship "Harold,"* 3 B. C. R. 128.

CONTRACTOR.

1. Liability of a municipal corporation for the acts of.]—*Steves* v. *District of South Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS, I. 2.

CONTRIBUTION.

1. Joint tort feasors — *Indemnity of innocent agent.*]—Where an act is innocently done under the express direction of another, which occasions an injury to the rights of a third person, the principal must indemnify the innocent agent. *The Board of School Trustees of Victoria* v. *Muirhead & Mann, and the Albion Iron Works Co., Ltd.*, 4 B. C. R. 148.

CONTRIBUTORIES.

See COMPANY, IX. 3.

CONTRIBUTORY NEGLIGENCE.

1. Action of one person assisting another is not.]—*Love* v. *The New Fairview Corporation*, 10 B. C. R. 330.

See NEGLIGENCE.

2. Defence of—*To support there must be direct and positive finding that risk was voluntarily incurred.*]—*Scott* v. *B. C. Milling Co.*, 3 B. C. R. 221.

See MASTER AND SERVANT, IV.

3. Guest — *By* — *Does not absolve innkeeper from liability.*]—*Frank* v. *Berryman*, 3 B. C. R. 506.

See INN-KEEPER.

4. Inconclusive finding—*By jury in answer to question directed to issue of—Whether defendant entitled to a new trial to obtain a finding.*]—Defendant is not entitled to a new trial upon the ground that the jury have failed to return a direct finding upon a question put to them upon the issue of contributory negligence, where the other findings support judgment for the plaintiff. From the moment the plaintiff makes out a primâ facie case, that the injury was caused by the negligence of the defendant, the onus is cast on the defendant, if he sets it up, to shew and obtain a finding of contributory negligence. *McMillan* v. *Western Dredging Company*, 4 B. C. R. 122.

5. Jury—*Effect of answers of jury as to.*]—*Marshall* v. *Cates*, 10 B. C. R. 153.

See MASTER AND SERVANT, IV.

6. Volenti non fit injuria.]—*Franks* v. *Berryman*, 3 B. C. R. 506.

7. Other cases of.]—*Warmington* v. *Palmer*, 7 B. C. R. 414; *Faweett* v. *C. P. R. Co.*, 8 B. C. R. 393; *McMillen* v. *Western Dredging Co.*, 4 B. C. R. 122.

See PRACTICE, XX.

See also EMPLOYERS' LIABILITY ACT—MASTER AND SERVANT.

CONVENIENCE.

1. Preponderance of.]—*Jones* v. *City of Victoria*, 2 B. C. R. 8.

See INJUNCTION.

2. Preponderance of — *Not necessarily sufficient for change of venue.*]—*Centre Star* v. *Rossland Miners' Union*, 10 B. C. R. 306.

See also COMMISSION—PRACTICE, XXXV.—VENUE.

CONVERSION.

1. Claim.]—The exemption under Homestead Act of goods seizable under execution must be exercised within a reasonable time, and does not apply after sale and conversion. *Pilling* v. *Stewart*, 4 B. C. R. 94.

See EXEMPTION.

CONVEYANCE.

1. After breach of condition in deed is invalid.]—*Clark* v. *City of Vancouver*, 10 B. C. R. 31.

See DEEDS.

2. Plan — *Registered plan governs the boundaries of a lot.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

3. Precious metals.] — Conveyance of land by grantor, to whom precious metals have passed, passes the same without being specified. *Re St. Eugene Mining Co.*, 7 B. C. R. 288.

See MINES AND MINERALS, XXXI. 6.

4. Tender—*Conveyance should be tendered by purchaser. Foot et al.* v. *Mason et al.*, 3 B. C. R. 377.

See VENDOR AND PURCHASER.

5. Tender of—*To agent not authorized to execute deed is insufficient.*] — *Williams* v. *Wilson et al.*, 3 B. C. 613.

See VENDOR AND PURCHASER.

CONVICTION.

1. Amendment of.]—*Houghton's Case*, 1 B. C. R. pt. I., 89.

See CERTIORARI.

2. Amendment — *Right of Justice to amend.*]—*Reg.* v. *McAnn*, 4 B. C. R. 587.

See CERTIORARI.

3. Appeal from, is a proceeding de novo.]—*Re W. N. Bole*, 2 B. C. R. 208.

See PROHIBITION.

4. Incapacity of magistrate making —*On ground of interest.*]—*Regina* v. *Hart*, 2 B. C. R. 264.

See JUSTICES OF THE PEACE.

5. Intoxicating liquors—*Conviction for selling, where license varied by by-law.*]—*In re Clay*, 1 B. C. R., pt. II., 301.

See INTOXICATING LIQUORS.

6. Penalty — *Conviction where none imposed by legislature.*]—*Reg.* v. *Little*, 6 B. C. R. 78.

See MASTER AND SERVANT, V.

7. Quashing — *Conviction for employing Chinamen underground.*]—*In re Coal Mines Regulation Act*, 10 B. C. R. 408.

See CONSTITUTIONAL LAW, III.

COOK.

1. No mechanic's lien arises under Mechanic's Lien Act for cooking.] — *Anderson et al.* v. *Godsal*, 7 B. C. R. 404.

See MECHANIC'S LIEN.

CO-OWNERS.

1. Of mineral claim—*Lapse of license of one—Effect of on ownership.*]—A sheriff in possession of a free miner's interest in a mineral claim has no power to take out a special free miner's certificate under s. 4 of the Mineral Act Amendment Act of 1899, in the name of the judgment debtor: neither has the sheriff power to renew a certificate before lapse. Where one or more of the co-owners of a mineral claim allow their free miners' certificates to lapse, their interest at once vests pro rata in their former co-owners. *McNaught* v. *Van Norman, et al.*, 9 B. C. R. 131.

See also MINES AND MINERALS, XXXVI., XL., XXVII.

COPY.

1. Of certain recorded instruments—*When admissible without proof of originals.*] —*Pavier* v. *Snow*, 7 B. C. R. 80.

See MINES AND MINERALS, XIX.

CORAM NON JUDICE.

In re Horsefly Mining Co., 4 B. C. R. 165.

See COURTS, II.

CORPORATION.

1. Agency ultra vires—*Ratification.*]—*Adams* v. *The National Elec. Tramway Co.*, 3 B. C. R. 199.

See MASTER AND SERVANT, III.

2. Corporation sole—*Covenant for self and heirs — Whether successors bound by mortgage — C. S. B. C.* 1888, *c.* 87.]—A covenant by a corporation sole, described in his corporate capacity, expressed to be on behalf of himself, his heirs, executors and administrators, will not bind his successors in office. *Paris* v. *Bishop of New Westminster*, 5 B. C. R. 450.

3. Discretion of municipal corporation to refuse tenders.]—*Haggerty* v. *City of Victoria*, 4 B. C. R. 163.

See MUNICIPAL CORPORATIONS, III.

4. Indictment of, for manslaughter.] —*Reg.* v. *Union Colliery Co.*, 7 B. C. R. 247.

See CRIMINAL LAW, XII.

5. Liability of promoters of.] — Defendants, promoters of a public company, signed a memorandum of association for incorporation, under the Companies Act, 1862 (Imp.), and instructed the company to be incorporated, which was not done. At a meeting of the promoters subsequently held, at which some of the defendants were present, and others not, one B. was directed to incur certain expenses, the subject of the action:—Held, giving judgment against the defendants present at the meeting, and in favour of those not proved to have been present, that the defendants still occupied the position of promoters, and as such, not each other's agent, or liable for each other's acts. *Hung Man* v. *Ellis et al.*, 3 B. C. R. 486.

6. Officers—*For purposes of discovery.*]—*Hobbs* v. *E. & N. Ry. Co.*, 5 B. C. R. 461.

See PRACTICE, XI. 5.

7. Powers of municipal corporations.]—*The C. P. N. Co.* v. *City of Vancouver*, 2 B. C. R. 193.

See HEALTH.

8. Seal — *Corporate — Necessity for.*] — *Drake & Jackson* v. *Victoria*, 1 B. C. R. pt. II., 165; *United Trust Co.* v. *Chilliwack*, 5 B. C. R. 128.

See CONTRACT, III. 1; II. 1.

9. Seal — *Contract without, void for want of mutuality.*]—*C. P. N. Co.* v. *Victoria Packing Co.*, 3 B. C. R. 490.

See CONTRACT, II. 1.

10. Seal—*Necessity for, on contracts.*]—*Tuck* v. *City of Victoria*, 2 B. C. R. 179.

See MUNICIPAL CORPORATIONS, III.

11. Torts—*Committed by servants of, in course of company's business — Respondeat superior.*]—*Harris* v. *Brunette Saw Mill Co.*, 3 B. C. R. 172.

See MASTER AND SERVANT, III.

See also COMPANY — MUNICIPAL CORPORATIONS—MASTER AND SERVANT.

CORPUS DELICTO.

1. Rule of proof of.]—*Reg.* v. *Garrow et al.*, 5 B. C. R. 61.

See CRIMINAL LAW, VIII.

CORROBORATION.

1. Required by s. 50 of Evidence Act.]—*Blacquiere* v. *Corr*, 10 B. C. R. 448.

See EVIDENCE.

COSTS.

1. Settlement between parties—*Right of solicitor to proceed for.*] — Where a defendant in good faith settles an action with the plaintiff in such a way as to deprive the plaintiff's solicitor of his costs, such solicitor is not entitled to leave to proceed with the action for the recovery of his costs. *Rideout* v. *McLeod*, 6 B. C. R. 161.

2. Settlement between parties—*Right of solicitor to proceed for.*]—Defendant after service of a writ claiming $152.16, settled with plaintiff personally by payment of $60, taking a receipt in full. Plaintiff's solicitor being unaware of the settlement, signed judgment for the full amount and costs. Upon motion by the defendant to set aside the judgment as a breach of the settlement:—Held, that as there was no release under seal of the balance of the debt, or consideration for the agreement to accept a part in full discharge, the plaintiff was entitled to maintain the judgment. The plaintiff consenting to accept the amount of the settlement:—Held, that the plaintiff's solicitor had a right to maintain the judgment as to his costs, and *nem. con.* the judgment was allowed to stand for the amount of the settlement and costs. *Soder* v. *Yorke*, 5 B. C. R. 133.

3. Solicitor.]—Plaintiff recovered a judgment, which on appeal was reversed with costs. Plaintiff paid those costs. Supreme Court of Canada restored original judgment, but made no order for recovery of costs paid. Order to refund made, following Rodger v. Comptoir de Paris, L. R. 3 P. C. 465. *Davies* v. *McMillan*, 3 B. C. R. 72.

See also PRACTICE, IX.

COUNSEL.

1. Appearance of—*As waiver to objection.*]—*Edison Gen. Electric W. & V. Tramway Co. et al.*, 5 B. C. R. 34.

See APPEAL, II.

2. Appearance of in Court — *Before entry of appearance — Effect of.*] — *Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, IV.

3. Chambers — *Failure to agree as to what took place on hearing of motion and terms of order made.*]—*Beaven* v. *Fell*, 3 B. C. R. 362.

See APPEAL, VIII. 9.

4. Evidence — *Onus of proof—Duty of counsel to press objection at trial.*]—In adverse proceedings the onus of proof is on the adverse claimant, who has to give affirmative evidence of his own title. Counsel for adverse claimant in deference to a remark of the trial Judge, did not complete the proof of his own title:—Held, that he should have pressed to be allowed to complete it, but under the circumstances there should be a new trial. *Caldwell et al.* v. *Davys*, 7 B. C. R. 156.

5. Fees of.] — *Barnard* v. *Walkem*, 1 B. C. R. pt. I., 120; *Milton* v. *The District of Surrey*, 10 B. C. R. 325.

See PRACTICE, IX. 10.

6. Fees—*Right of barrister to sue for.*]—*B. C. Land & Invest. Agency* v. *Wilson*, 9 B. C. R. 412.

See PRACTICE, IX. 10.

7. Judgment—*Counsel electing to take, in lieu of issue being ordered, is in effect a compromise and not appealable.*]—*Sun Life* v. *Elliott et al.*, 7 B. C. R. 189.

See APPEAL, VIII. 12.

8. Standing of—*Interpretation of term.*]—*Drake & Jackson* v. *Corp. of Victoria*, 1 B. C. R., pt. II., 165.

See MUNICIPAL CORPORATIONS, VI.

9. Undertaking of—*Not to object that order for costs not appealable.*]—*Iron Mask* v. *Centre Star*, 7 B. C. R. 66.

See TRIAL.

COUNTERCLAIM.

1. Defendants—*One of two defendants sued jointly may set up counterclaim against plaintiff individually.*]—*Powell* v. *Lowenberg, Harris Co.*, 3 B. C. R. 81.

See PLEADINGS, V.

2. Issue—*Should involve an issue raised as a defence.*]—*Powell* v. *Lowenberg, Harris Co.*, 3 B. C. R. 81.

See PLEADINGS, V.

3. Petition of right — *None to a.*] — *Spiers* v. *The Queen et al.*, 4 B. C. R. 388.

See PETITION OF RIGHT.

4. Striking out.]—*Powell* v. *Lowenberg, Harris Co.*, 3 B. C. R. 81.

See PLEADING, XI.

5. Trial — *Allowing addition of counterclaim after action set down for.*]—*Beer Bros.* v. *Collester*, 3 B. C. R. 145.

See PLEADINGS, V.

See also PLEADING, V.—PRACTICE.

COUNTERMAND.

1. Notice of trial—*An adjournment by counsel is equivalent to a countermand of notice of trial.*]—*Harvey* v. *City of New Westminster*, 3 B. C. R. 398.

See PRACTICE, I.

COUNTY COURT.

See COURTS, I.

COURTS.

I. COUNTY COURT.

1. *Appeal.*

1. No appeal from County Court where sitting as appellate Court.]—*Re Lambert*, 7 B. C. R. 396.

See SUNDAY.

2. Appeal — *After lapse of time limited for setting down by Rule* 678.]—*Archibald* v. *MacDonald*, 5 B. C. R. 125.

3. Appeal—*Scope of—From to Supreme Court.*]—*Confederation Life* v. *McInnes*, 4 B. C. R. 126; *Mason* v. *Oliver*, 2 B. C. R. 328.

4. Appeal—*Matters of fact and matters of law distinguished.*]—*Boultbee* v. *Rolls*, 4 B. C. R. 137.

See ESTOPPEL.

2. *Jurisdiction.*

1. Constitutional law—*Stat.* 1890, *B.C., c. 8, s. 9, empowering a County Court Judge to act as Judge within the territorial limits of another County Court — Whether ultra vires—Speedy Trial Acts—Any Judge of a County Court.*] — *Piel-Ke-Ark-An* v. *The Queen*, 2 B. C. R. 53.

2. Damage action—*Metalliferous Mine.*] —An action for damages for personal injuries received by an employee in a metalliferous mine may be brought for any amount in the County Court. *Beamish* v. *Whitewater Mines, Limited*, 7 B. C. R. 261.

3. Equitable jurisdiction—*Action for rent—Void lease.*]—It is part of the equitable jurisdiction of the Court to enforce payment of rent when the lease is void, and when the value of such lease, if valid, would exceed $2,500, the County Court has no jurisdiction. *B. C. Board of Trade Building Association, Limited Liability*, v. *Tupper and Peters*, 8 B. C. R. 291.

4. Equitable jurisdiction — *County Court.*] — County Courts have no equitable jurisdiction other than that conferred by the County Courts Act, C. S. B. C. 1888, s. 25, s. 44, and cannot entertain an action to set aside a chattel mortgage as being a fraudulent preference. *Parsons' Produce Company* v. *Given*, 5 B. C. R. 58.

5. Jurisdiction—*Costs of action within, brought in Supreme Court.*]—An order to pay money in which the drawee is mentioned is a Bill of Exchange, and by s. 7, C. S. B. C. 1888, c. 39 (Assignment of Choses in Action Act), is excepted from the operation of that Act, and does not operate as an assignment. When the drawee is not mentioned, the order is not a Bill of Exchange and is an assignment within the Act. Johnson v. Braden, 1 B. C. R., pt. II., 269, followed. The action being within the jurisdiction of the County Court, County Court costs only allowed. *McPherson* v. *Johnston and Glaholm*, 3 B. C. R. 465.

6. Jurisdiction—*Costs—No jurisdiction to order in Supreme Court action.*] — No costs of an adjournment of trial will be allowed to the successful party where the adjournment was caused by reason of there being no Court room available. *MacDonell* v. *Perry*, 10 B. C. R. 326.

7. Jurisdiction of in Crown actions.] —It is a prerogative right of the Crown to bring a suit in a County Court, even though as between subject and subject such Court would not be open, either because of the defendant not residing in or of the cause of action not arising in the district. *The King* v. *Campbell*, 8 B. C. R. 208.

8. Jurisdiction of County Court Judge under the Speedy Trials Act.] —*Piel-Ke-Ark-An* v. *Reg.*, 2 B. C. R. 53.

9. Jurisdiction as Local Judge of the Supreme Court to deal with wages claims under the Execution Act.]—*McKay* v. *Clark*, 2 B. C. R. 213.

10. Jurisdiction of when requested so to sit by Supreme Court Judge.]— A County Court Judge for one county was requested by a Supreme Court Judge, being the Acting County Court Judge for another county, to sit in lieu of himself whenever absent:—Held, that the County Court Judge had no jurisdiction to sit by virtue of such request, and that s. 8 of the County Courts Acts empowered only a County Court Judge to make such request. *Bell & Flett* v. *Mitchell*, 7 B. C. R. 100.

11. Jurisdiction of, in mining disputes.]—*Burk* v. *Tunstall*, 2 B. C. R. 12.

See CONSTITUTIONAL LAW, II. 1.

12. Jurisdiction under Mineral Act, 1896.]—Held, by McCREIGHT, J. (the Full

Court not dissenting), that ss. 144 to 150 of the Mineral Act, 1896, refer only to procedure in the County Courts. In an action to enforce an adverse claim and for a declaration that the plaintiff was entitled to the right of possession to that portion of the "Paul Boy" mineral claim in conflict with the "Lookout" mineral claim, and that the "Lookout" be declared invalid, the defendants asked for a jury:—Held, by the Full Court, DAVIE, C.J., and DRAKE, J. (MCCOLL, J.J., concurring), affirming MCCREIGHT, J.: 1. That as the relief prayed was such as could not have been obtained in a common law action prior to the Judicature Acts, the issues were not proper for trial by a jury. 2. That the character of the action will be determined from the issues raised on the pleadings. *Corbin* v. *Lookout Mining and Milling Company* (Foreign), 5 B. C. R. 281.

13. Jurisdiction with respect to mechanics' liens.]—*Martin* v. *Russell et al.*, 2 B. C. R. 98.

See MECHANICS' LIEN.

14. Jurisdiction to grant new trial.]—*Hutchins* v. *B. C. Copper Co.*, 9 B. C. R. 535.

See PRACTICE, XX.

15. Jurisdiction to make personal order over $1,000 in mechanic's lien suit.]—A claim for personal order to pay an amount over $1,000 was entertained in the County Court as auxiliary to relief by way of enforcement of a mechanic's lien. *Post* v. *Jones*, 2 B. C. R. 250.

16. Jurisdiction — *Venue.*]—Where the plaintiff and defendant to a cause of action within the competence of the County Court reside in different County Court districts, the action should be brought in the County Court in the district where the defendant carries on business, or where the cause of action, wholly or in part, arose (C. C. Amendment Act, 1894, s. 3), and is no reason for bringing the action in the Supreme Court. *McPherson* v. *Johnson et al.*, 3 B. C. R. 465, at p. 467.

17. Jurisdiction.]—A County Court has no equitable jurisdiction other than that conferred by the County Courts Act, C. S. B. C. 1888, c. 25, s. 44, and cannot entertain an action to set aside a chattel mortgage as being a fraudulent preference. *Parsons' Produce Co.* v. *Given*, 5 B. C. R. 58.

18. Jurisdiction of—*Personal injuries—Mineral Act, s. 117, s.-s. 2.*]—An action for damages for personal injuries by an employee in a metalliferous mine may be brought for any amount in the County Court. *Beamish* v. *Whitewater Mines, Limited*, 7 B. C. R. 261.

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3. *Matters of Practice.*

1. Commission to take evidence.]—In an action on a promissory note for $65.40, the defendant pleaded that the note was obtained from him under duress, and the plaintiffs, who lived in Ontario, applied for a commission to take their evidence there:—Held, that as the probable expenses of the commission would not exceed a quarter of the expenses of the plaintiffs' attending the trial, and the application was made bonâ fide, it should be granted. *Thompson et al.* v. *Henderson*, 9 B. C. R. 540.

2. Discovery.]—A County Court Judge has no jurisdiction to grant an order for an oral examination for discovery except in the case of a failure to answer interrogatories. *Roberts* v. *Fraser*, 9 B. C. R. 296.

3. Examinations — *Judgment debtor — Committal order—Conditional—Form of order—Service—Order XIX., rr. 13 and 14—Practice.*]—An order to commit under s. 193 of the County Courts Act must be absolute, not conditional. Where an order to commit a party is made in his absence he must be served with a copy of the order before arrest. Orders to commit should be drawn up and should contain the terms on which discharge out of custody may be obtained as required by Order XIX., r. 13. Where a Registrar is present and takes a minute of an order, the minute so taken is conclusive, even though the Judge's recollection of the order is different. *Wallace* v. *Ward*, 9 B. C. R. 459.

4. Garnishee—*Money paid into Court—Charging order — Priorities.*] — Priorities amongst claimants to moneys paid into Court under garnishee process settled by HENDERSON, Co. J., in favour of parties who obtained first charging order. *Wilson Bros.* v. *Robertson and Rolston*, 9 B. C. R. 30.

5. Garnishee order — *Claimant—Judge by consent trying issue summarily—Appeal—County Court—Garnishee proceedings—Practice.*]—Where the interested parties in garnishee proceedings agree that a County Judge may decide the matter in a summary way, he is in effect an arbitrator and no appeal lies from his decision. Eade v. Winser & Son (1878), 47 L. J., C. P. 584, followed. *Per* DRAKE, J, on appeal: (1) The affidavit leading to a garnishee summons must verify the plaintiff's cause of action and a garnishee is entitled to question the validity of the proceedings at the hearing. (2) The defect in the affidavit was an irregularity only, and payment into Court by the garnishees was a waiver by them of their right to object. (3) The plaintiff may specify in one affidavit several debts proposed to be garnished. *Harris* v. *Harris*, 8 B. C. R. 307.

6. Garnishment — *Practice as to.*]—A garnishee summons may be issued based on a default summons as well as on an ordinary summons. *Jowett* v. *Watts*, 10 B. C. R. 172.

7. Judge—*Powers of County Court.*]—*Re W. N. Bole*, 2 B. C. R. 208.

See PROHIBITION.

8. Interrogatories—*Practice as to.*]—An order for leave to deliver interrogatories under Order XIII., r. 6, may be made ex parte. *Charles T. Daily Co.* v. *B. C. Market Co.*, 8 B. C. R. 1.

9. Notice of trial—*Power of Judge to abridge.*] — A County Court Judge has no jurisdiction to abridge the six clear days' notice of trial required to be given by s. 92 of the County Courts Act. *Hickingbottom* v. *Jordan*, 8 B. C. R. 126.

10. Practice—*Discovery—Oral examination.*]—A County Court Judge has no jurisdiction to grant an order for an oral examination for discovery except in the case of a failure to answer interrogatories. *Roberts* v. *Fraser*, 9 B. C. R. 296.

11. Speedy judgment—*Leave to defend—Appeal—Preliminary objection—Notice of.*]—On a motion for speedy judgment in the County Court it is open to a defendant to set up other defences than those disclosed in his dispute note:—Held, on the facts, reversing LEAMY, CO.J., that the defendant should have unconditional leave to defend. Per IRVING, J.: Defendant should have been allowed to cross-examine plaintiff on his affidavit. Notice of a preliminary objection to an appeal to the Full Court must be served at least one clear day before the time set for the beginning of the sittings. *McGuire* v. *Miller*, 9 B. C. R. 1.

12. Statement in plaint of residence of parties—*Order IV., Rules 2 and 3—Security for costs—Married women—Residence of.*]—The statement in the plaint of the residence of the plaintiff (temporarily resident in California), as "the wife of Maynard Havelock Cowan, of Victoria," &c.:—Held, sufficient. Statement of the residence of defendants as "of Broad Street, Victoria, auctioneers:"—Held, sufficient. The residence of a wife not living apart from her husband is at the place of residence of her husband, and defendant held not entitled to security for costs from the plaintiff on the ground that she was living in California, her husband being resident in Victoria. *Cowan* v. *Cuthbert*, 3 B. C. R. 373.

13. Summons in chambers—*Authority for.*]—There is jurisdiction under the County Court Act and Rules, and it is the proper course to entertain questions of practice arising in that Court upon summons in chambers in the same manner as in Superior Court actions. *Wilkerson* v. *City of Victoria*, 3 B. C. R. 366.

14. Waiver.]—After judgment had been signed in default of a dispute note in a County Court action in which it did not appear on the face of the process that the Court had jurisdiction, the defendants filed a dispute note (what it contained was not shewn) and applied to set aside the judgment and for leave to defend on the merits, and on the hearing of the application, which was dismissed, facts were disclosed shewing that the Court had jurisdiction: — Held, on appeal, that County Court process should shew jurisdiction on its face, but that the defendants by filing the dispute note and applying for leave to defend on the merits had waived their right to object to the jurisdiction. *Beaton* v. *Sjolander, et al.*, 9 B. C. R. 439.

II. SUPREME COURT.

1. *Constitution.*

1. History of Supreme Court.] — It is prerogative right of the Crown to stop a suit between subjects in the subject matter of which it is alleged that the Crown is or may be interested, and in respect of which suit has been brought in behalf of the Crown to have its interest declared. If the Crown right alleged is a right in behalf of the Province, then the Attorney-General of the Province is the proper officer to exercise the prerogative. Observations by MARTIN, J., on the history of the Supreme Court of British Columbia. *Attorney-General for British Columbia and the New Vancouver Coal Mining and Land Company, Limited*, v. *The Esquimalt and Nanaimo Railway Company*, 7 B. C. R. 221.

2. Power of Province to create Mining Courts.]—It is competent to the Province to create Mining Courts, and to fix their jurisdiction, but not to appoint any officers thereof with other than ministerial powers. *Burk* v. *Tunstall*, 2 B. C. R. 12.

3. Power of Provincial Legislature to legislate respecting procedure and residence of Judges—*Delegation of power to Lieutenant-Governor-in-Council.*]—The Provincial Legislature had by a local Act, passed in 1881, declared that the sittings of the Supreme Court for reviewing nisi prius decisions, motions for new trials, &c., should be held only once in each year, and on such day as should be fixed by Rules of Court, and that the Lieutenant-Governor-in-Council should have power to make such Rules of Court:—Held, per BEGBIE, C.J., CREASE and GRAY, JJ.: That the appointment of the days on which the Court should sit for such purposes is a matter of procedure, and of purely judicial cognizance, and is not within the power of local legislature either to fix by positive enactment, or to hand over to be fixed by any other person or persons, but belongs to the Court itself; and that the above sections are in that respect unconstitutional and void. The power conferred by s. 92 of the British North America Act, 1867, on provincial legislatures is a legislative power, enabling them to exercise legislative functions merely, and does not enable them to interfere with functions essentially belonging to the judiciary or to the executive. The Judges of the Supreme Court of British Columbia are officers of Canada, and by ss. 129 and 130 of the British North America Act, 1867, their power and jurisdiction remain as before Confederation, subject only to the constitutional action of the Parliament of Canada under the British North America Act, 1867. The authority given by s. 92, s.-s. 14, to the local legislature to make laws in relation to civil procedure, is confined to civil procedure in the Courts described in that sub-section, and the Supreme Court of British Columbia does not come within the meaning of that sub-section. The power to make laws in relation to criminal procedure in those Courts, i.e., the provincial Courts described in that sub-section, and as to all procedure in all other Courts is, either by the general or the particular words of s. 91 of the British North America Act, 1867, reserved to the Parliament of Canada. The local legislature has no power to diminish or repeal the powers, authorities, or jurisdiction of the Supreme Court, nor to allot any jurisdiction to any particular Judge of the Supreme Court, nor to alter or add to any of the existing terms and conditions of the tenure of office by the Judges, whether as to residence or otherwise. *Sewell* v. *British Columbia Towing Co., the "Thrasher" Case*

1 B. C. Reports, pt. I., page 153. [The Supreme Court Can., to whom status of Court was referred for opinion, reversed opinions and judgment of Full Court; see note at conclusion of case, p. 243, idem.]

4. Power of Province to define jurisdiction of Courts.] — The power given to the provincial governments by the B. N. A. Act, s. 92, s.-s. 14, to legislate regarding the constitution, maintenance and organization of provincial Courts includes the power to define the jurisdiction of such Courts territorially as well as in other respects, and also to define the jurisdiction of the Judges who constitute such Courts. The Acts of the Legislature of British Columbia, C. S. B. C. c. 25, s. 14, authorizing any County Court Judge to act as such in certain cases in a district other than that for which he is appointed, and 53 V. c. 8, s. 9, which provides that until a County Court Judge of Kootenay is appointed the Judge of the County Court of Yale shall act as and perform the duties of the County Court Judge of Kootenay, are intra vires of the said legislature under the above section of the B. N. A. Act. The Speedy Trials Act, 51 Vict. c. 47 (D.), is not a statute conferring jurisdiction, but is an exercise of the power of Parliament to regulate criminal procedure. By this Act jurisdiction is given to "any Judge of a County Court" to try certain criminal offences:—Held, that the expression "any Judge of a County Court" in such Act, means any Judge having, by force of the provincial law regulating the constitution and organization of County Courts, jurisdiction in the particular locality in which he may hold a "speedy trial." The statute would not authorize a County Court Judge to hold a "speedy trial" beyond the limits of his territorial jurisdiction without authority from the Provincial Legislature so to do:—Held, per TASCHEREAU, J.: It is doubtful if Parliament had power to pass those sections of the Act, 54 & 55 Vict. c. 35, which empower the Governor-General-in-Council to refer certain matters to this Court for an opinion. *In re County Courts of British Columbia.* (Special case referred by Governor-General-in-Council to Supreme Court of Canada, taken from 21 S. C. R. 446.)

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2. *Jurisdiction.*

1. Coercive jurisdiction — *Church of England in British Columbia — Church Discipline Act (3 & 4 Vict. c. 86)—Injunction.*] —Held, by BEGBIE, C.J., on an application for an injunction, that, though the letters patent from which the Bishop of Columbia derives his authority do not confer upon him any effective coercive jurisdiction over his clergy, he could still enforce obedience by having recourse to the civil Courts. This Court will, on proper application, supply coercive jurisdiction to enforce the sentence of ecclesiastical tribunals of assessors, appointed in accordance with the provisions of the Church Discipline Act (3 & 4 Vic. c. 86), so far as its provisions are applicable to this country, when the finding of such tribunal is not unreasonable, and the proceedings before it are conducted in a way consonant with the principles of justice, as understood in a Court of Equity. Subsequently, at the hearing, GRAY, J., made the injunction perpetual. Constitution and authority of the Bishop of Columbia. General status of the Church of England in British Columbia. *Bishop of Columbia* v. *Cridge*, 1 B. C. R., pt. I., page 5.

2. Of Court—*To award costs on dismissing a matter for want of jurisdiction to hear it.*]—*Hendyxx* v. *Heanessey*, 3 B. C. R. 53.

3. Crown—*Right of, to sue in County Court.*]—It is a prerogative right of the Crown to bring a suit in a County Court, even though as between subject and subject such Court would not be open, either because of the defendant not residing in or of the cause of action not arising in the district. *The King* v. *Campbell*, 8 B. C. R. 208.

4. Of Divisional Court—*Judgment appealed from final or interlocutory.*]—Plaintiffs having recovered judgment in an action against defendant J. C., brought this action on behalf of themselves and his other creditors against him, J. C., jr., and H., to set aside prior judgments recovered by the two latter against him upon the ground that they were fraudulent and collusive as against the plaintiff's judgment. Pending this action, the plaintiffs arrested J. C. on a ca. re. under this judgment, and defendants herein pleaded such arrest, and that J. C. remained in custody thereunder, as a satisfaction of that judgment and bar to this action. Upon issue in law and argument of the point:—Held, per WALKEM, J., dismissing the action: That though the arrest and detention of J. C. on the ca. re. did not extinguish the debt, it operated meanwhile as a satisfaction of the judgment, and was a good defence to the present action, the object of which was to establish a remedy by fi. fa., which was suspended. On appeal to the Divisional Court (DAVIE, C.J., CREASE and MACREGHT, JJ.):—Held, (1) That the judgment appealed from was not a final judgment, as it would not have been so had the point been decided the other way, and that the Divisional Court had jurisdiction, following Salaman v. Warner, (1891), 1 Q. B. 734. (2) That the disability of the plaintiff was limited to this, that he could not resort to any mode of execution on the judgment other than the ca. sa., or any charge under 1 & 2 Vict. (Imp.), c. 110, but that he had a status to impeach the prior judgments as interfering with other remedies left to him under his judgment, *e.g.*, registration thereof under the Execution Act against the judgment debtor's lands, which is not an execution. (3) That the right of execution might be restored by the death or escape of J. C., or on his taking gaol limits under s. 12 of the Execution Act, and that the action might be maintained for a declaration of right independently of any claim to present relief:—Semble, that the action might be maintained by plaintiff on behalf of the other creditors of J. C., who were strangers to the ca. sa., independently of his personal status. *Robert Ward & Co.* v. *John Clark, John Clark, jr., and Heanessey*, 4 B. C. R. 71.

5. Divisional Court—*Appeal.*]—No appeal lies to the Divisional Court from an order setting aside an order giving leave to issue a writ of summons for service out of the jurisdiction. *Fuller* v. *Yeran*, 1 B. C. R., pt. II., 330.

6. Of Divisional Court.] — An order setting aside an award, and giving

apply for further directions is not a final order, and the Divisional Court has jurisdiction to entertain an appeal from it. *Wood* v. *Gold*, 3 B. C. R. 281.

7. Of Exchequer Court in Admiralty — *Damages for breach of contract — Owner within jurisdiction—Entry of appearance no waiver of objection to jurisdiction.*]—*Rithet* v. *Ship "Barbara Boscowitz,"* 3 B. C. R. 445.

See ADMIRALTY, IV.

8. Equitable jurisdiction.]—It is part of the equitable jurisdiction of the Court to enforce payment of rent when the lease is void, and when the value of such lease, if valid, would exceed $2,500, and the County Court has no jurisdiction. *B. C. Board of Trade Building Association, Limited Liability,* v. *Tupper and Peters*, 8 B. C. R. 291.

9. Foreign contract — *Jurisdiction of, to enforce foreign contract against non-resident alien.*]—*Baxter* v. *Jacobs et al.*, 1 B. C. R., pt. II., 373.

See CONTRACT, IV. 2.

10. Full Court — *Jurisdiction of, to deprive party of costs.*]—Under Rule 751 (a) the discretion as to costs in an action tried with a jury is exercisable by the Judge or Court of the first instance only; the Full Court has no power to make any order therein, except on appeal upon the question whether or not "good cause" has been shewn for depriving the successful party of his costs. Remarks as to jurisdiction of Full Court. *Gibson* v. *Cook, et al.*, 5 B. C. R. 534.

11. Full Court—*No jurisdiction to hear motion for judgment.*]—The Full Court is an appellate Court, and has no jurisdiction to hear a motion for judgment on the findings of a jury referred to it by a trial Judge. *McKelvey* v. *Le Roi Mining Company, Limited*, 8 B. C. R. 268.

12. Full Court—*Jurisdiction of, to hear application which may be made before single Judge.*]—The Full Court will not hear a motion for a rule nisi to quash a conviction; the motion should be made to a single Judge. *Rex* v. *Tanghe*, 10 B. C. R. 297.

13. Judge—*Jurisdiction of, to vary order of another Judge by adding conditions.*]—A Judge has no jurisdiction to add to an order made by another Judge for redemption of a mortgage on payment of the debt and costs to date of decree, a further term adding subsequent costs and requiring their payment as a further condition of redemption and charge upon the lands. Per BEGBIE, C.J., CREASE, WALKEM and DRAKE, JJ. *Lehman* v. *Wilkinson*, 2 B. C. R. 19.

14. Judge in County Court actions—*C. C. Amendment Act*, 1888.]—The jurisdiction of a Supreme Court Judge to perform the duties of a County Court Judge, in an action in the County Court, does not attach until the existence of the consolidated statutory pre-requisites to the exercise of the jurisdiction are made to appear as a matter of fact. A Court on dismissing a motion for want of jurisdiction has power to award costs. *Hendryx* v. *Hennessey*, 3 B. C. R. 53.

15. Judge — *Powers of Local Judge of Supreme Court.*]—A local Judge of the Supreme Court has jurisdiction to make an order for an *ex juris* writ. The affidavit leading to the writ should be reasonably precise as to the essential facts alleged to constitute the cause of action, and if there are omissions of substance the order should not be made. A Supreme Court Judge has power on motion to set aside an ultra vires order made by a Judge of limited jurisdiction. *Tate et al.* v. *Hennessey et al.*, 7 B. C. R. 262.

16. Judgment—*Power of, to enter final, where no evidence to sustain verdict.* 2 B. C. R. 246.

See APPEAL, VII.

17. Judgment—*Power of, to vacate before drawn up.*]—Per DAVIE, C.J.: Rule 463 providing: "No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose," is imperative, and plaintiff was not absolved from compliance by tendering a præcipe for a writ of ca. sa. to the officer of the Court, and accepting his statement that it was not necessary. Under s. 7 of the Execution Act the provisions of 1 & 2 Vict. (Imp.) govern the form of the affidavit for ca. re., and an affidavit to hold defendant to bail to answer an action for an ordinary debt is sufficient without the allegations required by s. 10 in an affidavit for a ca. sa. Section 9 of the Act, providing that "No person shall be arrested or held to bail for non-payment of money, unless a special order for the purpose be made on an affidavit establishing the same circumstances as are necessary for obtaining a writ of ca. sa. under this Act, and in such case, the arrest, when allowed, shall be made by a writ of attachment corresponding as nearly as may be to a writ of ca. sa.," has relation only to arrests for non-payment under judgments and orders of the Court analogous to process for contempt, and does not apply to ordinary bailable process for debt. On appeal to the Divisional Court (CREASE, WALKEM and DRAKE, JJ.), the Court held the defendant was entitled to be discharged on a point not taken by counsel, and delivered a verbal judgment dismissing the appeal without costs. The next day, before the order was drawn up, counsel for plaintiff brought authorities to the attention of the Court contrary to the view upon which the appeal was dismissed, and asked leave to reargue:—Held, that it is in the discretion of the Court to vacate an order before it is drawn up. Upon re-argument:—Held, affirming DAVIE, C.J., upon the same grounds, that the affidavit required by 1 & 2 Vict. c. 10, for ca. re. was sufficient to support that writ and the ca. sa. (2) Overruling DAVIE, C.J., that the non-filing of the præcipe for the ca. sa. was an omission attributable to the act of the officer of the Court, and should be relieved against under Supreme Court Rule 950, and the appeal from order discharging defendant allowed with costs. *Kimpton* v. *McKay*, 4 B. C. R. 196.

18. Mechanics' liens — *Jurisdiction of, in respect to.* 2 B. C. R. 98.

See MECHANIC'S LIEN.

19. Making order in Court below—*After allowance of appeal to Supreme Court of Canada.*]—The Supreme Court of British

Columbia has no power to make an order controlling proceedings under its judgment, after the perfecting of an appeal from such judgment to the Supreme Court of Canada. *Foley v. Webster*, 2 B. C. R. 251.

20. Order effectuating judgment of Court of Appeal — *Costs — Refund of, on reversal of judgment.*]—Plaintiff recovered a judgment, which, on appeal to the Full Court, was reversed with costs to the defendant. Plaintiff paid these costs. On appeal, the Supreme Court of Canada restored the original judgment with costs, but made no order to refund the costs paid by the plaintiff. Order made for defendant to refund the costs, following Rodger v. Comptoir D'Escompte de Paris, L. R. 3 P. C. 465, *Davies v. McMillan*, 3 B. C. R. 72.

21. Order of reference — *A matter of jurisdiction.*]—The power to make an order of reference in an action is a matter of jurisdiction, and not merely a question of "procedure and practice," within the meaning of s. 3 of the Judicature Ordinance, and therefore the Yukon Court has no power under this section to make an order of reference. *Williams et al. v. Faulkner and Kroenert; Raymond et al. v. Faulkner and Kroenert*, 8 B. C. R. 197.

22. Order of reference.]—In an action in the Yukon territory in which the question in issue was as to the true boundary between a creek and a hill claim, a reference to ascertain the boundary was ordered on the application of the plaintiff, the referee adopted a line run by a surveyor named Gibbons under instructions from the Gold Commissioner (after the location of plaintiff's claim), for the purpose of establishing an official boundary between the hill and creek claims, and which cut off part of plaintiff's claim. On motion to the Court the report was confirmed and judgment entered accordingly:—Held, on appeal, per WALKEM, J.: (1) that the Gibbons line was a nullity, and as the Court below adopted it and based its judgment upon it, that judgment must be set aside; 2. The reference was a nullity, as it involved the determination of a mixed question of law and fact, and was not a matter of "practice and procedure," but of jurisdiction; and it was beyond the power of the Court to order the reference even by consent. Per IRVING, J., allowing the appeal (following Williams v. Faulkner and Roenert (1901), 8 B. C. 197): that the Yukon Court has no power to make an order of reference, and as the whole proceedings before the referee were founded on a mistaken idea of the jurisdiction to refer, the doctrine of extra cursum curiæ did not apply. Per MARTIN, J., dissenting, that on the motion to vary or refer back the report, which was dismissed, the substantial question in the action was disposed of, and there was nothing properly open for the consideration of the Appeal Court. *Stevenson et al. v. Parks et al.*, 10 B. C. R. 387.

23. Provincial Legislature — *Whether jurisdiction of Supreme Court is subject to control by.*]—*Scwell v. B. C. Towing Co.*, 1 B. C. R. pt. I., 133.

24. Reference to particular Judge—*Unauthorized by statute — "Court" and "Judge" distinguished.*] — By the Supreme Court Reference Act, 1891, s. 1, "The Lieutenant-Governor-in-Council may refer to the Supreme Court of British Columbia, or to a Divisional Court thereof, or to the Full Court, for hearing and consideration, any matter which he thinks fit to refer, and the Court shall thereupon hear and consider the same." Upon this Statute the Lieutenant-Governor-in-Council assumed to refer a certain question and issue "to the Honourable Mr. Justice DRAKE for decision and report." On appeal to the Full Court from the report of Mr. Justice DRAKE:—Held, that there was no power to refer otherwise than to the Supreme Court, and that the proceedings appealed from before Mr. Justice DRAKE were coram non judice. *In the matter of the Harsefly Mining Co., In re Supreme Court Reference Act*, 1891, 4 B. C. R. 165.

25. Time — *Extension of.*] — *Dunlop v. Haney*, 6 B. C. R. 320.

See TENDER.

26. Time—*Jurisdiction to extend.*

See APPEAL, VIII.

See MINES AND MINERALS, XLIII.

27. Venue in criminal cases — *Right of Supreme Court Judge to try without commission.*]—The plaintiff in error was committed for trial on a charge of murder. The scene of the alleged homicide was in the bailiwick of the Sheriff for Kootenay. On the application of the Crown, Victoria (in the bailiwick of the Sheriff of Vancouver Island) was fixed as the place of trial; the Chief Justice, before making the order, required from the Crown "an undertaking that the Crown would abide by such order as the Judge who might preside at the trial should think just to meet the equity of s. 11 of 32-33 Vict. c. 29." The order so pronounced was not drawn up, but a document incorrectly stating the order, and omitting all mention of the terms imposed, was signed at the time and handed to the gaoler, and under this document the prisoner was detained in the gaol at Victoria until his trial. The prisoner was tried and found guilty at the sitting of the Court of Oyer and Terminer and General Gaol Delivery held at Victoria, under the Assize Court Act, 1885, and presided over by GRAY, J., a Judge of the Supreme Court of British Columbia, and a Justice named in a Commission of Oyer and Terminer and General Gaol Delivery issued by the Lieutenant-Governor. In the body of the indictment there was no venue stated, and the marginal venue was simply "British Columbia to wit." The jurors were selected, not from the whole of the bailiwick of the Sheriff for Vancouver Island, as defined by the Sheriffs' Amendment Act, 1878, but from that portion of the bailiwick created by the Jurors' Act, 1883, as Victoria District. On the return to a writ of error, the prisoner alleged a diminution of the record, and applied for a writ of certiorari:—Held, (1), that where an order has been made orally, and afterwards imperfectly drawn up (i.e.), without specifying the terms upon which it was made, and such terms appear in the Judge's note, made at the time of the application, it is proper, in making up the record on a writ of error prayed, that a true and perfect order should be drawn up and placed on the record:—Held, (2) that the refusal of the Judge at the trial to allow the

prisoner's counsel to poll the jury after verdict, was not a matter that could be dealt with on a writ of error, and therefore should not appear in the record. On the writ of error:—Held, (1) that assuming the Lieutenant-Governor's commission to be void, the Court was properly constituted without commission, under s. 14, Judicature Act, 1879, and the Assize Court Act, 1885. Held, (2) following McLean's Case, that the commissions of Oyer and Terminer and General Gaol Delivery was sufficient, and that the Lieutenant-Governor had power to issue it under s. 129, B. N. A. Act, 1867. Held, (3) that the commission was not exhausted by reason of the Justices therein named having held under it Courts of Oyer and Terminer in other districts of the Province. Held, (4) that there was no objection to the summoning of jurors from a limited portion of the shrievalty, under the Jurors' Act, 1883, as that Act in effect created new districts for the purposes of the administration of justice in criminal cases. Held, (5) that the prescribing of the qualifications of jurors, and the manner of preparing the jury lists, by the Jurors' Act, 1883, were not matters of criminal procedure within the meaning of s. 91, s.-s. 27, of B. N. A. Act, 1867, but were matters belonging to the "organization of Provincial Courts," within the meaning of s. 92, s.-s. 14, and therefore intra vires of the Provincial Legislature. Held, (6) that the venue was sufficiently stated in the record, and that the marginal venue "British Columbia, to wit," was at the lowest but an imperfect venue, and therefore cured by s. 23 Criminal Procedure Act, 1869. Held, per CREASE, J., that the statement of the imposition of conditions in an order under s. 11, 32-33 Vict. c. 29, is not jurisdictional. Held, per BEGBIE, C.J., that any application for an order for a change of venue under s. 11 should be made as early as possible after the commitment. Held, by GRAY, J., after argument before himself and brother Justices, sitting as assessors, on a case stated, that on a trial on a charge of felony the prisoner is not entitled, in this Province, as of right, to have the jury polled; and that where, in such a trial, after verdict given, the prisoner's counsel moved to have the jury polled, but as the Court perceived nothing to create a doubt respecting the agreement and concurrence of the whole jury, the motion was refused. Held, that such refusal was proper. *Robert E. Sproule, plaintiff, in error,* v. *The Queen, defendant, in error,* 1 B. C. R. pt. II., 219.

28. Waiver of right to object to.]—*Howay & Reed* v. *Dom. Permt. Loan Co.*, 6 B. C. R. 551.

See PRACTICE, XV., XXXVI.

29. Yukon Territorial appeal—*Jurisdiction of Full Court to hear.*]—The Act 62 & 63 Vict, c. 11, giving the right of appeal to the Judges of the Supreme Court of British Columbia sitting together as a Full Court in cases from the Yukon as therein specified, does not apply to a case tried before the Act came into force and decided after. *Canadian and Yukon Prospecting and Mining Company, Limited,* v. *Casey, et al.*, 7 B. C. R. 373.

See also APPEAL—JURISDICTION—JUDGES.

3. *Policy in General.*

1. Actus curiae neminem gravabit.]—It is a good defence to an action on a bond conditioned for the construction of a railway by a specified time, that the delay was wholly caused by an injunction of a Court of competent jurisdiction though afterwards overruled. *Attorney-General of British Columbia* v. *The Canadian Pacific Railway Company, et al.*, 1 B. C. R. pt. II., 350.

2. Superior Court—*Restraining proceedings in to avoid inconvenience and multiplicity of actions — Discretion — How exercised.*]—By s. 278 Municipal Act, 1892, B. C., "Before any by-law . . . shall be valid or come into effect, the council shall cause it to be published once in every week for four weeks in, etc. . . . after which the by-law may be re-considered by the council; and, if reconsidered and finally adopted by the council within thirty days from the termination of the four weeks of publication aforesaid, it shall come into effect after seven days from its final adoption by the council, unless the date of its coming into effect is otherwise postponed by such by-law." By s. 279, unless quashed, "the by-law shall, notwithstanding any want of substance or form, either in the by-law itself or in the time or manner of passing the same, be a valid by-law." The by-law in question was not reconsidered and finally adopted by the council within the thirty days above limited. No motion to quash the by-law within the time limited for that purpose had been made. The action was for a declaration that the by-law was invalid, and plaintiffs had obtained an interim injunction restraining actions against them in the County Court, to recover a rate assessed against them thereunder:—Held, per DRAKE, J.: Dissolving the injunction, that the by-law was invalidated by s. 279. Semble, that the objection was not fatal to the by-law. On appeal to the Divisional Court:—Held, per CREASE and MCCREIGHT, JJ.: That the discretion of a superior Court is against assuming to restrain a number of actions in an inferior Court, merely because the question upon which they depend may be finally decided once for all in one Superior Court action. *Belrose* v. *The Municipality of Chilliwack*, 3 B. C. R. 115.

3. Mining disputes.] — The Court should deal with mining disputes upon the principles of a Court of Equity, and should discountenance a plaintiff whose action is based upon defects in title, knowledge of which was acquired by him while a government employee in a mining record office; it being contrary to his duty to the public, and those interested in the records, for him so to use such information. *Granger* v. *Fotheringham et al.*, 3 B. C. R. 590.

III. DIVORCE COURT.

1. Divorce jurisdiction — *Nullity of marriages—Introduction of English law.*]—Held, by CREASE and GRAY, JJ. (BEGBIE, C.J. dissentiente): — 1. That the Supreme Court of British Columbia has in British Columbia all the jurisdiction conferred on the "Court for Divorce and Matrimonial Causes" under the Matrimonial Causes Act, 1857 (20 and 21 Vict. c. 85), as amended by

21 and 22 Vict. c. 108. Per GRAY, J.: That the legislative adoption by British Columbia in March, 1867, of the English law as it existed in England on the 19th November, 1858, did not necessitate the adoption of the machinery by which the English law was carried out in England, but, coupled with the language constituting the Supreme Court in British Columbia, was a direct legislative sanction and authority to carry out that law in the province by local tribunals and local machinery, and clothed the Supreme Court of the province with ample power to hear and determine divorce and matrimonial causes. *M., falsely called S——, v. S——*, 1 B. C. R., pt. I., page 25.

2. Full Court—*No jurisdiction as an appellate Court in matters of divorce.*]—In construing statutes the legislature must be presumed to contemplate dealing only with subjects within its legislative control, and as provincial legislatures have no power to confer divorce jurisdiction upon any Court, the language of the Supreme Court Act, C. S. B. C. (1888), c. 25, s. 67, providing that "an appeal shall lie to the Full Court from every judgment, decree or order made by a Judge of the Supreme Court, whether final or interlocutory, and whether such judgment, decree or order shall be in respect of a matter specified in the Rules of Court or not," cannot be construed to confer upon the Full Court of British Columbia any appellate jurisdiction in divorce matters. The Imperial Act 20 & 21 Vict. c. 25, s. 55, giving an appeal to the Full (Divorce) Court from all decisions of a single Judge thereof, is inapplicable to the Full Court of British Columbia. *Scott v. Scott*, 4 B. C. R. 316.

IV. MISCELLANEOUS.

1. Contempt of Court.] — *Stoddart v. Prentice*, 6 B. C. R. 308.

See CONTEMPT.

2. The Court of a Police Commissioner "is a Court of Record for British Columbia" within the meaning of s. 2 of British Columbia Replevin Act. *Keefer v. Todd*, 1 B. C. R., pt. II., 249.

3. Court house—*Definition of.*]—*In re Close & Barry*, 2 B. C. R. 131.

See INTOXICATING LIQUORS.

4. "Court" distinguished from "Judge."]—By the Supreme Court Reference Act, 1891, s. 1, "The Lieutenant-Governor-in-Council may refer to the Supreme Court of British Columbia or to a Divisional Court thereof, or to the Full Court, for hearing and consideration, any matter which he thinks fit to refer, and the Court shall thereupon hear and consider the same. Under this statute the Lieutenant-Governor-in-Council assumed to refer a certain question, and issue "to the Honourable Mr. Justice DRAKE for decision and report." On appeal to the Full Court from the report of Mr. Justice DRAKE:—Held, that there was no power to refer otherwise than to the Supreme Court, and that the proceedings appealed from before Mr. Justice DRAKE were coram non judice. *In the matter of the Horsefly Mining Co., In re Supreme Court Reference Act*, 1891, 4 B. C. R. 165.

5. Equitable interference — *Dilatory processes of, as ground for.*]—*Edison Gen. Electric Co. v. Van. & New West. Tram. Co.*, 4 B. C. R. 469.

See JUDGMENT.

6. Infants—*Responsibility of Courts towards.*]—*Ex parte Brown*, 2 B. C. R. 110.

See INFANTS.

7. Receiver order must be made by.]—*Wakefield v. Turner*, 6 B. C. R. 216.

See RECEIVER.

8. Revision — *Court of—Person assessed is not bound to appeal to.*]—*Coquitlam v. Hoy*, 6 B. C. R. 546.

See MUNICIPAL CORPORATIONS.

9. Small Debts Court.]—An action to enforce a mechanics' lien is not one of debt within the meaning of s. 2 of the Small Debts Act. In the County Court of Atlin. *Dillon v. Sinclair*, 7 B. C. R. 328.

COURT STENOGRAPHER.

1. Person undertaking to act as such —*Estoppel—Whether bound to furnish copy of notes—Fees payable to.*]—A person who undertakes to act as Court stenographer cannot refuse to furnish parties to a suit with a transcript of his notes merely because his fees have not been paid by the Crown. *Pender v. War Eagle, Ex parte Jones*, 6 B. C. R. 427.

COVENANT.

1. Corporation sole.]—Described in his corporate capacity, expressed to be on behalf of himself, his heirs, executors and administrators, will not bind his successors in office. *Paris v. Bishop of New Westminster*, 5 B. C. R. 450.

2. Express covenant overrides and excludes an implied covenant.]—*Rithet v. Beaven*, 5 B. C. R. 457.

3. Sub-lease—*Whether breach of covenant in lease not to assign — Contemporaneous documents relating to same matter — Covenants in — Whether dependent or independent.*]—*Griffiths v. Canonica*, 5 B. C. R. 67.

See CONTRACT, VI.

CREDITOR.

1. Costs—*Creditors' action to preserve fund —Payable out of fund.*]—Costs incurred in a creditors' action in preserving for creditors property which had been fraudulently transferred, are a first lien upon the fund recovered, and are allowed as between solicitor and client. In re the Judgments Act: *Hood Aldridge & Co. v. Tyson*, 9 B. C. R. 233.

2. Credit — *Effect of.*] — *Haggerty* v. *Grant et al.*, 2 B. C. R. 173.

See MECHANICS' LIEN.

3. Creditors' Trust Deeds Act—*Partnership assets only assigned.*] — An assignment by a firm for benefit of creditors which was construed by the Court to be an assignment of partnership assets only, may be a good and valid assignment within the meaning of the Creditors' Trust Deeds Act. *Eastman* v. *Pemberton*, 7 B. C. R. 459.

4. Creditors' Trust Deeds Act.] — There is inherent jurisdiction in Courts of Equity to remove trustees and appoint new ones in proper cases. A trustee for creditors who is also employed as solicitor to manage an insolvent estate is a person whose interest conflicts with his duty to the creditors as trustee. The constitutionality of a statute will only be considered where necessary to a decision of the question before the Court. *Re Dickinson*, 2 B. C. R. 262.

5. Creditors' Trust Deeds Act — *Exemption—Onus of proof.*]—A deed of assignment of the estate and effects of insolvents for the benefit of their creditors executed on 26th March, 1896, pursuant to the Creditors' Trust Deeds Act, 1890, excepted "such personal property as may be selected by the said debtors, under the Homestead Act and Homestead Amendment Act, 1890:"—Held, that the onus was on the claimant to shew that the claim was not within the exception to the right of exemption provided by s. 10 of the Homestead Act, 1890, as amended by the Act of 1895, s. 2, in regard to goods seized in "satisfaction of a debt contracted for or in respect of such identical goods," and in the absence of evidence upon the point the claim was disallowed:—Semble, the Homestead Act Amendment Act, 1896, c. 23, s. 2, directing the method of selecting the goods proposed to be exempted, is retroactive in its effect, as regulating procedure, and applied to the claim under the deed in question though passed after the date of the deed, and that the claim was also invalid for want of compliance with that statute. *In re Sharp*, 5 B. C. R. 117.

6. Creditors' Trust Deeds Act.] — Debtors assigned, under the Creditors' Trust Deeds Act, all their personal property, credits and effects that might be seized and sold under execution and afterwards claimed, as exempt, chattels to the amount of $500:—Held, on an originating summons for directions, that by the form of assignment the claimants were precluded from claiming exemption. Trustees' remuneration in this case fixed at five per centum. *In re Ley et al.*, 7 B. C. R. 94.

7. Creditors' Trust Deeds Act — *Preference for wages limited to salary—Not applicable to piece work.*]—*Tam* v. *Robertson*, 9 B. C. R. 505.

See ASSIGNMENTS FOR BENEFIT OF CREDITORS.

8. Creditors' Trust Deeds Act—*Privileged claim for rent.*]—*Gold* v. *Ross*, 10 B. C. R. 80.

See LANDLORD AND TENANT.

9. Entries in books of transfer of shares—*Not notice to creditors.*]—*Ex parte Bibby*, 1 B. C. R., pt. II., 94.

See COMPANY, VI.

10. Insolvent estate—*Priority of creditors of.*]—*Wilson* v. *Marvin*, 3 B. C. R. 327.

See INSOLVENCY.

11. Pressure—*By.*]—*Doll* v. *Hart*, 2 B. C. R. 32.

See CHATTEL MORTGAGE.

12. Right of—*To impeach voluntary conveyance.*]—*McKenzie et al.* v. *Bell Irving*, 2 B. C. R. 241.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

13. Secured creditors—*Rights of with respect to legatee.*]—*Harper* v. *Harper et al.*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

14. Valuation—*Not entitled to withdraw original valuation in winding-up matter.*]—*In re B. C. Pottery Co.*, 4 B. C. R. 525.

See COMPANY, IX. 6.

See also ASSIGNMENT FOR BENEFIT OF CREDITORS — ASSIGNEE — FRAUDULENT CONVEYANCE.

CREW.

1. Landing of.] — A municipal by-law providing "The medical health officer shall have power to stop, detain and examine every person or persons, freight, cargoes, boats * * * coming from a place infected with a pestilential or infectious disease, in order to prevent the introduction of the same into the city," does not authorize the medical health officer or other municipal authorities to detain a steamship and its passengers and crew coming from an infected place, or to prevent them from landing within the municipal limits, without reference to a proper examination for the purpose indicated and its results, as shewing danger of their introducing the disease. 2. That the stopping of all the passengers without examination was not an exercise of the powers reposed in the corporation by the by-law, but was an interference with trade and commerce and was ultra vires. 3. That the by-law, and the statute authorizing it, were intra vires. *The Canadian Pacific Navigation Co.* v. *City of Vancouver*, 2 B. C. R. 193.

CRIMINAL LAW.

I. Abduction.

1. Gist of offence.]—Prisoner was indicted for having, at the city of Victoria, unlawfully caused to be taken a certain unmarried girl, to wit, one B. R., being under the age of sixteen years, out of the possession and against the will of her father, contrary to s. 283 of the Criminal Code. The evidence shewed that the girl, by persuasion of letters written by the prisoner in Victoria, Canada, addressed to and received by her within the State of Washington, U. S. A., was induced to leave her father's house in that State and meet the prisoner at Victoria. Upon meeting her there he suggested that it was not too late for her to return home, but she declined, and the prisoner thereupon took her to a house near Victoria, where they spent the night together:—Held, *per* Davie, C.J., at the trial, convicting the prisoner, that the Court had jurisdiction, as the offence was wholly committed within Canada. Upon case stated for the opinion of the Court of Criminal Appeal, Davie, C.J., and Crease, J., affirmed the judgment:—Held, *Per* McCreight, Walkem and Drake, JJ., quashing the conviction: That it was essential to the offence that the girl should have been in the possession of her father at the time of the taking, and that upon the facts, when she met the prisoner at Victoria, she had already abandoned that possession. *Per* McCreight and Walkem, JJ.: That the reception by the girl of the letters was the motive cause of her abandoning her father's possession, and therefore a material factor in the offence, which consequently, in part, took place outside the jurisdiction. *Per* Walkem, J.: That the letters, so far as they held out the inducement, should not have been admitted in evidence at the trial. *Regina* v. *Blythe*, 4 B. C. R. 276.

II. Abortion.

1. Code, s. 743 — *Murder—Evidence of cause of death—Insufficient post mortem examination—Effect of.*]—On the trial of the accused for murder, by committing an abortion on a girl, it appeared in evidence that a port mortem examination of the girl had been made by a medical man, which was, however, confined to the pelvic organs and was, upon the medical evidence, inconclusive as to the cause of death, but there was other evidence pointing to the inference that death was caused by the operation. Davie, C.J., left the case to the jury, but reserved a case for the Court of Criminal Appeal as to whether there was, in point of law, evidence to go to the jury, upon which they might find that the death of the girl resulted from the criminal acts of the accused. The jury found a verdict of guilty: Held, *per* McCreight, J. (Davie, C.J., and Walkem, J., concurring), that there is no rule that the cause of death must be proved by post mortem examination, and that there was evidence to go to the jury of the cause of death notwithstanding the absence of a complete post mortem examination. *Regina* v. *Garrow*, 5 B. C. R. 61.

III. Adjournment.

1. Crown — *Power of Court to grant, etc.*]—Although the Crown elects to proceed with a speedy trial in the absence of a material witness, and although the trial has commenced, the Court has power to grant an adjournment to enable the Crown to get the witness. *Regina* v. *Gordon*, 6 B. C. R. 160.

2. Speedy Trials Act—*Adjournment of trial.*]—An adjournment of a speedy trial to permit the Crown to obtain better evidence, that a witness examined on the preliminary hearing was absent from Canada in order to admit his deposition, refused as contrary to the spirit of the Act. *Regina* v. *Morgan*, 2 B. C. R. 329.

IV. Appeal.

1. Case stated.]—The provision in s. 87 of the Summary Convictions Act, that the appellant shall, within three days after receiving the case stated, transmit it to the district registry, is a condition precedent to the jurisdiction of the Court to hear appeal. *Cooksley* v. *Nakashiba*, 8 B. C. R. 117.

2. Case stated.]—The recognizance required by s. 900, s.-s. 4 of the Criminal Code, is a condition precedent to the jurisdiction of the Court to hear the appeal and no substitute therefor is permissible. *Rex* v. *Geiser*, 8 B. C. R. 169.

3. County Court — *Finality of decision on.*]—The decision of the County Court in appeal from a summary conviction is final and conclusive, and a Supreme Court Judge has no jurisdiction to interfere by habeas corpus. *Rex* v. *Beamish*, 8 B. C. R. 171.

4. Divisional Court.]—No appeal lies to a Divisional Court from an order appointing commissioners to take evidence under s. 23, s.-s. 2, of the Criminal Law Amendment Act, 1890. *Regina* v. *Johnson et al.*, 2 B. C. R. 87.

5. Magistrate — *Taking view.*]—On the trial for selling an intoxicant to an Indian,

the magistrate, after hearing the evidence, but before giving his decision, went alone and took a view of the place of sale:—Held, (1) quashing the conviction, that this proceeding was unwarranted; (2) that ss. 108 of the Indian Act and 889 of the Criminal Code do not prevent proceedings by certiorari where the ground of complaint is that something was done contrary to the fundamental principles of criminal procedure. *Re Sing Kee*, 8 B. C. R. 20.

6. Improper admission of—*Effect of.*] —Under s. 746 of the Code, the improper admission of evidence at a criminal trial cannot be said in itself necessarily to constitute a wrong or miscarriage, but it is a question for the Court, upon hearing of any appeal, whether in the particular case it did so or not. Makin v. A. G. for N. S. W. (1894), A. C. 57, distinguished. *Regina* v. *James Woods*, 5 B. C. R. 586.

7. Notice—*Description of offence—Sufficiency of.*]—A notice of appeal from a conviction for playing in a common gaming house, which describes the offence for which the appellant was convicted as "looking on while another was playing in a common gaming house," is insufficient. *Rex* v. *Mah Yin*, 9 B. C. R. 319.

8. Notice of appeal — *Service of.*]—A notice of appeal from a summary conviction (Provincial), served upon the convicting magistrate, is not invalid because it is not also addressed to and served upon the respondent. It is not a pre-requisite to the right of appeal that the person convicted should have been taken into custody:—Quære, whether service of notice of appeal on respondent's solicitor would not be sufficient in any event. *Rex* v. *Jordan*, 9 B. C. R. 33.

9. Payment of fine—*Effect of on right of appeal.*]—A person, by paying his fine on a summary conviction loses any right of appeal he might otherwise have had under s. 880 of the Criminal Code. Where, on an appeal from a summary conviction, an appellant makes a money deposit in lieu of recognizance, the deposit, which includes both the fine and the security for costs of appeal, should be returned by the justice into the appellate Court, and in default the appeal cannot be heard. *Rex* v. *Neuberger*, 9 B. C. R. 272.

10. Recognizance on.] — The recognizance required by s 71 (c) of the Summary Convictions Act (Provincial) must be entered into before the appeal can be entered for trial. *Regina* v. *King*, 7 B. C. R. 401.

11. Right of.] — The right of appeal given by s. 782 of the Criminal Code, as amended by 58 & 59 Vic. (Can.) 40 (a), from conviction by two Justices of the Peace, under Code s. 783 (a) and (f), is not taken away in British Columbia by Code s. 784, s.-s. 3, as amended by 58 & 59 Vic. (Can.) c. 40 (b). *Regina* v. *Wirth and Reed*, 5 B. C. R. 114.

12. Summary conviction—*Objection as to by-law not taken in Court below.*]—A defendant convicted on summary conviction of an infraction of a city by-law, is estopped from contending on appeal that the by-law is ultra vires unless the objection was taken before the magistrate. He is estopped from appealing on the merits if he pleaded guilty before the magistrate. *Regina* v. *Bowman*, 6 B. C. R. 271.

13. Power of Lieut.-Governor to issue commissions of Oyer and Terminer—*32 and 33 Vic. c. 29, s. 11—Assize Court Act, 1885.*] — British Columbia (in 1885) not being divided into judicial districts for criminal purposes, any place in the Province was a good venue for the trial of a criminal case. (2) The Lieut.-Governor in Council has authority to issue commissions of Oyer and Terminer. (3) A Judge of the Supreme Court has power to try criminal cases, apart from the authority of a commission of Oyer and Terminer, under s. 14, Judicature Act, 1879, and the Assize Court Act, 1885. *Regina* v. *Malott*, 1 B. C. R., part II., 207.

NOTE.—But this was overruled in *Malott* v. *Reginam*, *post*, 1 B. C. R., pt. II., 212.

V. BAIL.

1. After commitment for trial.] — A Judge who has committed a prisoner for trial for perjury under R. S. C. c. 154, s. 4 (a), is not thereby functus officio, but may subsequently admit the prisoner to bail. *In re Victor M. Ruthven*, 6 B. C. R. 115.

VI. CONSTITUTION OF CRIMINAL COURTS.

1. Courts of Oyer and Terminer—*Power of Governor to issue commissions.*]—The prisoner was tried and found guilty at the sittings of the Court of Oyer and Terminer and general gaol delivery held at Victoria under the "Assize Court Act, 1885," and presided over by Gray, J., a Judge of the Supreme Court of British Columbia, and a justice named in a commission of Oyer and Terminer and general gaol delivery issued by the Lieutenant-Governor: — Held, (1) that assuming the Lieutenant-Governor's commission to be void, the Court was properly constituted without commission, under s. 14 "Judicature Act, 1879," and the "Assize Court Act," 1885. Held, (2) Following McLean's case, that the commission of Oyer and Terminer and general gaol delivery was sufficient, and that the Lieutenant-Governor had power to issue it under s. 129, B. N. A. Act, 1867. Held, (3) that the commission was not exhausted by reason of the justices therein named having held under it Courts of Oyer and Terminer in other districts of the Province. *Robert E. Sproule*, plaintiff in error v. *The Queen*, defendant in error, 1 B. C. R., pt. II., 219.

VII. ELECTION.

1. Code, s. 756—*Speedy trial—Right to elect, of accused admitted to bail under Code s. 601.*]—A person accused of an indictable offence who has been admitted to bail under Code, s. 601, by the magistrate before whom he is brought for preliminary examination upon the charge, has a right to a speedy trial under Code, s. 765, to the same extent as if the magistrate had committed him for trial under s. 596. *Regina* v. *Lawrence*, 3 B. C. R. 160.

2. Speedy trial—*Code, ss, 765-2—Right of prisoner to re-elect as to mode of trial.*]—A prisoner who has been brought up for election as to the mode of his trial under the speedy trial sections of the Criminal Code, and has elected to be tried by a jury, may afterwards re-elect to be tried speedily by a Judge. *Reg.* v. *Prevost*, 4 B. C. R. 326.

VIII. Evidence.

1. Abduction — *Possession of father — Abandonment of induced in U. S. A., and "taking" in Canada — Jurisdiction — Evidence.*]—Prisoner was indicted for having, at the city of Victoria, unlawfully caused to be taken a certain unmarried girl, to wit, one B. R., being under the age of sixteen years, out of the possession and against the will of her father, contrary to s. 283 of the Criminal Code. The evidence shewed that the girl, by persuasion of letters written by the prisoner in Victoria, Canada, addressed to and received by her within the State of Washington, U.S.A., was induced to leave her father's house in that State and meet the prisoner at Victoria. Upon meeting her there he suggested that it was not too late for her to return home, but she declined, and the prisoner thereupon took her to a house near Victoria, where they spent the night together:—Held, *per* Davie, C.J., at the trial, convicting the prisoner, that the Court had jurisdiction as the offence was wholly committed within Canada. Upon case stated for the opinion of the Court of Criminal Appeal, Davie, C.J., and Crease, J., affirmed the judgment:—Held, *per* McCreight, Walkem and Drake, JJ., quashing the conviction, that it was essential to the offence that the girl should have been in possession of her father at the time of the taking, and that, upon the facts, when she met the prisoner at Victoria, she had already abandoned that possession. *Per* McCreight and Walkem, JJ., that the reception by the girl of the letters was the motive cause of her abandoning her father's possession, and therefore a material factor in the offence, which, consequently, in part took place outside the jurisdiction. *Per* Walkem, J.: That the letters so far as they held out the inducement, should have not been admitted in evidence at the trial. *Regina* v. *Blythe*, 4 B. C. R. 276.

2. Admission—*Statement by prisoner.*]—The provisions of s. 32 of 32 and 33 Vic. (Can.) c. 30, are directory, and a statement in writing not prefaced with the statutory words, made by a prisoner to the committing magistrate, was admitted in evidence, upon evidence by the committing magistrate that he had verbally cautioned the prisoner to the effect required by the statute, before receiving the statement in question. *Regina* v. *Kalabeen et al.*, 1 B. C. R., pt. I., 1.

3. Confession—*Statement made to person in authority.*]—A rector of a cathedral held an inquiry into the circumstances of an assault in which several of the choir boys were implicated:—Held, that the rector was a person in authority, and that a statement made to him by one of the boys who was told to speak the truth, and that the statement was for the purpose of that inquiry only, was not voluntary. *Rex* v. *Royds*, 10 B. C. R. 407.

4. Deposition—*Admissibility of deposition of witness taken on preliminary examination—Proof of absence from Canada.*]—Upon a prosecution for wounding with intent to murder, the deposition of one C., taken before the police magistrate on the preliminary investigation, was read upon the following proof that C. was absent from Canada: "C. is, to the best of my belief, in the United States. He was employed about 10 days ago as one of the crew on a steamer then running between Victoria and an American port. He said when he left me he was going on board the steamer. The steamer has not been on that route since. She is now running between two American ports:"—Held, that there was sufficient proof of absence from Canada. *Regina* v. *Pescaro and Jim*, 1 B. C. R., pt. II., 144.

5. Dying declaration — *Admissibility of.*]—An Indian woman's statement that she thinks she is going to die is a sufficient indication of such a settled, hopeless expectation of immediate death as to render the statement admissible as a dying declaration. Before the death of an Indian woman, for whose murder the prisoner was being tried, a statement was obtained from her in the following way: A Justice of the Peace swore an Indian to interpret the statement the woman was about to make; a constable then asked questions through the interpreter, and a doctor wrote down what the interpreter said the woman's answers were. The doctor and the Justice of the Peace then signed the statement. To some of the questions the woman indicated her answer by nodding her head. At the trial the statement was tendered as a dying declaration, and the doctor, the Justice of the Peace and the constable identified the statement; the interpreter deposed that he interpreted truly, but he gave no evidence as to what the woman really did say:—Held, disapproving Rex v. Mitchell (1892), 17 Cox, C. C. 503, that the statement was admissible as a dying declaration; also that it had been properly proved. A dying declaration may be obtained by means of questions and answers, and if it is reduced to writing it is sufficient if the answer only appear in the writing: — Held, *per* Martin, J. Nodding sufficient answer where witness warned to talk as little as possible. *Rex* v. *Louie*, 10 B. C. R. 1.

6. Extradition.]—Where an application for extradition is founded upon deposition evidence it will be required to strictly conform to the conditions prescribed by the Act for such evidence, and nothing will be inferred in its favour. The warrant of the magistrate in the foreign jurisdiction was dated before the date of the swearing of the deposition. The evidence consisted in part of admissions stated to have been made by the accused, but there was nothing to shew that the admission was not procured by an inducement to the prisoner to make a statement: — Held, the evidence was insufficient upon which to extradite the accused. *In re Ockerman*, 6 B. C. R. 143.

7. Improper admission of — *Whether miscarriage thereby—Code, s.* 746.]—Under s. 746 of the Code, the improper admission of evidence at a criminal trial cannot be said in itself necessarily to constitute a wrong or miscarriage, but it is a question for the Court upon the hearing of any appeal.

whether in the particular case it did so or not. Makin v. A. G. for N. S. W. (1894), A. C. 57, distinguished. *Reg.* v. *Woods*, 5 B. C. R. 585.

8. Onus of proof — *Statute creating offence—Exemption from—Proviso or exception—Negativing Game Protection Act*, 1895 — *Operation as to imported skins.*] — The existence of an exception nominated in the description of an offence created by statute, must be negatived in order to maintain the charge, but if a statute creates an offence in general with an exception by way of proviso in favour of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso. The generality of the prohibition contained in the statute (s. 7), against purchasers having in possession with intent to export, causing to be exported, etc., game, etc., is not to be limited by inference to game killed within the province. *Regina* v. *Strauss*, 5 B. C. R. 486.

9. Perjury—*Admissibility of explanatory statements.*]—A person charged with perjury committed in a civil action is entitled to have put in evidence those parts of his testimony in the civil action which may be explanatory of the statements in respect of which the perjury is charged. *Rex* v. *Coote*, 10 B. C. R. 287.

10. Witness — *Absence of—Preliminary depositions — Admissibility of.*] — Per WALKEM, J., on a trial under the Speedy Trials Act. 1. Evidence that the captain of a schooner had cleared from a Canadian port a week before the trial and put to sea, is insufficient evidence of his being out of Canada to satisfy s. 222, Criminal Proc. Act, and his deposition taken on the preliminary examination refused. 2. An adjournment of the trial to procure better evidence of the witness being out of Canada refused, as contrary to the spirit of the Speedy Trials Act. 3. The prisoner being elected to be tried speedily on the charge of forgery, for which he was committed to trial, and being charged and tried for that offence accordingly, there was not sufficient evidence to convict, but there was evidence upon which he might be convicted of obtaining money by false pretences:—Held, that the Crown could not then substitute a charge for the latter offence for the charge of forgery, upon which the prisoner had elected to be tried. *Regina* v. *Morgan*, 2 B. C. R. 329.

11. Witnesses—*Indorsing names of witnesses on indictment—Abortion—Form of indictment — Cr. Code, ss.* 273 & 645.] — The provisions of s. 645 of the Criminal Code requiring the names of all witnesses examined by the grand jury to be indorsed on the bill of indictment are directory only and an omission so to indorse does not invalidate the indictment. An indictment under s. 273 of the Code charging accused "with unlawfully using on her own person . . . ' with intent thereby to procure a miscarriage" (without stating whose miscarriage), is sufficient. *Rex.* v. *Holmes*, 9 B. C. R. 294

12. Witness absent from Canada — *Preliminary deposition.*]—Upon a prosecution for wounding with intent to murder, the deposition of one C., taken before the Police Magistrate on the preliminary investigation, was read, upon the following proof that C. was absent from Canada: C. is, to the best of my belief, in the United States. He was employed, about 10 days ago, as one of the crew, on a steamer then running between Victoria and an American port. He said when he left me, he was going on board the steamer. The steamer has not been on that route since. She is running between two American ports:—Held, that there was sufficient proof of absence from Canada. *Regina* v. *Pescaro and Jim*, 1 B. C. R., pt. II., 144.

IX. EXEMPTION UNDER STATUTE.

1. Prohibition—*Against killing deer out of season — Exemption of resident farmer — Resident agent of absent farmer within the exemption.*]—Defendant was convicted under s. 15 of the Game Protection Act, 1895 (B. C.), for having shot certain deer within the period prohibited by the Act. It appeared from the evidence that the defendant resided upon and managed a certain farm as the agent of the owner, who was then absent, and that the deer in question came upon and was depasturing a cultivated field, part of the farm, when the defendant shot and killed it:—Held, that the defendant in committing the act was within the exemption created by s. 16 of the Act, providing: "16. Nothing in this Act shall be construed as prohibiting any resident farmer from killing at any time deer that he finds depasturing within the cultivated fields." Observations upon the equitable construction of statutes. *Reg* v. *Symington*, 4 B. C. R. 323.

2. Statute creating offence—*Exemption from — Proviso or exception — Negativing Game Protection Act*, 1895—*Operation as to imported skins.*]—The existence of an exception nominated in the description of an offence created by statute, must be negatived in order to maintain the charge, but if a statute creates an offence in general with an exception by way of proviso in favour of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso. The generality of the prohibition contained in the statute (s. 7) against purchasers having in possession with intent to export, causing to be exported, etc., game, etc., is not to be limited by inference to game killed within the Province. *Regina* v. *Strauss*, 5 B. C. R. 486.

X. EXTRADITION.

1. Deposition — *Evidence.*] — Where an application for extradition is founded upon deposition evidence, it will be required to strictly conform to the conditions prescribed by the Act for such evidence, and nothing will be inferred in its favour. The warrant of the magistrate in the foreign jurisdiction was dated before the date of the swearing of the deposition. The evidence consisted in part of admissions stated to have been made by the accused, but there was nothing to shew that the admission was not procured by any inducement to the prisoner to make a statement:—Held, the evidence was insufficient upon which to extradite the accused. *In re Ockerman*, 6 B. C. R. 143.

XI. GAMING.

1. Black jack.]—Certain persons played the game called black jack in a room to which the public had access, there being no constant dealer:—Held, that the lessee of the room was legally convicted of keeping a common gaming house. *Regina* v. *Petrie*, 7 B. C. R. 176.

2. Gaming house — *Order to enter — Within what time to be executed.*]—An order to enter a house reported to be a common gaming house must be executed within a reasonable time. *Regina* v. *Ah Sing*, 2 B. C. R. 167.

3. Margins — *Payment of differences — Criminal Code — Section 201.*] — Defendant instructed the plaintiffs to sell shares in the C. T. Co. for him, who asked for cover, and defendant paid $600; no time was fixed for delivery; plaintiffs asked defendants for more, as shares were rising, and finally called for $2,400, which defendant refused to pay. Plaintiffs then, as they alleged, purchased the shares to satisfy their own liability, and sued for amount paid:—Held, by DRAKE, J., dismissing the action, that as no stock was ever delivered, or intended to be delivered, and as the intent was to make a profit from the fluctuations of the stock market, the transaction was illegal. *B. C. Stock Exchange, Limited*, v. *Irving*, 8 B. C. R. 186.

XII. HOMICIDE.

1. Manslaughter—*Corporation.*] — The defendants, a corporation, were indicted for that they unlawfully neglected, without lawful excuse, to take reasonable precautions, and to use reasonable care in maintaining a bridge forming part of their railway which was used for hauling coal and carrying passengers, and that on the 17th of August, 1898, a locomotive engine and several cars, then being run along said railway and across said bridge, owing to the rotten state of the timbers of the bridge, were precipitated into the valley underneath, thereby causing the death of certain persons. The defendants were found guilty, and a fine of $5,000 was inflicted by WALKEM, J., at the trial:—Held, per MCCOLL, C.J., and MARTIN, J., on appeal confirming the conviction, that such an indictment will lie against a corporation under s. 252 of the Code. *Per* DRAKE, and IRVING, JJ.: Such an indictment will not lie against a corporation. Sections 191, 192, 213, 252, 639 and 713 of the Code considered. A corporation cannot be indicted for manslaughter. Per MCCOLL, C.J.: The words "grievous bodily injury" in s. 252 have no technical meaning, and in their natural sense include injuries resulting in death. Per DRAKE, J.: The indictment charges the company with the death of certain persons owing to the company's neglect of duty, and is a charge of manslaughter, the punishment of which is a term of imprisonment for life, and because a corporation cannot suffer imprisonment, therefore the punishment laid down in the Code is not applicable to such a body. When death ensues the offence is no longer "grievous bodily injury," but culpable homicide. *Regina* v. *Union Colliery Company*, 7 B. C. R. 247.

2. Murder—*Abortion.*]—On a trial of the accused for murder, by committing an abortion on a girl, it appeared in evidence that a post mortem examination of the girl had been made by a medical man, which was, however, confined to the pelvic organs, and was, upon the medical evidence, inconclusive as to the cause of death, but there was other evidence pointing to the inference that death was caused by the operation. DAVIE, C.J., left the case to the jury, but reserved a case for the Court of Criminal Appeal as to whether there was in point of law evidence to go to the jury upon which they might find that the death of the girl resulted from the criminal acts of the accused. The jury found a verdict of guilty: — Held, *per* MCCREIGHT, J. (DAVIE, C.J., and WALKEM, J., concurring), that there is no rule that the cause of death must be proved by post mortem examination, and that there was evidence to go to the jury of the cause of death notwithstanding the absence of a complete post mortem examination. *Regina* v. *Garrow and Greeck*, 5 B. C. R. 61.

3. Negligence—*Medical aid.*] — Medical attendance and remedies are necessaries within the meaning of ss. 209 and 210 of the Criminal Code, and any one legally liable to provide such is criminally responsible for neglect to do so. See also at Common Law. Conscientious belief that it is against the teachings of the Bible and therefore wrong to have recourse to medical attendance and remedies is no excuse. *Rex* v. *Brooks*, 9 B. C. R. 13.

XIII. INDICTMENT.

1. Alternative charges.]—The fact that a person charged with an offence might, upon the facts, have been charged with a conspiracy with another, is no objection to the individual charge. *Regina* v. *Clark*, 2 B. C. R. 191.

2. Indorsing names of witnesses on back.] — The provisions of s. 645 of the Criminal Code requiring the names of all witnesses examined by the grand jury to be indorsed on the bill of indictment, are directory only, and an omission so to indorse does not invalidate the indictment. *Rex* v. *Holmes*, 9 B. C. R. 294.

3. Indictment of corporation—*Punishment—Criminal Code, ss. 191, 192, 213, 252, 639 and 713.*]—The defendants, a corporation, were indicted for that they unlawfully neglected, without lawful excuse, to take reasonable precautions and to use reasonable care in maintaining a bridge forming part of their railway which was used for hauling coal and carrying passengers, and that on the 17th of August, 1898, a locomotive engine and several cars, then being run along said railway and across said bridge, owing to the rotten state of the timbers of the bridge, were precipitated into the valley underneath, thereby causing the death of certain persons. The defendants were found guilty and a fine of $5,000 was inflicted by WALKEM, J., at the trial:—Held, per MCCOLL, C.J., and MARTIN, J., on appeal affirming the conviction, that such an indictment will lie against a corporation under s. 252 of the Code. *Per* DRAKE and IRVING, JJ.: Such an indictment will not lie against a corporation. Sections 191, 192, 213, 252, 639 and 713 of the Code considered. A corporation cannot be indicted for manslaughter. *Per* MCCOLL, C.J.: The words "grievous

bodily injury," in s. 252, have no technical meaning, and in their natural sense include injuries resulting in death. *Per* DRAKE, J.: The indictment charges the company with the death of certain persons owing to the company's neglect of duty, and is a charge of manslaughter, the punishment of which is a term of imprisonment for life, and because a corporation cannot suffer imprisonment therefor, the punishment laid down in the Code is not applicable to such a body. When death ensues the offence is no longer "grievous bodily injury," but culpable homicide. *Regina* v. *Union Colliery Company*, 7 B. C. R. 247.

XIV. JUDGE'S CHARGE.

1. Duty to define crime—*New trial.*]—It is the duty of the Judge in a criminal trial with a jury to define to the jury the crime charged and to explain the difference between it and any other offence of which it is open to the jury to convict the accused. Failure to so instruct the jury is good cause for granting a new trial, and the fact that counsel for the accused took no exception to the Judge's charge is immaterial. After the case for the Crown and defence was closed the Crown called a witness in rebuttal whose evidence changed, by a few minutes, the exact time of the crime as stated by the Crown's previous witnesses and which tended to weaken the alibi set up by the accused:—Held, that to allow the evidence was entirely in the discretion of the Judge, and there was no legal prejudice to the accused as he was allowed an opportunity to cross-examine and meet the evidence. *Rex* v. *Wong On and Wong Gow*, 10 B. C. R. 555.

XV. JURY.

1. Grand jury—*Perusal of deposition of absent witness.*]—Upon a bill of indictment being presented, the grand jury reported that without the evidence of an absent witness they had no materials to find a bill:—Held, *per* CREASE, J., that they were entitled to peruse the depositions without proof that the witness was too ill to travel or absent from Canada. *Regina* v. *Howes*, 1 B. C. R., pt. II., 307.

2. Grand jury — *Constitution of — Cr. Code, sec. 656—Jurors' Act and Amendment of 1899, sec. 2.*] — A sheriff when about to summon, pursuant to s. 48 of the Jurors' Act, one of the jurors drafted to serve on a grand jury, ascertained that the juror was demented and did not summon him:—Held, that the grand jury was not legally constituted and that an indictment found by the jurors who had been summoned must be quashed. A motion to quash such an indictment is not an objection to the constitution of the grand jury within the meaning of s. 656 of the Criminal Code. *Rex* v. *Hayes*, 9 B. C. R. 574.

3. Procedure — *Interlocutory order imperfectly drawn up—Exhibiting order as actually made on return to writ of error—Refusing poll of jury—Jurisdiction—Right of Supreme Court Judge to try criminal cases without commission—Jurors — Summoning from limited part of shrievalty under Jurors Act, 1883.*]—Upon a writ of error after conviction for murder:—Held, (1) that where an order has been made orally and afterwards imperfectly drawn up, i.e., without specifying the terms upon which it was made, and such terms appear in the Judge's note made at the time of the application, it is proper in making up the record on a writ of error prayed, that a true and perfect order should be drawn up and placed on the record; (2) that the refusal of the Judge at the trial to allow the prisoner's counsel to poll the jury after the verdict, was not a matter that could be dealt with on a writ of error, and therefore should not appear in the record; (3) that assuming the Lieut-Governor's commission to be void, the Court was properly constituted without commission, under s. 14, Judicature Act, 1879, and the Assize Court Act, 1885; (4) following McLean's case, that the commission of Oyer and Terminer and general gaol delivery was sufficient, and that the Lieut.-Governor had power to issue it under s. 128, B. N. A. Act, 1867; (5) that the commission was exhausted by reason of the justices therein named having held under it Courts of Oyer and Terminer in other districts of the Province; (6) that there was no objection to the summoning of jurors from a limited portion of the shrievalty, under the Jurors Act, 1883, as that Act in effect created new districts for the purposes of the administration of justice in criminal cases; (7) that the prescribing of the qualifications of jurors and the manner of preparing jury lists, by the Jurors Act, 1883, were not matters of "criminal procedure," within the meaning of s. 91, s.-s. 27 of B. N. A. Act, 1867, but were matters belonging to the organization of Provincial Courts, within the meaning of s. 92, s.-s. 14, and therefore intra vires of the Provincial Legislature; (8) that the venue was sufficiently stated in the record, and that the marginal venue, "British Columbia to wit," was at the lowest but an imperfect venue, and therefore cured by s. 23, Criminal Procedure Act, 1869:—Held, *per* CREASE, J., that the statement of the imposition of conditions in an order under s. 11, 32 & 33 Vic. c. 29, is not jurisdictional:—Held, *per* BEGBIE, C.J., that any application for an order for a change of venue under s. 11, should be made as early as possible after the commitment:—Held, *per* GRAY, J., after argument before himself and brother justices, sitting as assessors on a case stated, that on a trial on a charge of felony, that the prisoner is not entitled in this Province, as of right, to have the jury polled; and that where, in such a trial after a verdict given, the prisoner's counsel moved to have the jury polled, but as the Court perceived nothing to create a doubt respecting the agreement and concurrence of the whole jury, the motion was refused:—Held, that such refusal was proper. *Sproule* v. *Regina*, 1 B. C. R., pt. II., 219.

4. Separating—*Verdict.*]—After the jury had been given in charge, one of the jurymen was taken with a fit and removed, in charge of the sheriff and his physician, to his residence. The remainder of the jury subsequently adjourned to the sick man's house, where, upon his recovery, a verdict of guilty was rendered:—Held, that after the verdict had been recorded, it could not be disturbed. *Queen* v. *Peter*, 1 B. C. R., pt. I., 2.

XVI. PRISONER.

1. Evidence—*Money taken from person of accused—Restoration of.*] — It appearing that money taken by the police from a prisoner would not be required as evidence by the Crown, the Court ordered it to be restored. *Regina* v. *Harris*, 1 B. C. R., pt. I., 255.

2. Habeas corpus—*Warrant of commitment not shewing conviction—Effect of—Form of rule nisi — Dispensing with presence of prisoner or argument of.*]—*Ex parte Ettamass*, 2 B. C. R. 232.

3. Right of prisoner to make statement to jury after his counsel's address.]—Notwithstanding the prisoner calls no evidence, if he makes such a statement, the Crown has the right of reply. *Regina* v. *Rogers*, 1 B. C. R., pt. II., 119.

4. Venue—*Sheriff's* 1873 *Amendment Act*, 1878—*Criminal Law Procedure Act*, 1869 (*Can.*)]—British Columbia was divided into judicial districts by the above Acts:—Held, overruling WALKEM, J., in Regina v. Malott (1 B. C. R., pt. II., p. 207), a criminal must be tried in the county or judicial district where the crime is alleged to have been committed, in this case Kootenay district, and not Kamloops, where the trial took place, and prisoner discharged upon writ of error and ordered to be tried again. *Malott* v. *Regina*, 1 B. C. R., pt. II., 212.

XVII. Speedy Trial.

1. Right of accused to—*After bail by magistrate.*]—A person accused of an indictable offence who has been admitted to bail under Code, s. 601, by the magistrate before whom he is brought for preliminary examination upon the charge, has a right to a speedy trial under Code, s. 765, to the same extent as if the magistrate had committed him for trial under s. 506. *Regina* v. *Lawrence*, 5 B. C. R. 160.

2. Subsequent re-election.] — A prisoner who has been brought up for election as to the mode of his trial under the speedy trial sections of the Criminal Code, and has elected to be tried by a jury, may afterwards re-elect to be tried speedily before a Judge. *Regina* v. *Prevost*, 4 B. C. R. 326.

3. Witness—*Proof of absence from Canada to admit a deposition of witness taken at preliminary hearing.*]—*Per* WALKEM, J., on a trial under the Speedy Trials Act: (1) Evidence that the captain of a schooner had cleared from a Canadian port a week before the trial and put to sea is insufficient evidence of his being out of Canada to satisfy s. 222, Criminal Procedure Act, and his deposition taken on the preliminary examination refused. *Regina* v. *Morgan*, 2 B. C. R. 329.

XVIII. Summary Conviction.

1. A summary conviction describing defendant as "Mrs. Morgan," held bad. *Regina* v. *Morgan*, 1 B. C. R., pt. I., 245.

2. Amendment of — *Right of Justice to amend.*]—*Reg.* v. *McAnn*, 4 B. C. R. 587.

3. Amendment of—*Construction of statute—Words of, contradicted by words in schedule—Effect of.*]—Consolidated Statutes, 32 & 33 Vic. c. 32, gives a competent magistrate summary jurisdiction to try the offences there defined, with the consent of the accused; such consent to be asked and given as therein set out. Con. Stat., 37 Vic. c. 32, s. 1, declares that certain Acts, "the titles of which are set forth in the annexed schedule," among them, 32 & 33 Vic. c. 32, supra, "shall apply to British Columbia." After the mention of the last mentioned Act in the schedule are the words: "In applying this Act to British Columbia, the expression 'competent magistrate' shall be construed as any two Justices of the Peace, sitting together, as well as any functionary having the powers of two Justices of the Peace, and the jurisdiction shall be absolute without the consent of the parties charged:"—Held, (1) that the 32 & 33 Vic. c. 32 was introduced in its entirety, and that the last mentioned words in the schedule were inoperative as repugnant to it. (2) Justices may amend conviction before return to certiorari in matters of form but not in matters of substance. (3) The Court may look at the depositions for the purpose of deciding whether there is any evidence whatever to found jurisdiction to convict. (4) To sustain a conviction for cutting, the skin must be broken. *Houghton's Case*, 1 B. C. R., pt. I., 89.

4. Appeal — *Code, s.*, 782, 783 (*a*), *and* 784—58 & 59 *Vic.* (*Can.*) *c.* 40.]—The right of appeal given by s. 782 of the Criminal Code as amended by 58 & 59 Vic. (Can.) c. 40, from convictions by two Justices of the Peace, under Code, s. 783 (a) and (f), is not taken away in British Columbia by Code s. 784, s.-s. 3, as amended by 58 & 59 Vic. (Can.) c. 40. *Regina* v. *Wirth*, 5 B. C. R. 114.

5. Certiorari — *Motion to quash conviction—Practice—Rule of Court requiring recognizance with sufficient sureties—Necessity for affidavit of justification—Jurisdiction.*]—The Court or a Judge has no jurisdiction to entertain a motion to quash a conviction moved up by certiorari, unless the defendant is shewn to have entered into a recognizance with one or more sufficient sureties to prosecute such certiorari with effect and pay such costs as may be awarded against him, etc., as provided by rule of this Court of 27th of April, 1889. (2) The Court must have an affidavit of justification before it, upon which it can judge of the sufficiency of the sureties. *Regina* v. *Ah Gin*, 2 B. C. R. 207.

6. Certiorari—*Six days' notice to Justices under Geo. II., c.* 8, *(Imp.), s.* 5—*Substituting good warrant before return of rule.*]—The Statute 13 Geo. 2, c. 8, s. 5, requiring six days' previous notice to convicting Justices of motion for certiorari is in force in this Province. The service upon the Justices of a rule nisi for a certiorari returnable more than six days after service thereof will not be treated as a compliance with the statute—following Regina v. Justices of Glamorgan, 5 T. R. 279. The convicting Justices, after service on them of the rule nisi, substituted and brought in on its return a good warrant of commitment in place of that objected to, which was admittedly bad for not following the conviction:—Held, that they were entitled to do so. *Re Charles Plunkett*, 3 B. C. R. 484.

7. Certiorari—*Selling liquor to Indians—View by magistrate alone—Whether warranted or not—Sections* 108 *of the Indian Act and* 889 *of the Criminal Code.*]—On the trial for selling an intoxicant to an Indian, the magistrate, after hearing the evidence, but before giving his decision, went alone and took

a view of the place of sale: — Held, (1) quashing the conviction, that this proceeding was unwarranted: (2) that ss. 108 of the Indian Act and 889 of the Criminal Code do not prevent proceedings by certiorari where the ground of complaint is that something was done contrary to the fundamental principles of criminal procedure. *Re Sing Kee*, 8 B. C. R. 20.

8. Common gaming house — 40 *Vic. (Can.) c. 33, s. 4—Unlawful game.*]—Held, by Sir M. B. BEGBIE, C.J., on case stated under 20 & 21 Vic. (Imp.), c. 43: (1) That it is not necessary to a conviction under 40 Vic. c. 33, s. 4, providing "any person playing in a common gaming house is guilty of an offence," to allege or prove that the game played is an unlawful game, and it appearing in the case stated that cards and instruments of gaming were found in the house when entered on a warrant, there was prima facie evidence, under s. 3, of the Act, that the place was a common gaming house, and that the defendant, who was found there, was playing therein. (2) That the allegation in the information that the defendant was playing at an unlawful game was surplusage and could be rejected. 20 & 21 Vic. (Imp.), c. 43, was not repealed by the Dominion Statute, 37 Vic. c. 42, and is therefore still in force in British Columbia. *Regina* v. *Ah Pow*, 1 B. C. R., pt. I., 147.

9. "Disorderly house"—*Summary jurisdiction of magistrate to hear charge of keeping—Discretion to hear charge or commit.*]—A magistrate has absolute jurisdiction, under s. 783, s.-s. (f), and s. 784 of the Criminal Code, to hear and determine in a summary way a charge of keeping a disorderly house. The exercise of the summary jurisdiction is, under those sections, and s. 791, discretionary with the magistrate, and he may commit the accused for trial, and a mandamus will not lie to compel him to hear and determine the charge summarily. The meaning of the term "disorderly house," in s. 783, s.-s. (f), must be taken from its definition in s. 198, and not from the common law. *Re Farquhar Macrae, Ex parte John Cook*, 4 B. C. R. 18.

10. Mens rea — *Sanitary by-law—Overcrowding — "Suffering to be occupied"—Proof of knowledge of defendant.*]—In order to support a conviction under the clause in the Victoria Consolidated Health By-law, 1886, providing: (17) No person shall let, occupy, or suffer to be occupied as a dwelling or lodging, any room (a) which does not contain at least 384 cubic feet of space for each person occupying the same," it is necessary that there should be some evidence of guilty knowledge actual or constructive, on the part of the person charged. *Re Wing Kee*, 2 B. C. R. 321.

11. Notice of appeal from—*Parties to be served—R. S. B. C. 1897, c. 176, s. 71.*]—A notice of appeal from a summary conviction (Provincial), served upon the convicting magistrate, is not invalid because it is not also addressed to and served upon the respondent. It is not a pre-requisite to the right of appeal that the person convicted should have been taken into custody. Quære, whether service of notice of appeal on respondent's solicitor would not be sufficient in any event. *Rex* v. *Jordan*, 9 B. C. R. 33.

12. Notice of appeal from.]—A notice of appeal from a conviction for playing in a common gaming house, which describes the offence for which the appellant was convicted as "looking on while another was playing in a common gaming house," is insufficient. *Rex* v. *Mah Yin*, 9 B. C. R. 319.

13. Payment of fine—*No appeal after—Security—Money deposit in lieu of recognizance — Return of to appellate Court—Cr. Code, ss. 880 (c) and 888.*]—A person by paying his fine on a summary conviction loses any right of appeal he might otherwise have had under s. 880 of the Criminal Code. Where on an appeal from a summary conviction an appellant makes a money deposit in lieu of recognizance, the deposit, which includes both the fine and the security for costs of appeal, should be returned by the Justices into the appellate Court, and in default the appeal cannot be heard. *Rex* v. *Neuberger*, 9 B. C. R. 272.

14. Vagrancy — *Conviction insufficiently describing offence—Cr. Code, ss. 207, 208 and 611.*]—Accused was charged with, and convicted of being "a loose, idle person or vagrant:"—Held, *per* HUNTER, C.J., that the conviction was bad in that it did not set out the facts constituting the offence. Under s. 207 of the Code, various acts constituting vagrancy are specified, and an information charging vagrancy should shew the particular facts on which the prosecution relies to establish the offence. *Rex* v. *McCormack*, 9 B. C. R. 497.

XIX. SUMMARY TRIAL.

1. Jurisdiction — *Obstructing a peace officer—Consent of accused not necessary to summary trial — Criminal Code, ss. 144, 783-6.*]—A person charged with obstructing a peace officer in the execution of his duty may be tried summarily by a magistrate without the consent of the accused. *Rex* v. *Jack*, 9 B. C. R. 19.

2. Jurisdiction of magistrate—*Charge of obstructing peace officer.* — A person charged with obstructing a peace officer in the execution of his duty may be tried summarily by a magistrate without the consent of the accused. Semble, a magistrate is not bound to inform an accused of the exact sections of the Code under which the proceedings are being taken. The Queen v. Crossen (1899), 3 C. C. C. 152, not followed. *Rex* v. *Nelson*, 8 B. C. R. 110.

3. Jurisdiction of magistrate—*Charge of keeping disorderly house.*]—A magistrate has absolute jurisdiction under s. 785, s.-s. (f), and s. 784 of the Criminal Code, to hear and determine in a summary way a charge of keeping a disorderly house. The exercise of the summary jurisdiction is, under those sections, and under s. 791, discretionary with the magistrate, and he may commit the accused for trial, and a mandamus will not lie to compel him to hear and determine the charge summarily. The meaning of the term "disorderly house" in s. 783, s.-s. (f), must be taken from its definition in s. 198, and not from the common law. *Re Farquhar Macrae*, 4 B. C. R. 18.

4. Justices—*Practice — Different offences charged—Hearing of second information before decision on first—Conviction on second—Legality of conviction.*]—Where a magistrate is trying two distinct but similar informations against an accused, a conviction by him in the second case is not invalid merely because he reserved his decision in the first case, which he afterwards dismissed, until the conclusion of the second case. The Queen v. McBerney (1897), 3 C. C. C. 339, distinguished. *Rex* v. *Sing*, 9 B. C. R. 254.

XX. Trial.

1. Criminal libel — *Costs—Depositions not used at trials—Abortive trial—Cr. Code, ss. 833 and 835.*]—In a criminal libel action, defendant, in support of his plea of justification, obtained a commission, and had the evidence of certain witnesses out of the jurisdiction taken, for use at the trial. The evidence was used at the first trial and the jury disagreed. At the second trial the jury again disagreed. At the third trial defendant was acquitted, but the evidence was not used, owing to the private prosecutors giving evidence, and admitting substantially what was stated by the witnesses in their depositions before the commissioner:—Held, by Drake, J., that as the commission evidence was not put in by defendant as part of his case, defendant should be deprived of the costs of it:—Held, also, that defendant was not entitled to the costs of the abortive trials. *Rex* v. *Nichol*, 8 B. C. R. 276.

2. Statement by prisoner defended by counsel.]—A prisoner on his trial, defended by counsel, may, at the conclusion of his counsel's address, himself make a statement of facts to the jury, but the prosecution will be entitled to reply. *Queen* v. *Rogers*, 1 B. C. R., pt. II., 119.

XXI. Venue.

1. Criminal libel—*Change of venue in case of.*]—*Reg* v. *Nicol*, 7 B. C. R. 278.

See Venue.

2. Criminal Procedure Act—*R. S. C. c. 174, s. 266 — Mis-statement of venue — Whether open on writ of error.*]—(1) An objection to the venue in an indictment is not an objection which could have been reserved at the trial, and is a proper subject of a writ of error under s. 266, supra, but any error in the statement of venue is cured by s. 247 of the statute, supra. (2) An objection that the trial Judge did not deliver the whole of his charge to the jury in open Court is not a question of record; that it could have been reserved, and that a writ of error did not lie for it. (3) It is too late to allege a diminution of the record after errors assigned. *Greer* v. *The Queen*, 2 B. C. R. 112.

3. Scene of crime — *Province but one venue — In criminal cases.*] — The prisoner charged with the commission of the crime of murder in the Kootenay District, was brought for trial in a Court of Oyer and Terminer held at Kamloops, under the Assize Court Act, 1885, by one of the Judges of the Supreme Court, who was also named in the Commission of Oyer and Terminer issued by the Lieutenant-Governor. The prisoner pleaded to the jurisdiction, stating that the scene of the alleged homicide was in Kootenay District; that no order changing the venue had been made under s. 11, of 32-33 Vic., c. 29; that in the absence of such an order the prisoner could not be tried elsewhere than in Kootenay District, and by a jury of the venue, and further, that the Court profession to sit and act under a commission from the Lieutenant-Governor was improperly constituted:—Held, that as British Columbia had never at any time been divided into districts for that purpose relative to the administration of justice in criminal cases, the Province was but one venue; that, therefore, there was no necessity for an order under s. 11 to entitle the Crown to proceed at Kamloops; that the jury, having been summoned under the Jurors Act, 1869, was a proper and lawful jury:—Held, (following the McLean's case), that the Lieutenant-Governor is authorized, under s. 129, B. N. A. Act, to issue commissions of Oyer and Terminer. And held that even if the commission was invalid, a Court of Oyer and Terminer, if presided over by a Judge of the Supreme Court, would be, under the combined effect of s. 14 of the Judicature Act, 1879, and the Assize Court Act, 1875, properly constituted. *Regina* v. *Malott*, 1 B. C. R., pt. II., 207.

XXII. Writ of Error.

1. Indictment for assault.] — On appeal by way of writ of error from a conviction upon indictment for assault occasioning bodily harm, the following errors were, inter alia, in effect assigned:—(1) That the grand and petit juries were stated by the record to be taken from the county of Westminster and not from the district of New Westminster (a smaller area included within the boundaries of the former), as required by the Jurors Act, C. S. (B. C.), 1888, c. 64:—Held, that this was a question of law which could not have been reserved at the trial, but that s. 247 of the Criminal Procedure Act precluded the plaintiff from raising this objection in error. (2) That the trial Judge did not deliver the whole of his charge to the jury in open Court, but, having been requested by message from the jury after they had retired, proceeded to the jury room with the plaintiff in charge of the sheriff, and in the absence of both counsel for the Crown, who elected to be absent, and counsel for the plaintiff, gave further instructions to the jury, the plaintiff not objecting:—Held, that the facts as to this did not properly form part of the record; that it was a question which could have been reserved, and therefore, not raisable in error; and that in any event, while it is expedient for a Judge to communicate with the jury otherwise than in open Court, yet his doing so is not necessarily a ground of error; (3) That the record did not state where the offence was committed:—Held, that sections 143 and 245 of the Criminal Procedure Act precluded the plaintiff from assigning this as error:—Held, further, that if the record is perfectly returned, the plaintiff in error should allege a diminution of the record, but, following Dunn v. Regina, 12 Q. B. 1026, 1031, it is too late to do so after errors have been assigned, joinder therein and argument thereon. Morin v. The Queen, 18 S. C. R. 407, and certain dicta of Lord Hale specially considered.

State v. Patterson, 12 Am. Rep. 200 (Vt.); Sargent v. Roberts, 11 Am. Dec. 185 (Mass.); and Bishop, Crim. Proc., vol. 1, 1000, not followed. Conviction affirmed. *Samuel Greer (plaintiff in error)*, v. *Her Majesty the Queen (defendant in error)*, 2 B. C. R. 113.

2. Polling of jury—*Change of venue—Power of governor to issue commissions.*]—The plaintiff in error was committed for trial on a charge of murder. The scene of the alleged homicide was in the bailiwick of the Sheriff of Kootenay. On the application of the Crown, Victoria (in the bailiwick of the Sheriff of Vancouver Island) was fixed as the place of trial; the Chief Justice, before making the order, required from the Crown "an undertaking that the Crown would abide by such order as the Judge who might preside at the trial should think just to meet the equity of s. 11 of 32-33 Vic. c. 29." The order so pronounced was not drawn up, but a document incorrectly stating the order, and omitting all mention of the terms imposed, was signed at the time and handed to the gaoler, and under this document the prisoner was detained in the gaol at Victoria until his trial. The prisoner was tried and found guilty at the sittings of the Court of Oyer and Terminer and General Gaol Delivery held at Victoria under the Assize Court Act, 1885, and presided over by GRAY, J., a Judge of the Supreme Court of British Columbia, and a justice named in a commission of Oyer and Terminer and General Gaol Delivery issued by the Lieutenant-Governor. In the body of the indictment there was no venue stated, and the marginal venue was simply "British Columbia, to wit." The jurors were selected not from the whole of the bailiwick of the Sheriff for Vancouver Island, as defined by the Sheriffs Amendment Act, 1878, but from that portion of the bailiwick created by the Jurors Act, 1883, as Victoria District. On the return to a writ of error, the prisoner alleged a diminution of the record, and applied for a writ of certiorari:—Held, (1) that where an order has been made orally, and afterwards imperfectly drawn up (i.e.), without specifying the terms upon which it was made, and such terms appear in the Judge's note made at the time of the application, it is proper, in making up the record on a writ of error prayed, that a true and perfect order should be dawn up and placed on the record:—Held, (2) that the refusal of the Judge at the trial to allow the prisoner's counsel to poll the jury after verdict, was not a matter that could be dealt with on a writ of error, and therefore, should not appear in the record. On the writ of error:—Held, (1) that assuming the Lieutenant-Governor's commission to be void, the Court was properly constituted without commission, under s. 14, Judicature Act, 1879, and the Assize Court Act, 1885:—Held, (2) following McLean's case, that the Commission of Oyer and Terminer and General Gaol Delivery was sufficient, and that the Lieutenant-Governor had power to issue it under s. 129, B. N. A. Act, 1867:—Held, (3) that the commission was not exhausted by reason of the justices therein named having held under it Courts of Oyer and Terminer in other districts of the Province:—Held, (4) that there was no objection to the summoning of jurors from a limited portion of the shrievalty, under the Jurors Act, 1883, as that Act in effect created new districts for the purposes of the administration of justice in criminal cases:—Held, (5) that the prescribing of the qualifications of jurors, and the manner of preparing the jury lists, by the Jurors Act, 1883, were not matters of "criminal procedure" within the meaning of s. 91, s.-s. 27, of B. N. A. Act, 1867, but were matters belonging to the "organization of Provincial Courts," within the meaning of s. 92, s.-s. 14, and therefore intra vires of the Provincial Legislature:—Held, (6) that the venue was sufficiently stated in the record, and that the marginal venue, "British Columbia, to wit," was at the lowest but an imperfect venue, and therefore cured by s. 23 Criminal Procedure Act, 1869:—Held, per CREASE, J., that the statement of the imposition of conditions in an order under s. 11, 32-33 Vic. c. 29, is not jurisdictional:—Held, per BEGBIE, C.J., that any application for an order for a change of venue under s. 11 should be made as early as possible after the commitment:—Held, by GRAY, J., after argument before himself and brother justices, sitting as assessors on a case stated, that on a trial on a charge of felony, the prisoner is not entitled, in this Province, as of right, to have the jury polled; and that where in such a trial after verdict given, the prisoner's counsel moved to have the jury polled, but as the Court perceived nothing to create a doubt respecting the agreement and concurrence of ehe whole jury, the motion was refused:—Held, that such refusal was proper. *Sproule* v. *Regina*, 1 B. C. R., pt. II., 219.

XXIII. MISCELLANEOUS.

1. Application for re-fund of a fine and costs.]—In a statute providing that the Court may perform a judicial act for the benefit of a party, under given circumstances, the word "may" is imperative. *Fenson (appellant)* v. *The City of New Westminster (respondent)*, 5 B. C. R. 624.

2. Criminal code. Sections—

144 discussed: *Rex* v. *McCormack*, 9 B. C. R. 497.

201 discussed: *B. C. Stock Exchange* v. *Irving*, 8 B. C. R. 186.

207 discussed: *Rex* v. *McCormack*, 9 B. C. R. 497.

208 discussed: *Rex* v. *McCormack*, 9 B. C. R. 497.

222 discussed: *Reg.* v. *Morgan*, 2 B. C. R. 329.

252 discussed: *Reg.* v. *Union Colliery Co.*, 7 B. C. R. 247.

273 discussed: *Rex* v. *Holmes*, 9 B. C. R. 294.

283 discussed: *Reg.* v. *Blythe*, 4 B. C. R. 276.

293 discussed: *Major* v. *McCraney*, 5 B. C. R. 571.

596 discussed: *Reg.* v. *Lawrence*, 5 B. C. R. 160.

601 discussed: *Reg.* v. *Lawrence*, 5 B. C. R. 160.

611 discussed: *Rex* v. *McCormack*, 9 B. C. R. 497.

645 discussed: *Rex* v. *Holmes*, 9 B. C. R. 294.

656 discussed: *Rex* v. *Hayes*, 9 B. C. R. 574.

743 discussed: *Reg.* v. *Garrow*, 5 B. C. R. 61.

746 discussed: *Reg.* v. *Woods*, 5 B. C. R. 585.

765 discussed: *Reg.* v. *Lawrence*, 5 B. C. R. 160.
765-9 discussed: *Reg.* v. *Prevost*, 4 B. C. R. 326.
782-4 discussed: *Reg.* v. *Wirth*, 5 B. C. R. 114.
783 discussed: *Re Macrae*, 4 B. C. R. 18.
783-6 discussed: *Rex* v. *Jack*, 9 B. C. R. 19.
784 discussed: *Re Macrae*, 4 B. C. R. 18.
785 discussed: *Re Macrae*, 4 B. C. R. 18.
791 discussed: *Re Macrae*, 4 B. C. R. 18.
833 discussed: *Rex* v. *Nichol*, 8 B. C. R. 276.
835 discussed: *Rex* v. *Nichol*, 8 B. C. R. 276.
880 discussed: *Rex* v. *Neuberger*, 9 B. C. R. 272.
888 discussed: *Rex* v. *Neuberger*, 9 B. C. R. 272.
889 discussed: *Re Sing Kee*, 8 B. C. R. 20.
900 discussed: *Rex.* v. *Geiser*, 8 B. C. R. 169.

3. Injunction—*Will not be granted to prevent breach of.*]—*Atty.-Gen.* v. *Wellington Coll. Co.*, 10 B. C. R. 397.

See INJUNCTION.

4. Provincial statutes—*Query, if dealing with criminal law—Whether ultra vires.*]—*Reg.* v. *Little*, 6 B. C. R. 78.

See MASTER AND SERVANT, V.

5. Proceedings for contempt — *Criminal Code does not oust jurisdiction of Court in.*]—*Stoddart* v. *Prentice*, 6 B. C. R. 308.

See CONTEMPT.

See also CERTIORARI—HABEAS CORPUS.

CROSS-EXAMINATION.

1. Affidavit — *On, in support of motion for summary judgment.*]—*Ward* v. *Dom. S. Boat Co.*, 9 B. C. R. 231.

See PRACTICE, XXXI.

2. Affidavit—*On.*]—On an interlocutory application to change venue, defendant filed his own affidavit in support of the application, and on being served with an order and appointment for his cross-examination on such affidavit, attended for such cross-examination, but refused to be sworn or answer until paid his expenses of attendance:—Held, on appeal to the Divisional Court (DAVIE, C.J., and MCCREIGHT, J., overruling CREASE, J.), that he was not entitled to conduct money, following Mansel v. Chronicarde, 54 L. J. 982. *Emerson* v. *Irving*, 4 B. C. R. 56.

3. Affidavit—*On.*]—As a general rule an order under Rule 401 will not be made for the attendance for cross-examination of a plaintiff who has made an affidavit leading to an interim injunction before the defendant files an affidavit of merits. *Leavock* v. *West, et al.*, 6 B. C. R. 404.

4. Affidavit — *On.*]—Rules 385 and 429, taken together, compel the production for cross-examination of a deponent on his affidavit, if required by the opposite party, before such affidavit can be used. *Russell* v. *Saunders*, 7 B. C. R. 173.

5. Affidavit—*On.*] — *Westphalen* v. *Edmonds*, 7 B. C. R. 175.

6. Discovery— *Cross-examination—Allowed on examination for.*]—*Carroll* v. *Golden Gate*, 6 B. C. R. 354; *Bank of B. C.* v. *Trapp*, 7 B. C. R. 354; *Hopper* v. *Dunsmuir*, 10 B. C. R. 23.

See PRACTICE, XI. 5.

CROWN.

1. Certificate of improvements — *Crown alone has right to sue to set aside.*]—*Hand* v. *Warren*, 7 B. C. R. 42.

See MINES AND MINERALS, IX. 3.

2. Certificate of improvements.]—In an action by the Attorney-General to set aside a certificate of improvements on the ground that it was obtained by fraud, the fraud alleged was a statement in an affidavit of defendant's agent sworn on 10th August, 1899, that the defendant was in undisputed possession of the Pack Train mineral claim. On 10th August, 1899, an action was then pending as to the title of the Pack Train claim, and judgment was not delivered till 11th August, 1899, in favour of defendant. As it was after the 11th of August, when the affidavit reached the Gold Commissioner:—Held, not fraud within s. 37 of the Mineral Act. The application to the Minister of Mines under s. 10 of the Mineral Act Amendment Act, 1899, need not be in writing. *Attorney-General* v. *Dunlop*, 7 B. C. R. 312.

3. Foreshore—*Right to.*]—*Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 108.

See PLEADINGS, IX. 2.

4. Laches—*Plea of, as against Crown.*]—The Mineral Ordinance, 1869, provides that holders of a prospecting license for coal may select for purchase a portion of the lands included in their license. Upon compliance with the terms and conditions of the Act, the licensees are entitled to claim a Crown grant of the selected lands. The petitioners held a prospecting license for coal over 2,500 acres of land, and applied for a Crown grant. In support of their claim, they relied on a certificate of the Assistant Commissioner of Lands and Works, that they had posted notices of their application, and that no objection to the issue of a grant had been substantiated:—Held, (1) that the certificate was not in accordance with the Act:—Held, (2) that the certificate of an Assistant Commissioner was not conclusive evidence of compliance with the statutory conditions, and the presumption arising from the certificate could be rebutted by evidence to the contrary. It was contended that the Lands and Works Department having received the certificate without objection, and not having cancelled the license under the provisions of the Mineral Ordinance Amendment Act, 1873, had waived the performance of the terms and conditions of the Act:—Held, that the Department could not waive the performance of conditions imposed by the Legislature. The petitioners' application for a Crown grant was made in 1874, but they did not prospect or work the land, or take further steps in support of their claim till 1882, and in the meantime the lands had

increased in value:—Held, that, in a proceeding to enforce specific performance by the Crown, unreasonable delay on the part of the petitioners is fatal to the application. Quære, whether, that to entitle prospecting licensees to a Crown grant for coal lands under the Mineral Act, it is not essential that they should have found coal on the land selected by them for purchase? *Peck and others, petitioners,* v. *The Queen, respondent,* 1 B. C. R., pt. II., 2.

5. Particulars—*Crown not bound to furnish—As to what officers acted on its behalf.*]—*Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 184.

See PRACTICE, XXII.

6. Prerogative right to sue in any Court.]—*King* v. *Campbell*, 8 B. C. R. 208.

See COURTS, XXII.

7. Prerogative of—*Right of Attorney-General to injunction to restrain action—Public harbour.*]—It is a prerogative right of the Crown to stop a suit between subjects in the subject matter of which it is alleged that the Crown is or may be interested and in respect of which suit has been brought in behalf of the Crown to have its interest declared. If the Crown right alleged is a right in behalf of the Province, then the Attorney-General of the Province is the proper officer to exercise the prerogative. Observations by MARTIN, J., on the history of the Supreme Court of British Columbia. *Attorney-General for British Columbia and the New Vancouver Coal Mining and Land Company, Limited,* v. *The Esquimalt and Nanaimo Railway Company*, 7 B. C. R. 221.

8. Prerogative of—*R. S. B. C.* 1897, *c.* 52, *s.* 64.]—It is a prerogative right of the Crown to bring a suit in a County Court, even though as between subject and subject, such Court would not be open, either because of the defendant not residing in or of the cause of action not arising in the district. *The King* v. *Campbell*, 8 B. C. R. 208.

9. Rules—*Crown office—Application of to civil matters.*]—*In re O'Driscoll* v. *Wright*, 8 B. C. R. 424.

See ELECTIONS.

10. Tidal water—*Crown in right of Dominion has right to restrain pollution of tidal river.*]—*Atty.-Gen.* v. *Ewen*, 3 B. C. R. 468.

See INJUNCTION.

See also MINES AND MINERALS, XIV.

CROWN GRANT.

1. Affirmative proof of.]—Plaintiff sued for cancellation of a lease from the defendant on the ground that the defendant's Crown grant did not pass the surface rights:—Held, by IRVING, J. (without deciding whether it did or not), that the action failed on the ground that the plaintiff had not affirmatively proved that the grant did not pass the surface rights. Section 16 of the Mineral Act Amendment Act, 1897 (s. 132, Mineral Act), is declaratory and not prospective merely. Appeal to the Full Court dismissed. *Spencer* v. *Harris*, 6 B. C. R. 466.

2. Adversing Crown grant.]—Plaintiffs held a Crown grant dated 8th March, 1895, of certain lands from which there were excepted "lands held prior to 23rd March, 1893, as mineral claims." Defendant held certificate of improvements dated 14th August, 1899, and plaintiffs being apprehensive as to form of Crown grant to be issued to defendant applied for injunction restraining him from applying for and receiving Crown grant:—Held, dismissing the motion, that the policy of the Mineral Acts is to compel persons claiming adversely to an applicant for a Crown grant to commence action before a certificate of improvements is obtained. *Nelson and Fort Sheppard Railway Co.* v. *Dunlop*, 7 B. C. R. 411.

3. Conflicting grants.]—In July, 1898, plaintiff located and obtained a Crown grant for placer mining in respect of a claim, and on 25th January, 1898, one Mensing located a claim, and recorded it the next day, and on the succeeding 27th of October, a few minutes after midnight of the 26th, the defendant re-located it as ground abandoned and open to occupation on the ground of non-representation. The two claims overlapped. On 10th November, 1898, the defendant obtained her Crown grant for placer mining covering the ground in dispute and being a re-location of Mensing's old claim. The Gold Commissioner had made a rule that three months' continuous work in the year was sufficient, and by the regulations a claim was deemed abandoned after it had remained unworked on working days for the space of seventy hours:—Held, by the Full Court (MARTIN, J., dissenting), dismissing an action of trespass, that the defendant's Crown grant must prevail over that of the plaintiff. *Victor et al.* v. *Butler*, 8 B. C. R. 100.

4. Construction of. 4 B. C. R. 181.

See MINES AND MINERALS, XV.

5. Construction of.]—The Crown granted to W. W. C. W., inter alia, ss. 49, 50, 63 and 64, Lake District, B. C., said to contain 320 acres. Within the limits of s. 49 was a body of water, covering the land, known as Beaver Lake. The sections of land in question, excluding the area covered by the lake, contained 320 acres. By a proviso in the grant, Her Majesty reserved such water privileges and rights of carrying water over, through or under the lands, as might be required for mining purposes in the vicinity of the lands, paying reasonable compensation therefor to the said W. C. W.:—Held, *per* CREASE, J., that although the maxim verba fortius accipiunter contra proferentem, does not apply to the Crown, yet the intention of all grants must be construed from the language used with reference to surrounding circumstances, and as it was in evidence that it was the custom of the Crown to calculate acreage for the purpose of fixing the price exclusive of portions covered by water, and in view of the reservation of privileges in regard to the water in question, that the grant included Beaver Lake, and that an award upon expropriation for water works purposes allowing compensation to W. C. W. for the land covered by water, was correct. Semble, the number of acres mentioned in the early Vancouver Island

grants is not the measure of the extent granted, but merely the measure of price:—Held, (without deciding that the Imperial Statute, 9 & 10 Wm. III., c. 15), was in force in British Columbia), that the time limited by s. 2 of that Act was the time within which application to this Court to set aside awards should be made. Remarks as to setting aside awards on the ground of misconduct of arbitrators. *In re W. C. Ward and the Victoria Water Works*, 1 B. C. R., pt. I., 114.

6. Mandamus—*Does not lie to compel issue of.*]—*Clark* v. *Com. of L. & W.*, 1 B. C. R. pt. II., 328.

See MANDAMUS.

7. Occupation.]—The defendant's mineral claim, Grand Prize, was recorded in June, 1884, and certificates of work were issued in respect of it in June, 1895, and in June, 1896. The plaintiff in July, 1896, located the Buffalo Bill claim, on the same ground, and attacked defendant's location on the ground that his posts were situate outside the limits of his claim:—Held, that defendant's ground, being actually occupied and actively worked, was not open to location. *Waterhouse* v. *Liftchild*, 6 B. C. R. 484.

8. Petition of right to set aside.]—*Hall* v. *Queen*, 7 B. C. R. 480.

See PETITION OF RIGHT.

9. Precious metals.] — Where the precious metals have been passed out of the Crown to a grantee, a conveyance of the land by the latter to a third person in the ordinary form will pass the precious metals although not specially mentioned. *Re St. Eugene Mining Co. and the Land Registry Act*, 7 B. C. R. 288.

10. Precious metals—*Right to—As between Dominion and Province.*]—"On admission of British Columbia into the Dominion of Canada, it was agreed by the Articles of Union that the Dominion should construct a railway through the Province, and that the Province should convey to the Dominion certain 'public lands' of the Province, and the lands were 'granted' by an Act of the Provincial Legislature:—Held, that such 'grant' did not transfer the rights of the Crown assigned to the Province for State purposes by s. 109 of the British North America Act, 1878, and that such grant did not convey any right to gold or gold mining rights. *Attorney-General of B. C.* v. *Attorney-General of Canada*, 58 L. J. P. C. 88; 14 S. C. R. 345. (Apparently not reported in B. C. R.)

11. Pre-emption—*Right to, assignable.*]—*Turner & Jones* v. *Curran*, 2 B. C. R. 51.

See CONTRACT, II. 1.

12. Rectification of.] — An application was made to the Chief Commissioner of Lands and Works for the rectification of a Crown grant of certain mineral claims and was opposed by parties who had obtained a certificate of improvements covering a portion of the ground included in the grant:—Held, affirming the Chief Commissioner, that the applicant was entitled to have the grant rectified notwithstanding the said certificate:—Held, also, by the Chief Commissioner, that the holder of a certificate of improvements is not bound to adverse any subsequent applicant for a certificate. *In re The American Boy Mineral Claim*, 7 B. C. R. 268.

13. Squatters—*Rights of.*] — *Hayden* v. *Smith et al.*, 1 B. C. R., pt. II., 312.

See CONTRACT, I. 2.

14. Survey by official of Government in respect to.]—*Johnson* v. *Clark*, 1 B. C. R., pt. II., 56.

See BOUNDARIES.

15. Tax sale — *Crown grant of to purchaser under.*]—*Moriarity* v. *Wadhams*, 1 B. C. R., pt. II., 145.

See TAXATION, IV.

See also MINES AND MINERALS, XV.

CROWN LANDS.

1. Applicant for purchase of cannot attack Crown grant.]—*Hall* v. *Queen*, 7 B. C. R. 89.

See PETITION OF RIGHT.

2. Free miners—*Right of to.*] — *Bainbridge* v. *E. & N. Ry. Co.*, 4 B. C. R. 181.

See MINES AND MINERALS, XIV., XXII.

3. Petition of right — *Status of petitioner.*]—*Hall* v. *Queen*, 7 B. C. R. 89, 480.

See PETITION OF RIGHT.

4. Record obtained by misrepresentation — "*Unoccupied*"—*Trespasser making improvements—Whether right to recover.*]—H., in 1893, applied to the Crown to pre-empt the land in question, and obtained a record thereof in his own name from the Crown upon a misstatement that the same was not improved, etc., and a statutory declaration that the same was "unoccupied and unreserved Crown land within the meaning of the Land Act." C., in 1889, made application to the Crown to purchase the land, and, in the belief that his purchase and title from the Crown were completed, entered into actual occupation, and made improvements on the land to the value of $600. H., at the time of his application and record, was aware of the occupation and improvements of C.:—Held, sustaining the decision of the Crown Lands Commissioner, that at the time of the application of H. the lands were not "unoccupied" Crown lands within the meaning of s. 5 of the Act, and were not open to pre-emption and record. That s. 14 of the Land Act, as amended by the Land Amendment Act, 1891, s. 1: "The occupation in this Act required shall mean a continuous bona fide residence of the pre-emptor, or of his family, on the land recorded by him," relates to s. 13, which provides for cancellation of the record of a settler "if he shall cease to occupy such land," and does not govern the question of what lands are "unoccupied" for the purpose of s. 5, supra. Semble, that as H. was a trespasser and wrong-doer, $180 awarded by the Land Commissioner to be paid

to him for his improvements while in possession was improperly awarded. *Hereron* v. *Christian*, 4 B. C. R. 246.

5. Trespass—*Reservation from settlement—C. S. B. C.* 1888, *c.* 66, *ss.* 86 *and* 87.]—A person in possession of waste lands of the Crown, with the consent of the Crown, can maintain trespass against persons having no title. Where Crown land is reserved from settlement by the Lieutenant-Governor in Council, under s. 86 of the Land Act, it does not again become open for settlement until cancellation of the reservation by the same authority, under s. 87. *Nelson and Fort Sheppard Railway Company* v. *Parker*, 6 B. C. R. 1.

6. Water—*Diversion by recorded owner—Injury to adjacent proprietor—Damages—Injunction.*]—The defendants, as owners of recorded water privileges under ss. 39-52 of the Crown Lands Act, were entitled to and did divert in and upon their land water from a neighbouring stream for irrigation purposes. The effect of this user of the water was to create a slide, carrying down masses of silt, etc., upon the plaintiffs' railway line, which was constructed by the Dominion Government and conveyed to the plaintiffs after the defendants' rights to the pre-emption and user of the water accrues. It appeared that, without the irrigation, the defendants' lands were worthless, and that the injury was an unavoidable incident of the exercise of the defendants' statutory rights. Negligence was not alleged:—Held, by DRAKE, J., at the trial, dismissing the action (affirmed by the Full Court, MCCREIGHT, WALKEM and MCCOLL, JJ.), that there being no allegation or proof of a negligent user by the defendants of their statutory rights, it was a case of damnum sine injuria. Quære, *per* MCCOLL, J., whether, if the plaintiffs had themselves constructed the part of the railway in question, the defendants would not have been entitled to compensation for injury to their lands by the plaintiffs. *C. P. R.* v. *Parke*, 6 B. C. R. 6.

CRUELTY.

1. As a ground for judicial separation.]—*Town* v. *Town*, 7 B. C. R. 122.

See DIVORCE.

CURIAE ACTUS.

1. Praecipe—*For writ of execution—Nonfiling of—Attributable to omission of officer of Court—Relief against.*]—*Kimpton* v. *McKay*, 4 B. C. R. 196.

CUSTODY.

1. Of children — *Husband entitled to where wife leaves without justification.*]—*In re McPhalen*, 10 B. C. R. 40.

2. Of infant.]—*In re Ah Gway*, 2 B. C. R. 343.

See HABEAS CORPUS.

3. Of infant.]—*Reg.* v. *Redner*, 6 B. C. R. 73.

See PARENT AND CHILD.

4. Of infant.]—*In re Soy King*, 7 B. C. R. 291.

See INFANTS.

CUSTOM.

1. Evidence of. 1 B. C. R., pt. I., 76.

See CONTRACT, III.

DAMAGES.

1. Animals—*Damages for injury to horse running into a barbed wire fence.*]—*Plath* v. *Grand Forks & Kettle River Ry. Co.*, 10 B. C. R. 209.

See RAILWAYS, II.

2. Assessment of.] —*Parks* v. *Blackwood*, 2 B. C. R. 346.

See PRACTICE, XX.

3. Breach of—*Agreement for lease—Remoteness.*] — A plaintiff in an action for breach of an agreement to let a store to him not entitled to recover damages for the loss of prospective profits from the sale of goods purchased with a view to their sale in the premises, merely because he was unable to obtain other suitable premises for that purpose. *McLennan* v. *Millington*, 5 B. C. R. 345.

4. Breach of contract to sell land—*Damage for.*]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

5. Breach of contract.] — *Miller* v. *Averill*, 10 B. C. R. 205.

See CONTRACT, VI.

6. Breach of warranty—*Completed sale of chattels.*]—In an action (by counterclaim) for damages for breach of warranty of an engine sold and delivered by plaintiffs to defendants, the warranty and its breach were proved at the trial. WALKEM, J., delivered judgment, ordering the engine to be returned to the defendants and assessed the damages to be recovered on that basis. Upon appeal to the Full Court:—Held, overruling WALKEM, J., reversing the order for re-delivery of the engine and directing a re-assessment of damages. A completed sale of chattels cannot be rescinded for breach of warranty. *William Hamilton Manufacturing Company* v. *Knight Bros.*, 5 B. C. R. 391.

7. Building contract—*Action for, under.*]—*Moore* v. *B. C. Pottery Co.*, 2 B. C. R. 45.

See CONTRACT, IV. 1.

8. Bush fire.]—A fire started in brush and fallen timber by the defendant for the purpose of clearing his land, spread on to the

plaintiff's lands adjoining:—Held, in an action for damages, applying the principle of Rylands v. Fletcher (1868), L. R. 3 H. L. 330, that the defendant maintained the fire at his own risk and was responsible for the damage caused by it. Costs on County Court scale allowed, as action should have been brought there. *Crewe* v. *Mottershaw*, 9 B. C. R. 246.

9. Collision — *Damage for to be equally divided where both ships to blame.*]—*Ward et al.* v. *Yosemite*, 3 B. C. R. 311.

See COLLISION.

10. Collision—*Damages for.*] — *Yambesi* v. *Fanny Dutard*, 2 B. C. R. 91.

See COLLISION.

11. Collision — *Rule as to damages in, where both parties in the wrong.*]—*Lee* v. *The Olympian*, 2 B. C. R. 84.

See COLLISION.

12. Consequential damages.] — Plaintiffs contracted to construct for defendants, according to specifications, a marine boiler capable of standing 120 lbs. pressure to the square inch, to be used in a steam tug. The boiler, as delivered, did not comply with the specifications, but it was accepted upon a statement by plaintiffs "that if it was not right they would make it right." The boiler burst, and besides direct damage, the defendants were obliged to hire another tug to carry on its work. The defendants admitted the plaintiffs' claim for goods sold and delivered, and counterclaimed, alleging breach of express warranty of the boiler, claiming direct and consequential damages:—Held, *per* DRAKE, J., at the trial upon the counterclaim that, on the evidence, the injury was caused by defective construction of the boiler, and that its steam pressure capacity was not as agreed. That the contract as to the form of the boiler was waived, but that the agreement to "make it all right," etc., amounted to a general warranty of fitness for the purpose. That the defendants were entitled to recover the costs of putting the boiler in the condition originally agreed upon, but not the amount paid for hire of another tug during the delay, on the ground that such liability was not contemplated by the contract. Plaintiffs appealed to the Full Court, and defendants cross-appealed claiming that the judgment should be increased by allowing the consequential damages claimed:—Held, *per* CREASE, MCCREIGHT and WALKEM, JJ., that apart from any, in this case doubtful, express warranty, there is an implied warranty by a manufacturer of goods for a particular purpose, that they are fit for that purpose, and that, upon the evidence, the defendants were entitled to recover for the breach of such warranty. That on the facts, the consequential damage which ensued from the bursting of the boiler must be taken to have been within the contemplation of the parties to the contract, as an accident to the boiler would, in the known circumstances of the defendants, necessitate the hire by them of another tug. *William Hamilton Manufacturing Co.* v. *Victoria Lumber and Manufacturing Co.*, 4 B. C. R. 101.

13. Contract.] — A party to a contract cannot be decreed, uno flatu, both specific performance and rescission, and where he obtains rescission he cannot have damages, which are given as in lieu of specific performance. *Smith et al.* v. *Mitchell*, 3 B. C. R. 450.

14. Contract — *Rescission — Action for damages.*]—Where a party contracts to purchase property and pays an instalment and afterwards repudiates the contract and sues for rescission, the Court has no jurisdiction to restrain by interim injunction the vendor who accepted the repudiation and re-took his property from dealing with it as he sees fit. *Christie* v. *Fraser et al.*, 10 B. C. R. 291.

15. Detention — *Action for detention of person having measles.*] — *Mills* v. *City of Vancouver*, 10 B. C. R. 99.

See HEALTH.

16. Distress—*Damages for illegal distress for taxes.*]—*Vedder* v. *Chadsey*, 1 B. C. R., pt. II., 76.

See TAXATION, II.

17. Drainage — *Damage caused by.*] — *Peatt* v. *Rhode*, 2 B. C. R. 159.

See WATERS AND WATERCOURSES, II.

18. Dog—*Damages for bite of.*]—*Neville* v. *Laing*, 2 B. C. R. 100.

See ANIMALS.

19. Electric wire—*Damages caused by.*] —*Earle* v. *Victoria*, 2 B. C. R. 156.

See NEGLIGENCE.

20. Excessive damages as ground of appeal.]—*Pender* v. *War Eagle*, 7 B. C. R. 162; *Warmington* v. *Palmer et al.*, 8 B. C. R. 344; 10 B. C. R. 250.

See MASTER AND SERVANT, IV. 2.

21. Extralateral rights—*Damages for infringement of—Right to jury in action for.* 6 B. C. R. 474.

See PRACTICE, XVII.

22. Finding of—*Is equivalent to general verdict supplementing any special findings, and importing such as were necessary.* 3 B. C. R. 221.

See MASTER AND SERVANT, IV.

23. Flooding of adjoining land caused by construction of railway embankment.]—*Hornby* v. *N. W. P. Ry. Co.*, 6 B. C. R. 588.

See WATERS AND WATERCOURSES, III.

24. Injunction — *Where remedy by injunction refused — Measure of damages allowed.* 1 B. C. R., pt. II., 370.

See INJUNCTION.

25. Injury arising from the exercise of a statutory duty or power.]—*Jones* v. *Victoria*, 2 B. C. R. 8.

See DAMNUM SINE INJURIA.

26. Loss of goods—*Damage for.* 1 B. C. R., pt. II., 176.

See CARRIERS.

27. Liquidated or unliquidated demand—*Order XIV.*]—*British Columbia Cor. v. Coughlan et al.*, 3 B. C. R. 273.

28. Malicious prosecution — *Damages for.*]—*Baker v. Kilpatrick*, 7 B. C. R. 150.

See MALICIOUS PROSECUTION.

29. Measure of — *For wrongful seizure under Behring Sea Award Act.* 5 B. C. R. 110.

See ADMIRALTY, III. 6.

30. Measure of—*Where ores improperly sampled.* 10 B. C. R. 138.

See CONTRACT, I. 1.

31. Measure of—*Negligence in procuring valuation.*]—In an action for damages against agents of a mortgagee for negligence in not procuring an accurate valuation of the lands or a good security for the loan, the property having been put up for sale under the mortgage and proving unsaleable, WALKEM, J., giving judgment for plaintiff, upon a finding of the jury that the plaintiff had been unable to realize anything upon the security, ordered the defendants to pay the whole amount of principal and interest due upon the mortgage, upon the plaintiff executing a transfer to them of the mortgage security. On appeal to the Full Court the judgment was affirmed by a majority of the Court (CREASE and DRAKE, JJ., MCCREIGHT, J., dissenting), *per* MCCREIGHT J., that there was nothing amounting to a guarantee of the loan, and the damages should be reduced by the actual cash value of the security at the time of the loan and a new trial had to ascertain such value. *Wolley v. Lowenberg, Harris & Co.*, 3 B. C. R. 416.

NOTE.—On appeal to the Supreme Court of Canada the judgment of the majority of the Court was reversed, and the judgment of MCCREIGHT, J., sustained.

32. Negligence of fireman for. 10 B. C. R. 9.

See MASTER AND SERVANT, IV.

33. Nuisance — *Damage for—Allegation of ownership of foreshore—Whether necessary in an action for damage for obstruction of sewer.*]—*Attorney-General v. C. P. R.* 10 B. C. R. 108.

34. Procuring—*Action for damages for procuring plaintiff to enter house of ill-fame.* 10 B. C. R. 449.

See ACTION.

35. Railway — *Damages against railway company for loss of goods—Limitation of liability.* 8 B. C. R. 190.

See CARRIERS.

36. Recovery of—*Damages cannot be recovered if jury can only conjecture how injury occurred.* 6 B. C. R. 579.

See MASTER AND SERVANT, IV.

37. Recovery of—*Damages cannot be recovered until invalid by-law is quashed.*]—*Traves v. City of Nelson*, 7 B. C. R. 48.

See MUNICIPAL CORPORATIONS, II. 3.

38. Seizure—*Damages for illegal seizure of sealing ship.*]—*The Beatrice*, 4 B. C. R. 347.

See ADMIRALTY, III. 6.

39. Sewer—*Damages for putting through land without taking expropriation proceedings.*]—*Arnold v. City of Vancouver*, 10 B. C. R. 198.

See MUNICIPAL CORPORATIONS, VIII.

40. Ship—*Damages for unseaworthiness.*]—*Drydale v. Union S. S. Co.*, 8 B. C. R. 228.

See CARRIERS.

41. Statutory duty—*Damages for neglect of.*]—*Love v. New Fairview Corp.*, 10 B. C. R. 330.

See NEGLIGENCE.

42. Tax sale—*Damages for unlawful.*]—*Lasker v. Tretheway*, 10 B. C. R. 438.

See PARTIES.

43. Tax sale — *Damages for failure to complete.*]—*Tracy v. North Vancouver*, 10 B. C. R. 235.

See MUNICIPAL CORPORATIONS, IX.

44. Trespass—*Damages allowed for trespass by constructing tank and pipe line on plaintiff's land.*] — *Byron N. White Co. v. Sandon Water Works*, 10 B. C. R. 361.

See WATERS AND WATERCOURSES, I.

45. Truck — *Damages for defect in.*]—*Wood v. C. P. R.*, 6 B. C. R. 561.

See MASTER AND SERVANT, IV.

46. Undertaking as to.] — *New Vancouver Coal Co. v. E. & N. Ry. Co.*, 6 B. C. R. 222.

See INJUNCTION.

47. Water rights — *Damages for interference with.*]—*Carson et al. v. Martley et al.*, 1 B. C. R., pt. II., 189.

See WATERS AND WATERCOURSES, IV.

48. Water—*Damages for use of.*]—*Carson v. Martley*, 1 B. C. R., pt. II., 281.

See WATERS AND WATERCOURSES, IV.

49. Water—*Damages for injury by—Evidence of.*]—*Milton v. District of Surrey*, 10 B. C. R. 296.

See EVIDENCE.

50. Wrongful dismissal — *Non-suit — Advisability of having findings of jury as to damages—Before entering non-suit.*] — *Varrelman v. Phœnix Brewery Co.*, 3 B. C. R. 135.

See MASTER AND SERVANT, II.

51. Wrongful dismissal — *Damages for.*]—*Tuck* v. *City of Victoria*, 2 B. C. R. 179.

See MUNICIPAL CORPORATIONS, VI.

52. Wrongful dismissal—*For.*]—*Hopkins* v. *Gooderham et al.*, 10 B. C. R. 250.

See MASTER AND SERVANT, II.

See also ADMIRALTY — COLLISION — CONTRACT—INJUNCTION — MALICIOUS PROSECUTION—MASTER AND SERVANT — WATER AND WATERCOURSES.

DAMNUM SINE INJURIA.

1. Injury—*Arising from exercise of statutory power or duty.*]—There is at common law no remedy for damage caused by the non-negligent exercise of a statutory duty or power. *Jones* v. *The City of Victoria*, 2 B. C. R. 8.

2. Damnum absque injuria.]—*Peat* v. *Rhode et al.*, 2 B. C. R. 159; *Columbia River Lumber Co.* v. *Yuill et al.*, 2 B. C. R. 237.

See WATERS AND WATERCOURSES, II.

3. Damnum sine injuria—*Where damage caused by exercise of statutory rights.*]—*C. P. R.* v. *Park et al.*, 6 B. C. R. 6.

See WATERS AND WATERCOURSES, I.

DAY.

See TIME.

DE BENE ESSE.

1. Evidence—*Taken may be read on jury trial.*]—*Ferguson* v. *Thain*, 3 B. C. R. 447.

See PRACTICE, XI. 1; XVI.

2. Practice as to examination.]—*Bank of Montreal* v. *Harvey*, 6 B. C. R. 68.

See PRACTICE, XI. 1.

3. Practice as to using evidence taken.]—*Vermont S. S. Co.* v. *Abby Palmer*, 10 B. C. R. 381.

See ADMIRALTY, I.

DEBENTURES.

1. Holder of—*May enforce his security notwithstanding judgment being registered.*]—*In re Giant Mining Co.*, 10 B. C. R. 327.

See COMPANY, IX. 6.

2. Registration of — *Where creates a charge against all property they may be registered.*]—*In re Land Registry Act*, 10 B. C. R. 370.

See REGISTRATION OF DEEDS.

3. Validity of.]—*Wiltshire* v. *Township of Surrey*, 2 B. C. R. 79.

See MUNICIPAL CORPORATIONS, IV.

DEBT.

1. An action to enforce a mechanic's lien is not an action for debt within meaning of Small Debts Act. *Dillon* v. *Sinclair*, 7 B. C. R. 328.

See COURTS, IV.

2. Calls on mining stock overdue at time of testator's death are debts, secus where accruing but not due. *Mason* v. *Ross*, 1 B. C. R. pt. II., 49.

DEBTOR AND CREDITORS.

1. Affidavit—*Omission on jurat of place of swearing.*]—The Bills of Sale Act, C. S. B. C. 1888, c. 8, s. 3, as to the affidavits of execution to be filed with the instrument, provides "the affidavit aforesaid may be in the form in the schedule hereto annexed marked A." In this form, and also in the affidavit filed with the chattel mortgage in question, no mention was made in the jurat of the place of swearing the affidavit:—Held (per curiam), that the affidavit was sufficient as complying with the statute, per DAVIE, C.J.: Apart from its statutory sufficiency it would be presumed from the fact that the affidavit was, on the face of it, sworn before a commissioner for taking affidavits in British Columbia, that the official acted within the territorial limits of his authority, and not elsewhere. *Brown and Ebb* v. *Jowett*, 4 B. C. R. 44.

2. Assignment by, under pressure.]—*Doll* v. *Hart*, 2 B. C. R. 32.

See CHATTEL MORTGAGE.

3. Assignment—*Notice to, of assignment of a chose in action.*]—*Clark* v. *Kendall*, 4 B. C. R. 503.

See ASSIGNMENTS.

4. "Apparent possession" — *Premises occupied by "person giving bill of sale."*] — The grantee under a bill of sale (treated as unregistered by reason of a defect in the affidavit), on 3rd January, 1894, took possession of the goods covered thereby, consisting of a bakery stock, and employed a person to take charge, and instructed him to let no one else in the place. The grantor had absconded from British Columbia. The plaintiff gave no written notice of change of ownership, but informed some of the creditors that he was in possession. The plaintiff carried on baking and delivered the product in his own name. The debtor's name, however, was not removed from the door of the premises. The defendant seized under fi. fa. on the 5th January, 1894:—Held, (1) that the goods were not in the "apparent possession" of the debtor. (2) That the premises were not "occupied" by him, within the meaning of the Act. *Brackman, et al.*, v. *McLaughlin*, 3 B. C. R. 265.

5. Arrest of debtor—*Not a bar to creditor setting aside prior fraudulent judgment.*] —*Ward & Co. v. Clark*, 4 B. C. R. 71.

See ARREST.

6. Conditions outside the instrument —Pressure—*Fraudulent preference.*] — To constitute pressure which will authorize an assignment by way of security, there must be a legitimate and bona fide attempt by the creditor to get payment of his debt or security thereof. It is not bona fide pressure for a creditor knowing of his debtor's insolvency to take an assignment of all his property. Bill of sale given subject to a condition not appearing therein is void as against creditors. *Doll v. Hart*, 2 B. C. R. 32.

7. Defeasance—*Bill of sale — Possession by grantee—Defeasance or condition—Fraudulent preference — Pressure — Authority of partner to execute bill of sale — Right to attack.*]—Where the goods comprised in a bill of sale are within twenty-one days after execution of the bill of sale, bona fide taken possession of by the grantee, the Bills of Sale Act does not apply, and it is immaterial even though the bill of sale was given subject to a defeasance not contained in it. D. B., A. O. B., and T. G. B., carried on business in partnership as hardware merchants under the name of Greenwood Hardware Company, the money being supplied by D. B. and A. O. B., and the business being maaged by W. The firm became indebted to both the McClary Company and the Howland Company, and the latter under threat of commencing action, obtained on the 27th of June, 1900, a bill of sale by way of mortgage of all the firm's assets, and immediately took possession. The bill of sale was executed on behalf of the firm by W., and also by W. personally, D. B. and A. O. B. both being absent; when A. O. B. returned he protested against the execution of the bill of sale, but subsequently withdrew his protest and consented to a sale of the goods on the understanding that plaintiffs and defendants should share pro rata in the proceeds. The arrangement that plaintiffs and defendants should share in the proceeds was not carried out. On the 27th of July, 1900, the McClary Company recovered a judgment in respect of their claim against the firm and obtained judgment under Order XIV., the judgment being entered up against D. B. and A. O. B., and also against the Greenwood Hardware Company, although not a party to the action, and an execution issued was returned nulla bona. The McClary Company thereupon sued to have the bill of sale set aside on the ground that it was fraudulent and void, as being given with the intent to defeat and delay creditors, and that W. had no authority to give it on behalf of the firm. Under an order of Court the goods were sold and the proceeds paid into the Court to abide the result of the action. The Howland Company recovered a judgment in January, 1901, against the firm for the amount of its indebtedness to them, and an execution issued thereunder was returned nulla bona. At the trial in July, 1902, MARTIN, J., dismissed the plaintiffs' action, holding that the bill of sale was not a fraudulent preference, but was given bona fide under pressure:—Held, on appeal, affirming decision of MARTIN, J., that the bill of sale was not a fraudulent preference, but was given bona fide under pressure. Per HUNTER, C.J., and DRAKE, J., W. had implied authority to execute the bill of sale. Per IRVING, J., W. was not the agent of his partners to execute the bill of sale, but they had either ratified his act or become estopped from denying his authority. Per HUNTER, C. J., the plaintiffs had no locus standi to attack the bill of sale on the ground that it was executed without proper authority. *Per* DRAKE, J.: The McClary Company's judgment against the firm was invalid and hence the company has no locus standi to attack the bill of sale. *The McClary Manufacturing Co. v. H. S. Howland, Sons & Company, and the Greenwood Hardware Company*, 9 B. C. R. 479.

8. Duty of debtor to seek creditor.] —*Shallcross, et al. v. Alaska Steamship Co.*, 8 B. C. R. 203.

9. Fraudulent preference—*U. S. B. C. 1888, c. 51 — Pressure.*] — Wilson Bros., creditors of P. & Y., a firm of general storekeepers, demanded security for their overdue account, and agreed if it was given to supply further goods and not register the instrument. P. & Y. objected that it would be unfair to their other creditors to accede, but finally did so on the terms proposed, and gave the security by bill of sale on part of their stock of goods. The debtors were at the time in insolvent circumstances, but it was not proved that Wilson Bros. were aware of it:—Held, that the bill of sale was not made with intent to give Wilson Bros. a preference over the other creditors of plaintiffs, but was made under pressure sufficient to take the transaction out of the staute. *Stewart v. Wilson*, 3 B. C. R. 369.

10. Garnishee order—*Claimant—Judge by consent trying issue summarily—Appeal—County Court—Garnishee proceedings—Practice.*]—Where the interested parties in garnishee proceedings agree that a County Judge may decide the matter in a summary way, he is in effect an arbitrator and no appeal lies from his decision. Eade v. Winser & Son (1878), 47 L. J., C. P. 584, followed. Per DRAKE, J., on appeal: (1) The affidavit leading to a garnishee summons must verify the plaintiff's cause of action, and a garnishee is entitled to question the validity of the proceedings at the hearing. (2) The defect in the affidavit was an irregularity only, and payment into Court by the garnishees was a waiver by them of their right to object. (3) The plaintiff may specify in one affidavit several debts proposed to be garnished. *Harris v. Harris, et al.*, 8 B. C. R. 397.

11. Husband and wife.]—C. in 1896 gave his wife $600, which she kept in the house, and he shortly after commenced to receive it back in small portions, and continued to do so until he had received it all. In March, 1898, according to the evidence of both, she demanded some settlement, and he agreed to give her a bill of sale of the household furniture, but the transaction was not carried out until June, after he had been sued for the price of the furniture: — Held, reversing MARTIN, J., that there was no legal obligation binding upon the husband to repay the $600, and that the bill of sale must be treated in the same way as if the gift had been made to the wife at the time of the execution of the bill of sale, and was therefore void. *Cordingley v. MacArthur*, 6 B. C. R. 527.

12. Instrument — *Not stating its true consideration—Actual change of possession—Pressure.*]—A bill of sale absolute in form is invalid against creditors, where the transaction was in reality one of mortgage, for not setting forth its true consideration and effect:—Held, on the facts, that as there was actual delivery and change of possession of the goods, the bill of sale agreed between the parties to it, to operate by way of mortgage, was therefore valid against creditors as a mortgage. The plaintiff, a brother of the mortgagor, had refused to make him necessary advances unless secured, whereupon the instrument in question was executed:—Held, that there was pressure rebutting preference. *Matheson* v. *Pollock*, 3 B. C. R. 74.

13. Preference—*Collusion — Pressure — R. S. B. C.* 1897, *c.* 86 *and* 87—*Bank Act, s.* 80.]—Where there is good consideration, a mortgage comprising the whole of a debtor's property, will not be set aside notwithstanding that the mortgagor is in insolvent circumstances to the knowledge of the mortgagee and that the effect of the mortgage is to defeat, delay and prejudice the creditors, if there is pressure. *Adams and Burns* v. *Bank of Montreal*, 8 B. C. R. 314.

14. Recital—*Estoppel — Covenant.*] —A bill of sale contained a recital that a certain sum was due from the mortgagor to the mortgagee, and a covenant by the mortgagor to pay that sum, and also any other sum which on taking an account might appear to be due thereon:—Held, that the mortgagee was not estopped by the recital from claiming that the debt due at the date of the bill of sale was larger than the sum therein named. An express covenant overrides and excludes an implied covenant. *Rithet* v. *Beaven*, 5 B. C. R. 457.

15. Release of debtor by novation.]—*Gurney* v. *Braden*, 3 B. C. R. 474.

See NOVATION.

16. Verbal sale not prohibited by the Act—*Receipt for consideration and lease back—Whether documents requiring registration.*]—B. made a verbal sale of the goods in question to the plaintiff, who paid him part of the price in two instalments, and took from him written receipts therefor. Plaintiff then executed a lease of the goods to B. who continued in apparent possession thereof. The goods having been seized by the sheriff under a fi. fa. upon a judgment obtained by the defendants against B., the plaintiff claimed them, and, upon trial of an interpleader issue:—Held, that verbal sales of goods are not prohibited by the Act, which contains no provision requiring written evidence of such sales to be made or registered. That such verbal sales, if bona fide, are good against subsequent execution creditors of the vendor, though the chattels are suffered to remain in his apparent possession. That the lease in question was not the contract of sale, or a memorandum thereof, but was a subsequent independent transaction, and that neither it nor the other writings were documents requiring registration under the Act. *Esnouf* v. *Gurney*, 4 B. C. R. 144.

See also ARREST—ASSIGNMENTS FOR BENEFIT OF CREDITORS — CHOSE IN ACTION — CHATTEL MORTGAGE—FRAUDULENT PREFERENCE—FRAUDULENT CONVEYANCE.

DECEIT.

1. Broker—*Misrepresentation by.*] — The action was for misrepresentation by defendants, financial brokers, concerning the value of the security and character of the borrower, made by S., a member of their firm, in recommending to plaintiff an investment on real estate mortgage security of $5,500. Defendants were in fact employed by the borrower, H., and they obtained a written valuation of the lands from two persons, who certified that they knew the lands personally, and that they were worth $9,700 or 7,000 at a forced sale. The mortgage becoming overdue the lands proved unsaleable and not worth the amount of the loan; and H. had abandoned the property. At the trial the case was put in the alternative, as an action for negligence on the part of defendants as plaintiff's agents in not obtaining an accurate valuation. The jury, besides finding that S. had misrepresented to plaintiff the value of the security, and the character of H. found, that S. led the plaintiff to rely upon the belief that the defendants were acting for him, and that they were his agents in the matter; that S. did not shew the valuation to the plaintiff, who acted solely on his advice; that the defendants adopted the valuation without further enquiry and in doing so were guilty of negligence. Upon these findings WALKEM, J., ordered judgment to be entered for the plaintiff for the full amount of the loan and interest, as damages, upon plaintiff executing an assignment to defendants of the security. Upon appeal to the Full Court, and motion to the Divisional Court for a new trial:—Held, per CREASE, MCCREIGHT and DRAKE, JJ.: That there was sufficient evidence and findings of agency and negligence: Per CREASE and DRAKE, JJ., affirming WALKEM, J.: That the measure of damages was the whole loss on the loan. That the fact that the case was put to the jury, as also involving actionable misrepresentation or deceit, and that findings were taken thereon, and that the learned Judge charged the jury that the representations, if made, amounted to a guarantee by the defendants of the loan, were insufficient grounds of misdirection to call for a new trial. Per MCCREIGHT, J.: There was nothing amounting to a guarantee of the loan, and the damages should be reduced by the actual cash value of the security at the time of the loan, and a new trial had to ascertain such value. *Wolley* v. *Lowenberg, Harris & Co.*, 3 B. C. C. C. 416.

2. Deception by use of similar name of company.]—*Canada Permanent* v. *B. C. Permanent*, 6 B. C. R. 377.

See COMPANY, I.

DECREE.

1. Admiralty—*Decree in—Effect of pronouncement of.* 2 B. C. R. 91.

See COLLISION.

2. Power of Judge to alter.]—*Haltz* v. *McAlister*, 2 B. C. R. 77.

3. Practice as to taking further accounts.] — *Vanvolkenburg* v. *Western Can. Banking Co.*, 6 B. C. R. 284.

See CHATTEL MORTGAGE.

See also JUDGMENT.

DEDICATION.

1. Foreshore — *Crown grant of — Public way — Plan—Registration of—Registering plan shewing public street—Who can dedicate.*]—In 1881, by letters patent under the great seal, and issued pursuant to statute of Canada, 49 Vict. c. 1, s. 18a, and having by s. 2, the force of an Act of Parliament, plaintiffs were granted the right to "take, use, and hold the beach and land below high water mark in any navigable water, gulf, or sea, to such extent as shall be required by the company for its railway and other works, as shall be exhibited upon a map or plan thereof deposited in the office of the Minister of Railways." In November, 1885, plaintiffs deposited a plan of the town site of Vancouver, and made sales of lots by it, such plan showing a street, Gore Avenue, opening at right angles upon the foreshore of Vancouver Harbour at the point in question. In March, 1886, plaintiffs deposited in the office of the Minister of Railways a plan exhibiting that they required for their railway and works all the land below high water mark along the shore line at the point in question; and they afterwards constructed their line of railway upon an embankment along such foreshore about half way between high and low water mark, in such manner as to cut off public access to the sea by way of the street. In May, 1892, defendants proposed to run Gore Avenue across the plaintiffs' railway embankment, and to continue the street as a wharf to deep water, and for that purpose commenced an embankment to run across the foreshore and plaintiffs' embankment. Plaintiffs thereupon obtained an injunction restraining such proceedings. Upon motion after the trial for judgment:—Held, per McCREIGHT, J., dissolving the injunction and dismissing the action:—1. That the registration of their townsite plan in November, 1885, operated as a dedication by plaintiffs of a public way over the foreshore from the foot of Gore Avenue, shewn as opening upon it, and as an estoppel against their setting up their subsequently acquired rights over the foreshore against such public right of way. 2. That if plaintiffs, in 1886, acquired any title to the foreshore inconsistent with such public right of way, such title fed the estoppel. 3. A public right of way is extinguished by Act of Parliament only by express words, or where it clearly authorizes the doing of a thing which is physically inconsistent with the continuance of such right, and s. 18a, supra, does not do so. 4. The Crown was a necessary party to the action. Upon appeal to the full Court:—Held, per BEGBIE, C.J. (WALKEM and DRAKE, J.J., concurring), overruling McCREIGHT, J., giving judgment for plaintiffs, and reinstating and continuing the injunction:—1. The plaintiffs' right to occupy the foreshore under s. 18a, supra, was exclusive; 2. There was no dedication by plaintiffs by the registration of their map of 1885, as there can be no dedication except by owners of the soil; 3. There is no power of dedication where there is no power to alienate. *The Canadian Pacific Railway Company* v. *The City of Vancouver*, 2 B. C. R. 306.

2. Alienation—*Dedication.*]—A person who has no power to alienate cannot dedicate. *C. P. R.* v. *City of Vancouver*, 2 B. C. R. 306.

See ESTOPPEL.

DEEDS.

1. Cancellation of — *Question not one for jury action.*]—*Stewart* v. *Warner*, 4 B. C. R. 298.

See PRACTICE, XVI.

2. Fee simple — *Deeds—Grant of on defeasible condition.*]—On the grant of a fee simple, defeasible on breach of a condition, no estate is left in the grantor, but only a possibility of a reverter, and, therefore, before breach there is nothing capable of assignment. After breach, where the deeds do not provide for ipso facto forfeiture, the fee does not revest automatically, and until revesting by suit or otherwise there is nothing capable of assignment. Land was conveyed subject to certain conditions to be performed by the purchasers, and, in default of the performance of such conditions, the purchasers were to hold the land in trust for the grantor, and re-convey to him, notwithstanding that any prior breach may have been waived. The conditions were not performed. In an action by the assignee under seal of the vendor for a declaration that the purchasers held the land in trust for him, and for an order for the conveyance thereof to him:—Held, that after the conveyance there was no estate left in the grantor, but only a possibility of reverter, which was not assignable and no action lay. Decision of MARTIN, J., affirmed on different grounds. *Clark* v. *The Corporation of the City of Vancouver*, 10 B. C. R. 31.

3. Interpretation of—*Voluntary conveyance—Trust deed for benefit of creditors—Fraudulent preference—Setting aside deeds.*]—Under a trust deed assignment the assets of a partnership business upon trust to sell the same and divide the proceeds "into and among all the creditors of the parties of the first part" (viz., the assignors), without any words of distribution such as, "or either of them" being added:—Held, on appeal to the Full Court by DAVIE, C.J., and McCREIGHT, J., McCOLL, J., that the deed provided only for the payment of the joint creditors, and not the separate creditors of the partners, and, in the absence of any satisfactory arrangement being agreed upon, the deed must be set aside on the ground that it constituted a preference. *Cunningham* v. *Curtis*, 5 B. C. R. 472.

4. Land—*Registered plan—Governs boundaries of, embraced in deed.* 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

5. Title deeds—*Production of for purpose of registration.*]—*Hudson's Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

DEER.

1. Exemption of farmer from statutory penalty in respect of killing out of season. *Reg.* v. *Simmington*, 4 B. C. R. 323.

See GAME.

DEFAMATION.

1. Poster—*Advertising accounts for sale.*]—Defendant, a debt collector, printed a poster containing the names of persons from whom he was employed to make collections, shewing the amounts and the nature of the accounts, set opposite the respective names under the heading in large letters: "Accounts for sale. Victoria, B.C. The British Columbia Commercial Agency offer the following accounts for sale at their office," etc. This poster, which shewed the name of the plaintiff as debtor for a drug bill of $9.67, defendant sent to him, and to each of the persons on the list, together with a circular stating, "you may still have your name lifted by paying the amount on or before the 27th inst., after which date the posters will positively be issued." An interim injunction having been granted to restrain further publication:—Held, *per* BEGBIE, C.J., on motion to continue the injunction till the hearing: That the poster was libellous, and the innuendo implied was not merely that the plaintiff was justly indebted in the sum mentioned, but that he was dishonest and insolvent:—Held, *per* BEGBIE, C.J., on motion to dissolve injunction: The Court will interfere by interlocutory injunction restraining until the trial the publication of what clearly appears to be a libel. On appeal to Divisional Court:—Held, *per* CREASE, J., that the poster was libellous. It was in fact, in the eyes of the public, a black list, implying that all ordinary efforts to obtain payment had failed, and that the debtor was either dishonest or insolvent. That, though in England the Courts have not of late restrained publication before the question of libel had been submitted to a jury, there is undoubted power to do so under C. S. B. C. c. 31, s. 14, and appeal should be dismissed:—Held, *per* DRAKE, J., that as the jurisdiction is one never admitted before the Judicature Act, and the exercise of it may prejudice the trial of the action, as being a conclusive opinion that the matter complained of is defamatory, it should be very sparingly used and in practice confined to trade libels, and appeal should be allowed. *Wolfenden* v. *Giles*, 2 B. C. R. 279.

See also LIBEL AND SLANDER.

DEFAULT.

1. Default summons — *Garnishee summons may be based upon.*]—*Jowett* v. *Watts*, 10 B. C. R. 172.

See GARNISHMENT.

2. Judgment obtained in foreign country by—*Sued on.*]—*Boyle* v. *V. and Y. Trading Co.*, 9 B. C. R. 213.

See JUDGMENT.

3. Judgment by.] — *Mason* v. *Nason*, 4 B. C. R. 172.

See PRACTICE, XXXVIII. 10.

4. Judgment by — *Setting aside of.*]—*Gordon* v. *Roadley*, 6 B. C. R. 305.

See PRACTICE, IV.

5. Judgment by — *Not an estoppel.*]—*Harper* v. *Cameron*, 2 B. C. R. 365.

See CANCELLATION OF INSTRUMENTS.

6. Judgment by—*Under special indorsement.*]—*McLarcy Mfg. Co.* v. *Corbett*, 2 B. C. R. 212; *Hassard* v. *Riley*, 6 B. C. R. 167.

See PRACTICE, XXXVIII., 10.

7. Judgment by — *Irregular—No terms should be imposed in setting aside of.*]—*Pounder* v. *Corner*, 6 B. C. R. 177.

See PRACTICE, XXXI.

DEFENCE.

1. Amendment to.]—*Gordon* v. *City of Victoria*, 6 B. C. R. 129.

See PRACTICE, IX. 5.

2. Embarrassing—*Striking out.* 6 B. C. R. 306.

See PLEADING, X. 1.

3. Leave to defend.]—*Hatz* v. *McAllister*, 2 B. C. R. 77.

See PRACTICE, XXXI.

4. New defence on appeal not allowed.]—*Hogg* v. *Farrell*, 6 B. C. R. 387.

See PLEADING, X. 3.

5. Separate defences—*Costs of.*]—*Merchants Bank* v. *Hamilton*, 7 B. C. R. 352.

See PRACTICE, IX. 19.

6. Where application for judgment dismissed.]—*Pounder* v. *Corner*, 6 B. C. R. 177.

See PRACTICE, XXXI.

See also PLEADING, X.

DEFENDANT.

1. Adding a party defendant.]—*Trowbridge* v. *McMillan*, 9 B. C. R. 171.

See PARTIES.

2. Adding party defendants.]—*Bryce* v. *Jenkins*, 8 B. C. R. 32.

See PRACTICE, I. 8.

DELAY.

See LACHES.

See PRACTICE, I. 6.

DELEGATION.

See AGENCY.

DELIVERY.

See SALES OF GOODS.

DEMAND.

1. Bona fide demand.]—*Brown et al.* v. *Jowett*, 4 B. C. R. 44.

See CHATTEL MORTGAGES.

2. For statement of claim.] — *Mason* v. *Mason*, 4 B. C. R. 172.

See PRACTICE, XXXVIII. 10.

3. Time to consider liability on.]—A man is not bound to say yes or no at once when confronted with a demand for the payment of money about which there may be doubt as to his liability to pay, but he is entitled to a reasonable time according to the circumstances of the case, to consider the position and to make up his mind whether he really owes the money or not, and as to what course he will take. *Belcher et al.* v. *McDonald*, 9 B. C. R. 377.

DEMURRER.

1. Interference by Court—*Plea of on is good.*]—*Atty.-Gen.* v. *C. P. R.*, 1 B. C. R., pt. II., 350.

See PLEADING, VII.

2. On ground of insufficient interest.]—*Barnard* v. *Walkem*, 1 B. C. R. 120.

See INJUNCTION.

3. Order allowing, is final.] — *Atty.-Gen.* v. *C. P. R.*, 1 B. C. R., pt. II., 330.

See APPEAL, VIII. 12.

4. Point disposing of case could have been raised before trial.]—*Hall* v. *The Queen*, 7 B. C. R. 120.

See PRACTICE, IX.

DEPORTATION.

1. Of Chinamen refused admittance into United States.]—*In re Lee San*, 10 B. C. R. 270.

See HABEAS CORPUS.

DEPOSITION.

1. Absent witness — *Proof of absence from Canada.*]—*Reg.* v. *Morgan*, 2 B. C. R. 329.

See CRIMINAL LAW, VII.

2. Admissibility of.]—*Reg.* v. *Piscara et al.*, 1 B. C. R., pt. II., 144.

See CRIMINAL LAW, VIII.

3. Perusal of, by grand jury.]—*Reg.* v. *Hawes*, 1 B. C. R., pt. II., 307.

See CRIMINAL LAW, XV.

4. Trial—*Reading to, at.*]—*B. C. Electric* v. *Mfg. Guarantee Ins. Co.*, 7 B. C. R. 512; *Walkley* v. *City of Victoria*, 7 B. C. R. 481.

See PRACTICE, XI. 5.

See also CRIMINAL LAW—EVIDENCE.

DESCRIPTION.

1. Accused person as "Mrs. M." held to be bad.]—*Reg.* v. *Morgan*, 1 B. C. R., pt. I., 245.

See HABEAS CORPUS.

2. Documents — *Of, in affidavit of.*]—*Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 104.

See PRACTICE, XI. 3.

3. Property—*Of, in agreement of sale of land.*]—*Borland* v. *Coote*, 10 B. C. R. 493.

See VENDOR AND PURCHASER.

4. Property—*Of, not necessary to obtain registration of debentures where all the property is charged by the debentures.*]—*In re Land Registry Act*, 10 B. C. R. 370.

See REGISTRATION OF DEEDS.

DETECTIVE.

1. Held, to be bona fide traveller.]—*Reg.* v. *Harris*, 2 B. C. R. 177.

See INTOXICATING LIQUORS.

DETENTION.

1. Of person exposed to infection.]—*Mills* v. *City of Vancouver*, 10 B. C. R. 99.

See HEALTH.

2. Wrongful—*Damages for only nominal where goods might be replevied.*]—*Brown* v. *Jowett*, 4 B. C. R. 44.

See CHATTEL MORTGAGE.

DERELICT.

1. Expenses of salvage of.]—*Jacobson et al.* v. *Ship Archer*, 3 B. C. R. 374.

See SALVAGE.

DESCENT AND DISTRIBUTION.

See EXECUTORS AND ADMINISTRATORS.

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See ADMIRALTY—COLLISION.

DEVISEE.

1. No right as such to a certificate of indefeasible title.]—*In re Trimbel*, 1 B. C. R., pt. II., 321.

See RECORDS.

DIMENSIONS.

1. Not essential where plan according to scale.]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

DIMINUTION OF RECORD.

Greer v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXI.

DIPHTHERIA.

1. Detention of person exposed to infection.]—*Mills* v. *City of Vancouver*, 10 B. C. R. 99.

See HEALTH.

DIRECT TAXATION.

1. Taxation by means of license fees is not.]—*Reg.* v. *Mc Wah*, 3 B. C. R. 403.

See CONSTITUTIONAL LAW, II. 8.

DIRECTIONS.

1. Summons for.]—*Jones* v. *Pemberton*, 6 B. C. R. 67.

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DIRECTORS.

1. Liability of — *For issuing shares as fully paid up.*]—*Kettle River Mines* v. *Bleasdel*, 7 B. C. R. 507.

See COMPANY, II.

2. Regularity of proceedings by—*May be assumed by holder of security.*] —*Jackson* v. *Cannon*, 10 B. C. R. 73.

See COMPANY, II.

3. Removal of.]—*Fraser River Mining Co.* v. *Gallagher*, 5 B. C. R. 82.

See COMPANY, II.

DIRECTORY.

1. Provisions of Jury Act as to summoning jury are merely.]—*Hogg* v. *B. C. Electric Co.*, 7 B. C. R. 394.

See PRACTICE, XVI.

DISABILITY.

1. Of judgment creditor as to other modes of execution on resort to ca. re. —*Ward & Co.* v. *Clark*, 4 B. C. R. 71.

See ARREST.

DISAGREEMENT OF JURY.

1. Judge cannot direct for either party in case of.]—*Loo Chu Fan* v. *Loo Chock Fan*, 1 B. C. R., pt. II., 172.

See PRACTICE, XX.

DISCHARGE.

1. In ca. re. proceedings.]—*Coursier* v. *Madden*, 6 B. C. R. 125.

See ARREST.

2. Of lien. 2 B. C. R. 82.

See MECHANICS' LIEN.

3. Of order for service ex juris.]—*Garesche et al.* v. *Halliday*, 1 B. C. R., pt. II., 83.

See PRACTICE, XXXVIII. 5.

See ARREST.

DISCOVERY.

1. Application for before delivery of amended statement of claim.]—*Cooley* v. *Fitzstubbs*, 3 B. C. R. 198.

See PRACTICE, XI. 5.

2. Corporation—*Examination of ex officer of.*]—*Royal Bank* v. *Harris*, 8 B. C. R. 368.

See PRACTICE, XI. 5.

3. County Court — *When oral permissible.*]—*Roberts* v. *Fraser*, 9 B. C. R. 296.

See COURTS, I. 3.

4. Documents—*Party not entitled to as of right.*]—*Elson* v. *C. P. R.*, 6 B. C. R. 71.

See PRACTICE, XI. 7.

5. Dual capacity — *One subpœna only necessary.*]—*Centre Star* v. *Rossland Miners' Union*, 9 B. C. R. 190.

See PRACTICE, XI. 5.

6. Examination for.]—*Beaven* v. *Fell*, 4 B. C. R. 334; *Lyon* v. *Marriott*, 5 B. C. R. 157; *Jones* v. *Pemberton*, 6 B. C. R. 69; *Beauchamp* v. *Muirhead*, 6 B. C. R. 418; *Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 104; *Feigenbaum* v. *Jackson*, 7 B. C. R. 171; *Bank of B. C.* v. *Trapp*, 7 B. C. R. 354; *Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 448; *Walkley* v. *City of Victoria*, 7 B. C. R. 481; *Hopper* v. *Dunsmuir*, 10 B. C. R. 23.

See PRACTICE, XI. 5.

7. Guardian ad litem also a party for.]—*Beaven* v. *Fell*, 5 B. C. R. 453.

See PRACTICE, XI. 5.

8. Labour union—*Whether legal entity for purpose of.*] — *Centre Star* v. *Rossland Miners' Union*, 9 B. C. R. 190.

See PARTIES.

9. Libel—*Plea of justification—Right to particulars of.*]—*Bullen* v. *Templeman*, 5 B. C. R. 43.

See PRACTICE, XI. 6.

10. Inspection.]—*Green* v. *Stussi*, 6 B. C. R. 193; *Centre Star* v. *Iron Mask*, 6 B. C. R. 355.

See PRACTICE, XI. 2.

11. Refusal to answer on.]—*Boggs* v. *Bennet Lake N. Co.*, 8 B. C. R. 353.

See PRACTICE, XI. 5.

12. Second order for after material amendment of pleading.]—*Bank of Montreal* v. *Major*, 5 B. C. R. 181.

See PRACTICE, XI. 5.

13. Use of.]—*Royal Bank* v. *Harris*, 8 B. C. R. 368; *Lyon* v. *Marriott*, 5 B. C. R. 157.

See PRACTICE, XI. 5.

14. Want of parties no objection to application for.]—*Beaven* v. *Fell*, 4 B. C. R. 334.

See PRACTICE, XI. 5.

15. What are opposite parties for purpose of.]—*Richards* v. *B. C. Goldfields*, 4 B. C. R. 485; *Beaven* v. *Fell*, 5 B. C. R. 453.

See PRACTICE, XI. 5.

See also PRACTICE, XI.

DISCRETION.

1. As to terms where leave to defend granted.]—*Hotz* v. *McAllister*, 2 B. C. R. 77.

See PRACTICE, XXXI.

2. Of Judge—*Not to be lightly interfered with.*] — *Hopper* v. *Dunsmuir*, 10 B. C. R. 159.

See PRACTICE, XXII.

3. Of Judge—*As to ordering cross-examination on affidavit.*]—*Leavock* v. *West*, 6 B. C. R. 404.

See PRACTICE, II.

4. Of magistrate—*To try or commit.*]—*In re McRae*, 4 B. C. R. 18.

See CRIMINAL LAW, XVIII.

5. Of magistrate—*As to amount of fine not to be interfered with unless shewn that he acted oppressively.*]— *Reg.* v. *Bowman*, 6 B. C. R. 271.

See CRIMINAL LAW, XVIII.

6. Substitutional service—*Discretion of Court to set aside proceedings for irregularities.*]—*Centre Star* v. *Rossland and Great Western Mines*, 10 B. C. R. 262.

See PRACTICE, XXVII.

7. Time—*Of Appeal Court to extend.*]—*Wilson* v. *Marvin*, 3 B. C. R. 327.

See APPEAL, VIII. 2.

DISEASES.

See HEALTH.

DISFRANCHISEMENT.

1. Of voters—*Acts should be construed so as not to disfranchise persons having qualifications.*]—*In re Prov. Elections Act*, 10 B. C. R. 114.

See ELECTIONS.

DISMISSAL.

1. Of action for want of prosecution.]—*McDonald* v. *Jessop*, 3 B. C. R. 606; *Boscowitz* v. *Cooper*, 4 B. C. R. 88.

See PRACTICE, I. 6.

2. Of application for judgment under Order XIV.—*Effect of.*] — *Pounder* v. *Corner*, 6 B. C. R. 177.

See PRACTICE, XXXI.

3. Of application for after notice of trial — *Want of prosecution.*]—*Sullivan* v. *Jackson*, 7 B. C. R. 133.

4. Of servant.]—*Tuck* v. *City of Victoria*, 2 B. C. R. 179.

See MUNICIPAL CORPORATIONS, VI.

5. Of servant — *Damages for.*] — The plaintiff, who had been engaged for one year from August, 1902, by defendants at a monthly salary, was dismissed wrongfully in December. He sued for damages for breach of contract, and the action was tried in May, 1903:—Held, by the Full Court, affirming the judgment entered at the trial, that plaintiff was entitled to recover damages covering the unexpired term of his engagement. The statement of claim alleged a contract of hiring

plaintiff as superintendent of a mill, arising from two letters, without setting them out, and without alleging the continuance of the construction of the mill, which was one of the conditions stated by defendants in their second letter. The defence denied the allegations in the statement of claim and alleged the contract was contained in the second letter:—Held, that it was not necessary for the plaintiff to prove the continuance of the construction of the mill. *Hopkins* v. *Gooderham et al.*, 10 B. C. R. 250.

6. Dismissal and non-suit.

See PRACTICE, XII.

See MASTER AND SERVANT—PRACTICE, I. 6—WRONGFUL DISMISSAL.

DISOBEDIENCE.

1. As contributory negligence.]—*McMillan* v. *Western Dredge Co.*, 4 B. C. R. 122.

See PRACTICE, XX.

DISORDERLY HOUSE.

In re McRae, 4 B. C. R. 18.

See CRIMINAL LAW, XIX.

DISPUTE NOTE.

1. Setting up defence outside of—*On motion for summary judgment.*] — *McGuire* v. *Miller*, 9 B. C. R. 1.

See COURTS, I. 3.

DISQUALIFICATION.

1. Of alderman.]—*Faulkner* v. *Langley*, 6 B. C. R. 444.

See MUNICIPAL CORPORATIONS, V.

See also ARBITRATION AND AWARD.

DISSOLUTION.

1. Of partnership—*Effect of.*]—*Cane* v. *McDonald*, 10 B. C. R. 444.

See PARTNERSHIP, IV.

DISTANCE.

1. Correction of, by Provincial Land Surveyor.] — *Granger* v. *Fotheringham*, 3 B. C. R. 590.

See MINES AND MINERALS, XLII.

DISTILLATION.

1. Proof of—*Necessary to sustain charge of selling spirituous liquors.*] — *Re Kwong Wo*, 2 B. C. R. 336.

See INTOXICATING LIQUORS.

DISTRESS.

1. Definition of.] — *Hamley* v. *Libbey*, 1 B. C. R., pt. II., 44.

See SHIPPING.

2. Municipal taxes—*Assessment—Concealment of objection—Rights of action for trespass.*] — Plaintiff being placed on the assessment roll and taxed in respect of certain lands, the separate property of his wife, did not raise that objection until after seizure and sale of his chattels to levy the amount:—Held, in an action of trespass, not to amount to leave and license, but the auction value of the goods only allowed as damages. In the discretion of the Court no costs allowed. *Vedder* v. *Chadsey*, 1 B. C. R., pt. II., 76.

DITCH.

Carson v. *Clark, et al.*, 1 B. C. R. pt. II., 198; *Peat* v. *Rhode*, 2 B. C. R. 159.

See WATERS AND WATERCOURSES, IV.

DIVERSION OF WATER.

See WATERS AND WATERCOURSES.

DIVISIONAL COURT.

1. Appeal—*Divisional Court will not entertain from ex parte order.*]—*H. B. Co.* v. *Hazlett*, 4 B. C. R. 351.

See APPEAL, V.

2. Appeal to — *From order re Mineral Act.*] — *Re Maple and Lanark Mineral Claims*, 2 B. C. R. 323.

See APPEAL, V.

3. Appeal from — *To Privy Council — Only in case of general public interest.*]—*Gordon* v. *Cotton*, 3 B. C. R. 287.

See APPEAL, V.

4. Concurrent jurisdiction — *Of, with full Court in interlocutory matters.*]—*Edison General Electric Co.* v. *Edwards*, 4 B. C. R. 354.

See APPEAL, V.

5. Criminal case—*Appeal to, in.*]—*Reg.* v. *Johnson*, 2 B. C. R. 87.

See CRIMINAL LAW, IV.

6. Jurisdiction of — *To extend time of appeal.*]—*Foote* v. *Mason*, 3 B. C. R. 146; *Varrelman* v. *Phœnix Brewery Co.*, 3 B. C. R. 143; *Fuller* v. *Yerxa*, 1 B. C. R., pt. II., 330.

See APPEAL, V.

7. Jurisdiction of.]—*Ward* v. *Clark et al.*, 4 B. C. R. 71.

See ARREST.

8. New trial — *Application to, for.*]—*Perks* v. *Blackwood*, 2 B. C. R. 346.

See APPEAL, V.

9. New trial—*Power to give final judgment on motion for.*]—*Perks* v. *Blackwood*, 2 B. C. R. 346.

See APPEAL, V.

DIVORCE.

1. Cruelty — *By husband — Condonation of.*]—Where the husband had been guilty of cruelty, which had been condoned, but within the six months subsequent to the condonation had been guilty of violent and harsh treatment, which would not originally of itself constitute a ground for separation, the Court granted a separation to the wife. *Town* v. *Town*, 7 B. C. R. 122.

2. Evidence of witness given at former trial—*Admissibility of.*]—In divorce proceedings the evidence of a witness who cannot be found, given at a former trial proving misconduct, may be read over to the petitioner at the trial and verified by her as a correct note of the evidence as given by the witness and used as proof of misconduct. *Cunliffe* v. *Cunliffe*, 8 B. C. R. 181.

3. Intemperance of wife—*Separation—Adultery committed after.*]—Where a husband separates from his wife on account of her intemperance, but makes no provision for her, thereby leaving her without any means of support, he is not entitled to a divorce on the ground of adultery committed by her after the separation. *Forrest* v. *Forrest and Morton*, 8 B. C. R. 19.

4. Jurisdiction — *Of Supreme Court of British Columbia to entertain action for—Introduction of English law.*] — Held, by CREASE and GRAY, JJ. (BEGBIE, C.J., dissenting), (1) That the Supreme Court in British Columbia has in British Columbia all the jurisdiction conferred on the "Court for Divorce and Matrimonial Causes" under the Matrimonial Causes Act, 1857, 20 and 21 Vict. c. 85, as amended by 21 and 22 Vict. c. 108. Per GRAY, J., That the legislative adoption by British Columbia in March 1867, of the English law as it existed in England on the 19th November, 1858, did not necessitate the adoption of the machinery by which the English law was carried out in England, but coupled with the language constituting the Supreme Court in British Columbia, was a direct legislative sanction and authority to carry out that law in the Province by local tribunals and local machinery, and clothed the Supreme Court of the Province with ample authority to hear and determine divorce and matrimonial causes. *M——— falsely called S——— v. S———*, 1 B. C. R., pt. I., 25.

5. Jurisdiction of full Court.] — In construing statutes the Legislature must be presumed to contemplate dealing only with subjects within its legislative control, and as Provincial Legislatures have no power to confer divorce jurisdiction upon any Court, the language of the Supreme Court, Act, C. S. B. C. (1888) c. 25, s. 67, providing that "an appeal shall lie to the Full Court from every judgment, decree or order, made by a Judge of the Supreme Court, whether final or interlocutory, and whether such judgment, decree or order shall be in respect of a matter specified in the Rules of Court or not," cannot be construed to confer upon the Full Court of British Columbia any appellate jurisdiction in divorce matters. The Imperial Act, 20 & 21 Vict. c. 85, s. 55, giving an appeal to the Full (Divorce) Court from all decisions of a single Judge thereof, is inapplicable to the Full Court of British Columbia. *Scott* v. *Scott*, 4 B. C. R. 316.

DOCUMENTS.

1. Affidavit of.] — *Beauchamp* v. *Muirhead*, 6 B. C. R. 418.

2. Inspection of.] — *Vanvolkenberg* v. *Bank of B. N. A.*, 5 B. C. R. 4.

See PRACTICE, XI. 2.

See PRACTICE, XI. 7.

3. Production of—*Should be where writ issued.*]—*David Sayward Mill Co.* v. *Buchanan*, 10 B. C. R. 175.

See PRACTICE, XI. 7.

4. Title—*Documentary title is sufficient to establish prima facie case in action of ejectment.*]—*Carrol* v. *City of Vancouver*, 10 B. C. R. 179.

See MUNICIPAL CORPORATIONS, IX.

See PRACTICE, XI. 2, 7—REGISTRATION OF DEEDS—RECORDS.

DOG.

1. Damages for bite of.]—*Neville* v. *Laing*, 2 B. C. R. 100.

See ANIMALS.

DOMICILE.

1. Foreign company.]—The defendants—a foreign company—had a place of business in Victoria, where it carried on a trading business, although its principal place of business and head office, where the meetings of the governor, chief traders, and shareholders were held, were in England. The plaintiff, an administrator (appointed by the Court here), to the intestate estate of McL———, a deceased servant of the company—served a writ on one of the company's managers at Victoria. On

an application to have the writ set aside:—Held, that inasmuch as by the company's rules the power to appoint, pay and dismiss was with the English office, and as, by agreement, the deceased's account was kept at that office, and the balance due him from time to time was payable there, the English office must be regarded as the domicile of the company, and the company could not be sued here by the plaintiff as administrator of the deceased. *Wilson* v. *Hudson's Bay Company*, 1 B. C. R., pt. II., 102.

2. Law—*Of domicile.*]—Contracts of marriage made in a foreign country, the domicile of parties, by the terms of which, in accordance with the laws of that country, the alienation by a testator (one of the parties to the contract) of his real estate away from his wife and family, is forbidden, will prevent a contrary disposition of the same even though, according to the lex loci rei sitæ, there be no such restriction. By the comity of nations the contract travels abroad, and, as between the parties to that contract and their representatives, attaches to the testator's real estate in places other than the domicile. Marriage, carried out in consideration of such a contract, and in accordance with the laws of the domicile, will, in its incidents touching the real estate of one of the parties, as between those parties and their representatives, be respected and sustained, as to those incidents, in countries other than the domicile, when there is no direct local legislation to the contrary. Remarks on the Land Registry Ordinance, 1870. *In re Klaukie's Will*, 1 B. C. R., pt. I., 76.

3. Parties having foreign domicile liable to arrest.]—*Baxter* v. *Jacobs, Moss et al.*, 1 B. C. R., pt. II., 373.

See ARREST.

DOMINION GOVERNMENT.

1. Official of — *Salary whether assignable.*]—*Cane* v. *McDonald*, 9 B. C. R. 297.

See PARTNERSHIP, IV.

2. Official of—*One partner has no right to share in salary of another after dissolution.*]—*Cane* v. *McDonald*, 10 B. C. R. 444.

See PARTNERSHIP, IV.

3. Official of—*Salary—Whether receiver can be appointed in respect of.*]—*Cane* v. *McDonald*, 9 B. C. R. 297.

See PARTNERSHIP, IV.

DOMINION WINDING-UP ACT.

1. Application of, to provincial companies.—*In re B. C. Iron Works Co.*, 6 B. C. R. 536.

See COMPANY, IX.

DOMINOES.

1. To play for stakes is gaming.]—*Reg.* v. *Ah Pow*, 1 B. C. R., pt. I., 147.

See GAMING.

DOUBT.

1. Parol evidence—*When admissible in case of.*]—*Le Roi* v. *Northport Smelting Co.*, 10 B. C. R. 138.

See CONTRACT, III.

See also AMBIGUITY—EVIDENCE.

DRAINAGE.

1. By-law in regard to.]—*Wiltshire* v. *Township of Surrey*, 2 B. C. R. 79.

See MUNICIPAL CORPORATIONS, II.

See also WATER AND WATERCOURSES.

DRAWEE.

1. Where not mentioned in an order—*The document is not a bill of exchange.*]—*McPherson* v. *Johnson*, 3 B. C. R. 465.

See ASSIGNMENTS.

DRUGGIST.

1. Registration under Pharmacy Act.]—*Ex parte Henderson*, 2 B. C. R. 103.

See MANDAMUS.

DYING DECLARATION.

1. Admissibility of.]—*Reg.* v. *Woods*, 5 B. C. R. 855; *Reg.* v. *Louis*, 10 B. C. R. 1.

See CRIMINAL LAW, VIII.

DYKING BY-LAW.

Wiltshire v. *Surrey*, 2 B. C. R. 79.

See MUNICIPAL CORPORATIONS, II.

ECCLESIASTICAL LAW.

1. Colonial bishop — *Coercive jurisdiction—Church of England in British Columbia—Church Discipline Act, 3 and 4 Vict., c. 86.*]—Held, by BEGBIE, C.J., on an application for an injunction that, though the letters patent from which the Bishop of Columbia derives his authority, do not confer upon him any effective coercive jurisdiction over his clergy, he could still enforce obedience by having recourse to the civil Courts. Subsequently at the hearing, GRAY, J., made the injunction perpetual. This Court will on

proper application apply its coercive jurisdiction to enforce the sentence of an ecclesiastical tribunal of assessors appointed in accordance with the provisions of the Church Discipline Act, 3 and 4 Vict., c. 86, so far as its provisions are applicable to this country, when the finding of such tribunal is not unreasonable, and the proceedings before it are conducted in a way consonant with the principles of justice as understood in a Court of Equity. Constitution and authority of the Bishop of Columbia and general status of the Church of England in British Columbia. *Bishop of Columbia* v. *Cridge*, 1 B. C. R. pt. I., 5.

EJECTMENT.

1. Onus of proof in action for.] — *Carrol* v. *City of Vancouver*, 10 B. C. R. 179.

See MUNICIPAL CORPORATIONS, IX.

See also LANDLORD AND TENANT.

EJUSDEM GENERIS.

1. Rule of—*Applied under interpretation of s. 92, B. N. A. Act.*]—*Reg.* v. *Me Wah*, 3 B. C. R. 403.

See CONSTITUTIONAL LAW, II. 8.

ELECTION.

1. By counsel—*Where option of having issue or taking judgment against one defendant, effect of.*]—*Sun Life* v. *Elliott*, 7 B. C. R. 189.

See APPEAL, VIII. 12.

2. Criminal law—*Prisoner electing to be tried speedily.*]—Whether can be convicted on his speedy trial of any other offence than that for which he elected to be tried. *Regina* v. *Morgan*, 2 B. C. R. 329.

See CRIMINAL LAW, VII.

3. Judgment — *Election to take against one party liable.*]—*Semish* v. *Guenther*, 10 B. C. R. 371.

See PRINCIPAL AND AGENT.

4. Legatee—*Election by, as to shares in company.*]—*Manson* v. *Ross*, 1 B. C. R. pt. II., 49.

See WILLS.

5. Right of person to change.]—*Reg.* v. *Prevost*, 4 B. C. R. 326.

See CRIMINAL LAW, VII.

6. Winding-up—*Election by creditor in proceedings of.*]—*Re Thunder Hill & Bowker*, 5 B. C. R. 21.

See COMPANY, IX.

See also CRIMINAL LAW, VII.

ELECTIONS.

1. Election petition.] — Where the case raised by an election petition embraces several distinct grounds of complaint, the Court has no power to state only one part of the case. *Jardine* v. *Bullen—Esquimalt Election Case*, 6 B. C. R. 220.

2. Election petition.]—An election petition under R. S. B. C. 1897, c. 67, s. 214, must be filed within twenty-one days of the exact time of the return. *Rae* v. *Gifford*, 8 B. C. R. 273.

3. Election petition — *Preliminary objection — English rules — Copy of petition — When to be filed—R. S. C. 1886, c. 9, s. 9.*] —In order to have due presentation of an election petition under the Dominion Controverted Elections Act, a petitioner must at the same time he files his petition, leave with the clerk of the Court a copy of the petition to be sent to the returning officer. *Duval* v. *Maxwell; Burrard Election Case*, 8 B. C. R. 65.

4. Election petition — *Presentation of—Time—Computation of.*]—An election petition under R. S. B. C. 1897, c. 67, s. 214, must be filed within twenty-one days of the exact time of the return. Decision of MARTIN, J., reported in (1901), 8 B. C. 275, affirmed, IRVING, J., dissenting. *Rae* v. *Gifford*, 9 B. C. R. 192.

5. Election petition—*Presentation of—Time — Computation of.*] — An election petition under R. S. B. C. 1897, c. 67, s. 214, must be filed within twenty-one days of the exact time of the return. *Rae* v. *Gifford*, 8 B. C. R. 273.

6. Vendor and purchaser — *Construction of conduct whether amounts to an election.*]—As long as a man does nothing and says nothing, he does not elect unless the rights of the third party intervene, and then election is either by express words or unequivocal act. *Per* CREASE, J. *Manson* v. *Howison*, 4 B. C. R. at page 411.

7. Election petition—*Time for.*]—*Falconer* v. *Langley*, 6 B. C. R. 444.

See MUNICIPAL CORPORATIONS, V.

8. Election petition—*Time for filing.*]—An election petition under R. S. B. C. 1897, c. 67, s. 214, must be filed within twenty-one days of the exact time of the return. Decision of MARTIN, J., reported in (1901), 8 B. C. 273, affirmed, IRVING, J., dissenting. *Rae* v. *Gifford*, 9 B. C. R. 192.

9. Jurisdiction—*Power of Judge to fix time for trial.*]—A Judge has jurisdiction to fix a time and place for the trial of an election petition under the Municipal Elections Act, notwithstanding no rules for regulating such a trial have ever been made as provided by s. 86 (d) of the Act. Remarks as to the procedure to be followed at such a trial. It is not necessary that Judges should exercise power to make rules regulating the trial of election petitions if the ordinary machinery of the Court is sufficient for that purpose. *In re Slocan Municipal Election*, 9 B. C. R. 113.

10. Jurisdiction of Court—*Production of ballots for recount.*] — The Court or a

Judge thereof has no jurisdiction, under s. 154 of the Provincial Elections Act, to order the Deputy Provincial Secretary to produce ballots for the purpose of a recount before a County Court Judge under s. 43 of the amendment to the said Act in 1899. *Re Fernie Election (Provincial) petition*, 10 B. C. R. 151.

11. Municipal law—*Elections—Regulations — Non-compliance with in voting on money by-law — Effect of.*] — *Re Arthur & City of Nelson*, 6 B. C. R. 323.

See MUNICIPAL CORPORATIONS, II. 4.

12. Municipal election — *Qualification of candidate.*]—C. having paid all his taxes to municipal treasurer in due time, and being in all other respects qualified as candidate for councillor of a municipal ward returning only one councillor, W., the returning officer, refused him nomination, and a poll for non-payment of taxes to the collector of the municipality. B., the only other candidate, declared elected by acclamation. Appeal by petition to Judge of Supreme Court:—B.'s election avoided. Interim bona fide acts of B., as councillor, held good. New election declared and appointed. Apportionment of costs. The sections of above Act cited or referred to:—18, 19, 21, 27, 28, 29, 30, 31, 34, 35, 36, 38, 43, 51, 53 and 55. *Cawley* v. *Branchflower and Webb*, 1 B. C. R., pt. II., 35.

13. Practice—*Case stated—R. S. B. C. c. 67, s. 231, s-s. 8.*]—Where the case raised by an election petition embraces several grounds of complaint, the Court has no power to state only one part of the case. *Jardine* v. *Bullen; Esquimault Election Case*, 6 B. C. R. 220.

14. Provincial Act—*Ultra vires—R. S. B. C. 1897, c. 67, s. 8—Validity of—Right of naturalized Japanese to be registered as voters.*]—Section 8 of the Provincial Elections Act, which purports to prohibit the registration of Japanese as provincial voters, is ultra vires. Union Colliery Company of British Columbia, Limited, v. Bryden (1899), A. C. 580, considered and followed. *In re the Provincial Elections Act and In re Tomey Homma, a Japanese*, 7 B. C. R. 368.

15. Provincial Act—*Right of Japanese as naturalized citizens to be registered.*] — Section 8 of the Provincial Elections Act, which purports to prohibit the registration of Japanese as provincial voters, is ultra vires. Union Colliery Company of British Columbia, Limited, v. Bryden (1899), A. C. 580, considered and followed. Judgment of McCOLL, C.J., reported in 7 B. C. 368, affirmed. Leave to appeal to the Judicial Committee of the Privy Council granted. *In re the Provincial Elections Act and in Re Tomey Homma, a Japanese*, 8 B. C. R. 76.

16. Provincial Elections Act—*Affidavit.*]—Under the Provincial Elections Act and amendments, an affidavit or application to be placed on the register of voters for an electoral district may be sworn outside the Province of British Columbia; and the venue and jurat of the affidavit, Form A, Provincial Elections Act Amendment Act, 1902, may be varied to conform to that fact. The affidavit may be sworn before a commissioner for taking affidavits in and for the Courts of the province, or before any of the officers named in s. 4 of the amending Act of 1902, provided they derive their power from provincial authority, or ordinarily reside and perform their duties within the province. The Lieutenant-Governor-in-Council has power under the Elections Act and s. 11 of the Redistribution Act, to make regulations providing that affidavits sworn outside the province may be received by collectors of voters, and the applicants' names be placed upon the register. Per WALKEM and DRAKE, JJ.: Acts affecting the franchise should be construed liberally so as not to disfranchise persons having the necessary qualifications of voters. *In re Provincial Elections Act*, 10 B. C. R. 114.

17. Provincial Act—*Collector of votes.*] —After the collector of votes under the Provincial Elections Act, (1897), as amended in 1899, has placed on the register of voters the names of persons objected to, an application for prohibition on the ground that the collector proceeded without jurisdiction, is too late. Semble, in any event prohibition is not the proper remedy. Quære, whether the Crown office rules have any application in civil matters. *In re Provincial Elections Acts, and in re O'Driscoll* v. *Wright*, 8 B. C. R. 424.

18. Rules of Court—*Validity of—Payment into Court—Appointment of Master.*] —Payment into Court in the usual way is a good payment in within the meaning of r. 16 of the Parliamentary Election Petition Rules, 1868 (Imperial). A rule made by the Judges empowering the senior puisne Judge, or any other Judge of the Court, to perform the duties devolving by the rules on the Chief Justice, whenever the office of Chief Justice is vacant, or he is absent from the province, is valid. Appointment of a new Master under said rules operates *ipso facto* as a rescission of any former appointment, it being unnecessary to rescind any former appointment by express writing. The Full Court, on appeal, allowed evidence to be adduced to prove status of petitioners, although the matter was not gone into in the Court below. *Jardine* v. *Bullen; Esquimalt Election Case*, 7 B. C. R. 471.

19. Trial of election petition—*Amendment at.*]—At the trial of an election petition based on bribery, the petitioner asked for leave to amend by setting up that the election was void, on the ground that the list of voters used at the election was compiled and signed by an unauthorized official, this fact having been discovered only after the commencement of the trial:—Held, that the amendment must be refused. *Martin* v. *Deane; North Yale Election Case*, 7 B. C. R. 128.

20. Security—*Notice of, by petitioner.*] —In s. 216 of the Provincial Elections Act "proposed security" means "intended security," and a notice by petitioner informing respondent that security would be given by depositing $2,000 with the registrar, was held a good notice pursuant to the section. The additional rules made 27th January, 1875, (i.e., in addition to the Parliamentary Election Petition Rules, Michaelmas term, 1868), are in force in British Columbia. The petitioner, after serving notice of the presentation of the petition, and of the proposed security, omitted to file an affidavit of the time and manner of such service thereof:—Held, by MARTIN, J., that the petition should not be

struck off the files of the Court on that ground. *Soddart* v. *Prentice; Lillooet Election Case*, 7 B. C. R. 408.

ELECTRICITY.

1. Electric light plant — *Purchase of, by municipality.*] — *Re Arthur & City of Nelson*, 6 B. C. R. 323.

See MUNICIPAL CORPORATIONS, VIII.

2. Electric wire—*Damage by.*] — *Earle* v. *City of Victoria*, 2 B. C. R. 156.

See NEGLIGENCE.

EMBANKMENTS.

1. Obstruction of sewers by railway.] —*Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 108.

See PLEADING, IX. 2.

EMBARRASSING PLEA.

1. Application to strike out merits of case not agreeable on.]—*Centre Star* v. *Rossland Miners*, 9 B. C. R. 531.

See PLEADINGS, XI.

2. Striking out.]—*E. & N. Ry. Co.* v. *New Van. Coal Co.*, 9 B. C. R. 162; *E. & N. Ry. Co.* v. *New Van. Coal Co.*, 6 B. C. R. 306.

See PLEADINGS, IX. 2; X. 1; XI.

See also PLEADINGS, IX. 2; X. 1.

EMPLOYER.

1. Advertising for labour in foreign country by means of "want ad." — *Violation of Alien Labour Act.*]—*Downey* v. *Van. Eng. Wks.*, 10 B. C. R. 367.

See ALIENS.

EMPLOYERS' LIABILITY ACT.

1. Apparatus causing injury, necessity to use.]—To entitle plaintiff to judgment in an action under the Employers' Liability Act, the jury's findings must shew that it was reasonably and practically necessary for him to use the apparatus causing the injury. Where the facts proved shew absence of such necessity a new trial will not be granted. *Davies* v. *Le Roi Mining and Smelting Company*, 7 B. C. R. 6.

2. Dangerous place — *Duty to warn workman.*]—Where a workman is put to work in a place where there is an imminent danger of a kind not necessarily involved in the employment and of which he is not aware, but of which the employer is aware, it is the employer's duty to warn the workman of the danger. G. had been working in the defendants' mine on the floors immediately below the 600 foot level, and on the night of the accident when he was going to work he was told by the shift whom he was relieving that the place was in pretty bad shape and to look out for it. He proceeded to make an examination, but while thus engaged the mine superintendent directed him to do some blasting, and while doing it a slide occurred and he was injured. The principal evidences of the likelihood of a slide were two floors beneath the 600 foot level, and of which the superintendent was aware and G. not aware. The jury found that the superintendent was negligent inasmuch as he did not advise G. of the probable danger.—Held, in an action under the Employers' Liability Act, that the defendants were liable. *Gunn* v. *Le Roi Mining Company, Limited*, 10 B. C. R. 59.

3. Negligence—*Accident in mine.*] — In an action under the Employers' Liability Act the jury found that defendants were guilty of negligence in not having a platform so fixed as to prevent drills which were thrown down from bounding into the tunnel, and that plaintiff was unaware that drills were being thrown down when he was about to pass through the tunnel; and the jury assessed the damages at $3,000.—Held, by the Full Court, IRVING, J., dissenting, reversing WALKEM, J., who dismissed the action, that the defendants were liable, but that the damages should be reduced to $500. *Pender* v. *War Eagle Consolidated Mining and Development Co., Limited*, 7 B. C. R. 162.

4. Negligence — *Contributory — Prima facie case.*]—Defendant is not entitled to a new trial upon the ground that the jury have failed to return a direct finding upon a question put to them upon the issue of contributory negligence where the other findings support judgment for plaintiff. From the moment the plaintiff makes out a prima facie case that the injury was caused by the negligence of the defendant, the onus is cast on the defendant, if he sets it up, to shew contributory negligence:—Held, that the plaintiff, on the facts, was a "workman" within the Act. *McMillan* v. *Western Dredging Co.*, 4 B. C. R. 122.

5. Negligence—*Defective machinery.*] — In an action by a miner against the mine owners for damages for injuries caused him by being precipitated to the bottom of a shaft when at work in the mine, the jury found inter alia that the system adopted for lowering the men was faulty and that the plaintiff did not comply with the printed rules of the mine:—Held, that the plaintiff was entitled to judgment although adherence by him to the rules would have prevented the accident. *Warmington* v. *Palmer and Christie*, 7 B. C. R. 414.

6. Negligence — *Duty of employer — Volens.*]—An employer of mill hands is bound to take reasonable care that the mill is properly and safely constructed and fitted with machinery such as to ensure a reasonable degree of security to a careful workman, and to provide reasonably skillful and careful supervision. The maxim volenti non fit injuria considered. Smith v. Baker, 1891, A. C. 336; Clark v. Holmes, 7 H. & N. 937; Thomas v. Quartermaine, 18 Q. B. D. 685; Yarmouth v. France, 19 Q. B. D. 647; Patterson v. Wallace, 1 Macq. 748; Brydon v. Stewart, 2 Macq. 30; and Weems v. Matheson, 4 Macq. 215, referred to. Findings of a jury explained and harmonized. *Foley* v. *Webster et al.*, 2 B. C. R. 137.

7. Negligence — *Operating colliery with statutory manholes — Railway.*] — In defendant's coal mine the haulage slope, which was necessarily used as a travelling road by the workmen, was not provided with man-holes at intervals of not more than twenty yards, as required by the Coal Mines Regulation Act, and on account of this lack of sufficient man-holes it was the custom of the company not to run the trip during the time the workmen were going to and coming from work. The plaintiff while coming from work was run into and injured by the trip which had been started off during a prohibited time. The trip was a train of cars, operated by a stationary engine on the outside, and used for hauling coal out of the mine. The jury found that the accident was caused by defendant's negligence in letting the trip down, and on the verdict judgment was entered for plaintiff for $1,424 and costs. An appeal to the Full Court was dismissed, the Court refusing to reverse the findings of fact or interfere with the damages as excessive; — Held, also, that the place in question was a "railway" within the meaning of the Employers' Liability Act. *Booker* v. *Wellington Colliery Company, Limited*, 9 B. C. R. 265.

8. Negligence—*Way—Defect in.*] — The plaintiff in an action under the Employers' Liability Act, for damages caused by a defect in his employers' "works and ways," cannot succeed if on the facts proved the jury can only conjecture how the injury occurred. Rule 18 of s. 25, c. 134, R. S. B. C. 1897, does not require that a winze extending through several levels of a metalliferous mine shall be protected at each level; the rule is sufficiently complied with if the winze is protected at the top level only. *Stamer* v. *Hall Mines*, 6 B. C. R. 579.

9. Notice of injury — *Want of reasonable excuse.*] — In an action for damages under the Employers' Liability Act for injuries sustained by plaintiff, it was shewn that the plaintiff was without means and for some weeks after the accident was unable to transact any business; and that the defendants' business manager and representative saw the accident and arranged for plaintiff's admission into the hospital, where a few days later he discussed with him the cause of the accident:—Held, the circumstances excused the want of notice of injury. At the close of the plaintiff's case a non-suit was moved for on the ground that plaintiff had not proved notice of injury, and plaintiff then adduced evidence which the Court held shewed a reasonable excuse for the want of notice and the trial proceeded. Before closing his case defendant's counsel tendered evidence of being prejudiced by want of notice:—Held, excluding the evidence, that the proper time to shew prejudice was while the question of reasonable excuse was still open. *Lever* v. *McArthur et al.*, 9 B. C. R. 417.

10. Ways — *Defect in — Contributory negligence.*] — Plaintiff in the course of his duties as defendants' employee, in their mill, walked upon a roller way constructed for the purpose of carrying lumber from the saws out of the mill, consisting of a platform through which rollers moved by connecting uncovered cog wheels at the sides, slightly projected. The jury found that there were other passage ways for the plaintiff, but none of them sufficient. That the non-covering of the cogs was a defect. That the plaintiff was cognizant of the danger of using the roller platform, but was not unduly negligent, and found damages:—Held, *per* DRAKE, J.—Upon motion for judgment, dismissing the action, that if the defendants had covered the cogs the accident would not have happened, and that, upon the findings of the jury, the negligence of defendants was primarily the cause of the accident, but that the plaintiff was guilty of contributory negligence in using the roller way as a passage way, and was volens in regard to the risk of injury.—Held, by the Full Court (BEGBIE, C.J., CREASE and WALKEM, JJ.), allowing an appeal and entering judgment for the plaintiff—that, to support the defence of contributory negligence, it was necessary that there should be a direct and positive finding that the plaintiff voluntarily incurred the risk, and that there was no such finding:—Quære, whether that defence was not barred by s. 6 of the Act. Per WALKEM, J., that it was. That the finding, by the jury, of damages must be considered as equivalent to a general verdict for the plaintiff, supplementing the special findings and importing such as were necessary to a general verdict. That upon the evidence and findings of the jury the plaintiff's case was made out, and that the Court having all the necessary materials before it should enter judgment for the plaintiff upon the evidence, instead of granting a new trial. *Scott* v. *British Columbia Milling Co.*, 3 B. C. R. 221.

See also MASTER AND SERVANT—NEGLIGENCE.

EMPLOYMENT.

1. Contract of.] — *Tuck* v. *City of Victoria*, 2 B. C. R. 179.

See MUNICIPAL CORPORATIONS, VI.

2. Of Chinamen underground.] — *Atty.-Gen.* v. *Wellington Colliery Co.*, 10 B. C. R. 397; *In re Coal Mining Ry. Act*, 10 B. C. R. 408.

See also CONSTITUTIONAL LAW — MASTER AND SERVANT.

ENCUMBRANCES.

1. On land—*Method of registration of under Land Registry Act.*] — *H. B. C.* v. *Kearns*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS—RECORDS.

ENDORSEMENT.

1. Of address on writ.

See PRACTICE, XXXVIII. 1.

2. Special endorsement.

See PRACTICE, XXXVIII. 10.

ENGINEER.

1. Action by, for fees for examination and report—*Either party is entitled to a jury.*]—*Ferguson* v. *Thain*, 3 B. C. R. 447.

See PRACTICE, XVI.

2. Certificate — *Contract* — *Fraud—Collusion or prevention*]—Where, under a contract which made the right of the contractors to receive payment for the construction of certain works dependent upon the certificate of an engineer, who was also sole arbitrator of all disputes, the engineer unjustifiably delayed the issue of the certificate for seven months and acted in a shifting and vacillating, though not fraudulent manner, and probably caused heavy loss to the contractors by his mistakes.—Held, in the absence of collusion on the part of the corporation, the certificate could not be set aside. Impropriety of certain acts of the corporation remarked upon. *Walkley et al.* v. *City of Victoria*, 7 B. C. R. 481.

3. Income of—*Railway—Whether taxable.*]—*In re Assessment Act*, 9 B. C. R. 60.

See TAXATION, I.

ENGLISH COURT ORDERS.

1. Whether valid in colonies.]—Held, that Orders in Council passed in England under powers in an Imperial Statute are not in force proprio vigore in a colony, although the statute itself may be in force. Semble, that the colony of Vancouver Island was established as a British colony prior to 1855. *Reynolds* v. *Vaughan*, 1 B. C. R., pt. II., 3.

ENGLISH LAW.

1. Adoption of, in British Columbia.]—Held, by CREASE and GRAY, JJ. (BEGBIE C.J., dissentiente): 1. That the Supreme Court of British Columbia has in British Columbia all the jurisdiction conferred on the "Court for Divorce and Matrimonial Causes," under the "Matrimonial Causes Act, 1857" (20 and 21 Vic. c. 85), as amended by 21 and 22 Vic. c. 108. Per GRAY, J.: That the legislative adoption by British Columbia in March, 1867, of the English law as it existed in England on the 19th November, 1858, did not necessitate the adoption of the machinery by which the English law was carried out in England, but, coupled with the language constituting the Supreme Court in British Columbia, was a direct legislative sanction and authority to carry out that law in the province by local tribunals and local machinery, and clothed the Supreme Court of the province with ample power to hear and determine divorce and matrimonial causes. *M. falsely called S—*, v. *S—*, 1 B. C. R., pt. I., 25

2. Applicability of.] — The arbitrators appointed under the "Victoria Water Works Act, 1873," in making an award of damages to be allowed to W. for lands required for the Water Works took into consideration in their award and estimate, the value of certain land covered with water (Beaver Lake); — Held, by the Court (CREASE and GRAY JJ.), that the arbitrators were right in so doing. 1. Semble, the number of acres mentioned in the early Vancouver Island Crown grants is not the measure of the extent granted, but merely the measure of price. —Held, (without deciding that the Imperial Statute 9 & 10 Wm. III. c. 15, was in force in British Columbia), that the time limited by s. 2 of that Act was the time within which applications to this Court to set aside awards should be made. 2. Remarks as to setting aside awards on the grounds of misconduct on the part of the arbitrators. *In re W. C. Ward and The Victoria Water Works*, 1 B. C. R., pt. II., 114.

3. Stamp Act inapplicable in B. C.]—*Hinton Electric Co.* v. *Bk. of Montreal*, 9 B. C. R. 545.

See BILLS AND NOTES.

ENGLISH MEDICAL PRACTITIONERS.

1. Right to practice in British Columbia.]—*Metherell* v. *Medical Council of B. C.*, 2 B. C. R. 186.

See MANDAMUS.

ENTRY.

1. Of judgment.]—*Laing* v. *Victoria*, 6 B. C. R. 117.

See JUDGMENT.

2. Right of entry.

See LANDLORD AND TENANT.

EPIDEMIC.

1. Of disease.]—*Atty-Gen.* v. *Milne*, 2 B. C. R. 196.

See HEALTH.

EQUITABLE ASSIGNMENT.

1. Chose in action—*Oral priority of subsequent attaching order.*]—*Todd & Son* v. *Phœnix*, 3 B. C. R. 302.

See ASSIGNMENT.

2. Mechanic's lien—*Has no preference over.*]—*Johnson* v. *Braden*, 1 B. C. R., pt. II., 265.

See MECHANIC'S LIEN.

EQUITABLE EXECUTION.

1. Wages of workman.]—*Muirhead* v. *Lawson*, 1 B. C. R., pt. II., 113.

See RECEIVER.

2. A receiver for the purpose of giving a judgment creditor equitable relief will not be appointed until the judgment creditor has examined his legal (as distinguished from equitable) remedies. *Davidge* v. *Kirby*, 10 B. C. R. 231.

EQUITABLE JURISDICTION.

See COURTS.

EQUITABLE MORTGAGE.

1. Constructive notice of.]—*Hudson Bay* v. *Kearns et al.*, 4 B. C. R. 536.

See REGISTRATION OF DEEDS.

2. Priorities between equitable mortgages and subsequent registered conveyance.]—*H. B. Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF LEEDS.

3. Status of over registered judgment.]—*Manley* v. *O'Brien*, 8 B. C. R. 280.

See JUDGMENT.

EQUITY.

1. Courts should deal with mining disputes upon principles of.]—*Granger* v. *Fotheringham*, 3 B. C. R. 590.

See MINES AND MINERALS XIII. 3.

EQUITY OF REDEMPTION.

1. Conveyance of—*To mortgagee*—*When a merger.*]—*In re Major et al.*, 5 B. C. R. 244.

See MORTGAGES.

2. Purchase of.]—*Keary* v. *Mason*, 2 B. C. R. 48.

See MORTGAGES.

3. Purchaser of—*Entitled to be registered.*]—*In re Major et al.*, 5 B. C. R. 244.

See REGISTRATION OF DEEDS.

See also MORTGAGES.

ERROR.

1. In written statement.]—*Borland* v. *Coate*, 10 B. C. R. 493.

See VENDOR AND PURCHASER.

2. Writ of.]—*Pielkearkan* v. *The Queen*, 2 B. C. R. 53.

See CONSTITUTIONAL LAW.

3. Writ of.]—*Grier* v. *Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXII.

See also MISTAKE.

ESCHEAT.

See CROWN—CROWN LANDS.

See MINES AND MINERALS, XX.

ESTOPPEL.

1. Boundary dispute—*Estoppel by correcting survey plan.*]—Held, per BEGBIE, C.J., in a dispute between adjoining proprietors as to boundaries: An owner who adopts a corrected survey made by the Crown by filing, in 1880, a plan indicating the boundary in dispute as therein laid down, is estopped as against his adjoining proprietor from setting up any other boundary. *Johnston* v. *Clarke*, 1 B. C. R., pt. II., 56.

2. Boundaries—*Description of*—*Filing plan*—*Estoppel.*]—In an action for the declaration of title to a piece of land claimed by plaintiff as part of lot 376, and by defendant, as part of 202, defendant's title was derived through B., to whom, in 1870, a Crown grant was issued, granting that lot "numbered 202 on the official plan, said to contain 150 acres more or less." In 1876-77 the Lands and Works Department having caused an official survey of the adjoining lots to be made, found the official plan by which the boundaries of B.'s lot were defined to be incorrect, and with a view to retain the acreage proper to each grant, and to make the boundaries run true to the cardinal points moved his s. e. corner post four chains north, and his s. w. corner post two chains south, and without notifying the defendant gave him, in the new official plan or survey, a new southern boundary. This adjustment of B.'s southern boundary gave to Lot 376 the gore of land now in question. Three years after the completeion of this survey, defendant filed in the Land Registry Office a plan of the greater part of Lot 202, according to a private survey made by his own directions, in which he implicitly followed, as to his southern boundary, the survey of 1876-77. In 1881 a Crown grant to Lot 376—the boundaries thereof being as determined by the survey of 1876-77—was issued to plaintiff. On an appeal to the Full Court from the judgment of BEGBIE, C.J. (ante, p. 56, 1 B. C. R., pt. II., 26),—Held, (in this affirming the decision of BEGBIE, C.J.), that in question relating to boundaries and descriptions of land the rule is that the work on the ground governs, and that the gore had been originally included in the grant to B. as part of 202.—Held, (in this reversing the decision of BEGBIE, C.J.), that the filing of the map in 1880 did not under the circumstances (if at all) estop the defendant from claiming land not included therein, and that the defendant was entitled to the gore of land originally granted as part of Lot 202. *Johnston* v. *Clarke*, 1 B. C. R., pt. II., 81.

3. Bill of exchange—*Blank spaces*—*Alteration after endorsement.*]—The endorsers of a promissory note, containing blank spaces

for the names of the payee, and the rate of interest, are estopped from denying that they have given the maker authority to fill in the blanks. *Burton* v. *Goffin*, 5 B. C. R. 454.

4. Bill of sale — *Fraud—Plaintiff particeps fraudis.*]—In an action to set aside a bill of sale as fraudulent against the plaintiff, who was a creditor, and, as far as the evidence disclosed, the only creditor of the grantor, it appeared that the plaintiff himself had advised upon and drawn up the bill of sale.—Held, that he had no locus standi to attack it; that on the facts the conveyance was not fraudulent. *Boulthee* v. *Rolls*, 4 B. C. R. 137.

5. By conduct of registered agent of foreign company. *Richards* v. *C. Goldfields Co.*, 5 B. C. R. 483.

6. By judgment between the same parties in a former action as to a point involved though not raised.]—An action was brought by a public company, to remove two of its trustees for refusing to obey an order of the Court made in a previous action directing them to join with the other trustee in assessing, as not being bonâ fide fully paid up, in order to raise funds for carrying on the company.—Held, by the Full Court, upon appeal from the judgment of DAVIE, C.J., that the defendant trustees were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action. *Fraser River Mining Co.* v. *Gallagher*, 5 B. C. R. 82.

7. By judgment.]—*Dunlop* v. *Haney*, 7 B. C. R. 307.

See RES JUDICATA.

8. By judgment against one of parties liable.]—*Lemiach* v. *Guenther*, 10 B. C. R. 371.

See PRINCIPAL AND AGENT.

9. Court stenographer.]—A person who undertakes to act as Court stenographer cannot refuse to furnish parties to a suit with a transcript of his notes merely because his fees have not been paid by the Crown. *Pender* v. *War Eagle; ex parte Jones*, 6 B. C. R. 427.

10. Dedication — *No power to dedicate where none to alienate.*]—Registering plan shewing street and selling lots by it. The defendants, a railway company, by Dominion statute acquired the power to "take, hold and use" certain foreshore "to such extent as shall be required by the company for its railway and other works." The company were the owners in fee of the lands abutting on the foreshore, and in 1885 filed a certain plan of a portion of such lands in the Lands Registry office at Vancouver, which plan shewed a public street running at right angles to and opening upon the foreshore, and subsequently sold lots from said plan. The defendants in 1892 ran an embankment for their railway along the foreshore cutting off access thereto and to the sea, by way of the street.—Held, *per* MCCREIGHT, J., dissolving the injunction and dismissing the action: (1) That the registration of their town-site plan in November, 1885, operated as a dedication by plaintiffs of a public way over the foreshore from the foot of Gore Avenue, shewn as opening upon it, and as an estoppel against their setting up their subsequently acquired rights over the foreshore against such public right of way. (2) That if plaintiffs in 1886 acquired any title to the foreshore inconsistent with such public right of way, such title fed the estoppel. (3) A public right of way is extinguished by Act of Parliament only by express words, or when it clearly authorizes the doing of a thing which is physically inconsistent with the continuance of such right, and s. 18a, supra, does not do so. (4) The Crown was a necessary party to the action. Upon appeal to the Full Court. Held, *per* BEGBIE, C.J., (WALKEM and DRAKE, JJ., concurring), overruling MCCREIGHT, J., giving judgment for plaintiffs, and reinstating and continuing the injunction: (1) The plaintiffs' right to occupy the foreshore under s. 18a, supra, was exclusive. (2) There was no dedication by plaintiffs by the registration of their map of 1885, as there can be no dedication except by owners of the soil. (3) There is no power of dedication where there is no power to alienate. (4) The Crown was not a necessary party. *The Canadian Pacific Railway Company* v. *The City of Vancouver*, 2 B. C. R. 306.

11. Default judgment, whether—*Res judicata—Lunatic — Laches — Judgment.*]—Attacking by separate action after refusal of leave to defend. A matter does not become res judicata by a default judgment upon which the parties are not heard on the merits. Notwithstanding that the Court has, on the ground of laches, waiver, etc., refused a motion upon affidavit, to set a default judgment aside and admit a defence on the merits, the defendant is not thereby estopped from attacking the judgment and the contract upon which it was founded, upon the ground that he was insane at the time of the contract, and at the time of the obtaining of the judgment and of alleged waiver, although his insanity was alleged on the affidavits on the motion. *Harper* v. *Cameron*, 2 B. C. R. 365.

12. Default judgment — *Whether.*] — Fresh action to recover back part of amount of judgment by default on ground that judgment was for too much.—Held, that the judgment constituted an estoppel, and was a bar to the present action, and that the proper course was to apply in the action in which it was obtained to set aside the judgment by default on the merits, which could only be done on the ground of surprise or mistake. *Goon Gun* v. *Moore*, 2 B. C. R. 154.

13. Doctrine of.]—The doctrine of estoppel or ratification cannot be evoked to enforce as against a municipal corporation, a contract to which the corporate seal has not been affixed pursuant to s. 82 of the Municipal Act, 1892. *United Trust Co.* v. *Chilliwack*, 5 B. C. R. 128.

14. Doctrine of—*Explained.*] — *Hayden* v. *Smith*, 1 B. C. R., pt. II., 312.

See CONTRACT, III.

15. Doctrine of.]—Does not apply to the Crown. *per* WALKEM, J., in *Queen* v. *Victoria Lumber Co.*, 5 B. C. R. 288.

16. Insane person—*Doctrine of estoppel as applied to.*]—*Harper* v. *Cameron*, 2 B. C. R. 365.

See CANCELLATION OF INSTRUMENTS.

17. Insurance — *Forfeiture clause—Hazardous employment.*] — *Elson* v. *Nor. Am. Life Ins. Co.*, 9 B. C. R. 474.

See INSURANCE, II.

18. Litigation—*By course of.*]—*Manley* v. *O'Brien*, 8 B. C. R. 280.

See JUDGMENTS.

19. Mining partnership.] — A mining partnership is estopped from denying its legal ability for items of accounts passed at meetings of the partnership. *Gray* v. *McCallum*, 5 B. C. R. 462.

20. Objection—*Estoppel from setting up where not taken in Court below.*]—*Reg.* v. *Bowman*, 6 B. C. R. 271.

See CRIMINAL LAW, IV.

21. Of right of action for debt by agreement to extend time for payment.]—An insolvent company had called its creditors together, and a deed was executed whereby the company assigned certain property to trustees to answer the creditors' claims, and the creditors agreed to extend the time for payment:—Held, that the creditors who had executed the deed were estopped from presenting a winding-up petition until the period of extension had expired. *Re Atlas Canning Co.*, 5 B. C. R. 661.

22. Plan, from disputing validity of.]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

23. Plan of—*Must state particulars of conduct relied on.*]—*Guichon* v. *Fisherman's Cannery Co.*, 4 B. C. R. 516.

24. Recital in a deed that a sum is due is not an estoppel against proving a greater sum.]—A bill of sale contained a recital that a certain sum was due from the mortgagor to the mortgagee, and a covenant by the mortgagor to pay that sum, and also any other sum which on taking an account might appear to be due thereon. Held, that the mortgagee was not estopped by the recital from claiming that the debt due at the date of the bill of sale was larger than the sum therein named. *Rithet* v. *Beaven*, 5 B. C. R. 457.

25. Recital in order of inferior Court—*Prohibition.*]—A party moving for a writ of prohibition against an order of an inferior Court is not estopped from denying statements of fact necessary to found the jurisdiction of the inferior Court appearing on the face of the order in question on the motion. *Re W. N. Bole C. C., Judge, etc., In re Conviction of Ah Tim and others*, 2 B. C. R. 208.

26. Shares — *By issuing as fully paid up.*]—*Kettle River Mines Co.* v. *Bleasdel*, 7 B. C. R. 507.

See COMPANY, VI.

27. Submission—*Mere submission to injury is not.*] — *Byron N. White* v. *Sandon Water Works*, 10 B. C. R. 361.

See WATERS AND WATERCOURSES, I.

28. Tax sale—*Pre-emption—Cancellation of—Pre-emptor's right* — "*Land Amendment Act*, 1878, *s.* 2."]—In 1876, M. pre-empted land in Westminster district, and paid one instalment of the purchase money. The other instalment was payable on the 18th November, 1878. M. paid also the taxes for 1876, 1877, and 1878; but no further tax or instalment. The taxes for 1879 became delinquent on the 1st March, 1879. M. left the Province early in 1880, his address being wholly unknown. In December, 1879, the land was sold to W. by tax sale. Subsequently W. paid all arrears of taxes and the balance of the purchase money, and in 1881 a Crown grant issued to him, and he entered and improved and mortgaged the land; the Crown grant and mortgages were duly registered. In 1883, M. returned to the Province, and claimed the land.—Held, that M. by his laches, had disentitled himself from sustaining such claim. The Crown had not declared M.'s first instalment forfeited, but had allowed W. the benefit of it.—Held, that M. might under the prayer for general relief, recover the amount of such instalment, as money paid for the use of W. Semble, the grant from the Crown, in 1881, operated as a cancellation of M.'s pre-emption claim without reference to the matters specified in s. 2 of the "Land Amendment Act, 1878." Moriarty v. Wadhams, 1 B. C. R., pt. II., 145. See Company. A delay of four months, unaccounted for, in applying to renew an expired writ of summons, is fatal. *Loring* v. *Sonneman*, 5 B. C. R. 335.

29. Void contracts — *Estoppel in.*] — *Boyle* v. *Victoria Yukon Trading Co.*, 9 B. C. R. 213.

See JUDGMENTS.

See also FRAUDULENT CONVEYANCE.

ESQUIMALT AND NANAIMO RAILWAY ACT.

1. Taxes — *Exemption — Lands sold or alienated.*]—*The Queen* v. *Victoria Lumber Co.*, 5 B. C. R. 288.

See TAXATION, III.

EVIDENCE.

1. Abandonment—*Evidence of, must be clear.*] — *Dunlop* v. *Haney*, 7 B. C. R. 1; *Cranston* v. *Eng. Can. Co.*, 7 B. C. R. 266; *Dunlop* v. *Haney*, 7 B. C. R. 305.

See MINES AND MINERALS, I.

2. Admiralty — *Statement of officers of warship making seizure—Production of copy purporting to be printed by King's Printer in London—Admissibility of.*]—*The Minnie*, 3 B. C. R. 161.

See ADMIRALTY, III. 3.

3. Admiralty — *Onus of proof — Under Behring Sea Award Act.*

See ADMIRALTY, III.

4. Admissibility of statement of officer of warship making seizure under s.-s. 5 of s. 1 of the Seal Fishery (North Pacific) Act, 1893. "*The Minnie*," 3 B. C. R. 161.

5. Adverse Proceedings.] — In adverse proceedings if the plaintiff wishes to attack the defendant's title he must attack it while proving his own title and not wait till rebuttal. The plaintiff must shew the measurements of the ground in dispute in order to prove overlapping of claims. An affidavit by a re-locator that the ground is unoccupied may be regarded as a statutory abandonment of his former claim. *Dunlop* v. *Haney et al.*, 7 B. C. R. 1.

6. Affidavit in language not that of the deponent.]—*In re Ah Gway*, 2 B. C. R. 343.

See AFFIDAVIT.

7. Affirmative Proof — *Crown grant — Surface rights.*]—Plaintiff sued for cancellation of a lease from the defendant on the ground that the defendant's Crown grant did not pass the surface rights:—Held, by IRVING, J. (without deciding whether it did or not), that the action failed on the ground that the plaintiff had not affirmatively proved that the grant did not pass the surface rights. Section 16 of the Mineral Act Amendment Act, 1897 (section 123, Mineral Act), is declaratory and not prospective merely. Appeal to the Full Court, dismissed. *Spencer* v. *Harris*, 6 B. C. R. 466.

8. Affirmative evidence must be given by adverse.]—*Coldwell* v. *Davys*, 7 B. C. R. 156.

See MINES AND MINERALS, XIX.

9. Affirmative—*When not necessary.*] — *Schomberg* v. *Holden*, 6 B. C. R. 419.

See MINES AND MINERALS. XIX.

10. Agency.]—The defendants could not invoke against the plaintiff a statement in a bill of sale from H. to W. (who was agent for the plaintiff) that the ends of the two claims between which the fraction in question was located, adjoined each other. *Gibson* v. *McArthur and Lukeman*, 7 B. C. R. 59.

11. Agency—*Partners—Opposite parties as defendants — Admissibility of statements by one as against other.*]—When a primâ facie liability to the plaintiff is made out against one defendant, then, upon the issue of whether another defendant is also liable as being his partner therein, such defendants, as between themselves, are "opposite parties" within the meaning of Rule 723, upon the issue involved, as it is the interest of the first that the second be held as a contributor to the obligation, while it is the interest of the latter to be discharged, and therefore the examination before trial of one of such defendants for discovery is evidence at the trial on behalf of the other. The plaintiff sought to give evidence, in proof of the partnership, of ante litem statements by the former defendant that the latter was his partner in the transaction in question:—Held, inadmissible, as the foundation for the admission of such evidence is the implied authority and agency of the person making the statement to make it on behalf of the person sought to be bound by it, arising from the nature of their relationship, which was itself the matter sought to be proved. *British Columbia Iron Works Co.* v. *Ernest Buse, John G. Bugbee, and Rosa Mueller, carrying on business as the Buse Milling Company, and Ernest Buse*, 4 B. C. R. 419.

12. Agency — *Evidence of acts of as binding the company without proof of express authorization.*]—Statements made by the officers of the company to the plaintiff, indicating to him that he was dismissed from its service, are admissible on evidence upon an issue raised by a denial of the dismissal, without proof that the company authorized the same, or by resolution authorizing a dismissal of the plaintiff. *Carrelmann* v. *The Phanix Brewery Company, Ltd. Liab.*, 5 B. C. R. 135.

13. Amendment of pleadings to conform to.] — *Holton* v. *Vandell*, 7 B. C. R. 331.

See FRAUDULENT CONVEYANCE.

14. Appeal — *Evidence on appeal from Small Debts Court.*]—*Malkin* v. *Tobin*, 7 B. C. R. 386.

See APPEAL, I.

15. Appeal — *Introducing fresh evidence on.*]—*Harper* v. *Cameron*, 2 B. C. R. 365; *Hogg* v. *Farrell*, 6 B. C. R. 387; *Marino* v. *Sproat et al.*, 9 B. C. R. 335; *Borland* v. *Coote*, 10 B. C. R. 193.

See APPEAL, VI.

16. Burden of Proof — *Where facts in party's knowledge.*]—*H. B. Co.* v. *Kearns*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

17. By-law — *Evidence of, allowed to prove status of petitioners.*] — *Jardine* v. *Bullen*, 7 B. C. R. 471.

See ELECTIONS.

18. Certificate of Work—*Admissibility of.*]—The Parrot mineral claim, located in February, 1895, lapsed by abandonment in February, 1896. In March, 1895, part of the same ground was located by plaintiff as the Townsite claim, and certificates of work were recorded in respect of it in 1896, 1897, 1898 and 1899. In December, 1899, the ground covered by the original Parrot claim was relocated as the Defiance No. 1 Fraction by the defendants' predecessor in title.—Held, in adverse proceedings, that so much of the Parrot claim as was overlapped by the Townsite claim was not unoccupied ground at the time of the location of the Townsite, and as such was not open to location. At the trial plaintiffs attacked the validity of defendants' location, and defendants sought to put in evidence a certificate of work issued the day before:—Held, not admissible, as it was obvious that such certificate was to be used to cure irregularities. *Rammelmeyer et al* v. *Curtis et al.*; *Powers* v. *Curtis et al.*, 8 B. C. R. 383.

19. Chinese Immigration Act — *63 & 64 Vic. c. 32—Prostitute—Affidavits of Chinamen in English language.*]—Evidence of the general reputation of a house in which a Chinese immigrant has lived is admissible in habeas corpus proceedings directed against the collector of customs, who is detaining such immigrant for deportation to China on the ground that she is a prostitute. An affidavit drawn up in a language not understood by the deponent, may be read in Court if it appears from the jurat that it was first read over and interpreted to deponent. *In re Ah Gway* (1893), 2 B. C. 343, not followed: *In re Fong Yak and the Chinese Immigration Act*, 8 B. C. R. 118.

20. Commission to examine witness —*Necessity to state names of in affidavit.*]—An affidavit for an order for a commissioner to examine witnesses abroad must state the names of the witnesses proposed to be examined. *Hermann* v. *Lawson*, 3 B. C. R. 353.

21. Commission to examine witnesses —*Preponderance of convenience.*] — In an action on a promissory note for $85.40, the defendant pleaded that the note was obtained from him under duress, and the plaintiffs, who lived in Ontario, applied for a commission to take their evidence there:—Held, that as the probable expenses of the commission would not exceed a quarter of the expenses of the plaintiffs' attending the trial, and the application was made bonâ fide, it should be granted. *Thompson et al.* v. *Henderson*, 9 B. C. R. 540.

22. Commission to take evidence in criminal case — *Practice in.*] — *Reg.* v. *Johnson*, 2 B. C. R. 87.

See CRIMINAL LAW, VIII.

23. Commission to take evidence— *Second one to same place — Costs of.*] — A second commission to New York granted to defendant to examine a witness, he having already obtained a commission to the same place, but he was ordered to pay the costs of executing it in any event of the action. *Gill* v. *Ellis*, 5 B. C. R. 137.

24. Commission to take evidence— *Affidavit in support.*]—A party desiring a commission for his own examination outside the jurisdiction should himself make an affidavit of the facts relied on. *Tollemache* v. *Hobson*, 5 B. C. R. 216.

25. Commission to take evidence— *Right of non-resident defendant to.*]—A defendant resident outside the jurisdiction has a primâ facie right to a commission to take his own evidence for use at the trial. *Cranstown* v. *Bird*, 5 B. C. R. 140.

26. Commission evidence—*Reversal by Appellate Court — Company incorporated in British Columbia—Contract by, in Yukon—Validity of—Ultra vires.*] — In an action in the Yukon for damages for breach of contract tried before a Judge without a jury, the evidence for the defence being evidence taken on commission, the Court held that the contract sued on was made with defendant company, and not with one Munn, as alleged by the defence, and gave judgment for plaintiffs. On appeal, held, reversing the finding and allowing the appeal, that the Court had failed to appreciate said evidence. Per DRAKE, J.: The question of ultra vires not having been raised in the Court below, was not open on appeal. *McKay Bros.* v. *Y. D. T. Co.*, 9 B. C. R. 37.

27. Conduct of a person — *Benefiting under a will—Evidence as to.*]—*Adams* v. *McBeath*, 3 B. C. R. 513.

See WILLS.

28. Contempt of Court.]—Contempt of Court being a criminal offence, on the hearing of an application to commit nothing will be inferred, and it is necessary to prove the charge with particularity. *In re Scaife*, 5 B. C. R. 153.

29. Contract.]—As to terms of contract where proposal in writing and acceptance by parol. Whether admissible. *Harris* v. *Dunsmuir*, 6 B. C. R. 505.

See CONTRACT, III. 2.

30. Copies of certain recorded instruments held admissible without proof of originals. *Pavier* v. *Snow*, 7 B. C. R. 80.

31. Corroboration — *Evidence Act, s. 50.*]—The corroboration required by s. 50 of the Evidence Act (R. C. Stat. 1900, c. 9, s. 4) must refer specifically to the contract on which action is based, and not to some part of it, so as to leave the effect of the whole unascertained. *Blacquiere* v. *Corr*, 10 B. C. R. 448.

32. Criminal law—*Abduction — Letters to a foreign state inducing—Inadmissible.*]—*Reg.* v. *Blythe*, 4 B. C. R. 276.

33. Criminal law—*Admissibility of deposition of witness taken on preliminary examination — Proof of absence from Canada. Regina* v. *Pescaro and Jim*, 1 B. C. R. pt. II., 144.

See CRIMINAL LAW, VIII.

34. Criminal law — *Murder — Evidence of cause of death—Insufficient post-mortem examination — Effect of.*]—There is no rule that the cause of death must be proved by post-mortem examination, and there may be evidence to go to the jury of the cause of death, notwithstanding the absence of a complete post-mortem examination. *Regina* v. *Garrow*, 5 B. C. R. 61.

35. Criminal law—*Right of grand jury to peruse depositions.*]—*Reg.* v. *Hawes*, 1 B. C. R., pt. II., 307.

See CRIMINAL LAW, XV.

36. Criminal law — *Extradition — Evidence to obtain.*]—*In re Ockerman*, 6 B. C. R. 143.

See CRIMINAL LAW, X.

37. Criminal law — *Proof of absence from Canada of witness to admit his deposition.*]—*Reg.* v. *Morgan*, 2 B. C. R. 329.

See CRIMINAL LAW, VIII.

38. Criminal law — *Improper admission of—Whether miscarriage thereby — Code, s. 746.*]—Under s. 746 of the Code, the improper admission of evidence at a criminal

trial cannot be said in itself necessarily to constitute a wrong or miscarriage, but it is a question for the Court upon the hearing of any appeal, whether in the particular case it did so or not. Makin v. A. G. for N. S. W. (1894), A. C. 57, distinguished. *Regina* v. *Woods*, 5 B. C. R. 585.

39. Criminal law — *Evidence taken before magistrate — Sufficiency of.*]—*Howden's Case*, 1 B. C. R. pt. 1, 89.

See CERTIORARI.

40. Criminal law — *Admissibility of a voluntary statement.*]—*Reg.* v. *Boyds*, 10 B. C. R. 407.

See CRIMINAL LAW, VIII.

41. Criminal law—*Statement by prisoners.*]—The provisions of s. 32 of 32-33 Vic. c. 30, are directory, and a statement not prefaced with the statutory words made by a prisoner to the committing magistrate was admitted in evidence upon the Justice deposing that the caution had been given, although not in the statutory words. *Regina* v. *Kalabeen and Another*, 1 B. C. R., page 1.

42. De bene esse—*Practice as to use of.*] —*Vermont S. S. Co.* v. *Abbey Palmer*, 10 B. C. R. 381.

See ADMIRALTY, I.

43. De bene esse]—*Bank of Montreal* v. *Home*, 6 B. C. R. 68.

See PRACTICE, XI. 1.

44. Discovery.]—On an examination for discovery of the plaintiffs' manager the plaintiffs took no part:—Held, that the deposition was admissible at the trial. *Royal Bank of Canada* v. *Harris*, 8 B. C. R. 268.

45. Discovery — *Use of examination at trial.*]—A Judge in charging a jury may read to them parts of an examination for discovery additional to parts put in evidence by counsel. *Adams* v. *The National Electric Tramway & Lighting Co.*, 3 B. C. R. 199.

46. Discovery—*Use of at trial.*

See PRACTICE, XI. 5.

47. Discovery—*Privilege—Photographs.*] —Photographs sworn to be part of the materials of the defendants' evidence in the action are privileged from production. Documents sworn to be called into existence in the bonâ fide belief that litigation might ensue are not for this reason only privileged from production. *Feigenbaum* v. *Jackson & McDonell*, 7 B. C. R. 171.

48. Discovery — *Opposite party—Rules 723, 725 — Admissions — Partnership.*] — When a primâ facie liability to the plaintiff is made out against one defendant, then, upon the issue of whether another defendant is also liable as being his partner therein, such defendants, as between themselves, are "opposite parties," within the meaning of Rule 723, upon the issue involved, as it is the interest of the first that the second should be held as a contributor to the obligation, while it is the interest of the latter to be discharged, and, therefore, the examination before trial of one of such defendants for discovery is evidence at the trial on behalf of the other. The plaintiff sought to give evidence in proof of the partnership, of ante litem statements by the former defendant that the latter was his partner in the transaction in question:—Held, inadmissible as the foundation for the admission of such evidence is the implied authority and agency of the person making the statement to make it on behalf of the person sought to be bound by it, arising from the nature of their relationship, which was itself the matter sought to be proved. *B. C. Iron Works* v. *Buse*, 4 B. C. R. 419.

49. Discovery — *Evidence given on judgment passed upon.*] — *Guilbault* v. *Brothier*, 10 B. C. R. 449.

See ACTION.

50. Dying declaration — *Hearsay evidence of.*]—*Rex* v. *Louis*, 10 B. C. R. 1.

See CRIMINAL LAW, VIII.

51. Exclusion of persons from Court room.]—*Bird* v. *Vieth*, 7 B. C. R. 31.

See TRIAL.

52. Exemplification of foreign judgment — *Admissibility of.*]—*McKay Bros.* v. *Victoria Yukon Co.*, 9 B. C. R. 37.

See JUDGMENT.

53. Expert—*Evidence of.*]—*Wm. Hamilton Mfg. Co.* v. *Victoria Lumber Co.*, 4 B. C. R. 101.

See CONTRACT, III. 3.

54. Expert—*Evidence of medical, as to cause of death.*]—*Reg.* v. *Garrow et al.*, 5 B. C. R. 61.

See CRIMINAL LAW, VIII.

55. Fresh evidence on appeal — *Rule 674.*]—*Harper* v. *Cameron*, 2 B. C. R. 365.

See APPEAL, VI.

56. Fraud—*Evidence of as against plaintiff.*]—In an action to set aside a bill of sale of a mineral claim on the ground that it was a forgery by one of the defendants, evidence was given by plaintiff and his witnesses as to matters which, whether material or not, were intended to make the Judge give a readier credit to the plaintiff's case. For the defence witnesses were allowed to give evidence shewing that the plaintiff and his witnesses, in respect of the same mineral claim, had been parties or privy to a fraudulent transaction involving perjury and conspiracy and tending to shew that a like fraudulent scheme was being attempted in this case, and the result was that the Judge was so influenced by this evidence that he gave judgment for the defendants:—Held, by the Full Court, that the said evidence on behalf of defendants was properly admitted. *D'Avignon* v. *Jones et al.*, 9 B. C. R. 359.

57. Fraudulent conveyance — *Onus of proof.*]—When a voluntary conveyance has the effect of defeating creditors, it will be set aside, and it is not necessary to adduce evidence of fraud; the burden lies on the person

executing the deed to shew cause why it should not be set aside. *Cunningham* v. *Curtis*, 5 B. C. R. 472.

58. Handwriting expert—*Admissibility of evidence by.*]—*B. C. Land Co.* v. *Ellis et al.*, 6 B. C. R. 82.

See BILLS AND NOTES.

59. Imperial Order-in-Council.]—The Court will take judicial cognizance, without further proof, of an Imperial Order-in-Council, upon production of a copy purporting to have been printed by the Queen's printer in London. *The Minnie*, 3 B. C. R. 161.

60. Judge—*May state his opinion of evidence to jury.*]—*Harry et al.* v. *Packers' S. S. Co.*, 10 B. C. R. 258.

See PRACTICE, XX.

61. Judge — *Evidence as to matter for Judge alone—Jury may retire.*]—*Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 448.

See PRACTICE, XVII.

62. Judges' notes — *Introducing testimony not noted in—Application to amend should first be made to trial Judge.*]—*Rendell* v. *McLellan*, 9 B. C. R. 328.

See APPEAL, VI

63. New trial — *Where jury disregards material undisputed facts.*]—*Robson* v. *Suter*, 1 B. C. R. pt. II., 375.

See PRACTICE, XX.

64. Non-disclosure of material fact—*Effect of—Whether objection available on appeal.*]—It appeared that a writ endorsed to prosecute an adverse claim under the Mineral Act, 1891, in the Supreme Court, had been issued before an application for an order extending the time for bringing action in the County Court was made; but that fact was not disclosed to the Judge upon the application: — Held, allowing an appeal, that the fact of the issue of the Supreme Court writ was material to the original application and should have been disclosed. Such a circumstance can be taken advantage of upon an appeal from, as well as upon a motion to rescind, the order. *Re The Maple Leaf and Lanark Mineral Claims*, 2 B. C. R. 323.

65. Parol evidence to explain a latent ambiguity.]—*Borland* v. *Coote*, 10 B. C. R. 493.

See VENDOR AND PURCHASER.

66. Parol evidence to shew that indorsee of note stipulated that he should not be liable, inadmissible.]—*Emerson* v. *Erwin*, 10 B. C. R. 101.

See BILLS AND NOTES.

67. Parol evidence—*To vary contract.*]—*Le Roi* v. *Northport Smelting Co.*, 10 B. C. R. 138.

68. Parol — *Supplementing written contract.*]—A bill of lading, or receipt of goods, by a common carrier, expressed that the goods were bound from Victoria to New Westminster:—Held, parol evidence that the contract was to carry not only to New Westminster, but further to Yale, was admissible, as not contradicting but supplementing the written document. *Hamilton* v. *Hudson's Bay Co. et al.*, 1 B. C. R., pt. II., 1.

69. Positive in preference to negative testimony.] — Where the trial Judge accepts positive in preference to the negative testimony, the Full Court will not interfere unless he is clearly wrong. *Milton* v. *The Corporation of the District of Surrey*, 10 B. C. R. 296.

70. Prejudice—*Evidence of—For want of notice under Employers' Liability Act — Admissibility of.*]—*Lever* v. *McArthur*, 9 B. C. R. 147.

See MASTER AND SERVANT, IV. 2.

71. Prima facie case—*Evidence sufficient to establish.*]—*Carroll* v. *City of Vancouver*, 10 B. C. R. 179.

See MUNICIPAL CORPORATIONS, I.

72. Registrar — *Provisions as to taking evidence by.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

73. Rejection of as ground of new trial.]—*Hopkins* v. *Gooderham*, 10 B. C. R. 250.

See PRACTICE, XX.

74. Rebuttal evidence in — *Differing from previous evidence may be allowed in discretion of Judge.*]—*Rex* v. *Wong On et al.*, 10 B. C. R. 555.

See CRIMINAL LAW, VIII.

75. Relevancy.] — Observations on the doctrine of relevancy of evidence. *Varrelmann* v. *The Phœnix Brewery Company, Limited Liability*, 2 B. C. R. 135.

76. Relevancy—*Evidence to contradict.*]—In an action to set aside a bill of sale of a mineral claim on the ground that it was a forgery by one of the defendants, evidence was given by plaintiff and his witnesses as to matters which, whether material or not, were intended to make the Judge give a readier credit to the plaintiff's case. For the defence, witnesses were allowed to give evidence shewing that the plaintiff and his witnesses, in respect to the same mineral claim, had been parties or privy to a fraudulent transaction involving perjury and conspiracy and tending to shew that a like fraudulent scheme was being attempted in this case, and the result was that the Judge was so influenced by this evidence that he gave judgment for the defendants:—Held, by the Full Court, that the said evidence on behalf of defendants was properly admitted. *D'Avignon* v. *Jones*, 9 B. C. R. 359.

77. Secondary when inadmissible.]—Before a substituted certificate will be admitted in evidence there must be proof of loss of the original. Conditions of the admissibility of a mining recorder's certificate as to issue of free miner's license, and as to issue of certificates of work, considered. Copies of certain recorded instruments held admissible

without proof of originals. *Pavier* v. *Snow*, 7 B. C. R. 80.

78. Substituted certificate.]—Before a substituted certificate will be admitted in evidence there must be proof of loss of the original. Conditions of the admissibility of a mining recorder's certificate as to issue of free miner's license, and as to issue of certificates of work, considered. Copies of certain recorded instruments held admissible without proof of originals. *Pavier* v. *Snow*, 7 B. C. R. 80.

79. Trial—*Abortive—Appeal—Full Court giving judgment which should have been given at trial — Judgment on evidence.*] — On the second trial of an action on a promissory note where the defence alleged fraud on the part of the plaintiffs in obtaining the indorsement, the jury disagreed. Plaintiffs then moved for judgment on the ground that there was no evidence of fraud, and the motion was refused: —Held, by the Full Court, allowing an appeal and entering judgment for plaintiffs, that no jury could properly find fraud, and it was desirable, especially in view of the first abortive trial, that the judgment should now be entered which should have been entered at the trial. *Yorkshire Guarantee Corporation* v. *Fulbrook & Innes*, 9 B. C. R. 270.

80. Witness—*Incompetency by reason of want of religious belief — Examination on voir dire—Duty of trial Judge.*]—It is not the duty of the trial Judge to examine a witness on the voir dire as to his religious belief, for the purpose of testing his competency as a witness, even if requested to do so by counsel for opposite party, and a party who has not been examined on the voir dire at the trial, will not be heard upon affidavit on appeal against the competency of the evidence. *Gray* v. *McCallum*, 2 B. C. R. 104.

81. Witness—*Evidence of—Part may be believed and part rejected.*]—*Stowes* v. *South Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS, I.

82. Witness at former trial—*Admissibility of testimony by.*]—*Cunliffe* v. *Cunliffe*, 8 B. C. R. 18.

See DIVORCE.

83. Wrongful dismissal—*Evidence of—Statement of officers of company—Admissible without proof of authority.*]—*Varrelmann* v. *Phœnix Brewery Co.*, 3 B. C. R. 135.

See MASTER AND SERVANT, II.

See also ADMIRALTY—AFFIDAVIT—APPEAL—COMMISSION—CRIMINAL LAW—MINES AND MINERALS, XIX.—FRAUDULENT CONVEYANCE—PRACTICE, XI., XIX.

EXAMINATION.

1. De bene esse.]—*Bank of Montreal* v. *Horne*, 6 B. C. R. 68; *Hyland* v. *C. W. Co.*, 9 B. C. R. 32.

See PRACTICE, XI. 2.

2. For discovery.]—*Bank of B. C.* v. *Trapp et al.*, 7 B. C. R. 354; *Hopper* v. *Dunsmuir*, 10 B. C. R. 23; *Boggs* v. *Bennett Lake Co.*, 8 B. C. R. 333; *Jones* v. *Pemberton*, 6 B. C. R. 69.

See PRACTICE, XI. 5.

3. Of judgment debtor.] — *Steele* v. *Pioneer Corporation*, 6 B. C. R. 158; *Bank of Montreal* v. *Major*, 5 B. C. R. 156; *Drosdowitz* v. *Manchester Fire Assurance Co.*, 6 B. C. R. 269.

See PRACTICE, XI. 4.

4. Of solicitor.] — *Loadbeater* v. *Crow's Nest Coal Co.*, 10 B. C. R. 206.

See PRACTICE, XI. 5.

5. Of ex-officer of corporation.] — *Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 448; *Hobbs* v. *E. & M. Company*, 5 B. C. R. 461; *Walkeley* v. *City of Victoria*, 7 B. C. R. 481.

See PRACTICE, XI. 5.

EXCAVATION.

1. Negligence in.] — *Steves* v. *South Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS, I.

EXCEPTION.

1. Where not taken to Judge's charge it does not preclude right to new trial where crime was not defined.]—*Rex* v. *Wong On et al.*, 10 B. C. R. 555.

See CRIMINAL LAW, XIV.

EXCESSIVE DAMAGES.

1. As ground for new trial.]—*Hopkins* v. *Goodenham*, 10 B. C. R. 250.

See PRACTICE, XX.

2. Reduction of.]—*Pender* v. *War Eagle Mining Co.*, 7 B. C. R. 162.

See MASTER AND SERVANT, IV.

See also DAMAGES.

EXCHEQUER COURT.

1. No jurisdiction if owner is resident within Province.] — *Rithet* v. *S. "Barbara Boscowitz,"* 3 B. C. R. 445.

See ADMIRALTY, IV.

2. Stay of proceedings in case of appeal to.] — *Vermont S.S. Co.* v. *The Abby Palmer*, 10 B. C. R. 383.

See ADMIRALTY, I.

EXECUTION.

1. Appointment of receiver is not an execution — *Creditors' Relief Act, 1883—Preferential claims of workmen.*]—M. had obtained a judgment in the action against L. The defendant being examined as a judgment debtor, swore that he had no goods nor lands upon which execution could be levied in a fi. fa.; but that there were some contingent payments which he expected to receive shortly. Thereupon M. procured an order appointing himself receiver, without having previously taken out a writ of fi. fa. Afterwards certain unpaid workmen of L. claimed under the above Act, that M. should be ordered to satisfy their claims, preferentially, out of any moneys coming to him as receiver; — Held, that as there was no writ of fi. fa., the statute did not authorize the application. Semble, it is not sufficient in such a case, that the workmen should claim to be in arrear of wages; the claim should be established against both the judgment debtor and the execution creditor, or at least against the judgment debtor. Semble, a receiver is not within the Act; an Act which takes away the legal right of a diligent litigant, to bestow it gratis on a stranger, is to be construed strictly according to its letter. *Muirhead* v. *Lawson*, 1 B. C. R., pt. II., 113.

See EXEMPTION—RECEIVER.

2. Arrest—*Effect of arrest on ca. sa., as superseding other modes of.*]—*Ward & Co.* v. *Clark et al.*, 4 B. C. R. 71.

See ARREST.

3. Assignment for benefit of creditors—*Exemption.*]—P. & Y., partners, on the 26th of July, 1894, executed a deed of assignment to S. for the benefit of their creditors, of "all their and each of their personal estate which might be seized and sold under execution (save and except the household furniture of Agnes York), and all their and each of their real estate," and S. immediately entered into possession thereof, and afterwards converted the same into money. Subsequently, on December 28th, 1894, P. claimed from S. $500 of the proceeds as an exemption from execution to which he was entitled under the Homestead Act (C. S. B. C. 1888, c. 57), Amendment Act, 1890, s. 2, and implied reservation in the deed:—Held, that the $500 exemption from execution under the Act is not an absolute right, but a privilege or option to be effectuated only by claiming it within a reasonable time in regard to the specific goods seizable, or which have been seized under execution, and does not apply to the proceeds of the goods after sale and conversion into money. Quære, as to the effect of a claim of exemption by one partner only where some of the goods seized are partnership, and others individual property. *Pilling* v. *Stewart et al.*, 4 B. C. R. 94.

4. Certificate of judgment—*Registration as against lands.*]—The registration of a certificate of judgment against the lands of a judgment debtor is not an execution within the meaning of a Supreme Court of Canada Act, s. 47, s.-s. (e); and the giving security to the satisfaction of a Judge of the Supreme Court of B. C. for the whole amount of the debt and costs, does not supersede the registration of such certificate. *Foley* v. *Webster*, 2 B. C. R. 251.

5. Constitutional law — *Distribution of legislative power—British North America Act, 1867—Public officer — Notice of action—Exemption.*]—Provincial statutes providing for exemptions from execution are not ultra vires as dealing with insolvency. An action is not maintainable against a sheriff who has seized privileged or protected goods, in obedience to the command of a writ, but the person injured must apply to the Court for an order to restore the goods. A County Court bailiff is entitled to notice of action for anything done under process of the Court under 9 & 10 Vic. c. 95, s. 138 (Imp.), introduced into this province by the County Court Ordinance, 1867. A right of exemption from execution is a privilege exercisable at the option of the debtor and to take effect must be claimed. *Johnson* v. *Harris*, 1 B. C. R., pt. I., 96.

6. Contract—*Construction of. Homestead Act, 1888 (s. 10), Amendment Act, 1890, s. 2—Creditors' Trust Deeds Amendment Act, 1894—Exemption from execution — Option—When exercisable.*] — P. & Y., partners, on 26th July, 1894, executed a deed of assignment to S., for the benefit of their creditors, of "all their and each of their personal estate which might be seized and sold under execution (save and except the household furniture of Agnes York), and all their and each of their real estate," and S. immediately entered into possession thereof, and afterwards converted the same into money. Subsequently, on December 28th, 1894, P. claimed from S. $500 of the proceeds as an exemption from execution to which he was entitled under the Homestead Act (C. S. B. C. 1888, c. 57), Amendment Act, 1890, s. 2, and implied reservation in the deed:—Held, that the $500 exemption from execution under the Act is not an absolute right, but a privilege or option to be effectuated only by claiming it within a reasonable time in regard to the specific goods seizable, or which have been seized, under execution, and does not apply to the proceeds of the goods after sale and conversion into money. Quære, as to the effect of a claim of exemption by one partner only, where some of the goods seized are partnership and others individual property. *Pilling* v. *Stewart et al.*, 4 B. C. R. 94.

7. Equitable execution.] — *Davidge* v. *Kirby*, 10 B. C. R. 231.

See EQUITABLE EXECUTION, 2.

8. Equitable execution.]—*Muirhead* v. *Lawson*, 1 B. C. R., pt. II., 113.

See RECEIVER.

9. Exemption from—*Onus of proving.*] —*In re Sharp*, 5 B. C. R. 117.

See EXEMPTION.

10. Exemption from—*Of proceeds from sale of ship.*]—*Yorkshire Guarantee Corporation* v. *Cooper*, 10 B. C. R. 65.

See EXEMPTION.

11. Exemption from seizure and sale of goods and chattels—*Whether book debts within.*]—Book debts are not within the exemption of the following provision of the Homestead Act, C. S. B. C. 1888, c. 57, s. 10: "The following personal property shall be

exempt from forced seizure and sale by any process at law or in equity; that is to say, the goods and chattels of any debtor * * * to the value of $500," as not being within the description of personal property capable of seizure, or capable of being dealt with conformably to the provisions of the Act relating to the mode claiming the exemption. *H. B. Co.* v. *Hazlett*, 4 B. C. R. 450.

12. Exemption—*Homestead Act—Small Debts Court—Jurisdiction.*] — A magistrate sitting as Judge of the Small Debts Court has no jurisdiction to decide the validity of a claim of exemption under the Homestead Act of goods seized under process of execution issued from that Court. *Auberg* v. *Anderson, Stewart* v. *Anderson*, 5 B. C. R. 622.

13. Fraudulent prior sale.] — *Esnauf* v. *Gurney*, 4 B. C. R. 144.

See SALES.

14. Garnishee—*Execution as against.*]—*Mt. Royal Milling Co.* v. *Kwong Mau Yuen*, 2 B. C. R. 171.

See GARNISHMENT.

15. Homestead Amendment Act, 1890—*Exemption from execution.*]—A horse, the only exigible personalty of defendant, was taken in execution. It was appraised at $1,000. Defendant under s. 2, Homestead Amendment Act, 1890, c. 20, providing: "2. It shall be the duty of every sheriff or other officer seizing the personal property of any debtor under a writ of fieri facias, or any process of execution, to allow the debtor to select goods and chattels to the value of $500, and to be paid that amount by the sheriff out of the proceeds of its sale":—Held, that the debtor was so entitled. *Vye* v. *McNeill*, 3 B. C. R. 24.

16. Mineral claim—*Seizure by sheriff of the interest of a co-owner—Lapse of debtor's mining license — Sheriff's right to renew—Mineral Act, s. 9, and Amendment of* 1899, *s. 4.*] — A sheriff in possession of a free miner's interest in a mineral claim has no power to take out a special free miner's certificate under s. 4 of the Mineral Act Amendment Act of 1899, in the name of the judgment debtor; neither has the sheriff power to renew a certificate before lapse. Where one or more of the co-owners of a mineral claim allow their free miner's certificates to lapse, their interests at once vest pro rata in their former co-owners. *McNaught* v. *Van Norman*, 9 B. C. R. 131; 1 M. M. C. 516.

17. Necessity of filing praecipe for writ of.]—See *Kimpton* v. *McKay*, 4 B. C. R. 196.

18. One mode of superseding others.] —*Ward* v. *Clark et al.*, 4 B. C. R. 71.

See ARREST.

19. Plaintiff's solicitor as a purchaser under, not protected by statute.] —*Spiers* v. *The Queen*, 4 B. C. R. 388.

See PETITION OF RIGHT.

20. Preferenee—*Res judicata.*] — K., a trader in solvent circumstances, sold all his stock-in-trade to D., who knew that two of K.'s creditors had recovered judgment against him. The goods so sold were afterwards seized by the sheriff under executions issued on judgments recovered after the sale. On the trial of an interpleader issue in the County Court, the jury found that K. had sold the goods with intent to prefer the creditors who then had judgments, but that D. did not know of any such intent. The County Court Judge gave judgment against D., holding that the goods seized were now his goods, and that judgment was affirmed by the Court in banc. D. afterwards brought an action against the sheriff for trespass in seizing the goods, and obtained a verdict, which was set aside by the Court in banc, the majority of the Judges holding that the County Court judgment was a complete bar to the action. On appeal to the Supreme Court of Canada:—Held, reversing the decision of the Supreme Court of British Columbia, that the evidence shewed that D. purchased the goods from K. in good faith for his own benefit, and the statute against fraudulent preferences did not make the sale void:—Held, also, that the County Court judgment, being a decision of an inferior Court of limited jurisdiction, could not operate as a bar in respect of a cause of action in the Supreme Court, and beyond the jurisdiction of the County Court to entertain:—Held, further, that if such judgment could be set up as a bar, it should have been specially pleaded by way of estoppel, in which plea all the facts necessary to constitute the estoppel must have been set out in detail, and from the evidence in the case no such estoppel could have been established. (Judgment of Supreme Court of Canada.) *Davies* v. *McMillan*, 1893, Canada Law Times, vol. XIII., 207, apparently not reported in B. C. Reports.

21. Receiver — *Equitable relief.*]—A receiver for the purpose of giving a judgment creditor equitable relief, will not be appointed until the judgment creditor has exhausted his legal (as distinguished from equitable) remedies. *Davidge* v. *Kirby*, 10 B. C. R. 231.

22. Receiver—*Appointment of, is not an execution— Order XLII., Rule* 8.]—The appointment of a receiver of the estate of a judgment debtor at the instance of his judgment creditor by way of recovering upon the judgment, is not an "execution" within the meaning of the Execution Act, s. 21, and clerks and servants of the execution debtor have no right to an order for payment of their wages out of the amount realized by the receiver in priority to the claim of the judgment creditor. *Aspland* v. *Hampson & Co.*, 3 B. C. R. 299.

23. Registration of judgments—*Fi. fa. against lands—Condition precedent.*] — Held, by the Full Court, DAVIE, C.J., CREASE and DRAKE, JJ., affirming MCCREIGHT, J.: A purchaser at sheriff's sale under a writ of fi. fa. had no status to question a subsequent judgment of the Court setting aside the judgment except by intervening as indicated in Jacques v. Harrison, 12 Q. B. D. 136-165. The registration of a judgment in the Land Registry office before the delivery of fi. fa. lands thereunder to the sheriff is a condition precedent to the efficacy of the writ in the sheriff's hands and sale thereunder under ss. 31 & 32 of the Execution Act, C. S. B. S. (1888), c. 42. Per DRAKE, J.: The purchaser of the sheriff's sale being the solicitor for the plaintiffs in the action was not within the protection against irregularities given by s. 43 of

the Execution Act, supra, to purchasers at sheriff's sales under executions. *Spiers* v. *The Queen and Corbould*, 4 B. C. R. 388.

24. Sheriff's costs of seizure and possession money are payable by the execution debtor claiming the exemption, which is a privilege arising only when claimed. *Sehl* v. *Humphreys*, 1 B. C. R. pt. II., 257.

25. Stay of—*Pending appeal—Terms on which granted.*]—*Davies* v. *McMillan*, 3 B. C. R. 35.

See PRACTICE, XXVIII.

26. Terms of — *Redemption of mortgage by purchase of equity of redemption at sale by sheriff under fi. fa. lands—What arrears recoverable — Statute of Limitations.*] — *Keary* v. *Mason*, 2 B. C. R. 48.

See MORTGAGES.

27. Wages claim—*Payment into Court by sheriff.*] — The plaintiff having recovered judgment and execution in this action in the Supreme Court, the sheriff levied the amount thereof from the goods of the defendant. Five persons, to whom the execution debtor was indebted for wages, obtained an ex parte order from a County Court Judge, professing to sit as a Judge of the Supreme Court—under Stat. B. C. 1891, c. 8, and Rules of Court printed in B. C. Gazette, 4th November, 1891—for the sheriff to pay into Court out of the moneys levied the amount claimed by them, in order that they might be at liberty to establish their claims thereto, in preference to the execution creditor, under C. S. B. C., 1888, c. 42, s. 21. Neither the order nor the affidavits in support of it were styled in any cause, but "In the matter of the Execution Act, and of A. E. Clarke, judgment debtor:" Held, 1. The order and affidavits were irregular, as not being styled in any pending cause. 2. The order ought not to have been made ex parte. 3. Section 31, supra, only authorized the order therein provided for to be made by a "Judge of the Court out of which the process issues," and "upon proof of the claim," and the County Court Judge had no jurisdiction. 4. An order for payment into Court of the moneys levied is unauthorized. *McKay* v. *Clarke*, 2 B. C. R. 213.

28. Wages.] — Plaintiff having obtained judgment and execution against an administratrix of the estate of John Gilmour, deceased, John A. Gilmour claimed under C. S. B. C. c. 42, s. 21, to be paid the amount of wages due to him by the administratrix as manager of her farm, part of the estate of the intestate, in priority to the execution creditor: — Held, that the Act only applies to claims for wages against the execution debtor, and that the administratrix, and not the estate, as responsible for the wages. *Alexander Gilmour* v. *Ellen Gilmour, John A. Gilmour (claimant)*, 3 B. C. R. 397.

29. Where claim and counterclaim.] —*Smith* v. *Hansen*, 2 B. C. R. 153.

See PRACTICE, VIII.

See also ASSIGNMENT FOR BENEFIT OF CREDITORS—EQUITABLE EXECUTION—EXEMPTIONS—FRAUDULENT CONVEYANCE—RECEIVER —SALES—SHERIFF.

EXECUTORS AND ADMINISTRATORS.

1. Corroboration of evidence in an action against executor.]—*Blacquiere* v. *Carr*, 10 B. C. R. 448.

See EVIDENCE.

2. Inquisition as to lunacy—*Costs payable out of estate.*]—K., a person alleged to be of unsound mind, died during the progress of an inquisition a. to his lunacy, and before verdict. On an application by the petitioner in lunacy, supported by an affidavit that the proceedings were taken bonâ fide, and for the sole and only purpose of protecting K.'s estate: DRAKE, J., made a declaration that the costs of the inquisition had been properly incurred, and ought to be paid out of K.'s estate in due course of administration. *In re Kaye*, 6 B. C. R. 61.

3. Insolvent estate — *Priority of judgment creditors against, to executors of.*]—*Wilson* v. *Marvin*, 3 B. C. R. 327.

See INSOLVENCY.

4. Legacy — *Judgment for — Priority as to.*]—In 1874, one E. H. became entitled to a legacy of $10,000, bequeathed to him by his brother J., who appointed as his executor another brother T., with whom he was in partnership. On J.'s death, T. entered into possession of the whole partnership property, and paid half the legacy to E. in 1875. E. sued T. and recovered judgment by default for the balance on January 24th, 1889, which judgment was registered February 28th, 1889. In the meantime, T. had charged the whole property for large sums to various creditors, who obtained and registered judgments before January 24th, 1889, before which date also judgment was obtained against T. and registered by a simple contract creditor, C. Receivers having been put in possession of T.'s estate, sold the same under order of Court, and after certain mortgage debts and expenses were paid off, with the sanction of the Court, the balance left was insufficient to pay off the charges registered before K.'s judgment. In an action by E. for an inquiry as to what assets of J. came into the hands of T. or the receivers, to have his judgment declared entitled to priority over the other registered charges, and to restrain the receivers:—Held, per BEGBIE, C.J., that the action must fail as against all the defendants, for E. was now a mere judgment creditor of T., and no longer a legatee, and he had not shewn that any moneys in the receiver's hands were impressed with a trust in his favour. But, held, on appeal, per MCCREIGHT and WALKEM, JJ., that the action lay as against the simple contract creditor C., but not, semble, as against the secured creditors, by reason of ss. 32-36 of the Land Registry Act. *Per* DRAKE, J., dissenting, the action was misconceived, and should have been launched as an administration action. *Ezekiel Harper* v. *Thasseus Harper, Thomas Dixon Galpin, Henry Slye Mason, The Canadian Pacific Land and Mortgage Company, Limited; The British Columbia Land and Investment Agency, Limited; John Cameron, and Henry Slye Mason, and James Charles Prevost, as Receivers of the Estate of the said Thasseus Harper*, 2 B. C. R. 15.

5. Mixing private funds with estate —*Judgment by general legatee for amount of legacy—Priority of, as against prior judgment*

against executor personally—Merger—Following assets into mixed fund.]—In 1874 one E. H. became entitled to a general legacy of $10,000, bequeathed to him by his brother T., with whom he was in partnership. On E.'s death T. entered into possession of the whole partnership property and paid half the legacy to E. In 1875, E. sued T. and recovered judgment by default for the balance in the usual form of a judgment against an executor admitting assets de bonis testatoris et si non de bonis propriis, which judgment was registered February 28th, 1880. In the meantime T. had charged the whole property for large sums to various creditors who obtained and registered judgment before January 24th, 1889, and a simple contract creditor, C., had also before that date obtained and registered a judgment against him. Receivers having been put in possession of T.'s estate, sold the same under order of the Court: the balance left was insufficient to pay off the registered charges prior to E.'s judgment. In an action by E. for an enquiry as to what assets of J. came into the hands of T. or the receivers, to have his judgment declared a charge upon such assets prior to the personal judgment creditors, and to restrain the receivers:—Held, per BEDBIE, C.J., that the plaintiff, by bringing his action and obtaining judgment against T., became a mere creditor of T., and that his claim was no longer that of a legatee, and also that he had not shewn that any of the moneys in the receiver's hands were impressed with a trust in his favour. But held, by the Full Court, on appeal, per MCCREIGHT and WALKEM, JJ., that the action lay as against C., but not semble as against the mortgagees, by reason of ss. 32-36 of the Land Registry Act. *Harper* v. *Harper*, 2 B. C. R. 15.

6. Official administrator.] — The official administrator is not allowed to take out letters of administration in opposition to the heirs of the deceased, such heirs being resident out of the jurisdiction, but having an attorney in fact within the province to manage the estate, and there being no evidence that the deceased had any debts or any substantial personal property although he died possessed of considerable real estate within the Province subject to a mortgage. *In re Lelaire*, 9 B. C. R. 429.

7. Priority—*Against assets of estate of judgment against executors obtained before administration decree—C. S. B. C., c. 68, s. 4.*]—The plaintiff obtained judgment against the defendant as an executor of the deceased, an insolvent. Afterwards an administration decree was made. The plaintiff applied for payment to him of the amount of his judgment out of funds in Court, being proceeds of the estate:—Held, per DRAKE, J., making the order, that C. S. B. C. c. 68, s. 4, does not take away the priority of a creditor under a judgment obtained before the making of the administration decree:—Held, on appeal, by the Divisional Court, CREASE and MCCREIGHT, JJ., it appearing that there might not be sufficient funds to satisfy an undecided right of retainer by the executor, and other judgments, that payment out of Court to plaintiff should be postponed till final distribution of the estate under the decree in the administration suit. *Wilson* v. *Marvin*, 3 B. C. R. 327.

See also WILLS.

EXEMPLIFICATION.

1. Of judgment — *Admissibility of, as evidence.*]—*Boyle* v. *Victoria Yukon Co.*, 9 B. C. R. 213.

See JUDGMENTS.

EXEMPTION.

1. Assignment or execution—*An exemption under must be claimed.*]—*Pilling* v. *Stewart et al.*, 4 B. C. R. 94.

See EXECUTION.

2. Book debts—*Not within exemptions.*] —Book debts are not within the exemption of the following provisions of the Homestead Act, C. S. B. C. 1888, c. 57, s. 10, "The following persons shall be exempt from forced seizure and sale by any process at law or in equity: that is to say, the goods and chattels of any debtor . . . to the value of $500," as not being within the description of personal property capable of seizure, or capable of being dealt with conformably to the provisions of the Act relating to the mode of claiming the exemption. *Hudson's Bay Company* v. *Hazlett*, 4 B. C. R. 450.

3. Claim of priority for wages.] — Plaintiff having obtained judgment and execution against defendant as administratrix of the estate of John Gilmour, deceased, John A. Gilmour claimed under C. S. B. C. c. 42, s. 21, to be paid the amount of wages due to him by the administratrix as manager of a farm, part of the estate of the intestate, in priority to the execution creditor:—Held, that the Act only applies to claims for wages against the execution debtor, and the administratrix, and not the estate, was responsible for the wages. *Gilmour* v. *Gilmour*, 3 B. C. R. 397.

4. From execution—*When right to claim exercisable—Not after goods sold.*]—*Pilling* v. *Stewart*, 4 B. C. R. 94.

5. Interpleader issue—*Notice of exemption claim.*]—Held, in an interpleader issue, that the execution debtor was entitled, as an exemption under the Homestead Act, to $500 out of $1,000 realized by the sheriff on the sale of a steamship, the only exigible personalty of the debtor. Vye v. McNeill (1893), 3 B. C. 24, approved. Semble, notice of claim of exemption is necessary. *Yorkshire Guarantee & Securities Corporation* v. *Cooper*, 10 B. C. R. 65.

6. Homestead Act—*Exemption of personal property under.*]—*In re Ley et al.*, 7 B. C. R. 94.

See ASSIGNMENTS FOR BENEFIT OF CREDITORS.

7. Homestead Ordinance, 1867 — *British Columbia Homestead Amendment Act, 1873—British North America Act, 1867, ss. 91, 92.*] — Held, (1) that the exemption clauses of the Homestead Acts of British Columbia, to the full extent of $500, are in full force:—Held, (2) that exemption from seizure under execution of property to a limited extent, dependent upon the personal option of the owner, under a statute, is a matter of privilege to be exercised, and must

be claimed under proper notification. An action is not maintainable against a sheriff who has, in obedience to a valid writ, seized property so privileged, without prior legal notification of its exemption:—Held, (3) the sheriff in such cases is entitled to notice before action brought. *Johnson* v. *Harris*, 1 B. C. R. 93.

8. Optional — *Exemptions from execution.*]—*Pilling* v. *Stewart*, 4 B. C. R. 94.

See EXECUTION.

9. Right of selection.] — A horse, the only exigible personalty of defendant, was taken in execution. It was appraised at $1,000. Defendant under s. 2, Homestead Amendment Act, 1890, c. 20, providing: "2. It shall be the duty of every sheriff or other officer seizing the personal property of any debtor under a writ of fieri facias or any process of execution, to allow the debtor to select goods and chattels to the value of $500 from the personal property so seized," claimed that he was entitled to select the horse to the extent of $500, and to be paid that amount by the sheriff out of the proceeds of its sale:—Held, that the debtor was so entitled. *Tye* v. *McNeill*, 3 B. C. R. 24.

10. Selection—*Onus of proof.*]—A deed of assignment of the estate and effects of insolvents for the benefit of their creditors, executed on March 26th, 1896, pursuant to the Creditors' Trust Deeds Act, 1890, excepted "such personal property as may be selected by the said debtors under the Homestead Act and Homestead Amendment Act, 1890:"—Held, that the onus was on the claimant to shew that the claim was not within the exception to the right of exemption provided by s. 10 of the Homestead Act, 1890, as amended by the Act of 1893, s. 2, in regard to goods seized in "satisfaction of a debt contracted for or in respect of such identical goods," and in the absence of evidence upon the point the claim was disallowed. Semble, the Homestead Act Amendment Act, 1896, c. 23, s. 2, directing the method of selecting the goods proposed to be exempted is retroactive in its effect, as regulating procedure, and applied to the claim under the deed in question, though passed after date of the deed, and that the claim was also invalid for want of compliance with that statute. *In re Sharp*, 5 B. C. R. 117.

11. Sheriff's costs of goods seized.]—Held, that where a judgment debtor claims the benefit of the Homestead Amendment Act, 1873, in respect of goods seized by the sheriff under a fi. fa., the judgment debtor must pay the sheriff's costs of seizure and possession moneys. *Sehl* v. *Humphreys*, 1 B. C. R. pt. II., 257.

12. Small Debts Court—*Jurisdiction of magistrate to decide claim for.*]—A magistrate sitting as Judge of the Small Debts Court, has no jurisdiction to decide the validity of a claim of exemption under the Homestead Act, of goods seized under process of execution issued from that Court. *Auberg* v. *Anderson; Stewart* v. *Anderson*, 5 B. C. R. 622.

See also ASSIGNMENT FOR BENEFIT OF CREDITORS—EXECUTION.

EXHIBIT.

1. Service of, with affidavit.]—*Hughes* v. *Hume*, 5 B. C. R. 278; *Barker & Co.* v. *Lawrence*, 5 B. C. R. 460.

See PRACTICE, XXVII.

EX JURIS WRIT.

1. Service of.]—*Gaveschc* v. *Holladay*, 1 B. C. R. pt. II., 83; *Northern Counties* v. *Nathan*, 7 B. C. R. 136; *Tates* v. *Heaucssey*, 7 B. C. R. 262; *Davies* v. *Dunn*, 8 B. C. R. 68.

See PRACTICE, XXXVIII., 5.

2. Special endorsement—*Refusing leave to issue ex juris writ — When discloses no cause of action.*]—*Tai Yune* v. *Blum*, 3 B. C. R. 21.

See PRACTICE, XXXVIII., 5.

3. Substitutional service of—*Affidavit must shew defendant evading service—Supplemental affidavit filed shewing such, not admissible on motion to set aside order for.*]—*Mellor* v. *Carter*, 3 B. C. R. 301.

See PRACTICE, XXXVIII., 5.

EX PARTE ORDER.

1. Appeal from refusal of application for.]—*Tai Yune* v. *Blum*, 2 B. C. R. 348.

See APPEAL, VIII. 12.

2. Application ex parte under Execution Act irregular.]—*McKay* v. *Clarke*, 2 B. C. R. 213.

See EXECUTION.

3. Injunction—*Made ex parte—Order for continuing — Where no proper appearance — Validity of.*]—*Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, VIII.

4. Local Judge — *Ex parte restraining order made by—Must be obeyed until set aside.*]—*Leberry* v. *Braden*, 7 B. C. R. 403.

See CONTEMPT.

5. Order made on a summons—*No one appearing for opposite party—Is not an ex parte order.*]—*Biggar* v. *City of Victoria*, 6 B. C. R. 130.

See VENUE.

6. Service of affidavits, with.] — *Macaulay* v. *O'Brien*, 5 B. C. R. 510.

See ARREST.

7. Varying terms of previous order —*Made on summons—Is irregular but not a nullity.*]—*Foot* v. *Mason*, 3 B. C. R. 146.

See APPEAL, VIII. 11.

8. What is, for purpose of appeal.] —*Denny* v. *Saywards*, 4 B. C. R. 212.

See PRACTICE, III.

9. Where made on a — *What is.*] — When an order is made after service of a summons upon which the opposite party does not attend, it will be treated as an ex parte order, and may be re-heard in Chambers and rescinded. *Griffiths* v. *Canonica*, 5 B. C. R. 48.

10. Whether appealable without motion to rescind—*Rule 577.*] — The Divisional Court will not entertain an appeal from an ex parte order made by a Judge. The proper practice is in the first instance to move before the Judge making such an order to rescind same. *Hudson's Bay Company* v. *Hazlett*, 4 B. C. R. 351.

EXPERT EVIDENCE.

See EVIDENCE.

EX POST FACTO LEGISLATION.

1. Interpretation of.]—*In re Clay*, 1 B. C. R. pt. II., 301.

See INTOXICATING LIQUORS.

EXPROPRIATION.

1. Compensation for.] — *In re W. C. Ward*, 1 B. C. R. pt. I., 114.

See ARBITRATION AND AWARD.

2. Of land for sewer.]—*Arnold* v. *City of Vancouver*, 10 B. C. R. 198.

See MUNICIPAL CORPORATIONS, VIII.

3. Of land—*For right of way for railway.*]—*C. P. R.* v. *Major*, 1 B. C. R. pt. II., 287; *Edmonds* v. *C. P. R. Co.*, 1 B. C. R. pt. II., 272.

See RAILWAYS, IV.

4. Rival railway — *No power of expropriation in case of crossing.*]—*C. P. R.* v. *V., W. & Y. Ry. Co.*, 10 B. C. R. 228.

See RAILWAYS, IV.

EXTENSION.

1. Of life insurance.]—*Tilley* v. *Confederation Life*, 7 B. C. R. 144.

See INSURANCE.

2. Of railway — *Not distinguished from branch.*]—*C. P. R. Co.* v. *Major*, 1 B. C. R. pt. II., 287.

See RAILWAYS, I.

3. Of time for appealing.

See APPEAL, VIII. 11.

EXTINGUISHMENT OF LIEN.

Edmonds v. *Walter*, 2 B. C. R. 82.

See MECHANIC'S LIEN.

EXTRALATERAL RIGHTS.

1. Mining litigation — *Opportunity to determine apex of vein.*]—*Noble Five* v. *Last Chance*, 9 B. C. R. 514.

See MINES AND MINERALS, XVI.

EXTRA CURSUM CURIAE.

1. Doctrine of — *Does not apply where fundamental error exists.*] — *Stevenson* v. *Parks et al.*, 10 B. C. R. 387.

See COURTS, II. 2.

EXTRADITION.

See CRIMINAL LAW.

EXTRINSIC EVIDENCE.

1. If usage or custom.] — *Le Roi* v. *Northport Smelting Co.*, 10 B. C. R. 138.

See CONTRACT, I. 1.

See also EVIDENCE.

FACT.

1. Findings of, by Court below—*Reversal of, on appeal.*]—*McKay Bros.* v. *Victoria Yukon Trading Co.*, 9 B. C. R. 37.

See APPEAL, IV.

FACTORS.

See BROKERS.

FAIR TRIAL.

1. Must be shewn that a fair trial cannot be had in order to warrant a change of venue.]—*Riggar* v. *City of Victoria*, 6 B. C. R. 130; *Centre Star* v. *Rossland Miners' Union*, 10 B. C. R. 307.

See VENUE.

FALSE IMPRISONMENT.

1. False imprisonment—*By detention in house of prostitution.*]—*Guilbault* v. *Brothier*, 10 B. C. R. 449.

See ACTION.

2. Timber afloat — *Lien for salvage — Joint arrest by defendant and constable.*]— Plaintiff took possession of Mason's float, which he found adrift on a lake. Mason, although aware that plaintiff claimed a lien for salvage, made no move towards recovering the float until after twelve weeks, when he in company with a constable, demanded it, and on plaintiff refusing to give it up without compensation, he was arrested without a warrant and taken to gaol, and subsequently an information laid against him under s. 338 of the code for taking and holding timber found adrift, was dismissed.—Held, on the facts, affirming FORIN, Co.J., that the arrest was the joint act of Mason and the constable, and that Mason was therefore liable for damages for false imprisonment. An action for malicious prosecution was tried in the County Court, without objection by either party, and judgment given in favour of plaintiff:—Held, by the Full Court, that the question of the jurisdiction of the County Court could not be raised on appeal. *Robitaille* v. *Mason and Young*, 9 B. C. R. 499.

FALSE PRETENCES.

1. Knowledge of agent.]—C., a policy holder of a fire insurance company, conspired with H., their local agent, to defraud the company. C. handed in to H., for transmission to the company, an unfounded claim for pretended losses by fire, supported by his (C.'s) statutory declaration, the whole being false to the knowledge of H. Upon this, C. obtained the money through H. from W. & Co., the general agents of the company. —Held, (1) The knowledge of their agent H., of the falsity of the pretence, could not be imputed as the knowledge of W. & Co., or of the company, so as to effect the criminality of C. (2) The fact that C. and H. might have been indicted for conspiracy to defraud was immaterial. *Regina* v. *Clark*, 2 B. C. R. 191.

2. Substitution of charge of—*For forgery.*]—*Reg.* v. *Morgan*, 2 B. C. R. 329.

See CRIMINAL LAW, III.

FALSE REPRESENTATION.

See FRAUD.

FAN TAN.

1. Held not to be per se an unlawful game.]—*Reg.* v. *Ah Pow*, 1 B. C. R. 147.

See GAMING.

FATHER.

1. Right of adoptive, to custody of infant under sixteen years.]—*In re Quai Shing*, 6 B. C. R. 86.

See ADOPTION.

FAVOURITISM.

1. By-law admitting of.] — A by-law that is just and equal in its operation or which is unreasonable, or permits favouritism, is void. *Regina* v. *Russell*, 1 B. C. R. 256.

FEE.

1. Deed in fee should not be registered as a charge.] — *Hudson's Bay* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

FEES.

1. Barrister—*Fees of, whether an honorarium.*]—*Barnard* v. *Walkem*, 1 B. C. R. 120.

See INJUNCTION.

2. Barrister—*Right of, to sue for.*]— Counsel in this province have the right to maintain an action for their fees. Where a solicitor contrary to his client's expectation does not pay over to a counsel, fees received from his client, the client is still liable to the counsel. *British Columbia Land and Investment Agency, Limited*, v. *Wilson*, 9 B. C. R. 412.

3. Court stenographer—*Payable to.*]— *Pender* v. *War Eagle*, 6 B. C. R. 427.

See ESTOPPEL.

FELLOW SERVANT.

1. Doctrine of common employment.

See also EMPLOYER'S LIABILITY ACT—MASTER AND SERVANT—NEGLIGENCE.

FENCES.

1. Guarding line of railway.] — The company maintained along its line of railway a barbed wire boundary fence, without any pole, board or other capping connecting the posts; plaintiffs' horse, picketed in their field adjoining, became frightened for some cause unexplained, and ran into fence, receiving injuries on account of which it had to be killed:—Held, that the fence was not inherently dangerous, and therefore the company was not liable. The test is whether the fence is dangerous to ordinary stock under ordinary conditions, and not whether it is dangerous to a bolting horse. Judgment of LEAMY, Co.J., reversed, IRVING, J., dissenting. *Plath and Ballard* v. *The Grand Forks and Kettle River Valley Railway Company*, 10 B. C. R. 299.

2. Where placed according to surveyors' stakes are superseded as boundaries by plan.]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

FIDUCIARY RELATIONSHIP.

1. Of agent to owner.] — *McLeod* v. *Waterman*, 10 B. C. R. 42.

See PRINCIPAL AND AGENT.

See also EXECUTORS AND ADMINISTRATORS — TRUSTEES.

FIERI FACIAS.

1. Appointment of receiver without taking out fi. fa.]—M. had obtained a judgment in the action against L. The defendant being examined swore that he had no goods nor lands upon which execution could be levied on a fi. fa.: but that there were some contingent payments which he expected to receive shortly. Thereupon M. procured an order appointing himself receiver, without previously taking out a useless fi. fa. Afterwards, certain unpaid workmen of L., asked, under the above Act, that M. should be ordered to satisfy their claims, preferentially, out of any moneys coming to him as receiver. —Held, that as there was no writ of fi. fa. nor any execution thereon, nor any lands or goods, the statute did not authorize the application. Semble, it is not sufficient in such a case that the workmen should claim to be in arrear of wages; the claim should be established against both the judgment debtor and the execution creditor, or at least against the judgment debtor. Semble, a receiver is not within the Act. An Act which takes away the legal right of a diligent litigant to bestow it gratis on a stranger is to be construed strictly according to its letter. *Muirhead* v. *Lawson, In re "Creditors' Relief Act, 1883," McLean's Case*, 1 B. C. R., pt. II., 113.

2. Examination of judgment debtor, before return of.]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See JUDGMENT DEBTOR.

3. Lands against—*Registration of a condition precedent.*]—*Spiers* v. *The Queen*, 4 B. C. R. 388.

See PETITION OF RIGHT.

See also EXECUTION.

FINAL JUDGMENT.

1. Time for appeal from.] — *Traders Nat. Bk. of Spokane* v. *Brigham*, 10 B. C. R. 442.

See APPEAL, VIII. 11.

See also JUDGMENT.

FINAL ORDER.

1. Findings of jury, sufficiency of.]—*McMillan* v. *Western Dredging Co.*, 4 B. C. R. 122.

See PRACTICE, XX.

2. Order for service ex juris is a.]—*Reg.* v. *City of Victoria*, 1 B. C. R., pt. II., 331.

See MUNICIPAL CORPORATIONS, IX.

3. Order allowing demurrer is a.]—*Atty.-Gen.* v. *C. P. R.*, 1 B. C. R., pt. II., 330.

See APPEAL, VIII. 12.

FINES.

1. In lieu of forfeiture where sealing ship seized within prohibited zone.]—*The Shelby*, 4 B. C. R. 342.

See ADMIRALTY, III. 3.

FIRES.

1. Damage from bush fire—*Liability for.*]—A fire started in brush and fallen timber by the defendant for the purpose of clearing his land spread on to the plaintiff's lands adjoining:—Held, in an action for damages, applying the principle of Rylands v. Fletcher (1868), L. R. 3 H. L. 330, that the defendant maintained the fire at his own risk, and was responsible for the damage caused by it. Costs on County Court scale allowed, as action should have been brought there. *Crewe* v. *Mottershaw*, 9 B. C. R. 246.

2. Liability of carrier for loss occasioned by.]—The Hudson's Bay Company and the other defendants, the Pioneer line, were common carriers—the company plying the "Enterprise" between Victoria and New Westminster, and the Pioneer Line the "Irving" between New Westminster and Yale, so as to form a continuous line of steamers between Victoria and Yale. The receipts from traffic passing over both sections of the route were divided between the defendants. The plaintiff ordered goods from the company which were to be forwarded by them to his agent at Yale. The company having filled the order, shipped the goods on the "Enterprise" and took the following receipt from the purser: "Shipped in good order by H. B. Co., on board the 'Enterprise,' . . . bound for New Westminster, the following packages (the dangers of fire and navigation excepted) consigned to Gavin Hamilton of 150 Mile House, and marked," etc. On an appeal to the Full Court:—Held, affirming WALKEM, J., as to this receipt, that parol evidence was admissible to show that the company had agreed to carry beyond New Westminster, viz., to Yale, as it did not contradict, but only supplemented the language of the receipt; also that the exception of liability in cases of fire does not protect the carrier where loss from fire is due to his, or his agents' or servants', negligence. At New Westminster, the goods were transferred from the "Enterprise" to the "Irving." Next day, while the "Irving" was on her way to Yale, a fire broke out in some hay stowed near her boilers. The hay consisted of about 20 tons, and, besides being uncovered, so nearly filled the whole space between decks forward from the engine room to within 8 feet of the boilers, that it was found impossible

to do any good with the fire hose. The fire, under these circumstances, spread rapidly, and burnt the vessel and her cargo (including the plaintiff's goods):—Held, (affirming WALKEM, J.), that the stowage of the hay was bad stowage, due to negligence, to which the loss of plaintiff's goods was fairly attributable, and therefore that the H. B. Co. were liable to the plaintiff for breach of their contract to carry his goods to Yale, as their liability extended beyond their own line or section of route, and throughout the whole distance over which they undertook to carry; and that they were, moreover, responsible for the negligence of the Pioneer Line, as the latter were their agents for the carriage of the goods. That the Pioneer Line having accepted the goods for carriage to Yale, thereby undertook a duty they neglected, viz., "to use due care and diligence in the safe-keeping and punctual conveyance of the goods," that this obligation was cast upon them by the common law as well as by the Dominion Act respecting carriers by water; and that having failed to fulfil it, and been privy to the loss of the goods through their own negligence, they were liable as well as the other defendants for such loss:—Held, also, that the measure of damages by way of compensation for delay (where delay has occasioned loss), is interest at the legal rate upon the actual value until judgment. *Hamilton* v. *Hudson's Bay Company and Irving and Briggs*, 1 B. C. R., pt. II., 176.

FIRE ESCAPE ACT.

1. Neglect of statutory duty.]—Where a guest in a burning hotel is injured in consequence of the proprietor having failed to provide the means of fire escape required by the Fire Escape Act, an action for damages will lie against the proprietor notwithstanding that a penalty is imposed for breach of the statutory duty. Groves v. Lord Wimborne (1898), 2 Q. B. 402, applied. The defence arising from the maxim volenti non fit injuria (the guest being aware of the lack of means of fire escape, and having made no objection) is not applicable where the injury arises from a breach of a statutory duty. Baddeley v. Earl Granville (1887), 19 Q. B. D. 423, applied. The fact that the guest delayed his exit in order to rescue a fellow-guest and thereby lost his own chance of getting safely out, is not as a matter of law "contributory negligence," whether the plaintiff did anything which a person of ordinary care and skill would not have done under the circumstances, or omitted to do anything which a person of ordinary care and skill would have done, and thereby contribute to the accident, was for the jury to decide. Judgment of Hunter, C.J., set aside and new trial ordered, IRVING, J., dissenting. *Love* v. *The New Fairview Corporation Limited*, 10 B. C. R. 330.

FIRE INSURANCE.

1. Contract valid in Canada.]—A contract to procure fire insurance in some office valid in Canada means in some company licensed to do business in Canada, and a premium paid under such a contract may be recovered back, as upon a failure of consideration, if the insurance is effected without the knowledge of the insured in a company not so licensed. *Barrett et al.* v. *Elliott et al.*, 10 B. C. R 461.

See INSURANCE, I.

FIRE LIMITS.

1. Validity of by-law defining.]—*Reg.* v. *On Hing*, 1 B. C. R., pt. II., 148.

See MUNICIPAL CORPORATIONS, II.

FIREMAN.

1. Damages for negligence of.] — In construing a jury's verdict consisting of a number of questions and answers, the whole verdict must be taken together and construed reasonably, regard being had to the course of the trial. In an action for damages for personal injuries from an accident happening because of plaintiff's failure to withdraw himself from danger in response to a signal, the jury found that the defendant was negligent, and that the signal was given prematurely, and that the plaintiff should have heard the signal, but being busy may not have heard it. The answer to the question as to contributory negligence, to which the jury's attention was directed by the Judge, was "we do not consider that plaintiff was doing anything but his regular work." Judgment was entered for plaintiff.—Held, by the Full Court, that the judgment must be affirmed. *Marshall* v. *Cates*, 10 B. C. R. 153.

FIRM.

1. In suing must shew change in constitution of firm or partnership.]—*Lenz et al.* v. *Kirschberg*, 6 B. C. R. 533.

See ARREST.

2. One person cannot sue in firm name.]—*B. C. Furniture Co.* v. *Tugwell*, 7 B. C. R. 84.

See PRACTICE, I. 2.

FISHERMAN'S REVENUE TAX.

1. Canners furnishing tackle.] — Where canners furnish fishermen with fishing apparatus, but there is no agreement binding the fishermen to sell their catch to the canners, the latter are not liable for the revenue tax in respect of such fishermen. *Campbell* v. *United Canneries*, 8 B. C. R. 113.

FISH OFFAL.

1. Pollution of tidal rivers by.]—*Atty.-Gen. of Dom.* v. *Ewen*, 3 B. C. R. 468.

See INJUNCTION.

FIXTURES.

See LANDLORD AND TENANT.

FLOATING TIMBER.

1. Arrest for taking and holding.]—*Robitaille* v. *Mason*, 9 B. C. R. 499.

See FALSE IMPRISONMENT.

FLOOD.

1. Flooding adjoining land caused by construction of railway embankment.]—*C. P. R.* v. *McBryan*, 5 B. C. R. 187.

See WATERS AND WATERCOURSES, III.

FOLLOWING MONEY.

1. Trust funds.]—M. & Co., being then insolvent, upon demand of one of their creditors, O. Bros., and in fear of legal proceedings, executed a bill of sale to them of their stock in trade and effects. Before the commencement of this action by the other creditors to have the bill of sale declared void, as being made with intent to give O. Bros. a preference, the latter had sold the goods to a bonâ fide purchaser for value and received the purchase money:—Held, 1. The bill of sale was not made voluntarily or with intent to give a preference, but was made under pressure sufficient to take the transaction out of the statutes. 2. O. Bros. could not, in any event, be called upon to account for the purchase money to the other creditors. *Cascaden et al.* v. *McIntosh et al.*, 2 B. C. R. 268.

FORECLOSURE.

1. Default of payment of interest only — *Right of.*] — *Canada Settlers* v. *Nicholles*, 5 B. C. R. 41.

See MORTGAGES.

2. Affidavit of non-payment where both principal and agent—*Necessity for affidavit of both.*]—*Canada Settlers* v. *Renouf*, 5 B. C. R. 243.

See MORTGAGES.

FOREIGN COMMISSION.

See CRIMINAL LAW, VIII.—EVIDENCE.

FOREIGN COMPANY.

1. Costs—*Security for by.*]—*Alaska S. S. Co.* v. *McAuley*, 7 B. C. R. 338; *Alaska S. S. Co.* v. *McAuley*, 8 B. C. R. 84.

See PRACTICE, IX. 18.

2. Discovery—*Local manager of foreign company for purpose of—Who is.*]—*Richards* v. *B. C. Gold Fields*, 5 B. C. R. 483.

See PRACTICE, XI. 5.

3. Domicile of.]—The defendants—a foreign company—had a place of business in Victoria, where it carried on a trading business, although its principal place of business and head office, where the meetings of the Governor, chief traders, and shareholders were held, were in England. The plaintiff, as administrator—appointed by the Court here to the intestate estate of McL., a deceased servant of the company—served a writ on one of the company's managers at Victoria. On an application to have the writ set aside—Held, that inasmuch as by the company's rules the power to appoint, pay, and dismiss was with the England office, and as, by agreement, the deceased's account was kept at that office, and the balance due him from time to time was payable there, the English office must be regarded as the domicile of the company, and the company could not be sued here by the plaintiff as administrator of the deceased. *Wilson* v. *Hudson's Bay Company*, 1 B. C. R., pt. II., 102.

4. Right of non-registered foreign company to hold lands.]—*Ex parte New Vancouver Coal Co.*, 9 B. C. R. 571.

See REGISTRATION OF DEEDS.

5. Service of writ on—*By serving manager temporarily passing through province.*]—*Fall* v. *Klondike Bonanza*, 9 B. C. R. 493.

See PRACTICE, XXVII.

6. Title to land—*Application to register by.*]—*Ex parte New Vancouver Coal Co.*, 2 B. C. R. 8.

See REGISTRATION OF DEEDS.

FOREIGN CONTRACT.

1. Arrest in case of.]—*Baxter* v. *Jacobs et al.*, 1 B. C. R., pt. II., 373.

See ARREST.

FOREIGN JUDGMENT.

1. Action on—*Proof of—Exemplification—Judgment founded on void contract—Right to question—Final and unalterable—Company—Extra-territorial contracts of carriage—Ultra vires—B. N. A. Act, ss.* 91 *and* 92.]—A default judgment obtained in a foreign jurisdiction, though liable to be set aside, so long as it stands, is "final and conclusive" within the meaning of that expression as applied to foreign judgments, and consequently it may be sued on in this province. In an action on a foreign judgment the defendant is entitled to challenge the validity of the judgment on the ground that it is manifestly erroneous, such as being founded on an ex facie void contract. The province may create a company with power to undertake extra-territorial contracts of carriage, and so it is not ultra vires of a company incorporated in British Columbia to contract to carry goods from British Columbia to a point in the Yukon Territory. *Per* MARTIN, J.: An exemplification of judgment under the seal of the Court in which the judgment was pronounced is equivalent to the original judgment exemplified, and notice under the evidence is unnecessary. *Boyle* v. *V. Y. T. Co.*, 9 B. C. R. 213.

2. Alimony — *Action for arrears of.*]—Plaintiff, in 1891, recovered a consent judg-

ment against the defendant in Ontario for alimony and maintenance, the judgment being a confirmation, subject to certain provisions, of an agreement previously made for the maintenance of the wife and children:—Held, that an action lay on the judgment for arrears of alimony and maintenance. *Nourion* v. *Freeman* (1889) L. R. 15 App. Cas. 1, specially referred to. *Hadden* v. *Hadden*, 6 B. C. R. 340.

3. Special indorsement on a.]—In an action on a Yukon Territory judgment, the writ may be specially indorsed within Order III., r. 6, with a claim for interest on the judgment. It is not necessary in such an indorsement to state that the interest is due by statute. *MacCaulay Brothers* v. *Victoria Yukon Trading Company*, 9 B. C. R. 27.

4. Special indorsement on a.]—A claim for interest "until payment or judgment" is not a claim for a liquidated demand, within the meaning of Order III., r. 6, except for example where the cause of action is in respect to negotiable instruments, in which case the interest is by section 57 of the Bills of Exchange Act, deemed to be liquidated damages. Interest claimed under a statute cannot be the subject of special indorsement unless it is stated in the indorsement under what Act the interest is claimed. A specially indorsed writ should state specifically the amount due, and when a claim is made for the taxed costs of a foreign judgment, the date of the taxation should be stated. Decision of WALKEM, J., reported, ante, at p. 27, 9 B. C. R., reversed, MARTIN, J., dissenting. *Macaulay Brothers* v. *Victoria Yukon Trading Company*, 9 B. C. R. 136.

FOREIGN LABOUR.

1. Importation of aliens by advertisement, whether a contravention of Alien Labour Act.]—*Downey* v. *Van. Eng. Works*, 10 B. C. R. 367.

See ALIENS.

FOREIGN LAW.

1. Presumption regarding.]—*McAuley* v. *O'Brien*, 5 B. C. R. 510.

See ARREST.

FOREIGN PLAINTIFF.

1. Security for costs by.] — *Bird* v. *Vieth*, 7 B. C. R. 511.

See PRACTICE, IX. 18.

See also FOREIGN COMPANY — PRACTICE, IX. 18.

FOREIGN WILL.

1. Probate—*Lex rei sitae.*]—Contracts of marriage made in a foreign country, the domicile of parties, by the terms of which, in accordance with the laws of that country, the alienation by a testator (one of the parties to the contract) of his real estate away from his wife and family is forbidden, will prevent, a contrary disposition of same even though, according to the lex loci rei sitæ, there be no such restriction. By the comity of nations the contract travels abroad, and, as between the parties to that contract and their representatives, attaches to the testator's real estate in places other than the domicile. Marriage, carried out in consideration of such a contract, and in accordance with the laws of the domicile, will, in its incidents touching the real estate of one of the parties, as between those parties and their representatives, be respected and sustained, as to those incidents, in countries other than the domicile, when there is no direct local legislation to the contrary. Remarks on the Land Registry Ordinance, 1870. *In re Klaukie's Will*, 1 B. C. R. Pt. 1., 76.

FORESHORE.

1. Dedication of, for particular purposes.]—Whoever interferes with the free use of a public landing or wharf, erected on land acquired for that purpose only by a municipality under Act of Parliament, is a wrongdoer, and the municipality has no power to license such interference. In Admiralty. *Lee* v. *The Olympian*, 2 B. C. R. 84.

2. Rights of Crown in — *Allegation of ownership.*]—In an action for damages and an injunction, the plaintiff alleged in the statement of claim, that the defendant company had wrongfully erected an embankment on the foreshore of Burrard Inlet, and thereby obstructed the outfall of sewers, to the damage and annoyance of the people of Vancouver:—Held, on an application to strike out the pleading as embarrassing and as disclosing no cause of action, that the pleading was good. In such an action it is not necessary for the plaintiff to allege ownership in the foreshore. Semble, a combined application may be made under Order XIX., r. 27, and Order XXV., r. 4, to strike out a statement of claim on the ground that it is embarrassing and discloses no reasonable cause of action, and such procedure is not limited to cases which are plain and obvious. *The Attorney-General for the Province of British Columbia, ex rel. The City of Vancouver* v. *The Canadian Pacific Railway Company*, 10 B. C. R. 108.

3. Tidal river — *Right of Dominion to restrain pollution of*]—The Crown in the right of the Dominion of Canada, has the right to take proceedings to restrain by injunction the pollution of tidal rivers, which co-exists with the right of the Provincial Attorney-General to restrain any public nuisance caused by the improper conduct in question. The fact that a statute makes the conduct in question an offence, and imposes fines and imprisonment for its commission, does not derogate from the right of the Court at the motion of the party injured to restrain its commission by injunction. An injunction may be granted although the defendant makes affidavits that he has taken precautions against the recurrence of the injury complained of. *The Attorney-General for the Dominion of Canada* v. *Ewen*; *The Attorney-General for the Dominion of Canada* v. *Munn*, 3 B. C. R. 468.

FORFEITURE.

1. Breach of condition in deed—*For.*]—*Clark* v. *City of Vancouver*, 10 B. C. R. 31.

See DEEDS.

2. For non-payment of instalment—*Where accepted though overdue.*]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

3. For non-payment of instalments of purchase money under agreement for sale of land.]—*Moriarity* v. *Wadhams*, 1 B. C. R., pt. II., 145.

See TAXATION, III.

4. Life insurance—*Premium note—Non-payment—Forfeiture—Extended insurance.*]—A life policy was issued 27th June, 1894, for $5,000, an annual premium of $84.50 being payable on the 20th March, 1895, but the third was not paid, the insured giving a note dated 20th March, 1896, at ninety days, instead, the note providing that if it was not paid at maturity the policy should become null and void, but subject, on subsequent payment, to reinstatement under the rules for lapsed policies. Payments on account of the note were made, and in February, 1898, the insured died.—Held, in an action by the beneficiary, that the giving of the note was not a payment of the premium such as would entitle the insured to the extended insurance allowed in case three full annual premiums had been paid. *Tilley* v. *Confederation Life*, 7 B. C. R. 144.

5. Life insurance.]—A policy of insurance, "signed, sealed and delivered" by the president and managing director of an insurance company is complete and binding as against the company from the date of execution, though in fact it remains in the company's possession, unless there remains some act to be done by the other party to declare his adoption of it. A life policy was subject to a condition making it void if the insured took a hazardous employment, without the written permission of the president, vice-president or managing director of the company. The assured did take such employment without the written permission of any of the officers named, but with the assent of the company's provincial agent, and after the change of occupation paid a premium, which was retained by the company with knowledge of the change of occupation.—Held, that the company was estopped from taking advantage of the forfeiture clause. Remarks as to the nature of incontestability clauses in insurance policies. Decision of MARTIN, J., reversed. *Elson* v. *The North American Life Assurance Company*, 9 B. C. R. 474.

6. Sealing ship — *Fine in lieu of where seized within prohibited zone.*]—*The "Shelby,"* 4 B. C. R. 342.

See ADMIRALTY, III. 3.

See also MINES AND MINERALS, XX.

FORGERY.

1. Acquittal for—*Substitution of charge for false pretences.*]—*Reg.* v. *Morgan*, 2 B. C. R. 329.

See CRIMINAL LAW, VIII.

2. Authority of banker for payment on forged indorsement.]—*Hinton Electric* v. *Bank of Montreal*, 9 B. C. R. 545.

See BILLS AND NOTES.

FORMS.

1. Form "A" Provincial Elections Act—*Variation of.*]—*In re Provincial Elections Act*, 10 B. C. R. 114.

See ELECTIONS.

2. Forms of pleadings—*In appendix to rules may be used.*]—*Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 108.

See PLEADING, XI.

FOSTER PARENT.

1. Whether enjoys a legal right to custody of child.]—In habeas corpus proceedings to recover possession of a female child, stated to have been adopted and brought up by the applicant, and to have been taken away from him against his will, by a refugee home. Per DRAKE, J.: 1. A person who has adopted and brought up a child obtains thereby no legal right to its custody. 2. The child being a female under sixteen, the age of consent or election as to custody, her choice should not be considered, but her welfare and well being only, and that same were, on the facts, furthered by continuing the custody of the refuge home. 3. If the child had been over the age of consent, the Court would have no right to determine who should have the custody or control of her, but only to set her at liberty if detained in unlawful custody against her will. 4. The Court has power under Supreme Court Act, s. 10, and Rule 751, to award costs upon a rule nisi for habeas corpus. Upon appeal to the Full Court per WALKEM and IRVING, JJ., dismissing the appeal: Adoption is not recognized by the law of England, and a foster parent has no more legal right to the custody of the child of their adoption than a stranger. Per WALKEM, J.: The Court has jurisdiction to award costs in habeas corpus proceedings. Per IRVING, J.: The Court has no jurisdiction to award costs in habeas corpus proceedings, but the Full Court has jurisdiction to award costs of appeal. Per DAVIE, C.J., dissenting (allowing the appeal with costs): Although the adoption of a child into a family may confer no right to its custody, as against a parent, it constitutes a legal status capable of being maintained against a mere invader of the household, and the adoptive father is a person in loco parentis for the purpose of recovering the child if taken out of his custody by a stranger. *In re Quai Shing, an infant*, 6 B. C. R. 86.

FRACTIONAL CLAIM.

1. Blazing of trees necessary in locating.]—*Snyder* v. *Ranson*, 10 B. C. R. 182.

See MINES AND MINERALS, XXXI. 2.

2. Location of valid, though lying between two claims previously sold by the locator.]—*Gibson* v. *McArthur*, 7 B. C. R. 59.

See MINES AND MINERALS, XXXI. 2.

FRANCHISE.

1. Acts affecting should be construed liberally.]—*In re Provincial Elections Act*, 10 B. C. R. 114.

See ELECTIONS.

2. Adverse claimant.] — An adverse claimant who neglects to take the remedy provided by s. 37 of the Mineral Act cannot sue to set aside a certificate of improvements on the ground of fraud. Semble, that under such circumstances the Crown alone is entitled to sue. *Hand* v. *Warren*, 7 B. C. R. 42.

FRAUD AND MISREPRESENTATION.

1. Action to set aside will on ground of fraud and undue influence must be tried without a jury. *Hopper* v. *Dunsmuir*, 10 B. C. R. 17.

See PRACTICE, XVI.

2. Agent—*Fraud of.*]—C., a policy holder of a fire insurance company, conspired with H., their local agent, to defraud the company. C. handed in to H., for transmission to the company, an unfounded claim for pretended losses by fire, supported by his (C.'s) statutory declaration, the whole being false to the knowledge of H. Upon this C. obtained the money through H. from W. & Co., the general agents of the company:—Held, 1. The knowledge of their agent H. of the falsity of the pretence could not be imputed, as the knowledge of W. & Co., or the company, so as to effect the criminality of C. 2. The fact that C. and H. might have been indicted for conspiracy to defraud was immaterial. *Regina* v. *Clark*, 2 B. C. R. 191.

3. Certificate of engineer—*Fraud as a ground for setting aside.*]—*Walkley et al.* v. *City of Victoria*, 7 B. C. R. 481.

See CONTRACT, II. 1.

4. Certificate of improvements—*Fraud as a ground for setting aside.*]—*Atty.-Gen.* v. *Dunlop*, 7 B. C. R. 312.

See MINES AND MINERALS, IX. 3.

5. Damages for, and claim for injunction.] — Where a party contracts to purchase property and pays an instalment, and afterwards repudiates the contract and sues for rescission, the Court has no jurisdiction to restrain by interim injunction the vendor who accepted the repudiation and retook his property from dealing with it as he sees fit. *Christie* v. *Fraser et al.*, 10 B. C. R. 291.

6. Fractional claim.]—W. sold certain mineral claims called the Big Four group to A., who sold in turn to the defendants, after which W., as agent for the plaintiff, located a fraction between two of the claims in the plaintiff's name:—Held, that defendants had no right to the fraction in the absence of proof of fraud by W., and that the plaintiff was a party thereto; and held also, that the defendants could not invoke against the plaintiff a statement in a bill of sale from H. to W., that the end of the two claims between which the fraction in question was located, adjoined each other. *Gibson* v. *McArthur and Luckman*, 7 B. C. R. 59.

7. Insurance — *Fraud in procuring premium for fire.*]—*Barret et al.* v. *Elliott et al.*, 10 B. C. R. 461.

See INSURANCE, I.

8. Municipal corporation—*Fraud as a ground for injunction against council of.*]—*Haggarty* v. *City of Victoria*, 4 B. C. R. 163.

See MUNICIPAL CORPORATIONS, III.

9. New trial—*Where issue involves charge of fraud.*]—*Cope* v. *Scottish Union Co.*, 5 B. C. R. 329.

See INSURANCE, I.

10. Possession — *Continuance in possession by transferor is a badge of fraud.*]—*Robson* v. *Suter*, 1 B. C. R., pt. II., 375.

See PRACTICE, XIX.

11. Presumption as to.]—*The Shelby*, 4 B. C. R. 342.

See REGISTRATION OF DEEDS.

12. Solicitor and client—*Contract between.*]—Plaintiff being unable to raise money to pay off a mortgage upon his lands, applied to a solicitor who in consideration of certain interest and commissions, agreed to advance the necessary amount, and also to obtain time from defendant's unsecured creditors, and took as security a conveyance of plaintiff's equity of redemption in the property, with a short period for payment and redemption. Upon the evidence it appeared that there was no fraud or improper dealing on the defendant's part:—Held, there is no principle upon which any agreement a solicitor and client choose to make in the circumstances of the particular case, is to be invalidated, if no deception is practised and no advantage taken, merely because of the existence of the relationship. *Bell* v. *Cochrane*, 5 B. C. R. 211.

See MINES AND MINERALS, XXXI. 1.

FRAUDULENT CONVEYANCE.

1. Assignment—*Collusion.*]—V., a miner and prospector, engaged in 1896, B., as a servant in an hotel kept by him in Revelstoke, on the understanding that the rate of wages would be fixed when he found out what she was worth, and some weeks afterwards he fixed the rate at $50 per month. A few months after V. built a house and he and B. lived there as man and wife. In November, 1898, V. made an assignment for the benefit of his creditors, having seven days previously conveyed to B. the house property for an alleged consideration of $1,200 as representing her wages for two years. She had never asked for wages before October, 1898, and

then V. was hopelessly in debt:—Held, by WALKEM, J., in an action to set aside the conveyance on the ground of its being fraudulent under the statute of 13 Eliz., c. 5, that there was collusion between V. and B. to defeat V.'s creditors:—Held, also, that the conveyance was void on the ground that it was based on an immoral consideration; also that if necessary the statement of claim could be amended to conform to the evidence. *Holten et al., Vandall et al.*, 7 B. C. R. 331.

2. Assignment for benefit of creditors—*Fraud.*]—1. Apart from statutory provision, an assignee for the benefit of creditors is in no better position than his assignor, to impeach previous conveyances by the assignor, and cannot be treated as occupying the place of the creditors for that purpose. 2. Misjoinder by a plaintiff of unconnected causes of action against different defendants is not objectionable on demurrer by any of the separate defendants, but is proper subject of motion to strike out as embarrassing, etc. *McKenzie and McGowan (assignees for the benefit of the creditors of H. T. Read & Co.)*, v. *Bell-Irving, Paterson & Co. and Alexander McEwen*, 2 B. C. R. 241.

3. Assignment—*Preference.*] — Under a trust deed assigning the assets of a partnership business upon trust to sell the same and divide the proceeds "into and among all the creditors of the parties of the first part," (viz., the assignors), without any words of distribution, such as "or either of them" being added:—Held, on appeal to the Full Court, by DAVIE, C.J., and MCCREIGHT, J., MCCOLL, J., not dissenting, overruling DRAKE, J., that the deed provided only for the payment of the joint creditors, and not the separate creditors of the partners, and, in the absence of any satisfactory arrangement being agreed upon, the deed must be set aside on the ground that it constituted a preference. When a voluntary conveyance has the effect of defeating creditors it will be set aside, and it is not necessary to adduce evidence of fraud; the burden lies on the person executing the deed to shew cause why it should not be set aside. *Cunningham* v. *Curtis*, 4 B. C. R. 472.

4. Bill of sale — *Husband and wife.*] — C. in 1896 gave his wife $600, which she kept in the house, and he shortly after commenced to receive it back in small portions, and continued to do so until he had received it all. In March, 1898, according to the evidence of both, she demanded some settlement, and he agreed to give her a bill of sale of the household furniture, but the transaction was not carried out until June, after he had been sued for the price of the furniture:—Held, (reversing MARTIN, J.), that there was no legal objection binding upon the husband to repay the $600, and that the bill of sale must be treated in the same way as if the gift had been made to the wife at the time of the execution of the bill of sale, and was therefore void. *Cordingley* v. *MacArthur*, 7 B. C. R. 527.

5. Bill of sale—*Pressure.*] — M. & Co., being then insolvent, upon demand of one of their creditors, O. Bros., and in fear of legal proceedings, executed a bill of sale to them of their stock-in-trade and effects. Before the commencement of this action by the other creditors to have the bill of sale declared void, as being made with intent to give O. Bros. a preference, the latter had sold the goods to a bonâ fide purchaser for value and received the purchase money:—Held, 1. The bill of sale was not made voluntarily or with intent to give a preference, but was made under pressure sufficient to take the transaction out of the statutes. 2. O. Bros. could not, in any event, be called upon to account for the purchase money to the other creditors. *Cascaden et al.* v. *McIntosh et al.*, 2 B. C. R. 268.

6. Bill of Sale Act — *Whether fraudulent sale prohibited by.*]—B. made a verbal sale of the goods in question to the plaintiff, who paid him part of the price in two instalments, and took from him written receipts therefor. Plaintiff then executed a lease of the goods to B., who continued in apparent possession thereof. The goods having been seized by the sheriff under a fi. fa. upon a judgment obtained by the defendants against B., the plaintiff claimed them, and, upon trial of an interpleader issue:—Held, that verbal sales of goods are not prohibited by the Act, which contains no provision requiring written evidence of such sales to be made or registered. That such verbal sales, if bonâ fide, are good against subsequent execution creditors of the vendor, though the chattels are suffered to remain in his apparent possession. That the lease in question was not the contract of sale, or a memorandum thereof, but was a subsequent independent transaction, and that neither it nor the other writings were documents requiring registration under the Act. *Eswauf* v. *Gurney*, 4 B. C. R. 144.

7. Bill of sale—*Estoppel.*]—In an action to set aside a bill of sale as fraudulent against the plaintiff who was a creditor, and, as far as the evidence disclosed, the only creditor, of the grantor, it appeared that the plaintiff himself had advised upon and drawn up the bill of sale:—Held, that he had no locus standi to attack it—that, on the facts, the conveyance was not fraudulent. *Boultbee* v. *Rolls*, 4 B. C. R. 137.

8. Chattel mortgage — *Preference.*] — A bonâ fide demand by a creditor upon his insolvent debtor for payment or security is pressure sufficient to rebut any inference of "intent to prefer" in the execution of a mortgage in response to the demand, and takes the transaction out of the prohibition of the Fraudulent Preferences Act, C. S. B. C. 1888, c. 15, s. 2, following Stephens v. McArthur, 19 S. C. R. 446. The Bills of Sale Act, C. S. B. C. 1888, c. 8, s. 3, as to the affidavit of execution to be filed with the instrument, provides, "the affidavit aforesaid may be in the form in the schedule hereto annexed marked 'A.'" In this form, and also in the affidavit filed with the chattel mortgage in question, no mention was made in the jurat of the place of swearing the affidavit: — Held, (per curiam), that the affidavit was sufficient as complying with the statute. *Per* DAVIE, C.J.: Apart from the statutory sufficiency it would be presumed, from the fact that the affidavit was on the face of it sworn before a commissioner for taking affidavits in British Columbia, that the official acted within the territorial limits of his authority and not elsewhere. *Brown and Erb* v. *Jowlett*, 4 B. C. R. 44.

9. Chattel mortgage—*Pressure.*]—Wilson Bros., creditors of P. & Y., a firm of general storekeepers, demanded security for their overdue account, and agreed to supply further goods and not register the instrument, if it was given. Plaintiffs objected that it

would be unfair to other creditors to accede, but finally did so on the terms proposed, and gave the security by bill of sale on part of their stock of goods. The debtors were at the time in insolvent circumstances, but it was not proved that Wilson Bros. were aware of it:—Held, the bill of sale was not made with intent to give Wilson Bros. a preference over the other creditors of plaintiffs, but was made under pressure sufficient to take the transaction out of the statute. *Stewart* v. *Wilson*, 3 B. C. R. 369.

10. Chattel mortgage — *Pressure.*]—Where the goods comprised in a bill of sale are, within twenty-one days after execution of the bill of sale, bonâ fide taken possession of by the grantee, the Bills of Sale Act does not apply, and it is immaterial even though the bill of sale was given subject to a defeasance not contained in it. D. B. A. O. and T. G. W. carried on business in partnership as hardware merchants under the name of the Greenwood Hardware Company, the money being supplied by D. B. and A. O. B., and the business being managed by W. The firm became indebted to both the McClary Company and the Howland Company, and the latter under threat of commencing an action, obtained, on the 27th of June, 1900, a bill of sale by way of mortgage of all the firm's assets and immediately took possession. The bill of sale was executed on behalf of the firm by W. and also by W. personally, D. B. and A. O. B. both being absent; when A. O. B. returned he protested against the execution of the bill of sale, but subsequently withdrew his protest and consented to a sale of the goods on the understanding that plaintiffs and defendants should share pro rata in the proceeds. The arrangement that plaintiffs and defendants should share in the proceeds was not carried out. On the 27th July, 1900, the McClary Company recovered a judgment in respect of their claim against the firm and obtained judgment under Order XIV., the judgment being entered up against D. B. and A. O. B., and also against the Greenwood Hardware Company, although not a party to the action, and an execution issued was returned nulla bona. The McClary Company thereupon sued to have the bill of sale set aside on the ground that it was fraudulent and void as being given with the intent to defeat and delay creditors, and that W. had no authority to give it on behalf of the firm. Under an order of Court the goods were sold and the proceeds paid into Court to abide the result of the action. The Howland Company recovered a judgment in January, 1901, against the firm for the amount of its indebtedness to them, and an execution issued thereunder was returned nulla bona. At the trial in July, 1902, MARTIN, J., dismissed the plaintiffs' action, holding that the bill of sale was not a fraudulent preference, but was given bonâ fide under pressure: — Held, on appeal affirming decision of MARTIN, J., that the bill of sale was not a fraudulent preference, but was given bonâ fide under pressure. *Per* HUNTER, C.J., and DRAKE, J., W. had implied authority to execute the bill of sale. *Per* IRVING, J.: W. was not the agent of his partners to execute the bill of sale, but they had either ratified his act or become estopped from denying his authority. *Per* HUNTER, C.J.: The plaintiffs had no locus standi to attack the bill of sale on the ground that it was executed without proper authority. *Per* DRAKE, J.: The McClary Company's judgment against the firm was invalid and hence the company had no locus standi to attack the bill of sale. *The McClary Mfg. Co.* v. *H. S. Howland Sons & Co., and the Greenwood Hardware Co.*, 9 B. C. R. 479.

11. Chattel mortgage — *Pressure.*]—A chattel mortgage to two of his principal creditors, made by a trader while unable to pay his debts in full, and knowing himself to be on the eve of insolvency, covering all his property except a leasehold interest and his book debts, held void as being made with intent to defeat or delay his other creditors, and to give the mortgagees a preference over them. The mortgagees had requested the trader to scure them by chattel mortgage, he stating to them at the time that he was solvent, that his other creditors were small and that he could arrange to pay them off and concentrate the business:—Held, insufficient to bring into question the doctrine of pressure. Statute B. C., 43 Vic. c. 10, considered constitutional. *Anderson* v. *Shorey*, 1 B. C. R., pt. II., 325.

12. Company—*Fraudulent sale by directors of assets of.*]—In an action to set aside a sale of a mineral claim on the ground that the sale was a sham sale for the benefit of the purchaser and the directors, and that the stated consideration was not paid and the trial Judge found that the sale was made at a price so inadequate as to shew an intention to benefit the purchaser at the expense of the shareholders:—Held, on appeal, that on the finding of the trial Judge, the sale should be set aside. *Per* IRVING and MARTIN, JJ.: The provisions of s. 2 of the Companies Act Amendment Act, 1893, respecting the mode of sale of a company's assets are enabling and not restrictive. *Daniel* v. *Gold Hill Mining Company (Foreign) et al.*, 6 B. C. R. 495.

13. Fraudulent Preference Act—*C. S. B. C.*, 1888, c. 51—*Pressure.*]—A bonâ fide demand by a creditor upon his insolvent debtor for payment or security, is pressure sufficient to rebut any inference of "intent to prefer," in the execution of a mortgage in response to the demand, and takes the transaction out of the prohibition of the Fraudulent Preference Act, C. S. B. C. 1888, c. 51, s. 2, following Stephens v. McArthur, 19 S. C. R. 446. *Brown & Erb* v. *Jowett*, 4 B. C. R. 44.

14. Innocent purchaser — *Following trust funds.*]—M. & Co., being then insolvent, upon demand of one of their creditors, O. Bros., and in fear of legal proceedings, executed a bill of sale to them of their stock in trade and effects. Before the commencement of this action by the other creditors to have the bill of sale declared void as being made with intent to give O. Bros. a preference, the latter had sold goods to a bonâ fide purchaser for value and received the purchase money:—Held, 1. The bill of sale was not made voluntarily or with intent to give a preference, but was made under pressure sufficient to take the transaction out of the statutes. 2. O. Bros. could not, in any event, be called upon to account for the purchase money to the other creditors. *Cascaden et al.* v. *McIntosh et al.*, 2 B. C. R. 268.

15. Insolvent circumstances — *Mortgage for good consideration.*]—Where there is good consideration, a mortgage comprising the whole of a debtor's property will not be set aside notwithstanding that the mortgagor is in insolvent circumstances to the knowledge of the mortgagee, and that the effect of the

mortgage is to defeat, delay and prejudice the creditors, if there is pressure. A mortgage made by the directors of a company prior to the consent of its shareholders, without which consent there was no power to borrow, may be ratified by the shareholders. *Adams and Burns v. Bank of Montreal, The Kootenay Brewing, Malting and Distilling Company, Limited Liability, and John R. Myers*, 8 B. C. R. 314.

16. Insolvency caused by interest and taxes accumulating — *Fraudulent conveyance in case of.*]—*Sun Life* v. *Elliott*, 7 B. C. R. at p. 194.

17. Counsel electing to take judgment in lieu of issue being ordered—*Effect of* — *Whether such judgment appealable.*] — Plaintiff's counsel, on motion for judgment after trial, was given the option of having an issue ordered as to a point on which evidence was not sufficiently directed, or of taking judgment against one defendant with costs and dismissing the action against the other defendant without costs, and elected to take the latter course:—Held, IRVING, J., dissenting, that such judgment was in effect a compromise and therefore unappealable. *Sun Life* v. *Elliott et al.*, 7 B. C. R. 189.

18. Preference—*Confession of judgment —Pressure.*]—A company being insolvent, the plaintiffs, on 29th December, obtained a default judgment against it, but did not issue execution thereon. On 13th January the company obtained a Chamber summons, signed by a Judge, to set aside the plaintiffs' judgment as irregular and in breach of an agreement not to proceed. The summons contained the words, "in the meantime let all proceedings be stayed." On 17th January the Bank of British Columbia commenced an action against the company by specially endorsed writ, and on the morning of 24th January, before the hour for the regular sitting of the Judge in Chambers, the company, by their counsel, attended without summons in the Judge's private room and consented to an order for judgment thereon, which was immediately registered and execution issued. Afterwards, on the same morning, in Chambers, the summons of the company to set aside the plaintiffs' judgment was argued; judgment was reserved, and on 27th was delivered, dismissing the application. In an action to set aside or postpone the judgment and execution of the bank, as being a confession of judgment by the company obtained by collusion, and therefore void within the meaning of the Fraudulent Preference Act:—Held, *per* CREASE, J., at the trial, 1. That what took place was not a confession of judgment within the Act. 2. That there was pressure on the part of the bank of the company to do what they did, rebutting the inference that it was done with intent to prefer. Upon appeal to the Full Court:—Held, *per* DAVIE, C.J., and MCCREIGHT, J.: That what took place was a confession of judgment. Per DAVIE, J., and DRAKE, J.: That there was pressure rebutting the intention to prefer. *Per* MCCREIGHT, J.: That the plaintiffs' cause of action was not governed by the Act, but lay to the general equitable jurisdiction of the Court, to relieve against a transaction whereby the plaintiffs, through no fault of their own, had, through the operation of the dilatory process of the Court by the company, and its combination with the bank to expedite the latter, been deprived of the fruits of their prior judgment, and that there should be a new trial to obtain such findings of fact as would determine whether the bank was entitled, as against the plaintiffs, to take advantage of its priority of execution. *Per* DRAKE, J.: 1. A term in a summons signed by a Judge, "in the meantime let all proceedings be stayed," does not operate as a stay, but only as an intimation that upon its return a stay will be asked for. 2. The registration of a judgment against lands is not a breach of an order staying proceedings upon it. *Edison Gen. Electric Co.* v. *The Vancouver & Westminster Tramway Co. et al.*, 4 B. C. R. 460.

NOTE.—Overruled by the Privy Council.

19. Pressure—*Bills of Sale Act—Conditional sale—Insolvency.*]—To constitute pressure which will authorize an assignment by way of security, there must be a legitimate and bonâ fide attempt by the creditor to get payment of his debt, or security therefor. A bill of sale given subject to a condition not appearing therein is void as against creditors. The evidence shewed that the mortgagor was started in business by the mortgagees in May, 1889, and was to their knowledge insolvent from the day he commenced business. The mortgage was made in April, 1890, upon demand of the mortgagees, who threatened to sue, but almost all the property of the debtor was exempt from execution and the mortgage covered all his property:—Held, not bonâ fide pressure. *Doll* v. *Hart*, 2 B. C. R. 32.

20. Trade of hazardous character—*Previous transfer.*]—Where a settler, not indebted at the time, transfers the bulk of his property shortly before engaging in a trade of hazardous character, such settlement may be declared void as against subsequent creditors, and the burden of proof of bonâ fides of the settlement rests on the settler, following Mackay v. Douglas, L. R. 14 Eq. 106. *Lai Hop* v. *Jackson*, 4 B. C. R. 168.

21. Voluntary settlement — *Creditors' suit — Settler solvent at date of settlement, but engaged in hazardous undertaking.*]—When a settler, not indebted at the time, transfers the bulk of his property shortly before engaging in a trade of a hazardous character, such settlement may be declared void as against subsequent creditors, and the burden of proof of bonâ fides of the settlement rests on the settler, following Mackay v. Douglas, L. R. 14 Eq. 106. *Lai Hop* v. *Jackson*, 4 B. C. R. 168.

See also ASSIGNMENT FOR BENEFIT OF CREDITORS; CHATTEL MORTGAGE.

FRAUDULENT JUDGMENT.

1. Setting aside prior fraudulent judgment.]—*Ward* v. *Clark*, 4 B. C. R. 71.

See ARREST—FRAUDULENT CONVEYANCE.

FRAUDULENT PREFERENCE.

See ASSIGNMENT FOR BENEFIT OF CREDITORS — CHATTEL MORTGAGE — FRAUDULENT CONVEYANCE.

FRAUDS, STATUTE OF.

1. Equitable mortgage — *Statute of Frauds not a defence to action.*]—Action to

foreclose an equitable mortgage by deposit of title deeds, brought by the plaintiffs against the mortgagor K. and a person R., who appeared on the title as the grantee of the lands under a deed made to him by K. subsequent to, and, as the plaintiffs' claim alleged, in fraud of the mortgage, which deed he had registered not as a fee, but as a charge against the lands, K. had suffered judgment by default. Neither notice of the mortgage, nor want of valuable consideration for the deed were charged against R. in the statement of claim, or negatived by him in his defence, in which he claimed, that, under s. 31 of the Land Registry Act, his registered charge, and also set up the Statute of Frauds. At the trial, R. called no evidence, and maintained that the onus probandi to displace his primâ facie statutory priority was on the plaintiffs, and that he was entitled to judgment:—Held, *per* WALKEM, J., on motion for judgment, dismissing the action as against R., that his registered charge had a primâ facie validity and priority, under s. 31, and that the onus of proof of want of consideration, fraud, or notice to him of the mortgage, was on plaintiffs. The Statute of Frauds is not a defence to an equitable mortgage:—Held, by the Full Court on appeal:—*Per* CREASE, J.: That in the state of the pleadings and evidence, fraud on R.'s part could not be assumed by the Court, but that there should be a new trial to determine the question of the bonâ fides of the deed. *Per* MCCREIGHT, J.: That before the statute the burden of proof would have been upon R. to shew that he made enquiries for the title deeds and gave valuable consideration for his deed from K., as being facts peculiarly within his knowledge and not of the plaintiffs, and not having done so he was, by their absence, affected with constructive notice of the mortgage. That by s. 35 he was only relieved from the effect of such notice by proving himself a purchaser for value, and that the onus of doing so was therefore on him, and that as to the effect of notice, s. 31 must be read as subject to s. 35, which alone deals with that question. Quære, whether the non-compliance with ss. 13, 19, 54 and 55 of the Act as to production of the title deeds vitiated the registration. *Per* DRAKE, J.: That, on the facts, the presumption was that R. had actual or there was constructive notice to him of the equitable mortgage, and the onus was on him to allege and prove valuable consideration for his deed. That the deed in fee was improperly registered as a charge, and that the plaintiffs should not be prejudiced by the mistake of the Registrar. *The Hudson's Bay Co.* v. *Kearns & Rowling*, 3 B. C. R. 330.

2. Lease—*Stating terms.*]—In an action for damages for not delivering possession of premises, the document set up as a lease was: "Received from J. C. McLennan the sum of $15, being part payment on premises now occupied as a barber shop, on west side of Fourth street, between A avenue and Front street, said sum to apply on rent for premises aforesaid from November 1st, 1896. Rent to be paid in advance. S. Millington." The only evidence of damages was that the plaintiff had purchased a tobacconist's stock in view of occupying the premises at the date mentioned, and being unable to get other suitable premises had made a loss on the goods. FORIN, Co. J., at the trial entered judgment for the plaintiff for $100, the amount of the full loss. Upon appeal to the Full Court:—Held, *per* MCCREIGHT, WALKEM, DRAKE and MCCOLL, JJ. (allowing the appeal), that there was no evidence of legal damage. Quære, whether the agreement was not void under the Statute of Frauds as not stating the term. *McLennan* v. *Millington*, 5 B. C. R. 345.

3. Mineral claim — *Whether interest in land—Statute of Frauds—Pleading—Partnership—Contract—'In on it.'*]—Plaintiff having discovered "mineral afloat," communicated its situation to the defendant upon a verbal agreement by the latter that in the event of his thereby discovering the ledge and locating a mineral claim, the plaintiff should be "in on it:"—Held, by WALKEM, J., at the trial, dismissing the action, that the transaction took place, but that the words "in on it" were too indefinite to found a contract:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and DRAKE, JJ.), overruling WALKEM, J., that the words "in on it" imported an agreement to give the plaintiff an interest in the nature of a partnership or co-partnership; that, in the absence of anything in a partnership contract to the contrary, the presumption of law is that the partnership shares are equal, and that the contract was not void for uncertainty. Quære, whether the right to a duly located and recorded mineral claim constitutes an interest in land within the meaning of the Statute of Frauds. *Per* DAVIE, C.J.: That the defendant, upon finding the ledge and locating the claim, became, under the verbal agreement, a trustee for the plaintiff of one-half share therein, and was incapacitated from setting up the Statute of Frauds, as a defence. Per MCCREIGHT, J.: That if the title to a mineral claim is an interest in the land within the Statute of Frauds, the Mineral Act should also be pleaded. *Wells* v. *Petty*, 5 B. C. R. 353.

4. Mineral claim — *Interest in land.*]—*Per* DRAKE, J.: Under s. 34 of the Mineral Act, 1891 (a), the interest of a free miner in his mineral claim is an interest in land within the Statute of Frauds. An agreement between the defendant and plaintiff, not stated to be in writing, in regard to the mineral claim in question, being alleged in the statement of claim and admitted in the statement of defence:—Held, that the defence of the Statute of Frauds was waived and the defendant concluded by the admission. Upon appeal to the Full Court:—Held, per MCCREIGHT, J. (WALKEM and MCCOLL, JJ., concurring): To maintain the defence of the Statute of Frauds to an agreement for sale or transfer of a mineral claim, both that statute and s. 34 of the Mineral Act supra, must be pleaded. Quære, whether the bar provided by s. 51 of the Mineral Act, 1891, that "no transfer of any mineral claim, etc., shall be enforceable unless the same shall be in writing, etc.," is not confined to a plaintiff seeking to enforce the transfer, and inapplicable to a defendant. *Stussi* v. *Brown*, 5 B. C. R. 380.

5. Partner—*Statute of Frauds has no application in an action by partner for share of purchase money for mineral claim.*]—*McNerhanie* v. *Archibald*, 6 B. C. R. 260.

See MINES AND MINERALS, XXI. 2.

6. Partnership.]—Plaintiff alleged that defendant, being his partner, bought land for the use of the partnership:—Held, on the evidence, that there was not sufficient proof of such partnership to enable the Court to declare the defendant a trustee for the partnership. *Brown* v. *Grady*, 6 B. C. R. 190.

7. What constitutes a sufficient writing to satisfy.]—In an action in their own names by the vendors, who were trustees, for specific performance by defendants of an agreement to purchase lands, or damages in lieu thereof, or rescission of the contract and ejectment; it appeared that the negotiations for purchase were carried on between the vendees and one B. by means of a written correspondence. B.'s letters contained the terms of sale offered, which were accepted by the defendants. These letters were written on printed letter forms headed "Canadian Pacific Railway Company Land Department," and under B.'s signature was the word "Commissioner." The defendants pleaded the Statute of Frauds, and maintained that the only written contract was, on its face, between the C. P. R. Co. and the defendants, and that evidence that the plaintiffs were the undisclosed principals of B. was not admissible. Judgment was entered at the trial by WALKEM, J., for the plaintiff for a rescission of the contract, possession of the land, and damages in lieu of specific performance. On appeal to the Full Court, CREASE, MCCREIGHT and DRAKE, JJ.: —Held, the form of the writing did not import that B. was contracting as agent for the C. P. R. Co. 2. That the contract was by B. in his own name. 3. That evidence was admissible to shew that the contract was made by B. on behalf of unnamed principals. 4. That such principals, being trustees, were (under Rule 98) entitled to sue on the contract in their own names without joining their cestuis que trustent as parties. 5. That a party to a contract cannot be decreed, uno flatu, both specific performance and rescission, and where he obtains rescission he cannot have damages, which are given as in lieu of specific performance. *Smith et al.* v. *Mitchell*, 3 B. C. R. 450.

8. Verbal agreement—*Whether enforceable.*]—The interests of a free miner in his mineral claim is an interest in land and an agreement not in writing respecting it cannot be enforced. Where one person on behalf of another locates and records a claim in his own name, the Court will compel him to transfer the claim to his principal. *Fero* v. *Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, XXI. 2; SPECIFIC PERFORMANCE.

FREE MINER.

1. Certificate of—*Expiration or lapse—Effect of.*]—*McNerhanie* v. *Archibald*, 6 B. C. R. 260; *Corbin* v. *Lookout Mining Co.*, 5 B. C. R. 181; *Grutchfield* v. *Harbottle*, 7 B. C. R. 186; *Grutchfield* v. *Harbottle*, 7 B. C. R. 344.

See MINES AND MINERALS, IX. 2, XXII.

2. Certificate to Chinese.] — *Reg.* v. *Gold Commissioner of Victoria*, 1 B. C. R., pt. II., 260.

See CONSTITUTIONAL LAW, III.

3. Right to enter on private property.]—*Bainbridge* v. *E. & N. Ry. Co.*, 4 B. C. R. 181.

See MINES AND MINERALS, IX. 2, XXII.

FRESH EVIDENCE.

1. On appeal.]—*Hogg* v. *Farrell*, 6 B. C. R. 387.

See PLEADINGS, X. 1.

See also APPEAL — EVIDENCE — MINES AND MINERALS, XIX.

FULL COURT.

1. Jurisdiction to hear motion for judgment.]—The Full Court is an Appellate Court and has no jurisdiction to hear a motion for judgment on the findings of a jury referred to it by a trial Judge. *McKelvey* v. *Le Roi Mining Co., Ltd.*, 8 B. C. R. 268.

2. Jurisdiction in matters of divorce.]—In construing statutes the Legislature must be presumed to contemplate dealing only with subjects within its legislative control, and as provincial legislatures have no power to confer divorce jurisdiction upon any Court, the language of the Supreme Court Act, C. S. B. C. (1888), c. 25, s. 67, providing that "an appeal shall lie to the Full Court from every judgment, decree or order made by a Judge of the Supreme Court, whether final or interlocutory, and whether such judgment, decree or order shall be in respect of a matter specified in the Rules of Court or not," cannot be construed to confer upon the Full Court of British Columbia any appellate jurisdiction in divorce matters. The Imperial Act, 20 & 21 Vic. c. 85, s. 55, giving an appeal to the Full (Divorce) Court from all decisions of a single Judge thereof, is inapplicable to the Full Court of British Columbia. *Scott* v. *Scott*, 4 B. C. R. 316.

3. Jurisdiction—*Finality of within Province.*]—The plaintiff company, as judgment creditor of the Westminster and Vancouver Tramway Company, brought the action against the defendants, as shareholders therein, to compel them to contribute and pay to the plaintiff company, out of the amounts respectively unpaid up by them upon their shares in the company, a sum sufficient to satisfy the judgment. The statement of defence raised an objection in point of law to the whole claim, that the tramway company was not within the Act, as not being a "railway" company. Upon argument thereon, DRAKE, J., decided the point of law in favour of the defendants. Upon appeal by the plaintiff company, the Divisional Court (CREASE and WALKEM, JJ., MCCREIGHT, J., dissenting), affirmed the judgment of DRAKE, J. Upon motion then made to him by the plaintiff company, under Supreme Court Rule 234, DRAKE, J., made an order dismissing the action as being substantially disposed of by the decision of the point of law. Upon appeal by the plaintiff company from that order upon the grounds: (1) that the point of law was wrongly decided, and (2) that its decision did not dispose of the action; the Divisional Court (DAVIE, C.J., MCCREIGHT and WALKEM, JJ.), overruling an objection that the Court was concluded on the point of law by the decision of the prior Divisional Court:—Held, that an action in the Supreme Court can only be finally determined in the last resort in this province by a decision of the highest Court of final resort therein, namely, the Full Court, from which an appeal lies, as of right, to the Supreme Court of Canada, and that both this and the former judgment

of the Divisional Court are interlocutory and inconclusive. 2. That the action should be remitted to be set so as to admit of an appeal to the Full Court from the judgment thereon with an expression of opinion. 3. That the tramway was a "railway" within the Act, and plaintiff should have succeeded on the point of law. Quære (*per* DAVIE, C.J., and MCCREIGHT, J.), whether the action as brought lay for want of privity between the parties; and whether a winding up of the company, and call upon the defendants as contributories, was not the only remedy of the plaintiff company. *Edison General Electric Co.* v. *Edmonds et al.*, 4 B. C. R. 354.

4. Motion to quash—*Full Court will not hear a motion to quash conviction.*]—The Full Court will not hear a motion for a rule nisi to quash a conviction; the motion should be made to a single Judge. *Rex* v. *Vaughe*, 10 B. C. R. 297.

5. Power of — *To restore party struck out.*]—Trustees having refused to bring an action to recover funds of the estate, certain of the beneficiaries brought the action in their own names and obtained an order removing the trustees and appointing a receiver in their place, with leave to substitute the receiver as plaintiff. He was substituted accordingly by a subsequent order. Neither of the above orders was appealed from, but at the trial the defendants, while not objecting to the receiver as plaintiff, objected that there was no cause of action in him, whereupon one of the beneficiaries previously struck out asked to be joined as plaintiff. *Per* DRAKE, J.: 1. That there was no cause of action in the receiver. 2. That the Full Court alone had power to restore a plaintiff struck out by order of a Judge:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and MCCOLL, JJ.), that the action should be carried on in the names of the receiver and one of the beneficiaries with leave to any of the other beneficiaries to apply to be added as plaintiffs. *Shallcross* v. *Garesche*, 5 B. C. R. 320.

FUNCTUS OFFICIO.

1. Criminal law — *Committment by Judge.*]—A Judge who has committed a prisoner for trial for perjury under R. S. O. c. 154, s. 4 (a), is not thereby functus officio, but may subsequently admit the prisoner to bail. *In re Victor M. Ruthven*, 6 B. C. R. 115.

GAME.

1. Game Protection Act — *B. C.* 1895, *ss.* 15-16—*Killing deer out of season—Exemption to resident farmer killing deer depasturing his fields — Whether resident agent of absent farmer within the exemption — Statutes—Construction of.*]—Defendant was convicted under s. 15 of the Game Protection Act, 1895 (B. C.), for having shot certain deer within the period prohibited by the Act. It appeared from the evidence that the defendant resided upon and managed a certain farm as the agent of the owner, who was then absent, and that the deer in question came upon and was depasturing a cultivated field, part of the farm, when the defendant shot and killed it:—Held, that the defendant in committing the act was within the exemption created by s. 16 of the Act, providing: "16. Nothing in this Act shall be construed as prohibiting any resident farmer from killing, at any time, deer that he finds depasturing within his cultivated fields." Observations on the equitable construction of statutes. *Reg.* v. *Symington*, 4 B. C. R. 323.

2. Game Protection Act — *Exception in statute—Onus of proof.*]—The existence of an exception nominated in the description of an offence created by statute, must be negatived in order to maintain the charge, but if a statute creates an offence in general with an exception by way of proviso in favour of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso. The generality of the prohibition contained in the statute (s. 7) against purchasers having in possession with intent to export, causing to be exported, etc., game, etc., is not to be limited by inference to game killed within the Province. *Regina* v. *Strauss*, 5 B. C. R. 486.

3. Prohibiting exportation of.]—*Reg.* v. *Boscowitz*, 4 B. C. R. 132.

See CONSTITUTIONAL LAW, II. 9.

GAMING.

1. Black Jack.]—Certain persons played the game called black jack in a room to which the public had access, there being no constant dealer:—Held, that the lessee of the room was legally convicted of keeping a common gaming house. *Regina* v. *Petrie*, 7 B. C. R. 176.

2. Case stated by a magistrate—20-21 *Vict. (Imp.) c.* 43-47, *Vict. (Dom.) c.* 42, *s.* 7—"*Playing*" *and* "*Gaming*"—"*Playing in a common gaming house*" — 40 *Vict. (D.) c.* 33, *s.* 4-*A*"—"*Common gaming house*" *defined.*]—The defendant was charged under 40 Vict. (D.), c. 33, s. 4, with "playing at an unlawful game in a common gaming house," etc. Upon a case stated by the magistrate under 20-21 Vict. (Imp.) c. 43:—Held, that it was not necessary to allege that the defendant was playing "at an unlawful game," and that the introduction of these words in the information was merely surplusage:—Held, that it was not necessary for the prosecution, in order to convict under this charge, to prove that the accused was playing at an "unlawful game":—Held, that 20-21 Vict. (Imp.) c. 43, was not repealed by the Dominion Statute, 37 Vict. c. 42, and therefore is still in force in British Columbia. *Regina* v. *Ah Pow*, 1 B. C. R. page 147.

3. Fan tan—*Is not per se an unlawful game.*]—*Reg.* v. *Ah Pow*, supra, per BEGBIE, C.J.

4. Magistrate — *Jurisdiction to try or commit*]—A magistrate has absolute jurisdiction under s. 785, s.-s. (*f*) and s. 784 of the Criminal Code, to hear and determine in a summary way a charge of keeping a disorderly house. The exercise of the summary jurisdiction is, under those sections, and s. 791, discretionary with the magistrate, and he may commit the accused for trial, and a mandamus will not lie to compel him to hear and determine the charge summarily. The meaning of the term "disorderly house" in s. 783, s.-s. (*f*), must be taken from its definition in s. 198, and not from the common law. *Re Farquhar MacRae*, 4 B. C. R. 18.

5. Order to enter common gaming house.]—An order to enter a house reported to be a common gaming house must be executed within a reasonable time from the time of making the complaint. *Regina* v. *Ah Sing*, 2 B. C. R. 167.

6. Stock exchange—*Margins.*] — Defendant instructed the plaintiffs to sell shares in the C. T. Co. for him, who asked for cover, and defendant paid $600; no time was fixed for delivery; plaintiffs asked defendant for more, as shares were rising, and finally called for $2,400, which defendant refused to pay. Plaintiffs then, as they alleged, purchased the shares to satisfy their own liability and sued for amount paid:—Held, by DRAKE, J., dismissing the action, that as no stock was ever delivered or intended to be delivered, and as the intent was to make a profit from the fluctuations of the stock market, the transaction was illegal. *B. C. Stock Exchange, Limited*, v. *Irving*, 8 B. C. R. 186.

See also CRIMINAL LAW, XI.

GARNISHMENT.

1. Building contract — *Condition to be performed.*]—A sum of money payable under a building contract as soon as the building should be finished, is not attachable before the performance of the condition, as not being a debt. The fact that the creditor has assigned the debt to a third person, though there be no notice of the assignment to the debtor, is a good answer to an attaching order, as the attaching creditor can only take that which the debtor can lawfully part with, having regard to the rights of others. *Gray et al.* v. *Hoffer; Bostock, garnishee*, 5 B. C. R. 56.

2. County Court order.] — An order made by a County Judge that garnished moneys remain in Court to abide the event of a new action to be commenced forthwith (a former suit in respect of the same cause of action being dismissed by the same order), is not a nullity, and if not appealed against is valid. So held by MCCOLL, C.J., and WALKEM, J.: IRVING and MARTIN, J.J., dissenting. *King* v. *Boultbee*, 7 B. C. R. 318.

3. County Judge as arbitrator — *No appeal.*]—Where the interested parties in garnishee proceedings agree that a County Judge may decide the matter in a summary way, he is in effect an arbitrator, and no appeal lies from his decision. Eade v. Winser & Son (1878), 47 L. J. C. P. 584, followed. Per DRAKE, J., on appeal: (1) The affidavit leading to a garnishee summons must verify the plaintiff's cause of action, and a garnishee is entitled to question the validity of the proceedings at the hearing. (2) The defect in the affidavit was an irregularity only, and payment into Court by the garnishees was a waiver by them of their right to object. (3) The plaintiff may specify in one affidavit several debts proposed to be garnished. *Harris* v. *Harris et al.* (two suits); *Cregan et al., garnishees, and Rogers et al., claimants*, 8 B. C. R. 307.

4. Default summons.] — A garnishee summons may be issued based on a default summons as well as on an ordinary summons. *Jowett* v. *Watts*, 10 B. C. R. 172.

5. Defendant paying into Court within 5 days—*No costs allowed.*]—Where a defendant in a County Court action pays the full amount of the claim and costs called for in a default summons within the five days' limit mentioned in the summons, the plaintiff will not be allowed the costs of a garnishee summons. *Shawnigan Lake Lumber Co.* v. *Fairfull Coburn, garnishee*, 7 B. C. R. 58.

6. Garnishee disputing liability — *Trial of issue.*]—Where a garnishee disputes his liability to a judgment debtor, the Court has no power to order execution against him, but will direct an issue to try the same, and where the garnishee's alleged indebtedness is to a third party, such party must be summoned, and, if necessary, an issue ordered to try his liability to the judgment debtor. *Mount Royal Milling, etc., Co. (Limited), Judgment Creditors*, v. *Kwong Mau Yuen, Judgment Debtor, and James Leamy, Garnishee*, 2 B. C. R. 171.

7. Money in hands of receiver.] — Money in the hands of a receiver is not a debt due from him to the persons interested in the estate, and cannot be attached by garnishing process. *Gray* v. *Purdy; Armstrong (Garnishee)*, 5 B. C. R. 241.

8. Priorities.] — Priorities amongst claimants to moneys paid into Court under garnishee process settled by HENDERSON, Co.J., in favour of parties who obtained first charging order. *Wilson Bros.* v. *Robertson and Rolston*, 9 B. C. R. 30.

9. Promissory note — *Attachable.*] — A promissory note not yet due constitutes a debt owing and accruing, and is attachable to answer a judgment debt within the meaning of Rule 497. *Girard* v. *Cyrs*, 5 B. C. R. 45.

See ATTACHMENT OF DEBT.

GENERAL ALLEGATION OF TITLE.

1. Of defendant's title sufficient.]—*E. & N. Ry.* v. *New Vancouver Coal Co.*, 6 B. C. R. 306.

See PLEADING, X.

2. Of plaintiff's title not sufficient.]—*E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 188.

See PLEADING, IX.

GENERAL DENIAL.

1. Insufficient.]—*Hogg* v. *Farrell*, 6 B. C. R. 387.

See PLEADING, X.

GENERAL SUMMONS FOR DIRECTIONS.

See PRACTICE, X.

GLACIER.

1. Placing No. 2 post of mineral claim in, does not invalidate location.]—*Sandberg* v. *Ferguson*, 10 B. C. R. 123.

See MINES AND MINERALS, XXIX.

GOLD.

1. Gold and silver pass—*Eo nomine in statutory grant.*]—*Bainbridge* v. *E. & N. Ry. Co.*, 4 B. C. R. 181.

See MINES AND MINERALS, XV.

GOLD COMMISSIONER.

1. Effect of being misled by.]—*Law* v. *Parker*, 7 B. C. R. 418.

See MINES AND MINERALS, XXXV. 1.

2. Jurisdiction of.]—*Burke* v. *Tunstall*, 2 B. C. R. 12.

See CONSTITUTIONAL LAW — MINES AND MINERALS, XXXV. 1.

GOLD MINING ORDINANCE, 1867.

Jenny Lind Co. v. *Bradley Nicholson*, 1 B. C. R., pt. II., 185.

See WATERS AND WATERCOURSES, I.

GOLD MINES REGULATION ACT,

1. Ultra vires.]—*Atty.-Gen.* v. *Wellington Coll.*, 10 B. C. R. 397; *In re Coal Mines Regulation Act*, 10 B. C. R. 408.

See CONSTITUTIONAL LAW, II. 9.

GOOD WILL.

1. Of business—*Sum stated for not to be charged against mortgagees in taking accounts.*]—*Vanvolkenberg* v. *Western Canada Ranching Co.*, 6 B. C. R. 284.

See CHATTEL MORTGAGE.

See also PATRNERSHIP.

GOODS.

See CARRIERS.

GOVERNMENT EMPLOYEE.

1. Use of knowledge acquired as such—*Discountenanced.*]—*Granger* v. *Fotheringham*, 3 B. C. R. 590.

See MINES AND MINERALS, XIII. 3.

GRAB SMELTING.

1. Of ores.]—*Le Roi* v. *Northport Smelting Co.*, 10 B. C. R. 138.

See CONTRACT, I. 1.

GRAND JURY.

1. Depositions—*Right to peruse.*]—*Reg.* v. *Howes*, 1 B. C. R., pt. II., 307.

See CRIMINAL LAW, XV.

2. Juror on panel being demented not summoned by sheriff — *Legality of constitution of.*]—A sheriff when about to summon, pursuant to s. 48 of the Jurors' Act, one of the jurors drafted to serve on a grand jury, ascertained that the juror was demented and did not summon him:—Held, that the grand jury was not legally constituted and that an indictment found by the jurors who had been summoned must be quashed. A motion to quash such an indictment is not an objection to the constitution of the grand jury within the meaning of s. 656 of the Criminal Code. *Rex* v. *Hayes*, 9 B. C. R. 574.

See CRIMINAL LAW, XV.

GRANT.

1. Of land—*To purchase under tax sale.*]—*Moriarity* v. *Wadham*, 1 B. C. R. pt. II., 145.

See TAXATION, IV.

2. Of mineral claim by Crown includes surface rights under Mineral Act of 1891.]—*Spencer* v. *Harris*, 6 B. C. R. 466.

See MINES AND MINERALS, XV.

3. Prerogative right to precious metals.]—*Bainbridge* v. *E. & N. Ry. Co.*, 4 B. C. R. 181.

See also MINES AND MINERALS, XV.—CROWN GRANT.

GRIEVOUS BODILY HARM.

1. Defined.]—*Reg.* v. *Union Coll. Co.*, 7 B. C. R. 247.

See CRIMINAL LAW, XIII.

GUARANTEE.

1. Of loan by broker — *What is.*] — *Wobley* v. *Lowenberg Harris*, 3 B. C. R. 416.

See PRINCIPAL AND AGENT.

See also SALES—WARRANTY.

GUARDIAN.

See INFANTS.

GUARDIAN AD LITEM.

See PRACTICE, IX. 5.

GUEST.

1. Goods of—*Loss of.*]—A person retaining goods under an inn-keeper's lien for board must take reasonable care of them. Defendant, an inn-keeper, detained plaintiff's trunk for the amount owed by him for board and lodging. Plaintiff assisted in carrying his trunk to the reading room, the ordinary baggage room being full. The trunk was broken open and several articles lost:—Held, on appeal, *per* McCREIGHT and WALKEM, JJ., sustaining the decision of DRAKE, J., at the trial, that the fact that plaintiff had assisted to place the trunk in the reading room, there being no evidence that he requested that it should be placed there, did not shew contributory negligence on his part, or that he accepted the risk incurred thereby, nor did it discharge the liability of the landlord to take reasonable care. *Frank* v. *Berryman*, 3 B. C. R. 506.

2. Hotel.]—Guest is entitled to damages where proprietor neglects to provide fire escape. *Love* v. *New Fairview Co.*, 10 B. C. R. 330.

See NEGLIGENCE.

See also INNKEEPER.

GUILTY.

1. Plea of—*No appeal after.*]—*Reg.* v. *Bowman*, 6 B. C. R. 271.

See CRIMINAL LAW, IV.

GUILTY KNOWLEDGE.

1. Sanitary by-law.]—In order to support a conviction under the clause in the Victoria Consolidated Health By-law, 1886, providing "17. No person shall let, occupy, or suffer to be occupied, as a dwelling or lodging, any room which (a) does not contain at least 384 cubic feet of space for each person occupying the same," it is necessary that there should be some evidence of guilty knowledge, actual or constructive, on the part of the person charged. *Re Wing Kee*, 2 B. C. R. 321.

HABEAS CORPUS.

1. Application for, to different Judges.]—1. A person imprisoned may make fresh application for a habeas corpus to every Judge or Court in turn, who are each bound to consider the question independently. Statutes to be construed favourably to personal liberty. 4 An appeal lies in cases of habeas corpus. *Re George Bowack*, 2 B. C. R. 216.

2. Application of rule as to contradiction of statement of facts.]—*Re W. N. Bole*, 2 B. C. R. 208.

See PROHIBITION.

3. Application by way of—*To obtain possession of child.*]—*Reg.* v. *Redner*, 6 B. C. R. 73.

See PARENT AND CHILD.

4. Application by way of—*To obtain possession of infant under sixteen years.*]—*Re Quai Shing*, 6 B. C. R. 86.

See ADOPTION.

5. Application by way of, to obtain custody of infant.]—*In re Soi King*, 7 B. C. R. 291.

See INFANTS.

6. Application for, after appeal—*Jurisdiction to consider.*]—*Reg.* v. *Geiser*, 8 B. C. R. 169.

See CRIMINAL LAW, IV.

7. Costs of application for—*Where resisted by wife who left her husband without justification.*]—*In re McPhalen*, 10 B. C. R. 40.

See HUSBAND AND WIFE.

8. Chinaman refused admittance to United States — *Deportation by railway company.*]—Where a Chinaman, who contracts with a transportation company for his passage from China through Canada to the United States, on the understanding that if he is refused admittance to the States he will be deported to China by the company, is refused admittance to the States and is being deported, he will not be granted his discharge on habeas corpus proceedings, as the contract is not illegal, and under the Chinese Immigration Act, 1900, deportation is proper. *In re Lee San*, 10 B. C. R. 270.

9. Conviction — *Identity of accused.*]—Conviction describing defendant simply as "Mrs. M.," held bad. *Regina* v. *Morgan*, 1 B. C. R. 245.

10. Conviction should shew jurisdiction.]—Conviction held bad for not shewing that the offence was committed within the justices' jurisdiction, and because the person entitled to receive the costs was not designated, and the costs of conveyance to gaol remained unascertained. *Regina* v. *Akerman*, 1 B. C. R., pt. I., 255.

11. Custody of infant.] — The Court will not interfere by habeas corpus to take an infant out of the custody of a person not lawfully entitled thereto, for the purpose of enabling a person equally unentitled to obtain possession of it. *In re Ah Gway*, 2 B. C. R. 343.

12. Evidence of general reputation—*Deportation of prostitute.*]—Evidence of the general reputation of a house in which a Chinese immigrant has lived is admissible in habeas corpus proceedings directed against the collector of customs, who is detaining such immigrant for deportation to China on the ground that she is a prostitute. An affidavit drawn up in a language not understood by the deponent, may be read in Court if it appears from the jurat that it was first read over and interpreted to deponent. In re Ah Gway (1893), 2 B. C. 343, not followed. *In re Fong Yuk and the Chinese Immigration Act*, 8 B. C. R. 118.

13. Warrant of commitment defective.]—A warrant of commitment by an Indian agent, recited that E. had been charged

with having an intoxicant in his possession contrary to the Indian Act, "and thereupon having considered the matter of the said complaint, I adjudged the said Ettamas should be imprisoned in the common gaol for three calendar months." Held, 1. Warrant defective for not shewing any conviction. 2. The prisoner could be discharged without the writ of habeas corpus actually issuing, and without the prisoner being personally brought before the Court. *Ex parte Ettamas*, 2 B. C. R. 232.

14. Judgment debtor — *Committal—Notice by plaintiff's solicitor.*]—A notice by a judgment creditor's solicitor of an application to a magistrate of a Small Debts Court for an order to commit a judgment debtor because of failure to pay instalments ordered to be paid on the return of a judgment summons, is a nullity. A judgment debtor by appearing pursuant to such notice does not waive his right to object at any stage. *In re the Small Debts Act; In re Waxstock*, 9 B. C. R. 833.

15. Preliminary enquiry—*Hearing by different Justices.*]—Where evidence on a preliminary enquiry is commenced before one justice of the peace and finished before two justices, a committal by the two is irregular unless they have heard all the evidence. *Re Nunn*, 6 B. C. R. 464.

16. Supreme Court of Canada—*Jurisdiction of, in.*]—*Sproule* v. *The Queen*, 1 B. C. R., pt. II., 219.

See CRIMINAL LAW, XV.

17. Vagrancy—*Necessity to detail facts of offence.*]—Accused was charged with and convicted of being a "loose, idle person or vagrant:"—Held, per HUNTER, C.J., that the conviction was bad in that it did not set out the facts constituting the offence. Under s. 207 of the Code, various acts constituting vagrancy are specified, and an information charging vagrancy should shew the particular facts on which the prosecution relies to establish the offence. *Rex* v. *McCormack*, 9 B. C. R. 497.

See also CRIMINAL LAW, XVIII.—INFANTS.

HACKS.

1. By-law regulating.]—A by-law that is not just and equal in its operation, or which is unreasonable, or permits favouritism, is void. A magistrate is bound to decide all questions raised before him as to the validity of statutes or by-laws. Jonas v. Gilbert, 5 S. C. R. 356, Re Nash and McCracken, 33 U. C. R. 181, and Regina v. Johnston, 38 U. C. R. 549, referred to and followed. *Reg.* v. *Russell*, 1 B. C. R., pt. I., 256.

HARBOUR.

1. Obstruction of.]—*McEwen* v. *Anderson*, 1 B. C. R., pt. II., 308.

See NAVIGABLE WATERS.

2. Public harbour defined.] — *Atty.-Gen.* v. *L. & M. Ry. Co.*, 7 B. C. R. 221.

See ATTORNEY-GENERAL.

3. Vested in Dominion Government.]—Franchise and ownership of the soil in public harbours are both vested in the Dominion of Canada by s. 108 B. N. A. Act, and False Creek, B.C., is such a harbour. *Attorney-General of Canada* v. *Keefer*. 1 B. C. R., pt. II., 368.

HAWKERS.

1. By-law regulating, in Vancouver City.]—The Vancouver Incorporation Act, 1886, s. 142, s.s. 71, as amended by the Vancouver Incorporation Amendment Act, 1889, s. 33, empowered the council to pass by-laws: (*a*) "For licensing, regulating, and governing hawkers, etc., of any goods for sale, etc., and for fixing the sum to be paid for a license for exercising such calling within the city, and the time the license shall be in force." "(*b*) Provided always that no such license shall be required for hawking or peddling any goods, etc., the growth, produce or manufacture of this Province." By-law 202 of the City of Vancouver, purporting to have been passed under the powers conferred by sub-section 71 (*a*) supra, provided; "No sale of vegetables, etc., shall be made in the city by any dealer, huckster, etc., unless at a permanent place of business for the sale of said articles, before the hour of nine o'clock in the forenoon of each day of the week, excepting Saturdays, and then not before four o'clock in the afternoon, except at the market place; and no such dealer, huckster, etc., shall sell or offer for sale any of the before-mentioned goods at any place other than the market or from a recognized store, without first having paid the market fees payable by him or her, the amount of which fees and where payable may from time to time be fixed and regulated by resolution of the council." The defendant was convicted of offering vegetables, which appeared to have been grown in the province, for sale between the hours of seven and eight o'clock, a.m. —Held, *per* DRAKE, J., on appeal, quashing the conviction: (1) That the power to fix the license fee by by-law did not authorize a by-law relegating it to the council to fix the fees by resolution. (2) That the imposition of a fee, in effect a license fee "to be fixed," etc., was bad for uncertainty. (3) That the partial prohibition and regulation by the by-law as to sales by hawkers in effect involved the imposition of a license tax upon them in the exercise of the calling, and that the case of the defendant as hawker of vegetables grown in the province was within the exception provided by sub-section (*b*). (4) A by-law may be good in part and bad in part, but the part that is good must be clearly distinguished from the part that is bad, so that if the invalid portion is eliminated there will still remain a perfect and complete by-law capable of being enforced. *Regina* v. *Jim Sing*, 4 B. C. R. 338.

HAZARDUOUS UNDERTAKING.

1. As ground for setting aside a voluntary settlement.]—Where a settler, not indebted at the time, transfers the bulk of his property shortly before engaging in a trade of hazardous character, such settlement may be declared void as against subsequent creditors, and the burden of proof of

bonâ fides of the settlement rests on the settler—following Mackay v. Douglas, L. R. 14 Eq. 106. *Lai Hop* v. *Jackson*, 4 B. C. R. 168.

HEALTH.

1. Detention of person exposed to infection.]—A municipal by-law of the City of Vancouver, authorized by provincial statute, provided, "In case any traveller coming from without the city is infected with, or exposed to, any of the diseases mentioned in this by-law (of which smallpox was one) the medical health officer, or board of health, may make effective provision, in the manner which to them shall seem meet and best for the public safety, by removing such persons to a separate house, or by otherwise isolating them, if it can be done without danger to life, and by providing nurses and other assistance necessary for them at his own cost and charges," etc. B. having been for 36 hours in Victoria, a city of 20,000 inhabitants, in which there were 55 cases of smallpox, came directly thence to Vancouver, where he landed. He was thereupon by direction of the medical health officer of Vancouver, under colour of above by-law, arrested and confined in quarantine as a traveller, etc., "exposed to" the disease. Upon motion for a writ of habeas corpus:—Held, *per* McCreight, J.—(1) That B. was a person "exposed to the disease," and that the detention was lawful. Writ refused. Subsequently, upon similar motion to Walkem, J.:—Held, *per* Walkem J.—(2) The detention was unlawful and not within the scope of the by-law. The authority to detain, isolate and nurse, could only apply to persons suffering from the disease. (3) B. could not be said to be a person "exposed" to the disease merely because he came from and had been 36 hours in a city infected with it to the extent proved. Writ granted. *Re George Boswack*, 2 B. C. R. 216.

2. Detention of person exposed to infection.]—Section 75 of the Health Act provides that when smallpox, scarlet fever, diphtheria, cholera or any other contagious or infectious disease dangerous to the public health is found to exist in a municipality, the health officers shall use all possible care to prevent the spreading of the infection or contagion:—Held, that health officers were justified under this section in detaining a person who had been exposed to infection from a person suspected of having smallpox, but who in reality had measles. *Mills* v. *The City of Vancouver et al.*, 10 B. C. R. 99.

3. Detention under by-law, of ship.]—A municipal by-law providing, "The medical health officer shall have power to stop, detain, and examine every person, or persons, freight, cargoes, boats, coming from a place infected with a pestilential or infectious disease, in order to prevent the introduction of the same into the city," does not authorize the medical health officer, or other municipal authorities, to detain a steamship and its passengers and crew coming from an infected place, or to prevent them from landing within the municipal limits, without reference to a proper examination for the purpose indicated, and its results, as showing danger of their introducing the disease. 2. That the stopping of all the passengers without examination was not an exercise of the powers reposed in the corporation by the by-law, but was an interference with trade and commerce, and was ultra vires. 3. That the by-law and the statute authorizing it were intra vires. *The Canadian Pacific Navigation Co.* v. *The City of Vancouver*, 2 B. C. R. 193.

4. Detention, by medical officer under by-law.]—Action of trespass against the medical health officer of the City of Victoria for causing the plaintiff, one of a number of Chinamen, who landed at Victoria in a steamer last from Hong Kong in China, to be removed to the "Suspect Station," and there detained and subjected to cleansing process under colour of s. 55 of the Municipal Health Act, which gives medical health officers power "to stop, detain and examine every person or persons, freight, cargoes, railway and tramway cars coming from a place infected with a malignant or infectious disease," in order to prevent the introduction of such into Victoria. The plaintiff had been passed by the Dominion Government quarantine officer as entitled to land at Victoria. The white passengers from Hong Kong on the same steamer were not interfered with. The only evidence of Hong Kong being a place infected, etc., was that of a medical man resident in Victoria, who said "That in China smallpox was endemic, because there inoculation was the universal practice. That there was danger of infection from white passengers, but not the same danger as from Chinamen." There was no direct evidence of the existence of smallpox to a dangerous extent in Hong Kong at the time of the departure thence of the steamer, or that it was "a place infected," etc., or that the plaintiff had been "exposed to infection": — Held, that the facts were insufficient to justify the action of the health officer under the by-law. Remarks on the duties of health officers. *Wong Hoy Woon* v. *Duncan*, 3 B. C. R. 318.

5. Evidence of guilty knowledge.]—In order to support a conviction under the clause in the Victoria Consolidated Health By-law, 1886, providing: "17. No person shall let, occupy, or suffer to be occupied, as a dwelling or lodging, any room which (a) does not contain at least 384 cubic feet of space for each person occupying the same," it is necessary that there should be some evidence of guilty knowledge, actual or constructive, on the part of the person charged. *Re Wing Kee*, 2 B. C. R. 321.

6. Power of Lieutenant-Governor in Council to dismiss officer.]—1. Held, *per* Begbie, C.J.—(1) A provincial statute having given to the Lieutenant-Governor in Council power to make and alter such regulations as he might deem expedient in regard to certain matters affecting the public health, the same to have the force of law, such regulations when passed superseded all provincial and municipal enactments inconsistent with themselves. (2) It is competent to the Lieutenant-Governor in Council, by regulation under the provisions of the Health Act, 1888, to dismiss a health officer appointed by municipal by-law. 2. Held, by the Divisional Court, *per* Crease, Walkem and Drake, JJ., on appeal from order granting injunction, that no appeal lies from such an order, but only from an order refusing to dissolve the injunction. (1) Held, also, by the Divisional Court, on appeal from order refusing to dissolve, that the regulations in question purported to oust defendant from further acting as Health Officer only in relation to small-

pox, i.e., the matter in which the Lieutenant-Governor in Council has assumed control. *The Attorney-General of British Columbia* v. *Milne*, 2 B. C. R. 196.

HEARSAY EVIDENCE.

1. Allegations of, should be struck out.]—*Hoste* v. *Victoria Times Pub. Co.*, 1 B. C. R., pt. II., 365.

See PLEADINGS, XI.

2. Of dying declaration.] — *Rex* v. *Louie*, 10 B. C. R. 1.

See CRIMINAL LAW, VIII.

See also EVIDENCE—CRIMINAL LAW.

HEATHEN MARRIAGE.

1. Performance of ceremony—*Validity of.*]—A clergyman is not bound to perform the ceremony of marriage, but if he does, the rites and usages of his church or denomination, and the accustomed form, although unmeaning, must be followed. Semble, marriage between non-Christians ought to be left to their own officiants or to the registrar:—Held, on the evidence, that a marriage purporting to have been solemnized by a Wesleyan minister between two Chinese was void, for want of understanding on the woman's part of the nature of the ceremony, and of any intention to contract. *In re Ah Lie, an infant; Regina* v. *Chin Ah You, ex parte Shub Look; Regina* v. *Shub Look, ex parte Chin Ah You*, 1 B. C. R., pt. I., 261.

HIGHWAYS.

1. Non-repair of.] — *Lindel* v. *City of Victoria*, 3 B. C. R. 400.

See MUNICIPAL CORPORATIONS, VIII.

2. Right of way over, for tramcars—*Whether includes right to enforce sufficient repair to carry.*]—A railway company had a right under its statutory charter (s. 12 of 57 Vict. c. 65), to construct, maintain and operate a street railway along certain highways and bridges. One of the bridges over which the company had lawfully run its cars under the Act was destroyed, and the municipal corporation commenced the construction of another in its place which was of insufficient strength to carry the cars. Upon motion for a mandatory injunction to compel the corporation to construct the bridge of sufficient strength to maintain the car traffic of the company:—Held, *per* DRAKE, J., that as the company had a right to run over any bridge at that point they had a right to the injunction. Upon appeal, held, by the Full Court, *per* MCCREIGHT, J., (WALKEM and MCCOLL, JJ., concurring): That the company were merely grantees of the right-of-way, and as such had no right to compel their grantors to repair the bridge, and that, in the absence of a special agreement to do so, the right did not exist. The corporation were not liable for non-repair even if it amounted to a nuisance. *Consolidated Railway Company* v. *Victoria*, 5 B. C. R. 266.

HIRING.

1. Contract of.]—*Tuck* v. *City of Victoria*, 2 B. C. R. 179.

See MUNICIPAL CORPORATIONS, VI.—MASTER AND SERVANT, I.

HISTORY OF SUPREME COURT.

1. Of British Columbia.]—*Atty.-Gen.* v. *E. & N. Ry. Co.*, 7 B. C. R. 221.

See ATTORNEY-GENERAL.

HOLIDAY.

1. Time expiring on.] — *In re Nelson City By-law*, 6 B. C. R. 163.

See MUNICIPAL CORPORATIONS, II. 3.

HOMESTEAD ACT.

1. Chattels—*Right of selection.*]—*Vye* v. *McNeil*, 3 B. C. R. 24; *Yorkshire Guarantee* v. *Cooper*, 10 B. C. R. 65.

See EXEMPTION.

HOMESTEAD.

1. Taxes—*Municipality.*]—Where the fee still remains in the Crown, the interest of the holder of a homestead claim is not subject to taxation by a municipality, although the holder personally is. *King* v. *The Municipality of Matsqui*, 8 B. C. R. 289.

See also EXECUTION—EXEMPTION.

HOMICIDE.

See CRIMINAL LAW, XII.

HOTEL PROPRIETOR.

1. Liability of, for neglecting to provide fire escapes.]—*Love* v. *New Fairview Corp.*, 10 B. C. R. 330.

See NEGLIGENCE.

2. Lien for board—*Care of goods detained.*]—A person retaining goods under an innkeeper's lien for board, must take reasonable care of them. Defendant, an innkeeper, detained plaintiff's trunk for the amount owed by him for board and lodging. Plaintiff assisted in carrying his trunk to the reading room, the ordinary baggage room being full. The trunk was broken open and several articles lost:—Held, on appeal, *per* MCCREIGHT and WALKEM, JJ., sustaining the decision of DRAKE, J., at the trial: that the fact that plaintiff had assisted to place trunk in the reading room, there being no evidence that he requested that the trunk should be

placed there, did not show contributory negligence on his part, or that he accepted the risk incurred thereby, nor did it discharge the liability of the landlord to take reasonable care. *Frank* v. *Berryman*, 3 B. C. R. 506.

HUSBAND AND WIFE.

1. Bill of sale by husband and wife.]—*Cordingly* v. *McArthur*, 6 B. C. R. 527.

See FRAUDULENT CONVEYANCE.

2. Costs of habeas corpus.]—Where a wife leaves her husband without justification she is not entitled to her costs of unsuccessfully resisting his application by habeas corpus for the custody of children. *In re C. T. McPhalen*, 10 B. C. R. 40.

3. Libel action—*Costs where nominal verdict.*]—In an action against husband and wife for damages for a libel published by the latter, the jury returned a verdict for $10. —Held, by MARTIN, J., that the husband was liable and that the costs should follow the event. *Mackenzie* v. *Cunningham and Wife*, 8 B. C. R. 206.

4. Replevin action.]—A replevin action is an action for a tort, and therefore a husband cannot maintain it against his wife. *McGregor* v. *McGregor*, 6 B. C. R. 432.

5. Residence of wife is that of husband.]—*Cowan* v. *Cuthbert*, 3 B. C. R. 373.

See PRACTICE, IX. 18.

ILLEGALITY.

1. Consideration — *Illegality of.*]—*Per* BOLE, Co.J.: It is necessary to the validity of an assignment in writing of a chose in action under C. S. B. C. 1888, c. 19, that express notice thereof shall have been given to the debtor, trustee or other person, from whom the assignor would have been entitled to receive or claim the chose in action. *Per* WALKEM and MCCREIGHT, JJ., on appeal (without expressing an opinion on the other point): That the assignment in question was void for illegality, it appearing that it was made in consideration of the assignee refraining from taking criminal proceedings against the assignor. That, as the question of illegality was not raised on the pleadings, a new trial should be granted on payment of costs, to give the assignee an opportunity of adducing evidence to contradict the illegality of the consideration. *The Meriden Britannia Co.* v. *Bowell*, 4 B. C. R. 520.

2. Contract—*Account for moneys had and received.*]—On the trial of an action containing three different causes of action, one of which was an action for moneys had and received, another for damages for assault and false imprisonment, and a third for damages for procuring the plaintiff to enter a house of prostitution, the Judge, after reading the plaintiff's examination for discovery, came to the conclusion that the evidence disclosed an illegal contract under which the defendants were to receive a part of the moneys obtained by plaintiff while engaged in prostitution, and that the action involved the taking of an account in respect thereof, and was of an indecent character and unfit to be dealt with, and he dismissed it out of the Court of his own motion, the formal judgment stating that "this Court doth of its own motion and without adjudicating as between the plaintiff and defendants on the matters in dispute between them, order that this action be dismissed out of this Court, with costs:"—Held, by the Full Court, that the order dismissing the action would have precluded the plaintiff from again suing in respect of any of the causes of action included in the statement of claim, and that the plaintiff should have been allowed to prove her case in respect to those causes of action against which there was no objection; and that the respondent who supported the judgment on appeal must pay the costs of the appeal. Judgment of IRVING, J., set aside. *Guilbault et al.* v. *Brothier et al.*, 10 B. C. R. 449.

3. Contract—*Use of another's name in locating claim.*]—A transfer of any interest in a mineral claim is not enforceable unless in writing. Where one free miner locates and records a mineral claim, if he locates another claim on the same vein in the name of another free miner, he thereby acquires no interest in such last claim by virtue of s. 29 of the Mineral Act of 1896. *Alexander* v. *Heath et al.*, 8 B. C. R. 95.

4. Insurance—*Illegal contract to insure against fire.*]—*Barrett* v. *Elliott*, 10 B. C. R. 461.

See INSURANCE, I.

5. Lease—*Illegal—Premises for hotel purposes.*] — Premises in Vancouver leased for use as a hotel did not fulfil the requirements of a by-law in regard to the number of bedrooms, and of this both the lessor and lessee were aware at the time the lease was entered into. The lessee was stopped using the premises as a hotel by the authorities:—Held, in an action by the lessor on covenants for rent and repair, that the lease was void ab initio and the maxim in pari delicto potior est conditio defendentis applied. Even if the lease were not void ab initio it became void by the action of the authorities in stopping the further use of the premises as a hotel. *Hickey* v. *Sciutto*, 10 B. C. R. 187.

6. Stock exchange contract — *Dealing on margins.*] — *B. C. Stock Exchange* v. *Irving*, 8 B. C. R. 186.

See GAMING.

ILLUSORY CONTRACT.

1. Agreement to pay what is right.]—Plaintiff had performed services for a mining company for over three years, when the following resolution was passed: "Resolved and carried unanimously, that Mr. H. F. Croasdaile be requested to accompany Messrs. Hall and McDonald to England and assist them in negotiating the sale of the mines, and that he be paid for his expenses $70 by each of the aforesaid 13 interests, and such further sum as Mr. Winslow Hall shall consider right, upon the sale of the mines, in consideration of his general services to the partnership." The plaintiff proceeded to England accordingly, and in the result a sale of

the mines was affected. W. H. declined to allow plaintiff anything, and the defendants refused to pay him anything for his services either before or consequent on the resolution. At the trial the jury found a verdict, and judgment was entered for the plaintiff for $1,350 for the former, and $4,350 for the latter services. On appeal to the Full Court, McCREIGHT, WALKEM and DRAKE, JJ.:—Held, 1. That the resolution affected subsequent services only, and that it contained no contract upon which the plaintiff could recover everything. 2. Its acceptance constituted an agreement by the plaintiff to abide by the decision of W. H. to the exclusion of any right of action for the subsequent services upon a quantum meruit, and that the judgment as to the $4,350 should be set aside. 3. A vested right of action can only be discharged by payment, release under seal, or accord and satisfaction, and, as plaintiff had at the date of the resolution such a right in respect of his prior services, the resolution could not be construed as affecting it, and that the judgment for $1,300 should stand. *Per* DRAKE and WALKEM, JJ.: On motion for a new trial for misdirection, the objections must be specified. *Crossdaile* v. *Hall*, 3 B. C. R. 384.

2. Promise to form company and allot stock.] — Where on a sale of mineral claims the purchaser promises and agrees to form a company to take over the claims, and that the vendor shall have in such company a reasonable amount of stock, to be amicably determined between them, and then refuses to form a company, the vendor has no right of action, as the agreement is illusory. *Briggs* v. *Newswander et al.*, 8 B. C. R. 402.

INADEQUATE CONSIDERATION.

1. Assets of company — *Sale by directors.*]—*Daniel* v. *Gold Hill Mining Co.*, 6 B. C. R. 495.

See COMPANY, II.

IMMIGRATION.

1. Alien Labour Act — *Advertising for employees in foreign country—Whether contravention of.*]—*Downey* v. *Van. Eng. Wks.*, 10 B. C. R. 367.

2. Immigration Act. 10 B. C. R. 270.

See HABEAS CORPUS.

See also HEALTH.

IMMINENT DANGER.

1. Duty of employer to warn employees.] — *Gunn* v. *Le Roi*, 10 B. C. R. 59.

See MASTER AND SERVANT, IV.

IMMORAL CONSIDERATION.

1. Ground for setting aside conveyance.]—*Hotel* v. *Vandall*, 7 B. C. R. 331.

See FRAUDULENT CONVEYANCE.

IMPERIAL ACTS.

1. Applicability of.]—*Re W. C. Ward*, 1 B. C. R., pt. 1., 114.

See ARBITRATION AND AWARD.

2. Imperial Act, 20 and 21 Vict. c. 25 —*No application in B. C.*]—*Scott* v. *Scott*, 4 B. C. R. 316.

See DIVORCE.

3. Imperial Medical Act—*Application of.*]—*Metherell* v. *Med. Council of B. C.*, 2 B. C. R. 186.

See MANDAMUS.

4. Imperial Orders in Council—*Not in force in Colonies.*]—*Reynolds* v. *Vaughan*, 1 B. C. R., pt. 1., 3.

See PRACTICE, IX.

5. Imperial Statutes—*Force of, in Colonies.*]—*Reynolds* v. *Vaughan*, 1 B. C. R., pt. 1., 3.

See PRACTICE, IX.

IMPLIED CONTRACT.

Galbraith & Sons v. *H. B. Co.*, 7 B. C. R. 431.

See CONTRACT III. 3.

IMPLIED WARRANTY.

Wm. Hamilton Mfg. Co. v. *Victoria Lumber Co.*, 4 B. C. R. 101.

See CONTRACT, III. 3.

IMPORTATION.

1. Of foreign labour.]—*Downey* v. *Van. Eng. Wks.*, 10 B. C. R. 367.

See ALIENS.

IMPOSSIBILITY OF PERFORMANCE.

1. Of contract.]—*Carson* v. *Carson*, 10 B. C. R. 84.

See VENDOR AND PURCHASER.

IMPRISONMENT.

See ARREST—CRIMINAL LAW.

IMPROVEMENTS.

1. Certificate of—*Action to set aside.*]—*Hand* v. *Warren*, 7 B. C. R. 42.

See MINES AND MINERALS, IX. 3.

2. Certificate of—*Not a bar to rectification of Crown grant covering same ground.*]—*In re American Boy Mineral Claim*, 7 B. C. R. 268.

See MINES AND MINERALS, IX. 3.

3. Certificate of — *Crown suit to set aside.*]—*Atty.-Gen.* v. *Dunlop*, 7 B. C. R. 312.

See MINES AND MINERALS, IX. 3.

4. Land—*Placed on land by mistake, right to remove.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

5. Purchaser making—*Does not waive right to enquiry as to title.*]—*Townend* v. *Graham*, 6 B. C. R. 539.

See VENDOR AND PURCHASER.

See MINES AND MINERALS, IX. 3—XXIII.

INCOME.

1. Basis of, for taxation.]—*Re Marquis of Biddle* v. *Cope*, 5 B. C. R. 37.

See TAXATION, I.

2. Railway engineers — *Whether taxable.*]—*Re Assessment Act*, 9 B. C. R. 60; *Re Assessment Act*, 9 B. C. R. 209.

See TAXATION, I.

3. Tax by local legislature—*Application of, to Dominion officials.*—*Regina* v. *Bowell*, 4 B. C. R. 498.

See CONSTITUTIONAL LAW, II. 8.

See also TAXATION.

INCOMPETENCY OF WITNESSES.

1. Atheist incompetent to testify.]—The Court will not set aside the verdict of a jury unless it is wholly unsupported by evidence, or is contrary to such a body of evidence, or rests on so slight a foundation as to make it obvious that the jury were perverse or invincibly prejudiced. It is no misdirection sufficient to require a new trial, that the Judge has used inaccurate language in the course of a long summing up, if the charge as a whole afforded a fair guide to the jury. Clark v. Molyneux, 3 Q. P. D. 243, followed. *Gray et al.* v. *Macallum*, 2 B. C. R. 104.

See also EVIDENCE.

INCOMPLETE VERDICT.

1. Action for work done.]—In an action for work done and materials provided for certain steamers the jury did not answer all the questions submitted, and the trial Judge gave judgment for the plaintiffs for the amount claimed for certain work covered by the certificate of an agent of the defendants, but discharged the jury as being unable to agree in respect of the other matters, and reserved further considerations:—Held, on appeal, that on the findings, as they stood, the plaintiffs could not recover any amount other than the one allowed. *Galbraith & Sons* v. *Hudson's Bay Company*, 7 B. C. R. 431.

INCUMBRANCE.

1. Clear of—*Expression "absolute fee," L. R. O. 1870, does not mean necessarily "clear of incumbrances."*]—*Re Sir Douglas*, 1 B. C. R., pt. 1., 84.

See REGISTRATION OF DEEDS—JUDGMENTS—RECORDS.

INDEMNITY.

1. Covenant of—*Not a liquidated demand subject to special indorsement.*] — *Baker* v. *Dalby*, 3 B. C. R. 289.

See PRACTICE, XXXVIII. 10.

2. Innocent agent.]—Where an act is innocently done under the express direction of another, which occasions an injury to the rights of a third person, the principal must indemnify the innocent agent. *The Board of School Trustees of Victoria* v. *Muirhead & Mann, and the Albion Iron Works Company, Limited*, 4 B. C. R. 348.

3. Parties liable to indemnify substituted as defendants.]—*Wilkerson* v. *Victoria*, 3 B. C. R. 367.

See PRACTICE, I. 8.

See also CONTRACT—COVENANTS—PRINCIPAL AND AGENT.

INDECENT MATTER.

1. Action involving indecent matter.]—*Guilbault* v. *Brothier*, 10 B. C. R. 449.

See ACTION—PLEADINGS, XI.

INDEFEASIBLE TITLE.

1. Certificate of—*When grantable.*]—By the Land Registry Act, C. S. B. C. 1888, c. 67, s. 63: "The owner in fee of any land, the title to which shall have been registered for the space of seven years, may apply to the registrar for a certificate of indefeasible title." The applicants applied to the registrar at Vancouver for a certificate of indefeasible title to the lands in question upon an affidavit that they "are the owners in fee of the lands, the title of which lands has been registered for the space of seven years." The registrar held that the applicant must prove a seven years' registered title in himself, following In re Trimble (*Per* BEGBIE, C.J., 1 B. C. R. pt. II., 321), and refused the application. Upon appeal to a Judge: MCCREIGHT, J., affirmed the registrar and dismissed the appeal. Upon appeal from MCCREIGHT, J., to the Full Court:—Held, *per* BEGBIE, C.J., and DRAKE, J., that the construction of the registrar and MCCREIGHT, J., was correct, and

that the appeal should be dismissed. *Per* CREASE and WALKEM, JJ., that all that was necessary under the language of the Act was that the applicant should be the owner of the lands, the title, not his title, to which has been a registered title for seven years, and that the appeal should be allowed. *In re The Vancouver Improvement Company, in the matter of the Land Registry Act*, 3 B. C. R. 601.

2. Certificate of—*Power of registrar to cancel original certificate of title.*]—*Re G. H. Turner*, 2 B. C. R. 244.

See REGISTRATION OF DEEDS.

3. Transfer of.]—*In re Shotbolt*, 1 B. C. R., pt. II., 337.

See RECORDS—REGISTRATION OF DEEDS.

INDEPENDENCE OF PARLIAMENT.

1. Member of Provincial Legislature employed as counsel for Dominion Government—*Counsel fees, whether "allowance, emolument or profit"—Injunction—Interlocutory—Discretion to refuse.*] — Held, *per* BEGBIE, C.J., and CREASE, J., (GRAY, J., dissenting), on motion for an injunction until the hearing: (1) The employment by the Dominion Government of a member of the British Columbia Legislative Assembly, a barrister, as counsel upon an arbitration involving 35 days' attendance in Victoria, Toronto and Ottawa, though he refused to receive counsel fees therefor, disqualified the member under Stat. B. C. 1875, s. 1, providing: "No person accepting or holding any office or employment, permanent or temporary, to which an annual salary or any fee, allowance or emolument or profit of any kind or amount whatever from the Dominion of Canada is attached, shall be eligible to sit or vote in the Legislative Assembly." (2) That the discretion of the Court should be exercised in refusing an injunction on the grounds of public policy, as the defendant was Attorney-General, and the granting of it before the hearing would prejudice the public interest. *Per* GRAY, J.: That the employment of the defendant in question was not one to which any fee, allowance, emolument or reward attached, as the counsel fees were mere honoraria and did not create a contract to pay. *Per curiam*: Any registered voter has status to bring action to enforce the Act. *Barnard* v. *Walkem*, 1 B. C. R., pt. 1, 121.

INDIRECT TAXATION.

1. Taxation by means of license fees is.]—*Reg.* v. *Mee Wah*, 3 B. C. R. 403.

See also CONSTITUTIONAL LAW, II. 8 — TAXATION, II.

INDICTMENT.

1. Indorsement of names of witnesses on.]—*Rex* v. *Holmes*, 9 B. C. R. 294.

See CRIMINAL LAW, XIII.

2. Surplusage—*Not impaired by.*]—*Rex* v. *Coote*, 10 B. C. R. 285.

See CRIMINAL LAW, XIII.

INDORSEMENT.

1. Of address on writ.] — *Dundas* v. *McKenzie*, 10 B. C. R. 174.

See PRACTICE, XXXVIII. 2, 7.

2. Of address — *Amendment of indorsement by insertion of plaintiff's address.*]—*Short* v. *Federation Brand Salmon Co.*, 6 B. C. R. 382.

See PATENTS.

3. On writ—*Extension of, by statement of claim.*]—*Oppenheimer* v. *Sperling*, 10 B. C. R. 162.

See PLEADING, IX. 1.

4. Special endorsement.]—*Hassard* v. *Riley*, 6 B. C. R. 167; *Rogers* v. *Reed*, 7 B. C. R. 139.

See PRACTICE, XXXVIII. 10.

See also PRACTICE, XXXVIII. 7, 10.

INDUCEMENT TO PRISONER.

1. To make statements—*Admissibility of evidence—Must be shown no inducement was held out to prisoner.*]—*Re Ockerman*, 6 B. C. R. 143.

See CRIMINAL LAW, XVI.

INEVITABLE ACCIDENT.

1. Defence of.]—*Bank Shipping Co.* v. "*City of Seattle*," 10 B. C. R. 513.

See COLLISION.

INFANTS.

1. Custody of.] — A girl aged fourteen was taken by a Refuge Home from the custody of a person standing in loco parentis who was proved to be leading a bigamous life:—Held, in habeas corpus proceedings, that such person had lost his right to the custody of the infant. An application in vacation for a rule nisi for a writ of habeas corpus should be made in chambers. *In re Soy King, an infant*, 7 B. C. R. 291.

2. Custody of—*Right to.*] — The Court will not interfere by habeas corpus to take an infant out of the custody of a person not lawfully entitled thereto, for the purpose of enabling a person equally unentitled to obtain possession of it. An affidavit drawn up in a language not understood by the deponent cannot be read in Court; it must be drawn up and sworn to in the language of the deponent, but a sworn translation of it may be read. *In re Ah Gway ex parte Chin Su*, 2 B. C. R. 343.

3. Custody of female over sixteen years.]—The parents of an infant who is under the age at which it may elect as to its custody, may be deprived of that custody if the Court is satisfied that such a course is necessary for the child's welfare. Where an infant has attained the age of election, the Court ought to separately examine the infant, and adopt its wishes on the subject. *Regina* v. *Redner*, 6 B. C. R. 73.

4. Custody of female under sixteen.]—In habeas corpus proceedings to recover possession of a female child stated to have been adopted and brought up by the applicant, and to have been taken away from him against his will, by a refuge home. *Per* DRAKE, J.: 1. A person who has adopted and brought up a child obtains thereby no legal right to its custody. 2. The child being a female under sixteen, the age of consent or election as to custody, her choice should not be considered, but her welfare and well being only, and that same were, on the facts, furthered by continuing the custody of the refuge home. 3. If the child had been over the age of consent, the Court would have no right to determine who should have the custody or control of her, but only to set her at liberty if detained in unlawful custody against her will. 4. The Court has power under Supreme Court Act, s. 10, and Rule B. C. 751, to award costs upon a rule nisi for habeas corpus. Upon appeal to the Full Court *per* WALKEM and IRVING, JJ., dismissing the appeal: Adoption is not recognized by the law of England and a foster-parent has no more legal right to the custody of the child of their adoption than a stranger. *Per* WALKEM, J.: The Court has jurisdiction to award costs in habeas corpus proceedings. *Per* IRVING, J.: The Court has no jurisdiction to award costs in habeas corpus proceedings, but the Full Court has jurisdiction to award costs of appeal. *Per* DAVIE, C.J., dissenting (allowing the appeal with costs): Although the adoption of a child into a family may confer no right to its custody, as against a parent, it constitutes a legal status capable of being maintained against a mere invader of the household, and the adoptive father is a person in loco parentis for the purpose of recovering the child if taken out of his custody by a stranger. *In re Quai Shing, an infant*, 6 B. C. R. 86.

5. Guardian.]—Where a guardian to an infant has already been appointed by the Court, it is not necessary to appoint a guardian for the special purpose of presenting a petition for sale of the infant's estate under Settled Estates Act, 1877, s. 49 (*a*). *In re Ash Estate*, 5 B. C. R. 672.

6. Loan of moneys belonging to.]—The Court will not sanction a loan of infants' moneys on mortgage of realty, without a covenant by the mortgagor to procure a binding agreement with those who may be entitled to liens under the Mechanics' Lien Act, 1891, to forego their rights under the Act. *In re Brown and Brown, infants, ex parte Brown*, 2 B. C. R. 110.

7. Mortgage executed by—*Liability in respect of.*]—A mortgage executed by an infant before the passing of the Infants' Contracts Act, is not void, but voidable, and if the infant wishes to avoid it he must expressly repudiate it within a reasonable time after coming of age. R. in 1896, being then an infant, executed a mortgage in favour of S. R. came of age on 27th January, 1900, and at that time on account of default having been made in the payment of the loan, S. was proceeding to sell under power of sale in the mortgage. R.'s solicitors on 13th February, 1900, wrote S., saying that no valid mortgage had ever been executed by R., and threatening proceedings to protect their client's interests, and on 2nd March they issued a writ on behalf of R. against S. claiming a declaration that the mortgage was null and void, and an injunction restraining sale. On cross-examination on an affidavit made by R. in support of a motion for an interim injunction, he said in substance that the reason he did not pay was because he couldn't, and that he had never repudiated his contract, and in October, 1900, he discontinued his action. On 2nd November, 1900, S. commenced his foreclosure action, and in defence R. pleaded infancy:—Held, that the solicitors' letter and the writ in Russell v. Saunders did not constitute repudiation, as they were qualified by R.'s statement that he did not intend to repudiate. Judgment of IRVING, J., dismissing the action, reversed. *Saunders* v. *Russell*, 9 B. C. R. 321.

See ADOPTION—HABEAS CORPUS — PARENT AND CHILD.

INFECTION.

1. Detention of persons exposed to.]—*Mills* v. *City of Vancouver*, 10 B. C. R. 99.

See HEALTH.

2. Infected places.]—*C. P. N. Co.* v. *City of Vancouver*, 2 B. C. R. 193; *Wong Hoy Woon* v. *Duncan*, 3 B. C. R. 318.

See HEALTH.

3. Municipal powers with respect to infectious diseases and detention of persons exposed to.] — *C. P. N. Co.* v. *City of Vancouver*, 2 B. C. R. 193.

See HEALTH.

INFORMATION.

1. Suit by, to restrain corporation from selling land.]—*Anderson* v. *City of Victoria*, 1 B. C. R., pt. II., 107.

See MUNICIPAL CORPORATIONS.

2. Summary conviction — *Hearing of second charge before disposal of first.*]—*Rex* v. *Sing*, 9 B. C. R. 254.

See CERTIORARI.

See also CRIMINAL LAW—CERTIORARI.

INFRINGEMENT OF PATENTS.

Short v. *Federation Salmon Co.*, 7 B. C. R. 197; *Short* v. *Federation Brand Salmon Co.*, 6 B. C. R. 436; *Jones* v. *Galbraith*, 9 B. C. R. 521.

See PATENTS.

INJUNCTION.

1. Action — *Injunction to restrain.*]—*Atty.-Gen.* v. *E. & N. Co.*, 7 B. C. R. 221.

See ATTORNEY-GENERAL.

2. Action for, is proper for a trial by a jury. *C. P. R.* v. *Parke*, 5 B. C. R. 507.

3. Affidavit in support of—*Cross examination on plaintiff's.*]—*Scavack* v. *West*, 6 B. C. R. 404.

See PRACTICE, II.

4. After dismissal of action to preserve property pending appeal.] — An injunction may be continued, after dismissal of action, to preserve property in dispute pending appeal, though such jurisdiction will only be exercised under exceptional circumstances. *Dunlop* v. *Haney*, 7 B. C. R. 300.

5. Amendment of — *Notice* — *Disobedience.*]—A mandatory injunction required "the defendants, their officers, their agents, etc., to permit all passengers on the plaintiffs' steamers to land at the port of Vancouver, subject only to such detention, examination and inspection as may be reasonably necessary in order to ascertain the existence among them of the disease of smallpox, or of actual danger of said passengers or crew or any of them being infected with smallpox, by reason of their or any of them having been actually exposed to contagion thereof," etc. Notice of the effect of the amendment was telegraphed to the defendants' solicitor by his agent in Victoria, upon whom the amended order had been served. Defendants afterwards, by their agents, met plaintiffs' steamships at the wharf at Vancouver, and, without any inspection or examination of them, informed the passengers that they could land, but if they did so they would be subject to quarantine for 14 days, under the City Health Bylaw; and thereby prevented them from landing:—Held, 1. That the defendants had sufficient notice of the terms of the injunction as amended. 2. That the conduct of the defendants was a breach of the injunction, and attachment ordered to bring before the Court those proved to have been actively concerned in the breach. *The Canadian Pacific Navigation Co. (Ltd.)* v. *The City of Vancouver*, 2 B. C. R. 298.

6. Appeal.]—No appeal lies from order granting injunction, but only from an order refusing to dissolve the injunction. *Attorney-General* v. *Milne*, 2 B. C. R. 196.

7. Appeal from refusal to grant — *Commencement of trial.*]—Where a motion to dissolve an interlocutory injunction has been refused and notice of appeal given before trial, but not brought on to be heard until after the trial has commenced, but not concluded, the Full Court will not interfere. *Dunlop* v. *Haney*, 7 B. C. R. 455.

8. Appearance—*Ex parte order for continuation of injunction after filing irregular appearance.*]—*Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See APPEARANCE—PRACTICE, IV.

9. Appearance—*Necessity for entry of, to writ before moving to dissolve injunction on merits.*]—*Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, IV.

10. Certificate of incorporation—*To restrain registrar from cancelling.*]—*Canada Permanent* v. *B. C. Permanent*, 6 B. C. R. 387.

See COMPANY, I.

11. Coal mine—*Employment of Chinamen.*]—Held, on a motion by the Attorney-General for an injunction to restrain a colliery company from employing Chinamen below ground in contravention of s. 34, s. 82 of the Act, that the matter was not one affecting the public, or likely to affect the public to such an extent as to call for the granting of an injunction. *Attorney-General* v. *Wellington Colliery Co.* 10 B. C. R. 397.

12. Chinese tax—*Injunction against collection of.*]—*Tar Sing* v. *Maguire*, 1 B. C. R., pt. I., 101.

See CONSTITUTIONAL LAW, III.

13. Crown grant—*To restrain issue of.*] *Nelson and F. Sheppard Ry. Co.* v. *Parker*, 6 B. C. R. 1; *Nelson and Fort Sheppard Co.* v. *Dunlop*, 7 B. C. R. 411.

See MINES AND MINERALS, IV.

14. Dedication of street—*Injunction restraining continuing of street.*]—*C. P. R.* v. *City of Vancouver*, 2 B. C. R. 306.

See DEDICATION.

15. Disobedience of—*Writ of sequestration*—*Whether lies against person not named in the injunction.*] — Persons not named in an injunction are not liable to be committed for breach of it, unless, with knowledge of the injunction, they interfere and commit the act enjoined, in which case they are liable for contempt of Court. *DeCosmos* v. *The Victoria and Esquimalt Telephone Co. (Ltd.)*, 3 B. C. R. 347.

16. Extralateral rights — *To restrain infringement of.* 3 B. C. R. 474.

See PRACTICE, XVI.

17. From working on vein.]—*Centre Star* v. *Iron Mask*, 6 B. C. R. 355.

See MINES AND MINERALS, XXIV.

18. Independence of Parliament Act, 1875—*Barrister's fees—Injunction—Crown officers.*]—On an application for an injunction under the Independence of Parliament Act, 1875, to restrain a member of the Legislative Assembly and a Minister of the Crown from sitting and voting in the house:—Held, per GRAY, J., that a barrister's fees being in the nature of an honorarium, the acceptance of employment as counsel in an arbitration by a barrister was not the acceptance of such an office as to disqualify a member from sitting and voting. Held, per BEGBIE, C.J., and CREASE, J., that the acceptance of such an employment was an infringement of the provisions of s. 1 of that Act. Held, per BEGBIE,

C.J., and CREASE and GRAY, JJ., on demurrer, that any registered voter in the province had sufficient interest to maintain an action under this Act. Remarks on the Court controlling, by its process, officers of the Crown. *Barnard* v. *Walkem*, 1 B. C. R. 120.

19. Interim injunction—*Motion to dissolve—Not waiver of irregularity in writ.*]—*Fletcher* v. *McGillivray*, 3 B. C. R. 37.

See PRACTICE, XXXVI.

20. Land—*Injunction in action for possession of.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

21. Lease—*Violation of.*]—*Ross* v. *Henderson*, 8 B. C. R. 5.

See LANDLORD AND TENANT.

22. Libel—*Discretion to grant in action of.*]—Discretion to grant interlocutory injunctions in action of libel: — Held, per BEGBIE C.J., on a motion to dissolve an injunction restraining until the hearing the further publication of matter charged to be libellous, that the Court will interfere by interlocutory injunction restraining until the trial, the publication of what clearly appears to be a libel. On appeal to the Divisional Court: Held, per CREASE, J., that though in England the Courts have not of late restrained publication before the question of libel has been submitted to a jury, there is undoubted power to do so under C. S. B. C. c. 31, s. 14, and the appeal should be dismissed. Per DRAKE, J., that as the jurisdiction is one never admitted before the Judicature Act, and the exercise of it may prejudice the trial of the action as being a conclusive opinion that the matter complained of is defamatory, it should be very sparingly used, and in practice confined to trade libels, and the appeal should be allowed. *Wolfenden* v. *Giles*, 2 B. C. R. 279.

23. Mining—*To restrain mining on continuation of vein.*] — *Centre Star* v. *Iron Mask*, 6 B. C. R. 355.

See MINES AND MINERALS, XXIV.

24. Motion to dissolve—*Plaintiff's shewing on affidavits.*]—Upon motion to dissolve an injunction retaining property in dispute in statu quo, pendente lite, it is not necessary in order to maintain the injunction for the Court to enquire further into the rights of the parties, if it appears upon the affidavits that the plaintiff has made, upon his own shewing, a good case for the interference of the Court, and that upon all the facts before the Court, a reasonable prospect of his succeeding at the trial. *Albert Ward & Co.* v. *John Clark, John [illegible] and Henniger*, 3 B. C. R. 356.

25. Municipal Act—*By law, detention of persons exposed to infection—Injunction to restrain.*]—*C. P. R.* v. *City of Vancouver*, 2 B. C. R. 193.

See HEALTH.

26. Municipal by-law — *To restrain proceedings under.*]—*Graves* v. *City of Nelson*, 7 B. C. R. 48.

See MUNICIPAL CORPORATIONS, II. 3.

27. Municipal Act, 1892, s. 30, s.-s. 10—*Disqualification of aldermen by reason of interest in contract—Practice—Injunction or quo warranto.*]—An injunction is a competent and appropriate remedy for a complaint that an alderman is, on the facts alleged, disentitled by statute to sit and vote, where the prayer is to restrain him from so doing. Semble, if the action was to remove him from office and no other relief asked, quo warranto might be the only mode of procedure. *Coughlan & Mayo* v. *The City of Victoria et al.* 3 B. C. R. 57.

28. Municipal corporations—*Diversion of corporate funds to unlawful purpose.*]—The municipal corporation of the city of Victoria having, by special resolution, appropriated $5,200 to defray the cost of constructing a bridge over navigable water, part of a public harbour within the city limits, did not obtain the sanction of the Dominion Government to the work, and proceeded to execute it in such a way as to interfere with navigation. Upon information by the Attorney-General of Canada, an injunction was granted restraining the continuance of the work. This action was then brought by the plaintiff individually as a ratepayer to restrain the corporation from expending any part of the $5,200 in payment for the work:—Held, that an injunction should be granted restraining the application of the money to any further construction of the bridge, but refused as to payment for work bonâ fide done upon that part of it already completed. *Elworthy* v. *Victoria*. 5 B. C. R. 123.

29. Municipal corporations — *Injunction to restrain from selling land.*]—*Anderson* v. *City of Victoria*, 1 B. C. R., pt. II., 107.

See MUNICIPAL CORPORATIONS, VII.

30. Navigable waters — *Injunction restraining obstruction of.*] — *Atty.-Gen.* v. *Keefer*, 1 B. C. R., pt. II., 368.

See NAVIGABLE WATERS.

31. Obedience to, whether waiver of right to appeal against.] — *Consolidated Ry. Co.* v. *Victoria*, 5 B. C. R. 266.

See BRIDGES.

32. Order of Court causing delay good defence to action on bond conditioned to complete work at specified time. *Attorney-General of British Columbia* v. *C. P. R. Co.*, 1 B. C. R. pt. II., 350.

33. Partners — *Injunction against.*] — *Hudson's Bay Co.* v. *Green et al.*, 1 B. C. R. 247.

See ASSIGNMENTS FOR BENEFIT OF CREDITORS.

34. Presumed justice of the Crown—*Crown lands.*]—The Court should not, upon the ground that his claim appears to be invalid, restrain a party from applying to the proper department of the Government for a Crown grant of lands, for the Court cannot presume that the Crown will not do right. *Nelson and Port Sheppard Railway Company* v. *Parker*, 6 B. C. R. 1.

35. Prohibitory injunction—*Disobeying—Remedy — Attachment or committal — Rule* 451—*Endorsement.* —Upon motion for

a writ of attachment against the manager of the defendant company for disobeying an injunction restraining the company, its agents, servants, etc., from blasting or depositing rock upon the plaintiffs' mineral claim, it was objected. (1) Under Rule 451, that there was no memorandum of the consequence of the disobedience endorsed on the order. (2) That the notice of motion for attachment was not personally served on the manager, but only on the solicitor for the defendant company. Counsel had appeared for the manager, and obtained several adjournments of the motion to obtain affidavits on the merits, which finally, were not forthcoming:—Held, per ROLE, L.J.S.C., overruling the objection: (1) That Rule 451 does not apply to prohibitory injunctions. (2) That the want of personal service of the notice of motion upon the manager was waived by the adjournments at his request. Upon appeal to the Full Court: Held (per MCCREIGHT, WALKEM and DRAKE, JJ.), allowing the appeal: That committal and not attachment is the appropriate remedy for breach of a prohibitory injunction. That personal service of a notice of motion is an essential pre-requisite to committal and that the party applying in a case proper for committal is not absolved from the necessity for such personal service by moving for attachment instead of committal. *Browning* v. *Sabin*, 5 Ch. D. 511, distinguished. That the objection of want of personal service of the notice was not waived by the adjournments. *The Golden Gate Mining Company* v. *The Granite Creek Mining Company*, 5 B. C. R. 145.

36. Railway—*Injunction to restrain from extending its line.*]—*Edmonds* v. *C. P. Ry. Co.*, 1 B. C. R., pt. II., 272.

See RAILWAYS, I.

37. Railway—*Injunction to prevent rival railway from crossing track.*]—*C. P. R.* v. *V., W. & Y.*, 10 B. C. R. 228.

See PRACTICE, XIX.

38. Rescission — *Possession of property by vendor.*]—Where a party contracts to purchase property and pays an instalment and afterwards repudiates the contract and sues for rescission, the Court has no jurisdiction to restrain by interim injunction the vendor who accepted the repudiation and re-took his property from dealing with it as he sees fit. *Christie* v. *Frasee et al.*, 10 B. C. R. 291.

39. Restraining action in inferior Court.]—On appeal to the Divisional Court from a refusal to restrain a number of actions in the County Court to recover a rate under a municipal by-law, upon the ground that the question could better be determined in the action in the Supreme Court to declare the by-law invalid: Held, *per* CREASE and MCCREIGHT, JJ.: That the leaning of Superior Courts is against assuming to restrain a number of actions in an inferior Court, merely because the question upon which they depend may be finally decided once for all in one Superior Court action. *Belrose* v. *The Municipality of Chilliwack*, 3 B. C. R. 115.

40. Sewers — *Injunction to prevent obstruction of.*]—*Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 108.

See PLEADINGS, IX. 2.

41. Sewers — *Injunction against expropriation of land for.*] — *Arnold* v. *City of Vancouver*, 10 B. C. R. 198.

See MUNICIPAL CORPORATIONS, VIII.

42. Statutory duty or power—*Exercise of, causing damage.*]—There is no remedy for damage caused by the exercise of a statutory duty or power unless it is given by statute, or unless the duty or power had been negligently exercised. The Court generally requires three things to be shewn before granting an interlocutory injunction: — (1) There must be a strong primâ facie case that the plaintiff will succeed at the hearing. (2) There must be some wrong suffered or threatened not sufficiently or appropriately to be covered by a money payment. (3) The preponderance of convenience must be in favour of the injunction. *Jones et al.* v. *The Corporation of the City of Victoria*, 2 B. C. R. 8.

43. Similarity of name—*Deception.*]—*Can. Permt.* v. *B. C. Permt.*, 6 B. C. R. 377.

See COMPANY, I.

44. Trade union—*Picketing.*] — *Le Roi Mining Co.* v. *Rossland Miners' Union*, 8 B. C. R. 370.

See CONSPIRACY.

45. Tidal river—*Right of Dominion of Canada to restrain pollution of.*]—The Crown in the right of the Dominion of Canada has the right to take proceedings to restrain by injunction the pollution of tidal rivers, which co-exists with the right of the Provincial Attorney-General to restrain any public nuisance caused by the conduct in question. The fact that a statute makes the conduct in question an offence, and imposes fines and imprisonment for its commission, does not derogate from the right of the Court, on the motion of the party injured, to restrain its commission by injunction. An injunction may be granted, although the defendant makes affidavits that he has taken precautions against the recurrence of the injury complained of. *The Attorney-General for the Dominion of Canada* v. *Ewen*, 3 B. C. R. 468.

46. Undertaking not to proceed until trial.]—An undertaking not to proceed further until the trial of the action is observed although proceedings are taken before the formal order or decree is drawn up, but after judgment delivered. *Dunlop* v. *Haney*, 7 B. C. R. 300.

47. Undertaking as to damages.]—An undertaking as to d[illegible] ought to be given by a plaintiff who [illegible]s an interlocutory order for an injun[illegible]ot only when the order is made ex p[illegible] even when it is made upon hearing both [illegible]s. *New Vancouver Coal Company* v. *E. & N. Railway Company*, 6 B. C. R. 222.

48. Water—*Injunction to compel removal of water tank and pipe line.*] — *Byron N. White* v. *Sandon Water Works*, 10 B. C. R. 361.

See WATERS AND WATERCOURSES, I.

49. Water—*Injunction against fouling.*] —*Columbia River L. Co.* v. *Yuill*, 2 B. C. R. 237.

See WATERS AND WATERCOURSES, IV.

50. Watercourse—*Injunction to restrain use of natural.*]—*Peate* v. *Rhode*, 2 B. C. R. 159.

See WATERS AND WATERCOURSES, I.

51. Water privilege—*Injunction to restrain interference with.*]—*Jenny Lind Co.* v. *Bradley Nicholson*, 1 B. C. R., pt. II., 185.

See WATERS AND WATERCOURSES, I.

52. Where there has been no order for the payment of money, the Courts will not restrain the removal of property out of the jurisdiction by the owner. *Baxter* v. *Jacobs, Moss, et al.*, 1 B. C. R., pt. II., 370.

See also MINES AND MINERALS, XXIV.—WATERS AND WATERCOURSES.

INJURY.

1. Recurrence of—*Precautions against will not prevent an injunction being granted.*] —*Atty.-Gen.* v. *Ewen*, 3 B. C. R. 468.

See INJUNCTION.

INNKEEPER.

1. Loss of guest's goods—*Contributory negligence—Volenti non fit injuria—Lien—Innkeepers' Act, C. S. B. C.* 1888, *c.* 59.]—A person retaining goods under an innkeepers' lien for board must take reasonable care of them. Defendant, an innkeeper, detained plaintiff's trunk for the amount owed him for board and lodging. Plaintiff assisted in carrying trunk to reading-room, the ordinary baggage-room being full. The trunk was broken open and several articles lost:—Held, on appeal, *per* MCCREIGHT and WALKEM, JJ., sustaining the decision of DRAKE, J., at the trial, that the fact that plaintiff had assisted to place the trunk in the reading-room, there being no evidence that he requested it to be placed there, did not show contributory negligence on his part, or that he accepted the risk incurred thereby, nor did it discharge the liability of the landlord to take reasonable care. *Frank* v. *Berryman*, 3 B. C. R. 506.

INNOCENT AGENT.

1. Indemnity of.]—*Lai Hop* v. *Jackson*, 4 B. C. R. 168.

See INDEMNITY.

INNOCENT PURCHASER.

1. Purchaser for value without notice—*Con. Stat. B. C.* 1888, *c.* 51.]—The purchasers of goods from an insolvent, under a bill of sale, alleged to have been fraudulent against his creditors, before action to set aside the sale, sold and delivered the goods to an innocent purchaser for value, and received the purchase money, which was not ear marked in any way:—Held, (1) No remedy is provided by the Act after the property reaches bonâ fide purchasers. (2) The purchase money paid by the latter not being ear marked in any way could not be followed by the Court, and no order could be made. Plaintiff non-suited. *Cascaden* v. *McIntosh*, 2 B. C. R. 268.

See also FRAUDULENT CONVEYANCE.

INNOCENT SHAREHOLDER.

1. Liability of, as holder of false shares.]—*Re Thunder Hill Mining Co.*, 4 B. C. R. 61.

See COMPANY, VII.

INSANITY.

1. As ground for cancelling note.]—*Harper* v. *Cameron*, 2 B. C. R. 365.

See CANCELLATION OF INSTRUMENTS.

2. Inquisition.]—A finding by inquisition of the insanity of a person is not a necessary preliminary to an action by his next friend to set aside his contract on the ground of his insanity. Insanity once established is presumed to continue. *Harper* v. *Cameron*, 2 B. C. R. 264.

3. Presumption of continuance. 2 B. C. R. 365.

See CANCELLATION OF INSTRUMENTS.

See also LUNATIC.

INSOLVENCY.

1. Assignee—*Removal of, where interest conflicts with duty.*]—*Re Dickenson*, 2 B. C. R. 262.

See ASSIGNEE.

2. Assignment—*By an insolvent.*]—*Doll* v. *Hart*, 2 B. C. R. 32.

See CHATTEL MORTGAGE.

3. Bill of sale—*Insolvent circumstances in connection with giving.*]—*Stewart* v. *Wilson*, 3 B. C. R. 369.

See CHATTEL MORTGAGE.

4. Company — *What constitutes—Dominion Winding-up Act—Balance sheets, whether correctness of disputable.*] — *In re United Canneries*, 9 B. C. R. 528.

See COMPANY, IX.

5. Company — *Insolvency of.*] — *In re Kootenay Brewing Co.*, 6 B. C. R. 112.

See COMPANY, IX.

6. Knowledge of, on part of creditor.]—*Adams et al.* v. *Bank of Montreal*, 8 B. C. R. 314.

See FRAUDULENT CONVEYANCE.

7. Postponement of payment till final distribution.]—The plaintiff obtained judgment against the defendant as an executor of the deceased, an insolvent. Afterwards an administration decree was made. The plaintiff applied for payment to him of the amount of his judgment out of funds in Court being proceeds of the estate:—Held, *per* DRAKE, J., making the order, that C. S. B. C. c. 68, s. 4, does not take away the priority of a creditor under a judgment obtained prior to the making of the administration decree:—Held, on appeal, by the Divisional Court (CREASE and MCCREIGHT, JJ.), it appearing that there might not be sufficient funds to satisfy an undecided right of retainer by the executor, and other judgments, that payment out of Court to plaintiff should be postponed till final distribution of the estate under the decree in the administration suit. *Wilson* v. *Marvin*, 3 B. C. R. 327.

8. What constitutes — *Fraudulent preference — Pressure — Provincial Fraudulent Preference Act — Constitutionality of.*] — A chattel mortgage to two of his principal creditors, made by a trader when unable to pay his debts in full and knowing himself to be on the eve of insolvency, covering all his property except a leasehold interest and his book debts, held void, as being made with intent to defeat or delay his other creditors, and to give the mortgagees a preference over them. The mortgagees had requested the trader to secure them by chattel mortgage, he stating to them at the time that he was solvent, that his other creditors were small, and that he could arrange to pay them off and concentrate the business:—Held, insufficient to bring into question the doctrine of pressure. Stat. B. C., 43 Vic. c. 10, considered constitutional. The words of the statute, "unable to pay his debts in full," are satisfied by proof of a promissory note of the grantors having been protested. *Anderson* v. *Shorey*, 1 B. C. R., pt. II., 325.

See also ASSIGNEE — ASSIGNMENTS FOR BENEFIT OF CREDITORS—CHATTEL MORTGAGE—FRAUDULENT CONVEYANCE.

INSPECTION.

1. Documents of.]—*Van Valkenberg* v. *Bank of B. N. A.*, 5 B. C. R. 4; *Teiglerbaum* v. *Jackson*, 7 B. C. R. 171.

See PRACTICE, XI. 2.

2. Metalliferous Mines Act.]—*Stamer* v. *Hall Mines*, 6 B. C. R. 579.

See MASTER AND SERVANT, IV. 2.

3. Metalliferous Mines Act—*R. S. B. C.* 1897, *c.* 134, *s.* 25 — *Duty of mine owner to use reasonable precaution against accidents to miners.*]—*McDonald* v. *Can. Pac. Ry. Co.*, 7 B. C. R. 39.

See NEGLIGENCE.

4. Mines — *Underground workings — Undertaking for damages in respect of.*]—*Star Mining Co.* v. *Byron N. White*, 9 B. C. R. 9.

See PRACTICE, XI. 2.

5. Mines — *Underground workings of—Privilege to make copies of plans—When allowable.*] — *Star Mining Co.* v. *Byron N. White*, 9 B. C. R. 422.

See PRACTICE, XI. 2.

6. Order for.]—The Centre Star Company had been enjoined from mining in the Iron Mask Claim, in which it was alleged was a continuation of a vein whose apex was in its own claim, and was also refused leave to do experimental or development work on the Iron Mask Claim in order to determine the character or identity of the said vein:—Held, by the Full Court, on appeal (MARTIN, J., dissenting), refusing to modify said orders, that it ought to be left to the Trial Judge to decide whether it was necessary to have any work done to elucidate any of the issues raised. *Centre Star* v. *Iron Mask*; *Iron Mask* v. *Centre Star*, 6 B. C. R. 355.

7. Property—*Claim of privilege—Right to examine plans.*]—*Star Mining Co.* v. *Byron N. White*, 9 B. C. R. 422.

See PRACTICE, XI. 2.

8. Trial—*Order for when granted at.*]—*Iron Mask* v. *Centre Star*, 7 B. C. R. 66.

See TRIAL.

See also PRACTICE, XI. 2—MINES AND MINERALS, XVI.

INSURANCE.

I. FIRE INSURANCE.

1. Carrying on business without license.]—H. was the authorized agent at Vancouver of the Equity Fire Insurance Company, a company incorporated in Ontario, but which was not registered or licensed under the provisions of any British Columbia statute or of the Insurance Act of Canada. He was convicted under the provisions of the Insurance Act for carrying on an insurance business without a license:—Held, by DRAKE, J., on appeal, confirming the conviction, that the Act is intra vires of the Parliament of Canada. *Regina* v. *Holland*, 7 B. C. R. 281.

2. Contract valid in Canada—*Meaning of.*]—A contract to procure fire insurance in some office valid in Canada, means in some company licensed to do business in Canada, and a premium paid under such a contract may be recovered back, as upon a failure of consideration, if the insurance is effected without the knowledge of the insured in a company not so licensed. *Barrett et al.* v. *Elliott et al.*, 10 B. C. R. 461.

3. Statutory conditions — *Superseding conditions in policy—Weight of evidence.*] — The Fire Insurance Policy Act (B. C.), 1893, providing statutory conditions, was passed subject to a condition that "This Act shall not come into force until a day to be named by the Lieutenant-Governor-in-Council." The Lieutenant-Governor-in-Council named 1st

November, 1893, and advertised the same in the Gazette, but before the date published a further notice, and afterwards other notices, postponing the day for the Act to come in force until a date after that of the making of the policy in question:—Held, by the Full Court (McCreight, Drake and McColl, JJ.): (1) That the Lieutenant-Governor was the delegate of the Legislature for the purpose only of proclaiming the Act in force, and upon his doing so the Act came into operation, and he was functus officio and could not afterwards postpone the date. (2) Following Citizens' Insurance Co. v. Parsons, 7 A. C. 119, that the statutory conditions superseded the conditions in the policy, the latter not being indicated as variations therefrom in manner required by ss. 4 and 5 of the Act. (3) That the statement of the insured in the application as to the value of the goods which was found by the jury to be incorrect, taken in connection with the statutory condition, No. 1, viz., "not to describe the goods insured otherwise than as they really are to the prejudice of the company, or misrepresent any material circumstance," did not amount to a warranty. Per Drake, J.: That statements as to value being as to matters of opinion, do not constitute a warranty. The Court will not as a rule grant a new trial on the ground that the verdict is against the weight of evidence upon an issue of fraud, particularly where the charge involves a criminal offence, and the verdict is in favour of the party charged. *Cope & Taylor* v. *Scottish Union & National Insurance Company*, 5 B. C. R. 329.

II. Life Insurance.

1. Benefit society.] — In an action for sick benefits against an I. O. O. F. Lodge, it appearing that the plaintiff had no occupation, being a retired merchant — nonsuit. *Bone* v. *Columbia Lodge, No. 2, I. O. O. F.*, 1 B. C. R. pt. II., 349.

2. Payment by note.]—A life policy was issued 27th June, 1894, for $5,000, an annual premium of $84.50 being payable on the 20th March in each year. The second premium was paid 20th March, 1895, but the third was not paid, the insured giving a note dated the 20th March, 1896, at ninety days instead, the note providing that if it was not paid at maturity the policy should become null and void, but subject, on subsequent payment, to re-instatement under the rules for lapsed policies. Payments on account of the note were made, and in February, 1898, the insured died:—Held, in an action by the beneficiary, that the giving of the note was not a payment of the premium such as would entitle the insured to the extended insurance allowed in case three full annual premiums had been paid. *Tilley* v. *Confederation Life*, 7 B. C. R. 144.

3. Policy—"*Signed, sealed and delivered*" —*When complete—Insured taking hazardous employment without permission—Retention of premium paid after with knowledge of facts—Estoppel—Incontestable clause.*]—A policy of insurance "signed, sealed and delivered," by the president and managing director of an insurance company, is complete and binding as against the company from the date of execution, though, in fact, it remains in the company's possession, unless there remains some act to be done by the other party to declare his adoption of it. A life policy was subject to a condition making it void if the insured took a hazardous employment without the writen permission of the president, vice-president or managing director of the company. The assured did take such employment without the written permission of any of the officers named, but with the assent of the company's provincial agent, and after the change of occupation paid a premium which was retained by the company with knowledge of the change of occupation:—Held, that the company was estopped from taking advantage of the forfeiture clause. Remarks as to the nature of incontestability clauses in insurance policies. Decision of Martin, J., reversed. *Elson* v. *The North American Life Assurance Company*, 9 B. C. R. 474.

4. Return of policy—*Authority of agent —County Court appeal.*] — Defendant agreed to take a policy of life assurance for $10,000 from the plaintiff company, which was issued and transmitted to, and stood in the hands of plaintiffs' B. C. agent, for defendant. Defendant wrote to the agent that he was unable to pay his premium notes or carry out the transaction, but that he was confident of being in a better financial position within the next six or eight months, and continued, "I promise to take a new policy with you within that time. In the meantime I return the policy and $5 for the medical examination." Whereupon the agent signed and delivered to him the following, "Received back from Mr. T. R. E. McInnis our policy No. 30,574, together with $5 for medical attendance, in accordance with terms submitted in his letter." Defendant offered to take out a fresh policy in plaintiff company for $1,000. The company refused this offer, or to take back the original policy, and returned it together with the $5 to defendant, who declined to receive same. It was a term of the policy that agents of the company were not authorized to alter or discharge contracts. Upon action upon the premium notes:—Held, by Harrison, Co.J., on the facts, that there was no acceptance by the plaintiffs of the proposal contained in the letter or release or accord and satisfaction of the original contract. On appeal to two Judges of the Supreme Court (McCreight and Drake, JJ.): That no question of law being distinctly raised before or referred by the County Court Judge, no such question was open on appeal, and that the findings of fact could not be considered under the County Court Amendment Act, 1892, s. 3. *The Confederation Life Assurance Co.* v. *McInnis*, 4 B. C. R. 126.

INTENTION.

1. Of debtor to leave province.] — *Hartney* v. *Onderdonk*, 1 B. C. R., pt. II., 88.

See Arrest.

2. Of parties—*Jury should be specifically directed to consider.*]—*McAdam* v. *Kickbush*, 10 B. C. R. 358.

See Practice, XIX.

See also Contract, III.—Guilty Knowledge.

INTEREST.

1. Damages, interest as.]—*Hamilton* v. *Hudson's Bay Co.*, 1 B. C. R., pt. II., 1.

See CARRIERS.

2. Free miner's interest in claim is an interest in land.]—*Fero* v. *Hall*, 6 B. C. R 339.

See MINES AND MINERALS, XXII.

3. Judgment—*Interest on, from date of verdict.*]—*Gordon* v. *City of Victoria*; 7 B. C. R. 421.

See JUDGMENT.

4. Liquidated or unliquidated demand—*Practice—Order III., Rule 6—Judgment by default. McClary Manufacturing Co.* v. *Corbett*, 2 B. C. R. 212.

5. Mayor—*Interest of, in company—From which municipality is making purchases.*]—*Re Arthur & City of Nelson*, 6 B. C. R. 323.

See MUNICIPAL CORPORATIONS, III.

6. Mortgage—*Default in payment—Foreclosure.*]—Though no proviso that principal should become due on default of payment of interest. *Canada Settlers* v. *Nicholles*, 5 B. C. R. 41.

See MORTGAGES.

7. On judgment — *Rate of.*] — The interest carried by a judgment in this province is governed by 1 & 2 Vict. c. 110, s. 17 (Imp.), and is therefore 4 per centum per annum. *Foley* v. *Webster et al.*, 3 B. C. R. 30.

8. On judgment entered by Full Court, in accordance with verdict, reversing trial Judge—*When computed from —57 & 58 Vict. c. 22, s. 3.*] — Plaintiff obtained a verdict at the trial, but the Judge dismissed the action. The Full Court allowed the plaintiff's appeal, and ordered that judgment be entered in plaintiff's favour for the amount of the verdict:—Held, that plaintiff was entitled to interest from the date of the verdict. *Gordon* v. *The Corporation of the City of Victoria*, 7 B. C. R. 339.

9. On mortgage, after maturity, in the absence of any proviso for payment thereof at a specified rate, is recoverable at the statutory rate of six per cent., following People's Loan Co. v. Grant, 18 S. C. R. 262. *Cunningham* v. *Hamilton*, 5 B. C. R. 539.

10. Party—*What is sufficient interest of —Party to maintain action.*] — *Barnard* v. *Walkem*, 1 B. C. R. pt. I., 120.

See INJUNCTION.

11. Promissory note—*Insertion of rate after note signed.*] — *B. C. Land & Invest. Co.* v. *Ellis*, 6 B. C. R. 82.

See BILLS AND NOTES.

12. Promissory note—*Laches.*] — It is discretionary with the tribunal on the trial of an action upon a promissory note not providing for interest, to allow interest after maturity by way of damages, or not:—Held, that a plaintiff by laches, in not pressing for or suing to recover on the note for a period of over three years, had disentitled himself to interest. *Smith* v. *Hansen*, 2 B. C. R. 153.

13. Special indorsement of claim of.]—*McClary Mfg. Co.* v. *Corbett*, 2 B. C. R. 212; *Bank of Montreal* v. *Bainbridge*, 3 B. C. R. 125; *B. C. Land & Invest. Co.* v. *Thain*, 4 B. C. R. 321.

See PRACTICE, XXXVIII. 10.

14. Special indorsement of claim for, on foreign judgment.] — *McAulay Bros.* v. *Vict. Yukon T. Co.*, 9 B. C. R. 27.

See PRACTICE, XXXVIII. 10.

15. The surcharge of 18 per cent. and 25 per cent. interest on unpaid taxes, is ultra vires of the Local Legislature. *Murne* v. *Morrison*, 1 B. C. R. pt. II., 120.

See PRACTICE, XXXVIII. 10.

INTERLOCUTORY APPEAL.

1. Costs of.

See APPEAL, VIII. 2—PRACTICE, IX. 6.

2. Entertainment of by Full Court after action decided.]—*Fawcett* v. *C. P. R.*, 8 B. C. R. 219.

See APPEAL, I.

INTERLOCUTORY ORDER.

1. Order allowing demurrer is not an.]—*Atty.-Gen.* v. *C. P. R.*, 1 B. C. R. pt. II., 330.

See APPEAL, VIII. 12.

2. Order for service ex juris is not an.]—*Fuller* v. *Verxa*, 1 B. C. R. pt. II., 330.

See PRACTICE, XXVIII. 5.

See also APPEAL.

INTERNATIONAL LAW.

1. Admission—*Agency—Jurisdiction.*] — In an action against the captain and owner of a steamship for trespass and false imprisonment in taking the plaintiff on board their steamship at Honolulu, and conveying him to Vancouver, B.C., against his will, the statement of defence of each defendant alleged that "in receiving the said plaintiff on board the said steamship Warrimoo, and conveying him to Vancouver aforesaid, he was acting as the agent for the Hawaiian Government, being a responsible government, and carrying out the lawful order of that government, given in the said city of Honolulu and Island of Oahu, which were at that time under martial law." The plaintiff in his reply admitted the above paragraph. DRAKE, J., at the trial, non-suited the plaintiff, on the ground that the scope of the allegation was that the act of state, and agency of the

defendants for the Hawaiian Government in carrying it out, covered the conduct complained of outside as well as within the territorial limits of Hawaii, and that the admission was fatal to the cause of action:—Held, by the Full Court, *per* McCreight, J. (Davie, C.J., and Walkem, J., concurring), overruling Drake, J., and granting a new trial: That the scope of the admission had reference to the substantive facts alleged in the defence, and not the extent of the agency as alleged, which was a matter of legal deduction from the facts not susceptible of being concluded by admission. That the jurisdiction afforded by a defence of agency for a responsible government in the execution of an act of state only extends to acts done within the territorial jurisdiction of that state. *John Cranstoun v. Charles Edward Bird and James Huddart*, 4 B. C. R. 569.

INTERPLEADER.

1. Assignment—*Money order — Indorsement of.*]—Defendant, under contract to build for one Walker, purchased the materials from plaintiffs, who subsequently got judgment against him, and who garnished the moneys due from Walker to defendant under the contract. Moneys due the contractor were to be paid on the certificate of the architect, Grant. Before the garnishee proceedings defendant had accepted the following order drawn upon him by Nicholas & Barker, to whom he was indebted on a sub-contract: "Please pay to Champion & White the sum of $270, and charge the same to my account, for plastering Place Block, Hastings Street W., in full to date:" which order the defendant thus indorsed in favour of Grant: "Please pay that order and charge to my account on contract for Rovery Walker Block on Hastings Street, City:"—Held, in interpleader by the Full Court, affirming McColl, C.J., that apart from the order there was a parol assignment specifically appropriating to the assignees the sum in question, of the moneys to arise out of the contract. *B. C. Mills Lumber and Trading Co. v. Mitchell; Walker, garnishee, and Champion and White, claimants*, 8 B. C. R. 71.

2. Receiver.]—No jurisdiction to grant an interpleader where a receiver is appointed by Exchequer Court. *Williamson v. Bank of Montreal*, 6 B. C. R. 486.

See Admiralty, IV.

INTERPRETATION OF STATUTES.

1. Crown grant.] — An exception, expressed in a Crown grant to the railway company, of subsidy lands, of all portions of such lands previously to a certain date, "Held as mineral claims," imports only such claims as were then lawfully so held, and that it was open to the railway company to question the validity of mineral claims previously located thereon. The exception from the railway company's Crown grant of "Lands held as mineral claims," means de facto claims, and the word "lawfully" cannot be imported. *The Nelson & Fort Sheppard Railway Co. v. Jerry et al.*, 5 B. C. R. 396.

2. By-law—*Interpretation of, not to be meaningless or absurd—Policy of Court in regard to construction of.*]—*Esquimalt Water Works Co. v. City of Victoria*, 10 B. C. R. 193.

See Municipal Corporations, II. 1.

3. Enabling words, when compulsory.]—*Reg. v. City of Victoria*, 1 B. C. R. pt. II., 331.

See Municipal Corporations, II. 1.

4. General terms in statute.]—A statutory grant of lands, "including all coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever thereupon, therein and thereunder," does not include the precious metals. The interpretation of general terms in a statute cannot be assisted by reference to the interpretation clause in another statute by which the same terms are in it given a special construction. Under s. 95 of the Crown Lands Act, 1888, all lands in the province, both public and private, are subject to the right of entry by free miners to search for the precious metals, subject to the conditions precedent contained in the Placer Mining Act, 1891, c. 26. *Bainbridge v. The Esquimalt and Nanaimo Railway*, 4 B. C. R. 181.

5. Interpretation Act—*Application of.*]—*In re Succession Duty Act and McDonald Estate*, 9 B. C. R. 174.

See Taxation, III.

6. Interpretation Act—*S.* 8, *s.-s.* "*considered.*]—*Reg. v. Little*, 6 B. C. R. 78.

See Master and Servant, V.

7. Liberty — *Construction should be favourable to personal liberty.*] — *Re George Bowack*, 2 B. C. R. 216.

See Habeas Corpus.

8. Mineral claim—*Staking.*]—The erection of stone mounds as posts Nos. 1 and 2 is not a compliance with s. 16 of the Mineral Act, which requires such posts to be of wood. *Callanan v. George*, 8 B. C. R. 146.

9. Remarks on.]—*Re Bell Irving & City of Vancouver*, 4 B. C. R. 228.

See Municipal Corporations, II. 2.

10. Rules as to.]—*Gwillim v. Law Society of B. C.*, 6 B. C. R. 147.

See Solicitor.

INTERROGATORIES.

See Practice, XI. 3.

INTOXICATING LIQUORS.

1. Appeal from conviction, a proceeding de novo.] — Upon an appeal to the County Court from a summary conviction, expressed to be for selling spirituous liquors by retail without a lease, contrary to the statute in

such case, etc., and to a certain municipal by-law, fining and ordering the defendant to pay $50, and in addition $75 as the amount payable for such a license: *Per* SIR M. B. BEGBIE, C.J., sitting as a County Court Judge—the following objections were overruled: (1) To the jurisdiction — (a) That the conviction was not returned to or before the Court upon the appeal. (b) That the deposit as security for the appeal had not been returned. (2) That the by-law referred to in the conviction, exercising the statutory power given to the municipality by the Municipal Act, 1892, *s.* 204, s.-s. (3), to issue licenses for the mode of liquor selling charged, and to levy and collect by means thereof an amount not exceeding $75 for every six months was not proved. It was held: (3) That an appeal from a conviction is a proceeding de novo, as if the information were then first brought to be tried. (4) That s. 208 of the statute supra, providing: "No person shall sell liquors by retail, and no person shall use, practice, carry on, or exercise in the municipality any trade or business described or named in s. 204 and the sub-sections thereof, without having taken out and had granted to him a license in that behalf, under a penalty not exceeding $250, together with the amount which he shall have paid for such license, which penalty shall, for the purposes of recovery, be held to be one penalty," made it an offence to sell liquor by retail, without a license in that behalf, independently of whether a by-law providing for the issue of such licenses and fixing the amount of fees thereon, had been passed or not, and that the appeal could proceed, as a hearing de novo, for such statutory defence. (5) It appearing upon such hearing that the liquor sold was intoxicating, but no evidence being given as to its having been produced by distillation, that the evidence was insufficient to sustain a charge of selling spirituous liquor. (6) That the absence of proof of the by-law would have been fatal in proceedings by way of certiorari and motion to quash the conviction. *Re Kwong Wo*, 2 B. C. R. 336.

2. By-law closing licensed premises.]—A municipality has no power under *s.* 50, s.-ss. 109 and 110, of the Municipal Clauses Act, to pass a by-law closing any kind of licensed premises, except saloons. A municipality is not empowered, by s. 7 of the Liquor Traffic Regulation Act, to pass any closing by-law, the intention of the section being to prohibit the sale during, inter alia, such hours as may be prescribed by the municipality under the authority of some other statute. Where a statute creates offences and provides the necessary machinery for the carrying out of its provisions, a by-law to put it in force is unnecessary and bad. *Hayes* v. *Thompson*, 9 B. C. R. 249.

3. Club — *What is.*]—By the Municipal Act, B. C., 1889, s. 173: "Every club in a municipality shall pay to the corporation of the municipality an annual tax of one hundred dollars on the 31st day of December in every year." "A 'club' for the purposes of this Act shall mean and include an association of persons consisting of not less than forty in number, whose objects of association are mutual recreation or improvement, and the keeping for the members a place of resort wherein intoxicating, spirituous and malt liquors are consumed by members, either at a tariff fixed by the rules of the association or pursuant to any agreement or understanding between the members of the association." The defendants admitted that they were such an association:—Held, that the club was not liable to pay the license because it did not sell liquor. *The City of Victoria* v. *The Union Club*, 3 B. C. R. 363.

4 Constable—*A bonâ fide traveller.*]—A constable who, by order, visits saloons on Sundays to see whether or not the law with respect to the sale of liquor is being obeyed, is a bonâ fide traveller within the meaning of the Liquor License Regulation Act, 1891. *Regina* v. *Harris*, *Regina* v. *Duval*, 2 B. C. R. 177.

5. Liquor License Law.]—The Liquor License Regulation Act, B.C., 1891, s. 4, providing for the closing of saloons on Sunday, is intra vires of the Provincial Legislature. *Sauer* v. *Walker*, 2 B. C. R. 93.

6. Meal—*Whether mere excuse to supply liquor.*]—By the Liquor License Regulation Act, 54 Vict. B.C., c. 21, s. 4, the sale of liquor in licensed premises is prohibited between the hours of eleven o'clock on Saturday night and one o'clock on Monday, and by s.-s. 2 of s. 4, "the provisions of this section shall not apply to the furnishing of liquor to bonâ fide travellers nor to the case of hotel or restaurant keepers supplying liquor to their guests with meals." The defendant was the holder of a saloon and restaurant license. A customer called for liquor during the prohibited hours, which was refused unless he ordered a "meal," whereupon he ordered crackers and cheese, for which no extra charge to that for the liquor was made: — Held, sustaining a conviction of the defendant, that the word "meal," applied to food eaten to satisfy the requirements of hunger, and, on the facts, that the supply of food by defendant was a mere excuse to enable defendant to supply liquor. *Regina* v. *Sauer*, 3 B. C. R. 308.

7. Retail license—*Consideration of petition for.*]—A retail liquor license which was obtained clandestinely and without due regard to preliminary statutory requirements, was ordered to be cancelled. A school-house which has been used on several occasions as a place of meeting by a licensing Court, is not a court house within the meaning of s. 11 of the Licensing Act. On an application for a retail license, to obtain which a petition is necessary, the magistrates are bound to consider all the circumstances that make against as well as in favour of granting it, and are justified in refusing it if, for good reasons, they are satisfied that it ought not to be granted. *In re Close & Berry*, 2 B. C. R. 131.

8. Saloon license a statutory contract.]—On an application to quash a conviction under a municipal by-law:—Held, 1st. A "saloon" license under the Municipality Act of 1881, the fee for which is paid in advance under the provisions of the Act, is a statutory contract with the municipality, and during the statutory term for which it is given, cannot be so altered or varied by a by-law, passed by the corporation or municipality granting the license, as to destroy the object for which it is granted, or materially reduce its value. Like other contracts it carries the elements of mutuality. 2nd. The Municipality Act provides fixed periods of six months, 30th June and 31st December, for the expiration

and renewal of saloon licenses. New restricting regulations must come in at those periods, form part of the implied contract, and be in force concurrently with the license when granted. 3rd. This construction in no way interferes with the power of suspension, forfeiture, fines, or punishment otherwise existing for misconduct, under laws specially or generally applicable. Ex post facto legislation objectionable. *In re Clay and the Corporation of the City of Victoria*, 1 B. C. R., pt. II., 300.

9. Selling intoxicating liquors on Sunday—*Detectives visiting saloons to see if law obeyed—Whether bona fide travellers.*]—A constable who, by order, visits saloons on Sundays to see whether or not the law with respect to the sale of liquor is being obeyed, is a bona fide traveller, within the meaning of the Liquor License Act, 1891. *Regina v. Harris*, 2 B. C. R. 177.

10. Wholesale license by Japanese.]—The Vancouver licensing board refused to consider an application for a wholesale liquor license because the applicant was a Japanese. An application for a mandamus was refused by IRVING, J. Applicant appealed to the Full Court, and at the time of the hearing of the appeal, the personnel of the board had been changed:—Held, that the board should have considered the application regardless of the fact that he was a Japanese, but as the personnel of the board had been changed, no order would be made. *In re Kanamura*, 10 B. C. R. 354.

INTRA VIRES.

See CONSTITUTIONAL LAW.

INVESTMENT AND LOAN SOCIETIES ACT.

Can. Permt. v. B. C. Permanent, 6 B. C. R. 377.

See COMPANY, I.

IRREGULARITY.

1. Appeal—*Failure to set down for two successive sittings of Full Court, is an irregularity only.*]—*Baker v. Kilpatrick*, 7 B. C. R. 127.

See APPEAL, VIII. 9.

2. Ca. re. proceedings — *Irregularities in.*]—*Williams v. Richards*, 3 B. C. R. 510.

See ARREST.

3. Discretion of Court to set aside proceedings for substitutional service.]—*Centre Star v. Rossland & Gt. West. Mines*, 10 B. C. R. 262.

See PRACTICE, XXVII.

4. In obtaining water rights.]—*Carson v. Martley*, 1 B. C. R., pt. II., 281.

5. Location of mineral claim—*Irregularity not cured by certificate of work.*] —*Callaghan v. Coplen*, 7 B. C. R. 422.

See MINES AND MINERALS, XXIX.

6. Mineral claim—*Irregularity arising after location and record, cured by certificate of work.*] — *Galbraith v. Hudson's Bay Co.*, 7 B. C. R. 431.

See MINES AND MINERALS, IX. 4.

7. Objections to—*Proceedings should set same out specifically.*]—*Walt v. Barber*, 6 B. C. R. 461.

See ARREST.

8. Style of cause — *Irregularity in* — *Amendable.*] — *B. C. Furniture Co. v. Tugwell*, 7 B. C. R. 361.

See PRACTICE, XXXVIII. 3.

9. Setting out on face of order setting aside proceedings for irregularity—*Necessity for, in order to found appeal from order.*]—*Tiltzen v. Reverbeck*, 1 B. C. R., pt. II., 365.

See PRACTICE. III.

10. Title — *Irregularities in, covered by certificate of work.*]—*Fero v. Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, IX. 4.

IRREPARABLE DAMAGE.

1 By drainage.]—*Peatte v. Rhode*, 2 B. C. R. 159.

See WATERS AND WATERCOURSES, II. — INJUNCTION.

IRRIGATION.

See WATERS AND WATERCOURSES.

ISSUE.

1. Issues to be submitted to jury.]—*Love v. New Fairview Corp.*, 10 B. C. R. 330.

See NEGLIGENCE.

JAIL.

1. Sheriff of Vancouver entitled to lodge person arrested for debt in New Westminster jail. *Carson v. Carson*, 10 B. C. R. 83.

See SHERIFF.

JAPANESE.

1. Application for liquor license should be considered irrespective of nationality.] — *In re Kanamura*, 10 B. C. R. 354.

See INTOXICATING LIQUORS.

2. Right to vote.]—Section 8 of the Provincial Elections Act, which purports to prohibit the registration of Japanese as provincial voters is ultra vires. *In re The Provincial Elections Act, and In re Tomey Homma, a Japanese*, 7 B. C. R. 368.

3. Right to vote.]—*In re Tomey Homma*, 8 B. C. R. 76.

See ELECTIONS.

JOINDER.

1. In error—*Effect of.*] — *Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXII.

2. Of causes — *Action for recovery of land.*]—*Fletcher* v. *McGillivray*, 3 B. C. R. 37.

See PRACTICE, I. 5

3. Of causes arising out of summary conviction.]—Joint action by several offenders to recover fines paid after conviction quashed. Where several persons are fined by one summary conviction which has been quashed, they may not sue jointly to recover the fines paid, but must bring separate actions. *Five Chinamen* v. *New Westminster*, 2 B. C. R. 168.

4. Of defendants.] — *Dunlop* v. *Haney*, 6 B. C. R. 169.

See PRACTICE, I. 8.

5. Of parties.]—*Lasher* v. *Tretheway*, 10 B. C. R. 438.

See PRACTICE, I. 8.

See also PLEADINGS.

JOINT DEBTORS.

1. Acceptance of note of one of the joint debtors does not alone constitute a novation. *Gurney* v. *Braden*, 3 B. C. R. 474.

See NOVATION.

JOINT OWNER.

1. A part owner of a mineral claim may apply for a certificate of improvements under s. 36 of the Mineral Act. *Bentley et al.* v. *Botsford and MacQuillan*, 8 B. C. R. 128.

2. If one of two joint transferees of an undivided interest in a mineral claim rejects the transfer, no title passes to the other. *Cook et al.* v. *Denholm et al.*, 8 B. C. R. 39.

See MINES AND MINERALS, XXII., XXXVI.

JOINT TENANCY.

1. Joint tenants—*Transfer to of mineral claim—Repudiation by one.*]—If one of two joint transferees of an undivided interest in a mineral claim rejects the transfer, no title passes to the other. *Cook et al.* v. *Denholm et al.*, 8 B. C. R. 39.

JOINT TORT FEASORS.

1. Contribution—*Indemnity of innocent agent.*] — Where an act is innocently done under the express direction of another, which occasions an injury to the rights of a third person, the principal must indemnify the innocent agent. *Victoria School Trustees* v. *Muirhead et al.*, 4 B. C. R. 148.

2. Right to add as party defendants.] —A defendant in an action of tort has no right to an order to add other parties as co-defendants upon the ground that they are also responsible to the plaintiff. Such persons might be added as third parties under s. 22, s.-s. 108 (f), of the Municipal Act Amendment Act, supra. *Holmes* v. *The Corporation of Victoria*, 4 B. C. R. 567.

5. Rule 94—*Separate acts.*] — The statement of claim was so drawn as to charge the two different defendants with separate acts of negligence causing damage to the plaintiff. It appeared, however, from the facts alleged, that, if the action lay at all, the two defendants each contributed to the injury in such manner as to make them joint tort feasors. An application by one of the defendants to stay all proceedings in the action unless the other defendant was struck out, was dismissed. *Bowness* v. *The City of Victoria, and the Consolidated Railway Company*, 5 B. C. R. 185.

4. Separate acts of different defendants.] — The statements of claim were so drawn as to charge the two different defendants with separate acts of negligence, causing damage to the plaintiff. It appeared, however, from the facts alleged, that if the actions lay at all, the two defendants each contributed to the injury in such manner as to make them joint tort feasors:—Held, by the Full Court, that the plaintiffs were entitled so to join the defendants. Sadler v. G. W. R. Co. (1885), 2 Q. B. 688; (1886), A. C. 450, distinguished. *Bowness* v. *The City of Victoria and the Consolidated Railway Company; Gordon* v. *The City of Victoria and the Consolidated Railway Company*, 5 B. C. R. 503.

JOINT TRANSFER.

1. Of undivided interest in mineral *claim.*]—*Cook* v. *Denholm*, 8 B. C. R. 39.

See MINES AND MINERALS. XXXI. 6.

2. Transferees—*Repudiation by one joint transferee—Effect of.*]—*Cook* v. *Denholm*, 8 B. C. R. 39.

See MINES AND MINERALS, XXXI. 6.

JOINT STOCK COMPANY.

See COMPANY.

JUDICATURE ACT.

1. Effect of—*As extending right to relief by injunction and receiver.*]—The firm of O. Brothers comprised three partners. One of them died, leaving L. his executrix. Three months afterwards, the surviving partners executed an assignment for the benefit of their creditors. Immediately thereupon, H., a general creditor who had not signed or acquiesced in the deed, brought an action for an account, not only against the two surviving partners, but also against L., as representing the estate of the deceased partner:—Held, that H. was entitled to an order for an injunction and receiver against the surviving partners and the trustees of the deed of assignment. Semble, since the Judicature Act, the formal matters which used to be essential on an application for a receiver or injunction, are no longer necessary; but the substantial matters necessary to be proved continue as before. Thus the application may be made in a case sounding in damages or the like; but the applicant must still, as heretofore, shew some claim upon the subject matter of the suit, or some special relation with the defendant against whom the injunction is asked. Semble, it is improper to endorse on the writ a claim that a particular person may be appointed receiver. *The Hudson Bay Company* (for themselves and all the creditors of Oppenheimer Bros.), *plaintiffs*, v. *A. R. Green and G. A. Sargeson, Lina Oppenheimer, the executrix of Godfrey Oppenheimer, deceased, and Oppenheimer Bros., defendants*, 1 B. C. R., pt. I., 247.

JUDICIAL DISTRICTS.

1. Power of Lieutenant-Governor to issue commissions of Oyer and Terminer—*32 & 33 Vic. c. 29, s. 11—Assize Court Act*, 1885.]—British Columbia (in 1885), not being divided into judicial districts for criminal purposes, any place in the Province was a good venue for the trial of a criminal case. (2) The Lieutenant-Governor in Council has authority to issue commissions of Oyer and Terminer. (3) A Judge of the Supreme Court has power to try criminal cases, apart from the authority of a commission of Oyer and Terminer, under s. 14, Judicature Act, 1879, and the Assize Court Act, 1885. *Regina* v. *Malott*, 1 B. C. R., pt. II., 207.

NOTE.—But this was overruled in Malott v. Reginam, post p. 212, but see Sproule v. Reginam, 1 B. C. R., pt. II., 219.

2. Venue—*Sheriff's* 1873 *Amendment Act*, 1878 — *Criminal Law Procedure Act*, 1869 (*Can.*).]—British Columbia was divided into judicial districts by the above Acts:—Held, overruling WALKEM, J., in Regina v. Malott (ante 1 B. C. R., pt. II., 207): A criminal must be tried in the county or judicial district where the crime is alleged to have been committed, in this case Kootenay district and not Kamloops, where the trial took place, and prisoner was discharged upon writ of error and ordered to be tried again. *Malott* v. *Reginam*, 1 B. C. R., pt. II., 212.

JUDICIAL SALES.

1. Of ships—*Refusal of purchaser to complete — Re-sale.*] — *Hackett* v. *S. Blakeley, ex parte Jones*, 9 B. C. R. 430.

See ADMIRALTY, V.

JUDICIAL SEPARATION.

1. Cruelty — *Condonation — Cruelty received by subsequent acts.*]—Where the husband had been guilty of cruelty, which had been condoned, but within the six months subsequent to the condonation had been guilty of violent and harsh treatment which would not originally of itself constitute a ground for separation, the Court granted a separation to the wife. *Town* v. *Town*, 7 B. C. R. 122.

See DIVORCE.

JUDGES.

1. A County Court Judge, sitting as Local Judge of the Supreme Court, has, under the statutes and rules, jurisdiction to make orders in actions in the Supreme Court which are domiciled in a registry outside the territorial limits of his jurisdiction as a County Court Judge. *Postill* v. *Traves*, 5 B. C. R. 374.

2. Appointment of.]—*Burk* v. *Tunstall*, 2 B. C. R. 12.

See CONSTITUTIONAL LAW, II.

3. A Judge has no jurisdiction to enter judgment for either party after the disagreement of the jury in an action ordered to be tried by a jury, but it must be retried before a jury. *Fan* v. *Fan*, 1 B. C. R., pt. II., 172.

4. Communications between Judge and jury.]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XV.

5. County Court.]—County Court Judge sitting as Local Judge of Supreme Court, has jurisdiction in an action domiciled outside his County Court district. *Postill* v. *Traves*, 5 B. C. R. 374.

6. "Court," distinction of from "Judge."] — *Re Horsefly Mining Co.*, 4 B. C. R. 165.

See COURTS, II. 2.

7. Criminal law — *Committal by bench warrant—Bail — Whether committing Judge functus officio.*]—*The Ruthven*, 6 B. C. R. 115.

See CRIMINAL LAW, V.

8. Evidence.]—Judge suggesting that evidence is unnecessary may be a ground for new trial. *Caldwell* v. *Davys*, 7 B. C. R. 156.

See PRACTICE, XX.

9. Jurisdiction.] — Jurisdiction of a Judge to vary order of another by adding condition, re payment of subsequent costs. *Lehman* v. *Wilkinson*, 3 B. C. R. 19.

See JUDGES.

10. Jurisdiction of Supreme Court—*Residence of—Whether subject to control by Provincial Legislature.*]—*The Thrasher Case*, 1 B. C. R. pt. I., 153.

See CONSTITUTIONAL LAW, II. 1.

11. Jurisdiction of County Court Judge.]—*Piel Ke-Ark-An.* v. *Reg.*, 2 B. C. R. 53.

See CONSTITUTIONAL LAW, II. 1.

12. Jurisdiction.]—A local Judge of the Supreme Court has no power to sit as a trial Judge in an action. *Brigman* v. *McKenzie*, 6 B. C. R. 56.

13. Jury.] — Judge is bound to submit question to jury if requested to do so. *Alaska Packers* v. *Spencer*, 10 B. C. R. 473.

See PRACTICE, XX.

14. Libel—*Functions of Judge in action for.*]—*Higgins* v. *Walkem*, 17 S. C. R. 225; *Wolfenden* v. *Giles*, 2 B. C. R. 279.

See LIBEL AND SLANDER.

15. Local Judge.]—A local Judge of the Supreme Court has no jurisdiction to make a winding-up order. An order made ultra vires should be moved against, not appealed from. *In re Kootenay Brewing Company*, 7 B. C. R. 131.

16. Local Judge.] — A County Court Judge for one county was requested by a Supreme Court Judge, being the acting County Court Judge for another county, to sit in lieu of himself whenever absent:—Held, that the County Court Judge had no jurisdiction to sit by virtue of such request, and that s. 8 of the County Courts Act empowers only a County Court Judge to make such request. *Bell & Flett* v. *Mitchell*, 7 B. C. R. 100.

17. Local Judge — *Jurisdiction of.*]—A County Court Judge sitting as Local Judge of the Supreme Court has, under the statutes and rules, jurisdiction to make orders in actions in the Supreme Court which are domiciled in a registry outside the territorial limits of his jurisdiction as a County Court Judge. *Postill* v. *Traves*, 5 B. C. R. 374.

18. Local Judge — *Powers of, to make order for ex juris writ.*]—*Tate* v. *Hennessey*, 7 B. C. R. 262.

See PRACTICE, XXXVIII. 5.

19. Local Judge.] — A Local Judge of the Supreme Court has no jurisdiction to make a winding-up order. *In re Kootenay Brewing Company*, 7 B. C. R. 403.

20. Note of Judge at previous trial, admissibility of at subsequent trial.]—*Cunliffe* v. *Cunliffe*, 8 B. C. R. 18.

See DIVORCE.

21. Notes of — *Evidence omitted from amendment of, by introducing same—Method of application for—Amendment.* 9 B. C. R. 328.

See APPEAL, VI.

22. Notes of—*Failure to obtain—No excuse or ground for extending time to set down appeal.*]—*Loring* v. *Sonneman*, 5 B. C. R. 135.

See APPEAL, VIII. 9.

23. Notes of—*Inability to obtain—Effect of.*]—*Kinney* v. *Harris*, 5 B. C. R. 229.

See APPEAL, VIII. 9.

24. Residence of—*Legislative authority to fix.*]—*Thrasher Case*, 1 B. C. R. pt. I., 153.

See CONSTITUTIONAL LAW, II. 1.

25. Supreme Court — *Jurisdiction as such under s. 14 Judicature Act*, 1879, *and the Assize Court Act*, 1885, *to try criminal cases without a commission of Oyer and Terminer. Reg.* v. *Malott*, 1 B. C. R. pt. II., 207.

See CRIMINAL LAW, IV.

26. Supreme Court Judge—*Jurisdiction of, to perform duties of County Judge.*]—The jurisdiction of a Supreme Court Judge to perform the duties of a County Court Judge, in an action in the County Court, does not attach until the existence of the statutory pre-requisites to the exercise of the jurisdiction are made to appear as a matter of fact. A Court on dismissing a motion for want of jurisdiction has power to award costs. *Hendryx* v. *Hennessey*, 3 B. C. R. 53.

27. Supreme Court.] — The Supreme Court has no power to decide the validity of the appointment of one of its members. *Stoddart* v. *Prentice*, 6 B. C. R. 308.

28. Supreme Court — *Judge of, has power to sign an order for another Judge.*]—*Gordon* v. *Catton*, 3 B. C. R. 499.

See PRACTICE, XV.

JUDGE'S CHARGE.

1. Exceptions to—*Not taken at trial do not afford ground for new trial.*]—*Hopkins* v. *Gooderham*, 10 B. C. R. 250.

See PRACTICE, XX.

2. Objections to.] — *Laing* v. *City of Victoria*, 2 B. C. R. 104.

See PRACTICE, XX.

3. Opinion as to evidence.]—It is not misdirection for the Judge to tell the jury his own opinion on the evidence before them. In his charge to the jury the Judge stated that he himself would pay very little attention to certain corroborative evidence adduced by defendants, but he told them that the matter was entirely for them to decide:—Held, not misdirection. *Harry et al.* v. *The Packers Steamship Company*, 10 B. C. R. 278.

JUDGMENT.

1. Admiralty.]—Judgment of Supreme Court cannot be enforced against ship, where receiver appointed by Exchequer Court.]—*Williamson* v. *Bank of Montreal*, 6 E. C. R. 486.

See ADMIRALTY, V.

2. Adverse action.]—A judgment in an adverse action under section 37 of the Mineral Act is not a judgment in rem. One co-owner of a mineral claim is not estopped by the result of such action instituted by an adverse claimant against another co-owner who has applied for a certificate of improvements. *Per* MARTIN, J.:—Section 37 does not apply to co-owners of the same claim, but to owners of conflicting claims. Decision of IRVING, J., affirmed. Berkley et al. v. Botsford and MacQuillan (1901), 8 B. C. 128, followed. *Fry et al.* v. *Botsford and MacQuillan* (two suits); *MacQuillan* v. *Fry*, 9 B. C. R. 254.

3. Alimony, action for arrears of, on consent judgment.]—Plaintiff in 1891 recovered a consent judgment against the defendant in Ontario for alimony and maintenance, the judgment being a confirmation, subject to certain provisions, of an agreement previously made for the maintenance of the wife and children:—Held, that an action lay on the judgment for arrears of alimony and maintenance. Nouvion v. Freeman (1889), L. R. 15 App. Cas. 1, specially referred to. *Hadden* v. *Hadden*, 6 B. C. R. 340.

4. Alteration of.]—(1) A Judge has power to alter his decree in matters of detail before it has been drawn up and settled, but has no power to virtually reverse it. *Yambesix* v. *Dotard*, 2 B. C. R. 91.

5. Appeal from—*Where final as to one and interlocutory as to others.*]—*Belcher* v. *McDonald*, 9 B. C. R. 377.

See APPEAL, VIII. 11.

6. Appeal—*When appealable.*]—Held, by the Full Court, *per* DAVIE, C.J., and WALKEM, J. (DRAKE, J., dissenting): A judgment is appealable from the moment that it is pronounced, and an objection to the hearing of an appeal, otherwise regular, that the judgment appealed from had not been entered, overruled. *Lang* v. *Victoria*, 6 B. C. R. 117.

7. By Court of own motion.]—On the trial of an action containing three different causes of action, one of which was an action for moneys had and received, another for damages for assault and false imprisonment, and a third for damages for procuring the plaintiff to enter a house of prostitution, the Judge, after reading the plaintiff's examination for discovery, came to the conclusion that the evidence disclosed an illegal contract under which the defendants were to receive a part of the moneys obtained by plaintiff while engaged in prostitution, and that the action involved the taking of an account in respect thereof, and was of an indecent character and unfit to be dealt with, and he dismissed it out of the Court of his own motion, the formal judgment stating that this Court doth of its own motion and without adjudicating as between the plaintiff and defendants on the matters in dispute between them, order that this action be dismissed out of this Court, with costs:—Held, by the Full Court, that the order dismissing the action would have precluded the plaintiff from again suing in respect of any of the causes of action included in the statement of claim, and that the plaintiff should have been allowed to prove her case in respect to those causes of action against which there was no objection; and that the respondent who supported the judgment on appeal must pay the costs of the appeal. Judgment of IRVING, J., set aside. *Guilbault et al.* v. *Brothier et al.*, 10 B. C. R. 449.

8. Costs—*Effect of consent to judgment on a motion for summary judgment.*]—A plaintiff who obtains judgment on a summons under Order XIV., issued after the expiration of the time for filing defence, is entitled to the costs of the summons and not only to such costs as he would have been entitled to had he taken judgment in default of defence. *Diamond Glass Co.* v. *Okell Morris Co.*, 9 B. C. R. 48.

9. Costs—*Security for.*]—Foreign plaintiff who holds unsatisfied judgment against defendant not required to give security for costs.]—*Horsefall* v. *Phillips*, 3 B. C. R. 352.

See PRACTICE, IX. 18.

10. Claim and counterclaim.—(2) Claim and counterclaim are treated as distinct actions up to execution, which will go for the difference or the sum of the two judgments, as the case may be. *Smith* v. *Hansen*, 2 B. C. R. 153.

11. Confession of judgment—*Fraudulent preferences—Pressure.*]—The Tramway Company being insolvent, the plaintiffs, on 29th December, obtained a default judgment against it, but did not issue execution thereon. On 13th January the Tramway Company obtained a Chamber summons, signed by a Judge, to set aside the plaintiffs' judgment as irregular and in breach of an agreement not to proceed. The summons contained the words "in the meantime let all proceedings be stayed." On 17th January the Bank of British Columbia commenced an action against the Tramway Company by specially endorsed writ, and on the morning of the 24th January, before the hour for the regular sitting of the Judge in Chambers, the Tramway Company, by their counsel, attended without summons in the Judge's private room and consented to an order for judgment thereon, which was immediately registered and execution issued. Afterwards, on the same morning, in Chambers, the summons of the Tramway Company to set aside the plaintiffs' judgment was argued; judgment was reserved, and on the 27th was delivered, dismissing the application. In an action to set aside or postpone the judgment and execution of the bank, as being a confession of judgment by the Tramway Company obtained by collusion, and therefore void within the meaning of the Fraudulent Preference Act: Held, *per* CREASE, J., at the trial: (1) That what took place was not a confession of judgment within the Act. (2) That there was pressure on the part of the Bank of the Tramway Company to do what they did, rebutting the inference that it was done with intent to prefer. Upon appeal to the Full Court: — Held, *per* DAVIE, C.J., and MCCREIGHT, J., that what took place was a confession of judgment. *Per* DAVIE, C.J., and DRAKE, J., that there was pressure rebutting

the intent to prefer. *Per* McCreight, J., that the plaintiffs' cause of action was not governed by the Act, but lay to the general equitable jurisdiction of the Court to relieve against a transaction whereby the plaintiffs, through no fault of their own, had, through the operation of the dilatory process of the Court by the Tramway Company, and its combination with the bank to expedite the latter, been deprived of the fruits of their prior judgment, and that there should be a new trial to obtain such findings of fact as would determine whether the bank was entitled, as against the plaintiffs, to take advantage of its priority of execution. *Per* Drake, J.: (1) A term in a summons signed by a Judge, "In the meantime let all proceedings be stayed," does not operate as a stay, but only as an intimation that upon its return a stay will be asked for. (2) The registration of a judgment against lands is not a breach of an order staying proceedings upon it. (3) Judgment for a bona fide debt consented to with the object of giving one creditor a priority over another, is not a collusive judgment or within the prohibition of the Act. *The Edison General Electric Company* v. *The Vancouver & New Westminster Tramway Company and The Bank of British Columbia*, 4 B. C. R. 460.

12. Counsel electing to take, in lieu of issue being ordered—*Whether appealable.*]—*Grutchfield* v. *Harbottle*, 7 B. C. R. 189.

See Fraudulent Conveyance.

13. Default of defence—*Specially endorsed writ.*]—The claim endorsed on the writ of summons was for a liquidated amount, but did not give the dates and items of credits. The defendant entered an appearance upon which was a note demanding a statement of claim, but did not serve on the plaintiff such demand as provided by S. C. Rule 182. The plaintiff signed judgment in default of a defence. Upon application to set aside the judgment:—Held, *per* Drake, J., granting the application, that the writ was not specially endorsed as not shewing dates and items of goods sold or credits. On appeal to the Divisional Court (Crease and McCreight, JJ.):—Held, reversing Drake, J., and allowing the appeal: That to obtain judgment in default of defence it is not necessary that the writ of summons should be specially endorsed. Semble, an endorsement on a writ of summons claiming balance due on a promissory note giving particulars of the note, but not of the credits, is a good special endorsement. *Mason* v. *Mason*, 4 B. C. R. 172.

14. Default of defence—*Costs of motion for in.*]—The costs to which a party is entitled on a party and party taxation are such costs as have been incurred by the act of the opposite party, and costs of the day of the trial thrown away by reason of the absence of the trial Judge, disallowed upon review, overruling the taxing officer. The quantum of counsel fees reviewed and reduced. *The William Hamilton Manufacturing Company* v. *The Victoria Lumber Company*. 5 B. C. R. 53.

15. Default—*Setting aside of judgment by—Time.*]—The dismissal of an application for leave to sign judgment under Order XIV., is equivalent to giving leave to defend, and the defendant has therefore eight days in which to deliver his defence unless otherwise ordered. *Pounder* v. *Corner*, 6 B. C. R. 177.

16. Default judgment signed by—*Jurisdiction.*]—After judgment had been signed in default of a dispute note in a County Court action, in which it did not appear on the face of the process that the Court had jurisdiction, the defendant filed a dispute note (what it contained was not shewn) and applied to set aside the judgment and for leave to defend on the merits, and on the hearing of the application, which was dismissed, facts were disclosed shewing that the Court had jurisdiction:—Held, on appeal, that County Court process should shew jurisdiction on its face, but that the defendants by filing the dispute note and applying for leave to defend on the merits had waived their right to object to the jurisdiction. *Beaton* v. *Solander et al.*, 9 B. C. R. 439.

17. Default of appearance—*Judgment as to—Setting aside.*]—Where an irregular appearance has been entered, the plaintiff cannot treat it as a nullity and sign judgment as in default, but must move to set it aside. *Gordon* v. *Roadley*, 6 B. C. R. 305.

18. Default judgment — *Foreign* — *Whether final.*]—A default judgment obtained in a foreign jurisdiction, though liable to be set aside, so long as it stands, is "final and conclusive," within the meaning of that expression as applied to foreign judgments, and consequently it may be sued on in this province. In an action on a foreign judgment the defendant is entitled to challenge the validity of the judgment on the ground that it is manifestly erroneous such as being founded on an ex facie void contract. The Province may create a company with power to undertake extra-territorial contracts of carriage, and so it is not ultra vires of a company incorporated in British Columbia to contract to carry goods from British Columbia to a point in the Yukon Territory. *Per* Martin, J.:—An exemplification of judgment under the seal of the Court in which the judgment was pronounced is equivalent to the original judgment exemplified, and notice under the Evidence Act of intention to produce it in evidence is unnecessary. *Boyle* v. *Victoria Yukon Trading Company*, 9 B. C. R. 213.

19. Doubt in—*Benefit of.*] — *Per* Hunter, C.J.: (1) It is incumbent on a successful party to take care that any order or judgment in his favour is drawn up in clear and unmistakable language, otherwise the benefit of any doubt as to its scope which cannot be resolved by reference to any prior contemporaneous record or other competent document, should be given to the party aggrieved. *Belcher* v. *McDonald*, 9 B. C. R. 377.

20. Election to take judgment against one of the parties.]—The plaintiff, Clara Semisch, sold a judgment of over $9,000 against K. to G., who was acting as agent for Mrs. K., to whom he at once assigned the judgment and received $1,000 from her therefor; G. by his instructions from Mrs. K. was limited to $1,000 as the purchase price of the judgment, but as he was interested in the architect's commission which he expected to receive out of the erection of a building proposed to be erected on the land

against which the judgment was registered, he agreed to pay plaintiff $1,000 in cash and $500 when the roof of the building was completed, or at the latest on 1st January, 1903, and he also agreed to enforce the judgment against K., and pay plaintiff half the proceeds he received; his agreement with plaintiff was contained in two writings, one being an assignment from plaintiff to G. of all her rights under the judgment for $1,000, and the other containing the additional terms of which Mrs. K. was not aware when she bought from G.; G. failed to pay plaintiff the additional $500, and plaintiff sued for it in the County Court, and although the fact came out in evidence during the trial that G. in buying the judgment had been acting as Mrs. K.'s agent, the plaintiff took judgment against G. Subsequently plaintiff sued G. and Mrs. K. to have the assignment set aside, or to have Mrs. K. declared a trustee for plaintiff:—Held: (1) That plaintiff by taking judgment against G. founded upon his promise contained in one of the documents which made up the transaction, elected to treat him as the sole principal; and (2) That Mrs. K. bought the judgment without any knowledge of the agreement between plaintiff and G., and was not bound by its terms. *Semisch* v. *Guenther and Keith*, 10 B. C. R. 371.

21. Entry of—*Right of party to compel.*]—*Lang* v. *City of Victoria*, 6 B. C. R. 104.

See PRACTICE, III., VIII.

22. Executors—*Against executors before administration decree — Priority of, against assets of the estate—C. S. B. C. c. 68, s. 4.*]—*Wilson* v. *Marvin*, 3 B. C. R. 327.

See EXECUTORS AND ADMINISTRATORS.

23. Full Court—*Jurisdiction to hear motion for.*]—The Full Court is an Appellate Court, and has no jurisdiction to hear a motion for judgment on the findings of a jury referred to it by a trial Judge. *McKelvey* v. *Le Roi Mining Company, Limited*, 8 B. C. R. 268.

24. Interest from verdict.]—Plaintiff obtained a verdict at the trial, but the trial Judge dismissed the action. The Full Court allowed the plaintiff's appeal and ordered that judgment be entered in plaintiff's favour for the amount of the verdict:—Held, that plaintiff was entitled to interest from the date of the verdict. *Gordon* v. *The Corporation of the City of Victoria*, 7 B. C. R. 339.

25. Interest—*Right to on judgment.*]—*Foley* v. *Webster*, 3 B. C. R. 30.

See INTEREST.

26. Interest — *Judgment by default — Claim for.*]—Held, *per* BEGBIE, C.J., CREASE, and IRAKE, JJ.: A claim specially endorsed on writ for amount of an account rendered and "for interest thereon at six per cent. until judgment" is not a liquidated demand under Order III., Rule 6, and an order setting aside judgment thereon as in default of appearance, sustained. *McClary Manufacturing Co.* v. *Corbett*, 2 B. C. R. 212.

27. Lands — *Judgment only binds lands belonging to judgment debtor.*]—*Townend* v. *Graham*, 6 B. C. R. 539.

See VENDOR AND PURCHASER.

28. Jury—*When disagree, judgment cannot be entered for either party.*]—Where an issue has been ordered to be found by a jury and the jury have disagreed, and been discharged without giving a verdict, the order for trial by jury is not exhausted, and the Judge on motion for judgment, cannot direct judgment to be entered for either party. *Loo Chu Fan* v. *Loo Chock Fan*. 1 B. C. R., pt. II., 172.

29. Precedent—*Pronouncement effects a.*]—An order once pronounced will be given effect to and followed by every Judge and Court of inferior or co-ordinate jurisdiction, and no order will be made inconsistent therewith. *Gabriel* v. *Mesher*, 3 B. C. R. 159.

30. Pronouncement of — *Time—Crown suit to set aside certificate of improvements.*]—Held, by MARTIN, J., that a judgment signed by him and left by him for deposit in the mail at Victoria on August 11th, 1899, was pronounced on that date, although the judgment did not apparently reach the Vancouver registry to which it was addressed until the 15th. In an action by the Attorney-General to set aside a certificate of improvements on the ground that it was obtained by fraud, the fraud alleged was a statement in an affidavit of defendant's agent sworn on 10th August, 1899, that the defendant was in undisputed possession of the Pack Train mineral claim. On 10th August, 1899, an action was then pending as to the title of the Pack Train claim and judgment was not delivered till 11th August, 1899, in favour of the defendant. As it was after the 11th August when the affidavit reached the gold commissioner:—Held, not fraud within s. 37 of the Mineral Act. The application to the Minister of Mines under s. 10 of the Mineral Act Amendment Act, 1899, need not be in writing. *Attorney-General* v. *Dunlop*, 7 B. C. R. 312.

31. Purchase of—*Mutual misconception of terms.*]—*Manley* v. *McIntosh*, 10 B. C. R. 84.

See VENDOR AND PURCHASER.

32. Re-argument after, and varying before order drawn up.]—Upon an appeal from an order discharging a defendant from a ca. sa., the Court held that the defendant was entitled to be discharged on a point not taken by counsel, and delivered a verbal judgment dismissing the appeal without costs. The next day, before the order was drawn up, counsel for plaintiff brought authorities to the attention of the Court contrary to the view upon which the appeal was dismissed, and asked leave to re-argue:—Held, that it is the discretion of the Court to vacate an order before it is drawn up. *Kimpton* v. *McKay*, 4 B. C. R. 196.

33. Registration of.]—A registered judgment binds only the interest of the debtor existing at the time of registration, and therefore cannot affect a mortgage already given by the debtor, although such mortgage is not registered before the judgment. *Yorkshire Guarantee and Securities Corporation* v. *Edmonds et al.*, 7 B. C. R. 348.

34. Registration of—*Not a bar to foreclosure proceedings.*] — *In re Giant Mining Co.*, 10 B. C. R. 327.

See COMPANY, IX. 6.

35. Registration of—*Effect of after delivery of writs to sheriff.*]—Held, by the Full Court, DAVIE, C.J., CREASE and DRAKE, JJ., affirming MCCREIGHT, J.: A purchaser at sheriff's sale under a writ of fi. fa., has no status to question a subsequent judgment of the Court setting aside the judgment except by intervening as indicated in *Jacques* v. *Harrison*, 33 Q. B. D. 130-165. The registration of a judgment in the land registry office before the delivery of fi. fa. lands thereunder to the sheriff is a condition precedent to the efficacy of the writ in the sheriff's hands, and sale thereunder under ss. 31 and 32 of the Execution Act, C. S. B. S. (1888) c. 42. *Per* DRAKE, J.: The purchaser at the sheriff's sale being the solicitor for the plaintiffs in the action, was not within the protection against irregularities given by s. 43 of the Execution Act, supra, to purchasers at sheriff's sales under execution. *Per* DAVIE, C.J.: There cannot be a counterclaim to a petition of right. *Spiers* v. *The Queen and Corbould*, 4 B. C. R. 388.

36. Rules of 1880—*Admitting to defend—Discretion.*]—Upon a motion for leave to sign a final judgment under Order XIV., S. C. Rules of 1880, if a Judge thinks that a good defence is bonâ fide intended to be set up, or if he is doubtful, he must give leave to defend, but he has a discretion as to the terms of the leave, and in exercising the discretion regard should be had to the chances of the defence being successful. *Hotz* v. *McAllister*, 2 B. C. R. 77.

37. Rule 74.]—A plaintiff, who has obtained final judgment against one of two defendants sued upon a joint liability, may afterwards, under Rule 74, proceed to judgment against the other defendants. *Zweig* v. *Morrissey*, 5 B. C. R. 484.

38. Sale of land under Judgments Act—*Equitable mortgagee—Notice.*] — In 1891, O'Brien pre-empted provincial Crown land, and in 1898, Manley obtained a judgment against him which provided that he might cut timber from off O'Brien's pre-emption and apply the proceeds in satisfaction of the judgment, and which restrained O'Brien for six months from cutting or selling timber. Manley registered his judgment in 1899. In January, 1900, O'Brien agreed to sell to Mackintosh the timber for $1,500 payable at various times, part of the consideration being the fees payable to the Crown for Crown grant and on these being advanced by Mackintosh, the Crown grant was delivered to him as security for such advance. Plaintiff moved for liberty to sell the land under his judgment, and DRAKE, J., made an order for sale, and holding that Mackintosh, being an equitable mortgagee, was excluded by the statute:—Held, by the Full Court, reversing DRAKE, J., that the sale should be subject to Mackintosh's interest: — Held, also (*per* MARTIN, J.), that as the plaintiff at the trial induced the Court to grant him a judgment recognizing defendant's right to timber, he was estopped from afterwards contending that the defendant had no right to dispose of timber. *Manley* v. *O'Brien: In re Mackintosh*, 8 B. C. R. 280.

39. Setting aside — *Vacation rule* 736 (*d*).]—*Green* v. *Stussi*, 6 B. C. R. 193.

See VACATION.

40. Special endorsement.] — A statement of claim having been required, if no other statement of claim is delivered, there must be a good special endorsement under Rule 15 to sustain a default judgment under Rule 242. *Hassard* v. *Riley*, 6 B. C. R. 167.

41. Special endorsement—Claim for interest until judgment at certain rate necessitating computation. *B. C. L. & I. A.* v. *Thain*, 4 B. C. R. 321.

42. Special endorsement — *Sufficiency of.*]—*Croft* v. *Hamlin*, 2 B. C. R. 333.

See BILL OF EXCHANGE ACT.

43. Stamps—*Application to set aside judgment for want of stamps on summons.*] — *Aldrich* v. *Nest Egg Co.*, 6 B. C. R. 53.

See PRACTICE, XVII.

44. Title—*Judgment when title has not been established by either party.*]—*Ryan* v. *McQuillan*, 6 B. C. R. 431.

See MINES AND MINERALS, XLIV.

45. Under Order XIV. — *Bills of Exchange Act* (*Can.*) 1890, s. 57—*Interest—Liquidated demand.*]—*B. C. Corp.* v. *Coughlin et al.*, 3 B. C. R. 273.

See PRACTICE, XXXVIII. 10.

46. Under Order XIV. — *Time.*] — A Judge has no power to shorten the four days' notice of a motion for judgment required by Order XIV., Rule 2. *Wheaton* v. *Allice & Ault*. 3 B. C. R. 306.

47. Under Order XIV.—*Contract—Construction of—Covenant to indemnify—Liquidated or unliquidated demand — Variation between endorsement and affidavit verifying.*] —*Baker* v. *Daily*, 3 B. C. R. 289.

See PRACTICE, XXXVIII. 10.

48. Under Order XIV.—*Practice—Writ of summons—Sufficiency of special endorsement—Obtaining judgment under Order XIV. after amendment of—Time.*]—In an action to recover the amount of a promissory note, presentment for payment, dishonour and notice thereof to the endorser, must be stated in the special endorsement of the writ to warrant an order for judgment against the endorser, under Order XIV., but need not be alleged to warrant judgment against the maker. When an order amending the special endorsement upon a writ of summons is made, the writ with the new special endorsement must be reserved upon every defendant affected by the amendment. If such defendant has already appeared, such appearance stands as an appearance to the amended writ (following Paxton v. Baird, 1891, 1 Q. B. 139), and the plaintiff can apply for judgment under Order XIV., but judgment cannot be directed to be entered against him before the lapse of eight days from the service of the amended writ. *More* v. *Patterson*, 2 B. C. R. 302.

See PRACTICE, XXXVIII. 10.

49. Vacation—*Setting aside of judgment delivered in.*]—Where a trial was called before vacation, but not proceeded with, and was

adjourned to a day in vacation and then proceeded with in the defendant's absence, the judgment may be set aside, as the trial was not "pending" within the meaning of Rule 736 (d) and so could not be heard in vacation. *Green* v. *Stussi*, 6 B. C. R. 193.

See also ADMIRALTY—APPEAL—MINES AND MINERALS, XXXVI.—PRACTICE, VIII., IX., XXXVIII. 10.

JUDGMENT CREDITOR.

1. Appointment of receiver—*No right to have, by way of equitable execution until legal remedies exhausted.*]—A receiver for the purpose of giving a judgment creditor equitable relief will not be appointed until the judgment creditor has exhausted his legal (as distinguished from equitable) remedies. *Davidge* v. *Kirby*, 10 B. C. R. 231.

2. Of insolvent estate—*Priorities of.*]—*Wilson* v. *Marvin*, 3 B. C. R. 327.

See INSOLVENCY.

3. Rights of, with respect to legatee.] In 1874, one E. H. became entitled to a general legacy of $10,000, bequeathed to him by his brother J., who appointed as his executor another brother T., with whom he was in partnership. On J.'s death, T. entered into possession of the whole partnership property, and paid half the legacy to E. in 1875. E. sued T. and recovered judgment by default for the balance on January 24th, 1889, which judgment was registered February 28th, 1889. In the meantime T. had charged the whole property for large sums to various creditors, who obtained and registered judgments before January 24th, 1889, before which date also judgment was obtained against T., and registered by a simple contract creditor C. Receivers having been put in possession of T.'s estate, sold the same under order of Court, and after certain mortgage debts and expenses were paid off with the sanction of the Court, the balance left was insufficient to pay off the charges registered before E.'s judgment. In an action by E. for an inquiry as to what assets of J. came into hands of T., or the receivers, to have his judgment declared entitled to priority over the other registered charges and to restrain the receivers:—Held, *per* BEGBIE, C.J., that the action must fail as against all the defendants, for E. was not a mere judgment creditor of T., and no longer a legatee, and he had not shewn that any moneys in the receiver's hands were impressed with a trust in his favour. But held, on appeal, *per* MCCREIGHT and WALKEM, JJ., that the action lay as against the simple contract creditor C., but not, semble, as against the secured creditors, by reason of ss. 32-36 of the Land Registry Act. *Per* DRAKE, J., dissenting, the action was misconceived and should have been launched as an administration action. *Ezekiel Harper* v. *Thaddeus Harper, Thomas Dixon Galpin, Henry Slye Mason, The Canadian Pacific Land and Mortgage Company, Limited, The British Columbia Land and Investment Agency, Limited, John Cameron and Henry Slye Mason and James Charles Prevost, as Receivers of the Estate of the said Thaddeus Harper.* 2 B. C. R. 15.

See also ARREST—ASSIGNMENTS FOR CREDITORS — DEBTOR AND CREDITOR — JUDGMENT DEBTOR—REGISTRATION OF DEEDS.

JUDGMENT DEBTOR.

1. Corporation — *Examination of officer of — Return of nulla bona.*] — A judgment debtor is examinable under Rule 486, notwithstanding that a fi. fa. in the sheriff's hands has not yet been returned nulla bona. *Steele* v. *Pioneer Trading Corporation*, 6 B. C. R. 158.

2. Costs — *Examination where judgment for costs only.*]—Section 11 of the Execution Act, S. C. B. C. 1888, c. 42, providing for the examination of a judgment debtor "as to the means or property he had when the debt or liability was incurred, refers to the debt or liability to recover which the action was brought and does not apply to a judgment for costs only. When an order is made after service of a summons upon which the opposite party does not attend, it will be treated as an ex parte order and may be re-heard in Chambers and rescinded. *Griffiths* v. *Canonica*, 5 B. C. R. 48.

3. Costs—*Examination where judgment for costs only.*]—A person against whom a judgment has been recovered for costs only, is examinable as a judgment debtor under Rule 486, but not under R. S. B. C. c. 10, s. 19. Griffiths v. Canonica, 5 B. C. 48, followed. *Drosdoritz* v. *Manchester Fire Assurance Company*, 6 B. C. R. 269.

4. Examination of—*Incurring debt by fraud—Practice—R. S. B. C.* 1897, c. 10, *ss.* 15, 16 *and* 19.] — Defendant received from plaintiff several sums of money, part of which were to be invested and part expended on plaintiff's farm. Defendant placed these moneys to his wife's credit, made no investment, kept no accounts and could not account at all for a large portion, although he said it had been expended on the farm. Before the plaintiff got judgment and while the action was pending defendant allowed his wife and sister-in-law to get judgment against him. Held, by the Full Court, reversing DRAKE, J., that the defendant had not incurred the debt by fraud or false pretences within the meaning of s. 15 of the Arrest and Imprisonment for Debt Act. An appeal lies direct from an order committing a debtor to gaol and no preliminary motion to the Judge for discharge is necessary. *Bullock* v. *Collins*, 8 B. C. R. 23.

5. Maintenance money must be advanced by creditor.]—*Jensen* v. *Shepperd*, 3 B. C. R. 126.

See ARREST.

6. Order for committal — *Necessity to shew cause for summons—Whether an appearance in pursuance of notice of solicitor operates as waiver.*] — A notice by a judgment creditor's solicitor of an application to a magistrate of a Small Debts Court, for an order to commit a judgment debtor because of failure to pay instalments ordered to be paid on the return of a judgment summons, is a nullity. A judgment debtor by appearing pursuant to such notice does not waive his right to object at any stage. *In re The Small Debts Act: In re Waxstock*, 9 B. C. R. 433.

7. Practice in garnishee proceedings.]—Where a garnishee disputes his liability to a judgment debtor, the Court has no power to order execution against him, but will

direct an issue to try the same, and where the garnishee's alleged indebtedness is to a third party, such party must be summoned, and, if necessary, an issue ordered to try his liability to the judgment debtor. *Mount Royal Milling, etc., Co. (limited), Judgment Creditors* v. *Kwong Mau Yuen, Judgment Debtor, and James Leavy, Garnishee.* 2 B. C. R. 171.

8. Right of, to counsel on examination.]—The examination of a judgment debtor is a personal examination, and he is not entitled to the assistance of counsel to take part in such examination, but he can have counsel to privately advise him. *Bank of Montreal* v. *Major and Eldridge*, 5 B. C. R. 156.

See also ARREST—DEBTOR AND CREDITOR—PRACTICE, XI. 4.

JURA REGALIA.

1. In respect to land.]—*Bainbridge* v. *E. & N. Ry.*, 4 B. C. R. 194.

See MINES AND MINERALS, XV.

JURAT.

1. Affidavit — *In form "A" Provincial Elections Act—Variation of jurat in.*]—*In re Provincial Elections Act*, 10 B. C. R. 114.

See ELECTIONS.

2. Place of swearing omitted in *Effect of.*]—*Brown* v. *Jowett*, 4 B. C. R. 73.

See also CHATTEL MORTGAGE—AFFIDAVIT—MINES AND MINERALS, IV.—PRACTICE, II.

JURISDICTION.

1. Abduction—*Correspondence from foreign state—Jurisdiction to try.*] — *Reg.* v. *Blythe*, 4 B. C. R. 276.

See CRIMINAL LAW, I.

2. Affidavit — *Requisites of as jurisdictional—An affidavit leading to an order for substituted service is a jurisdictional affidavit.*] —An affidavit leading to an order for substituted service under s. 130 of the Companies Act on an extra provincial company licensed to do business in British Columbia should shew clearly that the company is an extra-provincial one licensed to do business in the province. On an application to set aside an order for substituted service it is discretional with the Judge to allow plaintiffs to read further affidavits setting out facts omitted in the affidavit on which the order was made, and where in the exercise of his discretion he refused leave, the Court on appeal will not interfere. Judgment of IRVING, J., affirmed, HUNTER, C.J., dissenting. *Center Star Mining Company, Limited*, v. *Rossland Great Western Mines, Limited, et al.* (*No.* 2.). 10 B. C. R. 262.

3. Appeal—*To extend time for.*] — The Court has no jurisdiction to extend the time limited by s. 76 of the Supreme Court Act as amended by B. C. Stat. 1899, c. 20, for giving notice of appeal. A respondent by applying for security for the costs of appeal does not waive his right to object that the appeal was not brought in time. *Sung* v. *Lung*, 8 B. C. R. 423.

4. Appeal—*Right of, is not a matter of jurisdiction.*]—*Can. and Yukon Co.* v. *Casey*, 7 B. C. R. 373.

See APPEAL, VII.

5. Appearance—*Filing of—A waiver of objection to jurisdiction.*]—*Laing* v. *Sonneman*, 5 B. C. R. 135.

See PRACTICE, XXXVI.

6. Ballots—*Jurisdiction of Court to order production of, by Provincial Secretary for recount.*]—*Re Fernie Election Petition*, 10 B. C. R. 151.

See ELECTIONS.

7. Chamber summons—*Jurisdiction of Judge to entertain application on where issued in registry other than where writ issued.*]—*Re Ellard*, 2 B. C. R. 235.

See PRACTICE, V.

8. County Court—*Jurisdiction of to make personal order to pay amount over $1,000 as auxiliary to relief by way of enforcement of a mechanic's lien.*] — *Post* v. *Jones*, 2 B. C. R. 250.

See MECHANIC'S LIEN.

9. County Court Judge—*When requested to sit by Supreme Court Judge acting as a local Judge.*]—*Bell & Flett* v. *Mitchell*, 7 B. C. R. 100.

See JUDGES.

10. County Court — *Jurisdiction of to abridge time for notice of trial.*]—*Higginbotham* v. *Jordan*, 8 B. C. R. 126.

See COURTS, I. 2.

11. County Court—*Jurisdiction of in action for trespass.*]—*Aldous* v. *Hall Mines*, 6 B. C. R. 394.

See MINES AND MINERALS, XLV.

12. County Court — *Jurisdiction of in Crown actions.*]—*The King* v. *Campbell*, 8 B. C. R. 208.

See COURTS, I. 2.

13. County Court Judge—*Jurisdiction of in criminal matters under Speedy Trials Act.*]—*Pict[illegible] Ass.* v. *Queen*, 2 B. C. R. 53.

See CONSTITUTIONAL LAW, II. 1.

14. County Court jurisdiction in equity in respect to leaseholders.]—*B. C. Board of Trade Ass.* v. *Tupper*, 8 B. C. R. 291.

See COURTS, I. 2.

15. County Court — *Objection to jurisdiction of, not permissible on appeal where action tried by consent.*]—*Robitaille* v. *Mason*, 9 B. C. R. 499.

See FALSE IMPRISONMENT.

16. Divisional Court—*Of.*]—*Fuller* v. *Yerxa*, 1 B. C. R., pt. II., 330; *Tai Yun Co.* v. *Plum*, 2 B. C. R. 348.

See APPEAL, V.

17. Exchequer Court—*Jurisdiction of.*] —*Rithet* v. *Barbara Boscowitz*, 3 B. C. R. 445.

See ADMIRALTY, IV.

18. Full Court—*Inherent jurisdiction to prevent abuse of processes.*]—*Bodi* v. *Crow's Nest Pass Coal Co.*, 9 B. C. R. 332.

See PRACTICE, XV.

19. Full Court — *To hear application which may be made to single Judge.*]—*Rex* v. *Tanghe*, 10 B. C. R. 297.

See CERTIORARI.

20. Full Court jurisdiction to hear motion for judgment.]—*McKelvey* v. *Le Roi Mining Co.*, 8 B. C. R. 208.

See COURTS, II. 2.

21. Gold Commissioner — *Jurisdiction of.*]—*Burke* v. *Tunstall*, 2 B. C. R. 12.

See MINES AND MINERALS, XXXV. 1.

22. Habeas corpus—*Jurisdiction in, after appeal to County Court.*]—*Rex* v. *Beamish*, 8 B. C. R. 171.

See CRIMINAL LAW, IV.

23. Local Judge — *No jurisdiction to make winding-up order.*] — *In re Kootenay Brewing Co.*, 7 B. C. R. 131.

See JUDGES.

24. Local Judge—*Jurisdiction to make order for ex juris writ.*]—*Tetc et al.* v. *Hennessey*, 7 B. C. R. 262.

See PRACTICE, XXXVIII. 5.

25. Justice of Peace — *Necessity for shewing that offence was committed within jurisdiction of.*]—*Reg.* v. *Ackerman*, 1 B. C. R., pt. I., 255.

See HABEAS CORPUS.

26. Justice of Peace—*Jurisdiction of.*] —*Re Nunn*, 6 B. C. R. 464.

See HABEAS CORPUS.

27. Mechanic's lien — *Jurisdiction of Supreme Court Judge to enforce.*]—*Martin* v. *Russell et al.*, 2 B. C. R. 98.

See MECHANIC'S LIEN.

28. Objection to—*Raised first time on appeal.*]—*Gelinas* v. *Clark*, 8 B. C. R. 42.

See MINES AND MINERALS. XXVI.

29. Objection to—*On appeal—Not a preliminary objection — Notice thereof not required.*]—*In re B. T. Rogers*, 9 B. C. R. 373.

See MUNICIPAL CORPORATIONS, IX.

30. Prohibition—*Statement of facts in order, as to jurisdiction of County Court Judge, may be contradicted.*] — *Re W. N. Bole*, 2 B. C. R. 208.

See PROHIBITION.

31. Reference—*Order for, is a matter of jurisdiction, and not of practice.*]—*Williams et al.* v. *Faulkner et al.*, 8 B. C. R. 197.

See COURTS, II. 2.

32. Service out of.] — *Oppenheimer* v. *Sperling*, 7 B. C. R. 96.

See PRACTICE, XXXVIII. 5.

33. Small Debts Court — *Jurisdiction of.*]—*Dillon* v. *Sinclair*, 7 B. C. R. 328.

See COURTS, IV.

34. Stay of proceedings — *Jurisdiction to grant — When exercisable.*] — *Nicol* v. *Pooley*, 9 B. C. R. 363.

See PRACTICE, IX.

35. Trustees — *Jurisdiction inherent in Court of Equity.*]—*Re Dickenson*, 2 B. C. R. 262.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

36. Trustees — *Proceedings when one of the trustees is outside the jurisdiction.*]—*In re Spinks Trusts*, 6 B. C. R. 375.

See TRUSTS.

37. Waiver of right to object to.]—*Howey & Reid* v. *Dominion Permanent Loan Co.*, 6 B. C. R. 551.

See PRACTICE, XXXVI.

38. Waiver of right to object to—*By filing dispute note.*]—*Beaton* v. *S. Jolander*, 9 B. C. R. 439.

See COURTS, I. 2.

39. Yukon Courts—*Jurisdiction to make order of reference.*] — *Stevenson* v. *Parkes*, 10 B. C. R. 387.

See COURTS, II. 2.

40. Yukon appeals — *Jurisdiction of Full Court to hear.*]—*Can. and Yukon P. & M. Co.* v. *Casey*, 7 B. C. R. 373.

See APPEAL, X.

See also APPEAL—COURTS—CRIMINAL LAW—JUDGES—MINES AND MINERALS, XXVI. —PRACTICE. XV.

JURY.

1. A jury drawn from a limited part of the shrievalty is a good panel, when such part is made a separate judicial district for the purpose of criminal trials. *Sproule* v. *The Queen*, 1 B. C. R., pt. II., 219.

See CRIMINAL LAW, XV.

2. Adverse action—*Not a jury action.*]—Held, by McCREIGHT, J. (the Full Court not dissenting), that ss. 144 to 150 of the Mineral Act, 1896, refer only to procedure in the County Courts. In an action to enforce an adverse claim, and for a declaration that the plaintiff was entitled to the right of possession to that portion of the "Paul Boy" mineral claim in conflict with the "Lookout" mineral claim and that the "Lookout" be declared invalid, the defendants asked for a jury:—Held, by the Full Court, DAVIE, C.J., and DRAKE, J. (McCOLL, J., concurring), affirming McCREIGHT, J.: 1. That as the relief prayed was such as could not have been obtained in a common law action prior to the Judicature Acts, the issues were not proper for trial by a jury. 2. That the character of the action will be determined from the issues raised on the pleadings. *Corbin* v. *Lookout Mining and Milling Company (Foreign)*, 5 B. C. R. 281.

3. Allowed to retire during evidence as to matter for Judge alone.]—On a trial by jury after the plaintiff's case has commenced, the Judge may, in his discretion, permit the jury to retire while proof is being given of facts with which the Judge alone is concerned. *Bank of B. C.* v. *Oppenheimer et al.*, 7 B. C. R. 448.

4. Application for — *Before joinder of issue.*]—*Bank of Montreal* v. *Major*, 5 B. C. R. 155.

See PRACTICE, XVI.

5. Charge to jury—*Should define crime and explain it.*]—*Rex* v. *Wong On et al.*, 10 B. C. R. 555.

6. Civil cases in Cassiar and Kootenay.]—The provisions of C. S. B. C. c. 31, s. 47, providing for trial of civil cases before a jury of eight, are in force in the electoral districts of Cassiar and Kootenay. *Hogg* v. *Farnell*, 4 B. C. R. 534.

7. Communications between Judge and jury.]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XV.

8. Contract—*Action by engineer for fees.*]—An action by an engineer for making an examination and report upon a mineral claim, in which the defence denied the contract and set up that the report made was unsatisfactory and of no value, is within Rule 333, and either party is entitled to trial by a jury. The action had been brought down to trial without a jury, and been postponed, and the evidence of a witness subsequently taken, de bene esse:—Held, that the facts did not amount to a waiver of the right to a jury, or constitute an agreement to try without a jury. *Ferguson* v. *Thain*, 3 B. C. R. 447.

9. Contributory negligence—*Question of, is one for the jury to decide.*]—*Love* v. *New Fairview Corp.*, 10 B. C. R. 330.

See NEGLIGENCE.

10. Costs of jury trial follow verdict.]—*Gibson* v. *Cook*, 5 B. C. R. 534.

See PRACTICE, IX. 1.

11. Cross-examining questions to — *Right of, to find general verdict.*]— The jury may believe part and reject part of a witness' evidence. Cross-examining questions to a jury are not to be encouraged, as they are calculated to induce the jury to stand on their undoubted right to return a general verdict. *Steves* v. *The Corporation of the District of South Vancouver*, 6 B. C. R. 17.

12. Criminal law—*Trial—Criminal law—Practice—Jury separating—Verdict, delivery of.*]—After the jury had been given in charge, one of the jurymen was taken with a fit and removed, in charge of the sheriff and his physician, to his residence. The remainder of the jury subsequently adjourned to the sick man's house, where upon his recovery a verdict of "guilty" was rendered. — Held, that after the verdict had been recorded, it could not be disturbed. *Queen* v. *Peter*, 1 B. C. R. pt. I., 2.

13. Disagreement.] — Where an issue has been ordered to be found by a jury, and the jury have disagreed, and been discharged without giving a verdict, the order for trial by jury is not exhausted, and the Judge, on motion for judgment, cannot direct judgment to be entered for either party. *Loo Chu Fan* v. *Loo Chock Fan*, 1 B. C. R. pt. II., 172.

14. Disregarding material undisputed facts—*Right to new trial.*]—*Dobson* v. *Suter*, 1 B. C. R., pt. II., 375.

See PRACTICE, XIV.

15. Discharge — *Re-calling and amending verdict—Effect of.*]—After judgment was pronounced and the jury was discharged, at the direction of the Court, the jury was re-called and asked certain questions as to the meaning of the verdict, and the verdict was amended accordingly: — Held, that whatever was done after the discharge of the jury was a nullity. *Waterland* v. *City of Greenwood*, 8 B. C. R. 396.

16. Evidence — *Written contract — Parol evidence.*]—Whether written instructions constituted the whole of the contract was a question that should be submitted to jury.]—*Harris* v. *Dunsmuir*, 6 B. C. R. 505.

See CONTRACT, III.

17. Facts—*In issue must be submitted to.*]—*McAdam* v. *Kickbush*, 10 B. C. R. 358.

See PRACTICE, XX.

18. Findings of inconclusive.]—*Nightingale* v. *Union Colliery*, 8 B. C. R. 134.

See RAILWAYS, III.

19. Findings of—*Setting aside.*]—*McKinnon* v. *Pabst Brewing Co.*, 8 B. C. R. 265.

See CONTRACT, IV. 1.

20. Findings of — *As to necessity of workmen using apparatus.*] — *Davies* v. *Le Roi Mining Co.*, 7 B. C. R. 6.

See MASTER AND SERVANT, IV. 2.

21. Findings of — *Conclusive, if reasonable.*]—*Pender* v. *War Eagle C. M. and D. Co.*, 7 B. C. R. 162.

See MASTER AND SERVANT, IV. 2.

22. Findings of as to defective machinery—*Sufficient to support judgment.*]—*Warrington* v. *Palmer et al.*, 7 B. C. R. 414.

See MASTER AND SERVANT, IV. 2.

23. Findings of — *Sufficiency of.*]—*McMillan* v. *Western Dredging Co.*, 4 B. C. R. 122.

See PRACTICE, XX.

24. Findings of—*Effect of.*]—*Foley* v. *Webster*, 2 B. C. R. 137.

See MASTER AND SERVANT, IV. 2.

25. Functions of — *In an action for libel.*]—*Wolfenden* v. *Giles*, 2 B. C. R. 279.

See LIBEL AND SLANDER.

26. Grand jury—*Demented juror.*] — A sheriff when about to summon, pursuant to s. 48 of the Jurors' Act, one of the jurors drafted to serve on a grand jury, ascertained that the juror was demented, and did not summon him:—Held, that the grand jury was not legally constituted, and that an indictment found by the jurors who had been summoned must be quashed. A motion to quash such an indictment is not an objection to the constitution of the grand jury within the meaning of s. 656 of the Criminal Code. *Rex* v. *Hayes*, 9 B. C. R. 574.

27. Grand jury—*Right of to peruse depositions.*]—*Reg.* v. *Howes*, 1 B. C. R., pt. II., 307.

See CRIMINAL LAW, XV.

28. Injunction action.]—An action for an injunction is proper for a trial by a jury. *Canadian Pacific Railway Co.* v. *Parke et al.*, 5 B. C. R. 507.

29. Jurors' Act — *Compliance with.*]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XV.

30. Order for, providing that jury not to be composed of ratepayers.]—*Biggar* v. *City of Victoria*, 6 B. C. R. 130.

See VENUE.

31. Mining suit—*Extra lateral rights.*] —By Rule 331, a Judge may direct a trial without a jury of any issue, which previous to the Judicature Act could, without any consent of parties, have been tried without a jury, and by Rule 332 he may direct the trial without a jury of any issue requiring any scientific investigation which in his opinion cannot conveniently be made without a jury. In a mining suit respecting extra lateral rights, the plaintiff company sued for an injunction restraining the defendant company from sinking an incline shaft in plaintiff's claim, and for damages. The defence was that the incline shaft was commenced within the lines of defendant's location upon a vein, the apex of which lay inside such surface lines extended downward vertically, and that that vein had been followed upon its dip. The plaintiff company applied for a trial with a jury:—Held, by MARTIN, J., dismissing the application, that before the Judicature Act the plaintiff company would have had the right to have the case tried by a jury, and that it has it now under Rule 331, but that there was an issue in the action requiring scientific investigation which could not conveniently be tried by a jury. *Iron Mask* v. *Centre Star*, 6 B. C. R. 471.

32. Malicious prosecution — *Questions for jury.*] — Findings as to reasonable care taken to be informed as to the facts before commencing prosecution. *Baker* v. *Kilpatrick*, 7 B. C. R. 150.

See MALICIOUS PROSECUTION.

33. Mis-direction.] — It is not a misdirection for Judge to state his opinion of the evidence.]—*Harry et al.* v. *Packers S. S. Co.*, 10 B. C. R. 258.

See PRACTICE, XX.

34. Panel — *Directory provisions of Jury Act.*]—If on the trial of an action in the Supreme Court twenty persons do not appear from which a jury may be selected, the panel may be quashed. The provisions of the Jurors' Act relating to the procedure to be followed by the sheriff in summoning a jury are not imperative but directory, and an irregularity in respect thereto is not ipso facto a ground for setting aside the panel. *Ross* v. *British Columbia Electric Ry. Co., Ltd.*, 7 B. C. R. 394.

35. Poll of jury—*Refusal of Judge to allow.*]—*Sproule* v. *The Queen*, 1 B. C. R., pt. II., 219.

See CRIMINAL LAW, XV.

36. Practice—*Chamber summons for jury before delivery of amended defence is premature.*]—*Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 446.

See PRACTICE, XX.

37. Practice—*Rules* 81-331.]—Where the relief prayed for is such as could not have been obtained in a common law action prior to the Judicature Acts, the issues are not proper for a trial by jury. *Corbin* v. *Lookout Mining Company*, 5 B. C. R. 281.

38. Prejudices of — *Effect of appealing to.*]—*Hopkins* v. *Gooderham*, 10 B. C. R. 250.

See MASTER AND SERVANT, II.

39. Qualifications of jurors.]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XV.

40. Questions—*Nature of—To be left to jury.*]—*Steves* v. *My. of So. Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS, I.

41. Questions to — *Entering judgment against findings.*] — *McDonald* v. *Trustees Pandora*, 5 B. C. R. 521.

See TRIAL.

42. Right to—*Practice.*]—An action for an injunction is proper for a trial by jury *C. P. R.* v. *Parke*, 5 B. C. R. 507.

43. Right to—*Rule* 333.]—*Ferguson* v. *Thain*, 3 B. C. R. 447.

See PRACTICE, XVI.

44. Right to—*Rules* 81-330.]—Rule 330, providing, "causes or matters referred to in Rule 81 of these rules shall be tried by a Judge without a jury" is imperative, and, as one of the matters referred to in Rule 81 is "the rectification, setting aside or cancellation of deeds, or other written instruments," any action claiming such relief must be tried without a jury, though the issue involved might otherwise be proper for trial by a jury. *Stewart* v. *Warner*, 4 B. C. R. 298.

45. Separating jury.]—*Queen* v. *Peter*, 1 B. C. R., pt. I., 2.

See TRIAL.

46. Special—*Fees when not serving—R. S. B. C.* 1897, *c.* 107, *s.* 61.] — A special juror is entitled to $2 for each day's attendance at Court whether he serves or not, and whether in order to attend Court he travels from his place of residence or not; if he so travels he is in addition entitled to mileage *Taylor* v. *Drake*, 9 B. C. R. 54.

47. Special direction to sheriff — *When necessary.*] — Where an action is to be tried at the Victoria or Vancouver Civil Sittings, held pursuant to *s.* 5 of the Supreme Court Act Amendment Act, 1901, a special direction (under s. 69 of the Jurors' Act) to the sheriff to summon a jury is necessary *Tanaka* v. *Russell*, 9 B. C. R. 336.

48. Special jury—*Striking of, when more than two parties.*]—Defendants, in the original action, counterclaimed against the plaintiff and one R. On defendants' application an order for a special jury was made, the plaintiff and R. acquiescing. On the striking of the jury the sheriff refused to allow R. to take any part, and plaintiff then applied under r. 157 to strike out the counterclaim because of the impossibility of properly striking a special jury where there are more than two parties:—Held, dismissing the summons, that plaintiff had no right to make the application. As R. acquiesced in the order for a special jury when it was made, and had not appealed, a challenge to the array by his counsel at the trial was overruled. *Bank of British North America* v. *Robert Ward & Co., Limited liability*, 9 B. C. R. 49.

49. Special juror in former trial sitting on new trial not sufficient ground for a new trial.]—*Harris* v. *Dunsmuir*, 9 B. C. R. 303.

See PRACTICE, XX.

50. Special jury—*Panel—Challenging for cause.*]—*Harris* v. *Dunsmuir*, 9 B. C. R. 303.

See PRACTICE, XX.

51. Special jury—*Right to, whether as of course.*]—*Cranstoun* v. *Bird*, 5 B. C. R. 210.

See PRACTICE, XVI.

52. Special juror—*Fees of.*]—A special juror is entitled to $2 for each day's attendance at Court whether he serves or not, and whether in order to attend Court he travels from his place of residence or not; if he so travels he is in addition entitled to mileage. *Taylor* v. *Drake*, 9 B. C. R. 55.

53. Summoning of — *Procedure on* — *Whether directory or imperative.*]—*Ross* v. *B. C. Electric Ry. Co.*, 7 B. C. R. 394.

See PRACTICE, XVI.

54. Time for application for.]—*Bank of Montreal* v. *Major*, 5 B. C. R. 155.

See PRACTICE, XVI.

55. Trial by—*Scientific investigation.*]—*Iron Mask* v. *Centre Star*, 6 B. C. R. 474.

See PRACTICE, XVI.

56. Verdict—*General and special—Setting aside — Illusory agreement — Jury, special — Challenge—Same juror sitting on former trial —New trial.*]—The fact that a member of a special jury was one of the jurors at a former trial is a good ground of challenge at a new trial, but the fact that such a juror served without challenge is not per se a ground for granting a new trial. At first trial with special jury plaintiff got a verdict in his favour, and on appeal a new trial was ordered. At the second trial a non-suit was entered, and on appeal a new trial was ordered. At the third trial, also with a special jury, the plaintiff got a verdict in his favour. Between the second and third trials the defendant changed her solicitors. At the first trial the defendant was in Court, but on account of illness was not present at either the second or third trial. James Muirhead was a juror on the first trial, and also on the third trial, but neither the defendant nor her solicitors were aware of the fact until after the conclusion of the trial:—Held, refusing a new trial on this ground, that in selecting a special jury it was the duty of the solicitor to ascertain any grounds of challenge, an opportunity to do which is provided by *s.-s.* 5 of s. 59 of the Jurors' Act. D. gave instructions in writing to H. respecting the sale of a coal mine on terms mentioned, and agreeing to pay a commission of five per cent. on the selling price, such commission to include all expenses. H. failed to effect a sale. In an action to recover expenses incurred in an endeavour to make a sale, and reasonable remuneration, the jury returned a verdict as follows:—"Mr. Foreman: In reply to the questions, we have found a general verdict. We find that the plaintiff is entitled to compensation of $9,667.62. The Court: So that disposes of the questions? Mr. Foreman: Yes. Mr. Foreman handed in a written verdict as follows: — (1) Did the defendant, Mrs. Dunsmuir, verbally authorize the plaintiff, say, in the middle of 1890, 'to do his best' to sell her mine; and if so, was any compensation mentioned at the time? A. In view of concessions made subsequently we believe there was. (b) A promise of fair treatment in case of no sale. (2) Were the documents.

which were dated later, viz., on the 18th of September, 1890, and 18th of January, 1892, which provided that the plaintiff was to be paid a commission of five per cent., which was 'to include all expenses' in the event of his effecting a sale, intended to represent all the terms agreed upon between the parties with respect to a sale and to compensation to the plaintiff. A. Yes, had sale been effected. (3) If you should be of opinion that the above documents were not intended to represent the whole agreement between the parties, what agreement was come to? Answer to question number one expresses our view on this point. (4) Is the plaintiff entitled to any damages, and, if, so, how much? Stating amount of disbursements, including sums for which he was liable and also amount of compensation separately? The plaintiff is entitled to compensation. We have no means of proving the accuracy of his statement of disbursements, but accept it as correct, with the exception of one item of $525 which we have deducted. We find the plaintiff is entitled to compensation for expenses to the amount of $9,667.62:"—Held, by the Full Court, affirming the judgment entered at the trial in the plaintiff's favour: (1) The agreement found by the jury was not illusory. (2) The verdict supported the judgment. (3) The verdict was not one which the jury could not reasonably find. *Harris* v. *Dunsmuir*, 9 B. C. R. 303.

57. Verdict of—*Method of construing.*]—*Marshall* v. *Cates*, 10 B. C. R. 153.

See MASTER AND SERVANT, V.

58. Verdict of—*Finality of.*]—*Gray et al.* v. *McAllum*, 2 B. C. R. 104.

See PRACTICE, XX.

59. Whether order for trial by jury exhausted upon disagreement of jury at first trial—*Practice*—*Rules of Court*, 1880, *O.* 36, *rr.* 3, 26.]—An order for the trial of an issue by a jury is not exhausted by the disagreement and discharge of the jury upon a first trial, and there is no jurisdiction in a Judge to enter up judgment for either party upon the evidence, but the action can only be determined by a trial by jury as directed, unless by consent. *Fan* v. *Fan*, 1 B. C. R. pt. II., 172.

60. Will—*Action to set aside—Fraud—Undue influence.*]—In an action to set aside a will on the ground that it was obtained by fraud and undue influence, the plaintiff asked for a jury:—Held, by the Full Court, reversing WALKEM, J., that the action was one of those referred to in r. 81, and as such, according to r. 330, must be tried without a jury. *Per* DRAKE, J.: The character of an action is determined by the issues raised in the pleadings rather than by the prayer for relief. Stewart v. Warner (1895), 4 B. C. 298, and Cordin v. Lookout Mining Co. (1897), 5 B. C. 281, approved. *Hopper* v. *Dunsmuir* (*No.* 2), 10 B. C. R. 17.

See also CRIMINAL LAW, XV. — PRACTICE, XVI., XX.

JUS TERTII.

1. Title—*As to title to a mining claim.*]—*Victor* v. *Butler*, 8 B. C. R. 100.

See MINES AND MINERALS, XLIV.

JUSTICE OF THE PEACE.

1. Certiorari—*Notice to justice on motion for writ of—Is necessary.*]—*Re Plunkett*, 3 B. C. R. 484.

See CERTIORARI.

2. Inquiry commenced by one and completed by two—*Invalid commitment.*]—Where evidence on a preliminary inquiry is commenced before one justice of the peace and finished before two justices, a committal by the two is irregular unless they have heard all the evidence. *Re Nunn*, 6 B. C. R. 464.

3. Jurisdiction of.]—*Re Nunn*, 6 B. C. R. 464.

See HABEAS CORPUS.

4. Magistrate—*Interest in prosecution by reason of salary drawn from Consolidated Rev. Fund.*]—The fact that the fines imposed by a police magistrate appointed by a municipal corporation are paid into the Consolidated Municipal Fund, and that he holds another office under the corporation, the salary of which is drawn from such fund, does not incapacitate him as magistrate by reason of interest in the prosecution. A provincial statute authorized an appointment to be made by a municipal corporation, subject to the consent of the Lieutenant-Governor-in-Council:—Held, 1. Such appointment was well made by resolution under the corporate seal, and a by-law was unnecessary. 2. It is immaterial whether the assent of the Lieutenant-Governor in Council is obtained before or after the resolution. *Regina* v. *Hart*, 2 B. C. R. 264.

5. Power to sit—*Where is a police magistrate.*]—An information was laid before a Justice of the Peace against the police magistrate of the city of Kaslo, for a breach by him of one of the city by-laws, and the justice of the peace granted a summons thereon, returnable at Nelson. By s. 212 of the Municipal Clauses Act, "No justice of the peace shall adjudicate upon or otherwise act in any case for a city where there is a police magistrate, except in the case of illness, or absence, or at the request of the police magistrate. Section 213 saves the jurisdiction of justice of the peace for the several districts, in regard to offences committed in any city situated within their respective districts in which there may be no police magistrate. The police magistrate was not ill or absent and did not request the justice of the peace to act. Upon motion for a prohibition against further proceedings upon the information:—Held, *per* DRAKE, J., dismissing the motion, that, in the particular circumstances there was, for the purposes of the case in question, no police magistrate in Kaslo, and that s. 212, supra, did not apply, and that the ordinary jurisdiction of justices of the peace of the district, exerciseable over its whole area, applied. The making of the summons returnable at Nelson was improper on the ground of inconvenience, but was within the jurisdiction of the justice of the peace. Any person may properly lay an information for the infraction of a city by-law, though the fine goes to the city. *Regina* v. *Chipman*, 5 B. C. R. 349.

6. Right to amend summary conviction after return to the County Court.]—*Reg.* v. *McAnn*, 4 B. C. R. 587.

See also CERTIORARI—CRIMINAL LAW.

JUSTIFICATION.

1. Of libel by plea of truth — *Effect of.*]—*Wolfenden* v. *Biles*, 2 B. C. R. 279.

See LIBEL AND SLANDER.

2. Of sureties.]—*Reg* v. *Ah Gin*, 2 B. C. R. 207.

See CRIMINAL LAW, V.

KEYS.

1. Effect of acceptance of.]—*Gold* v. *Ross*, 10 B. C. R. 80.

KNOWLEDGE.

1. Proof of—*Guilty.*]—*Re Wing Kee*, 2 B. C. R. 321.

See HEALTH.

LABOUR.

1. Employment of aliens.] — *Downey* v. *Vancouver Engine Works*, 10 B. C. R. 367.

See ALIENS.

2. Lien for.] — *Weller* v. *Shup*, 6 B. C. R. 58.

See MECHANICS' LIEN.

See also MECHANICS' LIEN — WOODMAN'S LIEN.

LABOURER.

1. Preferential claim of—*Where equitable execution.*]—*Muirhead* v. *Lawson*, 1 B. C. R., pt. II., 113.

See also ASSIGNMENT FOR BENEFIT OF CREDITORS — MASTER AND SERVANT — MECHANICS' LIEN — RECEIVER — WOODMAN'S LIEN.

LACHES.

1. Action—*Laches by plaintiff in proceeding with.*]—*Clark* v. *Eholt et al.*, 3 B. C. R. 443.

See PRACTICE, I. 6.

2. Exemption may be lost.]—*In re Ley et al.*, 7 B. C. R. 94.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

3. Interest—*Laches may deprive a suitor of any rate of interest on his claim.*]—*Smith* v. *Hanson*, 2 B. C. R. 153.

See INTEREST.

4. Order of Court—*Laches in not enforcing obedience to.*]—B., a registered holder of shares in a limited company, transferred them to S., but B. being in arrear for some calls, the transfer was not registered. In August, 1881, B. obtained an order from CREASE, J., that, on certain payments being made, the company should take his name off the register and substitute S.'s name. The order was served on the secretary of the company, and payments were made by B. under the order. The register was not rectified in pursuance of the order. In February, 1883—the company having suspended business for over two years—a winding-up order was made, and in March, 1884, B. appeared on a summons before the C. J. to shew cause why he should not be on the contributories' list. The C. J. held that B., not having taken steps to enforce the rectification, had abandoned the order of August, and directed his name to be on the list. In an appeal to the Full Court:—Held, reversing the decision of the C.J., that there were no laches on the part of B., and that his name must be removed from the list of contributories: and held, that entries made in the books of the Registrar-General are not notice to creditors of transfer. Ex parte John Bibby. *In re Enterprise Gold and Silver Mining Company, Limited*, 1 B. C. R. pt. II., 94.

See VENDOR AND PURCHASER.

5. Payment—*Laches in paying instalment waived by acceptance.*]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

6. Payment of purchase money for land.]—*Moriarity* v. *Wadhams*, 1 B. C. R., pt. II., 145.

See TAXATION, III.

7. Specific performance against Crown—*In suit to enforce*—Held, that unreasonable delay on part of the petitioners is fatal to the application. *Peck* v. *The Queen*, 1 B. C. R., pt. II., 11.

See MINES AND MINERALS, XIV.

8. Submission—*Mere submission to an injury is not laches.*]—*Byron White Co.* v. *Sandon Water Works Co.*, 10 B. C. R. 361.

See also WATERS AND WATERCOURSES — DELAY—ESTOPPEL — MINES AND MINERALS, II. 3—PRACTICE, I. 6.

LAND.

1. Agreement for sale of—*Latent ambiguity—Statute of Frauds—Parol evidence—Rectification.*]—*Borland* v. *Coote*, 10 B. C. R. 493.

See VENDOR AND PURCHASER.

2. Agreement for sale of—*Reservation of minerals—unilateral mistake—Rectification—Specific performance.*]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

3. Agreement for sale of—*Purchase by instalments—Title—Lis pendens a cloud on—Making improvements not a waiver of right of an enquiry as to title.*] — *Townend* v. *Graham*, 6 B. C. R. 539.

See VENDOR AND PURCHASER.

4. Crown grants of coal lands.]—*Peck v. The Queen*, 1 B. C. R., pt. II., 11.

See MINES AND MINERALS, XI.

5. Mineral claim—*Interest in land.*]—The interest of a free miner in his mineral claim is an interest in land and an agreement not in writing respecting it cannot be enforced. Where one person on behalf of another locates and records a claim in his own name, the Court will compel him to transfer the claim to his principal. *Fero v. Hall*, 6 B. C. R. 421.

6. Power to expropriate for railroads.]—*Edmonds v. C. P. R. Co.*, 1 B. C. R., pt. II., 272.

See RAILWAY, IV.

7. Precious metals—*Pass by conveyance of.*]—*Re St. Eugene Mining Co.*, 7 B. C. R. 288.

See MINES AND MINERALS, XIV.

8. Purchase of by plan.]—*Fowler v. Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

9. Title to.]—*Johnston v. Clarke*, 1 B. C. R., pt. II., 56.

See BOUNDARIES.

10. Water—*Land covered with water—Definition of.*]—*Re W. C. Ward*, 1 B. C. R., pt. I., 114.

See ARBITRATION AND AWARD.

11. What is occupied land within meaning of B. C. Land Act. 4 B. C. R. 246.

See also CROWN LANDS—PUBLIC LANDS—MINES AND MINERALS, XV., XXVII.—REGISTRATION OF DEEDS—VENDOR AND PURCHASER.

LAND ACT.

1. Application to purchase under — *Gives no locus standi to attack Crown grant.*] —*Hall v. The Queen et al.*, 7 B. C. R. 89.

See PETITION OF RIGHT.

2. Record obtained by misrepresentation.]—*Hurron v. Christian*, 4 B. C. R. 246.

See PUBLIC LANDS.

3. Sale of pre-emption claim under.] —*Turner et al. v. Curran*, 2 B. C. R 51.

See CONTRACT, II. 1.

4. Water rights—*Land Acts do not limit riparian water rights.*]—*Carson v. Martley*, 1 B. C. R., pt. II., 281.

See WATERS AND WATERCOURSES, IV.

LAND AGENT.

1. A land agent has no right to practice in Supreme Court.]—*In re Johnson*, 1 B. C. R., pt. II., 334.

See SOLICITOR.

LANDING.

1. Use of.]—*Lee v. The Olympian*, 2 B. C. R. 84.

See COLLISION.

LANDLORD AND TENANT.

1. Agreement for lease—*Uncertainty—Statute of Frauds—Damages.*]—In an action for not delivering possession of premises, the document set up as a lease was: "Received from J. C. McLennan, the sum of $15, being part payment on premises now occupied as a barber shop, on west side of Fourth street, between A. avenue and Front street, said sum to apply on rent for premises aforesaid, from November 1st, 1896. Rent to be paid in advance. S. Millington." The only evidence of damages was that the plaintiff had purchased a tobacconist's stock in view of occupying the premises at the date mentioned, and being unable to get other suitable premises, had made a loss on the goods. FORIN, Co.J., at the trial, entered judgment for the plaintiff for $100, the amount of the full loss. Upon appeal to the Full Court:—Held, *per* MCCREIGHT, WALKEM, DRAKE and MCCOLL, JJ. (allowing the appeal), that there was no evidence of legal damage. Quære, whether the agreement was not void under the Statute of Frauds, as not stating the term. *McLennan v. Millington*, 5 B. C. R. 345.

2. By-law — *Hotel premises — Lease of where not up to requirements of.*]—Premises in Vancouver leased for use as a hotel did not fulfil the requirements of a by-law in regard to the number of bedrooms, and of this both the lessor and lessee were aware at the time the lease was entered into. The lessee was stopped using the premises as a hotel by the authorities:—Held, in an action by the lessor on covenants for rent and repair, that the lease was void ab initio and the maxim in pari delicto potior est conditio defendentis applied. Even if the lease were not void ab initio it became void by the action of the authorities in stopping the further use of the premises as a hotel. *Hudson v. Scott*, 10 B. C. R. 187.

3. Lease—*Privileges not specified therein conceded—Injunction.*]—Before the construction of a building by the defendant, the plaintiff agreed to rent a shop in the proposed building. The lease, in the short form, made in pursuance of the Leaseholds Act, described the premises by metes and bounds without specifying any privileges. Plaintiff, after entering, demanded use of water closet and a place for storing coal, and defendant conceded the right:—Held, that the plaintiff was entitled to an injunction restraining defendant from interfering with his right of access to the closet and his right to store coal in rear of the premises. *Ross v. Henderson*, 8 B. C. R. 5.

4. Rent — *Preference — Assignment—Surrender of premises.*]—Plaintiff let a store to H. A. & Co., who afterwards executed an assignment for the benefit of creditors to defendant, who did not take possession of the premises. Plaintiff on the third day after the assignment requested and obtained from H. A. & Co. the keys of the premises which she proceeded to clean up and put in repair, and she took down a sign board having on it the firm name of H. A. & Co. and painted the name out. Plaintiff afterwards sued for a declaration that she was entitled to a privileged claim against the estate for rent accruing due after the assignment:—Held, affirming HENDERSON, Co.J., who dismissed plaintiff's action, that there had been a surrender of the premises to the landlord by act and operation of law. *Phene* v. *Popplewell* (1862), 12 C. B. N. S. 334, applied. *Gold* v. *Ross*, 10 B. C. R. 80.

5. Sub-lease is not a breach of a covenant in a lease not to assign.]—*Griffiths* v. *Canonica*, 5 B. C. R. 67.

LAND AND WORKS.

1. Commissioner of—*Mandamus does not lie to compel issuance of Crown grant.*]—*Clark* v. *Com. of L. and W.*, 1 B. C. R., pt. II., 328.

See MANDAMUS.

2. Commissioner of—*Power of to cancel record on false declaration.*] — *Hurron* v. *Christian*, 4 B. C. R. 246.

See PUBLIC LANDS.

LAND ORDINANCE, 1870.

1. *In re Klaukie's Will*, 1 B. C. R., pt. I., 76.

See WILLS.

2. *In re Sir James Douglas*, 1 B. C. R., pt. I., 84.

See REGISTRATION OF DEEDS.

3. Costs.]—Where a doubt exists on the construction of a will, the Registrar of Titles under above ordinance properly refused to register and issue certificate of title, until removal of the doubt by adjudication. In such a case the Registrar is entitled to his costs. *In re Henry Jerome* (deceased), 1 B. C. R., pt. I., 87.

LAND REGISTRY ACT.

1. Certificate of indefeasible title—*When grantable.*]—*Re Van. Impt. Co.*, 3 B. C. R. 601.

See REGISTRATION OF DEEDS.

2. Debentures creating a charge.] — *Re Land Registry Act*, 10 B. C. R. 370.

See REGISTRATION OF DEEDS.

3. Effect of Land Registry Act as between mortgagees and legatees.]—*Harper* v. *Harper et al.*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

4. Effect of reference to map in agreement.]—*Thompson* v. *Courtney*, 2 B. C. R. 89.

See SPECIFIC PERFORMANCE.

5. Land Registry Acts explained.]—*In re Shotbolt*, 1 B. C. R., pt. II., 337.

See RECORDS.

6. Lis pendens — *Cancellation of.*]—*Merrick et al.* v. *Morrison*, 7 B. C. R. 442.

See LIS PENDENS.

7. Lis pendens—*Provisions of Land Registry Act as to.*]—*Towne* v. *Brighouse*, 6 B. C. R. 225.

See VENDOR AND PURCHASER.

8. Priorities between equitable mortgage and subsequent registered conveyance — *Constructive notice.*]—*Hudson's Bay* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

9. Registered judgment binds only the interest of the debtors existing at the time of registration, and therefore cannot affect a mortgage already given by debtor although such mortgage is not registered before the judgment. *Tontine Guarantee* v. *Edmonds*, 7 B. C. R. 348.

See JUDGMENT.

10. Registered plan — *Description of land by reference to plan—Mistake.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

11. Tax sale deed—A certificate of title based on, does not ipso facto, oust a prior certificate of title outstanding in the hands of former owner, and holder of it must affirmatively shew regularity of all tax sale proceedings. *Kirk* v. *Kirkland*, 7 B. C. R. 12.

See REGISTRATION OF DEEDS.

12. Winding-up Act — *Land Registry Act does not supersede provision of.*]—*In re Giant Mining Co.*, 10 B. C. R. 327.

See also COMPANY—RECORDS—REGISTRATION OF DEEDS—SPECIFIC PERFORMANCE.

LAND REGISTRY OFFICE.

1. Effect where information furnished by to sheriff.]—*Brynes* v. *McMillan*, 2 B. C. R. 163.

See SHERIFF.

LAPSE.

1. Of free miner's certificate—*Effect of.*]—*Grutchfield* v. *Harbottle*, 7 B. C. R. 344.

See MINES AND MINERALS, IX. 2, XXII.

2. Of time to begin adverse action.

See MINES AND MINERALS, II. 4.

See also LACHES.

LATENT AMBIGUITY.

1. Evidence to explain.]—*Borland* v. *Coote*, 10 B. C. R. 493.

See also VENDOR AND PURCHASER—AMBIGUITY—EVIDENCE.

LAUNDRY.

1. Taxation of, imposed as a restriction on Chinese — *License fee* — *Indirect taxation—Validity of.*]—The Municipal Act, 1885, s. 10, extended the powers of municipalities so as to include "licensing and regulating wash-houses and laundries," and s. 11 enacts that municipalities may "hereafter levy and collect from every person who keeps or carries on a public wash-house or laundry, such sums shall be fixed on by by-law, not exceeding $75 for every six months." On appeal from conviction for carrying on a public laundry without a license:—Held, (1) Taxation by means of license fees, and the tax in question, is indirect and not direct taxation. (2) All indirect taxation, except that authorized by s. 92, s.-s. 9, B. N. A. Act, providing, "in each province the legislature may exclusively make laws in relation to (9) shop, tavern, saloon, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes," is ultra vires of the Provincial Legislature. (3) The words "and other licenses" only included industries ejusdem generis with those specified and do not include a wash-house. (4) The most reasonable rule to adopt to ascertain whether a certain matter or thing is within the meaning of a statute as being ejusdem generis with things specified therein "and others," is to look to the object or mischief aimed at by the statute. All similar things that come within that object, though not in the abstract ejusdem generis, are so for the purpose of the statute. (5) If it appears that a tax is not bonâ fide within the purpose provided for, but is imposed with the real purpose of discriminating against a class, it is not within the jurisdiction of the enabling statute and, on the facts, the tax in question was intended not for the purpose of raising a revenue, but as a restriction on the Chinese. *Regina* v. *Mee Wah*, 3 B. C. R. 403.

LAW SOCIETY.

1. Rules of as to admission of solicitor.]—*Guillon* v. *Law Society of B. C.*, 6 B. C. R. 147.

See SOLICITOR.

See also LEGAL PROFESSIONS ACT.

LAW STAMPS.

1. Omission of on County Court summons.]—*Aldrich* v. *Nest Egg. Co.*, 6 B. C. R. 53.

See PRACTICE, XVII.

2. Non-cancellation of.]—*McAulay* v. *O'Brien*, 5 B. C. R. 510.

See PRACTICE, XVII.

LAWS.

1. Conflict of—*Foreign law — Probate.*]—*In re Klaukie's Will*, 1 B. C. R., pt. I., 76.

LEASE.

1. Covenant not to assign — *Whether includes sub-letting.*]—A lease of land for 25 years, containing a covenant by the lessee not to assign without leave, was executed contemporaneously with an agreement by the lessee to purchase from the lessor a building on the land, which agreement contained a covenant by the lessee, to pay the purchase money by instalments and to insure, and gave the lessor the right to cancel the agreement "upon breach of any of the covenants herein contained." The only reference to the agreement in the lease was contained in a proviso, "The first month's rent to be paid on the execution of an agreement of even date," etc. The lessee sub-let the premises for ten years, and did not pay the instalments of purchase money under the agreement, or insure. The action was to cancel the agreement, lease and sub-lease for such breaches. The sub-lessee set up in his defence that the lease and sub-lease were registered, and that the agreement was not, and claimed the benefit of the Land Registry Act, s. 35 (a):—Held, *per* DAVIE, C.J.: 1. That the covenants in the lease and agreement were incorporated with each other and dependent, and that the breaches of the covenants in the agreement avoided the lease, citing Paget v. Marshall, 28 C. D. 255. 2. Quære, whether the sub-lessee was a purchaser of any registered real estate, or registered in real estate, within the meaning of s. 35 supra. 3. That on the evidence, the sub-lessee had actual notice of the agreement and could not invoke s. 35 supra. Upon appeal to the Full Court:—Held, *per* MCCREIGHT, WALKEM and DRAKE, JJ., overruling DAVIE, C.J., as to the cancellation of the lease and sub-lease: 1. That a sub-lease is not a breach of a covenant in a lease not to assign. 2. That the agreement and its covenants were independent of the lease and its covenants. *Griffiths* v. *Canonica*, 5 B. C. R. 67.

2. Of hotel not fulfilling requirements of By-law—*Breach of covenant to pay rent under.*]—*Hickie* v. *Sciutto*, 10 B. C. R. 187.

See LANDLORD AND TENANT.

3. Scope of—*Where no privileges named.*]—*Ross* v. *Henderson*, 8 B. C. R. 5.

See LANDLORD AND TENANT.

LEAVE.

1. Appeal—*Leave to.*

See APPEAL, IX.

2. Defend — *Leave to.*] — *Hoty* v. *McAllister*, 2 B. C. R. 77.

See PRACTICE, XXXVIII. 10.

3. Special leave—*Notice of motion.*]—*C. P. R.* v. *V. W. Y.*, 10 B. C. R. 228.

See PRACTICE, XIX.

LEGACY.

1. Non-payment of.]—*Harper* v. *Harper et al.*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

2. Probate duty in the nature of a legacy duty and payable out of the estate.]—*In re Pearce's Estate*, 10 B. C. R. 280.

See WILLS.

3. Time of vesting of.] — *Re George Baillie*, 3 B. C. R. 350.

See WILLS.

LEGAL ADVISER.

1. Appointment of, to corporation.] —*Drake & Jackson* v. *City of Victoria*, 1 B. C. R. pt. II., 165.

LEGAL POSTS.

1. What are, for purposes of staking mineral claim.]—*Callanan* v. *George*, 8 B. C. R. 146.

See MINES AND MINERALS, XXXI. 1; XXIX.

LEGAL PROFESSIONS ACT.

1. A person other than a barrister or a solicitor has no right to conduct proceedings in the Supreme Court, on behalf of another. *In re Land Registry Act*, 1870, *and E. M. Johnson et al.*, 1 B. C. R. pt. II., 334.

2. Legal Professions Act, 1895—*Ss.* 68, 72—*Practising, etc., without qualification —Evidence—Contempt of Court.*]—Upon motion by the Law Society of British Columbia to commit the defendant, it appeared that the offence charged was that he had written two letters on behalf of clients; the first threatening that proceedings would be instituted for slander unless retraction was made, and the other stating that he had instructions to proceed against R. for taking certain goods without authority, and for trespassing and forcibly removing goods subject to a lien. The defendant adduced evidence that he was a solicitor of Manitoba, carrying on business in British Columbia as a debt collector, and had made application to be admitted in British Columbia; that no fees had been charged against or paid by the person to whom the letter was written, and that he had disclaimed being a solicitor entitled to practise in British Columbia, and had refused to accept legal business offered to him:—Held, per DAVIE, C.J.: That the first letter did not constitute an offence, and that any presumption of practising which may have been raised by the second letter was rebutted by the evidence adduced by the defendant. *In re C———*, 5 B. C. R. 530.

3. Section 37.]—To come within the exception of s.-s. 5 of s. 37 of the Legal Professions Act, the applicant must have had his term of study or service shortened because he was a graduate. *King* v. *The Law Society of British Columbia*, 8 B. C. R. 356.

See SOLICITOR.

LEGISLATION.

1. Delegation of legislative powers.

See HEALTH.

2. Interpretation of—*Not to be meaningless or absurd.*]—*Esquimalt Water Works* v. *City of Victoria*, 10 B. C. R. 193.

See MUNICIPAL CORPORATIONS, II. 1.

LETTER.

1. Contract by—*Acceptance—Terms of.*] —*Oppenheimer* v. *Brackman Kerr M. Co.*, 9 B. C. R. 343.

See CONTRACTS, I. 2.

2. Contract by.]—*Koksilah Quarry Co.* v. *The Queen*, 5 B. C. R. 525.

See CONTRACT, I. 2.

LEX DOMICILII.

In re Klaukie's Will, 1 B. C. R. 76.

See WILLS.

LEX LOCI CELEBRATIONIS.

In re Klaukie's Will, 1 B. C. R. 76

See WILLS.

LEX LOCI CONTRACTUS.

In re Klaukie's Will, 1 B. C. R. 76; *Baxter* v. *Jacobs et al.*, 1 B. C. R. pt. II., 373.

See WILLS,

LEX LOCI REI SITAE.

In re Klaukie's Will, 1 B. C. R 76.

See WILLS.

LIBEL AND SLANDER.

1. Black-leg.]—The epithet "lack-leg" is libellous. *Hugo* v. *Todd*, 1 B. C. R. pt. II., 369.

2. Defamation — *Poster advertising accounts for sale.*] — Defendant, a debtor collector, printed a poster, containing the names of persons from whom he was employed to make collections, showing the amounts and the nature of the accounts set opposite the respective names, under the heading in large letters: "Accounts for sale, Victoria, B.C. The British Columbia Commercial Agency offers the following accounts for sale at their office," etc. This poster, which showed the name of the plaintiff as a debtor for a drug bill of $9.67, defendant sent to him, and to each of the persons on the list, together with a circular stating: "You may still have your name lifted by paying the amount on or before the 27th inst., after which date the posters will positively be issued." An interim injunction having been granted to restrain further publication:—Held, *per* BEGBIE, C.J., on motion to continue the injunction till the hearing that the poster was libellous, and the innuendo implied was not merely that the plaintiff was justly indebted in the sum mentioned, but that he was dishonest and insolvent; and held, *per* CREASE, J., on appeal, that the poster was in fact in the eyes of the public a black list implying that all ordinary efforts to obtain payment had failed, and that the debtor was either dishonest or insolvent. *Wolfenden* v. *Giles*, 2 B. C. R. 279.

3. Liability of husband for wife's— *Costs.*]—In an action against husband and wife for damages for a libel published by the latter, the jury returned a verdict for $10:—Held, by MARTIN, J., that the husband was liable, and that the costs should follow the event. *Mackenzie* v. *Cunningham and Wife*, 8 B. C. R. 206.

4. Innuendo — *Excessive damages.*] — W. a Judge of the Supreme Court of B. C., brought an action against H., editor, for a libel contained in the following article published in his paper:—

"The McNamee-Mitchell Suit.

"In the sworn evidence of Mr. McNamee, defendant in the suit of McKenna v. McNamee, lately tried at Ottawa, the following passage occurs: 'Six of them were in partnership (in the dry dock contract) out in British Columbia, one of whom was the Premier of the Province. The Premier of the Province at the time referred to was Hon. Mr. Walkem, now a Judge of the Supreme Court. Mr. Walkem's career on the bench has been above reproach. His course has been such as to win for him the admiration of many of his old political enemies. But he owes it to himself to refute this charge. We feel sure that Mr. McNamee must be labouring under a mistake. Had the statement been made off the stand it would have been scouted as untrue; but having been made under the sanctity of an oath it cannot be treated lightly nor allowed to pass unheeded." The innuendoes alleged by the declaration to be contained in this article were:—1. That W. corruptly entered into partnership with McNamee while holding offices of public trust, and thereby unlawfully acquired large sums of public money. 2. That he did so under cloak of his public position and by fraudulently pretending that he acted in the interest of the government. 3. That he committed criminal offences punishable by law. 4. That he continued to hold his interest in the contract after his elevation to the bench:—Held, that the article was susceptible of the first of the above innuendoes, but not of the others which should have been, but were not, distinctly withdrawn from the consideration of the jury at the trial. On the trial the jury found a verdict for the plaintiff, with $2,500 damages. —Held, *per* STRONG, FOURNIER, TASCHEREAU, and GWYNNE, JJ., that the case was improperly left to the jury, but the only prejudice sustained by the defendant thereby was that of excessive damages, and the verdict might stand on the plaintiff consenting to the damages being reduced to $500:—Held, *per* RITCHIE, C.J., that there had been a mistrial, and the consent of both parties to such reduction was necessary. (Appeal from a decision of the Supreme Court of British Columbia sustaining the verdict at the trial in favour of the plaintiff). *David W. Higgins* v. *The Honourable George Anthony Walkem* (taken from 17 S. C. R. 225).

(Apparently not reported in B. C. Reports.)

5. Mercantile agency — *Publication—Privilege.*]—In a mortgage foreclosure action, the Lion Brewery Company as second mortgagees was joined as a party defendant, and a mercantile agency published in a notice or circular, distributed amongst its subscribers, that a writ had been issued against the Lion Brewery Company claiming foreclosure of a mortgage and indicating by means of the words "et al." that there were other defendants—Held, *per* IRVING, J., in an action by the Lion Brewery Company against the mercantile agency, that the publication was libellous and not privileged. *Lion Brewery Company, Limited* v. *The Bradstreet Company*, 9 B. C. R. 435.

6. Pleading—*Striking out defence as embarrassing—Offering to publish apology.*]—In an action for libel an allegation that the defendants were willing to publish an apology in such terms as the plaintiff could reasonably require, was struck out. Allegations which are merely matters of opinion or hearsay and derogatory to the plaintiff will be struck out. *Hoste* v. *Victoria Times Publishing Co.*, 1 B. C. R., pt. II., 365.

7. Pleading—*Discovery — Practice.*]—A defendant in a libel action who has pleaded a general justification, must furnish the plaintiff with the particulars of the facts relied on as a justification before he can obtain discovery from the plaintiff. *Bullen* v. *Templeman*, 5 B. C. R. 43.

8. Publication.]—Defendant took a copy of an alleged libellous resolution to the editor of a newspaper who dictated it to his stenographer, and handed defendant's copy back to her. Before the stenographer extended his notes another copy of the resolution was found in the office and from it the printer set up the type:—Held, (reversing IRVING, J., who dismissed the action on the ground that it was not shewn that defendant was the cause of publication), that there should be a new trial. *Mackenzie* v. *Cunningham et al.*, 8 B. C. R. 36.

9. Venue—*Change of.*]—In criminal libel, in order to obtain a change of venue, it is not sufficient to allege that the prosecution is interested in politics in the place where

the libel is alleged to have been committed and that therefore the defendant cannot obtain a fair trial. The fact that two abortive trials have taken place is not per se a reason for change of venue. *Regina* v. *Nicol*, 7 B. C. R. 278.

LIBERTY.

1. Statutes to be construed favourably to.]—*In re Boicack*, 2 B. C. R. 216.

See HABEAS CORPUS.

LICENSE.

1. By-law — *License fee under "to be fixed" — Bad for uncertainty.*] — *Spiers* v. *The Queen et al.*, 4 B. C. R. 388.

See MUNICIPAL CORPORATIONS, II.

2. Constitutionality of license law.] —*Poole* v. *City of Victoria*, 2 B. C. R. 271.

See MUNICIPAL CORPORATIONS, X.

3. Court—*Licensing Court.*]—*In re Close & Barry*, 2 B. C. R. 131.

See INTOXICATING LIQUORS.

4. Fire insurance company—*To carry on business in Canada.*]—*Barrett* v. *Elliott*, 10 B. C. R. 461.

See INSURANCE, I.

5. Free miner's—*Legality of.*]—*Manley* v. *Collom*, 8 B. C. R. 153.

See MINES AND MINERALS, IX. 2.

6. Free miner's — *Effect of lapse of.*]—*Grutchfield* v. *Harbottle*, 7 B. C. R. 186.

See MINES AND MINERALS, IX. 2.

7. Insurance company — *Necessity for company carrying on business in B. C. to have.*]—*Reg.* v. *Holland*, 7 B. C. R. 281.

See INSURANCE, I.

8. Landing—*License to use.*]—*Lee* v. *The Olympian*, 2 B. C. R. 84.

See COLLISION.

9. License fees—*Taxation by is indirect taxation.*]—*Reg.* v. *Me Wah*, 3 B. C. R. 403.

See CONSTITUTIONAL LAW, II. 8.

10. Licensed premises—*Sale on during prohibited hours.*]—*Reg.* v. *Sauer*, 3 B. C. R. 308.

See INTOXICATING LIQUORS.

11. Licensing board — *Mandamus does not lie to, where personnel changed.*]—*In re Kanamura*, 10 B. C. R. 354.

See INTOXICATING LIQUORS.

12. Transient trader.]—*Reg.* v. *Wilson*, 7 B. C. R. 112.

See MUNICIPAL CORPORATIONS, X.

13. Trade—*License to.*]—*In re Trimble*, 1 B. C. R. pt. II., 321; *Heath* v. *City of Victoria*, 2 B. C. R. 276.

See MUNICIPAL CORPORATIONS, X.

14. Water privileges for mining purposes.]—The licensee has no right so to use the water so as to foul the stream and prevent riparian proprietors lower down from using the water for milling purposes. *The Columbia River Lumber Co.* v. *Vouill*, 2 B. C. R. 237.

15. Wholesale trader — *Manufacturer selling in large quantities—Issue of license by municipality.*]—*Reg.* v. *Pearson*, 3 B. C. R. 325.

See MUNICIPAL CORPORATIONS, X.

See also INTOXICATING LIQUORS — MUNICIPAL CORPORATIONS—MINES AND MINERALS, IX. 2; XXII.

LIEN.

1. Banker's lien—*Overdrawn accounts—Partner's separate account.*] — Where the members of a firm have separate private accounts with the bankers of the firm, and a balance is due to the bankers from the firm, the bankers have no lien for such balance on the separate accounts. *Richards* v. *Bank of B. N. A.*, 8 B. C. R. 143.

2. Overdrawn accounts—*Partner's separate accounts—Costs—"Good cause."*]—Decision of MARTIN, J., reported ante at p. 143, affirmed on main question, and reversed on question of costs by the Full Court, which held that the plaintiff should be allowed his costs of the action, but only on the County Court scale, as the action should have been brought in that Court. *Richards* v. *Bank of B. N. A.*, 7 B. C. R. 209.

3. Innkeepers—*For board and lodging.*] *Frank* v. *Berryman*, 3 B. C. R. 506.

See INNKEEPER.

4. Mechanic's lien.] — *Johnson* v. *Braden*, 1 B. C. R. pt. II., 265; *Haggerty* v. *Grant et al.*, 2 B. C. R. 173; *Edmonds* v. *Walter et al.*, 2 B. C. R. 82; *Dillon* v. *Sinclair*, 7 B. C. R. 328; *Anderson* v. *Godsall*, 7 B. C. R. 404.

See MECHANIC'S LIEN.

5. Mechanic's lien—*Cannot be enforced in Small Debts Court.*]—*Dillon* v. *Sinclair*, 7 B. C. R. 328.

See COURTS, IV.

6. Stenographer—*Lien of, on his notes.*] —*Pender* v. *War Eagle*, 6 B. C. R. 427.

See ESTOPPEL.

7. Taxes — *Lien of municipality for.*] — *Jamieson* v. *City of Victoria*, 6 B. C. R. 109.

See MUNICIPAL CORPORATIONS, IX.

8. Woodman's lien — *Persons entitled to.*]—*Davidson* v. *Frayne*, 9 B. C. R. 369.

See WOODMAN'S LIEN.

See also MECHANIC'S LIEN—WOODMAN'S LIEN.

LIEUTENANT-GOVERNOR IN COUNCIL.

1. Assessment work—*Power of Lieutenant-Governor in Council to extend time for doing.*]—*Peters* v. *Samson*, 6 B. C. R. 405.

See MINES AND MINERALS, VII.

2. Functus officio after proclaiming statute in force.]—*Cope et al.* v. *Scottish Union*, 5 B. C. R. 329.

See INSURANCE, I.

3. Power to dismiss municipal health officer appointed by by-law.] — *Atty.-Gen.* v. *Milne*, 2 B. C. R. 196.

See HEALTH.

4. Power of, to make regulations.]—The Lieutenant-Governor in Council has power under the Elections Act, and section 11 of the Redistribution Act, to make regulations providing that affidavits sworn outside the province may be received by collectors of voters and the applicants' names be placed upon the register. *Per* WALKEM and DRAKE, JJ.:—Acts affecting the franchise should be construed liberally so as not to disfranchise persons having the necessary qualifications. *In re Provincial Elections Act*, 10 B. C. R. 114.

5. Powers of, under Water Clauses Consolidation Act.] — *Re Water Clauses Consol. Act*, 10 B. C. R. 356.

See WATERS AND WATERCOURSES, V.

6. Powers of, to issue commissions of oyer and terminer.]—*Reg.* v. *Malott*, 1 B. C. R. pt. II., 207; *Sproule* v. *The Queen*, 1 B. C. R. pt. II., 219; *Malott* v. *Reg.*, 1 B. C. R. pt. II., 212.

See CRIMINAL LAW, VI.

LIFE INSURANCE.

1. Agents—*Power to abrogate contracts.*]—*Federation Life Ass. Co.* v. *McInnes*, 4 B. C. R. 126.

See INSURANCE, II.

2. Succession duty on.] — *Re Templeton*, 6 B. C. R. 180.

See TAXATION, III.

See also INSURANCE, II.

LIMITATIONS.

1. Of action — *Against municipality.*] — *Reg.* v. *Corporation of Mission*, 7 B. C. R. 513.

See MUNICIPAL CORPORATIONS, I.

2. Statute of.]—*McEwen* v. *Anderson*, 1 B. C. R. pt. II., 308.

See NAVIGABLE WATERS.

3. Statute of.] — *Keary* v. *Mason*, 2 B. C. R. 48.

See MORTGAGES.

LIQUIDATED DAMAGES.

1. Penalty under contract — *Whether —Special indorsement.*]—*Lantz* v. *Baker*, 3 B. C. R. 269.

See PRACTICE, XXXVIII. 10.

LIQUIDATED DEMAND.

See PRACTICE, XXXVIII. 10.

LIQUIDATOR.

1. Liability for costs where he sues in his own name.]—*Jackson* v. *Cannon*, 10 B. C. R. 73.

See COMPANY, IX. 5.

2. Rights of, with regard to securities.]—*Re Thunder Hill Co.*, 3 B. C. R. 351.

See COMPANY, IX. 5.

3. Right of, to take over securities at creditor's valuation.] — *Re B. C. Pottery Co.*, 4 B. C. R. 525.

See COMPANY, IX. 5.

4. Service on, of notice of appeal not necessary.]—*Re Oro Fino Mines*, 7 B. C. R. 388.

See COMPANY, IX. 5.

5. Where also a shareholder—*Agreement by creditors to appoint.*] — *Re The New Westminster Gas Co.*, 5 B. C. R. 618.

See COMPANY, IX. 5.

LIQUOR.

1. Licensing board.]—May refuse a license notwithstanding compliance with statutory requirements if under all the circumstances board is satisfied it ought to be granted. *Re Close & Berry*, 2 B. C. R. 131.

2. Liquor License Regulation Act.]—*Sauer* v. *Walker*, 2 B. C. R. 93.

See INTOXICATING LIQUORS.

3. Liquor License Regulation Act.]—*Reg.* v. *Harris*, 2 B. C. R. 177.

See INTOXICATING LIQUORS.

4. Liquor License Regulation Act.]—*Re Kwong Wo.*, 2 B. C. R. 336.

See INTOXICATING LIQUORS.

LIS PENDENS.

1. Cancellation of.]—On a summons to cancel lis pendens, the Judge being of opinion that the plaintiffs could not succeed in the action, ordered that the lis pendens be cancelled on the applicants giving the nominal security of $1:—Held, on appeal, that it was not a case for cancellation of the lis pendens, but that the plaintiffs should be put on terms to speed the action. *Merrick et al.* v. *Morrison et al.*, 7 B. C. R. 442.

2. Cancellation of—*Agreement for sale—Practice—R. S. B. C., c. 3, s. 85.*]—An order will not be made cancelling a lis pendens under section 85 of the Land Registry Act in a case where damages would not be a complete compensation. *Towne* v. *Brighouse*, 6 B. C. R. 225.

3. Interest of plaintiff in action.]—Plaintiff claimed in the endorsement on his writ, on behalf of himself and the other creditors of the defendant Marie Schneider, a declaration that a conveyance made by her to her husband (co-defendant) of certain lands, was fraudulent and void as against them, and obtained and registered in the Land Registry Office a lis pendens against the land in question. On motion to set aside the lis pendens:—Held, *per* DRAKE, J., and affirmed on appeal by the Divisional Court (CREASE and WALKEM, JJ.): That the statement of claim in the writ shewed an interest in the plaintiff, as a creditor, in the subject matter, sufficient to maintain the action and the registration of the lis pendens, though only a declaratory order, and no consequent relief was prayed. *Bevilockway* v. *Schneider*, 3 B. C. R. 90.

4. Maliciously filing—*Action for.*] —*Cowan* v. *Macaulay*, 5 B. C. R. 405.

See PRACTICE, XVIII.

5. Mechanic's Lien Act — *Lis pendens under.*]—*Johnston* v. *Braden*, 1 B. C. R. pt. II., 265.

See MECHANIC'S LIENS.

6. Is a cloud upon the title. *Townsend* v. *Graham*, 6 B. C. R. 539.

7. Whether a cloud on title.]—*Mason* v. *Howison*, 4 B. C. R. 404.

See VENDOR AND PURCHASER.

LOCAL JUDGE.

1. Jurisdiction of, in action domiciled out of county.]—*Postill* v. *Traves*, 5 B. C. R. 374.

See JUDGES.

2. Of Supreme Court — *Powers of.*] — *In re Kootenay Brewing Co.*, 7 B. C. R. 131.

See JUDGES.

3. Order of, valid until set aside.]—*Lubary* v. *Braden*, 7 B. C. R. 403.

See CONTEMPT.

4. Powers of.]—*Wakefield* v. *Turner*, 6 B. C. R. 216.

See RECEIVER.

5. Ultra vires order made by—*Can be set aside by Supreme Court Judge.*]—*Tete et al.* v. *Hennessey*, 7 B. C. R. 262.

See PRACTICE, XXXVIII., 5 — JUDGES — JURISDICTION.

LOCATION.

See MINES AND MINERALS, I., VIII., XXII., XXIX.

LODGING.

1. Lien of inn-keeper for.]—*Frank* v. *Berryman*, 3 B. C. R. 506.

See INN-KEEPER.

2. Lodging-house keeper—*By-law—No definition of—How construed.*]—Where a by-law requiring lodging-house keepers to take out a license did not define what was meant by keeping a lodging house:—Held, that it did not apply to a person not engaged in such occupation for profit. *Re Gun Long*, 7 B. C. R. 457.

LOCO PARENTIS.

1. Rights of person standing in.] — *In re Loi King*, 7 B. C. R. 291.

See INFANTS.

LOGS AND LOGGING.

See WOODMAN'S LIEN.

LORD'S DAY ACT.

29 Car II.—*No application in British Columbia.*]—*Reg.* v. *Peterskey*, 4 B. C. R. 385.

See SUNDAY.

LOTTERY.

See CRIMINAL LAW.

LUNACY.

1. Contract—*Fraud.*] — Action to cancel promissory notes as being obtained by defendant, without consideration from plaintiff while he was to defendant's knowledge of unsound mind and incapable of transacting business; and to set aside a judgment by default of appearance obtained Dec. 10th, 1888, in an action by defendant against the plaintiff upon the notes. The jury found that the plaintiff at the time of the contract represented by the notes in question was of unsound mind; (2) that the transaction was not fair and bonâ fide; (3) that there was no consideration; (4) that the transaction was without deliberation; (5) without independent advice; (6) that the defendant at the time of making the notes was aware that the plaintiff was of unsound mind. The jury also stated that they were all for a verdict for the plaintiff. Upon motion for judgment:—Held, (1) That the plaintiff was not estopped by the default judgment in Cameron v. Harper. (2) That the issues were not res judicata by a decision in Chambers in Cameron v. Harper, affirmed by the Divisional Court, refusing to set aside the default judgment and admit plaintiff to defend, and set up in that action the plaintiff's case herein. (3) That the answer and general verdict of the jury included a finding that the plaintiff was in fact non compos mentis at the time of and ever since the transaction impeached, and he was consequently not estopped by conduct. (4) A finding by inquisition of the insanity of the plaintiff was not a necessary preliminary to this action. Upon motion for new trial and appeal: *Per* BEGBIE, C.J., WALKEM and DRAKE, JJ. (sitting both as a Full Court and Divisional Court) judgment of CREASE, J., affirmed. (2) The verdict of a jury should not be disturbed as being against evidence, unless it is one which the jury on the evidence could not reasonably have found. (3) An action lies to set aside a judgment in another action. (4) Where documentary evidence is rejected at the trial, and the propriety of the rejection is not made a ground of appeal, the Court will not allow that evidence to be read on appeal as fresh evidence under Rule 874. (5) *Per* WALKEM, J., insanity once established is presumed to continue. (6) *Per* DRAKE, J., where a contract is attacked the defence of ratification must be pleaded to admit evidence of ratification. *Harper* v. *Cameron*, 2 B. C. R. 365.

2. Practice—*Costs of inquisition terminated by death of alleged lunatic before verdict.*]—K., a person alleged to be of unsound mind, died during the progress of an inquisition as to his lunacy, and before verdict. On an application by the petitioner in lunacy, supported by an affidavit that the proceedings were taken bonâ fide, and for the sole and only purpose of protecting K.'s estate: DRAKE, J., made a declaration that the costs of the inquisition had been properly incurred and ought to be paid out of K's estate in due course of administration. *In re Kaye*, 6 B. C. R. 61.

MAGISTRATE.

1. By-law—*Duty to decide as to validity of.*]—*Reg.* v. *Russell*, 1 B. C. R. 256.

See MUNICIPAL CORPORATIONS, II. 3.

2. Decision in open Court—*Waiver of right to.*]—*Chase* v. *Sing*, 6 B. C. R. 454.

See PROHIBITION.

3. Discretion of.]—*Reg.* v. *Bowman*, 6 B. C. R. 271.

See CRIMINAL LAW, IV.

4. Pecuniary interest in prosecution—*Effect of.*]—*Reg.* v. *Hart*, 2 B. C. R. 264.

See JUSTICE OF THE PEACE.

5. Powers of.]—*Howden's Case*, 1 B. C. R. 89.

See also CERTIORARI—CRIMINAL LAW.

MAINTENANCE.

See CHAMPERTY AND MAINTENANCE.

MAINTENANCE MONEY.

1. Refusal of sheriff to accept.] — *Ward* v. *Clark*, 3 B. C. R. 609.

See ARREST.

MALICE.

1. Implication of—*From want of reasonable and probable cause.*]—*Baker* v. *Kilpatrick*, 7 B. C. R. 150.

See MALICIOUS PROSECUTION.

MAL-PRACTICE.

1. Of medical men—*Remedies for.*]—*In re Ex parte Invararity*, 10 B. C. R. 268.

See MANDAMUS.

MALICIOUS PROSECUTION.

1. County Courts Act, ss. 23 and 31—*Waiver of objection to jurisdiction.*]—Plaintiff took possession of the Mason's float, which he found adrift on a lake. Mason, although aware the plaintiff claimed a lien for salvage, made no move towards recovering the float until after 12 weeks, when he in company with a constable, demanded it, and on plaintiff refusing to give it up without compensation, he was arrested without a warrant and taken to gaol, and subsequently an information laid against him under s. 338 of the Code for taking and holding timber found adrift, was dismissed:—Held, on the facts, affirming FORIN, Co.J., that the arrest was the joint act of Mason and the constable and that Mason was therefore liable for damages and false imprisonment. An action for malicious prosecution was tried in the County Court without objection by either party and judgment given in favour of the plaintiff:—Held, by the Full Court, that the question of the jurisdiction of the County Court could not

be raised on an appeal. *Robitaille* v. *Mason and Young*. 9 B. C. R. 499.

2. Reasonable and probable cause — *Belief of defendant — Malice — Questions to jury.*]—In an action for malicious prosecution, the Judge intimated that he thought there was no evidence to go to the jury, but he decided to let the case go to the jury, so that the Full Court might have the benefit of the findings in case an appeal was taken. The jury found that defendant had not taken reasonable care to inform himself of the facts before he proceeded against the plaintiff, and that he did not honestly believe in the charge, being actuated by an indirect motive, viz.: to obtain recompense for the loss of his horse. Damages were assessed at $200. On motion for judgment, McColl, C.J., dismissed the action, holding that there was not a want of reasonable and probable cause. Held, by the Full Court, reversing McColl, C.J., that on the findings the plaintiff was entitled to judgment. Shrosbery v. Osmaston (1877), 37 L. T. N. S. 792, followed. *Baker* v. *Kilpatrick*, 7 B. C. R. 150.

MANDAMUS.

1. Award.]—A mandamus will not lie to enforce the award of a contract by a municipal council to the lowest tenderer. *Haggerty* v. *City of Victoria*, 4 B. C. R. 163.

2. Crown grant—*Minister of Crown to compel issuance.*] — Mandamus does not lie to compel a Minister of the Crown (the Commissioner of Lands and Works) to issue a Crown grant: the remedy is by petition of right. *Clarke et al.* v. *The Chief Commissioner of Lands and Works*, 1 B. C. R., pt. II., 328.

3. Crown—*Minister of—Constitutionality of Chinese Regulation Act.*]—Mandamus will lie to compel Chief Commissioner of Lands and Works, as said commissioner, to issue a free miner's certificate to a Chinaman on payment of usual fee. *Reg.* v. *Gold Commissioner of Victoria*, 1 B. C. R., pt. II., 260.

4. Legal Professions Act.]—To come within the exception in s.-s. 5 of s. 37 of the Legal Professions Act, it is not necessary that the applicant should have been a graduate at the time he commenced to study law, or that his term of study or service was shortened because he was a graduate. An applicant who obtained his degree after call or admission would come within the exception. *Calder* v. *The Law Society of British Columbia*, 9 B. C. R. 56.

5. Limitation of action against municipality—*Whether includes mandamus proceedings.*]—The limitation of one year prescribed by s. 244 of the Municipal Clauses Act, for commencing actions against a municipality, applies to mandamus proceedings to compel a municipality to appoint an arbitrator to determine the amount of compensation for land taken for road purposes. *The Queen* v. *The Municipal Council of the Corporation of the District of Mission*. 7 B. C. R. 513.

6. License commissioners—*Board of—Refusal of license to Japanese.*]—The Vancouver licensing board refused to consider an application for a wholesale liquor license because the applicant was a Japanese. An application for a mandamus was refused by Irving, J. Applicant appealed to the Full Court, and at the time of the hearing of the appeal the personnel of the Board had been changed:—Held, that the Board should have considered the application regardless of the fact that he was a Japanese, but as the personnel of the Board had been changed, no order would be made. *In re Kanamura*, 10 B. C. R. 354.

7. License—*Mandamus to compel issue of.*]—*Reg.* v. *Corp. of Victoria*, 1 B. C. R., pt. II., 331.

See Municipal Corporations, X.

8. Magistrate—*Jurisdiction — Discretion to try or commit.*]—A magistrate has absolute jurisdiction under s. 785, s.-s. (f) and s. 784 of the Criminal Code to hear and determine in a summary way a charge of keeping a disorderly house. The exercise of the summary jurisdiction is, under those sections, and s. 791, discretionary with the magistrate, and he may commit the accused for trial, and a mandamus will not lie to compel him to hear and determine the charge summarily. *Re Farquhar Macrae*, 4 B. C. R. 18.

9. Medical Act — *Inquiry by council under.*]—Under s. 36 of the Medical Act, 1898 (previous to its amendment in 1903), the council may hold an inquiry into a charge of unprofessional conduct made against a registered medical practitioner:—Held, that mandamus did not lie to compel the council to hold an inquiry. Charges of unprofessional conduct may be investigated by the council notwithstanding the acts complained of may be the subject-matter of an action at law. *In re The Medical Act: Ex parte Inverarity*, 10 B. C. R. 268.

10. Medical practitioner — *Imperial Medical Acts—Application of in B. C.*]—A medical practitioner registered in England prior to June 1st, 1887, under the Imperial Medical Acts, is entitled to be registered and admitted to practice in British Columbia, pursuant to Imp. Stat. 31 Vic. c. 92, s. 3, subject to such laws as the Provincial Legislature may have made, for the purpose of enforcing the registration within its jurisdiction of persons registered under the Imperial Medical Acts. 2. General provisions in the B. C. Medical Act (Con. Stat. B. C. 1888, c. 81), relating to examination of candidates, payment of fees, and registration of medical practitioners, do not effect the right to be registered in the colony, acquired under the Imperial Statute by English registered practitioners. 3. The question of supremacy in relation to subjects of legislation, as distributed by the B. N. A. Act, arises only as between the Dominion Parliament and the Provincial Legislatures. The Imperial Parliament is sovereign to both. 4. The B. C. Medical Act (Con. Stat. B. C. 1888, c. 81), s. 31, authorizes the making by the B. C. Medical Council of rules, pursuant to Imp. Stat. 31 Vic. c. 29, s. 3, for admitting English registered practitioners upon the Provincial register. 5. The B. C. Medical Council having made no such rules plaintiff was entitled to be admitted upon the B. C. register, upon such proof of his English registration as would be admitted in a court of law. *Metherell* v. *The Medical Council of British Columbia*

and G. L. Milne, M.D., The Registrar of the Council. 2 B. C. R. 186.

11. Municipal corporation—*Mandamus to compel execution of a sealed appointment to office and to admit applicant to perform his duties—Whether grantable—Preliminary objections to.*] — A mandamus will not be granted unless it is the applicant's only remedy, and clearly appears that it will be effectual. *Tuck* v. *City of Victoria*, 2 B. C. R. 179, at p. 184.

12. Pharmacy Act.]—One who resided out of the Province until the coming into force of the Pharmacy Act, 1891, and was a partner of a druggist practising within the province, is not entitled to be registered under s. 12 of the Act as having practised as a druggist. *Ex parte Henderson, Appellant in re the Pharmacy Act*, 1891, 2 B. C. R. 102.

13. School teacher.] — Mandamus does not lie to force a teacher, against his bona fide judgment on reasonable grounds, to keep a pupil at his school, but the Court will, if necessary, force him to hold a proper enquiry. *Phelps* v. *Williams*, 1 B. C. R., pt. I., 257.

MANDATORY INJUNCTION.

1. Objection to—*Whether waiver of right to appeal.*]—*Consol. Ry. Co.* v. *City of Victoria*, 5 B. C. R. 266.

See BRIDGES.

1. To compel removal of water tank and flume.]—*Byron N. White Co.* v. *Sandon Water Works Co.*, 10 B. C. R. 361.

See WATER AND WATERCOURSES, V.

See also INJUNCTION.

MANOEUVRING.

1. Of ships prior to collision.]—*Lee* v. *The Olympian*, 2 B. C. R. 84.

See COLLISION.

MANSLAUGHTER.

1. Definition of.]—*Reg.* v. *Union Coll. Co.*, 7 B. C. R. 247; *Reg.* v. *Wong On et al.*, 10 B. C. R. 555.

See CRIMINAL LAW, XII.

MANUFACTURER.

1. A manufacturer who sells the product of his labour in wholesale quantities is a wholesale trader. *Reg.* v. *Pearson*, 3 B. C. R. 325.

See MUNICIPAL CORPORATIONS, X.

MAPS.

1. Effect of filing map—*Adoption of survey, thereby.*]—*Johnson* v. *Clark*, 1 B. C. R. pt. II., 56.

See BOUNDARIES.

2. Trespass—*City of Victoria Official Map Act*, 1880.]—"The City of Victoria Official Map Act, 1880," and amending Acts, have reference to streets only. Held, therefore, that nothing in those Acts could justify an interference by private individuals with the boundaries of a lot held by purchase and 20 years' possession. *Crowther* v. *Beaven*, 1 B. C. R., pt. II., 116.

MARITIME LAW.

1. Admiralty jurisdiction of Exchequer Court—*Claims for damages for breach of contract by owner of ship—Owner within jurisdiction.* 24 Vic. c. 10 (*Imp.*) *s.* 6.]—The Admiralty Court has no jurisdiction over claims by owner or consignee of goods for damages done thereto by negligence or breach of duty by owner, master, or crew of the ship, if it is shewn that at the time of the institution of the cause any such owner, or part owner, is within the province: Held, that the entry of an appearance is not a waiver of the objection to the jurisdiction. *Rithet* v. *Ship "Barbara Boscowitz" and Porter*, 3 B. C. R. 445.

2. Collision—*Party to blame—Salvage.*] —Salvage consequent on a collision may be awarded to the party to blame. *Zambesi* v. *Fanny Dutard*, 2 B. C. R. 91.

3. Collision — *Barque approached by steamer — Manœuvres.*] — Where a steamer proceeding on a course north seventy-two degrees west, and a barque sailing on the starboard tack within about seven points of the wind, whose direction is east north-east, the barque is not an overtaken ship within the meaning of the regulations. *Smith et al.* v. *The Steamship Empress of Japan*, 8 B. C. R. 122.

4. Collision—*One ship under way and other at anchor—Onus of proof—Mortgagee in possession—Right of, to bring action for damages—Both parties in fault—Division of loss—Costs.*]—It appeared from the preliminary acts that the defendant ship was under way and the plaintiffs' ship at anchor at the time of the collision. Held, upon proof of the interest and right to sue of the plaintiffs, that the onus was on the defendant ship to shew that the collision was not caused by her negligence. (2) That mortgagees of a ship in possession have a right of action for damage done to her. (3) That where both parties are to blame for a collision, though in different degrees, the loss and costs will be equally divided between them. *Ward et al.* v. *The Ship "Yosemite,"* 3 B. C. R. 311.

5. Salvage—*Expense of conveying derelict to hands of receiver of wrecks—Whether recoverable.* —Plaintiff having salved the ship incurred expenses in navigating her along a dangerous coast at a rough season of the year. Held, on the facts, that besides a salvage reward of one-half of the proceeds of

the sale of the ship, the plaintiffs were entitled to expenses to be estimated at a lump sum. *Jacobson* v. *Ship "Archer,"* 3 B. C. R. 374.

6. Towage contract — *Towage or salvage.*]—The ship S. was found by the tug M. in a dangerous position in foul waters. The captain of the tug agreed to tow the ship into the open sea, the amount payble for such services to be left to the respective owners. The owners being unable to agree:—Held, on the evidence, that the ship was in impending danger of loss from her situation, and the ignorance of her captain of the locality, and that the service of the tug was therefore a salvage, and not a towage, service. *Canadian Pacific Navigation Company* v. *The "C. F. Sargent,"* 3 B. C. R. 5.

7. Towage contract — *Concealment of circumstances affecting — Extraordinary towage or salvage.*] — The concealment by the owners of a ship, through the officer in charge, of the fact that the ship is in a leaky and dangerous condition, avoids a contract to tow her to port for a specified sum, made with him by the captain of a tug, in ignorance of her true condition. Where towage service cannot on the facts be said to have saved the ship from being lost, but were of extraordinary service, owing to her condition, and involved more than ordinary trouble and risk, they should be allowed for, not as salvage, but as extraordinary towage services. *Dunsmuir* v. *Ship "Harold,"* 3 B. C. R. 128.

See also ADMIRALTY—COLLISION—SALVAGE—SHIPPING.

MARRIAGE.

1. Between Chinese.]—A clergyman in British Columbia is not bound to perform the ceremony of marriage, but, if he does, the rights and usages of his church or denomination, and the accustomed form, must be followed. Held, also, marriage between non-Christians ought to be left to their own officiants or to the registrar. A marriage purporting to have been solemnized by a Wesleyan minister between two Chinese was void for want of understanding on the woman's part of the nature of the ceremony and of any intention to contract. *In re Ah Hie*, 1 B. C. R., pt. I., 261.

2. Contract of marriage made in foreign country.]—Contracts of marriage made in a foreign country, the domicile of parties, by the terms of which, in accordance with the laws of that country, the alienation by a testator (one of the parties to the contract) of his real estate away from his wife and family is forbidden, will prevent a contrary disposition of the same, even though according to the lex loci rei sitae, there be no such restriction. By the comity of nations the contract travels abroad, and, as between the parties to that contract and their representatives, attaches to the testator's real estate in places other than the domicile. Marriage, carried out in consideration of such a contract and in accordance with the laws of the domicile, will, in its incidents touching the real estate of one of the parties, as between those parties and their representatives, be respected and sustained, as to those incidents in countries other than the domicile, when there is no direct local legislation to the contrary. Remarks on the Land Registry Ordinance, 1870. *In re Klaukie's Will*, 1 B. C. R., pt. I., 76.

MARRIED WOMAN.

1. Bill of sale by husband.]—*Cordingly* v. *MacArthur*, 6 B. C. R. 527.

See FRAUDULENT CONVEYANCES.

2. Married Woman's Property Act.]—*McGregor* v. *McGregor*, 6 B. C. R. 432.

See HUSBAND AND WIFE.

3. Statement of residence of, on writ.]—The statement in the plaint of the residence of the plaintiff (temporarily resident in California), as "the wife of Maynard Havelock Cowan of Victoria," &c.:—Held, sufficient. Statement of the residence as of "Broad Street, Victoria, auctioneers:" Held, sufficient. The residence of a wife, not living apart from her husband, is at the place of residence of her husband, and defendant held not entitled to security for costs from the plaintiff, on the ground that she was then living in California, her husband being resident in Victoria. *Cowan* v. *Cuthbert*, 3 B. C. R. 373.

4. Partnership—*Separate estate—Necessity of proving separate property — Evasive denial on pleadings.*]—*Jackson* v. *Jackson et al.*, 3 B. C. R. 149.

See PLEADING, X. 1.

See also CONTRACT—HUSBAND AND WIFE—JUDICIAL SEPARATION.

MARSHAL'S POSSESSION FEES.

1. Taxation of.]—Where in an admiralty action a marshal is in possession of a ship simultaneously under warrants issued in different actions, more than one set of possession fees will not be allowed. *Sunback* v. *The Ship Saga; Carlsson* v. *The Ship Saga*, 6 B. C. R. 522.

MASTER AND SERVANT.

I. CONTRACT OF HIRING.

1. Contract of hiring by election to office—*Corporate seal—Municipal Act*, 1891 (*B.C.*), *s.* 93, 54 *Vict. c.* 29.]—"At the first meeting of the council in every year, or as soon as possible thereafter, the council may

elect a clerk, water commissioner, surveyor, or such other officers as may be deemed necessary, who shall hold office during the pleasure of the council, and may receive such remuneration as the council shall by by-law appoint." The plaintiff was thereunder duly elected to the office of city engineer of the city of Victoria, the salary of which was fixed by by-law:—Held, that he became thereby the servant of the city without further evidencing of the contract of hiring under the corporate seal or otherwise. *Tuck* v. *The Corporation of the City of Victoria*, 2 B. C. R. 179.

2. Contract of hiring—*Construction of —Corporation—Evidence—Trial — Divisional Court—Jurisdiction.*]—A contract by defendants to employ plaintiff as brewmaster in its lager beer brewery in Victoria for three years, and during that period pay him as such brewmaster a salary of $250 a month, at the end of each month, is broken by the company incapacitating itself from continuing the plaintiff in that employment, and is not satisfied by a readiness to pay the salary at the end of each month. *Varrelmann* v. *The Phœnix Brewery Co.*, 3 B. C. R. 135.

II. Dismissal.

1. Breach of contract—*Yearly hiring—Monthly salary.*] — The plaintiff, who had been engaged for one year from August, 1902, by defendants at a monthly salary, was dismissed wrongfully in December. He sued for damages for breach of contract, and the action was tried in May, 1903:—Held, by the Full Court, affirming the judgment entered at the trial, that plaintiff was entitled to recover damages covering the unexpired term of his engagement. The statement of claim alleged a contract of hiring plaintiff as superintendent of a mill, arising from two letters, without setting them out, and without alleging the continuance of the construction of the mill, which was one of the conditions stated by defendants in their second letter. The defence denied the allegation in the statement of claim, and alleged the contract was contained in the second letter:—Held, that it was not necessary for the plaintiff to prove the continuance of the construction of the mill. Where a party seeks a new trial on the ground of wrongful rejection of evidence, he should shew that the evidence sought to be adduced was put squarely before the Judge so that his mind was applied to the point. *Hopkins* v. *Gooderham et al.*, 10 B. C. R. 250.

2. Corporation—*Evidence — Jurisdiction —Construction of contract of hiring.*] — A contract by defendants to employ plaintiff as brewmaster in its lager beer brewery in Victoria for three years, and during that period pay him as such brewmaster a salary of $250 a month, at the end of each month, is broken by the company incapacitating itself from continuing the plaintiff in that employment, and is not satisfied by a readiness to pay the salary at the end of each month. Statements made by the officers of the company to the plaintiff, indicating to him that he was dismissed from the service, are admissible in evidence upon the issue raised by a denial of the dismissal, without proof that the company authorized a dismissal of the plaintiff. Observations by Begbie, C.J., on the propriety of obtaining a finding as to damages before entry of non-suit to avoid a new trial, should the nonsuit be reversed on appeal. Observations of McCreight, JJ., on a relevancy of evidence. *Varrelmann* v. *Phœnix Brewery Company (Ltd.)*, 3 B. C. R. 135.

3. Municipal corporation.] — Under s. 45 of the Municipal Clauses Act, a municipal officer holds office during the pleasure of the mayor or council, and so may be removed at any time without notice or cause shewn therefor. *Municipality of North Vancouver* v. *Keene*, 10 B. C. R. 276.

III. Liability of Master for Acts of Servant.

1. Respondeat superior—*Corporation—Ultra vires—Agency—Ratification.*] — A corporation is liable for a trespass committed by its servant while conducting its business, although committed in the doing of an act ultra vires of the corporation itself. Where the servant of a corporation forms an erroneous judgment, and, in the supposed scope and discharge of the duty delegated to him commits a trespass, the corporation is liable for it. *Adams* v. *The National Electric Tramway and Lighting Co.*, 3 B. C. R, 199.

2. Trespass — *Respondeat superior — Agency—New trial—Misdirection—Rule* 446.] —A servant of the defendant corporation, employed to cut timber on its lands, knowingly trespassed and cut timber off plaintiff's lands, which adjoined, and the defendants' manager, general foreman, and other servants, knowingly took and included it in defendants' boom, and hauled it away. It was afterwards cut up and sold along with defendants' lumber. Evidence was given for plaintiff and denied by defendants, that the trespass was committed by instructions of the manager. The jury found a verdict for the plaintiff:—Held, *per* Drake, J., on motion for judgment: If a servant of a company commits a tort in the course of his employment, and for the benefit of his employer, whether by his direct orders or not, the employer is liable, even if the act was unknown to or actually forbidden by him. On appeal and motion for a new trial:—Held, *per* Crease, J., following Clarke v. Molyneux, 3 Q. B. D. 237: The whole of the summing up must be considered in order to determine whether it afforded a fair guide to the jury, and too much weight must not be allowed to isolated and detached expressions:—Held, *per* Walkem, J.: That it was misdirection by the trial Judge to tell the jury that they had only to consider the question of damages, as the question of agency of the servant for the master by ratification or otherwise had to be left to them. That the defendants were liable for tortious acts of their manager and foreman on the ground that they had the entire control of their business. That under Rule 446, the Court on appeal, notwithstanding an apparent misdirection of the jury, can draw such inferences of fact as are not inconsistent with the verdict. *Harris* v. *Brunette Saw Mill*, 3 B. C. R. 172.

IV. Liability of Master for Injury to Servant.

1. *At Common Law.*

1. Common employment — *Volenti non fit injuria.*] — The plaintiff, a conductor in

employ of defendant company, was injured while uncoupling cars on a side track, the accident being caused by the plaintiff's foot becoming entangled in the long grass which had been allowed to grow on the track. The company had a sectionman and roadmaster whose duties were to keep the road in order: —Held, in a common law action for damages, that the company was not liable. A railroad company is not liable for personal injuries sustained by an employee by reason of a defect in the track, provided the track was properly constructed and competent workmen were employed to keep it in order. *Wood* v. *The Canadian Pacific Railway Company*, 6 B. C. R. 561.

2. Common employment.] — H. & M. contracted to sink a winze in defendants' mine at a certain price per foot, and by the terms of the contract the direction and dip of the winze were to be as given by the defendants' engineers; the defendants were to provide all necessary appliances, etc., H. & M.'s workmen should be subject to the approval and direction of the defendants' superintendent, and any men employed without the consent and approval of or unsatisfactory to such superintendent should be dismissed on request. A hoisting bucket hung on a clevis was supplied to H. & M. by defendants, and through the negligence of the defendants' superintendent, master mechanic or shift boss, a hook substituted for the clevis, by defendants, at the request of H. & M., got out of repair, in consequence of which the bucket slipped off and in falling injured the plaintiff, who was one of H. & M.'s workmen engaged in sinking the winze:—Held, that the plaintiff, being subject to the orders and control of the defendants, was acting as their servant, and the doctrine of common employment applied, and the action was not maintainable. Judgment of IRVING, J., reversed. *Hastings* v. *Le Roi, No. 2, Limited*, 10 B. C. R. 10.

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2. *Employers' Liability Act.*

1. Contributory negligence.] — F., a conductor and brakeman in the employ of the defendant company, while turning the brake wheel fell from his train and was run over and killed. The nut which fastens the brake wheel to the brake mast, and which should have been on, was not on, and so the wheel came off and the accident resulted. It was the duty of the deceased to examine the cars of the train and see that they were in good order before leaving the station which the train was just leaving:—Held, affirming IRVING, J., in an action by F.'s personal representatives, to recover damages in respect of his death, that it was F.'s own neglect in not seeing that the brake was in a secure condition, and that there was therefore no case for the jury. *Fawcett et al.* v. *Canadian Pacific Railway Company*, 8 B. C. R. 393.

2. Duty of employer to warn workmen of danger.] — Where a workman is put to work in a place where there is an imminent danger of a kind not necessarily involved in the employment, and of which he is not aware, but of which the employer is aware, it is the employer's duty to warn the workman of the danger. G. had been working in the defendants' mine on the floors immediately below the 600 foot level, and on the night of the accident when he was going to work he was told by the shift whom he was relieving that the place was in pretty bad shape, and to look out for it. He proceeded to make an examination, but while engaged, the mine superintendent directed him to do some blasting, and while doing it a slide occurred and he was injured. The principal evidences of the likelihood of a slide were two floors beneath the 600 foot level, and of which the superintendent was aware, and G. not aware. The jury found that the superintendent was negligent, inasmuch as he did not advise G. of the probable danger:—Held, in an action under the Employers' Liability Act, that the defendants were liable. *Gunn* v. *Le Roi Mining Company, Limited*, 10 B. C. R. 59.

3. Duty of employer to employee.] — An employer of mill hands is bound to take reasonable care that the mill is properly and safely constructed and fitted with machinery such as to ensure a reasonable degree of security to a careful workman, and to provide reasonably skillful and careful supervision. The maxim volenti non fit injuria considered. Smith v. Baker, 1891, A. C. 336; Clark v. Holmes, 7 H. & N. 937; Thomas v. Quartermaine, 18 Q. B. D. 685; Yarmouth v. France, 19 Q. B. D. 647; Patterson v. Wallace, 1 Macq. 748; Brydon v. Stewart, 2 Macq. 30; and Weems v. Mathieson, 4 Macq. 215, referred to. Findings of a jury explained and harmonized. (2) The Court may allow the plaintiff's pleadings to be amended at the close of the trial to meet the facts proved, and in accordance with the lines on which the trial has proceeded, following Clough v. London and N. W. R. Co., L. R. 7 Ex. 30. (3) It is not competent to an appellant, uno flatu, to move alternatively for reversal of the judgment as entered on the findings of a jury, or for a new trial. O. xxxix. and O. xl., R. 4, of the S. C. Rules of 1880 explained. Davies v. Felix, 4 Ex. D. followed. *Foley* v. *Webster*, 2 B. C. R. 137.

4. Jury — *Apparatus causing injury — Necessity to use — New trial.*] — To entitle plaintiff to judgment in an action under the Employers' Liability Act, the jury's findings must shew that it was reasonably and practically necessary for him to use the apparatus causing the injury. Where the facts proved shew absence of such necessity a new trial will not be granted. *Davies* v. *Le Roi Mining and Smelting Company*, 7 B. C. R. 6.

5. Negligence—*Accident in mine—Excessive damages.*]—In an action under the Employers' Liability Act, the jury found that defendants were guilty of negligence in not having a platform so fixed as to prevent drills which were thrown down from bounding into the tunnel, and that plaintiff was unaware that drills were being thrown down when he was about to pass through the tunnel; and the jury assessed the damages at $3,000:—Held, by the Full Court, IRVING, J., dissenting, reversing WALKEM, J.J., who dismissed the action, that the defendants were liable but that the damages should be reduced to $500. *Pender* v. *War Eagle Consolidated Mining and Development Co., Limited*, 7 B. C. R. 162.

6. Negligence—*Defective machinery.*] — In an action by a miner against the mine owners for damages for injuries caused him by being precipitated to the bottom of a shaft when at work in the mine, the jury found inter alia that the system adopted for lowering the men was faulty, and that the plaintiff

did not comply with the printed rules of the mine—Held, that the plaintiff was entitled to judgment, although adherence by him to the rules would have prevented the accident. *Warmington* v. *Palmer and Christie*, 7 B. C. R. 414.

7. Negligence — *Excessive damages.*] — On an appeal from the judgment of IRVING, J., reported in 7 B. C. R. 414, the Full Court (MARTIN, J., dissenting), ordered a new trial on the grounds that the damages were excessive, that the plaintiff by his recklessness had contributed to the accident, and that there was no evidence to support the finding that the plant was defective. Points not argued, although included in the notice of appeal, will be considered as abandoned. Grounds of appeal should be so particularized that the opposite party will know beforehand what he has to meet, and when "misdirection" is alleged particulars should be stated. *Warmington* v. *Palmer and Christie*, 8 B. C. R. 344.

8. Notice of injury — *Want of—Reasonable excuse — Evidence of prejudice.*] — In an action for damages under the Employers' Liability Act, for injuries sustained by plaintiff, it was shewn that the plaintiff was without means, and for some weeks after the accident was unable to transact any business; and that the defendants' business manager and representative saw the accident, and arranged for plaintiff's admission into the hospital, where a few days later he discussed with him the cause of the accident:—Held, the circumstances excused the want of notice of injury. At the close of the plaintiff's case a non-suit was moved for on the ground that plaintiff had not proved notice of injury, and plaintiff then adduced evidence which the Court held shewed a reasonable excuse for the want of notice, and the trial proceeded. Before closing his case defendants' counsel tendered evidence of being prejudiced by want of notice:—Held, excluding the evidence, that the proper time to shew prejudice was while the question of reasonable excuse was still open. *Lever* v. *McArthur et al.*, 9 B. C. R. 417.

9. Operating colliery without statutory man holes — *Negligence — Excessive damages.*]—In defendants' coal mine the haulage slope, which necessarily used as a travelling road by the workmen, was not provided with man holes at intervals of not more than twenty yards, as required by the Coal Mines Regulation Act, and on account of this lack of sufficient man holes, it was the custom of the company not to run the trip during the time the workmen were going to and coming from work. The plaintiff, while coming from work, was run into and injured by the trip, which had been started off during a prohibited time. The trip was a train of cars operated by a stationary engine on the outside, and used for hauling coal out of the mine. The jury found that the accident was caused by defendant's negligence in letting the trip down, and on the verdict judgment was entered for plaintiff for $1,424 and costs. An appeal to the Full Court was dismissed, the Court refusing to reverse the findings of fact or to interfere with the damages as excessive:—Held, also, that the place in question was a "railway" within the meaning of the Employers' Liability Act. *Booker* v. *Wellington Colliery Company, Limited*, 9 B. C. R. 265.

10. Pleading—*Framing action under Employers' Liability Act and at common law—Common employment—Employer's liability.*]—Where a party frames an action for negligence at common law, and also under the Employers' Liability Act, but at the trial attempts to develop a case at common law and fails, he will not be granted a new trial in order to try to establish a case under the Employers' Liability Act. In an action for personal injuries the jury found that the defendants were negligent in not providing proper and accurate working plans of a mine, and that such neglect was the cause of the accident, but they did not specify what person or official was guilty of the negligent act. The plans were prepared by the defendants' engineers, who were competent, and who had left the defendants' employment before the injured person entered their employment:—Held, the defendants were not liable either under the Act or at common law. *Per* IRVING, J.: The doctrine of common employment is applicable where the servant, because of whose fault the accident happened, had left the employer's service before the injured servant entered his service. Decision of MARTIN, J., affirmed. *Hosking* v. *Le Roi, No. 2, Limited*, 9 B. C. R. 551.

11. Use of apparatus—*Necessity to use by workman injured.*]—To entitle plaintiff to judgment in an action under the Employers' Liability Act, the jury's findings must shew that it was reasonably and practically necessary for him to use the apparatus causing the injury. Where the facts proved shew absence of such necessity, a new trial will not be granted. *Davies* v. *Le Roi Mining and Smelting Company*, 7 B. C. R. 6.

12. Works and ways—*Conjecture as to injury.*]—The plaintiff in an action under the Employers' Liability Act, for damages caused by a defect in his employer's "works and ways," cannot succeed if on the facts proved the jury can only conjecture how the injury occurred. Rule 18, of s. 25, c. 134, R. S. B. C. 1897, does not require that a winze extending through several levels of a metalliferous mine shall be protected at each level; the rule is sufficiently complied with if the winze is protected at the top level only. *Stamer* v. *Hall Mines*, 6 B. C. R. 579.

13. Ways—*Defect — Volenti non fit injuria.*]—Plaintiff, in the course of his duties as defendants' employee, in their mill, walked upon a roller way constructed for the purpose of carrying lumber from the saws out of the mill, consisting of a platform through which rollers, moved by connecting uncovered cog wheels at the sides, slightly projected. The jury found that there were other passage ways for the plaintiff, but none of them sufficient. That the non-covering of the cogs was a defect. That the plaintiff was cognizant of the danger of using the roller platform, but was not unduly negligent, and found damages:—Held, *per* DRAKE, J.: — Upon motion for judgment, dismissing the action, that if the defendants had covered the cogs the accident would not have happened, and that, upon the findings of the jury, the negligence of defendants was primarily the cause of the accident, but that the plaintiff was guilty of contributory negligence in using the roller way as a passage way, and was volens in regard to the risk of injury: — Held, by the Full Court (BEGBIE, C.J., CREASE and WALKEM, JJ.), allowing an appeal and entering judgment for

the plaintiff: That, to support the defence of contributory negligence, it was necessary that there should be a direct and positive finding that the plaintiff voluntarily incurred the risk, and that there was no such finding. Quære, whether that defence was not barred by s. 6 of the Act. *Per* WALKEM, J., that it was. That the finding, by the jury, of damages must be considered as equivalent to the general verdict for the plaintiff, supplementing the special findings and importing such as were necessary to a general verdict. That upon the evidence and findings of the jury the plaintiff's case was made out, and that the Court having all the necessary materials before it, should enter judgment for the plaintiff upon the evidence, instead of granting a new trial. *Scott* v. *British Columbia Milling Co.*, 3 B. C. R. 221.

V. MISCELLANEOUS.

1. Employment of Chinamen underground.] — Held, on a motion by the Attorney-General, for an injunction to restrain a colliery company from employing Chinamen below ground in contravention of r. 34, s. 82, of the Act, that the matter was not one affecting the public, or likely to affect the public to such an extent as to call for the granting of an injunction. *Attorney-General* v. *Wellington Colliery Co.*, 10 B. C. R. 397.

2. Metalliferous Mines Inspection Act.]—Section 25 of the Inspection of Metalliferous Mines Act was not intended to impose unreasonable burdens upon the mine owner, and therefore he is only required to use reasonable precaution against accidents to miners. *McDonald* v. *The Canadian Pacific Exploration Company, Ltd.*, 7 B. C. R. 39.

3. Metalliferous Mines Inspection Act.]—A cage used for lowering and hoisting men is not "falling material" within the meaning of that term as used in r. 20 of s. 25 of the Metalliferous Mines Inspection Act, and the amendment of 1899 (c. 49, s. 12), does not create any duty on the mine owner to provide protection from a falling cage. *McKelvey* v. *Le Roi Mining Company, Limited*, 9 B. C. R. 62.

4. Coal Mines Regulation Act.] — The Coal Mines Regulation Act, by s. 4 provided: "No boy under the age of twelve years, and no woman or girl of any age, should be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground." By s. 12, if any person contravenes or fails to comply with, etc., "Any provision of this Act with respect to the employment of women, girls, young persons, boys or children, he shall be guilty of an offence against this Act." By s. 95, "every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he is . . . . the manager, $100. In 1890, s. 4 was amended by inserting the words, "and no Chinamen" after the word "age." The defendant was convicted before two justices of the peace of having employed a Chinaman in a coal mine under ground, and was fined $100. Upon application for certiorari to quash the conviction:—Held, by DRAKE, J., confirmed by the Full Court, DAVIE, C.J., WALKEM and IRVING, JJ.: That a contravention of the amendment to s. 4 prohibiting the employment of Chinamen was not made an offence under the Act for which any penalty is imposed, and that the penal Act should not be extended beyond the reasonable construction which the words used would bear. The Interpretation Act, s. 8, s.-s. 21, providing that "any wilful contravention of any Act which is not made an offence of some kind shall be a misdemeanor and punishable accordingly," did not assist the conviction. *Regina* v. *Little*, 6 B. C. R. 78.

5. Verdict — *Construing of answers.*] — In construing a jury's verdict, consisting of a number of questions and answers, the whole verdict must be taken together and construed reasonably, regard being had to the course of the trial. In an action for damages for personal injuries from an accident happening because of plaintiff's failure to withdraw himself from danger in response to a signal, the jury found that the defendant was negligent, and that the signal was given prematurely, and that the plaintiff should have heard the signal, but being busy may not have heard it. The answer to the question as to contributory negligence, to which the jury's attention was directed by the Judge, was "We do not consider that plaintiff was doing anything but his regular work." Judgment was entered for plaintiff:—Held, by the Full Court, that the judgment must be affirmed. *Marshall* v. *Cates*, 10 B. C. R. 153.

See also EMPLOYERS' LIABILITY ACT — NEGLIGENCE.

MATERIALS.

1. Lien for.]—*Haggerty* v. *Grant et al.*, 2 B. C. R. 173; *Miller* v. *Shupe*, 6 B. C. R. 58.

See MECHANIC'S LIEN.

MAYOR.

1. Interest of, in company from which municipality is purchasing.]—A city by-law to borrow money for the purchase of an electric light plant belonging to a company is not invalid merely because the mayor was president of the company at the time of the passage of the by-law, and of the completion of the contract. *Re Arthur and the Corporation of the City of Nelson*, 6 B. C. R. 323.

MEASLES.

1. Detention of person suspected.] — *Mills* v. *City of Vancouver*, 10 B. C. R. 99.

See HEALTH.

MEASUREMENTS.

1. Of ground must be shewn in adverse proceedings.]—*Dunlop* v. *Haney*, 7 B. C. R. 1; *Dunlop* v. *Haney*, 7 B. C. R. 306.

See MINES AND MINERALS, III.

MECHANIC'S LIEN.

1. Action to enforce a mechanic's lien is not one of debt within the meaning of s. 2 of the Small Debts Act. *Dillon* v. *Sinclair*, 7 B. C. R. 328.

2. Affidavit of lien — *Sworn before a commissioner — Whether good — Whether a miner has a lien for work done on a mineral claim—R. S. B. C.* 1897, *c.* 132.]—Under the Mechanics' Lien Act a free miner may enforce a mechanic's lien against a mineral claim. A statement in the affidavit of lien that the work was finished or discontinued on or about a certain date is sufficient. *Holden* v. *Bright Prospects Gold Mining and Development Co.*, 6 B. C. R. 439.

3. Affidavit — *Sufficiency of — Lien on mineral claim.*] — Under the Mechanics' Lien Act a free miner may enforce a mechanic's lien against a mineral claim. A statement in the affidavit of lien that the work was finished or discontinued on or about a certain date is sufficient. *Holden* v. *Bright Prospects Gold Mining and Development Co.*, 6 B. C. R. 439.

4. Affidavit — *Sufficiency of.*] — In an affidavit for a mechanic's lien, the particulars of the claim as stated were "the putting in bath tubs, wash tubs, hot and cold water connection, all necessary pipes, boiler and hot water furnace, and waste pipes, $220. FORIN, Co.J., at the trial refused a motion for a nonsuit and referred it to the registrar to ascertain how much of the claim was for labor, and directed judgment to be entered for the plaintiff for that amount:—Held, by the Full Court, on appeal, *per* MCCOLL and DRAKE, JJ. (DAVIE, C.J., dissenting), that the particulars of the claim were insufficiently stated, under s. 8 of the Mechanics' Lien Act, 1891, and also that the claim could not be supported as including, indiscriminately with the claim for labor, a claim for materials, as to which there is no lien. *Per* DAVIE, C.J., that the particulars and affidavit were sufficient, and that the separation of the price of the labor from that of the material was a function of the Court exercisable at the trial. *Weller* v. *Shupe et al.*, 6 B. C. R. 58.

5. Affidavit — *Sufficiency of.*] — In an affidavit for a mechanic's lien the particulars of the work done were stated as follows: "Brick and stone work and setting tiles in the house situate upon the land hereinafter described, for which I claim the balance of $125:"—Held, insufficient and plaintiff nonsuited. *H. T. Knott, plaintiff*, v. *W. J. Cline (contractor)*, and *John Leander Beckwith (owner), defendants*, 5 B. C. R. 120.

6. Affidavits for lien—*Residence of contractors—Particulars of work and materials "owing."*]—The filing of an affidavit fulfilling all the requirements of stat. B. C. 1888, c. 74, s. 9, is a pre-requisite to the validity of a mechanic's lien. The following defects in such affidavit held fatal: (1) Omission to state the residence of the owner of the property; (2) Omission to sufficiently state the residence of the contractors. Statement of residence as "Victoria" held insufficient; (3) Omission to state in detail the particulars and items of the work done and materials furnished in respect of which the lien is sought; (4) Omission to state that the amount claimed was "due," and when it became due. Statement that it was "owing" held insufficient. *Smith* v. *McIntosh, Carne, et al.*, 3 B. C. R. 26.

7. Certificate of action.]—The certificate of action required under s. 24 of the Mechanics' Lien Act must be filed within the time therein limited, otherwise the lien ceases to exist. *Dunn* v. *Holbrook and Bain*, 7 B. C. R. 503.

8. Claim for personal order as auxiliary.] — Claim for personal order to pay amount over $1,000 entertained in the County Court auxiliary to relief by way of endorsement of a mechanic's lien. *Post* v. *Jones*, 2 B. C. R. 250.

9. Jurisdiction under Act of 1891.]—The Supreme Court has no original jurisdiction to enforce a mechanic's lien under the Act of 1891, whatever the amount. *Martin* v. *Russell and Jobson and the B. C. Paper Manufacturing Company, Limited*, 2 B. C. R. 98.

10. Materials—*Whether saved by repealing s.* 30 *of the Mechanics' Lien Act*, 1891—*Affidavits — What they should show — Nonsuit.*]—In an action to enforce a mechanic's lien the owner is entitled to defend on any ground available to the contractor, even where judgment has gone against the latter by default. Quære, whether if credit has originally been given the contractor for a longer period than the time within which proceedings must be taken to enforce the lien, an action would be maintainable. The lien for materials given by the Mechanics' Lien Acts, 1888-90, together with the procedure for the enforcement thereof, have not been abolished by the repealing s. (30) of the Act of 1891. The Court is not disposed to grant a nonsuit with leave to bring fresh action where the action is brought to enforce a purely statutory right and fails. *Haggarty* v. *Grant (defendant)*, and *Duck (owner)*, 2 B. C. R. 173.

11. Materials — *Lien for—Preference—Equitable assignments.*]—R. contracted with N. to build for him a house—the last instalment ($1,125) to be paid 31 days after the completion. The contract contained a condition that R. should pay his sub-contractors and protect N. and his estate in the premises from registration of any liens; in case of default N. was to be at liberty to satisfy such liens and deduct the amount payable, or to become payable to R. by virtue of the contract. The building was completed on the 30th October, and on the 3rd November R. by a number of instruments in writing, directed N. to pay the defendants (sub-contractors who had supplied materials) sums amounting to $920.50, out of moneys due or to become due from N. to R. on the contract. About one hour after the last of these documents had been presented to N. (who refused to accept them), the plaintiffs notified N. that they claimed a lien for $889 for materials supplied, and on the same day they instituted proceedings to enforce it. Held, that notwithstanding that these documents were good as equitable assignments without any acceptance by N., the lienholders were entitled to be paid in preference to the defendants. The plaintiffs' statement of claim omitted to state the kind of material supplied. Held, that the statement was inoperative. By the Mechanics' Lien Act (unless there is an express agreement to the contrary), every mechanic or other person shall by virtue of

being employed upon a building or furnishing materials, have a lien without any preliminary registration of a statement of claim, provided he institutes an action to enforce the lien and registers a certificate of lis pendens in the land registry office within 30 days. Held, therefore, that the filing of the defective statement did not prejudice the plaintiff's lien. *Johnson and others* v. *Braden and others*, 1 B. C. R., pt. II., 265.

12. Mineral claim—*Work done at request of holder of option—Whether or not lien lies.*]—Defendant, a mine owner, gave C. an option to buy a mine for $25,000, with liberty to work it, the net proceeds to be applied towards payment. The plaintiff claimed liens for labour while employed by C. in working it under the agreement. C. did not exercise his option. Held, by the Full Court (IRVING, J., dissenting), that the plaintiffs were not entitled to liens under the Mechanics' Lien Act. There is no lien given for cooking under the Act. *Anderson et al.* v. *Godsal*, 7 B. C. R. 404.

13. Mortgages—*Mechanics' Lien Act of 1891—Effect of on mortgages.* 2 B. C. R. 110.

See INFANTS.

14. No lien on mine where worked under option—*Cooking.*] — Defendant, a mine owner, gave C. an option to buy a mine for $25,000 with liberty to work it, the net proceeds to be applied towards payment. The plaintiffs claimed liens for labour while employed by C. in working it under the agreement. C. did not exercise his option. Held, by the Full Court (IRVING, J., dissenting), that the plaintiffs were not entitled to liens under the Mechanics' Lien Act. There is no lien given for cooking under the Act. *Anderson et al. v. Godsal*, 7 B. C. R. 404.

15. Owner—*Defence by.*]—In an action to enforce a mechanic's lien, the owner is entitled to defend on any ground available to the contractor, even where judgment has gone against the latter by default. Quære, whether if credit has originally been given the contractor for a longer period than the time within which proceedings must be taken to enforce the lien, an action would be maintainable. The lien for materials given by the Mechanics' Lien Acts, 1888-90, together with the procedure for the enforcement thereof, have not been abolished by the repealing section (30) of the Act of 1891. The Court is not disposed to grant a non-suit, where the action is brought to enforce a purely statutory right. *Haggerty* v. *Grant (defendant) and Duck (owner)*, 2 B. C. R. 173.

16. Promissory note — *Taking of, as waiver of lien.*]—Taking a promissory note for the amount of a mechanic's lien, and negotiating the same, discharges the lien, and the lien does not revive on non-payment of the note. *Edmonds et al.* v. *Walter (owner) and Tiernan (contractor)*. 2 B. C. R. 82.

17. Railways—*Whether Mechanics' Lien Act applies to.*]—The Mechanics' Lien Act, 1891, B. C., c. 23, s. 8: "Every mechanic's lien shall absolutely cease after the expiration of thirty-one days after the work shall have been completed, etc., unless in the meantime the person claiming the lien shall file an affidavit stating in substance (c), the time when the work was finished or discontinued, which affidavit shall be received and filed as a lien against such property, interest, or estate. The registrar-general, district registrar, and every Government agent, shall be supplied with printed forms of such affidavits in blank, which may be in the form or to the effect of schedule "A" to this Act, and which shall be supplied to every person requesting the same and desiring to file a lien. The form of affidavit in the schedule "A" had the clause: "That the work was finished or discontinued on or about the day of ." Per SPINKS, Co.J., discharging the lien: that an affidavit stating the time when the work was finished, as "on or about," etc., was insufficient. Upon appeal to the Supreme Court, the Court expressed no opinion as to the correctness of the ruling of the learned County Judge, but declined to maintain his judgment on that ground. *Per* CREASE, J.: The requirements of the various sections of the Dominion Acts governing the railway in question are so at variance with the recognition of mechanics' liens thereon under a provincial statute, that it is impossible for the two to stand together, and therefore the Dominion legislation must prevail. *Per* MCCREIGHT, J.: The language of the Mechanics' Lien Act, B. C., 1891, s. 4, is insufficient to confer a lien upon a railway in respect of work done thereon. The provisions of the Act as to the priority of mechanics' liens upon the property charged being inconsistent with the provisions of the Dominion Railway Act, 1888, as to the priority of mortgages upon railways, it is to be inferred that the Provincial Legislature did not intend the Act, and it is not to be construed to apply to railways within the control of the Dominion Parliament. *Lorson* v. *Nelson and Fort Sheppard Railway Company et al.*, 4 B. C. R. 151.

18. Winding-up order — *Priority as against lienholders—Right of lienholders to notice.*]—The holders of mechanics' liens filed against mineral claims owned by a company which was subsequently ordered to be wound up, recovered judgment thereon in the County Court the same day the winding-up order was made. In the list of creditors made up by the liquidator the lien claimants did not appear as secured creditors, but as judgment creditors. The winding-up order was made on the petition of Holmes, a surveyor, who held the field notes of the survey made by him, and who afterwards proposed that he advance the moneys necessary to obtain Crown grants of the claims and retain a lien on them until he was paid; the liquidator applied to the Court for leave to accept the proposal and an order was made, without notice to the lienholders, giving Holmes a first charge on the claims for his debt and the amount advanced by him; afterwards, on Holmes' application, an order was made, on notice to the liquidator, but without notice to the lienholders, that the claims be sold to pay his charge. The lienholders did not appeal from either of the last orders, but applied for leave to enforce their security and that they be declared to have priority over Holmes:—Held, by the Full Court (reversing DRAKE, J., who dismissed the application), that the order giving Holmes priority over the lienholders was made without jurisdiction, and the lienholders were not bound by it. *Re Ibex Mining and Development Company of Slocan, Limited Liability*, 9 B. C. R. 557.

19. Woodman's lien — *Action under — Estoppel to enforcement of mechanic's lien.*] —Where a workman has recovered part of his wages by seizure and sale in a joint action with other workmen against his employer under the Woodman's Lien for Wages Act, he is estopped from proceeding under s. 27 of the Mechanics' Lien Act for the balance of his wages. *Wake* v. *The Canadian Pacific Lumber Company, Limited*, 8 B. C. R. 358.

MEDICINE.

1. Attendance—*Neglect to provide medical attendance from conscientious scruples.*] —*Rex* v. *Brooks*, 9 B. C. R. 13.

See CRIMINAL LAW, XII.

2. C. S. B. C. 1888, c. 81, s. 41—*Liability of unregistered practitioner—"Practising medicine."*]—Defendant, with the object of making sales of medicines professed by him to be specifics for certain diseases, held public meetings, invited proposed purchasers to declare their symptoms, and publicly examined them and applied the remedy. Held, that this was practising medicine for gain or hope of reward. *Regina* v. *Barnfield (alias Sequah)*. 4 B. C. R. 305.

3. Evidence—*By medical expert.* —On a trial of the accused for murder, by committing an abortion on a girl, it appeared in evidence that a post-mortem examination of the girl had been made by a medical man, which was however confined to the pelvic organs, and was, upon the medical evidence, inconclusive as to the cause of death, but there was other evidence pointing to the inference that death was caused by the operation. DAVIE, C.J., left the case to the jury, but reserved a case for the Court of Criminal Appeal as to whether there was in point of law evidence to go to the jury upon which they might find that the death of the girl resulted from the criminal acts of the accused. The jury found a verdict of guilty. Held, *per* MCCREIGHT, J., LAVIE, C. J., and WALKEM, J. concurring): That there is no rule that the cause of death must be proved by post-mortem examination and that there was evidence to go to the jury of the cause of death notwithstanding the absence of a complete post-mortem examination. *Regina* v. *Garrow and Creech*, 5 B. C. R. 61.

4. Inquiry under Medical Act — *Whether mandamus lies to compel.*]—Under s. 36 of the Medical Act, 1898 (previous to its amendment in 1903), the council may hold an inquiry into a charge of unprofessional conduct made against a registered medical practitioner:—Held, that mandamus did not lie to compel the council to hold an inquiry. Charges of unprofessional conduct may be investigated by the council notwithstanding the acts complained of may be the subject-matter of an action at law. *In re The Medical Act: Ex parte Inverarity*. 10 B. C. R. 268.

5. Medical health officer—*Powers of.*] —*C. P. N.* v. *City of Vancouver*, 2 B. C. R. 193; *Wong Hai Woon* v. *Duncan*, 3 B. C. R. 318.

See HEALTH.

6. Medical practitioner—*Duty of as to ascertaining mental condition of person making will.*]—*McHugh* v. *Dooley*, 10 B. C. R. 537.

See WILLS.

7. Refusal to register in British Columbia an English registered practitioner—*Mandamus.*] — A medical practitioner registered in England prior to June 1st, 1887, under the Imperial Medical Acts, is entitled to be registered and admitted to practice in British Columbia pursuant to Imp. Stat. 31 Vic. c. 29, s. 3, subject to such laws as the Provincial Legislature may have made, for the purpose of enforcing the registration within its jurisdiction of persons registered under the Imperial Medical Acts. (2) General provisions in the B. C. Medical Act (Con. Stat. B. C. 1888, c. 81), relating to examination of candidates, payment of fees and registration of medical practitioners, do not affect the right to be registered in the colony acquired under the Imperial Statute by English registered practitioners. (3) The B. C. Medical Act (Con. Stat. B. C. 1888, c. 81, s. 31), authorizes the making by the B. C. Medical Council of rules pursuant to Imp. Stat. 31 Vic. c. 29, s. 3, for admitting English registered practitioners upon the provincial register. (4) The B. C. Medical Council having made no such rules plaintiff was entitled to be admitted upon the British Columbia register upon such proof of his English registration as would be admitted in a Court of law. *Metherell* v. *The Medical Council of B. C.*, 2 B. C. R. 186.

8. Registration of practising pharmacist—*Meaning of exercising profession.*] —*Ex parte Henderson*, 2 B. C. R. 103.

See MANDAMUS.

9. Ship—*No duty of owner to provide medical attendance on board.*] — *Morgan* v. *British Yukon Nav. Co.*, 10 B. C. R. 112.

See SHIPPING.

MENS REA.

1. In order to support a conviction under the clause in the Victoria Consolidated Health By-law, 1886, providing "17. No person shall let, occupy, or suffer to be occupied, as a dwelling or lodging, any room which (*a*) does not contain at least 384 cubic feet of space for each person occupying the same," it is necessary that there should be some evidence of guilty knowledge actual or constructive, on the part of the person charged. *Re Wing Kee*, 2 B. C. R. 321.

MERCANTILE AGENCY.

1. Erroneous report — *Publication of whether libellous.*] — *Lion Brewery Co.* v. *Gladston*, 9 B. C. R. 435.

See LIBEL AND SLANDER.

MERCHANTS' SHIPPING ACT.

1. Section 281 discussed.]—*The Beatrice*, 4 B. C. R. 347.

See ADMIRALTY, III. 1.

See also ADMIRALTY—SHIPPING.

MERGER.

1. Claim of general legatee recovering judgment—*Position of, as regards assets of estate.*]—In 1874 one E. H. became entitled to a general legacy of $10,000, bequeathed to him by his brother J., who appointed as his executor another brother T., with whom he was in partnership. On J.'s death, T. entered into possession of the whole partnership property, and paid half the legacy to E. in 1875. E. sued T. and recovered judgment by default for the balance, on January 24th, 1889, which judgment was registered February 28th, 1889. In the meantime T. had charged the whole property for large sums to various creditors, who obtained and registered judgments before January 24th, 1889, before which date also judgment was obtained against T. and registered by a simple contract creditor C. Receivers having been put in possession of T.'s estate, sold the same under order of Court, and after certain mortgage debts and expenses were paid off, with the sanction of the Court, the balance left was insufficient to pay off the charges registered before E.'s judgment. In an action by E. for an inquiry as to what assets of J. came into hands of T. or the receivers, to have his judgment declared entitled to priority over the other registered charges, and to restrain the receivers:—Held, *per* BEGBIE, C.J., that the action must fail as against all the defendants, for E. was not a mere judgment creditor of T., and no longer a legatee, and he had now shewn that any moneys in the receiver's hands were impressed with a trust in his favour. But, held, on appeal, *per* MCCREIGHT and WALKEM, JJ., that the action lay as against the simple contract creditor, C., but not, semble, as against the secured creditors, by reason of sections 32-36 of the Land Registry Act. *Per* DRAKE, J., dissenting, the action was misconceived and should have been launched as an administration action. *Ezekiel Harper* v. *Thaddeus Harper, Thomas Dixon Galpin, Henry Slye Mason, The Canadian Pacific Land and Mortgage Company, Limited, The British Columbia Land and Investment Agency, Limited, John Cameron and Henry Slye Mason, and James Charles Prevost, as receivers of the estate of the said Thaddeus Harper*, 2 B. C. R. 15.

2. Of cause of action in judgment.]—*Seonisch* v. *Guenther et al.*, 10 B. C. R. 371.

See PRINCIPAL AND AGENT.

3. Whether by conveyance of equity of redemption to mortgagee.]—A conveyance of the equity of redemption by a mortgagor to a mortgagee of lands does not constitute a discharge of the mortgage by merger, unless it is made to appear that such a result was intended by the parties; and when a mortgagee applies to register a conveyance of the equity of redemption, the registrar shall not mark the mortgage merged unless at the request of the mortgagee. *In re Major*, 5 B. C. R. 244.

MESNE PROFITS.

1. In an action for possession of land.]—*Fowler* v. *Henry*, 10 B. C. R. 212.

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METALS.

1. Precious metals—*Whether pass by conveyance of land.*]—*Re St. Eugene Mining Co.*, 7 B. C. R. 288.

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MILEAGE.

1. For transfer of person to New Westminster jail.]—*Carson* v. *Carson*, 10 B. C. R. 83.

See SHERIFF.

MILITIA.

1. Military reserve—*Deadman's Island—Recitals in private Acts—Whether binding on the Crown.*]—The statement in the Vancouver Incorporation Acts which are private in their nature, that certain land was a "Government Military Reserve," is not conclusive on the Crown in right of the Province, and held, on the facts that it was not shewn that Deadman's Island was a military reserve called into existence by properly constituted authority, and, therefore, that it belongs to the province and not to the Dominion. Remarks as to the powers of Governor Douglas and as to what constituted a "reserve." *The Attorney-General of British Columbia* v. *Ludgate and The Attorney-General of Canada, Deadman's Island Case*, 8 B. C. R. 242.

MINES AND MINERALS.

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I. Abandonment or Surrender.

1. Affidavit of re-location.]—A statement of a re-locator in his affidavit of re-location that the ground so re-located is "unoccupied by any person as a mineral claim," is a notice of abandonment in writing, under s. 30 of the Mineral Act, of the deponent's former rights in the original location, and if the original location were valid, it could not lawfully be re-located without the written permission of the Gold Commissioner. *Dunlop* v. *Haney*, 1 M. M. C. 369; 7 B. C. R. 1, 305.

2. Certificate of work.]—Where a location is purported to be made on ground already covered by a valid and existing location, the junior location is invalid to at least the extent of the ground already covered by the senior location. On the lapse of the senior location its ground reverted to the Crown. Failure to record a certificate of work is presumptive evidence of abandonment. The recording of a certificate of work is an answer to the objection that mineral in place was not discovered. *Cranston et al.* v. *The English Canadian Co.*, 1 M. M. C. 394; 7 B. C. R. 266.

3. Coal license.] — Petitioners held a prospecting license for coal over 2,500 acres of land under the Mineral Ordinance, 1869, and applied for a Crown grant. In support of their claim, they relied on a certificate of the Assistant Commissioner of Lands and Works, that they had duly posted notices of their application, and "that no objection to the issue of such grant had been substantiated:"—Held, (1) That the certificate was not in accordance with the Act. (2) That the certificate of an assistant commissioner was not conclusive evidence of compliance with the statutory conditions, and the presumption arising from the certificate could be rebutted. (3) That the department could not dispense with the performance of preliminary conditions imposed by the Legislature. (4) That in a proceeding to enforce specific performance by the Crown unreasonable delay on the part of the petitioners is fatal to the application. (5) On the facts, that the claim had been abandoned. Quære, whether to entitle prospecting licensees to a Crown grant of coal lands under the Mineral Act, it is not essential that they should

have found coal on the land selected by them for purchase. *Peck* v. *Regina*, 1 M. M. C. 13; 1 B. C. R., pt. II., 11.

4. Invalid location.]—Failure to put up legal posts, as required by the Mineral Act, invalidates a location, unless cured by s. 16, s.-s. (*d*). The curative provisions of that section are intended as a shield for the protection of locators, and to be invoked by them, and not as a weapon of attack upon them. It is not necessary to record the abandonment of an invalid location before re-location. *Creelman* v. *Clarke et al.*, 1 M. M. C. 228.

5. Mining operations.]—Where mining ground is held from the Crown under a lease which is subject to forfeiture for non-compliance with terms and conditions, the Crown alone can declare a forfeiture and re-enter for breach or waive it. Free miners in general are strangers to such a lease and have no rights under or over it. Cessation of mining operations for want of funds is not proof of intention to abandon, even if that question could be raised by strangers to the lease. The act of recording a claim is the act of the party and not of the Crown, so cannot operate as a re-demise of ground already leased by the Crown. *Canadian Company* v. *Grouse Creek Flume Co., Ltd.*, 1 M. M. C. 3.

6. Non-representation.] — During the close season there is no obligation to represent a claim, the whole of that season being for the purposes expunged from the calendar, and an attempt to locate another claim on the same ground during that season is merely an unauthorized trespass—a "jumping." Unless actual damage be shewn, nominal damages ($1) only will be awarded for the trespass. Building a residence on or at a place manifestly convenient for the purpose of working a claim is doing miner-like work on such claim within the meaning of the Mineral Act, 1882, secs. 48 and 50, though in old and highly organized countries it would not be. The decision of the Gold Commissioner in granting leave of absence will not be interfered with unless for fraud. Where a free miner finds another in possession of his claim so that to insist upon working it might lead to a breach of the peace, he is exonerated from the performance of assessment work until the title is determined. In proving title one party cannot set up as against another a right to a third claim which he himself contends he had destroyed. Absence of 72 hours is not in all cases conclusive evidence of an intention to abandon. If a claimholder does not properly represent his claim and so render it liable to re-location, he may, nevertheless, if he return to it and find it intact, resume possession, recommence working, and be in "as of his old estate." Where one man pretends to represent two claim holders at the same time, it is strong evidence that his representation in both cases is colourable, and so, worthless. *Woodbury* v. *Hudnut*, *Woodbury* v. *Meyers*, *Blasdel* v. *Hunley*, *Hammil* v. *Sproule*, 1 M. M. C. 31; 1 B. C. R., pt. II., 39.

7. Partial abandonment.]—Any portion of a mineral claim may be abandoned by specifying the portion and recording the abandonment. *Granger* v. *Fotheringham*, 1 M. M. C. 71, 3 B. C. R. 590.

8. Statutory notice of.] — Only abandonment by which owner of valid location can be concluded is by statutory notice. *Nelson, etc., Ry. Co.* v. *Jerry*, 5 B. C. R. 166, 396; 1 M. M. C. 161.

9. Unrenewed interest.] — Though the interest of a free miner in his claim expires, unless renewed, at the end of a year, his lessor, the Crown, may relieve against forfeiture in cases where there is no one entitled to take advantage of such expiry. An interest in a claim which has not been renewed is an abandoned interest. *Williams Creek Co.* v. *Symon*, 1 M. M. 1.

II. ACTION.

1. *Adjournment.*

1. Development work.]—In an action between the owners of adjoining mineral claims respecting extralateral rights, the parties claiming the extralateral rights will not be forced on to trial without being given a fair opportunity of doing such development work as may be necessary to determine the position of the apex of the vein in question. Quære, whether Sung v. Lung (1901), 8 B. C. 423, was rightly decided. *Noble Five Consolidated Mining and Milling Company, Limited, et al.* v. *Last Chance Mining Company, Limited*, 9 B. C. R. 514; 2 M. M. C. 35; 9 B. C. R. 514.

2. Terms on which amendment at trial will be allowed. *Hanna* v. *Morgan*, 2 M. M. C. 142.

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2. *Jury.*

1. Adverse action.] — Generally in adverse actions the issues cannot be tried by a jury, though it is possible cases might arise wherein it could be done. The right to a jury under s. 150 of the Mineral Act, 1896, is restricted to the County Courts. *Corbin* v. *Lookout Mining & Milling Co.*, 5 B. C. R. 281; 1 M. M. C. 126.

2. General right to, with particular exceptions.]—In a mining action either party has the right to a trial by jury under Rule 331, subject to Rule 332, which applied to the present case (one of extralateral rights) because it required scientific or local investigation which could not be conveniently made by a jury. *Iron Mask Co.* v. *Centre Star Co.*, 6 B. C. R. 474, 1 M. M. C. 300.

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3. *Laches.*

1. Adverse action.]—The plaintiff in an adverse action issued a writ on 5th August, 1897, and not having served it, obtained on 2nd August, 1898, upon an ex parte application, an order for renewal; the order was on the application of the defendant set aside:—Held, on appeal to the Full Court that no reasonable explanation of the delay being given, the order for renewal was properly set aside; but that section 37 of the Mineral Act does not enable a defendant to get rid of an action by applying in a summary way

when not authorized by the ordinary practice of the Court. *Haney* v. *Dunlop*, 6 B. C. R. 520; 1 M. M. C. 311.

2. Adverse claim — *Service of writ.*]—Plaintiff having commenced an action to enforce an adverse claim did not serve the writ within a year as provided by Rule 31. The defendant moved in the action to set aside the writ and to vacate the adverse claim:—Held, that the action was out of Court, and no order could be made therein. Semble, that an application to set aside an adverse claim is not properly made in an action brought to enforce it. *Troup* v. *Kilbourne*, 5 B. C. R. 547; 1 M. M. C. 219.

3. Adverse claimant.] — An adverse claimant who neglects to take the remedy provided by section 37 of the Mineral Act cannot sue to set aside a certificate of improvements on the ground of fraud. *Hand* v. *Warren*, 7 B. C. R. 42; 1 M. M. C. 376.

4. Appeal—*Time for.*] — The appellant was advised by counsel up to a period considerably beyond the time for appealing from the judgment of an inferior Court, to acquiesce in it, but he had since been advised by other counsel to appeal, and that special hardship would probably result to him if the judgment were allowed to stand:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and WALKEM, JJ.), insufficient ground for extending the time for appealing. *Trask* v. *Pellent*, 5 B. C. R. 1; 1 M. M. C. 86.

5. Certificate of work—*Delay in recording.*]—An order in council, under s. 161 of the Mineral Act, 1896, extending the time for the doing and recording of assessment work on a mineral claim, is intra vires. A certificate of work recorded pursuant to permission granted by a Gold Commissioner acting under such an order in council, is a good certificate within s. 28 of the said Act. The word "irregularity" in s. 28 extends to the certificate of work itself. Delay in recording such a certificate of work is an irregularity which is cured by said s. 28. Meaning of "irregularity" considered. Decision of MCCOLL, J., reversed. *Peters* v. *Sampson*, 6 B. C. R. 405; 1 M. M. C. 247.

6. Failure to record.]—In adverse proceedings the party locating over a claim alleged to have been abandoned must produce clear evidence of abandonment, and it is not enough for this purpose to rely upon the non-production of certificates of work. Semble, a locator cannot after abandonment by a prior locator rest on a location made before such abandonment, but must re-locate. *Cranston et al.* v. *The English Canadian Co.*, 7 B. C. R. 266; 1 M. M. C. 394.

7. Specific performance against Crown.]—In a proceeding to enforce specific performance by the Crown, unreasonable delay on the part of the petitioners is fatal to the application. *Peck* v. *Regina*, 1 B. C. R., pt. II., 11; 1 M. M. C. 13.

See ABANDONMENT, *supra*, I. 3.

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4. *Lapse.*

1. Adverse action.]—If the writ in an adverse action is not served within a year the action is out of Court and no order can be made therein. *Troup* v. *Kilbourne*, 5 B. C. R. 547, 1 M. M. C. 219.

2. Renewal.]—There must be reasonable explanation of delay in serving, otherwise an application to renew made two days before expiry will be refused. *Haney* v. *Dunlop*, 6 B. C. R. 520; 1 M. M. C. 311.

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5. *Parties.*

1. Joinder—*Of Claimants.*]—Joinder of various claimants in an adverse action—all claimants under the Mineral Act—to any part of the ground covered by the mineral claim of the plaintiff, may be made defendants to an action by him to enforce his adverse claim against any one of such claimants. *Dunlop* v. *Haney*, 6 B. C. R. 169; 1 M. M. C. 232.

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6. *Trial.*

(*a*) *Adjournment.*

1. Inspection.]—Defendants got an order at the trial for the inspection of a vein in the plaintiffs' claim which they alleged was the continuation of a vein, the apex of which was within the limits of their own claim, and plaintiffs alleging that such order necessitated inspection by them of other similar places on their property, with a view to furnishing evidence to rebut that which might be adduced by reason of the plaintiffs' inspection, and therefore an adjournment for that purpose, were allowed the adjournment, but only on the terms that all costs occasioned thereby should be borne by them in any event:—Held, on appeal, that such costs should abide the result of the issues to which the inspection related. *Iron Mask* v. *Centre Star*, 7 B. C. R. 66; 1 M. M. C. 362.

(*b*) *Amendment.*

1. Fresh evidence.]—*Per* WALKEM, J.: To constitute a valid location, the statutory requirements as to blazing must be complied with. Semble, after the case of the adverse claimant has been closed the Court will not allow the case to be re-opened to enable the claimant to give fresh evidence as to his location:—Held, on appeal, ordering a new trial: (1) If the defendant wishes to rely on defects in the plaintiff's location he must set them forth specifically in his pleading; (2) The fact that the affidavit was made by the claimant's husband does not ipso facto vitiate the adverse claim, but the question is one of bonâ fides under the Act; (3) No costs of appeal will be given to the appellant who succeeds on a point not taken below. Quære, whether the County Court has jurisdiction, also whether trespass lay independently of the proceeding by adverse claim. *Aldous* v. *Hall Mines*, 6 B. C. R. 394; 1 M. M. C. 213.

See also AMENDMENT.

(c) *Costs.*

1. Of adjournment for purpose of inspection.]—Defendants got an order at the trial for the inspection of a vein in the plaintiffs' claim, which they alleged was a continuation of a vein, the apex of which was within the limits of their own claim; whereupon plaintiffs alleging that such order necessitated inspection by them of other similar places on their property, with a view to furnish evidence to rebut that which might be adduced by reason of the plaintiffs' inspection, and on adjournment for that purpose, obtained the adjournment, but on the terms that all costs occasioned thereby should be borne by them in any event:—Held, on appeal that such costs should abide the result of the issues to which the inspection related. Order of WALKEM, J., varied. *Iron Mask Mining Co.* v. *Centre Star Mining Co.* 1 M. M. C. 362; 7 B. C. R. 66.

2. Of appeal.] — Where appellant succeeds on point not taken below no costs will be allowed. *Aldous* v. *Hall Mines*, 6 B. C. R. 394; 1 M. M. C. 213.

See also PRACTICE, I.

(d) *Objection.*

1. Counsel should press objection at the trial.]—In adverse proceedings the onus of proof is on the adverse claimant, who has to give affirmative evidence of his own title, and if he is the junior locator establish his case in detail. Counsel for adverse claimant in deference to a remark of the trial Judge, did not complete the proof of his own title. Held, that he should have pressed to be allowed to complete it, but under the circumstances there should be a new trial. *Caldwell et al.* v. *Davys*, 1 M. M. C. 387; 7 B. C. R. 156.

(e) *Undertaking.*

1. Not to proceed till trial.]—An undertaking not to proceed further until the trial of the action is observed, although proceedings are taken before the formal order or decree is drawn up, but after judgment delivered. *Dunlop* v. *Haney*, 7 B. C. R. 300; 1 M. M. C. 344.

III. ADVERSE CLAIM OR ACTION.

1. "Adverse proceedings."] — Application of s. 11 of 1898—The words "adverse proceedings," in s. 11 of the Mineral Act, 1898, apply to all mining cases wherein there are mineral claims in conflict under the Mineral Acts. By the combined effect of s. 117 of the Mineral Act, and s. 25 of the County Courts Act, said s. 11 has the same effect in the County Court as in the Supreme Court. *Gelinas* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

2. Affidavit — *Order extending time for filing.*]—An order to extend time for filing the affidavit and plan required by s. 37 of the Mineral Act, must be made by the Court, and cannot be made by a Judge in Chambers. Noble v. Blanchard, 7 B. C. R. 62, not followed. *Murphy* v. *Star Exploring and Mining Co.*, 8 B. C. R. 421; 1 M. M. C. 450.

3. Affidavit—*Husband and wife.*] — An affidavit in support of an adverse claim under s. 37 and amendments may, if bona fide, be made by the husband of the claimant. *Aldous* v. *Hall Mines Co.*, 6 B. C. R. 394; 1 M. M. C. 213.

4. Certificate of improvements—*Second adverse action—Fraud — Policy.*] — Where a claim owner has received a certificate of improvements for his claim his position is assured and he is not called upon to adverse a subsequent application of another for a certificate of improvements for a claim which would include a portion of his claim. Section 37 requires any claimant of an adverse nature to the ground applied for to substantiate his claim within the prescribed time or be forever barred except for fraud, The fact that a claimant began adverse proceedings and abandoned them does not deprive him of whatever rights he otherwise had under the section. Speedy finality of litigation and quieting of titles with all due celerity are the dominant policy of the Mineral Act. *Re American Boy Mineral Claim*, 7 B. C. R. 268, 1 M. M. C. 304.

5. Certificate of improvements—*Bar —Laches — Crown.*]—An adverse claimant who neglects to bring an adverse action under s. 37 cannot sue to set aside a certificate of improvements on the ground of fraud. Semble, that under such circumstances the Crown alone is entitled to sue. *Hand* v. *Warren*, 7 B. C. R. 42; 1 M. M. C. 376.

6. Certificate of work—*Title.*]—Where both sides have recorded, title will be determined according to prior location. *Fero* v. *Hall*, 6 B. C. R. 421; 1 M. M. C. 238.

7. Claimants—*To a mineral claim may be joined as party defendants.*]—All claimants under the Mineral Act to any part of the ground covered by the mineral claim of a plaintiff may be made defendants to an action by him to enforce an adverse claim by him against any one of such claimants. *Dunlop* v. *Haney*, 6 B. C. R. 169; 1 M. M. C. 232.

8. Condition precedent — *Affidavit — Oaths Act—Plan — Survey.*]—It is a condition precedent to right of adverse action that an affidavit and plan should be filed as required by Mineral Act, s. 37, and amendments. Such plan must not only be made and signed by a provincial land surveyor, but the survey on which it is based must be made by him. The provisions of the Oaths Act s. 16, apply to affidavits filed under said s. 37. *Paulson* v. *Beaman*, 9 B. C. R. 184; 1 M. M. C. 471.

9. Curative provisions.] — Failure to write the true date upon the posts of a mineral claim as required by the Mineral Act invalidates the location, unless cured by s. 16; validity of a junior location depends upon the validity of a senior location on the same ground; the curative provisions of s. 16, s.-s. (*d*), of the Mineral Act can only be invoked in support of such senior location by some one claiming to be entitled thereto, and not by a party to such adverse action who has no interest therein. *Bole* v. *Saulter*, 1 M. M. C. 240.

10. Notice of appeal—*Service on solicitor's agent.*]—A notice of appeal may be served on the agent of the solicitor for the proposed defendants. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233; 1 M. M. C. 142.

11. Onus of proof—*Objection—Trial.*]—In adverse proceedings the onus of proof is on the adverse claimant, who has to give affirmative evidence of his own title, and if he is the junior locator establish his case in detail. Counsel for adverse claimant in deference to a remark of the trial Judge, did not complete the proof of his own title:—Held, that he should have pressed to be allowed to complete it, but under the circumstances there should be a new trial. *Caldwell* v. *Davys*, 7 B. C. R. 156; 1 M. M. C. 387.

12. Onus of proof—*Title not established.*]—Defendant cannot satisfy onus by production of certificate of work issued day before trial. Neither party having established his title judgment was so entered without costs. *Rammelmeyer* v. *Curtis*, 8 B. C. R. 383; 1 M. M. C. 401.

13. Onus of proof of title.]—Adverse proceedings are essentially ejectment, not trespass action, and the plaintiff must succeed by the strength of his own title, and it is part of the plaintiff's case to affirmatively shew due location of his claim. *Clark* v. *Haney et al.*, 8 B. C. R. 130; 1 M. M. C. 281.

14. Judgment in rem—*Co-owner—Application of s.* 37.]—A judgment in an application in an adverse action under s. 37 of the Mineral Act is not a judgment in rem. One co-owner of a mineral claim is not estopped by the result of such action instituted by an adverse claimant against another co-owner who has applied for a certificate of improvements. *Per* MARTIN, J.—Section 37 does not apply to co-owners of the same claim, but to owners of conflicting claims. *Fry* v. *Botsford*, 9 B. C. R. 234; 1 M. M. C. 520.

15. Time—*Extension of—Appeal.*] — An appeal lies to the Divisional Court from the order of a Judge extending the time for bringing an adverse action under s. 37 of the Mineral Act, 1891, and amendments. The fact that a writ has already been issued is material to the application and should be disclosed. Such a circumstance can be taken advantage of upon appeal from as well as upon a motion to rescind the order. *Re Maple Leaf Claim*, 2 B. C. R. 323; 1 M. M. C. 68.

16. Time—*Extension of.*] — Court has jurisdiction to extend time for commencing adverse action as well after as before lapse thereof. *Re Good Friday Mineral Claim*, 4 B. C. R. 496; 1 M. M. C. 84.

17. Time—*Extension of.*] — The boundaries of the Countess and Golden Butterfly mineral claims overlapped. The Countess having applied for a certificate of improvements was adversed on the ground of defective location by the Golden Butterfly, with a view to secure the ground common to the two claims. The secretary of the Golden Butterfly Company had re-located the remainder of the Countess ground in his own name as a fraction. He, upon the assumption that, if the adverse of the Golden Butterfly were sustained, the whole of the Countess location would be invalidated, did not bring an action attacking it on his own behalf until after the expiration of the statutory sixty days from the publication of the notice of application for the certificate of improvements to the Countess. He then applied to the Court for leave to bring an action. Held, the circumstances were sufficient ground for an order extending the time. *Re Golden Butterfly Mineral Claim*, 5 B. C. R. 445; 1 M. M. C. 125.

18. Time — *Extension of—Court—Judge in Chambers.*]—An order to extend the time for filing the affidavit and plan required by s. 37 of the Mineral Act must be made by the Court and cannot be made by the Judge in Chambers. *Murphy* v. *Star Mining Co.*, 8 B. C. R. 421; 1 M. M. C. 450.

19. Time—*Extension of—Condition Precedent.*]—Under the Mineral Act Amendment Act, 1892, s. 14, the filing of an adverse claim in the office of the mining recorder is a condition precedent to right of action. The Court has no jurisdiction to extend the time for so doing. The rules as to time governing ordinary cases are to be more stringently applied in mining cases. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233; 1 M. M. C. 112.

20. Time—*Extending.*]—The time for filing affidavit and plan in an adverse action may be further extended on an application made after the lapse of the time fixed by a previous order. *Noble* v. *Blanchard*, 7 B. C. R. 62; 1 M. M. C. 375.

21. Title—*Not established.*]—Where both parties fail to establish title, Judge will so find and direct judgment to be so entered without costs. *Ryan* v. *McQuillan*, 5 B. C. R. 431; 1 M. M. C. 289.

22. Title — *Overlapping—Measurements—Re-location—Affidavit.*]—In an adverse action if the plaintiff wish to attack the defendant's title he must do so at the time of making out a primâ facie case for his own title. Where boundaries of conflicting claims are in question the overlappping must be proved by measurements taken on the ground. The expression "adverse proceedings" in s. 11 of the Mineral Act Amendment Act, 1898, is used in a broad sense. Observations upon the scope and object of s. 11. *Dunlop* v. *Haney*, 7 B. C. R. 1, 305; 1 M. M. C. 369.

23. Title—*Proof of.*]—Section 11 of the Mineral Act Amendment Act, 1898, applies to all adverse proceedings, including those commenced before the Act. By proving (1) his free miner's certificate; (2) prior location and due record; and (3) the overlapping of the claims in dispute, a senior locator who is plaintiff in adverse proceedings makes out a primâ facie case. *Schomberg* v. *Holden*, 6 B. C. R. 419; 1 M. M. C. 290.

24. Trial of, by jury.]—Held by MCCREIGHT, J.: (the Full Court not dissenting), that ss. 144 to 150 of the Mineral Act 1896, refer only to procedure in the County Courts. In an action to enforce an adverse claim, and for a declaration that the plaintiff was entitled to the right of possession to that portion of the "Paul Boy" mineral claim in conflict with the "Lookout" mineral claim, and that the "Lookout" be declared invalid, the defendants asked for a jury. Held, by the Full Court, DAVIE, C.J., and DRAKE, J. (MCCOLL J., concurring), affirming MCCREIGHT, J.: (1) That as the relief

prayed was such as could not have been obtained in a common law action prior to the Judicature Acts, the issues were not proper for trial by a jury. (2) That the character of the action will be determined from the issues raised on the pleadings. *Corbin* v. *Lookout Mining and Milling Company (Foreign)*. 5 B. C. R. 281;1 M. M. C. 126.

25. Writ—*Renewal—Delay.*]—In an adverse action where no reasonable explanation of delay in serving a writ is forthcoming, an application for renewal made two days before the expiry of the writ will be refused. Section 37 does not enable a defendant to get rid of an adverse action other than according to the ordinary practice of the Court. *Haney* v. *Dunlop*, 6 B. C. R. 451, 520; 1 M. M. C. 311.

26 Writ—*Renewal of.*]—If the writ in adverse action is not served within a year the action is out of Court and no order can be made therein. *Troup* v. *Kilbourne*, 5 B. C. R. 547; 1 M. M. C. 219.

IV. Affidavit.

1. Condition precedent.]—In an adverse action, the plan to be filed pursuant to s. 37 of the Mineral Act must be based on a survey made by a Provincial Land Surveyor. The filing of the affidavit and plan pursuant to said section is a condition precedent to the plaintiff's right to proceed with his action. Decision of Martin, J., reversed, Hunter, C.J., dissenting. *Paulson* v. *Beaman et al.*, 9 B. C. R. 184; 1 M. M. C. 471.

2. Fraud in—*Application for certificate of improvements.*]—Held, by Martin, J., that a judgment signed by him and left by him for deposit in the mail at Victoria on August 11th, 1899, was pronounced on that date, although the judgment did not apparently reach the Vancouver registry to which it was addressed until the 15th. In an action by the Attorney-General to set aside a certificate of improvements on the ground that it was obtained by fraud, the fraud alleged was a statement in an affidavit of defendant's agent sworn on August 10, 1899, that the defendant was in undisputed possession of the Pack Train mineral claim. On 10th August, 1899, an action was then pending as to the title of the Pack Train claim, and judgment was not delivered till 11th August, 1899, in favour of the defendant. As it was after the 11th August when the affidavit reached the Gold Commissioner:—Held, not fraud within s. 37 of the Mineral Act. The application to the Minister of Mines under s. 10 of the Mineral Act Amendment Act, 1899, need not to be in writing. *Attorney-General* v. *Dunlop*, 7 B. C. R. 312; 1 M. M. C. 408.

3. Husband and wife.]—An affidavit in support of an adverse claim under s. 37 and amendments may, if bonâ fide, be made by the husband of the claimant. *Aldous* v. *Halt Mines Co.*, 6 B. C. R. 394; 1 M. M. C. 213.

4. Mechanic's lien.]—Under the Mechanics' Lien Act a free miner may enforce a mechanic's lien against a mineral claim. A statement in the affidavit of lien that the work was finished or discontinued on or about a certain date is sufficient. *Holden* v. *Bright Prospects Gold Mining and Development Co.*, 6 B. C. R. 439; 1 M. M. C. 292.

5. Re-location.]—*Per* Martin, J.:—In an adverse action if the plaintiff wish to attack the defendant's title he must do so at the time of making out a primâ facie case for his own title. Where boundaries of conflicting claims are in question the overlapping must be proved by measurements taken on the ground. The expression "adverse proceedings," in s. 11 of the Mineral Act Amendment Act, 1898, is used in a broad sense. Observations upon the scope and object of s. 11. A statement by a re-locator in his affidavit of re-location that the ground so re-located is "unoccupied by any person as a mineral claim," is a notice of abandonment in writing, under s. 30 of the Mineral Act of the deponent's former rights in the original location, and if the original location were valid, it could not lawfully be re-located without the written permission of the Gold Commissioner. Schomberg v. Holden, ante p. 290, M. M. C., approved. *Dunlop* v. *Haney*, 1 M. M. C. 369; 7 B. C. R. 1, 305.

6. Time—*Order extending for filing.*]—An order to extend the time for filing the affidavit and plan required by s. 37 of the Mineral Act must be made by the Court and cannot be made by a Judge in Chambers. Noble v. Blanchard (1899), 7 B. C. R. 62, not followed as to this point. McColl, C.J., dissenting. *Murphy* v. *Star Exploring and Mining Company*, 8 B. C. R. 421; 1 M. M. C. 450.

V. Agency.

1. Bill of sale.]—The interest of a principal in a mineral claim may be transferred by his agent by a bill of sale though executed by agent in his own name. *Wilson* v. *Whitten*, 1 M. M. C. 38.

2. Location by agent—*Estoppel.*]—W. sold certain mineral claims called the Big Four Group to A., who sold in turn to the defendants, after which W., as agent for the plaintiff, located a fraction between two of the claims in the plaintiff's name:—Held, that defendants had no right to the fraction in the absence of proof of fraud by W., and that the plaintiff was a party thereto, and held also that the defendants could not invoke against the plaintiff a statement in a bill of sale from H. to W. that the end of the two claims between which the fraction in question was located adjoined each other. *Gibson* v. *McArthur and Luckman*, 7 B. C. R. 59; 1 M. M. C. 382.

3. Parol agency and Statute of Frauds.]—The interest of a free miner in his mineral claim is an interest in land and an agreement not in writing respecting it cannot be enforced. Where one person on behalf of another locates and records a claim in his own name, the Court will compel him to transfer the claim to his principal. 6 B. C. R. 421; 1 M. M. C. 238.

4. Smelting.]—Mine owner's agent cannot vary contract for.]—*Le Roi Mining Co.* v. *Northport Smelting & R. Co.*, 10 B. C. R. 138.

See Contract, III. 2.

5. Solicitor — *Service on agent of.*]—A notice of appeal may be served on the agent of the solicitor for proposed defendants. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233; 1 M. M. C. 142.

VI. APPEAL.

1. Abandonment of.]—After judgment allowing an appeal, and adjournment of the Court, but before the order was drawn up, it was brought to the attention of the Court by special leave that a notice of which respondents' counsel was not instructed), abandoning the appeal, had been served upon respondents' solicitor on the morning of, but before the argument of the appeal:—Held, that the appeal was at an end upon the giving of the notice abandoning it, and the order allowing the appeal not having been drawn up no order would be issued, but the appeal should stand as if struck out of the paper. *Re Maple Leaf Claim*, 2 B. C. R. 323; 1 M. M. C. 68.

2. Costs of appeal will not be given to appellant who succeeds on point not taken below. *Aldous* v. *Hall Mines*, 6 B. C. R. 394; 1 M. M. C. 213.

3. Costs—*Interlocutory order.*]—Costs of appeal from interlocutory order are payable forthwith. *Star Mining Co.* v. *Byron N. White Co.*, 4 B. C. R. 9; 1 M. M. C. 468.

4. Cross-motion — *Withdrawal.*] — A cross-motion to the appeal for a new trial having been served by respondent and adjournments obtained by her to obtain affidavits in support of it, which were subsequently filed, the Court, on objection by defendants, refused to permit the plaintiff to withdraw such application. *Atkins* v. *Coy*, 5 B. C. R. 6; 1 M. M. C. 88.

5. Divisional Court—*Appeal to from order extending time.*]—The order of a Judge extending the 30 days provided by the Mineral Act (1891) Amendment Act, 1892, within which to commence proceedings in a Court of competent jurisdiction to enforce an adverse claim, is appealable to the Divisional Court under s. 67, Supreme Court Act, although not made in any pending cause. It appeared that a writ, endorsed to prosecute the adverse claim in the Supreme Court, had been issued before the application for the order appealed from was made; but that fact was not disclosed to the Judge upon the application:—Held, allowing the appeal, that the fact of the issue of the Supreme Court writ was material to the original application and should have been disclosed. Such a circumstance can be taken advantage of upon an appeal from, as well as upon a motion to, rescind the order. After judgment allowing the appeal, and adjournment of the Court, but before the order was drawn up, the matter was spoken to before the Court upon a subsequent day, in presence of counsel for both parties, by special leave, and it appearing that a notice (of which respondents' counsel was not instructed) abandoning the appeal had been served by appellants' solicitor upon respondents' solicitor on the morning of, but before the argument of, the appeal:—Held, that the appeal was at an end upon the giving of the notice abandoning it, and the order allowing the appeal not having been drawn up, no order would be issued, but the appeal should stand as if struck out of the paper. *Re The Maple Leaf and Lanark Mineral Claims*, 2 B. C. R. 323; 1 M. M. C. 68.

6. Extending time—*Abandoned appeal—Appeal from Mining Courts.*]—In extending time for appealing in mining cases, the discretion of the Court will only be exercised on the strongest grounds. Application to extend time to set down appeal on the ground of inability to procure the Judge's notes, should be made to the Court for which notice of appeal has been given, and if not so made the appeal will be treated as abandoned. Appeals from Mining Courts may, despite C. S. B. C. 1888, c. 82, s. 29, be brought as in ordinary procedure and not only by way of a case stated. *Kinney* v. *Harris*, 5 B. C. R. 229; 1 M. M. C. 137.

7. Gold Commissioner—*Reviewing decision of.*]—A decision of Gold Commissioner in granting leave of absence will not, on appeal, be interfered with except for fraud. *Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39; 1 M. M. C. 31.

8. Injunction preserving property pending.]—In a case of very special and exceptional circumstances, and to preserve the property in dispute, a party in an adverse action, who had obtained judgment at the trial, may, after appeal has been brought, be enjoined from persisting in his application for, or from obtaining a certificate of improvements pending such appeal. An undertaking not to proceed further until the trial of the action is observed, although proceedings are taken before the formal order or decree is drawn up, but after judgment delivered. *Dunlop* v. *Haney*, 1 M. M. C. 344; 7 B. C. R. 300.

9. Jurisdiction.] — Unless objection is taken to jurisdiction of County Court at trial it will not be considered on appeal. *Gelinas et al.* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

10. New defence on appeal.]—Defence setting up defective location cannot be raised for the first time on appeal. *Hogg* v. *Farrell*, 6 B. C. R. 387; 1 M. M. C. 79.

11. Service of notice—*Agent of solicitor.*]—A notice of appeal may be served on the agent of the solicitor for proposed defendants in an adverse action. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233; 1 M. M. C. 142.

12. Time, extension of.]—The appellant was advised by counsel, up to a period considerably beyond the time for appealing from the judgment of an inferior Court, to acquiesce in it, but he had since been advised by other counsel to appeal, and that special hardship would probably result to him if the judgment were allowed to stand:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and WALKEM, JJ.), insufficient ground for extending the time for appealing. *Trask* v. *Pellent*, 5 B. C. R. 1; 1 M. M. C. 86.

13. Water Clauses Consolidation Act.] — Anyone affected by a decision appealed from under s. 36 of the Water Clauses Consolidation Act, may be let in on the hearing of the appeal, even though the month for giving notice of appeal has expired. Such person may make his application on the hearing of appellant's motion for directions. *In*

re Waters Consolidation Act, 8 B. C. R. 17; 1 M. M. C. 421.

VII. Assessment.

1. Close season—*Gold Commissioner.*]—A close season may be fixed by the Gold Commissioner by verbal direction requiring three months' work on each claim, instead of by specifying a certain portion of the year as applicable to all claims. *Victor* v. *Butler*, 8 B. C. R. 100; 1 M. M. C. 438.

2. Close season — *Lay over—Gold Commissioner.*] — Gold Commissioner cannot, by declaring close season or laying over, supersede statutory requirements as to assessment work. *Wilson* v. *Whitten*, 1 M. M. C. 38.

3. Close season — *Representation—Gold Commissioner—Leave of absence—Residence—Resumption of possession — Evidence.*]—During the close season there is no obligation to represent a claim, the whole of that season being for such purposes expunged from the calendar, and an attempt to locate another claim on the same ground during that season is merely an authorized trespass—a "jumping." Building a residence on or at a place manifestly convenient for the purpose of working a claim is doing miner-like work on such claim within the meaning of the Mineral Act, 1882, ss. 48 and 50, though in old and highly organized countries it would not be. The decision of the Gold Commissioner in granting leave of absence will not be interfered with unless for fraud. Where a free miner finds another in possession of his claim so that to insist upon working it might lead to a breach of the peace, he is exonerated from the performance of assessment work until the title is determined. Absence of 72 hours is not in all cases conclusive evidence of an intention to abandon. If a claim-holder does not properly represent his claim and so render it liable to re-location, he may, nevertheless, if he return to it and find it intact, resume possession, recommence working and be in "as of his old estate." Where one man pretends to represent two claim holders at the same time, it is strong evidence that his representation in both cases is colourable, and so, worthless. *Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39; 1 M. M. C. 31.

4. Performance of, outside of location — *Mistake—Certificate of work.*]—Performance of assessment work by mistake outside of boundaries of claim is an irregularity which is cured by the recording of a certificate of work. *Lawr* v. *Parker*, 7 B. C. R. 417; 8 B. C. R. 223; 1 M. M. C. 456.

5. Performance of.] — Is equivalent to payment of annual rent to the Crown. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487.

6. Performance of, as between subjects, is conclusively established by recording certificate of work. *Cleary* v. *Boscowitz*, 8 B. C. R. 225; 1 M. M. C. 506.

7. Title—*Defects in, cured by certificate of work.*]—In November, 1897, Cooper, having already located a claim on the same lode, located the Native Silver claim in the name of Halpin, who transferred in December, 1897, one-half to Cooper and the other half to Haller, who sold to plaintiff in July, 1900, the usual certificates of work having been obtained in the interim. Defendant, who knew of the error in the description of the compass bearing, and of the issue of such certificates, on failing to effect a purchase of the claim from Cooper and Haller, located the same ground as the Arlington Fraction, and on obtaining the usual certificates of work, applied for Crown grant:—Held, in adverse proceedings, affirming Walkem, J. (Drake, J., dissenting), that the defendant not being misled, the irregularities in the plaintiff's title were cured by s. 28 of the Mineral Act. Callahan v. Coplen (1899), 30 S. C. R. 555, and Gelinas et al. v. Clark (1901), 8 B. C. R. 42, specially considered. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487.

VIII. Boundary.

1. Measurements.]—The plaintiff, in adverse proceedings, must shew the measurements of the ground in dispute in order to prove overlapping of claims. *Dunlop* v. *Haney et al.*, 7 B. C. R. 1, 305; 1 M. M. C. 369.

2. Overlapping.] — Locations which do not overlap do not conflict, at least in so far as boundaries are concerned. *Dunlop* v. *Haney*, 7 B. C. R. 344; 1 M. M. C. 344.

3. Staking.] — In adverse proceedings where it is not established with reasonable certainty, (1) that the ground was properly staked; (2) that assuming the ground had been properly staked, it was identical with the ground mentioned in the record, and the defendant shews title and produces certificates of work for several years, judgment will be given in favour of defendant. *Pavior* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384.

4. Time—*Extending.*]—The boundary of the Countess and Golden Butterfly mineral claims overlapped. The Countess having applied for a certificate of improvements was adversed on the ground of defective location by the Golden Butterfly, with a view to secure the ground common to the two claims. The secretary of the Golden Butterfly Company had re-located the remainder of the Countess ground in his own name as a fraction. He, upon the assumption that, if the adverse of the Golden Butterfly were sustained, the whole of the Countess location would be invalidated, did not bring an action attacking it on his own behalf until after the expiration of the statutory sixty days from the publication of the notice of application for the certificate of improvements to the Countess. He then applied to the Court for leave to bring an action:—Held, that circumstances were sufficient ground for an order extending the time. *Re "Golden Butterfly Fraction" and "Countess" Mineral Claims*, 5 B. C. R. 445; 1 M. M. C. 125.

5. Work—*Miner doing assessment outside of boundary of claim.*]—The plaintiff, owner of the Rebecca mineral claim and having an interest in the Ida, an adjoining claim, performed the assessment work for both claims, on the Ida, as he believed, but in reality, as shewn by subsequent survey, a few feet outside the claim, but did not file the notice required by s. 24 of the Mineral Act with the Gold Commissioner, who told him the work on the Ida would be regarded as

done on the Rebecca. Plaintiff received in August, 1899, a certificate of work in respect of the Rebecca, and in his affidavit stated that the work was done on the Rebecca:—Held, in ejectment, that the plaintiff, being misled by the Gold Commissioner, was protected by s. 53 of the Act. The omission to file the notice required by s. 24 of the Act, and the incorrect filling up of the affidavit, were irregularities which were cured by the certificate of work. *Lacr* v. *Parker*, 7 B. C. R. 418; 8 B. C. R. 223; 1 M. M. C. 456.

IX. Certificate or License.

1. *Coal License.*

1. Prospecting license — *Certificate of Commissioner.*] — Petitioners held a prospecting license for coal over 2,500 acres of land under the Mineral Ordinance, 1869, and applied for a Crown grant. In support of their claim, they relied on a certificate of the Assistant Commissioner of Lands and Works, that they had duly posted notices of their application, and "that no objection to the issue of such grant had been substantiated:"—Held, (1) that the certificate was not in accordance with the Act. (2) That the certificate of an assistant commissioner was not conclusive evidence of compliance with the statutory conditions, and the presumption arising from the certificate could be rebutted. (3) That the department could not dispense with the performance of preliminary conditions imposed by the legislature. (4) That in a proceeding to enforce specific performance by the Crown, unreasonable delay on the part of the petitioners is fatal to the application. (5) On the facts, that the claim had been abandoned. Quære, whether to entitle prospecting licensees to a grant of coal lands under the Mineral Act, it is not essential that they should have found coal on the land selected by them for purchase? *Peck* v. *Regnam*, 1 M. M. C. 13; 1 B. C. R., pt. II., 11.

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2. *Free Miner's Certificate.*

1. Lapse of.] — A sheriff in possession of a free miner's interest in a mineral claim has no power on behalf of a judgment creditor to take out a special free miner's certificate under s. 4 of the Mineral Act Amendment Act of 1899, in the name of the owner of the interest under seizure; neither has the sheriff power to renew a certificate before lapse. Where one of the co-owners of a mineral claim allows his free miner's certificate to lapse, his interest at once vests pro rata in the remaining co-owners. Decision of Irving, J., affirmed. *McNaught* v. *Van Norman et al.*, 1 M. M. C. 516; 9 B. C. R. 131.

2. Special certificate — *Whether a revival of title.*]—On the expiration of a free miner's certificate, any mineral claim of which the holder thereof was the sole owner becomes open to location. The obtaining of a special certificate under s. 2 of the Mineral Act Amendment Act, 1901, does not revive the title if, in the meantime, the ground has been located as a mineral claim. *Woodbury Mines, Limited* v. *Poyntz*, 2 M. M. C. 76; 10 B. C. R. 181.

3. *Improvements, Certificate of.*

1. Action — *Necessity for commencement of before issuance of.*] — Plaintiffs held a Crown grant dated 8th March, 1895, of certain lands from which there were excepted "lands held prior to 23rd March, 1893, as mineral claims." Defendant held certificate of improvements dated 14th August, 1899, and plaintiffs being apprehensive as to form of Crown grant to be issued to defendant, applied for injunction restraining him from applying for and receiving Crown grant:—Held, dismissing the motion, that the policy of the Mineral Acts is to compel persons claiming adversely to an applicant for a Crown grant to commence action before a certificate of improvements is obtained. *Nelson and Fort Sheppard Railway Co.* v. *Dunlop*, 7 B. C. R. 411; 1 M. M. C. 414.

2. Co-owner of part of claim may apply for.]—*Bentley* v. *Botsford*, 8 B. C. R. 128; 1 M. M. C. 454.

3. Crown grant—*Rectification of.*]—An application was made to the Chief Commissioner of Lands and Works for the rectification of a Crown grant of certain mineral claims and was opposed by parties who had obtained a certificate of improvements covering a portion of the ground included in the grant:—Held, affirming the Chief Commissioner, that the applicant was entitled to have the grant rectified notwithstanding the said certificate:—Held, also, by the Chief Commissioner, that the holder of a certificate of improvements is not bound to adverse any subsequent applicant for a certificate. *In re The American Boy Mineral Claim*, 7 B. C. R. 268; 1 M. M. C. 304.

4. Fraud.]—Held, by Martin, J., that a judgment signed by him and left by him for deposit in the mail at Victoria, on August 11th, 1899, was pronounced on that date, although the judgment did not apparently reach the Vancouver registry to which it was addressed until the 15th. In an action by the Attorney-General to set aside a certificate of improvements on the ground that it was obtained by fraud, the fraud alleged was a statement in an affidavit of defendant's agent sworn on 10th August, 1899, that the defendant was in undisputed possession of Pack Train mineral claim. On 10th August, 1899, an action was then pending as to the title of the Pack Train claim and judgment was not delivered till 11th August, 1899, in favour of the defendant. As it was after the 11th August when the affidavit reached the Gold Commissioner:—Held, not fraud within s. 37 of the Mineral Act. The application to the Minister of Mines under s. 10 of the Mineral Act Amendment Act, 1899, need not to be in writing. *Attorney-General* v. *Dunlop*, 7 B. C. R. 312; 1 M. M. C. 408.

5. Fraud setting aside for.]—An adverse claimant who neglects to take the remedy provided by s. 37 of the Mineral Act cannot sue to set aside a certificate of improvements on the ground of fraud. Semble, that under such circumstances the Crown alone is entitled to sue. *Hand* v. *Warren*, 7 B. C. R. 42; 1 M. M. C. 376.

6. Injunction to restrain obtaining pending appeal.]—An undertaking not to proceed further until the trial of the action is

observed, although proceedings are taken before the formal order or decree is drawn up, but after judgment delivered. *Dunlop* v. *Haney*, 7 B. C. R. 300; 1 M. M. C. 344.

7. Injunction — *To restrain application for Crown grant.*]—Plaintiffs held a Crown grant dated 8th March, 1895, of certain lands from which there were excepted "lands held prior to 23rd March, 1893, as mineral claims." Defendant held certificate of improvements dated 11th August, 1899, and plaintiffs being apprehensive as to form of Crown grant to be issued to defendant, applied for injunction restraining him from applying for and receiving Crown grant:—Held, dismissing the motion, that the policy of the Mineral Act is to compel persons claiming adversely to an applicant for a Crown grant to commence action before a certificate of improvement is obtained. *Nelson and Fort Sheppard Railway Co.* v. *Dunlop*, 7 B. C. R. 411; 1 M. M. C. 414.

8. Operates as a bar.] — *Per* DAVIE, C.J.:—Held, (1) A duly recorded mineral claim may be abandoned before the expiration of the year from the date of its location by absence or other conduct of the holder, evincing an election to surrender it, and, on the facts, that the "Zenith" mineral claim in question was so abandoned. (2) An exception, expressed in a Crown grant to the railway company of subsidy lands, of all portions of such lands previously to a certain date, "held as mineral claims," imports only such claims as were then lawfully so held, and that it was open to the railway company to question the validity of mineral claims previously located thereon. (3) In the case of lands occupied for other than mining purposes, the giving by the free miner of a bond, under s. 10 of the Mineral Act, as security for any damage which may be caused to such lands by mining operations, is an imperative pre-requisite to his right to enter and locate a mineral claim thereon. (4) The finding upon the location of mineral bearing "rock in place," with a vein or ledge having defined walls, is essential to the validity of a mineral claim. (5) A certificate of improvements under s. 46 of the Mineral Act, 1891, is a bar only to adverse claims to the location advanced by other claimants under the Mineral Act, and is not a bar to the rights of claimants of the land as land to whom the Mineral Act procedure does not apply. Upon appeal to the Full Court (MCCREIGHT, WALKEM, DRAKE and MCCOLL, JJ.):—Held, (1) The title to a duly located and recorded mineral claim is equivalent, under s. 34 of the Mineral Act, 1891, to a lease for a year vested in its owner, and the doctrine of implied surrender by conduct does not apply to it; and the only abandonment by which the owner can be concluded is that by notice of abandonment given by him to the Crown, as provided for by s. 27 of the Act. (2) The exception from the railway company's Crown grant of "lands held as mineral claims," means de facto claims, and the word "lawfully" cannot be imported. (3) A claimant to the land as land has no status to question the due performance by the free miner of the conditions required by the Crown as pre-requisite to his right to a valid mineral claim thereon. (4) The requirements of a bond by s. 10 of the Act of 1891, is a directory provision for the protection of the land owner, and is not a pre-requisite to the acquisition by the miner of the mineral rights from the Crown. (5) The discovery of a mineral vein or lode is not essential to a valid mineral claim; "rock in place" is sufficient. (6) The words, "rock in place" are satisfied by rock in situ, bearing valuable deposits of mineral, although not lying between defined walls or in a vein or ledge. (7) A certificate of improvements is, under s. 10 of the Mineral Act, 1891, a bar to adverse claimants in any right, and on all grounds, except fraud. (8) Holders of mineral claims are not entitled to deal with any portion of the surface, except in accordance with the mining laws, and are not entitled to sell or dispose of the same. *The Nelson and Fort Sheppard Railway Company* v. *Jerry et al.*, 5 B. C. R. 396; 1 M. M. C. 161.

9. Subsequent claim, no need to adverse after issue of.]—An application was made to the Chief Commissioner of Lands and Works for the rectification of a Crown grant of certain mineral claims, and was opposed by parties who had obtained a certificate of improvements covering a portion of the ground included in the grant:—Held, affirming the Chief Commissioner, that the applicant was entitled to have the grant rectified notwithstanding the said certificate:—Held, also, by the Chief Commissioner, that the holder of a certificate of improvements is not bound to adverse any subsequent applicant for a certificate. *In re The American Boy Mineral Claim*, 7 B. C. R. 268; 1 M. M. C. 304.

See also IMPROVEMENTS, *infra*.

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4. *Work, Certificates of.*

1. Admissibility of, in evidence.]—In adverse proceedings where it is not established with reasonable certainty (1) that the ground was properly staked; (2) that assuming the ground had been properly staked it was identical with the ground mentioned in the record, and the defendant shews title and produces certificates of work for several years, judgment will be given in favour of defendant. Before a substituted certificate will be admitted in evidence there must be proof of loss of the original. Conditions of the admissibility of a mining recorder's certificate as to issue of free miner's license and as to issue of certificates of work considered. Copies of certain recorded instruments held admissible without proof of originals. *Parker* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384.

2. Curing defects in title.]—In November, 1897, Cooper, having already located a claim on the same lode, located the Native Silver claim in the name of Halpin, who transferred in December, 1897, one-half to Cooper and the other half to Haller, who sold to plaintiff in July, 1900, the usual certificates of work having been obtained in the interim. Defendant, who knew of the error in the description of the compass bearing, and of the issue of such certificates, on failing to effect a purchase of the claim from Cooper and Haller, located the same ground as the Arlington Fraction, and on obtaining the usual certificates of work, applied for Crown grant:—Held, in adverse proceedings, affirming WALKEM, J. (DRAKE, J., dissenting), that the defendant, not being misled, the irregularities in the plaintiff's title were cured by s. 28 of the Mineral Act. Callahan v. Coplen (1899), 30 S. C. R. 555, and Gelinas et al. v. Clark (1901), 8 B. C. R. 42, specially considered.

Manley v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487.

3. Curative effect of—*Date—Failure to write on post.*]—Failure to write the true date upon the posts of a mineral claim as required by the Mineral Act, invalidates the location unless cured by s. 16, s.-s. (d). In an adverse action when the validity of a junior location depends upon the validity of a senior location on the same ground, the curative provisions of s. 16, s.-s. (d), of the Mineral Act can only be invoked in support of such senior location by some one claiming to be entitled thereto, and not by a party to such adverse action who has no interest therein. *Bole* v. *Saulter*, 1 M. M. C. 240.

4. Curative effects of.]—Defects in location made bonâ fide in endeavouring to avoid encroaching upon other locations, and which do not mislead, are cured by a certificate of work. *Waterhouse* v. *Liftchild*, 6 B. C. R. 424; 1 M. M. C. 153.

5. Curative effects of—*Error in initial post.*]——*Per* BOLE, Co. J.: (1) An error in the statement on the initial post of the approximate compass bearing of No. 2 post, of N.-E. and S.-W. instead of N.-W. and S.-E., is fatal to the validity of the location of the mine. (2) That, as a fact, such a mode of location was calculated to mislead other persons desirous of locating claims in the vicinity; and therefore could not be treated as a bonâ fide attempt to comply with the provisions of the Mineral Act, 1896. (3) That the plaintiffs' prior location not having been recorded within the prescribed time was abandoned and of no validity as against the defendant's subsequent location properly recorded. *Francoeur and McDonald* v. *English*, 6 B. C. R. 63; 1 M. M. C. 203.

6. Curative effects of — *Legal posts — Failure to erect.*] — Failure to put up legal posts, as required by the Mineral Act, invalidates a location, unless cured by s. 16, s.-s. (d). The curative provisions of that section are intended as a shield for the protection of locators, and to be invoked by them, and not as a weapon of attack upon them. It is not necessary to record the abandonment of an invalid location before re-location. *Creelman* v. *Clarke et al.*, 1 M. M. C. 228.

7. Curative effects of—*Lapsed location —Curative effects of on.*]—The Trilby mineral claim lapsed by abandonment in July, 1896. Before lapse the same ground was located as the Old Jim by the defendant's predecessor in title, and certificates of work were recorded in respect of it in 1897, 1898 and 1899. In February, 1899, the plaintiffs located the same ground as the Herald Fraction claim:—Held, affirming SPINKS, Co.J. (MARTIN, J., dissenting), that the defects in defendant's title were cured by the recording of the certificate of work. Unless objection is taken to the jurisdiction of the Court below at the trial, it will not be considered in appeal. Remarks by MARTIN, J., as to admissibility of evidence of abandonment when same not pleaded. *Gelinas et al.* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

8. Curative effects of—*Mistake in compass bearing.*]—The defendant's mineral claim Cube Lode was located in May, 1892, and duly recorded, and certificates of work were issued in respect of it regularly since. The plaintiff in 1896, located and recorded the Cody Fraction and the Joker Fraction claims on the same ground, and attacked the defendant's location on the ground that upon the initial post the "approximate compass bearing" of No. 2 post was not given as required by the Act. The compass bearing was east by north, and required south-easterly as stated on No. 1 post:—Held, by the Full Court (IRVING, J., dissenting), reversing MARTIN, J., that the irregularity in locating was not cured by a certificate of work:—Held, *per* DRAKE, J., that s. 28 of the Mineral Act cures only irregularities arising after location and record, and which do not go to the root of the title. *Callahan* v. *Coplen*, 7 B. C. R. 422; 1 M. M. C. 348.

9. Curative effects of—*Rock monuments instead of posts.*]—The erection of rock monuments instead of legal posts as required by the Mineral Act, invalidates a location, and such an omission cannot be cured by s. 16, s.-s. (d). The provisions of that section are conjunctive. Any other mode of making a location then that specified by the Act is calculated to mislead other locators. Decision of MCCOLL, J., affirmed. *Callanan et al.* v. *George et al.*, 1 M. M. C. 242; 8 B. C. R. 146.

10. Curative effects of—*Work—Assessment done outside of claim.*]—The plaintiff, owner of the Rebecca mineral claim, and having an interest in the Ida, an adjoining claim, performed the assessment work for both claims on the Ida, as he believed, but in reality, as shewn by subsequent survey, a few feet outside the claim, but did not file the notice required by s. 24 of the Mineral Act with the Gold Commissioner, who told him the work on the Ida would be regarded as done on the Rebecca. Plaintiff received in August, 1899, a certificate of work in respect of the Rebecca, and in his affidavit stated that the work was done on the Rebecca:—Held, in ejectment, that the plaintiff being misled by the Gold Commissioner was protected by s. 53 of the Act. The omission to file the notice required by s. 24 of the Act, and the incorrect filling up of the affidavit, were irregularities which were cured by the certificate of work. *Lauer* v. *Parker*, 7 B. C. R. 418; 8 B. C. R. 223; 1 M. M. C. 456.

11. Form of.]—A certificate of work is not irregular because it contains more than the Act requires, nor because it does not shew on its face a statutory extension of time. *Payne Consolidated Mining Co., Ltd. Lby.*, v. *Wilson*, 1 M. M. C. 485.

12. Failure to record.]—In adverse proceedings the party locating over a claim alleged to have been abandoned must produce clear evidence of abandonment, and it is not enough for this purpose to rely upon the non-production of certificates of work. Semble, a locator cannot after abandonment by a prior locator rest on a location made before such abandonment, but must re-locate. *Cranston et al.* v. *The English Canadian Co.*, 7 B. C. R. 266; 1 M. M. C. 394.

13. Fraud.]—Certificate of work cannot be invoked in support of so called location which has been fraudulently changed. *Wise* v. *Christholm*, 1 M. M. C. 413.

14. Gold Commissioner — *Recorded pursuant to permission of.*] — An order in council, under s. 161 of the Mineral Act,

1896, extending the time for the doing and recording of assessment work on a mineral claim is intra vires. A certificate of work recorded pursuant to permission granted by a Gold Commissioner acting under such an order-in-council, is a good certificate within s. 28 of the said Act. *Peters* v. *Sampson*, 6 B. C. R. 405; 1 M. M. C. 247.

15. Impeachment of.]—A certificate of work cannot be impeached in any proceeding to which the Attorney-General is not a party. Plaintiffs, in making their case, admitted that defendant held certificates of work:—Held, that in itself was affirmative evidence of defendant's title within the meaning of s. 2 of the Mineral Act Amendment Act of 1898. *Cleary et al.* v. *Boscowitz*, 8 B. C. R. 225; 1 M. M. C. 506.

16. Impeachment for fraud.] — In November, 1897, Cooper having already located a claim on the same lode, located the Native Silver claim in the name of Halpin, who transferred in December, 1897, one-half to Cooper and the other half to Haller, who sold to plaintiff in July, 1900, the usual certificates of work having been obtained in the interim. Defendant, who knew of the error in the description of the compass bearing, and of the issue of such certificates, on failing to effect a purchase of the claim from Cooper, Haller located the same ground as the Arlington Fraction, and on obtaining the usual certificates of work, applied for Crown grant:—Held, in adverse proceedings, affirming WALKEM, J. (DRAKE, J., dissenting), that the defendant not being misled, the irregularities in the plaintiff's title were cured by s. 28 of the Mineral Act. Callahan v. Coplen (1899), 30 S. C. R. 555, and Gelinas et al. v. Clark, 1901, 8 B. C. R. 42, specially considered. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487.

17. Priority of record.] — Where both parties have recorded certificates of work, the title will be determined according to prior location and record. *Fero* v. *Hall*, 6 B. C. R. 421; 1 M. M. C. 298.

See also WORK, *infra*.

X. CLOSE SEASON.

1. Power of Gold Commissioner to declare.]—Under the Mineral Act, 1884, and amendments of 1886-7, a Gold Commissioner has no power to declare a close season or lay over mineral claims so as to supersede the necessity of compliance with the statutory requirements relating to the representation of such claims by annual assessment work or expenditure of $100. Powers of Gold Commissioner to declare a close season and lay over mineral claims considered. Decision of WALKEM, J., affirmed. *Per* WALKEM, J.: The interest of a principal in a mineral claim may be transferred by his agent by bill of sale though executed by the agent in his own name. *Wilson* v. *Whitten*, 1 M. M. C. 38.

2. Power of Gold Commissioner to order.]—Where there are two Crown grants to different parties for the same claim, or overlapping portions of two claims, the earlier must prevail. A close season may be fixed by the Gold Commissioner by verbal direction requiring three months' work on each claim, instead of by specifying a certain portion of the year as applicable to all claims. *Per* MARTIN, J.: Observations on what constitutes "possession" of a mineral claim. Decision of DUGAS, J., affirmed. *Victor et al* v. *Butler*, 1 M. M. C 438.

3. Representation during.] — During the close season there is no obligation to represent a claim, the whole of that season being for the purposes expunged from the calendar, and an attempt to locate another claim on the same ground during that season is merely an unauthorized trespass—a "jumping." Unless actual damage be shewn, nominal damages ($1) only will be awarded for the trespass. Building a residence on or at a place manifestly convenient for the purpose of working a claim is doing miner-like work on such claim within the meaning of the Mineral Act, 1882, ss. 48 and 50, though in old and highly organized countries it would not be. The decision of the Gold Commissioner in granting leave of absence will not be interfered with unless for fraud. Where a free miner finds another in possession of his claim, so that to insist upon working it might lead to a breach of the peace, he is exonerated from the performance of assessment work until the title is determined. In proving title one party cannot set up as against another a right to a third claim, which he himself contends he has destroyed. Absence of 72 hours is not in all cases conclusive evidence of an intention to abandon. If a claim-holder does not properly represent his claim, and so render it liable to re-location, he may, nevertheless, if he return to it and find it intact, resume possession, re-commence working, and be in "as of his old estate." Where one man pretends to represent two claim holders at the same time, it is strong evidence that his representation in both cases is colourable, and so, worthless. *Woodbury* v. *Hudnut*, *Woodbury* v. *Meyers*, *Blasdel* v. *Hunley*, *Hammil* v. *Sproule*, 1 M. M. C. 31; 1 B. C. R. pt. II., 39.

XI. COAL.

1. Chinese, employment of, in Coal Mines.]—The Coal Mines Regulation Act by s. 4 provided: "No boy under the age of twelve years, and no woman or girl of any age, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground." By s. 12, if any person contravenes or fails to comply with, etc., "any provision of this Act with respect to the employment of women, girls, young persons, boys, or children, he shall be guilty of an offence against this Act." By s. 95 "every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he is . . . the manager, $100." In 1890, s. 4 was amended by inserting the words "and no Chinamen," after the word "age." The defendant was convicted before two justices of the peace of having employed a Chinaman in a coal mine under ground, and was fined $100. Upon application for certiorari to quash the conviction:—Held, by DRAKE, J., confirmed by the Full Court (DAVIE, C.J., WALKEM and IRVING, JJ.): That a contravention of the amendment to s. 4 prohibiting the employment of Chinamen was not made an offence under the Act for which any penalty is imposed, and that the Penal Act should not be extended beyond the reasonable construction which the

words used would bear. The Interpretation Act, s. 8, s.-s. 21, providing that "any wilful contravention of any Act which is not made an offence of some other kind shall be a misdemeanour and punishable accordingly," did not assist the conviction. *Regina* v. *Little*, 6 B. C. R. 78; 1 M. M. C. 220.

2. Coal Mine Regulation—*Employment of Chinamen.*]—An enactment by a provincial Legislature that no Chinaman shall be employed in mines is beyond its competence, inasmuch as by the British North America Act, 1867, s. 91, s.-s. 25, legislation with respect to "naturalization and aliens" is reserved exclusively to the Parliament of the Dominion. (Appeal from a decision dated July 13, 1898, of the Supreme Court of British Columbia, affirming a judgment of DRAKE, J., of May 14th, 1898. The facts appear in the judgment of the Board. *Union Colliery Co. of British Columbia* v. *Bryden*—Att.-Gen. for British Columbia intervening. Taken from 68 L. J. P. C. 118. Reported in 1 M. M. C. 337.)

3. Indictment of coal corporation for manslaughter.] — The defendants, a corporation, were indicted for that they unlawfully neglected, without lawful excuse, to take reasonable care in maintaining a bridge forming part of their railway which was used for hauling coal and carrying passengers, and that on the 17th of August, 1898, a locomotive engine and several cars then being run along said railway and across said bridge, owing to the rotten state of the timbers of the bridge, were precipitated into the valley underneath, thereby causing the death of certain persons. The defendants were found guilty, and a fine of $5,000 was inflicted by WALKEM, J., at the trial:—Held, *per* MCCOLL, C.J., and MARTIN, J., on appeal, affirming the conviction, that such an indictment will lie against a corporation under s. 252 of the Code. *Per* DRAKE and IRVING, JJ.: Such an indictment will not lie against a corporation. Ss. 191, 192, 213, 252, 639 and 713 of the Code considered. A corporation cannot be indicted for manslaughter. *Per* MCCOLL, C.J.: The words "grievous bodily injury" in s. 252 have no technical meaning, and in their natural sense include injuries resulting in death. *Per* DRAKE, J.: The indictment charges the company with the death of certain persons owing to the company's neglect of duty, and is a charge of manslaughter, the punishment of which is a term of imprisonment for life, and because a corporation cannot suffer imprisonment, therefore the punishment laid down in the Code is not applicable to such a body. When death ensues the offence is no longer "grievous bodily injury," but culpable homicide. *Regina* v. *Union Colliery Company*, 7 B. C. R. 247; 1 M. M. C. 337.

4. Inspection of.] — Plaintiffs claiming title to certain coal fields which were being worked by the defendants, applied before pleading for an order for inspection of the defendants' workings. Defendants admitted working within the area claimed by the plaintiffs:—Held, by WALKEM, J.: That the plaintiffs were entitled to have inspection, and by their own agents:—Held, on appeal, (1) The chief ground on which such an order is made is to enable the plaintiff to get on with his case; (2) Under special circumstances, as where there is danger of flood, the order may be made to preserve the evidence; (3) That the inspection should be by indifferent persons who should not reveal any information without the sanction of the Court. *E. & N. Railway Co.* v. *New Vancouver Coal Company*, 6 B. C. R. 194; 1 M. M. C. 223.

5. Prospecting license—*Crown grant—Application for—Waiver—Laches — Evidence Certificate — Statutory preliminaries — Abandonment.*] — Petitioners held a prospecting license for coal over 2,500 acres of land under the Mineral Ordinance, 1869, and applied for a Crown grant. In support of their claim they relied on a certificate of the Assistant Commissioner of Lands and Works, that they had duly posted notices of their application, and "that no objection to the issue of such grant had been substantiated:"—Held, (1) That the certificate was not in accordance with the Act; (2) That the certificate of an Assistant Commissioner was not conclusive evidence of compliance with the statutory conditions, and the presumption arising from the certificate could be rebutted; (3) That the department could not dispense with the performance of preliminary conditions imposed by the Legislature; (4) That in a proceeding to enforce specific performance by the Crown, unreasonable delay on the part of the petitioners is fatal to the application; (5) On the facts, that the claim has been abandoned. Quære, whether to entitle prospecting licencees to a Crown grant of coal lands under the Mineral Act, it is not essential that they should have found coal on the land selected by them for purchase. *Peck* v. *Reginam*, 1 B. C. R. pt. II., 11; 1 M. M. C. 13.

6. Title—*Particulars of.*] — In an action by plaintiffs who have never been in possession to recover certain coal seams:—Held, that the statement of claim should state particulars of the title under which the plaintiffs claim. *E. & N. Railway Co.* v. *New Vancouver Coal Company*, 6 B. C. R. 188; 1 M. M. C. 237.

7. Title—*Particulars of.*] — Statement of defence traversed allegations in the claim to the effect that plaintiffs were entitled to mine certain coal under the sea, without shewing the defendants' title in the defence, and further set up laches as an alternative defence:—Held, that the defendants were bound to set forth their title in their statement of defence. Decision of IRVING, J., reported in 6 B. C. R. 306, reversed. *Esquimalt and Nanaimo Railway Company* v. *New Vancouver Coal Company*, 9 B. C. R. 162; 1 M. M. C. 284.

XII. CONTRACT.

1. Mineral claim — *Development work, expense of — Co-owners and partners — Repayment—Ore.*]—Partners and co-owners in a mineral claim entered into an agreement by which one of the partners and co-owners was to advance to his co-partner in cash the amount of their respective shares of the expenses of certain development work, and to be repaid the loan with interest out of the proceeds of ore shipped from the claim, the principal and interest not to stand as a charge against the interests of the partners in the claim:—Held, that taken as a whole the agreement could not, in the absence of express stipulation, be construed to exclude the lender from his ordinary right to compel the borrowing partners to ultimately account to him for his advances of their share of the expenses. *Marino* v. *Sproat*, 1 M. M. C. 481.

2. Minerals—*Reservation of, in contract for sale of.* 6 B. C. R. 228.

See VENDOR AND PURCHASER.

3. Parol agreement for partnership.]—Plaintiff having discovered "mineral float" communicated its situation to the defendant upon a verbal agreement by the latter that in the event of his thereby discovering the ledge and locating a mineral claim, the plaintiff should be "in on it;"—Held, by WALKEM, J., at the trial, dismissing the action, that the transaction took place, but that the words "in on it" were too indefinite to found a contract:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and DRAKE, JJ.), overruling WALKEM, J., that the words "in on it" imported an agreement to give the plaintiff an interest in the nature of a partnership or co-ownership; that, in the absence of anything in a partnership contract to the contrary, the presumption of law is that the partnership shares are equal, and that the contract was not void for uncertainty. Quære, whether the right to a duly located and recorded mineral claim constitutes an interest in land within the meaning of the Statute of Frauds. *Per* DAVIE, C.J.: That the defendant, upon finding the ledge and locating and recording the claim, became, under the verbal agreement, a trustee for the plaintiff of one-half share therein, and was incapacitated from setting up the Statute of Frauds as a defence. *Per* MCCREIGHT, J.: That, if the title to a mineral claim is an interest in land within the Statute of Frauds, it is so only by reason of the Mineral Act, and that in order to take advantage of the defence of the Statute of Frauds, the Mineral Act should also be pleaded. *Wells* v. *Petty*, 5 B. C. R. 353; 1 M. M. C. 147.

4. Parol establishment of agency.]—The interest of a free miner in his mineral claim is an interest in land, and an agreement not in writing respecting it cannot be enforced. Where one person on behalf of another locates and records a claim in his own name, the Court will compel him to transfer the claim to his principal. *Fero* v. *Hall*, 6 B. C. R. 421; 1 M. M. C. 238.

5. Partner—*Lapsed certificate — Stat. of Frauds.*]—Where partners in a mineral claim enter into an agreement for the sale thereof, a partner whose free miner's certificate has lapsed thereafter does not thereby forfeit his share in the proceeds of the sale. The Statute of Frauds does not exclude parol evidence of a partnership for dealing in land. *McNerhanie* v. *Archibald*, 6 B. C. R. 260; 1 M. M. C. 320.

6. Sale—*Fraud—Agent—Estopped.*]—W. sold certain mineral claims called the Big Four group to A., who sold in turn to the defendants, after which W. as agent for the plaintiff, located a fraction between two of the claims in the plaintiff's name:—Held, that the defendants had no right to the fraction in the absence of proof of fraud by W., and that the plaintiff was a party thereto; and, held, also, that the defendants could not invoke against the plaintiff a statement in a bill of sale from H. to W. that the end of the two claims, between which the fraction in question was located, adjoined each other. *Gibson* v. *McArthur*, 7 B. C. R. 59; 1 M. M. C. 382.

7. Sale—*Rescission.—Failure of consideration—Misrepresentation.*]—An executed contract for the sale of a mineral claim, being an interest of land, will not be rescinded for mere innocent misrepresentation. But where, by error of both parties and without fraud or deceit, there has been a complete failure of consideration, a Court of Equity will rescind the contract and compel the vendor to return the purchase money. Thus where, on the sale of a mining claim, it turned out that the whole property sold was included in prior claims, whereby the purchaser got nothing for his money, the contract was rescinded though the vendor acted in good faith and the transaction was free from fraud. *Pope* v. *Cole*, 6 B. C. R. 295; 1 M. M. C. 257.

8. Sale—*Payment by instalments—Time—Extension of—Consideration.*]—An agreement for the sale of mineral claims provided for payment by instalments, and contained a proviso that "failure to make any of the above payments to render this agreement void as to all parties thereto, and the said (vendees) can quit at any time without being liable for any further payments thereunder from such time on." At the request of the vendees the vendors, without consideration, extended the time for payment of one of the instalments. After the original, but before the extended period for making the payment, the vendees notified the vendors that they had quit. In an action to recover the amount of the instalment:—Held, that the liability of the defendants, the vendees, to pay the instalment in question was absolute upon the day named in the original agreement, and remained unaffected by the voluntary concession of further time to pay. *Webb* v. *Montgomery*, 5 B. C. R. 323; 1 M. M. C. 129.

9. Smelting contract.]—A contract between mine owners and smelter owners provided inter alia that the ores supplied by the former to the latter should be sampled within one week after shipment. The evidence shewed that "automatic" or machine sampling had displaced the old method of "grab" or "shovel" sampling, and had been in vogue for about twenty years: — Held (WALKEM, J., dissenting), that the contract permitted either mode of sampling so long as it was so done that the true value of the ore was arrived at. *Per* curiam:—A mine owner's representative at a smelter for the purpose of watching the weighing and sampling of ores, so that the mine owner may be satisfied as to the correctness of the weight and sampling, has no authority to consent to a method of sampling not allowed by the contract. Where the smelter returns of ore of average character sampled either negligently or in a manner not contemplated by contract, shew a value below the average value of a certain number of lots immediately before and after the lots in dispute. Decision of HUNTER, C.J., reversed in part. *Le Roi Co., No. 2, Ltd.*, v. *Northport Smelting & Refining Co., Ltd., and The Le Roi Mining Co., Ltd.*, 2 M. M. C. 59; 10 B. C. R. 138.

XIII. COURTS.

1. *County Court.*

1. Finality of decision of.]—Failure to put up legal posts as required by the Mineral Act, 1891, and amendments, invalidates a

location. It is necessary to record the abandonment of an invalid location and obtain permission of the Gold Commissioner before re-location. Where a location is purported to be made on ground already covered by a valid and existing location, the junior location is invalid to, at least, the extent of the ground already covered by the senior location. When the titles to conflicting claims have been investigated and determined in the County Court mining jurisdiction, the same question cannot be raised between the same parties or their successors in title in the Supreme Court. *Pellent et al.* v. *Almoure, et al.; Pellent et al.* v. *Boyer et al.*, 1 M. M. C. 134.

2. Jurisdiction.]—An action for damages for personal injuries received by an employee in a metalliferous mine, may be brought for any amount in the County Court. *Beamish* v. *Whitewater Mines, Limited*, 7 B. C. R. 261; 1 M. M. C. 405.

3. Jurisdiction.] — Section 34 of the County Courts Act, which provides inter alia, that if in any action of tort the plaintiff shall claim over $250, and the defendant objects to the action being tried in the County Court, and gives security for trial in the Supreme Court, the proceedings in the County Court shall be stayed, applied to proceedings in the County Court under its mining jurisdiction. *Muirhead et al.* v. *Spruce Creek Power Co., Ltd.*, 2 M. M. C. 155; 11 B. C. R. 1.

4. Jurisdiction.] — If jurisdiction is objected to, the point must be taken below or will not be entertained on appeal. Special defences must be raised by notice before trial. *Gelinas* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

5. Transfer to Supreme Court.] — Action pending in the County Court will not be transferred to the Supreme Court unless some peculiar questions of expediency arise. *Richard* v. *Price*, 5 B. C. R. 362; 1 M. M. C. 140.

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2. *Mining Courts.*

1. Appeal from.]—Owing to the nature of the subject matter, the Court requires stronger grounds for extending the time for appealing from judgment in mining cases than in other matters. The provisions in s. 29 of c. 82, C. S. B. C. 1888, (a), that appeals from judgments of Mining Courts "may be in the form of a case settled and signed by the parties," is not imperative, but such appeals may be brought in the same form as in ordinary cases. Defendants gave notice of appeal from a judgment of a County Court in a mining cause rendered 11th March, 1896, within the time provided by s. 29, supra, for the next Court, but being unable to procure the notes of the trial Judge, did not set it down for that Court. In December, 1896, they obtained the notes, and in January, 1897, gave notice of moving the Full Court to extend the time for setting down the appeal, shewing that the Registrar refused to enter the appeal without appeal books containing the Judge's notes being filed: — Held, by the Full Court (WALKEM, DRAKE and MCCOLL, JJ.), that the appellants were bound to set the appeal down for argument at the next Full Court, or to move that Court for an extension of time for setting it down, and that the neglect to take either course constituted an abandonment. *Kinney* v. *Harris*, 5 B. C. R. 229; 1 M. M. C. 137.

2. Creation and officers.] — It is competent for the province to create Mining Courts, and to fix their jurisdiction, but not to appoint any officers thereof, with other than ministerial powers. *Burk* v. *Tunstall*, 2 B. C. R. 12; 1 M. M. C. 61.

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3. *Policy of Courts.*

1. Adverse claims.]—Policy of Courts as to, is to compel persons claiming adversely to commence action before certificate of improvements is obtained. *Nelson Ry. Co.* v. *Dunlop*, 7 B. C. R. 411; 1 M. M. C. 414.

2. Jumping—*Equity.*]—To deal on equitable principles and discourage "jumping." *Granger* v. *Fotheringham*, 3 B. C. R. 590; 1 M. M. C. 617; *Atkins* v. *Coy*, 5 B. C. R. 6; 1 M. M. C. 88; *Victor* v. *Butler*, 8 B. C. R. 100; 1 M. M. C. 438, at p. 446.

3. Registration of title.] — Policy of land registration introduced. *Atkins* v. *Coy*, Ib.; *Nelson, etc., Ry. Co.* v. *Jerry*, 5 B. C. R. 396; 1 M. M. C. 161, at p. 187.

4. Re-location on same vein.]—Second location in another's name on same against public policy. *Alexander* v. *Heath*, 8 B. C. R. 95; 1 M. M. C. 333.

5. Speed and finality.] — Speedy determination of disputes and finality of title. *Kinney* v. *Harris*, 5 B. C. R. 229; 1 M. M. C. 137; *Kilbourne* v. *McGuigan*, 5 B. C. R. 233; 1 M. M. C. 142; *Nelson, etc., Ry. Co.* v. *Jerry*, *Ib.* at p. 189; *Dunlop* v. *Haney*, at p. 236; *Re American Boy*, 7 B. C. R. 268; 1 M. M. C. 304.

XIV. CROWN.

1. Certificate of improvements — *Fraud.*]—Crown alone can sue to set aside certificate of improvements on ground of fraud. *Hand* v. *Warren*, 7 B. C. R. 42; 1 M. M. C. 376.

2. Chinese—*Coal Mine—B. N. A. Act—Naturalization and aliens — Constitutional law.*]—Held, that s. 4 of the Coal Mines Regulations Act, 1890, which prohibits Chinamen of full age from employment in underground coal workings, is in that respect ultra vires of the Provincial Legislature. Regarded merely as a coal working regulation, it would come within s. 92, s.-s. 16, or s. 92, s.-s. 13 of the British North America Act. But its exclusive application to Chinamen who are aliens or naturalized subjects, establishes a statutory prohibition which is within the exclusive authority of the Dominion Parliament, conferred by s. 91, s.-s. 25, in regard to naturalization and aliens. *Bryden* v. *Union Colliery Co.*, 1899, A. C. 580; 7 B. C. R. 247; 1 M. M. C. 337.

3. Chinese in coal mines—*Constitutional Law—Brit. N. Am. Act.*]—The provision of s. 4 of the Coal Mines Regulation Act, as amended by the Coal Mines Regulation Amendment Act, 1890, s. 1, that "No Chinaman

shall be employed in, or allowed to be for the purpose of employment in any mine in which this Act applies, below ground," is within the constitutional power of the Provincial Legislature as being a regulation of coal mines and is not ultra vires, as an interference with the subject of aliens. *In re Coal Mines Regulation Act*, 5 B. C. R. 306; 1 M. M. C. 116.

4. Chinese in coal mines — *Penalty—Conviction—Certiorari.*]—The defendant was convicted before two Justices of the Peace, of having employed a Chinaman in a coal mine underground, and was fined $100. Upon application for certiorari to quash the conviction:—Held, that a contravention of the amendment to *s.* 4 prohibiting the employment of Chinamen was not made an offence under the Act, for which any penalty is imposed, and that the penal act should not be extended beyond the reasonable construction which the words used would bear. The Interpretation Act, *s.* 8, *s.-s.* 21, providing that "any wilful contravention of any Act which is not made an offence of some other kind shall be a misdemeanour and punishable accordingly," did not assist the conviction. *Regina* v. *Little*, 6 B. C. R. 78; 1 M. M. C. 229.

5. Laches is fatal to specific performance against Crown.]—*Peck* v. *Regiuam*, 1 B. C. R., pt. II., 11; 1 M. M. C. 13.

6. Lands—*Right to prospect on.*]—Under s. 95 of the Crown Lands Act, 1888, all lands in the Province, both public and private, are subject to the right of entry by free miners to search for the precious metals, subject to the conditions precedent contained in the Placer Mining Act, 1891, c. 26. *Bainbridge* v. *The Esquimalt and Nanaimo Railway*. 4 B. C. R. 181; 1 M. M. C. 98.

7. Lease — *Forfeiture — Abandonment—Record.*]—Where mining ground is held from the Crown under lease, which is subject to forfeiture for non-compliance with terms and conditions, the Crown alone can declare a forfeiture and re-enter for breach, or waive it. Free miners in general are strangers to such a lease and have no rights under or over it. Cessation of mining operations for want of funds is no proof of intention to abandon, even if that question could be raised by strangers to the lease. The act of recording a claim is the act of the party and not of the Crown, so cannot operate as a redemise of ground already leased by the Crown. *Canadian Co.* v. *Grouse Creek Co.*, 1 M. M. C. 3.

8. Lease — *Rent—Assessment work—Certificate of work—Fraud.*] — Performance of the annual assessment work (or the equivalent money payment), is the annual rental payable to the Crown, and therefore in the case of a valid location whenever a dispute arises in which payment of a rent is concerned, the production of the certificate of work (i.e., payment) is conclusive against all the world, except the Crown itself, in a suit to set aside for fraud. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487; 32 S. C. R. 371.

9. Minerals — *Whether property of Dominion or Province.*]—*Atty.-Gen.* v. *E. & N. Ry. Co.*, 7 B. C. R. 221.

See ATTORNEY-GENERAL.

10. Order-in-Council — *Extending time Assessment work.*] — An Order-in-Council, under *s.* 161 of the Mineral Act, 1896, extending time for doing and recording of assessment work, is intra vires. *Peters* v. *Sampson*, 6 B. C. R. 405; 1 M. M. C. 247.

11. Precious metals—"*Lands*," *British North America Act.*]—A conveyance by the Province of British Columbia to the Dominion of Canada of "public lands" being in substance an assignment of its right to appropriate the territorial revenues arising therefrom, does not imply any transfer of its interest in revenues arising from the prerogative rights of the Crown. The precious metal in, upon and under such lands are not incidents of the land, but belong to the Crown, and under s. 109 of the British North America Act, 1867, beneficially to the province, and an intention to transfer them must be expressed or necessarily implied. *Attorney-General of British Columbia* v. *Attorney-General of Canada*, 14 A. C. 295; 14 S. C. R. 345; 1 M. M. C. 52.

12. Precious metals pass only by apt and precise words, and the use of the words "all mines, minerals and substances whatsoever," in a grant from the Crown, did not pass such metals to the grantee. *Bainbridge* v. *Esquimalt & Nanaimo Railway Co.*, 1896, A. C. 561; 1 M. M. C. 98; 4 B. C. R. 181.

13. Precious metals — *Grant of.*]—Where the Crown has granted the precious metals in a parcel of land, a conveyance of such parcel by the grantee of the Crown to a third person in the ordinary form, will pass the precious metals, although not specially mentioned. *Re St. Eugene Co.*, 7 B. C. R. 288; 1 M. M. C. 406.

14. Reversion of lapsed location.]—In adverse proceedings where it is not established with reasonable certainty, (1) that the ground was properly staked, (2) that assuming the ground had been properly staked, it was identical with the ground mentioned in the record, and the defendant shews title and produces certificates of work for several years, judgment will be given in favour of defendant. Before a substituted certificate will be admitted in evidence there must be proof of loss of the original. Conditions of the admissibility of a mining recorder's certificate as to issue of free miner's license and as to issue of certificates of work considered. Copies of certain recorded instruments held admissible without proof of originals. *Parier* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384.

15. Reversion of lapsed location.]—In adverse proceedings the party locating over a claim alleged to have been abandoned, must produce clear evidence of abandonment, and it is not enough for this purpose to rely upon the non-production of certificates of work. Semble, a locator cannot, after abandonment by a prior locator, rest on a location made before such abandonment, but must re-locate. *Cranston et al.* v. *The English Canadian Co.*, 7 B. C. R. 266; 1 M. M. C. 394.

16. Reversion of lapsed location.]—The Parrot mineral claim, located in February, 1895, lapsed by abandonment in February, 1899. In March, 1895, part of the same ground was located by plaintiff as the Townsite claim, and certificates of work were recorded in respect of it in 1896, 1897, 1898 and 1899. In December, 1899, the ground covered by the original Parrot claim was relocated as the Defiance No. 1 Fraction, by the

defendants' predecessor in title:—Held, in adverse proceedings, that so much of the Parrot claim as was overlapped by the Townsite claim was not unoccupied ground at the time of the location of the Townsite, and as such was not open to location. At the trial, plaintiffs attacked the validity of defendants' location, and defendants sought to put in evidence a certificate of work issued the day before:—Held, not admissible, as it was obvious that such certificate was to be used to cure irregularities. *Rammelmeyer et al.* v. *Curtis et al.*; *Powers* v. *Curtis et al.*, 8 B. C. R. 383; 1 M. M. C. 401.

17. Reversion of lapsed location.]—The Trilby mineral claim lapsed by abandonment in July, 1896. Before lapse the same ground was located as the Old Jim by the defendant's predecessor in title, and certificates of work were recorded in respect of it in 1897, 1898 and 1899. In February, 1899, the plaintiffs located the same ground as the Herald Fraction claim:—Held, affirming SPINKS, Co. J. (MARTIN, J., dissenting), that the defects in defendant's title were cured by the recording of the certificate of work. Unless objection is taken to the jurisdiction of the Court below at the trial, it will not be considered in appeal. Remarks by MARTIN, J., as to admissibility of evidence of abandonment when same not pleaded. *Gelinas et al.* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

18. Rights of lessees of timber berths from Crown in right of the Dominion.]—Plaintiffs were entitled, as riparian proprietors, to the use of the natural flow of the water of a stream, Quartz Creek, running through timber lands leased by them from the Dominion Government. The lands so leased were part of the lands in the railway belt granted to the Dominion by the Province of British Columbia, by 43 Vic., B.C., c. 2, in aid of the construction of the C. P. R. Defendants, as free miners, licensed by the Provincial Government, obtained from it a grant of the right to use, for mining purposes, the water of a stream running into Quartz Creek above the plaintiffs' sawmill, by record under the Placer Mining (B.C.) Act, 1891, ss. 56 and 57. Defendants so used this water as to foul Quartz Creek and stop the plaintiffs' mill:—Held, (1) No person, unless by grant or prescription, is entitled to deprive another of the beneficial use of water which would naturally descend to him. (2) A right granted by a statute, which does not, in express terms, derogate from the rights of others, cannot be held to have done so by implication. (3) A grant of water privileges under the Provincial Mining Acts does not sanction the user of the water to the detriment of the rights of others, however acquired, to the same water at another part of the stream. 4. The Dominion Government, under 43 Vic., B.C., c. 2, were in possession of the lands, as trustees to administer the same, and it was competent to them to grant a lease to the plaintiffs, carrying the ordinary rights to the water of a riparian proprietor. *The Columbia River Lumber Co.* v. *Hall and others*, 2 B. C. R. 237; 1 M. M. C. 64.

19 Rights of Crown Provincial to create Mining Courts and appoint officers.]—It is competent for the Province to create Mining Courts and to fix their jurisdiction, but not to appoint any officers thereof with other than ministerial powers. *Burk* v. *Tunstall*, 1 M. M. C. 61; 2 B. C. R. 12.

XV. CROWN GRANT.

1. Application for, to coal lands—*Specific performance against Crown.*]—The Mineral Ordinance, 1869, provides that holders of a prospecting license for coal may select for purchase a portion of the lands included in their license. Upon compliance with the terms and conditions of the Act, the licensees are entitled to claim a Crown grant of the selected lands. The petitioners held a prospecting license for coal, over 2,500 acres of land, and applied for a Crown grant. In support of their claim, they relied on a certificate of the Assistant Commissioner of Lands and Works, that they had posted notices of their application, and that no objection to the issue of a grant had been substantiated:—Held, (1) That the certificate was not in accordance with the Act. (2) That the certificate of an Assistant Commissioner was not conclusive evidence of compliance with the statutory conditions, and the presumption arising from the certificate could be rebutted by evidence to the contrary. It was contended that the Lands and Works Department, having received the certificate without objection, and not having cancelled the license under the provisions of the Mineral Ordinance Amendment Act, 1873, had waived the performance of the terms and conditions of the Act:—Held, that the Department could not waive the performance of conditions imposed by the Legislature. The petitioners' application for a Crown grant was made in 1874, but they did not prospect or work the land, or take further steps in support of their claim till 1882, and in the meantime the lands had increased in value:—Held, that, in a proceeding to enforce specific performance by the Crown, unreasonable delay on the part of the petitioners is fatal to the application. Quære, whether, that to entitle prospecting licensees to a Crown grant of coal lands under the Mineral Act, it is not essential that they should have found coal on the land selected by them for purchase? *Peck and others, petitioners* v. *The Queen, respondent*, 1 B. C. R., pt. II., 11; 1 M. M. C. 13.

2. Cancellation of.]—Under s. 86 of the Land Act, a defective Crown grant may be cancelled and a new one issued at any time irrespective of existing certificates of improvements for mineral claims contained in the area of the grant. Where a claim owner has received a certificate of improvements for his claim, his position is assured, and he is not called upon to adverse a subsequent application of another for a certificate of improvements for a claim which would include a portion of his claim. Section 37 of the Mineral Act requires any claimant of an adverse nature to the ground applied for, to substantiate his claim within the prescribed time or be forever barred, except for fraud. The fact that a claimant began adverse proceedings and abandoned them does not deprive him of whatever rights he otherwise had under the section. Speedy finality of litigation and quieting of titles, with all due celerity, are the dominant policy of the Mineral Act. Decision of the Chief Commissioner of Lands and Works affirmed. *In re The American Boy Mineral Claim*, 1 M. M. C. 304.

3. Conflicting Crown grants—*Title.*]—Where there are two Crown grants to different parties for the same claim, or overlapping portions of two claims, the earlier must prevail. *Victor* v. *Butler*, 8 B. C. R. 100; 1 M. M. C. 438.

4. Injunction to restrain issue of.]—A Crown grantee of land, qua land, cannot obtain an injunction to prevent the owner of a mineral claim who has obtained a certificate of improvements from obtaining a Crown grant thereunder, even though the objection is only to the form of the Crown grant. The policy of the Mineral Acts is to compel persons claiming adversely to an applicant for a Crown grant to begin action before the certificate of improvements is obtained. *Nelson and Fort Sheppard Ry. Co.* v. *Dunlop*, 1 M. M. C. 414; 7 B. C. R. 411.

5. Lands—*Mineral claims.*]—An exception of "lands held as mineral claims," in Crown grant means de facto claims, and the word "lawfully" cannot be imported. *Nelson, etc., Ry. Co.* v. *Jerry*, 5 B. C. R. 396; 1 M. M. C. 161.

6. Lease from grantee—*Squatter.*]—A Crown grant of a mineral claim vests such a title at least in the grantee that a squatter upon such lands must shew a better title or move off. Where such a squatter takes a lease from the Crown grantee he cannot maintain an action to set aside the lessee if the lessor has observed its covenants. *Per* IRVING, J.: Section 16 of the Mineral Act Amendment Act, 1897, is declaratory. *Spencer* v. *Harris*, 6 B. C. R. 466; 1 M. M. C. 294.

7. Minerals—*Whether included in statutory grant.*]—A statutory grant of lands, "including all coal, coal oil, ores, stones, clay, marble, slate, mines, minerals and substances whatsoever thereupon, therein and thereunder," does not include the precious metals. The interpretation of general terms in a statute cannot be assisted by reference to the interpretation clause in another statute by which the same terms are in it given a special construction. Under s. 95 of the Crown Lands Act, 1888, all lands in the Province, both public and private, are subject to the right of entry by free miners to search for the precious metals, subject to the conditions precedent contained in the Placer Mining Act, 1891, c. 26. *Bainbridge* v. *E. & N. Ry. Co.*, 4 B. C. R. 181; 1 M. M. C. 98.

8. Minerals — *Not included in grant.*]—"On admission of British Columbia into the Dominion of Canada, it was agreed by the Articles of Union that the Dominion should construct a railway through the Province, and that the Province should convey to the Dominion certain 'public lands' of the Province, and the lands were 'granted' by an Act of the Provincial Legislature:—Held, that such 'grant' did not transfer the rights of the Crown assigned to the Province for state purposes by s. 109 of the British North America Act, 1878, and that such grant did not convey any right to gold or gold mining rights." *Attorney-General of B. C.* v. *Attorney-General of Canada*, 58 L. J. P. C. 88; 14 S. C. R. 345. Apparently not reported in B. C. R.

XVI. DISCOVERY.

1. Costs of adjournment for.] — Defendants got an order at the trial for the inspection of a vein in the plaintiffs' claim which they alleged was the continuation of a vein, the apex of which was within the limits of their own claim, and plaintiffs alleging that such order necessitated inspection by them of other similar places on their property, with a view to furnishing evidence to rebut that which might be adduced by reason of the plaintiffs' inspection, and therefore an adjournment for that purpose, were allowed the adjournment, but only on the terms that all costs occasioned thereby should be borne by them in any event:—Held, on appeal, that such costs should abide the result of the issues to which the inspection related. *Iron Mask* v. *Centre Star*, 7 B. C. R. 66; 1 M. M. C. 362.

2. Development work — *Extralateral rights.*]—In an action between the owners of adjoining mineral claims, respecting extralateral rights, the parties claiming the extralateral rights will not be forced on to trial without being given a fair opportunity of doing such development work as may be necessary to determine the position of the apex of the vein in question. Quære, whether Sung v. Lung (1901), 8 B. C. R. 423, was rightly decided. *Noble Five Consolidated Mining and Milling Company, Limited, et al.* v. *Last Chance Mining Company, Limited*, 9 B. C. R. 514; 2 M. M. C. 35.

3. Extralateral rights — *Experimental work.*]—The Centre Star Company had been enjoined till the hearing from mining in the Iron Mask ground, in which there was alleged to be a continuation of a vein whose apex was in Centre Star ground, and had also been refused leave to do experimental work on the Iron Mask in order to determine the character or identity of the said vein:—Held (MARTIN, J., dissenting), that it ought to be left to the trial Judge to decide whether it was necessary to have any work done to elucidate any of the issues raised. Circumstances under which an order might be granted, considered. *Centre Star Mining Co.* v. *Iron Mask Mining Co.*, 6 B. C. R. 355; 1 M. M. C. 267.

4. Inspection of coal mine — *Form of order.*] — Where defendants admit working within the area of certain coal fields claimed by the plaintiffs, the plaintiffs are entitled, before pleading, to have inspection by their own agents. Form of order considered. *Esquimalt & Nanaimo Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 194; 1 M. M. C. 223.

5. Inspection and survey of mine—*Order—Undertaking and security.*]—An order for inspection and survey of a mine for making copies of plans thereof in an action concerning extralateral rights should contain an undertaking for damages, but not a direction that security be given. *Star Mining Co.* v. *Byron N. White Co.*, 10 B. C. R. 9; 1 M. M. C. 468.

6. Inspection — *Copies of plans.*]—The right to inspect underground workings in a mine carries with it the right to inspect and make copies of the plans of such workings. *Per* MARTIN, J.: (1) The practice respecting inspection under r. 514, is distinct from the practice in obtaining discovery, and a claim of privilege set up in an affidavit in answer to a motion to compel inspection is not conclusive. (2) It is a proper and convenient practice to apply to the Court to enforce an order for inspection. *Star Mining and Milling Co., Limited Liability* v. *Byron N. White Co.*, 2 M. M. C. 40; 9 B. C. R. 422.

7. Inspection — *Extralateral rights — Plans.*]—Proceedings for inspection of a mine

under rule 514 are distinct from ordinary proceedings in discovery, and a claim of privilege set up in an affidavit in answer to a motion to compel inspection is not inclusive. It is a proper and convenient practice to apply to the Court to enforce an order for inspection. *Star Mining Co.* v. *Byron N. White Co.*, 9 B. C. R. 9; 1 M. M. C. at p. 513.

8. Oral — *Compelling answers.*]—In the examination for discovery of a mine superintendent, the party examining is entitled to answers as full, direct and explicit as it is in the power of the witness to give. He who occupies a responsible position in the management of a mine will be presumed to be a person of experience and competence in mining matters, and must testify accordingly in regard to the workings under his superintendence. It is specially desirable in actions respecting extralateral rights, that there should be the fullest possible disclosure. *Star Mining and Milling Co., Limited Liability* v. *Byron N. White Co.*, 2 M. M. C. 96.

XVII. Employment of Labour.

1. Coal Mines Regulation Act.]—The Coal Mines Regulation Act, by s. 4, provided, "no boy under the age of twelve years, and no woman or girl of any age, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applied below ground." By s. 12, if any person contravenes or fails to comply with, etc., "any provision of this Act with respect to the employment of women, girls, young persons, boys or children, he shall be guilty of an offence against this Act." By s. 95, "every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he be in ———— the manager, $100." In 1890, s. 4 was amended by inserting the words "and no Chinamen" after the word "age." The defendant was convicted before two Justices of the Peace of having employed a Chinaman in a coal mine under ground, and was fined $100. Upon application for certiorari to quash the conviction:—Held, by Drake, J., confirmed by the Full Court, Davie, C.J., Walkem and Irving, JJ.: That a contravention of the amendment to s. 4 prohibiting the employment of Chinamen was not made an offence under the Act for which any penalty is imposed, and that the Penal Act should not be extended beyond the reasonable construction which the words used would bear. The Interpretation Act, s. 8, s.-s. 21, providing that "any wilful contravention of any Act which is not made an offence of some other kind, shall be a misdemeanour and punishable accordingly," did not assist the conviction. *Regina* v. *Little*, 6 B. C. R. 78; 1 M. M. C. 220.

2. Coal Mines Regulation — *Employment of Chinamen.*]—An enactment by a provincial legislature that no Chinaman shall be employed in mines is beyond its competence, inasmuch as by the British North America Act, 1867, s. 91, s.-s. 25, legislation with respect to "naturalization and aliens" is reserved exclusively to the Parliament of the Dominion. Appeal from a decision dated July 13th, 1898, of the Supreme Court of British Columbia, affirming a judgment of Drake, J., of May 14th, 1898. The facts appear in the judgment of the board. *Union Colliery Co. of British Columbia* v. *Bryden* (Attorney-General for British Columbia intervening). Taken from 68 L. J. P. C. 118. Reported in 1 M. M. C. 337.

3. Chinese.]—Held, on a motion by the Attorney-General for an injunction to restrain a colliery company from employing Chinamen below ground in contravention of r. 34, s. 82, of the Coal Mines Regulation Act, that the matter was not one affecting the public, or likely to affect it, to such an extent as to call for the granting thereof. *Attorney-General* v. *Wellington Colliery Co.*, 2 M. M. C. 70; 10 B. C. R. 397.

4. Chinese.]—Rule 34 of the Coal Mines Regulation Act of British Columbia, as amended in 1903, prohibiting Chinamen from employment below ground, and also in certain other positions in or about coal mines, is ultra vires, Martin, J., dissenting. Union Colliery Co. v. Bryden (1899), A. C. 580; 1 M. M. C. 337, applied and distinguished from Cunningham v. Tomey Homma (1903), A. C. 151. Observations by Martin, J., on the origin of Chinese in British Columbia. *In re The Coal Mines Regulation Act*, 2 M. M. C. 112; 10 B. C. R. 408.

5. Constitutional Law—*Rights of aliens—Coal mines.*]—The provision in s. 4 of the Coal Mines Regulation Act, as amended by the Coal Mines Regulation Amendment Act, 1890, s. 1, that "no Chinaman shall be employed in, or allowed to be for the purpose of employment in, any mine to which this Act applies, below ground," is within the constitutional power of the Provincial Legislature as being a Regulation of Coal Mines, and is not ultra vires as an interference with the subject of aliens. *In re the Coal Mines Regulation Amendment Act*, 1890, 5 B. C. R. 396; 1 M. M. C. 116.

6. Indictment of corporation.]—The defendants, a corporation, were indicted for that they unlawfully neglected, without lawful excuse, to take reasonable precautions and to use reasonable care in maintaining a bridge forming part of their railway which was used for hauling coal and carrying passengers, and that on the 17th of August, 1898, a locomotive engine and several cars then being run along said railway and across said bridge, owing to the rotten state of the timbers of the bridge, were precipitated into the valley underneath, thereby causing the death of certain persons. The defendants were found guilty and a fine of $5,000 was inflicted by Walkem, J., at the trial:—Held, *per* McColl, C.J., and Martin, J., on appeal, affirming the conviction, that such an indictment will lie against a corporation under s. 252 of the Code. *Per* Drake, and Irving, JJ.: Such an indictment will not lie against a corporation. Sections 191, 192, 213, 252, 639 and 713 of the Code considered. A corporation cannot be indicted for manslaughter. *Per* McColl, C.J.: The words "grievous bodily injury," in s. 252, have no technical meaning, and in their natural sense include injuries resulting in death. *Per* Drake, J.: The indictment charges the company with the death of certain persons owing to the company's neglect of duty, and is a charge of manslaughter, the punishment of which is a term of imprisonment for life, and because a corporation cannot suffer imprisonment therefor, the punishment laid down in the Code is not applicable to such a body. When

death ensues, the offence is no longer "grievous bodily injury," but culpable homicide. *Regina* v. *Union Colliery Company*, 7 B. C. R. 247; 1 M. M. C. 337.

XVIII. ESTOPPEL.

1. Adverse action by co-owner.]—A judgment in an adverse action under s. 37 of the Mineral Act, is not a judgment in rem. One co-owner of a mineral claim is not estopped by the result of such action instituted by an adverse claimant against another co-owner who has applied for a certificate of improvements. *Per* MARTIN, J.: Section 37 does not apply to co-owners of the same claim, but to owners of conflicting claims. Decision of IRVING, J., affirmed. Bentley v. Botsford, ante p. 454, M. M. C., followed. *Fry et al.* v. *Botsford et al.*, 1 M. M. C. 520.

2. Fraud—*Bill of sale.*]—W. sold certain mineral claims called the Big Four group to A., who sold in turn to the defendants, after which W., as agent for the plaintiff, located a fraction between two of the claims in the plaintiff's name:—Held, that defendants had no right to the fraction in the absence of proof of fraud by W., and that the plaintiff was a party thereto; and held, also, that the defendants could not invoke against the plaintiff a statement in a bill of sale from H. to W., that the end of the two claims between which the fraction in question was located adjoined each other. *Gibson* v. *McArthur and Luckman*, 7 B. C. R. 59; 1 M. M. C. 382.

3. Jus tertii.]—In proving a title, one party cannot set up against another a right to a third claim which he himself contends he has destroyed. *Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39; 1 M. M. C. 31.

4. Mineral claim — *Changing location.*]—Where the location of a claim has been fraudulently changed from its original position, it is void; s. 28 of the Mineral Act has no application and cannot be invoked in support of a so-called location which never existed. *Wise* v. *Christopher et al.*, 1 M. M. C. 413.

5. Partnership.]—M. was a member of and held a controlling interest in a mining partnership. He was not formally appointed foreman, but appeared to have been permitted to manage its affairs in the matters in question, and appointed one G. superintendent, who ordered certain goods from M. for the partnership. He also supplied other goods to the partnership, accounts for which were passed at a meeting of the partnership:—Held, *per* DRAKE, J., affirming the Registrar's certificate made upon taking the accounts under the decree allowing the items to M., that s. 126 of the Act (a) does not preclude a mining partnership from contracting liabilities otherwise than upon the order of a duly appointed foreman. That as to the items passed at meetings of the partnership, it was estopped from disputing its liability. Upon appeal to the Full Court, MCCREIGHT, J. (WALKEM and MCCOLL, JJ. concurring), affirmed DRAKE, J. *Gray et al.* v. *McCallum et al.*, 5 B. C. R. 462; 1 M. M. C. 206.

6. Res judicata—*Estoppel of plea of—By order of Full Court in same action.*]—*Dunlop* v. *Haney*, 7 B. C. R. 307; 1 M. M. C. 390.

7. Title determined in County Court.]—When the titles to conflicting claims have been investigated and determined in the County Court mining jurisdiction, the same question cannot be raised between the same parties or their successors in title in the Supreme Court. *Pellent et al.* v. *Atmore et al.*, 1 M. M. C. 134.

XIX. EVIDENCE.

1. Abandonment—*Evidence of intention to abandon.*]—In adverse proceedings, if the plaintiff wishes to attack the defendant's title he must attack it while proving his own title, and not wait till rebuttal. The plaintiff must shew the measurements of the ground in dispute in order to prove overlapping of claims. An affidavit by a relocator that the ground is unoccupied may be regarded as a statutory abandonment of his former claim. *Dunlop* v. *Haney et al.*, 7 B. C. R. 1; 1 M. M. C. 369.

2. Certificate of work—*Impeachment—Fraud.*]—Conclusive evidence of performance of assessment work as between subjects till impeached by Crown for fraud. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487. *Cleary* v. *Boscowitz*, 8 B. C. R. 225; 1 M. M. C. 506.

3. Certificate of compliance.]—A certificate of Assistant Commissioner of Lands and works is not conclusive evidence of compliance of provisions of Mineral Ordinance, 1896. *Peck* v. *Reginam*, 1 B. C. R., pt. II., 11; 1 M. M. C. 13.

4. Certificate — *Recorded instruments—Copy.*] — Under s. 119 of the Mineral Act a certificate of a mining recorder may, under certain conditions, be admitted in evidence without notice of proof of the issuance of a free miner's certificate. A similar certificate of the recording of a certificate of work may be similarly admitted. Copies of instruments recorded under s. 115 may be likewise admitted without proof of loss of original and without notice. *Pavier* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384.

5. Colourable representation.] — Absence of 72 hours is not in all cases conclusive evidence of intention to abandon. If a claim holder does not properly represent his claim and so render it liable to re-location, he may, nevertheless, if he return to it and find it intact, resume possession, recommence working, and be in "as of his old estate." Where one man pretends to represent two claim holders at the same time, it is strong evidence that his representation in both cases is colourable and so worthless. *Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39; 1 M. M. C. 31.

6. Fresh evidence—*Offering at trial.*]—*Per* WALKEM, J.: To constitute a valid location, the statutory requirements as to blazing must be complied with. Semble, after the case of the adverse claimant has been closed, the Court will not allow the case to be reopened to enable the claimant to give fresh evidence as to his location:—Held, on appeal, ordering a new trial: (1) If the defendant wishes to rely on defects in the plaintiff's location he must set them forth specifically in his pleading. (2) The fact that the affida-

vit was made by the claimant's husband does not, ipso facto, vitiate the adverse claim, but the question is one of bonâ fides under the Act. (3) No costs of appeal will be given to the appellant who succeeds on a point not taken below. Quære, whether the County Court has jurisdiction, also, whether trespass lay independently of the proceeding by adverse claim. *Per* WALKEM, J., on new trial dismissing the action: The affidavit of adverse claim must be made by the claimant. *Aldous v. Hall Mines*, 6 B. C. R. 394; 1 M. M. C. 213.

7. Measurements.] — Where area of mineral claim is in dispute the evidence of one who has made no measurements is of little, if any value. *Bleckir* v. *Christhom*, 8 B. C. R. 148; 1 M. M. C. 112; *Waterhouse* v. *Liftchild*, 6 B. C. R. 424; 1 M. M. C. 153; *Dunlop* v. *Haney*, 7 B. C. R. 1, 305; 1 M. M. C. 369.

8. Observations upon the difficulty of obtaining evidence in a mining country. *Atkins* v. *Coy*, 5 B. C. R. 6; 1 M. M. C. 86.

9. Onus of proof in adverse proceedings.]—In adverse proceedings the onus of proof is on the adverse claimant, who has to give affirmative evidence of his own title, and if he is the junior locator establish his case in detail. Counsel for adverse claimant in deference to a remark of the trial Judge, did not complete the proof of his own title:—Held, that he should have pressed to be allowed to complete it, but under the circumstances there should be a new trial. *Caldwell et al.* v. *Davys*, 7 B. C. R. 156; 1 M. M. C. 387.

10. Parol agency — *Evidence of, under Statute of Frauds.*]—The interest of a free miner in his mineral claim is an interest in land, and an agreement not in writing respecting it cannot be enforced. Where one person on behalf of another locates and records a claim in his own name, the Court will compel him to transfer the claim to his principal. *Fero* v. *Hall*, 6 B. C. R. 421; 1 M. M. C. 238.

11. Survey.]—It is a condition precedent to right of adverse action that an affidavit and plan should be filed as required by Mineral Act, s. 37, and amendments. Such plan must not only be made and signed by a provincial land surveyor, but the survey on which it is based must be made by him. MARTIN, J., reversed on these points, HUNTER, C.J., dissenting. *Per* MARTIN, J.: The provisions of the Oaths Act, s. 16, apply to affidavits filed under said s. 37. 1 M. M. C. 471; 9 B. C. R. 184.

XX. FORFEITURE.

1. Lease—*From Crown.*]—Where mining ground is held from the Crown under a lease which is subject to forfeiture for non-compliance with terms and conditions, the Crown alone can declare a forfeiture and re-enter for breach, or waive it. Free miners in general are strangers to such a lease, and have no rights under or over it. Cessation of mining operations for want of funds is not proof of intention to abandon, even if that question could be raised by strangers to the lease. The act of recording a claim is the act of the party and not of the Crown, so cannot operate as a re-demise of ground already leased by the Crown. *Canadian Company* v. *Grouse Creek Flume Co., Ltd.*, 1 M. M. C. 3.

2. Relief against by Crown.]—Though the interest of a free miner in his claim expires, unless renewed, at the end of the year, his lessor, the Crown, may relieve against the forfeitures in cases where there is no one entitled to take advantage of such expiry. An interest in a claim which has not been renewed is an abandoned interest. *Williams Creek Bed Rock Flume & Ditch Co., Ltd.*, v. *Synon*, 1 M. M. C. 1.

XXI. FRAUD.

1. *Generally.*

1. Certificate of improvements — *Setting aside for.*]—An adverse claimant who neglects to take the remedy provided by s. 37 of the Mineral Act, cannot sue to set aside a certificate of improvements on the ground of fraud. Semble, that under such circumstances the Crown alone is entitled to sue. *Hand* v. *Warren*, 7 B. C. R. 42; 1 M. M. C. 376.

2. Certificate of improvements — *Action by Attorney-General.*] — In an action by Attorney-General to set aside a certificate of improvements on the ground that it was obtained by fraud, the fraud alleged was a statement in an affidavit of defendant's agent, sworn on 10th August, 1899, that the defendant was in undisputed possession of the Pack Train mineral claim. On 10th August, 1899, an action was then pending as to the title of the Pack Train claim, and judgment was not delivered till 11th August, 1899, in favour of the defendant. As it was after the 11th August when the affidavit reached the Gold Commissioner:—Held, not fraud within s. 37 of the Mineral Act. The application to the Minister of Mines under s. 10 of the Mineral Act Amendment Act, 1899, need not to be in writing. *Attorney-General* v. *Dunlop*, 7 B. C. R. 312; 1 M. M. C. 408.

3. Certificate of work — *Setting aside for.*]—The provisions of the Mineral Act as to location are imperative, and failure to observe them invalidates a location unless cured by the remedial ss. 16 (g) and 28. Section 28 does not include within its purview any area not duly located; and the irregularities cured by that section are only such as occur in the interval between location and record, and the recording of the last certificate of work. Where a location is purported to be made on ground already occupied by a valid and existing location, the junior location is invalid to at least the extent of the ground already covered by the senior location. Performance of the annual assessment work (or the equivalent money payment) is the annual rental payable to the Crown, and therefore in the case of a valid location, whenever a dispute arises in which payment of rent is concerned, the production of the certificate of work (i.e., payment), is conclusive against all the world, except the Crown itself, in a suit to set it aside for fraud. *Manley* v. *Collom*, 1 M. M. C. 487; 8 B. C. R. 153.

4. Certificate of work — *Impeachment of, for fraud.*]—A certificate of work can only be impeached by the Crown, and for fraud; so in action between subjects it is conclusive evidence of the performance of assessment work. Where the defendant is the senior locator, an admission by the plaintiff, the junior locator, that the defendant has duly recorded certificates of work, is of itself affirmative evidence of the defendant's title under the Mineral Act, 1898. Manley v. Collom (ante p. 487, M. M. C.), followed. Decision of the Full Court of British Columbia affirmed. *Cleary et al.* v. *Boscowitz*, 1 M. M. C. 506; 8 B. C. R. 225.

5. Gold Commissioner, by.]—The decision of Gold Commissioner will not be interfered with granting leave of absence, except in case of fraud. *Woodbury* v. *Hudnut*, 1 B. C. R. pt. II., 39; 1 M. M. C. 31.

6. Sale of mineral claim—*Will be set aside for.*]—*Daniel* v. *Gold Hill Mining Co.*, 6 B. C. R. 495.

See COMPANY, II. 1.

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2. *Statute of Frauds.*

1. Interest in land—*Trustee—Pleading.*]—Whether or not an interest in a mineral claim is an interest in land within the meaning of the Statute of Frauds is doubtful, but under the circumstances the defendant was a trustee for the plaintiff, and could not set up said statute as a defence against him. *Per* MCCREIGHT, J.:—That, if the title to a mineral claim is an interest in land within the Statute of Frauds, it is so only by reason of the Mineral Act, and in order to take advantage of the defence of the Statute of Frauds, the Mineral Act should also be pleaded. *Wells* v. *Petty*, 5 B. C. R. 353; 1 M. M. C. 147.

2. Interest in land—*Free miner.*]—*Per* DRAKE, J.: The interest of a free miner in his claim is an interest in land within the Statute of Frauds. *Stussi* v. *Brown*, 5 B. C. R. 380; 1 M. M. C. 195.

2. Interest in land—*Agent—Trustee.*]—The interest of a free miner in his mineral claim is an interest in land and a parol agreement respecting it cannot be enforced. An agent who, pursuant to a parol agreement, locates in his own name a mineral claim for his principal, will, if he repudiate the trust, be declared a trustee for such principal. *Fero* v. *Hall*, 6 B. C. R. 421; 1 M. M. C. 238.

3. Parol evidence of partnership.]—Where partners in a mineral claim enter into an agreement for the sale thereof, a partner whose free miner's certificate has lapsed thereafter does not thereby forfeit his share in the proceeds of the sale. The Statute of Frauds does not exclude parol evidence of a partnership for dealing in land. Decision of Full Court affirmed (GWYNNE and SEDGEWICK, J., dissenting). *McNerhanie* v. *Archibald*, 1 M. M. C. 320; 6 B. C. R. 260.

4. Trust—*Location—Agent.*] — An agent who locates in his own name a mineral claim for his principal cannot if he repudiate the trust in the absence of any writing to satisfy the Statute of Frauds, be declared a trustee for such principal. *Sunshine, Ltd.*, v. *Cunningham*, 1 M. M. 286.

XXII. FREE MINER.

1. Expiration of certificate — *Special certificate, R. S. B. C.* 1897, *c.* 135, *s.* 9, *and B. C. Stat.* 1901, *c.* 35, *s.* 2.]—On the expiration of a free miner's certificate any mineral claim of which the holder thereof was the sole owner becomes open to location. The obtaining of a special certificate under *s.* 2 of the Mineral Act Amendment Act, 1901, does not revive the title if in the meantime the ground has been located as a mineral claim. *Woodbury Mines, Limited* v. *Poyntz*, 10 B. C. R. 181.

2. Interest of a free miner in his claim is an interest in land within the Statute of Frauds. *Stussi* v. *Brown*, 5 B. C. R. 195; 1 M. M. C. 195.

3. Lapsed certificate—*Partners' interest in proceeds of sale.*]—Where partners in a mineral claim enter into an agreement for the sale thereof, a partner whose free miner's certificate has lapsed thereafter does not thereby forfeit his share in the proceeds of the sale. The Statute of Frauds does not exclude parol evidence of a partnership for dealing in land. Decision of Full Court affirmed (GWYNNE and SEDGEWICK, JJ., dissenting). *McNerhanie* v. *Archibald*, 1 M. M. C. 320; 6 B. C. R. 260.

4. Lease—*Renewal — Forfeiture—Crown—Abandonment.*]—Though the interest of a free miner in his claim expires, unless renewed at the end of the year, his lessor, the Crown, may relieve against the forfeiture in cases where there is no one entitled to take advantage of such expiry. An interest in a claim which has not been renewed is an abandoned interest. *William Creek Co.* v. *Synon*, 1 M. M. C. 1.

5. Peace, breach of.]—Free miner is not required to commit a breach of the peace to preserve his rights or perform assessment work. *Victor* v. *Butler*, 8 B. C. R. 100; 1 M. M. C. 438.

6. Precious metals.]—Free miner may mine the precious metals within Esquimalt and Nanaimo Ry. Belt. *Bainbridge* v. *Esquimalt & Nan. Ry. Co.*, 4 B. C. R. 181; 1 M. M. C. 98.

7. Loss of certificate—Proof of.]—In adverse proceedings where it is not established with reasonable certainty: (1) That the ground was properly staked; (2) that assuming the ground had been properly staked it was identical with the ground mentioned in the record, and the defendant shews title and produces certificates of work for several years, judgment will be given in favour of defendant. Before a substituted certificate will be admitted in evidence there must be proof of loss of the original. Conditions of the admissibility of a Mining Recorder's certificate as to issue of free miner's license and as to issue of certificates of work considered. Copies of certain recorded instruments held admissible without proof of originals. *Pavier* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384.

8. Co-owners.]—Where co-partners are working placer claims together it takes very little evidence to shew that they have become co-partners as well as co-owners. Decision of HENDERSON, Co. J., affirmed on this point. *Sabin* v. *Pine Creek Power Co., Ltd., et al.*, 2 M. M. C. 141.

9. Renewal by sheriff of license.]—A sheriff in possession of a free miner's interest in a mineral claim has no power to take out a special free miner's certificate under section 4 of the Mineral Act Amendment Act of 1899, in the name of the judgment debtor; neither has the sheriff power to renew a certificate before lapse. Where one or more of the co-owners of a mineral claim allow their free miners' certificates to lapse, their interests at once vest pro rata in their former co-owners. *McNaught* v. *VanNorman et al.*, 9 B. C. R. 131; 1 M. M. C. 516.

10. Right to prospect on Crown lands.]—Under s. 95 of the Crown Lands Act, 1888, all lands in the Province, both public and private, are subject to the right of entry by free miners to search for the precious metals, subject to the conditions precedent contained in the Placer Mining Act, 1891, c. 26. *Bainbridge* v. *The Esquimalt and Nanaimo Railway*, 4 B. C. R. 181; 1 M. M. C. 98.

11. Special certificate.]—On the expiration of a free miner's certificate any mineral claim of which the holder thereof was the sole owner becomes open to location. The obtaining of a special certificate under section 2 of the Mineral Act Amendment Act, 1901, does not revive the title if in the meantime the ground has been located as a mineral claim. *Woodbury Mines Limited* v. *Poynitz*, 2 M. M. C. 76; 10 B. C. R. 181.

12. Where misled by public official.]—If a gold miner is misled by mistake of Gold Commissioner he is protected by s. 53 of the Mineral Act. *Laver* v. *Parker*, 7 B. C. R. 418; 8 B. C. R. 223; 1 M. M. C. 456.

13. Using another's certificate and name.]—See Alexander v. Heath, 8 B. C. R. 95; 1 M. M. C. 333. *Manley* v. *Coltom*, 8 B. C. R. 153; 1 M. M. C. 487.

XXIII. IMPROVEMENTS.

1. Adversing second adverse action.]—Where a claim owner has received a certificate of improvements his position is assured, and he is not called upon to adverse a subsequent application of another for a certificate of improvements for a claim which would include a portion of his claim. *Re American Boy Mineral Claim*, 7 B. C. R. 268; 1 M. M. C. 304.

2. Bar—*Fraud—Pleading.*]—Certificate of improvements is a bar to those claiming adversely to the location in any right and on all grounds except fraud. If it is proposed to attack it that issue must be raised on the pleadings. *Nelson, etc., Ry. Co.* v. *Jerry*, 5 B. C. R. 396; 1 M. M. C. 161.

3. Co-owner.]—A part owner of a mineral claim may apply for a certificate of improvements. *Bentley* v. *Bossford*, 8 B. C. R. 128; 1 M. M. C. 454.

4. Fraud—*Affidavit—Application to Minister of Mines.*]—A statement in an affidavit (as to the question of undisputed possession) untrue at the time of the taking of the oath, but true at the time the affidavit reached the Gold Commissioner for action thereon, was not a misleading of that official, the affidavit having been made at his suggestion as a formal compliance with the Act, and he having full knowledge of the circumstances, and so not a fraud within the meaning of the said sections. Parties strenuously yet bonâ fide pursuing what they deemed, however erroneously, to be their rights, do not come within the meaning of the word fraud in said sections. The application to the Minister of Mines under s. 10 of the Mineral Act Amendment Act, 1899, need not be in writing. Semble, when fraud is shewn under section 37 the curative properties of s. 28 vanish as against the Crown. *Attorney-General* v. *Dunlop*, 7 B. C. R. 312; 1 M. M. C. 408.

5. Impeachment of—*Crown—Fraud.*]—An adverse claimant who neglects to bring an adverse action under s. 37 of the Mineral Act cannot sue to set aside a certificate of improvements on the ground of fraud. Semble, the Crown alone can do so. *Hand* v. *Warren*, 7 B. C. R. 42; 1 M. M. C. 376.

6. Injunction—*Preservation of property pending appeal.*]—In a case of very special and exceptional circumstances and to preserve the property in dispute, a party in an adverse action who has obtained judgment at the trial, may, after appeal has been brought, be enjoined from persisting in his application for or from obtaining a certificate of improvements pending such appeal. *Dunlop* v. *Haney*, 7 B. C. R. 300; 1 M. M. C. 344.

7. Injunction—*Crown grant—Policy.*]—A Crown grantee of land, quâ land, cannot obtain an injunction to prevent the owner of a mineral claim who has obtained a certificate of improvements from obtaining a Crown grant thereunder, even though the objection is only to the form of the Crown grant. The policy of the Mineral Acts is to compel persons claiming adversely to an applicant for a Crown grant to begin action before the certificate of improvements is obtained. *Nelson, etc., Ry. Co.* v. *Dunlop*, 7 B. C. R. 411; 1 M. M. C. 414.

XXIV. INJUNCTION.

1. Land—*Owner — Crown grant — Free miner.*]—When will not be granted on application of land-owner to prevent free miner from obtaining Crown grant. *Nelson and Fort Sheppard Ry. Co.* v. *Dunlop*, 7 B. C. R. 411; 1 M. M. C. 414.

2. Preservation of property pending appeal.]—When to preserve property pending appeal, will be granted to prevent application for certificate of improvements. *Dunlop* v. *Haney*, 7 B. C. R. 300; 1 M. M. C. 344.

XXV. JUDGMENT.

1. Adverse Action.]—Judgment in under s. 37 of the Mineral Act is not a judgment in rem. *McQuillan* v. *Fry*, 9 B. C. R. 234; *Fry* v. *Botsford*, 1 M. M. C. 520.

2. Adverse proceedings.]—Where both parties fail to establish title to the property in dispute the Judge will so find, and direct judgment to go accordingly without costs to either party. *Ryan* v. *McQuillan*, 6 B. C. R. 431; 1 M. M. C. 289. *Rammelmeyer* v. *Curtis*, 8 B. C. R. 383; 1 M. M. C. 401.

3. Delivery of.]—A judgment signed by the Judge, and enclosed in a letter directed to the proper district registrar, and left in the law Courts in the customary place for deposit in the mail, is pronounced on that day, though it did not reach the registrar in due course of the mail. *Attorney-General* v. *Dunlop*, 7 B. C. R. 312; 1 M. M. C. 408.

4. Judgment creditor — *Free miners' certificates.*] — Debtor or sheriff cannot take out a certificate of debtor who is a free miner to prevent the latter's claim from lapsing. *McNaught* v. *Van Norman*, 9 B. C. R. 131; 1 M. M. C. 516.

XXVI. JURISDICTION.

1. County Court.] — Section 34 of the County Courts Act, which provides, inter alia, that if in any action of tort the plaintiff shall claim over $250, and the defendant objects to the action being tried in the County Court, and gives security for trial in the Supreme Court, the proceedings in the County Court shall be stayed, applied to proceedings in the County Court under its mining jurisdiction. *Muirhead et al.* v. *Spruce Creek Power Co., Ltd.*, 11 B. C. R. 1.

2. Of Court to extend time.] — The Mineral Act, 1891, ss. 21 and 126 (a), provides that adverse claims should be filed in the office of the Mining Recorder, while the Act of 1894, s. 6, gives a form of notice of application for certificate of improvements which sets forth that adverse claims must be sent to the Gold Commissioner. The proposed defendants made an application for a certificate of improvements for the mining ground in question, and published the notice prescribed by s. 6, supra, whereupon the proposed plaintiffs, in accordance with the terms of the notice, filed their adverse claim with the Gold Commissioner. Within the prescribed time they gave instructions to their agent to commence action, but he, by mistake, omitted to do so, the omission not being discovered until some time afterwards, when negotiations for settlement were pending. Prior to and during these negotiations the proposed defendants knew that no action had been instituted. Finally, one of the proposed defendants refused his assent to a settlement which had been agreed to by all the other parties. The proposed plaintiffs moved to extend the time to commence action:—Held, *per* DRAKE, J.: By the Mineral Act, 1892, s. 14 (b), the filing of an adverse claim in the office of the Mining Recorder is a condition precedent to the right of action, and that there is no jurisdiction to extend the time. Quære, whether, if there were such a jurisdiction, the grounds shewn were sufficient. Upon appeal to the Full Court:—Held, *per* MCCREIGHT, WALKEM and MCCOLL, JJ., affirming DRAKE, J.: (1) That the adverse claim was not properly filed: (2) That, owing to the nature of the subject matter, the Court requires stronger ground for extending time in mining cases than in other matters. The notice of appeal was served on the agent of the soiicitor for the proposed defendants:—Held, sufficient. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233; 1 M. M. C. 142.

3. Objection to.] — Of County Court must be taken below or will not be entertained on appeal. *Gelinas* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

4. Of province to create Mining Courts.]—It is competent for the Province to create Mining Courts, and to fix their jurisdiction, but not to appoint any officers thereof with other than ministerial powers. *Burk* v. *Tunstall*, 2 B. C. R. 12; 1 M. M. C. 61.

XXVII. LAND OWNER.

1. Bond—*Condition precedent to entry by free miner.*]—A claimant to the land as land has no status to question the due performance by the free mner of the conditions required by the Crown as pre-requisite to his right to a valid location thereon. The requirement of a bond by s. 10 of the Act of 1891 is a directory provision for the protection of the land owner, and is not a pre-requisite to the acquisition by the miner of mineral rights from the Crown. *Nelson, etc., Ry. Co.* v. *Jerry*, 8 B. C. R. 396; 1 M. M. C. 161.

2. Injunction by preventing holder of certificate of improvement from obtaining Crown grants. *Nelson & Fort Sheppard Ry. Co.* v. *Dunlop*, 7 B. C. R. 411; 1 M. M. C. 414.

XXVIII. LEASES.

1. Expiry of lease.]—Though the interest of a free miner in his claim expires unless renewed at the end of a year, his lessor the Crown may relieve against the forfeiture in cases where there is no one entitled to take advantage of such expiry. *Williams Creek Co.* v. *Synon*, 1 M. M. C. 1.

2. Surface rights — *Squatter.*] — A Crown grant of a mineral claim vests such a title, at least in the grantee, that a squatter upon such lands must shew a better title or move off. Where such a squatter takes a lease from the Crown grantee, he cannot maintain an action to set aside the lease if the lessor has observed its covenants. *Per* IRVING, J.: Section 16 of the Mineral Act Amendment Act, 1897, is declaratory. *Spencer* v. *Harris*, 1 M. M. C. 294; 6 B. C. R. 466.

3. Waste land — *Forfeiture.*] — Where mining ground is held from the Crown under a lease, which is subject to forfeiture for noncompliance with terms and conditions, the Crown alone can declare a forfeiture and reenter for breach, or waive it. Free miners in general are strangers to such a lease, and have no rights under or over it. Cessation of

mining operations for want of funds is not proof of intention to abandon, even if that question could be raised by strangers to the lease. The act of recording a claim is the act of the party and not of the Crown, so cannot operate as a re-demise of ground already leased by the Crown. *Canadian Company* v. *Grouse Creek Flume Co., Ltd.*, 1 M. M. C. 3.

4. Water rights—*Riparian proprietors.*]—Lessees of the Dominion Government in the Canadian Pacific Railway belt operating a saw-mill by water power are entitled, as riparian proprietors, to an injunction restraining provincial free miners, located up-stream, after occupation by said lessees, and having a mining water record, from fouling such stream, the natural source of the water supply, so as to interfere with lessees' user thereof. A grant of water privileges under the Placer Mining Act, 1891, does not sanction the user of the water to the detriment of the rights of others. The Dominion Government is in possession of said lands within the railway belt, as trustees to administer same, and it was competent to it to grant a timber lease to the plaintiffs, who would have the right to the use of the water flowing through their limits in its ordinary and natural condition. *The Columbia River Lumber Co.* v. *Yuil et al.*, 1 M. M. C. 64; 2 B. C. R. 237.

XXIX. Location and Re-location.

1. Agent—*Location by.*]—An agent who locates in his own name a mineral claim for his principal cannot, if he repudiate the trust, in the absence of any writing to satisfy the Statute of Frauds, be declared a trustee for such principal. If a locator include in his location ground then occupied by buildings, the record of such location will be rectified so as to exclude such ground. *Sunshine, Limited*, v. *Cunningham et al.*, 1 M. M. C. 286.

2. Bona fide attempt to locate—*Misleading post.*]—A bonâ fide attempt to comply with the provisions of the Mineral Act, 1896, s. 16 (d), does not merely mean an attempt to locate a claim of size and form as provided in s. 15, but means an attempt to comply with the formalities provided by s. 16 as to staking, and a locator who has staked his location by four corner posts, without No. 1 and 2 posts, has not made such an attempt. *Richards* v. *Price*, 5 B. C. R. 362; 1 M. M. C. 156.

3. Crown grant — *De facto minerals—Rock in place.*] — (1) The doctrine of implied surrender by conduct does not apply to a valid location, and the only abandonment by which the owner can be concluded is that by notice of abandonment given by him to the Crown under s. 27 of the Mineral Act Amendment Act, 1892; (2) The exception from the plaintiff's Crown grant of "lands held as mineral claims," means de facto claims, and the word "lawfully" cannot be imported; (3) A claimant to the land as land has no status to question the due performance by the free miner of the conditions required by the Crown as pre-requisite to his right to a valid location thereon; (4) The requirement of a bond by s. 10 of the Act of 1891 is a directory provision for the protection of the land owner, and is not a pre-requisite to the acquisition by the miner of mineral rights from the Crown; (5) The discovery of a mineral vein or lode is not essential to a valid location—"rock in place" is sufficient; (6) The words "rock in place" are satisfied by rock in situ, bearing valuable deposits of mineral, although not lying between defined walls, or in a vein or ledge; (7) A certificate of improvements is a bar to those claiming adversely to the validity of the location in any right and on all grounds except fraud; (8) The expression "valuable deposits of mineral" means "capable of being valued," not "costly"; (9) If it is proposed to attack a certificate of improvements obtained since issue of writ, that issue must be raised on the pleadings. Decision of Davie, C.J., reversed. *Nelson & Fort Sheppard Ry. Co.* v. *Jerry et al.*, 1 M. M. C. 161; 5 B. C. R. 396.

4. Curing effects—*Misleading.*]—Defects in a location made bonâ fide in endeavouring to avoid encroaching upon other locations, and which do not mislead, are cured by a certificate of work: Ib. *Waterhouse* v. *Litchild*, 6 B. C. R. 424; 1 M. M. C. 153.

5. Curative provisions.]—Failure to put up legal posts, as required by the Mineral Act, invalidates a location, unless cured by s. 16, s.-s. (d). The curative provisions of that section are intended as a shield for the protection of locators, and to be invoked by them, and not a weapon of attack upon them. It is not necessary to record the abandonment of an invalid location before re-location. *Creelman* v. *Clarke et al.*, 1 M. M. C. 228.

6. Date—*Curative provisions.*]—Failure to write the true date upon the posts of a mineral claim invalidates the location unless cured by s. 16, s.-s. (d). In an adverse action, when the validity of a junior location depends upon the location of the senior location on the same ground, the curative provisions of s. 16, s.-s. (d) of the Mineral Act can only be invoked in support of each senior location by some one claiming to be entitled thereto, and not by a party to such adverse action who has no interest therein. *Boie* v. *Saulter*, 1 M. M. C. 240.

7. Defective post.]—A location having a defective post is invalid: Ib. *Pellent* v. *Almoure*, 1 M. M. C. 134; *Clark* v. *Haney*, 8 B. C. R. 130; 1 M. M. C. 281.

8. Foreign territory—*Post.*] — A location which has its No. 1 post on foreign territory is invalid. *Connell* v. *Madden*, 6 B. C. R. 76, 531; 1 M. M. C. 359.

9. Fractional claim—*Location line of—Necessity for blazing—Re-location by another at instance of first holder—Permission of Gold Commissioner.*]—Where the holder of a mineral claim which is the subject of an adverse action, causes the ground to be re-located by someone else, from whom he purchases it for a small consideration, the provisions of s. 32 of the Mineral Act, requiring permission to re-locate, do not apply. The location line of a fractional mineral claim must be marked by the blazing of trees or the setting of posts in the same manner as that of a full sized claim. *Snyder* v. *Ransom*; *Ransom* v. *Snyder*. 10 B. C. R. 182; 2 M. M. C. 77.

10. Fraud — "*Swinging*" *location — Estoppel.*] — Where the location of a claim

has been fraudulently changed from its original position, it is void, and s. 28 of the Mineral Act has no application and cannot be invoked in support of a so-called location which never existed. *Wise* v. *Christopher*, 1 M. M. C. 413.

11. Imperative provisions — *Invalidity —Re-location—Fractional claim—Irregularity —Compass bearing—Misleading—Certificate of work—Proof—Title—Free miner's certificate —Using another's—Crown—Lease—Reversion —Fraud.*]—The provisions of the Mineral Act as to location are imperative, and failure to observe them invalidates a location unless cured by the remedial ss. 16 (g) and 28. Section 28 does not include within its purview any areas not duly recorded; and the irregularities cured by that section are only such as occur in the interval between the location and record, and the recording of the last certificate of work. Where a location is purported to be made on ground already occupied by a valid and existing location, the junior location is invalid to at least the extent of the ground already covered by the senior location. Performance of the annual assessment work (or the equivalent money payment) is the annual rental payable to the Crown, and therefore, in the case of a valid location, whenever a dispute arises in which payment of rent is concerned, the production of the certificate of work (i.e., payment), is conclusive against all the world, except the Crown itself, in a suit to set it aside for fraud. Failure to give the "approximate compass bearing" of No. 2 post will invalidate a location. Such an effect, if of a character calculated to mislead, cannot be cured by s. 16 (g), nor by a certificate of work under s. 28. Accuracy is as essential in the case of fractional claims as in full sized claims. Failure to discover "mineral in place" invalidates a location, and such discovery must be established as a fact when the onus of proving it is upon the locator—belief is insufficient. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487.

12. Intervening location.]—Two plots of ground separated by an intervening valid location, cannot, although within the statutory limit of 1,500 feet, be included in one location. *Dart* v. *St. Keverne Mining Co.*, 7 B. C. R. 56; 1 M. M. C. 331.

13. Irregularity — *Compass bearing — Misleading location — Curative provision.*] — Failure to give the "approximate compass bearing" of No. 2 post invalidates a location. Such defect, if of a character calculated to mislead, cannot be cured by s. 16 (g), nor by a certificate of work under s. 28. Section 28 only cures little irregularities after location and record which do not go to the root of title. If a claim is not properly taken up and recorded it never becomes a mineral claim. *Callahan* v. *Coplen*, 6 B. C. R. 523; 7 B. C. R. 422; 1 M. M. C. 348.

14. Location on same vein on another's location — *Public policy.*] — When one free miner locates a mineral claim and locates another claim on the same vein in the name of another free miner, such a proceeding is contrary to public policy, and a violation of the Mineral Act and amendments, and the free miner requires no interest in the second location. *Alexander* v. *Heath*, 8 B. C. R. 95; 1 M. M. C. 333.

15. Location line—*Title.*]—The foundation or root of title to a mineral claim depends upon the proper location, i.e., a location made in accordance with the rules prescribed in the Mineral Act. Failure to mark the location line invalidates the location. *Aldous* v. *Hall Mines Co.*, 6 B. C. R. 394; 1 M. M. C. 213; *Clark* v. *Haney*, 8 B. C. R. 130; 1 M. M. C. 281.

16. Location line — *Existing location — Re-location — Imperative provisions.*]—A location line which is not run as near as possible on the line of the edge or vein invalidates the location. Where a location is purported to be made on ground already covered by a valid and existing location, the junior location is valid to at least the extent of the ground already covered by the senior location. The provisions of the Mineral Act as to location are imperative. *Bleckir* v. *Chrisholm*, 8 B. C. R. 148; 1 M. M. C. 112. *Pellent* v. *Almoure*, 1 M. M. C. 134.

17. Location line.] — A location is not invalid because the location line exceeds in length the statutory allowance. *Granger* v. *Fotheringham*, 3 B. C. R. 390; 1 M. M. C. 71.

18. Misleading location—*Monuments— Posts—Curative provisions.*]—The erection of rock monument instead of legal posts invalidates a location, and such an omission cannot be cured by s. 16, s.-s. (d). The provisions of that section are conjunctive. Any other mode of making a location than that specified by the Act is calculated to mislead other locators. *Callahan* v. *George*, 8 B. C. R. 146; 1 M. M. C. 242.

19. Misnomer.]—A claim which is located under one name and recorded under another is invalid, and such a defect in location being necessarily calculated to mislead other locators in the vicinity, cannot be cured by s.-s. (g) of s. 16 of the Mineral Act Amendment Act, 1898. *British Lion Gold Mining Co.* v. *Creamer*, 2 M. M. C. 51.

20. Occupation and working.]—Mining ground actually occupied and actively worked as a mineral claim is not open to location. *Waterhouse* v. *Liftchild*, 6 B. C. R. 424; 1 M. M. C. 153.

21. Occupied ground — *Record.*] — If a locator includes in his location ground then occupied by buildings, the record of such location will be rectified so as to include such ground. *Sunshine, Ltd.*, v. *Cunningham*, 1 M. M. C. 286.

22. Occupied land.]—A location on land already lawfully occupied for mining purposes is invalid. *Granger* v. *Fotheringham*, 3 B. C. R. 390; 1 M. M. C. 71; *Atkins* v. *Coy*, 5 B. C. R. 6; 1 M. M. C. 88.

23. Posts — *Curative provisions — Re-location.*]—Failure to put up legal posts as required by the Mineral Act, invalidates a location unless cured by s. 16, s.-s. (*d*). The curative provisions of that section are intended as a shield for the protection of locators and to be invoked by them, and not as a weapon of attack upon them. It is not necessary to record the abandonment of an invalid location before re-location. *Creelman* v. *Clarke*, 1 M. M. C. 228.

24. Record—*Failure to enter.*] — Failure to record a conveyance under s. 49 of the Mineral Act does not result in the claim becoming waste lands of the Crown open to location. There is an apparent conflict between ss. 49 and 50, which can be reconciled by construing s. 50 as meaning merely that a Court should not afford relief, before record of conveyance. Decision of MARTIN, J., reversed. *Grutchfield* v. *Harbottle*, 1 M. M. C. 396; 7 B. C. R. 186-344.

25. Record—*Compass bearing — Misleading—Failure to duly record a location invalidated it.*]—An error of the initial post of the approximate compass bearing of No. 2 post of N. E. and S. W., instead of N. W. and S. E., is calculated to mislead, and cannot be cured by s. 16 (d). *Francœur* v. *English*, 6 B. C. R. 63; 1 M. M. C. 203.

26. Re-location of existing location —"*Jumping.*"]—An attempt to locate a claim on an existing valid location is merely an authorized trespass — a "jumping." *Woodbury* v. *Hudnut*, 1 B. C. R. pt. II., 39; 1 M. M. C. 31.

27. Re-location in another name — *Permission of Gold Commissioner.*] — Where owners of a mineral claim, the title to which they consider defective, permitted a third person to re-locate it in his own name, who, afterwards, without previous binding agreement to that effect, conveyed his title to them for a consideration:—Held, not a re-location by the owners of the original claim so as to render necessary the written permission of the Gold Commissioner. *Granger* v. *Fotheringham*, 3 B. C. R. 590; 1 M. M. C. 71.

28. Re-location — *Lapsed location—Reversion—Certificate of work—Curative provisions.*] — Even if the senior location were valid at the time of the location by the junior locator, if it subsequently lapsed, the junior would become entitled to the over lapped area as against the third location, if the junior locator had recorded a certificate of work before the making of the third location; the junior location in the life of the senior was "a mere irregularity" cured by s. 28. *Pavier* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384.

29. Re-location—*Lapsed location — Reversion to Crown—Certificate of work—Mineral in place—Abandonment.*]—Where a location is purported to be made on ground already covered by a valid and existing location, the junior location is invalid to at least the extent of the ground covered by the senior location. On the lapse of the senior location its ground reverted to the Crown. Failure to record a certificate of work is presumptive evidence of abandonment. The recording of a certificate of work is an answer to the objection that mineral in place was not discovered. *Cranston* v. *English Canadian Co.*, 7 B. C. R. 266; 1 M. M. C. 394.

30. Re-location—*Lapsed location — Reversion to Crown.*]—Where a location is purported to be made on ground already covered by a valid and existing location, the junior location is invalid to, at least, the extent of the ground already covered by the senior location. On the lapse of the senior location, its ground reverted to Crown. *Rammelmeyer* v. *Curtis*, 8 B. C. R. 383; 1 M. M. C. 401.

31. Re-location—*Lapsed location — Reversion.*]—A location made upon an existing valid location becomes a valid location on the lapse of the senior location, upon a certificate of work being recorded for the junior location. *Gelinas* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

32. Re-location — *Permission of Gold Commissioner.*] — Before re-location, it is necessary to record the abandonment of an invalid location and obtain permission of Gold Commissioner. *Pellent* v. *Almoure*, 1 M. M. C. 134.

33. Staking — *Non-observance of formalities—No. 2 post planted in glacier—Mineral Act, ss. 12-16.*]—The failure to write on the No. 2 post of a mineral claim, the date of the location and the name of the locator, is a non-observance of the formalities within the meaning of s. 16 (g) of the Mineral Act. That fact that a No. 2 post of a mineral claim is planted in a moving glacier will not invalidate the location, provided the location line is well marked and the claim is otherwise properly marked out so as to be easily identified. Decision of MARTIN, J., affirmed. *Sandberg* v. *Ferguson*, 10 B. C. R. 123; 2 M. M. C. 165.

See also CERTIFICATE AND LICENSE, IX. 3, 4—TITLE, *infra*.

XXX. MECHANIC'S LIEN.

1. Free miner's lien—*Affidavit.*] — Free miner may have a mechanic's lien on a mineral claim. *Holden* v. *Bright Prospects Mining Co.*, 6 B. C. A. 439; 1 M. M. C. 292.

2. A statement in the affidavit that the work was finished or discontinued "on or about" a certain date, is sufficient: Ib.

3. Free miner's lien — *Cook — Bonded claim.*] — Miners employed by a bondholder, who has a working bond on a mine by which, if the mine were worked a certain number of men were to be employed by the bondholder, and the proceeds applied on the purchase, have, in the absence of an express request by the owner, no lien on the mine, if the bondholder does not exercise his option of purchase. The words "at the instance" in s. 7 bear a different construction from those "at the request" of the owner in s. 4. A cook cannot have a lien. Observation upon improper affidavits. *Anderson* v. *Godsal*, 7 B. C. R. 404; 1 M. M. C. 416.

4. Mineral claims — *Priority of mechanics' liens.*]—Right of lien holders to notice of application for winding up order. 9 B. C. R. 557.

See MECHANIC'S LIEN.

XXXI. MINERAL CLAIM.

1. *Curative Provisions.*

1. Failure to set up legal posts.] — Failure to set up legal posts, as required by the Mineral Act, invalidates a location, unless cured by s. 16, s.-s. (*d*). The curative pro-

visions of that section are intended as a shield for the protection of locators, and to be invoked by them, and not as a weapon of attack upon them. It is not necessary to record the abandonment of an invalid location before re-location. *Creelman* v. *Clarke et al.*, 1 M. M. C. 228.

See also CERTIFICATE OF LICENSE, *supra*, IX. 3, 4.

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2. *Fractional Claims.*

1. Accuracy a necessity.]—Accuracy is as essential in the case of fractional claims, as in full sized claims. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487.

2. Location line, marking of.]—Where the holder of a mineral claim which is the subject of an adverse action causes the ground to be re-located by someone else from whom he purchases it for a small consideration, the provisions of s. 32 of the Mineral Act, requiring permission to re-locate, do not apply. The location line of a fractional mineral claim must be marked by the blazing of trees or the setting of posts in the same manner as that of a full sized claim. *Snyder* v. *Ransom*; *Ransom* v. *Snyder*, 10 B. C. R. 182; 2 M. M. C. 77.

3. Irregularity.]—Failure to put proper notices on a post will invalidate a fractional location, but that is a defect which in proper circumstances may be cured by s. 16, s.-s. (*g*) of the Mineral Act, 1898. If the initial post is properly placed and the location line duly marked so that the position of the claim can be readily defined, the fact that the No. 2 post is placed in a moving glacier will not invalidate the location. *Per* MARTIN, J.—"Ground" in the sections in question has not the sole restricted meaning of fixed earth or rock, but a wider signification depending upon the circumstances, and will in some cases at least include ice and hard snow. In surveying mineral claims it is the duty of the surveyor to examine all posts and the location line. It is sufficient if the sketch plan required by s.-s. (e) gives reasonable information of adjoining claims. Decision of the Full Court of British Columbia affirmed. *Sandberg* v. *Ferguson*, 2 M. M. C. 165; 9 B. C. R. 123.

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3. *Interest in Land.*

1. Partnership — *Parol agreement.*] — Plaintiff having discovered "mineral float" communicated its situation to the defendant upon a verbal agreement by the latter that in the event of his thereby discovering the ledge and locating a mineral claim, the plaintiff should be "in on it:"—Held, by WALKEM, J., at the trial, dismissing the action, that the transaction took place, but that the words "in on it" were too indefinite to found a contract:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and DRAKE, JJ.), overruling WALKEM, J., that the words "in on it" imported an agreement to give the plaintiff an interest in the nature of a partnership or co-ownership; that, in the absence of anything in a partnership contract to the contrary, the presumption of law is that the partnership shares are equal, and that the contract was not void for uncertainty. Quære, whether the right to a duly located and recorded mineral claim constitutes an interest in land within the meaning of the Statute of Frauds. *Per* DAVIE, C.J.: That the defendant, upon finding the ledge and locating and recording the claim, became, under the verbal agreement, a trustee for the plaintiff of one-half share therein, and was incapacitated from setting up the Statute of Frauds as a defence. *Per* MCCREIGHT, J.: That, if the title to a mineral claim is an interest in land within the Statute of Frauds, it is so only by reason of the Mineral Act, and that in order to take advantage of the defence of the Statute of Frauds, the Mineral Act should also be pleaded. *Wells* v. *Petty*, 5 B. C. R. 353; 1 M. M. C. 147.

2. Partnership—*Notice.*]—*Per* DRAKE, J.: Under s. 34 of the Mineral Act, 1891, (a) the interest of a free miner in his mineral claim is an interest in land within the Statute of Frauds. An agreement between the defendant and plaintiff not stated to be in writing in regard to the mineral claim in question, being alleged in the statement of claim and admitted in the statement of defence:—Held, that the defence of the Statute of Frauds was waived and the defendant concluded by the admission. Upon appeal to the Full Court:—Held, *per* MCCREIGHT, J. (WALKEM and MCCOLL, JJ., concurring): To maintain the defence of the Statute of Frauds to an agreement for sale or transfer of a mineral claim both that statute and section 34 of the Mineral Act, supra, must be pleaded. Quære: Whether the bar provided by s. 51 of the Mineral Act, 1891, that "no transfer of any mineral claim, etc., shall be enforceable unless the same shall be in writing, etc.," is not confined to a plaintiff seeking to enforce the transfer, and inapplicable to a defendant. *Stussi* v. *Brown*, 5 B. C. R. 380; 1 M. M. C. 195.

3. Principal and agent—*Fraud.*]—The interest of a free miner in his mineral claim is an interest in land and an agreement not in writing respecting it cannot be enforced. Where one person on behalf of another located and records a claim in his own name, the Court will compel him to transfer the claim to his principal. *Pero* v. *Hall*, 6 B. C. R. 421, 1 M. M. C. 238.

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4. *Location and Occupation.*

1. Agent—*Location by.*]—A mineral claim may be located by an agent. If the location line crosses other existing valid locations it does not invalidate the junior location unless in the circumstances it is calculated to mislead. If the initial post is placed on an existing valid location it does not invalidate the junior location unless in the circumstances it is calculated to mislead. The question as to whether a deviation from any of the formalities prescribed by the Act is calculated to mislead is one of fact depending on the nature of the locus in quo. The learned trial Judge having found that an error in an approximate compass bearing of 77° 50′ was in the circumstances calculated to mislead, his finding would not be disturbed unless shewn to be clearly wrong. Decision of IRVING, J., affirmed. *Per* MARTIN, J., dissenting: An initial post placed as aforesaid is within

a prescribed area, and cannot be the foundation of a valid location and s.-s. (*g*) cannot be invoked to cure the defect. *Docksteader* v. *Clark*, 2 M. M. C. 192; 11 B. C. R. 37.

2. Defective post—*Abandonment.*]—The location of a mineral claim is not void because as staked, it exceeds the length directed by the Mineral Act. An owner of a mineral claim may abandon any portion thereof by specifying it and recording the abandonment. The Court should deal with mining disputes upon the principles of a Court of Equity, and should discountenance a plaintiff, whose action is based upon defects in title, knowledge of which was acquired by him while a Government employee in a mining record office, it being contrary to his duty to the public for him to use such information. Practice of "jumping" claims should be discouraged. *Granger* v. *Fotheringham et al.*, 1 M. M. C. 71; 3 B. C. R. 589.

3. Invalid location.]—An error in the statement on the initial post of the approximate compass bearing of No. 2 post n. e. and s. w., instead of n. w. and s. e., is calculated to mislead, and cannot be cured by s. 16 (*d*). A location which is not duly recorded is invalid. *Francoeur et al.* v. *English*, 1 M. M. C. 203; 6 B. C. R. 63.

4. Location line.]—When the validity of one location depends upon the due location of another the curative provisions of s.-s. (*g*) of s. 16 cannot be invoked to support the latter by an owner who is a stranger to the original locator thereof and does not claim title under him, or at all. If a sub-recording office is opened by the Minister of Mines without the authority of the executive, that is an "Act of omission or commission of a Government official," the consequences of which the free miner may be relieved against under s. 53. Posts may be ordered to be brought into Court in case of dispute regarding notices thereon or size thereof. Form of questions for jury, and charge thereon. *Rutherford* v. *Morgan et al.*, 2 M. M. C. 214.

5. Occupation of.] — Occupation of a mineral claim ordinarily consists of a valid location and record. Mining ground actually occupied and actively worked as a mineral claim is not open to location. Defects in a location made bonâ fide in endeavouring to avoid encroaching upon other locations, and which do not mislead, are cured by a certificate of work. Where the area of a mineral claim is in dispute the evidence of one who has made no measurements is of little if any value. *Waterhouse* v. *Liftchild*, 1 M. M. C. 153; 6 B. C. R. 424.

6. Placer claim.]—A placer claim may be located on a lode claim. Upon a locator of a placer claim tendering to the proper officer the proper documents in due form accompanied by the proper fee, he is entitled to obtain a record for the claim, and such officer has no discretion in the issuance thereof. Where a record is not granted to a locator in due course he shall, under the remedial provisions of s. 19 of the Placer Mining Act, 1901, be deemed to have had such record issued to him at the time of his application therefrom. The validity of a placer mining record primarily depends upon the mere belief of the locator based upon indications he has observed on the claim in the existence of a deposit of placer gold therein. Where the holder of a placer claim is prevented from properly representing it by the wrongful act of the Gold Commissioner, he will be excused from the consequences of such failure to represent. The Gold Commissioner has no authority either under s. 128, s.-s. (*g*) of the Placer Mining Act, or otherwise, to change the entire location of a placer claim, and an order to that effect is one made wholly without jurisdiction and absolutely null and void. Where it is sought to sustain an appeal on an issue outside the record, on the ground that nevertheless it was an issue fought in the course of the trial, it must, particularly in a charge of fraud, appear that the attention of the Court and the adversary was directed to the fact that such an issue was being raised, otherwise a waiver of the necessity for a formal pleading will not be assumed. Where the boundaries of conflicting locations are in dispute accurate measurements thereof should be taken and a plan prepared for use at trial. Terms of amendment of pleadings and postponement of trial considered. Decision of MARTIN, J., affirmed. *Tanghe* v. *Morgan et al.*, 2 M. M. C. 178; 11 B. C. R. 76.

See also LOCATION AND RE-LOCATION *supra*, XXIX.

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5. Registration and Record.

1. Act of party not Crown.]—Act of recording a claim is the act of the party and not of the Crown. *Canadian Co.* v. *Grouse Creek Co.*, 1 M. M. C. 3.

2. Effect of non-record on location.]—Failure to record a conveyance under c. 49 of the Mineral Act does not result in the claim becoming waste lands of the Crown open to location. There is an apparent conflict between ss. 49 and 50 which can be reconciled by construing s. 50 as meaning merely that a Court should not afford relief before conveyance. *Grutchfield* v. *Harbottle*, 7 B. C. R. 186, 344; 1 M. M. C. 396.

3. Location.]—One which is not duly recorded is invalid. 6 B. C. R. 63; 1 M. M. C. 203.

4. Notice — *Land registry*— *Conveyance.*]—Sections 50 and 51 Mineral Act, 1891, introduce into the law relating to transfers, the policy of the Land Registry Laws, namely, that a prior unregistered conveyance must be postponed to that which is subsequent but duly registered. Quære, whether mining records constitute notice, and to what extent? *Atkins* v. *Coy*, 5 B. C. R. 6; 1 M. M. C. 88.

5. Notice—*Record.*] — Though documents duly recorded are notice to subsequent purchasers, the mere fact of a notice of claim being filed with the Recorder is not notice. *Stussi* v. *Brown*, 5 B. C. R. 380; 1 M. M. C. 195.

6. Time allowed for recording—*Mineral Act, ss.* 19 *and* 49.]—The claimant of an interest in a mineral claim seized under an execution on 18th May, 1903, relied on a bill of sale obtained by him on 23rd February, 1903, while in Dawson, Y. T., over 2,000 miles from the Mining Recorder's office. The bill of sale was not recorded until 22nd May,

1903:—Held, that as the time for recording mineral claims fixed by s. 19 of the Mineral Act is dependent upon the distance of the claim (not of the locator) from the Recorder's office, therefore by s. 49 of the Act the bill of sale was of no effect as against the intervening execution, as it was not recorded within the time limited by said section 19. *Dumas Gold Mines, Limited,* v. *Boultbee et al.*, 10 B. C. R. 511; 2 M. M. C. 137.

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6. *Sale and Transfer.*

1. Accord and satisfaction.] — An agreement for the sale of mineral claims provided for payment by instalments and contained a proviso, that "failure to make any of the above payments to render this agreement void as to all parties thereto, and the said (vendees) can quit at any time without being liable for any further payments thereunder from such time on." At the request of the vendees the vendors, without consideration, extended the time for payment of one of the instalments. After the original, but before the extended period for making the payment, the vendees notified the vendors that they had quit. In an action to recover the amount of the instalment:—Held, that the liability of the defendants, the vendees, to pay the instalment in question was absolute upon the day named in the original agreement, and remained unaffected by the voluntary concession of further time to pay. Decision of WALKEM, J., overruled. *Webb* v. *Montgomery*, 1 M. M. C. 129; 5 B. C. R. 323.

2. Agent—*Transfer by.*]—*Per* WALKEM, J.: The interest of a principal in a mineral claim may be transferred by his agent by bill of sale though executed by the agent in his own name. *Wilson* v. *Whitten*, 1 M. M. C. 38.

3. Fraud — *Estoppel.*] — W. sold certain mineral claims called the Big Four group to A., who sold in turn to the defendants, after which W., as agent for the plaintiff, located a fraction between two of the claims in the plaintiff's name:—Held, that defendants had no right to the fraction in the absence of proof of fraud, by W., and that the plaintiff was a party thereto; and held also, that the defendants could not invoke against the plaintiff a statement in a bill of sale from H. to W., that the ends of the two claims between which the fraction in question was located adjoined each other. *Gibson* v. *McArthur et al.*, 1 M. M. C. 382; 7 B. C. R. 59.

4. Innocent misrepresentation.]—An executed contract for the sale of a mineral claim, being an interest in land, will not be rescinded for mere innocent misrepresentation. But where by error of both parties and without fraud or deceit, there has been a complete failure of consideration, a Court of equity will rescind the contract and compel the vendor to return the purchase money. Thus, where, on the sale of a mining claim, it turned out that the whole property sold was included in prior claims, whereby the purchaser got nothing for his money, the contract was rescinded though the vendor acted in good faith and the transaction was free from fraud. Decision of Full Court of British Columbia affirmed. *Pope* v. *Cole*, 1 M. M. C. 257; 6 B. C. R. 205.

5. Intervening execution — *Time for recording.*]—The claimant of an interest in a mineral claim seized under an execution on 18th May, 1903, relied on a bill of sale obtained by him on 23rd February, 1903, while in Dawson, Y.T., over 2,000 miles from the Mining Recorder's office. The bill of sale was not recorded until 22nd May, 1903:—Held, that as the time for recording mineral claims fixed by s. 19 of the Mineral Act is dependent upon the distance of the claim (not of the locator) from the Recorder's office, therefore by section 49 of the Act the bill of sale was of no effect as against the intervening execution, as it was not recorded within the time limited by said s. 19. *Dumas Gold Mines, Limited,* v. *Boultbee et al.*, 10 B. C. R. 511; 2 M .M. C. 137.

6. Joint transferees.]—If one or two joint transferees of an undivided interest in a mineral claim rejects the transfer, no title passes to the other. *Cook* v. *Denholm*, 8 B. C. R. 39; 1 M. M. C. 447.

7. Writing.] — Not enforceable unless in writing. *Alexander* v. *Heath*, 8 B. C. R. 95; 1 M. M. C. 333.

8. Written document.] — Semble: The bar provided by s. 51 that "no transfer of any mineral claim, etc., shall be enforceable unless the same be in writing, etc.," is confined to a plaintiff seeking to enforce the transfer, and inapplicable to a defendant. *Stussi* v. *Brown*, 5 B. C. R. 380; 1 M. M. C. 195.

See also CONTRACT, *supra*, XII.

See also CROWN, *supra*, XIV.

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7. *Miscellaneous.*

1. Agent—*Location by.*]—An agent who locates in his own name a mineral claim for his principal cannot, if he repudiates the trust, in the absence of any writing to satisfy the Statute of Frauds, be declared a trustee for such principal. If a locator include in his location ground then occupied by buildings, the record of such location will be rectified so as to exclude such ground. *Sunshine, Limited* v. *Cunningham et al.*, 1 M. M. C., 286.

2. Company — *Owner of shares in.*]—Is not an owner of any part of a mining claim owned by it. *Granger* v. *Fotheringham*, 3 B. C. R. 590; 1 M. M. C. 71.

3. De facto claims.] — Exception in Crown grant of "lands be held as mineral claims," means de facto claims and the word "lawful" cannot be imported. *Nelson etc., Ry. Co.* v. *Jerry*, 5 B. C. R. 396; 1 M. M. C. 161.

4. Lapsed certificate—*Co-owner.*]—The share of one co-owner which has lapsed because of failure to take out free miner's certificate immediately vests in the other co-owners. *McNaught* v. *VanNorman*, 9 B. C. R. 131; 1 M. M. C. 516.

5. Work.]—Done on mineral claim at request of holder of option of, does not create a mechanic's lien. 7 B. C. R. 404.

See MECHANIC'S LIEN.

See also ABANDONMENT, *supra*, 1 — CERTIFICATE AND LICENSE, *supra*, IX. 3, 4— LOCATION AND RE-LOCATION, *supra*, XXIX.—TITLE, *infra* — WATER RIGHTS, *infra*.

XXXII. MINERAL IN PLACE.

1. Failure to discover.]—Failure to discover "mineral in place" invalidates a location, and such discovery must be established as a fact when the onus of proving it is upon the locator—belief is insufficient. *Manley* v. *Collom*, 1 M. M. C. 487; 8 B. C. R. 153.

2. Minerals—*"Rock in place"—"Valuable deposit"—Certificate of improvements—Bar—Fraud.*]—The discovery of a mineral vein or lode is not essential to a valid location; "rock in place" is sufficient. The words "rock in place" are satisfied by rock in situ bearing valuable deposits of mineral, although not lying between defined walls or in a vein or ledge. A certificate of improvements is as to those claiming adversely to the validity of the location in any right, and on all grounds except fraud. The expression "valuable deposit of mineral" means "capable of being valued" not "costly." *Nelson, etc., Ry. Co.* v. *Jerry*, 5 B. C. R. 396; 1 M. M. C. 161.

XXXIII.

MINING STATUTES, PROCLAMATIONS, ORDINANCES, REGULATIONS AND ORDERS-IN-COUNCIL, ORIGIN AND TABLE OF PROCLAMATIONS; ORDINANCES AND STATUTES OF THE COLONIES OF VANCOUVER ISLAND AND BRITISH COLUMBIA, AND OF THE PROVINCE OF BRITISH COLUMBIA, RELATING TO MINING.

(Taken, by permission, from Mr. Justice Martin's Mining Cases.)

(EXCLUSIVE OF PRIVATE ACTS.)

1853, 26th March—(V. I.), Proclamation respecting gold mining in Queen Charlotte Island.

1853, 7th April—(V. I.), Provisional regulations regarding the same.

1857, 28th December—(V. I.), Proclamation respecting gold mining in the Districts of Fraser River and Thompson River, commonly known as "Quaatlan," "Couteau," and "Shuswap" countries.

1857, 29th December—(V. I.), Provisional Regulations regarding the same.

1857, 30th December—(V. I.), Provisional Regulations regarding the same (amending the preceding by raising the license fee from 10s. to 21s. per month).

1858, June (b) — (V. I.), "Regulations to be observed by the persons digging for gold, or otherwise employed at the gold fields," with accompanying form of mining license.

1858, 11th July—(V. I.), Instructions to Assistant Gold Commissioners.

1858, 13th July—(V. I.), General Regulations for Gold District.

1858, 19th November—Colony of British Columbia Established (c).

1859, 8th February—(B. C.), Proclamation confirming Proclamation of 28th December, 1857, and Regulations of 30th December, 1857, and 13th July, 1858, and fixing amount of mining and other licenses.

1858, 14th February—(B. C.), Proclamation respecting the alienation and possession of Crown Lands and Mines and Gold Claims, secs. 6, 7, and 9.

1859, 10th August—(B. C.), Proclamation. The "Licenses" Act, 1859.

1859, 31st August—(B. C.), Proclamation. The "Gold Fields Act, 1859." (Consolidation).

1859, 7th September—(B. C.), Rules and Regulations for the Workings of Gold Mines under foregoing Act.

1860, 6th January—(B. C.), Further Rules and Regulations for the working of Gold Mines under said Act. (Bench Diggings.)

1862, 29th September—(B. C.), Further Rules and Regulations under the said Act. (Respecting Crossing of Mining Ditches by Roads, etc.)

1863, 24th February—(B. C.), Further Rules and Regulations under said Act.

1862, 25th March—(B. C.), Proclamation (No. 4), amending the "Gold Fields Act, 1859."

1862, 27th May—(B. C.), Proclamation (No. 7), "The Mining District Act, 1863."

1864, 1st February—(B.C.), Ordinance (No. 1), "The Minings Drain Act, 1864."

1864, 26th February—(B. C.), Ordinance (No. 4). The "Gold Fields Act, 1864."

1865, 28th March—(B. C.), Ordinance (No. 14), The "Gold Mining Ordinance, 1865" (Consolidation).

1866, 29th March—(B. C.), Ordinance (No. 10), "The Williams Creek Flume Ordinance, 1866."

1866, 29th March—(B. C.), Ordinance (No. 12), "The Gold Export Repeal Ordinance, 1866."

1866, 17th November—Union of the two Colonies under the Name of British Columbia.

1867, 2nd April—Ordinance (No. 34), "Gold Mining Ordinance, 1867" (Consolidation).

1869, 10th March — Ordinance (No. 22), "Mineral Ordinance, 1869." (Respecting the works of mineral other than gold).

1871, 20th July—Union of the Colony with Canada.

1871, Revised Laws—(No. 90), "The Gold Mining Ordinance, 1867."

1871, Revised Laws—(No. 123), "Mineral Ordinance, 1869."

1872, 11th April—(No. 14), "The Gold Mining Amendment Act, 1873."

1873, 21st February—(No. 3), "Mineral Ordinance Amendment Act, 1873."

1873, 21st February—(No. 4), "The Gold Mining Amendment Act, 1873."

1873, 21st February—(No. 14), "The County Courts Extension Act, 1873." giving County Court Judges jurisdiction over the Mining Court).

1874, 2nd March—(No. 3), "Gold Mining Amendment Act, 1874."
1875, 22nd April — (chap. 12), "William Creek Flume Ordinance Extension Act, 1875."
1876, 19th May—(chap. 26), "Gold Mining Real Estate Repeal Act, 1876."
1877, 18th April—(chap. 13), "Quartz Act, 1877."
1877, 18th April—(chap. 14), "An Act relating to minerals other than coal." (Mineral Act, 1877. Relating to lode claims exclusively).
1877, 18th April—(chap. 15), "The Coal Mines Regulation Act, 1877."
1877, 18th April—(chap. 35), "An Act to Amend the Gold Mining Amendment Act, 1872" (Reserved).
1877, Consol. Stats. — (chap. 122), "The Coal Mines Regulation Act, 1877."
1877, Consol. Stats. — (chap. 123), "Gold Mining Ordinance, 1867."
1877, Consol. Stats.—(chap. 124), "Quartz Act, 1877."
1877, Consol. Stats.—(chap. 125), "Mineral Ordinance, 1869."
1877, Consol. Stats.—(chap. 126), "An Act relating to Minerals other than coal" (Mineral Act, 1877).
1878, 10th April—(chap. 11), "Coal Mines Regulation Act (1877), Amendment Act, 1878."
1878, 10th April—(chap. 12), "Quartz Act, 1878."
1878, 10th April—(chap. 13), "Mineral Act, 1878."
1878, 2nd September—(chap. 29), "Mineral Act Amendment Act, 1878."
1881, 25th March—(chap. 15), "Mineral Act, 1881."
1882, 21st April—(chap. 8), "Mineral Act, 1882." (Consolidation.)
1883, 12th May—(chap. 2), "Coal Mines Regulation Amendment Act, 1883."
1883, 12th May—(chap. 3), "Coal Prospecting Act, 1883."
1883, 12th May—(chap. 19), "Mineral Amendment Act, 1883."
1883, 18th February—(chap. 10), "Mineral Act, 1884." (Consolidation.)
1886, 6th April — (chap. 14), "Mineral Amendment Act, 1886."
1887, 7th April—(chap. 22), "An Act to Amend the 'Mineral Act, 1884,' and Amending Acts."
1887, 7th April—(chap. 24), "An Act to aid the Development of Quartz Mines." (Government guarantee of advances to extent of $60,000.)
1888, 28th April—(chap. 12), "Foreign Mining Companies Registration Act."
1888, 28th April—(chap. 21), "Coal Mines Regulation Act, 1888."
1888, 28th April—(chap. 22), "An Act to aid in the Further Development of Quartz Mines."
1888, 28th April—(chap. 34), "An Act to amend certain Statutes."
1888, Consol. Stats.—(chap. 82), "Mineral Act."
1888, Consol. Stats.—(chap. 83), "Coal Mines Act."
1888, Consol. Stats. — (chap. 84), "Coal Mines Regulation Act."
1888, Consol. Stats.—(chap. 85), "An Act to aid the development of Quartz Mines."
1889, 6th April—(chap. 16), "An Act to amend the 'Mineral Act.'"
1889, 6th April—(chap. 17), "Quartz Mines Development Act, 1889."
1890, 26th April—(chap. 31), "Mineral Act Amendment Act, 1890."
1890, 26th April—(chap. 32), "An Act to alter and amend the 'Coal Mines Act.'"
1890, 26th April—(chap. 33), "Coal Mines Regulation Amendment Act, 1890."
1891, 20th April—(chap. 25), "Mineral Act, 1891."
1891, 20th April—(chap. 26), "Placer Mining Act, 1891."
1891, 20th April—(chap. 27), "An Act to recompense the Members of the Mining Commission."
1892, 23rd April—(chap. 31), "Coal Mines Amendment Act, 1892."
1892, 23rd April—(chap. 32), "Mineral Act (1891), Amendment Act (1892).
1893, 12th April—(chap. 88), "Mineral Act Confirmation Act, 1893."
1893, 12th April—(chap. 29), "Mineral Act 1891, Amendment Act, 1893."
1894, 11th April—(chap. 5), "Coal Mines Regulation Amendment Act, 1894."
1894, 11th April—(chap. 32), "Mineral Act Amendment Act, 1894."
1894, 11th April—(chap. 33), "Placer Mining Amendment Act, 1894."
1895, 21st February—(chap. 3), "Bureau of Mines Act, 1895."
1895, 21st February — (chap. 37), "Coal Mines Amendment Act, 1895."
1895, 21st February — (chap. 28), "Coal Mines Regulation Amendment Act, 1895."
1895, 21st February — (chap. 29), "Mineral Act Amendment Act, 1895."
1895, 21st February — (chap. 40), "Placer Mining Act (1891), Amendment Act, 1895."
1896, 17th April — (chap. 5), "Bureau of Mines Amendment Act, 1895."
1896, 17th April—(chap. 34), "Mineral Act, 1896." (Consolidation.)
1896, 17th April—(chap. 35), "Placer Mining Act Amendment Act, 1896."
1896 17th April—(chap. 36), "An Act to repeal [illegible] Act to aid the Development of [illegible]rtz Mines,' and amending Acts."
1897, 8th May—(chap. 2), "Inspection of Metalliferous Mines Act, 1897."
1897, 8th May—(chap. 28), "Mineral Act Amendment Act, 1897."
1897, 8th May—(chap. 29), "Placer Mining Act (1891), Amendment Act, 1897."
1897, Revised Stats.—(chap. 36), "Bureau of Mines Act."
1897, Revised Stats.—(chap. 134), "Inspection of Metalliferous Mines Act."
1897, Revised Stats.—(chap. 135), "Mineral Act."
1897, Revised Stats. — (chap. 136), "Placer Mining Act."
1897, Revised Stats. — (chap. 137), "Coal Mines Act."
1897, Revised Stats. — (chap. 138), "Coal Mines Regulation Act."
1898, 16th March — (chap. 32), "Mineral Act Advisement Act, 1898."
1898, 20th May—(chap. 33), "Mineral Act Amendment Act, 1898."
1898, 20th May—(chap. 34), "Placer Mining Act (1891), Amendment Act, 1898."
1898, 10th September—Order in Council prohibiting Gold Commissioners, Mining Recorders, and others, connected with the administration of mineral claims, from holding mining interests.
1899, 18th January—(chap. 30), "Placer Mining Act Amendment Act, 1899."

1898, 27th February—(chap. 11), "Bureau of Mines Amendment Act, 1898."
1898, 27th February—(chap. 45), "Mineral Act Amendment Act, 1898."
1898, 27th February—(chap. 46), "An Act to Amend the 'Coal Mines Regulation Act.'"
1898, 27th February—(chap. 47), "An Act to further Amend the 'Coal Mines Regulation Act.'"
1898, 27th February—(chap. 48), "Department of Mines Act, 1898."
1898, 27th February—(chap. 49), "Inspection of Metalliferous Mines Act Amendment Act, 1898."
1898, 27th February — (chap. 51), "Placer Mining Act further Amendment Act, 1898."
1898, 27th February—(chap. 52), "Bennett-Atlin Commission Act, 1899."
1898, 27th February—(chap. 58), "An Act to extend the rights of the Crown to Prospect for Minerals on Railway Lands to all Free Miners."
1900, 18th January — Regulation respecting cancellation of certificates of improvements.
1900, 25th January — Notice withdrawing same.
1900, 5th March—Order in council respecting assessment work.
1900, 21st August — (chap. 30), "Porcupine District Commission Act, 1900.
1900, 31st August — (chap. 3), "Canadian Contingent Exemption Act, 1900."
1900, 31st August—(chap. 21), "Mineral Act Amendment Act, 1900."
1900, 21st August—(chap. 29), "Pine Creek Discovery Confirmation Act, 1900."
1900, 31st August—(chap. 37), "Coal Tax Act, 1900."
1901, 11th May—(chap. 8), "Canadian Contingent Exemption Act Amendment Act, 1901."
1901, 11th May—(chap. 35), "Mineral Act Amendment Act, 1901."
1901, 11th May—(chap. 36), "Coal Mines Regulation Act Amendment Act, 1901."
1901, 11th May—(chap. 37), "Inspection of Metalliferous Mines Act Amendment Act, 1901."
1901, 11th May—(chap. 38), "Placer Mining Act Amendment Act, 1901."
1902, 6th May — Order in council revoking order in council of 5th March, 1900, respecting assessment work.
1902, 15th May—Order in Council respecting assessment work.
1902, 21st June—(chap. 7), "Canadian Contingent Exemption Act, 1902."
1902, 21st June—(chap. 46), "An Act to Amend the 'Mineral Act.'"
1902, 21st June — (chap. 47), "Coal Mines Regulation Act Amendment Act, 1902."
1902, 21st June—(chap. 48), "Coal Mines Regulation Act. Further Amendment Act, 1902." (Disallowed, 5th Dec.,
1902, 21st June—(chap. 49), "Iron Placer Act, 1902."
1902, 21st June—(chap. 50), "Iron Placer Act, 1902, Amendment Act, 1902."
1902, 5th August—Order in Council rescinding Order in Council of 15th May, 1902, respecting assessment work, and substituting a new order therefor.
Gold Mines Regulation Act, ultra vires. 10 B. C. R. 408.

See CONSTITUTIONAL LAW.

Interpretation Clause in Mineral Act, application of. *Bainbridge* v. *The Esquimalt & Nanaimo Ry.*, 4 B. C. R. 181.

XXXIV. NEGLIGENCE.

1. Coal mine—*Gas explosion.*]—A report of a committee appointed by a meeting of a miners' union to inspect a mine is not, nor is it equivalent to the report of a committee appointed by "the persons employed in a mine" to make such inspection under Rule 31, even though a majority of such persons may be members of that union. A statutory meeting of such employees may be called by due notice posted at the pit's mouth. The bonneted clanny lamp is a locked safety lamp within the meaning of Rule 8:—Held, on the facts, that the explosion in question was a gas and not a dust explosion. *Leadbeater et al.* v. *Crow's Nest Pass Coal Co.*, 2 M. M. C. 145.

2. Employers' Liability Act—*Place of danger.*]—Where a workman is put to work in a place in a mine where there is an imminent danger of a kind not necessarily involved in the employment and of which he is not aware, but of which the employer is aware, it is the latter's duty to warn the former of the danger. G. had been working in the defendants' mine on the floors immediately below the 600 foot level, and on the night of the accident when he was going to work he was told by the shift whom he was relieving that the place was in "pretty bad shape," and to look out for it. He proceeded to make an examination, but while thus engaged the mine superintendent directed him to do some blasting, and while doing it a slide occurred and he was injured. The principal indications of the probability of a slide were in the two floors beneath the 600 foot level, and of these the superintendent was negligent inasmuch as he did not warn G. of the probable danger:—Held, in an action under the Employers' Liability Act, MARTIN, J., dissenting, that the defendants were liable. *Gunn* v. *Le Roi Mining Co., Ltd.*, 2 M. M. C. 53; 10 B. C. R. 59.

3. Metalliferous Mines Inspection Act—*Protection of winze—Statutory obligation.*]—Rule 18 of s. 25, c. 134 R. S. B. C., 1897, does not require that a winze extending through several levels of a metalliferous mine shall be protected at each level; the rule is sufficiently complied with if the winze is protected at the top level only:—Held, on the facts, the negligence had not been shewn. *Stamer* v. *Hall Mines Co.*, 6 B. C. R. 579; 1 M. M. C. 314.

4. Section 25 of the Inspection of Metalliferous Mines Act, was not intended to impose unreasonable burdens upon the mine owner, and therefore he is only required to use "reasonably practical" precaution against accidents to miners. *McDonald* v. *Can. Pac. Explor. Co.*, 7 B. C. R. 39; 1 M. M. C. 379.

5. "Falling material" — *Cage* — *Bulkhead—Shaft.*]—A cage used for lowering and hoisting men is no "falling material" within the meaning of that term as used in r. 20 of s. 25 of the Metalliferous Mines Inspection Act, and the Amendments of 1899 (c. 49, s. 12), do not impose any duty on the mine

owner to provide protection from a falling cage. *McKelvey* v. *Le Roi Mining Co., Ltd.*, 9 B. C. R. 62; 1 M. M. C. 477.

6. No proper working plans of mine —*Common employment — Frame of action. Hosking* v. *Le Roi Mining Co.*, 9 B. C. R. 551.

7. Superintendent of.]—*Hastings* v. *Le Roi Mining Co.*, 10 B. C. R. 9.

See MASTER AND SERVANT, IV. 2.

8. Superintendent—*Duty of, to warn employee.*]—*Gunn* v. *Le Roi M. Co.*, 10 B. C. R. 59.

See MASTER AND SERVANT, IV.

XXXV. OFFICIALS.

1. *Gold Commissioner.*

1. Appeal—*Reviewing decision on.*]—Decision of Gold Commissioner in granting leave of absence, will on appeal not be interfered with, except for fraud. *Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39; 1 M. M. C. 31.

2. Appeal.]—Under s. 36 of the Water Clauses Consolidation Act from the decision of the Gold Commissioner is a trial de novo. *Ross* v. *Thompson et al.*, 2 M. M. C. 79.

3. Lawful order.]—A conviction under s. 144 of the Placer Mining Act for refusing to obey a lawful order of the Gold Commissioner cannot stand if the order be in excess of jurisdiction. *R.* v. *Tanghe*, 2 M. M. C. 139.

4. Mistake of—*Effect on miner.*]—If a free miner is misled by Gold Commissioner and consequently neglects to give notice required by s. 24 and makes an incorrect affidavit, he is protected by s. 53. *Lawr* v. *Parker*, 7 B. C. R. 417; 8 B. C. R. 223; 1 M. M. C. 456.

5. Powers of over closed season.]—A close season may be fixed by the Gold Commissioner by verbal direction, requiring three months' work on each claim, instead of by specifying a certain portion of the year as applicable to all claims. *Per* MARTIN, J.: Observations on what constitutes "possession" of a mineral claim. Decision of DUGAS, J., affirmed. *Victor et al.* v. *Butler*, 1 M. M. C. 438; 8 B. C. R. 100.

6. Powers of Gold Commissioner over closed season.]—Under the Mineral Act, 1884, and Amendments of 1886-7, a Gold Commissioner has no power to declare a close season or lay over mineral claims so as to supersede the necessity of compliance with the statutory requirements relating to the representation of such claims by annual assessment work or expenditure of $100. Powers of Gold Commissioner to declare a close season and lay over mineral claims considered. *Wilson* v. *Whitten*, 1 M. M. C. 38.

7. Powers of—*Under Water Clauses Consolidation Act—Water record.*] — Where an application for a record of water for mining purposes is pending before a Gold Commissioner, an application for a record of the same water for domestic, mechanical and industrial purposes should not be adjudicated upon by an Assistant Commissioner of Lands and Works without express notice to the applicants before the Gold Commissioner. A water notice posted on a board usually used for such notices, in a hall leading to the rooms occupied by the Commissioner and his staff, is posted in the office of the Commissioner within the meaning of s. 9 of the Water Clauses Consolidation Act. Where an application is not contested, the Commissioner need not take evidence, but where it is contested he should have the evidence taken in shorthand. *In re Water Clauses Consolidation Act* 1897, *War Eagle Consolidated Mining and Development Co. Ltd., et al.* v. *B. C. Southern Railway Co. et al.*, 8 B. C. R. 374; 1 M. M. C. 422.

8. Powers of—*Under Water Clauses Consolidation Act—Water Record.*]—Water records under Part II. of the Water Clauses Consolidation Act, may be held jointly. Mine owners in their notice of application to the Gold Commissioner for water records, included in their notice among the purposes for which the water was required, a purpose not authorized by s. 10 of the Act, i.e., "domestic and fire purposes." At the hearing before the Gold Commissioner applicants requested him to deal with the application as one for mining purposes only, but he refused the request and dismissed the application. On appeal, MARTIN, J., held that the Gold Commissioner was not justified merely on this ground in refusing to exercise his powers, and he referred the matter back for re-hearing, and his decision was affirmed by the Full Court. Quære, whether a supply of water for fire purposes would be necessary as being directly connected with the working of a mine or incidental thereto. *Centre Star Mining Co. et al.* v. *B. C. Southern Railway Co. et al.*, 8 B. C. R. 214; 1 M. M. C. 460.

9. Powers of—*Under Water Clauses Consolidation Act—Water Record.*]—Where two different officials are called upon to exercise their functions in regard to applications for water rights in respect of the same water, the official who is determining the latter application should stay his hand until the final result of the prior application before another official is known. In re Water Clauses Consolidation Act 1897. *War Eagle Consolidated Mining and Development Co., Ltd., et al.* v. *B. C. Southern Railway Co. et al.* 8 B. C. R. 381; 1 M. M. C. 465.

10. Re-location — *Without permission of.*]—Where the holder of a mineral claim which is the subject of an adverse action causes the ground to be re-located by someone else, from whom he purchases it for a small consideration, the provisions of s. 32 of the Mineral Act, requiring permission to re-locate, do not apply. The location line of a fractional mineral claim must be marked by the blazing of trees or the setting of posts in the same manner as that of a full sized claim. *Snyder* v. *Ransom*; *Ransom* v. *Snyder*, 10 B. C. R. 182; 2 M. M. C. 77.

11. Re-location — *Without permission of.*]—*Per* MARTIN, J.: In an adverse action if the plaintiff wish to attack the defendant's title, he must do so at the time of making out a prima facie case for his own title. Where

boundaries of conflicting claims are in question, the overlapping must be proved by measurements taken on the ground. The expression "adverse proceedings" in s. 11 of the Mineral Act Amendment Act, 1898, is used in a broad sense. Observations upon the scope and object of s. 11. A statement by a re-locator in his affidavit of re-location that the ground so re-located is "unoccupied by any person as a mineral claim," is a notice of abandonment in writing, under s. 30 of the Mineral Act, of the deponent's former rights in the original location, and if the original location were valid, it could not lawfully be re-located without the written permission of the Gold Commissioner. Schomberg v. Holden, ante p. 290, M. M. C., approved. *Dunlop* v. *Haney*, 1 M. M. C. 369; 7 B. C. R. 1, 305.

12. Re-location — *Without permission of.*]—Where owners of a mineral claim, the title to which they considered defective, permitted a third person to re-locate it in his own name, who afterwards without previous binding agreement to that effect, conveyed his title to them for a consideration:—Held, not a re-location by the owners of the original claim so as to render necessary the written permission of the Gold Commissioner. *Granger* v. *Fotheringham et al.*, 1 M. M. C. 71; 3 B. C. R. 590.

13. Re-location — *Permission of.*]—It is necessary to record the abandonment of an invalid location and obtain permission of the Gold Commissioner before re-location. *Pelent* v. *Almoure et al.*, 1 M. M. C. 134.

See also WATER RIGHTS, *infra*, XLVII.

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2. *Mining Recorder.*

1. Appointment of—*Competent for province to create Courts and appoint. Burk* v. *Tunstall*, 2 B. C. R. 12; 1 M. M. C. 61.

2. Certificate of—*As evidence.*]—Under s. 119 of the Mineral Act a certificate of a mining recorder may, under certain conditions, be admitted in evidence without notice as proof of the issuance of a free miner's certificate. A similar certificate of the recording of a certificate of work may be similarly admitted. Copies of instruments recorded under s. 115, may be likewise admitted without proof of loss of original and without notice. *Pavier* v. *Snow*, 1 M. M. C. 384; 7 B. C. R. 80.

3. Certificate of work—*Production of*—Conclusive against all the world except the Crown. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487. See also, *Cleary* v. *Boscowitz*, 8 B. C. R. 225; 1 M. M. C. 506.

4. Public policy — *Improper conduct—Equitable principles.*]—The Court should deal with mining disputes upon the principles of a Court of Equity and should discountenance a plaintiff whose action is based upon defects in title, knowledge of which was acquired by him while a Government employee in a mining record office, it being contrary to his duty to the public for him to use such information. *Granger* v. *Fotheringham*, 3 B. C. R. 590; 1 M. M. C. 71.

3. *Sheriff.*

1. Judgment debtor.] — Right to take out free miner's certificate for a sheriff in possession of a free miner's interest in a mineral claim has no power to take out on behalf of the judgment creditor a special free miner's certificate under s. 4 of the Mineral Act Amendment Act of 1899, in the name of the owner of the interest under seizure, neither has the sheriff power to renew a certificate before lapse. *McNaught* v. *VanNorman*, 9 B. C. R. 131; 1 M. M. C. 516.

XXXVI. OWNER.

1. Co-owner — *Certificate of improvements.*]—Co-owner may apply for a certificate of improvements. *Bentley* v. *Botsford*, 8 B. C. R. 128; 1 M. M. C. 454.

2. Co-owners and owners—*Adverse action.*]—Section 37: One co-owner of a mineral claim is not estopped by the result of such action instituted by an adverse claimant against another co-owner who has applied for a certificate of improvements. Section 37 does not apply to co-owners of the same claim, but owners of conflicting claims. *Fry* v. *Botsford*, 9 B. C. R. 234; 1 M. M. C. 520. See also *Callahan* v. *Coplen*, 30 S. C. R. 555.

3. Lapsed certificate.]—Interest of one co-owner who has failed to renew his certificate immediately vests in his co-owners pro rata. *McNaught* v. *Van Norman*, 9 B. C. R. 131; 1 M. M. C. 516.

4. Partner or co-owner of interest in mineral is not in position of a partner but of a co-owner. *Alexander* v. *Heath*, 8 B. C. R. 95; 1 M. M. C. 333.

5. Shares in company.]—An owner of shares in an incorporated mining company is not the owner of any part of a mineral claim owned by it. *Granger* v. *Fotheringham*, 3 B. C. R. 590; 1 M. M. C. 71.

6. Statutory duty of.] — *McDonald* v. *C. P. Explor. Co.*, 7 B. C. R. 39.

See MASTER AND SERVANT, IV. 2.

XXXVII. PARTNERSHIP.

1. Co-owner.]—Owner of an interest in a claim is not in position of a partner, but of co-owner. *Alexander* v. *Heath*, 8 B. C. R. 95; 1 M. M. C. 333.

2. Co-owners.] — Where co-partners are working placer claims together, it takes very little evidence to shew that they have become co-partners as well as co-owners. Decision of HENDERSON, Co.J., affirmed on this point. *Sabin* v. *Pine Creek Power Co., Ltd., et al.*, 2 M. M. C. 141.

3. Development work—*Share of expense of—Advances by one co-owner and partner—Re-payment from—Ore.* See Contract, XLII. (7). *Mason* v. *Sproat*, 1 M. M. C. 48.

4. Lapsed certificate.]—Where partners enter an agreement for sale of their claim, a partner whose certificate has lapsed does not

forfeit his share in the proceeds. *McNerhanie v. Archibald*, 1 M. M. C. 329; 6 B. C. R. 260.

5. Liability — *Foreman — Accounts.*] — Section 126 of the Mineral Act does not preclude a mining partnership from contracting liabilities otherwise than upon the order of a duly appointed foreman. If items of expenditure are passed at meetings of the partnership it is estopped from disputing them on taking accounts. *Gray* v. *McCallum*, 5 B. C. R. 462; 1 M. M. C. 206.

6. Location of claim for partnership — "*In on it.*"] — A verbal agreement between two free miners by which they are both to be "in on it" in a mineral claim imports a co-ownership or partnership, and the presumption is that the interest shall be equal. *Wells* v. *Petty*, 5 B. C. R. 353; 1 M. M. C. 147.

XXXVIII. PLEADING.

1. Certificate of improvements.]—Attack upon must be raised in pleadings. *Nelson & Fort Sheppard Ry. Co.* v. *Jerry*, 5 B. C. R. 396; 1 M. M. C. 161.

2. General denial—*Appeal.*]—A general denial is bad and not only will it be disregarded, but the allegations must be taken as admitted. If it is intended to rely on non-compliance with the requirements of the Mineral Act as to location, or otherwise, this must be specially pleaded and the material facts set up on which reliance is placed. Defence of such a nature cannot be raised in appeal for the first time. *Hogg* v. *Farrell*, 6 B. C. R. 387; 1 M. M. C. 79; *Aldous* v. *Hall Mines*, 6 B. C. R. 394; 1 M. M. C. 213.

3. Special defences.]—In county, though there are no pleadings, yet special defences must be raised by notice before trial. *Gelinas* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

4. Special pleas.]—Pleadings in mining cases should be certain and unambiguous, and if it is intended to attack a location on the ground of non-compliance with the Mineral Acts, it must be specifically pleaded. Terms upon which an amendment at the trial will be granted, considered. Applications relating to records entered for trial should on and after the commission day of assize, or first day of civil sittings, be made to the Court, and not in Chambers. *Hanna* v. *Morgan et al.*, 2 M. M. C. 142.

5. Statute of Frauds and Mineral Act must be pleaded.] — *Per* MCCREIGHT, J.: That, if the title to a mineral claim is an interest in land within the Statute of Frauds, it is so by reason of the Mineral Act, and that in order to take advantage of the defence of the Statute of Frauds the Mineral Act should also be pleaded. Decision of WALKEM, J., reversed. *Wells* v. *Petty*, 1 M. M. C. 147; 5 B. C. R. 353. *Stussi* v. *Brown*, 5 B. C. R. 380; 1 M. M. C. 195.

6. Title—*Possession—Coal seams.*]—In an action by plaintiffs who have never been in possession to recover certain coal seams, the statement should set out particulars of the title under which the claim is advanced. *Esquimalt and Nan. Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 188; 1 M. M. C. 237.

7. Title—*Coal Seams—General Allegations —Embarrassing.*] — If the defendant not only traverse the plaintiff's title to certain coal seams, but set up a title to the same in himself, he must plead it with particularity; a general allegation will be struck out as embarrassing. 6 B. C. R. 306, 9 B. C. R. 162; 1 M. M. C. 284.

See also PLEADINGS.

XXXIX. POSSESSION.

1. Allegation of.]—In an action by plaintiffs who have never been in possession, to recover certain coal seams, the statement of claim should set out particulars of the title under which the claim is advanced. *Esquimalt & Nanaimo Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 188; 1 M. M. C. 237.

2. Breach of peace—*Assessment work—Resumption of former estate.*]—Such wrongful possession as will lead to breach of peace, if claim owner persists in attempt to perform assessment work, exonerates him from such performance. If owner return to his former placer claim which he has left unrepresented and finds it intact, and occupied, he may resume possession and be in as of his old estate. *Woodbury* v. *Hudnut*, 1 B. C. R. 2, 39; 1 M. M. C. 31.

3. Of mining claim, what constitutes.]—See *Victor* v. *Butler*, 8 B. C. R. 100, 1 M. M. C. 438.

XL. RES JUDICATA.

1. Estoppel.]—Held, that the order of the Full Court, reported at page 369, operated to prevent the plea of res judicata being set up by the defendant in this action. *Dunlop* v. *Haney*, 7 B. C. R. 307; 1 M. M. C. 390.

2. Judgment by County Court.] — When the titles to conflicting claims have been investigated and determined in the County Court mining jurisdiction, the same question cannot be raised between the same parties or their successors in title in the Supreme Court. *Pellent* v. *Almoure*, 1 M. M. C. 134.

XLI. REVERSION.

1. Co-owners.]—Where one of the co-owners of a mineral claim allows his free miner's certificate to lapse, his interest at once vests pro rata in the remaining co-owners. *McNaught* v. *Van Norman*, 9 B. C. R. 131; 1 M. M. C. 516.

2. Expiration of certificate.]—On the expiration of a free miner's certificate, any mineral claim of which the holder thereof was the sole owner, becomes open to location. The obtaining of a special certificate under s. 2 of the Mineral Act Amendment Act, 1901, does not revive the title if, in the meantime, the ground has been located as a mineral claim. *Woodbury Mines, Limited* v. *Poyntz*, 10 B. C. R. 181.

3. Location on existing location.]—Where a location is purported to be made on ground already covered by a valid and existing location, the junior location is invalid to at least the extent of the ground already covered by the senior location. On the lapse of the senior location its ground reverted to the Crown. Failure to record a certificate of work is presumptive evidence of abandonment. The recording of a certificate of work is an answer to the objection that mineral in place was not discovered. *Cranston et al.* v. *The English Canadian Co.*, 1 M. M. C. 394; 7 B. C. R. 266.

4. Location on existing location.]—Where a location is purported to be made on ground already covered by a valid and existing location, the junior location is invalid to at least the extent of the ground already covered by the senior location. On the lapse of the senior location its ground reverted to the Crown. *Rammelmeyer et al.* v. *Curtis et al.*; *Powers* v. *Curtis et al.*, 1 M. M. C. 401; 8 B. C. R. 383. See also *Gelinas* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

5. Location on existing location.]—Where a location purported to be made on ground already occupied by a valid and existing location, the junior location is invalid to at least the extent of the ground already covered by the senior location. *Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487.

XLII. Survey.

1. Necessity for filing plans and affidavit.]—It is a condition precedent to right of adverse action that an affidavit and plan should be filed as required by Mineral Act, s. 37, and amendments. Such plan must not only be made and signed by a provincial land surveyor, but the survey on which it is based must be made by him. Martin, J., reversed on these points, Hunter, C.J., dissenting. *Per* Martin, J.: The provisions of the Oaths Act, s. 16, apply to affidavits filed under said s. 37. *Paulson* v. *Beaman et al.*, 1 M. M. C. 471; 9 B. C. R. 184.

2. Order for survey—*Contents of.*]—An order for inspection and survey of a mine and for making copies of plans thereof in an action concerning extralateral rights should contain an undertaking for damages, but not a direction that security be given. Form of order settled. Costs of an interlocutory appeal are payable forthwith. *Star Mining and Milling Co., Limited* v. *Byron N. White Co.* (Foreign), 1 M. M. C. 468; 9 B. C. R. 9.

See also *Esquimalt & Nanaimo Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 194; 1 M. M. C. 223.

XLIII. Time.

1. *Adverse Proceedings.*

1. Adverse action—*Extending time to bring.*]—An appeal lies to Divisional Court from order of a Judge extending time for bringing an adverse claim under s. 37 of Mineral Act of 1891. *Re Maple Leaf and Lanark Mineral Claims*, 2 B. C. R. 323; 1 M. M. C. 68.

2. Adverse claim.]—Court has jurisdiction to extend time limited for commencing adverse proceedings as well after as before the lapse thereof. *Re Good Friday et al. Mineral Claims*, 4 B. C. R. 496; 1 M. M. C. 84.

3. Adverse claim — *Extending time for bringing.*]—The boundaries of the Countess and Golden Butterfly mineral claims overlapped. The Countess having applied for a certificate of improvements was adversed on the ground of defective location by the Golden Butterfly, with a view to secure the ground common to the two claims. The secretary of the Golden Butterfly Company had re-located the remainder of the Countess ground in his own name as a fraction. He, upon the assumption that, if the adverse of the Golden Butterfly were sustained, the whole of the Countess location would be invalidated, did not bring an action attacking it on his own behalf until after the expiration of the statutory sixty days from the publication of the notice of application for the certificate of improvements to the Countess. He then applied to the Court for leave to bring an action:—Held, that circumstances were sufficient ground for an order extending the time. *Re "Golden Butterfly Fraction" and "Countess" Mineral Claims*, 1 M. M. C. 125; 5 B. C. R. 445.

4. Adverse claim—*Extending claim.*]—The Mineral Act, 1891, ss. 21 and 126 (a), provides that adverse claims should be filed in the office of the Mining Recorder, while the Act of 1894, s. 6, gives a form of notice of application for certificate of improvements which sets forth that adverse claims must be sent to the Gold Commissioner. The proposed defendants made an application for a certificate of improvements for the mining ground in question, and published the notice prescribed by s. 6 supra, whereupon the proposed plaintiffs, in accordance with the terms of the notice, filed their adverse claim with the Gold Commissioner. Within the prescribed time they gave instructions to their agent to commence action, but he, by mistake, omitted to do so, the omission not being discovered until some time afterwards, when negotiations for settlement were pending. Prior to and during these negotiations the proposed defendants knew that no action had been instituted. Finally, one of the proposed defendants refused his assent to a settlement which had been agreed to by all the other parties. The proposed plaintiffs moved to extend the time to commence action:—Held, *Per* Drake, J.: By the Mineral Act, 1892, s. 14 (b), the filing of an adverse claim in the office of the Mining Recorder is a condition precedent to the right of action, and that there is no jurisdiction to extend the time. Quære, whether, if there were such a jurisdiction, the grounds shewn were sufficient. Upon appeal to the Full Court:—Held, *per* McCreight, Walkem and McColl, JJ., affirming Drake, J.: (1) That the adverse claim was not properly filed. (2) That, owing to the nature of the subject matter, the Court requires stronger ground for extending time in mining cases than in other matters. The notice of appeal was served on the agent of the solicitor for the proposed defendants:—Held, sufficient. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233; 1 M. M. C. 142.

2. *Affidavit.*

1. Affidavit and plan—*Time for filing.*]—The time for filing affidavit and plan, in an adverse action, under the Mineral Act and amendments, may be further extended on an application made after the lapse of the time fixed by a previous order. Decision of McColl, C.J., affirmed. *Noble* v. *Blanchard*, 7 B. C. R. 62; 1 M. M. C. 373.

2. Affidavit and plan—*Extending time—Order for.*]—An order to extend the time for filing the affidavit and plan required by s. 37 of the Mineral Act, must be made by the Court, and cannot be made by a Judge in Chambers. Noble v. Blanchard (1899), ante p. 373, M. M. C., not followed on this point. Decision of Drake, J., reversed, McColl, C.J., dissenting. *Murphy* v. *Star Exploring and Mining Co.*, 1 M. M. C. 450; 8 B. C. R. 421.

3. *Appeal.*

1. Appeal.]—The appellant was advised by counsel, up to a period considerably beyond the time for appealing from the judgment of an inferior Court, to acquiesce in it, but he had since been advised by other counsel to appeal, and that special hardship would probably result to him if the judgment were allowed to stand:—Held, an insufficient ground for extending the time for appealing. *Trask* v. *Pellent*, 1 M. M. C. 86; 5 B. C. R. 1.

2. Appeal—*Extending time—Grounds for.*]—Owing to the nature of the subject matter, the Court requires stronger grounds for extending the time for appealing from judgment in mining cases than in other matters. The provision in s. 29 of c. 82, C. S. B. C., 1888 (a), that appeals from judgments of Mining Courts "may be in the form of a case settled and signed by the parties," is not imperative, but such appeals may be brought in the same form as in ordinary cases. Defendants gave notice of appeal from a judgment of a County Court in a mining cause rendered 11th March, 1896, within the time provided by s. 29 supra, for the next Court, but being unable to procure the notes of the trial Judge, did not set it down for that Court. In December, 1896, they obtained the notes, and in January, 1897, gave notice of moving the Full Court to extend the time for setting down the appeal, shewing that the Registrar refused to enter the appeal without appeal books containing the Judge's notes being filed:—Held, by the Full Court (Walkem, Drake and McColl, JJ.): That the appellants were bound to set the appeal down for argument at the next Full Court, or to move that Court for an extension of time for setting it down, and that the neglect to take either course constituted an abandonment. *Kinney* v. *Harris*, 5 B. C. R. 229; 1 M. M. C. 137.

4. *Assessment Work.*

1. Extending time — *Order-in-Council.*] — An Order-in-Council, under s. 161 of the Mineral Act, 1896, extending the time for the doing and recording of assessment work on a mineral claim, is intra vires. A certificate of work recorded pursuant to permission granted by a gold commissioner, acting under such an Order-in-Council, is a good certificate within s. 28 of the said Act. The word "irregularity," in s. 28, extends to the certificate of work itself. Delay in recording such a certificate of work is an irregularity which is cured by said s. 28. Meaning of "irregularity," considered. Decision of McColl, J., reversed. *Peters* v. *Sampson*, 1 M. M. C. 247; 6 B. C. R. 405.

See also Assessment, supra, VII.

5. *Miscellaneous.*

1. Transfer — *Time allowed for recording.*] — The claimant of an interest in a mineral claim, seized under an execution on 18th May, 1903, relied on a bill of sale obtained by him on 23rd February, 1903, while in Dawson, Y. T., over 2,000 miles from the Mining Recorder's office. The bill of sale was not recorded until 22nd May, 1903:—Held, that as the time for recording mineral claims, fixed by s. 19 of the Mineral Act, is dependent upon the distance of the claim (not of the locator) from the Recorder's office, therefore by s. 49 of the Act, the bill of sale was of no effect as against the intervening execution, as it was not recorded within the time limited by said s. 19. *Dumas Gold Mines, Limited*, v. *Boulthee et al.*, 10 B. C. R. 511; 2 M. M. C. 137.

See also Mineral Claim, supra, XXXII. 5.

XLIV. Title.

1. Adverse action—*Manner of establishing, in.*]—*Schomberg* v. *Holden et al.*, 6 B. C. R. 419; 1 M. M. C. 290; *Dunlop* v. *Haney*, 7 B. C. R. 1, 305; 1 M. M. C. 363.

See Adverse Action, supra, III.

2. Affirmative evidence of.] — Section 11 of the Mineral Act of 1898, requiring both parties to give affirmative evidence of title, does not apply to actions begun before that Act. Affirmative evidence of title may be given by means of the record of the claim and other documents. *Cook* v. *Denholm*, 8 B. C. R. 39; 1 M. M. C. 447.

3. Affirmative evidence of—*Certificate of work.*] — Where the defendants of the senior locator, on admission by the plaintiff, the junior locator, that the defendant has duly recorded certificates of work, is of itself affirmative evidence of the defendant's title under the Mineral Act, 1898. *Cleary* v. *Boscowitz*, 8 B. C. R. 225; 1 M. M. C. 506.

4. Certificate of work — *Effect of on title.*]—*Manley* v. *Collom*, 8 B. C. R. 153; 1 M. M. C. 487.

See Certificate and License, supra, IX. 4.

5. Conflicting Crown grants—*Jus tertii—Possession.*]—*Victor* v. *Butler*, 8 B. C. R. 100; 1 M. M. C. 438.

See Crown Grant, supra, XV.

6. Conflicting certificates of work.]—Where both sides have recorded certificates of work, title will be determined according to prior location and record. *Fero* v. *Hall*, 6 B. C. R. 421; 1 M. M. C. 238.

7. Estoppel — *Jus tertii.*] — In proving title, one party cannot be set up against another, a right to a third claim which he himself contends he has destroyed. *Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39; 1 M. M. C. 31.

8. Failure to prove—*By either party and judgment accordingly.*]—*Ryan* v. *McQuillan*, 6 B. C. R. 431; 1 M. M. C. 289.

9. Observations upon s. 11 of Amendment of 1898, *re* evidence of title. *Dunlop* v. *Haney*, 7 B. C. R. 307; 1 M. M. C. 390.

10. Onus of proof—*In adverse action.*]—In adverse actions which are ejectment, not trespass actions, plaintiff must succeed by strength of his own title. *Clark* v. *Haney*, 8 B. C. R. 130; 1 M. M. C. 281.

11. Onus of proof.]—Where a location is alleged to be invalid on the ground that it was made upon an existing valid location, that fact must be established, particularly where the location attacked was otherwise valid, and certificates of work recorded thereon. *Pavier* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384.

12. Onus of proof is on adverse claimant, and if he is junior locator, must establish his case in detail. *Caldwell* v. *Davys*, 7 B. C. R. 156; 1 M. M. C. 387.

13. Onus of proof.]—Where the onus is on the defendant to prove valid location, he cannot do so simply by the production of a certificate of work issued the day before the trial. Neither party having established his claim, judgment was so entered without costs under s. 11 of the Mineral Act, 1898. *Rammelmeyer* v. *Curtis*, 8 B. C. R. 383; 1 M. M. C. 401.

14. Pleading title—*Particulars of in action for possession of coal mines.*]—*E. & N. Ry. Co.* v. *New V. C. Co.*, 6 B. C. R. 188; 1 M. M. C. 237; *E. & N. Ry. Co.* v. *New Van. Coal Co.*, 6 B. C. R. 306; 1 M. M. C. 284; *E. & N. Ry. Co.* v. *New V. Coal Co.*, 9 B. C. R. 162; 1 M. M. C. 284.

See PLEADING, supra, XXXVIII.

15. Root of title.]—Location according to the Act is the root of title. *Aldous* v. *Hall Mines Co.*, 6 B. C. R. 394; 1 M. M. C. 213.

XLV. TRESPASS.

1. Abstracting ore.]—It is the duty of a mine owner, when his workings approach his boundaries, to proceed with caution, and make surveys to prevent encroachment on adjoining properties, and the least evidence of bad faith on his part will make every intendment in favour of the injured party. The measure of damages for ore negligently abstracted by trespass workings, is the same as if the trespass is wilful, and only the cost of bringing the ore to bank will be allowed. The value of the ore so abstracted is its value to its owner at the time of the taking. Observations upon the burdens which a trespasser must assume. *Last Chance Mining Co., Limited* v. *American Boy Mining Co., Limited*. 2 M. M. C. 150.

2. Abstraction of ore.]—A company is not liable for the tort of its predecessor in title unless it adopts it. Where a company, after taking over a mining property, discovers that certain ore lying on a dump and believed to be waste and of no market value was wrongfully taken by its predecessor, yet takes no steps to return it, but does not deal with it in any way, that is not an adoption of the conversion thereof by the original trespasser. The value of ore so situated as regards the successor in title is its market value as it lies and not its value before abstraction:—Held, on the facts, that the increased flow of water into plaintiff's mine, as complained of, was not due to the accumulation thereof in the trespass workings. *Centre Star Mining Co., Limited*, v. *Rossland-Kootenay Mining Co., Limited*, 2 M. M. C. 232.

3. Ejectment—*Trespass and adverse actions considered.*]—*Clark* v. *Haney & Dunlop*, 8 B. C. R. 130; *Corbett* v. *Lookout Mining & M. Co.*, 5 B. C. R. 281.

4. Damage.] — Unless actual damage be shewn nominal damages only will be allowed for trespass. *Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39; 1 M. M. C. 31.

5. "Jumping."]—The practice of "jumping" claims should be discouraged. *Granger* v. *Fotheringham*, 3 B. C. R. 590; 1 M. M. C. 71. *Atkins* v. *Coy*, 5 B. C. R. 6; 1 M. M. C. 88. *Victor* v. *Butler*, 8 B. C. R. 100; 1 M. M. C. 438.

6. Unlaw re-location — "*Jumping.*"]—Attempt to locate a claim on an existing valid location is merely an unauthorized trespass—a "jumping." *Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39; 1 M. M. C. 31.

XLVI. WAIVER.

1. By laches.]—*Peck* v. *Reginam*, 1 B. C. R., pt. II., 11; 1 M. M. C. 13.

2. Of jurisdiction.]—Unless objection to is taken in Court below it will not be heard on appeal. *Gelinas* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

See also ACTION, II. 2.

XLVII. WATER RIGHTS.

1. Gold Commissioner—*Appeal from.*]—The appeal under s. 36 of the Water Clauses Consolidation Act, from the decision of the Gold Commissioner, is a trial de novo. *Ross* v. *Thompson et al.*, 2 M. M. C. 79.

2. Grant—*Hill claims—Conflicting rights—Gold Ordinance*, 1867.]—Under the Gold Mining Ordinance, 1867, unless the owner of a hill claim has obtained a grant of water under part X. he has no right to intercept water higher up a stream that flows through

or past his claim, and so interfere with another owner of a lower hill claim in the exercise of the latter's rights under a water grant under said part X. Water so intercepted is not water "naturally flowing through or past his claim," within the meaning of s. 36 of said Ordinance. A grant of such water right need not be in writing. *Jenny Lind Co.* v. *Bradley-Nicholson Co.*, 1 B. C. R., pt. II., 185; 1 M. M. C. 9.

3. Joint record — *Application—Notice—Duty of Gold Commissioner.*]—Water records under the Water Clauses Act may be held jointly. If an applicant asks for more in his notice than he is entitled to, that does not invalidate the notice; it is valid for that which he is entitled to, and it is the duty of the Gold Commissioner to adjudicate upon and not reject the application. Semble, a supply of water for fire purposes may be necessary as being directly connected with the working of a mine or incident thereto. *Re Water Clauses Consol. Act*, 8 B. C. R. 214; 1 M. M. C. 460.

4. Timber leases from Dominion Government—*Free miner of B. C.—Conflicting rights—Can. Pac. Ry. Belt.*]—Lessees of the Dominion Government in the Canadian Pacific Railway Belt, operating a saw mill by water power, are entitled, as riparian proprietors, to an injunction restraining provincial free miners located up-stream, after occupation by said lessees, and having a mining water record, from fouling such stream, the natural source of the water supply, so as to interfere with the lessee's user thereof. A grant of water privileges under the Placer Mining Act, 1891, does not sanction the user of the water to the detriment of the rights of others. The Dominion Government is in possession of such lands within the railway belt as trustee to administer same, and it was competent to it to grant a timber lease to the plaintiffs, who would have the right to the use of the water flowing through their limits in its ordinary and natural condition. *Columbia River Lumber Co.* v. *Yuill*, 2 B. C. R. 237; 1 M. M. C. 64.

5. Water Clauses Consolidation Act —*Appeal—Time—Notice.*] — Anyone affected by a decision appealed from under s. 36 of the Water Clauses Consolidation Act, may be let in on the hearing of the appeal even though the month for giving notice of appeal has expired. Such person may make his application on the hearing of the appellant's motion for directions. *Re Water Clauses Consolidation Act*, 8 B. C. R. 17; 1 M. M. C. 421.

6. Water Clauses Consolidation Act —*Notice—"In the office"—Conflicting and concurrent applications—Evidence and procedure.*] —Where an application for a record of water for mining purposes is pending before a gold commissioner, an application for a record of the same water for domestic, mechanical and industrial purposes should not be adjudicated upon by an Assistant Commissioner of Lands and Works without express notice to the applicants before the Gold Commissioner. A water notice posted on a board used for such notices, in a hall leading to the rooms occupied by the Commissioner, within the meaning of s. 9 of the Water Clauses Consolidation Act. Where an application is not contested, the Commissioner need not take evidence, but where it is contested he should have the evidence taken in shorthand. *Re Water Clauses Consolidation Act*, 8 B. C. R. 374; 1 M. M. C. 422.

7. Water Clauses Consolidation Act.] —Where a company holds distinct water records acquired from different owners, they cannot be consolidated. Where a power company has obtained a certificate from the Lieutenant-Governor in Council approving its specified purposes, one of which is to alter the point of diversion of its water, it is entitled to have its water record amended, without the imposition of terms, to cover the alteration. *In re Water Clauses Consolidation Act and Rossland Power Co., Limited*, 2 M. M. C. 135; 10 B. C. R. 536.

8. Water Clauses Consolidation Act.] —The County Court has jurisdiction over water rights appurtenant to placer claims. Though such jurisdiction is concurrent with that of the Supreme Court, it is not ousted by the mere fact that an action was begun in the Supreme Court by the same parties respecting the same subject matter before it was begun in the County Court, and if no objection is taken it will continue to exercise its jurisdiction. If objection is taken, the proper course is to apply to stay one of the actions, and it depends upon the circumstances which one will be stayed. It is too late to object to the jurisdiction after judgment. A layman is a leaseholder, and may apply for a water record which is appurtenant to the mine and not to the miner. No one has a status to attack a water record who has not got one himself, or what is equivalent to one under the Act; a right to water under s. 29 confers such a status. Individual miners, working on the same creek who have statutory rights in the same water, may join in an application for a record, or to reduce or modify an existing record which is being misused to their disadvantage, and on such application the Gold Commissioner may make such adjudication as seems to him just; and unless those interested who participated in or properly had notice of the proceedings appealed from his decision in the summary way provided by s. 36, they are bound by it. If the action taken by the Gold Commissioner was the proper one, it is not invalidated because he gave wrong reasons or relied on one section instead of another, which authorized his action. Decision of HENDERSON, Co. J., affirmed. *Brown et al.* v. *Spruce Creek Power Co., Limited*. 2 M. M. C. 254.

9. Water record.]—No one has a status to complain about the diversion or misuse of water by the holder of a water record unless he himself holds such a record under the Water Clauses Consolidation Act, which is an exclusive code on the subject of water rights, and the right to a flow of water is vested either in the Crown or in the holder of such a record. The County Court in its mining jurisdiction has power to deal with actions respecting the disturbance of water rights appurtenant to mining property. Observations upon the scope and object of the said Act and powers of the Gold Commissioner. All the principles of construction of statutes cannot be applied to enactments, such as the Mineral Act, which is constantly being amended without very careful consideration or supervision. *Spruce Creek Power Company, Limited* v. *Muirhead, et al.*, 2 M. M. C. 158; 11 B. C. R. 68.

10. Water record — *Priority—Pending and conflicting applications.*]—Where two different officials are called upon to exercise their functions in regard to application for water rights respecting the same water, the official who is determining the later application should stay his hand until the final result of the prior application before the other official is known. *Re Water Clauses Consolidation Act*, 8 B. C. R. 381; 1 M. M. C. 465.

See also WATER AND WATERCOURSES.

XLVIII. WORDS AND PHRASES.

1. "Adverse proceedings."]—*Dunlop* v. *Haney*, 7 B. C. R. 1, 305; 1 M. M. C. 369.

2. "At the instance" — *"At the request."*]—*Anderson* v. *Godsal*, 7 B. C. R. 404; 1 M. M. C. 416.

3. "Costly."]—*Nelson, etc., Ry. Co.* v. *Jerry*, 5 B. C. R. 396; 1 M. M. C. 161.

4. "Discovery."] — *Richards* v. *Price*, 5 B. C. R. 362; 1 M. M. C. 156.

5. "Falling material."] — *McKelvey* v. *Le Roi Mining Co.*, 9 B. C. R. 62; 1 M. M. C. 477.

6. "In on it"]—*Wells* v. *Petty*, 5 B. C. R. 353; 1 M. M. C. 147.

7. **"Interest in land."**] — See Frauds, Statute of, supra, XXI.

8. "In the office." — Re Water Clauses Consol. Act, 8 B. C. R. 374; 1 M. M. C. 422.

9. "Lands."—*Atty.-Gen. of B. C.* v. *Atty.-Gen. of Canada*, 14 A. C. 295; 14 S. C. R. 345; 1 M. M. C. 52; *Bainbridge* v. *Esq. and Nan. Ry. Co.*, 1896, A. C. 561; 4 B. C. R. 181; 1 M. M. C. 98.

10. "Lands held as mineral claims" —*"Lawfully."*] — See Mineral Claim, supra, XXXI.; Crown Grant, supra, XV.

11. "Mineral in place."] — *Manley* v. *Collom*, 32 S. C. R. 371; 8 B. C. R. 153; 1 M. M. C. 487. *See* Mineral in Place, supra, XXXII.

12. "Public lands."] — See Crown, supra, XIV.

13. "Rock in place."]—*Nelson and Fort Sheppard Ry. Co.* v. *Jerry*, 5 B. C. R. 396; 1 M. M. C. 161.

14. "Trial."]—See *Dunlop* v. *Haney*, 7 B. C. R. 300; 1 M. M. C. 344.

15. "Water naturally flowing."] — *Jenny Lind Co.* v. *Bradley Nicholson Co.*, 1 B. C. R. pt. II., 185; 1 M. M. C. 9.

XLIX. WORK.

1. Abandonment — *Mineral in place.*]—Failure to record certificate of work is presumptive evidence of abandonment. Record of certificate of work is an answer to objection that mineral in place was not discovered. *Cranston* v. *English Canadian Co.*, 7 B. C. R. 266; 1 M. M. C. 394.

2. Curative effects of — *Certificate of — Irregularities.*]—*Francœur et al.* v. *English*, 6 B. C. R. 63; 1 M. M. C. 263; *Waterhouse* v. *Liftchild*, 6 B. C. R. 424; 1 M. M. C. 153; *Creelman* v. *Clarke et al.*, 1 M. M. C. 228; *Boie* v. *Saulter*, 1 M. M. C. 240; *Callanan et al.* v. *George et al.*, 8 B. C. R. 146; 1 M. M. C. 242; *Callahan* v. *Coplen*, 6 B. C. R. 523; 7 B. C. R. 422; 1 M. M. C. 348; *Pavier* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384; *Cranston et al.* v. *English Canadian Co.*, 7 B. C. R. 266; 1 M. M. C. 394.

3. A claim which is located under one name, and recorded under another, is invalid, and such a defect in location, being necessarily calculated to mislead other locators in the vicinity, cannot be cured by s.-s. (g) of s. 16 of the Mineral Act Amendment Act, 1898. *British Lion Gold Mining Co.* v. *Creamer*, 2 M. M. C. 51.

4. Effect of certificate of work as affirmative evidence of title.] — *Cleary* v. *Boscowitz*, 8 B. C. R. 225; 1 M. M. C. 506.

See TITLE, *supra*, XLIV.

5. Form of—*Certificate of—Irregularity.*] A certificate of work is not irregular because it contains more than the Act requires, nor because it does not show on its face a statutory extension of time. *Payne Mining Co.* v. *Wilson*, 1 M. M. C. 485.

6. Fraud.]—Certificate of work cannot be invoked in support of so-called location which has been fraudulently changed. *Wise* v. *Christholm*, 1 M. M. C. 413.

7. Impeachment of certificate by Crown for fraud.]—Crown alone can impeach certificate of work for fraud; as between subjects it is conclusive evidence of performance of assessment work. *Cleary* v. *Boscowitz*, 8 B. C. R. 225; 1 M. M. C. 506.

8. Irregularity—*Misleading—Location—Compass bearing.*]—If failure to give approximate compass bearing is of a character calculated to mislead, such defect cannot be cured by recording certificate of work which only cures little irregularities which do not go to the root of title. *Callahan* v. *Coplen*, 6 B. C. R. 523; 7 B. C. R. 422; 1 M. M. C. 348.

9. Irregularity — *Impeachment of, by Crown for fraud.*]—Section 28 does not conclude within its purview any area not duly recorded; and the irregularities cured by that section are not only such as occur in the interval between location and record, and the recording of the last certificate of work. Performance of the annual assessment work (or the equivalent money payment), is the annual rental payable to the Crown, and therefore in the case of valid location, whenever a dispute arises in which payment of rent is concerned, the production of the certificate of work (i.e., payment) is conclusive against all the world, except the Crown itself, in a suit to set it aside for fraud. *Manley* v. *Collom*, 1 M. M. C. 487; 8 B. C. R. 153.

10. Irregularity — *Assessment work — Mistake of official — Curative provisions — Time.*]—If a free miner by mistake perform his assessment work outside the boundaries of his claim, that is an irregularity which is cured by recording a certificate of work. The Attorney-General is the only party who could attack such certificate. If a free miner is misled by the statement of the Gold Commissioner, and consequently neglects to give the notice required by s. 24, and makes any incorrect affidavit, he is protected by s. 53. The effect of s. 53 of the Mineral Act, 1898, is to provide for an extension of time within which the certificate can be obtained. *Lawr* v. *Parker*, 7 B. C. R. 417; 8 B. C. R. 223; 1 M. M. C. 456.

11. Order-in-council extending time for assessment work — *Irregularity — Delay.*]—An order-in-council under s. 161 of the Mineral Act, 1896, extending the time for the doing and recording of assessment work on a mineral claim, is intra vires. A certificate of work recorded pursuant to permission granted by a Gold Commissioner acting under such order-in-council, is a good certificate within s. 28 of the said Act. The word "irregularity" in s. 28 extends to the certificate of work itself. Delay in recording such certificate of work is an irregularity which is cured by s. 28. Meaning of "irregularity" considered. *Peters* v. *Sampson*, 6 B. C. R. 405; 1 M. M. C. 247.

12. Proof of title — *After certificate of work issued. Pavier* v. *Snow*, 7 B. C. R. 80; 1 M. M. C. 384.

13. Re-location—*Lapsed location — Reversion — Irregularity — Curative effect of certificate on. Gelinas* v. *Clark*, 8 B. C. R. 42; 1 M. M. C. 428.

14. Title.]—Where both parties have recorded certificates of work, the title will be determined according to prior location and record. *Fero* v. *Hall*, 6 B. C. R. 421; 1 M. M. C. 238.

See also ASSESSMENT, supra, VII.; CERTIFICATE AND LICENSE, supra, IX. 4; LOCATION AND RE-LOCATION, supra, XXXIX.; TIME, supra, XLIII.

L. WRITS.

1. Renewal.] — Must be reasonable explanation of delay in serving, otherwise an application to renew made two days before expiry will be refused. *Haney* v. *Dunlop*, 6 B. C. R. 451, 520; 1 M. M. C. 311.

2. Service within year.]—If writ is not served within a year the adverse action is out of Court. *Troup* v. *Kilbourne*, 5 B. C. R. 547; 1 M. M. C. 219.

See also ACTION, supra, II. 3.

MISAPPROPRIATION.

1. Of money by servant paying his wages out of Master's fees in his hands. 10 B. C. R. 271.

See MUNICIPAL CORPORATIONS, VI.

MISCHIEVOUS ANIMALS ACT.

1. Scienter.]—In an action for damages for injuries caused by the bite of a dog, s. 30 of the Mischievous Animals Act (C. S. B. C. 1888, c. 44) does not preclude the defendant from shewing the peaceful character of the dog, or his ignorance of its vicious disposition, but only raises a rebuttable presumption against him. *Neville* v. *Laing*, 5 B. C. R. 100.

MISCONCEPTION.

1. Manley having recovered judgment for $542 50 against O'Brien, issued a garnishee order against Macintosh, defendant. The trial Judge, WALKEM, J. held, that the agreements (set out in the judgment of IRVING, J., post pp. 88 and 90) between O'Brien and Mackintosh, by virtue whereof the alleged indebtedness arose, did not comply with the Statute of Frauds, inasmuch as the parties had omitted to state therein the terms actually agreed upon, and decided the issue in favour of the defendant. Upon appeal to a Full Court constituted, by consent of the parties, of two Judges, IRVING and MARTIN, JJ., the appeal was dismissed, the Court in delivering opinions sustaining the decision of the trial Judge holding: (1) That the promise made by defendant and now sought to be enforced against him was nudum pactum. (2) That the defendant O'Brien in the original action, and Mackintosh, the defendant in the issue, in reality came to an agreement in ignorance of the fact that its performance in view of the conditions it was contingent upon, was impossible. *Manley* v. *Mackintosh*, 10 B. C. R. 84.

MISCONDUCT.

1. Arbitrator—*Misconduct of.*] — *In re Doberer & M. E. Gow Arbitration*, 10 B. C. R. 48.

See ARBITRATION AND AWARD.

2. Evidence of.]—*Cunliffe* v. *Cunliffe*, 8 B. C. R. 18; *Forrest* v. *Forrest*, 8 B. C. R. 19.

See DIVORCE.

MISDIRECTION.

1. Charge.] — In considering Judge's charge the whole summing up must be considered. *Harris* v. *Bruncette Saw Mill Co.*, 3 B. C. R. 172.

See PRACTICE, XX.

2. Language of charge inaccurate.]—It is not mis-direction sufficient to require a new trial that the Judge has used inaccurate language in the course of a long summing up, if the charge as a whole afforded a fair guide to the jury. *Gray* v. *McCallum*, 2 B. C. R. 104.

3. Negligence—*Action for—Non-direction and misdirection — Contributory negligence—*

Proper question regarding to be left to jury.] —*Love* v. *New Fairview Corp.*, 10 B. C. R. 330.

See NEGLIGENCE.

4. New Trial—*Principle on which may be granted.*]—Notwithstanding the rule that objections going to misdirection not taken at the trial are not open on appeal, the Court may mero motu suo consider the question of whether there was miscarriage of justice arising from misdirection and direct a new trial. *British Columbia Iron Works Co.* v. *Ernest Ruse, John G. Rugbee, and Rosa Mueller, carrying on business as the Ruse Milling Company, and Ernest Ruse*, 4 B. C. R. 419.

5. Obligations of Judge to apply facts to law.]—In an action by a ship owner against a tug owner for damages for negligence on the part of the tug in allowing the ship to drift ashore while attempting to tow her from a dangerous position, the Judge in his charge to the jury explained the law applicable to the issues, but he did not point out to the jury the bearing of the facts in evidence upon the questions to be determined:—Held, that the charge was incomplete and was misunderstood by the jury, and that there must therefore be a new trial. The Judge is bound to submit questions to the jury if requested to do so. *Per* HUNTER, C.J.: (1) A jury is not suited to try a dispute involving questions as to what were the proper nautical manœuvres to be performed under peculiar conditions, and the new trial should be held before a Judge without a jury. (2) The Court has jurisdiction to order a new trial without a jury, although the applicant in his motion for a new trial does not so ask. *Per* MARTIN J.: (1) It is the duty of the Judge under s. 66 of the Supreme Court Act, 1904, to instruct the jury upon all leading groups of evidence and apply to them the law as affecting the issues arising out of such evidence. (2) The jury should not be excluded from the Court room during the discussion on an application by counsel for further direction by the Judge. (3) Mere complexity of fact is not a ground for depriving parties of their inherent right to a jury. *Alaska Packers' Association* v. *Spencer*, 10 B. C. R. 473.

6. Opinion of Judge—*It is not a misdirection in Judge to state his opinion of the evidence.*]—*Harry* v. *Packers' S.S. Co.*, 10 B. C. R. 258.

See PRACTICE, XX.

See also APPEAL—JUDGE'S CHARGE—NONDIRECTION—NEGLIGENCE—PRACTICE, XX.

MISFEASANCE.

1. In regard to excavation.] — *Steves* v. *South Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS, I.

MISJOINDER.

1. By plaintiff of unconnected causes against different defendants.] — *McKenzie et al.* v. *Bell-Irving*, 2 B. C. R. 241.

See PLEADING, IX., 2.

See PLEADING, IX., 2—PRACTICE, I. 5.

MISREPRESENTATION.

1. As to title of mineral claim.]—*Pope* v. *Cole*, 6 B. C. R. 205.

See MINES AND MINERALS, XLIV.

2. By broker of mortgage—*Security.*] —*Wobley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 416.

See PRINCIPAL AND AGENT.

See also FRAUD AND MISREPRESENTATION.

MISTAKE.

1. Amendment in case of.]—*Beamish* v. *White Water Mines, Ltd.*, 7 B. C. R. 261.

See PRACTICE, IX., 5.

2. Appeal book—*Mistake in.*]—*Rogers et al.* v. *Reed*, 7 B. C. R. 139.

See PRACTICE, III.

3. Boundaries—*Mistake as to — Raises no equity as between registered owners.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

4. Contract—*Mistake—Right of contractor to compel engineer to give final certificate.*]—*Coughlan* v. *Wilmot et al.*, 4 B. C. R. 20.

See CONTRACTS, III. 1.

5. Mineral claim — *Mistake in giving approximate compass bearing of number two post.*]—*Callahan* v. *Coplen*, 6 B. C. R. 523; *Callahan* v. *Coplen*, 7 B. C. R. 422.

See MINES AND MINERALS, XXIX.

6. Mineral claim—*Performance of assessment work outside of claim.*] — The plaintiff, owner of the Rebecca mineral claim, and having an interest in the Ida, an adjoining claim, performed the assessment work for both claims on the Ida, as he believed, but in reality as shewn by subsequent survey, a few feet outside the claim, but did not file the notice required by s. 24 of the Mineral Act with the Gold Commissioner, who told him the work on the Ida would be regarded as done on the Rebecca. Plaintiff received in August, 1899, a certificate of work in respect of the Rebecca, and in his affidavit stated that the work was done on the Rebecca. Held, in ejectment, that the plaintiff, being misled by the Gold Commissioner, was protected by s. 53 of the Act. The omission to file the notice required by s. 24 of the Act, and the incorrect filling up of the affidavit, were irregularities which were cured by the certificate of work. *Laur* v. *Parker*, 7 B. C. R. 418. Affirmed by Full Court, 8 B. C. R. 223.

7. Mistake as to acreage—*Not a ground for relief.*]—*Lea* v. *McLean et al.*, 1 B. C. R., pt. II., 67.

See VENDOR AND PURCHASER.

8. Mistake in memorandum of agreement as to description of property.]—*Borland* v. *Coote*, 10 B. C. R. 493.

See VENDOR AND PURCHASER.

9. Officials — *Mistake of—Effect of.*]—*Manley* v. *Cottom*, 8 B. C. R. 153.

See MINES AND MINERALS, XXXV., 1, 2.

10. Registrar — *Mistake of — Parties should not be prejudiced by.*]—*Hudson's Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

11. Registrar—*Mistake of.* 2 B. C. R. 163.

See SHERIFF.

12. Style of cause—*Mistake in name of plaintiff—Amendment of.*]—*B. C. Furniture* v. *Tuggwell*, 7 B. C. R. 361.

See PRACTICE, XXXVIII. 3.

13. Unilateral mistake—*A ground for refusing specific performance.*]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

See also AMENDMENT.

MONEY.

1. Money taken from prisoner—*Restoration of.*]—*Reg.* v. *Harris*, 1 B. C. R., pt. 1., 255.

See CRIMINAL LAW, XVI.

2. Money remaining in Court until new action commenced.]—*King* v. *Boultbee*, 7 B. C. R. 318.

See GARNISHMENT.

3. Money order — *Distinction between, and equitable assignment.*]—*Johnson* v. *Braden*, 1 B. C. R., pt. II., 265

See MECHANIC'S LIEN.

4. Money order—*Indorsement of—Parol assignment—Interpleader.*]—Defendant, under contract to build for one, Walker, purchased the materials from plaintiffs, who subsequently got judgment against him, and who garnished the moneys due from Walker to defendant under the contract. Moneys due the contractor were to be paid on the certificate of the architect, Grant. Before the garnishee proceedings defendant had accepted the following order drawn upon him by Nicholas & Barker, to whom he was indebted on a subcontract: "Please pay to Champion & White the sum of $270, and charge the same to my account for plastering Place Block, Hastings Street, W., in full to date;" which order the defendant thus indorsed in favour of Grant: "Please pay that order and charge to my account on contract for Robert Walker block on Hastings Street, City;"—Held, in interpleader, by the Full Court, affirming McCOLL, C.J., that apart from the order there was a parol assignment specifically appropriating to the assignees the sum in question, of the moneys to arise out of the contract. *B. C. Mills Lumber and Trading Co.* v. *Mitchell; Walker, garnishee, and Champion and White, claimants*, 8 B. C. R. 71.

MONTH.

1. What is a month's notice under Rule 749.]—Supreme Court Rule 749, requiring a month's notice of intention to proceed when there has been no proceeding for one year from the last proceeding, applies to an application to dismiss an action for want of prosecution. *MacDonald* v. *Jessop et al., Trustees of The Pandora Avenue Methodist Church*, 3 B. C. R. 606.

MORAL OBLIGATION.

1. Court will not grant an injunction to enforce a moral obligation.]—*Atty.-Gen.* v. *Well. Coll. Co.*, 10 B. C. R. 397.

See INJUNCTION.

MORTGAGES.

1. Book debts—*Mortgage on.*] — *Robinson* v. *Empey*, 10 B. C. R. 466.

See CHATTEL MORTGAGE.

2. Certificate of Registrar as to accounts.] — The certificate of the Registrar upon taking the accounts under the mortgage in a foreclosure action directed that the balance found due should be paid by the mortgagor at the office of the agent of the plaintiff (foreign) company in Victoria. Upon motion for final decree upon the affidavit of non-payment as directed, made by the agent:—Held, *per* WALKEM, J.—That the affidavit of both principal and agent was necessary. *Canada Settlers' Loan Co.* v. *Renouf*, 5 B. C. R. 243.

3. Company—*Mortgage by directors of.*] —*Adams* v. *Bank of Montreal*, 8 B. C. R. 314.

See FRAUDULENT CONVEYANCES.

4. Company—*Mortgagee may proceed with action notwithstanding judgment registered.*] —*In re Giant Mining Co.*, 10 B. C. R. 327.

See COMPANY, IX. 6.

5. Corporation sole—*Covenant by.*]—A covenant by a corporation sole, described in his corporate capacity, expressed to be on behalf of himself, his heirs, executors and administrators, will not bind his successors in office. *Paris* v. *Bishop of New Westminster*, 5 B. C. R. 450.

6. Debt—*Assignment of, by way of mortgage without notice.*]—*Morris* v. *Dickson et al.*, 9 B. C. R. 151.

See ASSIGNMENTS.

7. Default in payment.]—Upon default in payment by a mortgagor of any instalment of interest the mortgagee has a right, independently of any express proviso in the mortgage to that effect, to call in the whole principal and interest, and foreclosure. *Canada Settlers' Loan Company* v. *Nicholles et al.*, 5 B. C. R. 41.

8. Equitable mortgage — *Priority between and subsequent registered conveyance.*] —*Hudson's Bay* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

9. Equitable mortgage—*Status of over registered judgment.*] — *Manley* v. *O'Brien*, 8 B. C. R. 280.

See JUDGMENT.

10. Equity of redemption.]—A conveyance of the equity of redemption by a mortgagor to a mortgagee of lands does not constitute a discharge of the mortgage by merger, unless it is made to appear that such a result was intended by the parties; and when a mortgagee applies to register a conveyance of the equity of redemption the Registrar should not mark the mortgage merged unless at the request of the mortgagee. *In re Major et al.*, 5 B. C. R. 244.

11. Judgment — *Whether mortgage affected by.*]—A registered judgment binds only the interest of the debtor existing at the time of registration and therefore cannot affect a mortgage already given by the debtor although such mortgage is not registered before the judgment. *Yorkshire Guarantee and Securities Corporation* v. *Edmonds et al.*, 7 B. C. R. 348.

12. Jurisdiction—*Of Judge to vary order of another Judge as to redemption of mortgage.*]—A Judge has no jurisdiction to add to an order made by another Judge for redemption of a mortgage on payment of the debt and costs to date of decree, a further term adding subsequent costs and requiring their payment as a further condition of redemption and charge upon the lands. *Per* REGBIE, C.J., CREASE, WALKEM, and DRAKE, JJ. *Lehman* v. *Wilkinson*, 3 B. C. R. 19.

13. Infant mortgagee — *Safeguards in case of.*]—*In re Brown*, 2 B. C. R. 110.

See INFANTS.

14. Infant—*Mortgage made by—Validity of.*]—*Saunders* v. *Russell*, 9 B. C. R. 321.

See INFANTS.

15. Legatee—*Effect of mortgage on interest of.*]—*Harper* v. *Harper*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

16. Interest.]—A mortgage contained no proviso for payment of interest at the rate therein specified after maturity, but merely a covenant to pay same "at the day and time and in manner above mentioned:"—Held, that the interest after maturity was outside the covenant, and was reasonable only as damages for detention of the principal, at the statutory rate of six per cent., following Peoples' Loan Co. v. Grant, 18 C. R. 262. *Cunningham* v. *Hamilton*, 5 B. C. R. 539.

17. Sale of assets of company by mortgagee.]—*Re Thunder Hill M. Co.*, 3 B. C. R. 351.

See COMPANY, IX. 5.

18. Security given by company—*Necessity to inquire as to regularity of.*]—A person who bonâ fide takes a security in the ordinary course of business from an incorporated company is not bound to inquire into the regularity of the directors' proceedings leading up to the giving of the security; he is entitled to assume that everything has been done regularly. *Jackson* v. *Cannon*, 10 B. C. R. 73.

19. Ship—*Mortgagees of a ship in possession have a right to sue for damages.*] — *Ward* v. *S.* "*Yosemite*," 3 B. C. R. 311.

See COLLISION.

20. Ship — *Mortgagee of — Rights of, as against execution creditor.*]—Where property alleged to be part of the equipment of a ship is in the possession of a receiver appointed in an action in rem in the Exchequer Court to enforce a mortgage of the ship, such property cannot be seized by a sheriff under a writ of fieri facias issued on a judgment recovered against the registered owner of the ship in the Supreme Court; and the Supreme Court has no jurisdiction on the application of the sheriff to grant an order directing the trial of an interpleader issue between the mortgagees and the judgment creditors. *Williamson* v. *Bank of Montreal*, 6 B. C. R. 486.

21. Ship—*Mortgagee of—Action against by execution creditors.*] — *Wilson Bros.* v. *Donald*, 7 B. C. R. 33.

See PRACTICE, XXXVIII. 5.

22. Taxation of mortgage securities.]—*Yorkshire G. & S. Corp.*, 4 B. C. R. 258.

See CONSTITUTIONAL LAW, II. 8.

23. Terms of redemption by purchaser of equity of redemption—*Statute of Limitations—Execution Act, C. S. B. C. 1888, c. 42, ss. 37-44.*] — Under s. 44 of the Execution Act, supra, providing any purchaser may remove or satisfy any mortgage in like manner as the execution debtor might have done, an execution purchaser of an equity of redemption is entitled to redeem only upon payment of the whole arrears of principal and interest legally recoverable from the mortgagor, and 20 years are recoverable under the usual covenant to pay. *Keary* v. *Mason*, 2 B. C. R. 48.

See CHATTEL MORTGAGE.

MORTMAIN ACT.

1. Statute of mortmain not in force in B. C.]—*In re Pearse Estate*, 10 B. C. R. 280.

See WILLS.

MOTION.

1. Ca. re, proceedings—*Motion is not the proper proceeding to set aside.*]—*Watt* v. *Barber*, 6 B. C. R. 461.

See ARREST.

2. Judgment—*Motion for—Whether jurisdiction to shorten time for.*]—*Wheaton* v. *Allice et al.*, 3 B. C. R. 306.

See PRACTICE, XIX., XXXI.

See also PRACTICE, VIII.

MUNICIPAL BY-LAW.

1. Appeal from conviction under.]—*Reg.* v. *Bowman*, 6 B. C. R. 271.

See CRIMINAL LAW, IV.

See also APPEAL — CERTIORARI—MUNICIPAL CORPORATIONS.

MUNICIPAL CLAUSES ACT.

See MUNCIPAL CORPORATIONS.

MUNICIPAL CORPORATIONS.

I. ACTIONS AND PROCEEDINGS AGAINST.

1. Bridge—*Liability for state of repair.*]—Where a statute enacts that roads and bridges are originally vested in the province, but may be adopted by a municipality—no special form of adoption, however, being necessary—acts done and authority exercised by a corporation in respect of such roads and bridges will, in the absence of evidence to the contrary, be taken as proof of adoption. A bridge within the limits of the appellant corporation gave way and persons were drowned. The jury found that the proximate cause of the accident was the defective condition of a beam into which some years previously an officer of the corporation had bored holes. There was evidence that for a considerable time the corporation had undertaken the care and management of the bridge:—Held, as matter of legal inference from the facts found, that the corporation had adopted the bridge, and were, therefore, liable for damages in respect of the accident. Appeals from judgment of the Supreme Court of British Columbia, dated April 1st, 1898, by which application by the appellants for judgment or new trial was dismissed. *Victoria Corporation* v. *Lang*, taken from 68 L. J. P. C. 128. (Apparently not reported in B. C. Reports, case being similar to Patterson v. Corporation of Victoria, reported in 5 B. C. R. 628.)

2. Contract for supplying gravel — *Independent contractor — Negligence.*] — A municipal corporation which had statutory power to enter lands and take, without payment, gravel for its roads, let a contract for grading and gravelling a road within its limits, which contained no provision as to where the gravel was to be obtained. The contractor entered adjacent private property and took gravel from a pit thereon in such manner as to undermine a large tree standing close to the road allowance, which, by reason thereof, afterwards fell upon and killed plaintiff's husband who was driving on the road. To be assured of its quality, the taking of the gravel was superintended by the municipal road inspector. The jury found that the excavation was done by the order or permission of the corporation, and that, irrespective of who caused the excavation, the subsequent condition of the tree was a dangerous nuisance to the highway, of which the corporation had notice:—Held, *per* DAVIE, C.J., on motion for judgment, that, upon the finding of the jury, the corporation was liable: 1. For negligent misfeasance in regard to the excavation, and that a contention that the act was that of an independent contractor, was untenable; 2. For knowingly maintaining a dangerous nuisance causing the injury. Upon appeal to the Full Court, *per* MCCREIGHT, J., WALKEM, J., concurring: 1. The corporation was responsible for the act of the contractor in undermining the tree, to the same extent as if he was a labourer acting under the orders of the road inspector or the board of works; 2. If one employs a contractor to do a work not necessarily a nuisance, but which becomes so by reason of the manner in which the contractor has performed it, and the employer accepts the work in that condition, he becomes at once responsible for the nuisance; 3. He who knowingly maintains a nuisance is as liable for its consequences as he who created it; 4. The jury may believe part and reject part of witness' evidence; 5. Cross-examining questions to a jury are not to be encouraged, as they are calculated to induce the jury to stand on their undoubted right to return a general verdict. *Per* MCCOLL, J.: The corporation was under an obligation to the public so to exercise its powers of repairing the highway as not to render its use dangerous to the lives of passengers thereon by the absence of reasonable precautions against obvious risks from falling trees, and the circumstance that the corporation exercised its powers through the instrumentality of their contractor, did not absolve it. *Per* DRAKE, J. (dissenting): 1. That the contractor was, on the facts, an independent contractor, and was not a servant of the corporation. That the work to be done

for the corporation, as provided by the contract, was not necessarily attended with risk in regard to the tree, and in that the negligence was therefore casual and collateral to the performance of the contract, and the corporation was not liable for it; 2. That the statutory authority to the corporation to enter lands and take gravel for roads, did not extend to their contractor, and he was not therefore its agent quoad hoc; 3. That the negligence alleged and proved consisted in leaving a tree standing which ought to have been removed, and was therefore mere nonfeasance and not actionable. *Steeves* v. *The Corporation of the District of South Vancouver*, 6 B. C. R. 17.

3. Grade of street—*Action for damages for lowering.*] — The Act incorporating the city of New Westminster, 51 Vict. c. 42 (B., C.), by s. 190, empowers the council of the city to order by by-law the opening or extending of streets, etc., and for such purposes to acquire and use any land within the city limits, either by private contract, or by complying with the formalities prescribed in s.-s. 3 and 4 of said section, which provide for the appointment of commissioners to fix the price to be paid for such land; s.-s. 13 provides for the confirmation of the appointment and for the deposit in Court of said price by the Council, which deposit should vest in them the title to said land. Sub-section 17 of s. 190, enacts that s.-ss. 3 and 4 shall apply to cases of damage to real or personal estate by reason of any alteration made by order of council in the line or level of any street, and for payment of the compensation therefor without further formality. The Council was authorized by by-law to raise money for improving certain streets, but no by-law was passed expressly ordering such improvements. In one of the streets named in said by-law the grade was lowered, in doing which the approach to and from an adjacent lot became very difficult, and no retaining wall having been built, the soil of said lot caved and sunk, thereby weakening the supports of the buildings thereon:—Held, affirming the decision of the Court below, RITCHIE, C.J., and TASCHEREAU, J., dissenting, that the owner of said lot could maintain an action for the damage sustained by lowering the grade of the street, and was not obliged to seek redress under the statute; that s.-s. 17 of s. 190, which dispenses with the formalities required by prior sub-sections, only applies to cases where land is injuriously affected by access thereto being interfered with, and where land is taken or used for the purposes of work on the streets, the corporation must comply with the formalities prescribed by s.-ss. 3 and 4; that the street having been excavated to a depth which caused a subsidence of adjoining land, the latter must be regarded as having been taken and used for the purposes of the excavation, and the council should have acquired it under the statute; not having so acquired it, and having neglected to take steps to prevent the subsidence of the adjacent land, they were liable for damage thereby caused:—Held, further, that the neglect to take such precautions was in itself, however legal the making of the excavation may have been if skilfully executed, such negligence in the manner of executing it was to entitle the owner of the adjacent land to recover damages for the injury sustained:—Held, *per* PATTERSON, J., that in the absence of the statutory preliminaries, a municipality has no greater right than any other owner of adjacent land to disturb the soil of a private person. (Appeal from a decision of the Supreme Court of British Columbia, affirming the judgment at the trial in favour of the plaintiff.) *The Corporation of the City of New Westminster* v. *Manuella Brighouse*, taken from 20 S. C. R. 520. (Apparently not reported in B. C. R.)

4. Joinder of parties.] — A municipal corporation may be joined in an action to set aside tax sale. *Lasher* v. *Tretheway et al.*, 10 B. C. R. 438.

See PARTIES.

5. Liability of, where decided in another action.]—*Gordon* v. *City of Victoria*, 7 B. C. R. 342.

See PRACTICE, XIX.

6. Negligence—*Causing injury.*] — In an action for negligence it is not sufficient to shew general negligence on the part of the defendant, but the plaintiff must shew a negligent act "whereby" the injury was caused. There is, at law, no cause of action for damages for negligence in not performing a statutory duty, or for not exercising a statutory power, but only for negligent acts in the performance of the duty, or in the exercise of the power. The jury found (inter alia) that the injury, which resulted from the collapse of a bridge built by the Provincial Government, but afterwards brought within the city limits, was caused by the breaking of a hanger supporting one of the floor beams. The city had substituted stirrup hangers with welds, made by their orders on some of the beams, in place of unwelded straight hangers. When asked whether it was one of the substituted hangers which broke, the jury said there was no evidence, but in their opinion a missing stirrup hanger must have broken at the welds, otherwise it would have been attached to the floor beam. To the question whether the corporation was blamable for the cause of the action and how, the jury answered: "A. Yes, because having been made aware of the condition of the bridge, through the report of the engineer and otherwise, they attempted repairs, but the work was not done sufficiently well to strengthen the structure. In our opinion it was their duty to first ascertain the carrying capacity of the bridge before allowing such heavy cars to pass over it." Upon motion for judgment: — Held, 1. That there was no finding of actionable negligence "whereby" the disaster was caused; 2. That the acts of negligence to which the jury attributed the disaster were mere nonfeasance. *Gordon* v. *The City of Victoria*, 5 B. C. R. 553.

7. Limitation of action.]—The limitation of one year prescribed by s. 244 of the Municipal Clauses Act, for commencing actions against a municipality, applies to mandamus proceeding to compel a municipality to appoint an arbitrator to determine the amount of compensation for land taken for road purposes. *The Queen* v. *The Municipal Council of the Corporation of the District of Mission*, 7 B. C. R. 513.

II. By-laws.

1. *Generally.*

1. Construction of.]—In a by-law passed by the corporation of the city of Victoria, having for its object the closing of a portion of the Craigflower Road, the word "by" was omitted inadvertently, with the result that by the strict grammatical construction of the by-law a former by-law dealing with the same road was declared closed, instead of the road itself:—Held, that certain words in the enacting clause should be regarded as a parenthetical expression, and as descriptive of the portion of the road referred to, thus giving the by-law a sensible meaning and the one intended. The Court will not hold any legislation to be meaningless or absurd unless the language is absolutely intractable. Decision of DRAKE, J., reversed, IRVING, J., dissenting. *Esquimalt Water Works Company* v. *The Corporation of the City of Victoria*, 10 B. C. R. 193.

2. Revising by-law.]—Where a revising by-law purports to bring into effect a number of by-laws contained in a printed roll alleged to be attested by the mayor and city clerk, but such roll was not, in fact, so attested until after the final passage of the revising by-law, such by-law has failed to bring into force any by-law contained in such roll. Sections 91 and 92 of the Municipal Clauses Act do not prevent suit to restrain a municipality from proceeding under a by-law which has not been quashed, but only prevent an action for damages already suffered, till the by-law is quashed. The validity of such a by-law may be determined in certiorari proceedings. *Traves* v. *City of Nelson, In re Traves—Certiorari*, 7 B. C. R. 48.

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2. *Creating Debts.*

1. Aid to railway—*Roll on which electors voted — Quashing for irregularities.*] — By the (special) Vancouver Incorporation Act, 1886, s. 129, by-laws for raising money not for ordinary expenses must receive the assent of the electors, "and when such assent is received no such by-law shall be altered, amended or repealed by the council except as hereinafter provided." The (general) Municipal Act, 1892, s. 113, dealing with the same class of by-laws, provides, "No such by-law shall be altered or repealed except with the consent of the Lieutenant-Governor-in-council. The city of Vancouver passed a by-law, No. 159, aiding a railway by gift of municipal debentures. A question having been raised as to whether this by-law should have been voted upon by the electors upon the roll of 1891, instead of, as was the case, upon that of 1892, two new by-laws, Nos. 166 and 167, for the same purpose, were introduced and submitted to, and respectively received the assent of, each group of electors. These by-laws were similar to each other, but varied in substantial particulars from by-law 159. After they were passed, an order of the Lieutenant-Governor-in-council was obtained assenting to the alterations which they made in by-law 159. Upon motion to quash by-laws 166 and 167, as altering by-law 159, contrary to s. 129, supra:—Held, *per* DRAKE, J.: That s. 113 of the General Act, supra, applied, and that the assent of the Lieutenant-Governor-in-Council validated the by-laws, though obtained after they were passed. Upon appeal to the Full Court:—Held, *per* BEGBIE, C.J., CREASE and WALKEM, JJ., over-ruling DRAKE, J., and quashing the by-laws: That s. 129 of the special Act, supra, exclusively governed. That s. 113 of the subsequent general Act, supra, did not apply, and that, in any event, the language of that section was not enabling but necessitated the consent of the Lieutenant-Governor-in-council as an additional restriction upon the power to amend by subsequent by-law. *Per* BEGBIE, C.J., and CREASE, J.: The provisions of s. 128, s.-s. 3, are imperative, and the by-laws were bad for not setting out the total amount required to be raised annually to pay the debt and interest, etc. *Per curiam*: That it was no objection that the by-laws provided for handing over debentures of the city to the company to be aided, instead of the money proceeds thereof. *In re Bell-Irving and City of Vancouver: In the matter of the Vancouver Incorporation Act*, 1886, *and the Municipal Act*, 1892, *and By-laws* 166 *and* 167 *of the Corporation of the said City*, 4 B. C. R. 228.

2. Borrowing money to purchase electric plant — *Interest of mayor in company—Validity of.*]—A city by-law to borrow money for the purchase of an electric light plant belonging to a company is not invalid merely because the mayor was president of the company at the time of the passage of the by-law, and of the completion of the contract. A statement in a by-law that it shall come into force "on or after" a certain day, is a sufficient compliance with s.-s. 1 of s. 68, R. S. B. C. 1897, c. 144. Semble, that the Court has power in any case to afford relief where it is shewn that the council has not properly exercised its powers. Semble, that a by-law may be quashed on grounds not specified in the rule. Baird v. Almonte (1877), 41 U. C. Q. B. 415, considered. *Re Arthur and the Corporation of the City of Nelson*, 6 B. C. R. 323.

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3. *Quashing.*

1. Action for declaration of invalidity.]—By s. 278, Municipal Act, 1892, B. C., "Before any by-law . . . shall be valid or come into effect, the council shall cause it to be published once in every week for four weeks in, etc. . . . after which the by-law may be reconsidered by the council; and, if reconsidered and finally adopted by the council within thirty days from the termination of the four weeks of publication aforesaid, it shall come into effect after seven days from its final adoption by the council, unless the date of its coming into effect is otherwise postponed by such by-law." By s. 279, unless quashed, "the by-law shall, notwithstanding any want of substance or form, either in the by-law itself or in the time or manner of passing the same, be a valid by-law." The by-law in question was not reconsidered and finally adopted by the council within the thirty days above limited. No motion to quash the by-law within the time limited for that purpose had been made. The action was for a declaration that the by-law was invalid, and plaintiffs had obtained an interim injunction restraining actions against them in the County Court, to recover

a rate assessed against them thereunder:—Held, *per* DRAKE, J.: Dissolving the injunction, that the by-law was validated by s. 279. Semble, that the objection was not fatal to the by-law. On appeal to the Divisional Court:—Held, *per* CREASE and MCCREIGHT, JJ.: That the discretion of a superior Court is against assuming to restrain a number of actions in an inferior Court, merely because the question upon which they depend may be finally decided once for all in one Superior Court action. *Belrose* v. *The Municipality of Chilliwack*, 3 B. C. R. 115.

2. Application to quash.] — Held, by the Full Court (DAVIE, C.J., MCCREIGHT, and DRAKE, JJ., overruling WALKEM, J.), that the application to quash a by-law made within one month from the date of its publication in the British Columbia Gazette, though more than one month from the date of its passing the council, was "within one month of the passing of the by-law," according to the true interpretation of the language of s. 128 of the Municipal Act, 1892 (a), coupled with ss. 122, 125 and 126 (b). *Kane* v. *The Corporation of the City of Kaslo*, 4 B. C. R. 486.

3. Application to quash.]—An amendment to the special Act of the city of Vancouver required a three-fifths majority of votes to pass a certain class of by-laws requiring submission to the electors. An amendment to the general Municipal Act passed on the same day authorized such by-laws to be passed by a majority only of the electors, and gave the same power to the cities of Vancouver and New Westminster, notwithstanding anything in the special Acts relating to said cities inconsistent with or repugnant thereto. Upon a rule nisi to quash such a by-law, upon the ground that it received the assent of a majority only of the electors:—Held, by the Divisional Court (MCCREIGHT and WALKEM, JJ., overruling DRAKE, J.): Wherever there is a particular enactment, and also a general enactment, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative to the exclusion of the other. *Bailey* v. *The Corporation of the City of Vancouver*, 4 B. C. R. 433.

4. Application to quash.]—An application to quash a by-law made on the day next following the time limited by R. S. B. C. c. 144, s. 89, which time expired upon a holiday, is in time. R. S. B. C. c. 1, s. 10, s.-s. 20, is not confined to matters of procedure only. *In re Nelson City By-law, No. 11*, 6 B. C. R. 163.

5. By-law prohibiting sale of personal property on Sunday—*Whether unreasonable.*] — The Vancouver Incorporation Act, 1886 (private), as amended by stat. B. C. 1886, c. 68, s. 18, gave the municipal council of the city power to pass by-laws: "For the prevention of sales . . . of any . . . personal property whatsoever, except . . . milk, drugs or medicine . . . on Sundays." The city passed a by-law prohibiting the sale on Sundays in the city of any personal property, with the exceptions mentioned in the statute. Upon appeal by defendant from a conviction under the by-law for selling fruit on a Sunday:—Held, 1. That the Provincial Legislature having power to deal with the subject, it was no objection that the provision was inconsistent with the Lord's Day Act, 29 Car. II., c. 7. A by-law cannot be successfully attacked upon the ground of unreasonableness, where its provisions are in the terms of the enabling statute, for the objection is then to the unreasonableness of the statute. *Reg.* v. *Petersky*, 4 B. C. R. 385.

6. Inequality.] — A by-law that is not just and equal in its operation, or which is unreasonable, or permits favouritism, is void. A magistrate is bound to decide all questions raised before him as to the validity of statutes or by-laws. Jonas v. Gilbert, 5 S. C. R. 356; Re Nash and McCracken, 33 U. C. R. 181; and Regina v. Johnstone, 38 U. C. R. 549, referred to and followed. *Regina* v. *Russell*, 1 B. C. R., pt. 1., 256.

7. Quashing — *Mis-statement of fact on face of.*]—An agreement relating to the railway enterprise to be assisted by the by-law was referred to as "made and concluded" between the contracting railway companies, but the agreement was set forth in the by-law, and appeared without signatures; in fact, at the date of the publication of the by-law, it had only been executed by one of the railway companies:—Held, that there was no misrepresentation of fact such as to avoid the by-law on that ground. *Re Bell-Irving and Vancouver*, 4 B. C. R. 219.

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4. Submission to Electors.

1. Assessment rolls—*Voting on by-laws.*] —Section 127 of the Vancouver Incorporation Act gives the right to vote on by-laws requiring the assent of the electors to certain persons rated to the amount of $500 of real property on the revised assessment roll "on which the voters' lists of the city are based." The by-law in question was submitted to the electors upon the assessment rolls for the current year, which had not then been finally revised:—Held, that the words supra, "on which the voters' lists are based," are descriptive merely, and do not mean the voters' lists which must at that time be used in an election for councillor. Remarks on the impropriety of effectuating an inference by the interpolation of language not found in a statute. An agreement relating to the railway enterprise to be assisted by the by-law was referred to as "made and concluded" between the contracting railway companies, but the agreement was set forth in the by-law, and appeared without signatures; in fact, at the date of the publication of the by-law, it had only been executed by one of the railway companies:—Held, that there was no misrepresentation of fact such as to avoid the by-law on that ground. *In Re Bell-Irving and City of Vancouver: In the matter of the Vancouver Incorporation Act, 1886, and the Municipal Act, 1892, and by-law 159 of the corporation of the said city.* 4 B. C. R. 219.

2. Assessment rolls—*Right to vote.*]—By the (general) Municipal Act, 1892, s. 113, s.-s. 4, by-laws for contracting debts not required for ordinary expenditure, and not payable within the same municipal year, "shall recite: (2) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest, and (4) the annual special rate in the dollar for paying the interest and creating an equal yearly sinking fund for paying the principal of the new debt." By s. 4 of the same Act, "This

Act shall be construed as applying to the cities of New Westminster and Vancouver only, so far as it is not repugnant to or inconsistent with their Acts of Incorporation." By the Vancouver Incorporation Act (private) 1886, c. 32, s. 128, as amended by c. 62 of 1892, s. 5, each of such by-laws "(1) shall name a day in the financial year in which the same is passed, when the by-law shall take effect, and (3) the amount of the debt which such new by-law is intended to create, and, in some brief and general terms, the object for which it is to be created:"—Held, by the Divisional Court (BEGBIE, C.J., CREASE, and WALKEM, JJ., overruling the judgment of MCCREIGHT, J., ante page 219): (1) That the provisions of s. 113 of the (general) Municipal Act, supra, are not repugnant to or inconsistent with the provisions of s. 128 of the Vancouver Incorporation Act, supra, and that by-law 159 of Vancouver is invalid for non-compliance with s. 113. (2) That s. 127 of the Vancouver Incorporation Act, 1886, providing that "the right of voting on by-laws requiring the assent of the electors shall belong to persons rated, etc., on the revised assessment roll on which voters' lists of the city are based," confers the right to vote only upon persons on the revised assessment roll upon which the existing voters' lists are based, and the description is not satisfied by persons upon the last revised assessment roll, upon the basis of which the voters' lists for the current year have not yet been made up. *Bell-Irving and City of Vancouver: In the matter of the Vancouver Incorporation Act, 1886, and the Municipal Act, 1892, and the by-law 159 of the Corporation of the said City.* 4 B. C. R. 300.

3. Vancouver Incorporation Act — *Statutes — Construction of—Conflict between special and general Acts.*]—An amendment to the special Act of the city of Vancouver required a three-fifths majority of votes to pass a certain class of by-laws requiring submission to the electors. An amendment to the (general) Municipal Act, passed on the same day, authorized such by-laws to be passed by a majority only of the electors, and gave the same power to the cities of Vancouver and New Westminster, notwithstanding anything in the special Acts relating to said cities inconsistent or repugnant thereto. Upon a rule nisi to quash such a by-law upon the ground that it received the assent of a majority only of the electors: — Held, by the Divisional Court (MCCREIGHT and WALKEM, JJ., overruling DRAKE, J.): Wherever there is a particular enactment and also a general enactment, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative to the exclusion of the other. *Bailey v. Vancouver*, 4 B. C. R. 433.

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5. *Miscellaneous.*

1. Fire limits.] — The city of Victoria corporation, under the Municipal Act, 1881, passed a by-law which defined fire limits, within which limits no wooden building was to be altered without the permission of the inspector and a majority of the fire wardens. The defendant was convicted of a breach of this by-law for having altered his building (a wooden building existing in 1881), without permission:—Held, that the corporation under the Municipal Act, 1881, c. 16, s. 104, s.-ss. 78 and 58, had no power to regulate mere alterations in existing houses, and therefore the by-law was ultra vires. *Regina v. On Hing*, 1 B. C. R., pt. II., 148.

2. Lodging house.]—Where a by-law requiring lodging house keepers to take out a license, did not define what was meant by keeping a lodging house:—Held, that it did not apply to a person not engaged in such occupation for profit. *Re Gun Long*, 7 B. C. R. 457.

3. Municipal law — *Saloons—Bar-rooms—Sunday Closing By-law—Validity of—R. S. B. C. 1897, c. 144, s. 50, s.-ss. 109 and 110, and c. 124, s. 7.*] — A municipality has no power, under s. 50, s.-ss. 109 and 110, of the Municipal Clauses Act, to pass a by-law closing any kind of licensed premises, except saloons. A municipality is not empowered, by s. 7 of the Liquor Traffic Regulation Act, to pass any closing by-law, the intention of the section being to prohibit the sale during, inter alia, such hours as may be prescribed by the municipality under the authority of some other statute. Where a statute creates offences and provides the necessary machinery for the carrying out of its provisions, a by-law to put it in force is unnecessary and bad. *Hayes v. Thompson*, 9 B. C. R. 249.

III. CONTRACTS.

1. Control of Courts.]—Acts within the discretionary powers of a municipal council are not subject to judicial control, except where fraud is imputed and shewn, or there is a manifest invasion of private rights. Injunction to restrain the corporation from proceeding with a contract awarded to other than the lowest tenderer, refused, and action dismissed. *Haggerty v. The City of Victoria*, 4 B. C. R. 163.

2. Seal.] — Section 82 of the Municipal Act, 1892, providing: "Each municipal corporation shall have a corporate seal, and the council shall enter into all contracts under the same seal, which shall be affixed to all contracts by virtue of an order of the council," is imperative, and applies to all contracts of the corporation. That the contract was in fact wholly executed, and the work completed and accepted by the corporation, and part payment therefor made, and that the clerk of the corporation had acknowledged an order by the contractor in favour of the plaintiffs:—Held, not to operate to cure the objection that the contract was not under seal. *United Trust Company v. Chilliwack*, 5 B. C. R. 128.

3. Seal.]—Section 82, supra, providing: "Each municipal corporation shall have a corporate seal, and the council shall enter into contracts under the same seal, which shall be affixed to all contracts by virtue of an order of the council," is imperative and applies to all contracts by municipal corporations subject to the Act. *Paisley v. Corporation of Chilliwack*, 5 B. C. R. 132.

IV. DEBENTURES.

1. Money loaned on—*Assumption of risk as to regularity of proceedings.*]—The lender

of money to a municipality on its debentures, is bound, at his own risk, to see that the proceedings leading up to their creation and issue are legal and regular. Certain by-law declared bad for non-compliance with statutory requirements. *Wiltshire* v. *The Township of Surrey et al.*, 2 B. C. R. 79.

V. Members of Council.

1. Alderman—*Interest of—By-law closing road.*]—The roads mentioned in s.-s. 127 of s. 50 of the Municipal Clauses Act, which may be closed by by-law, are not only such roads as are wholly situate within the limits of the municipality, but include also highways or trunk roads leading into the districts beyond the boundaries. *Styles* v. *The Corporation of the City of Victoria*, 8 B. C. R. 406.

2. Alderman—*Qualification for.*]—A person to be qualified for alderman for Victoria city, must be the owner, in his own right, of property of the clear unincumbered value of at least $500, during the whole period of the six months preceding nomination. The period prescribed by s. 86 of the Municipal Elections Act for taking proceedings by way of election petition or quo warranto, does not apply to a qui tam action brought under s. 20 of the Municipal Clauses Act. *Falconer* v. *Langley*, 6 B. C. R. 444.

3. Contract by alderman.]—An alderman who has contracted to supply a person, who has a contract with his municipality, materials to carry it out, has "an interest in a contract with it for the municipality, either directly or indirectly," within the meaning of the Municipal Act, 1892, B.C., s. 30, s.-s. 10. *Coughlan & Mayo* v. *The Corporation of the City of Victoria, Antoine Henderson, James Munro Miller and James Baker*, 3 B. C. R. 57.

4. Qualification for municipal councillor—*Construction of statute.*] — By the Municipal Act, 1881, it was provided as an essential qualification for the position of municipal councillor, that the candidate should have paid all taxes due to the municipality. By the same Act, such taxes were provided to be paid to the "collector" of the municipality. C. having paid all his taxes to the municipal treasurer in due time, and being in all other respects qualified, W., the returning officer, refused him nomination and a poll for non-payment of taxes to the collector. B., the only other candidate, was declared elected by acclamation:—Held, that the taxes were duly paid, and that C. was duly qualified. New election ordered. *Cawley* v. *Branchflower and Webb*, 1 B. C. R., pt. II., 35.

VI. Officials or Servants.

1. Election to office.] — A person duly elected, at a meeting of the municipal council, to municipal office, pursuant to a statute giving the municipal corporation power so to appoint its officers, becomes thereby the servant of the corporation without further evidencing or ratification of the contract of hiring, either by writing under the corporate seal or otherwise, and can maintain an action for damages if not received into the employment in pursuance of the contract of hiring implied by such appointment. (2) The defendants having refused to receive the plaintiff, appointed as above, into the employment, he sued for wrongful dismissal:—Held, that his action should have been for the wrongful refusal to receive into the employment; but amendment allowed at the trial. *Tuck* v. *The Corporation of the City of Victoria*, 2 B. C. R. 179.

2. Legal advisers—*Appointment of.*]—Plaintiffs, by their statement of claim, alleged that they were solicitors in partnership and that they were duly appointed to be the "legal advisers" to the corporation, the defendants. This allegation was not denied or put in issue by the defendants' pleadings. Plaintiffs were afterwards continuously and exclusively employed as the solicitors of the corporation:—Held, that the defendants were debarred from denying a due appointment, viz. an appointment under seal. In conformity with a resolution of the mayor and council, their clerk, by a letter under the corporate seal, addressed to the plaintiffs, informed them that they had been appointed to be the "legal advisers" of the corporation. Semble, this might be insisted on as an appointment under seal. The designation "legal advisers" being ambiguous, may be interpreted to mean "solicitors" or "attorneys" by reference to the circumstances of the parties at the time of the appointment, and the acts of the parties subsequently; and was so interpreted in this case. Quære, whether an unambiguous term (e.g., standing counsel to the corporation) would not require to be strictly construed? An appointment to be solicitor to a corporation operates as a general retainer. Observations as to the effect of a retainer, and as to the functions of a solicitor and counsel. *Drake & Jackson* v. *Corporation of Victoria*, 1 B. C. R., pt. II., 165.

3. Salary.]—Sub-section 13 of s. 150 of the Act requiring a two-thirds vote of the members present for rescinding previous actions of the council, does not apply to a resolution of the council altering the amount of salary payable to an officer whose engagement might, under s. 154, have been terminated by one month's notice on either side. *Tetley* v. *City of Vancouver*, 5 B. C. R. 276.

4. Tenure of office.]—Under s. 45 of the Municipal Clauses Act, a municipal officer holds office "during the pleasure of the mayor or council," and so may be removed at any time without notice or cause shewn therefor. A tax sale by-law provided that the collector should be entitled to a commission on all arrears of taxes collected:—Held, that where lands were bid in by the municipality because the amount offered at the sale was less than the arrears of taxes and costs owing on the lands, the collector was not entitled to a commission on the price of lands so bid in. The *Municipality of the District of North Vancouver* v. *Keene*, 10 B. C. R. 276.

VII. Parks.

1. Trust estate — *Conveyance of lands embraced in.*]—The corporation of Victoria was, under an Act of Parliament, seised of 120 acres, upon trust, to lay out and maintain the same as a public park or pleasure ground for the enjoyment and recreation of the inhabitants:—Held, that the corporation could

not convey any of such land free from that trust:—Held, that cattle lairs, an agricultural hall for the exhibition of farming implements and products, and an emigrant's home, were not within the objects of the trust. An individual inhabitant cannot sue to restrain a misuse of the park, unless specially injured thereby; but the Attorney-General must join or be joined. It is the duty of the Attorney-General, in cases of disputed rights, to remove obstacles in the way of trial of those rights—receiving an indemnity as to costs. *Anderson* v. *Corporation of City of Victoria and others, and The Attorney-General* (on the information of Anderson) v. *Corporation of City of Victoria and others*, 1 B. C. R., pt. II., 107.

VIII. Public Works.

1. Bridges—*Falling into decay—Liability for.*] — *Per* McColl, J.:—At the trial, on motion for judgment (concurred with by McCreight, J., on appeal): If a municipal corporation knows, or ought to know, that a highway bridge within its limits is unsafe, yet throws it open to the use of the public, that act is a breach of a positive duty which it owes to the public, and is an act of negligent misfeasance, which renders the corporation liable for injuries resulting from the subsequent collapse of the bridge, although the unsafe condition of the bridge was not occasioned by any act of the corporation. On appeal to the Full Court: *Per* Davie, C.J., and McCreight, J.: A municipal corporation is liable for damages caused by a dangerous nuisance created by it on a highway within the limits of its control, and the misconduct will be treated as misfeasance, and not mere nonfeasance, if the injury arises from a combination of acts and omissions on the part of the corporation, where the boring of a beam rendering it more liable to rot, and its subsequent non-removal, though the acts without the omissions would not have caused the injury. *Per* Drake, J., dissenting: (1) That the corporation were the governing body selected to execute only such duties and powers as were created by their municipal charter. That they were not liable in damages for permitting the public works to fall into decay. That the boring of the floor beam in the bridge complained of, and attributed as the cause of the disaster, was not negligent, and did not in itself effect the strength of the beam, and that the subsequent non-removal of the beam was mere nonfeasance. (2) The doctrine that an action lies for the non-exercise of statutory powers, which, if reasonably exercised, would have avoided the injury complained of, has no application to municipal corporations. *Per* McColl, J. (at the trial): There cannot be a nonsuit, nor can leave to enter a nonsuit be reserved, without the consent of the plaintiff. *Patterson* v. *The Corporation of the City of Victoria*, 5 B. C. R. 628.

2. Bridge—*State of decay—Liability for.*] —Where a statute enacts that roads and bridges are originally vested in the Province, but may be adopted by a municipality—no special form of adoption, however, being necessary—acts done and authority exercised by a corporation in respect of such roads and bridges will, in the absence of evidence to the contrary, be taken as proof of adoption. A bridge within the limits of the appellant corporation gave way and persons were drowned. The jury found that the proximate cause of the accident was the defective condition of a beam, into which, some years previously, an officer of the corporation had bored holes. There was evidence that for a considerable time the corporation had undertaken the care and management of the bridge:—Held, as a matter of legal inference from the facts found, that the corporation had adopted the bridge, and were, therefore, liable for damages in respect of the accident. Appeals from judgment of the Supreme Court of British Columbia, dated April 1st, 1898, by which application by the appellants for judgment or new trial was dismissed. *Victoria Corporation* v. *Lang*, taken from 68 L. J. P. C. 128. (Apparently not reported in B. C. Reports, being similar to Patterson v. Corporation of Victoria.)

3. Bridges—*Public harbour—Sanction of Dominion Government.*]—The municipal corporation of the city of Victoria, having by special resolution appropriated $5,200 to defray the cost of constructing a bridge over navigable water, part of a public harbour within the city limits, did not obtain the sanction of the Dominion Government to the work, and proceeded to execute it in such a way as to interfere with navigation. Upon information by the Attorney-General of Canada, an injunction was granted restraining the continuation of the work. This action was then brought by the plaintiff individually as a ratepayer to restrain the corporation from expending any part of the $5,200 in payment for the work:—Held, that an injunction should be granted restraining the application of the money to any further construction of the bridge, but refused as to payment for work bona fide done upon that part of it already completed. As to the frame of the action: (1) That the Provincial Attorney-General was not a necessary party. (2) That the plaintiff should sue on behalf of himself and all other ratepayers, except the aldermen. (3) That both the corporation and the members thereof, responsible for the illegal action, should be parties defendants. *Elworthy* v. *The Corporation of the City of Victoria*, 5 B. C. R. 123.

4. Closing street by by-law.] — The roads mentioned in s.-s. 127 of s. 50 of the Municipal Clauses Act, which may be closed by by-law, are not only such roads as are wholly situate within the limits of the municipality, but include also highways or trunk roads leading into the districts beyond the boundaries. *Styles* v. *The Corporation of the City of Victoria*, 8 B. C. R. 406.

5. Corporation an insurer of latent defects in highways.]—Corporations undertaking to manage highways are not insurers against latent defects, they are only bound to take reasonable care. No action could be maintained at common law for an injury arising from the non-repair of a highway, but a duty may be cast by statute upon a corporation to repair, and if that is clearly done it will be answerable in an action of negligence. The Municipal Act, 1892, B. C., s. 104, s.-s. 90, gave the defendant corporation power to raise money by way of road tax, and to pass by-laws dealing with roads, streets and bridges:—Held, that no duty to keep the streets in repair was thereby laid on defendants. *Lindell* v. *Corporation of the City of Victoria*, 3 B. C. R. 400.

6. Grade of street—*Lowering of.*]—The Act incorporating the city of New Westminster, 51 Vict. c. 42 (B.C.), by s. 190, empowers the council of the city to order by by-law the opening or extending of streets, etc., and for such purposes to acquire and use any land within the city limits, either by private contract or by complying with the formalities prescribed in s.-s. 3 and 4 of said section, which provide for the appointment of commissioners to fix the price to be paid for such land; s.-s. 13 provides for the confirmation of the appointment and also for the deposit in Court of said price by the council, which deposit should vest in them the title to said land. Sub-section 17 of s. 190 enacts that s.-ss. 3 and 4 shall apply to cases of damage to real or personal estate, by reason of any alteration made by order of council in the line or level of any street, and for payment of the compensation therefor without further formality. The council was authorized by by-law to raise money for improving certain streets, but no by-law was passed expressly ordering such improvements. In one of the streets named in said by-law the grade was lowered, in doing which the approach to and from an adjacent lot became very difficult, and no retaining wall having been built, the soil of said lot caved and sunk, thereby weakening the supports of the buildings thereon:—Held, affirming the decision of the Court below, RITCHIE, C.J. and TASCHEREAU, J., dissenting, that the owner of said lot could maintain an action for the damage sustained by lowering the grade of the street, and was not obliged to seek redress under the statute; that s.-s. 17 of s. 190, which dispenses with the formalities required by prior sub-sections, only applies to cases where land is injuriously affected by access thereto being interfered with, and where land is taken or used for the purposes of work on the streets, the corporation must comply with the formalities prescribed by s.-ss. 3 and 4; that the street having been excavated to a depth which caused a subsidence of adjoining land, the latter must be regarded as having been taken and used for the purposes of the excavation, and the council should have acquired it under the statute; not having so acquired it, and having neglected to take steps to prevent the subsidence of the adjacent land, they were liable for damage thereby caused:—Held, further, that the neglect to take such precautions was in itself, however legal the making of the excavation may have been if skillfully executed, such negligence in the manner of executing it, was to entitle the owner of the adjacent land to recover damages for the injury sustained: — Held, *per* PATTERSON, J., that in the absence of the statutory preliminaries a municipality has no greater right than any other owner of adjacent land to disturb the soil of a private person. Appeal from a decision of the Supreme Court of British Columbia, affirming the judgment at the trial in favour of the plaintiff. *The Corporation of the City of New Westminster* v. *Mannella Brighouse*, taken from 20 S. C. R. 520. Apparently not reported in B. C. R.

7. Highway authority — *Negligence—Respondeat superior—Contractor or servant—Misfeasance or nonfeasance — Trial—Cross-examining questions to jury—Right of jury to find general verdict.*]—A municipal corporation which had statutory power to enter lands and take, without payment, gravel for its roads, let a contract for grading and gravelling a road within its limits, which contained no provision as to where the gravel was to be obtained. The contractor entered adjacent private property and took gravel from a pit thereon in such a manner as to undermine a large tree standing close to the road allowance, which, by reason thereof, afterwards fell upon and killed plaintiff's husband who was driving on the road. To be assured of its quality, the taking of the gravel was superintended by the municipal road inspector. The jury found that the excavation was done by the order or permission of the corporation, and that irrespective of who caused the excavation, the subsequent condition of the tree was a dangerous nuisance to the highway, of which the corporation had notice:—Held, *per* DAVIS, C.J., on motion for judgment, that upon the findings of the jury, the corporation was liable: (1) For negligent misfeasance in regard to the excavation, and that a contention that the act was that of an independent contractor, was untenable. (2) For knowingly maintaining a dangerous nuisance causing the injury. Upon appeal to the full Court, *per* MCCREIGHT, J., WALKEM, J., concurring: (1) The corporation was responsible for the act of the contractor in undermining the tree, to the same extent as if he was a labourer acting under the orders of the road inspector or the board of works. (2) If one employs a contractor to do a work not necessarily a nuisance, but which becomes so by reason of the manner in which the contractor has performed it, and the employer accepts the work in that condition, he becomes at once responsible for the nuisance. (3) He who knowingly maintains a nuisance is as liable for its consequence as he who created it. (4) The jury may believe part and reject part of a witness' evidence. (5) Cross-examining questions to a jury are not to be encouraged, as they are calculated to induce the jury to stand on their undoubted right to return a general verdict. *Per* MCCOLL, J.: The corporation was under an obligation to the public so to exercise its powers of repairing the highway as not to render its use dangerous to the lives of passengers thereon by the absence of reasonable precautions against obvious risks from falling trees, and the circumstance that the corporation exercised its powers through the instrumentality of their contractor, did not absolve it. *Per* DRAKE, J. (dissenting): (1) That the contractor was, on the facts, an independent contractor, and was not a servant of the corporation. That the work to be done for the corporation, as provided by the contract, was not necessarily attended with risk in regard to the tree, and in that negligence was therefore casual and collateral to the performance of the contract, and the corporation was not liable for it. (2) That the statutory authority to the corporation to enter lands and take gravel for roads, did not extend to their contractor, and he was not, therefore, its agent quoad hoc. (3) That the negligence alleged and proved consisted in leaving a tree standing which ought to have been removed, and was, therefore, mere nonfeasance and not actionable. *Steves* v. *The Corporation of the District of South Vancouver*, 6 B. C. R. 17.

8. Municipal Clauses Act, s. 135—*Assessment of private streets.*]—A street, the fee in which is in a private owner, who, however, cannot close it by reason of lots abutting thereon having been sold according to a plan shewing said street, should be assessed at a nominal figure only. An appeal lies from a decision of the Court of Revision in relation

to the assessment of such property to a Judge of the Supreme Court. *In re Smith Assessment Appeal*, 6 B. C. R. 154.

9. Sewer—*Compensation.*]—Before entering on land for the purpose of putting a sewer through it, the city of Vancouver must compensate the owner of the land through which it is proposed to lay the sewer. *Arnold* v. *The Corporation of the City of Vancouver*, 10 B. C. R. 198.

10. Sidewalk.]—The defendant corporation constructed a sidewalk and street crossing in such a manner that the defendant, walking upon the sidewalk at night with reasonable care, failed to step on to the crossing, which was of less width than the sidewalk, but stepped over its outer edge on to the ground, which at that point was at a considerably lower level, thereby sustaining injury:—Held, that the method of construction constituted a misfeasance by the corporation, and that it was liable in an action for damages. *Smith et Uxor* v. *City of Vancouver*, 5 B. C. R. 491.

IX. Taxation.

1. Assessment—*Appeal—Court of Revision.*]—No appeal lies from the decision of a Judge on an appeal from the Court of Revision had under s. 56 of the Vancouver Incorporation Act. An objection to an appeal on the ground that the Court has no jurisdiction to hear it is not a preliminary objection within s. 83 of the Supreme Court Act. Although the Full Court has no jurisdiction to hear an appeal, it has jurisdiction to award costs in dismissing it. Under s. 38 of the Vancouver Incorporation Act, 1900, all ratable property for assessment purposes shall be estimated at its actual cash value, as it would be appraised in payment of a just debt from a solvent debtor:—Held, *per* Irving, J., that in estimating the value of an expensive residence built by its owner, it is fair to assume that the owner will not permit his property to be sacrificed, and therefore a valuation approaching to nearly the actual costs is not excessive. *In re Vancouver Incorporation Act, 1900, and B. T. Rogers*, 9 B. C. R. 373.

2. Assessment.]—Defendant was the occupier of one of several stores on the ground floor of a building belonging to the Dominion Government, and was assessed under s. 168, s-s. 4 (a) of the Municipal Clauses Act, for taxes in respect of land and improvements. The assessment roll described the property as "parts of lots 1,605 and 1,607, Block 1; measurement, 23 x 66; Government street; land, $12,650; improvements, $920; total, $13,570:" — Held, by Drake, J., dismissing an action to recover taxes: (1) That defendant was an occupant of part of the improvements only, and not of the land. (2) The assessment was invalid because the lands and improvements were insufficiently described. (3) The Act provides no procedure for such an assessment. (4) Where an assessment is illegal, the person assessed is not bound to appeal to the Court of Revision, but may successfully raise the question of his liability in an action to recover taxes. *Victoria* v. *Bowes*, 8 B. C. R. 363.

3. Assessment.] — A street, the fee in which is in a private owner, who, however, cannot close it by reason of lots abutting thereon having been sold according to a plan shewing said street, should be assessed at a nominal figure only. An appeal lies from a decision of the Court of Revision in relation to the assessment of such property to a Judge of the Supreme Court. *In re Smith Assessment Appeal*, 6 B. C. R. 154

4. Assessment—*Income of locomotive engineers—Taxation—R. S. B. C.* 1897, *c.* 179.] —The earnings of railway locomotive engineers, who receive pay according to the number of miles they run their locomotives, are "income," within the meaning of that term as used in the Assessment Act prior to the amendment of 1901, and so liable to taxation. *In re The Assessment Act*, 9 B. C. R. 60.

5. Assessment—*Income of locomotive engineers—Taxation—R. S. B. C.* 1897, *c.* 179.] —The earnings of railway locomotive engineers, who receive pay according to the number of miles they run their locomotives, are not "income," within the meaning of that term as used in the Assessment Act prior to the amendment of 1901, and are therefore not liable to taxation. Decision of Irving, J., reported, ante p. 60, reversed. *In re The Assessment Act*, 9 B. C. R. 209.

6. Assessment — *Name on roll.*]—The mere fact that a person is named in the assessment roll of a municipality as the owner of certain real estate, does not make him personally liable for the amount of the assessment. Sections 134 and 155 of the Municipal Clauses Act, considered. Quære, whether a person whose name was once properly on the assessment roll would be liable for taxes after he had parted with his interest in the property but had omitted to have his name removed. *Coquitlam* v. *Hoy*, 6 B. C. R. 458.

7. Assessment — *Name on roll.*]—The mere fact that a person is named in the assessment roll of a municipality as the owner of certain real estate, does not make him personally liable for the amount of the assessment. Sections 134 and 155 of the Municipal Clauses Act, considered. Quære, whether a person whose name was once properly on the assessment roll would be liable for taxes after he had parted with his interest in the property but had omitted to have his name removed. Where an assessor exceeds his jurisdiction, the person assessed is not bound to appeal to the Court of Revision, but may successfully raise the question of his liability in an action to recover taxes. *Coquitlam* v. *Hoy*, 6 B. C. R. 546.

8. Clubs—*Right of municipality to tax.*] —*Victoria* v. *Union Club*, 3 B. C. R. 363.

See Intoxicating Liquors.

9. Fire insurance company.] — In an action against defendant company under the Fire Companies' Aid Amendment Act of 1871, which applies only to Victoria, for taxes due by it as a company issuing policies within city limits, it was held by Martin, J., at the trial, dismissing the action, that the plaintiff had failed to establish agency:—Held, by the Full Court, dismissing plaintiff's appeal, that the action was misconceived: that the tax sought to be recovered was not on the company directly, but in respect of a special form of agency described in the statute; and the evidence negatived the existence of such an

agency. *Dowler* v. *Union Assurance Society of London*, 9 B. C. R. 196.

10. Interest of homesteader.]—Where the fee still remains in the Crown, the interest of the holder of a homestead claim is not subject to taxation by a municipality, although the holder personally is. *King* v. *The Municipality of Matsqui*, 8 B. C. R. 289.

11. Measure of value.]—The measure of value for purposes of taxation, prescribed by s. 113 of the Municipal Clauses Act, is the actual cash selling value and not the cost. *In re Municipal Clauses Act and J. O. Dunsmuir*, 8 B. C. R. 361.

12. Measure of value for assessment.]—The measure of value of improvements for purposes of taxation, prescribed by s. 38 of the Vancouver Incorporation Act, 1900, is the actual cash selling value and not the cost. In re Municipal Clauses Act and J. O. Dunsmuir (1898), 8 B. C. 361, followed. In re Vancouver Incorporation Act, 1900, and B. T. Rogers (1903), 9 B. C. R. 373, not followed. *In re Vancouver Incorporation Act, 1900, and B. T. Rogers*, 9 B. C. R. 495.

13. Sale of land—*Regularity of proceedings—Title based on.*]—In an action for the recovery of land, a plaintiff who relies on a certificate of title based on a tax deed, is not called upon to prove the regularity of the tax sale proceedings until the defendant shews some title to the land in question. *Carroll* v. *The Corporation of the City of Vancouver*, 10 B. C. R. 179.

14. Sale of land for—*Exhausts lien.*]—A sale of land for taxes under a by-law passed pursuant to the Municipality Act, 1892, s. 104, s.-s. 115, exhausts the lien of the municipality upon the lands, for taxes, given by s. 202 of the Act; and the purchaser at the tax sale takes the lands discharged of any lien in respect of taxes actually due at the time of the sale, over and above the taxes for which the land was sold. *Jamieson* v. *City of Victoria*, 6 B. C. R. 109.

15. Tax sale—*Order confirming.*]—An order, under s. 151 of the Municipal Clauses Act Amendment Act of 1898 and amendments of 1899 and 1900, confirming a tax sale, will not be made without notice of the petition for the order being given to the persons whose property is being sold. *Re South Vancouver Tax Sale*, 9 B. C. R. 572.

16. Tax sale—*Subsequent sale by corporation—Redemption—Specific performance.*]—At a tax sale in November, 1899, as the price offered for a lot owned by one Beatty was less than the arrears of taxes, it was bid in by the corporation. In September, 1902, plaintiff wrote the corporation asking if they would accept "the taxes and costs" for the property, and the next day the council passed a resolution reciting plaintiff's offer and resolving to accept for the property the amount of "taxes, costs and interest," amounting to $88, and the reeve and clerk were authorized to issue a deed for that price, and a deed in the statutory form of conveyance by the officers upon a sale for taxes was prepared and signed and the corporate seal attached, but was not delivered to plaintiff, who then demanded the deed and tendered his cheque for $88. Subsequently the clerk received from the agent of Beatty $88, and returned plaintiff his cheque, informing him that Beatty had redeemed his property. Plaintiff sued for specific performance:—Held, *per* HUNTER C.J., at the trial, that no cause of action existed against the corporation, and that the action lay, if at all, only against the reeve and clerk as personæ designata:—Held, on appeal, reversing the decision of HUNTER, C.J. (IRVING, J., dissenting), that a contract had been made out and that plaintiff had a good cause of action against the corporation, but that as the land had been redeemed by the original owner specific performance could not be granted, and it was therefore referred to the Registrar to assess the damages. *Per* IRVING J. (dissenting): The resolution of 3rd September did not satisfy the requirements of s. 26 of the Municipal Clauses Act, which requires all contracts to be made under seal; a resolution to sell must be followed up by a contract under the corporate seal, placed there by order of the council. *Tracy* v. *The Corporation of the District of North Vancouver*, 10 B. C. R. 235.

X. TRADE REGULATIONS.

1. Conviction for retail sale without license.]—P. was convicted before a justice of the peace for soliciting in Victoria orders for the sale by retail of goods to be supplied by a firm doing business outside the province of British Columbia. By the Municipal Act, 1891, B. C. 54 Vic. c. 29, s. 166, "Every municipality shall, in addition to the powers of taxation by law conferred thereon, have the power to issue licenses for the purposes following, and to levy and collect by means of such licenses the amounts following:—" (12) From every person who, either on his own behalf or as agent for another or others, sells, solicits, or takes orders for the sale by retail of goods, wares or merchandise to be supplied or furnished by any person or firm doing business outside the province and not having a permanent and licensed place of business within the province, of a sum not exceeding $50 for every six months." By by-law, following the language of s.-s. (12) supra, except that the words "permanent or licensed place of business" are substituted for "permanent and licensed place of business," the license fee was fixed at $50:—Held, 1. The statute, by-law, and license tax thereunder, are not as contended ultra vires, (*a*) for interference with trade and commerce, or (*b*) for unlawful discrimination against traders outside the province. 2. The imposition of the license tax in question is within the powers relegated to provincial control by the B. N. A. Act, s. 92, s.-s. 16. 3. The word "and" in the statute, supra, should be construed "or." *Poole* v. *The City of Victoria*, 2 B. C. R. 271.

2. Discrimination against particular nationalities.]—It is not competent to the Provincial Legislature, or to a municipality, to deprive, generally, particular nationalities or individuals of the capacity to take out municipal trade licenses; *e.g.*, a Chinaman has a right to apply for a pawnbroker's license. *Regina* v. *Corporation of Victoria, at the prosecution of Mock Fee and another*, 1 B. C. R. pt. II., 331.

3. Goods sold on commission.]—Where goods are consigned by the owner to be sold on commission and they are sold by the consignee by auction in premises rented by him, the owner is not an occupant of such premises nor a transient trader within the Municipal Clauses Act (R. S. B. C. 1897, c. 144, s. 171, s.-s. 23), 4a amended in 1898 (c. 35, s. 19). To support a conviction it is essential that the person charged occupy premises in the municipality. *Regina* v. *Wilson*, 7 B. C. R. 112.

4. Hawking regulations.]—The Vancouver Incorporation Act, 1886, s. 142, s.-s. 71, as amended by the Vancouver Incorporation Amendment Act, 1889, s. 33, empowered the council to pass by-laws: (*a*) "For licensing, regulating and governing hawkers, etc., of any goods for sale, etc., and for fixing the sum to be paid for a license for exercising such calling within the city, and the time the license shall be in force." "(*b*) Provided, always, that no such license shall be required for hawking or peddling any goods, etc., the growth, produce or manufacture of this province." By-law 202, of the City of Vancouver, purporting to have been passed under the powers conferred by s.-s. 71 (*a*) supra, provided: "No sale of vegetables, etc., shall be made in the city by any dealer, huckster, etc., unless at a permanent place of business for the sale of the said articles, before the hour of nine o'clock in the forenoon of each day of the week, excepting Saturdays, and then not before 4 o'clock in the forenoon, except at the market place; and no such dealer, huckster, etc., shall sell or offer for sale any of the before-mentioned goods at any place other than the market or from a recognized store, without first having paid the market fees payable by him or her, the amount of which fees and where payable may from time to time be fixed and regulated by resolution of the council." The defendant was convicted of offering vegetables, which appeared to have been grown in the province, for sale between the hours of seven and eight o'clock a.m.:—Held, *per* DRAKE, J., on appeal, quashing the conviction: (1) That the power to fix the license fee by by-law did not authorize a by-law regulating it to the council to fix the fees by resolution. (2) That the imposition of a fee, in effect a license fee, "to be fixed," etc., was bad for uncertainty. (3) That the partial prohibition and regulation by the by-law as to sales by hawkers in effect involved the imposition of a license tax upon them in the exercise of the calling, and that the case of the defendant as hawker of vegetables grown in the province was within the exception provided by s.-s. (*b*). (4) A by-law may be good in part and bad in part, but the part that is good must be clearly distinguished from the part that is bad, so that if the invalid portion is eliminated there will still remain a perfect and complete by-law capable of being enforced. *Regina* v. *Jim Sing*, 4 B. C. R. 338.

5. License—"*Sale*" *of liquor—Club selling to its members, whether*.]—By the Municipal Act, B. C., 1889, s. 173, "Every club in a municipality shall pay to the corporation of the municipality an annual tax of one hundred dollars on the 31st day of December in every year. A club for the purposes of this Act shall mean and include an association of persons consisting of not less than forty in number, whose objects of association are mutual recreation or improvement, and the keeping for the members of a place of resort wherein intoxicating spirituous or malt liquors are consumed by members either at a tariff fixed by the rules of the association or pursuant to any agreement or understanding between the members of the association." The defendants admitted that they were such an association:—Held, that the club was not liable to pay the license, because it did not sell liquor. *The City of Victoria* v. *The Union Club*, 3 B. C. R. 363.

6. Wholesale trade.]—A sale to a person in British Columbia by an agent of a firm doing business outside the province of 1,100 business cards, to be supplied by them, is a sale by wholesale and not a sale by retail within the Municipal Act, 1891, 54 Vic. c. 29, B. C. s. 166, and a conviction for making such sale, without the license required by the statute for making such sales by retail, quashed. *Health* v. *The City of Victoria*, 2 B. C. R. 276.

7. Wholesale trader.]—By Statute B. C. 55 Vic. c. 33, s. 204, s.-s. (10): "Every municipality shall in addition to the powers of taxation by law conferred thereon have the power to issue licenses for the purposes following, and to levy and collect by means of such licenses the amounts following (10) from any person carrying on the business of a wholesale or of a wholesale and retail merchant or trader not exceeding $50 for every six months:"—Held, that a person who imported materials, and manufactured articles of clothing therefrom, and sold same in quantities to wholesale and retail dealers, was a person carrying on a wholesale business within the meaning of the Act. A trader, wholesale or retail, is one who sells to gain his living by such buying or selling, not to gain a profit on one isolated transaction. If a manufacturer sells the product of his labour and skill in wholesale quantities, he is a wholesale trader. *Regina* v. *Pearson*, 3 B. C. R. 325.

XI. MISCELLANEOUS.

1. Agreement between street railway company and municipality—*Whether company compelled to operate to city limits extended after agreement made—B. C. Statutes* 1890, *c.* 52, *and* 1894, *s* 63.]—The promoters of a street railway company entered into an agreement with the city in 1888, and agreed to run cars along Douglas Street to the northern boundary of the city limits. They became incorporated as a joint stock company, and in 1890 obtained a charter authorizing the construction of tramways connecting the country districts with the city system, and in pursuance of the new powers continued the Douglas Street tramway northerly along the Saanich Road. Traffic on this extension was discontinued in 1898, because it did not pay. In 1892, the city limits were extended so as to include a portion of the Saanich Road on which the tramway had been built. In 1894, the company obtained a private Act for the consolidation and confirmation of its rights, powers and privileges and ratifying the agreement of 1888,

between the city and the original promoters:—Held, in an action for a declaration that the company was bound to operate its tram system along Douglas Street to the extended city limits, that the company was not bound to do so. Quære, whether a ratepayer could sue. *Yates et al, v. B. C. Electric Railway Company, Limited*, 7 B. C. R. 323.

2. By-law—*Non-compliance with, renders a lease void.*]—*Hackey* v. *Scintto*, 10 B. C. R. 187.

See LANDLORD AND TENANT.

3. Compensation under s. 133 of the Vancouver Incorporation Act, 1900—*Award of—Procedure — Arbitrators—Practice.*]—The right to compensation cannot be determined by arbitrators appointed under s. 133 of the Vancouver Incorporation Act, 1900, as their jurisdiction is limited to the finding of the amount of compensation. An award of such arbitrators cannot be enforced summarily under s. 13 of the Arbitration Act. *In re Northern Counties Investment Trust, Limited, and the City of Vancouver*, 8 B. C. R. 338.

4. Diseases—*By-laws dealing with infections.*]—*C. P. N. Co.* v. *Vancouver*, 2 B. C. R. 193; *Re George Bowack*, 2 B. C. R. 216; *Mills* v. *Vancouver*, 10 B. C. R. 99.

See HEALTH.

5. Health regulations—*Victoria Health By-law, 1893, ss. 33, 35—"Infected locality"—Proof of—"Exposed to infection."*]—Action of trespass against the medical health officer of the City of Victoria for causing the plaintiff, one of a number of Chinamen, who landed at Victoria in a steamer last from Hong Kong in China, to be removed to the "Suspect station" and there detained and subjected to cleansing process under colour of s. 35 of the Municipal Health By-law, 1893, giving him, as medical health officer, power "to stop, detain and examine every person or persons, freight, cargoes, railway and tramway cars coming from a place infected with a malignant or infectious disease," in order to prevent the introduction of such into Victoria. The plaintiff had been passed by the Dominion Government Quarantine Officer, as entitled to land at Victoria. The white passengers from Hong Kong on the same steamer were not interfered with. The only evidence of Hong Kong being a place infected, etc., was that of a medical man resident in Victoria, who said "that in China smallpox was endemic, because there inoculation was the universal practice. That there was danger from white passengers, but not the same danger as from Chinamen." There was no direct evidence of the existence of smallpox to a dangerous extent in Hong Kong at the time of the departure thence of the steamer, or that it was "a place infected," etc., or that the plaintiff had been exposed to infection:—Held, that the facts were insufficient to justify the action of the health officer under the by-law. Remarks on the duties of health officers. *Wong Hoy Woon* v. *Duncan*, 3 B. C. R. 319.

6. Duty of, to maintain its electric wires in a safe condition—*Negligence—Res ipsa loquitur.*]—A fire alarm wire belonging to a municipality broke and fell upon an electric wire belonging to a private corporation, and thereby sent a fatal current into the plaintiff's horse:—Held, that the municipality was liable. *Earle* v. *The City of Victoria*, 2 B. C. R. 156.

7. Itala or Eagle Island is within the boundaries of the municipality of North Vancouver.] — The meaning of "coast" line and "shore" line, considered. *Mowat* v. *North Vancouver*, 9 B. C. R. 205.

8. Licensed premises—*By-laws closing—Validity of.*]—*Hayes* v. *Thompson*, 9 B. C. R. 249.

See INTOXICATING LIQUORS.

9. Magistrate — *Mode of appointment by.*]—*Reg.* v. *Hart*, 2 B. C. R. 264.

See JUSTICES OF THE PEACE.

10. Municipal Act, 1891.]—*Sauer* v. *Walker*, 2 B. C. R. 93.

See CONSTITUTIONAL LAW, II. 8.

11. Municipal election petition — *Rules—Procedure in absence of—R. S. B. C. 1897, c. 68, s. 86.*]—A Judge has jurisdiction to fix a time and place for the trial of an election petition under the Municipal Elections Act, notwithstanding no rules for regulating such a trial have ever been made as provided by section 86 (d) of the Act. Remarks as to the procedure to be followed at such a trial. It is not necessary that Judges should exercise power to make rules regulating the trial of election petitions if the ordinary machinery of the Court is sufficient for that purpose. *In re Slocan Municipal Election*, 9 B. C. R. 113.

12. Parties to an action — *Municipal corporation may be joined in action to set aside tax sale.*]—*Lasher* v. *Tretheway*, 10 B. C. R. 438.

See PARTIES.

13. Saloon licenses — *Under Municipal Act, 1881.*]—*In re Clay*, 1 B. C. R., pt. II., 300.

See INTOXICATING LIQUORS.

14. Summary Conviction—*Sections 81, 204, 212—Jurisdiction of Justices of the Peace in cities where there is a Police Magistrate.* *See* JUSTICES OF THE PEACE, 5 B. C. R. 349.

15. Rights of municipality with respect to wharves.]—*Lee* v. *The "Olympian,"* 2 B. C. R. 84.

See COLLISION.

See also ELECTIONS—HEALTH — INTOXICATING LIQUORS.

MURDER.

1. Definition of.]—*Rex Wong On et al.*, 10 B. C. R. 555.

See CRIMINAL LAW, XII.

MUTUALITY.

1. Contract of corporation—*Not having seal not void for want of.*]—*C. P. R. Co. v. Victoria Packing Co.*, 3 B. C. R. 490.

See also COMPANY—CONTRACT.

NAME.

1. Of accused person—*Must be sufficiently specified.*]—*Reg. v. Morgan*, 1 B. C. R., pt. II., 245.

See HABEAS CORPUS.

2. Of jurors—*Shewn in findings a ground for new trial.*]—*Robson v. Suter*, 1 B. C. R., pt. II., 375.

See PRACTICE, XX.

3. Similarity of — *Deception—Injunction.*] — *Can. Permanent Co. v. B. C. Permanent Co.*, 6 B. C. R. 377.

See COMPANY, I.

4. Similarity of—*Joint stock companies.*] —The opinion of the registrar as to the similarity of the names of different companies is not conclusive under the Investment and Loan Societies Amendment Act, 1898, c. 7, s. 2. *British Columbia Permanent v. Wootton*, 6 B. C. R. 382.

NATURAL OUTLET.

Pratt v. Rhode, 2 B. C. R. 159.

See WATERS AND WATERCOURSES, I.

NATURALIZATION OF ALIENS.

Re Coal Mines Regulation Act, 10 B. C. R. 408.

See CONSTITUTIONAL LAW, II., 5.

NATURALIZED JAPANESE.

1. Right of—*To be registered as voters.*] —*In re Tomey Homma*, 7 B. C. R. 368.

See ELECTIONS.

NAVIGABLE WATERS.

1. Collision—*Overtaking ship—Party to blame.*]—*The "Cutch,"* 2 B. C. R. 357.

See COLLISION.

2. Ownership of harbours vested in Dominion.]—The franchise of public harbours and the ownership of the soil within the limits of public harbours in Canada are both vested in the Dominion Government by s. 108 of the B. N. A. Act, and False Creek, British Columbia, is such a harbour. *The Attorney-General of Canada v. Keefer*, 1 B. C. R., pt. II., 368.

3. Right to user of—*Injunction.*] — 1. Every subject of the realm has a right to the user, for legitimate purposes, of public navigable waters and harbours within the realm, where the tide ebbs and flows. 2. He cannot be deprived of that right, except by legislative authority, duly exercised. 3. If his land fronts on tidal waters, and access thereto is obtainable by the user of such waters, no mere license or permission from the Crown to another, to obstruct that user, can be sustained; and any plea to that effect is bad. 4. The right to continue such an obstruction cannot be acquired by the Statute of Limitations, because there can be no presumption of a grant. 5. Remedy for personal loss sustained by obstruction to such right, may be materially affected by party's presumed acquiescence, or silence with knowledge. 6. Such an obstruction inflicting private injury cannot be justified by the allegation that the obstruction itself is a public benefit; nor is the remedy lost by the allegation that the private injury is merged in the greater public wrong. 7. In such cases, the Crown acts for the public, the individual for himself. 8. The description "having a frontage of 40 feet, more or less, on Store Street, and running back to the harbour," is sufficient to include all land within the parallel side lines, extending from Store Street to the harbour or bay, according to the curvature of the shore line, up to which the tide flows. 9. Semble, the Crown could not, in British Columbia, at the time the titles herein were originated (viz., in 1858), or at any time since, by subsequent license, legalize any addition to, or the continuance of, an obstruction which it had not the power to authorize in the first instance; and any leave or license to that effect would be inoperative. *McEwen v. Anderson*, 1 B. C. R., pt. II., 308.

See also ADMIRALTY—COLLISION—SALVAGE —SHIPPING.

NAVIGATION.

1. Rules of.]—*The "Cutch,"* 2 B. C. R. 357.

See also COLLISION—NAVIGABLE WATERS.

NEGATIVE EVIDENCE.

1. Weight of.]—*Milton v. Corporation of Surrey*, 10 B. C. R. 296.

See EVIDENCE.

See also MINES AND MINERALS, XIX.

NEGLIGENCE.

1. Action for at common law—*Precautions against accident — Fellow-servant.*] —*Wood v. C. P. R. Co.*, 6 B. C. R. 561.

See MASTER AND SERVANT IV. 1

2. Agent of mortgagee—*Negligence in not obtaining accurate valuation.*] — *Wolley v. Lowenberg, Harris & Co.*, 3 B. C. R. 416.

See PRINCIPAL AND AGENT.

3. Boundaries of land — *Negligence in ascertaining commenced on.*] — *Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

4. Collision — *Negligence causing.*] — *Ward et al.* v. *S. "Yosemite,"* 3 B. C. R. 311.

See COLLISION.

5. Collision—*Regulations in regard to do not apply to ships made fast to wharf.*]—*Bank Shipping Co.* v. *"City of Seattle,"* 10 B. C. R. 513.

See COLLISION.

6. Common carriers—*Criminal liability for negligence.*]—*Reg.* v. *Union Colliery Co.*, 7 B. C. R. 247.

See CRIMINAL LAW, XII.

7. Common carrier—*Liability—Contract to carry beyond own line—Contract "safely to carry, the dangers of fire and navigation excepted"—Whether a fire caused by negligence of the carrier within the exception.*]—The plaintiff delivered to the Hudson's Bay Company, as common carriers, certain goods to be carried from Victoria to Yale for reward. The defendants I. and B. ran a steamship to Yale, and to them the Hudson's Bay Company delivered the goods to be carried to that point from New Westminster. Between New Westminster and Yale, on the steamships of I. and B., the goods were destroyed by fire, owing, as found in their evidence, to their negligence. The plaintiff's action was against both defendants jointly, severally and in the alternative:—Held, (1) That the Hudson's Bay Company were liable to the plaintiff for breach of their contract to safely carry the goods and deliver them at Yale. (2) That the defendants I. and B. were liable in tort for negligence in burning the goods. The receipt for a bill of lading given to the plaintiff by the Hudson's Bay Company for his goods when delivered at Victoria stated that they were bound to New Westminster:—Held, that parol evidence that the contract was to carry further to Yale was admissible. The contract to carry was represented by the following receipt: "Victoria, &c. Shipped in good order by the H. B. Co. on board the Enterprise . . . . bound for New Westminster, the following packages . . . (the dangers of fire and navigation excepted)";—Held, *per* WALKEM, J., affirmed by the Full Court (BEGBIE, C.J., and MCCREIGHT and WALKEM JJ.), that the exception from liability by reasons of the dangers of fire and navigation expressed in the receipt (coinciding with the exception contained in 37 Vic. c. 25, s. 1), did not exempt the defendants from liability from loss by fire through negligence, and that such exceptions must be read as if followed by the words, "If not occasioned by the negligence of the defendants." *Hamilton* v. *Hudson's Bay Co. et al*, 1 B. C. R., pt. II., 1-176.

8. Common carriers — *Negligence in stowing goods.*]—*Hamilton* v. *Hudson's Bay Co. et al.*, 1 B. C. R. pt. II., 1.

See CARRIERS.

9. Conjecture of jury as to—*Not a sufficient finding of.*]—*Stamer* v. *Hall Mines*, 6 B. C. R. 579.

See MASTER AND SERVANT, IV. 2.

10. Contractor injured on defendant's train—*Inclusive findings of jury.*]—The plaintiff's intestate had a contract with the defendant's company to repair a bridge, and the jury found, inter alia, that he went thither on such business on a coal train without any ticket, but with the consent of the officer in charge, and that the latter had no authority, unless by custom, to allow the deceased to travel on the train:—Held, by the Full Court, reversing IRVING, J. (DRAKE J., dissenting), that the findings were inconclusive and that there should be a new trial. *Nightingale* v. *Union Colliery Co.*, 8 B. C. R. 134.

11. Contributory — *Defective machinery —Excessive damages—New trial—Full Court —Practice—Argument — Appeal — Grounds of—Particulars.*]—On an appeal from the judgment of IRVING, J., reported in 7 B.C.R. 414, the Full Court (MARTIN, J., dissenting) ordered a new trial on the grounds that the damages were excessive, that the plaintiff by his recklessness had contributed to the accident and that there was no evidence to support the finding that the plant was defective. Points not argued, although included in the notice of appeal, will be considered as abandoned. Grounds of appeal should be so particularized that the opposite party will know beforehand what he has to meet, and when "mis-direction" is alleged particulars should be stated. *Warmington* v. *Palmer and Christie*, 8 B. C. R. 344.

12. Demand for particulars of—*Compliance with.*] — *Kingswell* v. *Crow's Nest Pass Coal Co.*, 9 B. C. R. 518.

See PLEADING, VIII.

13. Electric wire—*Defective fire alarm —Liability of municipality.*] — A fire-alarm wire belonging to a municipality broke and fell upon an electric wire belonging to a private corporation, and thereby sent a fatal current into the plaintiff's horse:—Held, that the municipality was liable. *Earle* v. *The Corporation of the City of Victoria*, 2 B. C. R. 156.

14. Employer's negligence.] — *Ponder* v. *War Eagle Consol. Mining Co.*, 7 B. C. R. 162.

See MASTER AND SERVANT, IV.

15. Findings of jury as to.]—*Marshall* v. *Bates*, 10 B. C. R. 153.

See MASTER AND SERVANT, IV.

16. Findings of jury as to.]—*Paterson* v. *City of Victoria*, 5 B. C. R. 628.

See MUNICIPAL CORPORATIONS, I.

17. Hotel—*Fire escape wanting—Breach of statutory duty.*]—Where a guest in a burning hotel is injured in consequence of the proprietor having failed to provide means of fire escape required by the Fire Escape Act, an action for damages will lie against the proprietor, notwithstanding that a penalty is imposed for breach of the statutory duty.

Groves v. Lord Wimborne (1898), 2 Q. B. 402, applied. The defence arising from the maxim volenti non fit injuria (the guest being aware of the lack of means of fire escape and having made no objection) is not applicable where the injury arises from a breach of a statutory duty. Baddeley v. Earl of Granville (1887), 19 Q. B. D. 423, applied. The fact that the guest delayed his exit in order to rescue a fellow guest, and thereby lost his own chance of getting safely out, is not as a matter of law "contributory negligence." Whether the plaintiff did anything which a person of ordinary care and skill would not have done under the circumstances, or omitted to do anything which a person of ordinary care and skill would have done, and thereby contribute to the accident, was for the jury to decide. Judgment of HUNTER, C.J., set aside and new trial ordered, IRVING, J., dissenting. *Love* v. *The New Fairview Corporation, Limited*, 10 B. C. R. 331.

18. Hotel keeper—*Negligence in care of guest's property.*]—*Frank* v. *Berryman*, 3 B. C. R. 506.

See INN-KEEPERS.

19. In excavation.]—*Steves* v. *South Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS.

20. In exercising lawful powers.]—*Jones* v. *City of Victoria*, 2 B. C. R. 8.

See INJUNCTION.

21. In mooring vessel.]—*Lee* v. *The "Olympian,"* 2 B. C. R. 84.

See COLLISION.

22. Medical man — *Remedies for negligence of.*]—*In re Ex parte Inverarity*, 10 B. C. R. 268.

See MANDAMUS.

23. Municipal corporation — *Highway authority—Liability—Misfeasance — Findings of jury—Proximate cause—Nonsuit. Patterson* v. *Victoria*, 5 B. C. R. 628.

24. Municipal corporation — *Liability for non-repair of bridge—As affected by decision in similar case.*]—*Gordon* v. *City of Victoria*, 7 B. C. R. 342.

25. Municipal corporation—*Negligent construction of sidewalk — Misfeasance.*]—*Smith* v. *City of Vancouver*, 5 B. C. R. 491.

See MUNICIPAL CORPORATIONS, I.

26. Municipal corporation — *Liability for non-repair of highway — Municipal Act*, 1892, *s.* 104, *s.-s.* 90.]—*Lindell* v. *City of Victoria*, 3 B. C. R. 400.

See MUNICIPAL CORPORATIONS, I.

27. Of architect—*Care required by.*]—*Grant* v. *Dupont*, 8 B. C. R. 7.

See ARCHITECT.

28. Prima facie case of — *Costs—Onus on defendant to shew contributory negligence.*]—*McMillan* v. *West. Dredging Co.*, 4 B. C. R. 144.

See PRACTICE, XX.

29. Railway — *Water and watercourses—Flooding of adjoining land caused by construction of railway embankment.*]—*Hornby* v. *New West. So. Ry. Co.*, 6 B. C. R. 588.

See WATER AND WATERCOURSES, III.

30. Railway company — *Passenger—Mere licensee—Duty of company—Verdict—No evidence to support—Setting aside.*]—The relation of common carrier and passenger does not exist when a person travels on the locomotive of a coal train without the permission of some officer who has authority to give such permission, and if injured, such a person has no right of action unless injured through the dilus as distinguished from the culpa of the carrier. Nightingale had a contract with defendant company to repair a bridge, and while riding on the locomotive of the company's coal train on his way to the work, he was killed by reason of the train falling through a bridge. The engineer in charge of the train (there being no conductor) had no authority to take passengers, and had instructions not to allow people to travel on the engine without permission from some competent authority, but the company's officers and servants and other persons authorized by the manager and master mechanic used to ride on the coal train. A few days before the accident Nightingale and the defendant's manager had gone down to the bridge on the engine of the coal train and returned the same way the same day. In an action by Nightingale's representative to recover damages from the company for his death, the jury held that the company had undertaken to carry Nightingale as a passenger:—Held, on appeal, setting aside judgment in plaintiff's favour, that there was no evidence to support such a finding, and that Nightingale was a mere licensee. *Per* HUNTER, C.J., the power which a Judge has to take a case away from the jury should be exercised only when it is clear that plaintiff could not hold a verdict in his favour; if the matter is reasonably open to doubt the Judge should let the case go to the jury, and then decide, if necessary, whether there is any evidence on which the verdict can be supported. *Nightingale* v. *Union Colliery Company of British Columbia, Ltd. Liability*, 9 B. C. R. 453.

31. Railways — *Regular station—Injury to passenger alighting.*]—Special tickets at reduced rates were issued by the defendant company to persons living along the line, and one was held by W., limited to the use of himself and the members of his family, between Vancouver and Central Park station. The plaintiff, who lived in Vancouver, went to visit the W.'s, travelling as was her custom, on W.'s ticket, although not a member of the family. W. lived beyond Central Park station, and the company gratuitously, and for her own convenience, carried the plaintiff some four hundred yards farther on where she was allowed to alight. At this place the ground was not level, and a person living along the line had been permitted for his own convenience to lay down on the right of way a platform, one end of which rested on the ground and the other upon a plank. The plaintiff descended safely to the platform, but in passing from it she fell and was injured, owing, as alleged, to some defect in the condition of the plank supporting it:—Held, in an action for damages, that the company was not liable. *Burke* v. *B. C. Electric Railway Co., Ltd.*, 7 B. C. R. 85.

32. Rules—*Negligence by non-compliance with printed.*]—*Warrington* v. *Palmer et al.*, 7 B. C. R. 414.

See MASTER AND SERVANT, IV.

33. Superintendent—*Negligence of.*]—*Hastings* v. *Le Roi*, 10 B. C. R. 9; *Gunn* v. *LeRoi*, 10 B. C. R. 59.

See MASTER AND SERVANT, IV. 2.

34. What constitutes negligence.]—*Wood* v. *C. P. Ry.*, 6 B. C. R. 561.

See MASTER AND SERVANT, IV.

35. Where reasonable precautions not used.]—*McDonald* v. *Can. Pac. Expl. Co.*, 7 B. C. R. 39.

See MASTER AND SERVANT, IV.

36. Where workmen unnecessarily incurred danger.]—*Davies* v. *Le Roi M. & S. Co.*, 7 B. C. R. 6.

See MASTER AND SERVANT. IV.

See also COLLISION—CONTRIBUTORY NEGLIGENCE—EMPLOYERS' LIABILITY ACT—MASTER AND SERVANT—MUNICIPAL CORPORATIONS—WATER AND WATERCOURSES.

NEGOTIABLE INSTRUMENTS.

See BILLS AND NOTES.

NEW DEFENCE.

1. On appeal raised for the first time—*Not allowed.*]—*Hogg* v. *Farrell*, 6 B. C. R. 387.

See PLEADINGS.

NEWSPAPER.

1. Libel—*Apology—Offer to make, not a good plea—Apology must be unconditional.*]—A statement of defence alleged that the defendants were willing to publish such an apology as the plaintiffs could reasonably require:—Held, *per* Sir M. B. BECHIE, C.J.: The defendant should admit that the charge was unfounded, that it was made without proper information, and that he regrets that it was published in his newspaper. He should not offer to make, but actually make and publish at once such an apology expressing sorrow and withdrawing the imputation. *Hoste* v. *Times Pub. Co.*, 1 B. C. R., pt. II., 365.

2. Observations by, on pending suit.]—*Studdart* v. *Prentice*, 6 B. C. R. 308.

See CONTEMPT

NEW TRIAL.

1. Alternative application in connection with motion for new trial.]—*Foley* v. *Webster*, 2 B. C. R. 137.

See PRACTICE, XX.

2. Appeal.]—It is not competent to an appellant, uno flatu, to move alternatively for a reversal of the judgment as entered on the findings of a jury or for a new trial. O. XXXIX. and O. XL., R. 4, of the S. C. Rules of 1880 explained; Davies v. Felix, 4 Ex. D. 35, followed. (Ed. Note—This headnote seems too broad for the decision of the Court, which was only that the two alternative motions cannot be entertained unless both are properly founded on the necessary proceedings to bring them before the Court). *Foley* v. *Webster*, 2 B. C. R. 137.

3. Appeal—*New trial—Where illegality raised on appeal but not in pleadings.*]—*Meriden Britannia Co.* v. *Boxcell*, 4 B. C. R. 520.

See ASSIGNMENTS.

4. Application for, included in appeal.]—*Wilson* v. *Perrin*, 2 B. C. R. 350.

See APPEAL, V. 7.

5. Corporation—*Trespass—Master and servant — Respondeat superior — Agency — New trial—Misdirection—Rule* 446.]—A servant of the defendant corporation employed to cut timber on its lands, knowingly trespassed and cut timber off plaintiff's land which adjoined, and the defendants' manager, general foreman and other servants, knowingly took and included it in defendants' boom and hauled it away. It was afterwards cut up and sold along with defendants' lumber. Evidence was given for plaintiff and denied by defendants that the trespass was committed by instructions of the manager. The jury found a verdict for the plaintiff:—Held, *per* DRAKE, J., on motion for judgment: If a servant of a company commits a tort in the course of his employment and for the benefit of his employer, whether by his direct orders or not, the employer is liable, even if the act was unknown to or actually forbidden by him. On appeal and motion for a new trial:—Held, *per* CREASE, J., following Clark v. Molyneux, 3 Q. B. D. 237: The whole of a summing up must be considered in order to determine whether it afforded a fair guide to the jury, and too much weight must not be allowed to isolated and detached expressions. Held, *per* WALKEM, J.: That it was misdirection by the trial Judge to tell the jury that they had only to consider the question of damages, as the question of agency of the servant for the master by ratification or otherwise had to be left to them. That the defendants were liable for the tortious acts of their manager and foreman on the ground that they had the entire control of their business. That under Rule 446, the Court of Appeal, notwithstanding an apparent misdirection of the jury, can draw such inferences of fact as are not inconsistent with the verdict. *Harris* v. *Bruncttc Saw Mill Co.*, 3 B. C. R. 172.

6. Criminal law—*New trial where crime not defined to jury.*]—*Rex* v. *Wong On et al.*, 10 B. C. R. 555.

See CRIMINAL LAW, XIV.

7. Divisional Court—*Referring back motion for fresh evidence.* — The Divisional Court, upon a motion for a new trial, being of opinion that there was no evidence upon which the damages assessed could be calculated, directed a further inquiry as to such damages, and adjourned the motion in the meantime. *Parks* v. *Blackwood*, 2 B. C. R. 346.

8. Failure of jury to return direct answer to question — *Whether sufficient ground for. McMillan* v. *Western Dredging Co.*, 4 B. C. R. 122.

9. Fraud—*New trial where charge of.*]—*Cope & Talyor* v. *Scottish Union Fire Ins. Co.*, 5 B. C. R. 329.

See INSURANCE, I.

10. Grounds on which granted.]—*Goon Gan* v. *Moore*, 2 B. C. R. 154.

See PRACTICE, XX.

11. Grounds of—*What are sufficient.*]—*Wooley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 416.

See PRINCIPAL AND AGENT.

12. Misdirection — *Costs of new trial, through.*]—*B. C. Iron Works* v. *Buse*, 4 B. C. R. 419.

See PRACTICE, XX.

13. Misdirection—*New trial for—Must specify objections.*]—*Croasdaile* v. *Hall*, 3 B. C. R. 384.

See CONTRACTS, II. 2.

14. Misdirection — *Objection not taken at trial.*]—Notwithstanding the rule that objections going to misdirection not taken at the trial are not open, on appeal, the Court may mero motu suo consider the question of whether there was miscarriage of justice arising from misdirection and direct a new trial. *British Columbia Iron Works Co.* v. *Buse et al.*, 4 B. C. R. 419.

15. Misdirection—*Necessity for specifying grounds. Croasdaile* v. *Hall*, 3 B. C. R. 384.

16. Case improperly left to jury — *Excessive damages—Libel.*]—W., a Judge of the Supreme Court of B. C., brought an action against H., editor, for a libel contained in the following article published in his paper:—"The McNamee-Mitchell Suit. In the sworn evidence of Mr. McNamee, defendant in the suit of McKenna v. McNamee, lately tried at Ottawa, the following passage occurs: 'Six of them were in partnership (in the dry dock contract) out in British Columbia, one of whom was the Premier of the Province.' The Premier of the Province at the time referred to was Hon. Mr. Walkem, now a Judge of the Supreme Court. Mr. Walkem's career on the bench has been above reproach. His course has been such as to win for him the admiration of many of his old political enemies. But he owes it to himself to refute this charge. We feel sure that McNamee must be labouring under a mistake. Had the statement been made off the stand it would have been scouted as untrue; but having been made under the sanctity of an oath it cannot be treated lightly nor allowed to pass unheeded." The innuendoes alleged by the declaration to be contained in this article were:—1. That W. corruptly entered into partnership with McNamee while holding offices of public trust, and thereby unlawfully acquired large sums of public money. 2. That he did so under cloak of his public position and by fraudulently pretending that he acted in the interest of the Government. 3. That he committed criminal offences punishable by law. 4. That he continued to hold his interest in the contract after his elevation to the bench:—Held, that the article was susceptible of the first of the above innuendoes, but not of the others, which should have been, but were not, distinctly withdrawn from the consideration of the jury at the trial. On the trial the jury found a verdict for the plaintiff, with $2,500 damages. Held, *per* STRONG, FOURNIER, TASCHEREAU and GWYNNE, JJ., that the case was improperly left to the jury, but the only prejudice sustained by the defendant thereby was that of excessive damages, and the verdict might stand on the plaintiff consenting to the damages being reduced to $500. Held, *per* RITCHIE, C.J., that there had been a mistrial, and the consent of both parties to such reduction was necessary. Appeal from a decision of the Supreme Court of British Columbia sustaining the verdict at the trial in favour of the plaintiff. *David W. Higgins* v. *The Honourable George Anthony Walkem* (taken from 17 S. C. R. 225.) (Apparently not reported in B. C. Reports.

17. New trial — *Will not be directed where there have already been three trials.*]—*Pender* v. *War Eagle Con. M. & D. Co.*, 7 B. C. R. 162.

See MASTER AND SERVANT, IV.

18. New trial—*On ground of non-direction and misdirection.*]—*Lore* v. *New Fairview Corporation*, 10 B. C. R. 330.

See NEGLIGENCE.

19. New trial—*Granted on ground of exclusion of party.*]—*Bird et al.* v. *Vieth*, 7 B. C. R. 31.

See TRIAL.

20. New trial—*Will not be granted where workmen used apparatus causing injury unnecessarily.*]—*Davies* v. *LeRoi M. & S. Co.*, 7 B. C. R. 6.

See MASTER AND SERVANT, IV.

21. New trial—*Granted on suggestion of the Crown that acts of plaintiff contributed to injury.*]—*C. P. R.* v. *McBryan*, 6 B. C. R. 136.

See WATERS AND WATERCOURSES, I.

22. The Court will not as a rule grant a new trial on the ground that the verdict is against the weight of evidence upon an issue of fraud, particularly where the charge involves a criminal offence, and the verdict is in favour of the party charged. *Cope and Taylor* v. *Scottish Union Co.*, 5 B. C. R. 329.

23. Verdict of jury — *Finality of.*]—*Gray* v. *McAllum*, 2 B. C. R. 104.

See PRACTICE, XX.

24. Verdict against evidence.]—Where a jury answered one of seven questions put to them at the trial against undisputed evidence, a new trial was ordered. *Per* BEGBIE C.J.: In dealing with the verdict of a jury, the Court is bound to see whether the scales of justice are held in an apparently even manner. Where several questions were left to the jury, one of which, though not absolutely decisive in the matter, was answered contrary to uncontradicted evidence, a new trial was granted. *Robson* v. *Suter*, 1 B. C. R., pt. II., 375.

25. Weight of evidence.]—*Reasonableness of verdict.*]—The Court will not set aside the verdict of a jury unless it is wholly unsupported by evidence, or is contrary to such a body of evidence or rests on such slight foundation as to make it obvious that the jury was perverse or invincibly prejudiced. *Gray* v. *McCallum*, 2 B. C. R. 104.

See MISDIRECTION.

26. Where action wrongly framed.]—*Wilson* v. *Can. Dev. Co., Ltd.*, 9 B. C. R. 82.

See CARRIERS.

27. Where question of bona fides not raised in pleadings.]—*Hudson's Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

28. Where costs of first trial a condition precedent.] — *Courtney* v. *Can. Dev. Co.*, 8 B. C. R. 53.

See CARRIERS.

29. Where inconclusive findings of jury.]—*Nightingale* v. *Union Coll. Co.*., 8 B. C. R. 134.

See RAILWAYS, III.

30. Whether or not expedient in view of result of other decisions by Privy Council arising out of same accident—*Municipal corporation—Negligence by allowing a bridge to get rotten.*] — In an action for negligence against a municipality (reported 5 B.C.R. 553), the Judge gave judgment for the defendants, holding that the findings of the jury amounted to a verdict of nonfeasance only. Other actions by other plaintiffs arising out of the same occurrence had been decided against the defendants by the Privy Council:—Held, by the Full Court, that it was useless to send the case to another jury, and that the plaintiff was entitled to judgment for the amount of the verdict. *Gordon* v. *The Corporation of the City of Victoria*, 7 B. C. R. 342.

See also PRACTICE, XX.

NEXT SITTINGS OF COURT.

1. Meaning of.]—*McLeod* v. *Waterman*, 9 B. C. R. 370.

See PRACTICE, VIII., V.

NOMINAL DAMAGES.

1. For infringement of riparian rights.] — *Carson* v. *Martley*, 1 B. C. R., pt. II., 281.

See WATERS AND WATERCOURSES—DAMAGES.

NOMINAL PLAINTIFF.

1. Insolvent plaintiff where only nominal plaintiff must give security for costs.]—*Cowan* v. *Patterson*, 3 B. C. R. 353; *Courtney* v. *Can. Dev. Co.*, 8 B. C. R. 53.

See PRACTICE, IX. 18.

NON-CHRISTIAN.

1. Marriage between non-Christians, by whom to be performed.] — *In re Ah Lie*, 1 B. C. R., pt. I., 261.

See MARRIAGE.

NON-DIRECTION.

1. New trial on ground of.]—*Love* v. *New Fairview Corporation*, 10 B. C. R. 330.

See NEGLIGENCE.

2. New trial—*Non-direction not itself a ground for.*] — *Alaska Packers Assn.* v. *Spencer*, 10 B. C. R. 473.

See PRACTICE, XX.

3. Practice not to grant new trial—*In case of.*]—*Davies* v. *Le Roi M. & S. Co.*, 7 B. C. R. 6; *Waterland* v. *City of Greenwood*, 8 B. C. R. 396.

See MASTER AND SERVANT, IV. 2.

See PRACTICE, XX.

See also MIS-DIRECTION — NEW TRIAL — PRACTICE, XX.

NONFEASANCE.

1. Doctrine of, as applicable to municipal corporations.] — *Steves* v. *South Vancouver;* 6 B. C. R. 17; *Patterson* v. *City of Victoria*, 5 B. C. R. 628.

See MUNICIPAL CORPORATIONS, I.

2. Negligence—*Breach of statutory duty —Where actionable.*] — *Patterson* v. *City of Victoria*, 5 B. C. R. 628.

See MUNICIPAL CORPORATIONS, I.

NON-JURIDICAL DAY.

In re Nelson City By-law, No. 11, 6 B. C. R. 163.

See MUNICIPAL CORPORATIONS, II. 3.

NON-PAYMENT.

1. Of premium note—*Effect of.*]—*Tilley* v. *Confederation L. A.*, 7 B. C. R. 144.

See INSURANCE, II.

NON-SUIT.

1. Effect of.] — Judgment of non-suit is now equivalent to a judgment for defendant on the merits, and the Court has under the Judicature Act discretion as to the costs. *Phelps* v. *Williams*, 1 B. C. R. pt. 1., 257.

2. Employers' Liability Act—*Want of notice—Reasonable excuse.*]—*Liver* v. *McArthur*, 9 B. C. R. 417.

See MASTER AND SERVANT, IV. 2.

3. Plaintiff's right to refuse a.] — There cannot be a non-suit, nor can leave to enter a non-suit be reserved, without the consent of the plaintiff. *Per* McCOLL, J., in *Patterson* v. *Victoria*, 5 B. C. R. 628.

4. Power of Court to enter—*Principles governing the exercise of.*] — *Nightingale* v. *Union Coll. Co.*, 9 B. C. R. 453.

See CARRIERS.

5. Statutory remedy—*Enforcement of.*] —The Court is not disposed to grant a non-suit with leave to bring a fresh action, where the action is brought to enforce a purely statutory remedy contrary to common right, and fails for want of statutory pre-requisites. *Haggerty* v. *Grant & Duck*, 2 B. C. R. 173.

6. Wrongful dismissal, action for — *Advisability of having findings of jury as to damages before entering non-suit.*]—*Varrelman* v. *Phœnix Brewery Co.*, 3 B. C. R. 135.

See MASTER AND SERVANT, II.

See also PRACTICE, XII.

NOTICE.

1. Assignment — *Notice of — Cause of action in assignor.*]—*Okell* v. *Morrison Co.*, 9 B. C. R. 151.

See ASSIGNMENTS.

2. Constructive notice by absence of title deeds.]—*Hudson's Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

3. Constructive — *Whether constructive notice of registered charge is sufficient.*]—*Hudson's Bay Co.* v. *Kearns et al.*, 4 B. C. R. 338.

See REGISTRATION OF DEEDS.

4. Creditors — *Notice to, of transfer of shares.*] — Entries in books of Registrar-General, not sufficient notice. *Ex parte John Bibby*, 1 B. C. R., pt. II., 94.

See COMPANY,*VI.

5. Mineral claim — *Locating same ground.*]—In November, 1897, Cooper, having already located a claim on the same lode, located the Native Silver Claim in the name of Halpin, who transferred in December, 1897, one-half to Cooper and the other half to Haller, who sold to plaintiff in July, 1900, the usual certificates of work having been obtained in the interim. Defendant, who knew of the error in the description of the compass bearing and of the issue of such certificate, on failing to effect a purchase of the claim from Cooper and Haller, located the same ground as the Arlington Fraction, and on obtaining the usual certificates of work, applied for Crown grant:—Held, in adverse proceedings, affirming WALKEM, J. (DRAKE, J., dissenting), that the defendant not being misled, the irregularities in the plaintiff's title were cured by s. 28 of the Mineral Act. Callahan v. Coplen (1899), 30 S. C. R. 555, and Gelinas et al. v. Clark (1901), 8 B. C. 42, specially considered. *Manley* v. *Collom*, 8 B. C. R. 153.

6. Of action—*Public officer.*]—A County Court bailiff is entitled to notice of action for anything done under process of the Court under 9 & 10 Vict. c. 95, s. 138 (Imp.), introduced into this Province by the County Court Ordinance, 1867. *Johnson* v. *Harris*, 1 B. C. R., pt. I., 93.

7. Of assignment of chose in action —*Constructive through solicitor.*]—*Per* McCREIGHT, J.: That upon the evidence, the defendant, having had actual notice of the existence of the deed to the plaintiff, had constructive notice of its terms. (2) That the fact that the solicitor whom she had employed to draw the assignment to her also drew the deed to the plaintiff, fixed the defendant with constructive notice of such deed through the knowledge of the solicitor, though acquired in a different and previous transaction. *Clark* v. *Kendall*, 4 B. C. R. 503.

8. Practice—*Injunction—What notice of injunction sufficient.*]—Telegraphic notice to solicitors who have appeared for defendants of the effect of an injunction is sufficient notice to defendants to warrant their committal or attachment for disobedience of it. *The C. P. Navigation Co.* v. *City of Vancouver*, 2 B. C. R. 298.

9. Preliminary objection.] — Notice of a preliminary objection to an appeal to the Full Court must be served at least one clear day before the time set for the beginning of the sittings. *McGuire* v. *Miller*, 9 B. C. R. 1.

10. Right of party interested to — Whether order binding where no notice given.] —*Re Ibex Mining and Dev. Co.*, 9 B. C. R. 557.

See MECHANICS' LIEN.

11. Rule 749—*Notice under.*]—*McDonald* v. *Jessop et al.*, 3 B. C. R. 606.

See PRACTICE, XII.

See also APPEAL—CONSTRUCTIVE NOTICE.

NOTICE OF APPEAL.

1. From summary conviction — *Description of offence in.*]—*Rex* v. *Mah Yin*, 9 B. C. R. 319.

See CRIMINAL LAW, IV.

2. Grounds of appeal—*Omission to state in notice—Is fatal irregularity.*]—*Bevilockway* v. *Schneider*, 3 B. C. R. 88.

See APPEAL, VIII. 5.

3. Jurisdiction to extend time for.]—*Wilson* v. *Marvin*, 8 B. C. R. 327.

See APPEAL, VIII. 11.

4. Notice of intention to appeal is bringing the appeal.]—*Re Ellard*, 2 B. C. R. 235.

See APPEAL, VIII. 5.

5. Omission to state place of Court appealed to — *Waiver of objection by appearance of counsel.*] — *Bevilockway* v. *Schneider*, 3 B. C. R. 88.

See APPEAL, VIII., 5.

6. Points raised in, not argued, are considered as abandoned.]—*Warmington* v. *Palmer et al.*, 8 B. C. R. 344.

See MASTER AND SERVANT, IV.

7. Point on which appeal decided not stated in notice, precludes recovery of costs.] — *Byron N. White Co.* v. *Sandon Water Works Co.*, 10 B. C. R. 361.

See PRACTICE, IX. 6.

8. Time for.] — *Trader's Natl. Bk. of Spokane* v. *Ingram*, 10 B. C. R. 442.

See APPEAL, VIII. 5.

9. Under Summary Convictions Act.]—*Rex* v. *Jordon*, 9 B. C. R. 33.

See PROHIBITION.

See also APPEAL—PRACTICE, III.; XXXVI.

NOTICE OF MOTION.

1. Practice as to short notice of motion.]—Where a party applies for special leave to serve short notice of motion, he must distinctly state to the Court that the notice applied for is short; and the same fact must distinctly appear on the face of the notice served on the other party. The defendant company had obtained from the Railway Committee of the Privy Council an order permitting it to cross the C. P. R. track. Pending an appeal by the C. P. R. Company from the order to the Full Cabinet, the defendant company proceeded to lay the crossing, and the C. P. R. Company applied for an injunction:—Held, that defendant company was not exceeding the terms of the order, which was binding on the Court, until reversed on appeal to a competent authority, and therefore an injunction could not be granted. Before laying a crossing notice should be given of the time at which it is intended to commence the work. Failure by a company to give such notice constitutes good cause for depriving it of the costs of successfully resisting a motion for an injunction. *Canadian Pacific Railway Company* v. *Vancouver, Westminster and Yukon Railway Company*, 10 B. C. R. 228.

2. Service of — *Operates as waiver of objection to irregular appearance.*]—*Fletcher* v. *McGillivray*, 3 B. C. R. 49.

See PRACTICE, XIX., XXVII.

3. Service of — *On convicting Justice of motion for rule nisi for certiorari, necessary.*]—*Re Chas. Plunkett*, 3 B. C. R. 484.

See CERTIORARI—INJUNCTION — PRACTICE, XIX.

NOTICE OF TRIAL.

1. Application to dismiss for want of prosecution after notice of trial given.]—*Sullivan* v. *Jackson*, 7 B. C. R. 133.

See PRACTICE, I.; II.

2. Countermand of notice of trial.]—The adjournment at the trial of a hearing, by consent of counsel, is equivalent to a countermand of the notice of trial, and if the plaintiff does not proceed in due course, the defendant may thereafter either himself give notice of trial, or apply to dismiss for want of prosecution. *Harvey* v. *City of New Westminster*, 3 B. C. R. 398.

3. County Court Judge—*Power of, to abridge time for.*]—*Higginbotham* v. *Jordan*, 8 B. C. R. 126.

See COURTS, I.

4. Dismissal of action for want of prosecution.] — Supreme Court rule 340, providing that "if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial or apply to the Court or a Judge to dismiss the action, for want of prosecution." does not apply where the trial of the action has been partly proceeded with and adjourned. On appeal from an order dismissing the action for want of prosecution: Held, by the Divisional Court (CREASE and MCCREIGHT, JJ.), allowing the appeal and reversing the order of DRAKE, J., that the proper mode for a defendant to get rid of the action in such case was to set it down for trial, and if the plaintiff did not appear to ask for judgment dismissing the action, under Supreme Court rule 353. *Joseph Boscowitz* v. *T. H. Cooper, J. D. Warren, and Hannah Warren*, 4 B. C. R. 88.

5. Rule 340.] — In January, plaintiff's solicitor gave notice of trial at the civil sittings to be held in July, in Victoria, where, according to statute, civil sittings are also held in February, March and May:—Held, on a summons to dismiss for want of prosecution, that plaintiff must give notice of trial for the March sittings, otherwise the action will stand

dismissed. *Wiles* v. *The Times Printing and Publishing Company, Limited Liability*, 10 B. C. R. 226.

See also PRACTICE, I. 11; MINES AND MINERALS, II. 6.

NOTICE OF WRIT.

1. Order for service of, on a person out of jurisdiction—*Order XI.—Practice.*]—The allowance of service of a writ of summons upon a foreigner out of the jurisdiction of the Court is discretionary. Upon motion to the Judge who made such an order to rescind same, it appeared that the plaintiff's cause of action was upon a promissory note made at Portland, U.S.A., by the defendant, who resided there; no place of payment was mentioned in the note:—Held, rescinding the order, that prima facie the note was payable in Portland, and that the contract and breach arose in the foreign jurisdiction, and that the case was not within Order XI. (2) That the proper practice was to apply to the Judge who made the order to rescind it, and not to appeal from it. *Garesche, Green & Co.* v. *Holladay*, 1 B. C. R. pt. II., 83.

2. Practice—*Service outside jurisdiction—Order XI.—Conditional appearance.*]—Plaintiff obtained leave to serve notice of writ on a foreigner out of the jurisdiction:—Held, that the defendant was not bound to appear or enter a conditional appearance before he applied to set aside the order; (2) That the application to set aside the order was properly brought before a Judge in Chambers instead of before the Full Court. The defendant's affidavit having shewn that the case did not come within Order XI., the order was discharged. *Fowler* v. *Barstow*, L. R. 20 Ch. D. 240, observed upon. *Garesche, Green & Co.* v. *Holladay*, 1 B. C. R. pt. II., 83.

See PRACTICE, XXXVIII. 5.

NOVATION.

1. Partnership—*Dissolution—Acceptance of notes.*]—In an action against B. & S. as partners for goods sold and delivered, it appeared that the firm had dissolved, S. carrying on the business and assuming the liabilities. Plaintiffs having drawn on the firm for the amount, S. returned the draft, stating the dissolution, and that he had no right to accept in the firm name, but sent his own note. This note not being paid at maturity, plaintiffs drew on S. who did not accept, but in lieu sent four notes made by himself, for the amount in the aggregate. These notes were held by plaintiffs and sent for collection at maturity, and on non-payment brought the action against B. & S.:—Held, *per* DRAKE, J., at the trial: That though there was no express agreement to that effect, the acceptance of the four notes of S. and the retention of them, and forwarding of them for collection by plaintiff, was prima facie an acceptance of the sole liability of S. in the place of the joint liability of B. & S., and a discharge of B., there being no reservation of their rights against him. On appeal to the Full Court, *per* WALKEM, J. (CREASE and MCCREIGHT, JJ., concurring): That the proper question for the trial Judge, was whether the plaintiffs had expressly agreed to take, and did take, the notes of S. in satisfaction of the joint debt. That there was no evidence of such agreement, and the fact that the plaintiffs when taking the notes of S. did not expressly reserve their rights against B. was immaterial. *Gurney* v. *Braden*, 3 B. C. R. 474.

2. When complete.]—To bring about a complete novation, there must be three things:—1st, the new debtor must assume the complete liability; 2nd, the creditor must accept the new debtor as a principal debtor; and 3rd, the creditor must accept the new contract in full satisfaction of and substitution for the old contract, so that the original debtor is discharged. *Polson* v. *Wulfsohn*, 2 B. C. R. 39.

3. When complete.]—There may be a complete verbal novation, neither the discharge of the original debtor on one side, nor the assumption of the new debt on the other, need be evidenced in writing. *Strong* v. *Hesson*, 5 B. C. R. 217.

NUDUM PACTUM.

1. Promise by unauthorized agent—*No consideration.*]—*Sharecross, McAulay & Co.* v. *Alaska S.S. Co.*, 8 B. C. R. 263.

See PRACTICE, XXXVIII. 5.

2. Vendor and purchaser—*Agreement for sale made subject to happening of a contingent event.*]—*Manly* v. *McIntosh*, 10 B. C. R. 84.

See VENDOR AND PURCHASER.

NUISANCE.

1. Knowingly maintaining dangerous nuisance.]—*Steves* v. *City of Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS, I. 2.

2. Liability for nuisance on highway causing damage.]—*Patterson* v. *City of Victoria*, 5 B. C. R. 628.

See MUNICIPAL CORPORATIONS, I.

3. Obstruction of harbours.]—*McEwen* v. *Anderson*, 1 B. C. R., pt. II., 308.

See NAVIGABLE WATERS.

4. Public nuisance—*Right of Crown to restrain.*]—*Atty.-Gen.* v. *Ewen*, 3 B. C. R. 468.

See INJUNCTION.

NULLA BONA.

1. Return of, as a condition of examination, unnecessary.]—*Steele* v. *Pioneer Trading Co.*, 6 B. C. R. 138.

See PRACTICE, XI. 4.

NULLITY.

1. Dismissal of action by local Judge is not a nullity.]—*Brigman* v. *McKenzie et al.*, 6 B. C. R. 56.

See PRACTICE, XV.

2. Irregular appearance — *Not a nullity.*]—*Gordon* v. *Bradley*, 6 B. C. R. 305.

See PRACTICE, IV.

3. Order for substituted service of writ which cannot properly be served, is not a nullity. *Tate* v. *Hennessey*, 7 B. C. R. 262.

See PRACTICE, XXXVIII. 5.

4. Order that money remain in Court to abide new action — *Not a nullity.*] — *Ring* v. *Boulthee*, 7 B. C. R. 318.

See GARNISHMENT.

5. Writ—*Amendment of style of cause—Irregularity or nullity.*]—J. S., trading under the name of the B. C. Furniture Company, commenced an action on 10th March, 1899, in such name in respect of a promissory note dated 20th January, 1893, payable sixty days after its date. A summons under order XIV. having been dismissed on the ground that one person cannot sue in a firm name, plaintiff obtained an order amending the style of cause: —Held, by the Full Court, affirming DRAKE, J., that the writ was not a nullity, and that the irregularity was properly amended. *B. C. Furniture Company* v. *Tugwell*, 7 B. C. R. 361.

OATH.

1. Non-Christian witness, mode of swearing — *Where one form of oath more binding on witness's conscience.*]—*Rex* v. *Ah Wooly*, 9 B. C. R. 569.

See WITNESSES.

OBJECTION.

1. Appeal out of time—*Appeal may be heard notwithstanding objection.*] — In order that Court may be informed whether there are merits to justify extension of time for appealing. *Wilson* v. *Marvin*, 3 B. C. R. 327.

See APPEAL, VIII. 11.

2. Preliminary objection — *Notice of, must be given.*]—*Baker* v. *Kilpatrick*, 7 B. C. R. 127.

See APPEAL, VIII. 6.

See also APPEAL—PRELIMINARY OBJECTIONS.

OBSERVANCE OF SUNDAY.

Re Lambert, 7 B. C. R. 396.

See SUNDAY.

OBSTRUCTING PEACE OFFICER.

1. Charge of, triable summarily.] — *Rex* v. *Jack et al.*, 9 B. C. R. 19.

See CERTIORARI.

OBSTRUCTION OF JUSTICE.

Stoddart v. *Prentice*, 6 B. C. R. 308.

See CONTEMPT.

OBSTRUCTION OF SEWERS.

1. Injunction to prevent.]—*Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 108.

See PLEADING, IX. 2.

OBSTRUCTION OF HARBOURS.

Atty.-Gen. of Dom. v. *Keefer*, 1 B. C. R. pt. II., 368.

See NAVIGABLE WATERS.

OCCUPATION.

1. Benefit lodge—*Where no occupation followed, there is no right to sick benefits.*]—*Bone* v. *Victoria Lodge, No. 2*, 6 B. C. R. 424.

See ACTION.

2. Of mineral claim—*Prevents adverse location.*]—*Waterhouse* v. *Liftchild*, 6 B. C. R. 424.

See MINES AND MINERALS, XXXI. 4.

3. Of premises — *Necessary to support conviction for acting as transient trader without license.*]—*Reg.* v. *Wilson*, 7 B. C. R. 112.

See MUNICIPAL CORPORATIONS, X.

See also MINES AND MINERALS, XXXI. 4.

ODDFELLOWS.

1. Insurance—*Contract — Indemnity.*] — By the terms of a contract made by an association with its members, it was agreed, in consideration of certain subscriptions to be paid by them, that the association would indemnify any member against and pay him such losses up to a stipulated amount, as he might incur from disability by reason of sickness. In an action to recover upon the contract, it appeared that the plaintiff had been disabled by sickness for a considerable period, but it also appeared that he was a person of no occupation, who had lived upon his private means:—Held, that the contract was one of indemnity, and that the plaintiff could recover nothing for disability from work. *Bone* v. *Columbia Lodge of Oddfellows*, 1 B. C. R. pt. II., 349.

OFFAL.

1. Pollution of tidal waters by.] — *Atty.-Gen.* v. *Ewen*, 3 B. C. R. 468.

See INJUNCTION.

OFFICER.

1. Crown officer.]—Mandamus does not lie to compel the Chief Commissioner of Lands and Works to issue a Crown grant; the remedy is by petition of right. *Clark* v. *The Chief Commissioner of Lands and Works*, 1 B. C. R. pt. II., 328.

2. Obstructing peace officer — *Charge triable summarily.*]—*Rex* v. *Jack et al.*, 9 B. C. R. 19.

See CERTIORARI.

OFFICERS OF CORPORATION.

See COMPANY—MUNICIPAL CORPORATIONS.

OFFICIAL ADMINISTRATOR.

1. Power of, to take out administration — *Where heirs resident abroad, but attorney in fact within Province.*] — *In re Sclaire*, 9 B. C. R. 429.

See EXECUTORS AND ADMINISTRATORS.

OFFICIAL ASSIGNEE.

See ASSIGNEE — ASSIGNMENTS FOR BENEFIT OF CREDITORS.

OMISSION.

1. Acts of omission causing injury.] —*Mershall* v. *Cates*, 10 B. C. R. 153.

See MASTER AND SERVANT, IV.

2. Of word inadvertently—*Not to be read to make a by-law meaningless or absurd.*] — *Esquimalt Water Works* v. *City of Victoria*, 10 B. C. R. 193.

See MUNICIPAL CORPORATIONS, II. 3.

OMNIA ACTA RITE PRAESUMUNTUR.

1. Application of.] — *Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

ONUS PROBANDI.

1. Action for damages in collision.] —*Ward* v. *Yosemite*, 3 B. C. R. 311.

See COLLISION.

2. Adverse proceedings.] — *Caldwell* v. *Davys*, 7 B. C. R. 156.

See MINES AND MINERALS, III.

3. Onus on person procuring will when he takes benefit of it.]—*Adams* v. *McBeath*, 3 B. C. R. 513.

See WILLS.

4. Purchaser for valuable consideration.]—Onus is on party affected by constructive notice of a charge against lands. *Hudson's Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

5. Recovery of land—*Onus of proof in action for.*]—*Carrol* v. *City of Vancouver*, 10 B. C. R. 179.

See also MUNICIPAL CORPORATIONS — COLLISION—EVIDENCE—NEGLIGENCE — MINES AND MINERALS, III., XIX.

OPINION.

1. Evidence by expert opinion.] — *William Hamilton Mfg. Co.* v. *Victoria L. & Mfg. Co.*, 4 B. C. R. 101.

See CONTRACT, III.

OPPOSITE PARTIES.

1. What are, for purposes of discovery.]—*B. C. Iron Works* v. *Buse*, 4 B. C. R 419.

See PRACTICE, XI. 5.

OPTION.

1. Work done on mineral claim held under option does not create mechanic's lien.]—*Anderson* v. *Godsal*, 7 B. C. R. 404.

See MECHANIC'S LIEN.

ORAL EVIDENCE.

1. As to boundaries not admissible where plan referred to in deed.] — *Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

2. To rectify or explain memorandum of agreement for sale—*Misdescription of property—Statute of Frauds.*] — *Borland* v. *Coote*, 10 B. C. R. 493.

See FRAUDS—STATUTE OF.

ORDER.

1. Appealable from as soon as pronounced and before it is entered.] — *Laing* v. *City of Victoria*, 6 B. C. R. 117.

See PRACTICE, VIII.

2. Where partly nullifies an order of the Full Court—*Will be set aside.*]—*Leadbeater* v. *Crow's Nest Pass Coal Co.*, 10 B. C. R. 404.

See PRACTICE, VIII.

3. Where there is any doubt in nature of—*Consideration or construction will be favourable to party aggrieved.*] — *Blecher* v. *McDonald*, 9 B. C. R. 377.

See APPEAL, I.

ORDER-IN-COUNCIL.

1. Introduction of English law into colony.]—Orders-in-Council passed in England under powers in an Imperial statute, are not in force propria vigore in a colony, although the statute itself may be in force there. Semble, that the colony of Vancouver Island was established as a British colony prior to 1855. *Reynolds* v. *Vaughan*, 1 B. C. R., pt. I., 3.

2. Whether copy of report of committee of council is equivalent to.]—See *Murne* v. *Morrison*, 1 B. C. R., pt. II., at page 140.

ORDER XI.

Garesche, Green & Co. v. *Halliday*, 1 B. C. R., pt. II., 83; *Tate* v. *Hennessey*, 7 B. C. R. 262; *Willson* v. *Donald*, 7 B. C. R. 33; *Trowbridge* v. *McMillan*, 9 B. C. R. 443.

See PRACTICE, XXXVIII. 5.

ORDER XIV.

1. Copy of affidavit accompanying summons must be a true copy.]—*First Natl. Bk.* v. *Raynes*, 3 B. C. R. 87.

See AFFIDAVIT—PRACTICE, XXXVIII. 10.

2. Costs of where judgment should have been signed by default.]—*Diamond Glass Co.* v. *Okell Morris Co.*, 9 B. C. R. 48.

See PRACTICE, XXXVIII. 10.

3. Costs of where application dismissed.]—*Victoria* v. *Bowes*, 8 B. C. R. 15.

See PRACTICE, XXXVIII. 10.

4. Judgment under.] — *Hotz* v. *McAllister*, 2 B. C. R. 77; *Pounds* v. *Corner*, 6 B. C. R. 177; *B. C. Furniture* v. *Tugwell*, 7 B. C. R. 84; *Rogers* v. *Reed*, 7 B. C. R. 139.

See PRACTICE, XXXVIII. 10.

ORES.

1. Smelting of.]—*Le Roi* v. *Northport S. & R. Co.*, 10 B. C. R. 138.

See CONTRACTS, I. 1.

ORIGINATING SUMMONS.

Boscowitz v. *Belyea*, 4 B. C. R. 527.

See PRACTICE, XXI.

OVERCROWDING.

Re Wing Kee, 2 B. C. R. 321.

See HEALTH.

OVERLAPPING.

1. Occupied ground—*Location overlapping party invalid.*]—*Cranstoun* v. *Eng. C. Co.*, 7 B. C. R. 266.

See MINES AND MINERALS, XXIX.

2. Overlapping claims.] — *Dunlop* v. *Haney*, 7 B. C. R. 1; 7 B. C. R. 305.

See MINES AND MINERALS, XXIX.

OVERTAKING VESSEL.

Smith et al. v. *Empress of Japan*, 8 B. C. R. 122.

See COLLISION.

OWNER.

1. Request of, necessary to create mechanic's lien.]—*Anderson* v. *Godsall*, 7 B. C. R. 404.

See MECHANIC'S LIEN.

2. Ship—*Owner of—No duty to provide medical attendance.*] — *Morgan* v. *British Yukon N. Co.*, 10 B. C. R. 112.

See SHIPPING — MINES AND MINERALS, XXXII.

OWNERSHIP.

1. Apparent possession.]—*Brackman* v. *McLaughlin*, 3 B. C. R. 265.

See SALES.

2. Evidence, re change of.]—*Esnouf* v. *Gurney*, 4 B. C. R. 144.

See SALES.

3. Foreshore of—*No necessity for Crown to allege.*]—*Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 108.

See PLEADINGS, IX.

OYER AND TERMINER.

1. Authority of Lieutenant-Governor in Council to issue commission of.] — *Reg.* v. *Mallott*, 1 B. C. R., pt. II., 207.

See CRIMINAL LAW, VI.

PANEL OF JURY.

1. Quashing of—*Where less than twenty persons appear.*]—*Ross* v. *B. C. Elec. Ry. Co.*, 7 B. C. R. 394.

See PRACTICE, XVII.

PARENT AND CHILD.

1. Female infant under sixteen—*Adoptive father — Rights of.*] — In habeas corpus proceedings to recover possession of a female child, stated to have been adopted and brought up by the applicant, and to have been taken away from him against his will by a refuge home. *Per* DRAKE, J.: (1) A person who has adopted and brought up a child, obtains thereby no legal right to its custody. (2) The child being a female, under sixteen, the age of consent or election as to custody, her choice should not be considered, but her welfare and well being only, and that same were, on the facts, furthered by continuing the custody of the refuge home. (3) If the child had been over the age of consent, the Court would have no right to determine who should have the custody or control of her, but only to set her at liberty if detained in unlawful custody against her will. (4) The Court has power, under Supreme Court Act, s. 10, and Rule B. C., 751, to award costs upon a rule nisi for habeas corpus. Upon appeal to the Full Court, *per* WALKEM and IRVING, JJ., dismissing the appeal: Adoption is not recognized by the law of England, and a foster-parent has no more legal right to the custody of the child of their adoption than a stranger. *Per* WALKEM, J.: The Court has jurisdiction to award costs in habeas corpus proceedings. *Per* IRVING, J.: The Court has no jurisdiction to award costs in habeas corpus proceedings, but the Full Court has jurisdiction to award costs of appeal. *Per* DAVIE, C.J., dissenting (allowing the appeal with costs): Although the adoption of a child into a family may confer no right to its custody, as against a parent, it constitutes a legal status capable of being maintained against a mere invader of the household, and the adoptive father is a person in loco parentis for the purpose of recovering the child if taken out of his custody by a stranger. *In re Quai Shing, an infant*, 6 B. C. R. 86.

2. Infant, a female over sixteen years—*Right to custody of — Habeas corpus.*]—The parents of an infant who is under the age at which it may elect as to its custody, may be deprived of that custody if the Court is satisfied that such a course is necessary for the child's welfare. Where an infant has attained the age of election, the Court ought to separately examine the infant, and adopt its wishes on the subject. *Regina* v. *Redner*, 6 B. C. R. 73.

3. Right of parents to custody of child.]—A girl aged fourteen was taken by a refuge home from the custody of a person standing in loco parentis, who was proved to be leading a bigamous life;—Held, in habeas corpus proceedings that such person had lost his right to the custody of the infant. An application in vacation for a rule nisi for a writ of habeas corpus should be made in Chambers. *In re Soy Kiag, an infant.* 7 B. C. R. 291.

See also ADOPTION—INFANTS.

PARKS.

1. Public parks.]—*Anderson* v. *City of Victoria*, 1 B. C. R., pt. II., 107.

See MUNICIPAL CORPORATIONS, VII.

PAROL ACCEPTANCE.

1. Acceptance by parol of a written *proposal.*]—*Harris* v. *Dunsmuir*, 6 B. C. R. 505.

See CONTRACT.

PAROL AGREEMENT.

1. Respecting purchase of land.] — *Brown* v. *Grady*, 6 B. C. R. 190.

See FRAUDS, STATUTE OF.

PAROL ASSIGNMENT.

1. Of a debt—*Effect of.*]—*B. C. Mills, L. & T. Co.* v. *Mitchell*, 8 B. C. R. 71.

See ASSIGNMENTS.

PAROL CONTRACTS.

1. Not governed by Bills of Sale Act.] *Esnouf* v. *Gurney*, 4 B. C. R. 144.

See SALES

PAROL EVIDENCE.

1. Contract—*To vary written contract.*] —*Harris* v. *Dunsmuir*, 6 B. C. R. 505.

See CONTRACT, I. 1.

2. Rectification of memorandum of agreement—*For purchase of land—Admissibility of parol evidence to vary or explain.*] —*Borland* v. *Coote*, 10 B. C. R. 493.

See FRAUDS, STATUTE OF.

3. When admissible to supplement documents.]—*Hamilton* v. *H. B. Co.*, 1 B. C. R., pt. II., 1.

See CARRIERS.

4. Will not be received to shew that an indorser stipulated he should not be liable.]—*Emerson* v. *Ervin*, 10 B. C. R. 101.

See BILLS AND NOTES.

See also CONTRACTS—EVIDENCE — FRAUDS, STATUTE OF—VENDOR AND PURCHASER.

PARTICEPS FRAUDIS.

Boultbee v. *Rolls*, 4 B. C. R. 137.

See ESTOPPEL.

See also BILLS OF SALE—FRAUD AND MISREPRESENTATION.

PARTICULARS.

1. Action for declaration that public have right of access to sea.]—*Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 184.

See PRACTICE, XI. 6.

2. Ca. re. particulars of cause of action should appear in affidavit leading to writ of.]—*Walt* v. *Barber*, 6 B. C. R. 461.

See ARREST.

3. Defendant's knowledge—*Particulars of negligence where essentially within.*] — *Alaska Packers* v. *Spencer*, 9 B. C. R. 473.

See PRACTICE, XI. 6.

4. Defendant—*When not entitled to, till after discovery.*]—*Garesche* v. *Garesche*, 4 B. C. R. 444.

See PLEADINGS, VIII.

5. Demand of—*Where estoppel pleaded.*] —*Guichan* v. *Fisherman's Can. Co.*, 4 B. C. R. 516.

See PRACTICE, XI. 6.

6. Negligence—*Compliance with demand for particulars of.*] — *Kingswell* v. *Crow's Nest P. Co.*, 9 B. C. R. 518.

See PLEADINGS, VIII.

7. When affidavit of documents will be ordered before particulars have been furnished.]—*Beauchamp* v. *Muirhead*, 6 B. C. R. 418.

See PRACTICE, XI. 6.

8. When necessary.]—*P. & N. Ry.* v. *N. Vancouver Coal Co.*, 6 B. C. R. 188.

See PLEADINGS, VIII.

9. Where laches pleaded.]—*E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 306.

See PLEADINGS, VIII.

10. Witnesses—*No objection to demand for particulars merely because it will disclose names of.*]—*Guichan* v. *Fisherman's Can. Co.*, 4 B. C. R. 516.

See PRACTICE, XI. 6.

See also PLEADINGS, VIII.—PRACTICE, XI. 6.

PARTIES.

1. Adding—*Third party practice.*]—*Dunlop* v. *Haney*, 6 B. C. R. 169 *Henley* v. *The Reco M. & M. Co.*, 7 B. C. R. 449; *Chong* v. *McMorris*, 8 B. C. R. 261.

See PRACTICE, I. 8.

2. Discovery—*Parties for purpose of.*

See PRACTICE, XI. 5.

3. Exclusion of parties to action at trial.]—*Bird* v. *Vieth*, 7 B. C. R. 31.

See TRIAL.

4. Liquidator as a party to action should sue in name of company.] — *Jackson* v. *Cameron*, 10 B. C. R. 73.

See COMPANY, IX.

5. Parties substituted for defendants—*Liable to indemnify them.*] — *Wilkinson* v. *City of Victoria*, 3 B. C. R. 367.

See PRACTICE, I. 8.

6. Where party struck out—*Power of Full Court to restore.*]—*Shallcross* v. *Ganshee*, 5 B. C. R. 320.

See PRACTICE, I. 8.

7. Where several persons are fined in one summary conviction which has been quashed, they may not sue jointly to recover the fines paid, but must bring separate actions. *Five Chinamen* v. *New Westminster*, 2 B. C. R. 168.

See PRACTICE, I. 8.

PARTNERSHIP.

I. GENERALLY.

1. *Proof of.*

1. Evidence—*Admissibility.*]—To establish a partnership, the statements of one of the alleged partners is not admissible against the other. *British Columbia Iron Works Co.* v. *Buse et al.*, 4 B. C. R. 419.

2. For purchase of land for use of partnership—*Statute of Frauds.*]—Plaintiff alleged that the defendant, being his partner, bought land for the use of the partnership:—Held, on the evidence, that there was not sufficient proof of such partnership to enable the Court to declare the defendant a trustee for the partnership. *Brown* v. *Grady*, 6 B. C. R. 190.

2. *What Constitutes a Partnership.*

1. Agreement whether void as against public policy.]—Tenders were invited for certain municipal public works. Defendant, having already put in a tender, met the plaintiff, who also proposed to tender for the work. It was agreed between them that the defendant should withdraw his tender and put in another at the higher figure, and that the plaintiff should tender at a still higher price; that in the event of the defendant's tender being accepted, the profits of the contract should be equally divided between them. The defendant's tender was accepted. In an action to declare a partnership:—Held, that the agreement constituted a partnership, and was not void as against public policy. *Stevenson* v. *Boyd*, 5 B. C. R. 626.

2. Whether company has power to contract with an individual—*Rescission for non-performance of stipulations—Whether appropriate remedy.*] — The defendant company, having power by its memorandum of association, inter alia, to carry on and enter into contracts for the purposes of the business of bookbinders, entered into an agreement with the plaintiff whereby it purchased and amalgamated his book-bindery business with its own, the joint concern to be carried on and profits and losses to be divided between the plaintiff and the company in certain proportions, the plaintiff to be manager and foreman at a salary. The company not having paid plaintiff the purchase money, as agreed, refused to furnish proper accounts or otherwise perform the stipulations of the agreement. In an action for a rescission of the agreement, an account, payment and a receiver:—Held, *per* CREASE, J.: That the agreement in question constituted a partnership; that the remedy by rescission was inapplicable, as it was contracted in good faith, and business carried on under it; but that a dissolution should be ordered with accounts and a receiver. On appeal to the Full Court: Held, *per* McCREIGHT, J. (WALKEM, J., concurring): That the order for accounts and a receiver should be affirmed, but the contract rescinded instead of ordering a dissolution. Quære, whether the agreement constituted a partnership or not. *Per* DRAKE, J. (dissenting): That an incorporated company has no power to enter into a partnership with an individual, and that neither such an agreement nor any of its incidents could be enforced against it. *Roedde* v. *The News-Advertiser Publishing Company*, 4 B. C. R. 7.

II. ACTIONS BY OR AGAINST PARTNERSHIP.

1. Judgment against one — *Subsequent proceeding against others.*]—A plaintiff, who has obtained final judgment against one of two defendants sued upon a joint liability may, afterwards, under Rule 74, proceed to judgment against the other defendants. *Zweig* v. *Morrissey et al.*, 5 B. C. R. 484.

2. New firm suing in old firm name.]—K. in 1895 gave two promissory notes to the firm of Lenz and Leiser, and in 1896 one member of the firm died, and the partnership business was continued under the same firm name by the surviving partner and the dead partner's widow. In 1898 the firm sued K. on the notes, and he was arrested on a writ of ca. re., the affidavit leading to the order being made by the surviving partner, who swore that he was a member of the firm of LENZ and LEISER, and that K. was indebted to the firm on the notes, but no mention was made of the notes having been given to the old firm:—Held, on a summons to discharge the defendant from custody, that the affidavit was insufficient, as it did not disclose that the firm of Lenz and Leiser is a new and different firm from that in existence when the cause of action accrued. *Lenz & Leiser* v. *Kuschberg*, 6 B. C. R. 533.

3. Separate bank accounts—*Power of banker to draw on to cover overdraft of firm.*] —Where the members of a firm have separate private accounts with the bankers of the firm, and a balance is due to the bankers from the firm, the bankers have no lien for such balance on the separate accounts. *Richards* v. *Bank of B. N. A.*, 8 B. C. R. 143.

4. Separate bank accounts—*Power of banker to draw on to cover overdraft of firm.*] —Decision of MARTIN, J., reported ante at p. 143, 8 B. C. R., affirmed on main question and reversed on question of costs by the Full Court, which held that the plaintiff should be allowed his costs of the action, but only on the County Court scale, as the action should have been brought in that Court. *Richards* v. *Bank of B. N. A.*, 8 B. C. R. 209.

III. CONTRACTS OF PARTNERSHIP.

1. Mining partnership—*Whether agreement for equal shares.*]—Plaintiff having discovered "mineral float," communicated its situation to the defendant upon a verbal agreement by the latter that in the event of his thereby discovering the ledge and locating a mineral claim, the plaintiff should be "in on it:"—Held, by WALKEM, J., at the trial, dismissing the action, that the transaction took place but that the words "in on it" were too indefinite to found a contract:—Held, by the Full Court (DAVIE, C.J., McCREIGHT and DRAKE, JJ.), overruling WALKEM, J., that the words "in on it" imported an agreement to give the plaintiff an interest in the nature of a partnership or co-ownership; that in the absence of anything in a partnership contract to the contrary, the presumption of law is that the partnership shares are equal, and that the contract was not void for uncertainty. Quære, whether the right to a duly located and recorded mineral claim constitutes an interest in land within the meaning of the Statutes of Frauds. *Per* DAVIE, C.J.: That the defendant, upon finding the ledge and locating and recording the claim, became, under the verbal agreement, a trustee for the plaintiff of one-half share therein, and was incapacitated from setting up the Statute of Frauds as a defence. *Per* McCREIGHT, J.: That, if the title to a mineral claim is an interest in land within the Statute of Frauds, it is so only by reason of the Mineral Act, and that in order to take advantage of the defence of the Statute of Frauds, the Mineral Act should also be pleaded. *Wells* v. *Petty*, 5 B. C. R. 353.

IV. RIGHTS OR LIABILITIES AS BETWEEN PARTNERS.

1. Authority of one to bind firm by execution of chattel mortgage—*Notifica-*

tion.]—*McClary* v. *Howland, Sons & Co.*, 9 B. C. R. 479.

See CHATTEL MORTGAGES.

2. Dominion official — *Salary — Receiver—Appointment—Partnership in—Right to share in salary ceases on dissolution.*] — While C. & M. were in partnership as architects, M. received an appointment from the Dominion Government as supervising architect and clerk of the works in connection with a government building being erected in Nelson, and for a time M. paid the salary of the office into the partnership funds. M. afterwards notified C. that the partnership was at an end, and thereafter refused to account for the salary. C. sued for a declaration that he was entitled to half of the salary since the dissolution and asked that a receiver be appointed of it, and also of the book debts of the firm, which he alleged M. had been collecting and not accounting for:—Held, by the Full Court, that no receiver of the salary could be appointed: that although the amount of the book debts was small there should be a receiver in respect of them. *Per* HUNTER, C.J., at the trial: Even if it were agreed that the appointment should be for the benefit of the firm, all the partners would not have any right to share in the salary after the dissolution of the firm, unless there was a special agreement to that effect. *Cane* v. *MacDonald*, 9 B. C. R. 297.

3. Mining partnership—*Foreman—Estoppel.*]—M. was a member of and held a controlling interest in a mining partnership. He was not formally appointed foreman, but appeared to have been permitted to manage its affairs in the matters in question, and appointed one G. superintendent, who ordered certain goods from M. for the partnership. He also supplied other goods to the partnership, accounts for which were passed at a meeting of the partnership: — Held, *per* DRAKE, J., affirming the registrar's certificate made upon taking the accounts under the decree allowing the items to M., that s. 126 of the Act (a), does not preclude a mining partnership from contracting liabilities otherwise than upon the order of a duly appointed foreman. That as to the items passed at meetings of the partnership, it was estopped from disputing its liability. Upon appeal to the Full Court, MCCREIGHT, J. (WALKEM and MCCOLL, JJ., concurring), affirming DRAKE, J. *Gray et al.* v. *McCallum et al.*, 5 B. C. R. 462.

4. Right of partner who has allowed his license to expire to share in proceeds of sale of—*Mineral Act of* 1896, *ss.* 9, 34, 50, 80-92.]—If a partner in a mineral claim makes an agreement for sale thereof with a third party, another partner does not forfeit his share in the proceeds of such sale merely because his free miner's certificate was allowed to lapse after the making of the agreement. *McNerhanie* v. *Archibald*, 6 B. C. R. 260.

5. While C. and M. were in partnership as architects, M. received an appointment from the Dominion Government as supervising architect and clerk of the works in connection with a Government building being erected in Nelson, and for a time M. paid the salary of the office into the partnership funds. M. afterwards notified C. that the partnership was at an end and thereafter refused to account for the salary. C. sued for a declaration that he was entitled to half the salary since the dissolution:—Held, that even if it were agreed that the appointment should be for the benefit of the firm, the plaintiff would not have any right to share in the salary after dissolution unless there was a special agreement to that effect. Judgment of HUNTER, C.J. (9 B. C. 297), affirmed. *Cane* v. *MacDonald*, 10 B. C. R. 444.

V. MISCELLANEOUS.

1. Administration of partnership estates by partner.] — *Harper* v. *Harper et al.*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

2. Assignment by.]—1 B. C. R. Pt. I., 147. *Eastman* v. *Pemberton*, 7 B. C. R. 459.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

3. Married woman — *Separate estate — Evasive denial.*]—The action was tried and evidence given pro and con upon the question whether defendant, Celia Mylius, a married woman, was liable to the plaintiff as being the partner of the defendant Jackson. The plaintiff's claim alleged, "2. The defendants entered into partnership as watchmakers and jewellers on, etc. 3. That while defendants were carrying on such business, the plaintiff advanced to them the following (claimed) sums." The statement of defence of Celia Mylius alleged, "1. The defendant denies that on, etc., or at any other time she entered into partnership with the defendant Jackson as alleged in paragraph 2 of the statement of claim. 2. Neither at the times therein alleged, or at any other times did plaintiff advance to defendants the sums alleged or any of them, and if . . . advanced, they were advanced to defendant Jackson alone." CREASE, J., who tried the action, entered judgment for the plaintiff, on the ground that the partnership was proved. There was no evidence that the defendant Celia Mylius had any separate property at the time of the alleged contract. On appeal to the Full Court:—Held, *per* BEGBIE, C.J., and DRAKE, J.: That the partnership was admitted on the pleadings, and that such objection was then open to the plaintiff. *Per* MCCREIGHT, J., dissenting: That the partnership was not admitted, but denied in the defence. That, if otherwise, all proper amendments should be made to meet the case as presented at the trial. That in any case, the objection that the defendant Celia Mylius had no separate property at the time the alleged liability arose, was fatal to the judgment. *Margaret Jackson* v. *Alexander Jack and Celia Mylius*, 3 B. C. R. 149.

4. Purchase of land for use of the partnership.]—*Brown* v. *Grady*, 6 B. C. R. 190.

See FRAUDS, STATUTE OF.

5. Service on foreign partnership — *Where one member temporarily within jurisdiction.*]—*Fall* v. *Klondyke Bonanza, Ltd.* 9 B. C. R. 493.

See PRACTICE, XXVII.

See also MINES AND MINERALS, XXXVII.

PARTY INTERESTED.

1. Who is a "party interested" within meaning of Rivers and Streams Act. *In re Smith*, 9 B. C. R. 329.

See APPEAL, VIII. 12.

PASSENGER.

1. Alighting—*Injury to passenger while.*]—*Burke* v. *B. C. Electric Ry. Co., Ltd.*, 7 B. C. R. 85.

See RAILWAYS, III.

2. Baggage — *What is—R. S. Canada, 1886, c. 82, s. 3—Pleading—Point not pleaded or taken in Court below—Practice.*] — Defendant company sold plaintiff a ticket for Dawson from Bennet, and containing the proviso that baggage liability was limited to wearing apparel only, and that each ticket was allowed 150 lbs. of baggage free, and not exceeding $100 in valuation. Plaintiff paid $10 excess baggage. Part of the baggage, including lady's apparel, men's suits and wolf robes, to the value of $650, was lost. Plaintiff sued for full amount, and defendants pleaded that their liability under the contract was limited to $100:—Held, by CRAIG, J., and by the Full Court (IRVING, J., dissenting), that defendants were liable for more than $100, but under the Carriers' Act for not more than $500:—Held, also, on appeal, that the contention that defendants were not liable for certain articles not the wearing apparel of the plaintiff himself, was not now open to defendants, as that point was not raised in the pleadings or taken at the trial. Remarks as to what is included in the term "wearing apparel." *Wensky* v. *Canadian Development Co.*, 8 B. C. R. 190.

3. Duty of company to carry safely.]—*Nightingale* v. *Union Colliery Co.*, 8 B. C. R. 134.

See RAILWAYS, III.

4. Landing of passengers.]—*The C. P. N. Co.* v. *City of Vancouver*, 2 B. C. R. 193.

See HEALTH.

See also CARRIERS—RAILWAYS.

PATENT.

1. Infringement.]—A patent for a mechanical combination is not infringed unless the combination is taken in essence and in substance. *Jones et al.* v. *Galbraith and Sons*, 9 B. C. R. 521.

2. Infringement.]—In an action for damages for infringement of a patent, the writ need not be issued out of the registry nearest the place of residence or business of the defendants, but s. 30 of the Patent Act is complied with if the venue is laid at the place of such registry. *Short* v. *Federation Brand Salmon Canning Company*, 6 B. C. R. 385.

3. Infringement.]—In an action against a company for infringement of a patent, the venue should be laid at the place of the registry which is nearest the head office of the company. *Short* v. *Federation Brand Salmon Canning Co.*, 6 B. C. R. 436.

4. Infringement.]—A patent for a mechanical combination, which produces a new result, is infringed if the combination is taken in essence and in substance. *Short* v. *Federation Brand Salmon Canning Company*, 7 B. C. R. 197.

PAWNBROKER.

1. License — *Mandamus to compel issue of.*]—*Regina* v. *Corporation of Victoria*, 1 B. C. R. pt. II., 331.

See MUNICIPAL CORPORATIONS, X.

PAYMENT.

1. Court—*Payment into, under execution.*]—*McKay* v. *Clarke*, 2 B. C. R. 213.

See PRACTICE, XXIII.

2. Court — *Payment into.*] — *Jardine* v. *Bullen*, 7 B. C. R. 471.

See ELECTIONS.

3. Demand for — *Time to consider.*] — *Belcher et al.* v. *McDonald*, 9 B. C. R. 377.

See APPEAL, VIII. 11.

4. Garnishee proceedings — *Costs not allowed on payment into Court.*]—Where a defendant in a County Court action pays the full amount of the claim and costs called for in a default summons within the five days' limit mentioned in the summons, the plaintiff will not be allowed the costs of a garnishee summons. *Shawinigan Lake Lumber Co.* v. *Fairfull, Coburn Garnishee*, 7 B. C. R. 58.

5. Vested right.]—Can only be discharged by payment or release under seal or accord and satisfaction. *Croasdaile* v. *Hall*, 3 B. C. R. 384.

See CONTRACTS, IV. 1.

PEACE OFFICER.

1. Obstructing—*Charge of, triable summarily.*]—*Rex* v. *Jack et al.*, 9 B. C. R. 19.

See CERTIORARI.

See also CRIMINAL LAW.

PEACE PRESERVATION ACT, 1869.

1. Is intra vires.]—*Keefer* v. *Todd*, 1 B. C. R. pt. II., 249.

See CONSTITUTIONAL LAW, III.

PECUNIARY LEGACY.

1. Pecuniary legacies are payable out of residuary realty.]—*Manson* v. *Rose*, 1 B. C. R. pt. II., 49.

See WILLS.

PENALTY.

1. Penalty for sitting as alderman without being qualified.]—*Falconer* v. *Langley*, 6 B. C. R. 444.

See MUNICIPAL CORPORATIONS, V.

2. Prohibition without—*Quashing summary conviction.*]—*Reg.* v. *Little*, 6 B. C. R. 78.

See MASTER AND SERVANT, V.

PENDING TRIAL.

1. Words defined.]—*Green* v. *Stussi*, 6 B. C. R. 193.

See PRACTICE, XXXIV.

PERFORMANCE.

1. Impossibility of.]—*Manley* v. *Mackintosh*, 10 B. C. R. 84.

See VENDOR AND PURCHASER.

See also SPECIFIC PERFORMANCE.

PERJURY.

1. Evidence in civil action admitted on trial for. *Rex* v. *Coote*, 10 B. C. R. 285.

See CRIMINAL LAW, VIII.

PERSON.

1. Execution of.]—*Ward & Co.* v. *John Clark*, 4 B. C. R. 71.

See ARREST.

PERSONA DESIGNATA.

1. Deputy registrar.]—An order directed the examination of a witness de bene esse before the "the registrar of this Court." The registrar not being able to take the examination, the witness was examined before the deputy registrar of the Court. By the Supreme Court Act, C. S. B. C. 1888, c. 31, s. 2, "The district registrar shall include any deputy of such registrar:"—Held, that the nomination of the registrar by the order to take the examination, was not a "persona designata" but as registrar, and that the deputy registrar was competent to act for him thereon. *Richards* v. *Ancient Order of Foresters*, 5 B. C. R. 59.

2. When reeve and clerk of municipality are.]—*Tracey* v. *District of North Vancouver*, 10 B. C. R. 235.

See MUNICIPAL CORPORATIONS, IX.

PERSONAL ESTATE.

1. Tax on mortgage securities as personal property — *Whether direct or indirect.*]—*Re Yorkshire Guarantee and Securities Corp.*, 4 B. C. R. 258.

See CONSTITUTIONAL LAW, II. 8.

PESTILENCE.

See HEALTH.

PETITION.

1. Election — *Petition to set aside an — Time for filing.*]—*Martin* v. *Deane*, 7 B. C. R. 128; *Stoddart* v. *Prentice*, 7 B. C. R. 498; *Jardine* v. *Bullen*, 7 B. C. R. 471; *Jardine* v. *Bullen*, 6 B. C. R. 220; *Rae* v. *Gifford*, 8 B. C. R. 273.

See ELECTIONS.

2. For vesting order—*Service of.*]—*In re Spinks Trusts*, 6 B. C. R. 375.

See TRUSTS.

3. Liquor license.]—*In re Close & Berry*, 2 B. C. R. 131.

See INTOXICATING LIQUORS.

4. Municipal elections — *Procedure under.*]—*In re Slocan Municipal Election*, 9 B. C. R. 113.

See ELECTIONS.

5. Winding-up.]—*In re The Companies' Winding-up Acts and The Kootenay Brewing, Malting & Distilling Co.*, 6 B. C. R. 112.

See COMPANY, IX.

See also PRACTICE, XXIV.

PETITION OF RIGHT.

1. Agent for government — *Special delegate—Remuneration.*]—Suppliant—a member of Dominion Parliament—was appointed by order-in-council (14th October, 1880), as special agent for the Province at Ottawa. Another order, of same date, provided for "payment of expenses necessarily incurred." On 30th March, 1881, suppliant went, at the request of Provincial Government, as delegate to London, to support prayer of petition from the B. C. Legislative Assembly to the Queen. All expenses of suppliant were allowed and paid. On a petition for payment for services:—Held, that as the positions were honorary, and as contracts were silent as to remuneration for services, he could not recover. *DeCosmos* v. *The Queen*, 1 B. C. R. Pt. II., page 26.

2. Counterclaim.] — There cannot be a counterclaim to a petition of right. *Spiers v. Queen and Corbould*, 4 B. C. R. 388.

3. Crown grant—*Petition of right—Proper remedy to obtain.*] — Mandamus does not lie to compel the Chief Commissioner of Lands and Works to issue a Crown grant; the remedy is by petition of right. *Clarke et al. v. The Chief Commissioner of Lands and Works*, 1 B. C. R. pt. II., 328.

4. Locus standi of suppliant.] — Suppliant applied to be allowed to purchase certain lands under s. 31 of the Land Act, tendering the proper amount therefor. The application was refused on the ground that the lands had been granted to the railway company. The suppliant alleged that such grant was illegally issued and void and the Crown allowed a petition of right to be brought:—Held, dismissing the petition, that the suppliant had no locus standi to obtain any relief. *Hall v. The Queen and the Kaslo and Slocan Ry. Co.*, 7 B. C. R. 89.

5. Judgment of DRAKE, J., reported ante (at p. 89, 7 B. C. R.) confirmed. *Hall v. The Queen and the Kaslo and Slocan Railway Company*, 7 B. C. R. 480.

6. Mineral claim—*Petition of right to obtain Crown grant.*] — The Mineral Ordinance, 1869, provides that holders of a prospecting license for coal may select for purchase a portion of the lands included in their license. Upon compliance with the terms and conditions of the Act, the licensees are entitled to claim a Crown grant of the selected lands. The petitioners held a prospecting license for coal over 2,500 acres of land, and applied for a Crown grant. In support of their claim, they relied on a certificate of the Assistant Commissioner of Lands and Works that they had posted notices of their application, and that no objection to the issue of a grant had been substantiated:—Held, (1) that the certificate was not in accordance with the Act; Held, (2) that the certificate of an Assistant Commissioner was not conclusive evidence of compliance with the statutory conditions, and the presumption arising from the certificate could be rebutted by evidence to the contrary. It was contended that the Lands and Works Department having received the certificate without objections, and not having cancelled the license under the provisions of the Mineral Ordinance Amendment Act, 1873, had waived the performance of the terms and conditions of the Act:—Held, that the department could not waive the performance of conditions imposed by the legislature. The petitioners' application for a Crown grant was made in 1874, but they did not prospect or work the land, or take further steps in support of their claim till 1882, and in the meantime the lands had increased in value:—Held, that, in a proceeding to enforce specific performance by the Crown, unreasonable delay on the part of the petitioners is fatal to the application. Quære, whether, that to entitle prospecting licensees to a Crown grant of coal lands under the Mineral Act, it is not essential that they should have found coal on the land selected by them for purchase? *Peck and others, petitioners v. The Queen, respondent*, 1 B. C. R. pt. II., 11.

PHARAOH.

1. Held to be an unlawful game.]—*Regina v. Ah Pow*, 1 B. C. R. pt. I., 147.

See GAMING.

PHARMACY ACT, 1891.

1. "Exercising profession" — *Meaning of.*]—One who resided in the Province until the coming into force of the Pharmacy Act, 1891, and was a partner of a druggist practising within the Province, is not entitled to be registered under s. 12 of the Act, as having practised as a druggist. *Ex parte Henderson, in re The Pharmacy Act*, 1891, 2 B. C. R. 103.

PHOTOGRAPHS.

1. Are privileged from production.]—*Feigenbaum v. Jackson et al.*, 7 B. C. R. 171.

See PRACTICE, II., 2, 7.

PHYSICIANS AND SURGEONS.

1. Defendant, with the object of making sales of medicines professed by him to be specifics for certain diseases, held public meetings, invited proposed purchasers to declare their symptoms, and publicly examined them and applied the remedy:—Held, that this was "practising medicine for gain or hope of reward." *Regina v. Barnfield (alias Scquah)*, 4 B. C. R. 305.

See also MEDICINE.

PILE DRIVER

1. Defect in—*Causing injury.*]—*Marshall v. Cates*, 10 B. C. R. 153.

See MASTER AND SERVANT, IV.

PLACE FOR HEARING APPEAL.

Williamson v. Bank of Montreal, 6 B. C. R. 480.

See APPEAL, VIII. 11.

PLACE FOR PAYMENT.

1. Necessity for presentment of note at place of payment.]—*Croft v. Hamlin et al.*, 2 B. C. R. 333.

See PRACTICE, XXXVIII. 10.

PLACE FOR PRODUCTION.

1. The place of production should be where writ issued.]—*Davis, Sayward Mill & Land Co. v. Buchanan*, 10 B. C. R. 175.

See PRACTICE, XI. 7

PLACE OF ISSUE.

1. Of Chamber summons.] — *Centre Star Mining Co.* v. *Rossland & Great Western Mines*, 10 B. C. R. 136.

See PRACTICE, VI.

PLACER MINING.

1. Use of water for.] — *The Columbia River Lumber Co.* v. *Yuill et al.*, 2 B. C. R. 237.

See WATERS AND WATERCOURSES, IV.

See also MINES AND MINERALS.

PLAINTIFF'S ADDRESS.

1. Endorsement of, on writ.]—*Carse* v. *Tallyard*, 5 B. C. R. 142.

See PRACTICE, XXXVIII. 1.

PLAN.

1. Effect of reference to in agreement.]—*Thompson* v. *Courtney*, 2 B. C. R. 89.

See SPECIFIC PERFORMANCE.

2. Effect of filing in Land Registry Office.]—*Johnston* v. *Clarke*, 1 B. C. R., pt. II., 56.

See BOUNDARIES.

3. *Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

See also BOUNDARIES—MAP—REGISTRATION OF DEEDS—SURVEY.

PLEA.

1. Of guilty operates as an estoppel from appealing on merits.] — *Regina* v. *Bowman*, 6 B. C. R. 271.

See CRIMINAL LAW, IV.

PLEADINGS.

I. GENERALLY.

1. Allegations merely matters of opinion or hearsay and derogatory of the plaintiff will be struck out. *Hoste* v. *Victoria Times Pub. Co.*, 1 B. C. R. Pt. II., 365.

See STRIKING OUT, infra.

2. Alternative — *Alleging facts in.*] — *Garesche* v. *Garesche*, 4 B. C. R. 444.

See STATEMENT OF CLAIM, infra.

3. Character of action determined by issues raised.]—In an action to set aside a will on the ground that it was obtained by fraud and undue influence, the plaintiff asked for a jury:—Held, by the Full Court, reversing WALKEM, J., that the action was one of those referred to in r. 81, and as such, according to r. 330, must be tried without a jury. *Per* DRAKE, J.: The character of an action is determined by the issues raised in the pleadings rather than by the prayer for relief. Stewart v. Warner (1895), 4 B. C. 298, and Corbin v. Lookout Mining Co. (1897), 5 B. C. 281, approved. *Hopper* v. *Dunsmuir* (*No. 2*), 10 B. C. R. 23.

4. Condition precedent — *Pleading of.*] —*Hopkins* v. *Goodenham et al.*, 10 B. C. R. 250.

See MASTER AND SERVANT, II.

5. Denials—*Rules of pleading relating to considered.*] — *Hogg* v. *Farrell*, 6 B. C. R. 387.

6. Knowledge—*Facts alleged in pleadings —Peculiar to knowledge of opposite party— Right of discovery.*]—*Garesche* v. *Garesche*, 4 B. C. R. 444.

See STRIKING OUT, infra.

7. Illegality—*Plea of, not raised in.*]— *The Meriden Britannia Co.* v. *Bowell*, 4 B. C. R. 520.

See ASSIGNMENTS.

8. Matter — *Not raised in pleadings — Effect of, on appeal.*]—*Wensky* v. *Canadian Development Co.*, 8 B. C. R. 191.

See APPEAL, IX.

9. Matter—*Not in pleadings received at trial.*]—*Coughlan* v. *Victoria*, 4 B. C. R. 27.

See CONTRACT, III. 1.

10. Point of law not raised in pleadings.]—The objection that upon the evidence the act complained of was not done by the servant in the course and within the scope of his employment by defendants, and was unauthorized by them, is not open to defendants upon motion for a non-suit, unless they pleaded it as a defence. *Adams* v. *National Electric Tramway and Lighting Co.*, 3 B. C. R. 199.

11. Point not pleaded or taken in Court below — *Not open on appeal.*] — *Wenskv* v. *Canadian Development Co.*, 8 B. C. R. 190.

II. ADMISSION.

1. Agency—*Scope of admission of.*] — In an action against the captain and owner of a steamship for trespass and false imprisonment in taking the plaintiff on board their steamship at Honolulu and conveying him to Vancouver, B. C., against his will, the statements of defence of each defendant alleged that "in receiving the said plaintiff on board the said steamship Warimoo, and conveying him to Vancouver aforesaid, he was acting as the agent of the Hawaiian government, being a responsible government, and carrying out the lawful order of that government, given in the said City of Honolulu and Island of Oahu, which were at that time under martial law." The plaintiff in his reply admitted the above paragraph. DRAKE, J., at the trial, non-suited the plaintiff on the ground that the scope of the allegation was that the act of State, and agency of the defendants for the Hawaiian government in carrying it out, covered the conduct complained of outside as well as within the territorial limits of Hawaii, and that the admission was fatal to the cause of action; — Held, by the Full Court, *per* MCCREIGHT, J. (DAVIE, C.J., and WALKEM, J., concurring), overruling DRAKE, J., and granting a new trial: That the scope of the admission had reference to the substantive facts alleged in the defence, and not the extent of the agency, as alleged, which was a matter of legal deduction from the facts not susceptible of being concluded by admission. *Cranstoun* v. *Bird and Huddart*, 4 B. C. R. 569.

2. Partnership—*Allegation of*—*Whether admitted.*]—The action was tried and evidence given pro and con upon the question whether defendant, Celia Mylius, a married woman, was liable to the plaintiff as being the partner of the defendant Jackson. The plaintiff's claim alleged: "2. The defendants entered into partnership as watchmakers and jewellers on, etc. 3. That while defendants were carrying on such business, the plaintiff advanced to them the following (claimed) sums." The statement of defence of Celia Mylius alleged: "1. The defendant denies that on, etc., or at any other time, she entered into partnership with the defendant, Jackson, as alleged in paragraph 2 of the statement of claim. 2. Neither at the times therein alleged or at any other times did plaintiff advance to defendants the sums alleged or any of them, and if . . . advanced, they were advanced to defendant Jackson alone." CREASE, J., who tried the action, entered judgment for the plaintiff, on the ground that the partnership was proved. There was no evidence that the defendant, Celia Mylius, had any separate property at the time of the alleged contract. On appeal to the Full Court:—Held, *per* BEGBIE, C.J., and DRAKE, J.: That the partnership was admitted on the pleadings, and that such objection was then open to the plaintiff. *Per* MCCREIGHT, J., dissenting, that the partnership was not admitted, but denied in the defence. That, if otherwise, all proper amendments should be made to meet the case as presented at the trial. That, in any case, the objection that the defendant, Celia Mylius, had no separate property at the time the alleged liability arose, was fatal to the judgment. *Margaret Jackson* v. *Alexander Jackson and Celia Mylius*, 3 B. C. R. 149.

3. Statute of Frauds — *Mineral Act*, 1891, *s.* 34.]—*Per* DRAKE, J.: An agreement between the defendant and plaintiff not stated to be in writing, in regard to the mineral claim in question, being alleged in the statement of defence:—Held, that the defence of the Statute of Frauds was waived and the defendant concluded by the admission. Upon appeal to the Full Court:—Held, *per* MCCREIGHT, J. (WALKEM and MCCOLL, JJ., concurring): To maintain the defence of the Statute of Frauds to an agreement for sale or transfer of a mineral claim, both that statute and s. 34 of the Mineral Act, supra, must be pleaded. *Stussi* v. *Brown*, 5 B. C. R. 380.

4. Of a trespass.]—*Adams* v. *The National Electric Tramway & Lighting Co.*, 3 B. C. R. 199.

See RAILWAYS, V.

III. AMENDMENT.

1. Costs of, at trial.]—*Gordon* v. *City of Victoria*, 6 B. C. R. 129.

See PRACTICE, IX. 5.

2. Delay.]—No ground for setting aside order allowing amendment of pleadings. *Clark* v. *Eholt*, 3 B. C. R. 442.

3. Evidence—*Amendment of, to conform to.*]—*Halten et al.* v. *Vandall et al.*, 7 B. C. R. 331.

See FRAUDULENT CONVEYANCE.

4. Full Court — *Allowed by.*] — The Full Court has power to allow, on terms, an amendment for the first time of a pleading by setting up a fact which would if proved be a good answer to a plea of the Statute of Limitations. There is no fixed rule that in all cases costs of interlocutory proceedings shall not be payable until the conclusion of the litigation. *Jones* v. *Davenport*, 7 B. C. R. 452.

5. Orders.] — Amendment of pleadings where conflicting orders. *Leadbeater* v. *Crow's Nest*, 10 B. C. R. 404.

See PRACTICE, I. 9.

6. Order—*Amendment exceeding*—*Practice* — *Amending pleadings* — *Exceeding terms of order allowing*—*Waiver of right to object.*]—

Two weeks after the receipt of an amended statement of claim, defendants' solicitors wrote plaintiff's solicitor that they would "prepare and file a new statement of defence according to the amendment you have made," and two weeks later took out a summons to strike out amended statement of claim on the ground that it exceeded the terms of the order authorizing amendment: — Held, reversing FORIN, Co.J., that the defendants had waived their right to object. *Centre Star* v. *Rossland Miners' Union*, 9 B. C. R. 325.

7. Partnership action—*Allegation of — Whether admitted in defence.*] — Proper amendments should be allowed to meet the case as presented at the trial. *Jackson* v. *Jackson et al.*, 3 B. C. R. 149.

See PLEADINGS, II. 1.

8. Statement of claim — *Disclosing no reasonable cause of action to.*]—The statement of claim disclosed that the defendant had brought an action to set aside a conveyance to the plaintiff, a married woman, from her husband, of certain lands, as being made for the purpose of defeating a judgment of the defendant against him. That the defendant had issued a certificate of lis pendens in that action and registered it against the lands in question, whereby the plaintiff was prevented from making an advantageous sale thereof. That "the defendant, although he was made aware of the circumstances surrounding the transaction in question, and of the loss of profit which he would thereby entail upon the plaintiff, wrongfully and maliciously refused to remove the said lis pendens," and that the defendant afterwards discontinued his action. Upon application by defendant to dismiss the present action as frivolous and vexatious, and an abuse of the process of the Court, and, under Rule 235, as disclosing no reasonable cause of action:—Held, by WALKEM, J., and affirmed by the Full Court (DAVIE, C.J., McCREIGHT, and DRAKE, JJ.), that the statement of claim disclosed no reasonable cause of action, and, upon all the facts (which appeared by affidavits filed for the purpose of defendant's contention, that the action was an abuse of the process of the Court), that no truthful amendment could be made to the statement of claim which would disclose a good cause of action. *Cowan* v. *Macaullay*, 5 B. C. R. 495.

9. Statement of claim.] — After order for, amended claim must be delivered before an order for examination of defendant can be made. *Cooley* v. *Fitzstubbs*, 3 B. C. R. 198.

See PRACTICE, IX. 5.

10. Terms.]—After an order fixing the day for trial, amendments in the pleadings, making a new case, will only be allowed upon terms of postponing the trial, if the party against whom the amendments are made is not ready for trial on the new questions introduced. *Woolley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 197.

11. Trial—*At or after.*]—The Court may allow pleadings to be amended at any time at or after the trial to meet the facts proved, and in accordance with the times upon which the trial has proceeded, following Clough v. L. & N. W. Ry. Co., L. R. 7 Ex. 30. *Foley* v. *Webster*, 2 B. C. R. 137.

12. Trial—*Allowed at.*] — An action was brought for wrongful dismissal when, on the facts, it should have been for a refusal to receive into the employment. An amendment was allowed at the trial. *Tuck* v. *The Corporation of the City of Victoria*, 2 B. C. R. 179.

See also AMENDMENT.

IV. COSTS.

1. Amendment of.

See AMENDMENT, supra.

2. Mining cases — *Particularity.*] — In mining cases if the defendant wishes to rely on defects in the plaintiff's location he must set them forth specifically in his pleading. No costs of appeal will be given to the appellant who succeeds on a point not taken below. *Aldous* v. *Hall Mines*, 6 B. C. R. 394.

V. COUNTERCLAIM.

1. Claim and counterclaim treated as distinct actions up to execution. *Smith* v. *Hansen*, 2 B. C. R. 153.

2. Joint defendants—*One may counterclaim in individual cause of action against plaintiff.*]—One of two defendants sued jointly may counterclaim upon a cause of action which he individually has against the plaintiff. A counterclaim should not be entirely independent of the original cause of action, but where the counterclaim involved an issue raised as a defence, it was held to be sufficiently connected with the claim. Upon appeal to the Divisional Court:—Held, *per* CREASE and WALKEM, JJ.: The fact that a counterclaim, if successful, involves the taking of long accounts which will delay the disposition of the action, is not a sufficient cause for excluding it if otherwise unobjectionable. *Powell* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 81.

3. Petition of right—*There cannot be a counterclaim to a.*]—*Spiers* v. *The Queen*, 4 B. C. R. 388.

4. Trial—*After case in paper for.*]—Order made adding a counterclaim after the case was in the paper for trial. *Beer Bros.* v. *Collister*, 3 B. C. R. 145.

VI. DELIVERY.

1. After amendment.] — After an order for amendment of statement of claim the amended claim must be delivered before an order for examination of defendant can be made. *Cooley* v. *Fitzstubbs*, 3 B. C. R. 198.

2. Statement of claim—*After order for amendment of.*]—Amended copy must be delivered before order for discovery of defendant can be made. *Cooley* v. *Fitzstubbs*, 3 B. C. R. 198.

See PRACTICE, XI. 5.

3. Waiver.]—Delivery of pleadings not a waiver of objection to jurisdiction. *Rithet* v. *Ship "Barbara Boscowitz,"* 3 B. C. R. 445.

See ADMIRALTY, IV.

VII. DEMURRER.

1. Action on a bond.]—By agreement with the Province of British Columbia, dated February 23rd, 1885, a railway company was bound to complete the undertaking by December 31st, 1886, and due performance of the agreement was secured by a bond in the sum of $250,000. The work was stopped, owing to certain landowners obtaining injunctions against the company, which was affirmed on appeal to the Full Court, but at length dissolved on appeal to the Supreme Court of Canada on December 7th, 1886, but the company were unable to complete the contract by the stipulated time:—Held, in an action on the bond, that a demurrer to the defence on the ground "that non-performance of a contract, or delay in performing a contract, cannot be excused or defended by setting up the order of injunction of a Court of Justice" was bad. *Her Majesty's Attorney-General for the Province of British Columbia* v. *The Canadian P. R. Co., Donald A. Smith, Wm. C. Van Horne, and Sandford Fleming*, 1 B. C. R. pt. II., 350.

VIII. PARTICULARS.

1. Attorney-General — *Dedication of townsite.*]—In an action by the Provincial Attorney-General for a declaration that the public had a right of access to the sea over the embankment of the C. P. R. via certain streets in Vancouver, it was alleged that in 1870 Her Majesty by the officers of Her Colony of British Columbia, laid out and planned a townsite on Burrard Inlet, and dedicated certain parts of the townsite to public uses:—Held, that plaintiff must give (1) particulars of the authority under which the townsite was laid out; (2) of the nature and dates of dedication, and by whom made; and (3) of what portions of the townsite were dedicated. *The Attorney-General for the Province of British Columbia, ex rel. The City of Vancouver* v. *The Canadian Pacific Railway Company*, 10 B. C. R. 184.

2. Negligence within defendant's knowledge.] — Particulars are ordered for the purpose of forwarding the applicant's case, and not to hamper the party ordered to give them. When a plaintiff is ordered to give particulars of negligence which are essentially within the defendant's knowledge, the order may provide that the plaintiff should not be confined at the trial to the particulars given. *Alaska Packers' Association* v. *Spencer*, 9 B. C. R. 473.

3. Undue influence.]—A party alleging undue influence will be required to give particulars of the acts thereof. Lord Salisbury v. Nugent (1883), 9 P. R. 23, considered. *Hopper* v. *Dunsmuir*, (No. 3), 10 B. C. R. 159.

IX. STATEMENT OF CLAIM.

1. *Conformity with Writ.*

1. Conformity with indorsement on writ.] — Plaintiffs issued a writ against three defendants, all resident in England, and served it on one of the defendants while temporarily in British Columbia, and then under Order XI. served the other defendants in England. The claim indorsed on the writ was for damages for non-transfer to plaintiff of shares according to agreement, and for failure to hold certain stock in trust. By the statement of claim the plaintiffs set up in effect a claim for damages against defendants for fraudulently manipulating certain companies so that the stock had become worthless:—Held, that the matters alleged in the statement of claim were within the scope of the indorsement. In deciding whether or not the cause of action indorsed on a writ has been unduly extended on the statement of claim, the fact that one of the defendants was served within the jurisdiction, and the others were subsequently served without the jurisdiction under Order XI., is immaterial. *Oppenheimer* v. *Sperling et al.*, 10 B. C. R. 162.

See also AMENDMENT, supra—STRIKING OUT, infra.

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2. *Embarrassing Plea.*

1. Defendant—*Having means of knowledge.*]—When it appears from the statement of claim that the defendant has, on the circumstances alleged, the means of knowing the details of the matters charged, and the plaintiff has not, general allegations are not embarrassing, and the defendant is not entitled to particulars until after he has given discovery. A plaintiff may in his statement of claim deduce from the facts alleged and set up, alternative causes of action. Allegations that, etc., "as far as the plaintiffs can discover," in such a statement of claim are not embarrassing. *Garesche* v. *Garesche*, 4 B. C. R. 444.

2. Foreshore—*Allegation as to obstruction of.*]—In an action for damages and an injunction, the plaintiff alleged in the statement of claim that the defendant company had wrongfully erected an embankment on the foreshore of Burrard Inlet, and thereby obstructed the outfall of sewers, to the damage and annoyance of the people of Vancouver:—Held, on an application to strike out the pleading as embarrassing, and as disclosing no cause of action, that the pleading was good. In such an action, it is not necessary for the plaintiff to allege ownership in the foreshore. Semble, a combined application may be made under Order XIX., r. 27, and Order XXV., r. 4, to strike out a statement of claim on the ground that it is embarrassing and discloses no reasonable cause of action, and such procedure is not limited to cases which are plain and obvious. *The Attorney-General for the Province of British Columbia, ex rel. The City of Vancouver* v. *The Canadian Pacific Railway Company*, 10 B. C. R. 108.

3. General allegation of plaintiffs' title—*Rule* 181.]—In an action by plaintiffs, who have never been in possession, to

recover certain coal seams:—Held, that the statement of claim should state particulars of the title under which the plaintiffs claim. *E. & N. Railway Co.* v. *New Vancouver Coal Company*, 6 B. C. R. 188.

See also STRIKING OUT, infra.

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3. *Joinder of Causes.*

1. By plaintiff of unconnected causes.]—Misjoinder by a plaintiff of unconnected causes of action against different defendants is not objectionable on demurrer by any of the separate defendants, but is proper subject of motion to strike out as embarrassing, etc. *McKenzie and McGowan* (assignees for the benefit of the creditors of H. T. Read & Co.) v. *Bell-Irving, Paterson & Co., and Alexander McEwen*, 2 B. C. R. 241.

2. Where some objectionable.] — On the trial of an action containing three different causes of action, one of which was an action for moneys had and received, another for damages for assault and false imprisonment, and a third for damages for procuring the plaintiff to enter a house of prostitution, the Judge, after reading the plaintiff's examination for discovery, came to the conclusion that the evidence disclosed an illegal contract under which the defendants were to receive a part of the moneys obtained by plaintiff while engaged in prostitution, and that the action involved the taking of an account in respect thereof, and was of an indecent character and unfit to be dealt with, and he dismissed it out of the Court of his own motion, the formal judgment stating that this Court doth of its own motion and without adjudicating as between the plaintiff and defendants on the matters in dispute between them, order that this action be dismissed out of this Court, with costs:"—Held, by the Full Court, that the order dismissing the action would have precluded the plaintiff from again suing in respect of any of the causes of action included in the statement of claim, and that the plaintiff should have been allowed to prove her case in respect to those causes of action against which there was no objection; and that the respondent who supported the judgment on appeal must pay the costs of the appeal. Judgment of IRVING, J., set aside. *Guilbault et al.* v. *Brothier et al*, 10 B. C. R. 449.

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4. *Particulars.*

1. Declaration.] — Particulars in action for, that public have right of access to sea. *City of Vancouver* v. *C. P. Ry. Co.*, 10 B. C. R. 184.

See PRACTICE, XI. 6.

2. Defendant having means of knowledge.] — When it appears from the statement of claim that the defendant has, on the circumstances alleged, the means of knowing the details of the matters charged, and the plaintiff has not, general allegations are not embarrassing, and the defendant is not entitled to particulars until after he has given discovery. A plaintiff may in his statement of claim deduce from the facts alleged, and set up, alternative causes of action. Allegations that, etc., "as far as the plaintiffs can discover," in such a statement of claim are not embarrassing. *Garesche* v. *Garesche*, 4 B. C. R. 444.

3. Negligence.]—In an action for damages for personal injuries, paragraph 5 of the statement of claim contained allegations of negligence which might or might not have been particulars of the negligence alleged in paragraphs 3 and 4. Plaintiff refused to comply with defendants' demand for particulars of the negligence alleged in paragraphs 3 and 4:—Held, that he must give the particulars or else state that they were to be found in paragraph 5. *Kingswell* v. *Crow's Nest Pass Coal Company*, 9 B. C. R. 518.

4. Statutes—*Where pleading.*] — Where there are two statutes, the short titles of which are identical, a defendant pleading one of them should make it plainly appear on which he relies, but he need not plead the particular section. *Kirk* v. *Kirkland et al.*, 6 B. C. R. 442.

5. Title—*Particulars of, in action for recovery of land.*]—In an action by plaintiffs who have never been in possession to recover certain coal seams: — Held, that the statement of claim should state particulars of the title under which the plaintiffs claim. *E. & N. Railway Co.* v. *New Vancouver Coal Company*, 6 B. C. R. 188.

6. Undue influence—*Particulars of.*] — *Hopper* v. *Dunsmuir* (No. 3), 10 B. C. R. 159.

X. STATEMENT OF DEFENCE.

1. *Embarrassing Plea.*

1. General allegation of defendants' title—*Rule* 210.] — Statement of defence traversed allegations in the claim to the effect that plaintiffs were entitled to mine certain coal under the sea, without shewing the defendants' title in the defence, and further set up laches as an alternative defence: Held, that the defendants were not bound to set forth their title in their statement of defence, but that particulars of the alleged laches ought to be stated. *Esquimalt and Nanaimo Railway Company* v. *New Vancouver Coal Company*, 6 B. C. R. 306.

2. General allegation of defendants' title — *Rule* 210.] — Statement of defence traversed allegation in the claim to the effect that plaintiffs were entitled to mine certain coal under the sea, without shewing the defendant's title in the defence, and further set up laches as an alternative defence: Held, that the defendants were bound to set forth their title in their statement of defence. Decision of IRVING, J., reported in 6 B. C. 306, reversed. *E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 9 B. C. R. 162.

3. Libel—*Offer of apology.*] — An offer, alleged in a statement of defence to an action of libel, to publish an apology on such terms as the plaintiff could reasonably require, is no defence and embarrassing. *Hoste* v. *Victoria Times Publishing Co.*, 1 B. C. R. pt. II., 365.

4. General denial—*Whether sufficient—Rules* 158, 169 *and* 171—*New defence on appeal.*]—The rules of pleading relating to denials specially considered and applied. The Full Court will not allow a defence to be raised for the first time, based on non-compliance with the directions of the mineral laws relating to location. *Hogg* v. *Farrell*, 6 B. C. R. 387.

See also STRIKING OUT, infra.

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2. *Particulars.*

1. Discovery—*Rule* 158—*Estoppel.*] — Defendants in answer to an action for trespass to land by erecting a building thereon, set up in their statement of defence that the erection was upon land on defendants' side of boundaries, fixed by agreement between the parties, and also that the plaintiff was estopped by his conduct and representations from denying that the boundaries were as claimed by the defendants:—Held, by the Divisional Court (DAVIE, C.J., and DRAKE, J.): That the specific acts and conduct causing the alleged belief relied on as an estoppel must be pleaded, and that particulars under the general allegation were properly ordered. The mere fact that particulars will necessarily disclose the names of witnesses is no objection if the party is otherwise entitled to them. *Gwichon* v. *The Fishcrman's Cannery Co.*, 4 B. C. R. 516.

2. Libel.]—A defendant in a libel action, who has pleaded a general justification, must furnish the plaintiff with the particulars of the facts relied upon as a justification before he can obtain discovery from the plaintiff. *Bullen* v. *Templeman*, 5 B. C. R. 43.

3. Mining cases — *Particularity.*]—In mining cases, if the defendant wishes to rely on defects in the plaintiff's location he must set them forth specifically in his pleading. *Aldous* v. *Hall Mines Co.*, 6 B. C. R. 394, 1 M. M. C. 213; *Hogg* v. *Farrell*, 6 B. C. R. 387, 1 M. M. C. 79.

4. Statutes — *Rules* 169 *and* 174—*Two statutes entitled the same.*] — Where there are two statutes, the short titles of which are identical, a defendant pleading one of them should make it plainly appear on which he relies, but he need not plead the particular section. *Kirk* v. *Kirkland*, 6 B. C. R. 442.

See also EMBARRASSING PLEA, supra—PRACTICE, XXII.

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3. *Points not Raised in Pleadings.*

1. Defence raised first time on appeal.]—The rules of pleading relating to denials specially considered and applied. The Full Court will not allow a defence to be raised for the first time, based on non-compliance with the directions of the mineral laws relating to location. *Hogg* v. *Farrell*, 6 B. C. R. 387.

2. Point of law not raised on pleadings.]—The objection that, upon the evidence, the act complained of was not done by the servant in the course or within the scope of his employment by defendants, and was unauthorized by them, is not open to defendants upon motion for a non-suit, unless they pleaded it as a defence. *Adams* v. *The National Electric Tramway and Lighting Co.*, 3 B. C. R. 199.

3. Point not pleaded or taken in Court below.]—In an action by a passenger for damages for loss of baggage, the point that certain articles lost were not the wearing apparel of the plaintiff was not pleaded or taken at the trial:—Held, on appeal, that the point was not then open to defendants. *Wensky* v. *Canadian Development Co.*, 8 B. C. R. 190.

XI. STRIKING OUT.

1. Allegations merely matters of opinion.]—In an action for libel an allegation that the defendants were willing to publish an apology in such terms as the plaintiff could reasonably require, was struck out. Allegations which are merely matter of opinion or hearsay, and derogatory to the plaintiff, will be struck out. *Hoste* v. *Victoria Times Publishing Company*, 1 B. C. R., pt. II., 365.

2. Application to strike out as embarrassing.] — In an action for damages and an injunction the plaintiff alleged in the statement of claim that the defendant company had wrongfully erected an embankment on the foreshore of Burrard Inlet and thereby obstructed the outfall of sewers, to the damage and annoyance of the people of Vancouver:—Held, on an application to strike out the pleading as embarrassing and as disclosing no cause of action, that the pleading was good. In such an action it is not necessary for the plaintiff to allege ownership in the foreshore. Semble, a combined application may be made under Order XIX., r. 27, and Order XXV., r. 4, to strike out a statement of claim on the ground that it is embarrassing and discloses no reasonable cause of action, and such procedure is not limited to cases which are plain and obvious. The *Attorney-General for the Province of British Columbia ex rel. The City of Vancouver* v. *The Canadian Pacific Railway Company*, 10 B. C. R. 108.

3. Counterclaim involving long accounts.]—One of two defendants sued jointly may counterclaim upon a cause of action which he individually has against the plaintiff. A counterclaim should not be entirely independent of the original cause of action, but where the counterclaim involved an issue raised as a defence, it was held to be sufficiently connected with the claim. Upon appeal to the Divisional Court: — Held, *per* CREASE and WALKEM, JJ.: The fact that a counterclaim, if successful, involves the taking of long accounts which will delay the disposition of the action, is not a sufficient cause for excluding it if otherwise objectionable. *Powell* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 81.

4. Dismissing action summarily for want of a cause of action on the face of the statement of claim—*Practice—Frivolous action.*]—*Wells* v. *Petty*, 5 B. C. R. 353.

5. Objectionable causes of action.]—On the trial of an action containing three different causes of action, one of which was an action for moneys had and received, another for damages for assault and false imprisonment, and a third for damages for procuring the plaintiff to enter a house of prostitution, the Judge, after reading the plaintiff's examination for discovery, came to the conclusion that the evidence disclosed an illegal contract under which the defendants were to receive a part of the moneys obtained by plaintiff while engaged in prostitution, and that the action involved the taking of an account in respect thereof, and was of an indecent character and unfit to be dealt with, and he dismissed it out of the Court of his own motion, the formal judgment stating that this Court doth of its own motion and without adjudicating as between the plaintiff and defendants on the matters in dispute between them, order that this action be dismissed out of this Court, with costs: — Held, by the Full Court, that the order dismissing the action would have precluded the plaintiff from again suing in respect of any of the causes of action included in the statement of claim, and that the plaintiff should have been allowed to prove her case in respect to those causes of action against which there was no objection; and that the respondent who supported the judgment on appeal must pay the costs of the appeal. Judgment of IRVING, J., set aside. *Guilbault et al.* v. *Brothier et al.*, 10 B. C. R. 449.

See also EMBARRASSING PLEA, supra.

XII. WAIVER BY PLEADING.

1. Statute of Frauds.]—An agreement between defendant and plaintiff not stated to be in writing in regard to a mineral claim, being alleged in the statement of claim and admitted in statement of defence: — Held, that defence of Statute of Frauds was waived and the defendant concluded by the admission:—Held, on appeal to Full Court, that to maintain the defence of the Statute of Frauds to an agreement for sale or transfer of a mineral claim, both that statute and s. 34 of Mineral Act must be pleaded. *Stussi* v. *Brown*, 5 B. C. R. 380.

XIII. MISCELLANEOUS.

1. Contract — *Ratification of, must be pleaded.*] — *Harper* v. *Cameron*, 2 B. C. R. 365.

See CANCELLATION OF INSTRUMENTS.

2. Corporate seal—*Defence that no corporate seal affixed not allowed where same not pleaded.*]—*Drake and Jackson* v. *Corp. of Victoria*, 1 B. C. R., pt. II., 165.

See MUNICIPAL CORPORATIONS, III.

3. Land Registry Act, s. 35—*Estoppel.*] — A party having actual notice of a document of title, is estopped from pleading s. 35 of the Land Registry Act. *Per* DAVIE, C.J., in *Griffiths* v. *Canonica*, 5 B. C. R. 67.

4. Replevin—*R. S. B. C. c.* 165.]—The Court procedure and practice existing under the old Replevin Act are still in force, although the new Act contains no reference to pleading or practice other than to enable them to be dealt with by Rules of Court to be made. *McGregor* v. *McGregor*, 6 B. C. R. 258.

5. Third party—*Suing—For purpose of claiming indemnity.*]—*C. P. R.* v. *McBryan*, 6 B. C. R. 136.

See WATERS AND WATERCOURSES, I.

POLICY OF INSURANCE.

1. Succession duty on life insurance.]—*Re Templeton*, 6 B. C. R. 180.

See TAXATION, III.

See also INSURANCE.

POLITICAL BIAS.

1. Of prosecution in criminal libel case no ground for change of venue.]—*Regina* v. *Nicol*, 7 B. C. R. 278.

See VENUE.

POSITIVE EVIDENCE.

1. Weight of.] — *Milton* v. *District of Surrey*, 10 B. C. R. 296.

See EVIDENCE.

See also MINES AND MINERALS, III., XIX.

POSSESSION.

1. Evidence as to change of.]—*Esnouf* v. *Gurney*, 4 B. C. R. 144.

See SALES.

2. Land—*Action for possession of, in accordance with plan.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

3. Title by.]—*In re Loewen & Erb*, 2 B. C. R. 135.

See RECORDS.

POST.

1. Legal post — *Mistake in giving approximate compass bearing of in staking mineral claim.*]—*Callahan* v. *Coplen*, 7 B. C. R. 422.

See MINES AND MINERALS, XXIX.

POST MORTEM.

1. Examination — *Knowledge of where insufficient.*]—*Regina* v. *Garrow and Creech*, 5 B. C. R. 61.

See CRIMINAL LAW, II.

POSTER.

1. Defamation through publication of.]—*Wolfenden* v. *Giles*, 2 B. C. R. 279.

See LIBEL AND SLANDER.

PRACTICE.

I. ACTION.

1. *Adverse Action.*

1. The Mineral Act, 1891, ss. 21 and 126 (a), provides that adverse claims should be filed in the office of the Mining Recorder, while the Act of 1894, s. 6, gives a form of notice of application for certificate of improvements which sets forth that adverse claims must be sent to the Gold Commissioner. The proposed defendants made an application for a certificate of improvements for the mining ground in question and published the notice prescribed by s. 6, supra, whereupon the proposed plaintiffs, in accordance with the terms of the notice, filed their adverse claim with the Gold Commissioner. Within the prescribed time they gave instructions to their agent to commence action, but he by mistake omitted to do so, the omission not being discovered until some time afterwards when negotiations for settlement were pending. Prior to and during these negotiations the proposed defendants knew that no action had been instituted. Finally, one of the proposed defendants refused his assent to a settlement which had been agreed to by all the other parties. The proposed plaintiffs proved to extend the time to commence action:—Held, *per* DRAKE, J.: By the Mineral Act Amendment Act, 1892, s. 14 (b), the filing of an adverse claim in the office of the Mining Recorder is a condition precedent to the right of action, and that there is no jurisdiction to extend the time. Quære, whether, if there were such a jurisdiction, the grounds shewn were sufficient. Upon appeal to the Full Court:—Held, *per* MCCREIGHT, WALKEM and MCCOLL, JJ., affirming DRAKE, J.: (1) That the adverse claim was not properly filed. (2) That owing to the nature of the subject matter, the Court requires stronger ground for extending time in mining cases than in other matters. The notice of appeal was served on the agent of the solicitor for the proposed defendants: — Held, sufficient. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233.

2. Practice in adverse actions.] — *Caldwell et al.* v. *Davis*, 7 B. C. R. 156.

See MINES AND MINERALS, III.

3. Writ of summons — *Renewal of.*]— The plaintiff in an adverse action issued a writ in August, 1897, and not having served it before the end of the year, obtained upon an ex parte application an order for renewal: —Held, on motion to set aside the order for renewal that the plaintiff had not prosecuted his action with reasonable diligence as required by s. 37 of the Mineral Act, and that the order must be set aside. Haney v. Dunlop, 6 B. C. R. 451:—Held, on appeal to the Full Court, that no reasonable explanation of the delay being given the order for removal was properly set aside: but that s. 37 of the Mineral Act does not enable a defendant to get rid of an action by applying in a summary way when not authorized by the ordinary practice of the Court. *Haney* v *Dunlop*, 6 B. C. R. 520.

See also ADVERSE ACTION, I. 1 — ADVERSE PROCEEDINGS—MINES AND MINERALS.

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2. *Commencement.*

1. One person cannot sue in a firm name.] — *B. C. R. Furniture Company* v. *Tugwell*, 7 B. C. R. 84.

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3. *Consolidation.*

1. Twenty-nine actions having been brought by different persons against the defendant company for damages caused by the death of relatives in an explosion in the company's coal mine, and on twenty-nine summonses for better particulars of the plaintiffs' claims having been dismissed, the defendants appealed:—Held, that the Court by virtue of its inherent jurisdiction to prevent the abuse of its process, could and would on the application of the defendants, stay proceedings in twenty-eight of the actions (upon defendants consenting to be bound in all the appeals by the result in one) until after the decision of the appeal in the remaining action—proper provision being made in case that appeal did not properly dispose of the questions in all. The proper practice would have been to have applied to have the actions consolidated. *Bodi* v. *Crow's Nest Pass Coal Company, Limited*, 9 B. C. R. 332.

See also TEST, infra.

4. Frivolous or Vexatious.

1. Frivolous action—*Dismissing—Pleading—Rule 235 — Lis pendens — Action for maliciously filing and maintaining.*] — The statement of claim disclosed that the defendant had brought an action to set aside a conveyance to the plaintiff, a married woman, from her husband, of certain lands, as being made for the purpose of defeating a judgment of the defendant against him. That the defendant had issued a certificate of lis pendens in that action and registered it against the lands in question, whereby the plaintiff was prevented from making an advantageous sale thereof. That, the defendant, although he was made aware of the circumstances surrounding the transaction in question, and of the loss of profit which he would thereby entail upon the plaintiff, wrongfully and maliciously refused to remove the said lis pendens, and that the defendant afterwards discontinued his action. Upon application by defendant to dismiss the present action as frivolous and vexatious, and an abuse of the process of the Court, and, under Rule 235, as disclosing no reasonable cause of action: —Held, by WALKEM, J., and affirmed by the Full Court (DAVIE, C.J., MCCREIGHT and DRAKE, JJ.), that the statement of claim disclosed no reasonable cause of action, and, upon all the facts (which appeared by affidavits filed for the purpose of defendant's contention, that the action was an abuse of the process of the Court); that no truthful amendment could be made to the statement of claim which would disclose a good cause of action. *Cowan* v. *Macaulay*, 5 B. C. R. 495.

5. Joinder of Causes.

1. Injunction and misrepresentation.]—A claim indorsed on a writ of summons for a declaration that defendant is trustee of lands for plaintiffs and for a conveyance thereof to them, and for damages for breach of contract, and against one defendant for damages for misrepresentation in regard thereto, and for an injunction, is not a joinder of other causes of action with an action for the recovery of land within the meaning of Order XVIII., R. 2 (Rule 147.) *Fletcher* v. *McGillivray*, 3 B. C. R. 37.

2. Misjoinder.]—Misjoinder by a plaintiff of unconnected causes of action against different defendants is not objectionable on demurrer by any of the separate defendants, but is a proper subject of a motion to strike out as embarrassing, etc. *McKenzie & McGowan (Assignees, etc.)* v. *Bell-Irving, Paterson & Co. et al.*, 2 B. C. R. 241.

3. Misjoinder.]—A claim indorsed on a writ of summons for a declaration that defendant is trustee of lands for plaintiffs and for a conveyance thereof to them, and for damages for breach of contract, and against one defendant for damages for misrepresentation in regard thereto, and for an injunction, is not a joinder of other causes of action with an action for the recovery of land within the meaning of Order XVIII., R. 2 (Rule 147). *Fletcher* v. *McGillivray*, 3 B. C. R. 37.

See also PLEADINGS, IX. 3.

6. Laches.

1. Motion to dismiss.] — The proper mode for a defendant to take advantage of delays on the part of the defendant is by motion to dismiss the action. Plaintiff having, after long delays, obtained an order to amend his statement of claim:—Held, on appeal to the Divisional Court (CREASE and DRAKE, JJ.), that the intervening delay was no ground for setting it aside. *Clark et al.* v. *Eholt & Carson*, 3 B. C. R. 442.

2. No proceedings for a year.]—Supreme Court Rule 749, requiring a month's notice of intention to proceed when there has been no proceedings for one year from the last proceeding, applies to an application to dismiss an action for want of prosecution. *Macdonald* v. *Jessop et al., Trustees of the Pandora Avenue Methodist Church*, 3 B. C. R. 606.

3. Supreme Court Rule, 340.]—Providing that "if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or apply to the Court or a Judge to dismiss the action, for want of prosecution," does not apply where the trial of the action has been partly proceeded with and adjourned. On appeal from an order dismissing the action for want of prosecution:—Held, by the Divisional Court (CREASE and MCCREIGHT, JJ.), allowing the appeal and reversing the order in such case was to set it down for trial, and if the plaintiff did not appear, to ask for judgment dismissing the action, under Supreme Court Rule 353. *Joseph Boscowitz* v. *T. H. Cooper, J. D. Warren and Hannah Warren*, 4 B. C. R. 88.

7. Multiplicity.

1. Different plaintiffs against same defendants — *Stay of proceedings, where similar orders are being appealed from, pending decision in one—Consolidation of action.*] —Twenty-nine actions have been brought by different persons against the defendant company for damages caused by the death of relatives in an explosion in the company's coal mine, and on twenty-nine summonses for better particulars of the plaintiff's claims having been dismissed the defendants appealed:—Held, that the Court by virtue of its inherent jurisdiction to prevent the abuse of its process, could and would on the application of the defendants, stay proceedings in twenty-eight of the actions (upon defendants consenting to be bound in all the appeals by the result in one) until after the decision of the appeal in the remaining action—proper provision being made in case that appeal did not properly dispose of the questions in all. The proper practice would have been to have applied to have the actions consolidated. *Bodi* v. *Crow's Nest*, 9 B. C. R. 331.

2. Trustees — *Action for account.*] — Trustees having received moneys under a decree in one of several actions relating to the same subject matter to which they were parties, an originating summons was obtained by other parties to the same actions calling upon the trustees for an account, not directed

by the decree in question, and to pay into Court:—Held, by the Divisional Court (McCREIGHT, WALKEM and DRAKE, JJ.), affirming an order of CREASE, J., directing the trustees to account and personally to pay the costs of the motion: That the proceeding, by originating summons, was warranted by rule 591, s.-ss. (c), (d), and an objection that the motion should have been made in one of the pending actions, overruled. *Per* McCREIGHT and WALKEM, JJ., that the trustees were properly ordered personally to pay the costs of the motion, and that they should also personally pay the costs of the appeal. *Per* DRAKE, J., dissenting: Trustees are entitled to their costs as a matter of right even in cases where the litigation has been unsuccessful in the absence of misconduct, and that, as a duty had been cast upon the trustees to appear on the summons and draw the attention of the Court to the position of the litigation, they should have their costs of such attendance and of the appeal. *Boscowitz* v. *Belyea*, 4 B. C. R. 527.

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8. *Parties.*

(a) *Adding.*

1. Chamber order amending writ.]—A chamber order allowed plaintiffs to amend the writ and statement of claim by adding as defendant "L. and C. carrying on business with defendant under the name of the P. P. Co. and the said P. P. Co:"—Held, in appeal, that the order should be varied by striking out the words "and the said P. P. Co." *Chong et al.* v. *McMorran*, 4 B. C. R. 261.

2. Joint claimants of mineral claim.]—All claimants under the Mineral Act to any part of the ground covered by the mineral claim of a plaintiff may be made defendants to an action by him to enforce an adverse claim by him against any one of such claimants. *Dunlop* v. *Haney*, 6 B. C. R. 169.

3. Joint tort feasors as co-defendants—*Third party practice—Order X. and Order XVII. of County Court—Holmes* v. *The Corporation of Victoria*, 4 *B. C. R.* 567—*Want of—No objection to the application—Practice—Rule* 703—*Examination for discovery—Scope of.*]—Held, by the Divisional Court (CREASE, McCREIGHT and DRAKE, JJ., overruling WALKEM, J.): That it is not a valid objection to an application for an order to examine a party under Rule 703, and for discovery upon oath of documents in his custody, that other parties who might be affected by the discovery ought to be parties to the action. Parties are entitled upon an examination for discovery to examine as fully as they could do in Court. *Beaven et al.* v. *Fell and Worlock*, 4 B. C. R. 334.

4. To action against a municipal corporation for improper diversion of corporate funds.]—In a suit by a ratepayer against a municipal corporation for the unlawful diversion of corporate funds, both the corporation and the members thereof responsible for the illegal action, should be parties defendant. The plaintiff ratepayer should sue on behalf of himself and all other ratepayers, except the defendants whose action is complained of. (2) The Provincial Attorney-General is not a necessary party to such an action. *Elworthy* v. *Victoria*, 5 B. C. R. 123.

5. Joint tort-feasors as co-defendants—*Third party practice—Orders X. and XVII., rule* 12, *of County Court—Municipal Act Amendment Act*, 1893, *s.* 22, *s.-s.* 108*f.*]—A defendant in an action of tort has no right to an order to add other parties as co-defendants upon the ground that they are also responsible to the plaintiff. Such persons might be added as third parties under s. 22, s.-s. 108f of the Municipal Act Amendment Act, supra. *Holmes* v. *Victoria*, 4 B. C. R. 567.

6. Joint tort-feasors—*Rule* 94.]—The statement of claim was so drawn as to charge the two different defendants with separate acts of negligence causing damage to the plaintiff. It appeared, however, from the facts alleged, that, if the action lay at all, the two defendants each contributed to the injury in such manner as to make them joint tort-feasors: — Held, by the Full Court, affirming McCOLL, JJ., and BOLE, L.J.S.C.: That the plaintiffs were entitled so to join the defendants: Sadler v. G. W. R. Co. (1895), 2 Q. B. 688 (1896) A. C. 450, distinguished. *Bowness* v. *Victoria; Gordon* v. *Victoria*, 5 B. C. R. 185, 503.

7. Non-resident defendants.] — Sperling, Garbutt and Horne-Payne were residents of England, and members of the firm of Sperling & Co., which firm carried on business in England only. Plaintiffs issued two writs (neither of which was for service out of jurisdiction) in respect of the same cause of action, one being addressed against the firm and also against Sperling, Garbutt and Horne-Payne individually, and the other against the three individuals only. The writs were served on Horne-Payne while on a visit to British Columbia, and he entered conditional appearances and applied to have both writs set aside, and (in the alternative) as to the second action that it be dismissed as vexatious:—Held, by the Full Court, that (1) the name of the firm was wrongly inserted and should be struck out of the first writ; (2) That the plaintiffs should elect as to which action they would proceed with. Before the hearing of the appeal the respondents gave notice that they were content that the name of Sperling & Co. should be struck out of the writ:—Held, that the appellants were entitled to the costs of the appeal up to the time of the service of the notice, and the respondents to the costs subsequent. *Oppenheimer et al.* v. *Sperling et al.* (two suits), 9 B. C. R. 166.

8. Real parties should be before Court.]—T. sued McM. as the drawer of a bill of exchange payable to T.'s order, with an alternative claim against McM. on a guarantee that the bill would be paid. T. was the manager of the P. C. Line of Seattle, which owned the steamer Mexico, and the defendant was the agent of the D. & W. H. N. Co., and these two principals had through T. and McM. entered into a charter-party providing that the steamer Mexico should carry certain freight for which the D. & W. H. N. Co. agreed to pay. McM. alleged he gave the bill of exchange sued on along with the guarantee to T. as the balance of the freight moneys due under the charter-party, and the company set up a claim for

demurrage and advised McM. not to pay. On an application made by McM. and the company, an order was made adding the company as a defendant and giving leave to counterclaim against the P. C. Line:—Held, on appeal, that the order was properly made as the real parties in interest should be brought before the Court. *Trowbridge* v. *McMillan*, 9 B. C. R. 171.

9. Receivers and beneficiaries.]—Trustees having refused to bring an action to recover funds of the estate, certain of the beneficiaries brought the action in their own names and obtained an order removing the trustees and appointing a receiver in their place, with leave to substitute the receiver as plaintiff. He was substituted accordingly by a subsequent order. Neither of the above orders was appealed from, but at the trial the defendants, while not objecting to the receiver as plaintiff, objected that there was no cause of action in him, whereupon one of the beneficiaries previously struck out asked to be joined as plaintiff. *Per* DRAKE, J.: 1. That there was no cause of action in the receiver; 2. That the Full Court alone had power to restore a plaintiff struck out by order of a Judge:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and MCCOLL, JJ.), that the action should be carried on in the names of the receiver and one of the beneficiaries, with leave to any of the other beneficiaries to apply to be added as plaintiffs. *Shallcross* v. *Garesche*, 5 B. C. R. 320.

10. Shares in company.]—In an action against a company for a declaration that plaintiff was the owner of certain shares in the company, the company applied to have its president added as a third party on the ground that he was the real defendant and was responsible for the action:—Held, by the Full Court, affirming DRAKE, J., who dismissed the summons, that the defendant's remedy was by third party notice. *Henley* v. *The Reco Mining & Milling Company, Limited Liability*, 7 B. C. R. 449.

11. Specific performance.] — Where the owner of property authorized two agents to make a sale for him, and each of the agents entered into a contract for sale:—Held (reversing DRAKE, J., IRVING, J., dissenting), that in a suit by one purchaser for specific performance, the other purchaser had a right on his own application to be added as a party defendant. *Bryce* v. *Jenkins, Ex parte Levy*, 8 B. C. R. 32.

(b) Alteration of.

1. Alteration of parties after writ issued—*Effect of.*]—No alteration as to the parties to the record after a writ of capias ad respondendum has issued entitles the person capiased to have the order set aside unless he has been prejudiced by such alteration. There is no rule requiring a plaintiff who has amended the writ of summons by adding parties to serve any defendant who has appeared, with the amendment. In the absence of agreement ad hoc with his obligee, a party is liable at the latter's suit on a good cause of action to all the remedies, including arrest and imprisonment, allowed by law, and it is immaterial that the parties are aliens, or that the particular remedy sought is not allowed in the foreign jurisdiction. *Baxter* v. *Jacobs et al.*, 1 B. C. R. pt. II., 373.

(c) Third Party Practice.

1. Right to be made co-defendants.]—Persons brought in on third party notice as liable to indemnify the defendants against the action, ought to be made co-defendants. At their own request, the third parties were substituted as defendants, upon giving security to the plaintiff for such amount as he might recover, and costs. *Wilkerson* v. *The City of Victoria*, 3 B. C. R. 367.

2. Tax sale deed.]—In an action to set aside a tax sale deed obtained by defendant Tretheway, and for an account and damages against the municipality, the tax sale was impeached on the grounds, amongst others, that there were no taxes due, that there was no proper assessor's roll or collector's roll, and that the provisions of the Municipal Clauses Act respecting tax sales had not been observed:—Held, affirming an order of IRVING, J., that the municipality was not improperly joined as a party defendant. *Lasher* v. *Tretheway and the Townsite of Richmond*, 10 B. C. R. 438.

3. Third party notice — *Parties—Substituting for defendants—Parties liable to indemnify them—Terms—Security for costs.*]—Persons brought in on third party notice as liable to indemnify the defendants, ought to be made co-defendants. At their own request, the third parties were substituted as defendants, upon giving security to the plaintiff for such amount as he might recover and costs. *Wilkerson* v. *The City of Victoria*, 4 B. C. R. 367.

4. Third party notice—*Rule* 101 *(a).*]—In an action against a company for a declaration that plaintiff was the owner of certain shares in the company, the company applied to have its president added as a third party on the ground that he was the real defendant and was responsible for the action:—Held, by the Full Court, affirming DRAKE, J., who dismissed the summons, that the defendant's remedy was by third party notice. *Henley* v. *The Reco Mining and Milling Company, Limited Liability*, 7 B. C. R. 449.

5. Third party —*Right to bring in a fourth—When exercisable — Defendant.*]—A third party notice under Rule 128 can issue only at the instance of a defendant, and a person brought in by such notice as liable to indemnify the defendant, and who contests such liability, is not a defendant within the meaning of the rule, and cannot issue a notice bringing in and claiming indemnity over and against a fourth party. Semble, a third party who has obtained an order under Rule 133, admitting him to defend the action as against the plaintiff, is a defendant within the meaning of the rule. *Northern Counties Investment Trust* v. *Ross, McFie* (Third Party), 4 B. C. R. 253.

6. Tort—*Responsible third persons.*]—A defendant in an action of tort has no right to an order to add other parties as co-defendants upon the ground that they are also responsible to the plaintiff. Such persons might be added as third parties under s. 22, s.-s. 108f, of the Municipal Act Amendment Act, supra. *Holmes* v. *The Corporation of Victoria*, 4 B. C. R 367.

9. *Test Action.*

1. **Chamber order nullifying Full Court order.**]—Where particulars of the statement of claim in a test action are struck out on an appeal to the Full Court and full and true particulars ordered to be given, the plaintiffs may deliver their particulars in another action which has since been settled on as the test action; and an order obtained in Chambers which has the effect of nullifying in part, the Full Court order will be set aside. *Leadbeater et al.* v. *Crow's Nest Pass Coal Co., Ltd.* (*No.* 2). 10 B. C. R. 404.

2. Right of selection.]—Forty-four actions were brought by different persons against defendants for damages caused by the death of relatives in an explosion extending over a large area of defendants' coal mine, and plaintiffs applied to consolidate these actions with 29 other actions, one of which had been chosen as a test action. On account of the workmen who were killed not all being of the same class, and also on account of the different conditions in the different parts of the mine where deaths occurred, the defendants contended that one action would not be a fair test of all the others:—Held, that the defendants should have the right to select four actions as test actions for those of the same class. Order of FORIN, Lo. J., set aside. *Ellyn* v. *The Crow's Nest Coal Co., Ltd.*, 10 B. C. R. 221.

3. Substitution—*Jurisdiction to allow.*]—After one of a number of actions brought by different plaintiffs against the same defendants in respect of causes of action which are identical, has been ordered to be tried as a test action, the Court has power to substitute another action as a test action. Twenty-nine actions were brought by different persons against defendants for damages caused by the death of relatives in an explosion in the defendants' coal mine, and on plaintiffs' application on order for a test action was made, the order providing that defendants if satisfied with the result of the test action, might apply to have the other actions proceeded with, and that they might apply to have any of the actions forthwith proceeded with if there existed any special ground of defence applicable to it, and not raised in the test action. After obtaining the order, plaintiffs' solicitor discovered that on account of the particular place in the mine at which McLeod was killed, a separate defence not applicable to the other cases might apply, and an application was made for the substitution of another action as the test action:—Held, reversing WALKEM, J., who held that there was no jurisdiction to substitute another action, that the object of the order, which was provisional in its nature, was to have a fair test action, and as the one chosen would not be a fair one, another should be chosen. *McLeod et al.* v. *The Crow's Nest Pass Coal Co., Ltd.*, 10 B. C. R. 103.

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10. *Transmission.*

1. After an action has been transferred from the County Court to the Supreme Court the plaintiff can extend his claim beyond the sum he originally claimed in the County Court. *Thurston* v. *Tattersall*, 7 B. C. R. 160.

Costs after transferred to County Court.

See COSTS, infra, IX.

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11. *Trial.*

(a) *Adjournment of.*

1. The adjournment at the trial of a hearing, by consent of counsel, is equivalent to a countermand of the notice of trial, and if the plaintiff does not proceed in due course, the defendant may thereafter either himself give notice of trial, or apply to dismiss for want of prosecution. *Harvey* v. *City of New Westminster*, 3 B. C. R. 398.

2. Terms of.

See COSTS, infra, IX.

See also ADJOURNMENT.

(b) *Amendment at.*

1. After an order fixing day for trial, amendment in the pleadings making a new cause will only be allowed upon terms of postponing the trial, if the party against whom the amendments are made is not ready for trial on the new question introduced. *Wolley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 197.

2. Amendment of—*Postponing trial.*]—After an order fixing the day for trial, amendments in the pleadings, making a new case, will only be allowed upon terms of postponing the trial if the party against whom the amendments are made is not ready for trial on the new question introduced. *Wolley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 197.

3. The Court may allow pleadings to be amended at any time at or after the trial to meet the facts proved, and in accordance with the lines upon which the trial has proceeded, following Clough v. L. & N. W. Ry. Co., L. R. 7 Ex. 30. *Foley* v. *Webster*, 2 B. C. R. 137.

See also AMENDMENT—COSTS, infra, IX.

(c) *Entry for.*

1. Order setting down.] — An order, made on defendants' application to dismiss for want of prosecution, that plaintiff set down his action for the next sittings at Nelson and proceed with the trial, otherwise the action do stand dismissed without further order, dispenses with a notice of trial; and if before the date fixed for the sittings at the time the order was made the sittings are adjourned, it is a compliance with the order by the plaintiff if he enters the action for the later date and is ready for trial when the case is called. *McLeod* v. *Waterman et al.* 9 B. C. R. 370.

(d) *Examination, Use of at.*

1. Officer of corporation—*Royal Bank of Canada* v. *Harris*, 8 B. C. R. 368—*Past officer—Attendance of counsel on.*]—*Walkley et al.* v. *City of Victoria*, 7 B. C. R. 481; *British Columbia Electric Railway Company, Limited* v. *Manufacturers Guarantee and Accident Insurance Company*, 7 B. C. R. 512.

See DISCOVERY, infra.

2. Party cannot use his own examination at trial.]—*Lyon and Healey* v. *Marriott*, 5 B. C. R. 157.

See DISCOVERY, infra.

See also DISCOVERY AND EXAMINATION, infra.

(e) *Mode of.*

1. Whether a jury action.]—By Rule 331 a Judge may direct a trial without a jury of any issue, which previous to the Judicature Act could, without any consent of parties, have been tried without a jury, and by Rule 332 he may direct the trial without a jury of any issue requiring any scientific investigation, which, in his opinion, cannot conveniently be made with a jury. In a mining suit respecting extralateral rights, the plaintiff company sued for an injunction restraining the defendant company from sinking an incline shaft in plaintiff's claim and for damages. The defence was that the incline shaft was commenced within the lines of defendant's location upon a vein, the apex of which lay inside such surface lines extended downward vertically, and that that vein had been followed upon its dip. The plaintiff company applied for a trial with a jury:—Held, by MARTIN, J., dismissing the application, that before the Judicature Act the plaintiff company would have had the right to have the case tried by a jury, and that it has it now under Rule 331, but that there was an issue in the action requiring scientific investigation which could not conveniently be tried by a jury. *Iron Mask* v. *Centre Star*, 6 B. C. R. 474.

See also JURY, infra.

(f) *Notice of.*

1. In January, plaintiff's solicitors gave notice of trial at the civil sittings to be held in July in Victoria, where, according to statute, civil sittings are also held in February, March and May:—Held, on a summons to dismiss for want of prosecution, that plaintiff must give notice of trial for the March sittings, otherwise the action will stand dismissed. *Wiles* v. *The Times Printing and Publishing Company, Limited Liability*, 10 B. C. R. 226.

2. Countermand notice of trial—*Right to dismiss for want of prosecution after—Rule 340.*]—The adjournment at the trial of a hearing, by consent of counsel, is equivalent to a countermand of the notice of trial, and if the plaintiff does not proceed in due course, the defendant may thereafter, either himself give notice of trial, or apply to dismiss for want of prosecution. *Harvey* v. *New Westminster*, 3 B. C. R. 398.

(g) *Objections open at.*

1. Duty of counsel to press objection at.] — *Caldwell et al.* v. *Davys*, 7 B. C. R. 156.

2. Evasive denial—*Admission—Contract of married woman—Separate estate.*] — The action was tried and evidence given pro and con upon the question whether defendant, Celia Mylius, a married woman, was liable to the plaintiff as being the partner of the defendant Jackson. The plaintiffs' claim alleged: "2. The defendants entered into partnership as watchmakers and jewellers on, etc." "3. That while the defendants were carrying on such business, the plaintiff advanced to them the following (claimed) sums." The statement of defence of Celia Mylius alleged: "1. The defendant denies that on," etc., "or at any other time she entered into partnership with the defendant Jackson, as alleged in paragraph 2 of the statement of claim." "2. Neither at the times therein alleged or at any other times did the plaintiff advance the defendants the sums alleged or any of them, and if . . . advanced, they were advanced to defendant Jackson alone." CREASE, J., who tried the action, entered judgment for the plaintiff, on the ground that the partnership was admitted. There was no evidence that the defendant Celia Mylius had any separate property at the time of the alleged contract. On appeal to the Full Court:—Held, *per* BOSANQUET, C.J., and DRAKE, J., that the partnership was admitted on the pleadings, and that such objection was then open to the plaintiff. *Per* MCCREIGHT, J., dissenting: That the partnership was not admitted, but denied in the defence. That if otherwise, all proper amendments should be made to meet the case as presented at the trial. That in any case the objection that the defendant, Celia Mylius, had no separate property at the time the alleged liability arose, was fatal to the judgment. *Margaret Jackson* v. *Alexander Jackson and Celia Mylius*, 3 B. C. R. 149.

The judgment of the majority of the Court was reversed, and that of MCCREIGHT, J., sustained, by the Supreme Court of Canada. *Mylius* v. *Jackson*, 23 S. C. R. 485.

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12. *Miscellaneous.*

1. Proceedings to remove directors of company must be brought by the company, and an action for that purpose by one shareholder does not lie, and the fact that the plaintiff framed his action on behalf of himself and all shareholders of the company, other than those attacked, was immaterial. *Fraser River Co.* v. *Gallagher*, 5 B. C. R. 82.

II. AFFIDAVIT.

1. Ca. re.—*Affidavit—Sufficiency of—Irregularity—Waiver by giving bail.*]—*Robertson et al.* v. *Beers*, 7 B. C. R. 76.

See ARREST.

2. Capias—*New firm suing on cause of action which accrued to old firm—Practice—Rule 104.*]—K., in 1895, gave two promissory notes to the firm of Lenz & Leiser, and in 1896 one member of the firm died, and the

partnership business was continued under the same firm name by the surviving partner and the dead partner's widow. In 1898 the firm sued K. on the notes and he was arrested on a writ of ca. re., the affidavit leading to the order being made by the surviving partner, who swore that he was a member of the firm of Lenz & Leiser, and that K. was indebted to the firm on the notes, but no mention was made of the notes having been given to the old firm:—Held, on summons to discharge the defendant from custody, that the affidavit was insufficient, as it did not disclose that the firm of Lenz & Leiser is a new and different firm from that in existence when the cause of action accrued. *Lenz & Leiser* v. *Kirschberg*, 6 B. C. R. 533.

3. Cross-examination of plaintiff—*Discretion to refuse—Rule* 401.]—*On a summons* for judgment under Order XIV., it is only in exceptional cases that defendant will be permitted to cross-examine plaintiff on his affidavit, and then only after defendant has filed an affidavit of merits. *Ward* v. *Dominion Steamboat Line Co.*, 9 B. C. R. 231.

4. Cross-examination.]—Rules 385 and 429 taken together compel the production for cross-examination of a deponent on his affidavit if required by the opposite party before such affidavit can be used. *Russell* v. *Saunders*, 7 B. C. R. 173.

5. Cross-examination.]—Rules 385 and 429 taken together compel the production for cross-examination of a deponent on his affidavit if required by the opposite party, before such affidavit can be used. *Westphalen* v. *Edmonds*, 7 B. C. R. 175.

6. Cross-examination—*Conduct money.*]—On an interlocutory application to change venue, defendant filed his own affidavit in support of the application, and on being served with an order and appointment for his cross-examination on such affidavit, attended for such cross-examination, but refused to be sworn or answer until paid his expenses of attendance:—Held, on appeal to the Divisional Court (DAVIE, C.J., and MCCREIGHT, J., overruling CREASE, J.): That he was not entitled to conduct money; following Mansel v. Clonricarde, 54 L. J. Ch. 982. *Emerson* v. *Irving*, 4 B. C. R. 56.

7. Cross-examination.]—As a general rule an order under Rule 401 will not be made for the attendance for cross-examination of a plaintiff who has made an affidavit leading to an interim injunction before the defendant files an affidavit of merits. *Leavock* v. *West et al.*, 6 B. C. R. 404.

8. County Court—*Garnishee proceedings—Affidavit.*]—(1) The affidavit leading to a garnishee summons must verify the plaintiff's cause of action, and a garnishee is entitled to question the validity of the proceedings at the hearing. (2) Where garnishees pay money into Court they waive their right to object to irregularities in the affidavits leading to the garnishee summons. (3) The plaintiff may specify in one affidavit several debts proposed to be garnished. *Harris* v. *Harris et al.*, 8 B. C. R. 307.

9. Juris writ.]—An affidavit leading to an order for an ex juris writ containing allegations of facts which must necessarily have been founded on information and belief only, must state the source of information. *Tate et al.* v. *Hennessey et al.*, 8 B. C. R. 220.

10. Information and belief — *Based on.*] — *Northern Counties Invest. Trust* v. *Nathan*, 7 B. C. R. 136; *Tate* v. *Hennessey*, 8 B. C. R. 220.

See AFFIDAVITS, II.

11. Injunction — *Cross-examination of plaintiff on his affidavit—Discretion of Court or Judge—Rule* 401.]—As a general rule an order made under Rule 401 will not be made for the attendance for cross-examination of a plaintiff who has made an affidavit leading to an interim injunction before the defendant files an affidavit of merits. *Leavock* v. *West*, 6 B. C. R. 404.

12. Intituling—*Irregularity.*]—The affidavits in support of a motion for an order for payment into Court of moneys realized under an execution to answer claims of third persons against the execution debtor for wages were not intituled in the cause, but "in the matter of the Execution Act and of A. E. Clarke, judgment debtor:"—Held, irregular. *McKay* v. *Clarke*, 2 B. C. R. 213.

13. Mortgage—*Foreclosure—Affidavit of non-payment.*] — *Canada Settlers' Land Co.* v. *Renouf*. 5 B. C. R. 243.

14. Non-payment in foreclosure action.]—The certificate of the Registrar upon taking the accounts under the mortgage in a foreclosure action directed that the balance found due should be paid by the mortgagor in a certain manner. Upon motion for final decree upon the affidavit of non-payment as directed, made by the agent:—Held, *per* WALKEM, J.: That the affidavit of both principal and agent was necessary. *Canada Settlers' Loan Co.* v. *Renouf*, 5 B. C. R. 243.

15. Notice of use of.]—Rule 572 requiring every summons in Chambers to give notice of the affidavits to be read in support of it is imperative. *Leiser* v. *Cavalsky et al.*, 3 B. C. R. 196.

16. Oaths' Act, 1892—*Foreign affidavit—Notary — Motion for judgment — Order XIV., Rule* 2—*Irregularity.*] — An affidavit sworn out of the Province of British Columbia before a notary public and certified under his hand and official seal, is admissible under the B. C. Oaths Act,, 1892, *s.* 12. The copy of the affidavit to accompany a summons for judgment under Order XIV., Rule 2, must be a true copy. The affidavit was sworn before a notary public and the copy had no indication of the notarial seal upon the original:—Held fatal and motion dismissed. *First National Bank* v. *Raynes*, 3 B. C. R. 87.

17. Order XIV.]—The copy of affidavit required by Order XIV., r. 3, must be a true copy. *First National Bank* v. *Raynes*, 3 B. C. R. 87.

18. Statement of cause of action — *Particulars contained in exhibit to affidavit—Whether sufficient—R. S. B. C.* 1897, *c.* 10, *s.* 7—*Costs.*]—The plaintiffs' cause of action should appear in the affidavit leading to the order for a writ of ca. re., and a statement in the affidavit that the defendant is indebted to plaintiff in a sum as appears on an exhibit to the affidavits is insufficient. Proceedings to

discharge from custody a person arrested under a writ of capias should be by summons, and where objections are taken to the proceedings on the ground of irregularity, the specific irregularities should be set out. *Wall* v. *Barber*, 6 B. C. R. 461.

19. Substitutional service.] — An affidavit leading to an order for substituted service is a jurisdictional affidavit. An affidavit leading to an order for substituted service under s. 130 of the Companies Act on an extra-provincial company licensed to do business in British Columbia, should shew clearly that the company is an extra-provincial one licensed to do business in the Province. On an application to set aside an order for substituted service it is discretional with the Judge to allow plaintiffs to read further affidavits setting out facts omitted in the affidavit on which the order was made, and where in the exercise of his discretion he refused leave, the Court on appeal will not interfere. Judgment of IRVING, J., affirmed, HUNTER, C.J., dissenting. *Centre Star Mining Company, Limited*, v. *Rossland Great Western Mines, Limited, et al.* (No. 2), 10 B. C. R. 262.

20. Sworn before solicitor's agent resident outside Province — *Whether sufficient—Rule* 417.] — An affidavit sworn before a notary public in Manitoba, who had been acting as agent for defendant's solicitor, is insufficient under Rule 417. *McLellan* v. *Harris*, 6 B. C. R. 257.

21. Sworn before ante litem solicitor —*Whether sufficient—Rule* 417.]—The affidavit of a party to a suit sworn before an ante litem solicitor in his employ, acquainted with the facts of the case, although not the solicitor on the record, is insufficient under rule 417. *Dunsmuir* v. *The Klondike & Columbian Gold Fields, Ltd.*, 6 B. C. R. 200.

22. Writ for service out of jurisdiction—*Affidavit leading to order for—What it should shew.*] — An affidavit leading to an order for an ex juris writ should shew the grounds on which deponent believes that the plaintiff has a good cause of action. *The Northern Counties Investment Trust, Limited* (Foreign) v. *Nathan*, 7 B. C. R. 136.

See also ARREST—AFFIDAVIT—SERVICE, infra —WRITS OF SUMMONS, infra.

III. APPEAL.

1. From order completed—*Before new Act came into force — Supreme Court Act Amendment Act*, 1899. *Williamson* v. *Bank of Montreal*, 6 B. C. R. 480.

2. Gold Commissioner, from.]—*Jenny Lind Co.* v. *Bradley Nicholson Co.*, 1 B. C. R. pt. II., 185; *Woodbury* v. *Hudnut*, 1 B. C. R. pt. II., 365.

See WATERS AND WATERCOURSES, I.

3. Irregularity — *Omission to set down appeal two days before hearing.*]—It is necessary to set out the irregularity for which a proceeding is set aside in the order setting it aside in order to found an appeal from such order. *Teitjen* v. *Revesbeck*, 1 B. C. R., pt. II., 365.

4. Judgment debtor—*Committal order.*] —An appeal lies direct from an order committing a debtor to gaol, and no preliminary motion to the Judge for discharge is necessary. *Bullock* v. *Collins*, 7 B. C. R. 23.

5. Judgment—*When appealable.*]—Held, by the Full Court, per DAVIE, C.J., and WALKEM, J. (DRAKE, J., dissenting): A judgment is appealable from the moment that it is pronounced, and an objection to the hearing of an appeal otherwise regular, that the judgment appealed from had not been entered, overruled. *Lang* v. *Victoria*, 6 B. C. R. 117.

6. Objection to status of appeal for want of solicitor bringing same — *Waiver.*] — Held, *per* MCCREIGHT, J. (WALKEM, J., concurring), overruling an objection that the defendant, whose solicitor had been elevated to the bench, had no status on the appeal for want of notice to plaintiffs of appointment of a new solicitor to bring the appeal; that the plaintiffs, by serving D. with the original summons for judgment, and, as it appeared they had done, writing H. and L. D. for the grounds of appeal, had waived the objection. *Denny* v. *Sayward*, 4 B. C. R. 212.

7. Privy Council—*Leave to appeal to.*] —*Reg.* v. *Little*, 7 B. C. R. 321.

See APPEAL, IX.

8. Yukon cases—*Extension of time for—Costs—Security for — Appeal books.*] — The Court may extend on terms the time for appealing to the Full Court from the Territorial Court of the Yukon. The respondent is entitled to a copy of the appeal book. *Banks* v. *Woodworth*, 7 B. C. R. 385.

9. Yukon appeals.] — *Can. & Yukon Mining Co.* v. *Casey et al.*, 7 B. C. R. 373; *Courtney* v. *Can. Development Co.*, 7 B. C. R. 377.

See APPEAL, X.

10. In Yukon cases—*Costs—Preliminary Act—Collision.*] — *Canadian Developing Co.* v. *Le Blanc et al.*, 8 B. C. R. 173.

See APPEAL, X.

IV. APPEARANCE.

1. After judgment—*Leave to enter.*]— After judgment in default of appearance, an appearance cannot be entered without leave. *Chong Man Chook* v. *Kai Fung*, 8 B. C. R. 67.

2. Amending writ—*Re-service—Appearance — Whether that to original stands to amended writ — Judgment after — Time.*] — When an order, amending the special endorsement upon a writ of summons is made, the writ with the new special endorsement must be re-served upon every defendant affected by the amendment. If such defendant has already appeared, such appearance stands as an appearance to the amended writ (following Paxton v. Baird, 1893, 1 Q. B. 139), and the plaintiff can apply for judgment under Order XIV., but judgment cannot be directed to be entered against him before

the lapse of eight days from the service of the amended writ. *Moore et al.* v. *Paterson*, 2 B. C. R. 302.

3. Conditional appearance — *Effect of entering, where unnecessary.*] — Notwithstanding Order XII., r. 19 (Rule 70), providing that a defendant may move to set aside service of a writ of summons without entering a conditional appearance, the fact that a defendant has entered a conditional appearance, is not a good preliminary objection to such a motion. *Fletcher* v. *McGillivray*, 3 B. C. R. 37.

4. Conditional appearance.]—The defendant who had entered an appearance expressed to be conditional and for the purpose of moving to set aside the writ for irregularity, upon the dismissal of that motion moved to set aside two ex parte orders continuing an interim injunction upon the ground that they ought not to have been made ex parte after the appearance:—Held, (1) That the conditional appearance was not necessary to the motion to set aside the writ. (2) That being limited to the purposes of that motion, it did not survive after the disposition of it. (3) That defendant's counsel having appeared on the motion was a sufficient admission to the jurisdiction to permit the motion to be heard. (4) That the conditional appearance was a nullity, and the orders continuing the injunction were properly made ex parte. *Fletcher* v. *McGillivray*, 3 B. C. R. 40.

5. Conditional appearance.] — Defendant, on 7th July, entered an appearance expressed to be conditional, under protest, and without prejudice to an intended application to set aside an ex parte injunction for irregularity. Plaintiff on the same day served the solicitor so appearing for defendants with a notice of motion to continue the injunction. This notice gave less than the four days required by the rules for such notices. Neither party appeared upon it. On 8th July plaintiff obtained an ex parte order continuing the injunction till 22nd July, and on that day obtained a further ex parte order continuing it to the hearing. A motion by defendant to set aside these ex parte orders for irregularity was dismissed by CREASE, J. On appeal to the Divisional Court:—Held, *per* DRAKE and WALKEM, JJ.: — 1. An appearance under protest is a proceeding unknown to the law and irregular. 2. That such irregularity was waived by the plaintiffs by his notice of motion to continue the injunction, though itself not a sufficient notice. 3. That the ex parte orders obtained thereafter were irregular. 4. That as the first irregularity was committed by the defendant he had no right to complain of irregularities into which his own error had led the plaintiff, and that the appeal should be dismissed without costs, with leave to apply on the merits to dissolve the injunction. *Fletcher* v. *McGillivray*, 3 B. C. R. 49.

6. Conditional appearances — *Motion before Judge to rescind his own order—Rules of Court*, 1880 — *Order* 11 — *Order* 54.] — Where plaintiff obtained leave to serve notice of a writ on a foreigner out of the jurisdiction: — Held, that the defendant was not bound to appear or enter a conditional appearance before he applies to set aside the order: — Held, that the application to set aside the order giving leave to serve notice of writ was properly brought before the Judge in Chambers, instead of before the Full Court. The defendant's affidavits having shewn that the case did not come within Order 11, the order was discharged. *Fowler* v. *Barstow* (L. R. 20 Ch. D. 240), observed upon. *Garesche, Green & Co.* v. *Holladay*, 1 B. C. R. pt. II., 83.

7. County Court—*Notice of trial—Power of Judge to abridge.*]—A County Court Judge has no jurisdiction to abridge the six clear days' notice of trial to be given by s. 92 of the County Courts Act. *Hickingbottom* v. *Jordan*, 8 B. C. R. 126.

8. Entry of appearance — *Whether waiver of objection to jurisdiction.*]—*Rithet* v. *Ship "Barbara Boscowitz" and Porter*, 3 B. C. R. 445.

9. Irregular appearance — *Judgment signed as in default—Setting aside.*]—Where an irregular appearance has been entered, the plaintiff cannot treat it as a nullity and sign judgment as in default. *Gordon* v. *Roadley*, 6 B. C. R. 305.

See also APPEARANCE—WRITS OF SUMMONS, infra.

V. CHAMBERS.

1. Abandonment of order.]—An application to settle the minutes of an order was made fifteen days after it was pronounced in Chambers:—Held, that the delay was not sufficient to constitute an abandonment of the order. *Baker* v. *The "Province,"* 5 B. C. R. 45.

2. Amendment of order.] — The omission of the name of the Judge by whom an order is made which, by the Supreme Court Act, C. S. B. C. c. 31, is directed to be inserted in the caption, is an "accidental slip or omission" within Rule 266, S. C. Rules, 1890, which may be amended by the Court or any Judge thereof. A Judge of the Supreme Court has power to sign an order for and on behalf of another Judge. *Gordon* v. *Cotton*, 3 B. C. R. 499.

3. County Court jurisdiction.]—There is jurisdiction under the County Court Act and Rules, and it is the proper course to entertain questions of practice arising in that Court upon summons in Chambers in the same manner as in Superior Court actions. *Wilkerson* v. *City of Victoria*, 3 B. C. R. 366.

4. Delay in issuing order made in Chambers.] — An application to settle the minutes of an order was made fifteen days after it was pronounced in Chambers: Held, that the delay was not sufficient to constitute an abandonment of the order. *Baker* v. *"The Province,"* 5 B. C. R. 45.

5. Ex parte order in favour of wages —*Claimant as against execution creditor.*]—Such an order is irregular, if made ex parte. *McKay* v. *Clarke*, 2 B. C. R. 213.

6. Ex parte order—*Rescinding—Appeal improper where original material to be displaced.*]—Where an ex parte order is based on insufficient material, or can be displaced by other material, the proper course is not to appeal but to move in Chambers to rescind

the order. *Garesche, Green & Co.* v. *Holladay*, 1 B. C. R. pt. II., p. 83.

7. Ex parte restraining order by Local Judge.]—An ex parte restraining order made by a Local Judge must be obeyed until set aside. *Leberry* v. *Braden*, 7 B. C. R. 403.

8. Ex parte order—*Whether order is ex parte when made on summons and no attendance contra.*]—An order made in Chambers upon a summons duly served, no one appearing contra, is not an ex parte order, and an appeal will lie from it to the Full Court notwithstanding Rule 577. Hudson's Bay Company v. Hazlett, 4 B. C. 351, distinguished. *Biggar* v. *The Corporation of the City of Victoria*, 6 B. C. R. 130.

9. Ex parte order—*Whether order is ex parte when made on summons and no attendance contra.*]—*Denny* v. *Sayward*, 4 B. C. R. 212.

10. Ex parte order — *Whether appealable without motion to rescind rule 577.*]—The Divisional Court will not entertain an appeal from an ex parte order made by a Judge. The proper practice is, in the first instance, to move before the Judge making such an order to rescind same. *Hudson's Bay Co.* v. *Hazlett*, 4 B. C. R. 851.

11. Form of application to set aside writ for irregularity — *Summons or motion.*]—An application to set aside a writ of summons for irregularity need not be by motion to the Court, but may be by summons in Chambers, and objection that the defendant had no status to take out such summons without entering a conditional or other appearance over-ruled. *Carse* v. *Tallyard*, 5 B. C. R. 142.

12. Habeas corpus.]—An application in vacation for a rule nisi for a writ of habeas corpus should be made in Chambers. *In re Soy King*, 7 B. C. R. 291.

13. Injunction—*Practice as to granting —Where Statute prohibits Act complained of.*]—*Atty-Gen.* v. *Wellington Colliery Co.*, 10 B. C. R. 397.

See INJUNCTION.

14. Order made on summons served —*No one appearing to oppose.*]—An order made in Chambers upon a summons duly served, no one appearing contra, is not an ex parte order, and an appeal will lie from it to the Full Court notwithstanding rule 577. Hudson's Bay Company v. Hazlett, 4 B. C. 351, distinguished. *Biggar* v. *The Corporation of the City of Victoria*, 6 B. C. R. 130.

15. Order.] — Supreme Court Judge has power to sign an order for and on behalf of another Judge. *Gordon* v. *Cotton*, 3 B. C. R. 499.

16. Res judicata — *Divisional Court — Judge in Chambers — Jurisdiction.*] — An order once pronounced will be given effect to and followed by every Judge and Court of inferior or co-ordinate jurisdiction, and no order will be made inconsistent therewith. *Gabriel* v. *Mesher*, 3 B. C. R. 159.

17. Receiver—*Right of action.*]—Trustees having refused to bring an action to recover funds of the estate, certain of the beneficiaries brought the action in their own names and obtained an order removing the trustees and appointing a receiver in their place with leave to substitute the receiver as plaintiff. He was substituted accordingly by a subsequent order. Neither of the above orders was appealed from, but at the trial the defendants, while not objecting to the receiver as plaintiff objected that there was no cause of action in him, whereupon one of the beneficiaries previously struck out asked to be joined as plaintiff. *Per* DRAKE, J.: (1) That there was no cause of action in the receiver. (2) That the Full Court alone had power to restore a plaintiff struck out by order of a Judge:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT, and MCCOLL, JJ.), that the action should be carried on in the names of the receiver and one of the beneficiaries, with leave to any of the other beneficiaries to apply to be added as plaintiffs. *Shallcross* v. *Garesche*, 5 B. C. R. 320.

18. Summons—*Filing affidavit before issue of—Rules 421 and 572.*]—Rule 572, requiring every summons in Chambers to give notice of the affidavits to be read in support of it, is imperative. *Leiser* v. *Cavalsky et al.*, 3 B. C. R. 196.

19. Summons not issued from registry wherein action brought—*Effect of—Sec. 27, Supreme Court Act.*]—The giving of notice of intention to appeal is the bringing of the appeal, within s. 61, Supreme Court B. C. Act, and when such notice is given within eight days from the perfecting of the order appealed from, it is no objection that the appeal is not either set down or argued within that time. A Judge in Chambers has jurisdiction to entertain a motion made upon summons issued out of a registry, other than that out of which the writ of summons issued, notwithstanding s. 27, supra. *Re Ellard*, 3 B. C. R. 235.

20. Summons—*Must be issued where returnable.*]—Where it is desired to make an application, under s. 32 of the Supreme Court Act as amended in 1901, c. 14, s. 13, to a Judge at Victoria, Vancouver, or New Westminster, the summons must be issued at the place at which it is returnable. *Centre Star Mining Co., Limited*, v. *Rossland and Great Western Mines, Limited, and East Le Roi Mining Co., Limited*, 10 B. C. R. 136.

21. Stay of proceedings—*Summons for —When stay operates.*]—A summons calling for a stay of proceedings only operates as a stay from and after its return, and judgment by default of appearance signed after service of summons, but before it was returned, is regular. *Lantz et al.* v. *Baker*, 3 B. C. R. 269.

22. Varying after pronounced but before drawn up.]—*Kimpton* v. *McKay*, 4 B. C. R. 196; *Zambesi* v. *Dutard*, 2 B. C. R. 91.

23. When ex parte.]—When an order is made after service of a summons upon which the opposite party does not attend, it will be treated as an ex parte order and may be reheard in Chambers and rescinded. *Griffiths* v. *Canonica*, 5 B. C. R. 48.

24. Winding-up applications.] — All applications made to the Court in its winding-up jurisdiction must be made by summons. *Re Nelson Sawmill Company*, 6 B. C. R. 156.

See also APPEAL, supra, III.—COSTS, infra—JURISDICTION, infra—STAY OF PROCEEDINGS, infra—WRITS OF SUMMONS, infra—PLEADINGS.

VI. CLAIM AND COUNTERCLAIM.

1. Pleading — *Amendment — Counterclaim—Adding after case in paper.*]—Order made adding a counterclaim after the case was in the paper for trial. *Beer Bros.* v. *Collister*, 3 B. C. R. 145.

2. Striking out—*Rule* 204.]—One of two defendants sued jointly may counterclaim upon a cause of action which he individually has against the plaintiff. A counterclaim should not be entirely independent of the original cause of action, but where the counterclaim involved an issue raised as a defence, it was held to be sufficiently connected with the claim. Upon appeal to the Divisional Court:—Held, *per* CREASE and WALKEM, JJ.: The fact that a counterclaim, if successful, involves the taking of a long account which will delay the disposition of the action is not sufficient cause for excluding it, if otherwise unobjectionable. *Powell* v. *Lowenburg, Harris & Co.*, 3 B. C. R. 81.

3. Treated as separate actions up to execution.]—A claim and counterclaim are treated as distinct actions up to execution, which will go for the difference or the sum of the two judgments as the case may be. *Smith* v. *Hansen*, 2 B. C. R. 153.

See also PLEADINGS.

VII. COURT OFFICERS AND OFFICIALS.

1. Persona designata.] — An order directed the examination of a witness de bene esse before "the registrar of this Court." The registrar not being able to take the examination, the witness was examined before the deputy registrar of the Court. By the Supreme Court Act, C. S. B. C., 1888, c. 31, s. 2, "The district registrar shall include any deputy of such registrar:"—Held, that the nomination of the registrar by the order to take the examination was not as "persona designata," but as registrar, and that the deputy registrar was competent to act for him thereon. *Richards* v. *Ancient Order of Foresters*, 5 B. C. R. 59.

2. Registrar.]—Where present and takes a minute of an order, the minute so taken is conclusive even though the Judge's recollection of the order is different. *Wallace* v. *Wood*, 10 B. C. R. 450.

3. Sheriff.]—Is required to keep a person arrested on a capias safely, and as there is no common gaol in Vancouver, the sheriff of Vancouver is entitled to lodge such a person in New Westminster gaol and charge mileage therefor. *Carson* v. *Carson*, 10 B. C. R. 83.

VIII. COURT ORDERS, DECREES OR JUDGMENTS.

1. Amending judgment before drawn up.]—A Judge has power to alter his decree in matters of detail before it is drawn up, but not to reverse it. *Zambesi* v. *Fanny Dutard*, 2 B. C. R. 91.

2. Confession of judgment.] — *Held*, by the Full Court, DAVIE, C.J., and MCCREIGHT, J. (DRAKE, J., concurring), overruling CREASE, J., that a written consent to an order upon summons for judgment is a confession of judgment within C. S. B. C., 1888, c. 51, s. 1. *Edison General Electric Co.* v. *The Vancouver and Westminster Tramway Co. and the Bank of British Columbia*, 4 B. C. R. 460.

3. Court not Judge in Chambers.]—An order to extend the time for filing the affidavit and plan required by s. 37 of the Mineral Act must be made by the Court and cannot be made by a Judge in Chambers. Noble v. Blanchard (1889), 7 B. C. 62, not followed as to this point, MCCOLL, C.J., dissenting. *Murphy* v. *Star Exploring and Mining Company*, 8 B. C. R. 421.

4. Decree—*Power to alter.*] — A Judge has power to alter his decree in matters of detail before it is drawn up, but not to reverse it. *Zambesi* v. *Fanny Dutard*, 2 B. C. R. 91.

5. Injunction—*Practice as to granting where statute prohibits act complained of.*] —*Atty.-Gen.* v. *Wellington Colliery*, 10 B. C. R. 397.

See INJUNCTION.

6. Joint defendants.]—A plaintiff, who has obtained final judgment against one of two defendants sued upon a joint liability, may afterwards, under Rule 74, proceed to judgment against the other defendants. *Zweig* v. *Morrissey et al.*, 5 B. C. R. 484.

7. Judgment, when appealable.]—Held, by the Full Court, per DAVIE, C.J., and WALKEM, J. (DRAKE, J., dissenting): A judgment is appealable from the moment that it is pronounced, and an objection to the hearing of an appeal, otherwise regular, that the judgment appealed from had not been entered, overruled. *Lang* v. *Victoria*, 6 B. C. R. 117.

8. Judgment—*When pronounced or delivered.*]—Held, by MARTIN, J., that a judgment signed by him and left by him for deposit in the mail at Victoria on August 11th, 1899, was pronounced on that date, although the judgment did not apparently reach the Vancouver registry to which it was addressed until the 15th. *Attorney-General* v. *Dunlop*, 7 B. C. R. 312.

9. Judgment.]—DRAKE, J. (IRVING, J., concurring), affirming BOLE, L.J.S.C., refused to compel the plaintiff, or permit the defendant, to perfect and enter the order for judgment for the plaintiff pronounced at the trial. The defendants desired to prosecute an appeal from the judgment, and the plaintiff desired to delay that appeal. *Per* DAVIE, C.J., dissenting: A judgment pronounced in an action is the property of both parties, and

each party has an absolute right to have it entered up. *Lang* v. *The Corporation of the City of Victoria*, 6 B. C. R. 104.

10. Motion for judgment.]—A Judge has no power to shorten the four days' notice of a motion for judgment required by Order XIV., Rule 2. *Wheaton* v. *Allice & Ault*, 3 B. C. R. 306.

11. Order—*Improperly drawn up may be returned to a writ of error as it should have been drawn up.*]—*Fuller* v. *Yerza*, 1 B. C. R., pt. II., 330.

12. Order ultra vires—*Whether nullity—Full Court—Jurisdiction on appeal—Rule 354—Costs.*] — Notice of trial having been given in an action in the Supreme Court for trial with a jury, and the plaintiff not appearing, judgment was given for defendants: —Held, by the Full Court on appeal from the judgment: (1) A local Judge of the Supreme Court has no power to sit as a trial Judge in an action. (2) An order issued by and purporting to be an order of the Supreme Court (although made ultra vires) is not a nullity, but is valid until set aside by the Court. (3) Although an appeal lies from such an order to the Full Court, the more convenient and inexpensive course is to move before a Judge to rescind it, and the appeal was therefore allowed, with costs as of a motion to rescind. *Brigman* v. *McKenzie*, 6 B. C. R. 56.

13. Receivership order—*R. S. B. C., c. 56, s. 14—Rules 517 and 1075.*]—Receivership orders must be made by the Court and cannot be made by a Judge sitting in Chambers. *Wakefield* v. *Turner*, 6 B. C. R. 216.

14. Right of party to compel entry of a judgment pronounced against him.]—DRAKE, J. (IRVING, J., concurring), affirming BOLE, L.J.S.C., refused to compel the plaintiff, or permit the defendant, to perfect and enter the order for judgment for the plaintiff pronounced at the trial. The defendants desired to prosecute an appeal from the judgment, and the plaintiff desired to delay that appeal. *Per* DAVIE, C.J., dissenting: A judgment pronounced in an action is the property of both parties, and each party has an absolute right to have it entered up. Note: By general order of Court, May 23rd, 1898, subsequent to this decision, it was directed that "Orders of the Court may be taken out by the party in whose favour such order is pronounced, and if such party neglects or delays for a period of seven days to settle the minutes of any such order, the other party may obtain an appointment to settle the minutes and to pass and enter the order." *Lang* v. *The Corporation of the City of Victoria*, 6 B. C. R. 104.

15. Taking final judgment against one partner—*Afterwards proceeding against others.*]—A plaintiff who has obtained final judgment against one of two defendants sued upon a joint liability, may afterwards, under Rule 74, proceed to judgment against the other defendants. *Zweig* v. *Morrissey*, 5 B. C. R. 484.

16. Varying decree—*Accounts.*]—If it appears on the taking of accounts that the decree is not drawn in such a way as to include all proper subjects, the proper practice is to apply to the Court to direct further and other accounts to be taken. On a motion to vary a certificate, the parties are confined to the decree. *Van Volkenburg* v. *Western Canadian Ranching Company*, 6 B. C. R. 284.

17. Yukon law—*Order of reference on mixed question of law and fact, jurisdiction of Court to make.*]—*Stevenson* v. *Parks*, 10 B. C. R. 387.

See COURTS, II. 2.

IX. COSTS.

1. *Generally.*

1. Application—*Where should be by motion instead of summons.*]—*Watt* v. *Barber*, 6 B. C. R. 461.

See ARREST.

2. Chamber applications—*Generally.*] —*Victoria* v. *Bowes*, 8 B. C. R. 15.

3. Deprivation of costs from successful plaintiff.]—*Richards* v. *Bank of B. N. A.*, 8 B. C. R. 143.

See BANKS AND BANKING.

4. Good faith—*Costs not allowed where party not acting in.*]—*Goo Gan* v. *Moore*, 2 B. C. R. 154.

5. Law point undisposed of before trial.]—Under Rule 233 the plaintiff may have a point of law raised on the pleadings disposed of before trial, but there is no duty cast on a defendant to do so, and therefore where a defendant succeeds on a point of law at the trial which could have been so disposed of, he is entitled to the usual costs of trial. *Hall* v. *The Queen and the Kaslo and Slocan Railway Company*, 7 B. C. R. 120.

6. Nominal verdict—*Where.*]—*MacKenzie* v. *Cunningham et al.*, 8 B. C. R. 206.

See HUSBAND AND WIFE.

7. "No order as to costs"—*Meaning of.*]—The statement "no order as to costs" means that each party must pay his own costs. *McCune* v. *Botsford et al.*, 9 B. C. R. 129.

8. Thrown away through absence of trial Judge.]—*William Hamilton Manufacturing Co.* v. *Victoria Lumber Co.*, 5 B. C. R. 53.

9. Where should have been in County Court.]—*Richards* v. *Bank of B. N. A.*, 8 B. C. R. 209.

See BANKS AND BANKING.

Crew v. *Mottershaw*, 9 B. C. R. 246.

See DAMAGES.

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2. *Abortive Trial.*

1. Criminal libel action.]—In a criminal libel action, defendant, in support of his plea of justification, obtained a commission

and had the evidence of certain witnesses out of the jurisdiction taken, for use at the trial. The evidence was used at the first trial and the jury disagreed. At the second trial the jury again disagreed. At the third trial defendant was acquitted, but the evidence was not used owing to the private prosecutors giving evidence and admitting substantially what was stated by the witnesses in their depositions before the commissioner:—Held, that defendant was not entitled to the costs of the abortive trials. *Rex v. Nichol*, 8 B. C. R. 276.

3. *Adjournment.*

1. Inspection.]—Defendants got order at trial for inspection of vein in plaintiff's claim which they alleged was continuation of a vein the apex of which was within limits of their own claim, and plaintiffs alleging such order necessitated inspection by them to meet any evidence adduced by reason of defendants inspection, and asked for adjournment, which was granted only on terms that all costs occasioned thereby be borne by them in any event:—Held, on appeal, should abide the event of the issues to which inspection related. *Iron Mask v. Centre Star*, 6 B. C. R. 66.

2. No court room available.]—No costs of an adjournment of trial will be allowed to the successful party where the adjournment was caused by reason of there being no court room available. *MacDonell v. Perry*, 10 B. C. R. 326.

3. Sittings of Court — *Costs thrown away.*]—*McLeod v. Waterman et al.*, 9 B. C. R. 370.

4. *Admiralty.*

1. Costs in.]—*Zambesi v. Fanny Dutard*, 2 B. C. R. 91.

5. *Amendment.*

1. Full Court—*Where first asked for in —Terms on which granted.*]—*Jones v. Davenport*, 7 B. C. R. 452.

See PLEADING, III.

2. Pleadings of — *At close of trial—Terms on which granted.*]—*Pooley v. Fitzstubbs*, 3 B. C. R. 198.

See PLEADINGS, III.

3. Terms.]—In an action for damages for negligence under Lord Campbell's Act, defendants denied plaintiff was the widow of deceased, and at the trial on notice withdrew this defence, but were allowed to do so only on condition of paying costs of action up to and including first day of trial:—Held, on appeal, they could withdraw any part of the defence on paying costs thrown away by issue raised. *Gordon v. City of Victoria*, 6 B. C. R. 129.

See also AMENDMENT—PLEADING.

6. *Appeals.*

1. Abandoned appeals—*Taxation of.*]—*E. & N. Ry. Co. v. New Vancouver Coal Co.*, 9 B. C. R. 162.

2. Abandoned appeals.]—On 20th May, the plaintiffs gave notice of appeal, to come on at the November sittings of the Full Court, from an order requiring them to give security for the costs of the action. On 3rd June, the appeal was abandoned:—Held, *per* MARTIN, J., on a review of taxation, that respondents were entitled to tax briefs and a counsel fee. Counsel fee under the circumstances fixed at $10. A taxation may be reviewed under r. 583 as well as under r. 790. *Fry et al. v. Botsford et al.*, 9 B. C. R. 207.

3. Abandoned appeal]—The production of the notice of the abandonment of an appeal will be sufficient authority for the taxing officer to tax the respondent's costs of the appeal, and hereafter it will not be necessary to apply for an order for costs. *Fry et al. v. Botsford and MacQuillan*, 9 B. C. R. 165.

4. Interlocutory.]—The Full Court has power to allow, on terms, an amendment for the first time of a pleading by setting up a fact which would, if proved, be a good answer to a plea of the Statute of Limitations. There is no fixed rule that in all cases costs of interlocutory proceedings shall not be payable until the conclusion of the litigation. *Jones v. Davenport*, 7 B. C. R. 452.

5. Interlocutory appeals—*Costs of are payable forthwith.*]—*Star Mining and Milling Co. v. Byron N. White Co.*, 9 B. C. R. 9.

6. Jurisdiction—*Costs where Court has no.*]—*In re Vancouver Incorp. Act & Rogers*, 9 B. C. R. 373.

See MUNICIPAL CORPORATIONS, IX.

7. Offer of settlement — *Greater than reduced judgment.*] —Where a judgment is reduced on appeal and pending the disposition of the appeal, respondent offers to accept in settlement an amount smaller than the original judgment, but greater than the reduced judgment, the appellant will be allowed the costs of the appeal. *Dallin v. Weaver*, 8 B. C. R. 241.

8. Summary conviction—*From.*]—*Reg v. Boscowitz*, 4 B. C. R. 132.

See CONSTITUTIONAL LAW, II. 8.

9. Succeeding on point not taken below.]—Where an appeal is allowed on a point of law not taken at the trial or in the notice of appeal, but open on the pleadings, it is not in strictness successful, and no costs of the appeal will be allowed; but as the appellant should have succeeded at the trial he will be allowed the costs of it. *The Byron N. White Company v. The Sandon Water Works and Light Co., Ltd.*, 10 B. C. R. 361.

10. Where both parties to blame.]—*Can. Development Co. v. Le Blanc et al.*, 8 B. C. R. 173.

See COLLISION.

11. Where law point not taken in Court below.]—*In re Thunder Hill Mining Co.*, 5 B. C. R. 21.

See COMPANY, IX. 3.

12. Where only partially successful.]—*Foley* v. *Webster*, 2 B. C. R. 260.

See APPEAL, VIII. 3.

13. Where substantially successful.]—An appellant who is substantially successful is entitled to the costs of appeal. The fact that a respondent is successful in some parts of an appeal is not sufficient to deprive an appellant who is substantially successful of his costs. *Centre Star Mining Co., Limited* v. *Rossland Miners' Union et al.*, 9 B. C. R. 531.

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7. *Briefs.*

1. Although there is no allowance in terms in the tariff for the costs of making briefs on appeal, they may be allowed under the heading of "copies of pleadings, briefs and other documents, where no other provision is made," and though there is no allowance for fees paid to the official stenographer, his transcript may be taxed as a copy. *Edison General Electric Company* v. *Westminster and Vancouver Tramway Company, The Bank of British Columbia et al.*, 5 B. C. R. 34.

See also APPEAL, VIII. 2.

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8. *Certiorari.*

1. The old rule in certiorari proceedings, that the Crown neither pays nor receives costs, is no longer in force, and the Court will grant the costs of a successful appeal to the Crown if asked for. *Regina* v. *Little*, 6 B. C. R. 321.

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9. *Commissions.*

1. Held, by DRAKE, J., that as the commission evidence was not put in by defendant as part of his case, defendant should be deprived of the costs of it. *Rex* v. *Nichol*, 8 B. C. R. 276.

2. Second commission.]—A second commission to New York granted to defendant to examine a witness, he having already obtained a commission to the same place, but he was ordered to pay the costs of executing it in any event of the action. *Gill* v. *Ellis*, 5 B. C. R. 137.

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10. *Counsel Fees.*

1. After an appeal was opened, it was stood over at the suggestion of the Court in order to give the parties an opportunity to settle; the negotiations for settlement were unsuccessful, and the appeal was ultimately dismissed with costs:—Held, that the successful party was entitled (1) to a counsel fee (under item 224 of the Tariff of Costs), on the first day's hearing, and (2) to an allowance for costs of the negotiations for settlement under item 81 of schedule No. 4. *Milton* v. *The Corporation of the District of Surrey* (No. 2), 10 B. C. R. 325.

2. Counsel in this Province have the right to maintain an action for their fees. Where a solicitor, contrary to his client's expectation, does not pay over to a counsel, fees received from his client, the client is still liable to the counsel. *British Columbia Land and Investment Agency, Limited* v. *Wilson*, 9 B. C. R. 412.

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11. *Discretion.*

1. Under Rule 751 (a), the discretion as to costs in an action tried with a jury is exercisable, by the Judge or Court of the first instance only; the Full Court has no power to make any order thereon, except on appeal upon the question, whether or not "good cause" has been shewn for depriving the successful party of his costs. Remarks as to jurisdiction of Full Court. *Gibson* v. *Cook et al.*, 5 B. C. R. 534.

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12. *Habeas Corpus.*

1. Conveyance to gaol—*Unascertained of.*]—*Regina* v. *Ackerman*, 1 B. C. R., pt. I., 255.

See HABEAS CORPUS.

2. Person entitled to — *Costs — Not designated.*]—*Regina* v. *Ackerman*, 1 B. C. R., pt. I., 255.

See HABEAS CORPUS.

3. Under habeas corpus proceedings.]—*In re Quai Shing*, 6 B. C. R. 86.

See ADOPTION.

4. Where a wife leaves her husband without justification, she is not entitled to her costs of unsuccessfully resisting his application by habeas corpus for the custody of children. *In re C. T. McPhalen*, 10 B. C. R. 40.

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13. *Judgment Debtor.*

1. Examination of judgment debtor—*Execution Act, C. S. B. C.* 1888, *c.* 42—*Judgment debtor for costs only, not examinable.*]—Section 11 of the Execution Act, C. S. B. C., 1888, c. 42, providing for the examination of the judgment debtor "as to the means or property he had when the debt or liability was incurred," refers to the debt or liability to recover which the action was brought and does not apply to a judgment for costs only. *Griffiths* v. *Canonica*, 5 B. C. R. 48.

2. Judgment debtor — *Examination of, where judgment for costs only—R. S. B. C., c.* 10, *s.* 19, *and Rule* 486.] — A person against whom a judgment has been recovered for costs only, is examinable as a judgment debtor under r. 486, but not under R. S. B. C. c. 10, s. 19. Griffiths v. Canonica, 5 B. C. R. 48, followed. *Drosdowitz* v. *Manchester Fire Assurance Company*, 6 B. C. R. 269.

14. *Lien for.*

1. Costs incurred in a creditors' action in preserving for creditors property which had been fraudulently transferred, are a first lien upon the fund recovered, and are allowed as between solicitor and client. *In re The Judgment Acts; Hood, Aldridge & Co.* v. *Tyson*, 9 B. C. R. 233.

2. Solicitor—*Lien for — Compromise by clients.*] — Where defendant in good faith settles an action with plaintiff in such a way as to deprive plaintiff's solicitor of his costs, such solicitor is not entitled to leave to proceed with the action for recovery of his costs. *Ridout* v. *McLeod*, 6 B. C. R. 161.

15. *New Trial.*

1. Where jury disregarded material undisputed facts in evidence.]—*Robson* v. *Suter*, 1 B. C. R. pt. 11., 375.

See NEW TRIAL.

2. Where due to misdirection.] — *B. C. Iron Works Co.* v. *Buse et al.*, 4 B. C. R. 439.

See NEW TRIAL.

3. Where appeal due to action of plaintiffs.] — *Courtney et al.* v. *Can. Development Co.*, 8 B. C. R. 53.

See CARRIERS.

See NEW TRIAL, infra.

16. *Order* XIV.

1. A plaintiff who obtains judgment on a summons under Order XIV. issued after the expiration of the time for filing defence, is entitled to the costs of the summons, and not only to such costs as he would have been entitled to had he taken judgment in default of defence. *Diamond Glass Co.* v. *Okell Morris Co.*, 9 B. C. R. 48.

2. Where leave granted to defend.] —*Victoria* v. *Bowes*, 8 B. C. R. 15.

See WRITS OF SUMMONS, infra.

17. *Refund of.*

1. Plaintiff recovered a judgment which on appeal to the Full Court was reversed with costs to defendant. Plaintiff paid these costs. On appeal, the Supreme Court of Canada restored the original judgment with costs, but made no order to refund the costs paid by the plaintiff. Order made for defendant to refund the costs, following Rodger v. Comptoir D'Escompte de Paris, L. R. 3 P. C. 465. *Davies* v. *McMillan*, 3 B. C. R. 72.

18. *Security for.*

1. Appeal.]—*Wilson* v. *Perrin*, 2 B. C. R. 350.

See APPEAL, VIII. 8.

2. Appeal—*Amount of.*]—*Rogers* v. *Reed*, 7 B. C. R. 79.

See APPEAL, VIII. 8.

3. Extra-Provincial Co.] — An extra-provincial company must give security for costs under R. S. B. C. 1897, c. 44, s. 144, notwithstanding it is suing along with a resident of the Province and has assets within the Province. *McClary et al.* v. *Howland*, 7 B. C. R. 299.

4. Foreign company — *Lessee in Victoria.*] — An American steamship company having its head office in Seattle was the lessee of certain premises in Victoria, where applications for freight and passage could be made to an agent:—Held, by DRAKE, J., that the company was a foreign company within the meaning of s. 144 of the Companies Act, and was bound to give security for costs. *Alaska Steamship Co.* v. *Macaulay*, 7 B. C. R. 338. Held, by the Full Court (MARTIN, J., dissenting), affirming DRAKE, J., that the company was a foreign company within the meaning of s. 144 of the Companies' Act, and was bound to give security for costs. *Alaska Steamship Co.* v. *Macaulay*, 8 B. C. R. 84.

5. How application should be made.] —Applications for security for costs of appeal to the Full Court should be made to a Judge in Chambers and not to the Full Court. *Rogers* v. *Reed*, 7 B. C. R. 183.

6. Joint plaintiffs — *One an extra-provincial company—R. S. B. C.* 1897, c. 44, *s.* 144.]—An extra-provincial company must give security for costs under R. S. B. C. 1897, c. 44, s. 144, notwithstanding it is suing along with a resident of the Province and has assets within the Province. *McClary et al.* v. *Howland*, 7 B. C. R. 299.

7. Nominal insolvent plaintiff.]—The Court will order a nominal insolvent plaintiff to give security for costs of the action. Where a party is ordered to give security for costs within a limited time, and makes default, he will be compelled to pay the costs of a motion to dismiss the action for the non-compliance as a condition precedent to his right to furnish the security and proceed. *Cowan* v. *Patterson*, 3 B. C. R. 353.

8. Plaintiff divested of interest in action.]—The Court will order a plaintiff to give security for costs who has divested himself of his interest in the action, either before or after suit, and who appears to have no property or means. *Beer* v. *Collister*, 3 B. C. R. 79.

9. Test actions.] — Twenty-nine actions by different plaintiffs were commenced against defendants at one time, and subsequently forty-four similar actions were commenced. One action known as the Leadbeater action was ordered to be tried as a test action for the twenty-nine, and afterwards by consent four actions out of the forty-four were consolidated by order of the Full Court with the Leadbeater action and ordered to be tried as test actions for the whole seventy-three. In the Leadbeater action and in one of the four remaining test actions the plaintiffs resided in the jurisdiction and in the other three they resided outside the jurisdiction: — Held, by the Full Court, reversing IRVING, J., that the plaintiffs outside the jurisdiction should not

be required to give security for costs. *Silla v. Crow's Nest Pass Coal Company, Limited*, 10 B. C. R. 224.

10. Two separate appeals.]—An order was made in Chambers allowing plaintiff to amend his writ, and another order was also made dismissing defendant's application to set aside the writ. Defendant by one notice appealed from both orders:—Held, two separate appeals and that security for costs as of one appeal was insufficient. *Schl v. Tugwell*, 7 B. C. R. 359.

11. Undertaking for.]—Plaintiffs resident outside the jurisdiction lodged in Court an undertaking as security for costs. At the trial the plaintiffs succeeded and defendants appealed, but before the determination of the appeal plaintiffs applied for a release of the undertaking:—Held, by MARTIN, J., that the security should stand pending the appeal. *Bird et al. v. Vieth et al.*, 7 B. C. R. 511.

12. When order increasing will be allowed.] — Plaintiff residing outside the jurisdiction voluntarily deposited $100 as security for costs. Upon motion by defendant after appearance, to increase the amount to $150:—Held, (1) the amount in which security is to be given is in the discretion of the Court. (2) An order increasing security for costs will only be made after the amount furnished has been exhausted. *McLean v. The Inland Construction and Development Co., Ltd.*, 3 B. C. R. 307.

13. Where plaintiff is a judgment creditor of defendant.] — Security for costs, on the ground that the plaintiff is resident outside the jurisdiction, will not be granted to a defendant against whom the plaintiff holds an unsatisfied judgment for an amount sufficient to cover the costs of the action. *Horsfall v. Phillips*, 3 B. C. R. 352.

14. Wife of resident, as plaintiff, living in California.]—The statement in the plaint of the residence of the plaintiff (temporarily resident in California) as the wife of Maynard Havelock Cowan, of Victoria," &c:—Held, sufficient. Statement of the residence of defendants as " of Broad Street, Victoria, Auctioneers:" — Held, sufficient. The residence of a wife, not living apart from her husband, is at the place of residence of her husband, and defendant held not entitled to security for costs from the plaintiff, on the ground that she was then living in California, her husband being resident in Victoria. *Cowan v. Cuthbert*, 3 B. C. R. 373.

15. Waiver—*Of objection that security is not furnished in time, by moving for increased security.*]—*In re Oro Fino Mines*, 7 B. C. R. 388.

See COMPANY, IX. 2.

16. Waiver—*Of security for appeal.*]—*In re Florida Mining Co.*, 8 B. C. R. 388.

See APPEAL, VIII. 8.

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19. *Separate Defences.*

1. Costs of separate defences — *Who liable for.*] — Where defendants separate in their defence, a plaintiff who obtains judgment against them is entitled to costs against them jointly, and each defendant is liable for the costs of his separate defence, but not liable for any costs occasioned solely by the other. *Merchants Bank v. Houston et al.*, 7 B. C. R. 352.

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20. *Taxation.*

(*a*) *Party and Party.*

1. After an appeal was opened, it was stood over at the suggestion of the Court in order to give the parties an opportunity to settle; the negotiations for settlement were unsuccessful, and the appeal was ultimately dismissed with costs:—Held, that the successful party was entitled (1) to a counsel fee (under item 224 of the Tariff of Costs) on the first day's hearing, and (2) to an allowance for costs of the negotiations for settlement under item 81 of Schedule No. 4. *Milton v. The Corporation of the District of Surrey* (No. 2), 10 B. C. R. 325.

2. The costs to which a party is entitled on a party and party taxation are such costs as have been incurred by the act of the opposite party, and costs of the day of a trial thrown away by reason of the absence of the trial Judge, disallowed upon review, overruling the taxing officer. The quantum of counsel fees reviewed and reduced. *The William Hamilton Manufacturing Company v. The Victoria Lumber Company*, 5 B. C. R. 53.

(*b*) *Scale of.*

1. Proceedings before new scale.] — Upon taxation of costs, it appeared that some of the items had reference to proceedings taken before the introduction by statute of a new scale of taxation, and others to proceedings taken since the introduction of the new scale:—Held, *per* BOLE, Co.J., sitting as local Judge of the Supreme Court, overruling the Registrar, that the introduction of the new scale of costs was legislation in regard to procedure and had a retrospective effect, and that all the items must be taxed upon the new scale. *Youdall v. Douglas*, 2 B. C. R. 342.

2. The costs of an action in the Supreme Court, which might have been brought in the County Court, are not necessarily taxable on the County Court scale. *Royal Bank of Can. v. Harris*, 8 B. C. R. 268.

3. Appeal from the decision of IRVING, J., reported 9 B. C. R. at p. 21, dismissed. Quære, where costs are taxable under s. 835 of the Criminal Code, on what scale should they be taxed? *Nichol v. Pooley et al.*, 9 B. C. R. 363.

(*c*) *Solicitor and Client.*

1. Agreement with client for lump sum.]—*Robertson et al. v. Rossuyt*, 8 B. C. R. 301.

See SOLICITOR AND CLIENT.

2. A charge in a bill of costs, although not justified by the item under which it is framed, may nevertheless be allowed if it can be sustained under any other item of the tariff. *In re Cowan*, 7 B. C. R. 353.

(d) Tariff.

1. A charge in a bill of costs, although not justified by the item under which it is framed, may nevertheless be allowed if it can be sustained under any other item of the tariff. *In re Cowan*, 7 B. C. R. 353.

2. In a Supreme Court action, the Judge has no jurisdiction to order costs on the County Court scale on the ground that the action might or should have been brought in the County Court. *Russell* v. *Black*, 10 B. C. R. 326.

3. The plaintiff, resident in England, came to British Columbia to prosecute the action, remained until after the trial and obtained a verdict:—Held, on taxation of costs, a party to an action coming from abroad to prosecute it is not entitled to tax against the other side, either his travelling expenses or the cost of his subsistence, while awaiting trial. *Adams* v. *McBeath*, 3 B. C. R. 34.

4. Plaintiff taxed, in 1896, his costs of recovering judgment, and on appeal it was ordered that there should be a new trial and that the costs of the first trial should follow the event. Plaintiff finally, in 1901, recovered judgment with costs: — Held, that the costs of the first trial were not now taxable under the new tariff, which came in force in 1897, but that the old taxation must stand. Semble, costs incurred before the new tariff came into force were still taxable under the old tariff. *Harris* v. *Dunsmuir* (2), 9 B. C. R. 317.

5. Staying taxation.]—The Full Court allowed plaintiff's appeal. On appeal the Supreme Court of Canada allowed the appeal of the defendant Ward, and ordered plaintiff to pay him the costs of that appeal, and also all costs in the Court below, except in so far as Ward was to be regarded as the representative of the mortgagor in an action to realize a mortgage security, which costs were reserved until final decree: — Held, reversing IRVING, J., who made an order staying the taxation of Ward's costs of appeal to the Full Court until final decree, that there was no jurisdiction to make the order staying taxation. The application should have been made to a Judge of the Supreme Court of Canada instead. *Merchants Bank of Halifax* v. *Houston and Ward*, 9 B. C. R. 158.

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21. *Withdrawal.*

1. Amendment.] — In the statement of defence to an action under Lord Campbell's Act by the plaintiff to recover damages for the death of her husband, killed owing to the alleged negligence of the defendants, the defendants in their statement of defence denied that the plaintiff was the widow of the deceased, but at the trial moved upon notice to withdraw that defence. The Chief Justice allowed the amendment, but imposed as a condition, against the consent of the defendants' counsel, that the defendants should pay the costs of the action up to and including the costs of the first day of the trial.—Held, by the Full Court (WALKEM, DRAKE, MCCOLL and IRVING, JJ.), allowing the appeal, that the defendants had a right to withdraw any part of their defence upon payment of the costs thrown away by the plaintiff owing to that issue being raised. *Gordon* v. *The Corporation of the City of Victoria*, 6 B. C. R. 129.

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22. *Miscellaneous.*

1. Arbitration proceedings.] — *Re Dwyer & Victoria Waterworks*, 6 B. C. R. 165.

See ARBITRATION AND AWARD.

2. Directions.] — Where a summons is taken out with respect to any of the matters for which under Rule 268 (a) a general summons for directions should have been taken, the costs will be reserved, to consider whether, in the event of any other summons being taken out, all such applications could not have conveniently been dealt with under a general summons, and the costs only of such an application allowed. *Jones* v. *Pemberton*, 6 B. C. R. 67.

3. Garnishment.] — Costs of garnishee proceedings not allowed where defendant pays money into Court before judgment. *Shawnighan Lake L. Co.* v. *Fairfull*, 7 B. C. R. 58.

See GARNISHMENT.

4. Illegality—*Set up as defence.*] — *B. C. Stock Exchange* v. *Irving*, 8 B. C. R. 186.

See GAMING.

5. Judgment.]—A plaintiff is entitled to costs of a motion for judgment in default of defence when the defence is filed after service of the notice of motion. *San Francisco Mining Company, Limited*, v. *J. & E. Martin*, 5 B. C. R. 538.

6. Lunatic.] — Costs of inquisition terminated by death of alleged lunatic before verdict in proper case allowed out of estate of lunatic. *In re Kaye*, 6 B. C. R. 61.

7. Liquidator — *Suing in own name is liable for.*]—*Jackson* v. *Cannon*, 10 B. C. R. 73.

See COMPANY, IX. 5.

8. Libel.]—N., after his acquittal in a criminal libel action, proceeded to tax his costs and moved before the trial Judge for certain costs, and on obtaining an order with which he was dissatisfied, abandoned the taxation and commenced a civil action against the prosecutors for his costs: — Held, by IRVING, J., on a summons for a stay of proceedings, that plaintiff should not be allowed to pursue both remedies at once, but as in the other action there was no appeal he allowed this action to proceed on terms. *Nichol* v. *Pooley et al.*, 9 B. C. R. 21.

9. Mistake—*When caused by defendants —Costs not allowed to him.*]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

10. Multiplicity of actions—*Trustees — Costs.*]—Trustees having received monies under a decree in one of several actions relating to the same subject-matter to which they were parties, an originating summons was obtained by other parties to the same actions calling upon the trustees for an account not directed by the decree in question, and to pay into Court:—Held, by the Divisional Court (McCREIGHT, WALKEM and DRAKE, JJ.), affirming an order of CREASE, J., directing the trustees to account and personally to pay the costs of the motion: That the proceedings by originating summons was warranted by Rule 591, s.-ss. (c), (d), and an objection that the motion should have been made in one of the pending actions overruled. *Boscowitz* v. *Belyea*, 4 B. C. R. 527.

11. Payment of—*Otherwise dismissal of action.*]—*Dunlop* v. *Haney*, 6 B. C. R. 320.

See TENDER.

12. Prohibition.]—County Court Judge has no power to award costs of an appeal to him from a summary conviction, to be paid by a person not a party to the conviction or proceedings before the justices, though improperly made respondent to the appeal, and who has not appeared thereon. *In re Bole et al.*, 2 B. C. R. 208.

13. Qui tam action—*Costs of informer.*]—*McNeil* v. *Howe*, 2 B. C. R. 36.

14. Trespass — *Where encouraged by plaintiff.*]—*Vedder* v. *Chadsey*, 1 B. C. R. pt. II., 76.

See TAXATION, II.

15. Where respondent supports judgment made by Judge, of his own motion dismissing action, reversed on appeal, respondent must pay costs. *Guilbault* v. *Brothier*, 10 B. C. R. 449.

See ACTION, I.

16. Writ—*Costs of setting aside where ground not taken in summons.*]—*McGregor* v. *McGregor*, 6 B. C. R. 258.

See REPLEVIN.

17. Winding-up.]—Held, that creditors and debenture holders who neglected to enter an appearance to a winding-up petition as required by r. 58 of the Winding-up Rules passed by the Judges on 1st October, 1896, but who appeared by counsel on the return of the petition which was dismissed with costs, were not entitled to costs. The fact that their counsel was heard without objection by petitioner's counsel makes no difference. *In the matter of the Winding-up Act and in the matter of the Albion Iron Works Company, Limited*, 10 B. C. R. 351.

18. Official—*Where indemnified by party interested.*]—*B. C. Permanent* v. *Wootton*, 6 B. C. R. 382.

See COMPANY, I.

See also ADMIRALTY — AMENDMENT — APPEAL—CERTIORARI—HABEAS CORPUS — NEW TRIAL—PLEADINGS—SOLICITOR AND CLIENT.

X. DIRECTIONS.

1. Order XXX. — *General summons for directions—Particular summons for examination—Costs.*]—Where a summons is taken out with respect to any of the matters for which under Rule 269 (a) a general summons for directions should have been taken, the costs will be reserved, to consider whether, in the event of any other summons being taken out, all such applications could not have conveniently been dealt with under a general summons, and the costs only of such an application allowed. *Jones* v. *Pemberton*, 6 B. C. R. 67.

XI. DISCOVERY AND EXAMINATION.

1. *De Bene Esse.*

1. A party desiring a commission for his own examination outside the jurisdiction should himself make an affidavit of the facts relied on. *Tollemache* v. *Hobson*, 5 B. C. R. 216.

2. Grounds.] — The serious illness of a necessary witness is ground for granting an order for his examination de bene esse. When justice so requires, the Court will make an order abridging the month's notice required by Rules 749 from the party desiring to proceed in the action in which there has been no proceeding for one year from the last proceeding. *Bank of Montreal* v. *Horne*, 6 B. C. R. 68.

3. A witness who lives in a remote part of the Province is examinable under r. 368 while temporarily in Victoria. *Hyland* v. *C. D. Co.*, 9 B. C. R. 32.

2. *Inspection.*

(*a*) *Of Documents.*

1. Convenience of.] — Where an order has been made for the production of documents, the documents should be produced in the city or town in which the writ was issued, but a Judge has a discretionary power to order production somewhere else to prevent inconvenience and prejudice to a party's business operations. *Davies, Sayward Mill and Land Company, Limited*, v. *Buchanan et al.*, 10 B. C. R. 175.

2. Correspondence.] — In an action for redemption of shares in a public company deposited by plaintiff as collateral security to an over-draft, or in the alternative for damages for their improper sale by the bank, the defendants, in answer to an order for discovery, made an affidavit of documents disclosing possession of a number of letters relating to the matters in question which had passed between the manager of the Bank at Victoria and the manager of the Bank at Vancouver, which they objected to produce as being privileged:—Held, following Anderson v. Bank of British Columbia, 2 Ch. D. 644, that the letters were not privileged and must be produced. *Van Volkenburg* v. *The Bank of British North America*, 5 B. C. R. 4.

3. Privilege.]—An affidavit of documents which described certain bank books as bill registers, current accounts and ledgers for

stated periods, was held sufficient, IRVING, J., dissenting. Privilege was claimed for the first time in respect of such books in a supplementary affidavit filed subsequently to the issue of a summons for a further and better affidavit:—Held, reversing MARTIN, J., that this affidavit defeated the summons and that the claim of privilege must be allowed. *Bank of British Columbia* v. *Oppenheimer*, 7 B. C. R. 104.

4. Photographs — *Privilege.*] — *Feigenbaum* v. *Jackson et al.*, 7 B. C. R. 171.

See DOCUMENTS, *infra*.

(b) Of Property.

1. Apex of vein—*C. S. B. C.* 1888, *c.* 82, *ss.* 77 *and* 82—*Rule* 514.]—The Centre Star Company had been enjoined from mining in the Iron Mask claim, which it was alleged was a continuation of a vein whose apex was in its own claim, and was also refused leave to do experimental or development work on the Iron Mask claim in order to determine the character or identity of the said vein:—Held, by the Full Court, on appeal (MARTIN, J., dissenting), refusing to modify said orders, that it ought to be left to the trial Judge to decide whether it was necessary to have any work done to elucidate any of the issues raised. *Centre Star* v. *Iron Mask*, 6 B. C. R. 355.

2. Coal workings.]—Plaintiffs claiming title to certain coal fields which were being worked by the defendants, applied before pleading for an order for inspection of the defendants' workings. Defendants admitted working within the area claimed by the plaintiffs:—Held, by WALKEM, J.: That the plaintiffs were entitled to have inspection, and by their own agents:—Held, on appeal (1), The chief ground on which such an order is made is to enable the plaintiff to get on with his case; (2) Under special circumstances, as where there is danger of flood, the order may be made to preserve the evidence; (3) That the inspection should be by indifferent persons who should not reveal any information without the sanction of the Court. *E. & N. Railway Co.* v. *New Vancouver Coal Company*, 6 B. C. R. 194.

3. Costs of adjournment for.]—Defendants got an order at the trial for the inspection of a vein in the plaintiffs' claim, which they alleged was the continuation of a vein, the apex of which was within the limits of their own claim, and plaintiffs alleging that such order necessitated inspection by them of other similar places on their property, with a view to furnishing evidence to rebut that which might be adduced by reason of the plaintiffs' inspection, and therefore on adjournment for that purpose, were allowed the adjournment, but only on the terms that all costs occasioned thereby should be borne by them in any event:—Held, on appeal, that such costs should abide the result of the issues to which the inspection related. *Iron Mask* v. *Centre Star*, 7 B. C. R. 66.

4. Underground work.]—Form of order providing for inspection of underground workings in an action for trespass to extra-lateral rights appurtenant to a mineral claim, settled. In interlocutory appeals, when a party is allowed costs of the appeal, the costs are payable forthwith. The inspection order should contain an undertaking for damages, and the practice does not require security to be given. *Star Mining and Milling Company, Limited Liability*, v. *Byron N. White Company (Foreign)*, 9 B. C. R. 9.

5. Underground workings.] — The right to inspect underground workings in a mine carries with it the right to inspect and make copies of the plans of such workngs. *Per* MARTIN, J.: (1) The practice respecting inspection under r. 514 is distinct from the practice in obtaining discovery, and a claim of privilege set up in an affidavit in answer to a motion to compel inspection is not conclusive; (2) It is a proper and convenient practice to apply to the Court to enforce an order for inspection when the resistance is not contumacious. *Star Mining and Milling Company, Limited Liability*, v. *Byron N. White Company (Foreign)*, (*No.* 2), 9 B. C. R. 422.

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3. *Interrogatories.*

1. An order for leave to deliver interrogatories under Order XIII., r. 6, may be made ex parte. *Charles T. Daily Co.* v. *B. C. Market Co.*, 8 B. C. R. 1.

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4. *Judgment Debtor.*

1. Before return of execution.] — A judgment debtor is examinable under Rule 486, notwithstanding that a fi. fa. in the sheriff's hands has not yet been returned nulla bona. *Steele* v. *Pioneer Trading Corporations*, 6 B. C. R. 158.

2. Corporation — *Examination of officer of — Return of nulla bona.*] — A judgment debtor is examinable under Rule 486, notwithstanding that a fi fa. in the sheriff's hands has not yet been returned nulla bona *Steele* v. *Pioneer Trading Corporation*, 6 B. C. R. 158.

3. Costs—*Examination on judgment for.*] —Sec. 11 of the Execution Act, C. S. B. C. 1888, c. 42, providing for the examination of a judgment debtor "as to the means or property he had when the debt or liability was incurred," refers to the debt or liability to recover which the action was brought, and does not apply to a judgment for costs only. When an order is made after service of a summons upon which the opposite party does not attend, it will be treated as an ex parte order and may be re-heard in Chambers and rescinded. *Griffiths* v. *Canonica*, 5 B. C. R. 48.

4. Costs — *Not examinable on judgment for.*]—A person against whom a judgment has been recovered for costs only, is examinable as a judgment debtor under Rule 486, but not under R. S. B. C., c. 10, s. 19. Griffiths v. Canonica, 5 B. C. R. 48, followed. 6 B. C. R. 269.

5. Counsel — *Not entitled to be represented by.*]—The examination of a judgment debtor is a personal examination, and he is not entitled to the assistance of counsel to take part in such examination, but he can

have counsel to privately advise him. *Bank of Montreal* v. *Major & Eldridge*, 5 B. C. R. 156.

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5. Oral Examination.

(a) Conduct of.

1. Nature of—*Cross-examination.*]—An examination for discovery should be conducted as an examination in chief, and not as a cross-examination. *Carroll* v. *The Golden Cache Mines Company, Limited Liability*, 6 B. C. R. 354. (Overruled by Bank of B. C. v. Trapp et al., 7 B. C. R. 354).

2. Nature of — *Whether or not cross-examination allowed—Rule 703.*]—The examination for discovery under r. 703 is in the nature of a cross-examination, but limited to the issues raised in the pleadings. Carroll v. The Golden Cache Mines Company (1889), 6 B. C. 354, overruled. The amendment of 15th June, 1900, to Rule 703, is retroactive. *Bank of British Columbia* v. *Trapp et al.*, 7 B. C. R. 354.

3. Scope of — *Want of parties no objection to the application—Practice—Rule 703.*] — Held, by the Divisional Court (CREASE, MCCREIGHT and DRAKE, JJ.), overruling WALKEM, J.: That it is not a valid objection to an application for an order to examine a party under Rule 703, and for discovery upon oath of documents in his custody, that other parties who might be affected by the discovery, ought to be parties to the action. Parties are entitled, upon an examination for discovery, to examine as fully as they could do in Court. *Beaven* v. *Fell et al.*, 4 B. C. R. 334.

4. Scope of.]—The examination for discovery under r. 703 is a cross-examination both in form and in substance, and a party being examined must answer any question the answer to which may be relevant to the issues. *Hopper* v. *Dunsmuir (No. 2)*, 10 B. C. R. 23.

(b) Corporation Officer.

1. Company—*Estoppel.*]—The registered agent in B. C. of the defendant foreign corporation advertised his clerk B., and B. also advertised himself as local manager of the company. The plaintiff made an application for an affidavit of documents by B., which the company resisted upon the grounds that it had never authorized B. to act as its local manager, and that in fact his duties were merely those of clerk to the local manager: —Held, by DAVIE, C.J., granting the order, that for the purposes of the application B. must be treated as local manager of the company. *Richards* v. *B. C. Goldfields Co.*, 5 B. C. R. 483.

2. Examination of ex-officer of corporation—*Reading depositions at trial—Rule 725—Practice.*]—On an examination for discovery of an ex-officer of a corporation, the corporation's counsel attended and objected to certain questions being put:—Held, that the deposition was admissible at the trial. *Walkley et al.* v. *City of Victoria*, 7 B. C. R. 481.

3. Examination of officer of corporation — *Cross-examination on depositions—Reading depositions at trial.*] — On an examination for discovery of the plaintiffs' manager the plaintiffs took no part:—Held, that the deposition was admissible at the trial. *Royal Bank of Canada* v. *Harris*, 8 B. C. R. 368.

4. Examination of ex-officer of corporation — *Reading depositions at trial—Jury allowed to retire during evidence as to matter for Judge alone.*]—If an appointment is taken out for the examination of an ex-officer of a corporation, and the corporatiop's solicitor does not attend, and gives notice that he will object to the deposition being received at the trial:—Held, following OSLER, J., in Leitch v. Grand Trunk Railway Company (1890), 13 P. R. 369, that it should not be received. *Bank of B. C.* v. *Oppenheimer et al.*, 7 B. C. R. 448.

5. Ex-officer.]—An examination for discovery of an ex-officer of a corporation is not inadmissible at the trial merely because the person examined was not such officer at the time of examination. *B. C. Electric Railway Co., Ltd.* v. *Manufacturers' Guarantee and Accident Ins. Co.*, 7 B. C. R. 512.

6. Officer of corporation — *Examination of—Service of summons for—Service.*] —A summons under Rule 703, for the examination for discovery of past and presnt officers of a body corporate, must be served personally on all past officers, and application adjourned to enable the past officers to be served. *Hobbs* v. *E. and N. Ry. Co.*, 5 B. C. R. 461.

7. Union a legal entity for purpose of.] — A miners' union entered an appearance in an action, and by statement of defence raised the objection that it was not shewn that the defendant was a legal entity capable of being sued:—Held, that defendant by so pleading must be deemed, before the trial of the action, to be a corporation for the purposes of the litigation, and so compellable to make discovery. Where it is sought to examine for discovery in his dual capacity, one of the defendants in an action, who is also secretary of another defendant, two subpœnas are not necessary. On an examination for discovery, if the witness has an objection, such as the payment of insufficient conduct money, he should take the objection before the examiner, and he will not be allowed to raise it on an application to compel his attendance to answer questions which he has refused to answer. *Centre Star Mining Co., Ltd.*, v. *Rossland Miners' Union et al.*, 9 B. C. R. 190.

See also USE, infra.

(c) Other Persons.

1. Examination for discovery of guardian ad litem, at same time party defendant—*Whether examinable.*]—A party defendant is not absolved from examination for discovery by reason of being also guardian litem of infant defendants. *Beaven* v. *Fell*, 5 B. C. R. 453.

2. Rule 704—*Examination of person for whose benefit the action is brought—Assignee*

from plaintiff—Whether such person.]—The debt to recover which the action was brought had been assigned to the plaintiffs by C. in part satisfaction of a judgment debt due by him to them:—Held, that C. was "a person for whose immediate benefit" the action was brought within the meaning of Rule 704, and that the defendant was entitled to examine him for discovery. *Tollemache* v. *Hobson*, 5 B. C. R. 214.

3. Solicitor of—*A subpœna under r. 383 cannot be issued without an order therefor.*]—In actions for damages brought against colliery owners by relatives of miners killed in an explosion, the defendants applied to add the plaintiffs' solicitor as parties, and while the summons was pending they obtained, under r. 383, an order on summons, in support of which no affidavit was filed, for the examination of the solicitors as to what interest they had in the subject matter of the action: — Held, that the summons should have been supported by an affidavit shewing that it was probable that the solicitors had some interest in the subject matter of the litigation and the order should not have been made as of course. *Leadbeater et al.* v. *Crow's Nest Pass Coal Company, Ltd.*, 10 B. C. R. 206.

(d) Refusal or Objection to.

1. On an examination for discovery of an ex-officer of a corporation, the corporation's counsel attended and objected to certain questions being put:—Held, that the deposition was admissible at the trial. Where, under a contract which made the right of the contractors to receive payment for the construction of certain works dependent upon the certificate of an engineer who was also sole arbitrator of all disputes, the engineer unjustifiably delayed the issue of the certificate for seven months and acted in a shifting and vacillating, though not fraudulent manner, and probably caused heavy loss to the contractors by his mistakes. (2) Held, in the absence of collusion on the part of the corporation, the certificate could not be set aside. Impropriety of certain acts of the corporation remarked upon. *Walkley et al.* v. *City of Victoria*, 7 B. C. R. 481.

2. Disclosure of names of witnesses.]—A party is not, upon his examination for discovery under Rule LXI., bound to disclose the names of his witnesses. The defendant in an action for maliciously swearing out a search warrant was asked upon such an examination to give the names of the persons upon whose information he proceeded, as constituting reasonable and proper cause for his action, which he refused to do. On an application under Rule 715 to strike out his defence for such refusal:—Held, following Smith v. Greey, 10 P. R. 482, that there should be a fair disclosure of the line of defence contemplated, but no identification of persons such as would enable the opposite party to fix upon the defendant's witnesses, and that the refusal was justified. *Jones* v. *Pemberton*, 6 B. C. R. 69.

3. Guardian ad litem.]—A party defendant is not absolved from examination for discovery by reason of being also guardian ad litem of infant defendants. *Beaven* v. *Fell et al.*, 5 B. C. R. 453.

4. Nominal plaintiff.]—In an action on an assignment the defence alleged that plaintiff was only a nominal plaintiff and no consideration had been given for the assignment, and plaintiff, on his examination for discovery, objected to answer questions relating to the consideration and to the interest of the assignors:—Held, by the Full Court, affirming DRAKE, J., that the questions should be answered. *Boggs* v. *The Bennett Lake and Klondike Navigation Company, Limited*, 7 B. C. R. 353.

5. Parties to action—*Other persons who should be.*]—Held, by the Divisional Court (CREASE, MCCREIGHT and DRAKE, JJ.), overruling WALKEM, J., that it is not a valid objection to an application for an order to examine a party under Rule 703, and for discovery upon oath of documents in his custody, that other parties, who might be affected by the discovery, ought to be parties to the action. Parties are entitled, upon an examination for discovery, to examine as fully as they could do in Court. *Beaven et al.* v. *Fell and Worlock*, 4 B. C. R. 334.

(e) Second Examination.

1. Where a party, after being examined for discovery, materially amends his pleading so as to raise a new issue, he may be ordered to be examined again. *Bank of Montreal* v. *Major and Eldridge*, 5 B. C. R. 181.

(f) Use of.

1. A party cannot use his own examination for discovery as evidence for himself at the trial.]—Defendant being absent at the time of trial, and counsel having put in evidence for plaintiff parts of the defendant's examination for discovery, defendant's counsel desired the trial Judge to look at and direct certain other parts of the examination to be put in evidence under Rule 725. *Per* DRAKE, J.: Refused. *Lyon and Healey* v. *Marriott*, 5 B. C. R. 157.

2. Discovery—*Examination of officer of corporation — Cross-examination on depositions—Reading depositions at trial.*] — The costs of an action in the Supreme Court, which might have been brought in the County Court, are not necessarily taxable on the County Court scale. On an examination for discovery of the plaintiffs' manager the plaintiffs took no part:—Held, that the deposition was admissible at the trial. *Royal Bank of Canada* v. *Harris*, 8 B. C. R. 368.

3. Of ex-officer of corporation.]—An examination for discovery of an ex-officer of a corporation is not inadmissible at the trial merely because the person examined was not such officer at the time of examination. *British Columbia Electric Railway Company, Limited* v. *Manufacturers' Guarantee and Accident Insurance Company*, 7 B. C. R. 512.

4. Of ex-officer of corporation—*Counsel for corporation attended an examination and objected to certain questions put.*]—Held depositions were admissible at trial. *Walkem* v. *City of Victoria*, 7 B. C. R. 481.

(g) When Obtainable.

1. After amendment.]—After an order for amendment of a statement of claim, the amended claim must be delivered before an order for examination of defendant can be made. *Cooley* v. *Fitzstubbs*, 3 B. C. R. 198.

2. Libel.]—A defendant in a libel action, who has pleaded a general justification, cannot obtain discovery from the plaintiff until he has furnished the plaintiff with the particulars of the facts relied on as a justification. *Bullen* v. *Templeman*, 5 B. C. R. 43.

3. Application for—*To examine party under Rule* 708 *should be supported by affidavit.*]—*Elson* v. *C. P. R. Co.*, 6 B. C. R. 71.

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6. Particulars

1. Defendant's knowledge.]—When it appears from the statement of claim that the defendant has, on the circumstances alleged, the means of knowing the details of the matters charged and the plaintiff has not, general allegations are not embarrassing, and the defendant is not entitled to particulars until after he has given discovery. *Garesche* v. *Garesche*, 4 B. C. R. 444.

2. Libel.]—In an action of libel, a defendant who has pleaded a general justification must furnish the plaintiff with the particulars of the facts relied on as a justification before he can obtain discovery from the plaintiff. *Bullen* v. *Templeman*, 5 B. C. R. 43.

3. Matters in opposite party's knowledge.]—Particulars are ordered for the purpose of forwarding the applicant's case and not to hamper the party ordered to give them. When a plaintiff is ordered to give particulars of negligence which are essentially within the defendant's knowledge, the order may provide that the plaintiff should not be confined at the trial of the particulars given. *Alaska Packers' Association* v. *Spencer*, 9 B. C. R. 473.

4. Trespass—*Estoppel.*]—Defendants, in answer to an action for trespass to land by erecting a building thereon, set up in their statement of defence that the erection was upon land on defendants' side of boundaries fixed by agreement between the parties, and also that the plaintiff was estopped by his conduct and representations from denying that the boundaries were as claimed by the defendants:—Held, by the Divisional Court (DAVIE, C.J., and DRAKE, J.): That the specific acts and conduct causing the alleged belief relied on as an estoppel, must be pleaded, and that particulars under the general allegation were properly ordered. The mere fact that particulars will necessarily disclose the names of witnesses is no objection if the party is otherwise entitled to them. *Guichon* v. *The Fishermen's Cannery Co.*, 4 B. C. R. 516.

See also PARTICULARS, infra—PLEADINGS.

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7. Production.

(a) Affidavit on.

1. Discretion to order.] — The Court has discretion to order defendant to make an affidavit of documents before delivery of defence for the purpose of enabling the plaintiff to give particulars of charges of fraud made in the statement of claim. *Beauchamp* v. *Muirhead*, 6 B. C. R.

2. Privilege.]—An affidavit of documents which described certain bank books as bill registers, current accounts and ledgers for stated periods was held sufficient, IRVING, J., dissenting. Privilege was claimed for the first time in respect of such books in a supplementary affidavit filed subsequently to the issue of a summons for a further and better affidavit:—Held, reversing MARTIN, J., that this affidavit defeated the summons and that the claim of privilege must be allowed. *Bank of British Columbia* v. *Oppenheimer*, 7 B. C. R. 104.

3. Privilege.]—Photographs sworn to be part of the materials of the defendants' evidence in the action are privileged from production. Documents sworn to be called into existence in the bona fide belief that litigation might ensue, are not for this reason only privileged from production. *Feigenbaum* v. *Jackson and McDonald*, 7 B. C. R. 171.

4. Privilege—*Letters between principal and agent.*]—In an action for redemption of shares in a public company deposited by plaintiff as collateral security to an overdraft, or in the alternative for damages for their improper sale by the bank, the defendants, in answer to an order for discovery, made an affidavit of documents disclosing possession of a number of letters relating to the matters in question which had passed between the manager of the bank at Victoria, and the manager of the bank at Vancouver, which they objected to produce as being privileged:—Held, following Anderson v. Bank of British Columbia, 2 Ch. D. 644, that the letters were not privileged and must be produced. *Van Volkenburg* v. *Bank of B. N. A.*, 5 B. C. R. 4.

5. Sufficiency of description in affidavit of.]—*Bank of British Columbia* v. *Oppenheimer*, 7 B. C. R. 104.

(b) Order for.

1. Convenience of place of inspection.]—Where an order has been made for the production of documents, the documents should be produced in the city or town in which the writ was issued, but a Judge has a discretionary power to order production somewhere else to prevent inconvenience and prejudice to a party's business operations. *Davies, Sayward Mill and Land Company, Limited*, v. *Buchanan et al.*, 10 B. C. R. 175.

2. Corporation's registered agent—*Practice—Discovery.*]—The registered agent in B. C. of the defendant foreign corporation, advertised his clerk B., and B. also advertised himself, as local manager of the company. The plaintiff made an application for an affidavit of documents by B., which the company resisted upon the grounds that it had never authorized B. to act as its local manager, and that in fact his duties were merely those of clerk to the local manager:—Held, by DAVIE, C.J., granting the order, that for the purposes of the application B. must be treated as local manager of the company.

Richards v. *B. C. Goldfields (Foreign)*, 5 B. C. R. 483.

3. Defendant's knowledge.] — When facts alleged in a statement of claim are within the knowledge of defendant, and not of plaintiff, defendant is not entitled to particulars before he has given discovery. *Garesche* v. *Garesche*, 4 B. C. R. 444.

4. Discretion of Court to order.]—The Court has discretion to order defendant to make an affidavit of documents before delivery of defence for the purpose of enabling the plaintiff to give particulars of charges of fraud made in the statement of claim. *Beauchamp* v. *Muirhead*, 6 B. C. R. 418.

5. Not obtainable as of right—*Rule 708.*]—A party in an action is not entitled as of right to an order for discovery of documents by the opposite party, but must shew to the Court prima facie that there are documents to be discovered, and that they are material to the issue. An application to examine a party before trial under Rule 708 should be supported by affidavit. *Elson* v. *Canadian Pacific Railway Company*, 6 B. C. R. 71.

6. Scope of—*Want of parties no objection to the application.*]—Held, by the Divisional Court (CREASE, MCCREIGHT, and DRAKE, JJ.), overruling WALKEM, J.: That it is not a valid objection to an application for an order to examine a party under Rule 703, and for discovery upon oath of documents in his custody, that other parties, who might be affected by the discovery ought to be parties to the action. Parties are entitled upon an examination for discovery to examine as fully as they do in Court. *Reaves* v. *Fell & Worlock*, 4 B. C. R. 334.

7. Property, order for inspection of.]—Plaintiffs claiming title to certain coal fields, which were being worked by the defendants, applied before pleading for an order for inspection of the defendants' workings. Defendants admitted working within the area claimed by the plaintiffs:—Held, by WALKEM, J.: That the plaintiffs were entitled to have inspection, and by their own agents: — Held, on appeal: (1) The chief ground on which such an order is made is to enable the plaintiff to get on with his case. (2) Under special circumstances, as where there is danger of flood, an order may be made to preserve the evidence. (3) That the inspection should be by indifferent persons who should not reveal any information without the sanction of the Court. *E. & N. Railway Company* v. *New Vancouver Coal Company*, 6 B. C. R. 194.

XII. DISMISSAL OR NONSUIT.

1. By Court of own motion.]—On the trial of an action containing three different causes of action, one of which was an action for moneys had and received, another for damages for assault and false imprisonment, and a third for damages for procuring the plaintiff to enter a house of prostitution, the Judge, after reading the plaintiff's examination for discovery, came to the conclusion that the evidence disclosed an illegal contract under which the defendants were to receive a part of the moneys obtained by plaintiff while engaged in prostitution, and that the action involved the taking of an account in respect thereof, and was of an indecent character and unfit to be dealt with, and he dismissed it out of the Court of his own motion, the formal judgment stating that "this Court doth of its own motion and without adjudicating as between the plaintiff and defendants on the matters in dispute between them, order that this action be dismissed out of this Court, with costs:"—Held, by the Full Court, that the order dismissing the action would have precluded the plaintiff from again suing in respect of any of the causes of action included in the statement of claim, and that the plaintiff should have been allowed to prove her case in respect to those causes of action against which there was no objection; and that the respondent who supported the judgment on appeal must pay the costs of the appeal. Judgment of IRVING, J., set aside. *Guilbault et al.* v. *Brothier et al.*, 10 B. C. R. 449.

2. Delay—*Motion to dismiss.*]—The proper mode for a defendant to take advantage of delays on the part of a plaintiff is to move to dismiss the action. Plaintiff after long delays, obtained an order to amend his statement of claim:—Held, on appeal to the Divisional Court (CREASE, and DRAKE, JJ.), that the intervening delay was no ground for setting it aside. *Clarke* v. *Eholt*, 3 B. C. R. 442.

3. Dismissal of action for want of prosecution — *Action partly tried—Rules 340, 350, 353.*]—Supreme Court Rule 340, providing that "if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or apply to the Court or a Judge to dismiss the action for want of prosecution," does not apply where the trial of the action has been partly proceeded with and adjourned. On appeal from an order dismissing the action for want of prosecution:—Held, by the Divisional Court (CREASE and MCCREIGHT, JJ.), allowing the appeal and reversing the order of DRAKE, J., that the proper mode for a defendant to get rid of the action in such case was to set it down for trial, and if the plaintiff did not appear, to ask for judgment dismissing the action, under Supreme Court Rule 353. *Boscowitz* v. *Warren*, 4 B. C. R. 88.

4. Dismissal of action for want of prosecution after notice of trial—*Rule 340.*] — A Judge sitting in Chambers has power to dismiss an action for want of prosecution, notwithstanding that the action has been entered for trial. *Sullivan* v. *Jackson*, 7 B. C. R. 133.

5. Moving to dismiss for want of prosecution—*No proceedings for a year—Month's notice under Rule 749.*]—Supreme Court Rule 749, requiring a month's notice of intention to proceed when there has been no proceeding for one year from the last proceeding, applies to an application to dismiss an action for want of prosecution. *Mac Donald* v. *Jessop et al.*, 3 B. C. R. 606.

6. Non-suit.] — There cannot be a non-suit, nor can leave to enter a non-suit be reserved, without the consent of the plaintiff. *Per* MCCOLL, J., in *Paterson* v. *Victoria*, 5 B. C. R. 628.

XIII. Divisional Court.

1. Extending time for appeal — *Ex parte order—Irregularity.*] — An order extending the time for appealing to the Divisional Court is irregular if made ex parte. The Divisional Court has jurisdiction, and, in a proper case, ought to cure irregularities for want of time in the bringing of an appeal for making an order at the hearing of the appeal, extending the time for appealing, and thereupon proceeding to hear same—following re Manchester Economic Building Society, 24 Ch. D. 488. *Varrelmann* v. *The Phœnix Brewery Company, Limited Liability*, 3 B. C. R. 143.

2. Order — *Final or interlocutory.*]—No appeal lies to a Divisional Court from an order setting aside an order giving leave to issue an ex juris writ. *Fuller* v. *Yerxa*, 1 B. C. R., pt. II., 330 (decided before Rule 670 came into force. See Rules of Supreme Court, 1890.)

See also Appeal, V. — Chambers, supra—Writs of Summons, infra.

XIV. Evidence.

1. Affirmative evidence — *Practice as to.*]—*Schomberg* v. *Holden et al.*, 6 B. C. R. 419; *Ryan* v. *McQuillan*, 6 B. C. R. 431.

See Mines and Minerals, XIX.

2. Commission.]—A defendant resident outside the jurisdiction has a prima facie right to a commission to take his own evidence for use at the trial. An affidavit that such defendant was resident in Australia, and manager of a woollen factory, held sufficient to support an order for a commission to examine him, though it did not state that he could not personally attend at the trial. The fact that he could not do so without great inconvenience was a reasonable inference from the facts deposed to. *Cranstoun* v. *Bird*, 5 B. C. R. 140.

3. Commission.] — An affidavit for an order for a commissioner to examine witnesses abroad must state the names of the witnesses proposed to be examined. *Hermann* v. *Lawson*, 3 B. C. R. 353.

4. Commission — *Second commission to same place—Costs.*] — A second commission to New York granted to defendant to examine a witness, he having already obtained a commission to the same place, but he was ordered to pay the costs of executing it in any event of the action. *Gill* v. *Ellis*, 5 B. C. R. 137.

5. Commission—*Affidavit for.*]—A party desiring a commission for his own examination outside the jurisdiction, should himself make an affidavit of the facts relied on. *Tollemache* v. *Hobson*, 5 B. C. R. 216.

6. Commission to examine witness abroad.]—An affidavit for an order for a commission to examine witnesses abroad must state the names of the witnesses proposed to be examined. *Hermann* v. *Lawson*, 3 B. C. R. 353.

7. Commission — *Right of non-resident defendant.*] — A defendant, resident outside the jurisdiction, has a prima facie right to a commission to take his own evidence for use at the trial. An affidavit that such defendant was resident in Australia and manager of a woollen factory, held sufficient to support an order for a commission to examine him, though it did not state that he could not personally attend the trial. The fact that he could not do so without great inconvenience, was a reasonable inference from the facts deposed to. *Cranstoun* v. *Bird*, 5 B. C. R. 140.

8. Examination de bene esse — *Practice as to reading evidence taken.*]—*Vermont S. S. Co.* v. *Abby Palmer*, 10 B. C. R. 381.

See Admiralty, I.

9. Examination de bene esse—*When permitted—Rule* 749.]—*Bank of Montreal* v. *Horne*, 6 B. C. R. 68; *Hyland* v. *Can. Development Co.*, 9 B. C. R. 32; *Tollemache* v. *Hobson*, 5 B. C. R. 216.

See Discovery, supra.

10. Exclusion of witnesses—*Parties to action.*]—The mere fact that a party intends to give evidence does not entitle the other party to call for his exclusion, as in the case of an ordinary witness. If a party has been wrongfully excluded it is not necessary for him to shew that he was substantially prejudiced thereby in order to get a new trial. Quære, in case of harmless exclusion. *Bird et al.* v. *Vieth et al.*, 7 B. C. R. 31.

11. A witness who lives in a remote part of the Province is examinable under r. 368, while temporarily in Victoria. *Hyland* v. *Canadian Development Company*, 9 B. C. R. 32.

See also Discovery — Adverse Proceedings—Affidavit — Evidence — Mines and Minerals.

XV. Jurisdiction.

1. Dismissal of action.]—A Judge sitting in Chambers has power to dismiss an action for want of prosecution notwithstanding that the action has been entered for trial. *Sullivan* v. *Jackson*, 7 B. C. R. 133.

2. Full Court—*Reference of motion for judgment to by trial Judge—Jurisdiction.*] —The Full Court is an Appellate Court, and has no jurisdiction to hear a motion for judgment on the findings of a jury referred to it by a trial Judge. *McKelvey* v. *Le Roi Mining Co., Limited*, 8 B. C. R. 268.

3. A Judge of the Supreme Court has power to sign an order for and on behalf of another Judge. *Gordon* v. *Cotton*, 3 B. C. R. 499.

4. Judge—*Jurisdiction of to vary order of another Judge by adding conditions.*] — A Judge has no jurisdiction to add to an order made by another Judge for redemption of a mortgage, on payment of the debt and costs to date of decree, a further term adding subsequent costs and requiring their payment as a further condition of redemption, and charge upon the lands. (*Per* Begbie, C.J., Crease, Drake and Walkem, JJ.) *Lehman* v. *Wilkinson*, 3 B. C. R. 39

5. Local Judge.]—Notice of trial having been given in an action in the Supreme Court for trial with a jury, and the plaintiff not appearing, judgment was given for defendants:—Held, by the Full Court on appeal from the judgment: (1) A local Judge of the Supreme Court has no power to sit as a trial Judge in an action. (2) An order issued by and purporting to be an order of the Supreme Court (although made ultra vires) is not a nullity, but is valid until set aside by the Court. (3) Although an appeal lies from such an order to the Full Court, the more convenient and inexpensive course is to move before a Judge to rescind it, and the appeal was therefore allowed with costs as of a motion to rescind. *Brigman* v. *McKenzie et al.* 6 B. C. R. 56.

6. Winding-up—*No jurisdiction to make winding-up order—Local Judge of Supreme Court—Appeal on motion to rescind—Rule* 1,075—*R. S. Canada*, 1886, *c.* 129, *s.* 9.]—A local Judge of the Supreme Court has no jurisdiction to make a winding-up order. An order made ultra vires should be moved against, not appealed from. *In re Kootenay Brewing Company*, 7 B. C. R. 131.

7. Writ—*Ex juris—Affidavit leading to order for—Jurisdiction of Local Judge—Order XI.—Rule* 1,075.]—A local Judge of the Supreme Court has jurisdiction to make an order for an ex juris writ. The affidavit leading to the writ should be reasonably precise as to the essential facts alleged to constitute the cause of action, and if there are omissions of substance the order should not be made. A Supreme Court Judge has power on motion to set aside an ultra vires order made by a Judge of limited jurisdiction. *Tate et al.* v. *Hennessey et al.*, 7 B. C. R. 262.

See also APPEAL—ADMIRALTY JURISDICTION—MINES AND MINERALS.

XVI. JURY.

1. Action for injunction—*Right to jury.*]—An action for an injunction is proper for a trial by a jury. *C. P. R.* v. *Parke*, 5 B. C. R. 507.

2. Application for before joinder of issue.]—An application to try a case before a jury made before joinder of issue or the time for the filing of same is premature. *Bank of Montreal* v. *Major and Eldridge*, 5 B. C. R. 155.

3. Challenge.]—The fact that a member of a special jury was one of the jurors at a former trial is a good ground of challenge at a new trial, but the fact that such a juror served without challenge is not per se a ground for granting a new trial. *Harris* v. *Dunsmuir*, 9 B. C. R. 303.

4. Mode of trial—*Scientific investigation—Practice before Judicature Act*, 1879—*B. C. Stat.* 1876, *No.* 17—*Rules* 331, 332, 333.]—By Rule 331 a Judge may direct a trial without a jury of any issue, which previous to the Judicature Act could, without any consent of parties, have been tried without a jury, and by Rule 332 he may direct the trial without a jury of any issue requiring any scientific investigation which in his opinion cannot conveniently be made with a jury. In a mining suit respecting extra-lateral rights, the plaintiff company sued for an injunction restraining the defendant company from sinking an incline shaft in plaintiff's claim, and for damages. The defence was that the incline shaft was commenced within the lines of defendant's location upon a vein, the apex of which lay inside such surface lines extended down vertically, and that the vein had been followed upon its dip. The plaintiff company applied for a trial with a jury:—Held, by MARTIN, J., dismissing the application, that before the Judicature Act the plaintiff company would have had the right to have the case tried by a jury, and that it has it now under Rule 331, but that there was an issue in the action requiring scientific investigation which could not conveniently be tried by a jury. *Iron Mask* v. *Centre Star*, 6 B. C. R. 474.

5. Right to jury—*Rules* 81, 330.]—Rule 330, providing "causes or matters referred to in Rule 81 of these rules shall be tried by a Judge without a jury," is imperative, and, as one of the matters referred to in Rule 81 is "the rectification, setting aside or cancellation of deeds or other written instruments," any action claiming such relief must be tried without a jury, though the issues involved might otherwise be proper for trial by a jury. *Stewart* v. *Warner*, 4 B. C. R. 298.

6. Right to jury—*Waiver.*]—An action by an engineer for the price of making an examination and report upon a mineral claim, in which the defence denied the contract and set up that the report made was unsatisfactory and of no value, is within Rule 333, and neither party is entitled to trial by a jury. The action had been brought down to trial without a jury and had been postponed, and the evidence of a witness subsequently taken de bene esse:—Held, not to amount to a waiver of the right to a jury, or agreement to try without a jury. *Ferguson* v. *Thain*, 3 B. C. R. 447.

7. Retirement during proof of facts with which Judge alone is concerned.]—If an appointment is taken out for the examination for discovery of an ex-officer of a corporation, and the corporation's solicitor does not attend, and gives notice that he will object to the deposition being received at the trial:—Held, following OSLER, J., in Leitch v. Grand Trunk Railway Company (1890), 13 P. R. 369, that it should not be received. On a trial by jury after the plaintiffs' case has commenced, the Judge may, in his discretion, permit the jury to retire while proof is being given of facts with which the Judge alone is concerned. *Bank of B. C.* v. *Oppenheimer et al.*, 7 B. C. R. 448.

8. Rules 331-81—*Mineral Act*, 1896, *s.* 144 *to* 150.]—Held, by MCCREIGHT, J. (the Full Court not dissenting), that ss. 144 to 150 of the Mineral Act, 1896, refer only to procedure in the County Courts. In an action to enforce an adverse claim, and for a declaration that the plaintiff was entitled to the right of possession to that portion of the "Paul Boy" mineral claim in conflict with the "Lookout" mineral claim, and that the "Lookout" be declared invalid, the defendants asked for a jury:—Held, by the Full Court, DAVIE, C.J., and DRAKE, J. (MCCOLL, J., concurring), affirming MCCREIGHT, J.: (1) That as the relief prayed was such as could

not have been obtained in a common law action prior to the Judicature Acts, the issues were not proper for trial by jury; (2) That the character of the action will be determined from the issues raised on the pleadings. *Corbin* v. *Lookout Mining Co.*, 5 B. C. R. 281.

9. Special jury—*Right to.*]—The granting of a special jury under C. S. B. C. c. 31, s. 44, as amended by 58 Vic. (B. C.) c. 12, s. 11, and C. S. B. C. c. 64, s. 71, as amended by 52 Vic. (B. C.), c. 8, s. 5, and Order XXXVI., is not as of right, but is a discretion to be invoked upon special circumstances. As no special grounds were shewn, the application was dismissed. *Cranstoun* v. *Bird et al.*, 5 B. C. R. 210.

10. Summoning of — *Procedure on — Whether directory or imperative.*]—If on the trial of an action in the Supreme Court twenty persons do not appear from which a jury may be selected, the panel may be quashed. The provisions of the Jurors Act relating to the procedure to be followed by the sheriff in summoning a jury are not imperative but directory, and an irregularity in respect thereto is not ipso facto a ground for setting aside the panel. *Ross* v. *British Columbia Electric Ry. Co., Ltd.*, 7 B. C. R. 394.

11. Summons for before order amending defence delivered — *Whether premature.*] — An application for change of venue and trial by jury after an order made giving leave to amend defence, but before delivery thereof, is premature. *Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 446.

12. Time—*Jury* — *Application for before issue joined—Rule* 333.]—An application to try a case before a jury made before joinder of issue or expiration of the time for filing of same is premature. *Bank of Montreal* v. *Major*, 5 B. C. R. 155.

XVII. Law Stamps.

1. County Court order — *Omission to affix stamps.*]—No law stamps being obtainable, a County Court summons was issued and served without being stamped, and the judgment was signed in default. Forin, Co.J., on the ex parte application of the judgment creditor after judgment, ordered the stamp to be affixed under s. 15 of the Law Stamp Act, C. S. B. C. 1888, c. 70, and afterwards refused an application by the defendant company to set aside the judgment. Upon appeal to the Full Court from the refusal to set aside the judgment:—Held, *per* Davie, C.J., Drake and McColl, JJ., concurring, dismissing the appeal, that the omission to affix the law stamps did not, under the circumstances, constitute a knowing and wilful violation of the Act, and the order for the due stamping of the process was therefore properly made. *Aldrich* v. *Nest Egg Company*, 6 B. C. R. 53.

XVIII. Lis Pendens.

1. Lis pendens—*Cancellation of.*] — An order will not be made cancelling a lis pendens under s. 85 of the Law Registry Act in

a case where damages would not be a complete compensation. *Towne* v. *Brighouse*, 6 B. C. R. 225.

See also Vendor and Purchaser.

XIX. Motion or Rule Nisi.

1. Certiorari — *Motion to quash by.*] — Court or Judge has no jurisdiction to entertain unless defendant is shewn to have entered into a recognizance with one or more sufficient sureties to prosecute such and to pay costs as may be awarded against him. *Reg.* v. *Ah Gin*, 2 B. C. R. 207.

See Certiorari.

2. Certiorari.]—The Full Court will not hear a motion for a rule nisi to quash a conviction: the motion should be made to a single Judge. *Rex* v. *Tanghe*, 10 B. C. R. 297.

3. Motion to commit for contempt of Court.]—A party to a suit has status to move to commit a stranger to the suit for constructive contempt, although no affidavit is filed by him or on his behalf to the effect that the alleged contempt is calculated to prejudice him in his suit. Any person may bring to the notice of the Court any alleged contempt. *Stoddart* v. *Prentice*, 6 B. C. R. 308.

4. Contempt — *Motion to commit for — Disobedience to order of Local Judge.*]—An ex parte restraining order made by local Judge must be obeyed until set aside. *Leberry* v. *Braden*, 7 B. C. R. 403.

See Contempt.

5. Habeas corpus — *Right of person standing in loco parentis to custody of infant as against a stranger.*] — An application in vacation for a rule nisi for a writ of habeas corpus should be made in Chambers. *In re Soy King*, 7 B. C. R. 291.

See Infants.

6. Habeas corpus.]—A person imprisoned may make a fresh application for a habeas corpus to every Judge or Court in turn, who are each bound to consider the question independently. Statutes to be construed most favourably to personal liberty. An appeal lies in cases of habeas corpus. *Re George Bowack*, 2 B. C. R. 216.

See Habeas Corpus.

7. Injunction—*Motion to dissolve interlocutory — Appeal from — Pending trial, but before conclusion of — Full Court will not hear.*]—*Dunlop* v. *Haney*, 7 B. C. R. 455.

See Injunction.

8. Judgment.]—A Judge has no power to shorten the four days' notice of a motion for judgment required by order XIV., Rule 2. *Wheaton* v. *Allice & Ault*, 3 B. C. R. 306.

9. Notice of motion—*special leave.*]—Where a party applies for special leave to serve short notice of motion, he must distinctly state to the Court that the notice

applied for is short; and the same fact must distinctly appear in the face of the notice served on the other party. The defendant company had obtained from the Railway Committee of the Privy Council an order permitting it to cross the C. P. R. track. Pending an appeal by the C. P. R. company from the order to the Full Cabinet, the defendant company proceeded to lay the crossing and the C. P. R. company applied for an injunction: — Held, that defendant company was not exceeding the terms of the order, which was binding in the Court until reversed on appeal to a competent authority, and therefore an injunction could not be granted. Before laying a crossing notice should be given of the time at which it is intended to commence the work. Failure by a company to give such notice constitutes good cause for depriving it of the costs of successfully resisting a motion for an injunction. *Canadian Pacific Railway Company* v. *Vancouver, Westminster and Yukon Railway Co.*, 10 B. C. R. 228.

10. New trial—*Motion for.*]—It is not competent for an appellant uno flatu, to move alternatively for reversal of the judgment as entered on the findings of a jury or for a new trial. *Foley* v. *Webster*, 2 B. C. R. 137.

See NEW TRIAL—PRACTICE, XX.

11. Prohibition — *On motion for.*] — Statements of fact necessary to found jurisdiction in the inferior Court appearing in the order of the inferior Court in question on the motion, may be contradicted. *Re W. N. Bole*, 2 B. C. R. 208.

See PROHIBITION.

See also CERTIORARI—CONTEMPT—HABEAS CORPUS—INJUNCTION — JUDGMENT — MANDAMUS—PROHIBITION.

XX. NEW TRIAL.

1. *Further Enquiry.*

1. Damages—*Further enquiry as to.*]—The Divisional Court, upon a motion for a new trial, being of opinion that there was no evidence upon which damages assessed could be calculated, directed a further enquiry as to such damages, and adjourned the motion in the meantime. *Parks* v. *Blackwood*, 2 B. C. R. 346.

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2. *Judgment or Verdict.*

1. Alternative — *Motion for new trial.*] —It is not competent to an appellant uno flatu, to move alternatively for reversal of the judgment as entered on the findings of a jury or for a new trial. *Foley* v. *Webster*, 2 B. C. R. 137.

2. Contributory negligence — *Onus in regard to.*]—Defendant is not entitled to a new trial upon the ground that the jury have failed to return a direct finding upon a question put to them upon the issue of contributory negligence where the other findings support judgment for the plaintiff. From the moment the plaintiff makes out a prima facie case that the injury was caused by the negligence of the defendant, the onus is cast on the defendant, if he sets it up, to show contributory negligence:—Held, that the plaintiff, on the facts, was a "workman" within the act. *McMillan* v. *Western Dredging Co.*, 4 B. C. R. 122.

3. County Judge—*Power of.*]—A County Court Judge has no power to grant a new trial merely because he is dissatisfied with the verdict; he is to be guided in granting a new trial by the same principles as the Full Court: —Held, IRVING, J. (dissenting), on the facts (reversing LEAMY, CO.J.), that there was evidence to support the verdict, and a new trial should not have been granted. *Hutchins* v. *The British Columbia Copper Company, Limited*, 9 B. C. R. 535.

4. Judgment by default — *Surprise or mistake.*]—(1) If one pays a judgment got against him by default, he cannot sue to recover back part thereof; (2) But must apply to have the judgment set aside and for a new trial, which will be granted only on the ground of surprise or mistake. Costs not allowed where party not acting in good faith. *Goon Gan* v. *Moore*, 2 B. C. R. 154.

5. Jury—*Disregarding material evidence.*] —The Court has power to order a new trial where the findings shew that the jury have disregarded material undisputed facts in evidence. *Robson* v. *Suter*, 1 B. C. R. pt. 3, 375.

6. Privy Council deciding previous similar cases.]—In an action for negligence against a municipality (reported 5 B. C. 553), the Judge gave judgment for the defendants, holding that the findings of the jury amounted to a verdict of non-feasance only. Other actions by other plaintiffs arising out of the same occurrence had been decided against the defendants by the Privy Council:—Held, by the Full Court, that it was useless to send the case to another jury, and that the plaintiff was entitled to judgment for the amount of the verdict. *Gordon* v. *The Corporation of the City of Victoria*, 7 B. C. R. 342.

7. Proof of title — *Deference to trial Judge in refraining from completing.*]—Counsel for adverse claimant in deference to a remark of the trial Judge, did not complete the proof of his own title: — Held, that he should have pressed to be allowed to complete it, but under the circumstances there should be a new trial. *Caldwell et al.* v. *Davys*, 7 B. C. R. 156.

8. Verdict—*Grounds for setting aside.*]—(1) The Court will not set aside the verdict of a jury unless it is wholly unsupported by evidence, or is contrary to such a body of evidence, or rests on so slight a foundation as to make it obvious that the jury were perverse or invincibly prejudiced. It is no misdirection sufficient to require a new trial that the Judge has used inaccurate language in the course of a long summing up, if the charge as a whole afforded a fair guide to the jury. Clark v. Molyneux, 3 Q. B. D. 237 followed. *Gray* v. *McCallum*, 2 B. C. R. 106.

9. Non-submission of question of fact to jury.]—On the trial with a jury of a replevin action, the fact in issue was whether an annual rent, the amount whereof was fixed by an award, was agreed prior to

the submission to arbitration to be paid in advance, or whether both the amount of the rent and the time of payment were included in the submission. The ascertainment of this fact was not left to the jury, and pursuant to a general verdict judgment was entered for defendant:—Held, on appeal, that in consequence of the non-submission of this question of fact to the jury, there must be a new trial. *MacAdam* v. *Kickbush*, 10 B. C. R. 358.

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3. *Jury.*

1. Jury—*Disagreement of.*]—Where an issue has been ordered to be found by a jury, and the jury have disagreed, and been discharged without giving a verdict, the order for trial by jury is not exhausted, and the Judge, on motion for judgment, cannot direct judgment to be entered for either party. *Loo Chu Fan* v. *Loo Chock Fan*, 1 B. C. R. pt. 2, 172.

2. Jury—*Discharge of—Subsequent proceedings.*]—In an action for damages caused by water being backed up on to plaintiff's premises, the jury did not answer the questions put, but found that certain grading of a street caused the damage, but did not state that the grading was done by the defendants, and judgment was entered for plaintiff on the verdict:—Held, on appeal, that from the circumstances of the case, it was evident that the jury found that the grading was done by the defendant. After judgment was pronounced and the jury was discharged, at the direction of the Court, the jury was re-called and asked certain questions as to the meaning of the verdict, and the verdict was amended accordingly:—Held, that whatever was done after the discharge of the jury was a nullity. Where counsel at the trial abstains from asking the Judge to submit a point to the jury, a new trial will not be granted on the ground of non-direction as to that point. *Waterland* v. *City of Greenwood*, 8 B. C. R. 396.

3. Jury—*Power of Full Court to order new trial without.*]—In an action by a ship owner against a tug owner for damages for negligence on the part of the tug in allowing the ship to drift ashore while attempting to tow her from a dangerous position, the Judge in his charge to the jury explained the law applicable to the issues, but he did not point out to the jury the bearing of the facts in evidence upon the questions to be determined:—Held, that the charge was incomplete, and was misunderstood by the jury, and that there must therefore be a new trial. The Judge is bound to submit questions to the jury if requested to do so. *Per* HUNTER, C.J.: (1) A jury is not suited to try a dispute involving questions as to what were the proper nautical manœuvres to be performed under peculiar conditions, and the new trial should be held before a Judge without a jury. (2) The Court has jurisdiction to order a new trial without a jury, although the appellant in his motion for a new trial does not so ask. *Per* MARTIN, J.: (1) It is the duty of the Judge under s. 66 of the Supreme Court Act, 1904, to instruct the jury upon all leading groups of evidence, and apply to them the law as affecting the issues arising out of such evidence. (2) The jury should not be excluded from the Court room during the discussion as an application by counsel for further direction by the Judge. (3) Mere complexity of fact is not a ground for depriving parties of their inherent right to a jury. *Alaska Packers' Association* v. *Spencer*, 10 B. C. R. 474.

4. Verdict—*General and special—Setting aside—Challenge for cause.*]—At first trial with a special jury plaintiff got a verdict in his favour, and on appeal a new trial was ordered. At the second trial a non-suit was entered and on appeal a new trial was ordered. At the third trial, also with a special jury, the plaintiff got a verdict in his favour. Between the second and third trials the defendant changed her solicitors. At the first trial the defendant was in Court, but on account of illness was not present at either the second or the third trial. James Muirhead was a juror on the first trial, and also on the third trial, but neither the defendant nor her solicitors were aware of the fact until after the conclusion of the trial:—Held, refusing a new trial on this ground, that in selecting a special jury it was the duty of the solicitor to ascertain any grounds of challenge, an opportunity to do which is provided by s.s. 5 of s. 59 of the Jurors' Act. D. gave instructions in writing to H. respecting the sale of a coal mine on terms mentioned and agreeing to pay a commission of five per cent. on the selling price, such commission to include all expenses. H. failed to effect a sale. In an action by H. to recover expenses incurred in an endeavour to make a sale, and reasonable remuneration, the jury returned a verdict as follows: "Mr. Foreman: In reply to the questions, we have found a general verdict. We find that the plaintiff is entitled to compensation of $9,667.62. The Court: So that disposes of the questions? Mr. Foreman: Yes." Mr. Foreman handed in a written verdict as follows: "1. Did the defendant Mrs. Dunsmuir, verbally authorize the plaintiff, say in the middle of 1890, 'to do his best' to sell her mine, and if so was any compensation mentioned at the time? (a) In view of concessions made subsequently we believe there was. (b) A promise of fair treatment in case of no sale." "2. Where the documents, which were dated later, viz., on the 18th of September, 1890, and 18th January, 1892, which provided that the plaintiff was to be paid a commission of five per cent., which was 'to include all expenses' in the event of his effecting a sale intended to represent all the terms agreed upon between the parties with respect to a sale and to compensation to the plaintiff? Yes. Had sale been effected?" "3. If you should be of opinion that the above documents were not intended to represent the whole agreement between the parties, what agreement was come to? Answer to question number one expresses our view on this point." "4. Is the plaintiff entitled to any damages, and, if so, how much? Stating amount of disbursements, including sums for which he was liable, and also amount of compensation separately? The plaintiff is entitled to compensation. We have no means of proving the accuracy of his statement of disbursements, but accept it as correct, with exception of one item of $525, which we have deducted. We find the plaintiff is entitled to compensation for expenses to the amount of $9,667.62."—Held, by the Full Court, affirming the judgment entered at the trial in the plaintiff's favour: 1. The agreement as found by the jury was not illusory; 2. The verdict sup-

ported the judgment; 3. The verdict was not one which the jury could not reasonably find. *Harris* v. *Dunsmuir*, 9 B. C. R. 303.

See also JURY, *supra*, XVI.

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4. *Misdirection.*

1. Judge's opinion on evidence.]—It is not misdirection for the Judge to tell the jury his own opinion on the evidence before them. In his charge to the jury the Judge stated that he himself would pay very little attention to certain corroborative evidence adduced by defendants, but he also told them that the matter was entirely for them to decide:—Held, not misdirection. *Harry et al.* v. *The Packers' Steamship Company*, 10 B. C. R. 258.

2. Misdirection—*Objection not taken at trial.*]—Notwithstanding the rule that objections going to misdirection not taken at the trial are not open on appeal, the Court may mero motu suo consider the question of whether there was miscarriage of justice arising from misdirection, and direct a new trial. *British Columbia Iron Works Co.* v. *Ernest Buse, John G. Bugbee, and Rosa Mueller, carrying on business as the Buse Milling Company, and Ernest Buse*, 4 B. C. R. 419.

XXI. ORIGINATING SUMMONS.

1. Trustees—*Summons for an account.*]—Trustees having received moneys under a decree in one of several actions relating to the same subject-matter to which they were parties, an originating summons was obtained by other parties to the same actions calling upon the trustees for an account, not directed by the decree in question, and to pay into Court:—Held, by the Divisional Court (McCREIGHT, WALKEM and DRAKE, JJ.), affirming an order of CREASE, J., directing the trustees to account and personally to pay the costs of the motion: That the proceeding, by originating summons, was warranted by Rule 591, s-ss. (c), (d), and an objection that the motion should have been made in one of the pending actions, over-ruled. *Per* McCREIGHT and WALKEM, JJ., that the trustees were properly ordered personally to pay the costs of the motion, and that they should also personally pay the costs of the appeal. *Per* DRAKE, J., dissenting: Trustees are entitled to their costs as a matter of right even in cases where the litigation has been unsuccessful, in the absence of misconduct, and that, as a duty had been cast upon the trustees to appear on the summons and draw the attention of the Court to the position of the litigation, they should have their costs of such attendance, and of the appeal. *Bascowitz* v. *Belyea*, 4 B. C. R. 527.

XXII. PARTICULARS.

1. Attorney-General — *Dedication of townsite.*]—In an action by the Provincial Attorney-General for a declaration that the public had a right of access to the sea over the embankment of the C. P. R. via certain streets in Vancouver, it was alleged that in 1870 Her Majesty by the officers of Her Colony of British Columbia, laid out and planned a townsite on Burrard Inlet, and dedicated certain parts of the townsite to public uses:—Held, that plaintiff must give (1) particulars of the authority under which the townsite was laid out; (2) of the nature and dates of dedication, and by whom made; and (3) of what portions of the townsite were dedicated. *The Attorney-General for the Province of British Columbia ex rel. The City of Vancouver* v. *The Canadian Pacific Railway Company* (*No. 2*), 10 B. C. R. 184.

2. Negligence within defendant's knowledge.] — Particulars are ordered for the purpose of forwarding the applicant's case, and not to hamper the party ordered to give them. When a plaintiff is ordered to give particulars of negligence, which are essentially within the defendant's knowledge, the order may provide that the plaintiff should not be confined at the trial to the particulars given. *Alaska Packers' Association* v. *Spencer*, 9 B. C. R. 473.

3. Undue influence.]—A party alleging undue influence will be required to give particulars of the acts thereof. Lord Salisbury v. Nugent (1883), 9 P. D. 23, considered. *Hopper* v. *Dunsmuir* (*No. 3*), 10 B. C. R. 159.

XXIII. PAYMENT.

1. Payment into Court.]—The affidavit in support of a motion for an order for payment into Court of moneys realized under an execution to answer claims of third persons against execution debtor for wages, were not entitled in the cause, but "in the matter of the Execution Act and of A. E. Clark, Judgment Debtor:"—Held, irregular. *McKay* v. *Clark*, 2 B. C. R. 13.

2. Garnishment — *Moneys paid into Court—Order that money remain in Court abiding event of new action commenced — Whether order a nullity.*]—*King* v. *Boultbee*, 7 B. C. R. 318.

See GARNISHMENT.

XXIV. PETITION.

1. Elections.]—Where case raised by an election petition embraces several distinct grounds of complaint, the Court has no power to state only one part of the case. *Jardine* v. *Bullen*, 6 B. C. R. 220.

See ELECTIONS.

2. Election petition—*Trial of—Amendment of petition at trial.*]—At the trial of an election petition based on bribery, the petitioner asked for leave to amend by setting up that the election was void on the ground that the list of voters used at the election was compiled and signed by an unauthorized official, this fact having been discovered only after the commencement of the trial:—Held, that the amendment must be refused. *Martin* v. *Deane—North Yale Election Case*, 7 B. C. R. 128.

3. Settled Estates' Act, 1887—*Sale of infant's estate under guardian.*]—Where a

guardian to an infant has already been appointed by the Court, it is not necessary to appoint a guardian for the special purpose of presenting a petition for sale of the infant's estate under Settled Estates' Act, 1887, s. 49. *In re Ash Estate*, 5 B. C. R. 672.

4. Winding-up proceedings.] — The Court will not interfere with a voluntary winding-up of the company by its shareholders and order a compulsory liquidation unless it is shewn that the rights of the petitioner will be prejudiced by the voluntary winding-up. *In re Oro Fino Mines Co.*, 7 B. C. R. 388.

See COMPANY, IX.

XXV. REFERENCE.

1. Damages.] — The Divisional Court, upon a motion for a new trial, being of opinion that there was no evidence upon which the damages assessed could be calculated, directed a further enquiry as to such damages, and adjourned the motion in the meantime. *Parks v. Blackwood*, 2 B. C. R. 346.

2. Accounts, taking of.]—Mortgagees put in stock in trade of a butcher business for sale under their mortgages, bid it in and took possession with the assent of the mortgagor, paid off arrears of wages and rent, and carried on the business with the mortgagor in their employ for some months. In an action by the mortgagor to avoid the sale:—Held, by DRAKE, J.: (1) That it was void and the property could be redeemed. (2) That in the taking of accounts, mortgagor could not be charged with arrears of wages paid by the mortgagees, this payment not having been expressly assented to by the mortgagor:—Held, further, on appeal from judgment of DRAKE, J. (on motion to vary the registrar's certificate): (1) That a sum stated by the mortgagees to be the value of the goodwill for the purposes of an amalgamation scheme between them and another company, could not be charged against them in the accounts. (2) If it appears on the taking of accounts that the decree is not drawn in such a way as to include all proper subjects, the proper practice is to apply to the Court to direct further and other accounts to be taken. (3) On a motion to vary a certificate, the parties are confined to the decree. *Van Volkenburg v. Western Canadian Ranching Co.*, 6 B. C. R. 284.

3. Order for.] — A nullity where determining a mixed question of law and fact, and as such is not a matter of practice and procedure but one of jurisdiction, and is beyond power of the Court to order even by consent, the Yukon Court has no power to make an order of reference. *Stevenson et al. v. Parks et al.*, 10 B. C. R. 387.

See COURTS, II., 2.

XXVI. REGISTRY.

1. Chamber summons.] — Where it is desired to make an application under s. 32 of the Supreme Court Act, as amended in 1901, c. 14, s. 13, to a Judge at Victoria, Vancouver or New Westminster, the summons must be issued at the place at which it is returnable. *Centre Star Mining Co. v. Rossland and Great Western Mining Co., Ltd.*, 10 B. C. R. 136.

2. A Judge in Chambers has jurisdiction to entertain application made upon summons issued out of a registry other than that out of which the writ of summons issued, notwithstanding s. 27 of 61 Supreme Court B. C. Act. *Re Ellard*, 2 B. C. R. 235.

3. Patent.]—In an action for infringement of a patent, the writ need not be issued out of the registry nearest the place of residence or business of the defendants, but s. 30 of the Patent Act is complied with if the venue is laid at the place of such registry. *Short v. Federation Brand Salmon Canning Co.*, 6 B. C. R. 385.

XXVII. SERVICE.

1. Agents — *Service on.*] — Where the general agents in Victoria of a firm of country solicitors have never acted as agents in a particular suit, the service on them of a summons in that suit is sufficient. *Barnes v. Gray*, 6 B. C. R. 219.

2. C. P. R. Co.]—In an action against the Canadian Pacific Railway Company, service of process against the company must be effected at the company's office in Vancouver appointed pursuant to 44 Vict. c. 1, s. 9. So held by the Full Court, following a former unreported decision in Hansen v. Canadian Pacific Railway Company, refusing to hear subsequent decisions of the Privy Council, which counsel alleged in effect overruled such decision. *Jordan v. McMillan, Canadian Pacific Railway Company, Garnishee*, 8 B. C. R. 27.

3. Domicile.]—The defendants, a foreign company, had a place of business in Victoria, where it carried on a trading business, although its principal place of business and head office, where the meetings of the governor, chief traders, and shareholders were held, were in England. The plaintiff, as administrator (appointed by the Court here) to the intestate estate of McL., a deceased servant of the company, served a writ on one of the company's managers at Victoria. On an application to have the writ set aside:—Held, that inasmuch as by the company's rules the power to appoint, pay, and dismiss was with the English office, and as, by agreement, the deceased's account was kept at that office, and the balance due him from time to time was payable there, the English office must be regarded as the domicile of the company, and the company could not be sued here by the plaintiff as administrator of the deceased. *Wilson v. Hudson's Bay Company*, 1 B. C. R., pt. II., 102.

4. Exhibit to affidavit—*Rule* 84.]—Supreme Court Rule 84, providing that the summons for leave to enter final judgment under Order XIV., R. 1., must be accompanied by a copy of the affidavit and exhibits referred to therein, is imperative. Adjournment to enable the plaintiff to furnish a copy of exhibit refused. *Barker v. Lawrence*, 5 B. C. R. 460.

5. Exhibit to affidavit.]—Supreme Court Rule 84, providing that the summons for leave to enter final judgment under Order XIV., R. 1., must be accompanied by a copy of the affidavit and exhibits referred to therein, is imperative. *Hughes* v. *Hume*, 5 B. C. R. 278.

6. Prohibitory injunction—*Disobeying—Remedy—Attachment or committal—Rule 451—Indorsement—Service.*]—Upon a motion for a writ of attachment against the manager of the defendant company for disobeying an injunction restraining the company, its agents, servants, etc., from blasting or depositing rock upon plaintiff's mineral claim, it was objected: (1) Under Rule 451, that there was no memorandum of the consequence of his disobedience endorsed on the order. (2) That the notice of motion for attachment was not personally served on the manager, but only on the solicitor for the defendant company. Counsel had appeared for the manager and obtained several adjournments of the motion to obtain affidavits on the merits, which finally were not forthcoming:—Held, *per* BOLE, LA J. S. C., overruling the objections: (1) That Rule 451 does not apply to prohibitory injunctions. (2) That the want of personal service of the notice of motion upon the manager was waived by the adjournments at his request. Upon appeal to the Full Court:—Held (*per* MCCREIGHT, WALKEM and DRAKE, JJ.), allowing the appeal: That committal and not attachment is the appropriate remedy for breach of a prohibitory injunction. That personal service of a notice of motion is an essential pre-requisite to committal, and that the party applying in a case proper for committal is not absolved from the necessity for such personal service by moving for attachment instead of committal. Browning v. Sabine, 5 Ch. D. 511, distinguished. That the objection of want of personal service of the notice was not waived by the adjournments. *Golden Gate Co.* v. *Granite Creek Co.*, 5 B. C. R. 145.

7. Solicitor—*Service on after termination of engagement.*]—While a summons to review a taxation of costs under an order otherwise worked out was still pending, a summons to abridge the time for setting down an appeal from the final judgment in the matter was served on the solicitor who took out the first summons:—Held, good service notwithstanding the fact that the solicitor's engagement with the client had terminated, and that he had so informed the party effecting the service. *Arthur* v. *Nelson*, 6 B. C. R. 316.

8. Service of summons to abridge time for setting down appeal, on solicitor who took out a taxation summons in same matter—*Whether good or not—Rule 30.*]—While a summons to review a taxation of costs under an order otherwise worked out was still pending, a summons to abridge the time for setting down an appeal from the final judgment in the matter was served on the solicitor who took out the first summons:—Held, good service notwithstanding the fact that the solicitor's engagement with the client had terminated, and that he had so informed the party effecting the service. *Arthur* v. *Nelson*, 6 B. C. R. 316.

9. Substituted service.]—An affidavit for an order for substitutional service of an ex juris writ must shew that the defendant is evading service of it. *Hull Bros.* v. *Schruder*, 3 B. C. R. 32.

10. And a supplemental affidavit after motion to set aside is launched, not admitted. *Millor* v. *Carter*, 3 B. C. R. 131.

11. Vesting order—*Service of petition for.*]—A petition to vest the trust estate in certain trustees within the jurisdiction ought to be served on the absent trustee. *In re Spinks Trusts*, 6 B. C. R. 375.

12. Writ—*Service of without indicating seal of Court.*]—The seal of the Court affixed to a writ of summons is not a part of the writ itself, but merely authenticates it. The copy of the writ of summons served on the defendant did not indicate that the original was sealed. Upon motion to set aside the service thereof:—Held, dismissing the motion, that the writ was properly served. *Canada Settlers' Loan Co.* v. *Steinburger*, 4 B. C. R. 353.

13. Writ—*Service of.*]—Notwithstanding Order XII., r. 19 (Rule 709), providing that a defendant may move to set aside service of a writ of summons without entering a conditional appearance, the fact that a defendant has entered a conditional appearance is not a good preliminary objection to such a motion. The fact that defendant includes in such application a notice to discharge an interim injunction granted before service of the writ, is not a waiver of irregularity in the writ. *Fletcher* v. *McGillivray*, 3 B. C. R. 37.

See also WRITS OF SUMMONS, infra. XXXVI. 5, 8.

XXVIII. STAYING PROCEEDINGS.

1. Agreement to bring action in the Courts of Ontario—*Arbitration Act, s. 5 — County Court Act, s. 34 — Waiver.*] — Where a defendant, under s. 34 of the County Court Act, objects to an action being tried in the County Court, and an order is made directing that the plaint stand as a writ, and that an appearance be entered thereto in five days, he waives his right to object to the jurisdiction of the Court to try the action on the ground that the parties have agreed that any action brought in respect of the cause of action sued upon shall be tried in another form. *Howay and Reid* v. *Dominion Permanent Loan Company*, 6 B. C. R. 551.

2. Pending appeal to Privy Council.]—Execution upon a judgment of the Supreme Court of Canada, made an order of this Court, will be stayed pending an appeal to the Privy Council upon terms. The terms imposed were to pay the costs of the appeal to the Supreme Court of Canada with an undertaking to refund, if the judgment be reversed; to give security for the amount of the judgment appealed from; money in Court to stand for such security pro tanto. *Davies* v. *McMillan*, 3 B. C. R. 35.

3. Staying execution pending appeal to Privy Council — *Terms.*]—Execution upon a judgment of the Supreme Court of Canada, made an order of this Court, will be stayed pending an appeal to the Privy Council, upon terms. The terms imposed were to

pay the costs of the appeal to the Supreme Court of Canada, with an undertaking to refund, if the judgment be reversed: to give security for the amount of the judgment appealed from; money in Court to stand for such security pro tanto. *Davies* v. *McMillan*, 3 B. C. R. 35.

4. Summons for stay from, when operates.] — A claim for $1,000—"Amount due upon an agreement whereby the defendant agreed to pay the plaintiffs the sum of $1,000 in the event of certain work in which the plaintiffs were engaged, being wholly stopped by the defendant, and which has been wholly stopped by him," is a liquidated demand and proper subject of special endorsement. A summons calling for a stay of proceedings only operates as a stay from and after its return, and judgment by default of appearance signed after service of the summons, but before it was returned, is regular. *Lantz et al.* v. *Baker*, 3 B. C. R. 269.

5. Registration of a judgment, whether breach of ordor.]—*Per* DRAKE, J.: A term in a chamber summons, "In the meantime let all proceedings be stayed," does not operate as a stay, but only as an intimation that upon its return a stay will be asked for. (2) The registration of a judgment against lands is not a breach of an order staying proceedings upon it. *The Edison General Electric Co.* v. *Vancouver and New Westminster Tram. Co. and the Bank of British Columbia*, 4 B. C. R. 460.

6. Where several defendants.]—The statement of claim was so drawn as to charge the two different defendants with separate acts of negligence causing damage to the plaintiff. It appeared, however, from the facts alleged, that, if the action lay at all, the two defendants each contributed to the injury in such a manner as to make them joint tort feasors. An application by one of the defendants to stay all proceedings in the action unless the other defendant was struck out, was dismissed. *Bowness* v. *The City of Victoria and the Consolidated Railway Company*, 5 B. C. R. 185.

XXIX. STYLE OF CAUSE.

1. Amendment of style of cause—*Irregularity or nullity.*]—J. S., trading under the name of the B. C. Furniture Company, commenced an action on 10th March, 1889, in such name in respect of a promissory note dated 20th January, 1893, payable sixty days after its date. A summons, under Order XIV., having been dismissed on the ground that one person cannot sue in a firm name, plaintiff obtained an order amending the cause of style:—Held, by the Full Court, affirming DRAKE, J., that the writ was not a nullity, and that the irregularity was properly amended. *B. C. Furniture Company* v. *Tugwell*, 7 B. C. R. 361.

XXX. SUBPOENA.

1. Mode of proceeding where defendant's solicitor removed pendente lite.] —Defendant appeared to the action by D., a solicitor, and then went to reside outside the jurisdiction. D. being elevated to the bench, plaintiff afterwards obtained a summons for judgment under Order XIV., and served it upon H. (of the firm of H. & L. D.), the former partner of D. H. refused to accept or acknowledge the service. The plaintiff left the summons at the office of H., who returned it. DRAKE, J., upon the day mentioned in the summons, treated the above as good service thereof, and, no one appearing for the defendant, made an order giving the plaintiff leave to sign judgment for the amount claimed. The defendant appointed L. D., partner of H., solicitor ad hoc, and appealed to the Divisional Court from the order:—Held, *per* MCCREIGHT, J. (WALKEM, J., concurring): That the proper method of bringing the defendant before the Court on the summons for judgment was by subpœna to name a solicitor, which subpœna could be substitutionally served, though the defendant had gone abroad since the service of the writ of summons, and that the judgment was a nullity. Fry v. Moore, 23 Q. B. D (C.A.) 395, and Wilding v. Bean, 1891, Q. B. 100, distinguished. *Denny* v. *Saywards*, 4 B. C. R. 212.

XXXI. SUMMARY OR SPEEDY JUDGMENT.

1. Affidavit—*Cross-examination on.*]—On a summons for judgment under Order XIV., it is only in exceptional cases that defendant will be permitted to cross-examine plaintiff on his affidavit, and then only after defendant has filed an affidavit of merits. *Ward* v. *Dominion Steamboat Line Co.*, 9 B. C. R. 231.

2. Affidavit.]—The copy of an affidavit to accompany a summons for judgment under Order XIV., r. 2, must be a true copy. The affidavit was sworn before a notary public and the copy had no indication of the notarial seal upon the original:—Held, fatal and motion dismissed. *First National Bank* v. *Raynes*, 3 B. C. R. 87.

3. Dismissal of application for.] — The dismissal of an application for leave to sign a judgment under Order XIV., is equivalent to giving leave to defend, and the defendant has therefore eight days in which to deliver his defence unless otherwise ordered. *Pounder* v. *Corner*, 6 B. C. R. 177.

4. Dismissal.]—A summons under Order XIV., having been dismissed on the ground that one person cannot sue in a firm name, plaintiff obtained an order amending the style of cause:—Held, by the Full Court, affirming DRAKE, J., that the unit was not a nullity, and that the irregularity was properly amended. *B. C. Furniture Co.* v. *Tugwell*, 7 B. C. R. 361.

5. Dismissal—*Grounds of.*] — On a summons for judgment under Order XIV., if the case is not within the order, or there are circumstances which render it improper to grant the application, or the plaintiff knew the defendant relied on a contention which would entitle him to unconditional leave to defend, the summons will be dismissed with costs in any event, but not payable forthwith. When leave to defend is given, costs, as a general rule, will be in the cause. It is only in exceptional circumstances that costs will be ordered to be paid forthwith. In Chambers application generally, costs are

made payable by the unsuccessful party in any event, but not forthwith. *Victoria* v. *Bowes*, 8 B. C. R. 15.

6. Leave to defend—*Grounds for granting.*]—Upon a motion for leave to sign final judgment under Order XIV., S. C. Rules of 1880, if the Judge thinks that a good defence is bona fide intended to be set up, or if he is doubtful he must give leave to defend, but he has a discretion as to the terms of the leave, and in exercising the discretion regard should be had to the chances of the defence being successful. *Hotz* v. *McAllister*, 2 B. C. R. 77.

7. Order, whether ex parte.]—Defendant appeared to the action by D., a solicitor, and then went to reside outside the jurisdiction. D. being elevated to the bench, plaintiff afterwards obtained a summons for judgment under Order XIV., and served it upon H. (of the firm of H. & L. D.); the former partner of D. H. refused to accept or acknowledge the service. The plaintiff left the summons at the office of H., who returned it. DRAKE, J., upon the return day mentioned in the summons, treated the above as good service thereof, and no one appearing for the defendant, made an order giving the plaintiff leave to sign judgment for the amount claimed. The defendant appointed L. D., partner of H., solicitor ad hoc, and appealed to the Divisional Court from the order. (1) Solicitor:—Held, *per* MCCREIGHT, J. (WALKEM, J., concurring), overruling an objection that the defendant had no status on the appeal for want of notice to plaintiffs of appointment of a new solicitor to bring the appeal; that the plaintiffs, by serving D. with the original summons for judgment, and as it appeared they had done, writing H. & L. D. for the grounds of appeal, had waived the objection. That the order appealed from was not an ex parte order in the sense that an application to rescind it should have been made before DRAKE, J., instead of appealing to the Divisional Court. Flett v. Way, 14 Ont. P. R. 123, distinguished. That the proper method of bringing the defendant before the Court on the summons for judgment was by subpœna to name a solicitor, which subpœna could be substitutionally served though the defendant had gone abroad since the service of the writ of summons, and that the judgment was a nullity. Fry v. Moore, 23 Q. B. D. (C.A.) 395, and Wilding v. Bean, 1891, 1 Q. B. 100, distinguished. (2) Order XIV., though allowing affidavit evidence instead of the oral evidence usually adduced at a trial, does not supersede the rules of evidence, and it was necessary that the foreign judgment sued on should be strictly proved. *Denny* v. *Sayward*, 4 B. C. R. 212.

8. Service of exhibits.]—Supreme Court Rule 84, providing that the summons for leave to enter final judgment, Order XIV., R. I., must be accompanied by a copy of the affidavit and exhibits referred to therein, is imperative. Adjournment to enable the plaintiff to furnish a copy of exhibit, refused. *Barker & Company* v. *Lawrence*, 5 B. C. R. 460.

9. Service of affidavits and exhibits.]—Supreme Court Rule 84, providing that the summons for leave to enter final judgment under Order XIV., R. I., must be accompanied by a copy of the affidavit and exhibits referred to therein, is imperative. *Hughes* v. *Hume*, 5 B. C. R. 278.

10. Variance between special endorsement and affidavit verifying—*Held fatal to motion.*]—Plaintiff's writ was specially endorsed to recover $1,000 for principal money due, under a covenant to pay the sum of $1,000 on 20th February, 1892. "The covenant, as set out in the affidavit, was to assume, pay and discharge all moneys due and to become due from the said assignor (plaintiff) to one Parker, under a certain agreement between them," and "to indemnify and save harmless him, the said assignor, from the payment of the same," etc. It did not appear that Parker had demanded payment from the plaintiff:—Held, *per* DRAKE, J., dismissing the motion: That the covenant was one of indemnity, and that it was a prerequisite to the plaintiff's claim that he had been paid, or been called upon to pay, the $1,000. That the cause of action proved was not that stated in the endorsement on the writ. Upon appeal to the Divisional Court:—Held, *per* CREASE and WALKEM, JJ., dismissing the appeal: (1) The contract proved was one of indemnity. (2) A claim for breach of such a contract is not a liquidated but an unliquidated demand. (3) That the variance between the special indorsement and the affidavit was fatal. *Per* CREASE, J.: A demand upon the plaintiff to pay the $1,000 was a pre-requisite to his cause of action. *Baker* v. *Dalby, Ballentyne & Claxton*, 3 B. C. R. 289.

See also WRITS OF SUMMONS, infra, XXXVI., 9.

XXXII. TIME.

1. Adverse claim — *Extension of time after lapse of time fixed by a previous order*—*B. C. Stat.*, 1898, *c.* 33, *s.* 9, *and B. C. Stat.*, 1899, *c.* 45, *s.* 13.]—The time for filing affidavit and plan in an adverse action under the Mineral Act may be further extended on an application made after the lapse of the time fixed by a previous order. *Noble* v. *Blanchard*, 7 B. C. R. 62.

2. Extending time for depositing appeal books—*How application for should be made.*]—Appeal books were not deposited in time, and on an application to extend the time, it was held, by the Full Court, that such applications should be made as soon as possible to a Judge in Chambers if the Full Court is not sitting at the time, but if so sitting that the better course is to apply at once to the Full Court. *Haley* v. *McLaren*, 7 B. C. R. 184.

3. Extension of time for filing affidavit and plan in adverse action under Mineral Act.]—*Noble* v. *Blanchard*, 7 B. C. R. 62.

See MINES AND MINERALS, III.

4. For moving to set aside award.]—Held, *per* CREASE, J. (without deciding whether the Imp. St. 9 & 10 Wm. III., c. 15, was in force in British Columbia), that the time therein provided for applying to set aside an award—i. e., before the last day of the next term after making of it—was a reasonable time, and should be adopted in default of any time limit by Provincial Statute, and that seven months afterwards was too late. *In re W. C. Ward*, 1 B. C. R., pt. I., 114.

See now Rules S. C. 1890, No. 750.

5. No jurisdiction in Court to shorten that required by rules of Court—*Jurisdiction of Court to relieve against provisions in.*]—A Judge has no power to shorten the four days' notice of a motion for judgment required by Order XIV., Rule 2. *Wheaton* v. *Allice & Ault*, 3 B. C. R. 306.

6. Order extending after lapse of time limited.]—The Mineral Act (1891), Amendment Act, 1892, s. 14, s.-s. 2, provided: "An adverse claimant shall, within thirty days after filing his claim (unless such time shall be extended by special order of the Court upon cause being shewn), commence proceedings in a Court of competent jurisdiction to determine the right," etc.:—Held, that the Court had jurisdiction to extend the time limited as well after as before the lapse of the thirty days. *Re Good Friday, Timber, Indiana, Old Kentuck and Good Hope Mineral Claims*, 4 B. C. R. 496.

See also AFFIDAVIT — APPEAL, VIII. 11 — ARBITRATION AND AWARD—CHAMBERS, supra, V.—MINES AND MINERALS.

XXXIII. UNDERTAKING.

1. Certificate of improvements—*Undertaking not to proceed to obtain until trial.*]—*Dunlop* v. *Haney*, 7 B. C. R. 300.

See INJUNCTION.

2. Interlocutory injunction — *Undertaking as to damages.*]—An undertaking as to damages ought to be given by a plaintiff who obtains an interlocutory order for an injunction, not only when the order is made ex parte, but even when it is made upon hearing both sides. *New Vancouver Coal Company* v. *E. & N. Railway Company*, 6 B. C. R. 222.

XXXIV. VACATION OR HOLIDAY.

1. Adjournment to a day in vacation.]—A cause called on for trial before vacation, and adjourned to a day in vacation is not a trial pending within the meaning of Rule 736 (d), and so cannot be heard during vacation. *Gill* v. *Ellis*, 6 B. C. R. 157.

2. Habeas corpus—*Application in vacation for rule nisi for writ of—Should be made in Chambers. —In re Soy King*, 7 B. C. R. 291.

See INFANTS.

3. Non-juridical day.]—An application to quash a by-law made on the day next following the time limited by R. S. B. C., c. 144, s. 89, which time expired upon a holiday, is in time. R. S. B. C. c. 1, s. 10, s.-s. 20, is not confined to matters of procedure only. *In re Nelson City By-law, No.* 11, 6 B. C. R. 163.

4. Whether trial pending.]—Where a trial was called before vacation but not proceeded with, and was adjourned to a day in vacation, and then proceeded with in the defendant's absence, the judgment may be set aside, as the trial was not "pending" within the meaning of Rule 736 (d), and so could not be heard in vacation. *Green* v. *Stussi*, 6 B. C. R. 193.

XXXV. VENUE.

1. After plaintiff has selected venue—*Change of.*]—Where a plaintiff has selected his place of trial, the venue will not be changed on the ground of greater convenience unless it is clear that a fair trial can be had at the place proposed by defendant. *Centre Star Mining Company, Limited*, v. *Rossland Miners' Union et al.*, 10 B. C. R. 306.

2. Amendment by changing place of trial—*Not allowed on ordinary summons to amend claim.*]—A plaintiff who wishes to name some place other than that named in the original statement of claim as the place of trial, must obtain leave to do so on a summons which clearly shews that it is desired to change the venue, and not on a summons simply to amend statement of claim. *Wade* v. *Uren*, 9 B. C. R. 274.

3. Application for before delivery of amended defence.] — An application for change of venue and trial by jury after an order made giving leave to amend defence, but before delivery thereof, is premature. *Bank of B. C.* v. *Oppenheimer et al.*, 7 B. C. R. 446.

4. Change of.] — Defendant moved to change the venue on the grounds of preponderance of convenience and residence of the majority of witnesses at the place of trial proposed. Plaintiff resisted the motion on the ground that a fair trial could not be had at the proposed place. BOLE, L. J. S. C., refused the application, leaving it to the trial Judge to apportion the additional costs of trial in the venue as laid. *Lapointe* v. *Wilson*, 5 B. C. R. 150.

5. Change of — *Grounds for — Criminal libel—Political bias.*]—In criminal libel, in order to obtain a change of venue, it is not sufficient to allege that the prosecution is interested in politics in the place where the libel is alleged to have been committed, and that therefore the defendant cannot obtain a fair trial. The fact that two abortive trials have taken place is not per se a reason for change of venue. *Regina* v. *Nicol*, 7 B. C. R. 278.

6. Changing venue — *Preponderance of convenience—Fair trial.*] — Defendant moved to change the venue on the grounds of preponderance of convenience and residence of the majority of witnesses at the place of trial proposed. Plaintiff resisted the motion on the ground that a fair trial could not be had at the proposed place. BOLE, L. J. S. C., refused the application, leaving it to the trial Judge to apportion the additional cost of trial in the venue as laid. *Lapointe* v. *Wilson*, 5 B. C. R. 150.

7. Infringement of patent — *Venue — Practice—Company—Head office and place of business—R. S. Canada*, 1886, *c.* 61, *s.* 30.]—In an action against a company for infringement of a patent the venue should be laid at the place of the registry which is nearest the head office of the company. *Short* v. *Federation Prand Salmon Canning Company*, 6 B. C. R. 436.

8. Patent actions—*Changing venue in.*] —*Short* v. *Federation Canning Company*, 6 B. C. R. 385.

See PATENTS.

9. Preponderance of convenience — *View—Fair trial.*]—In an application by defendants to change the place of trial from Vancouver to Victoria of an action under Lord Campbell's Act for damages for the death of plaintiff's husband caused by the collapse of a bridge within the city limits of Victoria, owing, it is alleged, to the negligence of the corporation, it appeared that all the witnesses on both sides, except two from abroad, reside in Victoria, and that a view of the bridge by the jury was desirable. The plaintiff resisted the application on the ground that a fair trial could not be had in Victoria: — Held, by WALKEM and DRAKE, JJ., IRVING, J., dubitante, that the place of trial should be changed to Victoria notwithstanding the suggestion that a fair trial could not be had there owing to the interest, adverse to the plaintiff, of the ratepayers of the defendant corporation. It was, however, made a term of the order that the defendants should obtain a jury of the county, none of whom were such ratepayers. An order made in Chambers upon a summons duly served, no one appearing contra, is not an ex parte order, and an appeal will lie from it to the Full Court notwithstanding Rule 577. Hudson's Bay Company v. Hazlett, 4 B. C. 351, distinguished. *Biggar* v. *The Corporation of the City of Victoria*, 6 B. C. R. 130.

XXXVI. WAIVER.

1. Amendment — *Statement of defence.*] —Two weeks after the receipt of an amended statement of claim defendants' solicitors wrote plaintiff's solicitor that they would "prepare and file a new statement of defence according to the amendment you have made," and two weeks later took out a summons to strike out amended statement of claim on the ground that it exceeded the terms of the order authorizing amendment: — Held, reversing FORIN, Lo.J., that the defendants had waived their right to object. *Centre Star* v. *The Rossland Miners' Union et al.*, 9 B. C. R. 325.

2. Appearance.] — Entering does not waive right to object to jurisdiction if notice of objection be served. *Loring* v. *Sonneman*, 5 B. C. R. 135.

3. Costs.]—A respondent by applying to increase security for, waives his right to object that security was not originally furnished in time. *In re Oro Fino Mines Co.*, 7 B. C. R. 388.

See COMPANY, IX. 2.

4. Garnishee.] — Payment into Court by operates as waiver of right to object to any irregularity in affidavit. *Harris* v. *Harris*, 8 B. C. R. 307.

5. Jurisdiction.] — Where a defendant under s. 34 of the County Court Act objects to an action being tried in the County Court, and an order is made directing that the plaint stand as a writ and that an appearance be entered thereto in five days, he waives his right to object to the jurisdiction of the Court to try the action on the ground that the parties have agreed that any action brought in respect of the cause of action sued upon shall be tried in another form. *Howay and Reid* v. *Dominion Permanent Loan Co.*, 6 B. C. R. 551.

6. Jury—*Action brought to trial without a jury—Postponement occurred and evidence of one witness taken de bene esse.*]—Held, did not amount to waiver of right to jury. *Ferguson* v. *Thain*, 3 B. C. R. 447.

See JURY, supra, XVI.

7. Notice of dishonour — *Allegation of waiver on specially endorsed writ—Sufficiency of.*]—*B. C. Corporation* v. *Coughlan et al.*, 3 B. C. R. 273.

See WRIT OF SUMMONS, infra, XXXVI. 9.

8. Solicitor — *Service on partner of former solicitor—Mode of proceeding where opposing solicitor removed pendente lite — Objection to status — Waiver by service.*] — *Denny* v. *Sayward*, 4 B. C. R. 212.

See SOLICITOR.

9. Submission to the jurisdiction by appearance of counsel upon motion.] —*Fletcher* v. *McGillivray*, 3 B. C. R. 49.

10. Writ — *Irregularity in.*] — The fact that a defendant included in an application to set aside service of the writ of summons for irregularity, a motion to discharge an interim injunction granted before service of the writ, is not a waiver of the irregularity in the writ. *Fletcher* v. *McGillivray*, 3 B. C. R. 37.

XXXVII. WINDING-UP—PRACTICE.

1. Creditors discontinuing — *Whether other creditors entitled to be substituted.*]— In an application for a winding-up order petitioners may discontinue proceedings on settlement of their claims; and creditors, other than the petitioners, who have not themselves petitioned, are not entitled to be substituted for such petitioners for the purpose of continuing the proceedings. *Doyle* v. *Atlas Canning Company*, 5 B. C. R. 279.

2. Essentials for obtaining order for.]—To the making of a winding-up order it is essential: (1) That the petition upon its face make a sufficient case for the winding-up; and (2) That the petition should be supported by a sufficient affidavit filed before its presentation. Leave to file a supplementary affidavit refused. *In re The Companies' Winding-up Acts and the Kootenay Brewing, Malting and Distilling Company*, 6 B. C. R. 112.

3. Liquidator—*Should sell in name of company.*]—*Jackson* v. *Cannon*, 10 B. C. R. 73.

See COMPANY, IX. 5.

4. Mode of application.]—All applications made to the Court in its winding-up jurisdiction must be made by summons. *Re Nelson Sawmill Company*, 6 B. C. R. 156.

5. Order for whether final or interlocutory—*Appeal — Security — Demand for after expiration of time for furnishing — Waiver — Companies Winding-up Act*, 1898, *ss.* 27 *and* 33.] — A winding-up order is a final order. The respondent in an appeal from a winding-up order, after the time limited by s.-s. 3 of s. 27 of the Companies' Winding-up Act, 1898, for furnishing security had expired, demanded security for the costs of the appeal:—Held, by the Full Court (reversing IRVING, J.), that respondent had waived his right to have the appeal dismissed on the ground that the security was not originally furnished in time. *In re The Florida Mining Company, Limited*, 8 B. C. R. 388.

6. Voluntary—*When interfered with by Court — Liquidator — Whether he should be served with notice of appeal—Costs—Application to increase security for—Waiver.*] — The Court will not interfere with a voluntary winding up of a company by its shareholders, and order a compulsory liquidation, unless it is shewn that the rights of the petitioner will be prejudiced by the voluntary winding up. Service on the liquidator of a notice of appeal on behalf of the company from a compulsory winding-up order is not necessary. A respondent by applying to increase the amount of security for costs waives his right to object that the security was not originally furnished in time. *In re the Oro Fino Mines, Limited*, 7 B. C. R. 388.

XXXVIII. Writs of Summons.

1. *Address.*

1. Omission to state any address.]—Held by the Full Court (DAVIE, C.J., MCCREIGHT and DRAKE, JJ.), affirming MCCOLL, J.: That the omission to state upon the writ of summons any address does not invalidate the writ, but is an irregularity merely and amendable. *Mathews* v. *Corporation of Victoria*, 5 B. C. R. 284.

2. Patent—*Venue — Writ of summons — Indorsement of plaintiff's address—Rule* 18—*Action for infringement of patent—Practice—Writ of summons—R. S. Canada*, 1886, *c.* 61, *s.* 30.]—In an action for damages for infringement of a patent, the writ need not be issued out of the registry nearest the place of residence or business of the defendants, but s. 30 of the Patent Act is complied with if the venue is laid at the place of such registry. *Short* v. *Federation Brand Salmon Canning Company*, 6 B. C. R. 385.

3. Plaintiff's address where several suing as trustees.]—Where plaintiffs sue as trustees for a corporation it is not necessary to indorse on the writ the addresses of the individual plaintiffs. Plaintiffs sued as trustees of the Standard Life Assurance Company, and their address was indorsed on the writ as "Edinburgh, Scotland:" — Held, insufficient address, but as there was nothing misleading in the address, leave was given to amend by stating the place of business of the company. *Dundas et al.* v. *MacKenzie*, 10 B. C. R. 174.

4. Plaintiff's address.]—An application to set aside a writ of summons for irregularity need not be by motion to the Court, but may be by summons in chambers, and objection that the defendant had no status to take out such summons without entering a conditional or other appearance, over-ruled. The writ was in Form 2 of Appendix A. of the Rules and gave the plaintiff's address as "Victoria, B.C.:"—Held, sufficient. *Carse* v. *Tallyard*, 5 B. C. R. 142.

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2. *Adverse Action.*

1. Action to enforce adverse claim—*Abandonment of — Setting aside adverse — Practice.*] — Plaintiff having commenced an action to enforce an adverse claim, did not serve the writ within a year as provided by Rule 31. The defendant moved to set aside the writ and to vacate the adverse claim:—Held, that the action was out of Court, and no order could be made therein. Semble, that an application to set aside an adverse claim is not properly made in an action brought to enforce it. *Troup* v. *Kilbourne*, 5 B. C. R. 547. Adverse claim: The filing of an adverse claim in the office of the Mining Recorder is a condition precedent to the right of action. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233.

2. Practice as to adverse proceedings.]—*Caldwell* v. *Davys*, 7 B. C. R. 156.

See Mines and Minerals, III.

See also Adverse Proceedings — Mines and Minerals.

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3. *Amendment.*

1. Address of party—*Amending writ by adding.*]—The omission to state upon the writ of summons any address does not invalidate the writ, but is an irregularity merely and amendable. *Matthews* v. *Victoria*, 5 B. C. R. 284.

2. Indorsement — *Leave to amend address.*]—Where plaintiffs sue as trustees for a corporation, it is not necessary to indorse on the writ the addresses of the individual plaintiffs. Plaintiffs sued as trustees of the Standard Life Assurance Company, and their address was indorsed on the writ as "Edinburgh, Scotland":— Held, insufficient address, but as there was nothing misleading in the address leave was given to amend by stating the place of business of the company. *Dundas et al.* v. *Mackenzie*, 10 B. C. R. 174.

3. Service of Amended Writ.]—*Baxter* v. *Jacobs et al.*, 1 B. C. R. pt. II., 373.

See Arrest.

4. Style of cause — *Amendment of.*] — J. S., trading under the name of the B. C. Furniture Company, commenced an action on 10th March, 1899, in such name in respect of a promissory note dated 20th January, 1893, payable sixty days after its date. A summons under Order XIV., having been dismissed on the ground that one person cannot sue in a firm name, plaintiff obtained an order amending the style of cause:—Held, by the Full Court, affirming DRAKE, J., that the writ was not a nullity, and that the irregu-

larity was properly amended. *B. C. Furniture Company* v. *Tugwell*, 7 B. C. R. 361.

See also AMENDMENT — SUMMARY AND SPEEDY JUDGMENT, supra.

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4. *Capias Ad Re and Ad Sa.*

See AFFIDAVIT, II.

See also ARREST.

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5. *Ex Juris Writs.*

(a) Affidavit leading to.

See JURISDICTION, infra.

1. Grounds of information and belief —*Local Judge.*]—An affidavit leading to an order for an ex juris writ containing allegations of facts which must necessarily have been founded on information and belief only, must state the source of information. *Tate et al.* v. *Hennessey et al.*, 8 B. C. R. 220.

2. Information and belief.] — An affidavit leading to an order for an ex juris writ should shew the grounds on which deponent believes that the plaintiff has a good cause of action. *The Northern Counties Investment Trust, Limited* (foreign), v. *Nathan*, 7 B. C. R. 136.

See also AFFIDAVIT, supra, II.—JURISDICTION, supra, XV.

(b) Appearance to.

1. Conditional appearance.] — Where plaintiff obtained leave to serve notice of a writ on a foreigner out of jurisdiction:—Held, that defendant was not bound to appear or enter a conditional appearance before he applies to set aside the order:—Held, that the application to set aside the order giving leave to serve notice of writ was properly brought before the Judge in Chambers, instead of before the Full Court. The defendant's affidavits having shewn that the case did not come within Order XI., the order was discharged. Fowler v. Barstow (L. R. 20 Ch. D. 240), observed upon. *Garesche, Green & Co.* v. *Holladay*, 1 B. C. R. pt. II., 83.

(c) Indorsement.

1. Indorsement — *Must disclose reasonable cause of action—Rule 6—Writ of summons for service outside of jurisdiction—Indorsement not disclosing a reasonable cause of action.*] — As the leave of the Court or a Judge is (by Rule 6) expressly required to be obtained before the issue of a writ for service outside the jurisdiction, the Court must, before sanctioning it, be satisfied that the indorsement discloses a reasonable cause of action. The promissory note as set out in the special indorsement shewed the name of W., one of the defendants, sued as indorser, indorsed under that of the plaintiff, the payee of the note:—Held, prima facie evidence that W. was not liable on the note to the plaintiff, and that the plaintiff was not the holder of the note, and motion to issue the ex juris writ refused. *Tai Yune* v. *Blum et al.*, 3 B. C. R. 21.

(d) Jurisdiction.

1. Action properly brought against person served within jurisdiction.] — T., the British Columbia agent for the P. C. Line of Seattle, sued McM., the agent of the D. & W. H. N. Co., on a bill of exchange drawn by McM. on the company in favour of T. This bill was for the balance of freight moneys due under a charter-party entered into between the principals; and the company having a claim against the P. C. Line for demurrage, obtained an order adding them as party defendants, and giving them and McM. leave to deliver a counterclaim and serve it upon the P. C. Line. This order was affirmed by the Full Court (ante p. 171), on the ground that the real parties in interest should be brought before the Court. An order was then made by IRVING, J., giving leave to McM. and the company to serve notice on the P. C. Line of the defence and counterclaim: — Held, on appeal, *per* DRAKE and MARTIN, JJ. (HUNTER, C.J., dissenting), that as no cause of action or counterclaim against T. was shewn, there was no "action properly brought against some other person duly served within the jurisdiction," and hence there was no jurisdiction to make the order. *Trowbridge* v. *McMillan*, 9 B. C. R. 444.

2. Action to rescind purchase of shares in mining company—*Order XI.*]—An action to rescind purchase from defendant of shares in an incorporated company on the ground of misrepresentation, is not an action within Order XI., so as to enable the plaintiff to obtain an ex juris writ against the defendant. *Davies et al* v. *Dunn et al.*, 8 B. C. R. 68.

3. Action by execution creditors against a mortgagee of a British ship to recover the surplus of sale proceeds under power of sale:—Held, (1) That the creditors not having got a receiver appointed of the shares they had passed to the purchaser; (2) That an order for service out of the jurisdiction on the mortgagee could not be made. *Wilson Bros.* v. *Donald*, 7 B. C. R. 33.

4. Foreign contract.]—A Seattle steamship company contracted with a Victoria firm to carry coal from Seattle to Alaska, and was paid the amount of the contract price. When the coal arrived at Dyea the company demanded and collected from the firm's agent an additional sum for taking the coal in lighters from Skagway to Dyea. The company's agent promised to repay this amount in Victoria:—Held, setting aside an ex juris writ, that the claim really arose out of the contract, and therefore the Court had no jurisdiction. *Smallcross, Macaulay & Co.* v. *Alaska Steamship Co.*, 8 B. C. R. 203.

5. Local Judge, power of.] — A local Judge of the Supreme Court has jurisdiction to make an order for an ex juris writ. The affidavit leading to the writ should be reasonably precise as to the essential facts alleged to constitute the cause of action, and if there

are omissions of substance the order should not be made. A Supreme Court Judge has power on motion to set aside an ultra vires order made by a Judge of limited jurisdiction. *Tate et al.* v. *Hennessey et al.*, 7 B. C. R. 262.

6. Transfer of shares—*Agreement.*]—An ex juris writ having been issued to enforce an agreement between residents of British Columbia and England for transfer of shares in a provincial company not in terms providing for its performance within the jurisdiction:—Held, that the writ should be set aside. *Oppenheimer et al.* v. *Sperling et al.*, 7 B. C. R. 96.

(e) Service.

1. Agreement to transfer shares in a British Columbia company—*Order XI.*]—An ex juris writ having been issued to enforce an agreement between residents of British Columbia and England for transfer of shares in a provincial company not in terms providing for its performance within the jurisdiction:—Held, that the writ should be set aside. *Oppenheimer et al.* v. *Sperling et al.*, 7 B. C. R. 96.

2. Foreign company—*Domicile.*]—The defendants, a foreign company, had a place of business in Victoria, where it carried on a trading business, although its principal place of business and head office where the meetings of the governor, chief traders, and shareholders were held, were in England. The plaintiff as administrator (appointed by the Court here) to the intestate estate of McL., a deceased servant of the company served a writ on one of the company's managers at Victoria. On an application to have the writ set aside:—Held, that as inasmuch as by the company's rules the power to appoint, pay and dismiss was with the English office, and as by agreement the deceased's account was kept at that office, and the balance due him from time to time was payable there, the English office of the company must be regarded as the domicile of the company, and the company should not be sued here by the plaintiff as administrator of the deceased. *Wilson* v. *Hudson's Bay Co.*, 1 B. C. R. pt. II., 102. See, however, Rule 41 of the Rules of Supreme Court, 1890.

3. Shares in ship — *Receiver — Order XI.*]—Action by execution creditors against a mortgagee of a British ship to recover the surplus of sale proceeds under power of sale:—Held (1) That the creditors not having got a receiver appointed of the shares they had passed to the purchaser; (2) That an order for service out of the jurisdiction on the mortgagee could not be made. *Wilson Bros.* v. *Donald*, 7 B. C. R. 33.

(f) Substitutional Service.

1. Grounds for.]—To support an order for substitutional service of a writ of summons allowed to be issued for service out of the jurisdiction it must appear upon the affidavit upon which the order is obtained that the defendant is evading service of the writ. Supplemental affidavit that such was the fact not admitted in answer to a motion to set aside the order. *Mellor* v. *Carter*, 3 B. C. R. 301.

2. Irregularity of.]—A writ of summons for service outside the jurisdiction is irregular if issued without leave of a Judge under Rule 6. An affidavit for an order for substitutional service of such writ must shew that the defendant is evading service of it. *Hull Bros.* v. *Schneider*, 3 B. C. R. 32.

(g) When within Order XI.

1. Action to rescind purchase of shares.]—An action to rescind purchase from defendant of shares in an incorporated company on the ground of misrepresentation, is not an action within Order XI., so as to enable the plaintiff to obtain an ex juris writ against the defendant. *Davis et al.* v. *Dunn et al.*, 8 B. C. R. 68.

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6. *Foreign Firm.*

1. Action against foreign firm.]—Sperling, Garbutt, and Horne-Payne were residents of England and members of the firm of Sperling & Co., which firm carried on business in England only. Plaintiffs issued two writs (neither of which was for service out of the jurisdiction) in respect of the same cause of action, one being addressed against the firm and the other against the three individuals only. The writs were served on Horne-Payne while on a visit to British Columbia, and he entered conditional appearances and applied to have both writs set aside and (in the alternative as to the second action) that it be dismissed as vexatious:—Held, by the Full Court (1) the name of the firm was wrongly inserted, and should be struck out of the first writ; (2) That the plaintiffs should elect as to which action they would proceed with. Before the hearing of the appeal the respondents gave notice that they were content that the name of Sperling & Co. should be struck out of the writ:—Held, that the appellants were entitled to the costs of the appeal up to the time of the service of the notice, and the respondents to the costs subsequent. *Oppenheimer* v. *Sperling*, 9 B. C. R. 166.

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7. *Indorsement.*

1. Receiver.]—It is improper to endorse on writ a claim that a particular person may be appointed receiver. *Hudson's Bay Co.* v. *Green et al.*, 1 B. C. R. 247.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

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8. *Renewal.*

1. Adverse action—*Renewal of writ in.*]—*Haney* v. *Dunlop*, 6 B. C. R. 451.

See MINES AND MINERALS, III.

2. Adverse action.]—The plaintiff in an adverse action issued a writ in August, 1897, and not having served it before the end of the year obtained upon an ex parte application

an order for renewal:—Held, on motion to set aside the order for renewal that the plaintiff had not prosecuted his action with reasonable diligence, as required by s. 37 of the Mineral Act, and that the order must be set aside. *Haney* v. *Dunlop*, 6 B. C. R. 451.

3. Adverse action.]—The plaintiff in an adverse action issued a writ on 5th August, 1897, and not having served it, obtained on 2nd August, 1898, upon an ex parte application, an order for renewal; the order was on the application of the defendant set aside:—Held, on appeal to the Full Court, that no reasonable explanation of the delay being given, the order for renewal was properly set aside; but that s. 37 of the Mineral Act does not enable a defendant to get rid of an action by applying in a summary way when not authorized by the ordinary practice of the Court. *Haney* v. *Dunlop*, 6 B. C. R. 520.

4. Held, 1. An appearance does not waive a right to object to the jurisdiction if notice of the objection be given to the plaintiff. 2. A notice appended to an appearance, that it is filed under protest, is a sufficient notice for that purpose. Fletcher v. McGillivray, 3 B. C. 50, questioned. 3. A delay of four months unaccounted for, from the date of the expiry of a writ, is fatal to a motion to renew the writ. *Loring* v. *Sonneman*, 5 B. C. R. 135.

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9. *Service.*

1. Copy served not shewing original to be under seal of Court.]—The seal of the Court affixed to a writ of summons is not a part of the writ itself, but merely authenticates it. The copy of the writ of summons served on the defendant did not indicate that the original was sealed. Upon motion to set aside the service thereof:—Held, dismissing the motion, that the writ was properly served. *Canada Settlers' Loan Co.* v. *Steinburger*, 4 B. C. R. 353.

2. Defendant merely passing through Province.]—A writ of summons describing the defendant company as "Doing business in the Province of British Columbia," was served upon J. G. McLaren, the manager of the defendant company, who was passing through British Columbia en route to Dawson:—Held, that the service was irregular. Also that it is not necessary that a person who has been served with a writ should be a real defendant to entitle him to apply to set it aside *Fall* v. *Klondyke Bonanza, Limited*, 9 B. C. R. 493.

3. Delay in service.]—Plaintiff having commenced an action to enforce an adverse claim, did not serve the writ within a year as provided by Rule 31. The defendant moved in the action to set aside the writ and to vacate the adverse claim:—Held, that the action was out of Court, and no order could be made therein. Semble.—Then an application to set aside an adverse claim is not properly made in an action brought to enforce it. *Troup* v. *Kilbourne*, 5 B. C. R. 547.

4. Service after twelve months—*Appearance under protest—Laches.*]—Held, (1) An appearance does not waive a right to object to the jurisdiction if notice of the objection be given to the plaintiff. (2) A notice appended to an appearance, that it is filed under protest, is a sufficient notice for that purpose. Fletcher v. McGillivray, 3 B. C. 50, questioned. (3) A delay of four months, unaccounted for, from the date of the expiry of a writ, is fatal to a motion to renew the writ. *Loring* v. *Sonneman*, 5 B. C. R. 135.

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10. *Special Indorsement.*

(*a*) *Account Stated.*

1. An objection to the hearing of an appeal on the ground that the appeal books are defective and erroneous is not a preliminary objection within s. 83 of the Supreme Court Act. The particulars of the plaintiffs' claim indorsed on the writ were: "1899. November 30. To balance of account rendered, which balance has been stated, $51.70. Balance of account rendered and stated owing to Hunter Brothers, and duly assigned for value by an assignment dated the 1st day of December, 1889, to the plaintiffs, and of which express notice in writing has been given to the defendant, $167.15. Total, $218.85:"—Held, not a special indorsement such as would support a judgment under Order XIV. *Rogers et al* v. *Reed*, 7 B. C. R. 139.

2. Demand for statement of claim—*Rules* 73, 182 (*c*), 243—*Costs.*]—The claim endorsed on the writ of summons was for a liquidated amount, but did not give the dates and items of credits. The defendant entered an appearance upon which was a note demanding a statement of claim, but did not serve on the plaintiff such demand as provided by S. C. Rule 182. The plaintiff signed judgment in default of a defence. Upon application to set aside the judgment:—Held, *per* DRAKE, J., granting the application, that the writ was not specially indorsed, as not shewing dates and items of goods sold or credits. On appeal to the Divisional Court (CREASE and MCCREIGHT, JJ.):—Held, reversing DRAKE, J., and allowing the appeal: That to obtain judgment in default of defence it is not necessary that the writ of summons should be specially endorsed. Semble, an endorsement on a writ of summons claiming balance due on a promissory note giving particulars of the note, but not of the credits, is a good special endorsement. *Mason* v. *Nason*, 4 B. C. R. 172.

(*b*) *Claim of Interest.*

1. Claim for interest till judgment at certain rate, necessitating computation.]—Plaintiffs' claim, as endorsed on the writ of summons, was for a sum certain for principal and interest due upon a covenant in a mortgage, and interest thereon until judgment:—Held, not a special indorsement entitling the plaintiffs to judgment under Order XIV. To a special indorsement for interest it is necessary: (1) That it is claimed to be due by contract or statute. (2) That a definite sum is claimed, as defendant cannot be called upon to take the risks of calculation. Secus, in the case of interest claimed on a promissory note. *B. C. L. & I. A.* v. *Thain*, 4 B. C. R. 321.

2. Till judgment.]—Held, *per* BEGBIE, C.J. (CREASE and DRAKE, JJ.): A claim

specially endorsed on writ for amount of an account rendered, and "for interest thereon at six per cent. until judgment" is not a liquidated demand under Order III., Rule 6, and an order setting aside judgment thereon as in default of appearance sustained. *McClary Manufacturing Co.* v. *Corbett*, 2 B. C. R. 212.

3. Till payment or judgment.] — A claim for interest "until payment or judgment" is not a claim for a liquidated demand, within the meaning of Order III., Rule 6, except for example, where the cause of action is in respect to negotiate instruments, in which case the interest is by s. 57 of the Bills of Exchange Act, deemed to be liquidated damages. Interest claimed under a statute cannot be the subject of special indorsement unless it is stated in the indorsement under what Act the interest is claimed. A specially endorsed writ should state specifically the amount due, and when a claim is made for the taxed costs if a foreign judgment, the date of the taxation should be stated. Decision of WALKEM, J., reported ante, at p. 27, reversed, MARTIN, J., dissenting. *Macaulay Brothers* v. *Victoria Yukon Trading Company*, 9 B. C. R. 136.

(c) Default of Defence.

1. Default judgment — *Defective special indorsement — Rules 15 and 242.*] — A statement of claim having been required, if no other statement of claim is delivered, there must be a good special indorsement under Rule 15 to sustain a default judgment under Rule 242. *Hassard* v. *Riley*, 6 B. C. R. 167.

2. Not necessary that writ be specially indorsed.]—The claim indorsed on the writ of summons was for a liquidated amount, but did not give the dates and items of credits. The defendant entered an appearance upon which was a note demanding a statement of claim, but did not serve on the plaintiff such demand as provided by S. C. Rule 182. The plaintiff signed judgment in default of a defence. Upon application to set aside the judgment:—Held, *per* DRAKE, J., granting the application, that the writ was not specially indorsed as not shewing dates and items of goods sold or credits. On appeal to the Divisional Court (CREASE and MCCREIGHT, JJ.):—Held, reversing DRAKE, J., and allowing the appeal: That to obtain judgment in default of defence it is not necessary that the writ of summons should be specially indorsed. Semble, an indorsement on a writ of summons claiming balance due on a promissory note giving particulars of the note, but not of the credits, is a good special indorsement. *Mason* v. *Nason*, 4 B. C. R. 172.

(d) Foreign Judgment.

1. No allegation of recovery.]—In an action on a foreign judgment the statement of claim indorsed on the writ did not allege specifically against whom the judgment was recovered:—Held, *per* DRAKE, J., that the writ was not specially indorsed. *Boyle* v. *Victoria Yukon Trading Co., Limited*, 8 B. C. R. 352.

2. Yukon judgment.]—In an action on a Yukon Territory judgment, the writ may be specially indorsed within Order III., Rule 6, with a claim for interest on the judgment. It is not necessary in such an indorsement to state that the interest is due by statute. *Macaulay Bros.* v. *Victoria Yukon Trading Company*, 9 B. C. R. 27.

(e) Liquidated or Unliquidated Demand.

1. Covenant of indemnity.]—Plaintiff's writ was specially indorsed to recover "$1,000 for principal money due under a covenant to pay the sum of $1,000 on 20th Feb., 1892." The covenant as set out in the affidavit was to assume, pay and discharge all moneys due and to become due from the said assignor (plaintiff) to one Parker, under a certain agreement between them, and "to indemnify and save harmless him, the said assignor, from the payment of the same," etc. It did not appear that Parker had demanded payment from the plaintiff:—Held, *per* DRAKE, J., dismissing the motion: That the covenant was one of indemnity, and that it was a pre-requisite to the plaintiff's claim and that he had paid, or been called upon to pay, the $1,000. That cause of action proved was not that stated in the indorsement on the writ. Upon appeal to the Divisional Court: — Held, *per* CREASE and WALKEM, JJ., dismissing the appeal: 1. The contract proved was one of indemnity. 2. A claim for breach of such a contract is not a liquidated but an unliquidated demand. 3. That the variance between the special indorsement and the affidavit was fatal. *Per* CREASE, J.: A demand upon the plaintiff to pay the $1,000 was a pre-requisite to his cause of action. *Baker* v. *Dalby, Ballentyne & Claxton*, 3 B. C. R. 289.

2. Damages fixed by contract—*Liquidated or unliquidated demand—Order XIV.*]—A claim for $1,000, "amount due upon an agreement, whereby the defendant agreed to pay the plaintiffs the sum of $1,000 in the event of certain work in which the plaintiffs were engaged being wholly stopped by the defendant, and which has been wholly stopped by him," is a liquidated demand and proper subject of special indorsement. *Lantz et al.* v. *Baker*, 3 B. C. R. 269.

3. Interest.] — The plaintiff's claim, indorsed on the writ, was upon a promissory note expressed to be payable "with interest at 9 per cent. per annum until paid." It claimed the amount of the note and interest at 7 per cent. from the date of the note to the date of writ (in view of sec. 80 of the Bank Act, 1890, Stat. (Can.) cap. 31, limiting the interest recoverable by certain banks to 7 per cent): — Held, upon summons for judgment under Order XIV.: That the claim for interest at 7 per cent. after the maturity of the note was for unliquidated damages. *Bank of Montreal* v. *Bainbridge & Co.*, 3 B. C. R. 125.

4. Judgment by default — *Special indorsement including a claim for interest—Liquidated or unliquidated demand.*] — Held, *per* BEGBIE, C.J., CREASE and DRAKE, JJ.: A claim specially indorsed on the writ for amount of account rendered and "for interest thereon at 6 per cent. until judgment," is not a liquidated demand under Order III., Rule 6, and

an order setting aside judgment thereon is in default of appearance sustained. *McClary Manufacturing Co.* v. *Corbett*, 2 B. C. R. 212.

(f) Mortgage Covenant.

1. Claim for principal and interest under mortgage—*Order III., r. 6 and Order XIV., r. 1.*]—An indorsement of a claim for principal and interest under a covenant in a mortgage, in order to be a good special indorsement within the meaning of Order III., r. 6, and Order XIV., r. 1, must allege that the moneys are due under the covenant. *B. C. Land and Investment Agency, Limited* v. *Cum Yow et al.*, 7 B. C. R. 2.

2. Claim of interest till judgment.]—Plaintiffs' claim, as indorsed on the writ of summons, was for a sum certain for principal and interest due upon a covenant in a mortgage, and interest thereon until judgment:—Held, not a special indorsement entitling the plaintiff to judgment under Order XIV. To a special indorsement for interest it is necessary: 1. That it is claimed to be due by contract or statute. 2. That a definite sum is claimed, as defendant cannot be called upon to take the risks of calculation. Secus, in the case of interest claimed on a promissory note. *British Columbia Land & Investment Company* v. *Thain*, 4 B. C. R. 321.

3. Claim of interest till payment or judgment.]—In an action for principal and interest due upon a covenant in a mortgage a claim for interest until payment or judgment is not the subject of special indorsement within the meaning of Order III., r. 6. Where on an application for judgment under Order XIV., it appears that part of the claim is not the subject of special indorsement, it is not open to plaintiff to obtain amendment and proceed, but a new summons must be taken out. Where the indorsement of a writ has been amended, re-delivery, but not re-service, is necessary. Remarks as to necessity for amending the Supreme Court Rules. *Pike* v. *Copley*, 9 B. C. R. 52.

(g) Promissory Note or Bill.

1. Claim of interest after maturity.]—The plaintiff's claim, indorsed on the writ, was upon a promissory note expressed to be payable "with interest at 9 per cent. per annum until paid." It claimed the amount of the note and interest at 7 per cent. from the date of the note to the date of the writ (in view of s. 80 of the Bank Act, 1890, Stat. Can. c. 31), limiting the interest recoverable by certain banks to 7 per cent.:—Held, upon summons for judgment under Order XIV., that the claim for interest at 7 per cent., after the maturity of the note was for unliquidated damages. *Bank of Montreal* v. *Bainbridge & Co.*, 3 B. C. R. 125.

2. Interest not stated or note.]—Plaintiff obtained an order for judgment under Order XIV., upon a specially indorsed writ against Coughlan & Mason as makers, and Stelly as endorser for the amount of a promissory note and interest as claimed from the date of its maturity at 6 per cent., no interest being provided for in the note. The indorsement stated that the note had been duly presented for payment and been dishonoured and that "notices of dishonour had been waived." Upon appeal to the Divisional Court:—Held, *per* CREASE and DRAKE, JJ., affirming WALKEM, J., and dismissing the appeal: That interest was payable on the note after maturity at 6 per cent., and was a liquidated demand under the Bills of Exchange Act (Can.) 1890, s. 57, and that the special indorsement was sufficient. (McCREIGHT, J., concurred on that point):—Held, *per* McCREIGHT, J., dissenting from the order of the Court, that the indorsement was insufficient. That the allegation of waiver of the notice of dishonour should have stated the name of the defendant so waiving, and set out the facts relied on as a waiver, and that the note should have been stated to be still unpaid. *British Columbia Corporation (Ltd.)* v. *Coughlan & Mason and George Stelly*, 3 B. C. R. 273.

3. Presentation—*Allegation of, necessary.*]—Under s. 86 of Bills of Exchange Act, 53 Vict. (Can.), c. 33, where a promissory note is made payable at a particular place, presentation at that place must be alleged and proved in order to make a cause of action against the maker. A special indorsement upon a writ of summons in an action to recover from the maker the amount of a promissory note, stated the note as being made payable at a particular place, but did not allege presentment. Upon motion for judgment under Order XIV., WALKEM, J., dismissed the application on the ground that the special indorsement disclosed no cause of action. Upon appeal to the Divisional Court, Sir M. B. BEGBIE, C.J., and DRAKE, J., affirmed the judgment of WALKEM, J. *Croft* v. *Hamlin et al.*, 2 B. C. R. 333.

4. Presentment for payment—*Notice of dishonour—Allegations of, necessary.*]—In an action to recover the amount of a promissory note, presentment for payment, dishonour, and notice thereof to the indorser must be stated in the special indorsement of a writ to warrant an order for judgment against the indorser, under Order XIV., but need not be alleged to warrant judgment against the maker. When an order amending the special indorsement upon a writ of summons is made, the writ with the new special indorsement must be re-served upon every defendant affected by the amendment. If such defendant has already appeared, such appearance stands as an appearance to the amended writ (following Paxton v. Baird, 1895, 1 Q. B. 139), and the plaintiff can apply for judgment under Order XIV., but judgment cannot be directed to be entered against him before the lapse of 8 days from the service of the amended writ. *More et al.* v. *Paterson et al.*, 2 B. C. R. 302.

5. Presentment.]—The statement of claim indorsed on the writ alleged that the note sued on was payable at a particular place named, and in the same paragraph that the note was duly presented and dishonoured:—*Held*, a good special indorsement. *Cunard et al.* v. *Symon-Kaye Syndicate* (1894), 2 N. S. 340, distinguished. *Union Bank of Halifax* v. *Wurzburg and Company, Limited*, 6 B. C. R. 160.

(h) *Requisites in General.*

1. Heading — *Statement of claim.*] — A special indorsement, in order to support a judgment under Order XIV., must be headed with the words "statement of claim." *Vancouver Agency* v. *Quigley*, 8 B. C. R. 142.

2. Signature of solicitor.]—A special indorsement, in order to support a judgment under Order XIV., must contain the signature of the plaintiff's solicitor. *Oppenheimer* v. *Oppenheimer*, 8 B. C. R. 145.

3. A statement of claim having been required, if no other statement of claim is delivered, there must be a good special indorsement under Rule 15 to sustain a default judgment under Rule 242. *Hassard* v. *Riley*, 6 B. C. R. 167.

PRECEDENT CONDITION.

1. Action for work done—*Authority of agent—Effect of a certificate of agent as a condition precedent.*]—*Galbraith & Sons* v. *Hudson's Bay Co.*, 7 B. C. R. 431.

See CONTRACT, IV. 1.

2. Agreement for sale.]—Made subject to the happening of a contingent event as a condition precedent. *Manley* v. *Mackintosh*, 10 B. C. R. 84.

See VENDOR AND PURCHASER.

3. Pleading of a condition precedent.]—*Hopkins* v. *Gooderham et al.*, 10 B. C. R. 250.

See MASTER AND SERVANT, II.

See also CONDITION PRECEDENT.

PRECIOUS METALS.

1. Conveyance of land by grantor to whom precious metals have passed — *Whether precious metals pass without being mentioned.*]—Where the precious metals have been passed out of the Crown to a grantee, a conveyance of the land by the latter to a third person in the ordinary form will pass the precious metals although not specially mentioned. *Re St. Eugene Mining Co., and the Land Registry Act*, 7 B. C. R. 288.

2. Whether pass under grant of all minerals and substances whatsoever—47 *Vict. B. C. c.* 14, *s.* 3.]—A statutory grant of lands, "including all coal, coal oil, ores, stones, clay, marble, slate mines, minerals and substances whatsoever, thereupon, therein, thereunder," does not include the precious metals. *Bainbridge* v. *E. & N. Ry.*, 4 B. C. R. 181.

See also METALS—MINES AND MINERALS, XIV., XV.

PRE-EMPTION.

1. Execution creditor.] — No right of execution creditor to equitable execution against.]—*Davidge* v. *Kirby*, 10 B. C. R. 231.

See EXECUTION.

2. Transfer of.]—*Hjorth* v. *Smith*, 5 B. C. R. 369.

See CONTRACT, IV. 2.

3. Sale of, before Crown grant is illegal.]—*Turner & Jones* v *Curren et al.*, 2 B. C. R. 51.

See CONTRACT, II. 1.

PREFERENCE.

See BILLS OF SALE—CHATTEL MORTGAGE—FRAUDULENT CONVEYANCE—FRAUDULENT PREFERENCE.

PREFERENCE STOCK.

See COMPANY.

PREFERRED CLAIMS.

1. Of workmen not allowed in case of equitable execution.]—*Muirhead* v. *Lawson*, 1 B. C. R. pt. II., 113.

See RECEIVER.

See also ASSIGNMENT FOR BENEFIT OF CREDITORS—EXECUTION—EXEMPTION.

PREJUDICE.

1. Effect of, on appeal to the prejudices of jury.]—*Hopkins* v. *Gooderham et al.*, 10 B. C. R. 250.

See MASTER AND SERVANT, II.

2. Of suit by newspaper news.]—*Stoddart* v. *Prentice*, 6 B. C. R. 308.

See CONTEMPT.

PRELIMINARY DEPOSITIONS.

1. Admissibility of.]—*Regina* v. *Morgan*, 2 B. C. R. 329.

See CRIMINAL LAW, VIII.

See also CRIMINAL EVIDENCE.

PRELIMINARY OBJECTION.

1. Appeal—*Objection that out of time.*] —*Wilson* v. *Marvin*, 3 B. C. R. 327; *Trades National Bank of Spokane* v. *Ingram*, 10 B. C. R. 442.

See APPEAL, VIII. 6.

2. Appeal—*Time for raising preliminary objections to.*]—*Macdonald* v. *Pandora Methodist Church*, 5 B. C. R. 521.

See APPEAL, VIII. 6.

3. Appeal book—*Accuracy of it to be presumed.*]—*Rogers et al.* v. *Reed*, 7 B. C. R. 139.

See PRACTICE, XXXVIII. 10.

4. County Court appeal—*Time to take —Notice of.*]—*McGuire* v. *Miller*, 9 B. C. R. 1.

See COURTS, I. 1.

5. Notice of, must be given.]—*Baker* v. *Kilpatrick*, 7 B. C. R. 127.

See APPEAL, VIII. 6.

See also APPEAL—OBJECTION — PRACTICE, XV.

PREMIUM.

See INSURANCE.

PREPONDERANCE OF CONVENIENCE.

1. Venue—*Change of.*] — *Biggar* v. *City of Victoria*, 6 B. C. R. 130.

See VENUE.

See also INJUNCTION—VENUE.

PREROGATIVE OF CROWN.

See CONSTITUTIONAL LAW.

PRESCRIPTION.

1. Light—*Right to user and access.*]—A right to the access and use of light to a house cannot be acquired under the Prescription Act by the lapse of time, during which the owner of the house or his occupying tenant is also occupier of the land over which the right would extend. In an action to establish a right to ancient lights, the burden of proof in the first place is on the plaintiff to shew uninterrupted use for twenty years, and then the burden is shifted to the defendant to shew such facts as negative the presumption of ancient lights. Remarks as to the time from which the twenty years' prescription began to run. *Feigenbaum* v. *Jackson and McDonell*, 8 B. C. R. 417.

2. Title by.]—*Crowther* v. *Beaven*, 1 B. C. R. pt. II., 116.

See BOUNDARIES.

PRESENCE OF PRISONER.

1. Not necessary in habeas corpus proceedings.]—*Ex parte Ettamass*, 2 B. C. R. 232.

See HABEAS CORPUS.

See also CRIMINAL LAW.

PRESENTMENT.

1. For payment—*Necessity of allegation of.*]—*Croft* v. *Hamlin et al.*, 2 B. C. R. 333.

See PRACTICE, XXXVIII. 10.

See also BILLS AND NOTES.

PRESSURE.

1. As rebutting fraudulent preference.]—*Stewart* v. *Wilson*, 3 B. C. R. 369; *Brown and Erb* v. *Jowett*, 4 B. C. R. 44.

See CHATTEL MORTGAGE.

2. By creditor to secure preference.]—*Doll et al.* v. *Hart et al.*, 2 B. C. R. 32.

See CHATTEL MORTGAGE.

3. Doctrine of—*As applied to fraudulent conveyances.*]—*Anderson* v. *Shorey*, 1 B. C. R. pt. II., 325.

See FRAUDULENT CONVEYANCE.

4. In insolvent circumstances.]—*Cascaden et al.* v. *McIntosh et al.*, 2 B. C. R. 268.

See FRAUDULENT CONVEYANCE.

5. Validity of mortgage given under.]—*Adams & Burns* v. *Bank of Montreal*, 8 B. C. R. 314.

See FRAUDULENT CONVEYANCE.

6. What amounts to.] — *The Edison Gen. Electric Co.* v. *The Vancouver and New Westminster Tramway Co.*, 4 B. C. R. 460.

See JUDGMENT.

See also BILLS OF SALE—CHATTEL MORTGAGE —FRAUDULENT CONVEYANCE.

PRINCIPAL AND AGENT.

1. Authority of agent.]—*Galbraith & Sons* v. *Hudson's Bay*, 7 B. C. R. 431; *McKinnon* v. *The Pabst Brewing Co.*, 8 B. C. R. 265.

See CONTRACT, III. 3.

2. Authority—*Acting beyond scope of authority.*]—*Courtney et al.* v. *The Can. Devel. Co.*, 8 B. C. R. 53.

See CONTRACT, I. 1.

3. Authority—*Agent to sell lands has no power to bind principal contrary to instructions.*]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

4. Election to treat agent as principal—*Assignment of judgment.*]—The plaintiff, Clara Semisch, sold a judgment of over $9,000 against K. to G., who was acting as agent for Mrs. K., to whom he at once assigned the judgment and received $1,000 from her therefor. G. by his instructions from Mrs. K. was limited to $1,000 as the purchase price of the judgment, but as he was interested in the architect's commission which he expected to receive out of the erection of a building proposed to be erected on the land against which the judgment was registered, he agreed to pay plaintiff $1,000 in cash and $500 when the roof of the building was completed, or at the latest on 1st January, 1903, and he also agreed to enforce the judgment against K. and pay plaintiff half the proceeds he received: his agreement with plaintiff was contained in two writings, one being an assignment from plaintiff to G. of all her rights under the judgment for $1,000, and the other containing the additional terms of which Mrs. K. was not aware when she bought from G.; G. failed to pay plaintiff the additional $500 and plaintiff sued for it in the County Court, and although the fact came out in evidence during the trial that G. in buying the judgment had been acting as Mrs. K.'s agent the plaintiff took judgment against G. Subsequently plaintiff sued G. and Mrs. K. to have the assignment set aside or to have Mrs. K. declared a trustee for plaintiff:—Held, (1) That plaintiff by taking judgment against G. founded upon his promise contained in one of the documents which made up the transaction, elected to treat him as the sole principal; and (2) That Mrs. K. bought the judgment without any knowledge of the agreement between plaintiff and G. and so was not bound by its terms. *Semisch* v. *Guenther and Keith*, 10 B. C. R. 371.

5. Evidence admissible to show unnamed principals.]—*Smith et al.* v. *Mitchell*, 3 B. C. R. 450.

See VENDOR AND PURCHASER

6. Fiduciary relation.]—In July, 1897, a real estate agent on behalf of the owner negotiated with a prospective purchaser, but the attempted sale fell through, and after that the agent and the owner ceased to have any dealings with each other. In September, 1898, the agent bought the property at a tax sale at a very low figure:—Held, that at the time of the sale the agent was not in a fiduciary relation to the owner. Decision of IRVING, J., reversed. *McLeod* v. *Waterman* (No. 2), 10 B. C. R. 42.

7. Liabilities of principal and agent in tort.]—*Board of School Trustees of Victoria* v. *Muirhead & Mann et al.*, 4 B. C. R. 148.

See INDEMNITY.

8. **Mineral claim.**]—Principal is entitled to have claim located by agent transferred to him *Vero* v. *Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, XXIX.

9. Money paid to agent.]—Action does not lie against agent for recovery of money paid to him. *Williams* v. *Wilson and Morrow*, 3 B. C. R. 613.

See VENDOR AND PURCHASER.

10. Misrepresentation by agent of value of security—*Measure of damages.*]—The action was for misrepresentation by defendants, financial brokers, concerning the value of the security and character of the borrower, made by S., a member of their firm, in recommending to plaintiff an investment on real estate mortgage security of $5,500. Defendants were in fact employed by the borrower, H., and they obtained a written valuation of the lands from two persons who certified that they knew the lands personally, and that they were worth $9,700 or $7,000 at a forced sale. The mortgage becoming overdue the lands proved unsaleable and not worth the amount of the loan; and H. had abandoned the property. At the trial the case was put in the alternative as an action for negligence on the part of defendants as plaintiff's agents in not obtaining an accurate valuation. The jury, besides finding that S. had misrepresented to plaintiff the value of the security and the character of H., found that S. led the plaintiff to rely upon the belief that the defendants were acting for him, and that they were his agents in the matter; that S. did not show the valuation to the plaintiff, who acted solely on his advice; that the defendants adopted the valuation without further inquiry, and in doing so were guilty of negligence. Upon these findings, WALKEM, J., ordered judgment to be entered for the plaintiff for the full amount of the loan and interest, as damages, upon plaintiff executing an assignment to defendants of the security. Upon appeal to the Full Court, and motion to the Divisional Court for a new trial:—*Held*, *per* CREASE, McCREIGHT and DRAKE, JJ.—That there was sufficient evidence and findings of agency and negligence. *Per* CREASE and DRAKE, JJ.—Affirming WALKEM, J. That the measure of damages was the whole loss on the loan. That the fact that the case was put to the jury, as also involving actionable misrepresentation or deceit, and that findings were taken thereon, and that the learned Judge charged the jury that the representations, if made, amounted to a guarantee by the defendants of the loan, were insufficient grounds of misdirection to call for a new trial. *Per* McCREIGHT, J.—There was nothing amounting to a guarantee of the loan, and the damages should be reduced by the actual cash value of the security at the time of the loan, and a new trial had to ascertain such value. *Woolley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 416.

11. Promoters of company—*Liability of, for other's acts.*]—Defendants, promoters of a public company, signed a memorandum of association for incorporation, under the Companies Act, 1862 (Imp.), and instructed the company to be incorporated, which was not done. At a meeting of the promoters subsequently held, at which some of the defendants were present, and others not, one B. was directed to incur certain expenses, the subject of the action:—*Held*, giving judgment against the defendants present at the meeting, and in favour of those not proved to have been present, that the defendants still occupied the

position of promoters, and as such, not each other's agents, or liable for each other's acts. *Hung Man* v. *Ellis et al.*, 3 B. C. R. 486.

12. Ratification of act of agent.

See CONTRACT, V.

13. Right of agent to recover indemnity from his principal for consequences of tortious act innocently committed by his direction. *The Board of School Trustees of Victoria* v. *Muirhead & Mann and the Albion Iron Works Co., Ltd.*, 4 B. C. R. 148.

14. Servant of corporation.]—Liability of corporation for torts committed by its servants in the course of its business. *Adams* v. *National Electric Tramway & Lighting Co.*, 3 B. C. R. 199.

See MASTER AND SERVANT, III.

15. Service on Agent.]—*Barnes* v. *Gray*, 6 B. C. R. 219.

See PRACTICE, XXVII.

See also AGENCY—CONTRACT—MASTER AND SERVANT — MUNICIPAL CORPORATIONS — NEGLIGENCE.

PRIORITY.

1. Between equitable mortgage and subsequent registered conveyance.] — *Hudson's Bay Co* v. *Kearns*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

2. Between locators of mineral claims.]—*Francoeur et al.* v. *English*, 6 B. C. R. 63.

See MINES AND MINERALS, XXIX.

3. Between judgment creditors and legatee.]—*Harper* v. *Harper*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

4. Of judgment creditors of insolvent estate.]—*Wilson* v. *Marvin*, 3 B. C. R. 327.

See INSOLVENCY.

5. Of wages on an execution.]—*Gilmour* v. *Gilmour*, 3 B. C. R. 397.

See EXECUTION.

PRISONER.

1. Dispensing with presence of, on motion for habeas corpus.]—*Ex parte Ettamass*, 2 B. C. R. 232.

See HABEAS CORPUS.

2. Restoration of money found on, at time of arrest.]—*Reg.* v. *Harris*, 1 B. C. R., pt. I., 255.

See CRIMINAL LAW, XVI.

3. Statement by.]—*Regina* v. *Kalabeen*, 1 B. C. R., pt. I., 1; *Queen* v. *Rogers*, 1 B. C. R., pt. II., 119.

See CRIMINAL LAW, XVI.

PRIVATE PROPERTY.

1. Right of free miner to enter upon.]—*Rainbridge* v. *The E. & N. Ry.*, 4 B. C. R. 181.

See MINES AND MINERALS, XXII.

PRIVATE PROSECUTOR.

1. Right of, to sue for penalties.]—*The Queen* v. *Howe*, 2 B. C. R. 36.

See CONSTITUTIONAL LAW, II. 8.

PRIVILEGE.

1. As to letters in affidavit on production.]—*Van Volkenburg* v. *The Bank of B. N. A.*, 5 B. C. R. 4.

See PRACTICE, XI., 7.

2. Documents that are privileged.]—*Bank of B. C.* v. *Oppenheimer*, 7 B. C. R. 104; *Feigenbaum* v *Jackson*, 7 B. C. R. 171.

See PRACTICE, XI. 7.

PRIVITY.

See CONTRACT, IV. 2.

PRIVY COUNCIL.

1. Execution — *Staying pending appeal to.*]—*Davies* v. *McMillan*, 3 B. C. R. 35.

See PRACTICE, XXVIII.

2. Leave to appeal to—*In matter of civil rights.*]—*Madden* v. *The Nelson & Fort Sheppard Ry. Co.*, 5 B. C. R. 670.

See APPEAL, IX.

3. Leave to appeal to.]—*Queen* v. *The Victoria Lumber & Man. Co.*, 5 B. C. R. 305; *Regina* v. *Little*, 6 B. C. R. 321; *Re Tomea Homma*, 8 B. C. R. 76.

See APPEAL, IX.

4. Leave to appeal to from Divisional Court—*Granted only in case of general public interest.*]—*Gordon* v. *Cotton*, 3 B. C. R. 287.

See APPEAL, IX.

See also APPEAL—PRACTICE, III.; XXVIII.

PROBABLE CAUSE.

1. Question of, left to jury.]—*Baker* v. *Kilpatrick*, 7 B. C. R. 150.

See MALICIOUS PROSECUTION.

PROBATE.

1. Action to recall, must be tried without a jury.] — *Hopper* v. *Dunsmuir* (No. 1), 10 B. C. R. 17.

See PRACTICE, XVI.

2. Fees on.]—*In re Porter Estate*, 10 B. C. R. 275.

See TAXATION, III.

3. Duty is in nature of a legacy duty and payable out of the estate.]—*In re Pearse Estate*, 10 B. C. R. 280.

See WILLS.

4. Of codicil retained by under influence refused.]—*McHugh* v. *Dooley et al.*, 10 B. C. R. 537.

See WILLS.

PROCEDURE.

1. In criminal cases.]—*Regina* v. *Johnson et al.*, 2 B. C. R. 87.

See APPEAL, V.

2. Jury—*Summoning of.*]—*Ross* v. *B. C. Electric Ry. Co.*, 7 B. C. R. 394.

See PRACTICE, XVI.

3. Legislative authority to fix.] — *Sewell* v. *B. C. Towing Co.*, 1 B. C. R. 153.

See CONSTITUTIONAL LAW, II., 1

4. Order of reference is not a matter of.]—*Stevenson et al.* v. *Parks et al.*, 10 B. C. R. 387.

See COURTS, II. 2.

5. Rules as to, are retroactive.] — *Bank of B. C.* v. *Trapp et al.*, 7 B. C. R. 354.

See PRACTICE, XI. 5.

6. Retroactive legislation.] — Legislation affecting the method of levying a tax is legislation affecting procedure and has a retroactive effect. See BEGBIE, C.J., at page 127. *Murne* v. *Morrison*, 1 B. C. R., pt. II., 120.

7. Under election petitions.]—*In re Slocan Municipal Election*, 9 B. C. R. 113.

See ELECTIONS.

See also CRIMINAL LAW—CONSTITUTIONAL LAW—PRACTICE.

PRODUCTION.

1. Of title deeds for purpose of registration.] — *Hudson Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

See also PRACTICE, XI. 7.

PROFITS.

1. Loss of, as ground for damages.] —*Hamilton* v. *Hudson's Bay Co.*, 1 B. C. R., pt. II., 176; *McLennan* v. *Millington*, 5 B. C. R. 345.

See DAMAGES.

PROHIBITION.

1. County Court — *To.*] — *Beamish* v. *Whitewater Mines, Ltd.*, 7 B. C. R. 261

See COURTS. I.

2. Elections — *Voters' lists.*]—After the collector of votes, under the Provincial Elections Act (1897), as amended in 1899, has placed on the register of voters the names of persons objected to, an application for prohibition on the ground that the collector proceeded without jurisdiction, is too late. Semble, in any event prohibition is not the proper remedy. Quære, whether the Crown Office Rules have any application in civil matters. *In re Provincial Elections Act, and In re O'Driscoll* v. *Wright*, 8 B. C. R. 424.

3. Jurisdiction.]—(2) The only ground of prohibition to an inferior Court is that it is exceeding its jurisdiction. *Five Chinamen* v. *The Corporation of the City of New Westminster*, 2 B. C. R. 168.

4. Jurisdiction—*Statement of facts to found — May be contradicted — Costs.*]—A County Court Judge, upon an appeal to him from a summary conviction, has no power to award costs of the appeal to be paid by a person not a party to the conviction or proceedings before the justices, though improperly made respondent to the appeal, and who has not appeared thereon or objected. (2) On motion for prohibition, statement of fact, necessary to found jurisdiction in the inferior Court, appearing in the order of the Inferior Court in question on the motion, may be contradicted. (3) Quære, whether the same rule does not now apply to certiorari and habeas corpus applications. (4) Quære, whether it is necessary to found the jurisdiction of a County Court Judge to deal with a summary conviction on an appeal to him, that the conviction should be before him, since the statutory appeal is in effect a rehearing of the information de novo. An objection to the jurisdiction of the County Court Judge that the conviction was not before him, disregarded. *Re W. N. Bole, Judge of the County Court, etc., in the matter of a certain conviction of Ah Tim and others*, 2 B. C. R. 208.

5. Notice of appeal.]—A notice of appeal from a summary conviction (provincial)

served upon the convicting magistrate is not invalid because it is not also addressed to and served upon the respondent. It is not a pre-requisite to the right of appeal that the person convicted should have been taken into custody. Quære, whether service of notice of appeal on respondent's solicitor would not be sufficient in any event. *Rex* v. *Jordan*, 9 B. C. R. 33.

6. Of Gold Commissioner—*From sitting as Judge in a Mining Court.*]—*Burk* v. *Tunstall*, 2 B. C. R. 12.

See CONSTITUTIONAL LAW, II. 1.

7. Small Debts Act.]—Section 15 of the Small Debts Act, which provides that the decision of the magistrate must be given in open Court, may be waived, either expressly or by the conduct of a suitor, and prohibition in such case will be refused. *Chase* v. *Sing*, 6 B. C. R. 454.

8. Water rights — *Irregularity applied for—Prohibition or certiorari is proper proceeding in case of.*]—*Carson* v. *Martley*, 1 B. C. R., pt. II., 281.

See WATERS AND WATERCOURSES, IV.

PROLIXITY.

1. In statement of claim.] — *Oppenheimer* v. *Sperling et al.*, 10 B. C. R. 162.

See PLEADING, IX. 2.

PROMISE OF EMPLOYMENT.

1. Interpretation of as applicable to Alien Labour Act.]—*Downey* v. *Vancouver Eng. Co.*, 10 B. C. R. 367.

See ALIENS.

PROMISSORY NOTE.

1. Allegation as to presentment.]—*Croft* v. *Hamlin et al.*, 2 B. C. R. 333.

See PRACTICE, XXXVIII. 10.

2. Attachable under garnishee order.]—*Girard* v. *Cyrs*, 5 B. C. R. 45.

See GARNISHMENT.

3. Payable in gold dust—*Effect of.*]—*Belcher et al.* v. *McDonald*, 9 B. C. R. 377.

See APPEAL, VIII. 11.

4. Special indorsement—*Claim of interest after maturity—Waiver of notice of dishonour.*]—*B. C. Corporation* v. *Coughlan et al.*, 3 B. C. R. 273.

See PRACTICE, XXXVIII. 10.

See also BILLS AND NOTES.

PROMOTER.

1. Of company not liable for acts of other promoters.]—*Hung Man* v. *Ellis et al.*, 3 B. C. R. 486.

See PRINCIPAL AND AGENT.

2. Share capital—*Distribution of among promoters.*] — *Fraser River Mining Co.* v. *Gallagher et al.*, 3 B. C. R. 82.

See COMPANY, VI.

PROPERTY.

1. Deadman's Island.]—The statement in the Vancouver Incorporation Acts which are private in their nature, that certain land was a "Government Military Reserve," is not conclusive on the Crown in right of the Province, and:—Held, on the facts, that it was not shewn that Deadman's Island was a military reserve called into existence by properly constituted authority, and, therefore, that it belongs to the Province and not to the Dominion. Remarks as to the powers of Governor Douglas, and as to what constituted a "reserve." *The Attorney-General of British Columbia* v. *Ludgate and the Attorney-General of Canada. Deadman's Island Case.* 8 B. C. R. 242.

PROPOSAL.

1. Written proposal — *Acceptance by parol.*]—*Harris* v. *Dunsmuir*, 6 B. C. R. 505.

See CONTRACT, I. 1.

PROPOSED.

1. Meaning of equivalent to intended.]—*Stoddart* v. *Prentice*, 7 B. C. R. 498.

See ELECTIONS.

PROPOSED ACTION.

1. Courts of Appeal have no jurisdiction in.]—*Tai Yun Co.* v. *Blum et al.*, 2 B. C. R. 348.

See APPEAL, VII.

PROSTITUTION.

1. Action for damages for procuring plaintiff to enter house of.]—*Guilbault* v. *Brothier*, 10 B. C. R. 449.

See ACTION.

PROVINCIAL.

1. Interpretation of word.]—*Keefer* v. *Todd*, 1 B. C. R., pt. II., 249.

See CONSTITUTIONAL LAW, III.

PROVINCIAL COMPANY.

1. Application of Winding-up Acts to.]—*In re B. C. Iron Works Co., Limited Liability*, 6 B. C. R. 536.

See COMPANY, IX.

PROVINCIAL ELECTIONS ACT.

Jardine v. *Bullen*, 6 B. C. R. 220; *Re Tomey Homma*, 7 B. C. R. 368.

See ELECTIONS.

PROVINCIAL GAME ACT.

1. Constitutionality of.]—*Reg.* v. *Boscowitz*, 4 B. C. R. 132.

See CONSTITUTIONAL LAW, II. 8.

PROVINCIAL HEALTH ACT.

See HEALTH.

PROVINCIAL LEGISLATURE.

1. A provincial legislature has no power to delegate its legislative functions to any other body, such as the Lieutenant-Governor in Council. *Sewell* v. *B. C. Towing Co. (Thrasher Case)*. *Per* BEGBIE, C.J., at p. 175, pt. I.; CREASE, J., at p. 220; GRAY, J., at p. 237. 1 B. C. R., pt I., 153.

See CONSTITUTIONAL LAW, II. 1.

2. Powers of.]—*Burk* v. *Tunstall*, 2 B. C. R. 12.

See CONSTITUTIONAL LAW, II. 1.

See also CONSTITUTIONAL LAW — CRIMINAL LAW.

PROXIMATE CAUSE.

1. Of accident.]—*Earle* v. *City of Victoria*, 2 B. C. R. 156; *Stamer* v. *Hall Mines*, 6 B. C. R. 579.

See MASTER AND SERVANT, IV.

See also EMPLOYERS' LIABILITY ACT—MASTER AND SERVANT—NEGLIGENCE.

PUBLIC.

1. Crown alone represents the public.]—*The C. P. Ry. Co.* v. *City of Vancouver*, 2 B. C. R. 306.

See DEDICATION.

PUBLIC DANGER.

1. A ground for injunction.]—*Atty-Gen.* v. *Wellington Colliery Co.*, 10 B. C. R. 397.

See INJUNCTION.

PUBLIC DUTY.

1. The Court should deal with mining disputes upon the principles of a Court of Equity, and should discountenance a plaintiff whose action is based upon defects in title knowledge of which was acquired by him while a government employee in a mining record office, it being contrary to his duty to the public, and those interested in the records, for him so to use such information. *Granger* v. *Fotheringham et al.*, 3 B. C. R. 590.

PUBLIC EMPLOYEE.

1. Use of knowledge—*Gained in employment discountenanced.*]—*Granger* v. *Fotheringham*, 3 B. C. R. 590.

See MINES AND MINERALS, XXXV.

PUBLIC HARBOURS.

See ATTORNEY-GENERAL — HARBOURS—NAVIGABLE WATERS.

PUBLIC HEALTH.

See HEALTH.

PUBLIC LANDS.

1. Unoccupied Crown lands.]—H., in 1893, applied to the Crown to pre-empt the land in question, and obtained a record thereof in his own name from the Crown upon a mis-statement that the same was "unoccupied and unreserved Crown land within the meaning of the Land Act." C., in 1889, made application to the Crown to purchase the land, and, in the belief that his purchase and title from the Crown were completed, entered into actual occupation, and made improvements on the land to the value of $600. H., at the time of his application and record, was aware of the occupation and improvements of C.:—Held, sustaining the decision of the Crown Lands Commissioner, that at the time of the application of H. the lands were not "unoccupied" Crown lands within the meaning of s. 5 of the Act, and were not open to pre-emption and record. That s. 14 of the Land Act, as amended by the Land Amendment Act, 1891, s. 1, "That occupation in this Act required shall mean a continuous bona fide residence of the pre-emptor, or of his family, on the land recorded by him," relates to s. 13, which provides for cancellation of the record of a settler "if he shall cease to occupy such land," and does not govern the question of what lands are "unoccupied" for the purposes of s. 5, supra. Semble, that as H. was a trespasser and a

wrong-doer, $180 awarded by the Land Commissioner to be paid to him for his improvements while in possession was improperly awarded. *Hereron* v. *Christian*, 4 B. C. R. 246.

PUBLIC NUISANCE.

1. Right of Crown to restrain.]—*Atty.-Gen.* v. *Ewen*, 3 B. C. R. 468.

See INJUNCTION.

PUBLIC PARK ACT.

Anderson v. *City of Victoria et al.*, 1 B. C. R., pt. II., 107.

See MUNICIPAL CORPORATIONS, VII.

PUBLIC RIGHT.

1. Invasion of—*Attorney-General necessary party—Crown grant to public uses—Right to divert to other uses—Information—Injunction—Practice—Amendment.*] — The corporation of Victoria was, under Act of Parliament, seized of 120 acres, upon trust, to lay out and maintain the same as a public park or pleasure ground for the enjoyment and recreation of the inhabitants: — Held, that the corporation could not convey any of such lands free from that trust:—Held, that cattle lairs, an agricultural hall for the exhibition of farming implements and products, and an emigrants' home were not within the objects of the trust. An individual inhabitant cannot sue to restrain a misuse of the park, unless specially injured thereby; but the Attorney-General must join or be joined. It is the duty of the Attorney-General, in cases of disputed rights, to remove obstacles in the way of trial of those rights, receiving an indemnity as to costs. *Anderson* v. *Victoria et al.*, 1 B. C. R., pt. II., 107.

PUBLIC SCHOOLS.

1. Maintenance of.]—*Atty.-Gen. of B.C.* v. *City of Victoria*, 2 B. C. R. 1.

See CONSTITUTIONAL LAW, II. 2.

PUBLIC WAY.

1. Foreshore—*Public right of access.*]—*Canadian Pacific Railway Co.* v. *The City of Vancouver*, 2 B. C. R. 306.

2. Landing — *Use of.*] — *Lee* v. *The Olympian*, 2 B. C. R. 84.

See COLLISION.

PUBLICATION.

1. Of libel — *Injunction to restrain.*]—*Wolfenden* v. *Giles*, 2 B. C. R. 279.

See LIBEL AND SLANDER.

PURCHASER.

1. Title—*Purchaser not entitled to call for title until after payment of purchase money.*]—*Foot* v. *Mason*, 3 B. C. R. 377.

See VENDOR AND PURCHASER.

See also AGREEMENT — COMPANY — CONTRACT — REGISTRATION OF DEEDS—VENDOR AND PURCHASER.

QUANTUM MERUIT.

Moore v. *The B. C. Pottery Co.*, 2 B. C. R. 45.

See CONTRACT, VI.

QUARANTINE.

1. Officer—*Powers and duties of.*]—*Wong Hoy Woon* v. *Duncan*, 3 B. C. R. 318.

See HEALTH.

QUARTZ CLAIM.

1. Location of.]—*Bleekir et al.* v. *Chisholm et al.*, 8 B. C. R. 148.

See MINES AND MINERALS, XXIX.

QUASHING BY-LAW.

See MUNICIPAL CORPORATIONS.

QUASHING CONVICTION.

1. For employing Chinamen underground.]—*In re The Coal Mines Regulation Act*, 10 B. C. R. 408.

See CONSTITUTIONAL LAW, II. 5.

2. Where no penalty enforced by legislature.]—*Regina* v. *Little*, 6 B. C. R. 78.

See MASTER AND SERVANT, V.

3. Writ of error—*Practice on application for.*]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXII.

See also CRIMINAL LAW.

QUASHING JURY PANEL.

1. Where twenty persons do not appear.]—*Ross* v. *B. C. Electric Ry. Co., Ltd.*, 7 B. C. R. 394.

See PRACTICE, XVI.

QUIA TIMET ACTIONS.

1. Remarks on nature of.]—*Pcatt et al.* v. *Rhode et al.*, 2 B. C. R. 159.

See WATERS AND WATERCOURSES.

QUESTIONS FOR JURY.

Marshall v. *Cates*, 10 B. C. R. 153.

See MASTER AND SERVANT, V.

QUIETING TITLES ACT.

1. Title by possession.]—A person producing evidence of twenty years' continuous and undisturbed possession of lands is entitled to a declaration from the Court that he is entitled thereto in fee. *In re Loewen and Erb*, 2 B. C. R. 135.

QUI TAM ACTION.

1. Time for.]—*Falconer* v. *Langley*, 6 B. C. R. 444.

See MUNICIPAL CORPORATIONS, V.

QUO WARRANTO.

1. Time for.]—*Falconer* v. *Langley*, 6 B. C. R. 444.

See MUNICIPAL CORPORATONS, V.

2. Whether on injunction, the proper remedy to remove an alderman disentitled on the facts to sit and vote. *Coughlan & Mayo* v. *City of Victoria et al.*, 3 B. C. R. 57.

See INJUNCTION.

RAILWAYS.

I. CANADIAN PACIFIC RAILWAY ACT.

1. Canadian Pacific Ry. — *Powers of charter—Expropriation.*] — On the construction of the C. P. R. Act, 1881:—Held, 1. The construction of the Canadian Pacific Railway from Port Moody to Coal Harbour and English Bay clearly comes within the powers of the company under their Act of Incorporation, and carries with it, as incident thereto, the right of appropriation of land (necessary for its construction), in the mode provided for by the Consolidated Railway Act of 1879. It is immaterial whether the portion so constructed be called an extension or a branch, s.-ss. 17 and 19 of s. 7 of the Consolidated Railway Act, 1879, being inapplicable. It can come within the 14th paragraph of the contract, and, as a branch is fully authorized by the 15th section of the company's Act. *The Canadian Pacific Railway Company* v. *Major*, 1 B. C. R. pt. 2, 287.

2. Canadian Pacific Ry. — *Terminus of.*]—Held, on the construction of the C. P. R. Act, 1881, and the contract and charter incorporated therewith:—1. That Port Moody is thereby constituted the western terminus of the Canadian Pacific Railway. 2. That s.-ss. 19 of s. 7 of the Railway Consolidated Act, 1879, forbidding the extension of any line beyond the terminus is, by s. 18 of the company's charter, imported into the Act of 1881, and is not inconsistent with the general power of the company given by such last mentioned Act, to construct branches from any point along their line, to any other point in Canada. 3. That the company has no power to take lands for any purposes not authorized by some Act of Parliament, and therefore no power to interfere with or construct a line on the plaintiff's lands, which were all to the westward of Port Moody. *Edmonds and others* v. *The Canadian Pacific Railway Company*, 1 B. C. R. pt. II., 272.

3. Canadian Pacific Ry.—*Terminus of —Power to construct beyond.*]—On the construction of the C. P. R. Act, 1881, and the contract and charter incorporate therewith:—Held, by the Divisional Court (GRAY, J., dissenting):—1. That Port Moody is thereby constituted the western terminus of the Canadian Pacific Railway. 2. That s.-ss. 19 of s. 7 of the Railway Consolidated Act, 1879, forbidding the extension of any line beyond the terminus is, by s. 18 of the company's charter, imported into the Act of 1881, and is not inconsistent with the general power of the company given by such last mentioned Act, to construct branches from any point along their line, to any other point in Canada. That the company has no power to take lands for any purposes not authorized by some Act of Parliament, and, therefore, no power to interfere with or construct a line on the plaintiff's lands, which were all to the westward of Port Moody:—Held, (*per* GRAY, J.), that wherever the provisions of the Consolidated Railway Act, 1879, were inconsistent with or contrary to the provisions of the C. P. R. Act, the former were, as to the undertaking carried under the latter Act, to be inoperative. *The Canadian Pacific Railway Co.* v. *Edmonds and others*, 1 B. C. R. pt. II., 295.

II. INJURY TO ANIMALS.

1. Barbed wire fence — *Whether inherently dangerous.*]—The company maintained along its line of railway a barbed wire boundary fence, without any pole, board or other capping connecting the posts; plaintiff's horse, picketed in their field adjoining, became frightened from some cause unexplained, and ran into the fence, receiving injuries on account of which it had to be killed:—Held, that the fence was not inherently dangerous, and therefore the company was not liable. The test is whether the fence is dangerous to ordinary stock under ordinary conditions, and

not whether it is dangerous to a bolting horse. Judgment of LEAMY, Co.J., reversed, IRVING, J., dissenting. *Plath and Ballard* v. *The Grand Forks and Kettle River Valley Railway Company*, 10 B. C. R. 299.

III. INJURY TO PERSONS.

1. Coal train—*Travelling without ticket.*]—The plaintiff's intestate had a contract with the defendant company to repair a bridge, and the jury found inter alia, that he went thither on such business on a coal train without any ticket, but with the consent of the officer in charge, and that the latter had no authority, unless by custom, to allow the deceased to travel on the train:—Held, by the Full Court, reversing IRVING, J. (DRAKE, J., dissenting), that the findings were inconclusive, and that there should be a new trial. *Nightingale* v. *Union Colliery Co.*, 8 B. C. R. 134.

2. Tramway — *Invitation to alight — Passenger travelling on pass.*] — Special tickets at reduced rates were issued by the defendant company to persons living along the line, and one was held by W., limited to the use of himself and the members of his family between Vancouver and Central Park Station. The plaintiff, who lived in Vancouver, went to visit the W.'s, travelling as was her custom on W.'s ticket, although not a member of the family. W. lived beyond Central Park station, and the company gratuitously and for her own convenience carried the plaintiff some four hundred yards further on where she was allowed to alight. At this place the ground was not level and a person living along the line had been permitted for his own convenience to lay down on the right of way a platform, one end of which rested on the ground and the other upon a plank. The plaintiff descended safely to the platform, but in passing from it she fell and was injured, owing, as alleged, to some defect in the condition of the plank supporting it:—Held, in an action for damages, that the company was not liable. *Burke* v. *B. C. Electric Railway Co., Ltd.*, 7 B. C. R. 85.

IV. LANDS.

1. Expropriation — *Injunction restraining.*]—The defendant company was originally incorporated in 1897, by an Act of the Legislature of British Columbia, and on 28th June, 1898, by an Act of the Parliament of Canada. Its objects were declared to be works for the general advantage of Canada, and thereafter to be subject to the legislative authority of the Parliament of Canada, and the provisions of the Railway Act, except s. 89 thereof. Sec. 4 of the Dominion Act of 1898, required the railway to be commenced within two years. In 1901, the defendant company commenced expropriation proceedings in respect of the plaintiff hotel company's lands, and by consent took possession and proceeded with construction, negotiations to determine the amount of compensation by arbitration being carried on in the meantime. The defendant company had purchased for its line of railway land on either side of the plaintiff railway company's right of way, and had applied to the Railway Committee of the Privy Council for leave to make a crossing. On the application of plaintiffs, who alleged inter alia that the defendants' railway was not commenced within two years, that no map or plan and profile of the whole line of railway had been prepared and deposited in the Department of the Minister of Railways, and that the work being done by the defendant company was not authorized and was not being prosecuted in good faith by the company under its charter, but was really for the benefit of the Great Northern Railway Company, so that it might extend its railway system, which lies south of the International boundary, into British Columbia. Injunctions were granted restraining until the trial of the action defendant company from continuing in possession and proceeding with the expropriation of the land of the plaintiff hotel company, and also from taking any proceedings toward effecting the proposed crossing of the right of way of the plaintiff railway company. Motions to dissolve the injunctions were refused. *Yale Hotel Co., Ltd.*, v. *V. V. & E. Ry. & W. Co.*, 9 B. C. R. 66.

2. Lands — *Power to acquire, whether governed by local or Dominion Act.*]—The Columbia and Western Railway Company was incorporated in 1896, by the Provincial Legislature, one of the powers given to build branch lines, and on 13th June, 1898, by an Act of the Dominion Parliament, its objects were declared to be works for the general advantage of Canada, and thereafter to be subject to the legislative authority of the Dominion Parliament, and to the provisions of the Railway Act:—Held, on an application for a warrant of possession, that the company's power to acquire land for branch lines after 13th June, 1898, must be exercised in accordance with the Dominion Railway Act. *In re Columbia and Western Railway Company and the Railway Acts*, 8 B. C. R. 415.

V. LIABILITY FOR ACTS OF SERVANTS OR AGENTS.

1. Flooding of adjoining lands by construction of embankment.]—*Hornby* v. *New Westminster Southern Ry. Co.*, 6 B. C. R. 588

See WATERS AND WATERCOURSES, I.

2. Liability for injury caused by defect in truck.]—*Wood* v. *C. P. Ry. Co.*, 6 B. C. R. 561.

See MASTER AND SERVANT, IV.

3. Limitation of liability for loss of goods.]—*Wensky* v. *Canadian Development Co.*, 8 B. C. R. 190.

See CARRIERS.

4. Trespass committed by servant.]—A corporation is liable for a trespass committed by its servant while conducting its business, although committed in the doing of an act ultra vires of the corporation itself. Where the servant of a corporation forms an erroneous judgment, and, in the supposed scope and discharge of the duty delegated to him, commits a trespass, the corporation is liable for it. The objection that, upon the evidence, the act complained of was not done by the servant in the course or within the

scope of his employment by defendants, and was unauthorized by them, is not open to defendants upon motion for a non-suit unless they pleaded it as a defence. A Judge in charging a jury may read to them parts of an examination for discovery additional to the parts put in evidence by counsel. *Adams v. The National Electric Tramway and Lighting Co.*, 3 B. C. R. 199.

VI. Tramways.

1. B. C. Railway Act, 1890, s. 38—*Whether Westminster & Vancouver tramway a "railway" — Res Judicata — Divisional Court—Whether concluded by prior judgment of same Court upon another interlocutory appeal—S. C. Rule* 234.]—The plaintiff company, as judgment creditor of the Westminster & Vancouver Tramway Company, brought the action against the defendants, as shareholders therein, to compel them to contribute and pay to the plaintiff company, out of the amounts respectively unpaid up by them upon their shares in the company, a sum sufficient to satisfy the judgment. The statement of defence raised an objection in point of law to the whole claim, that the tramway company was not within the Act, as not being a "railway company." Upon argument thereon DRAKE, J., decided the point of law in favour of the defendants. Upon appeal by the plaintiff company, the Divisional Court (CREASE and WALKEM, JJ., MCCREIGHT, J., dissenting), affirmed the judgment of DRAKE, J. Upon motion then made to him by the plaintiff company under Supreme Court Rule 234, DRAKE, J., made an order dismissing the action as being substantially disposed of by the decision of the point of law. Upon appeal by the plaintiff company from that order, upon the grounds inter alia, that the point of law was wrongly decided, the Divisional Court (DAVIE, C.J., MCCREIGHT and WALKEM, JJ.):—Held, that the tramway was a "railway" within the Act, and plaintiff should have succeeded on the point of law. *Edison General Electric Co.* v. *Edmonds*, 4 B. C. R. 354.

2. Tramway—*Agreement to run to city limits—Extension of.*]—The promoters of a street railway company entered an agreement with the city in 1888, and agreed to run cars along Douglas Street to the northern boundary of the city limits. They became incorporated as a joint stock company, and in 1889, obtained a charter authorizing the construction of tramways connecting the country districts with the city system, and in pursuance of the new powers continued the Douglas Street tramway northerly along the Saanich Road. Traffic on this extension was discontinued in 1898, because it did not pay. In 1892, the city limits were extended so as to include a portion of the Saanich Road on which the tramway had been built. In 1894, the company obtained a private Act for the consolidation and confirmation of its rights, powers and privileges, and ratifying the agreement of 1888, between the city and the original promoters:—Held, in an action for a declaration that the company was bound to operate its tram system along Douglas Street to the extended city limits, that the company was not bound to do so. Quære, whether a ratepayer could sue. *Yates et al.* v. *B. C. Electric Railway Company, Limited*, 7 B. C. R. 323.

VII. Miscellaneous.

1. Crown Franchise Regulation Act—*Inapplicable to railways.*]—The defendant railway company was originally incorporated in 1897 by a Provincial Act, and in 1898 by a Dominion Act, its objects were declared to be works for the general advantage of Canada and thereafter to be subject to the legislative authority of the Parliament of Canada and the provisions of the Railway Act:—Held, by IRVING, J., setting aside an order allowing the Provincial Attorney-General to bring an action at the instance of a relator under the Crown Franchises Regulation Act, that the said Act did not apply to the company. *The Attorney-General of British Columbia ex rel. The Kettle River Valley Railway Company* v. *The Vancouver, Victoria and Eastern Railway and Navigation Company*, 9 B. C. R. 338.

2. Engineers—*Income of, whether taxable.*]—*In re The Assessment Act*, 9 B. C. R. 69.

See TAXATION, I.

3. Mechanic's lien — *Stat. B. C.* 1891, *c.* 23—*Whether lien given by for work done on a railway—Whether statute applicable to a railway within the exclusive legislative authority of the Dominion—Conflict of laws.*]—The Mechanics' Lien Act, 1891, B. C. c. 23, s. 8: "Every mechanic's lien shall absolutely cease after the expiration of thirty-one days after the work shall have been completed, etc., unless in the meantime the person claiming the lien shall file . . . an affidavit . . . stating in substance (c) the time when the work was finished or discontinued . . . which affidavit shall be received and filed as a lien against such property, interest, or estate. The registrar-general, district-registrar and every government agent shall be supplied with printed forms of such affidavits in blank, which may be in the form or to the effect of Schedule 'A' to this Act, and which shall be supplied to every person requesting the same and desiring to file a lien." The form of affidavit in schedule "A" had the clause: "That the work was finished or discontinued on or about the . . . day of . . . ." *Per* SPINKS, Co.J., discharging the lien; that an affidavit stating the time when the work was finished as "on or about," etc., was insufficient. Upon appeal to the Supreme Court, the Court expressed no opinion as to the correctness of the ruling of the learned County Court Judge, but declined to maintain his judgment on that ground. *Per* CREASE, J.: The requirements of the various sections of the Dominion Acts governing the railway in question are so at variance with the recognition of mechanics' liens thereon under a provincial statute, that it is impossible for the two to stand together, and, therefore, the Dominion legislation must prevail. *Per* MCCREIGHT, J.: The language of the Mechanics' Lien Act, R. C., 1891, s. 4, is insufficient to confer a lien upon a railway in respect of work done thereon. The provisions of the Act as to the priority of mechanics' liens upon the property charged being inconsistent with the provisions of the Dominion Railway Act, 1888, as to the priority of mortgages upon railways, as it is to be inferred that the Provincial Legislature did not intend the Act, and it is not to be construed to apply to railways within the

control of the Dominion Parliament. *Larsen v. Nelson & Fort Sheppard Railway Company et al.*, 4 B. C. R. 151.

4. Provincial Act requesting fences along — *Is ultra vires.*] — *Madden* v. *The Nelson & Fort Sheppard Ry. Co.*, 5 B. C. R. 541.

See CONSTITUTIONAL LAW, II. 7.

See also CARRIERS.

RATEPAYER.

1. Right of, to sue to enforce agreement with municipality.]—*Yates et al. v. B. C. Electric Ry. Co., Ltd.*, 7 B. C. R. 323.

See RAILWAYS, VI.

RATIFICATION.

1. By accepting instalments under agreement for sale of land.]—*Hobbs* v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

2. Of contract, as a defence must be pleaded.]—*Harper* v. *Cameron*, 2 B. C. R. 365.

See CANCELLATION OF INSTRUMENTS

See also MASTER AND SERVANT—PRINCIPAL AND AGENT.

REASONABLE AND PROBABLE CAUSE.

1. Question left to jury.] — *Baker* v. *Kilpatrick*, 7 B. C. R. 150.

See MALICIOUS PROSECUTION.

RECEIPT.

1. For goods — *Parol evidence, whether admissible to supplement terms of.*]—*Hamilton* v. *Hudson's Bay Co. et al.*, 1 B. C. R. pt. II., 1.

See CARRIERS.

RECEIVER.

1. Appointment of—*At instance of judgment creditor — Whether an "execution" within meaning of Executions Act.*]—The appointment of a receiver of the estate of a judgment debtor at the instance of his judgment creditor by way of recovering upon the judgment is not an "execution" within the meaning of the Execution Act, s. 21, and clerks and servants of the execution debtor have no right to an order for payment of their wages out of the amount realized by the receiver in priority to the claim of the judgment creditor. *Aspland* v. *Hampson & Co.*, 3 B. C. R. 299.

2. Appointment of — *Where liabilities small.*]—*Cane* v. *Macdonald*, 9 B. C. R. 297.

See PARTNERSHIP, II.

3. Appointment of — *In an action against an executor.*]—*Harper* v. *Harper et al.*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

4. Appointment of — *In place of trustees.*]—*Garesche* v. *Garesche*, 4 B. C. R. 310.

See TRUSTS.

5. Appointment of—*To preserve property where fraud charged.*]—*Christie* v. *Fraser, et al.*, 10 B. C. R. 291.

See INJUNCTION.

6. Creditors' Relief Act, 1883 — *Whether a receiver is within Act.*]—M. had obtained a judgment in the action against L. The defendant being examined swore that he had no goods nor lands upon which execution could be levied on a fi. fa.; but that there were some contingent payments which he expected to receive shortly. Thereupon M. procured an order appointing himself receiver, without previously taking out a useless fi. fa. Afterwards certain unpaid workmen of L. asked, under the above Act, that M. should be ordered to satisfy their claims, preferentially, out of any moneys coming to him as receiver: —Held, that as there was no writ of fi. fa. nor any execution thereon, nor any lands or goods, the statute did not authorize the application. Semble, it is not sufficient in such a case that the workmen should claim to be in arrear of wages; the claim should be established against both the judgment debtor and the execution creditor, or at least against the judgment debtor. Semble, a receiver is not within the Act. An act which takes away the legal right of a diligent litigant to bestow it gratis on a stranger is to be construed strictly according to its letter. *Muirhead* v. *Lawson, In re Creditors' Relief Act*, 1883. *McLean's Case*, 1 B. C. R pt. 2, 113.

7. Debenture holders—*Receiver on behalf of, has right to enforce security.*]—*In the matter of the Giant Mining Co., Ltd.*, 10 B. C. R. 327.

See COMPANY, IX.

8. Execution—*Appointment of receiver is not an execution.*]—The appointment of a receiver of the estate of a judgment debtor at the instance of his judgment creditor by way of recovering upon the judgment, is not an "execution" within the meaning of the Execution Act, s. 21, and clerks and servants of the execution debtor have no right to an order for payment of their wages out of the amount realized by the receiver in priority to the claim of the judgment creditor. *Aspland* v. *Hampson & Co.*, 3 B. C. R. 299.

9. Failure to have one appointed — *Effect of.*]— *Wilson Bros.* v. *Donald*, 7 B. C. R. 33.

See PRACTICE, XXXVIII. 5.

10. Garnishment — *Money in hands of receiver not garnishable.*]—*Gray* v. *Purdy*, 5 B. C. R. 241.

See GARNISHMENT.

11. Judgment creditor — *Receiver for purpose of giving equitable relief*]—*Davidge v. Kirby*, 10 B. C. R. 231.

See EXECUTION.

12. Objection that the person proposed as, was the partner of the husband of one of the beneficiaries overruled. *Garesche v. Garesche*, 4 B. C. R. 310.

13. Orders for.] — Receivership orders must be made by the Court, and cannot be made by a Judge sitting in Chambers. *Wakefield v. Turner*, 6 B. C. R. 216.

14. Parties—*Receiver, right of action of.*] —Trustees having refused to bring an action to recover funds of the estate, certain of the beneficiaries brought the action in their own names and obtained an order removing the trustees and appointing a receiver in their place, with leave to substitute the receiver as plaintiff. He was substituted accordingly by a subsequent order. Neither of the above orders was appealed from, but at the trial the defendants, while not objecting to the receiver as plaintiff, objected that there was no cause of action in him, whereupon one of the beneficiaries previously struck out asked to be joined as plaintiff. *Per* DRAKE, J.: (1) That there was no cause of action in the receiver. (2) That the Full Court alone had power to restore a plaintiff struck out by order of a Judge:—Held, by the Full Court (DAVIE, C.J., MCCREIGHT and MCCOLL, JJ.): That the action should be carried on in the names of the receiver and one of the beneficiaries, with leave to any of the other beneficiaries to apply to be added as plaintiffs. *Shallcross v. Garesche*, 5 B. C. R. 320.

15. Partnership — *Appointment of receiver on rescission of*]—*Roedde v. The News Advertiser Co.*, 4 B. C. R. 7.

See PARTNERSHIP, I. 2.

16. Partnership—*Creditor of entitled to receiver.*]—A creditor of a partnership is entitled, under the Judicature Act, in an otherwise proper case, to an interim injunction and a receiver of the partnership estate in an action against surviving partners, and personal representatives of a deceased partner, and trustees under an assignment for the benefit of creditors by the surviving partners, and the rule formerly prevailing in equity, that to obtain such relief, there must be some fiduciary relationship between plaintiff and defendant, does not apply since the Judicature Act, which gives the power to grant an injunction or receiver by interlocutory order in all cases in which it shall appear to the Court to be just or convenient. An applicant for a receiver or injunction must still shew some claim upon the subject matter of the suit or some special relation with defendant. *The Hudson's Bay Co. v. Green et al.*, 1 B. C. R., pt. I., 247.

17. Partnership — *Salary of Dominion Government official—No receiver in respect of.*]—While C. and M. were in partnership as architects, M. received an appointment from the Dominion Government as supervising architect and clerk of the works in connection with a Government building being erected in Nelson, and for a time M. paid the salary of the office into the partnership funds. M afterwards notified C. that the partnership was at an end and thereafter refused to account for the salary. C. sued for a declaration that he was entitled to half the salary since the dissolution and asked that a receiver be appointed of it and also of the book debts of the firm, which he alleged M. had been collecting and not accounting for:—Held, by the Full Court, that no receiver of the salary could be appointed; that although the amount of the book debts was small there should be a receiver in respect to them. *Per* HUNTER, C.J., at the trial: Even if it were agreed that the appointment should be for the benefit of the firm, all the partners would not have any right to share in the salary after the dissolution of the firm, unless there was a special agreement to that effect. *Cane v. MacDonald*, 9 B. C. R. 297.

18. Ship in possession of receiver not seizable by sheriff.]—*Williamson v. Bank of Montreal*, 6 B. C. R. 486.

See ADMIRALTY, V.

19. Wrecks—*Receiver of—Duty of salver to deliver ship salved to receiver of wrecks.*] —*Jacobsen et al. v. Ship "Archer,"* 3 B. C. R. 374.

See SALVAGE.

RECITAL.

1. Bill of sale—*Recital in not operating as an estoppel.*]—*Rithet et al. v. Beaven et al.*, 5 B. C. R. 457.

See CHATTEL MORTGAGES.

2. Private Acts — *Recitals in, whether binding on the Crown.*]—*The Attorney-General of B. C. v. Ludgate et al.*, 8 B. C. R. 242.

See MILITIA.

RECOGNIZANCE.

1. Case stated—*Necessity for recognizance on.*]—*Rex v. Geiser*, 8 B. C. R. 169.

2. Certiorari—*Necessity for recognizance on motion for certiorari — Rule 5 Crown side.*]—*Rex v. Geiser*, 9 B. C. R. 504.

See CERTIORARI.

3. Certiorari—*Recognizance to prosecute motion for.*]—*Regina v. Ah Gin*, 2 B. C. R. 207.

See CRIMINAL LAW, IV.

4. Summary conviction—*Recognizance must be entered into before entry of appeal from summary conviction*]—*Regina v. King*, 7 B. C. R. 401.

See CRIMINAL LAW, XVIII.

RECORDS.

1. B. C. Land Registry Ordinance, 1870, s. 47—*Construction of.*]—Section 47, supra, provides: "The owner in fee of any

land, the title of which shall have been registered for the space of seven years, may apply to the registrar for a certificate of indefeasible title?"—Held, *per* BEGBIE, C.J., that the applicant himself must have been the registered owner for seven years, in order to obtain a certificate of indefeasible title. *In re Trimble*, 1 B. C. R., pt. II., 321. But see *In re Shotbolt*, 1 B. C. R., pt. II., 337; *In re Vancouver Imp. Co.*, 3 B. C. R. 601.

2. Cancellation of ordinary certificate of title under s. 61, upon issue of certificate of indefeasible title under s. 17.]—The Registrar-General has power to cancel the ordinary certificate of title, upon issue of a certificate of indefeasible title. *Re J. H. Turner*, 2 B. C. R. 244.

3. Certificate of indefeasible title—*When grantable—C. S. B. C. c. 67, s. 68.*]—By the Land Registry Act, C. S. B. C., 1888, s. 67 c. 63, "The owner in fee of any land, the title to which shall have been registered for the space of seven years, may apply to the registrar for a certificate of indefeasible title." The applicants applied to the registrar at Vancouver for a certificate of indefeasible title to the lands in question upon an affidavit that they "are the owners in fee of the lands, the title of which lands has been registered for the space of seven years." The registrar held that the applicant must prove a seven years' registered title in himself, following In re Trimble (*per* BEGBIE, C.J., 1 B. C., pt. II., 321), and refused the application. Upon an appeal to a Judge, MCCREIGHT, J., affirmed the registrar and dismissed the appeal. Upon appeal from MCCREIGHT, J., to the Full Court:—Held, *per* BEGBIE, C.J., and DRAKE, J., that the construction of the registrar and MCCREIGHT, J., was correct, and that the appeal should be dismissed. *Per* CREASE and WALKEM, JJ., that all that was necessary under the language of the Act was that the applicant should be the owner of the lands, the title, not his title, to which had been a registered title for seven years, and that the appeal should be allowed. *In re Vancouver Improvement Company*, 3 B. C. R. 601.

4. Certificate of judgment.]—(2) Registration against lands of a certificate of the judgment appealed from is not a proceeding by way of execution thereof, and is not superseded by appellant giving security for the whole judgment debt and costs under R. S. C. c. 135, s. 47 (e). O'Donohoe v. Robinson, 10 Ont. App. Rep. 622, distinguished. Remarks of WALKEM, J., on res judicata and second application. *Foley* v. *Webster*, 2 B. C. R. 251.

5. Crown lands—*Record obtained by misrepresentation — Unoccupied lands — Trespasser making improvements.*]—H., in 1893, applied to the Crown to pre-empt the land in question and obtained a record thereof in his own name from the Crown upon a mis-statement that the same was not improved, etc., and a statutory declaration that the same was "unoccupied and unreserved Crown land within the meaning of the Land Act." C., in 1889, made application to the Crown to purchase the land, and, in the belief that his purchase and title from the Crown were completed, entered into actual occupation, and made improvements on the land to the value of $600. H., at the time of his application and record, was aware of the occupation and improvements of C.:—Held, sustaining the decision of the Crown Lands Commissioner, that at the time of the application of H. the lands were not "unoccupied" Crown lands within the meaning of s. 5 of the Act, and were not open to pre-emption and record. That s. 14 of the Land Act, as amended by the Land Amendment Act, 1891, s. 1, "The occupation in this Act required shall mean a continuous bona fide residence of the pre-emptor, or of his family, on the land recorded by him," relates to s. 13, which provides for cancellation of the record of a settler, "if he shall cease to occupy such land," and does not govern the question of what lands are "unoccupied," for the purposes of s. 5, supra. Semble, that as H. was a trespasser and wrong-doer, $180 awarded by the Land Commissioner to be paid to him for his improvements while in possession was improperly awarded. *Hercron* v. *Christian*, 4 B. C. R. 246.

6. Devisee in fee from testator—*Whether entitled to certificate of indefeasible title.*]—A devisee in fee from a testator who was entitled to a certificate of indefeasible title, but which had not been issued, is not entitled to such certificate except upon the usual conditions. Semble, that even if such certificate had been issued to the testator the devisee would not ipso facto have been entitled. *In re Trimble, In re the Land Registry Act*, 1 B. C. R., pt. II., 321.

7. Land Registry Act—*Indefeasible title—Retrogression.*]—Under the Land Registry Acts, the transferee of an indefeasible title in fee simple is entitled to be registered as the owner of the same estate, and there is no retrogression after the stage of indefeasibility has been reached. Objects, history, and working of the Land Registry Acts fully discussed. *In re Shotbolt, and In re Part of Lot 173, Victoria*, 1 B. C. R, pt. II., 337.

8. Land Registry Act, s. 35 — *Registered title and prior unregistered charge—Whether constructive notice of charge sufficient.*] — The registrar registered a conveyance from K. to R. as a charge, without either the title deeds or certificate of title being produced or accounted for by R. They were, in fact, outstanding in the hands of plaintiffs, as prior equitable mortgagees of the lands. Express notice to R. of the equitable mortgage was not proved, but he inquired of K. for the title deeds and certificate, and they were not accounted for. The action was for foreclosure of the equitable mortgage:—Held, *per* WALKEM, J.: The Act devolves upon the registrar the duty of satisfying himself of the primâ facie title of an applicant, as a pre-requisite to its registration, either by requiring production of the title deeds, or an affidavit satisfactorily explaining their non-production, and that the registration of R.'s conveyance was invalid, as against the plaintiffs, for want of the authorization of the registrar upon the basis required by the Act, and that, as an unregistered purchaser, he was not protected by s. 35 against the plaintiff's prior unregistered charge. On appeal to the Full Court (Per DAVIE, C.J., CREASE, J., concurring, overruling WALKEM, J.): (1) The purchaser of a registered title is within the protection of s. 35, whether he registers his own conveyance or not. (2) The principle of Lee v. Clutton, 45 L. J. Ch. 43, 46 L. J. Ch. 484, is applicable to the British Columbia Land Registry Act. The

policy of the Act is to free the purchaser of a registered title from the imputation of constructive notice, and in the absence of express notice such a purchaser of lands for valuable consideration will, under *s.* 35, have priority over a prior unregistered charge, notwithstanding that he knew that the title deeds were in the possession of persons other than the vendor, and abstained from inquiry. To take such a purchaser out of the protection of s 35, he must be guilty of conduct equivalent to fraud, and, as fraud is never presumed, it will not be imputed by inference, or in the absence of proof of express notice of the facts, the knowledge of which constitutes the fraud. *Per* McCREIGHT, J. (dissenting): The Act has not absolved a purchaser from the duty to inquire for the title deeds, but accentuates it, particularly in regard to the certificate of title, and neglect to inquire indicates a design, inconsistent with bonâ fides, to avoid knowledge. Constructive notice of a prior unregistered charge is sufficient to take the purchaser out of the protection of s. 35, and, on the facts, notice therefore must be imputed to the purchaser and his title postponed to such charge. *H. B. Co.* v. *Kearns & Rowling*, 4 B. C. R. 536.

9. Lis pendens—*Nature of the interest of plaintiff in the lands required to be shewn in the action.*]—Plaintiff claimed in the indorsement on his writ, on behalf of himself and the other creditors of the defendant Marie Schneider, a declaration that a conveyance made by her to her husband (co-defendant) of certain lands, was fraudulent and void as against them, and obtained and registered in the land registry office a lis pendens against the lands in question. On motion to set aside the registration of the lis pendens:—Held, *per* DRAKE, J., and affirmed on appeal by the Divisional Court (CREASE and WALKEM, JJ.), that the statement of claim indorsed on the writ shewed an interest in the plaintiff, as a creditor, in the subject matter, sufficient to maintain the action and to support the registration of the lis pendens, though only a declaratory order, and no consequent relief was prayed. *In re The Land Registry Act, Bevilockway* v. *Schneider*, 3 B. C. R. 90.

10. Mineral claim—*Effect of recording transfer of.*]—*Grutchfield* v. *Harbottle*, 7 B. C. R. 344.

See MINES AND MINERALS, XXXI. 5.

11. Mineral claim — *Recording certificate of work—Effect of.*]—*Peters* v. *Sampson*, 6 B. C. R. 405.

See MINES AND MINERALS, IX. 4.

12. Order for declaration of title on 20 years' continuous possession.]—Petitioners obtained an order for the issue of a declaration of title to them in fee, on producing evidence of 20 years' continuous and undisturbed possession, and other acts of ownership, payment of taxes, non-payment of rent, and non-acknowledgment of title. *In re Loewen & Erb*, 2 B. C. R. 135.

13. Priorities between equitable mortgage and subsequent registered conveyance—*Fraud—Constructive notice—Onus of proof — Pleading — Statute of Frauds.*]—Action to foreclose an equitable mortgage by deposit of title deeds, brought up by the plaintiffs against the mortgagor, K., and a person, R., who appeared on the title as the grantee of the lands under a deed made to him by K. subsequent to, and, as the plaintiffs' claim alleged, in fraud of the mortgage; which deed he had registered, not as a fee but as a charge against the lands. K. had suffered judgment by default. Neither notice of the mortgage, nor want of valuable consideration for the deed, were charged against R. in the statement of claim, or negatived by him in his defence, in which he claimed that, under s. 31 of the Land Registry Act, his registered charge was entitled to prevail over the plaintiffs' unregistered charges, and also set up the Statute of Frauds. At the trial R. called no evidence, and maintained that the onus probandi to displace his primâ facie statutory priority was on the plaintiffs, and that he was entitled to judgment:—Held, *per* WALKEM, J., on motion for judgment, dismissing the action as against R., that his registered charge had a primâ facie validity and priority, under s. 31, and that the onus of proof of want of consideration, fraud, or notice to him of the mortgage, was on plaintiffs:—Held, by the Full Court on appeal, *per* CREASE, J.: That in the state of the pleadings and evidence, fraud on R.'s part could not be assumed by the Court, but that there should be a new trial to determine the question of the bonâ fides of the deed. *Per* McCREIGHT, J.: That before the statute the burden of proof would have been upon R. to shew that he made inquiries for the title deeds, and gave valuable consideration for his deed from K., as being facts peculiarly within his knowledge and not of the plaintiff's, and that, not having done so, he was, by their absence, affected with constructive notice of the mortgage. That by s. 35 he was only relieved from the effect of such notice by proving himself a purchaser for value, and that the onus for so doing was therefore on him, and that as to the effect of notice, s. 31 must be read as subject to s. 35, which alone deals with that question. Quære, whether the non-compliance with ss. 13, 19, 54 and 55 of the Act as to production of title deeds vitiated the registration. *Per* DRAKE, J.: That, on the facts, the presumption was that R. had actual, or that there was constructive notice to him of the equitable mortgage, and the onus was on him to allege and prove valuable consideration for his deed. That the deed was improperly registered as a charge, and that the plaintiff should not be prejudiced by the mistake of the registrar. *The Hudson's Bay Co.* v. *Kearns & Rowling*, 3 B. C. R. 330.

14. Registered plan — *Description of land by reference to plan—Right to object to validity.*]—The owner of a district lot registered in 1885 a plan of it drawn to scale, but not shewing the sub-divisions, and afterwards had another plan made from a survey and which differed from the registered one; from an inspection of the ground and the unregistered plan, one Kilby, who was unaware of the registered plan, bought, in 1889, lot 16, and registered the deed which did not refer to the plan. On 11th July, 1889, the defendant bought from the same vendor lot 15. In 1890, the defendant bought from Kilby lot 16, the deed shewing the purchase to be according to the registered plan, but before purchase she inspected the property and saw the boundaries which were then according to the unregistered plan. Lot 16, according to registered plan, overlapped lot 15 according to the unregistered

plan:—Held, in an action for possession by the owner of lot 16: (1) That both plaintiff and defendant must be deemed to be holders of their respective parcels according to the registered plan and to have registered their conveyance in conformity with the Land Registry Act. (2) It was not open to defendant who had accepted and registered a conveyance of land according to a registered plan, to afterwards object, in an action respecting the title to the same land, to the validity of that plan. Decision of DRAKE, J., affirmed. *Fowler* v. *Henry*, 10 B. C. R. 212.

15. Time for recording mineral claim.]—The claimant of an interest in a mineral claim seized, under an execution on the 18th May, 1903, relied on a bill of sale obtained by him on the 23rd February, 1903, while in Dawson, Y. T., over 2,000 miles from the Mining Recorder's office. The bill of sale was not recorded until 22nd May, 1903:—Held, that as the time for recording mineral claims fixed by s. 19 of the Mineral Act is dependent upon the distance of the claim (not of the locator) from the recorder's office, therefore by s. 49 of the Act the bill of sale was of no effect as against the intervening execution, as it was not recorded within the time limited by said s. 19. *Dumas Gold Mines, Limited*, v. *Boultbee et al.*, 10 B. C. R. 511.

16. Transfer of indefeasible title—*Transferee in of same estate as that held by his transferor under s.* 45 — *Land Registry Act.*]—The transferee of the holder of a certificate of indefeasible title is entitled to be registered as the owner of an indefeasible title under s. 45 of statute, supra. *In re Shotbolt*, 1 B. C. R., pt. II., 337.

17. Writ of error—*Reservations of questions of law—What the record should contain—Effect of not setting forth where offence was committed.*]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXII.

See also DEEDS — JUDGMENTS — INDEFEASIBLE TITLE — MINES AND MINERALS, XXXI. 5—REGISTRATION OF DEEDS.

RECOUNT.

1. Supreme Court Judge has no jurisdiction to order production of ballots by Deputy Provincial Secretary for purposes of a recount. *Re Fernie Election Petition*, 10 B. C. R. 151.

See ELECTIONS.

RECTIFICATION.

1. Of Crown grant of mineral claim.]—*In re The American Boy Mineral Claims*, 7 B. C. R. 268.

See MINES AND MINERALS, XV.

2. Of register of shares.] — *Ex parte John Bibby*, 1 B. C. R., pt. II., 94.

See COMPANY, VI.

RECURRENCE.

1. Of injury — *Precautions against will not prevent injunction being granted.*]—*Atty.-Gen. for the Dominion of Canada* v. *Ewen*, 3 B. C. R. 468.

See INJUNCTION.

REDEMPTION.

1. Of chattels—*Sold under chattel mortgage.*]—*Van Volkenburg* v. *Western Canadian Ranching Co.*, 6 B. C. R. 284.

See CHATTEL MORTGAGE.

2. Of mortgage—*Power of Judge to vary order for by adding condition as to payment of subsequent costs.*]—*Lehman* v. *Wilkinson*, 3 B. C. R. 19.

See MORTGAGE.

3. Of mortgage—*By purchaser of execution.*]—*Keary* v. *Mason*, 2 B. C. R. 48.

See MORTGAGE.

REDISTRIBUTION ACT.

1. Regulation under.]—The Lieutenant-Governor in Council has power, under the Elections Act and s. 11 of the Redistribution Act, to make regulations providing that affidavits sworn outside the Province may be received by collectors of voters and the applicants' names be placed upon the register. *Per* WALKEM and DRAKE, JJ.: Acts affecting the franchise should be construed liberally so as not to disfranchise persons having the necessary qualifications of voters. *In re Provincial Elections Act*, 10 B. C. R. 114.

REEVE.

1. Of municipal council is persona designata for tax sale purposes.]—*Tracy* v. *District of North Vancouver*, 10 B. C. R. 235.

See MUNICIPAL CORPORATIONS, IX.

REFERENCE.

1. Court—*Reference to "Court"—Meaning of.*]—*In the Matter of the Horsefly Mining Co.*, 4 B. C. R. 165.

See COURTS, II. 2.

2. Yukon Courts—*Power of to make order for.*]—*Williams et al.* v. *Faulkner et al.*, 8 B. C. R. 197.

See COURTS, II. 2.

REFUSAL.

1. By one Judge of an application for habeas corpus — *Right to apply to other judges in turn.*]—*Re George Bowack*, 2 B. C. R. 216.

See HABEAS CORPUS.

2. Of a motion or application—*Meaning of.*]—*Short* v. *Federation Brand Salmon Canning Co.*, 7 B. C. R. 35.

See APPEAL, VIII. 11.

REGISTER.

1. Of shares — *Rectification of.*] — *Ex parte John Bibby*, 1 B. C. R., pt. II., 94.

See COMPANY, VI.

2. Of voters — *Application to be placed on.*]—*In re Provincial Elections Act*, 10 B. C. R. 114.

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REGISTRAR.

1. Duty of in respect to judgments.]—*Byrnes* v. *McMillan*, 2 B. C. R. 163.

See SHERIFF.

2. Motion to vary certificate of.]—*Van Volkenburg* v *Western Canadian Ranching Co.*, 6 B. C. R. 284.

See CHATTEL MORTGAGE.

3. Opinion of as to similarity of names not conclusive.]—*B. C. Permanent* v. *Wootton*, 6 B. C. R. 382.

See COMPANY, I.

4. Public companies—*Remarks on the duties of*] — *Twigg* v. *Thunder Hill Mining Co.*, 3 B. C. R. 101.

See COMPANY, VI.

5. Whether deputy registrar is competent to take examination appointed to be held before the registrar.] — *Richards* v. *Ancient Order of Foresters*, 5 B. C. R. 59.

See PRACTICE, VII.

REGISTRATION.

1. Of documents under Bills of Sale Act.]—*Esnouf* v. *Gurney*, 4 B. C. R. 144.

See SALES.

2. Of extra-provincial fire insurance company—*Necessity for.*]—*Regina* v. *Holland*, 7 B. C. R. 271.

See INSURANCE, I.

3. Of medical practitioners.] — *Metherell* v. *Medical Council of B. C.*, 2 B. C. R. 186.

See MANDAMUS.

See also REGISTRATION OF DEEDS.

REGISTRATION OF DEEDS.

1. Cancellation of ordinary certificate on issuance of indefeasible title.]—The Registrar-General has power, under s. 61 of the Land Registry Act, B. C. 1888, to cancel an ordinary certificate of title issued under s. 17 of the Act, upon the issue to the registered owner of a certificate of indefeasible title, under s. 63 of the Act. *Re J. H. Turner*, 2 B. C. R. 244.

2. Certificate of indefeasible title.]—*Devisee of testator, whether entitled to ipso facto.*]—It is not competent to the Provincial Legislature, or to a municipality, to deprive, generally, particular nationalities or individuals of the capacity to take out municipal trade licenses; e.g., a Chinaman has a right to apply for a pawnbroker's license. *Regina* v. *Corporation of Victoria*, 1 B. C. R. pt. II., 321.

3. Certificate of indefeasible title—*Transfer of.*]—Under the Land Registry Acts, the transferee of an indefeasible title in fee simple is entitled to be registered as the owner of the same estate, and there is no retrogression after the stage of indefeasibility has been reached. Objects, history, and working of the Land Registry Acts fully discussed. *In re Shotbolt and In re part of Lot* 173, *Victoria*, 1 B. C. R. pt. II., 337.

4. Certificate of title based on tax sale.]—A certificate of title based on a tax deed does not ipso facto, oust a prior certificate of title outstanding in the hands of the former owner, and the holder of such later certificate must affirmatively shew the regularity of all the tax sale proceedings in order to make good his title. *Kirk* v. *Kirkland et al.*, 7 B. C. R. 12.

5. C. S. B. C. c. 67, s. 35.] — Quære, whether the sub-lessee of registered real estate is a purchaser of any registered real estate, or registered interest in real estate, within the meaning of s. 35, supra. See *Griffiths* v. *Canonica*, 5 B. C. R. 67. 7 B. C. R. 12.

See CANCELLATION OF INSTRUMENTS.

6. Debentures—*Registration of.*] — A company issued debentures which created a charge upon all its property without describing the property:—Held, that the debentures were capable of registration under the Land Registry Act. *In re The Land Registry Act*, 10 B. C. R. 370.

7. Foreign company.]—The registrar is justified in refusing to register a non-registered foreign company as the owner of land. *Ex parte New Vancouver Coal Mining & Land Co.*, 2 B. C. R. 8.

8. Foreign company.]—Decision of Sir M. B. BEGBIE, C.J., reported in 2 B. C. 8, holding that the registrar was justified in refusing to register a non-registered foreign company as the owner of land, reversed. *Ex parte New Vancouver Coal Mining and Land Company*, 9 B. C. R. 571.

9. Judgment—*Registration of not a breach of order staying proceedings.*]—*Edison Gen. Electric Co.* v. *Vancouver & New Westminster Tramway Co., et al.*, 4 B. C. R. 460.

See JUDGMENT.

10. Judgment—*Registration of, does not prevent mortgagee from proceeding to enforce security.*]—*Re Giant Mining Co., Ltd.*, 10 B. C. R. 327.

See COMPANY, IX 6.

11. Land Registry Act, 1888 — *Indefeasible title—When grantable.*]—By the Land Registry Act, C. S. B. C. 1888, c. 67, s. 63, "The owner in fee of any land, the title to which shall have been registered for the space of seven years, may apply to the registrar for a certificate of indefeasible title." The applicants applied to the registrar at Vancouver for a certificate of indefeasible title to the lands in question upon an affidavit that they "are the owners in fee of the lands, the title of which lands has been registered for the space of seven years." The registrar held that the applicant must prove a seven years' registered title in himself, following In re Trimble (*per* BEGBIE, C.J., 1 B. C. pt. II., 321), and refused the application. Upon appeal to a Judge, MCCREIGHT, J., affirmed the registrar and dismissed the appeal. Upon appeal from MCCREIGHT, J., to the Full Court:—Held, *per* BEGBIE, C.J., and DRAKE, J., that the construction of the registrar and MCCREIGHT, J., was correct, and that the appeal should be dismissed. *Per* CREASE and WALKEM, JJ., that all that was necessary under the language of the Act was that the applicant should be the owner of the lands, the title, not his title, to which had been a registered title for seven years, and that the appeal should be followed. *In re the Vancouver Improvement Company; In the Matter of the Land Registry Act*, 3 B. C. R. 601.

12. Land Registry Act—*Priorities between equitable mortgage and subsequent registered conveyance—Constructive notice.*]—Action to foreclose an equitable mortgage by deposit of title deeds, brought by the plaintiffs against the mortgagor K. and a person R., who appeared on the title as the grantee of the lands under deed made to him by K. subsequent to, and, as the plaintiffs' claim alleged, in fraud of the mortgage, which deed he had registered not as a fee, but as a charge against the lands. K. had suffered judgment by default. Neither notice of the mortgage nor want of valuable consideration for the deed were charged against R. in the statement of claim, or negatived by him in his defence, in which he claimed that, under s. 31 of the Land Registry Act, his registered charge was entitled to prevail over the plaintiffs' unregistered charge, and also set up the Statute of Frauds. At the trial, R. called no evidence, and maintained that the onus probandi to displace his primâ facie statutory priority was on the plaintiffs, and that he was entitled to judgment:—Held, *per* WALKEM, J., on motion for judgment, dismissing the action as against R., that his registered charge had a primâ facie validity and priority, under s. 31, and that the onus of proof of want of consideration, fraud, or notice to him of the mortgage, was on plaintiffs. The Statute of Frauds is not a defence to an equitable mortgage: — Held, by the Full Court on appeal:—*Per* CREASE, J.: That in the state of the pleadings and evidence, fraud on R.'s part could not be assumed by the Court, but that there should be a new trial to determine the question of the bonâ fides of the deed. *Per* MCCREIGHT, J.: That before the statute the burden of proof would have been upon R. to show that he made enquiries for the title deeds and gave valuable consideration for his deed from K., as being facts peculiarly within his knowledge and not of the plaintiffs, and not having done so he was, by their absence, affected with constructive notice of the mortgage. That by s. 35 he was only relieved from the effect of such notice by proving himself a purchaser for value, and that the onus of doing so was therefore on him, and that as to the effect of notice, s. 31 must be read as subject to s. 35, which alone deals with that question. Quære—Whether the non-compliance with ss. 13, 19, 54 and 55 of the Act, as to production of title deeds, vitiated the registration. *Per* DRAKE, J.: That, on the facts, the presumption was that R. had actual or there was constructive notice to him of the equitable mortgage, and the onus was on him to allege and prove valuable consideration for his deed. That the deed in fee was improperly registered as a charge and that the plaintiffs should not be prejudiced by the mistake of the registrar. *The Hudson's Bay Co.* v. *Kearns & Rowling*, 3 B. C. R. 330.

13. Land Registry Act — *Registered title and prior unregistered charge—Constructive notice.*]—The registrar registered a conveyance from K. to R., as a charge, without either the title deeds or certificate of title being produced or accounted for by R. They were, in fact, outstanding in the hands of plaintiffs, as prior equitable mortgagees of the lands. Express notice to R. of the equitable mortgage was not proved, but he inquired of K. for the title deeds and certificate, and they were not accounted for. The action was for foreclosure of the equitable mortgage: — Held, *per* WALKEM, J.:—The Act devolves upon the registrar the duty of satisfying himself of the primâ facie title of an applicant, as a pre-requisite to its registration, either by requiring production of the title deeds, or an affidavit satisfactorily explaining their non-production, and that the registration of R.'s conveyance was invalid, as against the plaintiffs, for want of the authorization of the registrar upon the basis required by the Act, and that, as an unregistered purchaser, he was not protected by s. 35 against the plaintiffs' prior unregistered charge. On appeal to the Full Court (*per* DAVIE, C.J., CREASE, J., concurring, overruling WALKEM, J.): (1. The purchaser of a registered title is within the protection of s. 35, whether he registers his own conveyance or not.) (2. The principle of Lee v. Clutton, 45 L. J. Ch. 43, 46 L. J. Ch. 484, is applicable to the British Columbia Land Registry Act. The policy of the Act is to free the purchaser of a registered title from the imputation of constructive notice, and in the absence of express notice such a purchaser of lands for valuable consideration will, under s. 35, have priority over a prior unregistered charge, notwithstanding that he knew that the title deeds were in the possession of persons other than the vendor and abstained from enquiry.) To take such a purchaser out of the protection of s. 35, he must be guilty of conduct equivalent to fraud, and as fraud is never presumed, it will not be imputed by inference, or in the absence of proof of express notice of the facts, the knowledge of which constitutes the fraud. *Per* MCCREIGHT, J. (dissenting): The Act has not absolved a purchaser from the duty to enquire for the title deeds, but accentuates it, particularly in regard to the

certificate of title, and neglect to enquire indicates a design inconsistent with bonâ fides, to avoid knowledge. Constructive notice of a prior unregistered charge is sufficient to take the purchaser out of the protection of s. 35, and, on the facts, notice thereof must be imputed to the purchaser and his title postponed to such charge. *The Hudson's Bay Co.* v. *Kearns & Rowling*, 4 B. C. R. 536.

14. Land Registry Ordinance, 1870—*Registration of title—Equity of redemption, how registered — "Absolute fee," how construed.*] — Held, *per* BEGBIE, C.J., that the purchaser of the equity of redemption in fee is entitled to be registered in the "Register of Absolute Fees," as the sole owner of the "absolute fee" under s. 19 of the Land Registry Ordinance, 1870:—Held, also, that the expression "absolute fee" in L. R. O., 1870, does not necessarily mean "clear of all incumbrances." *Re Land Registry Ordinance, 1870, In re Sir James Douglas*, 1 B. C. Reports, page 84.

15. Land Registry — *Registered plan—Description of land by reference to plan—Boundaries — Mistake — Right to object to validity of plan.*]—The owner of a district lot registered in 1885 a plan of it drawn to scale, but not shewing the sub-divisions, and afterwards had another plan made from a survey, and which differed from the registered one; from an inspection of the ground and the unregistered plan, one Kilby, who was unaware of the registered plan, bought in 1889, lot 16, and registered the deed which did not refer to the plan. On 11th July, 1889, the defendant bought from the same vendor lot 15. In 1890, the defendant bought from Kilby lot 16, the deed shewing the purchase to be according to the registered plan, but before the purchase she inspected the property and saw the boundaries which were then according to the unregistered plan. Lot 16 according to registered plan overlapped lot 15 according to the unregistered plan:—Held, in an action for possession by the owner of lot 16; (1) That both plaintiff and defendant must be deemed to be holders of their respective parcels according to the registered plan, and to have registered their conveyances in conformity with the Land Registry Act; (2) It was not open to defendant who had accepted and registered a conveyance of land according to a registered plan to afterwards object, in an action respecting the title to the same land, to the validity of that plan. Decision of DRAKE, J., affirmed. *Fowler* v. *Henry*, 10 B. C. R. 212.

16. Lis pendens—*Effect of—Registration of.*]—*Towne* v. *Brighouse*, 6 B. C. R. 225.

See VENDOR AND PURCHASER.

17. Merger — *Executor mixing private funds with estate — Judgment by general legatee for amount of legacy—Priority of, as against prior judgment against executor personally.*] — In 1874, one E. H. became entitled to a general legacy of $10,000 bequeathed to him by his brother J., who appointed as his executor another brother, T., with whom he was in partnership. On J.'s death, T. entered into possession of the whole partnership property, and paid half the legacy to E. in 1875. E. sued T. and recovered judgment by default for the balance, on January 24th, 1889, which judgment was registered February 28th, 1889. In the meantime T. had charged the whole property for large sums to various creditors who obtained and registered judgments before January 24th, 1889, before which date also judgment was obtained against T., and registered by a simple contract creditor, C. Receivers having been put in possession of T.'s estate, sold the same under order of Court, and after certain mortgage debts and expenses were paid off, with the sanction of the Court, the balance left was insufficient to pay off the charges registered before E.'s judgment. In an action by E. for an inquiry as to what assets of J. came into the hands of T. or the receivers, to have his judgment declared entitled to priority over the other registered charges, and to restrain the receivers:—Held, *per* BEGBIE, C.J., that the action must fail as against all the defendants, for E. was now a mere judgment creditor of T., and no longer a legatee, and he had not shewn that any moneys in the receivers' hands were impressed with a trust in his favor. But, held, on appeal, *per* MCCREIGHT and WALKEM, JJ., that the action lay as against the simple contract creditor, C., but not, semble, as against the secured creditors, by reason of ss. 32-36 of the Land Registry Act. *Per* DRAKE, J., dissenting, the action was misconceived, and should have been launched as an administration action. *Ezekiel Harper* v. *Thaddeus et al.*, 2 B. C. R. 15.

18. Plan of townsite — *Effect of registration of.*]—*C. P. Ry. Co.* v. *City of Vancouver*, 2 B. C. R. 306.

See DEDICATION.

19. Registered judgment — *Whether mortgage given by debtor affected by or not—C. S. B. C.* 1888, *c.* 67, *ss.* 26, 27, 33 *and* 34, *and c.* 42, *s.* 32.] — A registered judgment binds only the interest of the debtor existing at the time of registration and therefore cannot affect a morigage already given by the debtor, although such mortgage is not registered before the judgment. *Yorkshire Guarantee and Securities Corporation* v. *Edmonds et al.*, 7 B. C. R. 348.

20. Registration of judgment against lands—*Duty of registrar.*]—*Byrnes* v. *McMillan*, 2 B. C. R. 163.

21. Wills—*Land Registry Ordinance*, 1870, *s.* 78—*Costs—Form of will.*]—Where a doubt exists on the construction of a will, as to whether a devise be fiduciary or absolute, the registrar of titles may refuse to register and issue certificate of title until the doubt be removed by adjudication. In such a case the registrar is entitled to his costs. Semble, the words "Will, simply appointing an executor," written immediately above, and apparently as part of the will, can be construed as incorporated with it, so as to shew the intention of the testator. *In the matter of Land Registry Ordinance*, 1870. *In re Henry Jerome, deceased*, 1 B. C. R. 87.

REGISTRY.

1. Of land title—*Characteristic features of—Land registry legislation.*]—*In re Shotbolt*, 1 B. C. R. pt. II., 337.

See RECORDS.

See also REGISTRATION OF DEEDS.

REGULARITY.

1. Of directors' proceedings.]—Holder of security is entitled to assume regularity of proceedings by which granted. *Jackson* v. *Cannon*, 10 B. C. R. 73.

See COMPANY, II.

2. Of tax sale proceedings.] — Nature of need not be shown in order to establish prima facie case in an action for possession of land. *Carroll* v. *City of Vancouver*, 10 B. C. R. 179.

See MUNICIPAL CORPORATIONS, IX.

RE-HEARING.

1. Appeal from Small Debts Court is by way of a.]—*Malkin* v. *Tobin*, 7 B. C. R. 386.

See APPEAL, I.

RE-INSTATEMENT.

1. Of solicitor struck off the rolls.]—*In re J. J. Blake*, 6 B. C. R. 276.

See SOLICITOR AND CLIENT.

REJECTION OF EVIDENCE.

1. As ground for new trial.] — *Hopkins* v. *Gooderham et al.*, 10 B. C. R. 250

See PRACTICE, XX.

See also EVIDENCE.

RELEASE.

1. Of debtor by novation.]—*Gurney* v. *Braden*, 3 B. C. R. 474.

See NOVATION.

2. Under seal.] — Vested right can only be discharged by payment, release under seal or accord and satisfaction. *Croasdaile* v. *Hall*, 3 B. C. R. 384.

See CONTRACT, IV. 1.

RELIGIOUS BELIEF.

1. Of witness.]—*Grey et al.* v. *Macallum*, 2 B. C. R. 104.

See PRACTICE, XX.

RE-LOCATION.

1. Location by third party, who afterwards conveys to previous locator, is not a re-location. *Granger* v. *Fotheringham et al.*, 3 B. C. R. 590.

See MINES AND MINERALS, XXIX

2. Of mineral claim.] — When valid without permission. *Snyder* v. *Ransom*, 10 B. C. R. 182.

See MINES AND MINERALS, XXIX.

RENEWAL.

1. Of writ of summons in adverse action.]—*Haney* v. *Dunlop*, 6 B. C. R. 451; 6 B. C. R. 520.

See MINES AND MINERALS, III.

RENT.

1. Action for under void lease.]—*B. C. Board of Trade Building Ass.* v. *Tupper et al.*, 8 B. C. R. 291.

See COURTS, I. 2.

RE-OPENING.

1. Of case not allowed after adverse action has closed.]—*Aldous* v. *Hall Mines*, 6 B. C. R. 394.

See MINES AND MINERALS, III.

See also PRACTICE.

REPEAL.

1. Effect of a repealing enactment.] *Haggerty* v. *Grant*, 2 B. C. R. 173.

See MECHANIC'S LIEN.

REPLEVIN.

1. Action for—*Whether it is an action for tort—Can husband maintain it against his wife?—Married Women's Property Act, R. S. B. C.* 1897, *c.* 130, *s.* 13.]—A replevin action is an action for a tort, and therefore a husband cannot maintain it against his wife. *McGregor* v. *McGregor*, 6 B. C. R. 432.

2. B. C. Replevin Act, 1873—*Affidavit for writ of replevin—Sufficiency of.*]—On an application to set aside a writ of replevin under the B. C. Statute, 1873, c. 24:—Held, (1) That the affidavit under s. 4 need not state that the deponent is the "servant" or "agent" of the claimant: (2) That the delivery to the sheriff of the bond is not a necessary preliminary to the issue of the writ. *Keefer* v. *Todd*, 1 B. C. R. pt. II., 249.

3. Bond — *Requirements as to sureties — Ship—Whether repleviable—C. S. B. C.* 1888, *c.* 101.]—*Per* DRAKE, J.: It is not necessary under the Replevin Act, C. S. B. C. 1888, c. 101, that the sureties on a replevin bond should be worth the amount of the bond, or that there should be sureties at all, but only that there shall be a bond in double the value, etc., to the satisfaction of the sheriff. A ship is repleviable. *Dunsmuir* v. *The Klondike & Columbian Gold Fields, Ltd.*, 6 B. C. R. 200; 6 B. C. R. 258.

See PRACTICE. II.

4. Practice and procedure.]—The Court procedure and practice existing under the old Replevin Act are still in force, although the new Act contains no reference to pleading or practice other than to enable them to be dealt with by rules of Court to be made. *McGregor* v. *McGregor*, 6 B. C. R. 258.

REPLY.

1. Right of.]—*Queen* v. *Rogers*, 1 B. C. R. pt. II., 119.

See CRIMINAL LAW, XVI.

REQUEST.

1. Of owner — *Necessary to create mechanic's lien.*]—*Anderson et al.* v. *Godsal*, 7 B. C. R. 404.

See MECHANIC'S LIEN.

RESCISSION.

1. Of agreement for sale of land.]—*Williams* v. *Wilson and Morrow*, 3 B. C. R. 613.

See VENDOR AND PURCHASER.

2. Of partnership agreement for non-performance of stipulations.]—*Roedde* v. *News-Advertiser Co.*, 4 B. C. R. 7.

See PARTNERSHIP, IV.

3. Order—*Practice as to rescinding.*]—*Brigman* v. *McKenzie et al.*, 6 B. C. R. 56.

See PRACTICE, VIII.

4. Rescission and specific performance cannot both be decreed uno flatu.]—*Smith et al.* v. *Mitchell*, 3 B. C. R. 450.

See VENDOR AND PURCHASER.

5. Right to.]—*Manson* v. *Howison*, 4 B. C. R. 404.

See VENDOR AND PURCHASER.

RESERVATION.

1. Of Crown lands not open for settlement—*Trespass on.*]—*Nelson & Fort Sheppard Ry. Co.* v. *Parker et al.*, 6 B. C. R. 1.

See TRESPASS.

2. Of minerals in contract for sale of land.]—*Hobbs* v. *E. & N. Ry Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

3. Of questions of law.]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, IV.

RESERVED CASE.

1. When proper proceeding.]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, IV.

RESIDENCE.

1. Indorsement of on writ.]—*Dundas et al.* v. *McKenzie*, 10 B. C. R. 174.

See PRACTICE, XXXVIII. 1.

2. Of defendants — *Statement of in plaint.*]—*Cowan* v. *Cuthbert*, 3 B. C. R. 373.

See PRACTICE, XXXVIII. 1.

3. Of Judges — *Legislative authority to fix.*]—*Sewell* v. *B. C. Towing Co.*, 1 B. C. R., pt. I., 153.

See CONSTITUTIONAL LAW, II. 1.

See also PRACTICE, XXXVIII. 1.

RESIDUARY REALTY.

1. Pecuniary legacies are payable out of.]—*Manson* v. *Ross*, 1 B. C. R., pt. II., 49.

See WILLS.

RES JUDICATA.

1. County Court judgment.] — K., a trader in insolvent circumstances, sold all his stock in trade to D., who knew that two of K.'s creditors had recovered judgment against him. The goods so sold were afterwards seized by the sheriff under executions issued on judgments recovered after the sale. On the trial of an interpleader issue in the County Court the jury found that K. had sold the goods with intent to prefer the creditors who then had judgments, but that D. did not know of any such intent. The County Court Judge gave judgment against D., holding that the goods seized were now his goods, and that judgment was affirmed by the Court in banc. D. afterwards brought an action against the sheriff for trespass in seizing the goods, and obtained a verdict, which was set aside by the Court in banc, the majority of the Judges holding that the County Court judgment was a complete bar to the action. *Davies* v. *McMillan*, 13 C. L. T. 267.

2. Crown — *Whether bound by.*]—The Court is not concluded by the decision in a case in which counsel for the Crown had not pressed the point involved in the case under consideration. *Queen* v. *Victoria Lumber Co.*, 5 B. C. R. 288.

3. Default judgment — *Decision in Chambers refusing application to set aside—Whether issues adjudged were res judicata thereby.*]—*Harper* v. *Cameron*, 2 B. C. R. 365.

See CANCELLATION OF INSTRUMENTS.

4. Divisional Court.]—Order once pronounced will be given effect to and followed by every Judge and Court of inferior or co-ordinate jurisdiction. *Gabriel* v. *Mesher*, 3 B. C. R. 159

See JUDGMENT.

5. Divisional Court.]—Res judicata as to appeal from Divisional Court re prior judgment of same Court or interlocutory appeal. *Edison Gen. Electric Co.* v. *Edmonds*, 4 B. C. R. 354.

See APPEAL, V.

6. Effect of judgment — *Dismissing whole action where part objectionable.*] — *Guilbault* v. *Brothier*, 10 B. C. R. 449.

See ACTION.

7. Fraud.] — As between parties to the judgment plea of res judicata is not conclusive in cases of fraud properly alleged and if necessary proved. *Spiers* v. *The Queen*, 4 B. C. R. 390.

8. Motion of Crown for extension of time to appeal—*Estoppel against*—*Retraction.*]—At the trial judgment was given for the suppliants, and the order for judgment was duly entered. Upon application by the Crown to extend the time of appealing from the judgment on the ground that the solicitor misapprehended the effect of s. 16 of the Supreme Court Amendment Act, 1896, DRAKE, J., refused the application, holding that the formal judgment not having been entered on the order for judgment, the time for appealing had not commenced to run; and intimated that the certificate of judgment granted to the suppliants under s. 16 of the Crown Procedure Act, C. S. B. C., 1888, c. 32, should not have been obtained ex parte. Upon motion to the Full Court that the appeal might be brought on notwithstanding the non-entry of the formal judgment, or for a stay of proceedings until it was entered, or, in the alternative, to extend the time for appealing: —Held, *per* MCCREIGHT, WALKEM and MCCOLL, JJ.: (1) (After consulting the other Judges), that the time for appealing from a final judgment commences to run when the decree or order for judgment is put into intelligible shape, so that the parties may clearly understand what they have to appeal from, and not from the entry of the formal judgment upon the order of the Court. (2) (After examining the manager of the Bank of B. N. A. as to the bonâ fides of an assignment of the judgment to it), that no grounds had been shewn by the Crown to warrant an extension of the time. After passing of the Supreme Court Amendment Act, 1897, the Crown gave a new notice of appeal to the next Court and the suppliants moved the Full Court to quash the appeal, the Crown making a cross-motion to extend the time if necessary: — Held, *per* MCCREIGHT, DRAKE and MCCOLL, JJ.: That the former decision of the Full Court had finally determined the rights of the parties, and the appeal should be quashed. *Per* DRAKE, J.: Statutes effecting the right to appeal are not statutes relating to procedure, and are not retroactive. *The Koksilah Quarry Company, Limited Liability* v. *The Queen*, 5 B. C. R. 600.

9. Order of Full Court varying order of trial Judge.]—In adverse action to establish plaintiff's title to certain mineral claims, the following points were decided by the judgment of the trial Judge: In adverse proceedings if the plaintiff wishes to attack the defendant's title he must attack it while proving his own title and not wait till rebuttal. The plaintiff must shew the measurements of the ground in dispute in order to prove overlapping of claims. An affidavit by a re-locator that the ground is unoccupied may be regarded as a statutory abandonment of his former claim. Dunlop v. Haney et al., 7 B. C. R. 1. In the result the action was dismissed without a declaration of title being made in favour of either party and without costs. This judgment was varied by the following order of the Full Court: "Upon motion being made unto this Court at the Court House, Vancouver, on the 23rd day of November, 1899, and this day by counsel on behalf of the defendant Edmund Haney, by way of appeal from the judgment of the Honourable Mr. Justice Martin, pronounced herein on the 11th day of August, 1899, and upon hearing counsel for the above named plaintiff, and by consent of respondent (plaintiff), and it appearing that formal judgment hath not been entered, but parties consenting to proceed with appeal notwithstanding, this Court doth order and adjudge that the plaintiff's said action be as against the defendant Edmund Haney, dismissed out of this Court without costs to either party, and without any declaration affecting the title of either party to their respective mineral claims in the pleadings in this action mentioned, namely, the plaintiff to the Pack Train mineral claim and the defendant to the Legal Tender or Legal Tender Fraction mineral claim; and this Court doth further order that the plaintiff do pay to the defendant Edmund Haney, his costs of this appeal to be taxed. "Let the cross-appeal be dismissed with costs." No order was drawn up in the original action, but the learned trial Judge dismissed it on the grounds that the evidence of overlapping was not sufficiently proven. At the same time he found that the defendant Haney had not established his claim to two of the claims — Legal Tender and Legal Tender Fraction—but no reference was made to the third claim—Olivett—which was the main ground of action. On the appeal the above order was made dismissing plaintiff's action without costs and without any discretion affecting either party to the respective claims. The question of ownership was thus left at large. A fresh action was commenced before DRAKE, J., for a declaration of title, and defendants raised plea of res judicata:—Held, that to establish plea of res judicata there must be a decision on the subject matter of the litigation and between the same parties, and that the order of the Full Court above mentioned operated to prevent the plea of res judicata being set up by defendant in this action. *Dunlop* v. *Haney*, 7 B. C. R. 307.

10. Registration of certificate of judgment—*Second application for cancellation—Res judicata.*]—*Foley* v. *Webster*, 2 B. C. R. 251.

See APPEAL, VIII. 3.

11. Third party—*Effect of decision on.*] —*Briggs et al.* v *Fleutot*, 10 B. C. R. 309.

See CHAMPERTY AND MAINTENANCE.

RESPONDEAT SUPERIOR.

1. As applied to municipal officers.]—*Tracy* v. *District of North Vancouver*, 10 B. C. R. 235.

See MUNICIPAL CORPORATIONS, IX.

See also EMPLOYERS' LIABILITY ACT—MASTER AND SERVANT—NEGLIGENCE.

RESTAURANT.

1. Sale of liquor under restaurant license during prohibited hours.]—*Regina* v. *Sauer*, 3 B. C. R. 308.

See INTOXICATING LIQUORS.

RESTORATION.

1. Of money taken from person of prisoners.]—*Regina* v. *Harris*, 1 B. C. R., pt. I., 255.

See CRIMINAL LAW, XVI.

RESTRAINT OF TRADE.

See CONTRACT.

RETAINER.

1. Of solicitors for corporation—*Effect of.*]—*Drake & Jackson* v. *Victoria*, 1 B. C. R., pt. II., 165.

See MUNICIPAL CORPORATIONS, VI.

2. Retainer of solicitor—*When terminates.*]—A solicitor is liable in damages to his client for neglecting to obey instructions to register a judgment and thereby precluding the client from recovering the amount of his judgment debt. *Per* STRONG, J.: A retainer to prosecute an action does not terminate when the judgment is obtained, but makes it the duty of the attorney or solicitor without further instruction to proceed after judgment, and endeavour to obtain the fruits of the recovery, including the making it by registration, a charge on the lands of the judgment debtor. *John Roland Hett* v. *Pun Pong*, 18 S. C. R. 290. Appeal from a decision of the Supreme Court of British Columbia, affirming the verdict for the plaintiff at the trial. (Apparently not reported in B. C. reports).

RETROACTIVITY.

1. Of statute relating to appeal.]—*The Koksilah Quarry Co.* v. *The Queen*, 5 B. C. R. 600.

See APPEAL, VIII. 11.

2. Procedure—*Rules as to retroactive.*]—*Bank of B. C.* v. *Trapp et al.*, 7 B. C. R. 354.

See PRACTICE, XI.

3. Retrospective act giving right to appeal from Yukon is not retroactive so as to apply to pending cases. *Canadian and Yukon Prospecting Co.* v. *Casey et al.*, 7 B. C. R. 373.

See APPEAL, X.

4. Retrospective legislation—*Effect of on costs.*]—*Youdall* v. *Douglas*, 2 B. C. R. 342.

See PRACTICE, IX.

See also STATUTES.

RETURN.

1. Of chamber summons—*Jurisdiction of Judge to make returnable at registry other than where writ issued.*]—*Reg.* v. *Holmes*, 9 B. C. R. 294.

See ARREST.

2. Of chamber summons—*Must be returnable at place of issue.*] — *Centre Star Mining Co.* v. *Rossland and Great Western Mines et al.*, 10 B. C. R. 136.

See PRACTICE, V.

3. Of nulla bona — *Whether necessary before examination of judgment debtor.*]—*Steel* v. *Pioneer Trading Corp.*, 6 B. C. R 158.

See PRACTICE, XI.

4. To writ of error.] — *Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXII.

REVENUE TAX.

1. Canners — *Tackle furnished fishermen — Whether canners liable for revenue tax—R. S. B. C.*, 1897, *c* 167, *and B. C. Stat.*, 1889, *c.* 66.] — Where canners furnish fishermen with fishing apparatus, but there is no agreement binding the fishermen to sell their catch to the canners, the latter are not liable for the revenue tax in respect of such fishermen. *Campbell* v. *United Canneries*, 8 B. C. R. 113.

See also CONSTITUTIONAL LAW—TAXATION.

RE-VESTING.

1. After breach of condition in conveyance.]—*Clark* v. *The City of Vancouver*, 10 B. C. R. 31.

See DEEDS.

REVISION.

1. Possibility of reverter — *Whether interest assignable.*]—On the grant of a fee simple, defeasible on breach of a condition, no estate is left in the grantor, but only a possibility of a reverter, and, therefore, before

breach there is nothing capable of assignment. After breach, where the deed does not provide for ipso facto forfeiture, the fee does not re-vest automatically, and until re-vesting by suit or otherwise there is nothing capable of assignment. Land was conveyed subject to certain conditions to be performed by the purchasers, and, in default of the performance of such conditions, the purchasers were to hold the land in trust for the grantor, and reconvey to him, notwithstanding that any prior breach may have been waived. The conditions were not performed. In an action by the assignee under seal of the vendor for a declaration that the purchasers held the land in trust for him, and for an order for the conveyance thereof to him:—Held, that after the conveyance there was no estate left in the grantor, but only a possibility of reverter, which was not assignable, and no action lay. Decision of MARTIN, J., affirmed on different grounds. *Clark* v. *The Corporation of the City of Vancouver*, 10 B. C. R. 31.

RIGHT OF WAY.

1. Public—*Law extinguished.*]—*C. P. Ry. Co.* v. *City of Vancouver*, 2 B. C. R. 306.

See DEDICATION.

RIPARIAN RIGHTS.

1. Rights of riparian proprietors.]—*Carson* v. *Martley*, 1 B. C. R., pt. II., 281; *Carson et al.* v. *Clark et al.*, 1 B. C. R., pt. II., 189; *Columbia River Lumber Co.* v. *Yuill*, 2 B. C. R. 237.

See WATERS AND WATERCOURSES, IV.

RITES.

1. Of church—*Or religious denomination as to marriage, must be followed by officiating clergyman.*]—*In re Ah Lie*, 1 B. C. R., pt. I., 261.

See MARRIAGE.

RIVERS AND STREAMS ACT.

1. Who is a "party interested" within meaning of.]—*In re Smith*, 9 B. C. R. 329.

See APPEAL, VIII. 12.

ROADS.

1. Whether duty of municipal corporation to keep streets in repair.]—*Lindell* v. *City of Victoria*, 3 B. C. R. 400.

See MUNICIPAL CORPORATIONS, VIII.

See also MUNICIPAL CORPORATIONS.

ROCK IN PLACE.

1. Finding of essential to validity of mineral claim.]—*Nelson and Fort Sheppard Ry. Co.* v. *Jerry et al.*, 5 B. C. R. 396.

See MINES AND MINERALS, XXXII.

ROLL.

1. Assessment of person not owner of property.]—*Coquitlam* v. *Hoy*, 6 B. C. R. 458.

See MUNICIPAL CORPORATIONS, IX.

RULES OF COURT.

1. Jurisdiction of Court to relieve against provisions in.]—A Judge has no power to shorten the four days' notice of a motion for judgment required by Order XIV., Rule 2. *Wheaton* v. *Allice & Ault*, 3 B. C. R. 306.

2. Rules of Court—*Power to make.*]—*Sewell* v. *British Columbia Towing Co.*, 1 B C. R., pt. I., 153.

See CONSTITUTIONAL LAW, I. 2.

3. Rules of Court—*As to payment into Court under election petition proceedings.*]—*Jardine* v. *Bullen*, 7 B. C. R. 471.

See ELECTIONS.

4. Rules of Supreme Court, 1880, invalid.]—*Jenny Lind Co.* v *Bradley-Nicholson Co.*, 1 B. C. R., pt. II., 185.

See WATERS AND WATERCOURSES.

5. Rules — *Forms in appendix to rules may be used.*]—*Atty.-Gen.* v. *C. P. R.*, 10 B C. R. 111.

See PLEADINGS, IX 2.

6. Rules of Court as to election petitions.]—*Stoddart* v. *Prentice*, 7 B. C. R. 498.

See ELECTIONS.

7. Rule 6—*Discussed.*]—*Daily* v. *B. C. Market*, 8 B. C. R. 1; *B. C. Land and Agency* v. *Cum Yow*, 8 B. C. R. 2.

See BILLS AND NOTES.

8. Rule 11—*Discussed.*]—*Bryce* v. *Jenkins*, 8 B. C. R. 32; *Hall Bros* v. *Schneider*, 3 B. C. R. 32.

See PRACTICE, XXXVIII. 5.

9. Rule 18—*Order VIII. County Court, discussed.*] — *Jordan* v. *McMillan*, 8 B. C. R. 27.

10. Rule 30—*Discussed.*]—*Arthur* v. *Nelson*, 6 B. C. R. 316.

See PRACTICE, XXVII.

11. Rule 35—*Discussed.*]—*Hall Bros.* v. *Schneider*, 3 B. C. R. 32.

See PRACTICE, XXXVIII. 5.

12. Rule 44—*Discussed.*]—*Hall Bros.* v. *Schneider*, 3 B. C. R. 32.

See PRACTICE, XXXVIII. 5.

13. Rules 59-60—(*Crown side*).]—*Rex* v. *Geiser*, 8 B. C. R. 169.

14. Rule 70 — *Discussed.*]—*Fletcher* v. *McGillivray*, 3 B. C. R. 37; *Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, IV.

15. Rule 73—*Discussed.*]—*Mason* v *Nason*, 4 B. C. R. 172.

See PRACTICE, XXXVIII. 10.

16. Rule 74—*Discussed.*]—*Zweig* v. *Morrisey*, 5 B. C. R. 484.

See PRACTICE, VIII.

17. Rule 81 — *Discussed.*]—*Stewart* v. *Warner*, 4 B. C. R. 298.

See PRACTICE, XVI.

18. Rule 84 — *Discussed.*]—*Wheaton* v. *Allice Ault*, 3 B. C. R. 306; *Barker & Co.* v. *Lawrence*, 5 B. C. R. 460.

See PRACTICE, XXXI.

19. Rule 98 — *Discussed.*] — *Smith* v. *Mitchell*, 3 B. C. R. 450.

See VENDOR AND PURCHASER.

20. Rule 101 (a)—*Discussed.*]—*Harley* v. *Rego Mining and Milling Co.*, 7 B. C. R. 449.

See PRACTICE, I. 8 (c).

21. Rule 104 — *Discussed.*] — *Lenz & Seiser* v. *Kirschberg*, 6 B. C. R. 533; *B. C. Furniture Co*, v. *Tugwell*, 7 B. C. R. 84.

See PRACTICE, I. 2.

22. Rule 147—*Discussed.*]—*Fletcher* v. *McGillivray*, 3 B. C R. 37.

See PRACTICE, IV

23. Rule 158—*Discussed.*]—*Guichon* v. *Fisherman's Cannery Co.*, 4 B. C. R. 516.

See PRACTICE, XI. 5 (d).

24. Rule 160—*Discussed.*]—*Hopper* v. *Dunsmuir*, 10 B. C. R. 159

See PRACTICE, XXII.

25. Rule 167—*Discussed.*]—*Jackson* v. *Jackson et al.*, 3 B. C. R. 149.

See PLEADINGS, II.

26. Rule 168 — *Discussed.*] — *Kirk* v. *Kirkland et al.*, 6 B. C. R. 442.

See PLEADINGS, IX 4.

27. Rule 173—*Discussed.*]—*Jackson* v. *Jackson et al.*, 3 B. C. R. 149.

See PLEADINGS, II.

28. Rule 174 — *Discussed.*] — *Kirk* v. *Kirkland et al.*, 6 B. C. R 442.

See PLEADINGS, IX. 4.

29. Rule 181—*Discussed.*]—*E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 188; *Atty.-Gen.* v. *C. P. R.*, 10 B. C. R. 108.

See PLEADINGS, IX. 4.

30. Rule 182 — *Discussed.*]—*Mason* v. *Nason*, 4 B. C. R. 172.

See PRACTICE, XXXVIII. 10.

31. Rule 197—*Discussed.*]—*Pounder* v. *Corner*, 6 B. C. R. 177.

See PRACTICE, XXXI.

32. Rule 210—*Discussed.*]—*E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 9 B. C. R. 162; *E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 306.

See PLEADINGS, IX., 4.

33. Rule 224—(*English*)—*Discussed.*]—*Can. Development Co.* v. *La Blanc*, 8 B. C. R. 173.

34. Rule 233—*Discussed.*]—*Williams* v. *Faulkner*, 8 B. C. R. 197.

35. Rule 234—*Discussed.*]—*Ward & Co.* v. *Clark et al.*, 4 B. C. R. 71.

See ARREST.

36. Rule 235 — *Discussed.*]—*Cowan* v. *Macaulay*, 5 B. C. R. 495.

See PRACTICE, I. 4.

37. Rule 236—*Discussed.*]—*Ward & Co.* v. *Clark et al.*, 4 B. C. R. 71; *Williams* v. *Faulkner*, 8 B. C. R. 197.

38. Rule 242—*Discussed.*]—*Hassard* v. *Riley*, 6 B. C. R 167.

See PRACTICE, XXXVIII. 10.

39. Rule 243 — *Discussed.*]—*Mason* v *Nason*, 4 B. C. R. 172.

See PRACTICE, XXXVIII. 10.

40. Rule 330—*Discussed.*]—*Stewart* v. *Warner*, 4 B. C. R. 298.

See PRACTICE, XVI.

41. Rule 331—*Discussed.*]—*Iron Mask* v. *Centre Star*, 6 B. C. R 474.

See JURY.

42. Rule 332—*Discussed.*]—*Iron Mask* v. *Centre Star*, 6 B. C. R. 474.

See JURY.

43. Rule 333—*Discussed.*]—*Ferguson* v. *Thain*, 3 B. C. R. 447; *Iron Mask* v. *Centre Star*, 6 B. C. R. 474.

See JURY.

44. Rule 340—*Discussed.*]—*Boscowitz* v. *Cooper*, 4 B. C. R. 88; *Sullivan* v. *Jackson*, 7 B. C. R. 133.

See PRACTICE, XII.

45. Rule 350—*Discussed.*]—*Boscowitz* v. *Cooper*, 4 B. C. R. 88.

See PRACTICE, XII.

46. Rule 353—*Discussed.*]—*Boscowitz* v. *Cooper*, 4 B. C. R. 88.

See PRACTICE, I. 11.

47. Rule 356—*Discussed.*]—*Noble Five* v. *Last Chance*, 9 B. C. R. 517.

48. Rule 368—*Discussed.*]—*Hyland* v. *Can. Development Co.*, 9 B. C. R. 32.

See PRACTICE, XI. 1.

49. Rule 383—*Discussed.*]—*Leadbeater* v. *Crow's Nest Coal Co.*, 10 B. C. R. 206.

See PRACTICE, XI. 5.

50. Rule 385 — *Discussed.*]—*Russell* v. *Saunders*, 7 B. C. R. 173.

See PRACTICE, II.

51. Rule 401 — *Discussed.*] — *Ward* v. *Dom. S. Boat Co.*, 9 B. C. R. 231; *Leavock* v. *West et al.*, 6 B. C. R. 404; *Russell* v. *Saunders*, 7 B. C. R. 173.

See PRACTICE, XXXI.

52. Rule 417—*Discussed.*]—*E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 194; *Dunsmuir* v. *Klondike and Col. Gold F. Co.*, 6 B. C. R. 200; *McLellan* v. *Harris*, 6 B. C. R. 257.

See PRACTICE, II. V.

53. Rule 421 — *Discussed.*]—*Leiser* v. *Cavalsky et al.*, 3 B. C. R. 196.

See PRACTICE, II. V.

54. Rule 429 — *Discussed.*]—*Russell* v. *Saunders*, 7 B. C. R. 173.

See PRACTICE, II.

55. Rule 436—*Discussed.*]—*B. C. Iron Works* v. *Buse*, 4 B. C. R. 422.

See EVIDENCE.

56. Rule 446 — *Discussed.*]—*Harris* v. *Burnette Saw Mill Co.*, 3 B. C. R. 172.

See APPEAL, VIII. 3.

57. Rules 463-6—*Discussed.*]—*Kimpton* v. *McKay*, 4 B. C. R. 196.

58. Rule 467—*Discussed.*]—*Kimpton* v. *McKay*, 4 B. C. R. 196.

See ARREST.

59. Rule 486—*Discussed.*]—*Drosdowitz* v. *Man. Fire Ins. Co.*, 6 B. C. R. 269.

See PRACTICE, XI. 4.

60. Rule 514—*Discussed.*]—*Centre Star* v. *Iron Mask*, 6 B. C. R. 355.

See MINES AND MINERALS, XVI.

61. Rule 517—*Discussed.*]—*Wakefield* v. *Turner*, 6 B. C. R. 216.

See RECEIVER.

62. Rule 541—*Discussed.*]—*Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, IV.

63. Rule 544—*Discussed.*]—*Star Mining and Milling Co.* v. *Byron N. White Co.*, 9 B. C. R. 422.

See PRACTICE, XI. 2 (b).

64. Rule 572 — *Discussed.*] — *Leiser* v. *Cavalsky et al.*, 3 B. C. R. 196.

See PRACTICE, II., V.

65. Rule 577 — *Discussed.*]—*Biggar* v. *Corp. of Victoria*, 6 B. C. R. 130.

See VENUE.

66. Rule 583—*Discussed.*]—*Fry* v. *Botsford*, 9 B. C. R. 207.

See PRACTICE, IX. 6.

67. Rule 591—*Discussed.*]—*Boscowitz* v. *Bellyea*, 4 B. C. R. 527.

See PRACTICE, XXI.

68. Rule 678 — *Discussed.*]—*Cowan* v. *McAulay*, 5 B. C. R. 495.

See PRACTICE, I. 4.

69. Rule 683—*Discussed.*]—*Noble Five* v. *Last Chance*, 9 B. C. R. 517.

See MINES AND MINERALS, II. 6 (a).

70. Rule 703—*Discussed.*]—*Bank of B. C.* v. *Trapp et al.*, 7 B. C. R. 354; *Hopper* v. *Dunsmuir*, 10 B. C. R. 23.

See PRACTICE, XI. 5.

71. Rule 708—*Discussed.*]—*Elson* v. *C. P. R.*, 6 B. C. R. 71.

See PRACTICE, XI. 5.

72. Rule 715 — *Discussed.*]—*Jones* v. *Pemberton*, 6 B. C. R. 69.

See PRACTICE, XI. 5.

73. Rule 716 — *Discussed.*]—*Jones* v. *Pemberton*, 6 B. C. R. 69.

See PRACTICE, XI. 5.

74. Rule 723 — *Discussed.*]—*Mason* v. *Howison*, 4 B. C. R. 404.

See EVIDENCE.

75. Rule 725—*Discussed.*]—*B. C. Electric* v. *Manufacturers' Guarantee Co.*, 7 B. C. R. 512.

See PRACTICE, XI. 5.

76. Rule 736 (d)—*Discussed.*]—*Green* v. *Stussi*, 6 B. C. R. 193; *Gill* v. *Ellis*, 6 B. C. R. 157.

See PRACTICE, XXXIV.

77. Rule 743—*Discussed.*]—*B. C. Iron Works Co.* v. *Buse*, 3 B. C. R. 170.

See APPEAL, VIII. II.

78. Rule 749 — *Discussed.*]—*McDonald* v. *Jessop*, 3 B. C. R. 606.

See PRACTICE, XII.

79. Rule 751 — *Discussed.*]—*Gibson* v. *Cook et al.*, 5 B. C. R. 534.

See PRACTICE, IX. 6.

In re Quai Shing, 6 B. C. R. 86.

See ADOPTION.

McKenzie v. *Cunningham et al.*, 8 B. C. R. 206.

80. Rule 790—*Discussed.*]—*Fry* v. *Botsford*, 9 B. C. R. 207.

See PRACTICE, IX. 6.

81. Rule 976 — *Discussed.*]—*Ward* v. *Clark*, 3 B. C. R. 609; *Jensen* v. *Sheppard*, 3 B. C. R. 126.

See ARREST.

82. Rule 977 — *Discussed.*]—*Jensen* v. *Sheppard*, 3 B. C. R. 126.

See ARREST.

83. Rule 979 — *Discussed.*] — *McCauley* v. *O'Brien*, 5 B. C. R. 510.

See ARREST.

84. Rule 1,065—*Discussed.*]—*In re Porter Estate*, 10 B. C. R. 275.

See TAXATION, III.

85. Rule 1,068—*Discussed.*]—*McGregor* v. *McGregor*, 6 B. C. R. 258.

See REPLEVIN.

86. Rule 1,075—*Discussed.*]—*Wakefield* v. *Turner*, 6 B. C. R. 216.

See RECEIVER.

In re Kootenay Brewing Co., 7 B. C. R. 131.

See JUDGES.

Tate et al. v. *Hennessey*, 7 B. C. R. 262.

See PRACTICE, XXXVIII. 5.

SALARY.

1. Dominion official — *Appointment of receiver in respect of.*]—*Cane* v. *McDonald*, 9 B. C. R. 297.

See PARTNERSHIP, IV.

2. Public officer—*Salary of, not assignable.*]—*Cane* v. *McDonald*, 10 B. C. R. 444.

See PARTNERSHIP, IV.

3. Receiver.]—Whether claim for salary is entitled to a preference on appointment of receiver by judgment creditor. *Aspland* v. *Hampson*, 3 B. C. R. 299.

See RECEIVER.

SALES.

1. Bill of sale — *Where transaction in reality one of mortgage—Validity of.*]—A bill of sale absolute in form, is invalid as against creditors, where the transaction was in reality one of mortgage, for not setting forth its true consideration and effect:—Held, on the facts, that there was actual delivery and change of possession of the goods, and the bill of sale, agreed between the parties to it to operate by way of mortgage, was therefore valid against creditors as a mortgage. The plaintiff, a brother of the mortgagor, had refused to make him necessary advances unless secured, whereupon the instrument in question was executed:—Held, that there was pressure rebutting preference. *Matheson* v. *Pollock*, 3 B. C. R. 76.

2. Change of ownership—*Seizure under fi. fa.*]—The grantee under a bill of sale (treated as unregistered by reason of a defect in the affidavit) on 3rd January, 1894, took possession of the goods covered thereby, consisting of a bakery stock, and employed a person to take charge and instructed him to let no one else in the place. The grantor had absconded from British Columbia. The plaintiff gave no written notice of change of ownership, but informed some of the creditors that he was in possession. The plaintiff carried on baking and delivered the product in his own name. The debtor's name, however, was not removed from the door of the premises. The defendant seized under fi. fa. on 5th January, 1894:—Held, 1. That the goods were not in the "apparent possession" of the debtor. 2. That the premises were not "occupied by" him, within the meaning of the Act. *Brackman et al.* v. *McLauchlin*, 3 B. C. R. 265.

3. Following proceeds of sale.] — *Cascaden* v. *McIntosh*, 2 B. C. R. 268.

See FRAUDULENT CONVEYANCE.

4. Mortgagee—*Sale to, and bidding in by, void.*] — *Van Volkenberg* v. *Western Can. Banking Co.*, 6 B. C. R. 284.

See CHATTEL MORTGAGE.

5. Sale of liquor — *Transactions of a club do not constitute a sale within statute.*] —*City of Victoria* v. *Union Club*, 3 B. C. R. 363.

See INTOXICATING LIQUORS.

6. Verbal sales—*Whether prohibited by Act.*]—B. made a verbal sale of the goods in question to the plaintiff, who paid him part of the price, in two instalments, and took from him written receipts therefor. Plaintiff then executed a lease of the goods to B., who continued in apparent possession thereof. The goods having been seized by the sheriff under a fi. fa. upon a judgment obtained by the defendants against B., the plaintiff claimed them, and, upon trial of an interpleader issue: Held, that verbal sales of goods are not prohibited by the Act, which contains no provision requiring written evidence of such sales to be made or registered. That such verbal sales, if bonâ fide, are good against subsequent execution creditors of the vendor, though the chattels are suffered to remain in his apparent possession. That the lease in question was not the contract sale, or a memorandum thereof, but was a subsequent independent transaction, and that neither it nor the other writings were documents requiring registration under the Act. *Esnouf* v. *Gurney*, 4 B. C. R. 144.

7. Whether wholesale or retail under municipal license law.]—*Heath* v. *City of Victoria*, 2 B. C. R. 276.

See MUNICIPAL CORPORATIONS, X.

See also BILLS OF SALE—CHATTEL MORTGAGE—FRAUDULENT CONVEYANCE.

SALE OF LAND.

1. Mineral claim — *Rights of partners interested, to proceeds of sale of.*]—*McNerhanie* v. *Archibald*, 6 B. C. R. 260.

See MINES AND MINERALS, XXXVII.

2. Mineral claim—*Sale of will be set aside on grounds of fraud.*]—*Daniel* v. *Gold Hill Mining Co.*, 6 B. C. R. 495.

See MINES AND MINERALS, XL. 6.

3. Sale of land under judgment — *Equitable mortgagee—Notice—Right to dispose of timber—Estoppel by course of litigation.*]—In 1891, O'Brien pre-empted Provincial Crown land, and, in 1898, Manley obtained a judgment against him, which provided that he might cut timber from off O'Brien's pre-emption and apply the proceeds in satisfaction of the judgment, and which restrained O'Brien for six months from cutting or selling timber. Manley registered his judgment in 1899. In January, 1900, O'Brien agreed to sell to Mackintosh the timber for $1,050, payable at various times, part of the consideration being the fees payable to the Crown for Crown grant, and on these being advanced by Mackintosh the Crown grant was delivered to him as security for such advance. Plaintiff moved for liberty to sell the land under his judgment, and DRAKE, J., made an order for sale, and holding that Mackintosh, being an equitable mortgagee, was excluded by the statute:—Held, by the Full Court, reversing DRAKE, J., that the sale should be subject to Mackintosh's interest:—Held, also (*per* MARTIN, J.), that as the plaintiff at the trial induced the Court to grant him a judgment recognizing defendant's right to timber, he was estopped from afterwards contending that the defendant had no right to dispose of timber. *Manley* v. *O'Brien, In re Mackintosh*, 8 B. C. R. 280.

4. Taxes—*Exemption—E. & N. Ry. Act —"Sold or alienated."*]—By stat. B. C. 47 Vic. c. 14, s. 22 (E. & N. Ry. Act), certain lands acquired by the company for the construction of the railway "shall not be subject to taxation unless and until the same are used by the company for other than railway purposes, or leased, occupied, sold, or alienated." In January, 1889, the E. & N. Ry. Co., by agreement, gave to the appellant the right to enter and select 50,000 acres of the said lands, the appellant agreeing to pay 85 per acre in certain instalments, with interest, etc., the lands to be conveyed to the appellants, as soon as the purchase money was fully paid, etc. The appellants had entered and surveyed the lands but never occupied the same, nor had they fully paid the purchase money. The Provincial Government assessed the lands for the purpose of taxation, and the Court of Revision confirmed the assessment:—Held, by the Full Court on appeal: That the E. & N. Ry. Co. had not "leased, sold or alienated" the lands within the meaning of the Act, and that the same were not liable to taxation. *Victoria Lumber Company* v. *The Queen*, 3 B. C. R. 16.

5. Time, essence of contract—*Right to rescind—Lis pendens—Whether a cloud on the title.* 4 B. C. R.

See VENDOR AND PURCHASER.

6. Taxes—*Sale of land for.*]—*Murne* v. *Morrison*, 1 B. C. R. pt. II., 120; *McLeod* v. *Waterman*, 10 B. C. R. 42.

See TAXATION, IV.

7. Taxes—*Sale of land for — Right of collector to commission on.*] — *Municipality North Vancouver* v. *Cane*, 10 B. C. R. 276.

See MUNICIPAL CORPORATIONS, IX.

See AGREEMENT—CONTRACTS—JUDGMENTS —MINES AND MINERALS, XXXI. 6—SPECIFIC PERFORMANCE — TAXATION — VENDOR AND PURCHASER.

SALVAGE.

1. Assessors—*Appointment of, in action for salvage.*]—*Vermont S. S. Co.* v. *Abbey Palmer*, 10 B. C. R. 380.

2. Contract for towage—*Whether towage or salvage — Impending danger.*] — The ship S. was found by the tug M. in a dangerous position in foul waters. The captain of the tug agreed to tow the ship into the open sea, the amount payable for such services to be left to the respective owners. The owners being unable to agree:—Held, on the evidence, that the ship was in impending danger of loss and injury from her situation and the ignorance of her captain of the locality, and that the service of the tug was therefore a salvage and not a towage service. *Canadian Pacific Navigation Co* v. *The C. F. Sargent*, 3 B. C. R. 5.

3. Expenses incurred in navigating after salving ship.] — Plaintiffs, having salved the ship, incurred expenses in navigating her along a dangerous coast at a rough

season of the year:—Held, on the facts, that besides a salvage reward of one-half of the proceeds of the sale of the ship, the plaintiffs were entitled to expenses to be estimated at a lump sum. *Jacobsen et al.* v. *Ship "Archer,"* 3 B. C. R. 374.

4. Where towage services cannot, on the facts, be said to have saved the ship from being lost, but were of extraordinary service owing to her condition, and involved more than ordinary trouble and risk, they should be allowed for, not as salvage but as extraordinary towage services. *Dunsmuir* v. *The owners of the ship "Harold,"* 3 B. C. R. 128.

See also ADMIRALTY—COLLISION.

SANITARY BY-LAW.

1. Summary conviction—*Overcrowding — "Suffering to be occupied" — Proof of knowledge of defendant — Mens rea.*]—*Re Wing Kee,* 2 B. C. R. 321.

See CRIMINAL LAW, XVIII.

See also HEALTH.

SCALE.

1. Plan according to a scale is valid.]—*Fowler* v. *Henry,* 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

SCALE OF COSTS.

1. A new scale is retrospective.]—*Youdall* v. *Douglas,* 2 B. C. R. 342.

See PRACTICE, IX. 20.

SCARLET FEVER.

1. Detention of person exposed to infection.]—*Mills* v. *City of Vancouver,* 10 B. C. R. 99.

See HEALTH.

SCHEDULE.

1. To Act of Parliament—*Effect of.*]—*Houghton's Case,* 1 B. C. R. 89.

See CERTIORARI.

SCHOOL TEACHER.

1. Mandamus does not lie to force a teacher, against his judgment formed bonâ fide and on reasonable grounds, to keep a pupil at his school, but the Court will, if necessary, compel him to hold a proper inquiry. *E. R. Phelps and Alice Mary Phelps by E. R. Phelps* (her father and next friend), v. *Williams* (school principal), *and Messrs. Fell and Wilson* (school trustees), 1 B. C. R. pt. I., 257.

SCIENTER.

See ANIMALS.

SEAL.

1. Agent must have authority under seal to execute conveyance for principal.]—*Williams* v. *Wilson & Morrow,* 3 B. C. R. 613.

See VENDOR AND PURCHASER.

2. Certificate of registrar—*Absence of, is not fatal.*]—*Johnson* v. *Braden,* 1 B. C. R. pt. II., 265.

See MECHANIC'S LIEN.

3. Contract by trading corporation does not require.]—*C. P. N. Co.* v. *Victoria Pack. Co.,* 3 B. C. R. 490.

See COMPANY, III.

4. Of corporation—*Necessity of, on contracts.*]—*Drake & Jackson* v. *Victoria,* 1 B. C. R. pt. II., 165; *Tracy* v. *Municipality North Vancouver,* 10 B. C. R. 235.

See MUNICIPAL CORPORATIONS, III.

5. Of Court on writ of summons discussed.]—*Canada Settlers* v. *Steinburger,* 4 B. C. R. 353.

See PRACTICE, XXXVIII.

SEAL FISHERIES.

1. Prohibition against the use of firearms—*Circumstances of suspicion—Rebuttal—Costs.*] *The E. B. Marvin,* 4 B. C. R. 330.

2. Seal Fishery Act, 1890—*Ship found within prohibited waters with skins on board—Vis major — Lawful excuse.*] — A sealing schooner equipped for sealing and with skins on board, was driven into the prohibited waters of the Behring Sea by stress of weather. A current, of which the master was ignorant, had falsified his reckoning so that he was unaware of his position. The schooner was seized by a Russian warship for infraction of the Act. Upon action by the Crown to condemn the schooner:—Held, that the presence of the schooner at the point in question was sufficiently accounted for to rebut the statutory presumption that she had infringed the Act. *Re "Ainoka,"* 3 B. C. R. 121.

3. Seal Fishery (North Pacific) Act, 1893—*56 & 57 Vic. (Imp.) c. 23, s. 1, ss. 2, 3—Behring Sea Award Act,* 1894—*57 & 58 Vict. (Imp.), c. 2, s. 1—Ship in prohibited zone — Onus of proof — Evidence required to satisfy — Fine, instead of forfeiture.*] — The ship having been arrested within the prohibited zone with seals, and implement for taking them, on board. Upon the trial of an action for her condemnation for infraction of the Act, the captain was not called as a witness by the defence, and the only excuse for not calling him was that he had gone fishing. The account and explanation of the conduct of the

ship, given in evidence by the mate and some of the crew, was inconsistent with reasonable inferences against the ship pointed to by entries in the log:—Held, following the "Minnie," 3 B. C. 161; 4 Exch. (Can.) 151; that under the Act the clearest evidence of bonâ fides is required to exonerate the master of a ship found in prohibited waters with skins and implements for taking them on board, from the imputation of an infringement of the provisions of the Act; that, on the evidence, the onus was not discharged, and the Court was not satisfied that the ship had not attempted to take seals in prohibited waters, and that she must be condemned:—Held, also, that as no seals appeared to have been actually caught or killed in prohibited waters, it was a proper case for the exercise of the discretion to release the ship on payment of a fine in lieu of forfeiture. *The Shelby*, 4 B. C. R. 342.

4. Seal Fishery (North Pacific) Act, 1893 — *Secs. 2 and 5 — Onus of proof—Rebutting — Evidence — Statement of officer of warship — Admissibility.*] — The Court will take judicial cognizance, without further proof, of an Imperial order-in-council, upon production of a copy purporting to have been printed by the Queen's printer in London. The statement of the captain or officer in command of a warship making seizure under s.-s. 1 of the Act, purporting to be signed by such officer, is admissible in evidence upon proceedings for condemnation without proof of signature. The "Minnie" was arrested 22 miles within the 30-mile limit of the prohibited zone, fully manned and equipped for the taking of seals and with one seal skin on board:—Held, that the evidence for the defence set out in the judgment was insufficient to satisfy the onus cast on the ship by s. 1, s.-s. 5 (a), to show that she was not used or employed in contravention of the Act. *The "Minnie,"* 3 B. C. R. 161.

See also ADMIRALTY.

SECONDARY EVIDENCE.

1. When admissible.]—*Pavier* v. *Snow*, 7 B. C. R. 80.

See MINES AND MINERALS, XIX.

See also EVIDENCE.

SECURITY.

1. Lis pendens—*Security to be given by plaintiff instead of cancellation.*]—*Towne* v. *Brighouse*, 6 B. C. R. 225.

See VENDOR AND PURCHASER.

2. Of mortgagee—*May be enforced notwithstanding registration of judgments.*] — *Re Giant Mining Co.*, 10 B. C. R. 327.

See COMPANY, IX. 6.

3. On cancellation of lis pendens.]—*Merrick et al.* v. *Morrison et al.*, 7 B. C. R. 442.

See LIS PENDENS.

4. "Proposed" security means "intended."]—*Stoddart* v. *Prentice*, 7 B. C. R. 498.

See ELECTIONS.

5. Security obtained from an incorporated company—*Holder is not bound to enquire into regularity of proceedings.*] — *Jackson* v. *Cannon*, 10 B. C. R. 73.

See COMPANY, II.

6. Under s. 74 of Bank Act.]—*Merchants Bank of Halifax* v. *Houston et al.*, 7 B. C. R. 465.

See BANKS AND BANKING.

SECURITY FOR COSTS.

1. A motion to the Divisional Court is an appeal within the meaning of Order LVIII., Rule 15, and the Court has power to order the applicant to give security for costs. *Wilson* v. *Perrin*, 2 B. C. R. 350.

2. Address.]—Security will not be ordered where indorsement of address is sufficient, unless misleading address deliberately given. *Dundas et al.* v. *McKenzie*, 10 B. C. R. 174.

See PRACTICE, XXXVIII. 1

3. Appeal to Exchequer Court—*Foley* v. *Webster*, 2 B. C. R. 251.

See APPEAL, VIII. 3.

4. Application for—*Whether waiver of objection as to time for appealing.*]—*Sung* v. *Lung*, 8 B. C. R. 423.

See APPEAL, VIII 8.

5. Application for—*Should be made to Judge in Chambers.*]—*Rogers* v. *Reed*, 7 B. C. R. 1888.

See APPEAL, VIII 8.

6. Foreign plaintiff.]—*Bird et al.* v. *Vieth et al.*, 7 B. C. R. 511.

See PRACTICE, IX. 18.

7. Nominal plaintiff — *Costs of motion to dismiss for non-compliance with order.*] — The Court will order a nominal insolvent plaintiff to give security for costs of the action. Where a party is ordered to give security for costs within a limited time, and makes default, he will be compelled to pay the costs of a motion to dismiss the action for the non-compliance, as a condition precedent to his right to furnish the security and proceed. *Cowan* v. *Patterson*, 3 B. C. R. 353.

8. Of appeal—*Practice as to.*] — *Kettle River Mines, Ltd.*, v. *Bleasdell et al.*, 8 B. C. R. 350.

See APPEAL, VIII. 8.

9. Of appeal, waiver of.]—*In re The Florida Mining Co., Ltd.*, 8 B. C. R. 388.

See APPEAL, VIII. 8.

10. Order for, as of course.]—*Ward & Co.* v. *Clark et al.*, 4 B. C. R. 501.

See PRACTICE, IX. 18.

11. Plaintiff residing outside the jurisdiction voluntarily deposited $100 as security for costs. Upon motion by defendant after appearance, to increase the amount to $150:—Held, (1) the amount in which security is to be given is in the discretion of the Court; (2) An order increasing security for costs will only be made after the amount furnished has been exhausted. *McLean* v. *The Inland Construction and Development Co., Ltd.*, 3 B. C. R. 307.

12. Practice as to.]—*Sehl* v. *Tugwell*, 7 B. C. R. 359; *Alaska Steamship Co.* v. *Macaulay*, 7 B. C. R. 338; *McClary et al.* v. *Howland*, 7 B. C. R. 299; *Rogers* v. *Reed*, 7 B. C. R. 79; *Banks* v. *Woodworth*, 7 B. C. R. 385.

See PRACTICE, IX. 18.

13. Practice—*Discretion to refuse where not made bona fide.*]—Security for costs, on the ground that the plaintiff is resident outside the jurisdiction, will not be granted to a defendant against whom the plaintiff holds an unsatisfied judgment for an amount sufficient to cover the costs of the action. *Horsfall* v. *Phillips*, 3 B. C. R. 352.

14. Test action—*Security for costs in.*]—*Silla* v. *Crow's Nest Pass Coal Co.*, 10 B. C. R. 224.

See PRACTICE, I. 9.

15. Third parties.] — Security to be given by, where substituted as defendants by their request. *Wilkerson* v. *City of Victoria*, 3 B. C. R. 367.

See PRACTICE, I. 8.

16. Where plaintiff has divested himself of interest in action, and is without property or means. *Beer* v. *Collister*, 3 B. C. R. 79.

See PRACTICE, IX. 18.

See also COSTS—PRACTICE, IX. 18.

SENILITY.

1. Of a testatrix does not necessarily invalidate a will.]—*McHugh* v. *Dooley*, 10 B. C. R. 537.

See WILLS.

SEPARATE DEFENCES.

1. Costs in case of.]—*Merchants Bank* v. *Houston et al.*, 7 B. C. R. 352.

See PRACTICE, IX. 19.

SEPARATION.

1. Judicial separation.] — *Towne* v. *Towne*, 7 B. C. R. 122.

See DIVORCE.

SEQUESTRATION.

1. Right of, for breach of injunction.]—*De Cosmos* v. *The Victoria & Esquimalt Tele. Co.*, 3 B. C. R. 347.

See INJUNCTION.

SERVANT.

1. No preferential claim in case of an equitable execution.] — *Mairhead* v. *Lawson*, 1 B. C. R. pt. II., 113.

See RECEIVER.

See also MASTER AND SERVANT—WAGES.

SERVICE.

1. Agent of solicitor — *Whether sufficient service on.*]—*Kilbourne* v. *McGuigan*, 5 B. C. R. 233.

See MINES AND MINERALS, V.

2. Application for service ex juris must show reasonable cause of action.]—*Tai Yune* v. *Blum et al.*, 3 B. C. R. 21.

See BILLS AND NOTES.

3. Ex juris.] — *Oppenheimer* v. *Sperling et al.*, 7 B. C. R. 96.

See PRACTICE, XXVII.

4. Ex juris — *Notice of counterclaim — Proper parties—Where cause of action against person within jurisdiction.*]—*Trowbridge* v. *McMillan*, 9 B. C. R. 443.

See PRACTICE, XXXVIII. 5.

5. Foreign corporation—*Service on by giving manager temporarily passing through province.*]—*Fall* v. *Klondyke Bonanza*, 9 B. C. R. 493.

See PRACTICE, XXVII.

6. Foreign partnership.]—*Oppenheimer* v. *Sperling*, 9 B. C. R. 166.

See PLEADINGS, IX. 1.

7. Of amended writ — *Specially indorsed.*]—*More* v. *Patterson*, 2 B. C. R. 302.

See PRACTICE, XXXVIII. 10.

8. Of notice of appeal—*Time for.*]—*Archibald* v. *McDonald*, 7 B. C. R. 125.

See APPEAL, VIII. 2.

9. Of petition for vesting order.]—*In re Spinks*, 6 B. C. R. 375.

See TRUSTS.

10. Of process on Canadian Pacific Railway Company.]—*Jordan* v. *McMillan*, 8 B. C. 27.

See PRACTICE, XXVII.

11. Of summons on solicitor who took out previous summons in same matter is good.]—*Arthur* v. *Nelson*, 6 B. C. R. 316.

See PRACTICE, XXVII.

12. Of writ not showing original to be sealed.]—*Canada Settlers* v. *Steinburger*, 4 B. C. R. 353.

See PRACTICE, XXVII.

13. On partner of former solicitor—*Sufficiency of.*]—*Denny* v. *Saywerd*, 4 B. C. R. 212.

See PRACTICE, XXVII.

14. Out of jurisdiction.] — *Garesche, Green & Co.* v. *Holiday*, 1 B. C. R., pt. II., 83; *Wilson Bros.* v. *Donald*, 7 B. C. R. 33; *Northern Counties* v. *Nathan*, 7 B. C. R. 136; *Shallcross Co.* v. *Alaska S. S. Co.*, 8 B. C. R. 203.

See also PRACTICE, XXVII., XXXVIII. 5, 9.

SET-OFF AND COUNTERCLAIM.

See PLEADINGS—PRACTICE, VI

SETTLED ESTATES ACT, 1887.

1. Appointment of guardian under.]—*In re Ashe Estate*, 5 B. C. R. 672.

See INFANTS.

SETTLEMENT.

1. Costs of negotiation for.]—*Milton* v. *Corp. of Surrey*, 10 B. C. R. 325.

See PRACTICE, IX.

2. Voluntary settlement where settler solvent.]—*Lai Hop* v. *Jackson*, 4 B. C. R. 168.

See FRAUDULENT CONVEYANCE.

SETTLERS.

1. Settler for agricultural purposes.]—By 47 Vict. c. 14, s.-s. (f) (B.C.), certain land conveyed to the E. & N. Ry. Co. was, for four years from the date of the Act, thrown open to actual "settlers for agricultural purposes," coal and timber excepted. H. and W. respectively claimed a right of pre-emption under this Act:—Held, affirming the decision of the Court below, that the Act did not confer a right of pre-emption to lands not within the pre-emption laws of the Province; that only "unreserved and unoccupied lands" came within those laws and the lands claimed had long before been reserved for a town site; and that the claimants were not upon the lands as "actual settlers for agricultural purposes," but had entered with express notice that the lands were not open for settlement. *David Hogan* v. *Esquimalt and Nanaimo Railway Co. and Samuel Waddington* v. *The Esquimalt and Nanaimo Railway Co.* (Appeals from the decisions of the Supreme Court of British Columbia, affirming the judgment at the trial for the defendants in each case respectively. Taken from 29 S. C. R. 235. Apparently not reported in B. C. R.)

2. Settler for agricultural purposes.]—In order to become a "settler for agricultural purposes," within the meaning of s. 23 of the Island Railway Act, 1883, of British Columbia, the claim must be in respect of unoccupied, unsurveyed and unreserved Crown lands, under s. 3 of the Land Act, 1875, and the claimant must have complied with the conditions imposed by ss. 5, 9, 10 and 11 of that Act. (This was an appeal from a judgment of the Supreme Court of Canada, affirming a judgment of the Full Court of British Columbia, which had affirmed a judgment of Mr. Justice Walkem, *Hogan* v. *Esquimalt and Nanaimo Railway* (1894), 6 Reports P. C., page 478. Apparently not reported in B. C. Reports).

SEWERS.

1. Compensation—*To owner of property for putting sewer through his land.*]—*Arnold* v. *City of Vancouver*, 10 B. C. R. 198.

See MUNICIPAL CORPORATION, VIII.

2. Injunction to prevent obstruction of.]—*Atty.-Gen.* v. *C. P. R.* 10 B. C. R. 108.

See PLEADINGS, IX. 2.

SHAREHOLDER.

1. Entitled to assume regularity of proceedings of directors.] — *Jackson* v. *Cannon*, 10 B. C. R. 73.

See COMPANY, II.

2. Liability of — *Re-purchase of bogus shares in market overt.*]—*Re Thunder Hill Co.*, 4 B. C. R. 61.

See COMPANY, VII.

3. Of irregular shares—*Rights and liabilities of.*]—*Re Thunder Hill Co.*, 4 B. C. R. 61.

See COMPANY, VII.

4. Power of—*Whether shareholders have power to interfere with trustees in management of company.*] — *Dunsmuir* v. *Colonist Co.*, 9 B. C. R. 290.

See COMPANY, VII.

See also COMPANY.

SHARES.

1. Election as to.]—*Manson* v. *Ross*, 1 B. C. R., pt. II., 49.

See WILLS.

2. Irregular issue of.]—*Re Thunder Hill Mining Co.*, 4 B. C. R. 61.

See COMPANY, VI.

3. Issue of at a discount.]—*Twigg* v. *Thunder Hill Mining Co.*, 3 B. C. R. 101; *Fraser River Mining Co.* v. *Gallagher*, 5 B. C. R. 82.

See COMPANY, VI.

4. Liability of transferror for calls on.]—*Manson* v. *Ross*, 1 B. C. R., pt. II., 49.

See COMPANY, VI.

5. Liability for calls on shares purporting to be fully paid up.] — *Kettle River Mines* v. *Bleasdel*, 7 B. C. R. 507.

See COMPANY, VI.

6. Owner of shares in an incorporated company is not an owner of any part of a mineral claim owned by it.] —*Granger* v. *Fotheringham*, 3 B. C. R. 590.

See MINES AND MINERALS, XXXVI.

7. Payments in cash—*Whether property sold to company by promoters is payment within the statute.*]—*Turner* v. *Cowan et al.*, 9 B. C. R. 301.

See COMPANY, VI.

8. Shares in a ship—*Service on mortgagee of—Out of jurisdiction.*]—*Wilson Bros.* v. *Donald*, 7 B. C. R. 33.

See PRACTICE, XXVII.

See also COMPANY.

SHELLY'S CASE.

1. Rule in.]—*Garriepie* v. *Oliver*, 8 B. C. R. 89.

See WILLS.

SHERIFF.

1. Claims for wages — *Effect of as against execution creditor.*]—*McKay* v. *Clark*, 2 B. C. R. 213.

See EXECUTION.

2. Execution Act — *Responsibility for error in notice of sale caused by error in land registry office—Duty of registrar—Mode of registering judgments.*]—A sheriff discharges his duty under s. 37 of the Execution Act if he publishes a correct copy of the information as furnished him by the land registry office, and is not responsible for loss arising out of errors committed therein. It is the duty of the registrar, either to comply with applications for registration or to give a written refusal forthwith. Remarks on the faulty mode of registering judgments. *Brynes* v. *McMillan*, 2 B. C. R. 163.

3. Exemption—*Necessity of giving sheriff notice of claim to.*]—*Yorkshire Guarantee* v. *Cooper*, 10 B. C. R. 65.

See EXEMPTION.

4. Free miner's certificate—*Renewal.*] —A sheriff in possession of a free miner's interest in a mineral claim has no power to take out a special free miner's certificate under s. 4 of the Mineral Act Amendment Act of 1899, in the name of the judgment debtor; neither has the sheriff power to renew a certificate before lapse. Where one or more of the co-owners of a mineral claim allow their free miners' certificate to lapse, their interests at one vest pro rata in their former co-owners. *McNaught* v. *Van Norman et al.*, 9 B. C. R. 131.

5. Jury—*Duty of sheriff as to summoning.*]—*Ross* v. *B. C. Electric Ry. Co.*, 7 B. C. R. 394.

See PRACTICE, XVI.

6. Miner's license—*Power of sheriff to renew miner's license under execution.*] — *McNaught* v. *Van Norman*, 9 B. C. R. 131.

See MINES AND MINERALS, IX. 2.

7. Person arrested on capias—*Custody of.*]—A sheriff required to keep a person arrested on a capias safely, and as there is no common gaol in Vancouver, the sheriff of Vancouver is entitled to lodge such a person in New Westminster gaol and charge mileage therefor. *Carson* v. *Carson*, 10 B. C. R. 83.

8. Refusal of — *To accept maintenance money.*]—*Ward* v. *Clark*, 3 B. C. R. 609.

See ARREST.

9. Right of—*To notice of action.*]—*Johnson* v. *Harris*, 1 B. C. R. 93.

See EXEMPTION.

10. Right of purchaser at sheriff's sale under to question a subsequent order setting aside judgment—*Registration of judgment—Condition precedent to issue of fi. fa.—Petition of right.*]—Held, by the Full Court, DAVIE, C.J., CREASE and DRAKE JJ., affirming MCCREIGHT, J.: A purchaser at a sheriff's sale under a writ of fi. fa. has no status to question a subsequent judgment of the Court setting aside the judgment, except by intervening as indicated in Jacques v. Harrison, 12 Q. B. D. 136-165. The registration of a judgment in the land registry office before the delivery of fi. fa. lands thereunder to the sheriff is a condition precedent to the efficacy of the writ in the sheriff's hands and sale thereunder under ss. 31 and 32 of the Execution Act, C. S. B. C. (1888), c. 42. *Per* DRAKE, J.: The purchaser at the sheriff's sale being the solicitor for the plaintiffs in the action was not within the protection against irregularities given by s. 43 of the Execution Act, supra, to purchasers at the sheriffs' sales under execution. *Speirs* v. *Queen*, 4 B. C. R. 388.

11. Seizure of ship under fi. fa.]—*Williamson* v. *Bank of Montreal*, 6 B. C. R. 486.

See ADMIRALTY, V.

SHIPPING.

1. Bill of lading—*Exceptions in, applicable to matters occurring during the voyage —Breach of obligation to provide reasonably fit ship — Clause limiting liability of ship owners, scope of.*]—The plaintiff shipped six cases of dry goods on board the defendants' ship for carriage from Vancouver to Skagway and thence to Dawson under a bill of lading which provided that all claims for damage to or loss of any of the merchandise must be presented within one month. The grating on the outside of the hull of the ship and at the mouth of the pipe in which the sea-cock was placed was defective and rendered the ship unseaworthy, the result being that salt water entered the afterhold and damaged the plaintiff's goods. Plaintiff did not present his claim within a month, but subsequently sued for damages:—Held, by the Full Court (reversing IRVING, J.), MCCOLL, C.J., dissenting, that the stipulation in the bill of lading to the effect that no claim for loss should be valid unless presented to the company within a month, did not apply to damage occasioned by the defendants not providing a seaworthy ship. *Drysdale* v. *Union Steamship Co.*, 8 B. C. R. 228.

2. Duty of ship owner to provide medical attendance.]—A ship owner is under no duty, either at common law or under s. 207 of the Merchants' Shipping Act, 1894, to provide surgical or medical attendance for the ship's company. *Morgan* v. *The British Yukon Navigation Company, Limited*, 10 B. C. R. 112.

3. Judicial sale of ship — *Refusal of purchaser to complete—Re-sale—Statute of Frauds.*]—*Hackett et al.* v. *Ship Blakeley*, 9 B. C. R. 430.

See ADMIRALTY, V.

4. Master's duty in case of collision.]—*The Cutch*, 2 B. C. R. 357.

See COLLISION.

5. Mate—*Power of to bind owners.*]—*Courtney et al.* v. *Can. Development Co.*, 8 B. C. R. 53.

See CARRIERS.

6. Seizure under fi. fa. by sheriff—*Goods in possession of receiver—Jurisdiction of Supreme Court to direct interpleader — Practice.*]—Where property alleged to be part of the equipment of a ship is in the possession of a receiver appointed in an action in rem in the Exchequer Court to enforce a mortgage of the ship, such property cannot be seized by a sheriff under a writ of fieri facias issued on a judgment recovered against the registered owner of the ship in the Supreme Court; and the Supreme Court has no jurisdiction on the application of the sheriff to grant an order directing the trial of an interpleader issue between the mortgagees and the judgment creditors. *Williamson* v. *Bank of Montreal*, 6 B. C. R. 486.

7. Ship — *Is repleviable.*]—*Dunsmuir* v. *Klondyke and Col. Gold F. Co.*, 6 B. C. R. 200.

See REPLEVIN.

8. Ship's log—*Neglect to keep as provided by Behring Sea Award Act.*]—*The Beatrice*, 4 B. C. R. 347.

See ADMIRALTY, III. 1.

9. Towage—*By American tug—Between Canadian ports.*]—Goliath, an American tug, with a clearance from Port Townsend for Victoria, picked up on the high seas ship Abercorn, bound for Port Moody, and contracted to tow her to that port. Goliath towed Abercorn to mouth of Victoria harbour, and there left her while tug went into Victoria for coal and clearance for Port Townsend. On coming out Goliath resumed towing and carried Abercorn to within 14 miles of Port Townsend, and then cast off and ran into that port for a clearance for Port Moody; the Goliath then towed the Abercorn into Port Moody. In an action for penalty under statute:—Held, that this was "a towage from one port or place in Canada to another," and defendant was liable. Semble, "distress" applied to the tow and not the tug. *Hamley* v. *Libby*, 1 B. C. R. pt. II., 44.

See also ADMIRALTY—COLLISION — SALVAGE.

SHORE.

1. Meaning of.]—*Mowat* v. *North Vancouver*, 9 B. C. R. 205.

See MUNICIPAL CORPORATIONS, XI.

SHORT NOTICE.

1. Of motion—*Special leave.*]—Where a party applies for special leave to serve short notice of motion, he must distinctly state to the Court that the notice applied for is short; and the same fact must distinctly appear on the face of the notice served on the other party. *Canadian Pacific Railway Company* v. *Vancouver, Westminster and Yukon Railway Company*, 10 B. C. R. 228.

SIGNAL.

1. Failing to respond to—*Causing accident.*]—*Marshall* v. *Cates*, 10 B. C. R. 153.

See MASTER AND SERVANT, IV.

SIMILARITY.

1. Interpretation of word "similar."]—*In re Smith*, 6 B. C. R. 154.

See MUNICIPAL CORPORATIONS, IX.

2. Of names of companies.] — *Can. Perm.* v. *B. C. Permanent*, 6 B. C. R. 377.

See COMPANY, I.

SISTER.

1. Includes half-sister.]—*In re Oliver*, 8 B. C. R. 91.

See TAXATION, III.

SITTINGS OF COURT.

1. Meaning of next sitting of Court —*Order to set down for—Adjournment of sittings.*]—*McLeod* v. *Waterman*, 9 B. C. R. 370.

See PRACTICE, I. 11.

2. Power of Provincial Legislature to legislate respecting procedure.]—The Provincial Legislature had, by a local Act, passed in 1881, declared that the sittings of the Supreme Court for reviewing nisi prius decisions, motions for new trials, etc., should be held only once in each year, and on such day as should be fixed by Rules of Court, and that the Lieutenant-Governor in Council should have power to make such Rules of Court:—Held, *per* BEGBIE, C.J., CREASE and GRAY, JJ.: That the appointment of the days on which the Court should sit for such purposes is a matter of procedure, and of purely judicial cognizance, and is not within the power of the Local Legislature either to fix by positive enactment, or to hand over to be fixed by any other person or persons, but belongs to the Court itself; and that the above sections are in that respect unconstitutional and void. The power conferred by s. 92 of "The British North America Act, 1867," on Provincial Legislatures, is a legislative power, enabling them to exercise legislative functions merely, and does not enable them to interfere with functions essentially belonging to the judiciary or to the executive. The Judges of the Supreme Court of British Columbia are officers of Canada, and by ss. 129 and 130 of "The British North America Act, 1867," their power and jurisdiction remain as before Confederation, subject only to the constitutional action of the Parliament of Canada under "The British North America Act, 1867." The authority given by s. 92, s.-s. 14, to the Local Legislature to make laws in relation to civil procedure, is confined to civil procedure in the Courts described in that sub-section, and the Supreme Court of British Columbia does not come within the meaning of that sub-section. The power to make laws in relation to criminal procedure in those Courts, i.e., the Provincial Courts described in that sub-section, and as to all procedure in all other Courts is, either by the general or the particular words of s. 91 of "The British North America Act, 1867," reserved to the Parliament of Canada. The Local Legislature has no power to diminish or repeal the powers, authorities, or jurisdiction of the Supreme Court nor to allot any jurisdiction to any particular Judge of the Supreme Court, nor to alter or add to any of the existing terms and conditions of the tenure of office by the Judges, whether as to residence or otherwise. *Sewell* v. *British Columbia Towing Co.* (*The "Thrasher" Case*), 1 B. C. R., pt. I., 153.

SMALL DEBTS COURT.

1. Appeal from—*New witness—Application of County Court Rules.*]—*Malkin* v. *Tobin*, 7 B. C. R. 386.

See APPEAL, I.

2. Jurisdiction of.]—*Dillon* v. *Sinclair*, 7 B. C. R. 328.

See COURTS, IV.

3. Jurisdiction — *Homestead Act.*]—A magistrate sitting as Judge of the Small Debts Court, has no jurisdiction to decide the validity of a claim of exemption under the Homestead Act, of goods seized under process of execution issued from the Court. *Augberg* v. *Anderson, Stewart* v. *Anderson*, 5 B. C. R. 622.

4. Small Debts Act, s. 15—*Magistrate's decision not given in open Court—Waiver of right to.*]—*Chase* v. *Sing*, 6 B. C. R. 454.

See PROHIBITION.

5. Small Debts Court Act — *Constitutionality of.*]—*In re Small Debts Act*, 5 B. C. R. 246.

See CONSTITUTIONAL LAW, II. 2.

SMALLPOX.

1. Detention of person exposed to.] *Re George Bowack*, 2 B. C. R. 216; *C. P. N. Co.* v. *City of Vancouver*, 2 B. C. R. 193; *Mills* v. *City of Vancouver et al.*, 10 B. C. R. 99.

See HEALTH.

SMELTING OF ORES.

1. Contract for.]—*The Le Roi Co.* v. *The Northport Smelting Co. et al.*, 10 B. C. R. 138.

See CONTRACT, III. 2.

SOLICITOR.

1. Admission of foreign attorney — *R. S. B. C., c. 24, s. 37, s.-ss. 4-5.*] — An attorney from another province who if originally admitted in B. C., would have had to serve five years, must shew five years' service before he can be admitted in B. C. *Gwillim* v. *Law Society of B. C.*, 6 B. C. R. 147.

2. Affidavit—*Sworn before ante litem—Solicitor—Is insufficient.*]—*Dunsmuir* v. *The Klondike and Columbian Gold Fields, Ltd., et al.*, 6 B. C. R. 200.

See REPLEVIN.

3. Agent of solicitor—*Affidavit sworn before is insufficient.*]—*McLellan* v. *Harris et al.*, 6 B. C. R. 257.

See AFFIDAVIT.

4. Authority of to bind principal.]—*Pither & Leiser* v. *Manly*, 9 B. C. R. 257.

See ACCORD AND SATISFACTION.

5. Change of—*Waiver of notice of.*]—*Denny* v. *Saywcard*, 4 B. C. R. 212.

See PRACTCIE, XXXVI.

6. Collusive settlement—*Right to proceed for costs after.*]—*Soder* v. *Yorke*, 5 B. C. R. 133.

See ACCORD AND SATISFACTION.

7. Compromise or settlement between parties—*Bona fide—Whether right to proceed for costs.*]—*Ridcout* v. *McLeod*, 6 B. C. R. 161.

See COSTS.

8. Examination of.] — *Leadbeater* v. *Crow's Nest Pass Coal Co.*, 10 B. C. R. 206.

See PRACTICE, XI. 5.

9. Knowledge of is knowledge of client.]—*Clark* v. *Kendall*, 4 B. C. R. 503.

See ASSIGNMENTS.

10. Legal Professions Act—*Admission of graduate.*]—To come within the exception in s.s. 5 of s. 37 of the Legal Professions Act, it is not necessary that the applicant should have been a graduate at the time he commenced to study law, or that his term of study or service was shortened because he was a graduate. An applicant who obtained his degree after call or admission would come within the exception. *Calder* v. *The Law Society of British Columbia*. 9 B. C. R. 56.

11. Municipal corporation — *Appointment of legal advisors to a.*]—*Drake & Jackson* v. *Corporation of Victoria*, 1 B. C. R., pt. II., 165.

See MUNICIPAL CORPORATIONS, VI.

12. Responsibility for investment of moneys of infant.] — *In re Brown & Brown*, 2 B. C. R. 110.

See INFANTS.

13. Service of summons on — *When good.*]—*Arthur* v. *Nelson*, 6 B. C. R. 316.

See PRACTICE, XXVII.

14. Striking off rolls—*Appeal from decision of benchers—Re-instatement—R. S. B. C., c. 24, ss. 42 and 48.*]—*In re Blake*, 6 B. C. R. 276.

See SOLICITOR AND CLIENT.

15. Solicitor as assignee—*Cannot also act for the insolvent estate in professional capacity.*]—*Re Dickenson*, 2 B. C. R. 262.

See ASSIGNMENTS FOR BENEFIT OF CREDITORS.

See also BARRISTER—LEGAL PROFESSIONS ACT—SOLICITOR AND CLIENT—COSTS—PRACTICE, IX.

SOLICITOR AND CLIENT.

1. Contract between not invalid where no deception is practised and no advantage taken. *Bell* v. *Cochrane*, 5 B. C. R. 211.

2. Fees—*Charge of a lump sum—Yukon advocate.*]—Plaintiffs, advocates in the Yukon, sued defendant for a lump sum for professional services in obtaining a judgment for the defendants against one H., it being alleged by the plaintiffs that they were to charge $600 if the amount was collected, and by the defendant that they were to get 10 per cent. if collected by them:—Held, in appeal, reversing CRAIG, J., and dismissing the action, *per* DRAKE, J., that by Yukon law an advocate cannot legally obtain a lump sum for professional services except under r. 524 of the North-West Territories Judicature Ordinance of 1893. *Per* MARTIN, J., that the plaintiffs failed to prove any agreement. *Robertson et al.* v. *Bossuyt*, 8 B. C. R. 301.

3. Liability of solicitor for negligence.]—A solicitor is liable in damages to his client for neglecting to obey instructions to register a judgment, and thereby precluding the client from recovering the amount of his judgment debt. *Per* STRONG, J.: A retainer to prosecute an action does not terminate when the judgment is obtained, but makes it the duty of the attorney or solicitor without further instruction to proceed after judgment and endeavour to obtain the fruits of the recovery, including the making it by registration, a charge on the lands of the judgment debtor. *John Roland Hett* v. *Pun Pong*, 18 S. C. R. 290. (Appeal from a decision of the Supreme Court of British Columbia, affirming the verdict for the plaintiff at the trial. Apparently not reported in B. C. Reports).

4. Settlement—*Collusion.*] — Defendant after service of a writ claiming $152.16, settled with plaintiff personally by payment of $60, taking a receipt in full. Plaintiff's solicitor, being unaware of the settlement, signed judgment for the full amount and costs. Upon motion by the defendant, to set aside the judgment as a breach of the settlement:—Held, that as there was no release under seal of the balance of the debt, or consideration for the agreement to accept a part in full discharge, the plaintiff was entitled to maintain the judgment. The plaintiff consenting to accept the amount of the settlement:—Held, that the plaintiff's solicitor had a right to maintain the judgment as to his costs, and nem. con., the judgment was allowed to stand for the amount of the settlement and costs. *Soder* v. *Yorke*, 5 B. C. R. 133.

5. Settlement behind solicitor.] — Where a defendant in good faith settles an action with the plaintiff in such a way as to deprive the plaintiff's solicitor of his costs, such solicitor is not entitled to leave to proceed with the action for the recovery of his costs. *Ridcout* v. *McLeod*, 6 B. C. R. 161.

6. Suspension for wrongfully retaining moneys of client.] — B., a barrister and solicitor, was suspended from practice for six months by the Benchers in 1894, for wrongfully retaining moneys of a client. On the expiration of the period of suspension, the client not having yet received her money from B., again complained to the Law Society, and on the hearing of the complaint in 1896, B. was disbarred and struck off the roll of solicitors:—Held, on appeal to the Judges of the Supreme Court, as visitors of the Law Society: 1. That B. was not obliged to apply to the Benchers for reinstatement under s. 48 of the Legal Professions Act before bringing his appeal; 2. That the Benchers by suspending B. in 1894, had not exhausted their powers, but that they had power to disbar, and disbar and strike B. off the rolls, if they found that he was still wrongfully retaining his client's money, and not a fit and proper person to remain on the roll:

3. That the Judges will not allow an appeal which would have the effect of reinstating a barrister or solicitor while still in default in respect to the transaction for which he was disbarred or struck off. *In re John Joseph Blake*, 6 B. C. R. 276.

SPECIAL BAIL.

See BAIL.

SPECIAL CONTRACT.

1. Carriers' limiting liability by.] — *Wilson* v. *Can. Dev. Co.*, 9 B. C. R. 82.

See CARRIERS.

SPECIAL FREE MINER'S CERTIFICATE.

1. Effect of.] — *Woodbury Mines* v. *Poyntz*, 10 B. C. R. 181.

See MINES AND MINERALS, IX. 2.

SPECIAL INDORSEMENT.

1. Claim of interest till date of judgment.]—*Pyke* v. *Copley*, 9 B. C. R. 52.

See PRACTICE, XXXVIII. 10.

2. Claim of interest—*After maturity at 7 per cent. on note—Not liquidated damages.*] —*Bank of Montreal* v. *Bainbridge & Co.*, 3 B. C. R. 125.

See PRACTICE, XXXVIII. 10.

3. Covenant to indemnify — *Not a liquidated demand capable of being specially indorsed.*]—*Baker* v. *Dalby*, 3 B. C. R. 289.

See PRACTICE, XXXVIII. 10.

4. "Due" — *Word "due" an essential allegation on a special indorsement.*]—*B. C. Land & Invest. Co.* v. *Cumyow*, 8 B. C. R. 2.

See PRACTICE, XXXVIII. 10.

5. Foreign judgment.]—*Boyle* v. *Victoria & Yukon T. Co.*, 8 B. C. R. 352.

See PRACTICE, XXXVIII. 10.

6. Foreign judgment.]—*McAuley Bros.* v. *Vict. & Yukon T. Co.*, 9 B. C. R. 27.

See PRACTICE, XXXVIII. 10.

7. Leave to defend on motion for summary judgment.]—*Pounder* v. *Corner*, 6 B. C. R. 177.

See PRACTICE, XXXI.

8. Liquidated damages — *Penalty for breach of contract.*]—*Lantz* v. *Baker*, 3 B. C. R. 269.

See PRACTICE, XXXVIII. 10.

9. Miscellaneous cases of.] — *Croft* v. *Hamlin*, 2 B. C. R. 333; *Hoyt* v. *McAllister*, 2 B. C. R. 77; *Hassard* v. *Riley*, 6 B. C. R. 167; *Rogers et al.* v. *Reid*, 7 B. C. R. 139.

See PRACTICE, XXXVIII. 10.

10. Omission of words—"*Statement of claim*" *on a.*]—*Van. Agency* v. *Quigley*, 8 B. C. R. 142.

See PRACTICE, XXXVIII. 10.

11. Promissory note—*Place of payment — Words "duly presented" whether sufficient.*] — *Union Bank of Halifax* v. *Wurtzburg & Co.*, 9 B. C. R. 160.

See PRACTICE, XXXVIII. 10.

12. Requisites of—*As to indorsement of claim for interest.*]—*McClary Mfg. Co.* v. *Corbett*, 2 B. C. R. 212.

See PRACTICE, XXXVIII. 10.

13. Signature of plaintiff's solicitor on.]—*Oppenheimer* v. *Oppenheimer*, 8 B. C. R. 145.

See PRACTICE, XXXVIII. 10.

14. Sufficiency of.]—*Croft* v. *Hamlin*, 2 B. C. R. 333.

See PRACTICE, XXXVIII. 10.

15. Waiver of notice of dishonour—*Claim of interest after maturity.*] — *B. C. Corp.* v. *Coughlan et al.*, 3 B. C. R. 273.

See PRACTICE, also XXXVI.; XXXVIII. 10.

SPECIAL JURY.

1. Challenging for cause.]—*Harris* v. *Dunsmuir*, 9 B. C. R. 305.

See PRACTICE, XX.

2. Fee of juror.]—*Taylor* v. *Drake*, 9 B. C. R. 54.

See PRACTICE, XVII.

3. Right to, whether as of course.]—*Cranstoun* v. *Bird*, 5 B. C. R. 210.

See PRACTICE, XVII.

See also JURY—PRACTICE, XVII.

SPECIAL LEAVE.

1. To serve short notice of motion.] —*C. P. R.* v. *V. W. & Y. Ry. Co.*, 10 B. C. R. 228.

See PRACTICE, XIX.

SPECIFIC PERFORMANCE.

1. Agreement to sell according to plan.]—An agreement to sell land "according

to a plan deposited in the Land Registry Office, and numbered 319," does not convey a warranty that the plan is deposited in accordance with the provisions of the Land Registry Act. *Thompson* v. *Courtney*, 2 B. C. R. 89.

2. Crown—*By the.*]—*Peck et al.* v. *Reg.*, 1 B. C. R. pt. II., 11.

See MINES AND MINERALS, XIV.

3. Enforcement of — *Will not be decreed where party claiming is in default.*] —*Miller* v. *Averill*, 10 B. C. R. 205.

See CONTRACTS, IV. 1.

4. Misdescription—*Statute of Frauds.*] —B. on behalf of D. negotiated with C. for the purchase of C.'s property on the N. W. corner of Hastings street and Westminster avenue, Vancouver, and D. drew up a receipt for the part payment of the purchase price, leaving the description blank for C to fill in as he did not know the Land Registry description, but adding the description "N. W. cor., etc.," below the space reserved for C.'s signature. B. took the receipt to C. and paid him $10, and he filled in the blank description as lots 9 and 10, block 10, and signed the receipt. Lots 9 and 10, block 10, were on the north-east corner, and were not owned by C., whereas lots 9 and 10, block 9, were on the north-west corner, and were owned by C. B. sued to have the agreement or receipt rectified or reformed so as to cover lots 9 and 10, block 9, and to have the agreement specially performed:—Held, that it was the property on the north-west corner that the parties had in contemplation, and that C. filled in the wrong description either by mistake or fraud, and that the plaintiff was entitled to specific performance of the true agreement. For perjury alleged to have been committed at the trial by the defendant, he was tried and acquitted before the hearing of the appeal, and on the appeal his counsel moved the Full Court to be allowed to read the verdict of the jury in the criminal trial. The Court dismissed the motion. *Borland* v. *Coote*, 10 B. C. R. 493.

5. Mistake — *Where unilateral.*] — An agreement for sale of lands containing no reservation of the minerals thereunder, issued by the land agent of a railway company to an intending purchaser, accompanied by a deposit, does not bind the company to convey the minerals, if the agent had instructions to reserve them, on the ground that there was a unilateral mistake against which the Court will relieve. *Hobbs* v. *Esquimalt and Nanaimo Railway Company*, 6 B. C. R. 228.

6. Part performance—*Compliance with fourth section of Statute of Frauds.*]—B., a resident of British Columbia, wrote to his sister in England, that he would like one of her children to come out to him, and in a second letter he said, "I want to get some relation here, for what property I have in case of sudden death, would be eat up by outsiders, and my relations would get nothing." On hearing the contents of these letters, T., a son of B.'s sister, and a coal miner in England, came to British Columbia and lived with B. for six years. All that time he worked on B.'s farm and received a share of the profits. After that he went to work in a coal mine in Idaho. While there he received a letter from B. containing the following: — "I want you to come at once as I am very bad. I really do not know if I shall get over it or not, and you had better hurry up and come to me at once, for I want you and I dare say you will guess the reason why. If anything should happen to me you are the person who should be here." On receipt of this letter T. immediately started for the farm, but B. had died and was buried before he reached it. After his return he received the following telegram which had not reached him before he left for home: "Come at once if you wish to see me alive, property is yours, answer immediately. (Sgd.) B." Under these circumstances T. claimed the farm and stock of B., and brought suit for specific performance of an alleged agreement by B. that the same should belong to him at B.'s death: —Held, affirming the judgment of the Court below, that as there was no agreement in writing for the transfer of the property to T., and the facts shewn were not sufficient to constitute a part performance of such agreement, the fourth section of the Statute of Frauds was not complied with, and no performance of the contract could be decreed. *Thomas Turner and Alice Turner* v. *James Charles Prevost et al.* (Appeal from a decision of the Supreme Court of British Columbia, affirming the judgment at the trial, which refused a decree for specific performance.) (Taken from 17 S. C. R. 283.) (Apparently not reported in B. C. R.)

7. Rescission and specific performance cannot both be decreed uno flatu.] —*Smith* v. *Mitchell*, 3 B. C. R. 450.

See VENDOR AND PURCHASER.

8. Tax sale—*Of.*]—*Tracy* v. *North Vancouver*, 10 B. C. R. 235.

See MUNICIPAL CORPORATIONS, IX.

9. Whether right in vendee to call for a title before payment of purchase money where the agreement provided for conveyance "on payment of the purchase money." Semble, unnecessary for the vendor to be the holder of the title if he can obtain grant in fee from the holder to the purchaser. *Foot and Carson* v. *Mason & Nicholles*, 3 B. C. R. 377.

10. Miscellaneous cases.]—*Sea* v. *McLean et al.*, 1 B. C. R. pt. II., 67.

See VENDOR AND PURCHASER.

Hayden v. *Smith & Angus*, 1 B. C. R. pt. II., 312.

See CONTRACT, IV. 2.

Towne v. *Brighouse*, 6 B. C. R. 225.

See VENDOR AND PURCHASER.

Hobbs v. *E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

See also CONTRACTS—SALES—VENDOR AND PURCHASER.

SPECIFICATIONS.

1. Non-compliance with.]—*Wm. Hamilton Mfg. Co.* v. *Victoria Lumber Mfg. Co.*, 4 B. C. R. 101.

See CONTRACT, III. 3.

2. Tender on.]—*Coughlan & Mayo* v. *Wilmot et al.*, 4 B. C. R. 20.

See CONTRACT, III. 1.

SPEEDY TRIAL.

1. Adjournment of.] — *Reg.* v. *Gordon*, 6 B. C. R. 160.

See CRIMINAL LAW, XVII.

2. Election of prisoner to be tried speedily for a certain offence — *Failure of Crown to prove—Whether prisoner can be convicted on a different offence disclosed by the evidence.*]—A prisoner having decided to be tried speedily upon the charge of forgery, for which he was committed to trial, and being charged and tried for that offence accordingly, there was not sufficient evidence to convict, but there was evidence upon which he might be convicted of obtaining money by false pretences:—Held, that the Crown could not then substitute a charge for the latter offence, for the charge of forgery upon which the prisoner had elected to be tried. *Regina* v. *Morgan*, 2 B. C. R. 329.

3. Code, ss. 765-9—*Right of prisoner to re-elect as to mode of trial.*]—*Reg.* v. *Prevost*, 4 B. C. R. 326.

See CRIMINAL LAW, VII.

4. Code, s. 765 — *Right to elect — Of accused admited to bail under code, s. 601.*] —*Reg.* v. *Lawrence*, 5 B. C. R. 160.

See CRIMINAL LAW, VII.

SPIRITUOUS LIQUORS.

1. Meaning of.]—*In re Kwong Wo*, 2 B. C. R. 336.

See INTOXICATING LIQUORS.

SQUATTERS.

1. Rights of.] — *Hayden* v. *Smith & Angus*, 1 B. C. R. pt II., 312.

See CONTRACT, I. 2.

STATEMENT OF CLAIM.

1. Defective statement of claim — *Does not prejudice mechanic's lien.*]—*Knott* v. *Cline et al.*, 5 B. C. R. 120.

See MECHANIC'S LIEN.

2. Delivery of.]—*Mason* v. *Nason*, 4 B. C. R. 172.

See PRACTICE, XXXVIII. 10.

3. Extension of indorsement on writ by.]—*Oppenheimer* v. *Sperling*, 10 B. C. R. 162.

See PLEADINGS, IX. 1.

4. Particulars of title—*Should be given in.*]—*E. & N. Ry. Co.* v. *New Van. Coal Co.*, 6 B. C. R. 188.

See PLEADINGS, VIII.

STATEMENT OF DEFENCE.

1. Embarrassing — *Striking out.*]—*E. & N. Ry. Co.* v. *New Van. Coal Co.*, 6 B. C. R. 306.

See PLEADING, X. 1.

STATEMENT OF PRISONER.

1. To person in authority not admissible.]—*Rex* v. *Royes*, 10 B. C. R. 407.

See CRIMINAL LAW, VIII.

STREET RAILWAYS.

1. A street railway company in grading a street in Vancouver in accordance with an agreement entered into with the corporation pursuant to the Vancouver Incorporation Act and Amendment of 1895, is not liable for damages for loss of support caused to lands adjoining the street. *MacDonell* v. *British Columbia Electric Railway Company*, 9 B. C. R. 542.

See also RAILWAYS.

STATUTES.

1. Appeal—*Statutes relating to — Where retroactive.*]—*Koksilah Quarry Co.* v. *Queen*, 5 B. C. R. 600.

See APPEAL, VIII. II.

2. Authorizing municipality to make by-laws—*Construction of—By-laws beyond terms of statute ultra vires.*] — The Municipalities Act, 1881, authorized municipalities to make by-laws inter alia "to regulate the erection of wooden buildings notwithstanding any Act or law in force in the Province." The municipality assumed thereunder to pass a by-law that "no wooden buildings within the fire limits shall be altered without the written permission of the inspector and the majority of the fire wardens:"—Held, on motion to quash conviction under this by-law, the statute contained no authority for regulating alterations, but only original erection of buildings. *Regina* v. *On Hing*, 1 B. C. R. pt. II., 148.

3. Constitutionality of.] — Only considered where necessary to a decision of the question before the Court. *Re Dickenson*, 11 B. C. R. 262.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

4. Construction of — *Conditions precedent — Imperative or directory — Clauses validating sales for taxes where any taxes due.*]—See *Murne* v. *Morrison*, 1 B. C. R. pt. II., 120; *Peck* v. *Reginam*, 1 B. C. R. pt. II., 11.

5. Construction of—*Creating an offence — Exemption from — Game Protection Act*, 1895.]—The existence of an exception nominated in the description of an offence created by statute, must be negatived in order to maintain the charge, but if a statute creates an offence in general with an exception by way of proviso in favour of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso. The generality of the prohibition contained in the statute (s. 7) against purchasers having in possession with intent to export, causing to be exported, etc., game, etc., is not to be limited by inference to game killed within the Province. *Regina* v. *Strauss*, 5 B. C. R. 486.

6. Construction of—*Latest of two conflicting sections shall prevail.*]—*Hudson's Bay* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

7. Construction of — *Words ejusdem generis.*]—The most reasonable rule to adopt to ascertain whether a certain matter or thing is within the meaning of a statute as being ejusdem generis with things specified therein "and others," is to look to the object or mischief aimed at by the statute. All similar things that come within that object, though not in the abstract ejusdem generis, are so for the purposes of the statute. *Regina* v. *Mee Wah*, 3 B. C. R. 403.

8. Construction of—*Remarks on the impropriety of effectuating an inference by the interpolation of language not found in the statute — Re Bell-Irving and City of Vancouver*, 4 *B. C. R.* 219 — *Construction of — Conflict between general and special act.*]—Where there is a particular enactment and also a general enactment, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative to the exclusion of the other. *Bailey* v. *The City of Vancouver*, 4 B. C. R. 433.

9. Construction of — *Whether can be assisted by definition of same words in another statute.*]—The interpretation of general terms in a statute cannot be assisted by reference to the interpretation clause in another statute, by which the same terms are in it given a special construction. *Bainbridge* v. *The Esquimalt & Nanaimo Railway*, 4 B. C. R. 181.

10. Construction of "after the passing"—*Kane* v. *Kaslo*, 4 B. C. R. 486—*Construction of term designating offence.*] — Where defined in the Statute of Common Law, construction is excluded. *Re Farquhar Macrae. Ex parte John Cook*, 4 B. C. R. 18.

11. Construction of.]—It must be presumed that Legislature only contemplated only subjects intra vires of its powers. *Scott* v. *Scott*, 4 B. C. R. 316.

See DIVORCE.

12. Construction of—*Particular enactment takes precedence to general.*]—*Bailey* v. *City of Vancouver*, 4 B. C. R. 433.

See MUNICIPAL CORPORATIONS, II. 3.

13. Construction of — *Principle of.*] — *Reg.* v. *Symington*, 4 B. C. R. 323.

See GAME.

14. Construction of — *Principle of.*]— *In re Assessment Act*, 9 B. C. R. 210.

See TAXATION, III.

15. Contract by statute — *Issuance of saloon license is a.*]—*In re Clay*, 1 B. C. R. pt. II., 301.

See INTOXICATING LIQUORS.

16. Equitable construction of — *Exemption in criminal statute.*] — *Reg.* v. *Symington*, 4 B. C. R. 323.

17. Grants — *By — Construction of.*] — *Bainbridge* v. *E. & N. Ry. Co.*, 4 B. C. R. 181.

See MINES AND MINERALS, XV.

18. Imperial Act.]—20 and 21 Vict. c. 43 (Imp.), giving the power to a magistrate exercising summary jurisdiction under Jervis' Act, to state a case for the opinion of the Superior Court, is not provided for or inconsistent with Can. Stat. 37 Vict. c. 42, and is not repealed by s. 7 thereof. *Regina* v. *Ah Pow*, 1 B. C. R. pt. I., 147.

19. Imperial Acts — *Force of, in colonies.*]—*Reynolds* v. *Vaughan*, 1 B. C. R. 3.

See PRACTICE, IX.

20. Imperial orders-in-council—*Costs —Introduction of English law into colony— Orders-in-council — Colony of Vancouver Island — "Statutes Repeal Act*, 1871."] — Held, that orders-in-council passed in England under powers in an Imperial statute are not in force proprio vigore in a colony, although the statute itself may be in force. Semble, that the colony of Vancouver Island was established as a British colony prior to 1855. *Reynolds* v. *Vaughan*, 1 B. C. Reports, page 3.

21. Interpretation of shall be favourable to personal liberty.] — *Re George Bowack*, 2 B. C. R. 216.

See HABEAS CORPUS.

22. Performance of judicial act — "*May*"—*Criminal Code*, 1892, *s.* 880 (*e*).] —In a statute providing that the Court may perform a judicial act for the benefit of a party under given circumstances, the word "may" is imperative. *Fenson* v. *City of New Westminster*, 5 B. C. R. 624.

23. Pleading of — *Not necessary to state sections relied on.*]—*Kirk* v. *Kirkland*, 6 B. C. R. 442.

See PLEADINGS, IX. 4.

24. Retroaction.] — Statutes affecting the right to appeal are not statutes relating to procedure, and are not retroactive. *Per* DRAKE, J., in *Koksilah* v. *The Queen*, 5 B. C. R. 600.

25. Rights under — *Must be construed strictly.*]—*Haggarty* v. *Grant*, 2 B. C. R. 173.

See MECHANIC'S LIEN.

26. Subject to proclamation—*Lieut.-Governor.*]—The Fire Insurance Policy Act (B. C.), 1893, providing statutory conditions, was passed subject to a provision that "This Act shall not come into force until a day to be named by the Lieutenant-Governor-in-council." The Lieutenant-Governor-in-council named 1st November, 1893, and advertised the same in the "Gazette," but before that date published a further notice, and afterwards further notices, postponing the day for the Act to come into force until a date after that of the making of the policy in question:—Held, by the Full Court (McCREIGHT, DRAKE and MCCOLL, JJ.): (1) That the Lieutenant-Governor was the delegate of the Legislature for the purpose only of proclaiming the Act in force, and upon his doing so the Act came into operation, and he was functus officio and could not afterwards postpone the date. *Cope & Taylor* v. *Scottish Union Co.*, 5 B. C. R. 329.

STATUTE OF FRAUDS.

1. Equitable mortgage — *Statute of Frauds not a defence to a.*]—*Hudson's Bay* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

2. Misdescription—*Mistake* — *Rectification.*]—*Borland* v. *Coote*, 10 B. C. R. 493.

See VENDOR AND PURCHASER.

3. Partnership—*Purchase for use of.*]—Plaintiff alleged that defendant being his partner, bought land for the use of the partnership:—Held, on the evidence that there was not sufficient proof of such partnership to enable the Court to declare the defendant a trustee for the partnership. *Brown* v. *Grady*, 6 B. C. R. 190.

4. What constitutes writing to satisfy.]—*Smith et al.* v. *Mitchell*, 3 B. C. R. 450.

See VENDOR AND PURCHASER.

5. Whether a mineral claim is an interest in land within.] — *Stussi* v. *Brown*, 5 B. C. R. 380; *Fero* v. *Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, XXI. 2.

See also FRAUDS, STATUTE OF—MINES AND MINERALS, XXI. 2—SPECIFIC PERFORMANCE—VENDOR AND PURCHASER.

STATUTE OF LIMITATIONS.

1. Limitation as to time—*Powers of Court to extend.*]—*In re Good Friday et al.*, 4 B. C. R. 496.

See MINES AND MINERALS, XLIII.

2. Mortgage—*Redemption.*] — An execution purchaser of an equity of redemption is entitled to redeem only upon payment of the whole arrears of principal and interest legally recoverable from the mortgagor, and twenty years of such arrears are recoverable under the usual covenant to pay. *Keary* v. *Mason*, 2 B. C. R 48.

3. Pleading of.]—*Jones* v. *Davenport*, 7 B. C. R. 452.

See PLEADINGS, III.

STATUTES, TABLE OF.

STAKES.

1. Surveyor's stakes superseded by plan.]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

STAKING CLAIM.

1. Must be shewn with reasonable certainty.]—*Pavier* v. *Snow*, 7 B. C. R. 80.

See MINES AND MINERALS, XXXI. 4.

2. Use of stone mounds for posts, in.]—*Callanan* v. *George*, 8 B. C. R. 146.

See MINES AND MINERALS, XXXI. 4.

3. What is a bona fide staking of a mineral claim within statute.] — *Richards* v. *Price*, 5 B. C. R. 362.

See MINES AND MINERALS, XXXI. 4.

See also MINES AND MINERALS, XXIX., XXXI.

STATED CASE.

1. In election petition proceedings.]—*Jardine* v. *Bullen*, 6 B. C. R. 220.

See ELECTIONS.

STAY OF PROCEEDINGS.

1. Of execution pending appeal — *Terms of.*]—*Davies* v. *McMillan*, 3 B. C. R. 35.

See PRACTICE, XXVIII.

2. Right to—*May be waived.*]—*Howay & Reid* v. *Dom. Permanent Loan Co.*, 6 B. C. R. 551.

See PRACTICE, XXXVI.

3. Right of Crown to — *In action between subjects.*]—*Atty.-Gen.* v. *E. & N. Ry. Co.*, 7 B. C. R. 221.

See ATTORNEY-GENERAL.

4. What operates as.] — *Edison Gen. Electric Co.* v. *Dom. & New West. Trans. Co.*, 4 B. C. R. 460.

See JUDGMENT.

5. Summons for—*Only operates as such from and after its return—Judgment signed by default of appearance interim is regular.*] —*Lantz* v. *Baker*, 3 B. C. R. 269.

See PRACTICE, XXVIII.

STEAMSHIP.

1. Exemptions of — *From proceeds of sale under execution.*]—*Yorkshire Guarantee* v. *Cooper*, 10 B. C. R. 65.

See EXEMPTION.

2. Landing of Passengers from.]—*C. P. N. Co.* v. *City of Vancouver*, 2 B. C. R. 183.

See HEALTH.

3. Steamers are entitled to greater salvage than other salvors.]—*Jacobson* v. *Ship Archer*, 3 B. C. R. 374.

See SALVAGE.

STENOGRAPHER.

1. Costs of extending notes of.]—*Edison Gen. Elec. Co.* v. *Van. & West. Tram. Co.* 5 B. C. R. 34.

See PRACTICE, IX 7.

2. Refusal of—*To furnish transcript of notes.*]—A person who undertakes to act as Court stenographer cannot refuse to furnish parties to a suit with a transcript of his notes merely because his fees have not been paid by the Crown. *Pender* v. *War Eagle*, 6 B. C. R. 427.

STOCK EXCHANGE.

1. Broker and principal—*Payment of differences—Illegality—Criminal Code, s.* 201.] —Defendant instructed the plaintiffs to sell shares in the T. C. Co. for him, who asked for cover, and defendant paid $600; no time was fixed for delivery; plaintiffs asked defendant for more as shares were rising, and finally called for $2,000, which defendant refused to pay. Plaintiffs then, as they alleged, purchased the shares to satisfy their own liability and sued for amount paid:— Held, by DRAKE, J., dismissing the action, that as no stock was ever delivered or intended to be delivered, and as the intent was to make a profit from the fluctuations of the stock market, the transaction was illegal. *B. C. Stock Exchange* v. *Irving*, 8 B. C. R. 186.

See also GAMING.

STOWAGE.

1. Common carriers—*Liability of negligent stowage inducing loss of goods.*]—The Hudson's Bay Co. and the other defendants, the Pioneer line, were common carriers—the company plying the "Enterprise," between Victoria and New Westminster, and the Pioneer Line the "Irving" between New Westminster and Yale, so as to form a continuous line of steamers between Victoria and Yale. The receipts from traffic passing over both sections of the route were divided between the defendants. The plaintiff ordered goods from the company which were to be forwarded by them to his agent at Yale. The company having filled the order, shipped the goods on the "Enterprise," and took the following receipt from the purser: "Shipped in good order by H. B. Co., on board the 'Enterprise,' bound for New Westminster, the following packages (the dangers of fire and navigation excepted), consigned to Gavin Hamilton, of 150 mile house, and marked," etc. On an appeal to the Full Court:—Held (affirming WALKEM, J.), as to this receipt, that parol evidence was admissible to show that the company has agreed to carry beyond New Westminster, viz., to Yale, as it did not contradict, but only supplemented, the language of the receipt: also that the exception of liability in cases of fire does not protect the carrier where loss from fire is due to his, or his agents' or servants' negligence. At New Westminster the goods were transferred from the "Enterprise" to the "Irving." Next day, while the "Irving" was on her way to Yale, a fire broke out in some hay stowed near her boilers. The hay consisted of about 20 tons, and besides being uncovered, so nearly filled the whole space between decks, forward from the engine-room to within 8 feet of the boilers, that it was found impossible to do any good with the fire hose. The fire under the circumstances spread rapidly, and burnt the vessel and her cargo (including the plaintiff's goods. — Held (affirming WALKEM, J., that the stowage of the hay was bad stowage, due to negligence, to which the loss of plaintiff's goods was fairly attributable; and therefore that the H. B. Co. were liable to the plaintiff for breach of their contract to carry his goods to Yale, as their liability extended beyond their own line or section of route and throughout the whole distance over which they undertook to carry; and that they were, moreover, responsible for the negligence of the Pioneer Line, as the latter were their agents for the carriage of the goods: that the Pioneer Line having accepted

tue goods for carriage to Yale, thereby undertook a duty they neglected, viz.: "To use due care and diligence in the safe-keeping and punctual conveyance of the goods," that this obligation was cast upon them by the common law as well as by the Dominion Act respecting carriers by water; and that having failed to fulfil it and been privy to the loss of the goods through their own negligence, they were liable as well as the other defendants for such loss:—Held, also, that the measure of damages by way of compensation for delay (where delay has occasioned loss) is interest at the legal rate upon the actual value until judgment. *Hamilton* v. *Hudson's Bay Co., and Irving and Briggs*, 1 B. C. R. 176.

STREAMS.

1. Fouling of — *Injunction to restrain.*]—*Col. River Lumber Co.* v. *Yuill*, 2 B. C. R. 237.

See WATERS AND WATERCOURSES, IV.

STREETS.

1. Dedication of what amounts to.]—*C. P. R.* v. *City of Vancouver*, 2 B. C. R. 306.

See DEDICATION.

2. Grading of — *Damage to adjoining land—Right to lateral support.*]—*McDonnell* v. *B. C. Electric*, 9 B. C. R. 542.

See RAILWAY, VI.

3. Whether duty of municipality to keep in repair.]—*Lindel* v. *City of Victoria*, 3 B. C. R. 400.

See MUNICIPAL CORPORATIONS, VIII.

STRIKING OUT.

1. Striking off roll.

See SOLICITOR AND CLIENT.

2. Striking out objectionable causes of action.]—*Guilbault* v. *Brothier*, 10 B. C. R. 449.

See ACTION.

See also PLEADINGS.

SUB-LEASE.

1. Whether breach of covenant not to assign.]—*Griffiths* v. *Canonica*, 5 B. C. R. 67.

See CANCELLATION OF INSTRUMENTS.

SUBSTANTIAL SERVICE.

1. Application for—*Whether, may be supported by supplementary affidavit.*]—*Centre Star* v. *Rossland & Great Western Mines*, 10 B. C. R. 262.

See PRACTICE, XXVII.

2. Of writ—*Affidavit for, must show defendant evading service.*]—*Hull Brothers* v. *Schneider*, 3 B. C. R. 32.

See PRACTICE, XXVII.

(*See* also PRACTICE, XXVII; XXXVIII. 5, 9.)

SUBSTITUTION.

1. Substituting different charge at trial.]—The prisoner, having elected to be tried speedily upon the charge of forgery, for which he was committed to trial, and being charged and tried for that offence accordingly, there was not sufficient evidence to convict, but there was evidence upon which he might be convicted of obtaining money by false pretences:—Held, that the Crown could not then substitute a charge for the latter offence for the charge of forgery, upon which the prisoner had elected to be tried. *Regina* v. *Morgan*, 2 B. C. R. 329.

2. Substituting different action as a test action.]—*McLeod et al* v. *Crow's Nest Coal Co.*, 10 B. C. R. 103.

See PRACTICE, I. 9.

SUCCESSION DUTY.

1. Life Policy—*Beneficiary domiciled in B. C.*]—The proceeds of a life policy payable at death without the Province are not liable, in the hands of a beneficiary domiciled in the Province, to succession duty under R. S. B. C. c. 175. *Re Templeton*, 6 B. C. R. 180.

2. Principle of calculation—*B. S. Stat.* 1899, c. 68.]—Under section 4 of the Succession Duty Act, where the aggregate value of the property exceeds $200,000, only the excess over that amount is subject to a duty of $5 for every $100 of the value. *In re Todd; Todd* v. *Todd*, 7 B. C. R. 115.

3. Amount payable by half-sister of testator.]—The words "sister of the deceased," in sub-section 4 of section 2 of the Succession Duty Act Amendment Act, of 1889, include a half-sister. *In re Oliver*, 8 B. C. R. 91.

4. Money on deposit in bank by foreigner — *Revenue* — *B. C. Stat.* 1899, *c.* 68, *s.* 4.] — Succession duty is payable upon money, on deposit in a bank in this Province, belonging to a person domiciled in a foreign country at the time of his death. *Re Succession Duty Act*, 9 B. C. R. 174.

SUMMARY CONVICTION.

1. Appeal to County Court—*Pre-requisite to hearing of—Conviction not returned—Security not given.*]—The following preliminary objections to the jurisdiction of the County Court to hear an appeal from a summary conviction were overruled: (a) That the conviction was not returned to or before the Court on appeal. (b) That no security for the appeal had been returned. The appeal having been heard, an objection that the by-law upon which the conviction professed to be made had not been proved, was overruled on the ground that a statute of the Province made the conduct complained of a substantive offence. Semble, that the absence on the deposition returned of proof of the by-law would have been fatal upon certiorari and motion to quash the conviction. It was held, that an appeal from a conviction is a proceeding de novo, as if the information were then first brought to be tried. *Per* Sir M. B. BEGBIE, C.J., *Re Quong Wo*, 2 B. C. R. 336.

2. Appeal from — *By-law ultra vires—Estoppel from setting up, because objection not taken in Court below—Plea of guilty—No appeal after—Discretion of magistrate—R. S. B. C. c. 176, ss. 80-85.*]—A defendant convicted on summary conviction of an infraction of a city by-law, is estopped from contending on appeal that the by-law is ultra vires, unless the objection was taken before the magistrate. *Regina* v. *Bowman*, 6 B. C. R. 271.

3. Appeal — *Entry of — Recognizance — R. S. B. C.* 1897, *c.* 176.]—The recognizance required by section 71 (c) of the Summary Convictions Act (Provincial), must be entered into before the appeal can be entered for trial. *Regina* v. *King*, 7 B. C. R. 401.

4. Appeal from summary conviction to County Court.] — Power of a County Court Judge to award costs of appeal to a person from a summary conviction where improperly made respondent. *Re W. N. Bole*, 2 B. C. R. 268.

See PROHIBITION.

5. Certiorari—*Minute and conviction returned to County Court imposing penalty (hard labour) in excess of jurisdiction — Right of convicting Justice to amend after such return.*]—A minute of conviction from an offence under a by-law, and summary conviction drawn up in accordance therewith by the convicting magistrate, and returned by him to the County Court, directed the accused to be imprisoned with hard labour, in default of payment of the fine imposed, or sufficient distress to meet it. The magistrate had no jurisdiction to impose hard labour. In answer to a rule nisi to shew cause why a certiorari should not issue to bring up the conviction, and why it should not be quashed without the writ actually issuing, the magistrate brought in on affidavit a copy of the conviction altered by him after it was returned to the County Court, by cutting out the sentence of hard labour:—Held, dismissing the rule nisi, on the authority of Regina v. Hartley, 20 Ont. 481, that the magistrate had a right so to amend the conviction, and that the Court would not look behind it. Quære, *per* MCCREIGHT, J.: Whether the certiorari, if issued, should not be directed both to the County Court Judge and convicting justice. Certiorari is not taken away by section 80 of the Summary Conviction Act, 1889 (B. C.), in regard to objections going to the jurisdiction of the convicting justices by an appeal from the conviction to the County Court. *Reg.* v. *McAnn*, 4 B. C. R. 587.

6. Discretion of magistrate to hear charge of keeping disorderly house or commit.]—*Re McRae*, 4 B. C. R. 18.

See CRIMINAL LAW, XVIII.

7. Joinder of causes of action after quashing of conviction.]—Where several persons are fined in one summary conviction which had been quashed, they may not sue jointly to recover the fines paid, but must bring separate actions. The only ground of prohibition to an inferior Court is that it is exceeding its jurisdiction. *Five Chinamen* v. *The Corporation of the City of New Westminster*, 2 B. C. R. 168.

8. Motion to quash — *Recognizance required on.*]—*Reg* v. *Ah Gin*, 2 B. C. R. 207.

See CRIMINAL LAW, XIX.

9. Notice of appeal from — *Necessary contents of.*]—*Rex* v. *Mah Yin*, 9 B. C. R. 319.

See CRIMINAL LAW, IV.

10. Payment of fine—*No right of appeal after.*]—*Reg.* v. *Neuberger*, 9 B. C. R. 272.

See CRIMINAL LAW, IV.

11. Quashing—*Commitment not shewing jurisdiction in magistrate.*]—A conviction was held bad on motion to quash, for not shewing that the offence was committed within the jurisdiction of the convicting Justice, and because the person entitled to receive the costs was not designated, and the costs of conveyance to jail remained unascertained. *Regina* v. *Akerman*, 1 B. C. R., pt. I., 255.

12. Summary Convictions Act — *Appeal—Case stated—Transmitting case to District Registry.*]—*R. S. B. C.* 1897 *c.* 176, *ss.* 86 *and* 87.]—The provision in section 87 of the Summary Convictions Act, that the appellant shall, within three days after receiving the case stated, transmit it to the District Registry, is a condition precedent to the jurisdiction of the Court to hear the appeal. *Cooksley* v. *Nakashiba*, 8 B. C. R. 117.

SUMMARY JUDGMENT.

1. Motion for in County Court—*Leave to defend.*]—*Maguire* v. *Miller*, 9 B. C. R. 1.

See COURTS, I. 3.

2. Where suit in firm name—*One person cannot sue in a firm name.*]—*B. C. Furniture Co.* v. *Tugwell*, 7 B. C. R. 84.

See also PRACTICE, XXXI.; XXXVIII. 10.

SUMMARY TRIAL.

1. Consent of accused.]—*Rex* v. *Nelson*, 8 B. C. R. 110.

See CRIMINAL LAW, XVI.

See also CRIMINAL LAW, XIX.

SUMMONING OF JURY.

See JURY; PRACTICE, XVI.

SUMMONS.

1. For directions.]—*Jones* v. *Pemberton*, 6 B. C. R. 67.

See PRACTICE, X.

2. Service of, on solicitor who has acted on previous summons in same matter—*Whether good service.*]—*Arthur* v. *Nelson*, 6 B. C. R. 316.

See PRACTICE, XXVII.

3. Winding-up.]—All applications made to the Court in its winding-up jurisdiction must be made by summons. *In re Nelson Saw Mill Co.*, 6 B. C. R. 156.

See also PRACTICE, V.; XXVII.; XXIX.; XXXV.; XXXVIII.

SUNDAY.

1. Intoxicating liquors — *Detectives visiting saloons—Whether bona fide travellers.*]—A constable who, by order, visits saloons on Sundays to see whether or not the law with respect to the sale of liquor is being obeyed, is a bonâ fide traveller within the meaning of the Liquor License Regulation Act, 1891. *Regina* v. *Harris*, *Regina* v. *Duval*, 2 B. C. R. 177.

2. Liquor License Regulation Act—*Validity of.*]—The Liquor License Regulation Act, 1891 (B C.), section 4, is intra vires of the Provincial Legislature, and is consistent with sub-sections 73, 78 and 92, of section 96 of the Municipal Act, 1891. *Sauer* (*App.*) v. *Walker* (*Resp.*), 2 B. C. R. 93.

3. Municipal Clauses Act—*By-law affecting public morals—Exercising calling—Unreasonableness of by-law.*]—The Municipal Clauses Act, 1896, s. 50, s.-s. 90, gave to the council of every municipality the power to pass by-laws in relation to "Public morals, including the observance of the Lord's Day, commonly called Sunday." The municipal council of Richmond passed a by-law thereunder, "that no person shall do or exercise any worldly labour, business, or work of his ordinary calling upon the Lord's Day, or any part thereof, works of necessity or charity only excepted," etc. Section 81 provides: "Every fine may be recovered and enforced with costs, by summary conviction, before any Justice of the Peace, etc.; and in default of payment the offender may be committed to the common gaol," etc. Section 81 (sub-sec. (2), provides: "The Justice may by warrant cause any such pecuniary penalty, etc., if not forthwith paid, to be levied by distress, etc. In case of there being no distress found, etc., may commit the offender to the common gaol, etc. The defendant was for an offence against the by-law, committed to gaol for non-payment of the fine, without previous issue of the distress warrant.—Held, upon motion for certiorari, quashing the conviction, that the by-law was bad for unreasonableness. 2. That the power of recovering the fine by imprisonment, given by s. 81, is not limited to the power of issuing distress warrant, etc., provided by s. 81, s.-s. (2), and that the form of the commitment was regular. *Regina* v. *Petersky*, 5 B. C. R. 549.

4. Sunday Closing by-law—*Saloons—Bar-rooms.*]—A municipality has no power under s. 50, s.-ss. 109 and 110 of the Municipal Clauses Act, to pass a by-law closing any kind of licensed premises, except saloons. A municipality is not empowered, by s. 7 of the Liquor Traffic Regulation Act, to pass any closing by-law, the intention of the section being to prohibit the sale during, inter alia, such hours as may be prescribed by the municipality under the authority of some other statute. Where a statute creates offences and provides the necessary machinery for the carrying out of its provisions, a by-law to put it in force is unnecessary and bad. *Hayes* v. *Thompson*, 9 B. C. R. 249.

5. Vancouver Incorporation Act — *Barber Shops—Keeping open on.*]—The Vancouver Incorporation Act, 1900, empowered the city to pass a by-law to prohibit "the keeping open of barber shops on Sunday," and the city thereupon passed a by-law enacting that all barber shops should be closed on Sunday, and that no person should exercise the trade of a barber on Sunday within the city. Appellant was charged with an offence under the by-law, and before the magistrate he admitted he had shaved customers on Sunday, and the magistrate thereupon convicted him of having "kept open:" — Held, by IRVING, J., allowing an appeal, that a barber by shaving customers on a Sunday does not necessarily "keep open:" — Held also, that the city had no power to pass a by-law prohibiting a barber from exercising his trade or calling on Sunday. No appeal lies from the County Court sitting as an appellate Court, from the decision of a magistrate under the Provincial Summary Convictions Act. *Re Lambert*, 7 B. C. R. 396.

6. Vancouver Incorporation Act — *Sale of personal property on—Selling fruit.*]—The Vancouver Incorporation Act, 1886 (private), as amended by Stat. B. C. 1886, c. 68, s. 18, gave the municipal council of the city power to pass by-laws: "For the prevention of sales. . . . of any . . . personal property whatsoever, except . . . milk, drugs or medicine . . . on Sundays." The city passed a by-law prohibiting the sale on Sundays in the city of any personal property with the exceptions mentioned in the statute. Upon appeal by defendant from a conviction under the by-law for selling fruit on a Sunday:—Held, 1. That the Provincial Legislature, having power to deal with the subject, it was no objection that the provision was inconsistent with the Lord's Day Act, 29 Car. II., c. 7. A by-law cannot be

successfully attacked upon the ground of unreasonableness, where its provisions are in the terms of the enabling statute, for the objection is then to the unreasonableness of the statute. *Regina* v. *Petersky*, 4 B. C. R. 385.

See also BY-LAWS; CERTIORARI; INTOXICATING LIQUORS; MUNICIPAL CORPORATIONS.

SUPPLEMENTARY AFFIDAVIT.

1. Allowed in support of order for substantial services.] — *Centre Star* v. *Rossland Mines*, 10 B. C. R. 262.

See PRACTICE, XXVII.

2. On winding-up petition refused.] —*In re Kootenay Brewing Co.*, 6 B. C. R. 112.

See COMPANY, IX. 1.

SUPREME COURT.

1. History of.]—*Atty.-Gen.* v. *E. & N. Ry. Co.*, 7 B. C. R. 221.

See ATTORNEY-GENERAL.

2. Jurisdiction of, to enforce Mechanic's lien.]—*Martin* v. *Russell et al.*, 2 B. C. R. 98.

See MECHANIC'S LIEN.

3. Powers of Provincial Legislature with respect to.]—*Sewell* v. *B. C. Towing Co.*, 1 B. C. R., pt. 1., 153.

See CONSTITUTIONAL LAW, II. 1.

4. What costs allowed where action within jurisdiction of County Court.]—*Macdonell* v. *Perry*, 10 B. C. R. 326.

See PRACTICE, IX.

See also COURTS—PRACTICE, XV.

SUPREME COURT ACT.

See STATUTES, TABLE OF.

SUPREME COURT OF CANADA.

1. Right to appeal to.] — *Edison Gen. Elec. Co.* v. *Edmonds*, 4 B. C. R. 354.

See APPEAL, III.

SUPREME COURT REFERENCE ACT.

1. "Court" — "Judge" — *Reference to particular Judge — Whether authorized by statutory power to refer to the Supreme Court.*]—By the Supreme Court Reference Act, 1891, s. 1, "The Lieutenant-Governor-in-Council may refer to the Supreme Court of British Columbia, or to a Divisional Court thereof, or to the Full Court, for hearing and consideration, any matter which he thinks fit to refer, and the Court shall thereupon hear and consider the same." Under this statute the Lieutenant-Governor-in-Council assumed to refer a certain question and issue "to the Honourable Mr. Justice DRAKE for decision and report." On appeal to the Full Court from the report of MR. JUSTICE DRAKE:—Held, that there was no power to refer otherwise than to the Supreme Court, and that the proceedings appealed from before MR. JUSTICE DRAKE were coram non judice. *Re Horsefly Mining Co.*, 4 B. C. R. 165.

See also COURTS—STATUTES, TABLE OF.

SUPREME COURT RULES.

See RULES OF COURT.

SURETY.

1. On replevin bond.] — *Dunsmuir* v. *Klondike & Col. Gold Fields*, 6 B. C. R. 200

See REPLEVIN.

See also BILLS AND NOTES—RECOGNIZANCE.

SURFACE RIGHTS.

1. Crown grant of mineral claim.]—Plaintiff sued for cancellation of a lease from defendant on ground that defendant's Crown grant did not pass the surface rights:—Held (without deciding whether it did or not), that action failed on ground that plaintiff had not affirmatively proved that the grant did not pass the surface rights. Sec. 16 of Mineral Act Amendment Act, 1897, is declaratory and not prospective merely. Appeal to the Full Court dismissed. *Spencer* v. *Harris*, 6 B. C. R. 466.

SURGICAL ATTENDANCE.

1. Whether duty of ship owner to provide.]—*Morgan* v. *British & Yukon N. Co.*, 10 B. C. R. 112.

See SHIPPING.

SURPLUSAGE.

1. Does not impair indictment.] — *Rex* v. *Coote*, 10 B. C. R. 285.

See CRIMINAL LAW, XIII.

SURPRISE.

1. Action to recover back part of judgment paid.]—If one pays a judgment got against him by default, he cannot sue to recover back part thereof, but must apply to have the judgment set aside and for a new trial, which will be granted only on the ground of surprise or mistake. *Goon Gan* v. *Moore*, 2 B. C. R. 154.

SURRENDER.

1. Of term under lease by operation of law.]—*Gold* v. *Ross*, 10 B. C. R. 80.

See LANDLORD AND TENANT.

SURVEY.

1. Adverse action — *Must be based on survey of P. L. S.*]—In an adverse action the plan to be filed pursuant to s. 37 of the Mineral Act must be based on a survey made by a provincial land surveyor. The filing of the affidavit and plan pursuant to said section is a condition precedent to the plaintiff's right to proceed with his action. Decision of MARTIN, J., reversed, HUNTER, C.J., dissenting. *Per* MARTIN, J.: The provisions of the Oaths Act, s. 16, apply to affidavits filed under said s. 37. *Paulson* v. *Beaman et al.*, 9 B. C. R. 184.

2. Crown grant of adjoining lots — *Description of land—Estoppel.*]—In an action for the declaration of title in a piece of land claimed by plaintiff as part of lot 276 and by defendant as part of 202. Defendant's title was derived through B., to whom, in 1870, a Crown grant was issued, granting that lot "numbered 202 on the official plan" said to contain "150 acres, more or less." In 1876-77 the Lands and Works Department having caused an official survey of the adjoining lots to be made, found the official plan by which the boundaries of B.'s lot were defined to be incorrect, and with a view to retain the acreage proper to each grant and to make the boundaries run true to the cardinal points, gave the defendant, without notifying him, in the new official plan or survey, a new southern boundary. Three years after the completion of this survey, defendant filed in the Land Registry office a plan of the greater part of lot 202, according to a private survey made by his own directions in which he implicitly followed, as to his southern boundary, the survey of 1876-77. In 1881 a Crown grant to lot 276—the boundaries thereof being as determined by the survey of 1876-77—was issued to plaintiff:—Held, that the defendant having, by filing his map in 1880, adopted the survey of 1876-77, was precluded as against the plaintiff, from treating that survey as a nullity. *Johnston* v. *Clarke*, 1 B. C. R. pt. II.

3. Surveyors' stakes superseded by plan.]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

STYLE OF CAUSE.

1. Irregularity in, is amendable.] — *B. C. Furniture* v. *Tugwell*, 7 B. C. R. 361.

See PRACTICE, XXIX.

TAXATION.

I. INCOME.

1. Income tax—*Locomotive engineer.*]—The earnings of railway locomotive engineers who receive pay according to the number of miles they run their locomotives, are "income" within the meaning of that term as used in the Assessment Act prior to the amendment of 1901, and so liable to taxation. *In re the Assessment Act*, 9 B. C. R. 60.

2. Income—*Engineers.*]—The earnings of railway locomotive engineers who receive pay according to the number of miles they run their locomotives, are not "income" within the meaning of that term as used in the Assessment Act prior to the amendment of 1901, and are therefore not liable to taxation. Decision of IRVING, J., reported ante p. 60, reversed. *In re Assessment Act*, 9 B. C. R. 209.

3. Income.]—The "income" made liable to taxation co nomine by the Assessment Act, C. S. B. C., 1888, c. 111, s. 3, means net income. *Re Marquis of Biddle Cope and the Assessment Act*, 5 B. C. R. 37.

II. MUNICIPAL.

1. Assessment—*Basis of valuation for.*]—*Re Municipal Clauses Act and G. O. Dunsmuir*, 8 B. C. R. 361.

See MUNICIPAL CORPORATIONS, IX.

2. Basis of assessment—*Residential property—Vancouver Incorporation Act—Section 28.*]—*Re Vancouver Incorporation Act*, 1900, *and B. T. Rogers*, 9 B. C. R. 373.

See MUNICIPAL CORPORATIONS, IX.

3. Defence to action for taxes.]—*Victoria* v. *Bowes*, 8 B. C. R. 363.

See MUNICIPAL CORPORATIONS, IX.

4. Distraint for taxes—*Action for trespass—Leave and license.*] — Defendant, a municipal assessor, distrained for taxes assessed on three lots, standing in assessment roll in plaintiff's name. One of these lots was the separate property of plaintiff's wife. This objection was not pointed out to the assessor, although the plaintiff in protesting against the legality of the levy as to all lots, raised a number of technical objections, and, as to the particular lot, claimed that the assessment was too high. The assessor, at plaintiff's request, seized certain cattle in preference to other articles:—Held, in an action for trespass that this did not amount to leave and license, and that the plaintiff was entitled to damages. But inasmuch as the plaintiff could have prevented the trespass, but did not, but rather encouraged it, with a

view to an action for damages:—Held, that he was entitled to no damages beyond the auction value of the goods seized and sold; and the Court having a discretion as to costs, each party was left to bear his own. *Mayne* v. *Morrison*, distinguished. *Vedder* v. *Chadsey*, 1 B. C. R., pt. II., 76.

5. Exemption from taxation where fee in Crown.]—*King* v. *Municipality of Matsqui*, 8 B. C. R. 289.

See MUNICIPAL CORPORATIONS, IX.

6. Homestead — *Municipality.*]—Where the fee still remains in the Crown, the interest of the holder of a homestead claim is not subject to taxation by a municipality, although the holder personally is. *King* v. *The Municipality of Matsqui*, 8 B. C. R. 289.

7. Land and improvements belonging to the Dominion Government — *Assessment.*]—Defendant was the occupier of one of several stores on the ground floor of a building belonging to the Dominion Government and was assessed under s. 168, s.-s. 4 (a), of the Municipal Clauses Act, for taxes in respect of lands and improvements. The assessment roll described the property as "parts of lots 1,605 and 1,607, block 1; measurement, 23 x 66; Government street; land, $12,650; improvements, 8920; total, $13,570:"—Held, by DRAKE, J., dismissing an action to recover taxes: (1) That defendant was an occupant of part of the improvements only, and not of the land. (2) The assessment was invalid because the lands and improvements were insufficiently described. (3) The Act provides no procedure for such an assessment. (4) Where an assessment is illegal the person assessed is not bound to appeal to the Court of Revision, but may successfully raise the question of his liability in an action to recover taxes. *Victoria* v. *Bowes*, 8 B. C. R. 363.

8. Municipality assessment roll—*Person on roll not owner of property—Liability of—Municipal Clauses Act, ss. 134 and 155.*]—The mere fact that a person is named in the assessment roll of a municipality as the owner of certain real estate does not make him personally liable for the amount of the assessment. Sections 134 and 155 of the Municipal Clauses Act considered. Quære, whether a person whose name was once properly on the assessment roll would be liable for taxes after he had parted with his interest in the property, but had omitted to have his name removed. Where an assessor exceeds his jurisdiction, the person assessed is not bound to appeal to the Court of Revision, but may successfully raise the question of his liability in an action to recover taxes. *Coquitlam* v. *Hoy*, 6 B. C. R. 458, 546.

9. Payment of taxes in order to qualify for municipal council.]—*Cawley* v. *Branchflower et al.*, 1 B. C. R., pt. II., 35.

See MUNICIPAL CORPORATIONS, IX.

III. PROVINCIAL.

1. Arrears — *Laches—Action for money paid to use of defendant.*]—In 1876 M. pre-empted land in New Westminster district, and paid one instalment of the purchase money. The other instalment was payable on the 18th November, 1878. M. paid also the taxes for 1876, 1877 and 1878, but no further tax or instalment. The taxes for 1879 became delinquent on the 1st March, 1879. M. left the Province early in 1880, his address being wholly unknown. In December, 1879, the land was sold to W., by tax sale. Subsequently W. paid all arrears of taxes, and the balance of the purchase money, and in 1881 a Crown grant issued to him, and he entered, and improved and mortgaged the land; the Crown grant and mortgages were duly registered. In 1883 M. returned to the Province and claimed the land:—Held, that M., by his laches, had disentitled himself from sustaining such claim. The Crown had not declared M.'s first instalment forfeited, but had allowed W. the benefit of it:—Held, that M. might, under the prayer for general relief, recover the amount of such instalment as money paid for the use of W. Semble, the grant from the Crown in 1881 operated as a cancellation of M.'s pre-emption claim without reference to the matters specified in s. 2 of the "Land Amendment Act, 1878." *Moriarity* v. *Wadhams*, 1 B. C. R., pt. II., 145.

2. Canneries.] — Where canners furnish fishermen with fishing apparatus, but there is no agreement binding the fishermen to sell their catch to the canners, the latter are not liable for the revenue tax in respect of such fishermen. *Campbell* v. *United Canneries*, 8 B. C. R. 113.

3. Discriminating against a class unconstitutional.]—Section 14 of the Chinese Regulation Act, 1884, providing "no free miner's certificate shall be issued to any Chinese except on payment of fifteen dollars," the fee for such certificate for other classes being five dollars, was unconstitutional as imposing an unequal and differential tax on a class. *Regina* v. *Gold Commissioner of Victoria District*, 1 B. C. R., pt. II., 260.

4. Dominion official—*Provincial tax on —Ultra vires.*] — The imposition of a tax upon the income of a Dominion official is ultra vires of the Provincial Legislature. *Regina* v. *Bowell*, 4 B. C. R. 498.

5. Educational — *Provincial law taxing municipality for educational purposes.*]—*Atty.-General of B. C.* v. *Victoria* 2 B. C. R. 1.

See CONSTITUTIONAL LAW, II. 2.

6. Probate fees.]—By r. 1,065, the appendices to the Supreme Court Rules form part thereof, and by s. 94 of the Supreme Court Act (R. S. B. C., 1897, c. 56), the Rules are declared to be valid and binding, therefore probate fees as set out in appendix M. of the Rules may be collected as being imposed by statutory enactment. *In re Porter Estate*, 10 B. C. R. 275.

7. Railway lands—*Alienation.*]—By the Statute B. C. 47 Vict. c. 14 (E. & N. Ry. Act), s. 22, it was provided that certain public lands granted by the Act to the railway in aid of its construction, "shall not be subject to taxation unless and until the same are used by the company for other than railway

purposes, or leased, occupied, sold or alienated." In January, 1889, the E. & N. Ry. Co., by agreement, gave to H. the right to enter and select 50,000 acres of the said lands, to be paid for at the rate of $5 per acre, in certain instalments, with interest, etc. H., in February, 1890, assigned all his interest under the agreement to the lumber company. The lands had been selected and surveyed, but the purchase money was not fully paid. The Provincial Government assessed the lands for the purpose of taxation, but the Court of Revision, upon the authority of Victoria Lumber Company v. The Queen, 3 B. C. 16, discharged the assessment: — Held, by the Full Court on appeal (*per* McCREIGHT and WALKEM, JJ., DRAKE, J., concurring), that the question was not concluded by the Victoria Lumber Co. v. The Queen, supra, as counsel for the Crown in that case did not press the point involved. That the word "alienated," in view of the sense in which it is used throughout the Act, must be given a construction sufficiently wide to include such a transaction. *The Queen, Appellant,* v. *The Victoria Lumber and Manufacturing Company, Respondents,* 5 B. C. R. 288.

8. Railways—*Alienation.*]—By the Stat. B. C., 47 Vict. c. 14, s. 22 (E. & N. Ry. Act), certain lands acquired by the company for the construction of the railway, "shall not be subject to taxation unless and until the same are used by the company for other than railway purposes, or leased, occupied, sold or alienated." In January, 1889, the E. & N. Ry. Co., by agreement, gave to the appellants the right to enter and select 50,000 acres of the said lands, the appellants agreeing to pay $5 per acre in certain instalments, with interest, etc., the lands to be conveyed to the appellants as soon as the purchase money was fully paid, etc. The appellants had entered and surveyed the lands but never occupied the same, nor had they fully paid the purchase money. The Provincial Government assessed the lands for the purpose of taxation, and the Court of Revision confirmed the assessment:—Held, by the Full Court on appeal: That the E. & N. Ry. Co. had not "leased," "sold," "alienated" the lands within the meaning of the Act, and that the same were not liable to taxation. *Victoria Lumber Company* v. *The Queen,* 3 B. C. R. 16.

9. Succession duty.]—Under s. 4 of the Succession Duty Act, where the aggregate value of the property exceeds $200,000, only the excess over that amount is subject to a duty of $5 for every $100 of the value. *In re Todd, Todd* v. *Todd,* 7 B. C. R. 115.

10. Succession duty—*Life insurance.*]—The proceeds of a life policy payable at death without the province are not liable, in the hands of a beneficiary domiciled in the province, to succession duty under R. S. B. C. c. 175. *Re Templeton,* 6 B. C. R. 180.

11. Succession duty.]—Succession duty is payable upon money, on deposit in a bank in this province, belonging to a person domiciled in a foreign country at the time of his death. *In re Succession Duty Act and In re The Estate of Scott McDonald,* 9 B. C. R. 174.

12. Succession duty.]—The words "sister of the deceased," in s.-s. 4 of s. 2, of the Succession Duty Act Amendment Act of 1899, include a half-sister. *In re Oliver,* 8 B. C. R. 91.

13. Tax sale — *Provincial assessor—Assessment Act.*]—The City of Nelson was incorporated in March, 1897, and in September, 1898, lands situated therein were sold by the provincial assessor for taxes for the years 1896 and 1897, levied under the provisions of the Assessment Act:—Held, setting aside the tax deed, that there was no authority to hold the tax sale as the Assessment Act does not apply to municipalities. *McLeod* v. *Waterman,* 10 B. C. R. 42.

14. Taxes on Property Acts—*Construction of.*]—On the construction of the "Taxes on Property Acts," 1876, 1877, 1878, 1879, 1880:—Held, (1) Land contracted to be purchased from the Crown, but only part paid for, and in respect of which no Crown grant has issued, is taxable under the Act of 1876, s. 8. (2) The surcharge of 25 per cent. interest on unpaid taxes is unconstitutional and void. (3) The affidavit required by s. 40 as to the correctness of the roll, extends to all lands taxed, whether belonging to resident or to non-resident taxes. (4) Such last mentioned affidavit, and also the certificate of the clerk of the Court of Revision, that the roll has been finally passed, are not merely directory but precedent and obligatory provisions, and without them no tax is so imposed on the land as that it can be levied by forced process. (5) The Act of 1876, s. 12, authorized "The Lieutenant-Governor in Council from time to time to appoint one or more person or persons to be assessors in each district for the purposes of the Act." The Provincial Secretary reported to the Executive Council, sitting as a committee without the Lieutenant-Governor, that it would be expedient to appoint H. to be assessor in New Westminster district. The committee adopting the report, recommended it to the Lieutenant-Governor for his approval. The Lieutenant-Governor subsequently approved of the report (how or when, did not appear), but nothing further was done:—Held, that such approval was not an "appointment" within s. 12 so as to bring a sale by H. within the protection of 1880, s. 39, as being a sale by "a person duly authorized to collect and enforce payment of taxes." The provisions of these Acts are to be construed strictly and followed strictly. The principle laid down by Mr. Justice Shaw, in Torrey v. Milbury, 21 Pick. 64, approved, viz.: "All measures intended for the security of the subject, for securing equality of taxation, are conditions precedent; and if they are not observed, the subject is not legally taxed." *Murne* v. *Morrison,* 1 B. C. R., pt. II., 120.

15. Unequal taxation — *Ultra vires where discriminate against a class.*]—*Regina* v. *Wing Chong,* 1 B. C. R., pt. II., 150.

See CONSTITUTIONAL LAW, II. 8.

16. Wild land—*Assessment—Flat rate.*]—In assessing 500,000 acres of wild land consisting largely of inaccessible mountains and valleys, the assessor acted on instruction received from the Provincial Assessment Department and fixed the value at $1 per acre for the whole tract. In appeal to the Court

of Revision and Appeal, evidence was taken and an average value of 45 cents per acre was fixed. An appeal was taken to the Full Court on the grounds that the valuation was too high, and that so far as some of the lands were concerned, they were exempt from taxation under the Company's Subsidy Act, and on the argument counsel for the company asked the Court to fix the assessable value of the lands at the specific sum of $47,986.23:—Held, *per* DRAKE, J., that as some of the land was of some value and some of it no value, the fixing of a flat rate was not a compliance with s. 51 of the Assessment Act, 1903, and that the assessment should be set aside with costs. *Per* IRVING, J.: The evidence did not enable the Court to form any opinion as to the value of the land within the meaning of s. 51, and as the assessment was improperly levied at the outset the Court should simply declare that there was no proper assessment in respect of which an appeal will lie. *Per* DUFF, J. (dissenting): (1) That the evidence was adequate to enable the Court to fix, as against the appellant, the assessable value of the lands. (2) The Court has power to deal with the assessment, even though it was not made in accordance with the statute. (3) In fixing the value of a tract of wild land, a process of averaging is reasonable, and a compliance with the statute:—Held, *per* DRAKE and IRVING, JJ. (DUFF, J., (dissenting): That by the operation of s. 3 of the Amending Act, with respect to all the lands granted to the company, the exemption from taxation conferred by s. 7 of the Subsidy Act, expired with the expiration of the period of ten years, beginning with 8th April, 1893, and that therefore the lands claimed to be exempt were assessable. *Per* DUFF, J.: The Court of Revision, under the Assessment Act, 1903, had no jurisdiction to decide whether or not the lands in question were exempt from taxation, and consequently the Full Court has no jurisdiction to deal with that question. *In re The Assessment Act and the Nelson and Fort Sheppard Railway Company*, 10 B. C. R. 519.

IV. TAX SALES.

1. Certificate of title based on—*Whether ousts a prior certificate in hands of former owner or not—Land Registry Act.*]—A certificate of title based on a tax deed does not, ipso facto, oust a prior certificate of title outstanding in the hands of the former owner, and the holder of such later certificate must affirmatively shew the regularity of all the tax sale proceedings in order to make good his title. *Kirk* v. *Kirkland et al.*, 7 B. C. R. 12.

2. Lien for—*Discharge of by tax sale.*]—A sale of land for taxes under a by-law passed pursuant to the Municipal Act, 1892, s. 104, s.-s. 115, exhausts the lien of the municipality upon the lands, for taxes, given by s. 202 of the Act; and the purchaser at the tax sale takes the lands discharged of any lien in respect of taxes actually due at the time of the sale, over and above the taxes for which the land was sold. *Jamieson* v. *City of Victoria*, 6 B. C. R. 109.

3. Sale for—*Assessment roll—Surcharge of 25 per cent. and interest at 18 per cent. per annum — Appointments by Order-in-Council.*]—On the construction of the "Taxes on Property Acts," 1876, 1877, 1878, 1879, 1880:—Held, (1) Land contracted to be purchased from the Crown, but only part paid for, and in respect of which no Crown grant has issued, is taxable under the Acts of 1876 and 1878. (2) The surcharge of 25 per cent. and 18 per cent. interest on unpaid taxes is unconstitutional and void. (3) The affidavit required by s. 40 as to the correctness of the roll, extends to all lands taxed, whether belonging to resident or to non-resident taxes. (4) Such last mentioned affidavit, and also the certificate of the clerk of the Court of Revision, that the roll has been finally passed, are not merely directory, but precedent and obligatory provisions, and without compliance with them no such tax on the land can be levied by forced process. (5) The Act of 1876, s. 12, authorized "the Lieutenant-Governor in Council, from time to time, to appoint one or more person or persons to be assessors in each district for the purposes of the Act." The Provincial Secretary reported to the Executive Council, sitting as a committee without the Lieutenant-Governor, that it would be expedient to appoint H. to be assessor in New Westminster district. The committee adopting the report, recommended it to the Lieutenant-Governor for his approval. The Lieutenant-Governor subsequently approved of the report (how or when, did not appear), but nothing further was done:—Held, that such approval was not an "appointment" within s. 12, so as to bring a sale by H. within the protection of Statute 1880, s. 30, as being a sale by "a person duly authorized to collect and enforce payment of taxes." The provisions of these Acts are to be construed strictly and followed strictly. The principle laid down by Mr. Justice Shaw, in Torrey v. Milbury, 21 Pick. 64, approved: "All measures intended for the security of the subject, for securing equality of taxation, are conditions precedent, and if they are not observed, the subject is not legally taxed." *Murne* v. *Morrison*, 1 B. C. R., pt. II., 120.

4. Setting aside tax deed.]—The city of Nelson was incorporated in March, 1897, and in September, 1898, lands situated therein were sold by the provincial assessor for taxes for the years 1896 and 1897, levied under the provisions of the Assessment Act:—Held, setting aside the tax deed, that there was no authority to hold the tax sale, as the Assessment Act does not apply to municipalities. In July, 1897, a real estate agent, on behalf of the owner, negotiated with a prospective purchaser, but the attempted sale fell through, and after that the agent and the owner ceased to have any dealings with each other. In September, 1898, the agent bought the property at a tax sale at a very low figure:—Held, that at the time of the sale the agent was not in a fiduciary relation to the owner. Decision of IRVING, J., reversed. *McLeod* v. *Waterman* (*No. 2*), 10 B. C. R. 42.

See also ASSESSMENT—BY-LAW—MUNICIPAL CORPORATIONS, II., IV., IX.—PRACTICE, IX. 20.

TEACHER.

1. Salaries of.]—*Atty.-General of B. C.* v. *Victoria*, 2 B. C. R. 1.

See CONSTITUTIONAL LAW, II. 2.

2. Whether mandamusable to keep pupil at school.]—*Phelps* v. *Williams*, 1 B. C. R., pt. I., 257.

TENANT.

1. Lease by where premises do not fulfil requirements of by-law.]—*Hickey* v. *Sciutto*, 10 B. C. R. 187.

See LANDLORD AND TENANT.

TENDER.

1. Conveyance — *To agent—Tender of—Where agent not authorized to execute deeds—Insufficient.*]—*Williams* v. *Wilson*, 3 B. C. R. 613.

See VENDOR AND PURCHASER.

2. Conveyance — *Tender of balance of purchase money with—Effect of.*]—*Manson* v. *Howison*, 4 B. C. R. 404.

See VENDOR AND PURCHASER.

3. Conveyance and purchase money—*Tender of necessary before purchaser can question title.*]—*Foot et al.* v. *Mason et al.*, 3 B. C. R. 377.

See VENDOR AND PURCHASER.

4. Evidence of, or dispensation with —*Practice.*]—Placing money to the credit of a solicitor in a bank, in a place where the solicitor resides, and notifying him thereof, do not constitute a good tender. Silence on the part of the solicitor is not a waiver. *Dunlop* v. *Haney*, 6 B. C. R. 185.

5. Lump sum — *Tender by on specified prices.*]—*Coughlan et al.* v. *Wilmot*, 4 B. C. R. 20.

See CONTRACT, IV 2.

6. Maintenance money—*Tender of by judgment creditor to sheriff.* —*Ward* v. *Clark*, 3 B. C. R. 609.

TENTERDEN'S ACT (LORD).

1. An agent in recommending a loan upon mortgage security upon lands represented to plaintiff that the borrower "was a hard working, industrious farmer, who would be sure to pay his interest money as it fell due," and also made certain representations concerning the value of the lands. The defendants pleaded Lord Tenterden's Act, and maintained that the representations were incapable of being separated, and that not being in writing, the action did not lie. A judgment for plaintiff having been maintained, not on the ground of misrepresentations but of negligence on the part of defendants in not taking due care to obtain a proper valuation and good security, the defence of the statute was not noticed except by DRAKE, J. *Per* DRAKE, J. (p. 439): "That (Lord Tenterden's) Act applies to representations affecting the financial standing and credit of a person, and not to such statements as were made here that H. was a thrifty, hard working man. Those statements may be absolutely true, without affecting his pecuniary position. The loan was not advanced on his thrift, but on the value of the security offered." *Wolley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 416.

TERMINUS.

1. Of railway defined.]—*Edmonds et al.* v. *C. P. Ry. Co.*, 1 B. C. R., pt. II., 272.

See RAILWAYS, I.

2. Right to build railway beyond terminus named in charter.]—*C. P. Ry. Co.* v. *Edmonds*, 1 B. C. R., pt. II., 295.

See RAILWAYS. I.

TERRITORIAL LIMITATION.

See INTERNATIONAL LAW.

TEST ACTION.

See PRACTICE, I. 9.

TESTAMENTARY CAPACITY.

See WILLS.

THIRD PARTY.

1. Notice to—*Practice as to.*]—*Henley* v. *The Reco Mining Co.*, 7 B. C. R. 449; *Bryce* v. *Jenkins*, 8 B. C. R. 32.

See PRACTICE, I. 8.

TIDAL WATERS.

1. Interference with — *In public harbours.*]—*McEwen* v. *Anderson*, 1 B. C. R., pt. II. 308.

See NAVIGABLE WATERS.

2. Obstruction of.] — *Atty.-General* v. *Keefer*, 1 B. C. R., pt. II., 368.

See NAVIGABLE WATERS.

3. Right of Dominion to restrain pollution of waters of a tidal river.] — *Atty-General* v. *Ewen*, 3 B. C. R. 468.

See INJUNCTION.

See also NAVIGABLE WATERS.

TIMBER.

1. Licenses — *Right to use water under timber license.*]—*The Columbia River Lumber Co.* v. *Yuill*, 2 B. C. R. 237.

See WATERS AND WATERCOURSES, IV.

2. Right to dispose of.] — *Manley* v. *O'Brien*, 8 B. C. R. 280.

See JUDGMENTS.

See also WOODMAN'S LIEN.

TIME.

1. Abridgment of.]—*Bank of Montreal* v. *Horne*, 6 B. C. R. 68.

See PRACTICE, XI. 1.

2. Admiralty—*Civic time obtains unless shewn to be incorrect.*]—*Vermont Steamship Co.* v. *The Abby Palmer*, 10 B. C. R. 381.

See ADMIRALTY, VI.

3. Amended writ—*Time for judgment.*] —When an order amending the special indorsement upon a writ of summons is made, the writ with the new special indorsement must be re-served upon every defendant affected by the amendment. If such defendant has already appeared such appearance stands as an appearance to the amended writ (following Paxton v. Baird, 1893, 1 Q. B. 139), and the plaintiff can apply for judgment under Order XIV., but judgment cannot be directed to be entered against him before the lapse of 8 days from the service of the amended writ. *More et al.* v. *Paterson et al.*, 2 B. C. R. 302.

4. Appeal—*Extension of, for appeal in Yukon cases.*]—*Banks* v. *Woodworth*, 7 B. C. R. 385.

See PRACTICE, III.

5. Appeal—*Extension of time after lapse of time fixed by a previous order.*]—*Noble* v. *Blanchard*, 7 B. C. R. 62.

See MINING LAW, VI.

6. Appeal—*Extending — Supreme Court Amendment Act*, 1896, *s.* 16—*S. C. Rule* 684 —*County Court Amendment Act*, 1896, *s.* 6.] —Section 16 of the Supreme Court Amendment Act, 1896 (made applicable to County Court appeals by the County Court Amendment Act, 1896, s. 6), supersedes Supreme Court Rule 684, and exclusively governs as to the time for bringing appeals from final judgments. The time for bringing such an appeal will not be extended unless strong circumstances in favour of such extension are shewn. On respondent's succeeding on a preliminary objection as to the appeal being out of time, the appellant will not be given an opportunity of procuring material to support an application for such an extension. He should be prepared with such material on the argument. *Reinhard* v. *McClusky*, 5 B. C. R. 226.

7. Appeal—*Notice of—Time for service of.*]—*Archibald* v. *McDonald et al.*, 7 B. C. R. 125.

See APPEAL, VIII. 5.

8. Appeal—*Setting down—Supreme Court Amendment Act*, 1896, *s.* 16—*S. C. Rule* 678.] — Supreme Court Amendment Act, 1896, s. 16, regulating the time for setting down and bringing on appeals for hearing, is imperative, and an appeal set down for the Full Court next after the entry of the order appealed from, being more than twelve days thereafter, is out of time and will be struck out. *Tollemache* v. *Hobson*, 5 B. C. R. 223.

9. Appeal — *Time for appeal from an order is after order to be appealed from is taken out.*]—*McColl* v. *Leamy et al.*, 3 B. C. R. 360.

See APPEAL, VIII. 11.

10. Appeal—*Time for setting down.*] — *Regina* v. *Aldous*, 5 B. C. R. 220.

See PRACTICE, III.

11. Appeal — *Time for — Extension of, where there are merits.*]—*Wilson* v. *Marvin*, 3 B. C. R. 327.

See APPEAL, VIII. 11.

12. Appeal—*Time—Extension of, on motion by Crown.*]—*The Koksilah Quarry Co.* v. *The Queen*, 5 B. C. R. 600.

See APPEAL, VIII. 11.

13. Appeal—*Whether lies from an order before it is entered.*]—*Lang* v. *Victoria*, 6 B. C. R. 117.

See PRACTICE, III.

14. Award—*Time to apply to set aside.*] —*In re W. C. Ward*, 1 B. C. R. pt. I., 114.

See ARBITRATION AND AWARD.

15. Certiorari—*Six days' notice of motion for is necessary.*]—*Re Plunkett*, 3 B. C. R. 484.

See CERTIORARI.

16. Contract—*Time as the essence of.*] —*Manson* v. *Howison*, 4 B. C. R. 404.

See VENDOR AND PURCHASER.

17. Costs—*Security for.*]—If party ordered to give security for costs does not do so within the time limited, he must pay the costs of a motion to dismiss. *Cowan* v. *Patterson*, 3 B. C. R. 353.

See PRACTICE, IX. 18.

18. Election petition—*Computation of time — "Clear days," meaning of.*] — *Rae* v. *Gifford*, 9 B. C. R. 192; *Rae* v. *Gifford*, 8 B. C. R. 273.

See ELECTIONS.

19. Exemption — *Time for claiming.*] — *Pilling* v. *Stewart et al.*, 4 B. C. R. 94.

See EXECUTION.

20. Extension of time by the Full Court.]—*Dunlop* v. *Haney*, 6 B. C. R. 320.

See TENDER.

21. For application for jury.]—*Bank of Montreal* v. *Major*, 5 B. C. R. 155.

See PRACTICE, XVI.

22. For bringing action on adverse claim — *Mineral laws — Extending after lapse.*]—*Re "Good Friday,"* 4 B. C. R. 496.

23. For depositing appeal books — *Extension.*]—*Haley* v. *McLaren*, 7 B. C. R. 184.

See APPEAL, VIII. 1.

24. For moving to quash municipal by-laws—*Municipal Act*, 1892, *ss.* 125-129.] —*Kane* v. *Kaslo*, 4 B. C. R. 486.

25. For putting in defence after dismissal of application for judgment under Order XIV.—*Rule* 197.]—*Pounder* v. *Corner*, 6 B. C. R. 177.

See PRACTICE, XXXVIII. 10.

26. Mines and minerals — *Adverse action, time for.*]—The Mineral Act (1891), Amendment Act, 1892, s. 14, s.-s. 2, provides, "An adverse claimant shall within thirty days after filing his claim (unless such time shall be extended by special order of the Court upon cause being shewn), commence proceedings in a Court of competent jurisdiction to determine the right," etc.:—Held, that the Court had jurisdiction to extend the time limited as well after as before the lapse of the thirty days. *In re "Good Friday," "Timber," "Indiana," "Old Kentuck," and "Good Hope" Mineral Claims; In the matter of the Mineral Act*, 1891, *and Amending Acts*, 4 B. C. R. 496.

27. Mines and minerals—*Certificate of improvements — Time for attacking.*] — The boundaries of the "Countess" and the "Golden Butterfly" mineral claims overlapped. The "Countess" having applied for a certificate of improvements was adversed on the ground of defective location by the "Golden Butterfly" with a view to secure the ground common to the two claims. The secretary of the "Golden Butterfly" had relocated the remainder of the "Countess" ground in his own name as a fraction. He, upon the assumption that, if the adverse of the "Golden Butterfly" was sustained, the whole of the "Countess" location would be invalidated, did not bring an action attacking it on his own behalf until after the expiration of the statutory sixty days from the publication of the notice of application for the certificate of improvements to the "Countess." He then applied to the Court for leave to bring an action: — Held, *per* WALKEM, J., that the circumstances were sufficient ground for an order extending the time. *In re "Golden Butterfly" "Fraction," and "Countess" Mineral Claims*, 5 B. C. R. 445.

28. Mines and minerals—*Time for recording mineral claim.*]—*Dumas Gold Mines* v. *Boultbee*, 10 B. C. R. 511.

See MINES AND MINERALS, XXXI. 5.

29. Mines and minerals—*Time for filing affidavit and plan.*]—The time for filing affidavit and plan in an adverse action under the Mineral Act may be further extended on an application made after the lapse of the time fixed by a previous order. *Noble* v. *Blanchard*, 7 B. C. R. 62.

30. Mines and minerals — *Assessment work—Extension of time for doing.*]—*Peters* v. *Sampson*, 6 B. C. R. 405.

See MINES AND MINERALS, VII.

31. Month's notice of intention to proceed.]—Supreme Court Rule 749, requiring a month's notice of intention to proceed when there has been no proceeding for one year from the last proceeding, applies to an application to dismiss an action for want of prosecution. *Macdonald* v. *Jessop et al., Trustees of the Pandora Avenue Methodist Church*, 3 B. C. R. 606.

32. Month, computation of time.]—*In re Clayoquot Fishing Co.*, 9 B. C. R. 80.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

33. Municipal corporations—*Time for bringing action for penalty where person not qualified as alderman.*]—*Falconer* v. *Langley*, 6 B. C. R. 444.

See MUNICIPAL CORPORATIONS, I.

34. Practice—*Extending—Mining law.*]—Owing to the nature of the subject matter, the Court requires stronger ground for extending time in mining cases than in other matters. *Kilbourne* v. *McGuigan*, 5 B. C. R. 233.

35. Power of Full Court to extend.] —The Full Court has power to and will, in a proper case, extend the time fixed by an order directing payment of costs, otherwise action to stand dismissed. *Dunlop* v. *Haney*, 6 B. C. R. 320.

36. Statutory limitation as to, when extended by Court.]—*In re "Good Friday,"* 4 B. C. R. 496.

See MINES AND MINERALS, XLIII.

37. Summary judgment—*Time for filing defence where application for judgment dismissed.*]—*Pounder* v. *Corner*, 6 B. C. R. 177.

See PRACTICE, XXXVIII. 10.

38. Title — *Reasonable time allowed to make.*]—*Williams* v. *Wilson et al.*, 3 B. C. R. 613.

See VENDOR AND PURCHASER.

39. Within which application to quash a by-law must be made—*Non-juridical day—R. S. B. C. c.* 1, *s.* 10, *s. s.* 20, *and c.* 144, *s.* 89.]—*Re Nelson City By-law*, 6 B. C. R. 163.

See MUNICIPAL CORPORATIONS, II. 2.

See also APPEAL—CERTIORARI—MINES AND MINERALS, II. 3, VI., XLIII.—MUNICIPAL CORPORATIONS, II. 3 — PRACTICE, IX. 5, XXXII.

TITLE.

1. Adverse action—*Trespass.*]—Adverse proceedings are essentially ejectment, not trespass actions, and the plaintiff must succeed by the strength of his own title, and it is part of the plaintiff's case to affirmatively shew due location of his claim. *Clark* v. *Haney and Dunlop*, 8 B. C. R. 130.

2. By possession.]—*In re Loewen & Erb*, 2 B. C. R. 135.

See RECORDS.

3. By prescription.] — *Trespass—Victoria city lots—City of Victoria Official Map Act*, 1880.] — The City of Victoria Official Map Act, 1880, and amending Acts, have reference to streets only; — Held, therefore, that nothing in these Acts could justify an interference by private individuals with the boundaries of a lot held by purchase and 20 years' possession. *Crowther* v. *Beaven*, 1 B. C. R., pt. II., 116.

4. Certificate of.]—*Kirk* v. *Kirkland*, 7 B. C. R. 12.

See REGISTRATION OF DEEDS.

5. Indefeasible title.]—*In re The Vancouver Improvement Co.*, 3 B. C. R. 601.

See REGISTRATION OF DEEDS.

6. Indefeasible title — *Transfer of.*]—*In re Shotbolt*, 1 B. C. R., pt. II., 337.

See RECORDS.

7. Investigation of title during term of credit.]—*Townend* v. *Graham*, 6 B. C. R. 539.

See VENDOR AND PURCHASER.

8. Merger.]—A conveyance of the equity of redemption by a mortgagor or to a mortgagee of lands does not constitute a discharge of the mortgage by merger, unless it is made to appear that such a result was intended by the parties; and when a mortgagee applies to register a conveyance of the equity of redemption, the registrar should not mark the mortgage merged unless at the request of the mortgagee. *In re Major*, 5 B. C. R. 244.

9. Registered plan—*Description of land by reference to boundaries—Mistake—Title.*]—The owner of a district lot registered in 1885 a plan of it drawn to scale, but not shewing the sub-divisions, and afterwards had another plan made from a survey and which differed from the registered one; from an inspection of the ground and the unregistered plan, one Kilby, who was unaware of the registered plan, bought, in 1889, lot 16, and registered the deed which did not refer to the plan. On 11th July, 1889, the defendant bought from the same vendor lot 15. In 1890, the plaintiff bought from Kilby lot 16, the deed shewing the purchase to be according to the registered plan, but before purchase she inspected the property and saw the boundaries which were then according to the unregistered plan. Lot 16, according to registered plan, overlapped lot 15 according to the unregistered plan:—Held, in an action for possession by the owner of lot 16 (1), that both plaintiff and defendant must be deemed to be holders of their respective parcels according to the registered plan, and to have registered their conveyances in conformity with the Land Registry Act. (2) It was not open to defendant who had accepted and registered a conveyance of land according to a registered plan, to afterwards object, in an action respecting the title to the same land, to the validity of that plan. Decision of DRAKE, J., affirmed. *Fowler* v. *Henry*, 10 B. C. R. 212.

10. Mineral claim—*Irregularities in location.*] — The defendant's mineral claim, Cube Lode, was located in May, 1892, and duly recorded, and certificates of work were issued in respect of it regularly since. The plaintiff, in 1896, located and recorded the Cody Fraction and the Joker Fraction claims on the same grounds and attacked the defendant's location on the ground that upon the initial post the "approximate compass bearing" of No. 2 post was not given as required by the Act. The compass bearing was east by north and not south-easterly as stated on No. 1 post:—Held, by the Full Court (IRVING, J., dissenting), reversing MARTIN, J., that the irregularity in locating was not cured by a certificate of work:—Held, *per* DRAKE, J., that s. 28 of the Mineral Act cures only irregularities arising after location and record, and which do not go to the root of the title. *Callahan* v. *Coplen*, 7 B. C. R. 422.

11. Mineral claim—*Adverse action when prima facie established.*] — *Schomberg* v. *Holden et al.*, 6 B. C. R. 419.

See MINES AND MINERALS, III.

12. Mineral claim—*Title to lapsed after lapse of free miner's certificate.*] — *Woodbury Mines* v. *Poyntz*, 10 B. C. R. 181.

See MINES AND MINERALS, XLIV.

13. Mineral claim—*Title to—Defects in when validated by certificate of work.*]—*Peters* v. *Sampson*, 6 B. C. R. 405.

See MINES AND MINERALS, XLIV.

14. Mineral claim—*Title by purchase from locator.*]—*Granger* v. *Fotheringham et al.*, 3 B. C. R. 590.

See MINES AND MINERALS, XXXI. 6.

15. Particulars—*Necessity of particulars of in pleadings.*]—*E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 188.

See PLEADINGS, VIII.

16. Pleading of general allegation of defendant's title sufficient.] — *E. & N. Ry. Co.* v. *New Vancouver Coal Co.*, 6 B. C. R. 306.

See PLEADINGS, X. 1.

17. Pleading of general allegation as to title in pleadings—*Necessity for particularity of.*]—*E. & N. Ry. Co.* v. *New Vancouver Co.*, 9 B. C. R. 162.

See PLEADINGS, X. 1.

18. Purchase by instalments—*Investigation of title during term of credit—Lis pendens—Cloud on title.*]—On a purchase of land, the balance of the purchase price for which is payable by instalments, the purchaser may require his vendor to shew a good title before parting with the first instalment. A lis pendens registered against real estate is a cloud upon the title and as such a purchaser is entitled to have it removed from the registry. The mere fact that the purchaser made some improvements on the property does not constitute a waiver of his right of an inquiry as to title. *Townend* v. *Graham*, 6 B. C. R. 539.

19. Specific performance — *Title to lands.*]—An agreement for the sale of land provided for the payment of the purchase money by instalments, and that on payment of the purchase money by the vendees, the vendor would convey by a good and sufficient deed in fee simple, free from encumbrances: —Held, that the vendors were not entitled to call for a title until after payment by them of the purchase money. Semble, it is not necessary, in an action for specific performance of the contract for the sale of lands, that the vendor should be the holder of the title if he can obtain a grant in fee from the holder to the purchasers. *Foot and Carter* v. *Mason and Nicholles*, 3 B. C. R. 377.

20. Tax sale—*Effect of certificate of title based on tax sale deed.*]—*Carroll* v. *City of Vancouver*, 10 B. C. R. 179.

See MINES AND MINERALS, XLIV.

21. Title deeds — *Effect of registration without producing certificate of title.*]—*Hudson's Bay Co.* v. *Kearns*, 4 B. C. R. 536.

See REGISTRATION OF DEEDS.

22. Title deeds—*Absence of equivalent to constructive notice.*]—*Hudson's Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

23. Transferee of holder of indefeasible title is entitled to be registered as owner of such title.] — *In re Shotbolt*, 1 B. C. R., pt. II., 337.

24. Vendor and purchaser — *Specific performance.*]—An agreement for the sale of land provided for payment by instalments, and that, on payment of the purchase money by the vendees, the vendor would convey by a good and sufficient deed in fee simple, free from encumbrances:—Held, that the vendors were not entitled to call for a title until after payment by them of the purchase money. Semble, it is not necessary in an action for specific performance of a contract for the sale of lands, that the vendor should be the holder of the title if he can obtain a grant in fee from the holder to the purchaser. *Foot and Carter* v. *Mason and Nicholles*, 3 B. C. R. 377.

See also BOUNDARIES.—DEEDS — INDEFEASIBLE TITLE—MINES AND MINERALS, XXXI. 5, 6; XLIV., XLV. — RECORDS—REGISTRATION OF DEEDS — SPECIFIC PERFORMANCE—VENDOR AND PURCHASER.

TOWAGE.

1. By foreign steamer—38 *Vict.* (*Can.*) c. 2—"*From one Canadian Port to another*"—"*Distress.*"] — Goliath, an American tug, with a clearance from Port Townsend for Victoria, picked up on the high seas, ship Abercorn, bound for Port Moody, and contracted to tow her to that port. Goliath towed Abercorn to mouth of Victoria harbour, and there left her while tug went into Victoria for coal and a clearance for Port Townsend. On coming out, Goliath resumed towing, and carried Abercorn to within fourteen miles of Port Townsend, and then cast off and ran into that port for a clearance for Port Moody. In an action for penalty under statute:—Held, that this was a "towage from one port or place in Canada to another," and defendant was liable. Semble, "distress" applied to the tow and not to the tug. The collector of customs has the right to sue in his own name for the penalty, under (Can.) Stat., 1877, c. 10, s. 101. *Hamley* v. *Libby*, 1 B. C. R., pt. II., 44.

2. Concealment by owners of tow—*Dangerous condition—Extraordinary towage.*]—The concealment by the owners of a ship, through the officers in charge, of the fact that the ship is in a leaky and dangerous condition, avoids a contract to tow her to port for a specified sum, made with him by the captain of a tug, in ignorance of her true condition. Where towage services cannot, on the facts, be said to have saved the ship from being lost, but were of extraordinary service, owing to her condition, and involved more than ordinary trouble and risk, they should be allowed for, not as salvage but as extraordinary towage services. *Dunsmuir* v. *The Owners of the Ship "Harold,"* 3 B. C. R. 128.

3. Contract for — *Ship in impending danger—Ignorance of position by captain of tug—Whether towage or salvage.*]—The ship S. was found by the tug M. in a dangerous position in foul waters. The captain of the tug agreed to tow the ship into the open sea, the amount payable for such services to be left to the respective owners. The owners being unable to agree:—Held, on the evidence, that the ship was in impending danger of loss and injury from her situation, and the ignorance of her captain of the locality, and that of the tug, was therefore a salvage and not a towage service. *Canadian Pacific Navigation Co.* v. *The C. P. Sargent*, 3 B. C. R. 5.

TRADE AND COMMERCE.

1. Class legislation is an interference with trade and commerce.]—*Reg.* v. *City of Victoria*, 1 B. C. R., pt. II., 331.

See MUNICIPAL CORPORATIONS, X.

2. Coal Mines Regulation Act as affecting trade and commerce.] — *In re Coal Mines Regulation Act*, 10 B. C. R. 408.

See CONSTITUTIONAL LAW, II. 9.

3. Exercising trade on Sunday.]—*Re Lambert*, 7 B. C. R. 396.

See SUNDAY.

4. Game — *Interference with trade and commerce by prohibiting exportation of.*]—*Reg.* v. *Boscowitz*, 4 B. C. R. 132.

See CONSTITUTIONAL LAW, II. 9.

5. Interference with trade and commerce—*Public health regulations—Provincial statute authorizing.*] — A municipal by-law providing, "The medical health officer shall have power to stop, detain, and examine every person or persons, freight, cargoes, boats . . coming from a place infected with a pestilential or infectious disease, in order to prevent the introduction of the same into the city," does not authorize the medical health officer, or other municipal authorities, to detain a steamship and its passengers and crew coming from an infected place, or to prevent them from landing within the municipal limits, without reference to a proper examinaton for the purpose indicated and its results, as shewing danger of their introducing the disease. (2) That the stopping of all passengers without examination was not an exercise of the powers reposed in the corporation by the by-law, but was an interference with trade and commerce, and was ultra vires. (3) That the by-law and the statute authorizing it, were intra vires. *The Canadian Pacific Navigation Co.* v. *The City of Vancouver*, 2 B. C. R. 193.

6. Interpretation of the term "trade and commerce."]—*Reg.* v. *Howe*, 2 B. C. R. 36; *Tai Sing* v. *Maguire*, 1 B. C. R., pt. I., 101; *Reg.* v. *Wing Chong*, 1 B. C. R., pt. II., 150.

See CONSTITUTIONAL LAW, II. 9.

7. License—*Occupant of premises—Conviction — R. S. B. C.*, 1897, *c.* 144, *s.* 171, *s.-s.* 23, *and B. C. Stat.*, 1898, *c.* 35, *s.* 19.]—Where goods are consigned by the owner to be sold on commission and they are sold by the consignee by auction in premises rented by him, the owner is not an occupant of such premises, nor a transient trader within the Municipal Clauses Act (R. S. B. C., 1897, c. 144, s. 171, s.-s. 23), as amended in 1898 (c. 35, s. 19). To support a conviction it is essential that the person charged occupy premises in the municipality. *Regina* v. *Wilson*, 7 B. C. R. 112.

8. Municipal License Law—*Discrimination between resident and non-resident traders under.*]—*Poole* v. *City of Victoria*, 2 B. C. R. 271.

See MUNICIPAL CORPORATIONS, X.

9. Municipal License Law — "*Wholesale trader," definition of — Manufacturer selling in large quantities.*]—By Stat. B. C. 55 Vict. c. 33, s. 204, s.-s. 10, "Every municipality shall, in addition to the powers of taxation by law conferred thereon, have the power to issue licenses for the purposes following, and to levy and collect by means of such licenses the amount following (10) from any person carrying on the business of a wholesale or of a wholesale and retail merchant or trader, not exceeding $50 for every six months:"—Held, that a person who imported materials, and manufactured articles of clothing therefrom, and sold same in quantities to wholesale and retail dealers, was a person carrying on a wholesale business within the meaning of the Act. A trader, wholesale or retail, is one who sells to gain his living by such selling or buying, not to gain a profit on one isolated transaction. If a manufacturer sells the product of his labour and skill in wholesale quantities, he is a wholesale trader. *Regina* v. *Pearson*, 3 B. C. R. 325.

10. Trading corporation—*Contract by does not require seal.*]—*C. P. N. Co.* v. *Victoria Packing Co.*, 3 B. C. R. 490.

See COMPANY, III.

11. Trade of hazardous character—*Voluntary settlement under—View of validity of.*]—*Lai Hop* v. *Jackson*, 4 B. C. R. 168.

See FRAUDULENT CONVEYANCES.

12. Trade license.] — *Reg.* v. *City of Victoria*, 1 B. C. R., pt. II., 331; *Heath* v. *City of Victoria*, 2 B. C. R. 276.

See MUNICIPAL CORPORATIONS, X.

13. Trade union — *Conspiracy—Watching and besetting—Injunction to restrain.*]—*Le Roi* v. *Rossland Miners' Union*, 8 B. C. R. 370.

See CONSPIRACY.

See also CONSTITUTIONAL LAW, II. 9—FRAUDULENT CONVEYANCE.

TRADE UNION.

1. Discovery—*Miners' Union — Witness in dual capacities — One subpœna—Conduct money—Objection as to sufficiency of—When to be taken.*]—A miners' union entered an appearance in an action, and by statement of defence raised the objection that it was not shewn that the defendant was a legal entity capable of being sued:—Held, that defendant by so pleading must be deemed, before the trial of the action, to be a corporation for the purpose of the litigation, and so compellable to make discovery. Where it is sought to examine for discovery in his dual capacity, one of the defendants in an action, who is also secretary of another defendant, two subpœnas are not necessary. On an examination for discovery, if the witness has an objection, such as the payment of insufficient conduct money, he should take the objection before the examiner, and he will not be allowed to raise it on an application to compel his attendance to answer questions which he has refused to answer. *Centre Star* v. *Rossland Miners' Union*, 9 B. C. R. 190.

2. Watching and besetting—*Conspiracy—Section 523 of the Cr. Code—Interlocutory injunction.*]—Injunction granted in the terms of the order made by FARWELL, J., in Taff Vale Railway Co. v. Amalgamated Society of Railway Servants (1901), A. C. 426. *Le Roi Mining Company, Limited*, v. *Rossland Miners' Union, No. 38, Western Federation of Miners et al.*, 8 B. C. R. 370.

TRAMWAY.

1. Whether a tramway is a railway within the B. C. Railway Act.]—*Edison Gen. Electric Co.* v. *Edmonds*, 4 B. C. R. 354.

See RAILWAYS, VI.

TRANSFER.

1. Of action to Supreme Court.]—*Beamish* v. *Whitewater Mines, Ltd.*, 7 B. C. R. 261.

See COURTS, II

2. Of County Court action to Supreme Court.]—*Thurston* v. *Tatterson*, 7 B. C. R. 60.

See PRACTICE, I. 10.

3. Of mineral claim—*Time for recording transfer.*]—*Dumas Gold Mines* v. *Boultbee*, 10 B. C. R. 511.

See MINES AND MINERALS, XXXI. 6.

4. Of mineral claim—*Effect of failure to record transfer.*]—*Grutchfield* v. *Harbottle*, 7 B. C. R. 344; *Grutchfield* v. *Harbottle*, 7 B. C. R. 186.

See MINES AND MINERALS, XXXI. 5, 6

5. Of mineral claim—*Must be in writing.*]—*Alexander* v. *Heath*, 8 B. C. R. 95.

See MINES AND MINERALS, XXXI. 6.

6. Shares—*Entries in books of Registrar-General not notice to creditors.*]—*Ex parte John Bibby*, 1 B. C. R., pt. II., 94.

See COMPANY, V.

See also MINES AND MINERALS, XXXI. 6.

TRANSIENT TRADER.

1. License to.]—*Reg.* v. *Wilson*, 7 B. C. R. 112.

See MUNICIPAL CORPORATIONS, X. 1.

TRAVELLER.

1. Detectives held to be bona fide travellers.] — *Reg.* v. *Harris*, 2 B. C. R. 177.

See INTOXICATING LIQUORS.

2. Sales of liquor to.]—*Reg.* v. *Sauer*, 3 B. C. R. 308.

See INTOXICATING LIQUORS.

TREATIES.

1. Legislation which is an infraction of Imperial is ultra vires.] — *Reg.* v. *Wing Chong*, 1 B. C. R., pt. II., 150.

TRESPASS.

1. By diversion of water.]—*C. P. R.* v. *McBryan*, 6 B. C. R. 136.

See WATERS AND WATERCOURSES, I.

2. By illegal distress for taxes.]—*Cedler* v. *Chadsey*, 1 B. C. R., pt. II., 76.

See MUNICIPAL CORPORATIONS, IX.

3. By locating on unoccupied ground.]—*Woodbury* v. *Hudnut*, 1 B. C. R., pt. II., 39.

See MINES AND MINERALS, XLV.

4. Flood—*Right to back water on adjoining land.*]—*C. P. R.* v. *McBryan*, 5 B. C. R. 187.

See WATERS AND WATERCOURSES, III.

5. Health—*Trespass for removing a person exposed to infection to Suspect Station.*]—*Wong Hoy Woon* v. *Duncan*, 3 B. C. R. 318.

See HEALTH.

6. Jurisdiction of County Court in an action of.]—*Aldous* v. *Hall Mines*, 6 B. C. R. 394.

See MINES AND MINERALS, XLV.

7. Trespasser making improvements on land—*Effect of.*]—*Herreron* v. *Christian*, 4 B. C. R. 246.

See PUBLIC LANDS.

8. Trespass to try title.]—A person in possession of waste lands of the Crown, with the consent of the Crown, can maintain trespass against persons having no title. The Court should not, upon the ground that his claim appears to be invalid, restrain a party from applying to the proper department of the government for a Crown grant of lands, for the Court cannot presume that the Crown will not do right. Where Crown land is reserved from settlement by the Lieutenant-Governor-in-Council under s. 86 of the Land Act, it does not again become open for settlement until cancellation of the reservation by the same authority, under s. 87. *Nelson and Port Sheppard Railway Company* v. *Parker et al.*, 6 B. C. R. 1.

9. Through mistake as to boundaries.]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

10. Water tank and pipe line — *Placing of, on plaintiff's premises.*]—*Byron N. White* v. *Sandon Water Works Co.*, 10 B. C. R. 361.

See MINES AND MINERALS, XLV.

TRIAL.

1. Abortive trial—*Action on promissory note — Allegation of fraud — Disagreement — Judgment entered by Full Court.*]—On the

second trial of an action on a promissory note where the defence alleged fraud on the part of the plaintiffs in obtaining the indorsement, the jury disagreed. Plaintiffs then moved for judgment on the ground that there was no evidence of fraud, and the motion was refused:—Held, by the Full Court, allowing an appeal and entering judgment for plaintiffs, that no jury could properly find fraud, and it was desirable especially in view of the first abortive trial, that the judgment should now be entered which should have been entered at the trial. *Yorkshire Guarantee & Securities Corporation* v. *Fulbrook & Innes and G. H. Cooper*, 9 B. C. R. 270.

2. Adjournment—*For purpose of inspection—Costs of.*]—Defendants got an order at the trial for the inspection of a vein in the plaintiffs' claim which they alleged was the continuation of a vein, the apex of which was within the limits of their own claim, and plaintiffs alleging that such order necessitated inspection by them of other similar places on their property, with a view to furnishing evidence to rebut that which might be adduced by reason of the plaintiffs' inspection, and therefore an adjournment for that purpose, were allowed the adjournment but only on the terms that all costs occasioned thereby should be borne by them in any event:—Held, on appeal that such costs should abide the result of the issues to which the inspection related. *Iron Mask* v. *Centre Star*, 7 B. C. R. 66.

3. Adjournment of — *Right of Crown to, after election, to proceed without a material witness.*]—*Reg.* v. *Gordon*, 6 B. C. R. 160.

See CRIMINAL LAW, III.

4. Adjournment of by consent of counsel equivalent to a countermand of notice of trial.]—*Harvey* v. *New Westminster*, 3 B. C. R. 398.

See PRACTICE, I. 11 (a).

5. Amendment of pleadings at trial.]—*Martin* v. *Deane*, 7 B. C. R. 128.

See PRACTICE, IX. 5.

6. Application to dismiss after notice of trial.]—*Sullivan* v. *Jackson*, 7 B. C. R. 133.

See PRACTICE, I. 11.

7. By jury—*Right to.*]—*Loo Chu Fan* v. *Loo Chock Fan*, 1 B. C. R., pt. II., 172.

See PRACTICE, XX.

8. Change of venue.]—*Centre Star* v. *Rossland Mines*, 10 B. C. R. 306.

See VENUE.

9. Cross-examining questions to jury—*Right of jury to find general verdict.*]—The jury may believe part and reject part of a witness' evidence. Cross-examining questions to a jury are not to be encouraged, as they are calculated to induce the jury to stand on their undoubted right to return a general verdict. *Steves* v. *The Corporation of the District of South Vancouver*, 6 B. C. R. 17.

10. Exclusion of witnesses at.]—The mere fact that a party intends to give evidence does not entitle the other party to call for his exclusion as in the case of an ordinary witness. If a party has been wrongfully excluded it is not necessary for him to shew that he was substantially prejudiced thereby in order to get a new trial. *Bird et al* v. *Vieth et al.*, 7 B. C. R. 31.

11. Judgment at, where title has not been established by either party.]—*Ryan* v. *McQuillan*, 6 B. C. R. 431.

See MINES AND MINERALS, XLIV.

12. Judgment — *Delivery of—Trial is entered when judgment is delivered.*]—*Dunlop* v. *Haney*, 7 B. C. R. 300.

See INJUNCTION.

13. Judgment in vacation set aside.]—*Green* v. *Stussi*, 6 B. C. R. 193.

14. Jury—*Number of jurors—C. S. B. C. c. 31, s. 47, applies to Kootenay.*]—*Hogg* v. *Farrell*, 4 B. C. R. 534.

See PRACTICE, XVI.

15. Mode of trial—*Scientific investigation—Practice before Judicature Act.*]—*Iron Mask* v. *Centre Star*, 6 B. C. R. 474.

See PRACTICE, XVI.

16. Notice of—*In County Court.*]—*Higginbottom* v. *Jordan*, 8 B. C. R. 126.

See COURTS, I. 3.

17. Notice of — *Wilds* v. *Times Publishing Co.*, 10 B. C. R. 226; *Harvey* v. *City of New Westminster*, 3 B. C. R. 398.

See PRACTICE, I. 11.

18. Of election petition.]—*Martin* v. *Deane*, 7 B. C. R. 128.

See ELECTIONS.

19. Order for inspection—*Right to follow vein.*]—The Centre Star Company had been enjoined from mining in the Iron Mask claim, in which it was alleged was a continuation of a vein whose apex was in its own claim, and was also refused leave to do experimental or development work on the Iron Mask claim in order to determine the character or identity of the said vein:—Held, by the Full Court, on appeal (MARTIN, J., dissenting), refusing to modify said orders, that it ought to be left to the trial Judge to decide whether it was necessary to have any work done to elucidate any of the issues raised. *Centre Star* v. *Iron Mask*, *Iron Mask* v. *Centre Star*, 6 B. C. R. 355.

20. Order to set down for.]—An order that plaintiff set his action down for trial for a certain sittings, otherwise his action be dismissed without further order, is not a peremptory order for trial. *Thurston* v. *Weyl*, 9 B. C. R. 452.

21. Parties bound by action of — *Non-direction.*]—Where counsel at the trial

abstains from asking the Judge to submit a point to the jury, a new trial will not be granted on the ground of non-direction as to that point. *Waterland* v. *City of Greenwood*, 8 B. C. R. 396.

22. Point of law not taken at—*Precludes recovery of costs on appeal.*]—*Byron N. White* v. *Sandon Water Works Co.*, 10 B. C. R. 361.

See PRACTICE, IX.

23. Postponement of — *Where amendment of pleadings introduced new issue.*]—*Wolley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 197.

See PLEADINGS, III.

24. Postponing where pleadings amended so as to make a new case after notice of trial.]—*Wolley* v. *Lowenberg, Harris & Co.*, 3 B. C. R. 197.

25. Questions to jury—*Findings—Entering judgment against.*]—The trial Judge submitted certain question to the jury with the following stated reservation: "Subject to the law governing the contract and its construction;" but judgment was given, for reasons stated by the Court, at variance with the findings of the jury therein:—Held, on appeal by DRAKE, J. (DAVIE, C.J., and MCCREIGHT, J., concurring): — That the trial Judge should have explained the law governing the contract and its construction to the jury, and then taken their opinion on the questions submitted; and that so long as the findings of a jury stand unreversed, judgment must be entered in accordance therewith. *McDonald* v. *Methodist Church*, 5 B. C. R. 521.

26. Speedy trial—*Determination of.*]—*Reg.* v. *Gordon*, 6 B. C. R. 160.

See CRIMINAL LAW, XVIII.

27. Venue—*The fact of two abortive previous trials having taken place is no ground for change of.*]—*Reg.* v. *Nicol*, 7 B. C. R. 278.

See VENUE.

28. Where new matter received at trial not in pleadings.]—*Coughlan & Mayo* v. *Wilmot*, 4 B. C. R. 20.

See CONTRACT, IV. 2.

29. Where order fixes time of—*Notice of not necessary.*]—*McLeod* v. *Waterman*, 9 B. C. R. 370.

See PRACTICE, I. 11.

30. Whether pending—*Rule* 736 (*d*).]—*Green* v. *Stussi*, 6 B. C. R. 193.

See VACATION.

See also CRIMINAL LAW, XX.—MINES AND MINERALS, II., 6 — NEW TRIAL—NOTICE—PRACTICE, I. 11; III.; IX.; XI. 2, 5; XII.; XVI.; XX.; XXXV.; XXXVI.

TRUSTS.

1. Agent—*Locating mineral claim, is a trustee for his principal.*]—*Fero* v. *Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, V.

2. Costs.] — Trustees having received moneys under a decree in one of several actions relating to the same subject matter to which they were parties, an originating summons was obtained by other parties to the same actions calling upon the trustees for an account, not directed by the decree in question, and to pay into Court:—Held, by the Divisional Court (MCCREIGHT, WALKEM and DRAKE, JJ.), affirming an order of CREASE, J., directing the trustees to account and personally to pay the costs of the motion; That the proceeding, by originating summons, was warranted by Rule 591, s.ss. (e), (d), and an objection that the motion should have been made in one of the pending actions, overruled. *Per* MCCREIGHT and WALKEM, JJ.: That the trustees were properly ordered personally to pay the costs of the motion, and that they should also personally pay the costs of the appeal. *Per* DRAKE, J., dissenting.—Trustees are entitled to their costs as a matter of right even in cases where the litigation has been unsuccessful, in the absence of misconduct, and that, as a duty had been cast upon the trustees to appear on the summons and draw the attention of the Court to the position of the litigation, they should have their costs of such attendance, and of the appeal. *Boscowitz* v. *Belyea*, 4 B. C. R. 527.

3. Creation of, by assignment of moneys to become due to grantor — *Priority over subsequent assignment thereof with notice to debtor.*]—*Clark* v. *Kendall*, 4 B. C. R. 503.

4. Duties of—*Investing infants' moneys —Covenant against incidence of mechanic's lien.*]—Re Brown, ex parte Brown, 2 B. C. R. 110. Removal of whose interest conflicts with his trust. There is an inherent jurisdiction in Courts of Equity to remove trustees and appoint new ones in proper cases. A trustee for creditors who is also employed as solicitor to manage an insolvent estate is a person whose interest conflicts with his duty to the creditors as trustee. *Re Dickenson*, 2 B. C. R. 262.

5. Heirs of deceased trustee out of jurisdiction—*Appointment of new trustees —Vesting order.*]—The survivor of two trustees under a will in his lifetime refused to convey the realty into the joint names of himself and a new trustee resident outside the jurisdiction who was duly appointed by the widow in place of the deceased trustee under power contained in the will, and died intestate as to the trust estate, leaving heirs, many of whom were resident in distant places outside the jurisdiction. Upon petition by the beneficiaries and the new trustee, DAVIE, C.J., made an order appointing a second trustee who was resident within the jurisdiction, and vested the realty in him and the trustee appointed by the widow. *Re Bossi (deceased)*, 4 B. C. R. 584.

6. Legacy—*Following estate for payment of.*]—*Harper* v. *Harper*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

7. Mineral claim, use by miner of another's name in locating.]—A transfer of any interest in a mineral claim is not enforceable unless in writing. Where one free miner locates and records a mineral claim, if he locates another claim on the same vein in the name of another free miner, he thereby acquires no interest in such last claim by virtue of s. 29 of the Mineral Act, 1896. *Alexander* v. *Heath et al.*, 8 B. C. R. 95.

8. One of trustees resident outside jurisdiction — *Vesting order — Service of petition for—R. S. B. C.* 1897, *c.* 187, *s.* 39.] —Where one trustee is resident out of the jurisdiction the Court will not vest the estate in the trustees within the jurisdiction on the ground that it will not reduce their number. A petition to vest the trust estate in certain trustees within the jurisdiction ought to be served on the absent trustee. *In re Spinks Trusts*, 6 B. C. R. 375.

9. Removal of trustees.]—The Court, in the exercise of its discretion, may remove trustees who unreasonably decline to bring an action for the benefit of the trust estate upon request of the beneficiaries. It appearing that the period of the trust had almost expired, and that nothing remained but to wind up the estate, a receiver was appointed instead of new trustees. The writ of summons not having asked for a receiver, it was directed to be amended. Objection that the proposed receiver was the partner of the husband of one of the beneficiaries overruled. If it appears that the continuance of the trustee would be detrimental to the execution of the trusts, if for no other reason than those beneficially interested, or those who act for them, are unable to work in harmony with him, and if there is no reason to the contrary from the intention of the framer of the trust to give the trustee a benefit or otherwise, the trustee is generally advised by his counsel to resign. If without any reasonable ground he refuses to do so, the Court may remove him. *Garesche* v. *Garesche*, 4 B. C. R. 310.

10. Trust fund — *Agreement to restore where compounding prosecution.*]—*Major* v. *McCraney et al.*, 5 B. C. R. 571.

See CONTRACT, II. 1.

11. Trust—*Conveyance of land to municipality in.*]—*Anderson* v. *City of Victoria*, 1 B. C. R., pt. II., 107.

12. Trustee resident out of jurisdiction.]—When one trustee is resident out of the jurisdiction the Court will not vest the estate in the trustees within the jurisdiction on the ground that it will not reduce their number. A petition to vest the trust estate in certain trustees within the jurisdiction ought to be served on the absent trustee. *In re Spinks Trusts*, 6 B. C. R. 375.

13. Trustee for partnership for purchase of land.]—*Brown* v. *Grady*, 6 B. C. R. 190.

See FRAUDS, STATUTE OF.

14. Trustee—*Mortgagee is not trustee for execution creditors.*]—*Wilson Bros.* v. *Donald*, 7 B. C. R. 33.

See PRACTICE, XXXVIII., 5.

15. Trustees—*Remuneration of.*]—*In re Lee*, 7 B. C. R. 94.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

16. Trustees may sue without joining parties beneficially interested.]—*Smith et al.* v. *Mitchell*, 3 B. C. R. 450.

See VENDOR AND PURCHASER.

17. Trusteeship of infant's funds.]—*In re Brown & Brown*, 2 B. C. R. 110.

See INFANTS.

18. Trusteeship—*Funds of.*]—*Hayden* v. *Smith & Angus*, 1 B. C. R., pt. II., 312.

See CONTRACT, I. 2.

See also EXECUTORS AND ADMINISTRATORS—INFANTS.

TRUSTEE.

See TRUSTS.

TRUSTEES AND EXECUTORS' ACT.

See TRUSTS.

ULTRA VIRES.

1. Appointment of County Court Judge by Provincial Government is ultra vires.]—*Piel-ke-ark-an* v. *Regina*, 2 B. C. R. 53.

See CONSTITUTIONAL LAW, II. 1.

2. Company issuing shares at discount.]—It is ultra vires of a company to issue shares at a discount, or to increase its capital except by special resolution under s. 51 of the Companies' Act, 1862 (Imp.), when the company is incorporated under that Act. *Twigg* v. *Thunder Hill Mining Company*, 3 B. C. R. 101.

3. Objection as to—*Not taken in Court below—Whether allowable on appeal.*]—*McKay Bros.* v. *Victoria Union Trading Co.*, 9 B. C. R. 37.

See APPEAL, VIII. 6.

See also COMPANY—CONSTITUTIONAL LAW—MUNICIPAL CORPORATIONS.

UNCERTAINTY.

1. Contract void for.]—*Kerr & Begg* v. *Cotton*, 2 B. C. R. 246.

See CONTRACTS, III. 1.

UNDERGROUND WORKS.

1. Inspection of underground workings of mine—*Undertaking as to damages.*]—*Star Mining Co. v. Byron N. White*, 9 B. C. R. 9.

See PRACTICE, XI. 2.

UNDERTAKING.

1. As to damages.]—*New Van. Coal Co. v. E. & N. Ry. Co.*, 6 B. C. R. 222.

See INJUNCTION.

2. Not to proceed to obtain certificate of improvements until trial.]—*Dunlop v. Haney*, 7 B. C. R. 300.

See INJUNCTION.

3. Of counsel not to object that order for costs not appealable.]—*Iron Mask v. Centre Star*, 6 B. C. R. 66.

See TRIAL.

See also PRACTICE, XXXIII.

UNDUE INFLUENCE.

1. Action to set aside agreement on ground of, must be tried without a jury.]—*Hopper v. Dunsmuir*, 10 B. C. R. 17.

See PRACTICE, XVI.

2. Allegation of in pleadings must give particulars.]—*Hopper v. Dunsmuir*, 10 B. C. R. 159.

See PRACTICE, XXII.

3. Exercised on testatrix.]—*McHugh v. Dooley*, 10 B. C. R. 537.

See WILLS.

UNEQUAL TAXATION.

1. Ultra vires of the Provincial Legislature.]—*Reg. v. Wing Chong*, 1 B. C. R., pt. II. 150.

See CONSTITUTIONAL LAW, II. 8.

UNILATERAL MISTAKE.

1. In contract for sale of land—*Effect of.*]—*Hobbs v. E. & N. Ry. Co.*, 6 B. C. R. 228.

See VENDOR AND PURCHASER.

UNION.

1. Labor union—*Pleading.*]—It is open to either party to an action up to the time of the trial to attack the other's pleadings. In an action against a labor union for damages in respect of a strike, the union pleaded that "they were not a company, corporation, co-partnership or person, and not capable of being sued in this or any action."—Held, bad plea. Questions of law going to the merits of a case will not be decided on an application to strike out pleadings as embarrassing. *Centre Star Mining Co., Ltd. v. Rossland Miners Union et al.*, 9 B. C. R. 531.

UNINTELLIGIBLE LANGUAGE.

1. Admissibility of parol evidence to explain.]—*Le Roi No. 2 v. North Port Smelting Co.*, 10 B. C. R. 138.

See CONTRACT, III. 2.

UNLAWFUL GAMING.

1. Black-jack is an unlawful game.] *Reg v. Petrie*, 7 B. C. R. 176.

See CRIMINAL LAW, XI.

See also GAMING.

UNLIQUIDATED DEMAND.

See PRACTICE, XXXVIII. 10.

UNOCCUPIED LAND.

1. Definition of.]—*Iron Mask v. Centre Star*, 7 B. C. R. 66.

See MINES AND MINERALS, XXXI. 4.

2. What is within the meaning of the B. C. Land Act.]—*Hereron v. Christian*, 4 B. C. R. 246.

See PUBLIC LANDS.

UNPROFESSIONAL CONDUCT.

1. Mandamus does not lie to compel medical council to hold an inquiry as to.]—*In re Ex parte Inverarity*, 10 B. C. R. 268.

See MANDAMUS.

UNREASONABLE BY-LAW.

See MUNICIPAL CORPORATIONS, II.

UNREASONABLE CONDUCT.

1. Of a party is the ground for refusing costs.]—*Phelps v. Williams*, 1 B. C. R., pt. I., 257.

UNREASONABLE VERDICT.

1. Unreasonableness of jury findings is a ground for new trial.]—*Robson* v. *Suter*, 1 B. C. R., pt. II., 375.

See PRACTICE, XX.

USAGE.

1. Admissibility of extrinsic evidence as to.]—*Le Roi No. 2* v. *North Port Smelting Co.*, 10 B. C. R. 138.

See CONTRACT, III. 2.

2. To church or denomination as to marriage must be followed in performance of ceremony.]—*In re Ah Lie*, 1 B. C. R., pt. 1. 261.

See MARRIAGE.

USURY.

See INTEREST.

VACATION.

1. Judgment in—*Pending trial — Rule* 736 (*d*).]—Where a trial was called before vacation but not proceeded with, and was adjourned to a day in vacation, and then proceeded with in the defendant's absence, the judgment may be set aside as the trial was not "pending" within the meaning of Rule 736 (*d*), and so could not be heard in vacation. *Green* v. *Stussi*, 6 B. C. R. 193.

2. Pending trial — *Rule* 736 (*d*).] — A cause called on for trial before vacation and adjourned to a day in vacation, is not a trial pending within the meaning of Rule 736 (*d*), and so cannot be heard during vacation. *Gill* v. *Ellis*, 6 B. C. R. 157.

See also PRACTICE, XXXIV.

VAGRANCY.

1. Conviction on charge of, must contain details of offence.]—*Rex* v. *McCormack*, 9 B. C. R. 497.

See HABEAS CORPUS.

VALUABLE CONSIDERATION.

1. When necessary for purchaser to prove.]—*Hudson's Bay Co.* v. *Kearns et al.*, 3 B. C. R. 330.

See REGISTRATION OF DEEDS.

VALUATION.

1. Liability of agent for not obtaining accurate.]—*Wollen* v. *Lowenberg et al.*, 3 B. C. R. 446.

See PRINCIPAL AND AGENT.

VANCOUVER INCORPORATION ACT.

1. By-law as to Sunday observance—*Invalid.*]—*Re Lambert*, 7 B. C. R. 396.

See SUNDAY.

2. By-laws requiring the assent of the electors—*Ratepayers entitled to vote on.*]—Section 127 of the Vancouver Incorporation Act gives the right to vote on by-laws requiring the assent of the electors to certain persons rated to the amount of $500 of real property on the Revised Assessment Roll "on which the voters' lists of the city are based." The by-law in question was submitted to the electors upon the assessment rolls for the current year, which had not then been finally revised:—Held, that the words supra, "on which the voters' lists are based," are descriptive merely, and do not mean the voters' lists which must at that time be used in an election for councillor. *Re Bell-Irving and Vancouver*, 4 B. C. R. 219.

3. Money by-laws—*Statutory recitals imperative—Municipal Act, s.* 113, *s.-s.* 4—*Submission to electors—"On which the voters' lists are based"* — *Vancouver Incorporation Act*, 1886, *s.* 127—*Conflict between General Municipal and Special Act.*]—*In re Bell-Irving and City of Vancouver*, 4 B. C. R. 228.

See MUNICIPAL CORPORATIONS, II. 2.

See also MUNICIPAL CORPORATIONS, II.

VEIN.

1. Right to follow continuation of in adjoining claim.]—*Centre Star* v. *Iron Mask*, 6 B. C. R. 355.

See MINES AND MINERALS, XVI. 3.

VENDOR AND PURCHASER.

1. Action to recover back money received as agent—*Rescission — Reasonable time to make title allowed to vendor.*]—An action does not lie against a person to recover back money received by him as agent for another, but lies only against the principal, and the Court will not in such an action go into the question of whether the agent paid over the money to the principal or not. In an action for the rescission of an agreement for the sale of lands, it was proved that the vendee tendered a conveyance for execution to the agent of the vendor, who was not proved to have been authorized under seal to execute deeds for the vendor:—Held, insufficient to bind the vendor. The vendee at the time of the agreement knew that the vendor had not then a title, but that he was the holder of an agreement from his vendors, upon payment of

his purchase money, to give a deed when required:—Held, that the vendor was entitled to a reasonable time to make title, and that there was on the facts, a waiver on the part of the vendee of his right to call forthwith for a conveyance. *Williams* v. *Wilson and Morrow*, 3 B. C. R. 613.

2. Agreement for sale—*Payment by instalments—Vendees, when entitled to call for title.*]—An agreement for the sale of land provided for the payment of the purchase money by instalments, and that on payment of the purchase money by the vendees the vendor would convey by a good and sufficient deed in fee simple free from encumbrances:—Held, that the vendees were not entitled to call for a title until after payment by them of the purchase money. Semble, it is not necessary in an action for specific performance of a contract for the sale of lands that the vendor should be the holder of the title if he can obtain a grant in fee from the holder to the purchasers. *Foot and Carter* v. *Mason and Nicholles*, 3 B. C. R. 377.

3. Agreement for sale—*Payment of instalments—Right of purchaser to require vendor to shew good title before paying first instalments.*]—On a purchase of land, the balance of the purchase price for which is payable by instalments, the purchaser may require his vendor to shew a good title before parting with the first instalment. A lis pendens registered against real estate is a cloud upon the title and as such a purchaser is entitled to have it removed from the registry. The mere fact that the purchaser made some improvements on the property does not constitute a waiver of his right of an inquiry as to title. *Townsend* v. *Graham*, 6 B. C. R. 539.

4. Agreement for sale—*Reservation of minerals—Unilateral mistake — Authority of agent.*]—An agreement for a sale of lands, containing no reservation of the minerals thereunder, issued by the land agent of a railway company to an intending purchaser, accompanied by a deposit, does not bind the company to convey the minerals if the agent had instructions to reserve them, on the ground that there was a unilateral mistake against which the Court will relieve. *Hobbs* v. *Esquimalt and Nanaimo Railway Company*, 6 B. C. R. 228.

5. Agreement for sale—*Time as essence of contract—Specific performance — Tender.*]—Vendor had a good title to the lands at the time of the contract, which made punctual payment of the instalments of purchase money of the essence of the contract, and in default the vendor to have a right to re-sell. It also gave the vendee the right to pay the whole of the purchase money at any time and demand a deed. The lands were of speculative value. After the date of the contract and payment of deposit an action was brought against the vendor involving her title to the lands, and a lis pendens registered. Vendor and vendee then agreed that no further payments should be made until it was removed. After the original period for completion, and before the lis pendens was removed, the vendee tendered the whole amount of the purchase money, and a conveyance for execution, to the vendor, who asked time to see her solicitor. No further tender was made. The lis pendens was afterwards removed. The action was brought by the vendee for rescission of the contract and return of the deposit, and the vendor counterclaimed, demanding specific performance:—Held, *per* McCREIGHT, J., ordering rescission, refusing return of the deposit, and dismissing the counterclaim: 1. That time was of the essence on both sides. That the avowedly speculative character of a purchase makes time of the essence, even where not so provided in the contract. 2. That, on the facts, the vendee had not waived his right to rescind. 3. Quære, whether the existence of the registered lis pendens was a good ground for refusal of the title. 4. The Court may refuse to order return of the deposit where the vendor had a good title at the time of the contract. Upon appeal to the Full Court: CREASE and WALKEM, JJ., affirmed McCREIGHT, J. *Per* DRAKE, J. (dissenting) dismissing the plaintiff's claim, and ordering specific performance by him: 1. Where a purchaser has a right to rescind for want of title, time being of the essence of the contract, the effect of his giving further time to the vendor to cure the defect is not to waive that right, but he must, after default upon the extended period, give the vendor a reasonable time to complete. 2. That the purchaser had no right to rescind at the time he offered the money and deed for execution, and in any case the tender and refusal proved were insufficient. 3. That the purchaser having originally had a right to rescind, which he did not exercise, could not complain that the property had afterwards considerably depreciated, and such depreciation and the fluctuating value of the property were not therefore grounds for refusing the vendor specific performance. 4. Quære, whether the existence of the registered lis pendens was a good ground for the refusal of the title. *Stanson* v. *Howison*, 4 B. C. R. 404.

6. Lis pendens—*When order made for cancellation of.*]—An order will not be made cancelling a lis pendens under s. 85 of the Land Registry Act, in a case where damages would not be a complete compensation. *Towne* v. *Brighouse*, 6 B. C. R. 225.

7. Onus of proof where purchaser effected by constructive notice of charge against land.]—*Hudson's Bay Co.* v. *Kearns*, 3 B. C. R. 350.

See REGISTRATION OF DEEDS.

8. Rights of vendor and purchaser where contract rescinded.]—*Christie* v. *Fraser et al.*, 10 B. C. R. 291.

See INJUNCTION.

9. Rights of vendor and purchaser as effected by plan.]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

10. Sale by auction—*Ignorance of acreage—Mistake.*]—Defendants, trustees under a will containing a power of sale "to sell such portion of his real estate as in their discretion should think necessary." "Some 60 acres, more or less of s. 78," were offered for sale, but two only of the three boundaries of the lot were defined in the particulars and conditions of sale. At the sale the auctioneer produced a map showing the property offered for sale and marked 60 acres, but stated that

the exact contents of the land and the amount to be paid would have to be ascertained by a survey at the joint expense of the vendors and purchaser, but bids would be received per acre. Plaintiff was the highest bidder at $36 per acre, and the subsequent survey showed that the lot contained 117 acres:—Held, that the plaintiff was entitled to a conveyance of the 117 acres at that price; and held, that the ignorance of the defendants as to the exact acreage of the lot was not such a mistake as entitled them to relief. *Sea* v. *McLean and Anderson*, 1 B. C. R., pt. II., 67.

11. Statute of frauds—*Nudum pactum—Contingent event.*]—Manley having recovered judgment for $542.50 against O'Brien, issued a garnishee order against Mackintosh, and an issue having been ordered in which Manley was plaintiff and Mackintosh defendant, the trial Judge, WALKEM, J., held that the agreements (set out in the judgment of IRVING, J., post pp. 88 and 90), between O'Brien and Mackintosh, by virtue whereof the alleged indebtedness arose, did not comply with the Statute of Frauds, inasmuch as the parties had omitted to state therein the terms actually agreed upon, and decided the issue in favour of the defendant. Upon appeal to the full Court constituted, by consent of the parties, of two Judges, IRVING and MARTIN, JJ., the appeal was dismissed, the Court in delivering opinions sustaining the decision of the trial Judge holding (1) That the promise made by defendant and now sought to be enforced against him was nudum pactum; (2) That the defendant O'Brien in the original action, and Mackintosh, the defendant in the issue, in reality came to an agreement in ignorance of the fact that its performance in view of the conditions it was contingent upon, was impossible. *Manley* v. *Mackintosh*, 10 B. C. R. 84.

12. Statute of frauds—*Misdescription—Parol evidence to explain.*]—B. on behalf of D. negotiated with C. for the purchase of C.'s property on the north-west corner of Hastings Street and Westminster Avenue, Vancouver, and D. drew up a recipt for the part payment of the purchase price, leaving the description blank for C. to fill in as he did not know the land registry description, but adding the description "N.w. cor. etc.," below the space reserved for C.'s signature. B. took the receipt to C. and paid him $10 and he filled in the blank description as lots 9 and 10, Block 10, and signed the receipt. Lots 9 and 10 were on the north-east corner, and were not owned by C.; whereas Lots 9 and 10, Block 9, were on the north-west corner, and were owned by C. B. sued to have the agreement or receipt rectified or reformed so as to cover Lots 9 and 10, Block 9, and to have the agreement specifically performed:—Held, that it was the property on the north-west corner that the parties had in contemplation, and that C. filled in the wrong description either by mistake or fraud, and that the plaintiff was entitled to specific performance of the true agreement. For perjury alleged to have been committed at the trial by the defendant, he was tried and acquitted before the hearing of the appeal, and, on the appeal, his counsel moved the full Court to be allowed to read the verdict of the jury in the criminal trial. The Court dismissed the motion. *Borland* v. *Coote*, 10 B. C. R. 493.

13. Statute of frauds—*Agent of undisclosed principal—Specific performance and rescission.*]—In an action in their own names by the vendors, who were trustees for specific performance by defendants of an agreement to purchase lands, or damages in lieu thereof, or rescission of the contract and ejectment; it appeared that the negotiations for purchase were carried on between the vendees and one B. by means of a written correspondence, B.'s letters containing the terms of sale offered, which were accepted by the defendants. These letters were written on printed letter forms headed "Canadian Pacific Railway Company Land Department," and under B.'s signature was the word "Commissioner." The defendants pleaded the Statute of Frauds, and maintained that the only written contract was, on its face, between the C. P. R. Co. and the defendants, and that evidence that the plaintiffs were the undisclosed principals of B. was not admissible. Judgment was entered at the trial by WALKEM, J., for the plaintiff for a rescission of the contract, possession of the land, and damages in lieu of specific performance. On appeal to the full Court, CREASE, MCCREIGHT and DRAKE, JJ.:—*Held*, the form of the writing did not import that B. was contracting as agent for the C. P. R. Co. (2) That the contract was by B. in his own name. (3) That evidence was admissible to show that the contract was made by B. on behalf of unnamed principals. (4) That such principals, being trustees, were (under Rule 98) entitled to sue on the contract in their own names without joining their cestuis que trustent as parties. (5) That a party to a contract cannot be decreed, *uno flatu*, both specific performance and rescission, and where he obtains rescission he cannot have damages, which are given as in lieu of specific performance. *Smith et al.* v. *Mitchell*, 3 B. C. R. 450.

14. Specific performance — *Title of lands.*]—An agreement for the sale of lands provided for the payment of the purchase money by instalments, and that on payment of the purchase money by the vendees the vendor would convey by a good and sufficient deed in fee simple, free from incumbrances:—Held, that the vendees were not entitled to call for a title until after payment by them of the purchase money. Semble, it is not necessary in an action for specific performance of a contract for the sale of lands that the vendor should be the holder of the title if he can obtain a grant in fee from the holder to the purchaser. *Foot and Carter* v. *Mason & Nicholles*, 3 B. C. R. 377.

15. Specific performance—*Mistake.*]—Defendants' trustees under a will containing a power of sale "to sell such portion of his real estate as they in their discretion should think necessary." Some 60 acres, more or less, of s. 78 were offered for sale, but two only of the three boundaries of the lot were defined in the particulars and the conditions of sale. At the sale, the auctioneer produced a map shewing the property offered for sale and marked 60 acres, but stated that the exact contents of the land and the amount to be paid would have to be ascertained by a survey at the joint expense of the vendors and purchaser, but bids would be received per acre. Plaintiff was the highest bidder at $36 per acre, and the subsequent survey shewed that the lot contained 117 acres:—Held, that the plaintiff was entitled to a

conveyance of the 117 acres at that price and held, that the ignorance of the defendants as to the exact acreage of the lot was not such a mistake as entitled them to relief. *Sea v. McLean and Anderson*, 1 B. C. R., pt. II., 67.

16. Tax sale—*Land bid in by municipality—Redemption by original owner—Sale by council by resolution—Necessity for contract under seal—Specific performance.*]—*Tracy* v. *District of North Vancouver*, 10 B. C. R. 235.

See MUNICIPAL CORPORATIONS, IX.

See also AGREEMENT — BOUNDARIES — CONTRACT—REGISTRATION OF DEEDS—TITLE — FRAUDS, STATUTE OF — SPECIFIC PERFORMANCE.

VENUE.

1. Action for infringement of patent—*Practice—Writ of summons—Indorsement of plaintiff's address—Rule* 18—*R. S. Canada*, 1886, *c.* 61, *s.* 30.]—In an action for damages for infringement of a patent, the writ need not be issued out of the registry nearest the place of residence or business of the defendants, but s. 30 of the Patent Act is complied with if the venue is laid at the place of such registry. *Short* v. *Federation Brand Salmon Canning Company*, 6 B. C. R. 385.

2. Application for change of, before amended defence is delivered is premature.]—*Bank of B. C.* v. *Oppenheimer et al.*, 7 B. C. R. 446.

See PRACTICE, XVI.

3. Change of — *Grounds for* — *Criminal libel—Political bias.*]—In criminal libel, in order to obtain a change of venue, it is not sufficient to allege that the prosecution is interested in politics in the place where the libel is alleged to have been committed and that therefore the defendant cannot obtain a fair trial. The fact that two abortive trials have taken place is not per se a reason for change of venue. *Regina* v. *Nicol*, 7 B. C. R. 278.

4. Change of—*Preponderance of convenience.*]—*Lapoint* v. *Wilson*, 5 B. C. R. 150.

See PRACTICE, XXXV.

5. Lieutenant-Governor in council—*Power to grant commission oyer and terminer.*]—*Reg.* v. *Malott*, 1 B. C. R., pt. II., 207; *Reg.* v. *Sproule*, 1 B. C. R., pt. II., 219.

See CRIMINAL LAW, XXI.

6. Of affidavit form "A" Provincial Elections Act—*Variation of.*]—*In re Provincial Elections Co.*, 10 B. C. R. 114.

See ELECTION.

7. Of chamber summons.]—*Centre Star Mining Co.* v. *Rossland Mines et al.*, 10 B. C. R. 136.

See PRACTICE, V.

8. Practice—*Company—Head office and place of business—R. S. Canada*, 1886, *c.* 61, *s.* 30.]—*Short* v. *Federation Brand Salmon Canning Co.*, 6 B. C. R. 436.

See PATENT.

9. Preponderance of convenience — *View—Fair trial.*]—In an application by defendants to change the place of trial from Vancouver to Victoria, of an action under Lord Campbell's Act for damages, for the death of plaintiff's husband, caused by the collapse of a bridge within the city limits of Victoria, owing, it is alleged, to the negligence of the corporation, it appeared that all the witnesses on both sides, except two from abroad, reside in Victoria, and that a view of the bridge by the jury was desirable. The plaintiff resisted the application on the ground that a fair trial could not be had in Victoria: —Held, by WALKEM, and DRAKE, JJ., IRVING, J., dubitante, that the place of trial should be changed to Victoria, notwithstanding the suggestion that a fair trial could not be had there owing to the interest, adverse to the plaintiff, of the ratepayers of the defendant corporation. It was, however, made a term of the order that the defendants should obtain a jury of the county, none of whom were such ratepayers. An order made in Chambers upon a summons duly served, no one appearing contra, is not an ex parte order, and an appeal will lie from it to the Full Court notwithstanding Rule 577. Hudson's Bay Company v. Hazlett, 4 B. C. 351, distinguished. *Biggar* v. *The Corporation of the City of Victoria*, 6 B. C. R. 130.

See also CRIMINAL LAW, XXI.—PRACTICE, XXXV.

VERDICT.

1. After jury separating.] — *Queen* v. *Peter*, 1 B. C. R., pt. I., 2.

See TRIAL.

2. Damages — *Excessive.*] — Verdict will not be considered perverse merely where damages considered excessive. *Hopkins* v. *Gooderham et al.*, 10 B. C. R. 250.

See PRACTICE, XX.

3. Damages—*Verdict as to.*]—Equivalent to general verdict supplementing any special findings and importing any findings as are necessary to a general verdict. *Scott* v. *B. C. Milling Co.*, 3 B. C. R. 221.

See MASTER AND SERVANT, IV.

4. Disagreement of Judge with verdict.]—*Pender* v. *War Eagle Mining Co.*, 7 B. C. R. 162.

See MASTER AND SERVANT, IV.

5. Disagreement of jury where no verdict—*No judgment can be entered.*]—*Loo Chu Fan* v. *Loo Chock Fan*, 1 B. C. R., pt. II., 172.

See PRACTICE, XX.

6. Finality of.]—*Harper* v. *Cameron*, 2 B. C. R. 365.

See APPEAL, VI.

7. Impeaching verdict.]—*Greer* v. *The Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXI.

8. Indefinite—*May be construed from the circumstances of the case.*]—In an action for damages caused by water being backed up on to plaintiff's premises, the jury did not answer the questions put, but found that certain grading of a street caused the damage, but did not state that the grading was done by the defendants, and judgment was entered for plaintiff on the verdict:—Held, on appeal, that from the circumstances of the case, it was evident that the jury found that the grading was done by the defendant. *Waterland* v. *City of Greenwood*, 8 B. C. R. 396.

9. Jury finding answers to questions and also returning general verdict—*Effect of.*]—Where a jury, besides returning answers to the questions put to them, of their own accord, stated that they were all for a verdict for the plaintiff:—Held, that a general verdict, in addition to special findings, imports a finding in favour of the party for whom it is given of every fact in issue necessary to sustain it besides the facts specially found. The verdict of a jury should not be disturbed as being against evidence unless it is one which the jury, on the evidence, could not have reasonably formed. *Harper* v. *Cameron*, 2 B. C. R. 365.

10. Method of construing.]—*Marshall* v. *Cates*, 10 B. C. R. 153.

See MASTER AND SERVANT, IV.

11. Reasonableness of.]—*Gray et al.* v. *Macallum*, 2 B. C. R. 104.

See NEW TRIAL.

12. Setting aside of principles governing.]—*Harris* v. *Dunsmuir*, 9 B. C. R. 303.

See PRACTICE, XX.

13. Setting aside of where fact in issue not submitted to jury.]—*MacAdam* v. *Kickbush*, 10 B. C. R. 358; *Gray et al.* v. *Macallum*, 2 B. C. R. 104.

See PRACTICE, XX.

14. The finding by a jury of damages must be considered as equivalent to a general verdict for plaintiff, supplementing the special findings and importing such as were necessary to a general verdict. *Scott* v. *British Columbia Milling Co.*, 3 B. C. R. 221.

15. View by jury.]—*Biggar* v. *City of Victoria*, 6 B. C. R. 130; 10 B. C. R. 153.

See VENUE—MASTER AND SERVANT, IV.

16. Where indefinite.] — *Waterland* v. *City of Greenwood*, 8 B. C. R. 296.

See PRACTICE, XX.

17. Where incomplete — *Effect of.*]—*Galbraith & Sons* v. *Hudson's Bay Co.*, 7 B. C. R. 431.

See CONTRACT, IV. 1.

See also APPEAL—NEW TRIAL—MASTER AND SERVANT—PRACTICE, XX.

VERBAL AGREEMENT.

1. Statute of Frauds—*Whether verbal agreement enforceable with relation to mineral claim.*]—*Fero* v. *Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, XXI. 2.

2. Verbal evidence—*As to boundaries not admissible where plan referred to not in deed.*]—*Fowler* v. *Henry*, 10 B. C. R. 212.

See REGISTRATION OF DEEDS.

See also FRAUDS, STATUTE OF—MINES AND MINERALS, XXI. 2.

VERBAL NOVATION.

1. Where complete.]—*Strong* v. *Hesson*, 5 B. C. R. 217.

See NOVATION.

VIS MAJOR.

1. As a defence against infringement of Behring Sea Award Act.] — *The Ainoko*, 5 B. C. R. 168.

See ADMIRALTY, III.

VOLENTI NON FIT INJURIA.

1. Application to—*Where injury arises from statutory duty — Maxim discussed.*]—*Foley* v. *Webster*, 2 B. C. R. 137; *Scott* v. *B. C. Milling Co.*, 3 B. C. R. 221.

See MASTER AND SERVANT, IV.

2. *Vedder* v. *Chadsey*, 1 B. C. R., pt. II., 76.

See MUNICIPAL CORPORATIONS, I.

VOLUNTARY CONFESSION.

1. Admissibility of in evidence.]—*Rex* v. *Royds*, 10 B. C. R. 407.

See CRIMINAL LAW, VIII.

VOLUNTARY CONVEYANCE.

1. Right of assignee to impeach.]—*McKenzie et al.* v. *Bell-Irving, Patterson & Co. et al.*, 2 B. C. R. 241.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

2. Setting aside of—*Onus of proof.*]—*Cunningham* v. *Curtis*, 5 B. C. R. 472.

See FRAUDULENT CONVEYANCE.

VOLUNTARY PREFERENCE.

See CHATTEL MORTGAGE—FRAUDULENT CONVEYANCE.

VOLUNTARY PROMISE.

1. Where without consideration not binding.]—*Manley* v. *Mackintosh*, 10 B. C. R. 84.

See VENDOR AND PURCHASER.

VOLUNTARY SETTLEMENT.

1. *Boulthee* v. *Rolls*, 4 B. C. R. 137.

See ESTOPPEL.

2. *Lai Hop* v. *Jackson*, 4 B. C. R. 168.

See FRAUDULENT CONVEYANCE.

VOLUNTARY WINDING-UP.

1. Of companies.]—*In re The Oro Fino Mines, Ltd.*, 7 B. C. R. 388.

See COMPANY, IX.

VOTER.

1. Application to be placed on register of voters.]—*In re Provincial Elections Act*, 10 B. C. R. 114.

See ELECTIONS.

2. Preparation of voters' list from assessment roll.]—*Bell-Irving and City of Vancouver*, 4 B. C. R. 300.

See MUNICIPAL CORPORATIONS, II. 4.

3. Right of naturalized Japanese to be registered as a voter.]—*In re The Provincial Elections Act, and In re Tomey Homma*, 7 B. C. R. 368.

See ELECTIONS.

WAGES.

1. Claim for, as against execution.]—The plaintiff having recovered judgment and execution in this action in the Supreme Court, the sheriff levied the amount thereof from the goods of the defendant. Five persons to whom the execution debtor was indebted for wages, obtained an ex parte order from a County Court Judge (professing to sit as a Judge of the Supreme Court, under Stat. B. C. 1891, c. 8, and Rules of Court printed in B. C. Gazette, 4th November, 1891), for the sheriff to pay into Court out of the moneys levied, the amount claimed by them in order that they might be at liberty to establish their claims thereto in preference to the execution creditor under C. S. B. C., 1888, c. 42, s. 21. Neither the order nor the affidavits in support of it were styled in any cause, but, "in the matter of the Execution Act and of A. E. Clarke, judgment debtor:" — Held, (1) The order and affidavits were irregular as not being styled in any pending cause. (2) The order ought not to have been made ex parte. (3) Section 21, supra, only authorizes the order therein provided for to be made by "a Judge of the Court out of which the process issues," and upon proof of the claim, and the County Court Judge had no jurisdiction. (4) An order for payment into Court of the moneys levied is unauthorized. *McKay* v. *Clarke*, 2 B. C. R. 213.

2. Preference for, limited to salary not applicable to piece work—*Creditors' Trust Deeds Act.*]—*Tam* v. *Robertson*, 9 B. C. R. 505.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

3. Priority of under Creditors' Trust Deeds Act.]—*In re Clayoquot Fishing Co.*, 9 B. C. R. 80.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

4. Priority of under execution.]—*Aspland* v. *Hampson & Co.*, 3 B. C. R. 299.

See EXECUTION.

WAIVER.

1. Appeal—*Waiver of right to, that appeal was not brought in time—Whether application for security for costs amounts to.*]—*Sung* v. *Lung*, 8 B. C. R. 425.

See APPEAL, VIII.

2. Appearance and delivery of pleadings do not waive objection to jurisdiction.]—*Rithet* v. *Ship "Barbara Boscowitz,"* 3 B. C. R. 445.

See ADMIRALTY, IV.

3. Appearance under protest — *Practice.*]—An appearance does not waive a right to object to the jurisdiction if notice of the objection be given to the plaintiff. *Loring* v. *Sonneman*, 5 B. C. R. 135.

4. Appearance of counsel to take the objection that an appeal should be struck out for irregularity, is not an appearance upon the appeal, so as to waive the irregularity. *Tollemache* v. *Hobson*, 5 B. C. R. 223.

5. A party obeying a mandatory order does not thereby waive his right of appeal. *Consolidated Ry. Co.* v. *Victoria*, 5 B. C. R. 266.

See BRIDGES.

6. A shareholder in the company accepted, under the idea that they were valid, and sold, a portion of certain shares issued by the company at a discount, representing part of an

increase of capital not authorized by special resolution as provided by s. 57 of the Companies' Act, 1862 (Imp.), under which the company was incorporated:—Held, not such an acquiescence as estopped him from repudiating the remainder as against the company. *Twigg* v. *Thunder Hill Mining Co.*, 3 B. C. R. 101.

See COMPANY, VI.

7. By appearance of counsel.]—*Edison Gen. Electric Co.* v. *West. and Van. Tram Co.*, 5 B. C. R. 34.

See APPEAL, VIII. 12.

8. By appearance of judgment debtor on application for order for committal.]—*In re Waxstock*, 9 B. C. R. 433.

See HABEAS CORPUS.

9. By conduct—*By making improvements on property.*]—*Townend* v. *Graham*, 6 B. C. R. 539.

See VENDOR AND PURCHASER.

10. By conduct of arbitrator.]—*In re Doberer & McGaw's Arbitration*, 10 B. C. R. 48.

See ARBITRATION AND AWARD.

11. By giving bail.]—*Robertson et al.* v. *Beers*, 7 B. C. R. 76.

See ARREST.

12. By knowledge—*Doctrine of does not apply where breach of statutory duty.*]—*Love* v. *New Fairview Corp.*, 10 B. C. R. 339.

13. Capias ad re.]—Defendant by giving bail waives right to object to irregularities in writ. *Robertson et al.* v. *Beers*, 7 B. C. R. 76.

14. Costs.]—A respondent, by applying to increase the amount of security for costs, waives his right to object that the security was not originally furnished in time. *In re The Oro Fino Mines, Limited*, 7 B. C. R. 388.

15. Doctrine of—*Not applicable to winding-up petition.*]—*In re Albion Iron Works*, 10 B. C. R. 351.

See PRACTICE, IX.

16. Exemption may be lost through laches by waiver.]—*In re Ley*, 7 B. C. R. 94.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

17. Magistrate's decision not given in open Court.]—*Chase* v. *Sing*, 6 B. C. R. 454.

See PROHIBITION.

18. Mechanic's lien.]—Taking and negotiating a promissory note for its amount discharges a mechanic's lien, and although the note falls due before the expiration of the time limited for filing the lien, the lien does not revive upon the note being dishonoured. Affirmed by the Supreme Court of Canada. *Edmonds* v. *Tiernan*, 2 B. C. R. 82.

19. Of breach in condition of deed.]—*Clark* v. *City of Vancouver*, 10 B. C. R. 31.

See DEEDS.

20. Of defect in writ by entry of appearance.]—*Fletcher* v. *McGillivray*, 3 B. C. R. 40.

See PRACTICE, IV.

21. Of demand—*For payment of promissory note.*]—The object of presentment of a promissory note being to demand payment, waiver of demand is also waiver of presentment. *Burton* v. *Goffin*, 5 B. C. R. 454.

22. Of demand—*Whether waiver of presentment.*]—*Burton* v. *Goffin*, 5 B. C. R. 454.

See BILLS AND NOTES.

23. Of irregular appearance by service of notice of motion.]—*Fletcher* v. *McGillivray*, 3 B. C. R. 49.

See PRACTICE, IV.

24. Of irregularity in notice of appeal by appearance of counsel.]—*Bevilockway* v. *Schneider*, 3 B. C. R. 88.

See PRACTICE, XXXVI.

25. Of objection that security not furnished in time.]—*In re Oro Fino Mines Co.*, 7 B. C. R. 388.

See COMPANY, IX. 2.

26. Of objection to jurisdiction by entry of appearance.]—*Kithet* v. *Boscowitz*, 3 B. C. R. 445.

See ADMIRALTY, IV.

27. Of preliminary objection by appearance of counsel.]—The appearance of counsel to take objection that an appeal is out of time, is not an appearance upon the appeal, so as to waive the objection. *Tollemache* v. *Hobson*, 5 B. C. R. 227.

28. Of objection to status of solicitor—*By serving him with papers and writing him letters.*]—*Denny* v. *Sayward*, 4 B. C. R. 212.

29. Of right to appeal—*By taking benefit under order appealed from.*]—*Spencer* v. *Cowan*, 5 B. C. R. 151.

See APPEAL, II.

30. Of right to security—*By consent to consolidation of action.*]—*Silla* v. *Crow's Nest Co.*, 10 B. C. R. 224.

See PRACTICE, I. 9.

31. Of right to object to award.]—*In re Doberer Arbitration*, 10 B. C. R. 48.

See ARBITRATION AND AWARD.

32. Of right to object to jurisdiction by filing dispute note.]—*Beaton* v. *Sjolender*, 9 B. C. R. 439.

See COURTS, I. 2.

33. Of right to call forthwith for conveyance.]—*Williams* v. *Wilson et al.*, 3 B. C. R. 613.

See VENDOR AND PURCHASER.

34. Of right to trial by jury.]—*Ferguson* v. *Thain*, 3 B. C. R. 447.

See PRACTICE, XVI.

35. Of right to prohibition.]—*Chase* v. *Sing*, 6 B. C. R. 454.

See PROHIBITION.

36. Purchaser making improvements does not waive right to an inquiry as to title.]—The mere fact that the purchaser made some improvements on the property does not constitute a waiver of his right of an inquiry as to title. *Townend* v. *Graham*, 6 B. C. R. 539.

37. Tender — *Silence without acts not a waiver of.*]—*Dunlop* v. *Hancy*, 6 B. C. R. 185.

See TENDER.

38. The executive of the Crown cannot waive the performance of an imperative condition precedent imposed by the Legislature. *Peck* v. *Reginam*, 1 B. C. R., pt. II., 11.

39. The objection of want of personal service not waived by adjournments.]—*Golden Gate Co.* v. *Granite Creek Co.*, 5 B. C. R. 145.

See INJUNCTION.

See also APPEAL—MINES AND MINERALS, XLVI — PLEADINGS, XII. — PRACTICE, XXXVI.

WARNING.

1. Effect of system of.] — *Marshall* v. *Cates*, 10 B. C. R. 153.

See MASTER AND SERVANT, IV. 2.

WARRANT.

1. Of commitment where defective.] —*Ex parte Ettamass*, 2 B. C. R. 232.

See HABEAS CORPUS.

2. Of commitment—*Justices may substitute good warrant of commitment for bad.*]—*Re Charles Plunkett*, 3 B. C. R. 484.

See CERTIORARI.

WARRANTY.

1. Damages for breach — *Return of article—Power to order.*]—In an action (by counterclaim) for damages for breach of warranty of an engine sold and delivered by plaintiffs to defendants, the warranty and its breach were proved at the trial. WALKEM, J., delivered judgment, ordering the engine to be returned to the defendants, and assessed the damages to be recovered on that basis. Upon appeal to the Full Court:—Held, overruling WALKEM, J., reversing the order for re-delivery of the engine and directing a re-assessment of damages. A completed sale of chattels cannot be rescinded for breach of warranty. *William Hamilton Mfg. Co.* v. *Knight Bros.*, 5 B. C. R. 391.

2. Implied warranty of seaworthiness.]—*Drysdale* v. *Union S. S. Co.*, 8 B. C. R. 228.

See CARRIERS.

3. Implied warranty.]—*William Hamilton Mfg. Co.* v. *Victoria Lumber Co.*, 4 B. C. R. 101.

See CONTRACTS, III.

4. Of fitness.]—*William Hamilton Mfg. Co.* v. *Victoria Lumber Co.*, 4 B. C. R. 101.

See CONTRACTS, III.

5. Whether statement as to value is a.]—*Cope & Taylor* v. *Scottish Union Ins. Co.*, 5 B. C. R. 329.

See INSURANCE.

See also SALES.

WATERS AND WATERCOURSES.

I. DIVERSION OF WATERCOURSES.

1. Alteration of points of.]—When a power company has submitted the documents specified in s. 85 to the Lieutenant-Governor in Council, one of the purposes set forth in the documents being to alter the points of diversion mentioned in water records purchased by the company, and when a certificate has duly issued under s. 87 approving the proposed undertaking, the power company is entitled, under s. 89, to have the said records amended, and is not bound to give fresh notices or submit to such terms as the Commissioner might impose, in ordinary cases, under s. 27. *In re Water Clauses Consolidation Act*, 10 B. C. R. 356.

2. Authority of Lieutenant-Governor a condition precedent.]—By s. 9 of the Sandon Water Works and Light Company Act (B. C. Stat. 1896, c. 62), the company was authorized to divert water from certain creeks and to use so much of the water of the creeks as the Lieutenant-Governor in Council might allow, with power to construct such works as might be necessary for making the water powers available, but the powers

were not to be exercised until the plans and sites of the works had been approved by the Lieutenant-Governor in Council. The company got their plans and sites approved, and proceeded with the construction of a tank and a flume on plaintiffs' lands for the purpose of diverting water:—Held, that the authority of the Lieutenant-Governor in Council to divert was a condition precedent to the company's right to interfere with the plaintiffs' soil, and that plaintiffs were entitled to damages and a mandatory injunction. Mere submission to an injury, such as the erection of a building by another on one's land, for any time short of the period limited by statute for the enforcement of the right of action, cannot take away such right; to amount to laches raising equities against the person on whose land the erection was placed, there must have been some equivocal conduct on his part inducing the expenditure by the person erecting it. *The Byron N. White Co.* v. *The Sandon Water Works and Light Co., Ltd.*, 10 B. C. R. 361.

3. Crown Lands Act—*Negligent user of statutory rights — Damnum sine injuria.*]—The defendants, as owners of recorded water privileges, under ss. 39-52 of the Crown Lands Act, were entitled to and did divert in and upon their land water from a neighbouring stream for irrigation purposes. The effect of this user of the water was to create a slide, carrying down masses of silt, etc., upon the plaintiffs' railway line, which was constructed by the Dominion Government and conveyed to the plaintiffs after the defendants' rights to the pre-emption and user of the water accrued. It appeared that, without the irrigation, the defendants' lands were worthless, and that the injury was an unavoidable incident of the exercise of the defendants' statutory rights. Negligence was not alleged:—Held, by DRAKE, J., at the trial, dismissing the action (affirmed by the Full Court, MCCREIGHT, WALKEM and MCCOLL, JJ.), that there being no allegation or proof of negligent user by the defendants of their statutory rights, it was a case of damnum sine injuria. Quære, *per* MCCOLL, J., whether, if the plaintiffs had themselves constructed the part of the railway in question, the defendants would not have been entitled to compensation for injury to their lands by the plaintiffs. *C. P. R.* v. *Parke et al.*, 6 B. C. R. 6.

4. Gold Mining Ordinance — *Natural flow—License to divert.*]—Each company had a hill claim, fronting on the right bank of Williams' Creek, and dependent on its water for the means of mining it. The B. N. Co., whose claim was higher up-stream than the J. L. Co.'s, turned nearly all the water of the creek from its bed at a point on the stream some distance above their claim, and conveyed it by a ditch to their ground, thereby depriving the J. L. Co. of water and obliging them to stop work. The B. N. Co. claimed the right to do so, by virtue of s. 36 of the Gold Mining Ordinance, which entitles a miner to use "so much of the water naturally flowing through or past his claim," as may be necessary to work it:—Held, reversing the Gold Commissioner's decision, that the water so used by the B. N. Co. was not "water naturally flowing through or past" their claim, as its natural flow had been intercepted and turned into a ditch above the claim, and that the B. N. Co had, therefore, no right to such water under s. 36. The J. L. Co. having complied with part X. of the same Ordinance, referring to "ditches," obtained from the Gold Commissioner, in April, 1882, a license to divert 150 inches of water from the creeek at their ditch-head, which was higher up-stream than both their and the B. N. Co.'s claims, and use it by means of their ditch, on their ground for mining purposes, for five years. The B. N. Co. held no similar license, either directly or derivatively:—Held, that owners of hill claims could only acquire water privileges such as those claimed in the present action, by complying with part X., and that under the circumstances stated, the J. L. Co. had an exclusive right to use 150 inches of water, according to the terms of their license and by virtue of it, and that the B. N. Co., having no similar license, had no right to any of the water of Williams' Creek: — Held, also that the grant of a water privilege, under part X., need not be by deed. *Jenny Lind Co., appellants*, v. *Bradley-Nicholson Co., respondents*, 1 B. C. R., pt. II., 185.

5. Irrigation—*Nuisance, abatement of.*]—In British Columbia the cultivation by means of irrigation of land so situated as not to be otherwise capable of cultivation, is a natural and reasonable user of such land; and and an injury to the defendant's land caused by such irrigation of his own land by an adjoining proprietor, could not lawfully be averted by any erection upon the defendant's own land diverting it upon the property of another. Upon appeal to the Full Court (WALKEM, DRAKE and IRVING, JJ.), *Per* DRAKE, J. The owner of land may protect himself from injury arising from an accumulation of water on his neighbour's land, and which, under ordinary circumstances, would find its way on to his own land, but in thus protecting himself he must not injure an innocent third party. Where an injury is caused to the land of another by artificial means, such as using water on one's own land for irrigation, the party injured can abate the nuisance in a manner least injurious to the person creating it. *Per* IRVING, J.: That the water was diverted upon the plaintiff's land by means of an artificial erection on the land of the defendant, which was not a natural user of his land, but was a violation of the rule of law expressed in the maxim sic utere tuo, etc. WALKEM, J., concurred. *C. P. R.* v. *McBryan*, 6 B. C. R. 136.

6. Trespass—*Right of landowner to protect himself of flooding by backing water on to lands adjoining—Pleading.*] — In British Columbia the cultivation by means of irrigation, of land so situated as not to be otherwise capable of cultivation, is a natural and reasonable user of such land, and an injury to the defendant's land caused by such irrigation of his own land by an adjoining proprietor, could not lawfully be averted by any erection upon the defendant's own land diverting it upon the property of another. Upon appeal to the Full Court (WALKEM, DRAKE and IRVING, JJ.) *Per* DRAKE J.: The owner of land may protect himself from injury arising from an accumulation of water on his neighbour's land, and which under ordinary circumstances would find its way on to his own land, but in thus protecting himself he must not injure an innocent third party. Where an injury is caused to the land of another by artificial means, such as using water on one's

land for irrigation, the party injured can abate the nuisance in a manner least injurious to the person creating it. *Per* IRVING, J.: That the water was diverted upon the plaintiff's land by means of an artificial erection on the land of the defendant, which was not a natural user of the land, but was a violation of the rule of law expressed in the maxim sic utere tuo, etc. WALKEM, J., concurred. *C. P. R.* v. *McBryan*, 6 B. C. R. 136.

See also RIPARIAN OWNERS, IV., infra—PENNING BACK, III., infra.

II. DRAINAGE.

1. Ditch under Land Act, 1888—*Running per United States territory.*]—The fact that a ditch constructed in intended compliance with the provisions of s. 41 of the Land Act (C. S. B. C. 1888), runs partly through United States territory, does not of itself prevent the ditch from being a good ditch within the meaning of the Act:—Held, also, applying Martley v. Carson (1889), 20 S. C. R. 634, that the plaintiff's water record was valid. *Covert* v. *Pettijohn et al.*, 9 B. C. R. 118.

2. Injunction—*Damage—Use of natural watercourse to improve drainage.*]—Where a person is commencing lawful operations for the purpose of enabling him to utilize his own property, the mere fact that such operations may be injurious to another, is not enough to induce the Court to interfere by injunction. There must at least be proof, not only of imminent danger, but also that the damage, if it comes, will be irreparable. The owner of land may make use of any natural watercourses on his property for the purpose of improving its drainage, and if damage arising from the increased flow of water ensue to another proprietor, it is damnum absque injuria. Remarks on the nature of quia timet actions. *Peatt et al.* v. *Rhode et al.*, 2 B. C. R. 159.

III. PENNING BACK.

1. Flood gate insufficient to carry off accumulation of water in ditch—*Construction of embankment by railway under charter—Outlet—Duty of company as to.*]—The plaintiffs were the owners of land having a slope and natural drainage towards the sea. The defendants, under authority of an Act of Parliament, had constructed a line of railway through this land (which was then owned by the plaintiffs' predecessors in title) and had thereby cut off the ditches which had been constructed on the lands in question for the purpose of drainage. The defendants, for the purpose of protecting their line, cut a ditch parallel with the embankment on which the line was built and cutting across the ditches on the plaintiff's lands, which thereafter emptied into the defendants' ditch. The defendants constructed a flood gate for their ditch, and the flood gate being insufficient to carry off the water accumulated in the defendants' ditch, the plaintiffs' lands were flooded:—Held, that under the defendants' special Act (incorporating s. 16 of the Railway Clauses Consolidation Act, 1845), the construction of the embankment and ditch were authorized by the Legislature, and that the plaintiffs could not complain of the flooding of their lands caused by the construction of the embankment:—Held, also (reversing the judgment of IRVING, J.), that no duty or obligation was imposed on the defendants to see that the plaintiffs had an outlet through their ditch for the water which collected on their lands. *Hornby* v. *New Westminster Southern Railway Company*, 6 B. C. R. 588.

2. Natural watercourse—*Injunction—Damages.*]—S. diverted water from a river on to his land for irrigation purposes. The water flowed thence on to the adjoining lands of the defendant, who thereupon erected a dam and penned the water back. The plaintiffs subsequently constructed their railway across the defendant's lands, between the dam and S.'s lands upon an open trestle, which did not interfere with the existing conditions of the water flow, but afterwards filled in the trestle with a solid embankment leaving an open culvert, the effect of which was to concentrate the water flow from S.'s upon defendant's land, to meet which defendant raised and lengthened his dam, which had the effect of throwing the water back on plaintiff's embankment so as to injure it. The plaintiffs sued, claiming an injunction and damages, alleging "the defendant penned back water flowing through a natural water course running through his land by means of a dam throwing the water back on to and causing it to flood plaintiffs' right of way, etc." The defence denied the allegation of "natural water course," and set up that the injury was caused by misconduct of S. At the trial the plaintiffs abandoned the allegation that the water course was natural. WALKEM, J., at the trial, upon the facts, gave judgment for plaintiffs. Upon appeal to the Full Court, *per* DAVIE, C.J., and MCCREIGHT, J.:—Held, that the facts proved suggested that the injury complained of by the paintiffs was attributable to their own act in concentrating the waterflow so as to increase the previously existing mischief caused by it to the defendant, and that, if so, as against the plaintiffs, it was permissible for defendant to so enlarge his dam as to meet that trespass on their part, and that there should be a new trial to obtain proper findings on that question. That plaintiffs should pay defendant's costs of bringing witnesses to meet the allegation of natural watercourse. *Per* DRAKE, J., affirming the judgment of WALKEM, J.: That as the waterflow would not have injured the plaintiffs' embankment but for defendant's dam, he was liable, as S. was the primary cause of the mischief and not the plaintiffs. Semble, the allegation that the watercourse was natural was immaterial to the cause of action. *C. P. R.* v. *McBryan*, 5 B. C. R. 187.

IV. RIPARIAN OWNERS.

1. Land Ordinance, 1865—*Rights of riparian owners under.*]—On the construction of the Land Ordinances and Acts: — Held, that under s. 44 of the Land Ordinance, 1865, no person is empowered to take water from any stream who is not at common law a riparian proprietor:—Held, that the Commissioner should, before granting any authority to divert water under the Land Acts, see that

all the requirements of the statute have been complied with, but that the applicant is responsible for the insufficiency of his record. Semble, that the owner of a water privilege cannot satisfy s. 50 of Land Act, 1875, by using the ditch of another. Semble, that even prior to passing s. 50, no exclusive right could be acquired until such ditch was constructed:—Held, that s. 44 of Land Ordinance, 1865, did not enable persons to acquire water rights as against riparian owners of land acquired prior to the passage of that Act. The duties of a Commissioner in considering applications for water under Land Acts, pointed out. *Carson & Holt* v. *Clark & Martley*, 1 B. C. R. pt. II., 189.

2. Use for mining purposes — *Fouling waters of creek — Right to deprive of use where natural descent.*]—Plaintiffs were entitled, as riparian proprietors, to the use of the natural flow of the water of the stream Quartz Creek, running through timber lands leased by them from the Dominion Government. The lands so leased were part of the lands in the railway belt granted to the Dominion by the Province of British Columbia by 43 Vict. B. C. c. 11, in aid of the construction of the C. P. R. Defendants, as free miners licensed by the Provincial Government, obtained from it a grant of the right to use, for mining purposes, the water of a stream running into Quartz Creek above the plaintiff's saw-mill, by record under the Placer Mining (B. C.) Act, 1891, ss. 56 and 57. Defendants so used this water as to foul Quartz Creek and stop the plaintiff's mill:—Held, 1. No person, unless by grant or prescription, is entitled to deprive another of the beneficial use of water which would naturally descend to him. 2. A right granted by a statute, which does not, in express terms, derogate from the rights of others, cannot be held to have done so by implication. 3. A grant of water privileges under the Provincial Mining Acts does not sanction the user of the water to the detriment of the rights of others, however acquired, to the same water at another part of the stream. 4. The Dominion Government, under 43 Vict. B. C. c. 11, were in possession of the lands, as trustees to administer same, and it was competent to them to grant a lease to the plaintiffs, carrying the ordinary rights to the water of a riparian proprietor. *The Columbia River Lumber Co.* v. *Yuill and others*, 2 B. C. R. 237.

See also DIVERSION, 1, *supra* — WATER CLAUSES CONSOLIDATION ACT, V., *infra*.

V. WATER CLAUSES CONSOLIDATION ACT.

1 Appeal—*After expiry of month's notice.*]—Anyone affected by a decision appealed from under s. 36 of the Water Clauses Consolidation Act, may be let in on the hearing of the appeal even though the month for giving notice of appeal has expired. Such person may make his application on the hearing of appellant's motion for directions. *In re Water Clauses Consolidation Act*, 8 B. C. R. 17.

2 Gold Commissioner.] — The appeal under s. 36 of the Water Clauses Consolidation Act from the decision of the Gold Commissioner is a trial de novo. *Ross* v. *Thompson et al.*, 10 B. C. R. 177.

3. Gold Commissioner—*Application for record pending before — Adjudication of similar application by Assistant Commissioner.*]—Where an application for a record of water for mining purposes is pending before a Gold Commissioner, an application for a record of the same water for domestic, mechanical and industrial purposes should not be adjudicated upon by an Assistant Commissioner of Lands and Works without express notice to the applicants before the Gold Commissioner. A water notice posted on a board usually used for such notices, in a hall leading to the rooms occupied by the Commissioner and his staff, is posted in the office of the Commissioner within the meaning of s. 9 of the Water Clauses Consolidation Act. Where an application is not contested the Commissioner need not take evidence, but where it is contested he should have the evidence taken in shorthand. *In re Water Clauses Consolidation Act*, 1897, *War Eagle Consolidated Mining and Development Co., Ltd., et al.*, v. *B. C. Southern Railway Co. et al.*, 8 B. C. R. 374.

4. Jurisdiction of Gold Commissioner.]—Under s. 11 of the Rossland Water and Light Company Incorporation Act, 1896, the rights of the City of Rossland, which purchased the water works system of the company, to the waters of Stoney Creek, are paramount but not exclusive, and the Gold Commissioner has jurisdiction to adjudicate on an application under s. 18 of the Water Clauses Consolidation Act for an interim record of the surplus water used by the City. *In re Water Clauses Consolidation Act. Centre Star Mining Company, Limited*, v. *Corporation of the City of Rossland*, 9 B. C. R. 403.

5. Similar applications for same water—*Official should stay his hand who is determining the later application.*] — Where two different officials are called upon to exercise their functions in regard to applications for water rights in respect of the same water, the official who is determining the later application should stay his hand until the final result of the prior application before another official is known. *In re Water Clauses Consolidation Act*, 1897, *War Eagle Consolidated Mining and Development Co., Ltd. et al.* v. *B. C. Southern Railway Co. et al.*, 8 B. C. R. 381.

6. Water records — *Joint holding of — "Domestic and fire purposes."*] — Water records under Part 2 of the Water Clauses Consolidation Act, may be held jointly. Mine owners in their notice of application to the Gold Commissioner for water records included in their notice among the purposes for which the water was required, a purpose not authorized by s. 10 of the Act, i.e., "domestic and fire purposes." At the hearing before the Gold Commissioner applicants requested him to deal with the application as one for mining purposes only, but he refused the request and dismissed the application. On appeal, MARTIN, J., held that the Gold Commissioner was not justified merely on this ground in refusing to exercise his powers, and he referred the matter back for re-hearing, and his decision was affirmed by the Full Court. Quære, whether a supply of water for fire purposes would be necessary as being directly connected with the working of a mine

or incidental thereto. *Centre Star Mining Co. et al.* v. *B. C. Southern Railway Co. et al.*, 8 B. C. R. 214.

See also DIVERSION OF WATER COURSES, I., supra.

VI. MISCELLANEOUS.

1. Appeal—*Right to—Party interested—Who is within Rivers and Streams Act. s.* 12.]—Sec. 12 of the Rivers and Streams Act provides that if a "party interested" is dissatisfied with the judgment of the County Judge, he may appeal to the Supreme Court:—Held, that "party interested" means one who was a party to the proceedings before the Judge appealed from. *Re Smith*, 9 B. C. R. 320.

2. Enjoyment of rights under—*Subsequent attack on for failure to comply with statutory notices.*]—On appeal from the Chief Justice (ante, p. 189):—Held, that the Land Acts do not limit statutory water rights in a stream to those who are riparian proprietors thereon. Where water rights have been enjoyed under an alleged water record, and such rights are subsequently attacked, in an action for damages, on the ground that the statutory notices and conditions were not complied with:—Held, that error in these matters could not be taken advantage of long afterwards, at a trial, but should be raised within a reasonable time by prohibition or certiorari. The word "adjacent" considered. *Carson* v. *Martley*, 1 B. C. R. pt. II., 281.

3. Obstruction of navigable waters—*Nuisance—Trespass.*]—Every subject of the realm has a right to the user, for legitimate purposes of public navigable waters, within the realm where the tide ebbs and flows. (2) He cannot be deprived of that right, except by legitimate authority duly exercised. (3) If his land fronts on tidal waters, and access thereto is obtainable by the user of such waters, no mere license or permission from the Crown to another, to obstruct that user, can be sustained; and any plea to that effect is bad. (4) The right to continue such an obstruction cannot be acquired by the Statute of Limitations, because there can be no presumption of a grant. (5) Remedy for personal loss sustained by obstruction to such right may be materially affected by party's presumed acquiescence, or silence with knowledge. (6) Such an obstruction inflicting private injury cannot be justified by the allegation that the obstruction itself is a public benefit; nor is the remedy lost by the allegation that the private injury is merged in the greater public wrong. (7) In such cases, the Crown acts for the public, the individual for himself. (8) The description "having a frontage of 40 feet, more or less, on Store Street and running back to the harbour," is sufficient to include all land within the parallel side lines, extending from Store Street to the harbour or bay, according to the curvature of the shore line, up to which the tide flows. (9) Semble, the Crown could not, in British Columbia, at the time the titles herein were originated (viz., in 1858), or at any time since, by subsequent license, legalize any addition to, or the continuance of an obstruction which it had not power to authorize in the first instance; and any leave or license to that effect would be inoperative. *Owen* v. *Anderson*, 1 B. C. R. pt. II., 308.

4. Record—*Appeal—Right of parties affected to intervene.*]—Any one affected by a decision appealed from under s. 36 of the Water Clauses Consolidation Act, may be let in on the hearing of the appeal, even though the month for giving notice of appeal has expired. Such person may make his application on the hearing of appellant's motion for directions. *In re Water Clauses Consolidation Act*, 8 B. C. R. 17.

5. Tidal rivers—*Injunction to restrain pollution of.*]—The Crown, in the right of the Dominion of Canada, has the right to take proceedings to restrain by injunction the pollution of tidal rivers, which co-exists with the right of the Provincial Attorney-General to restrain any public nuisance caused by the improper conduct in question. The fact that a statute makes the conduct in question an offence, and imposes fines and imprisonment for its commission, does not derogate from the right of the Court at the motion of the party injured to restrain its commission by injunction. An injunction may be granted although the defendant makes affidavits that he has taken precautions against the recurrence of the injury complained of. *The Attorney-General for the Dominion of Canada* v. *Ewen*; *The Attorney-General for the Dominion of Canada* v. *Munn*, 3 B. C. R. 468.

See also HARBOURS — MINES AND MINERALS, XLVII.—NAVIGABLE WATERS.

WEIGHT OF EVIDENCE.

1. Consideration of on application for new trial.]—*Hopkins* v. *Gooderham*, 10 B. C. R. 250.

See PRACTICE, XX.

See also EVIDENCE—NEW TRIAL — PRACTICE, XX.

WHARVES.

1. Use of public.]—*Lee* v. *O'Brien*, 2 B. C. R. 84.

See COLLISION.

WHOLESALE.

1. A trader, wholesale or retail, is one who sells to gain his living by such buying or selling, not to gain a profit on one isolated transaction. If a manufacturer sells a product of his labour and skill in wholesale quantities he is a wholesale trader. That a person who imported materials and manufactured articles of clothing therefrom, and sells the same in quantities to wholesale or retail dealers, was a person carrying on a wholesale business within the meaning of the municipal license law. *Regina* v. *Pearson*, 3 B. C. R. 325.

WIDE TIRE ACT, 1889.

See CONSTITUTIONAL LAW, II. 9.

WIFE.

1. Application of husband by habeas corpus for custody of child — *Costs.*] — Where a wife leaves her husband without justification she is not entitled to her costs of unsuccessfully resisting his application by habeas corpus for the custody of children. *In re C. T. McPhalen*, 10 B. C. R. 40.

2. Bill of sale to, by husband.] — *Cordingley* v. *MacArthur*, 6 B. C. R. 527.

See FRAUDULENT CONVEYANCE.

3. Replevin action by husband against wife is an action for retort, and therefore the husband cannot maintain it against his wife. *McGregor* v. *McGregor*, 6 B. C. R. 432.

See also DIVORCE—HUSBAND AND WIFE.

WILD LANDS.

1. Assessment of.]—*In re Nelson & Fort Sheppard Ry. Co.*, 10 B. C. R. 519.

See TAXATION, III.

WILL.

1. Action to set aside must be tried without a jury.]—*Hopper* v. *Dunsmuir*, 10 B. C. R. 17.

See PRACTICE, XVI.

2. Bequest to certain persons or their issue, "share and share alike" — *Per stirpes or per capita — Codicil — Substituted legacy.*]—Under a bequest in favour of certain persons, if living at testator's death, and the issue of such of them as should be then dead, "to be equally divided between them, share and share alike," such issue take per capita and not per stirpes. The will bequeathed $1,000 to each of the executors "for the trouble they will have in carrying out the trusts of this, my will." By a codicil, reciting that the original executors had died, new executors were appointed, and a provision made authorizing the executors for the time being to retain, as remuneration for their services, a commission of five per cent. on all moneys collected under the will. The codicil further provided that the will should be construed as if the names of the new executors were inserted throughout in place of the names of the original executors:—Held, that the existing executors were entitled only to the commission mentioned in the codicil. *In re Bossi*, 5 B. C. R. 446.

3. Charitable uses — *Mortmain Act — Probate duty.*]—The statute, 9 Geo. II., c. 36, relating to charitable uses and commonly known as the Mortmain Act, is not in force in British Columbia. Probate duty is in the nature of a legacy duty, and is payable in the first instance out of the estate. *In re Pearse Estate*, 10 B. C. R. 280.

4. Construction — *Pecuniary legacies — Payable out of residuary realty.*]—H. R., the testator, gave £250 to M., and lands at N. in fee to W., and gave certain other lands and also pecuniary legacies to other persons, and "all the rest and residue of my real and personal property" to D. absolutely. W. died in the testator's lifetime, so that the lands at N. fell into the residuary devise, and were the only lands comprised in such devise:—Held, that the pecuniary legacies were well charged on the lands at N. The testator gave to M. absolutely (among other things) "all mining property in C. I may possess at the time of my decease." The other testator died possessed of (inter alia) certain shares in a joint stock company, for working a mine in C., on which shares there were certain calls duly made and unpaid at testator's death, and sundry calls had been made since:—Held, that W. was entitled to have the shares clear of all calls for which the testator might have been sued, but subject to all calls not completely made in testator's lifetime, and therefore he was put to his election. Collins v. Lewis, Tomkins v. Colthouse, and Keeling v. Brown, not followed. Aubrey v. Middleton, Bench v. Biles, Francis v. Clemow, followed. *Manson* v. *Ross*, 1 B. C. R. pt. II. 49.

5. Construction of — *Rule in Shelley's case—Specific performance.*]—By the terms of the whole will it was doubtful whether the testator so used the word "heir" as to make the rule in Shelley's case applicable, and thereby confer a fee simple on the devisee:—Held, that the devisee could not get specific performance of a contract for the purchase of land, his title to which depended on the will. *Garriepie* v. *Oliver*, 8 B. C. R. 89.

6. Construction — *Specific devise subject to a prior life estate — Period of vesting — Advancement.*] — The testator after leaving his property in trust for his widow for life, with remainder to his children or their issue in certain shares, made certain specific devises to his children, to vest in possession on the death of his widow; and the will directed that in the event of the death of any of his children without leaving lawful issue, his, her or their share should fall into residue and be divided among the survivors in the proportions named: — Held, that the word "share" applied as well to the specific devises as to the remainder expectant on the widow's death; and, accordingly, until the specific bequests fell into possession, the children took no vested interest therein. The will gave the trustees a power of advancement in favour of the testator's sons:—Held, that the power was, by the necessity of the case, exercisable during the continuance of the widow's life estate, but that, in order to protect the life interest, any son in whose favour an advancement was made, was chargeable with interest thereon at the rate of five per cent. *In re Finlayson*, 5 B. C. R. 517.

7. Instrument instructed by legatee — *Onus of proof — Undue influence — Testamentary capacity.*]—Testator was a bachelor of 84. He had always been of careful habits and very determined mind, and had accumulated a small fortune by saving. He lived unattended in a small cottage which he owned. His only relatives were abroad. He had, commencing 13 years before his death, carried on a correspondence with the plaintiff his nephew, who lived in England, and was in indigent circumstances, intimating an intention to provide for him by making a will in his favour. No testamentary disposition in

favour of any other relative was indicated. Plaintiff obtained admission to a sailors' home in England in 1887, when testator wrote: "I am glad you have got into that noble institution; it is all you will want for life." Testator in his subsequent correspondence, made no allusion to any intention to leave the plaintiff anything. Testator in 1891 was found in his cottage in a state of physical collapse from cold, weakness and neglect, and was taken to the house of the defendant, who was a friend of long standing. He died there eight days afterwards. Seven days before his death he made the will in question, leaving all his property to the defendant, who at testator's request employed and instructed a solicitor, who drew the will at his office. The solicitor attended the testator, read the will over to him twice, and asked him if he understood it and wished to leave his property to the defendant, to which testator answered "Yes," and also asked if he had power to alter the will afterwards. The evidence of the solicitor and of the attending physician was that the testator was then of testamentary capacity:—Held, *per* CREASE, J., at the trial, that, where a will is instructed or procured by the person propounding and taking a benefit under it, the onus of proof of its validity is shifted upon that person, who must remove any suspicion raised in the mind of the Court by the surrounding circumstances. That the facts in evidence (set out in the judgment) had raised such a suspicion in his mind which had not been removed. On appeal to the Full Court (MCCREIGHT, WALKEM and DRAKE, JJ.):—Held, that the evidence established the will as that of a free and capable testator, and removed the case from the region of suspicion. That the conduct of the defendant was not so suspicious as to warrant the litigation, and that costs should not be ordered to be paid out of the estate. *Adams* v. *McBeath*, 3 B. C. R. 513.

8. Legacy—*Non-payment of — Executors mixing private funds with estate—Judgment by general legatee for amount of legacy—Priority of, as against prior judgment against executor — Personalty — Merger — Turning assets into mixed fund.*]—*Harper* v. *Harper*, 2 B. C. R. 15.

See EXECUTORS AND ADMINISTRATORS.

9. Legacy — *Vested estate.*] — Held, *per* DRAKE, J.: The following language in a will: "I give, devise and bequeath to such of my wife's children as are alive at the time of my death all money or moneys deposited in my name in any bank or banks in the Province of British Columbia, said money to be divided between each of the said children share and share alike when they shall attain the age of 21 years. Until such time the said money and interest as aforesaid is to remain untouched except as hereinafter provided," created a vested interest in the children payable on their respectively attaining 21 years of age. *Re George Baillie, deceased*, 3 B. C. R. 350.

10. Probate — *Foreign will — Foreign marriage contract — Real estate — "Land Registry Ordinance, 1870."*] — Contracts of marriage made in a foreign country, the domicile of parties, by the terms of which, in accordance with the laws of the country, the alienation by a testator (one of the parties to the contract) of his real estate away from his wife and family is forbidden, will prevent a contrary disposition of the same even though, according to the lex loci rei sitæ, there be no such restriction. By the comity of nations, the contract travels a road, and, as between the parties to that contract and their representatives, attaches to the testator's real estate in places other than the domicile. Marriage carried out in consideration of such a contract and in accordance with the laws of the domicile, will, in its incidents touching the real estate of one of the parties as between those parties and their representatives, be respected and sustained, as to those incidents in countries other than the domicile, when there is no direct local legislation to the contrary. Remarks on the Land Registry Ordinance, 1870. *In re Klunkie's Will*, 1 B. C. Reports, page 76.

11. Surviving trustee—*Refusal to convey realty jointly to himself and new trustee — Death of intestate — Appointment of new trustee by Court.*]—The survivor of two trustees under a will, in his lifetime refused to convey the realty into the joint names of himself and a new trustee resident outside the jurisdiction who was duly appointed by the widow in place of the deceased trustee under power contained in the will, and dies intestate as to the trust estate, leaving heirs, many of whom were resident in distant places outside the jurisdiction. Upon petition by the beneficiaries and the new trustees, DAVIE, C.J., made an order appointing a second trustee who was resident within the jurisdiction, and vested the realty in him and the trustee appointed by the widow. *Re Estate of Giacomo Bossi (deceased)*, 4 B. C. R. 584.

12. Testamentary capacity—*Best evidence of.*]—The best evidence of testamentary capacity is that which arises from rational acts and where the testatrix herself, without assistance, drew up and executed a rational will, medical evidence that she was mentally incapable of so doing will be rejected. Where one who benefits by a will procures it to be prepared without the intervention of any faithworthy witness, or anyone capable of getting independent evidence as to the testator's intention and instructions, it will be regarded with suspicion and its invalidity presumed, and the onus is on the party propounding it to clearly establish it. Where a physician improperly gives a certificate as to testamentary incapacity of his patient it should not on that ground alone be rejected as evidence, if otherwise admissible, but the circumstances will affect the weight that should be attached thereto. Observations upon delusions and undue influence:—Held, on the facts, that the will of the testatrix was valid, but that the codicil was obtained by undue influence, and probate thereof was refused. In the usual circumstances the Court made no order as to costs. *McHugh* v. *Dooley et al.*, 10 B. C. R. 537.

See also EXECUTORS AND ADMINISTRATORS.

WINDING-UP.

1. Company—*Contributories — Irregular issue of shares at a discount—Whether holder liable to make good face value to creditors—Waiver.* 4 B. C. R.

See COMPANY.

2. Insolvency—*Practice — Affidavit.*] — To the making of a winding-up order it is essential: (1) That the petition upon its face make a sufficient case for the winding-up, and (2) That the petition should be supported by a sufficient affidavit filed before its presentation. Leave to file a supplementary affidavit refused. *In re the Companies' Winding-up Acts and The Kootenay Brewing Malting and Distilling Company*, 6 B. C. R. 112.

3. "Just and equitable" — *Substratum gone—Shareholder's petition—Contributory — B. C. Companies Winding-up Act*, 1898.] — An order for compulsory winding-up may be made under s. 5 of the Companies Winding-up Act, 1898 (Provincial), notwithstanding the winding-up is opposed by the company. In winding-up proceedings it appeared: (1.) That shares had been unlawfully issued at a discount and at different percentages of their face value; (2) That the substratum was gone and that the company was unable to carry on business; (3) That there was a question as to the liability of the company to the principal shareholder who had always been in practical control of the company: — Held, affirming IRVING, J., that it was just and equitable that the company should be wound up. *In re Florida Mining Co.*, 9 B. C. R. 108.

4. Leave to bring action — *Secured creditors—Proving claims—R. S. C.* 1886, *c.* 129, *ss.* 62 *et seq.*]—A secured creditor has a right to apply for and obtain leave to bring an action to enforce his security. It is not optional for a secured creditor to either prove his claim in a winding-up or else proceed with an action to enforce it, and if he does commence an action it is still compulsory on him to proceed before the liquidator under s. 63 et seq. of the Act. *In re the Lenora Mount Sicker Copper Mining Company, Limited*, 9 B. C. R. 471.

5. Mineral claims — *Mechanic's liens against property of—Jurisdiction of Court to order winding-up of—Notice to parties effected.*] — The holders of mechanics' liens filed against mineral claims owned by a company which was subsequently ordered to be wound up, recovered judgment thereon in the County Court the same day the winding-up order was made. In the list of creditors made up by the liquidator the lien claimants did not appear as secured creditors, but as judgment creditors. The winding-up order was made on the petition of Holmes, a surveyor, who held the field notes of the survey made by him and who afterwards proposed that he advance the moneys necessary to obtain Crown grants of the claims and retain a lien on them until he was paid; the liquidator applied to the Court for leave to accept the proposal and an order was made, without notice to the lien holders, giving Holmes a first charge on the claims for his debt and the amount advanced by him; afterwards, on Holmes' application, an order was made, on notice to the liquidator but without notice to the lien holders, that the claims be sold to pay his charge. The lien holders did not appeal from either of the last orders, but applied for leave to enforce their security, and that they be declared to have priority over Holmes:— Held, by the Full Court (reversing DRAKE, J., who dismissed the application), that the order giving Holmes priority over the lien holders was made without jurisdiction, and the lien holders were not bound by it. *Re Ibex Mining and Dev. Co. of Slocan, Ltd.* Lby., 9 B. C. R. 557.

6. Order for, whether final or interlocutory—*Appeal—Security — Demand for after expiration of time for furnishing — Waiver — Companies Winding-up Act*, 1898, *ss.* 27 *and* 33.]—A winding-up order is a final order. The respondent in an appeal from a winding-up order, after the time limited by s.-s. 3 of s. 27 of the Companies' Winding-up Act, 1898, for furnishing security had expired, demanded security for the costs of the appeal:—Held, by the Full Court (reversing IRVING, J.) that respondent had waived his right to have the appeal dismissed on the ground that the security was not originally furnished in time. *In re The Florida Mining Company, Limited*, 8 B. C. R. 388.

7. Order for, made by local Judge — *Appeal, or motion to rescind.*] — A local Judge of the Supreme Court has no jurisdiction to make a winding-up order. An order made ultra vires should be moved against, not appealed from. *In re Kootenay Brewing Co.*, 7 B. C. R. 131.

8. Petition by shareholder—*Insolvency —R. S. C. c.* 129, *s.* 5 (c) *and* 62-63 *Vict. c.* 43, *s.* 4.]—By s. 5 (c) of the Winding-up Act (Dominion), a company is deemed insolvent "if it exhibits a statement shewing its inability to meet its liabilities:—Held, that the inability to meet liabilities means liabilities to creditors as distinguished from liabilities to shareholders. On the hearing of a petition based on such a statement the statement must be accepted as correct. Remarks as to company balance sheets. *In re United Canneries of British Columbia, Limited*, 9 B. C. R. 528.

9. Practice — *Creditors discontinuing — Whether other creditors entitled to be substituted.*]—In an application for a winding-up order petitioners may discontinue proceedings on settlement of their claims; and creditors, other than the petitioners, who have not themselves petitioned, are not entitled to be substituted for such petitioners for the purpose of continuing the proceedings. *Doyle* v. *Atlas Canning Company*, 5 B. C. R. 279.

10. Right of creditor to value his security.]—*Re Thunder Hill Mining Co. & Bowker*, 5 B. C. R. 21.

See COMPANY, IX. 6.

11. Right of creditor to ex debito justitiae—*No available assets—Examination of officers—R. S. C.* 1886, *c.* 129.]—The Court has a discretion to grant or withhold a winding-up order, s. 9 of R. S. Canada, 1886, *c.* 129. Re Maple Leaf Dairy Co. (1901) 2 O. L. R. 590, followed. A company will not be compulsorily wound up at the instance of unsecured creditors where it is shewn that nothing can be gained by a winding-up, as for example, where there would not be any assets to pay liquidation expenses. On the hearing of a winding-up petition which was dismissed, the petitioner did not avail himself of an opportunity to examine the officers of the company:—Held, on appeal, that it was too late then to grant an inquiry. *Re Okell & Norris Co.*, 9 B. C. R. 153.

12. Rules of — *No. 46.*] — All applications made to the Court in its winding-up jurisdiction must be made by summons. *Re Nelson Sawmill Company*, 6 B. C. R. 156.

13. Rules as to winding-up—*Costs of counsel appearing on motion for — Costs — Waiver.*]—*In re Allison Iron Works*, 10 B. C. R. 351.

14. Voluntary—*When interfered with by Court — Liquidator — Whether he should be served with notice of appeal—Costs—Application to increase security for—Waiver.*] — The Court will not interfere with a voluntary winding-up of a company by its shareholders, and order a compulsory liquidation, unless it is shewn that the rights of the petitioner will be prejudiced by the voluntary winding-up. Service on the liquidator of a notice of appeal on behalf of the company from a compulsory winding-up order is not necessary. A respondent by applying to increase the amount of security for costs waives his right to object that the security was not originally furnished in time. *In re The Oro Fino Mines, Limited*, 7 B. C. R. 388.

15. Winding-up Acts — *Winding-up Amendment Act*, 1889 (*Dominion*)—*Application of, to provincial company.*]—A company incorporated under the Companies' Act, 1890 (B. C.), may be put into compulsory liquidation and wound up under the Dominion Winding-up Amendment Act of 1889. *In re B. C. Iron Works Company, Limited Liability*, 6 B. C. R. 536.

16. Winding-up Act—*Petition—Affidavit verifying—Necessity for—Creditor — Debt not payable—Estopped.*]—Upon the petition for a winding-up order it appeared that the application was made by a creditor who had given the company an extension of time, not yet expired, for payment of the debt. The affidavit in support of the petition was made by a person who deposed upon information and belief, and upon cross-examination thereon it appeared that he had no personal knowledge of the matters deposed to:—Held, *per* DAVIE, C.J.: (1) That the affidavit must be treated as a nullity; (2) That all that the Winding-up Act requires, as essential to a winding-up order, is a petition setting forth sufficient facts, and that although the rules require a verifying affidavit the rules are not to be treated as imperative, but directory only; (3) That declarations of insolvency made by the officers of a company do not operate as an acknowledgment of insolvency by the company sufficient to satisfy s. 5 of the Act, that such acknowledgment must be a corporate one; (4) That the debt, though not yet payable, was sufficient to support the petition. Upon appeal to the Full Court, *per* DRAKE, J. (MCCREIGHT and MCCOLL, JJ., concurring): (1) There must be evidence to enable the Court to act, and, as the affidavit was insufficient, there was no support for the order; (2) The distinction between the language of s. 6 of the Act, which refers to a creditor whose debt is "then due," and that of s. 8, in which the term is "creditor" only, is not unmeaning, and a creditor, whose debt is not yet due, is a good petitioning creditor for winding-up under s. 8. The company had called its creditors together, and a deed was executed whereby the company assigned certain property to trustees to answer the creditors' claims, and the creditors agreed to extend the time for payment:—Held, that the creditors who had executed the deed, of whom the petitioner was one, were estopped from presenting a winding-up petition until the period of extension had expired. *In re Atlas Canning Company*, 5 B. C. R. 661.

17. Winding-up Act—*Creditors discontinuing after settlement—Whether others entitled to be substituted.*] — *Doyle* v. *Atlas Canning Co.*, 5 B. C. R. 279.

See COMPANY, IX.

18. Winding-up Act (Dom.)—*Right of liquidator to take over securities at creditor's valuation—Whether creditor entitled to withdraw original valuation.*] — A creditor having valued his security against a company upon a winding-up cannot withdraw such valuation and enforce the security, but the liquidator is entitled to obtain an assignment and delivery thereof to himself at that valuation. Under s. 62 of the Winding-up Act (Can.) it is compulsory on the creditor to value his security, leaving it to the liquidator to take it, or allow the creditor to keep it, at that valuation. *In the matter of the B. C. Pottery Co. and the Winding-up Act (Can.)*, 4 B. C. R. 525

See also COMPANY, IX,

WINZE.

1. Protection of, whether necessary to protect at each level.]—*Stamer* v. *Hall Mines*, 6 B. C. R. 579.

See MASTER AND SERVANT, IV.

WITNESSES.

1. Admissibility of depositions of — *Taken at preliminary hearing.*] — *Reg.* v. *Pescaro & Jim*, 1 B. C. R. pt. II., 144.

See CRIMINAL LAW, VIII.

2. Absence of—*Right of grand jury to peruse depositions.*]—*Reg.* v. *Howes*, 1 B. C. R. pt. II., 307.

See CRIMINAL LAW, XV.

3. Evidence of any witness may be partly accepted and partly rejected.]—*Stoves* v. *South Vancouver*, 6 B. C. R. 17.

See MUNICIPAL CORPORATIONS, VIII. 7.

4. Evidence of witness being outside of Canada—*Sufficiency of.*]—*Reg.* v. *Morgan*, 2 B. C. R. 329.

See CRIMINAL LAW, VIII.

5. Exclusion of.]—Exclusion of, if parties to action, not ordered as of course. *Bird et al.* v. *Vieth et al.*, 7 B. C. R. 31; *Bird* v. *Beith*, 7 B. C. R. 31.

See PRACTICE, XX.

6. Fees to witness — *Witness travelling from abroad — Travelling expenses whether taxable.*]—*Adams* v. *McBeath*, 3 B. C. R. 34.

See PRACTICE, IX. 20.

7. Form of Chinese oath settled for cases of gravity.]—*Rex* v. *Ah Wooey*, 9 B. C. R. 569.

8. Illness of—*Ground for order for examination de bene esse.*]—*Bank of Montreal* v. *Horne*, 6 B. C. R. 68.

See PRACTICE, XI. 1.

9. Incompetency by reason of lack of religious belief: *Gray et al.* v. *McCallum*, 2 B. C. R. 104.

10. Incompetency.]—Total defect in religious belief makes a witness incompetent, and the question of belief may be examined into after he has sworn or affirmed, but it is not the duty of the trial Judge to so examine before receiving his evidence. *Gray et al.* v. *McCallum*, 2 B. C. R. 104.

11. New witnesses — *May be called on appeal from Small Debts' Court.*]—*Melkin* v. *Tobin*, 7 B. C. R. 386.

See APPEAL, I, 17.

12. Right to expenses of attendance of party cross-examined on affidavit.]—*Emerson* v. *Irving*, 4 B. C. R. 56.

See PRACTICE, II.

13. Right to withhold names of, on examination for discovery.] — *Jones* v. *Pemberton*, 6 B. C. R. 69.

See PRACTICE, XI. 5.

WOODMAN'S LIEN.

1. Action for wages — *Pursuing both remedies—Estoppel.*]—Where a workman has recovered part of his wages by seizure and sale in a joint action with other workmen against his employer under the Woodman's Lien for Wages Act, he is estopped from proceeding under s. 27 of the Mechanics' Lien Act for the balance of his wages. *Wake* v. *The Canadian Pacific Lumber Company, Limited*, 8 B. C. R. 358.

2. There is no lien given to saw-mill men by the Woodman's Lien for Wages Act, but only to those engaged in getting the timber out of the forest. *Davidson* v. *Frayne et al.*, 9 B. C. R. 369.

WORDS AND PHRASES.

A.

"ABSOLUTE FEE."]—Construction of phrase under Land Registry Ordinance, 1870, whether equivalent to "clear of all incumbrances." *In re Sir James Douglas*, 1 B. C. R. pt. I., 84.

See REGISTRATION OF DEEDS.

"ADJACENT" — *Considered.*] — *Carson* v. *Martley*, 1 B. C. R. pt. II., 281.

See WATERS AND WATERCOURSES, VI.

"ALIENATED"—*E. & N. Ry. Act, Stat. B. C. 47, Vict. c. 14, s. 22.*]—In January, 1889, the E. & N. Ry. Co., by agreement gave to H. the right to enter and select 50,000 acres of lands granted to the company by the above Act, to be paid for at $5 per acre, in certain instalments, with interest, etc., the lands to be conveyed so soon as the purchase money was paid, etc. H. in February, 1890, assigned all his interest under the agreement to a lumber company. The lands had been selected and surveyed, but the purchase money was not fully paid:—Held, by the Full Court, that the word "alienated," in view of the sense in which it was used throughout the Act, must be given a construction sufficiently wide to include such an agreement as that in question. Semble, that proprio vigore, the word included such a transaction. *Queen* v. *Victoria Lumber Co.*, 5 B. C. R. 288.

"ALIENS" — *Chinese Regulation Act is ultra vires as to interference with rights of.*] —*Reg.* v. *Wing Chong*, 1 B. C. R. pt. II., 150.

See CONSTITUTIONAL LAW, II. 5.

"AND" *construed* "OR."]—*Poole* v. *City of Victoria*, 2 B. C. R. 271.

See CONSTITUTIONAL LAW, II. 8.

"APPARENT POSSESSION."] — *Brackman* v. *McLauchlin*, 3 B. C. R. 265.

See BILL OF SALE.

"APPEAL."]—A motion to the Divisional Court for a new trial is an appeal within the meaning of Order LVIII., Rule 15. *Wilson* v. *Perrin*, 2 B. C. R. 350.

"APPEAL SHALL BE BROUGHT."] — *Re Ellard*, 2 B. C. R. 235.

See APPEAL, VIII. 5.

"APPROXIMATE COMPASS BEARING."]—*Callaghan* v. *Coplen*, 7 B. C. R. 422.

See MINES AND MINERALS, XXIX.

"AUTOMATIC"—*Mode of sampling ores.*] —*Le Roi (No. 2)* v. *Northport S. & R. Co.*, 10 B. C. R. 138.

See CONTRACT, I. 1.

B.

"BLACKLEG" — *Is libellous.*] — *Hugo* v. *Todd*, 1 B. C. R., pt. II., 369.

See LIBEL AND SLANDER.

"BONA FIDE TRAVELLER"—*A constable is a.*]—*Regina* v. *Harris*, 2 B. C. R. 177.

C.

"CHINAMAN."]—*Re Coal Mines Regulation Act*, 10 B. C. R. 422.

"CLEAR DAYS" — *Meaning of.*]—*Rae* v. *Gifford*, 9 B. C. R. 192.

See ELECTIONS.

"CLEAR OF ALL INCUMBRANCES."]—*In re Sir James Douglas*, 1 B. C. R., pt. I., 84.

See REGISTRATION OF DEEDS.

"CONTRIBUTORY NEGLIGENCE."] — *Love* v. *New Fairview Co., Ltd.*, 10 B. C. R. 330.

See NEGLIGENCE.

See also EMPLOYERS' LIABILITY ACT—MASTER AND SERVANT.

"COURT HOUSE."]—*Re Close and Berry*, 2 B. C. R. 131.

"COURT."]—In Rule 751 means the Court before which an action is brought, presided over by one or more Judges. *In Gibson* v. *Cook*, 5 B. C. R. 534.

"COURT" — "*Judge*."] — Reference to a particular Judge, whether authorized by statutory power to refer to the Supreme Court. *Re Horsefly Mining Co.*, 4 B. C. R. 165.

D

"DEFECT."]—*Scott* v. *B. C. Milling Co.*, 3 B. C. R. 221.

See EMPLOYERS' LIABILITY ACT.

"DISCOVERER"—*Of mineral in place, under Mineral Act*, 1896, *s.* 16 (d).]—*Richards* v. *Price*, 5 B. C. R. 362.

See MINES AND MINERALS, XXXII.

"DISTRESS"—*Application of term under* 38 *Vict. c.* 27—*Whether applicable to tow or tug.*]—*Hamley* v. *Libbey*, 1 B. C. R., pt. II., 44.

See SHIPPING.

"DISORDERLY HOUSE"—*Code ss.* 783 (*f*) 784, 791.]—The meaning of the term "disorderly house," in s. 783, s.-s. (f), supra, must be taken from its definition in s. 198, and not from the common law. *Re Farquhar McRae, Ex parte John Cook*, 4 B. C. R. 18.

"DITCHES" — *Gold Mining Ordinance*, 1867, *s.* 36—*Under license to divert.*]—*Jenny Lind Co.* v. *Nicholson*, 1 B. C. R., pt. II., 185.

See WATERS AND WATERCOURSES, I.

"DUE."]—*B. C. Land and Invest. Agency* v. *Cumyow*, 8 B. C. R. 2.

See PRACTICE, XXXVIII. 10.

"DURING THE PLEASURE OF THE MAYOR OR COUNCIL"—*Officer of corporation holding office—Removal of without notice.*] — *North Vancouver* v. *Keene*, 10 B. C. R. 276.

See MUNICIPAL CORPORATIONS, VI.

E.

"EQUAL TO SAMPLE."]—*Kerr & Begg* v. *Cotton*, 2 B. C. R. 246.

See CONTRACT, II. 1.

"EXECUTION."]—*Foley* v. *Webster*, 2 B. C. R. 251.

"EXECUTION"]—*Aspland* v. *Hampson*, 3 B. C. R. 299.

See RECEIVER.

"EXERCISING PROFESSION."] — *Ex parte Henderson*, 2 B. C. R. 103.

"EXPOSED TO."]—*Re George Bowack*, 2 B. C. R. 216.

See HEALTH.

F.

"FULLY PAID AND NON-ASSESSABLE" — *Whether company bound by statement in certificate that shares were.*] — *Kettle River Mines* v. *Bleasdel*, 7 B. C. R. 507.

See COMPANY, VI.

"FRENCH CANADIANS."]—*In re Coal Mines Regulation Act*, 10 B. C. R. 423.

"FROM ONE PART OR PLACE IN CANADA TO ANOTHER" — *Application of.*]—*Hamley* v. *Libbey*, 1 B. C. R., pt. II., 44.

See SHIPPING.

G.

"GOOD CAUSE"—*What is for deprivation of successful party of his right to costs.*]—*Richards* v. *Bank of B. N. A.*, 8 B. C. R. 209.

See BANKS AND BANKING.

"GRAB" or "SHOVEL"—*Mode of sampling ores for smelting purposes.*]—*Le Roi* v. *Northport S. and R. Co.*, 10 B. C. R. 138.

See CONTRACT, I. 1.

"GRIEVOUS BODILY INJURY."] — *Reg.* v. *Union Colliery Co.*, 7 B. C. R. 247.

See CRIMINAL LAW, XII.

"GUILTY"—*Criminal trial—Jury separating owing to sickness of juror—Delivery of verdict of after his recovery—Recording of verdict of—Whether same may be disturbed.*]—*Queen* v. *Peter*, 1 B. C. R. 2.

See CRIMINAL LAW, XV.

H.

"HEIR"—*Use of phrase by testator—Application of rule in Shelley's case to.*]—*Garriepie* v. *Oliver*, 8 B. C. R. 89.

See WILLS.

"HEREIN"—*Meaning of phrase in order for discovery—Whether refers back to matters in summons.*]—*Leadbeater* v. *Crow's Nest*, 10 B. C. R. 208.

See PRACTICE, I. 9.

I.

"INCOME"—*Liable to taxation under the Assessment Act, C. S. B. C.*, 1888, *c.* 111, *s.* 3, *s.-s.* 16, *means net income.*]—*Re Biddle Cope*, 5 B. C. R. 37.

"INDIAN."]—*In re Coal Mines Regulation Act*, 10 B. C. R. 422.

"INFECTED LOCALITY"—"*Exposed to infection.*"]—*Wong Hoi Woon* v. *Duncan*, 3 B. C. R. 319.

See HEALTH.

"IN OFFICE"—*Posting in — What is.*] — *War Eagle* v. *B. C. Southern Ry. Co.*, 8 B. C. R. 374.

See WATERS AND WATERCOURSES, V.

"IN ON IT."]—Agreement that if defendant located a mineral claim on a certain ledge, plaintiff should be "in on it:"—Held, to constitute an agreement of partnership. *Wells* v. *Petty*, 5 B. C. R. 353.

J.

"JEWS."]—*In re Coal Mines Regulation Act*, 423.

"JUST AND EQUITABLE" — *B. C. Companies' Winding-up Act*, 1898, *petition by shareholder for winding-up.*] — *Re Florida Mining Co.*, 9 B. C. R. 108.

See COMPANY, IX.

K.

"KEEP OPEN"—*What amounts to keeping open on Sunday to constitute an infringement of the Vancouver Incorporation Act—Section 125.*]—*Re Lambert*, 7 B. C. R. 396.

See SUNDAY.

"KNOWINGLY AND WILFULLY"—*By omitting to affix law stamps to summons—Whether omission amounts to violating Act.*]—*Aldrich* v. *Nest Egg Co.*, 6 B. C. R. 53.

L.

"LAWFUL EXCUSE"—*Seal Fishery (Behring Sea) Act*, 1891—*Ship found within prohibited waters with seal skins on board.*]—*Re Ainscka*, 3 B. C. R. 121.

See ADMIRALTY, II.

"LEASED"—*Meaning of within E. & N. Railway Act, B. C. S.* 47 *Vict. c.* 14, *s.* 32—*What is for purposes of.*]—*Victoria Lumber Co.* v. *Queen*, 3 B. C. R. 16; *Queen* v. *Victoria Lumber Co.*, 5 B. C. R. 288.

See TAXATION, III.

"LEGAL ADVISERS" — *Appointment of to corporation — Meaning of term — Whether "solicitor" or "attorney" by reference to circumstances at time of appointment.*]—*Drake & Jackson* v. *City of Victoria*, 1 B. C. R., pt. II., 165.

See MUNICIPAL CORPORATIONS, VI.

"LODGING HOUSE KEEPER"—*Definition of.*] —*In re Gun Long*, 7 B. C. R. 457.

See MUNICIPAL CORPORATIONS, II. 5

M.

"MAY"—*Criminal Code, s.* 880 (e)—*Performance of Judicial Act.*]—In a statute providing that the Court may perform a judicial act for the benefit of a party, under given circumstances, the word "may" is imperative. *Fenson* v. *City of New Westminster*, 5 B. C. R. 624.

"MEAL."]—*Reg.* v. *Sacur*, 3 B. C. R. 308.

See LIQUOR LICENSE.

"MISDIRECTION"—*Where alleged in notice — Particulars of should be given.*] — *Warmington* v. *Palmer & Christie*, 8 B. C. R. 344.

See APPEAL, IV.

"MONTH"—*Computation of time during—Creditors' Trust Deeds Act.*]—*Re Clayoquot Fishing and T. Co.*, 9 B. C. R. 80.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

N.

"NEGRO."]—*In re Coal Mines Regulation Act*, 10 B. C. R. 422.

O.

"ON WHICH THE VOTERS' LISTS ARE BASED."]—*Re Bell-Irving and City of Vancouver*, 4 B. C. R. 219.

"OVERTAKING SHIP."]—*Re Cutch*, 2 B. C. R. 357.

See COLLISION,

"OWING."] — The Mechanics' Lien Act Stat. B. C., 1888, c. 74, *s.* 9, requires an affidavit that the amount claimed is "due," and when it became due. A statement that the amount was "owing," held insufficient. *Smith* v. *McIntosh, Carne et al.*, 3 B. C. R. 26.

"OWNER."]—*Granger* v. *Fotheringham*, 3 B. C. R. 590.

See MINES AND MINERALS, XXXVI.

P.

"PARTY INTERESTED"—*Who is.*] — *In re Smith*, 9 B. C. R. 329.

See APPEAL, VIII. 12.

"PLAYING AND GAMING."] — *Reg.* v. *Ah Pow*, 1 B. C. R., pt. I., 147.

See GAMING.

"PRACTICE AND PROCEDURE."] — Whether an order of reference in an action is a matter of jurisdiction or a matter of "procedure and practice" within the meaning of *s.* 3 of the Yukon Judicature Ordinance. *Williams et al.* v. *Faulkner*, 8 B. C. R. 197

"PRACTISING MEDICINE."] — *Reg.* v. *Barnfield*, 4 B. C. R. 305.

"PREMISES OCCUPIED BY."]—*Brackman* v. *McLauchlin*, 3 B. C. R. 265.

See BILL OF SALE.

"PROCEDURE AND PRACTICE."] — Whether an order of reference in an action is a matter of jurisdiction or a matter of "procedure and practice" within the meaning of s. 3 of the Yukon Judicature Ordinance. *Williams et al. v. Faulkner*, 8 B. C. R. 197.

"PROFESSIONAL CONFIDENCE."] — *Leadbeater v. Crow's Nest Pass Co.*, 10 B. C. R. 206.

See PRACTICE, I. 9.

"PROPOSED SECURITY"—*Means "intended security."*]—*Stoddard v. Prentice*, 7 B. C. R. 498.

See ELECTIONS.

"PROVINCIAL"—*Meaning of.*] — *Keefer v. Todd*, 1 B. C. R., pt. II., 249.

See CONSTITUTIONAL LAW, V.

R.

"RAILWAY"—*Within meaning of Employers' Liability Act.*] — *Booker v. Wellington Colliery Co.*, 9 B. C. R. 265.

See MASTER AND SERVANT, IV. 2.

"REFUSAL OF A MOTION OR APPLICATION"—*Meaning of.*]—*Short v. Federation Brand Salmon Co.*, 7 B. C. R. 35.

See APPEAL, VIII. 11.

"RESERVE"—*What constitutes a.*]—*Atty.-Gen. v. Ludgate*, 8 B. C. R. 242.

See PROPERTY.

"ROCK IN PLACE"—*Defined.*]—*Nelson and Fort Sheppard Ry. Co. v. Jerry*, 5 B. C. R. 396.

S.

"SALE BY RETAIL" — "*Wholesale.*"] — *Heath v. City of Victoria*, 2 B. C. R. 276.

See MUNICIPAL CORPORATIONS, X.

"SALE."]—*City of Victoria v. Union Club*, 3 B. C. R. 363.

See MUNICIPAL CORPORATIONS, X.

"SHARE AND SHARE ALIKE."]—Under a bequest in favour of certain persons, if living at testator's death, and the issue of such of them as should be then dead, "to be equally divided between them, share and share alike," such issue to take per capita and not per stirpes. *In re Bossi*, 5 B. C. R. 446.

"SHORE LINE" or "COAST LINE"—*Meaning of.*] — *McDonnell v. B. C. Electric Ry. Co.*, 9 B. C. R. 542; *Mowat v. North Vancouver*, 9 B. C. R. 205.

See BOUNDARIES.

"SIGNED, SEALED AND DELIVERED"—*Effect of phrase in life insurance policy.*]—*Elson v. North American Life Ins. Co.*, 9 B. C. R. 474.

See INSURANCE, II.

"SIMILAR"—*Interpretation of.*] — *In re Smith*, 6 B. C. R. 154.

See MUNICIPAL CORPORATIONS, VIII.

"SITTINGS OF COURT" — *Meaning of "next."*]—*McLeod v. Waterman*, 9 B. C. R. 370.

See PRACTICE, I. 11 (c).

"SISTER"—*Whether includes half-sister.*]—*In re Oliver*, 8 B. C. R. 91.

See TAXATION, III.

"SOLD OR ALIENATED."]— *Victoria Lumber Co. v. Queen*, 3 B. C. R. 16; *Queen v. Victoria Lumber Co.*, 5 B. C. R. 288.

See TAXATION, III.

"SPIRITUOUS LIQUOR"—*Means liquor produced by distillation.*] — It appearing upon the hearing of an appeal from a conviction for selling spirituous liquor without a license contrary to the Municipal Act of 1892, s. 204, s.-s. 3, that the liquor sold was intoxicating, but no evidence being given as to its having been produced by distillation, it was held that the evidence was insufficient to sustain the conviction. *Re Quong Wo.*, 2 B. C. R. 336.

"STATEMENT OF CLAIM" — *Omission of phrase "statement of claim" in special indorsement—Effect of.*]—*Vancouver Agency v. Quigley*, 8 B. C. R. 142.

See PRACTICE, XXXVIII. 10.

"STOP, DETAIN AND EXAMINE."] — *Canadian Pacific Navigation Co. v. City of Vancouver*, 2 B. C. R. 193.

"STRIKING AND CUTTING" — *Amendment of conviction for assault.*]—*Howden's Case*, 1 B. C. R., pt. I., 89.

See CERTIORARI.

"SUFFERING TO BE OCCUPIED."]—*Re Wing Kee*, 2 B. C. R. 321.

See CRIMINAL LAW, XVIII

T.

"TAKE, HOLD AND USE."] — *C. P. R. v. City of Vancouver*, 2 B. C. R. 306.

See ESTOPPEL.

"TERMINUS OF RAILWAY" — *Defined.*]—*Edmonds v. C. P. R.*, 1 B. C. R., pt. II., 272.

See RAILWAYS, I.

"TOUCHING THEIR KNOWLEDGE OF THE MATTERS IN QUESTION HEREIN" — *Meaning of phrase in order for discovery, whether refers back to matters in summons.*] — *Leadbeater v. Crow's Nest Co.*, 10 B. C. R. 208.

See PRACTICE, I. 9.

"TRADE AND COMMERCE."]—*Reg. v. Wing Chong*, 1 B. C. R., pt. II., 150; *Queen v. Howe*, 2 B. C. R. 36; *Tai Sing v. McGuire*, 1 B. C. R., pt. I., 101.

See CONSTITUTIONAL LAW, II.

"TRANSFER"—*Land Act*, 1888, *s.* 26.]—The word "transfer" in s. 26 of the Land Act, 1888, prohibiting the transfer of pre-emption claims, means parting with the title; and a deed of conveyance of land, subject to a pre-emption claim, signed before, but dated and delivered after Crown grant, does not constitute a transfer before Crown grant within the meaning of the Act. *Hjorth* v. *Smith*, 5 B. C. R. 369.

U.

"UNTIL PAID."]—A promissory note payable at a certain date with interest at 9 per cent. per annum "until paid," means until the maturity of the note, and a claim in an indorsement for interest thereon after maturity at a higher that the statutory rate of 6 per cent. is not a liquidated demand and cannot be specially indorsed. *Bank of Montreal* v. *Bainbridge*, 3 B. C. R. 125.

"UNTIL SOLD"—*Construction of word in statute, exempting lands from taxation.*]—*Victoria Lumber Co.* v. *Queen*, 3 B. C. R. 16.

See TAXATION, III.

V.

"VALID IN CANADA"—*Contract to procure fire insurance in some office "valid in Canada"—Means some company licensed to do business in Canada.*]—*Barrett* v. *Elliott*, 10 B. C. R. 461.

See INSURANCE, I.

W.

"WAGES OR SALARY OF PERSONS IN EMPLOY"—*Creditors' Trust Deeds Act—When their contract by piece work is included in and entitled to preference.*]—*Tam* v. *Robertson*, 9 B. C. R. 505.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

"WAYS."]—*Scott* v. *B. C. Milling Co.*, 3 B. C. R. 221.

See EMPLOYERS' LIABILITY ACT.

"WEARING APPAREL"—*What is included in the term.*]—*Wensky* v. *Can. Development Co.*, 8 B. C. R. 191.

See CARRIERS.

"WHOLESALE TRADER."]—*Reg.* v. *Pearson*, 3 B. C. R. 325.

See MUNICIPAL CORPORATIONS, X.

"WILL, SIMPLY APPOINTING AN EXECUTOR."]—*In re Henry Jerome Estate*, 1 B. C. R., pt. I., 87.

See WILLS.

"WITHIN ONE MONTH BEFORE"—*Computation of time during Creditors' Trust Deeds Act.*]—*In re Clayoquot Fishing and T. Co.*, 9 B. C. R. 80.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

"WORKMEN"—*Employers' Liability Act, Stat. B. C.*, 1891, *c.* 10.]—Plaintiff was employed to stop the descent of a pile-driver by the insertion of a block after it was raised until ready for work upon a pile: — Held, that he was a "workman" within the definition of s. 1, s.-s. 3 of the Act. *McMillan* v. *Western Dredging Co.*, 4 B. C. R. 122.

WORK AND LABOUR.

1. Injuries to workman.] — *Foley* v. *Webster*, 2 B. C. R. 137.

See MASTER AND SERVANT, IV.

2. Workmen have no preferential claim in case of equitable execution.] —*Muirhead* v. *Lawson*, 1 B. C. R., pt. II., 113.

See RECEIVER.

See also CONTRACT—EMPLOYERS' LIABILITY ACT—MASTER AND SERVANT — MECHANIC'S LIEN—NEGLIGENCE — WAGES — WOODMAN'S LIEN.

WRITS.

1. Application to hold to bail—*Material sued on need not shew that writ of summons issued.*]—*Williams* v. *Richards*, 3 B. C. R. 510.

See ARREST.

2. Application to set aside — *Not necessary that applicant be real defendant.*] —*Fall* v. *Klondike Bonanza*, 9 B. C. R. 493.

See PRACTICE, XXXVIII. 9.

3. Issue of writ prior to order allowing extension of time for.]—*Re Maple Leaf and Lanark Claims*, 2 B. C. R. 323.

See APPEAL, VIII. 11.

4. Omission of address of defendant on.]—*Matthews* v. *City of Victoria*, 5 B. C. R. 284.

See PRACTICE, XXXVIII. 1.

5. Renewal of in adverse action.]—*Haney* v. *Dunlop*, 6 B. C. R. 520; *Haney* v. *Dunlop*, 6 B. C. R. 451.

See MINES AND MINERALS, L.

6. Service of copy not shewing original to be under seal of Court.]—*Canada Settlers* v. *Steinburger*, 4 B. C. R. 353.

See PRACTICE, XXXVIII. 9.

7. Service of on foreign corporation by serving manager while temporarily passing through province.] — *Fall* v. *Klondike Bonanza*, 9 B. C. R. 493.

See PRACTICE, XXXVIII. 9.

8. Substitutional service of affidavit in support of application for — *Must shew defendant evading service.*]—*Hull Bros.* v. *Schneider*, 3 B. C. R. 32.

See PRACTICE, XXXVIII. 9

9. Writ of error.] — *Pick-ke-ark-an* v. *Queen*, 2 B. C. R. 53; *Greer* v. *Queen*, 2 B. C. R. 112.

See CRIMINAL LAW, XXII.

See also ARREST—MINES AND MINERALS, III. L.—PRACTICE, XXVI., XXVII., XXIX. XXXVI., XXXVIII.—SUMMONS.

WRITTEN AGREEMENT.

1. Agreement with respect to mineral claim not in writing — *Whether enforceable.*]—*Fero* v. *Hall*, 6 B. C. R. 421.

See MINES AND MINERALS, XXI. 2.

2. Parol evidence to explain—*Written contract.*]—*Le Roi* v. *Northport S. & R. Co.*, 10 B. C. R. 138.

See CONTRACT, I. 1.

3. Proposal in writing—*Acceptance of by parol.*]—*Harris* v. *Dunsmuir*, 6 B. C. R. 505.

See CONTRACT, I. 1.

WRONGFUL DISMISSAL.

1. Damages for.]—*Hopkins* v. *Gooderham*, 10 B. C. R. 250.

See MASTER AND SERVANT, II.

2. Salary—*Payable monthly—three-year contract—Damages for wrongful dismissal.*] —*Varrelmann* v. *Phœnix Brewing Co.*, 3 B. C. R 135.

See MASTER AND SERVANT, II.

3. Wrongful refusal to receive into employment—*Contract to hire by election to office pursuant to Municipal Act.*]—*Tuck* v. *City of Victoria*, 2 B. C. R. 179.

See MUNICIPAL CORPORATIONS, VI.

YUKON LAW.

1. Appeal—*Extension of time.*] — The Court may extend on terms the time for appealing to the Full Court from the Territorial Court of the Yukon. The respondent is entitled to a copy of the appeal book. *Banks* v. *Woodworth*, 7 B. C. R. 385.

2. Appeal from Yukon—*Jurisdiction of Full Court to extend time.*]—By the Yukon Territory Act (62 & 63 Vict, c. 11), the Supreme Court of British Columbia, sitting together as a Full Court, is constituted a Court of Appeal from final judgments of the Territorial Court, and notice of appeal should be given within twenty days after judgment. From interlocutory orders or judgments there is no appeal:—Held, by the Supreme Court of British Columbia, sitting as a Full Court, that it has no jurisdiction to extend the time for appealing. In an action on an alleged promissory note in the Territorial Court of the Yukon, the plaintiffs' counsel, at the close of his case, asked leave to amend the claim by inserting counts on an account stated, and leave was refused. The trial proceeded and the claim on the note was dismissed and a reference was ordered for the purpose of taking accounts, and an order to that effect was taken out on the 30th May, without specifying the date from which the accounts were to be taken. On taking the accounts the referee, at the discretion of the Judge, and as to which it did not appear that plaintiffs had notice, took the accounts as beginning at a date unsatisfactory to plaintiffs, and the referee's report was confirmed by the Judge:—Held, on appeal, that as the plaintiffs should have been allowed to amend their pleadings, and although the order of the 23rd of May, being final so far as the claim on the note was concerned, and an appeal from it had not been brought in time, yet as an amendment had been improperly refused, and the Judge, in giving his judgment on the 23rd May, had not made it clear to the plaintiffs what his judgment really decided, the case should be examined on the merits:—Held, on the merits, that the judgment of DUGAS, J., must be affirmed. *Per* HUNTER, C.J., and DRAKE, J.: In an action embracing several causes of action, there may be a judgment or order which is final as to one cause of action and interlocutory as to others, and a party dissatisfied with the part which is final must appeal within the time limited for appealing from final orders and cannot question its correctness in an appeal from the judgment at the conclusion of the whole action. *Per* HUNTER, C.J.: (1) It is incumbent on a successful party to take care that any order or judgment in his favour is drawn up in clear and unmistakable language, otherwise the benefit of any doubt as to its scope which cannot be resolved by reference to any prior or contemporaneous record or other competent document, should be given to the party aggrieved. (2) A man is not bound to say "yes" or "no" at once, when confronted with a demand for the payment of money about which there may be doubt as to his liability to pay, but he is entitled to reasonable time according to the circumstances of the case, to consider the position, and to make up his mind whether he really owes the money or not, and as to what course he will take. *Belcher et al.* v. *McDonald*, 9 B. C. R. 377.

3. Appeal to Supreme Court of British Columbia—62 & 63 *Vict. c.* 11, *s.* 7—*Collision — Damages—How assessed—Non-observance of Canadian sailing rules—Practice—Costs—Preliminary Act—Order XIX., r.* 28 *of the English rules.*]—Plaintiffs' claim for $408 was dismissed, and defendants on their counterclaim got judgment for $735. Plaintiffs appealed:—Held, by the Full Court, that the appeal must be limited to the judgment on the counterclaim, as the claim was not for an appealable amount. Plaintiffs in a collision case having failed to file a Preliminary Act:—Held, by DUGAS, J., that no evidence could be given in support of the plaintiffs' claim. The ship Canadian, navigated by an American pilot, was making a landing against a current of about six miles an hour. The ship Merwin, also navigated by an American pilot, was coming down stream. Both vessels before collision gave blasts which were interpreted by each ship according to American regulations:—Held, by

DUGAS, J., that under the circumstances the Canadian was alone to blame:—Held, in appeal, by WALKEM and DRAKE, JJ., that both vessels were to blame, and that the appeal should be allowed without costs. By IRVING, J., that both vessels were to blame, and that it be referred back to assess the damages to the Canadian, and then the damages should be apportioned according to the Admiralty rule. By MARTIN, J., that the appeal should be dismissed. Observations as to the necessity for complying with the Canadian navigation rules in Canadian waters. *Canadian Development Co.* v. *La Blanc et al.*, 8 B. C. R. 173.

4. Mining regulations—*Representation work—Rights of different Crown grantees to same ground.*] — In July, 1898, plaintiff located and obtained a Crown grant for placer mining in respect of a claim, and on 25th January, 1898, one Mensing located a claim, and recorded it the next day, and on the succeeding 27th of October, a few minutes after midnight of the 26th, the defendant relocated it as ground abandoned and open to occupation on the ground of non-representation. The two claims overlapped. On 10th November, 1898, the defendant obtained her Crown grant for placer mining covering the ground in dispute and being a re-location of Mensing's old claim. The Gold Commissioner had made a rule that three months' continuous work in the year was sufficient, and by the regulations a claim was deemed abandoned after it had remained unworked on working days for the space of seventy-two hours:—Held, by the Full Court (MARTIN, J., dissenting), dismissing an action of trespass, that the defendant's Crown grant must prevail over that of the plaintiff. *Victor et al.* v. *Butler*, 8 B. C. R. 100.

5. Order of reference—*Jurisdiction of Court to make—N. W. T. Orders XXIII. rr. 233 & 236, and XXXIII., r. 401—Co. Or. N. W. T. 1898, c. 21.*]—The power to make an order of reference in an action and not merely a question of "procedure and practice," within the meaning of s. 3 of the Judicature Ordinance, and therefore the Yukon Court has no power under this section to make an order of reference. *Williams et al.* v. *Faulkner and Kroenert; Raymond et al.* v. *Faulkner and Kroenert*, 8 B. C. R. 197.

6. Order of reference—*Jurisdiction of Courts to make.*]—In an action in the Yukon Territory in which the question in issue was as to the true boundary between a creek and a hill claim, a reference to ascertain the boundary was ordered on the application of the plaintiff; the referee adopted a line run by a surveyor named Gibbons under instructions from the Gold Commissioner (after the location of plaintiff's claim) for the purpose of establishing an official boundary between the hill and creek claims, and which cut off part of plaintiff's claim. On motion to the Court the report was confirmed and judgment entered accordingly: — Held, on appeal, *per* WALKEM, J.: (1) That the Gibbons line was a nullity, and as the Court below adopted it and based its judgment upon it, that judgment must be set aside; (2) The reference was a nullity, as it involved the determination of a mixed question of law and fact, and was not a matter of "practice and procedure" but of jurisdiction; and it was beyond the power of the Court to order the reference even by consent. *Per* IRVING, J., allowing the appeal (following Williams v. Faulkner and Kroenert (1901), 8 B. C. 197), that the Yukon Court has no power to make an order of reference, and as the whole proceedings before the Referee were founded on a mistaken idea of the jurisdiction to refer, the doctrine of extra cursum curiæ did not apply. *Per* MARTIN, J., dissenting, that on the motion to vary or refer back the report, which was dismissed, the substantial question in the action was disposed of, and there was nothing properly open for the consideration of the Appeal Court. *Stevenson et al.* v. *Parks et al.*, 10 B. C. R. 387.

7. Right to appeal in Yukon cases.]—The Act 62 & 63 Vict. c. 11, giving the right of appeal to the Judges of the Supreme Court of British Columbia, sitting together as a Full Court in cases from the Yukon as therein specified, does not apply to a case tried before the Act came into force an decided after. *Canadian and Yukon Prospecting and Mining Co., Ltd.*, v. *Casey et al.*, 7 B. C. R. 373.

8. Solicitor and client — *Lump charge for professional services—Whether champertous.*] — Plaintiffs, advocates in the Yukon, sued defendant for a lump sum for professional services in obtaining a judgment for the defendants against one H., it being alleged by the plaintiffs that they were to charge $600 if the amount was collected, and by the defendant that they were to get 10 per cent. if collected by them:—Held, in appeal, reversing CRAIG, J., and dismissing the action. *Per* DRAKE, J., that by Yukon law an advocate cannot legally obtain a lump sum for professional services except under r. 524 of the North-West Territories Judicature Ordinance of 1893. *Per* MARTIN, J., that the plaintiffs failed to prove any agreement. *Robertson et al.* v. *Bossuyt*, 8 B. C. R. 301.

See also APPEAL, X.

END OF THE DIGEST.

TABLE OF CASES

ON APPEAL TO THE SUPREME COURT OF CANADA AND THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

A.

Ada.-Att.]

Adams & Burns v. *Bank of Montreal, Kootenay Brewing, Malting and Distilling Company, Limited Liability, and John K. Meyers*, 8 B. C. R. 314. Affirmed by the Supreme Court of Canada, 19th February, 1901, and the Judicial Committee of the Privy Council on 18th December, 1901, refused leave to appeal. 31 S. C. R. 223.

Adams v. *McBeath*, 3 B. C. R. 513. Appealed to the Supreme Court of Canada and affirmed. 27 S. C. R. 13.

Alaska Packers' Association v. *Spencer*, 10 B. C. R. 473. Affirmed by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 362.

Anstrom, Attorney-General of British Columbia v., *In re Assessment Act*, 9 B. C. R. 60. *Per* IRVING, J., reversed by Full Court, 9 B. C. R. 209. Appealed to the Judicial Committee of the Privy Council. Judgment of Full Court reversed, and judgment of IRVING, J., affirmed. See 73 L. J. P. C. 11.

Archibald, McNerhanie v., 6 B. C. R. 260. Affirmed by Supreme Court of Canada. See (1899), 29 S. C. R. 564.

Assessment Act, In re The, and The Nelson and Fort Sheppard Railway Company, 10 B. C. R. 519. Leave to appeal granted by the Privy Council, 8th December, 1904.

Assessment Act, In re; Attorney-General of British Columbia v. *Anstrom*, 9 B. C. R. 60. *Per* IRVING, J. Reversed by Full Court, 9 B. C. R. 209. Appealed to the Judicial Committee of the Privy Council. Judgment of Full Court reversed and judgment of IRVING, J., affirmed. See 73 L. J. P. C. 11.

Attorney-General of British Columbia v. *Anstrom; In re Assessment Act*, 9 B. C. R. 60. *Per* IRVING, J. Reversed by Full Court, 9 B. C. R. 209. Appealed to the Judicial Committee of the Privy Council. Judgment of Full Court reversed and judgment of IRVING, J., affirmed. See 73 L. J. P. C. 11.

Attorney-General of British Columbia v. *Attorney-General of the Dominion of Canada*. Appealed to Judicial Committee of Privy Council by way of stated case from judgment of the Supreme Court of Canada. 14 S. C. R. 345. Judgment reversed. See 58 L. J. P. C. 88.

Att.-Boo.]

Attorney-General of the Dominion of Canada, Attorney-General of B. C. v. Appealed to Judicial Committee of Privy Council by way of stated case from judgment of the Supreme Court of Canada. 14 S. C. R. 345. Judgment reversed. See 58 L. J. P. C. 88.

Attorney-General v. *Wellington Colliery Company*, 10 B. C. R. 397. Leave to appeal granted by Privy Council, 8th December, 1904.

B.

Bailey v. *Cates*, 11 B. C. R. 62; 35 S. C. R. 293. Judgment affirmed.

Bailey, City of Vancouver v., 4 B. C. R. 444. Appealed to Supreme Court of Canada. Judgment affirmed, see 25 S. C. R. 62.

Bainbridge v. *Esquimalt & Nanaimo Railway Company*, 4 B. C. R. 181. Appeal to Judicial Committee of the Privy Council; affirmed judgment. See 65 L. J. P. C. p. 98.

Bank of Montreal, K. B. M. & D. Co. et al., Adams & Burns v., 8 B. C. R. 314. Affirmed by Supreme Court of Canada, 19th February, 1901, and the Judicial Committee of the Privy Council on 18th December, 1901, refused leave to appeal. 31 S. C. R. 223.

B. C. Mills Company, Scott v., 3 B. C. R. 221. Judgment of Full Court reversed, and new trial ordered. 24 S. C. R. 702.

B. C. Towing & Transportation Company and The Moodyville Saw Mill Co., Sewell v., *The Thrasher Case*, 1 B. C. R. p. I., 153. Appealed to the Supreme Court of Canada and reversed. See 9 S. C. R. 527.

Beaman et al., Paulson v., 9 B. C. R. 184. Reversed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 655.

Belcher et al. v. *McDonald*, 9 B. C. R. 377. Appeal to the Supreme Court of Canada and judgment reversed. See 33 S. C. R. 321. Appeal therefrom to the Judicial Committee of the Privy Council. Judgment of Full Court of B. C. affirmed, and judgment of Supreme Court reversed. See 73 L. J. P. C. 91.

Booker v. *Wellington Colliery Company, Limited*, 9 B. C. R. 365. Affirmed by Supreme Court of Canada, 6th November, 1902.

Bor.-Can.]

Borland, Coote v., 10 B. C. R. 493. Affirmed by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 282.

Boscowitz, Cleary et al. v., 8 B. C. R. 225. Affirmed by Supreme Court of Canada, 15th May, 1902. See 38 C. L. J. 497; 22 C. L. T. 278; 32 S. C. R. 418.

Brackman & Ker Milling Company, Ltd., Oppenheimer v., 9 B. C. R. 343. Reversed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 699.

Brighouse v. *Corporation of the City of New Westminster.* Judgment appealed to Supreme Court of Canada and affirmed. See 20 S. C. R. at p. 520. (This case apparently not reported in B. C. Reports.)

Briggs and Giegerich v. *Fleutot*, 10 B. C. R. 309. Affirmed by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 327.

Briggs v. *Newswander et al.*, 8 B. C. R. 402. Reversed by Supreme Court of Canada, 15th May, 1902. See 38 C. L. J. 498; 22 C. L. T. 278; 32 S. C. R. 405.

Bryden, Union Colliery Company of British Columbia v. (Attorney-General intervening), appealed to Judicial Committee of Privy Council. Judgment of Full Court reversed. See 68 L. J. P. C. 118. (Apparently not reported in B. C. Reports.)

Burrard Election Case, Duval v. *Maxwell*, 8 B. C. R. 65. Affirmed by Supreme Court of Canada. See (1901) 31 S. C. R. 459.

Byron N. White Company v. *Sandon Water Works and Light Company, Limited*, 10 B. C. R. 361. Judgment varied by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 309.

C.

Cameron v. *Harper*, 2 B. C. R. 15, affirmed 21 S. C. R. 273.

Canadian Development Company, Limited, Wilson v., 9 B. C. R. 82. Reversed by Supreme Court of Canada, 18th May, 1903. See 33 S. C. R. 432.

Canadian Pacific Railway Company v. *City of Vancouver*, 2 B. C. R. 206; 23 S. C. R. 1. Judgment of Full Court of B. C. affirmed.

Canadian Pacific Railway Company v. *Edmunds et al.*, 1 B. C. R. pt. 2, 295. Appeal to Supreme Court of Canada reversed. See 13 S. C. R. 233.

Canadian Pacific Railway Company, Fawcett et al. v., 8 B. C. R. 393. Affirmed by Supreme Court of Canada, 15th May, 1902. 32 S. C. R. 721.

Canadian Pacific Railway Company v. *Major*, 1 B. C. R. pt. II., 289. On appeal to the Supreme Court of Canada, reversed. See 13 S. C. R. 233.

Can.-Coo.]

Canadian Pacific Railway Company v. *McBryan*, 6 B. C. R. 136. Reversed by Supreme Court of Canada. See (1899) 29 S. C. R. 359.

Canadian Pacific Railway Company v. *Parke*, 6 B. C. R. 6. Appealed to the Judicial Committee of the Privy Council, and judgment delivered 17th June, 1899, reversing judgment appealed from. See (1899) A. C. 535; 68 L. J. P. C. 89.

Canadian Pacific Railway Company, Wood v., 6 B. C. R. 561. Affirmed by Supreme Court of Canada, 24th October, 1899. 30 S. C. R. 110.

Callahan v. *Coplen*, 7 B. C. R. 422. Affirmed by Supreme Court of Canada. See (1900), 30 S. C. R. 555.

Carson v. *Martley*, 1 B. C. R. pt. II., 281 (1886). On appeal to the Supreme Court of Canada as to when time for appeal began to run. See 13 S. C. R. 439. Appeal on merits of judgment affirmed. See 20 S. C. R. 634. (A further appeal to the Judicial Committee of the Privy Council was dismissed without consideration of the merits on it appearing that the appellant Clarke had parted with his interest in the property.)

Cates, Bailey v., 11 B. C. R. 62; 35 S. C. R. 293. Judgment affirmed.

City of Vancouver v. *Bailey*, 4 B. C. R. 444. Appealed to Supreme Court of Canada, judgment affirmed. See 25 S. C. R. 62.

City of Vancouver, Canadian Pacific Railway Company v., 2 B. C. R. 206; 23 S. C. R. 1. Judgment of Full Court of B. C. affirmed.

Clark v. *Corporation of the City of Vancouver*, 10 B. C. R. 31. Reversed by Supreme Court of Canada, 8th June, 1904. See 35 S. C. R. 121.

Cleary et al. v. *Boscowitz*, 8 B. C. R. 225. Affirmed by Supreme Court of Canada, 15th May, 1902. See 38 C. L. J. 497; 22 C. L. T. 278; 32 S. C. R. 418.

Cole, Pope v., 6 B. C. R. 205. Affirmed by Supreme Court of Canada. See (1899) 29 S. C. R. 291.

Collister and Lewis v. *Hibben and Bone.* Judgment reversed and varied. 30 S. C. R. 459. (Apparently not reported).

Collom, Manley v., 8 B. C. R. 153. Reversed by Supreme Court of Canada, 15th May, 1902. See 38 C. L. J. 497; 22 C. L. T. 278; 32 S. C. R. 371.

Colonist Printing & Publishing Company, Ltd. Lby., Dunsmuir v., 9 B. C. R. 275. Reversed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 679.

Connell v. *Madden*, 6 B. C. R. 76 and 531. Affirmed by Supreme Court of Canada, 24th October, 1899. 30 S. C. R. 109.

Coote, Borland v., 10 B. C. R. 493. Affirmed by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 282.

Cop.-Dun.]

Coplen, Callahan v., 7 B. C. R. 422. Affirmed by Supreme Court of Canada. See (1900) 30 S. C. R. 555.

Corporation of the City of New Westminster, Brighouse v. Judgment appealed to Supreme Court of Canada and affirmed. See 20 S. C. R. 520. (Apparently not reported.)

Corporation of the City of Vancouver, Clark v., 10 B. C. R. 31. Reversed by Supreme Court of Canada, 8th June, 1904. See 35 S. C. R. 121.

Corporation of the City of Victoria, Lang v. Appealed to Judicial Committee of Privy Council, judgment affirmed. See 68 L. J. P. C. 128. (Apparently judgment appealed from not reported in B. C. Reports, being similar to *Patterson* v. *City of Victoria.*)

Corporation of the City of Victoria, Patterson v., 5 B. C. R. 628. Appealed to the Judicial Committee of the Privy Council, affirming judgment. See 68 L. J. P. C. 128.

Corporation of the District of North Vancouver, Tracy v., 10 B. C. R. 235. Reversed by Supreme Court of Canada, 10th November, 1903. See 34 S. C. R. 132.

County Courts of British Columbia, In re. Case stated, referred by Governor-General-in-Council to Supreme Court of Canada. 21 S. C. R. 446.

Cowan, Turner v., 9 B. C. R. 301; 34 S. C. R. 160. Reversed by Supreme Court of Canada, 30th November, 1903.

D.

Davies v. *McMullan*, 1893, Can. Law Times, vol. 13, p. 267. Appeal to Sup. Court Can., reversing the decision of the S. C. B. C. Apparently not reported in either B. C. Repts. or S. C. Can. Repts. Appeal was applied for to Privy Council, which was refused.

D'Avignon v. *Jones et al.*, 9 B. C. R. 359. Affirmed by Supreme Court of Canada, 18th November, 1902. See 32 S. C. R. 679.

Doherer & Megaw's Arbitration, In re, 10 B. C. R. 48. Reversed by Supreme Court of Canada, 10th November, 1903. See 34 S. C. R. 125.

Drysdale v. *Union Steamship Co.*, 8 B. C. R. 228. Reversed by Supreme Court of Canada, 15th May, 1902. See 38 C. L. J. 496; 22 C. L. T. 278; 32 S. C. R. 379.

Dunsmuir v. *Colonist Printing & Publishing Company, Limited Liability*, 9 B. C. R. 275. Reversed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 679.

Dunsmuir, Harris v., 6 B. C. R. 505. Affirmed by Supreme Court of Canada. See (1900) 30 S. C. R. 334.

Dun.-Esq.]

Dunsmuir, Harris v., 9 B. C. R. 303. Appeal allowed and new trial ordered by the Supreme Court of Canada, 30th November, 1903. See 34 S. C. R.

Dunsmuir, Lowcaberg, Harris & Co., 6 B. C. R. 505. Affirmed by Supreme Court of Canada. 30 S. C. R. 334.

Duval v. *Maxwell, Burrard Election Case*, 8 B. C. R. 65. Affirmed by Supreme Court of Canada. See (1901) 31 S. C. R. 459.

E.

Edison General Electric Co. v. *Vancouver and New Westminster Tramway Co. and the Bank of British Columbia*, 4 B. C. R. 460. Appealed to the Judicial Committee of the Privy Council and reversed. See 66 L. J. P. C. 36.

Edmonds et al., Canadian Pacific Railway Company v., 1 B. C. R., pt. II., 295. Appeal to the Supreme Court of Canada, reversed. See 13 S. C. R. 233.

Edmonds v. *Tierman*, 2 B. C. R. 82; 21 S. C. R. 406. Judgment affirmed.

Elections Act, Provincial, Re, and Re Homma, 8 B. C. R. 76. Appealed to the Judicial Committee of the Privy Council, and standing for judgment. 72 L. J. P. C. 23.

Elliot et al., Sun Life v., 7 B. C. R. 189. Reversed by the Supreme Court of Canada. See (1901) 31 S. C. R. 91.

Elson v. *North American Life Assurance Company*, 9 B. C. R. 474. Affirmed by Supreme Court of Canada, 22nd April, 1903. See 33 S. C. R. 383.

Esquimalt and Nanaimo Railway Company, Bainbridge v., 4 B. C. R. 181. Appeal to Judicial Committee of the Privy Council, affirming judgment. See 65 L. J. P. C. 98.

Esquimalt and Nanaimo Railway Company, Hobbs v., 6 B. C. R. 228. Reversed by Supreme Court of Canada. See (1899) 29 S. C. R. 450. This case has been appealed to the Judicial Committee of the Privy Council and is standing for argument.

Esquimalt and Nanaimo Railway Company, Hoggan v., appealed to the Supreme Court of Canada. Judgment affirmed. 20 S. C. R. 235. Appeal to the Judicial Committee of the Privy Council. Judgment affirmed. See (1894) 6 L. R. P. C. 478; (1894) A. C. 429; 63 L. J. P. C. 97; 70 L. T. 888. (Apparently not reported in B. C. Reports).

Esquimalt and Nanaimo Railway Company, Waddington v. Appealed to the Supreme Court of Canada. Judgment affirmed. 20 S. C. R. 235. Appeal to the Judicial Committee of the Privy Council. Judgment affirmed. See (1894) 6 L. R. P. C. 478; (1894) A. C. 429; 63 L. J. P. C. 97; 70 L. T. 888. (Apparently not reported in B. C. Reports).

F.

Faw.-Hig.]

Faucett et al. v. *Canadian Pacific Railway Company*, 8 B. C. R. 393. Affirmed by Supreme Court of Canada, 15th May, 1902. 32 S. C. R. 721.

Federation Brand Salmon Canning Company, Short v., 7 B. C. R. 197. Affirmed by Supreme Court of Canada. See (1900) 31 S. C. R. 378.

Ferguson, Sandberg v., 10 B. C R. 123. Affirmed by Supreme Court of Canada, 24th October, 1904. 35 S. C. R. 478.

Fleutot, Briggs and Giegerich v., 10 B. C. R. 309. Affirmed by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 327.

Foley v. *Webster*, 2 B. C. R. 137; 21 S. C. R. 580. Judgment affirmed.

G.

Galbraith & Sons v. *Hudson's Bany Company*, 7 B. C. R. 431. Reversed by the Supreme Court of Canada, 7th December, 1900.

H.

Hamilton, William, Manufacturing Company v. *Victoria Lumber Manufacturing Company*, 4 B. C. R. 101; 26 S. C R 96 Judgment reversed.

Harper v. *Harper*, 2 B. C. R. 15; 21 S. C. R. 273; *sub nom. Cameron* v. *Harper*. Judgment affirmed.

Harper, Harper v., 2 B. C. R. 15; 21 S. C. R. 273; *sub nom. Cameron* v. *Harper*. Judgment affirmed.

Harris v. *Dunsmuir*, 6 B. C. R. 505. Affirmed by Supreme Court of Canada. See (1900) 30 S. C. R. 334.

Harris v. *Dunsmuir*, 9 B. C. R. 303. Appeal allowed and new trial ordered by the Supreme Court of Canada, 30th November, 1903. See 34 S. C. R.

Harvey, Van Norman & Co. et al., McNaught v., 9 B. C. R. 131. Affirmed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 690.

Hastings v. *Le Roi (No. 2), Ltd.*, 10 B. C. R. 9; 34 S. C. R. 177. Affirmed by Supreme Court of Canada, 30th November, 1903.

Hett, Pun Pong v. Appealed to the Supreme Court of Canada. Judgment affirmed. 18 S. C. R. 290. (Apparently not reported).

Hibben and Bone, Collister and Lewis v. Judgment reversed and varied. 30 S. C. R. 459. (Apparently not reported).

Higgins v. *Walkem*. Appealed to the Supreme Court of Canada and reversed, but appeal dismissed on consent of plaintiff to reduction of damages. See 17 S. C. R. 225. (Apparently not reported).

Hog.-Kir.]

Hoggan v. *Esquimalt and Nanaimo Railway Company*. Appealed to the Supreme Court of Canada. Judgment affirmed. 20 S. C. R. 235. Appeal to the Judicial Committee of the Privy Council. Judgment affirmed. See (1894) 6 L. R. P. C. 478; (1894) A. C. 429; 63 L. J. P. C. 97; 70 L. T. 888. (Apparently not reported in B. C. Reports).

Hobbs v. *Esquimalt and Nanaimo Railway Company*, 6 B. C. R. 228. Reversed by Supreme Court of Canada. See (1899) 29 S. C. R. 450. This case has been appealed to the Judicial Committee of the Privy Council, and appeal was dismissed on settlement between parties.

Homma v. *Vancouver City Collector of Votes and Attorney-General of B.C., In re Provincial Elections Act*, 8 B. C. R. 76. Appeal to the Judicial Committee of the Privy Council. Judgment of the Full Court reversed. See 72 L. J. P. C. 23.

Hosking v. *Le Roi*, 9 B. C. R. 551. Judgment delivered by the Supreme Court of Canada, 10th December, 1903, allowing the appeal and ordering a new trial. See 34 S. C. R

Houston & Ward, Merchants Bank of Halifax v., 7 B. C. R. 465. Appealed to Supreme Court of Canada. Appeal of Houston dismissed and appeal of Ward allowed. See (1901) 21 C. L. T. 401; 31 S. C. R. 361.

Hudson's Bay Company, Galbraith & Sons v., 7 B. C. R. 431. Reversed by the Supreme Court of Canada, 7th December, 1900.

J.

Jackson v. *Mylius*, 3 B. C. R. 149. Judgment of the Full Court reversed, and judgment of McCreight, J., sustained. Supreme Court of Canada, 23 S. C. R 485.

Johnston, Kirk v., 7 B. C. R. 12. Affirmed on appeal to the Supreme Court of Canada. 30 S. C. R. 344 (1900).

Jones et al., D'Avignon v., 9 B. C. R. 359. Affirmed by Supreme Court of Canada, 18th November, 1902. See 32 S. C. R 679.

K.

Kirk v. *Johnston*, 7 B. C. R. 12. Affirmed on appeal to the Supreme Court of Canada. 30 S. C. R. 344 (1900).

Kirk v. *Kirkland et al.*, 7 B. C. R. 12. Affirmed by Supreme Court of Canada. See (1900) 30 S. C. R. 344.

Kirkland et al., Kirk v., 7 B. C. R. 12. Affirmed by Supreme Court of Canada. See (1900) 30 S. C. R. 344.

L.

Lan.-Mar.]

Lang v. *Corporation of Victoria*. Appealed to Judicial Committee of Privy Council. Judgment affirmed. See 68 L. J. P. C. 128. (Apparently judgment appealed from not reported in B. C. Reports, being similar to Patterson v. City of Victoria).

Le Roi (No. 2), Limited, Hastings v., 10 B. C. R. 9. Affirmed by Supreme Court of Canada, 30th November, 1903. See 34 S. C. R. 177.

Le Roi, Hosking v., 9 B. C. R. 551. Judgment delivered by the Supreme Court of Canada, 10th December, 1903, allowing the appeal and ordering a new trial. Look in 34 S. C. R.

Le Roi Mining Company, Limited, McKelvey v., 9 B. C. R. 62. Reversed by Supreme Court of Canada, 17th November, 1902, and the Judicial Committee of the Privy Council in February, 1903, refused leave to appeal. See 32 S. C. R. 664.

Lowenberg, Harris & Co. v. *Dunsmuir*, 6 B. C. R. 505. Affirmed by the Supreme Court of Canada. 30 S. C. R. 334.

Lowenberg, Harris & Co., Wolley v., 3 B. C. R. 416, *re* assessment of damages. Judgment affirmed but varied as to interest allowed. 25 S. C. R. 51.

M.

Mackintosh, Manley v., 10 B. C. R. 84. Affirmed by Supreme Court of Canada, 30th November, 1903. See 34 S. C. R. 169.

Madden, Connell v., 6 B. C. R. 76 and 531. Affirmed by Supreme Court of Canada. 24th October, 1899. 30 S. C. R. 109.

Madden v. *Nelson and Fort Sheppard Railway Company*, 5 B. C. R. 541. Appeal to the Judicial Committee of the Privy Council. Judgment of Full Court affirmed. 68 L. J. P. C. 148.

Major, Canadian Pacific Railway Company v., 1 B. C. R., pt. II., 289. On appeal to the Supreme Court of Canada, reversed. See 13 S. C. R. 233.

Major v. *McCraney*, 5 B. C. R. 577. Affirmed on appeal. 29 S. C. R. 182.

Manley v. *Collom*, 8 B. C. R. 153. Reversed by Supreme Court of Canada, 15th May, 1902. See 38 C. L. J. 497; 22 C. L. T. 278; 32 S. C. R. 371.

Manley v. *Mackintosh*, 10 B. C. R. 84. Affirmed by Supreme Court of Canada, 30th November, 1903. See 34 S. C. R. 169.

Manley, Pither & Leiser v., 9 B. C. R. 257. 32 S. C. R. 651. Judgment affirmed.

Martley, Carson v., 1 B. C. R., pt. II., 281. (1886). On appeal to the Supreme Court of Canada as to when time for appeal began to run. See 13 S. C. R. 439. Appeal on merits of judgment affirmed. See 20 S. C. R. 634. (A further appeal to the Judicial Committee of the Privy Council was dismissed without consideration of the merits on it appearing that the appellant Clarke had parted with his interest in the property).

Max.-Nel.]

Maxwell, Duval v., *Burrard Election Case*, 8 B. C. R. 65. Affirmed by Supreme Court of Canada. See (1901) 31 S. C. R. 459.

McBeath, Adams v., 3 B. C. R. 513. Appealed to the Supreme Court of Canada and affirmed. 27 S. C. R. 13.

McBryan, Canadian Pacific Railway Company v., 6 B. C. R. 136. Reversed by Supreme Court of Canada. See (1899) 29 S. C. R. 359.

McCraney, Major, v., 5 B. C. R. 577. Affirmed on appeal. 29 S. C. R. 182.

McDonald, Belcher et al. v., 9 B. C. R. 377. Appeal to the Supreme Court of Canada and judgment reversed. See 33 S. C. R. 321. Appeal therefrom to the Judicial Committee of the Privy Council, judgment of the Full Court of B. C. affirmed, and judgment of Supreme Court reversed. See 73 L. J. P. C. 91.

McKelvey v. *Le Roi Mining Company, Limited*, 9 B. C. R. 62. Reversed by Supreme Court of Canada, 17th November, 1902, and the Judicial Committee of the Privy Council in February, 1903, refused leave to appeal. See 32 S. C. R. 664.

McIntosh, O'Brien v., 10 B. C. R. 84; 34 S. C. R. 169. Affirmed.

McLean, Sea v., 2 B. C. R. 67; 14 S. C. R. 632. Judgment reversed.

McMillan, Davies v., 1893, C. L. T. vol. 13, p. 267. Appeal to Supreme Court of Canada reversing decision of Supreme Court B.C. Apparently not reported in B. C. Reports or S. C. Can. Rep. Appeal applied for to Privy Council, which was refused.

McNaught v. *Harvey, Van Norman & Co. et al.*, 9 B. C. R. 131. Affirmed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 690.

McNerhanie v. *Archibald*, 6 B. C. R. 260. Affirmed by Supreme Court of Canada. See (1899) 29 S. C. R. 564.

Merchants Bank of Halifax v. *Houston & Ward*, 7 B. C. R. 465. Appealed to the Supreme Court of Canada. Appeal of Houston dismissed, and appeal of Ward allowed. See (1901) 21 C. L. T. 401; 31 S. C. R. 361.

"Minnie," The, 3 B. C. R. 161. Affirmed by Supreme Court of Canada. 25 S. C. R. 478.

Mylius, Jackson v., 3 B. C. R. 149. Judgment of Full Court reversed, and judgment of McCREIGHT, J., sustained. Supreme Court of Canada. 23 S. C. R. 485.

N.

Nelson and Fort Sheppard Railway Company, Madden v., 5 B. C. R. 541. Appeal to the Judicial Committee of the Privy Council. Judgment of Full Court affirmed. 68 L. J. P. C. 148.

New.-Qua.]

Newswander et al., Briggs v., 8 B. C. R. 402. Reversed by Supreme Court of Canada, 15th May, 1902. See 38 C. L. J. 498; 22 C. L. T. 278; 32 S. C. R. 405.

Nightingale v. *Union Colliery Company of British Columbia, Limited Liability*, 9 B. C. R. 453. Affirmed by Supreme Court of Canada, 30th May, 1904. See 35 S. C. R. 65.

North American Life Assurance Company, Elson v., 9 B. C. R. 474. Affirmed by Supreme Court of Canada, 22nd April, 1903. See 33 S. C. R. 383.

O.

O'Brien v. *McIntosh*, 10 B. C. R. 84; 34 S. C. R. 169. Affirmed.

Oppenheimer v. *Brackman & Ker Milling Company, Limited*, 9 B. C. R. 343. Reversed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 699.

P.

Palmer et al., Warmington v., 8 B. C. R. 344. Reversed by Supreme Court of Canada. See (1902) 32 S. C. R. 126.

Parke, Canadian Pacific Railway Company v., 6 B. C. R. 6. Appealed to the Judicial Committee of the Privy Council and judgment delivered 17th June, 1899, reversing judgment appealed from. See (1899) A. C. 535; 68 L. J. P. C. 89.

Patterson v. *Corporation of the City of Victoria*, 5 B. C. R. 628. Appealed to the Judicial Committee of the Privy Council, affirming judgment. See 68 L. J. P. C. 128.

Paulson v. *Beaman et al.*, 9 B. C. R. 184. Reversed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 655.

Pither & Leiser v. *Manley*, 9 B. C. R. 257. Affirmed by Supreme Court of Canada, 17th November, 1902. See 32 S. C. R. 651.

Pope v. *Cole*, 6 B. C. R. 205. Affirmed by Supreme Court of Canada. See (1899) 29 S. C. R. 291.

Pong v. *Hett*. Appealed to the Supreme Court of Canada. Judgment affirmed. 18 S. C. R. 290. (Apparently not reported).

Prevost, Turner v., 17 S. C. R. 283. Appealed to the Supreme Court of Canada. Judgment affirmed. (Apparently not reported).

Provincial Elections Act, Re, and Re Homma, 8 B. C. R. 76. Appealed to the Judicial Committee of the Privy Council, and standing for judgment. 72 L. J. P. C. 23.

Q.

Quai Shing, an infant, In re, 6 B. C. R. 86. Affirmed by Supreme Court of Canada.

R.

Reg.-Tur.]

Regina v. *Ship "Oscar" and "Hattie."* On appeal from the Admiralty District of B. C. to the Supreme Court of Canada. Judgment affirmed. 23 S. C. R. 396. (Apparently not reported).

Regina v. *Union Colliery Company*, 7 B. C. R. 247. Affirmed by Supreme Court of Canada. See (1901) 31 S. C. R. 81.

S.

Sandberg v. *Ferguson*, 10 B. C. R. 123. Affirmed by Supreme Court of Canada, 24th October, 1904. 35 S. C. R. 478.

Sandon Water Works and Light Company, Limited, White, Byron N. Company v., 10 B. C. R. 361. Judgment varied by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 309.

Scott v. *B. C. Mills Company*, 3 B. C. R. 221. Judgment of Full Court reversed and new trial ordered. 24 S. C. R. 702.

Sea v. *McLean*, 2 B. C. R. 67; 14 S. C. R. 632. Judgment reversed.

Sewell v. *B. C. Towing and Transportation Company and the Moodyville Saw Mill Company (The Thrasher Case)*, 1 B. C. R., pt. I., 153. Appeal to the Supreme Court of Canada and reversed. See 9 S. C. R. 527.

Ship "Oscar" and "Hattie," Regina v. On appeal from the Admiralty District of B. C. to the Supreme Court of Canada. Judgment affirmed. 23 S. C. R. 396. (Apparently not reported).

Short v. *Federation Brand Salmon Canning Company*, 7 B. C. R. 197. Affirmed by the Supreme Court of Canada. See (1900) 31 S. C. R. 378.

Spencer, Alaska Packers Association v., 10 B. C. R. 473. Affirmed by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 362.

Stephenson, Williams v., 33 S. C. R. 323. Judgment reversed. (Apparently not reported).

Sun Life v. *Elliot et al.*, 7 B. C. R. 189. Reversed by the Supreme Court of Canada. See (1901) 31 S. C. R. 91.

T.

Thrasher Case, The, Sewell v. *B. C. Towing and Transportation Company and The Moodyville Saw Mill Company*, 1 B. C. R., pt. I., 153. Appeal to the Supreme Court of Canada and reversed. See 9 S. C. R. 527.

Tierman, Edmonds v., 2 B. C. R. 82; 21 S. C. R. 406. Judgment affirmed.

Tracy v. *Corporation of the District of North Vancouver*, 10 B. C. R. 235; 34 S. C. R. 132. Reversed 10th November, 1903.

Turner v. *Cowan*, 9 B. C. R. 301; 34 S. C. R. 160. Reversed by Supreme Court of Canada, 30th November, 1903.

Tur.-Wad.]

Turner v. *Provost*, 17 S. C. R. 283. Appealed to the Supreme Court of Canada. Judgment affirmed. (Apparently not reported).

U.

Union Colliery Company of British Columbia, v. *Bryden* (Attorney-General intervening). Appealed to the Judicial Committee of the Privy Council. Judgment of Full Court reversed. See 68 L. J. P. C. 118. (Apparently not reported in B. C. Reports).

Union Colliery Company of British Columbia, Limited, Nightingale v., 9 B. C. R. 453. Affirmed by Supreme Court of Canada, 30th May, 1904. See 35 S. C. R. 65.

Union Colliery Company, Regina v., 7 B. C. R. 247. Affirmed by Supreme Court of Canada. See (1901) 31 S. C. R. 81.

Union Steamship Co., Drysdale v., 8 B. C. R. 228. Reversed by Supreme Court of Canada, 15th May, 1902. See 38 C. L. J. 496; 22 C. L. T. 278; 32 S. C. R. 379.

V.

Vancouver City Collector of Votes and Attorney-General of B. C., In re Provincial Elections Act, Homma v., 8 B. C. R. 76. Appealed to the Judicial Committee of the Privy Council. Judgment of the Full Court reversed. See 72 L. J. P. C. 23.

Vancouver and New Westminster Tramway Company and the Bank of British Columbia, Edison General Electric Co. v., 4 B. C. R. 460. Appealed to the Judicial Committee of the Privy Council and reversed. See 66 L. J. P. C. 36.

Victoria Lumber Manufacturing Company, William Hamilton Manufacturing Company v., 4 B. C. R. 101; 26 S. C. R. 96. Judgment reversed.

W.

Waddington v. *Esquimalt and Nanaimo Railway Company*. Appealed to the Supreme Court of Canada. Judgment affirmed. 20 S. C. R. 235. Appealed to the Judicial Committee of the Privy Council. Judgment affirmed. See (1894) 6 L. R. P. C. 478; (1894) A. C. 429; 63 L. J. P. C. 97; 70 L. T. 888. (Apparently not reported in B. C. Reports).

Wal.-Woo.]

Walkem, Higgins v. Appealed to the Supreme Court of Canada and reversed, but appeal dismissed on consent of plaintiff to reduction of damages. See 17 S. C. R. 283. (Apparently not reported).

Warmington v. *Palmer and Christie*, 8 B. C. R. 344. Reversed by Supreme Court of Canada. See (1902) 32 S. C. R. 126.

Webster, Foley v., 2 B. C. R. 137; 21 S. C. R. 580. Judgment affirmed.

Wellington Colliery Company, Attorney-General v., 10 B. C. R. 397. Leave to appeal granted by Privy Council, 8th December, 1904.

Wellington Colliery Company, Limited, Booker v., 9 B. C. R. 265. Affirmed by Supreme Court of Canada, 6th November, 1902.

White, Byron N., Company v. *Sandon Water Works and Light Company, Limited*, 10 B. C. R. 361. Judgment varied by Supreme Court of Canada, 21st November, 1904. 35 S. C. R. 309.

William Hamilton Manufacturing Company v. *Victoria Lumber Manufacturing Company*, 4 B. C. R. 101. 26 S. C. R. 96. Judgment reversed.

Williams v. *Stephenson*, 33 S. C. R. 323. Judgment reversed. (Apparently not reported.)

Wilson v. *Canadian Development Company, Limited*, 9 B. C. R. 82. Reversed by Supreme Court of Canada, 18th May, 1903. See 33 S. C. R. 432.

Wood v. *Canadian Pacific Railway Company*, 6 B. C. R. 561. Affirmed by Supreme Court of Canada, 24th October, 1899. 30 S. C. R. 110.

Wooley v. *Lowenberg, Harris & Co.*, 3 B. C. R. 416. *Re* assessment of damages. Judgment affirmed but varied as to interest allowed. 25 S. C. R. 51.

TABLE OF CASES CITED OR JUDICIALLY NOTED.

Ash-Att] Name of Case.	Where Found.	Reference.
Ashbury v. Watson (1885)	30 Ch.D. 376	9 B.C.R. 283.
Ashbury Ry. Co. v. Riche (1875)	L.R. 7 H.L. 653	1 M.M.C. 209.
Ashby v. White	1 Sm.L.C.	5 B.C.R. 294.
Ashby v. James (1843)	11 M. & W. 542	9 B.C.R. 387.
Ashdown v. Ingamells	5 Ex.D. 280 at 286	3 B.C.R. 292.
Asher v. Whitlock (1865)	L.R. 1 Q.B. 1	8 B.C.R. 101
Asher v. Whitlock (1865)	L.R. 1 Q.B. 1	1 M.M.C. 439.
Ashlett v. Corporation of Southampton	15 Ch.Div. 143	1 B.C.R. Pt. I., 247.
Astley v. Currey	6 C.L.T. 61	1 B.C.R. Pt. II., 60.
Ashmore & Son v. Cox & Co. (1898)	68 L.J.Q.B. 72	8 B.C.R. 297.
Ashton v. Hurwitz	41 L.T.N.S. 521	2 B.C.R. 212.
Ashton v. Spiers	9 L.R. 606	4 B.C.R. 578.
Ashton v. Spiers & Pond	9 T.L.R. 606	3 B.C.R. 182. 208.
Ashworth v. Bristol, &c., Ry. Co.	15 L.T.N.S. 561	3 B.C.R. 104.
Ashworth v. Stanwix	5 E. & E. 701	2 B.C.R.143.
Asher v. Witlock (1865)	L.R. 1 Q.B. 1	1 M.M.C. 439.
Askew v. Millington (1851)	9 Hare, 69	7 B.C.R. 227.
Aslatt v. Corporation of Southampton	16 Ch.D. 143	3 B.C.R. 58, 61.
Aspen v. Austin	5 Q.B. 671	3 B.C.R. 138.
Assyrian, The (1888)	4 T.L.R. 394	10 B.C.R. 308.
Astley v. Weldon	2 B. & P. 346	3 B.C.R. 270.
Aston v. Gwinnel (1829)	3 Y. & J. 136	10 B.C.R. 445.
Aston v. Hurwitz	41 L.T. 521	4 B.C.R. 174-7,8-9.
Atcheson v. Mann (1882)	9 P.R. 253, 473	6 B.C.R. 385, 437.
Atcheson v. Portage La Prairie	10 Man. 39	5 B.C.R. 639.
Attorney-General v. Ely, Haddenham and Sutton Railway Co. (1869)	4 Ch.App. 194	10 B.C.R. 402.
Athlumney, In re (1898)	2 Q.B. 552	6 B.C.R. 481.
Atkins v. Banwell	3 East, 92	5 B.C.R. 645.
Atkins v. Coy (1896)	5 B.C. 6	6 B.C.R. 208, 410; 1 M.M.C. 37, 251, 303, 336, 397, 400, 415, 433, 489, 500, 504.
Atkins v. Coy (1896)	5 B.C. 14 to 16	7 B.C.R. 187, 188.
Atkins v. Coy (1896)	5 B.C. 6	8 B.C.R. 156.
Atkins v. Coy (1896)	5 B.C. 6	9 B.C.R. 416.
Atkinson v. Newcastle Waterworks Co.	36 L.T.N.S. 761; 2 Ex. D. 441	5 B.C.R. 558.
Atkinson v. Newcastle & Gatesead Waterworks Co. (1877)	2 Ex.D. 441	10 B.C.R. 113, 334.
Atkinson v. Richie (1809)	10 East. 533	9 B.C.R. 102.
Atkinson v. Newcastle & Gateshead Waterworks Co. (1877)	2 Ex.D. 441	10 B.C.R. 113, 334.
Atlas Canning Co., In re (1897)	5 B.C. 667	9 B.C.R. 110.
Attorney-General for Canada, The, v. Attorney-General of the Province of Ontario. (1894)	23 S.C.R. 458	
Attorney-General for Canada, The, v. Attorney-General of the Province of Ontario. (1890)	20 Ont. 222	
Attorney-General for Canada, The, v. Attorney-General of the Province of Ontario. (1892)	19 A.R. 31	7 B.C.R. 225, 237, 371.
Attorney-General v. Ashborne Recreation Ground Co. (1903)	1 Ch. 101	10 B.C.R. 403.
Attorney-General of B. C. v. Attorney-General of Canada	14 App.Cas. 301-2.	2 B.C.R. 238-40.
Attorney-General of British Columbia v. The Attorney-General of Canada (1889)	14 All. Cas. 295	7 B.C.R. 288; 1 M.M.C. 65, 66, 67, 99, 100, 103, 105, 107, 108, 110, 111, 406, 407.
Attorney-General v. Cockmouth Local Board (1874)	L.R. 18 Eq. 172	10 B.C.R. 401.
Attorney-General for Ontario v. Attorney-General for Canada (1894)	App.Cas. 189	5 B.C.R. 308, 314, 316, 542; 7 B.C.R. 463.
Attorney-General for Ontario v. Attorney-General for the Dominion (1896)	A.C. 366	9 B.C.R. 548.
Attorney-General of Ontario v. Newman (1901)	10 L.R. 511	
Attorney-General of Ontario v. Newman (1900)	31 Ont. 340	9 B.C.R. 175, 176, 177, 181, 183.
Attorney-General v. Gaskill (1882)	20 Ch.D. 509	10 B.C.R. 24.

Att-Att] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Attorney-General v. Great Eastern Railway Co. (1879)	11 Ch. 449	
Attorney-General v. Great Eastern Railway (1880)	5 App.Cas. 443	10 B.C.R. 102, 403.
Attorney-General for the Dominion of Canada v. Attorney-General for the Province of Ontario (1898)	A.C. 247	7 B.C.R. 225, 237.
Attorney-General of Ontario v. Attorney-General of Canada (1894)	A.C. 189	1 M.M.C. 117, 121, 122, 339.
Attorney-General for Ontario v. Attorney-General for the Dominion, and the Distillers & Brewers' Assoc. of Ontario (1896)	A.C. 348	7 B.C.R. 283, 287, 369, 370.
Attorney-General of Ontario v. Attorney-General for the Dominion (1896)	A.C. 348	1 M.M.C. 339.
Attorney-General v. Albany Hotel Co. (1896)	2 Ch. 696	6 B.C.R. 223.
Attorney-General v. Aspinall	2 Myl. & Cr. 613	5 B.C.R. 125.
Attorney-General v. Baillie (1842)	1 Kerr, 443	7 B.C.R. 224, 231, 235.
Attorney-General, The, v. Barker (1872)	L.R. 7 Ex. 177; 20 W.R. 509	7 B.C.R. 222, 224, 229.
Attorney-General v. Birbeck (1884)	12 Q.B.D. 605	9 B.C.R. 202.
Attorney-General v. Bonner	54 L.J.Ch. 517	4 B.C.R. 391.
Attorney-General v. Burridge	10 Price, 350	2 B.C.R. 315.
Attorney-General v. Campbell (1872)	L.R. 5 H.L. 524	9 B.C.R. 175.
Attorney-General v. Carleton Bank (1899)	2 Q.B. 164	7 B.C.R. 117.
Attorney-General v. Carleton Bank (1899)	2 Q.B. 158	9 B.C.R. 210.
Attorney-General v. Chambers	12 Beav. 159	6 B.C.R. 198; 1 M.M.C. 225.
Attorney-General v. Cockermouth Local Board (1874)	L.R. 18 Eq. 172	9 B.C.R. 339
Attorney-General v. Constable (1879)	27 W.R. 661 4 Ex.D. 172	7 B.C.R. 222, 224, 229.
Attorney-General v. Corporation of Cashel (1842)	3 D. & War. 294	9 B.C.R. 340.
Attorney-General v. Corporation of The City of Victoria (1884)	1 B.C. Pt. II. 107	9 B.C.R. 339.
Attorney-General v. Ettershank (1875)	L.R. 6 P.C. 354	1 M.M.C. 8, 14, 23, 25, 250.
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Attorney-General of B. C. v. Dunlop		1 M.M.C. 194, 347, 378 415.
Attorney-General v. Emmerson (1882)	10 Q.B.D. 190	7 B.C.R. 111.
Attorney-General v. Emmerson (1891)	A.C. 649	10 B.C.R. 111.
Attorney-General v. E. & N. Ry. Co. (1900)	7 B.C. 221	10 B.C.R. 111, 297.
Attorney-General v. Esquimalt & Nanaimo Ry. (1900)	7 B.C. 221	1 M.M.C. 60.
Attorney-General v. Ely-Haddenham & Sutton Ry. Co. (1869)	4 Chy. App. 194	10 B.C.R. 402.
Attorney-General v. Ewelme Hospital	17 Beav. 366	1 B.C.R. Pt. II., 60.
Attorney-General v. Great Eastern Railway Co. (1872)	25 L.T.N.S. 867	9 B.C.R. 75, 340.
Attorney-General v. Great Eastern Railway Co. (1879)	11 Ch.D. 449	
Attorney-General v. Great Northern Ry. Co. (1860)	1 Dr. & Sm. 154	9 B.C.R. 339.
Attorney-General v. Hallet (1846)	15 M. & W. 97	7 B.C.C. 224.
Attorney-General v. Halling (1846)	15 M. & W. 692	7 B.C.R. 224.
Attorney-General v. Hertford (1845)	14 M. & W. 284	6 B.C.R. 502.
Attorney-General v. Hertford (1845)	3 Ex. 670	5 B.C.R. 613.
Attorney-General v. International Bridge Co. (1881)	6 A.R. 537	9 B.C.R. 339, 342.
Attorney-General v. Ironmongers' Co. (1840)	2 Beav. 313	9 B.C.R. 339.
Attorney-General v. Lamplough	3 Ex.D. 214	5 B.C.R. 38.
Attorney-General of Lancaster v. N. W. R. Co.	2 R. 87 (1892); 3 Ch. 276	5 B.C.R. 500, 502.
Attorney-General v. Lancashire and Yorkshire Ry. (1864)	33 L.J.Ex. 163	9 B.C.R. 209-10.
Attorney-General v. Churchill (1841)	8 M. & W. 171	8 B.C.R. 208.
Attorney-General v. London & North-Western Ry. (1899)	1 Q.B. 72	10 B.C.R. 400.
Attorney-General v. Lord Hotham (1823)	24 R.R. 21	7 B.C.R. 63, 132, 322 1 M.M.C. 374, 452.
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Attorney-General v. Lord Hotham (1823)	24 R.R. 21	1 M.M.C. 374, 452.

Ban-Bar] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Bank of England v. Vagliano Brothers (1891)	A.C. 107	9 B.C.R. 549, 550.
Bank of Toronto v. Eccles	10 C.P. 282; 2 E. & A. 53	1 B.C.R., pt. I., 248.
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Bank of Toronto v. Perkins (1883)	8 S.C.R. 603	8 B.C.R. 316.
Bank of Gibraltar and Malta, Limited, The, In re (1865)	35 L.J.Ch. 49	7 B.C.R. 390.
Bank of Hindustan, In re	9 L.R.Ch. 1	4 B.C.R. 66.
Bank of Hindustan v. Allison	L.R. 6 C.P. 75-222	3 B.C.R. 113.
Bank of Montreal v. Haffner (1884)	10 A.R. 592; Cassels' Digest 526	7 B.C.R. 504.
Bank of Montreal v. Major and Eldridge (1896)	5 B.C. 155	7 B.C.R. 446.
Bank of Montreal v. Cameron	2 Q.B.D. 536	2 B.C.R. 172.
Bank of New South Wales v. Owston	4 App. Cas. 270	4 B.C.R. 579.
Bank of New South Wales v. Owston	4 App. Cas. 270	3 B.C.R. 180.
Bank of New Zealand v. Simpson (1900)	A.C. 182	10 B.C.R. 499.
Bank of Ottawa v. Wade (1892)	21 Ont. 486	6 B.C.R. 455.
Bank of Toronto v. Lambe	12 App. Cas. 588	2 B.C.R. 3-274.
Bank of Toronto v. Lambe (1887)	12 App. Cas. 575	5 B.C.R. 262, 314; 1 M.M.C. 121, 541.
Bank of Toronto v. Lambe	12 App. Cas. 575	4 B.C.R. 135-154, 261-263, 265, 269, 272, 274.
Banks v. Goodfellow (1870)	L.R. 5 Q. B. 549.	10 B.C.R. 545.
Banks v. Woodworth (1900)	7 B.C. 385	8 B.C.R. 424.
Bannatyne v. Direct Spanish Telegraph Co. (1886)	34 Ch. D. 287	9 B.C.R. 283; 1 M.M.C. 139.
Banner v. Johnson	L.R. 5 H.L. 170	4 B.C.R. 497; 1 M.M.C. 84.
Banner v. Johnson (1871)	5 E. & I. Appeals, 157	7 B.C.R. 63, 64, 65. 1 M.M.C. 374, 375.
Baptist v. Baptist (1892)	21 S.C.R. 425	9 B.C.R. 386.
Barbat v. Allen (1852)	7 Ex. 609	7 B.C.R. 506.
Barber v. Blaiberg (1882)	19 Ch. D. 473	9 B.C.R. 446.
Barber v. McKay	19 Ont. 40	3 B.C.R. 334.
Barber v. Morton (1882)	2 C.L.T. 340	9 B.C.R. 208.
Barclay and Municipal Council of Darlington, Re	11 U.C.Q.B. 470-476, 12 U.C.Q.B. 86	4 B.C.R. 386.
Barden, in bonis	L.R. 1 P. & D. 325.	1 B.C.R., pt. I., 77.
Barford, Ex parte	8 Cox, C.C. 405	4 B.C.R. 286-7, 291.
Bargate v. Shortridge (1855)	5 H.L. Cas. 297; 24 L. J. Ch. 457.	8 B.C.R. 322.
Barker v. Edgar (1898)	A.C. 748	9 B.C.R. 408, 410.
Barker v. Hodgson	3 M. & S. 267	1 B.C.R., pt. II., 360.
Barker & Company v. Lawrence (1897)	5 B.C. 460	7 B.C.R. 321.
Barker v. Palmer (1881)	8 Q.B.D. 9	8 B.C.R. 429.
Barker v. Wardle (1835)	2 Myl. & K. 818	9 B.C.R. 234.
Baring Bros. & Co. v. North-Western of Uruguay Railway Company (1893)	2 Q.B. 406	6 B.C.R. 475, 477; 1 M.M.C. 301, 302
Barley v. Walford	9 Q.B. 197	3 B.C.R. 441.
Barlew v. Smith (1892)	9 T.L.R. 157	10 B.C.R. 175.
Barnard v. Cave	26 Beav. 253	6 B.C.R. 234, 239, 241.
Barnard v. Walkem (1880)	1 B.C.R., pt. I., 120	9 B.C.R. 413.
Barnardo v. McHugh (1891)	1 Q.B. 194 A.C. 388	6 B.C.R. 102.
Barnes v. Wood	L.R. 8 Eq. 424	6 B.C.R. 241.
Barnes, Ex parte (1896)	A.C. 146	9 B.C.R. 110.
Barnett, Ex parte, Re Ipswich Ry. Co.	1 DeG. & Sm. 749	5 B.C.R. 666.
Barton v. Bricknell	13 Q.B. 393	4 B.C.R. 590-92.
Barnes v. Shore	11 Jur. 887; Brod. & F. Ec. Jdgts. 44; 3	1 B.C.R. pt. I., 22.
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Barrett v. Day (1890)	43 Ch. D. 449	6 B.C.R. 521; 1 M.M.C. 31.
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Barrow v. Hæmatite Steel Co., In re (1888)	39 Ch. D. 582	9 B.C.R. 283.
Barrow v. Isaacs & Son (1897)	1 Q.B. 417	
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	645	8 B.C.R. 346.
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Besset, Re (1844)	14 L.J.M.C. 17	10 B.C.R. 271.
Betsy Caines, The (1835)	2 Hagg. 28	2 B.C.R. 86.
Bethlehem & Bridewell Hospital, In re (1885)	30 Ch. D. 541	8 B.C.R. 429.
Bethlem Hospital, In re (1873)	L.R. 19 Eq. 457	8 B.C.R. 127.
Betts v. Gibbins	2 Ad. & El. 57	4 B.C.R. 150.
Bevan v. Webb (1901)	2 Ch. 74	9 B.C.R. 12, 425.
Bevilockway v. Schneider (1893)	3 B.C. 88	5 B.C.R. 223, 224.
Bevilockway v. Schneider (1893)	3 B.C. 90	7 B.C.R. 443.
Bewicke v. Graham (1881)	7 Q.B.D. 412	7 B.C.R. 108.
Beyfus, In re	Q.B.D. Jan. 1886	1 B.C.R., pt. II., 236.
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Bichers v. Speight	22 Q.B.D. 7	3 B.C.R. 271.
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Biggerstaff v. Rowatt's Wharf, Ltd. (1896)	2 Ch. 93	8 B.C.R. 334.
Biggerstaff v. Rowatt's Wharf, Ltd. (1896)	2 Ch. 93	10 B.C.R. 206.
Biggs v. Evans (1894)	1 Q.B. 88	6 B.C.R. 242.
Biggs v. Hoddinott (1898)	2 Ch. 307	6 B.C.R. 302.
Bigsby v. Dickinson (1876)	4 Ch. D. 28	9 B.C.R. 41.
Bignall v. Gale (1841)	10 L.J.C.P. 169	10 B.C.R. 51.
Bilborough v. Holmes	5 Ch. D. 255	3 B.C.R. 479.
Bilton v. Clapperton	9 M. & W. 473	7 B.C.R. 513.
Bingham v. Bingham (1748)	1 Ves. Sr. 126	1 M.M.C. 265, 266.
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Birch v. Birch (1902)	P. 72	9 B.C.R. 240; 1 M.M.C. 525.
Birch v. Mather	22 Ch. D. 629	6 B.C.R. 70.
Bird, In re Ex parte Hill	23 Ch. D. 695	1 B.C.R., pt. II., 327.
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Bird v. Gibb (1883)	8 App. Cas. 559	10 B.C.R. 380.
Bird v. Brown	4 Exch. 786	1 B.C.R., pt. II., 319.
Birkett v. McGuire	7 O.A.R. 53	3 B.C.R. 479.
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Birmingham Canal Co. v. Lloyd (1812)	18 Ves. 515	10 B.C.R. 365.
Birmingham and District Land Company v. London and North-Western Ry. Co. (1886)	34 Ch. D. 261	9 B.C.R. 47.
Bishop v. Balkis Consol. Co.	59 L.J.Q.B. 565	5 B.C.R. 131.
Bishop v. North	12 L.J. Exch. 362	4 B.C.R. 362.
Bishop of Oxford Case (1880)	5 App. Cas. 214	9 B.C.R. 117.
Bissett v. Jones	32 Ch. D. 635	4 B.C.R. 174-6.
Blachford v. Christian	1 Knapp. 73	2 B.C.R. 407.
Black v. Christchurch Finance Co. (1894)	A.C. 48	6 B.C.R. 45.
Black v. Harrison (1865)	12 Gr. 175	10 B.C.R. 439.
Black v. Dawson	72 L.T. 525	5 B.C.R. 142-3.
Black v. Dawson (1895)	1 Q.B. 848	4 B.C.R. 352.
Black v. Elkhorn Mining Co. (1896)	163 U.S. 450	8 B.C.R. 44; 1 M.M.C. 430.
Blackborough v Davis	1 P. Wms. 53	8 B.C.R. 93.
Blackmore v. Cameron (1871)	5 P.R. 341	10 B.C.R. 308.
Blackmore v. Vestry of Mile End Old Town	9 Q.B.D. 451	
Blackmore v. The Toronto Street Railway Company (1876)	46 L.T.N.S. 869	5 B.C.R. 560, 646.
Blackmore v. The Toronto Street Railway Company (1876)	38 U.C.Q.B. 211	8 B.C.R. 137, 141.
Blackmore v. The Toronto Street Railway Company (1876)	38 U.C.Q.B. 211	9 B.C.R. 462, 464, 469, 470.
Blackburn v. Cameron (1891)	5 P.R. 341	10 B.C.R. 308.
Blackburn Bldg. Soc. v. Cunliffe, Brooks & Co.	22 Ch. D. 71	5 B.C.R. 452.
Blackburn Union v. Brook	7 Ch. D. 68	4 B.C.R. 424.
Blackwood v. The Queen	8 App. Cas. 82	4 B.C.R. 457.
	8 App. Cas. 94	5 B.C.R. 31.
Blackwood v. The Queen	8 App. Cas. 91	6 B.C.R. 181, 182, 183, 184.
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Blaiberg, Ex parte	23 Ch. D. 254	5 B.C.R. 292, 293, 613.
Blaiberg, Ex parte	23 Ch. D. 257	7 B.C.R. 379, 380.
Blain v. Peaker (1889)	18 Ont. 109	7 B.C.R. 463.
Blair v. Cordner	36 W.R. 64	5 B.C.R. 501.

Bla-Bow] Name of Case.	Where Found.	Reference.
Blair & Summer v. Deacon	57 L.T. 522	3 B.C.R. 471.
Blake, Re	3 E. & E. 34	6 B.C.R. 282.
Blake v. Herts & Essex Waterworks Co.	41 Ch. D. 399	4 B.C.R. 155.
Blake v. Robert Done (1861)	7 H. & N. 464	7 B.C.R. 364.
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Blakely v. Muller & Co. (1903)	19 T.L.R. 186	10 B.C.R. 192.
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Blakeney v. Defaur (1851)	15 Beav. 40	9 B.C.R. 298.
Bland v. Ross (1860)	14 Moore, P.C. 210	8 B.C.R. 178.
Bleeker v. Chisholm (1896)	8 B.C. 148	8 B.C.R. 156; 1 M.M.C. 83, 155, 289, 291 372, 433, 490, 504.
Bloomenthal v. Ford (1897)	A.C. 156	6 B.C.R. 208; 1 M.M.C. 259
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Blore v. Ashby	42 Ch. D. 682	3 B.C.R. 368.
Bluebird Mining Co. Ltd., v. Murray et al. (1890)	23 Prac. Rep. 1022	6 B.C.R. 360, 372; 1 M.M.C. 271, 278, 279.
Blundell v. Catterall	5 B. & Ald. 267	2 B.C.R. 314.
Blunt v. Harwood (1838)	8 A. & E. 610	9 B.C.R. 193.
Blyth v. Birmingham Water Works Company	25 L.J. Ex. 212	1 B.C.R., pt. II., 181.
Blyth v. Birmingham Water Works Company (1856)	11 Ex. 784	9 B.C.R. 553.
Blyth & Young, In re	13 Ch. D. 416	5 B.C.R. 607.
Bobier and Ontario Investment Association, Re (1888)	16 Ont. 259	6 B.C.R. 541.
Boehm v. Combe	2 M. & S. 172	1 B.C.R., pt. II., 180.
Boggs v. The Merced Mining Co. (1859)	10 Morr. 334	7 B.C.R. 45; 1 M.M.C. 378.
Boie v. Salter		1 M.M.C. 504, 512.
Boice v. O'Loane	7 Ont. P.R. 359	3 B.C.R. 79.
Boleh v. Smith (1862)	7 H. & N. 736	7 B.C.R. 11, 87.
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Boldero v. London and Westminster Loan Co. (1879)	5 Ex. D. 47	8 B.C.R. 326.
Bolingbroke v. Swindon Local Board	L.R. 9 C.P. 575	6 B.C.R. 28.
Bolingbroke v. Swindon Local Board	L.P. 9 C.P. 575	4 B.C.R. 578.
Bolingbroke v. Swindon Local Board	9 L.R.C.P. 575-578	3 B.C.R. 175, 180, 181 193, 206.
Bolitho v. Hillyar	34 Beav. 180	5 B.C.R. 519.
Bond v. Douglas (1836)	7 C. & P. 626	8 B.C.R. 37.
Book et al. v. Justice Min. Co. (1893)	58 Fed. Rep. 827 8 B.C.R. 131	1 M.M.C. 106, 115, 282. 356. 9 B.C.R. 54.
Booker v. Wellington Colliery Co.		
Boord v. African Consolidated Land & Trading Co. (1898)	1 Ch. 596	9 B.C.R. 425.
Bonnard v. Perryman (1891)	2 Ch. 269	8 B.C.R. 221.
Bonner v. Great Western Railway (1883)	24 Ch. D. 1	10 B.C.R. 401.
Bonnemort v. Gill (1897)	45 N.E. 768	9 B.C.R. 240; 1 M.M.C. 525.
Booth v. Ratte (1889)	15 App. Cas. 188	1 M.M.C. 65, 67.
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Bostock v. Ramsay Urban Council (1900)	1 Q.B. 360	8 B.C.R. 210.
Boston Deep Sea Fishing and Ice Co. v. Ansell (1888)	39 Ch. D. 339	9 B.C.R. 538, 539.
Bostock v. Jardine (1865)	3 H. & C. 700	10 B.C.R. 466.
Boston et al. v. Lelievre (1870)	39 L.J.P.C. 17	8 B.C.R. 93.
Boucher v. Lawson (1734)	Ca. Temp. Hardw. 85.	8 B.C.R. 61, 64.
Boulton v. Jeffrey (1845)	1 E. & A. 111	8 B.C.R. 286.
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Bourgoin v. La Compagnie du Chemin de Fer de Montreal, Ottawa et Occidental (1880)	5 App. Cas. 381	9 B.C.R. 77.
Bowen v. Hall	6 Q.P.D. 233	4 B.C.R. 471-6.
Bowen v. Hall (1881)	6 Q.P.D. 333	8 B.C.R. 373.
Bowen v. Peate	1 Q.P.D. 321	6 B.C.R. 50.
Bowes v. City of Toronto (1858)	11 Moore P.C. 463	6 B.C.R. 328, 331, 332. 336.
Bowes v. Hope Life Insurance, etc., Co. (1865)	11 H.L. Cas. 403	9 B.C.R. 156.
Bowes v. Shand (1877)	2 App. Cas. 455	8 B.C.R. 297.
Bowker v. Burdekin (1843)	11 M. & W. 128	9 B.C.R. 487, 492.

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Bristol & Ex. Ry. Co. v. Collins	29 L.J.Ex. 41; 7 H.L. Cas. 194	1 B.C.R., pt. II., 9, 10, 180, 182, 183.
Bristol Joint Stock Bank, In re (1890)	44 Ch.D. 703	9 B.C.R. 110.
Bristow v. Wright	1 Sm.L.C. 570	5 B.C.R. 204.
Britain v. Kinnard	1 B. & B. 432	2 B.C.R. 210.
B. C. Iron Works Company, In re (1890)	6 B.C. 536	9 B.C.R. 110.
B. C. Iron Works Company, Limited Liability, In re (1890)	6 B.C. 536	7 B.C.R. 391.
B. C. Iron Works v. Buse (1894)	4 B.C. 419	8 B.C.R. 398.
B. C. Land and Investment Agency, Ltd., v. Cum Yow et al. (1901)	8 B.C. 2	9 B.C.R. 161.
B. C. Land and Investment Co. v. Thain (1895)	4 B.C. 321	9 B.C.R. 53, 137, 139, 150.
British Columbia Sawmill Company v. Nettleship	L.R. 3 C.P. 501	1 B.C.R., pt. II., 10, 185.
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B. C. Mills Co. v. Scott (1894)		
British Mutual Banking Co. v. Charnwood Forest Railway Co. (1887)	18 Q.B.D. 714	10 B.C.R. 241.
British Mutual Banking Co., Ltd., v. Charnwood Ry. Co	18 Q.B.D. 714	3 B.C.R. 219.
British Seamless Paper Box Co	17 Ch.D. 467	5 B.C.R. 96.
British and South American Steamship Co. v. Anglo-Argentine Live Stock and Produce Agency (1902)	18 T.L.R. 382	9 B.C.R. 106.
Briton Medical and General Life Association v. Whinney	59 L.J.J.N.S. 888	4 B.C.R. 517.
Britton v. Royal Insurance Co	4 F. & F. 905	5 B.C.R. 341.
Broadbent v. Ramsbotham	11 Ex. 615	2 B.C.R. 159.
Broder v. Saillard	2 Ch.D. 692	6 B.C.R. 141.
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Brock v. Tew (1897)	18 P.R. 30	10 B.C.R. 167, 168.
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Brogden v. Metropolitan Railway Co	2 App.Cas. 667	4 B.C.R. 223.
Brogden v. Metropolitan Railway Co. (1877)	2 App.Cas. 666	9 B.C.R. 351.
Brook, In re	L.R. 3 Ch.Div. 630	1 B.C.R. Pt. II., 50.
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Brooke v. Mitchell	8 Dowl.C.P. 392	1 B.C.R. Pt. I., 119.
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Brown v. Dunn (1894)	6 R. 67	1 M.M.C. 497.
Brown, Ex parte	20 Q.B.D. 693	4 B.C.R. 205.
Brown v. Brown (1683)	23 Eng.Rep. 385	10 B.C.R. 51
Brown v. Fisher (1890)	63 L.T.N.S. 465	10 B.C.R. 548.
Brown's Trust, Re	5 L.R.Eq. 88	4 B.C.R. 507.
Brown v. Moore (1902)	32 S.C.R. 93	10 B.C.R. 189, 191.
Brown v. The Accrington Cotton Spinning and Manufacturing Co., Ltd. (1865)	34 L.J.Ex. 209	6 B.C.R. 567, 574, 578.
Brown v. Burdett	37 Ch.D. (C.A.) 207	2 B.C.R. 343.
Brown v. Clarke (1843)	12 M. & W. 24	8 B.C.R. 277, 278, 279.
Brown v. Clarke (1843)	12 M. & W. 24	9 B.C.R. 367.
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Brown v. Cotton Spinning Co	3 H. & C. 511	2 B.C.R. 144.
Brown v. Fisher	63 L.T. 465, 466	3 B.C.R. 524, 576, 586.
Brown v. Great Western Railway Co.	9 Q.B.D. 753	4 B.C.R. 441.
Brown v. Great Western Railway Co. (1885)	52 L.T.N.S. 622	9 B.C.R. 268.
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Brown v. Hawkes (1891)	2 Q.B. 718	7 B.C.R. 152, 154, 155.
Brown v. Jowett (1895)	4 B.C. 48, 53	6 B.C.R. 441, 530; 1 M.M.C. 293.
Brown v. Kempton (1850)	19 L.J.C.P. 169	8 B.C.R. 319.
Brown v. London and North-Western Railway Co. (1863)	4 B. & S. 334	6 B.C.R. 437.

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Brown v. London and North-Western Railway Co. (1863)	32 L.J.Q.B. 318.	9 B.C.R. 442.
Brown v. McLean	18 O.R. 533	2 B.C.R. 48.
Brown v. Peace (1897)	11 Man. 409	7 B.C.R. 195.
Brown v. Sheppard (1856)	19 U.C.Q.B. 180	9 B.C.R. 303.
Brown v. La Trinidad (1887)	37 Ch.D. 1	9 B.C.R. 281, 282.
Brown v. Vernon (1869)	2 L.T.N.S. 251	7 B.C.R. 279.
Brown v. Watkins	16 Q.B.D. 125	4 B.C.R. 424.
Brown v. Woods (1871)	Aleyn, 36	8 B.C.R. 93.
Brown, Shipley & Co v. Kough (1885)	29 Ch.D. 848	8 B.C.R. 73, 74.
Browne v. Dunn (1894)	6 R. 67	8 B.C.R. 165.
Brownlee v. Campbell	5 App.Cas. 936	3 B.C.R. 432.
Browning v. Sabin	3 Ch.D. 511	5 B.C.R. 145, 147, 432.
Brownlie v. Campbell	5 App.Cas. 925	6 B.C.R. 209, 210.
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Brunsden v. Beresford (1883)	1 Cab. & Ell. 125	7 B.C.R. 489.
Brunsden v. Humphrey	14 Q.B.D. 141	5 B.C.R. 294, 295.
Brutton v. Burton, etc., Mills (1819)	1 Chit. 707	9 BC.R. 492.
Bruty v. The Grand Trunk Railway Company of Canada (1871)	32 U.C.Q.B. 66	8 B.C.R. 193.
Bryan v. Child	5 Ex. 368	3 B.C.R. 364.
Bryan v. Child (1850)	5 Ex. 368	10 B.C.R. 232.
Bryan v. Cowdal	21 W.R. 693	2 B.C.R. 137-40.
Bryan v. Freeman	7 Man. 757	5 B.C.R. 513.
Bryant v. Flight	5 M. & W. 114.	1 B.C.R. Pt. II., 33-35.
Bryant v. Flight		3 B.C.R. 389, 392, 395.
Bryant v. Flight	5 M. & W. 114.	8 B.C.R. 405.
Bryant v. Herbert (1878)	3 C.P.D. 389.	6 B.C.R. 434.
Bryce v. Kinnee (1892)	14 P.R. 509	10 B.C.R. 511.
Bryce v. Jenkins. Ex parte Levy (1901)	8 B.C. 32	9 B.C.R. 173.
Bryden v. Union Colliery Co. (1899).	A.C. 580	10 B.C.R. 409, 410, 411, 413, 414, 415, 416, 417, 418, 422, 432, 433, 435, 436; 1 M.M.C. 124, 222.
Bryden v. Union Colliery Co. of British Columbia, Ltd. (1899)	A.C. 580	6 B.C.R. 322. 8 B.C.R. 84.
Bryden v. Stewart (1885)	2 Macq. (H.L.Sc.) 30.	6 B.C.R. 564, 565, 568, 574, 575, 578.
Bryden v. Stewart	2 Macq. 30	2 B.C.R. 137, 150.
Brydges v. Fisher (1835)	1 Scott, 490	8 B.C.R. 278.
Brydone-Jack v. The World		8 B.C.R. 207.
Buccleugh, Duke of (1892)	67 L.T.N.S. 739	7 B.C.R. 363, 364.
Buck v. Robson	L.R. 3 Q.B.D. 686	1 B.C.R. Pt. II., 268.
Buck v. Robson (1878)	3 Q.B.D. 691	5 B.C.R. 469.
Buckhurst, The (1881)	6 P.D. 152	10 B.C.R. 515; 1 M.M.C. 211.
Buckland v. Rose (1859)	7 Gr. 446	7 B.C.R. 195.
Budden v. Wilkinson (1893)	2 Q.B. 432	7 B.C.R. 106, 107, 108.
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Buenos Ayres Ry. Co. v. Northern Ry. Co. of Buenos Ayres	2 Q.B.D. 210	1 B.C.R. Pt. II., 375
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Buffle v. Jackson	2 Dowl. 505	5 B.C.R. 513, 515.
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Bulmer v. The Queen (1893)	23 S.C.R. 488	6 B.C.R. 532; 1 M.M.C. 8, 360.
Bunney v. Poyntz	4 B. & Ald. 568	2 B.C.R. 83.
Burbank v. Rockingham	24 New Hamp. 550	3 B.C.R. 18.
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Burnett and Town of Durham, Re (1899)	31 Ont. 262	10 B.C.R. 51, 58.
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Butchart v. Dresser (1853)	4 DeG. & J. 542	9 B.C.R. 486.
Butterfield v. Forrester (1809)	11 East, 60	10 B.C.R. 300.

But-Can] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Butterfield v. Forrester (1809)	11 East, 60	9 B.C.R. 268.
Bushel v. Bushel (1803)	1 Sch. & Lefroy, 20; 9 L.R. 21	1 M.M.C. 94.
Byers v. McMillan (1887)	15 S.C.R. 194	10 B.C.R. 87.
Byrne, Ex parte (1866)	35 L.J.Bk. 48	9 B.C.R. 446.
Byrne v. Brown (1889)	22 Q.B.D. 657	9 B.C.R. 446.
Caddick, Re	7 W.R. 344	5 B.C.R. 672.
Caddick v. Skidmore	2 DeG. & J. 52	6 B.C.R. 191.
Cahu v. Packett's Bristol Channel Steam Packet Co. (1898)	2 Q.B. 61	9 B.C.R. 102-3.
Cain v. Syracuse	5 A. & E. Corp.Cas. 371	5 B.C.R. 639.
Caird v. Moss	33 Ch.D. 22	5 B.C.R. 295.
Cairncross et al. v. Lorimer et al. (1860)	3 Macq. H.L. 827	7 B.C.R. 468.
Cakalane v. North Metropolitan Railway and Canal Co. (1896)	12 T.L.R. 611	10 B.C.R. 16.
Calder v. Bull	3 Dallas, 390	1 B.C.R. Pt. I., 241.
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Caldwell v. Payham Harbour Co.	L.R. 2 Ch. 221	1 B.C.R., pt. II., 107.
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Callahan v. Coplen (1900)	30 S.C.R. 555	8 B.C.R. 153; 1 M.M.C. 246, 490, 500, 504.
Calvert v. Gosling (1889)	T.L.R. 185	9 B.C.R. 75.
Callow v. Young (1886)	55 L.T.N.S. 543	6 B.C.R. 317.
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Cameron v. Carter (1885)	9 Ont. 426	6 B.C.R. 541, 544.
Cameron v. McRae	3 Gr. 311	5 B.C.R. 41, 42.
Cameron v. Smith	42 B. & Al. 308	2 BC.R. 153.
Cameron v. Stevenson (1862)	12 U.C.C.P. 389	9 B.C.R. 484, 486, 487, 492.
Cameron v. Nystrom (1893)	A.C. 308	10 B.C.R. 12.
Cammel v. Beaver Insurance Co.	39 U.C.Q.B. 8	4 B.C.R. 350.
Campbell, Ex parte (1870)	5 Chy.App. 706	6 B.C.R. 400; 1 M.M.C. 250, 491.
Campbell, Ex parte (1870)	5 Chy.App. 703	7 B.C.R. 478.
Campbell v. Patterson (1893)	21 S.C.R. 645	8 B.C.R. 157. 8 B.C.R. 328.
Campbell's Case	9 L.R. Ch. I.	4 B.C.R. 66.
Campbell v. Cole (1884)	7 Ont. 127	9 B.C.R. 309.
Campbell v. Doherty (1898)	34 C.L.J. 736	6 B.C.R. 437.
Campbell v. Doherty (1898)	18 P.R. 243	10 B.C.R. 308.
Campbell v. McKerricher	6 O.R. 85	3 B.C.R. 452.
Campbell v. Nat. Life Ins. Co.	24 U.C.C.P. 144	4 B.C.R. 130.
Campbell v. Royal Canadian Bank	19 Grant. 334	2 B.C.R. 259.
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Canada Atlantic Railway v. City of Ottawa (1901)	2 O.L.R. 336	10 B.C.R. 229.
Canada Atlantic Railway Company v. Moxley (1888)	15 S.C.R. 145	7 B.C.R. 482.
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Canada Atlantic Railway Company v. Stanton et al. (1888)	4 Montreal L.R. (S.C.) 160	6 B.C.R. 437.
Canada Central Ry. Co. v. McLaren (1883)	2 A.R. 564	8 BC.R. 137.
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Canada Central Ry. Co. v. Murray	8 S.C.R. 313	6 B.C.R. 240.
Canada Paint Co., The, v. Trainor (1898)	28 S.C.R. 352	8 B.C.R. 344.
Canadian Bank of Commerce v. Tinning	15 P.R. 401	5 B.C.R. 280.

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Chapelle v. The King (1902)	7 Ex. 414; 32 S.C.R. 586	1 M.M.C. 446.
Chaplin, Ex parte, in re Sinclair	26 Ch. D. 319	2 B.C.R. 243.
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Chapman et al. v. Smith (1882)	32 U.C.C.P. 555	7 B.C.R. 134.
Chapman v. Walton (1833)	10 Bing. 57	8 B.C.R. 10.
Charles v. Finchley Local Board	23 Ch. D. 767	5 B.C.R. 188.
Charlewood v. Duke of Bedford	1 Atk. 497	3 B.C.R. 452.
Charlesworth v. Mills (1892)	App. Cas. 231	4 B.C.R. 146.
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Charter v. Charter (1874)	L.R. 7 H.L. 364	10 B.C.R. 500.
Charter v. Graeme	13 Q.B. 227	5 B.C.R. 488.
Charter v. Graeme	13 Q.B. 216	4 B.C.R. 594-99.
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Chichester v. Gordon et al. (1866)	25 U.C.Q.B. 527	9 B.C.R. 451.
Chick v. Smith (1840)	8 Dowl. 337	9 B.C.R. 193.
Chischester v. Chischester	10 P.D. 186	3 B.C.R. 38.
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Childers v. Woller (1860)	29 L.J.Q.B. 129	9 B.C.R. 501.
Chinnock v. Marchioness of Ely	4 DeG. J. & S. 637	6 B.C.R. 233, 241, 250.
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Christopher v. Croll	16 Q.B.D. 66	3 B.C.R. 329.
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Church v. Brown (1878)	15 Ves. 258	5 B.C.R. 75, 77.
Church v. Fenton (1879)	28 U.C.C.P. 384	
Church v. Fenton (1880)	4 A.R. 159; 5 S.C.R. 239	8 B.C.R. 290.
Churchill v. Crease (1828)	5 Bing. 177	5 B.C.R. 499.
Churchill v. Siggers	3 E. & B. 929	8 B.C.R. 127.
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Churchward v. Churchward (1895)	P.D. 7	4 B.C.R. 462-483.
Churchward v. The Queen	L.R. 1 Q.B. 173	1 B.C.R., pt. II., 31, 32, 35.
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Christmas v. Oliver	2 Smith's Ldg. Cas. 803	2 B.C.R. 310.
Christopher v. Croll	16 Q.B.D. 66	2 B.C.R. 235.
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Citizens' Ins. Co. of Can. v. Parsons (1881)	7 App. Cas. 117	9 B.C.R. 215.
Citizens' Ins. Co. of Can. v. Parsons	7 App. Cas. 96	2 B.C.R. 274; 1 M.M.C.
Citizens' Ins. Co. of Can. v. Parsons	4 Ont. App. Cas. 96	
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Citizens' Ins. Co. of Can. v. Parsons	L.R. 7 App. 108	1 B.C.R., pt. II., 150, 151, 160.
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Citizens' Ins. Co. of Can. v. Parsons (1881)	7 App. Cas. 96. 1 Cartw. 265	**7 B.C.R. 282, 283, 286.**

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Clergue v. Murray (1902)	32 S.C.R. 450	10 B.C.R. 379.
Cliff, Re (1895)	2 Ch. 23	4 B.C.R. 217.
Clifford v. Thames Iron Works & Ship Building Company (1898)	1 Q.B. 314	8 B.C.R. 137.
Clifford v. Thames Ironworks and Ship Building Cos. (1898)	1 Q.B. 314	10 B.C.R. 342, 490.
Clifford v. Turrell (1841)	1 Y. & C.C.C. 138	10 B.C.R. 498.
Cline v. Cornwall	21 Gr. 129	6 B.C.R. 31.
Coleman v. Cooke (1802)	1 Sch. & Lef. 22; 9 P. R. 3.	10 B.C.R. 498.
Clinton v. Stewart	7 A. & E. Corp. Cases, 511	5 B.C.R. 639.
Clough v. Lon. & N. W. Ry. Co.	L.R. 7 Ex. 30	2 B.C.R. 137-141, 148.
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Clough v. London & Great Western Railway (1871)	L.R. 7 Ex. 26	10 B.C.R. 378; 1 M.M.C. C. 148.
Clough v. London & North-West Railway (1871)	L.R. 7 Ex. 30	3 B.C.R. 158.
Clough v. London & North-West Railway (1871)	L.R. 7 Ex. 26	4 B.C.R. 411.
Clough v. London & North-West Railway (1871)	L.R. 7 Ex. 34	5 B.C.R. 32.
Clough v. London & Great Western Railway (1871)	L.R. 7 Ex. 30	6 B.C.R. 510.
Clough v. London & Great Western Railway (1871)	L.R. 7 Ex. 26	8 B.C.R. 98, 345.
Clow v. Harper (1878)	3 Ex.D. 198	8 B.C.R. 200.
Clowes v. Higgison (1813)	1 Ves. & Beav. 524; 12 P.R. 284	10 B.C.R. 499.
Clutton v. Lee	7 Ch. Div. 541	2 B.C.R. 259; 4 B.C.R. 528.
Clunnes v. Pezzy (1807)	1 Camp. 8	10 B.C.R. 146, 150.
Coal Mines Regulation Amendment Act, 1890, The, In re (1890)	5 B.C.R. 306	6 B.C.R. 322; 1 M.M.C. 222, 343.
Coates, Ex parte, In re Skelton (1877)	5 Ch.D. 979	6 B.C.R. 410.
Coates' Case (1873)	L.R. 17 Eq. 169	9 B.C.R. 358.
Cobban v. Canadian Pacific Railway Co. (1895)	26 Ont. 732; 23 A.R. 115	9 B.C.R. 309.
Cobbett, In re	14 M. & W. 175	6 B.C.R. 89, 99.
Coch v. Allcock & Co. (1888)	21 Q.B.D. 178	9 B.C.R. 541.
Cocker's Case	3 Ch.D. 1	2 B.C.R. 44.
Cockell v. Taylor (1851)	15 Beav. 103	10 B.C.R. 377.
Cocking v. Pratt	1 Ves.Sen. 400	6 B.C.R. 245.
Codville v. Fraser (1902)	1 Man. 12	9 B.C.R. 481.
Coe v. Clay	5 Bing. 440	5 B.C.R. 346.
Coghlan v. Cumberland (1898)	1 Ch. 704	
Coghlan v. Cumberland (1898)	1 Ch. 704	10 B.C.R. 500.
Coghlan v. Cumberland (1898)	1 Ch. 704	6 B.C.R. 529.
Coghlan v. Cumberland (1898)	1 Ch. 704	8 B.C.R. 178.
Cohens v. Virginia	6 Wheat. 414	1 B.C.R., pt. I., 95.
	6 Wheat 375	1 B.C.R. Pt. I., 95.
Cole v. Porteous (1892)	19 A.R. 111	5 B.C.R. 249.
Cole v. Sumner (1900)	30 S.C.R. 379	9 B.C.R. 350.
Coles v. Civil Service Supply Assoc.	23 Ch.D. 529	3 B.C.R. 368.
Collard v. Marshall (1892)	1 Ch. 571	2 B.C.R. 291-297.
Collector v. Day	11 Wall. 113	1 B.C.R., pt. I., 236.
College of Physicians v. Rose	6 Mod. 44	4 B.C.R. 309.
Collett v. Smith	143 Mass. 473	3 B.C.R. 137.
Collette v. Goode (1878)	7 Ch.D. 842	7 B.C.R. 469.
Collette v. Lasnier (1886)	13 S.C.R. 576	7 B.C.R. 218.
Collier v. Hicks (1831)	2 B. & Ad. 663	8 B.C.R. 218.
Collins v. Bristol Exeter Ry. Co.	29 L.J.Ex. 41	1 B.C.R., pt. II., 9.
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Collins v. Jackson (1862)	31 Beav. 645	10 B.C.R. 445.
Collins v. Burton	4 DeG. & J. 612	3 B.C.R. 93-94.
Collins v. Jackson (1862)	31 Beav. 645	10 B.C.R. 445.
		9 B.C.R. 298, 300.
Collins v. Lewis	L.R. 8 Eq. 708	1 B.C.R. Pt. II., 49, 51, 53.
Collins v. Vestry of Paddington (1880)	5 Q.B.D. 368	1 M.M.C. 84, 125, 143.
Collins v. London General Omnibus Company (1893)	68 L.T.N.S. 831	7 B.C.R. 172.
Collom v. Manley (1902)	32 S.C.R. 371	10 B.C.R. 134.
Collins v. North British and Mercantile Insurance Co. (1894)	3 Ch. 228-234	7 B.C.R. 137, 263, 264.

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Conn v. Smith et al. (1897)	28 Ont. 629	7 B.C.R. 469.
Connecticut Fire Ins. Co. v. Kavanagh (1892)	A.C. 480	1 M.M.C. 83.
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Connecticut Fire Ins. Co. v. Kavanagh (1892)	67 L.T. 508	5 B.C.R. 295.
Connecticut, &c., v. Moore	6 App.Cas. 655	2 B.C.R. 258.
Connecticut Mutual Life Ins. Co. of Hartford v. Moore (1889)	6 App.Cas. 644	9 B.C.R. 555.
Connecticut Mutual Ins. Co. v. Moore	6 App.Cas. 644	3 B.C.R. 229.
Connell v. Town of Prescott (1892)	20 A.R. 49	6 B.C.R. 393
Connell v. Town of Prescott (1893)	22 S.C.R. 147	10 B.C.R. 333, 347.
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	30 S.C.R. 109	8 B.C.R. 43, 49, 155.; 1 M.M.C. 429, 434, 489, 500, 504.
Connor v. Middagh (1889)	16 A.R. 356	7 B.C.R. 52, 53.
Conover v. Mutual Ins. Co. of Albany	3 Denis, 254	3 B.C.R. 18.
Conron v. Conron	7 H.L.Ch. 168d.	2 B.C.R. 19.
Conservators of Thames v. Hall	L.R. 3 C.P. 415	4 B.C.R. 439
Consolidated Gold Mining Co. v. Champion	63 Fed.Rep. 540	5 B.C.R. 419; 1 M.M.C. 168, 176, 183.
Coombe v. Carter	36 Ch.D. 348	5 B.C.R. 354
Conway v. Gray	10 East, 536	4 B.C.R. 585.
Conway v. The Queen	7 Ir.L.R. 149	1 B.C.R. Pt. I., 2.
Conybeare v. Lewis	13 Ch.D. 469	2 B.C.R. 326, 327; 1 M.M.C. 76.
Conybeare v. Lewis (1880)	13 Ch.D. 469	9 B.C.R. 130.
Cooke v. Cooke (1863)	32 L.J.M. 81	7 B.C.R. 123
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Cooke v. Smith (1890-1891)	45 Ch.D. 38; A.C. 297	9 B.C.R. 485.
Cook v. McPherson (1846)	15 L.J.Q.B. 283	9 B.C.R. 439, 442.
Cook v. North Met. Tramway Co	18 Q.B.D. 683	4 B.C.R. 124.
Cook v. Sherwood	3 F. & F. 729	3 B.C.R. 137.
Cook v. Smith (1891)	1 Ch. 520	7 B.C.R. 110.
Cookney v. Anderson	32 L.J.Ch. 427	2 B.C.R. 349.
Cooksley v. Nakashiba (1901)	8 B.C. 117	9 B.C.R. 33, 385.
Coombe v. Carter (1887)	36 Ch.D. 348	1 M.M.C. 147.
Coomber v. Justices of Berks (1882)	9 Q.B.D. 17	9 B.C.R. 110.
Cooper v. Dixon (1884)	10 A.R. 50	7 B.C.R. 463, 464.
Cooper v. Board of Works for the Wandsworth District (1863)	14 C.B.N.S. 180	1 M.M.C. 440.
Cooper v. Hood (1858)	28 L.J.Ch. 212	5 B.C.R. 354; 1M.M.C. 147.
Cooper v. Stuart (1889)	14 App.Cas. 286	10 B.C.R. 282.
Cooper v. Ince Hall Company (1876)	W.N. 24	6 B.C.R. 198; 1 M.M.C. 225.
Cooper v. Phibbs (1867)	L.R. 2 H.L. 149, 170.	6 B.C.R. 237, 242; 1 M.M.C. 263, 265, 266.
Cooper v. Reilly (1829)	2 Sim. 560	9 B.C.R. 299.
Cooper v. Stuart (1889)	14 App.Cas. 266	9 B.C.R. 547.
Cooper v. Whittingham	15 Ch.D. 501	3 B.C.R. 471.
Cooper v. Whittington (1880)	15 Ch. D. 501	9 B.C.R. 400.
Cooper v. Whittington (1880)	15 Ch.D., Pt. I., 258	B.C.R. Pt. II., 87.
Cooper v. Stuart (1889)	58 L.J.P.C. 93	8 B.C.R. 246.
Cooper v. The Board of Works for the Wandsworth District (1863)	14 C.B.N.S. 180	8 B.C.R. 102.
Cooper v. The Board of Works for the Wandsworth District (1863)	14 C.B.N.S. 180	9 B.C.R. 573.
Coote v. Ingram (1887)	35 Ch.D. 117, 119	5 B.C.R. 507; 1 M.M.C. 302; 6 B.C.R. 477.
Cooth v. Jackson (1801)	6 Ves. 11	10 B.C.R. 498.
Copis v. Middleton	2 Madd. 410	5 B.C.R. 473.
Coplan v. Davies	L.R. 5 H.L. 358	4 B.C.R. 555.
Copiapo Mining Company, Limited, In re (1894)	10 T.L.R. 180	8 B.C.R. 199.
Coppinger v. Beaton	8 T.R. 338	5 B.C.R. 513.
Coquitlam v. Hoy (1899)	6 B.C. 546	8 B.C.R. 367.
Corby v. Hill (1858)	4 C.B.N.S. 556	9 B.C.R. 468.
Corbin v. Lookout Mining Co. (1897)	5 B.C. 281	10 B.C.R. 17, 18, 20, 21; 1 M.M.C. 127, 283, 303, 356
Cornish v. Abington	4 H. & N. 549	4 B.C.R. 215.
Cornish v. Abington	28 L.J.Ex. 262	3 B.C.R. 358.
Cornwall v. Regina	33 U.C.Q.B. 106	2 B.C.R. 332.
Cornwallis v. C. P. R.	19 S.C.R. 702	5 B.C.R. 18.

Cor-Cra] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Cornwallis, The Rural Municipality of, v. The Canadian Pacific Railway Co. (1891)	19 S.C.R. 702	5 B.C.R. 297, 302, 303.
Corporation of Parkdale v. West (1881)	12 App.Cas. 602	8 B.C.R. 290.
Corporation of Parkdale v. West		10 B.C.R. 200.
Corporation of the City of Brantford, The, v. The Ontario Investment Co. (1888)	15 A.R. 605	6 BC.R. 547, 548, 550.
Corporation of St. Vincent v. Greenfield (1886), (1887)	15 A.R. 567	10 B.C.R. 196.
Corporation of Hastings v. Ivall (1873)	8 Chv. App. 1017	7 B.C.R. 108.
Coryell et al. v. Cain (1860)	16 Cal. 567	8 B.C.R. 108; 1 M.M.C. 445.
Corporation of Parkdale v. West	12 App.Cas. 602, 613	5 B.C.R. 405, 420; 1 M.M.C. 166, 177, 251.
Corporation of Peterborough v. Overseers of Willsthorp (1883)	12 Q.B.D. 1	9 B.C.R. 375, 376.
Corporation of de Sutton Cornfield v. Wilson (1684)	1 Vern. 254	9 B.C.R. 361.
Coster v. Alerset (1822)	42 R.R. 667	10 B.C.R. 253.
Cotterell v. Stratton	9 Chy.App. 514	6 B.C.R. 295.
Cottingham v. Cottingham	C.L.J. 131	1 B.C.R. Pt. II., 67.
Covet v. Pettijohn (1902)	9 B.C. 118	1 M.M.C. 67.
Couch v. Steele	3 E. & B. 402	2 B.C.R. 9.
Couch v. Steele (1854)	3 El. & Bl. 402	10 B.C.R. 334.
Couch v. Steele	3 E. & B. 402	5 B.C.R. 558.
Counsell v. London and Westminster Loan and Discount Co. (1887)	19 Q.B.D. 512	9 B.C.R. 485, 486.
Countess Rothes v. Kirkaldy Water Works Co.	7 App.Cas. 702	3 B.C.R. 602.
County Courts of British Columbia, In re (1892)	21 S.C.R. 446	7 B.C.R. 102.
County of Gloucester Bank v. Rudry Merthyr Steam and House Coal Colliery Co. (1895)	1 Ch. 629	8 B.C.R. 334.
County Palatine Loan & Discount Co., In re Teasdale's Case	43 L.J.Ch. 579	3 B.C.R. 105.
Courtauld v. Legh (1869)	L.R. 4 Ex. 131	9 B.C.R. 188; 1 M.M.C. 475.
Couture v. Bouchard (1892)	21 S.C.R. 281	6 B.C.R. 481. 7 B.C.R. 375, 378, 383.
Cowell v. Lammers	10 Law. 246, 257	1 M.M.C. 168.
Cowan et al. v. The Goderich Northern Gravel Road Company (1859)	10 U.C.C.P. 87	7 B.C.R. 437, 440.
Cowan v. Wright	23 Gr. Ch. 616, 623	1 B.C.R. Pt. I., 205.
Cowan, In re (1900)	7 B.C. 353	9 B.C.R. 208.
Cowen v. Evans (1893)	22 S.C.R. 331	6 B.C.R. 481. 7 B.C.R. 378, 383.
Cowen v. Truefitt, Ltd. (1899)	2 Ch. 309	10 B.C.R. 497, 499, 509.
Cowley v. Mayor of Sunderlands	6 H. & N. 565	6 B.C.R. 29.
Cowley v. Mayor, &c., of Sunderland (1861)	6 H. & N. 565	10 B.C.R. 61.
Cowley v. Newmarket Local Board (1892)	A.C. 345	6 B.C.R. 24, 26, 50.
Cowley v. Newmarket Local Board (1892)	67 L.T.N.S. 486; App. Cas. 345	5 B.C.R. 275, 558, 568, 641.
Cowley v. Newmarket Local Board (1892)	A.C. 345.	10 B.C.R. 113, 334.
Cowell v. Lammers	10 Saw. 246-257	5 B.C.R. 407.
Cowell v. Simpson	16 Ves. 275	3 B.C.R. 509.
Cowell v. Taylor	31 Ch.D. 34-38	3 B.C.R. 79-80, 358.
Cowell v. Taylor	31 Ch.D. 38	2 B.C.R. 352.
Couper v. Laidler	2 Ch. 337	10 B.C.R. 365.
Cox v. Barker (1876)	3 Ch.D. 368	8 B.C.R. 32.
Cox v. Hakes	15 App. Cas. 506	2 B.C.R. 222.
Cox v. Hakes (1890)	15 App.Cas. 515	8 B.C.R. 85.
Cox v. Hickman	8 H.L.Cas. 268	1 B.C.R. Pt. II., 183.
Cox v. Burbidge (1863)	32 L.J.C.P. 89	10 B.C.R. 303.
Cox v. Hickman	8 H. of L. Cas. 268, 302	4 B.C.R. 421, 423, 429, 431.
Cox v. Schack (1902)	14 Man. 174	10 B.C.R. 71.
Cox v. Rabbits	3 App.Cas. 473	4 B.C.R. 270.
Cox v. Rabbits (1878)	3 App.Cas. 473	9 B.C.R. 204.
Cozens v. Stevenson	5 S. & R. 424	5 B.C.R. 347.
Cracknall v. Janson (1879)	11 Ch.D. 13	10 B.C.R. 455.
Cracknell v. Mayor of Thetford	4 L.R.C.P. 629	2 B.C.R. 157.
Crafter v. Metropolitan Railway Co. (1866)	L.R. 1 C.P. 300	9 B.C.R. 553.
Cragg v. Lamarch (1898)	4 C.C.C. 246	9 B.C.R. 33, 35, 320.
Craig v. Phillips	7 Ch. D. 253	5 B.C.R. 606.

Cra-Cur] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Cranston et al. v. The English Canadian Co. (1900)	7 B.C. 266	8 B.C.R. 156; 1 M.M. C. 2, 433, 489, 500, 504.
Crawford v. Brown Co., et al. (1877)	11 U.C.Q.B. 96	9 B.C.R. 100.
Crawford v. Spooner	Beauchamp, 760 ; 6 Moo.P.C. 1	293.
Crewe v. Mattershaw (1902)	9 B.C. 246	10 B.C.R. 309.
Crawley's Case	L.R. 4 Ch.App. 323	3 B.C.R. 106.
Crayshaw v. Collins	1 J. & W. 267	4 B.C.R. 10.
Crawshaw v. Collins (1808)	15 Ves. 227	10 B.C.R. 445.
Creen v. Wright	2 C.P.D. 354	4 B.C.R. 423.
Creen v. Wright (1877)	2 C.P.D. 354	9 B.C.R. 367.
Creelman v. Clarke		1 M.M.C. 2, 78, 136, 372, 504.
Cresswell v. Parker	L.R. 11 Ch.Div. 601	1 B.C.R. Pt. II., 103.
Cristie v. Cristie (1873)	8 Ch.D.App. 499	10 B.C.R. 455, 457.
Crick v. Hewlett (1884)	27 Ch.D. 354	7 B.C.R. 134.
Cripps v. Reade	6 Term.Rep. 606	6 B.C.R. 211.
Croasdaile v. Hall (1895)	3 B.C. 384	9 B.C.R. 309.
Croft v. Hamlin (1893)	2 B.C. 333	9 B.C.R. 53, 161.
Croft v. Peterborough (1854)	5 U.C.C.P. 41	8 B.C.R. 399.
Croft v. The London and North-Western Railway Company (1863)	32 L.J.Q.B. 113	6 B.C.R. 592.
Crombie v. Young (1894)	26 Ont. 194	7 B.C.R. 195.
Crompton v. Leg	19 Eq. 115	2 B.C.R. 159.
Crompton v. Melbourne	5 Sim. 353	1 B.C.R. Pt. II., 67.
Cromwell v. County of Sac	94 U.S. 351	5 B.C.R. 295.
Cronshaw v. Chapman	31 L.J.Exch. 277	1 B.C.R. Pt. I., 99.
Crooks & Co. v. Allan (1879)	5 Q.B.D. 40	8 B.C.R. 231.
Crooks v. Crooks (1854)	4 Gr. 376	9 B.C.R 431.
Crooks v. Glenn (1860)	8 Gr. 239	6 B.C.R. 544.
Croppen v. Smith (1884)	27 Ch.D. 700	
Crosdaile v. Hall (1895)	10 App.Cas. 249 ; 3 B.C. 384	7 B.C.R. 198. 8 B.C.R. 405.
Crosley, Re	34 Ch.D. 664	5 B.C.R. 36.
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Cross v. Howe (1892)	62 L.J.Ch. 342	9 B.C.R. 533.
Crossley v. Elsworthy (1871)	L.R. 12 Eq. 158	7 B.C.R. 195.
Crossley v. Maycock	L.R. 18 q. 180	5 B.C.R. 528.
Crossley v. Tomey	2 Ch. 533	6 B.C.R. 70.
Crossman v. Bristol & South Wales Railway Co. (1863)	1 H. & M. 531	9 B.C.R. 75.
Crowe, In re	14 Ch.D. 304	5 B.C.R. 296.
Crowe v. McCurdy	18 N.S. 301	2 B.C.R. 54, 58, 69, 70, 76.
Crown Bank, Re	44 Ch.D. 634	4 B.C.R. 204.
Crown Bank, In re (1890)	44 Ch.D. 634	9 B.C.R. 110, 112.
Crowther v. Nelson	7 T.L.R. 793	5 B.C.R. 137.
Crozat v. Brogden (1894)	2 Q.B. 30	10 B.C.R. 225.
Cruso v. Bugby	2 W.Bl. 766	5 B.C.R. 74, 81.
Culhane v. Stewart et al.	6 O.R. 97	2 B.C.R. 23.
Cull v. Wakefield (1841)	6 U.C.Q.B.O.S. 178	8 B.C.R. 14.
Cullacott et al. v. Cash, Gold and Silver Mining Company (1884)	15 Morr. 392	7 B.C.R. 429; 1 M.M. C. 356.
Cummins v. Herron (1877)	4 Ch.D. 787	10 B.C.R. 395.
Cuming v. Silby (1769)	1 Burr. 2, 489	7 B.C.R. 328.
Cummings v. Missouri	4 Wall. 325	3 B.C.R. 412.
Cummings v. Taylor (1898)	28 S.C.R. 337	8 B.C.R. 317.
Cummins v. Herron (1877)	4 Ch.D. 787	8 B.C.R. 200.
Cummins v. Herron (1877)	4 Ch.D. 787	9 B.C.R. 385.
Cunningham v. Curtisc (1897)	5 B.C. 472	7 B.C.R. 461, 463.
Cunningham v. Tomey Homma (1900)	7 B.C.R. 68	10 B.C.R. 402, 408, 409.
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Cunard et al. v. Van Oppen (1859)	1 F. & F. 716	8 B.C.R. 116.
Cunard et al. v. Symonkaye Syndicate (1894)	27 N.S. 340	9 B.C.R. 160, 161, 162.
Cunliffe Brooks & Co. v. Blackburn Benefit Society (1884)	9 App.Cas. 872	8 B.C.R. 332.
Curran v. Grand Trunk Railway Co. (1898)	25 A.R. 407	6 B.C.R. 567.
Curling v. Robertson (1844)	7 M. & G. 525	8 B.C.R. 277, 279.
Currie, In re Will B. (1899)	25 V.L.R. 224	9 B.C.R. 176.

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Curtis v. Buckingham	3 Ves. & B. 168	3 B.C.R. 359.
Curtis v. Curtis (1858)	27 L.J.M. 73	
Curtis v. Curtis (1859)	28 L.J.M. 55	7 B.C.R. 123, 124.
Curtis, Ex parte (1877)	3 Q.B.D. 13	9 B.C.R. 33, 35.
Curtis v. Platt (1866)	L.R. 1 H.L.	
Curtis v. Platt (1863)	35 L.J.Ch. 852	7 B.C.R. 201, 215, 217.
	3 Ch.D. 135	9 B.C.R. 524.
Curtis v. Sheffield	21 Ch.D. 1	5 B.C.R. 606.
Curtis v. Stovin (1889)	22 Q.B.D. 513	10 B.C.R. 196.
Cusack v. L. & N. W. R. C. (1891)	1 Q.B. 347, 348	5 B.C.R. 236-240, 607. 613; 1 M.M.C. 143. 144, 146, 374.
Cusack v. London and North Western Railway Company (1891)	1 Q.B. 347	7 B.C.R. 64.
Cushing v. Dupuy (1880)	5 App.Cas. 408, 415	7 B.C.R. 283.
Cushing v. Dupuy (1880)	5 App.Cas. 409	1 M.M.C. 121.
Cushing v. Dupuy (1880)	1 Cart. 252	5 B.C.R. 314, 578, 582.
Cushing v. Dupuy (1880)	5 App. Cas. 409	4 B.C.R. 135, 154.
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Cushing v. Dupuy (1880)	5 App. Cas. 409, 416	9 B.C.R. 549.
C. W. Mining Co. v. Champion Mining Co. (1894)	63 Fed.Rep. 540	5 B.C.R. 419; 1 M.M.C. 176.
Czech v. General Steam Navigation Co.	L.R. 3 C.P. 14	1 B.C.R., pt. II., 3, 181.
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Da Costa v. Jones (1778)	12 Camp.R.C. 377	10 B.C.R. 456.
Dahl v. Raunheim (1889)	132 U.S. 260	5 B.C.R. 414; 1 MM.C. 173.
Dakins, Ex parte (1855)	24 L.J.C.P. 131	8 B.C.R. 26.
Dale v. Hamilton (1846)	5 Hare, 369	5 B.C.R. 384; 1 M.M. C. 197, 326, 329.
Dale v. Hamilton (1846)	5 Hare, 381-384	6 B.C.R. 265; 1 M.M. C. 324.
Dalgleish, In re	4 Ch.D. 143	5 B.C.R. 296.
Dalrymple v. Scott	19 O.A.R. 477	4 B.C.R. 224.
Dalrymple v. Scott (1892)	19 A.R. 477	9 B.C.R. 351.
Dalton v. Angus	6 App.Cas. 740-831	6 B.C.R. 44. 50.
Dallow v. Ganold (1884)	54 L.J.Q.B. 78	1 M.M.C. 452,
Damer v. Busby	5 P.R. 356	5 B.C.R. 513.
Damer v. Busby (1871)	5 P.R. 356	10 B.C.R. 263,
Dane v. Viscountess Kirkwall	C. & P. 679	2 B.C.R. 395.
Dando v. Boden (1893)	1 Q.B. 318	9 B.C.R. 149.
Danford v. McAnulty (1883)	8 App.Cas. 460	6 B.C.R. 466; 1 M.M C. 250, 491.
Daniel v. Gold Hill Mines Co. (1899)	6 B.C. 495	1 M.M.C. 133.
Daniel v. Metropolitan Ry. Co.	L.R. 5 H.L. 45	6 B.C.R. 28, 48.
Daniel v. Metropolitan Ry. Co. (1868)	L.R. 3 C.P. 216	8 B.C.R. 347.
Danjou v. Marquis	3 S.C.R. 251	4 B.C.R. 378.
Danube & Co., Harbour Co. v. Xenos (1862)	31 L.J.C.P. 284	10 B.C.R. 253.
Dann v. Spurrier (1802)	7 Ves. 234	1 B.C.R. Pt. II., 26.
D'Arc v. London and North-Western Railway Co. (1874)	L.R. 9 C.P. 325	9 B.C.R. 98.
Darby v. Greenless (1865)	11 Gr. 351	6 B.C.R. 544.
Darby v. Darby (1856)	3 Drew. 495	1 M.M.C. 329.
Darkin v. Johnston	1 Phillim. 1	1 B.C.R. Pt. I., 81.
Darlaston Local Board, The v. The London and North-Western Railway Co. (1894)	2 Q.B. 700	7 B.C.R. 327.
Darling v. Darling	8 Ont. Pr. 391	5 B.C.R. 59.
Darling v. Midland Railway Co. (1885)	11 P.R. 32	9 B.C.R. 339.
Darling v. Weller	22 U.C.Q.B. 363	2 B.C.R. 255.
Darlington Wagon Co., Ltd., The, v. Harding and the Trouville Pier and Steamboat Co. Ltd. (1891)	1 Q.B. 248	8 B.C.R. 200.
Dartnell v. Howard	4 B. & C. 345	3 B.C.R. 428. 1 M.M.C. 504.
Dart v. St. Keverne Mining Co. (1899)		
Daun v. Simmons	40 L.T.N.S. 556	2 B.C.R. 250.
Dauphinais v. Clark (1885)	3 Man. 227	6 B.C.R. 467; 1 M.M. C. 295.
Davenport v. The Queen (1877)	3 App.Cas. 129	6 B.C.R. 408.
Davenport v. The Queen (1877)	3 App.Cas. 117	9 B.C.R. 339.

Davenport v. Regina		1 B.C.R. Pt. II., 26.
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Davidson v. Taylor (1890)	14 P.R. 78	7 B.C.R. 315; 1 M.M. C. 410.
Davies v. Davies (1887)	36 Ch.D. 359	8 B.C.R. 405.
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Davies v. Gillard (1892)	19 A.R. 432	8 B.C.R. 328, 337.
Davies v. Le Roi & Co. (1899)	7 B.C. 6	1 M.M.C. 319.
Davies v. Andre	24 Q.B.D. 598	3 B.C.R. 38-41, 43.
Davies v. England and Curtis (1864)	33 L.J.Q.B. 321	10 B.C.R. 61.
Davies v. Davies	9 C. & P. 87	1 B.C.R. Pt. II., 35.
Davies, et al. v. Dunn et al. (1901)	8 B.C. 68	9 B.C.R. 445.
Davies v. Evans (1882)	51 L.J.M.C. 132	9 B.C.R. 114.
Davies v. Felix	4 Ex.D. 32	5 B.C.R. 523.
Davies v. Felix	4 Ex.D. 35	2 B.C.R. 137, 141.
Davies v. Fitton (1842)	2 Dr. & War. 225	10 B.C.R. 499.
Davies v. Freethy (1890)	24 Q.B.D. 519	10 B.C.R. 310.
Davies v. Gillard	21 Ont. 431; 19 O.A.R. 432	3 B.C.R. 370.
Davies v. Gillard	21 Ont. 431; 19 O.A.R. 432	4 B.C.R. 463.
Davies v. Kennedy (1868)	3 Ir.R.Eq. 31	9 B.C.R. 320.
Davies v. Mann	10 M. & W. 545	3 B.C.R. 263.
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Davis v. Butler	1 Mor.M.C. 7	5 B.C.R. 420; 1 M.M. C. 177.
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Davis v. Chicago M. & St. Paul Ry.	67 N.W.Rep. 16	5 B.C.R. 640.
Davis v. Curling	8 O.R. 286	5 B.C.R. 646, 651.
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Davis v. Crown Point Mining Co. (1902)	3 Ont. 69	1 M.M.C. 293, 420.
Davis v. Hickson	1 Ont. 369	4 B.C.R. 464.
Davis v. Garrett (1830)	6 Bing. 724	6 B.C.R. 593.
Davis v. James	33 L.J.Ch. 523	4 B.C.R. 521.
Davis v. Jenkins	11 M. & W. 745	5 B.C.R. 500.
Davis v. McPherson	33 U.C.R. 376	1 B.C.R. Pt. II., 61.
Davis v. The City of Montreal (1897)	27 S.C.R. 539	7 B.C.R. 504.
Davis v. Park	L.R. 8 Ch. 862	1 B.C.R. Pt. II., 88.
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Davis v. Stephenson (1890)	24 Q.B.D. 529	8 B.C.R. 157; 1 M.M. C. 491
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Davis v. Whitehead (1804)	2 Ch. 133	1 M.M.C. 326.
Davison v. Ghent (1857)	1 H. & N. 744	8 B.C.R. 101; 1 M.M. C. 439.
Davidson v. Kinsman (1853)	2 N.S. 1	10 B.C.R. 217.
Davy v. Garrett	7 Ch.D. at 489	3 B.C.R. 336, 2 B.C.R. 389.
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Davy v. Garrett (1878)	7 Ch.D. 489	7 B.C.R. 263.
Davy v. Garrett (1878)	7 Ch.D. 473	9 B.C.R. 533.
Daw v. Eley (1868)	L.R. 7 Eq. 56	6 B.C.R. 312.
Dawson v. Beeson (1882)	22 Ch.D. 504	10 B.C.R 229, 230.
Dawson v. Cholmeley	13 L.J.Q.B. 33	3 B.C.R. 509.
Dawson v. Fitzgerald	1 Ex.D 260	5 B.C.R. 331.
Dawson v. Fox (1885)	14 Q.B.D. 377	10 B.C.R. 86.
Dawson v. Moffatt	11 O.R. 484	2 B.C.R. 258.
Dawson v. Moffatt	11 O.R. 484	4 B.C.R. 75
Dawson v. Payer	5 Ha. 415	2 B.C.R. 159.
Day v. McLea	22 Q.B.D. 610 (C.A.) .	3 B.C.R 388.

Dic-Dow] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Dickinson v. Shee	4 Esp. 67	6 B.C.R. 187.
Dickson v. Evans	6 T.R. 57	3 B.C.R. 341.
Dickson v. Great Northern Railway Company (1886)	18 Q.B.D. 176	9 B.C.R. 100.
Dickson v. Law & Davidson (1895)	2 Ch. 62	7 B.C.R. 137, 263
Dickson v. Law & Davidson (1895)	2 Ch. 62	8 B.C.R. 220, 313.
Dickson v. Law & Davidson (1895)	2 Ch. 62	10 B.C.R. 263, 264, 265.
Dickson v. Reuters' Agency	3 C.P.D. 5	3 B.C.R. 429.
Dillon, In re (1890)	44 Ch.D. 80	6 B.C.R. 529.
Dillon v. Arkins	17 L.R.Ir. 640	4 B.C.R. 528.
Dillon v. Sinclair (1900)	7B .C. 328	8 B.C.R. 360.
Directors, etc., of Bristol and Exeter Ry., The, v. Collins (1859)	7 H.L.Cas. 194	9 B.C.R. 98, 102, 222.
Directors, etc., of the Imperial Gas, Light and Coke Co., The, v. Broadbent	7 H.S.Cas. 600	10 B.C.R. 365.
Dixon v. Farrer, Secretary of the Board of Trade (1886)	17 Q.B.D. 664	
Dixon v. Farrer, Secretary of the Board of Trade (1886)	18 Q.B.D. 43	7 B.C.R. 222, 225, 238.
Dixon v. Farrer, Secretary of the Board of Trade (1886)	17 Q.B.D. 662	8 B.C.R. 208.
Dixon v. McLaughlin	1 E. & A. 370	1 B.C.R. Pt. II., 81.
Dixon v. The Richelieu Navigation Co. (1888)	15 A.R. 647	9 B.C.R. 101.
Dixon v. Sleddon	15 M. & W. 427	
Dixon v. Sleddon	15 L.J.Ex. 284	4 B.C.R. 462.
Dobie v. Temporalities Board	1 Cart. Const. Cas. 351.	1 B.C.R. Pt. II., 261.
Dobie v. Temporalities Board	7 App.Cas. 136	4 B.C.R. 135.
Dobie v. Temporalities Board (1881)	1 Cart. 351, 352	5 B.C.R. 251, 253, 307-308; 1 M.M.C. 116-117.
Dobie v. Temporalities Board (1882)	7 App.Cas. 136	7 B.C.R. 369.
Dodd v. Oliver	5 M.R.	2B.C.R. 52.
Dobson v. Scott	2 Ex. 457	5 B.C.R. 614.
Doe Anderson v. Todd (1845)	2 U.C.Q.B. 82	10 B.C.R. 281.
Doe v. Buckmill	2 B. & Ad. 278	1 B.C.R. Pt. II, 82.
Doe d. Dunning v. Cranstown (1840)	7 M. & W. 1	10 B.C.R. 508.
Doe d. Hiscocks v. Hiscocks (1839)	5 M. & W. 362	10 B.C.R. 500.
Doe v. Hutchwaite (1820)	3 B. & Ald. 632	10 B.C.R. 500, 506.
Doe v. Oliver (1828)	2 Smith's Lead'g Cases. 706	6 B.C.R. 350.
Doherty, Ex parte (1885)	25 N.B.R. 38	9 B.C.R. 34, 35, 36.
Doll et al. v. Hart et al. (1890)	2 B.C. 32	9 B.C.R. 483.
Dominion, etc., Co. v. Stinson (1881)	9 P.R. 117	8 B.C.R. 278.
Dominion v. Peoples Cape Co	45 L.T. 187	3 B.C.R. 452.
Dominion of Canada Plumbago Co., In re	27 Ch.D. 33	10 B.C.R. 75.
Dominion v. Provident Benevolent and Endowment Ass., Re (1894)	24 Ont. 416	7 B.C.R. 132.
Dominion Salvage and Wrecking Co. v. Attorney-General of Canada (1892)	21 S.C.R. 72	9 B.C.R. 393, 342.
Donahue v. Johnson (1892)	14 P.R. 476	7 B.C.R. 108.
Donaldson v. Donaldson (1856)	12 Gr. 431	10 B.C.R. 551.
Donovan v. Laing Syndicate (1893)	1 Q.B. 629	10 B.C.R. 12, 16, 17.
Doolan v. Midland Railway Co. (1877)	2 App.Cas. 792	9 B.C.R. 221.
Dore Gallery, Limited, In re (1891)	W.N. 98	7 B.C.R. 390
Dore v. Napier	2 Bing.N.C. 781	4 B.C.R. 574.
Dougall v. Regina	22 L.C.J. 133	2 B.C.R. 117.
Dougluth v. Lowagunda Reefs, Ltd. (1903)	1 Ch. 673	10 B.C.R. 310.
Douglas, In re Land Ordinance Act (1870)	1 B.C.R. 85	3 B.C.R. 602.
Douglas v. Chamberlain	25 Gr. 288	5 B.C.R. 122.
Douglas v. Scougall (1816)	4 Dow. 269	8 B.C.R. 231.
Douglas v. Ward (1864)	11 Gr. 39	6 B.C.R. 529
Doutre v. Queen	6 Can.S.C.R. 394	1 B.C.R., pt. II., 32, 34.
Dovaston v. Payne	2 H. & C. 527	2 B.C.R. 318.
Dove v. Dove (1868)	18 U.C.C.P. 424	8 B.C.R. 365.
Dover Gaslight Co. v. Dover (1855)	1 Jas. N.S. 813	9 B.C.R. 188; 1 M.M.C. 475.
Dow v. Black	L.R. 6 P.C. 272	1 B.C.R., pt. I., 94, 103, 205; pt. II., 151, 162.
Dow v. Black (1875)	L.R. 6 P.C. 272	9 B.C.R. 220.
Dowdeswell v. Francis	30 L.T.N.S. 608	5 B.C.R. 2; 1 M.M.C. 87.
Dowling v. Foxall (1809)	1 Ball. 2 B. 193	9 B.C.R. 193.
Dowling v. Pontypool Carlean & Newport Ry. Co. (1874)	1 L.R. Eq. 714	9 B.C.R. 73.
Down v. Collins	6 Hare 437	5 B.C.R. 372.
Downes, Ex parte	18 Ves. 260	4 B.C.R. 526.

Dow-Dun] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Downing, Re	65 L.T. 665	5 B.C.R. 10.
Downing v. Falmouth United Sewerage Board (1887)	37 Ch.D. 234	7 B.C.R. 106.
Doyle v. Duliferin (1892)	8 Man. 294	9 B.C.R. 374.
Doyle v. Kaufman (1877)	3 Q.B.D. 7	10 B.C.R. 171; 1 M.M.C. 374.
Drake v. Drake (1860)	8 H.L.Case, 172	10 B.C.R. 500.
Dresden v. Norwood	17 C.B. 466	4 B.C.R. 403.
Drew v. Drew (1855)	25 L.T.J. 282	10 B.C.R. 58.
Dusser v. Johns (1859)	8 C.B. 429	8 B.C.R. 310.
Drummond v. Van Ingen	L.R. 12 App.Cas. 285	4 B.C.R. 108, 110, 113, 114, 116, 117, 119.
Drummond v. Long (1886)	15 Morr. 511	10 B.C.R. 134.
Drury v. McNamara	5 El. & B. 1, 612	5 B.C.R. 346.
Dryden v. The Overseers of Putney (1876)	1 Ex. D. 223	8 BC.R. 127.
Drysdale v. Union Steamship Co (1901)	8 B.C. 228	9 B.C.R. 101.
Dublin Wicklow & Ry. Co. v. Slatterly	L.R. 3 App.Cas. 1135 at 1180	3 B.C.R. 228.
Dublin Wicklow & Railway Co. v. Slatterly (1878)	3 App.Cas. 1169	8 B.C.R. 396.
Dublin, Wicklow & Wexford Ry. v. Slatterly (1878)	3 App.Cas. 1155	4 B.C.R. 125; 1 M.M.C. 316.
Dublin, Wicklow & Wexford Ry. v. Slatterly (1878)	3 App. Cas. 1155	6 B.C.R. 33, 516, 582.
Dublin, Wicklow & Wexford Ry. v. Slatterly (1878)	3 App.Cas. 1155	10 B.C.R. 343.
Dublin, Wicklow & Wexford Ry. v. Slatterly (1878)	3 App.Cas. 1155	9 B.C.R. 286, 310, 241, 459.
Duc D'Aumali, The (1902)	19 T.L.R. 42, 87.	9 B.C.R. 448.
Duck v. Toronto	5 Ont. 295	6 B.C.R. 32.
Ducondu v. Dupuy (1883)	9 App.Cas. 150 (1886)	16 Can. S.C.R. 425; 1 M.M.C. 262.
Ducondu v. Dupuy (1883)	6 S.C.R. 425	
Duchess of Kingston's Case (1776)	2 Smith's L.C. (10th ed.)	Pp. 813, 826; 1 M.M.C. 178, 199, 525, 529.
Duchess of Kingston's Case, Re	2 Sm. L.C., 9th ed., 812.	4 B.C.R. 392.
Drugeon v. Thomson (1877)	3 App.Cas. 34	9 B.C.R. 524.
Dufresne v. Dufrense et al. (1885)	10 Ont. 773	6 B.C.R. 529.
Dugdale v. Dugdale	L.R. 34 Eq. 234	1 B.C.R. Pt. II., 51-53.
Duke of Bedford v. Swansea Harbour Trust	29 L.J.C.P. 241	1 B.C.R. Pt. I., 118.
Duke of Brunswick v. Harmer (1850)	19 L.R.Q.B. 456	1 M.M.C. 471.
Duke of Beaford v. Neeld	4 Ex. 450	6 B.C.R. 240.
Duke of Beaford v. Smith (1849)	7 Ex. 450	8 B.C.R. 244.
Duke of Bacclench, The (1892)	P.D. 212	6 B.C.R. 492.
Duke of Bacclench, The (1892)	15 P.D. 96	4 B.C.R. 373.
Duke of Leeds v. Earl of Amherst (1850)	20 Beav. 239	10 B.C.R. 146, 501.
Duke of Marlborough, In re (1894)	2 Ch. 133	1 M.M.C. 287, 326.
Duke of Northumberland v. Todd	7 Ch.D. 777	6 B.C.R. 202, 204.
Duke of Sutherland v. Heathcote (1891)	3 Ch. 504	
Duke of Sutherland v. Heathcote (1902)	1 Ch. 475	9 B.C.R. 405.
Dulmage v. Douglass	4 Man. 495	4 B.C.R. 261-2.
Duncan, Ex parte	16 L.C.J. 188	5 B.C.R. 253.
Duncan v. Dixon (1890)	44 Ch D. 211	9 B.C.R. 324.
Duncan v. Jacob	3 Jur. 1149	6 B.C.R. 126.
Dundas v. Dutens	1 Ves. 196	4 B.C.R. 521.
Dunelm, The (1884)	9 P.D. 164	10 B.C.R. 516.
Dunelm, The (1884)	9 P.D. 171	4 B.C.R. 97.
Dunlap v. International Steamboat Co. (1867)	98 Mass. 371	8 B.C.R. 193.
Dunlop v. Haney (1899)	7 B.C. 305	10 B.C.R. 133; 1 M.M.C. 2, 78, 115, 136, 231, 238, 289, 410, 411, 428, 432, 433, 489, 500, 504, 508, 510, 528.
Dunlop v. Haney et al. (1899)	7 B.C.Q. and 305	8 B.C.R. 46.
Dunlop v. Haney et al. (1899)	7 B.C.Q. 305	9 B.C.R. 22.
Dunlop v. Haney (1900)	7 B.C. 307	9 B.C.R. 22.
Dunlop v. Lambert (1839)	6 Cl. & F. 600	9 B.C.R. 102.
Dunsmuir v. Lowenberg, Harris & Co. (1900)	30 S.C.R. 334	9 B.C.R. 312, 314.
Dunstan Imperial Gas, Light and Coke Co. (1831)	1 L.J.K.B. 49	9 B.C.R. 110.
Dunstan Imperial Gas, Light and Coke Co. (1832)	3 B. & Ad.. 125	10 B.C.R. 240.

Dur-Edi] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Durnell v. Corfield	8 Jur. N. S. 815	3 B.C.R. 537.
Durell v. Pritchard	1 Chy.App. 244	10 B.C.R. 365.
Durham County Permanent Benefit Building Society, In re (1871)	7 Chy.App. 45	9 B.C.R. 375.
Dush v. Van Kleck	Johns. 498	1 B.C.R. Pt. I., 223.
Durval v. Maxwell (1801)	8 B.C. 65	8 B.C.R. 275.
Dynevor v. Duffryn Colliers Co.	W.N. (78) 199	5 B.C.R. 279.
Dynew v. Leach (1857)	26 L.J.Ex. 221	2 B.C.R. 143.
Dynew v. Leach	26 L.J.Ex. 221	2 B.C.R. 143.
Eade v. Jacobs (1877)	3 ExD. 335	6 B.C.R. 354.
Eade v. Jacobs (1877)	4 Ex.D. 335	7 B.C.R. 108.
Eade v. Windsor & Sons (1878)	47 L.J.C.P. 584	8 B.C.R. 307, 311, 313.
Eades v. McGregor (1859)	8 U.C.C.P. 262	8 B.C.R. 137.
Eades v. McGregor (1859)	10 U.C.C.P. 262	10 B.C.R. 15.
Eagle Company, Ex parte (1858)	4 K. & J. 546	8 B.C.R. 329.
Earl Beauchamp v. Winn	L.R. 6 H.L. 234	6 B.C.R. 237, 242.
Earl of Darnley v. The London, Chatham & Dover Ry. Co.	36 L.J.Ch. 404, 413	4 B.C.R. 411.
Earl of Hopewood (1861)	30 L.J.C.P. 217	8 B.C.R. 304.
Earle v. Kingscote (1900)	2 Ch. 585	8 B.C.R. 207.
Earl of Lonsdale v. Curwen	3 Bling.O.S. 168	6 B.C.R. 198.
Earl of Lonsdale v. Curwen	3 Bling.O.S. 168	9 B.C.R. 426, 428; 1 M.M.C. 225.
Earl of Northumberland's Case, Re (1568)	1 Plowden. 310	4 B.C.R. 188, 191-193; 1. M.M.C. 53, 57, 102, 104, 106.
Earl Poulett v. Viscount Hill (1893)	1 Ch. 277	9 B.C.R. 22, 365.
Earl of Shaftesbury v. L. & S. E. W. Co.	11 T.L.R. 126, and 269.	5 B.C.R. 639, 640.
Earl of Shrewsbury v. Scott	29 L.J.C.P. 53	6 B.C.R. 25.
Earle's Ehipbuilding and Engineering Co., In re (1901)	W.N. 7; 8 B.C.R. 512, 513.	
East v. O'Connor (1901)	2 O.L.R. 355	10 B.C.R. 355.
Eastman Photograph Materials Co. v. Comptroller-General of Patents	A.C. 573	9 B.C.R. 56.
East India Co. v. Kynaston & Co. (1898)	3 Bling.O.S. 153	6 B.C.R. 198.
Eastern Countries & C. Companies v. Marriage (1860)	9 H.L. Cas. 32	9 B.C.R. 18.
Easley v. Lye	15 East, 7	4 B.C.R. 17.
Eastern Countries Ry. Co., The, and Richardson Broom (1851)	6 Ex. 314	7 B.C.R. 259.
East Jersey Water Co. v. Bigelow et al (1897)	38 Atlantic Rep. 633	6 B.C.R. 592.
East & West India Dock Co., In re	38 Ch.D. 576	4 B.C.R. 363-371, 375.
East & West India Dock v. Gatthe (1851)	3 Mac. & G. 155	8 B.C.R. 242.
Eaton v. Delaware, Lackawanna & Western	57 N.Y. 382	8 B.C.R. 138.
Eaton v. Delaware, Lackawanna & Western	57 N.Y. 382	8 B.C.R. 138.
Ebbs v. Boulnois (1875)	10 Chy.App. 479	8 B.C.R. 121.
Eccles v. Southern (1861)	3 F. & F. 142	7 B.C.R. 435.
Eckert v. The Long Island Ry. Co. (1871)	43 N.Y. 502	10 B.C.R. 335.
Eden v. Weardale Iron and Coal Co.	28 Ch.D. 333	
Eden v. Weardale Iron and Coal Co.	34 Ch.D. 223	4 B.C.R. 255-257, 424.
Eddowes v. The Argentine Loan Co. (1890)	59 L.J.Ch. 392	1 M.M.C. 471.
Eddystone Marine Ins. Co., Re (1893)	3 Ch. 18	5 B.C.R. 100, 132.
Edevain v. Cohen (1889)	43 Ch.D. 187	6 B.C.R.518.
Edevain v. Cohen (1889)		2 B.C.R. 142.
Edgar v. Central Bank	15 O.A.R. 193	2 B.C.R. 263.
Edgar v. Central Bank	43 Ch. Dw. 187	
Edgar v. Central Bank (1888)	4 Cartw. 541	7 B.C.R. 283.
Edgar v. Magee (1882)	1 Ont 287	9 B.C.R. 193.
Edgar v. Watt (1835)	1 H. & W. 108	6 B.C.R. 535.
Edge v. Strafford	1 Tyrwhitt, 295	
Edge v. Strafford	1 Cr. & J. 391	5 B.C.R. 347.
Edgeware Highway Board v. Harrow Gas Co. (1874)	L.R. 10 Q.B. 92	10 B.C.R. 189.
Edington v. Fitzmaurice (1888)	29 Ch.D. 459	10 B.C.R. 378.
Edison General Electric Co. v. Bank of B.C.	5 B.C. 3 4	5 B.C.R. 224.
Edison General Electric Co. and Electric Light v. Holland	41 Ch.D. 28	3 B.C.R. 368.
Edison General Electric Co. v. Holland	L.R. 41 Ch.D. 28	4 B.C.R. 257.
Edison General Electric Co. v. Westminster and Vancouver Tramway Co. (1897)	A.C. 193	8 B.C.R. 335.
Edison General Electric Co. v. Edmonds (1896)	4 B.C.R. 354	9 B.C.R. 386.

Eng-Eyr] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Engelhart v. Farrant & Co. (1897)	1 Q.B. 240	10 B.C.R. 479.
English et al. v. Johnson et al. (1860)	17 Cal. 108	8 B.C.R. 101, 108; 1 M.M.C. 439, 445.
English and Scotch Trust Co. v. Flatan	36 W.R. 228	3 B.C.R. 291-295, 296.
Enery, The (1870)	L.R. 3 A. & E. 48	10 B.C.R. 479.
Ennor v. Barwell (1860)	1 DeG. F & J. 529	6 B.C.R. 197, 360, 374; 1 M.M.C. 225, 270, 280.
Equitable Loan Co., In re (1903)	6 O.L.R. 26	10 B.C.R. 264.
Equitable Loan Co., In re (1885)	15 Morr. 473	6 B.C.R. 532.
Erhardt v. Boaro (1884)	113 U.S. 527 (1885)	
	15 Morr. 473	5 B.C.R. 407; 1 M.M.C. 168, 360.
Erlanger v. New Sombrero Phosphate Co. (1878)	3 App.Cas. 1236	9 B.C.R. 110.
Ernest v. Nicholls (1857)	6 H.L.Cas. 401	6 B.C.R. 499.
Ernest v. Nicholls (1857)	6 H. of L. 423	4 B.C.R. 17.
Erskine v. Adeane (1873)	8 Chy.App. 756	10 B.C.R. 87.
Erskine v. Adeane (1873)	8 Chy.App. 756	6 B.C.R. 515.
Esdaile v. Paine	40 Ch.D. 520	5 B.C.R. 2; 1 M.M.C. 87.
Essex Land and Timber Co., Re, The (1891)	21 Ont. 367	10 B.C.R. 329.
E. & N. Railway Co. v. New Vancouver Coal Co. (1888)	6 B.C. 194	9 B.C.R. 12, 424.
Estate of James T. Swift, In re (1893)	137 N.Y. 77	9 B.C.R. 176.
Esquimalt and Nanaimo Ry. Co. v. New Vancouver Coal Co.	1 M.M.C.	
Ettrick, The	6 L.R. Prob.D. 134	1 B.C.R., pt. I., 194.
Eureka Consolidated Mining Co. v. Richmond Mining Co. (1877)	9 Morr. 578	6 B.C.R. 359; 1 M.M.C. 168, 176, 182, 183 270, 308, 578.
		5 B.C.R. 406, 419, 427, 429.
		7 B.C.R. 274.
European and Australian Co. v. R. M. S. Packet Co.	30 L.J.C.P. 247	3 B.C.R. 315.
European and Australian Co. v. R. M. S. Banking Co.	2 Eq. 521	5 B.C.R. 666.
European and Australian Co. v. R. M. S. Banking Co., In re (1866)	L.R. 2 Eq. 521	10 B.C.R. 352.
European and Australian Co. v. R. M. S. Central Ry. Co., In re	4 Ch.D. 33	5 B.C.R. 125.
European and Australian Co. v. R. M. S. Life Assurance Society, In re	L.R. 10 Eq. 403	6 B.C.R. 113.
Evans v. Harries (1856)	1 H. & N. 251	8 B.C.R. 399.
Evans v. Smallcombe (1868)	L.R. 3 H.L. 249	8 B.C.R. 334.
Evans, In re (1893)	1 Ch. 252	5 B.C.R. 147-149.
Evans' Case (1867)	2 Ch.App. 427	9 B.C.R. 355.
Evans, Ex parte	11 Ch.Div. 691	2 B.C.R. 23.
Evans v. Bicknell (1801)	6 Ves. 174	10 B.C.R. 499.
Evans v. Drummond	4 Esp. 89	3 B.C.R. 476-478, 480.
Evans v. Hoare (1892)	1 Q.B. 593	10 B.C.R. 499, 500, 504.
Evans v. Rhymney Board	4 T.L.R. 72	6 B.C.R. 32.
Evansville & R. R. Co. v. Barnes (1894)	137 Ind. 306 36 N.E. 1092	9 B.C.R. 462.
Evelyn v. Haynes		2 B.C.R. 385.
Everet v. Williams (1893)	9 L.Q.R. 197	10 B.C.R. 454.
Eves v. Genelle		
Ewart et al. v. Cochrane et al. (1861)	4 Macq. H.L.	2 B.C.R. 269.
Ewart v. Jones	1 M. & W. 774	1 B.C.R., pt. I., 94-95; pt. II., 259.
Ewart v. Stuart	12 O.A.R. 99	5 B.C.R. 478, 482.
Ewart v. Stuart et al. (1885)	12 A.R. 99	7 B.C.R. 462, 463, 464.
Exhersley v. The Mersey Docks and Harbour Board (1894)	2 Q.B. 667	7 B.C.R. 489.
Ex parte Hayward	3 L. & S. 546	2 B.C.R. 337.
Ex parte v. Chaplin, In re Sinclair	26 Chan. Div. 319	2 B.C.R. 243.
Ex parte Martin	9 Dow. 194 (1840)	2 B.C.R. 224.
Ex parte Jacklin	2 Dowl. & L. 103	2 B.C.R. 223.
Ex parte Partington	13 M. & N. 679	2 B.C.R. 223.
Eyre and Corporation of Leicester, In re (1892)	1 O.R. 136	9 B.C.R. 114.
Eyre v. Cox	46 L.J. Ch. 316	5 B.C.R. 135.
Eyre v. McDowell (1861)	9 H.L. Cas. 619	7 B.C.R. 350.

Fai-Fie] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Fahey v. Jephcott (1901)	2 O.L.R. 499	10 B.C.R. 335-345.
Fairclough v. Manchester Ship Canal Co. (1896)	13 T.L.R. 56	6 B.C.R. 312.
Fairclough v. Whitmore (1895)	64 L.J. 386	7 B.C.R. 178.
Fairley v. Hebbs	3 Dowl. 538	4 B.C.R. 214.
Fairlie v. Hastings	10 Ves. 123	4 B.C.R. 429.
Fairweather v. The Owen Sound Stone Quarry Company (1895)	26 Ont. 604	6 B.C.R. 566, 567, 574.
Falck v. Axthelm (1889)	24 Q.B.D. 174	9 B.C.R. 453.
Falck v. Williams (1900)	A.C. 176	9 B.C.R. 350.
Falcke v. Grey	4 Drew. & Sm. 651	1 B.C.R., pt. II., 67.
Fallon and Wife, Ex parte (1793)	5 Term. Rep. 283	9 B.C.R. 193.
Farden v. Richter	23 Q.B.D. 128	4 B.C.R. 391.
Farden v. Richter	23 Q.B.D. 124	5 B.C.R. 45.
Farmer v. Russell (1798)	1 Bos. & P. 296	10 B.C.R. 456.
Farmer v. Grand Trunk Railway Company (1891)	21 Ont. 299	6 B.C.R. 581, 584; 1 M.M.C. 315, 317.
Farmer v. Livingston (1882)	8 S.C.R. 145	7 B.C.R. 92.
Farmers' and Traders' Loan Co. v. Conklin.	1 Man. 181 at 188	3 B.C.R. 335.
Farnsworth v. Garrard	1 Camp. 38	2 B.C.R. 46.
Farquhar et al. v. The City of Hamilton et al. (1892)	20 A.R. 86	7 B.C.R. 490, 491.
Farquhar et al. v. City of Toronto	12 Grant 186	1 B.C.R., pt. II., 268.
Farquharson v. Floyer	L.R. 3 Ch.D. 111	1 B.C.R. pt. II., 51-53.
Farquharson v. Morgan (1894)	1 Q.B. 552	8 B.C.R. 428, 430.
Farquharson v. Morgan (1894)	1 Q.B. 552	9 B.C.R. 34.
Farras v. Farras, Limited	40 Ch. D. 395	6 B.C.R. 300.
Farrant v. Barnes (1862)	11 C.B.N.S. 553.	10 B.C.R. 61.
Farrer v. Lacey, Hartland & Co. (1885)	31 Ch. D. 50	9 B.C.R. 399.
Farwell v. The Queen (1894)	2 S.C. 553	1 M.M.C. 60.
Farwell v. G. T. Ry.	15 U.C.C.P. 427	3 B.C.R. 204.
Faulds v. Faulds et al. (1897)	17 P.R. 480	9 B.C.R. 173.
Faulkes v. Metropolitan District Ry. Co.	5 C.P.D. 157	1 B.C.R., pt. II., 5.
Faulkner et al. v. Clifford et al. (1898)	17 P.R. 368	7 B.C.R. 438.
Faure Electric Company, In re (1888)	40 Ch. D. 141	6 B.C.R. 331.
Fawsett v. Canadian Pacific Ry. Co. (1901)	8 B.C. 219	9 B.C.R. 130.
Fear v. Ferguson	2 Cham. R. Ont. 144	1 B.C.R., pt. II., 374.
Feather v. The Queen (1865)	6 B. & S. 257	7 B.C.R. 91.
Featherstonhaugh v. Fenwick (1810-11)	17 Ves. 298	10 B.C.R. 445.
Featherstone v. Smith	20 Gr. 474	6 B.C.R. 224.
Federation Brand Salmon Canning Co. v. Short (1900)	31 S.C.R. 378	9 B.C.R. 524
Federici v. Vanderzee	2 C.P.D. 70	2 B.C.R. 172.
Felkin v. Lord Herbert (1861)	30 L.J. Ch. 798	7 B.C.R. 172.
Fellow's Case	5 Greenleaf (Amer.) 333.	1 B.C.R., pt. II., 234.
Felthouse v. Bindley (1862)	11 C.B.N.S. 869	9 B.C.R. 350.
Fenn, Ex parte	2 Dowl. 527	5 B.C.R. 533.
Fenna v. Clarke & Co. (1895)	1 Q.B. 199	10 B.C.R. 304.
Fennel v. Corporation of Guelph	24 U.C.Q.B. 238	4 B.C.R. 341.
Fenner v. Wilson (1893)	2 Ch. 656	6 B.C.R. 223.
Fennessy v. Clark	37 Ch. D. 184	5 B.C.R. 508.
Fenton v. Dublin Steam Packet Co.	8 L.J.Q.B. 28	4 B.C.R. 579.
Fenwick v. Schmale	L.R. 3 C.P. 315	5 B.C.R. 39.
Ferguson v. Earl of Kinnoul	9 C. & Fin. 251	5 B.C.R. 54.
Ferguson v. Galt Public School Board (1900)	27 A.R. 480	8 B.C.R. 346.
Ferguson v. Kenny (1889)	16 A.R. 276	7 B.C.R. 195.
Ferguson v. Freeman (1879)	27 Gr. 211	10 B.C.R. 44.
Ferguson v. Roblin (1885)	17 Ont. 167	4 B.C.R. 579.
Ferguson v. Wilson	2 Chy. App. 77	6 B.C.R. 238.
Ferguson v. Winsor (1885)	10 Ont. 13	10 B.C.R. 216.
Ferguson v. Winsor (1886)	11 Ont. 88	
Fero v. Hall (1898)	6 B.C. 421	6 B.C.R. 420, 421, 426; 1 M.M.C. 152, 202, 288, 290, 291, 350, 512.
Feronia, The	2 L.R. Adm. 65	3 B.C.R. 316.
Ferrand v. Bringley Town Local Board	8 T.L.R. 70	2 B.C.R. 410.
Ferrand v. Bringley Town Local Bd. (1891)	8 T.L.R. 70	9 B.C.R. 309.
Ferris et ux v. Ferris (1883)	9 P.R. 443	8 B.C.R. 32.
Field v. Great Northern Ry. Co.	3 Ex. Div. 261	4 B.C.R. 423.
Field v. Great Northern Ry. Co. (1878)	3 Ex. Div. 261	9 B.C.R. 367.
Field v. Jones (1807)	9 East. 151	9 B.C.R. 193.
Fielding v. Morley Corporation (1889-99)	1 Ch. 1	6 B.C.R. 476; 1 M.M.C. 301.

For-Fra] Name of Case.	Where Found.	Reference.
Ford v. Allen	15 Gr. 565	2 B.C.R. 84.
Ford v. Dolphin	7 Drew. 222	4 B.C.R. 337.
Ford's Hotel Company, Limited v. Bartlett (1896)	A.C. 1	6 B.C.R. 553, 559, 560
Forder v. Handiside	1 Ex. D. 233	5 B.C.R. 40.
Fordyce v. Brydges	1 H.L. 14	3 B.C.R. 602.
Foreman v. Canterbury	L.R. 6 Q.B. 214	5 B.C.R. 557, 641, 647, 651.
Foreman v. Canterbury	40 L.J.Q.B. 138	6 B.C.R. 32.
Forget v. Ostigny (1895)	A.C. 318	8 B.C.R. 189.
Forhan v. Lalonde	27 Grant, 604	1 B.C.R., pt. II., 269.
Forrer v. Nash	35 Beav. 171	3 B.C.R. 382.
Forster v. Davis, Re Macrae	25 Ch. D. 16	5 B.C.R. 34, 35, 222, 224.
Forster v. Farquhar (1893)	1 Q.B. 564	4 B.C.R. 423; 1 M.M.C. 367, 368; 5 B.C.R. 534, 536; 7 B.C.R. 74, 76, 437.
Forster v. Farquhar (1893)	1 Q.B. 564	8 B.C.R. 207, 210.
Forster v. Hale	5 Ves. 309	6 B.C.R. 265.
Forster v. Hale	3 Ves. 696	5 B.C.R. 384; 1 M.M.C. 197, 287, 324, 328, 329.
Forsyth v. Boyle	28 U.C.C.P. 26	1 B.C.R., pt. II., 60.
Fortesque v. Vestry of St. Matthew (1891)	2 Q.B. 170	5 B.C.R. 201.
Foskett v. Kaufman (1885)	16 Q.B.D. 279, 286	6 B.C.R. 469; 1 M.M.C. 250, 491.
Foskett v. Kaufman (1885)	16 Q.B.D. 279	7 B.C.R. 478.
Foss v. Harbottle (1843)	2 Hare, 461	8 BC.R. 157.
Foster v. Bates	12 M. & W. 226	9 B.C.R. 203.
Foster v. Dawber (1851)	20 L.J. Ex. 385	1 B.C.R., pt. II., 319.
Foster v. North Hendre Mining Co. (1891)	1 Q.B. 71	10 B.C.R. 102.
Foster v. North Hendre Mining Co. (1891)	1 Q.B. 71	9 B.C.R. 64.
Foster v. Moore	11 Ont. P.R. 447	1 M.M.C. 479.
Foster v. Pointer (1841)	9 C. & P. 718	3 B.C.R. 92.
Foster v. Reeves (1892)	2 Q.B. 255	8 B.C.R. 38.
Foster v. Cockerell	9 Bligh, N.S. 332; 3 Cl. & F. 456	8 B.C.R. 202.
Foster v. Foster	3 L.R. Ch. 333	4 B.C.R. 508-14.
Foster v. Harvey	3 N.R. 98	4 B.C.R. 528-532.
Foster v. Jackson	Hob. 59	6 B.C.R. 205.
Foster v. Moore et al. (1886)	11 P.R. 447	4 B.C.R. 77.
Foster v. Orford (1853)	13 C.B. 200	7 B.C.R. 443.
Foster v. Tyne P. & D. D. Co.	63 L.J.Q.B. 56	6 B.C.R. 331.
Fothergill's Case (1873)	8 Chy. App. 270	5 B.C.R. 132.
Foulds v. Foulds (1898)	12 Man. 393	9 B.C.R. 357.
Foulkes v. The Metropolitan District Ry. Co. (1879)	4 C.P.D. 267	7 B.C.R. 384-5.
Foulkes v. The Metropolitan District Ry. Co. (1880)	5 C.P.D. 157	8 B.C.R. 136, 138.
Fountaine v. Carmarthen Ry. Co. (1868)	L.R. 5 Eq. 316	8 B.C.R. 321, 322.
Fournier v. Canadian Pacific Ry. Co. (1896)	33 N.B. 565	9 B.C.R. 537.
Fowkes v. Assurance Assoc. (1863)	3 B. & S. 929	5 B.C.R. 354; 1 M.M.C. 147.
Fowler v. Barstow	L.R. 20 Ch. Div. 240.	1 B.C.R., pt. II., 83-84.
Fowler v. Barstow (1881)	20 Ch. D. 240	10 B.C.R. 263, 264, 266.
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Fowler v. Barstow (1881)	51 L.J. Ch. 104	7 B.C.R. 137, 263.
Fowler v. Knopp	36 L.T.N.S. 219	4 B.C.R. 274
Fowler v. Lock (1872)	L.R. 7 C.P. 280	6 B.C.R. 574.
Fox v. Hanburg (1776)	1 & 2 Cowp. 445	9 B.C.R. 486.
Fox v. MacKreth	1 W. & T. Ldg. Cas. 141	4 B.C.R. 448.
Fox v. Star Newspaper Co. (1898)	W.N. 26; Q.B. 636	10 B.C.R. 180, 457.
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Fragano v. Long (1825)	4 B. & C. 219	9 B.C.R. 91.
Fame v. Dawson	9 Rev. Rep. 304-306	3 B.C.R. 452.
Francis v. Clemow	23 L.J. Ch. 288	1 B.C.R., pt. II., 49, 54.
Francis v. Cockrell	L.R. 5 Q.B. 184-501.	2 B.C.R. 144.
Francis v. Dowdeswell (1874)	L.R. 9 C.P. 423	8 B.C.R. 390.
Francoeur v. English		1 M.M.C. 504.
Franconia, The (1876)	2 P.D. 8	8 B.C.R. 123.
Frank v. Sun Life Assurance Co. of Canada (1893)	20 A.R. 564	7 B.C.R. 148.
Frank Mills Mining Co., In re (1883)	23 Ch. D. 52	9 B.C.R. 283.

Fra-Gal] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Fransenburg v. Great Horseless Carriage Co. (1900)	1 Q.B. 504	8 B.C.R. 263.
Fransenburg v. Great Horseless Carriage Co. (1900)	1 Q.B. 504	10 B.C.R. 439, 441.
Frankland, The (1872)	L.R. 3 A. & E. 511	8 B.C.R. 183.
Fraser v. Drew (1900)	30 S.C.R. 241	10 B.C.R. 491.
Fraser v. Ehrensperger (1883)	12 Q.B.D. 318	9 B.C.R. 137.
Fraser v. McLeod (1860)	8 Gr. 268	9 B.C.R. 484.
Fraser v. The Province of Brescia Steam (1887)	56 L.T.N.S. 77	10 B.C.R. 75.
Fraser River Mining Co. v. Gallagher (1895)	5 B.C. 82	9 B.C.R. 174.
Fredericton, City of v. Queen	3 Can. S.C.R. 505	1 B.C.R., pt. I., 204, 205; pt. II., 262.
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Freeborn v. Vandusen (1895)	15 P.R. 264	10 B.C.R. 396.
Freehold Loan Co. v. McLean	8 Man. L.R. 116	3 B.C.R. 126.
Freeman v. Birch (1842)	3 Q.B. 492	9 B.C.R. 91.
Freeman v. Cook	18 L.J. Ex. 114; 2 Ex. R. 654, 663	1 B.C.R., pt. II., 82; 5 B.C.R. 535.
Freeman v. Moyes	1 Ad. & E. 338	2 B.C.R. 343.
Freeman v. Pope (1869)	L.R. 9 Eq. 206	7 B.C.R. 195.
Freeman v. Pope	L.R. 5 Ch. 539	5 B.C.R. 47, 479, 480.
Freeman v. Robinson	7 Ind. 321	1 B.C.R., pt. I., 95.
Freeman v. Tranah	12 C.B. 406	1 B.C.R., pt. II., 358.
French v. Andrade (1796)	6 Term. Rep. 582	8 B.C.R. 310.
French v Bellew	1 M. & S. 302	4 B.C.R. 47, 51, 153.
French v. Brooks (1830)	6 Bing. 354	10 B.C.R. 256.
French v. Mainwaring	2 Beav. 115	2 B.C.R. 375.
French v. Martin (1892)	8 Man. 364	7 B.C.R. 321.
French v. Martin (1892)	8 Man. 362	8 B.C.R. 310.
Freshfield's Trust, In re	11 Ch. D. 198	4 B.C.R. 506.
Frey v. Mutual Insurance Co.	43 U.C.R. 111	5 B.C.R. 337, 338.
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Fritz v. Hobson	14 Ch. D. 542	4 B.C.P. 205.
Frontman v. Fusken	13 P.R. 153	5 B.C.R. 49.
Frost v. Knight (1872)	L.R. 7 Ex. 111	10 B.C.R. 253.
Frost v. Oliver (1853)	22 L.J.Q.B. 353	7 B.C.R. 438.
Fruhauf v. Grosvenor	8 The Times L.R. 744	2 B.C.R. 335.
Fruhauf v. Grosvenor & Company (1892)	61 L.J.Q.B. 717	9 B.C.P. 161.
Fry v. Botsford (1902)	9 B.C. 234	10 B.C.R. 310, 311.
Fry v. Moore	23 Q.B.D. 395	3 B.C.R. 32, 301.
Fry v. Moore (1889)	23 Q.B.D. 395	4 B.C.R. 212, 216.
Fry v. Moore (1889)	23 Q.B.D. 395	8 B.C.R. 310, 423.
Fry v. Moore (1889)	23 Q.B.D. 395	10 B.C.R. 265.
Fuller v. Fenwick	16 L.J.C.P. 79	1 B.C.R., pt. I., 118.
Fullwood v. Fullwood	L.R. 4 Ch. App. 768.	1 B.C.R., pt. II., 97, 99, 101.
Fullwood v. Fullwood (1878)	9 Ch. D 176	10 B.C.R 364; 1 M.M.C. 13.
Fulton v. Andrew	32 L.T.N.S. 209	3 B.C.R. 525.
Fulton Bros. v. Upper Canada Furniture Co. (1883)	9 A.R. 211	9 B.C.R. 348, 350.
Fulton v. Andrew (1875)	L.R. 7 H.L. 488	10 B.C.R. 548.
Furgusson v. Wilson	L.R. 2 Ch. App. 77	3 B.C.R. 453-457, 461.
Furness v. Booth (1876)	4 Ch. D. 587	9 B.C.R. 446.
Fynn, In re (1848)	2 DeG. & Sm. 475	7 B.C.R. 297.
Gabourie, Re	12 Ont. P.R. 252	2 B.C.R. 254.
Gadd v. Haughton	L.R. 1 Ex. D. 357. 360	3 B.C.R. 452-454.
Gainsford v. Dunn	L.R. 17 Eq. 405	1 B.C.R., pt. II., 55.
Galbraith & Sons v. Hudson's Bay Co. (1900)	7 B.C. 431 and 515	8 B.C.R. 267.
Gallagher v. Humphrey (1862)	6 L.T.N.S. 684	8 B.C.R. 138.
Gallagher v. Humphrey (1862)	6 L.T.N.S. 684	9 B.C.R. 457, 468.
Galloway v. Bird	12 Moore, 547	6 B.C.R. 203.
Galloway v. The Mayor, etc., of London (1865)	12 L.T.N.S. 623	7 B.C.R. 302; 1 M.M.C. 346.

Gre-Had] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Greenslade v. Dare	20 Beav. 284	2 B.C.R. 381.
Greenstreet v. Paris (1874)	21 Gr. 234	8 B.C.R. 322, 323.
Greenway v. Hurd	4 T.L. 553	3 B.C.R. 614.
Gregory v. Migell	18 Ves. 328	1 B.C.R. pt. II. 67.
Gregory v. Williams	3 Mer. 582; 17 R.R. 136.	4 B.C.R. 515.
Greville v. Brown	7 H.L.C. 689	1 B.C.R., pt. II.,50, 53, 54.
Grey, In re (1892)	61 L.J.Q.B. 795	6 B.C.R. 320.
Grey v. Pearson	6 H. of L. 106	5 B.C.R. 292, 613.
Grey v. Pearson (1854)	6 H.L.Cas. 61	7 B.C.R. 379. 380.
Grey v. Pearson (1857)	6 H.L. Cas. 61	9 B.C.R. 55.
Griendloveen v. Hamblyn & Co. (1892)	8 T.L.R. 231	9 B.C.R. 446.
Grieves v. Rawley (1852)	10 Hare 63	8 B.C.R. 93.
Griffin v. Allen (1879)	11 Ch. D. 913	9 B.C.R. 165.
Griffin v. Colver	69 Am. Dec. 718	4 B.C.R. 115.
Griffin v. Toronto Railway Co. (1902)	7 Ex. C.R. 411	9 B.C.R. 525.
Griffith, Ex parte, In re Wilcoxon	23 Ch. Div. 69	1 B.C.R. pt. II., 327.
Griffiths v. Earl of Dudley (1882)	9 Q.B.R. 357.	10 B.C.R. 271, 273.
Griffiths, Ex parte	23 Ch. D. 60	4 B.C.R. 53. 463.
Griffiths v. Gidlaw (1858)	3 H. & N. 648	10 B.C.R. 12. 115.
Griffiths v. Blake	27 Ch. D. 474	6 B.C.R. 223.
Griffiths v. Boscowitz (1891)	18 S.C.R. 718	10 B.C.R. 486.
Griffiths v. Canonica	5 B. C. 49	6 B.C.R. 269.
Griffiths v. Harwood (1900)	30 S.C.R. 315	9 B.C.R. 386.
Griffiths v. The London and St. Katharine Docks Co. (1884)	12 Q.B.D. 493.	6 B.C.R. 563, 565, 566 568, 569, 575, 577.
Griffiths v. The London and St. Katharine Docks Co. (1884)	13 Q.B.D. 259	8 B.C.R. 345.
Griffiths v. Taylor	L.R. 2 C.B.D. 194	1 B.C.R., pt. I., 94, 99
Grill v. Iron Screw Co	1 L.R.C.P. 600	1 B.C.R. pt. II., 181.
Grill v. Iron Screw Co	1 L.R.C.P.600	8 B.C.R. 56.
Grimshawe v. Grand Trunk Railway Co. (1860)	19 U.C.Q.B. 493	9 B.C.R 74
Grinham v. Wiley (1859)	4 H. & N. 496.	9 B.C.R. 501, 502.
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Groves v. Fuller (1888)	4 T.L.R. 474	6 B.C.R. 564, 565, 567, 574, 575.
Groves v. Lord Wimborne (1898)	2 Q.B. 402	10 B.C.R. 330, 335, 337, 340, 344, 45.
Groves v. Lord Wimborne (1898)	2 Q.B. 402.	6 B.C.R. 566, 567, 574 582, 586; 1 M.M.C 316, 318.
Grucott v. Williams (1863)	32 L.J.Q.B. 237	10 B.C.R. 300.
Grugeon v. Gerrard	4 Y. & C. 119	4 B.C.R. 526.
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Guardian of the Bath Union, The, v. The Guardians of the Berwick-upon-Tweed Union (1892)	1 Q.B. 731	7 B.C.R. 385.
Guerin, Re (1888)	16 Cox C. C. 596	6 B.C.R. 464, 465.
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Guinness v. Land Corporation of Ireland	22 Ch. D. 349	3 B.C.R. 104.
Gurnell v. Gardnier	9 L.T.N.S. 367	3 B.C.R. 204.
Gurnell v. Gardner (1863)	4 E.T. & Bl. 132.	10 B.C.R. 466.
Gurney v. Womersley (1854)		
Gurney v. Small (1891)	2 Q.B. 584	2 B.C.R. 203.
Gurney v. Small (1891)	2 Q.B. 584	9 B.C.R. 53.
Gurnnell v. Herbert	5 A. & E. 436	B.C.P. 22, 23.
Gutling v. Lynn (1831)	2 B. & Ad. 232	8 B.C.R. 405
Guthrie v. Clarke	3 Man. 320	3 B.C.R. 379.
Guthrie v. Clarke (1886)	3 Man. 318	6 B.C.R. 544.
Gwillim v. Donnellan (1884)	115 U.S. 45	8 B.C.R. 49. 1 M.M.C 434
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Gyett v. Williams	2 J. & H. 429	1 B.C.R. pt. II., 54.
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Habergham v. Vincent	2 Ves. 230	1 B.C.R. pt. I., 80.
Hach v. London Provident Building Society (1883)	23 Ch. D. 111	8 B.C.R. 157, 167, 1 M M.C 490, 498, 499.
Hadden v. Hadden (1899)	6 B.C. 340	9 B.C.R. 216.

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Heaman v. Seale	29 Gr. 278.	4 B.C.R. 464.
Heap v. The Rural Sanitary Authorities of Burnley Union	12 Q.B.D. 617	4 B.C.R. 385, 387.
	L.R. 4 Ch. 552	1 M.M.C. 286, 326.
Heard v. Pilley (1869)	4 Taunt. 326	3 B.C.R. 304.
Heath v. Hall	4 Taunt. 326	8 B.C.R. 72.
Heath v. Hall (1812)	1 O.R. 274	5 B.C.R. 614.
Heath v Weaverham	L.R. 11 Q.B.D. 503	1 B.C.R. pt. II., 182.
Heaven v. Pender	11 Q.B.D. 503	9 B.C.R. 468.
Heaven v. Pender (1883)	Q.B. 224	2 B.C.R. 351, 353.
Heckscher v. Crossley (1891)	11 Man. 320.	7 B.C.R. 111.
Hector v. The Canadian Bank of Commerce (1896)	A.C. 222	9 B.C.R. 554.
Hedley v. Pinkney & Sons Steamship Co. (1894)	1 Chy. Cha. 54	9 B.C.R. 431.
Heeley, Re (1859)	L.R.Ir. 18	10 B.C.R. 548.
Hegarty v. King (1881)	L.R. 4 C.P. 595	10 B.C.R. 500.
Heffield v. Meadows (1869)	7 Fed. 68	9 B.C.R. 101.
Helliwell v. Grand Trunk Railway Co. of Canada (1881)	1 Q.B. 742	5 B.C.R. 237, 605, 607 612.
Helsby, Re (1894)	Br. & Lush 425	10 B.C.R. 384.
Helene, The (1865)	25 Ont. 583	10 B.C.R. 279.
Hellems v. Corporation of the City of St. Catharines (1894)	1 Y. & C. 175	6 B.C.R. 234, 241.
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Hemery v. Worssam (1882)	7 B.C. 449	9 B.C.R. 174.
Henley v. Reco Mining & Milling Co. (1900)	20 Q.B.D. 509	6 B.C.R. 348, 349.
Henderson, In re (1888)	A.C. 158	6 B.C.R. 597.
Henderson v. Astwood (1894)	19 U.C.Q.B. 592	8 B.C.R. 26.
Henderson v. Dickson (1860)	3 Hare 115	2 B.C.R. 383.
Henderson v. Henderson	17 O.A.R. 461	5 B.C.R. 218.
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Herr v. Douglas (1867)	4 P.R. 102	8 B.C.R. 310.
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Hornby v. New Westminster Southern Railway Co. (1899)	6 B.C. 588	10 B.C.R. 491; 1 M.M.C. 67.
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Koksilah Quarry Co. v. The Queen (1897)	5 B.C. 600	9 B.C.R. 385.
Kootenay Brewing Company, In re (1898)	7 B.C. 131	7 B.C.R. 263, 319, 322.
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Laishley v. Goold Bicycle Co. (1902)	4 O.L.R. 350	10 B.C.R. 254.
Lake Winnipeg Co., Re	7 Man. 255	5 B.C.R. 663.
Lakeman v. Mountstephen	43 L.J.Q.B. 188	5 B.C.R. 218.
Lakin v. Nuttall	3 S.C.R. 685	2 B.C.R. 253.
Lambe's case	12 App. Cas. 586	2 B.C.R. 5, 37, 96.
Lamb, Ex parte (1881)	19 Ch. D. 169.	8 B.C.R. 66.
Lamb v. McCormack	6 Gr. 240	5 B.C.R. 41.
Lambe v. Smythe (1846)	15 L.J., Ex. 287	9 B.C.R. 56.
Lambert v. Parnell	10 Jur. 31	4 B.C.R. 75, 83, 85.
Lampen v. Kedgewin	1 Mod. 207	2 B.C.R. 379.
Lamplugh v. Norten et al.	22 Q.B.D. 452	2 B.C.R. 98.
Lancaster v. Moss (1899)	15 T.L.R. 476	10 B.C.R. 171.
Lancaster, The	8 P.D. 65, 9 P.D. 14	3 B.C.R 376.
Lancaster v. Greaves (1829)	9 B. & C. 628	9 B.C.R. 512.
Lancaster v. Moss (1899)	15 T.L.R. 476	7 B.C.R. 364.
Lancefield v. Iggulden	L.R. 10 Ch. App. 140	1 B.C.R. pt. II., 53.
Landowners West of England and South Wales, Land, etc., Co. v. Ashford (1880)	16 Ch. D. 411	8 B.C.R. 321, 322.
Landowners & Drainage & Enclosure Co. v. Ashford	16 Ch. D. 411	3 B.C.R. 376.
Lands Allotment Co. v. Broad	13 R. 699	5 B.C.R. 95.
Lane v. The Dungannon Agricultural Driving Park Association (1892)	22 Ont. 264	8 B.C.R. 72.
Lang v. Kerr	3 App. Cas. 529	3 B.C.R. 364.
Lang v. Kerr	3 App. Cas. 536	6 B.C.R. 326.
Lang v. Kerr, Anderson & Co. (1878)	3 App. Cas. 529	9 B.C.R. 65, 1 M.M.C. 479.
Lang v. Victoria (1899)	A.C. 615	7 B.C.R. 339, 342.
Langdon v. Robertson	12 Ont. P.R. 139	2 B.C.R. 254.
Langevin v. Commissioners de St. Marie (1891)	18 S.C.R. 599	9 B.C.R. 386.
Langham Skating Rink Company, In re (1877)	5 Ch. D. 669	7 B.C.R. 390.
Langton v. Hughes (1813)	1 M. & S. 593	1 M.M.C. 500.
Langstaff v. McRae et al. (1892)	22 Ont. 78.	6 B.C.R. 593, 595.

Lap-Lee] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Lapington v. Lapington (1888)	14 P.D. 21	8 B.C.R. 18.
Larchin v. Willan	4 M. & W. 351	1 B.C.R. pt. II., 90, 91.
Large v. Large (1877)	W.N. 198	10 B.C.R. 167.
Larkin v. Lloyd (1891)	64 L.T.N.S. 507	8 B.C.R. 200.
Larkin v. Suffarans	15 Fed. Rep. 147	5 B.C.R. 613.
Larocque v. Beauchemin (1897)	A.C. 358	9 B.C.R. 302, 303, 354, 356, 357.
Larkin v. Lloyd (1891)	64 L.T.N.S. 507	10 B.C.R. 395.
Larsen v. Nelson & Fort Sheppard Ry. Co.	4 B.C. 151	5 B.C.R. 121.
Lart, In re, Wilkinson v. Blades (1896)	2 Ch. 788	9 B.C.R. 240.
Lart, In re, Wilkinson v. Blades (1896)	2 Ch. 788	10 B.C.R. 310, 311.
Lash v. Meriden Britannia Co.	8 O.A.R. 680	3 B.C.R. 137.
Last Chance Mining Co. v. Tyler Mining Co. (1895)	157 U.S. 683	6 B.C.R. 361, 464. 1 M. M.C. 271, 273.
Latham v. Latham	2 Sw. & Tr. 208	4 B.C.R. 317.
La Trinidad v. Browne (1887)	36 W.R. 138	6 B.C.R. 404.
Laurence v. Wilcocks (1892)	1 Q.B. 696	4 B.C.R. 179, 321.
Laurence v. Jenkins (1873)	L.R. 8 Q.B. 274	10 B.C.R. 300.
Laura v. Renad (1882)		
Lavery v. Pursell	39 Ch. D. 508	6 B.C.R. 238, 255. 3 B.C.R. 457, 460.
Lavery v. Turley (1890)	30 L.J. Ex. 49	1 M.M.C. 201.
Lavery v. Turley	30 L.J. Ex. 49	5 B.C.R. 389.
Lavy v. London County Council (1895)	2 Q.B. 577	8 B.C.R. 157, 167. 1 M. M.C. 490, 498.
Law Courts Chamber Co.	61 L.T. 669	5 B.C.R. 666.
Law v. Garrett (1877)	8 Ch. D. 26	6 B.C.R. 553, 557, 558.
Law v. Local Board of Redditch (1892)	1 Q.B. 127 at 131, 134	3 B.C.R. 270.
Lawford v. Partridge (1857)	26 L.J., Ex. 148	9 B.C.R. 510.
Lawless v. Sullivan	6 App. Cas. 373	5 B.C.R. 38, 40.
Lawless v. Sullivan (1881)	6 App. Cas. 373	9 B.C.R. 61, 211.
Lawr v. Parker (1901)	8 B.C. 223.	8 B.C.R. 225, 226, 227. 1 M.M.C. 256, 350, 488, 500, 504, 506, 507, 508.
Lawrence, In re	4 Ch. D. 139.	3 B.C.R. 144.
Lawrence v. Egerton	B. C., case not reported.	1 B.C.R. pt. I., 33, 45.
Lawrence v. Great Northern Railway Company (1851)	20 L.J.Q.B. 293	
	16 A. & E. (N.S.), 643	6 B.C.R. 592, 595.
Lawrence v. Great Northern Railway Company (1851)	20 L.J.Q.B. 293	8 B.C.R. 399.
Lawrence v. Jenkins	L.R. 8 Q.B. 274	5 B.C.R. 544.
Lawrence Mfg. Co. v. Jamesville Cotton Mills (1891)	138 U.S. 561.	5 B.C.R. 297.
Lawrence Mfg. Co. v. Jamesville Cotton Mills (1891)	138 U.S. 552	9 B.C.R. 425.
Lawrence v. Lord Norreys (1890)	15 App.Cas. 210	7 B.C.R. 444. 3 B.C.R. 336.
Lawrence v. Todd (1863)	11 W.R. 835	9 B.C.R. 512.
Lawrence v. Willcocks (1892)	1 Q.B. 696	3 B.C.R. 274, 275, 276, 280.
Lawrence & Sons v. Willcocks (1892)	1 Q.B. 696	9 B.C.R. 142, 148, 150.
Lawrie v. Rathbun et al. (1876)	38 U.C.Q.B. 280	7 B.C.R. 469.
Lawrie v. Renad (1892)	3 Ch. 402	5 B.C.R. 611.
Laws, Re (1881)	9 P.R. 72	7 B.C.R. 126.
Lawson v. Hutchinson, In re	19 Gr. 84	3 B.C.R. 283.
Lawson v. Laidlaw	3 O.A.R. 77	5 B.C.R. 545.
Lawson v. Vacuum Brake Co.	27 Ch.D. 137	3 B.C.R. 140, 216.
Lawson v. Vacuum Brake Co. (1884)	27 Ch.D. 137	9 B.C.R. 540.
Laythoarp v. Bryant	2 Bing. N.C.A. 735	3 B.C.R. 456, 460.
Lax v. Corporation of Darlington (1879)	6 Ex.D. 28	10 B.C.R. 342.
Laxenby v. White	L.R. 6 Ch. 89	1 B.C.R., pt. I., 236.
Leacock v. Chambers (1886)	3 Man. 645	7 B.C.R. 195.
Leader v. Tod-Heatley	W.N. (1891) 38	3 B.C.R. 292.
Leak v. Driffield	28 Q.B.D. 98	3 B.C.R. 159.
Leake v. Robinson (1817)	2 Mer. 363	8 B.C.R. 93.
Leatherdale v. Sweepstone	3 C. & P. 342	6 B.C.R. 186, 187.
Leather Cloth Co. v. Lorsantz (1869)	9 L.J.Ch. 80	10 B.C.R. 273.
Leavesley, Re (1891)	2 Ch. 3 & 9, C.A.	2 B.C.R. 218.
Leavesley, Re (1891)	2 Ch. 8	9 B.C.R. 56.
Leavock v. West et al. (1897)	6 B.C. 404	7 B.C.R. 174.
Leckie v. Stuart (1901)	34 N.S. 140 (C.A.)	1 M.M.C. 140.
Lee v. Abdey	17 Q.B.D. 312	6 B.C.R. 181.
Lee v. Clutton	45 L.J.Ch. 43	3 B.C.R. 344.

Lee-Lew] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Lee v. Gibbings, Times ..	8 L.R. 773	2 B.C.R. 291, 297.
Lee v. Lee (1895)	27 Ont. 193	6 B.C.R. 346.
Lee v. Milner (1837)	2 Y. & C. 611	9 B.C.R. 74.
Lee et al. v. Stahl (1859)	16 Morr. 152	7 B.C.R. 273; 1 M.M.C. 308.
Lee v. Riley (1865)	34 L.J.C.P. 212	10 B.C.R. 303.
Lee Sing v. Washburn	20 Cal.Rep. 354	3 B.C.R. 410.
Leeds and Liverpool Navigation Co. v. Hornsfall (1889)	33 Sol.Jo.183	10 B.C.R. 230.
Leduc & Co. v. Ward (1886)	54 L.T.N.S. 214	8 B.C.R. 263.
Lefeunteum v. Beaudoin (1897)	28 S.C.R. 89.	9 B.C.R. 41.
Le Feuvre v. Lankister	3 E.&B. 530	3 B.C.R. 59.
Legge v. Crokers (1811)	Bul. & Bo. 156	1 M.M.C. 264.
Lees v. Nuttall (1834)	31 Rev.R. 99 ..	1 M.M.C. 286.
Leggatt v. Brown (1898)	29 Ont. 53	10 B.C.R. 312.
Le Lievre v. Gould	68 L.T.N.S. at 626	3 B.C.R. 429.
Le Lievre v. Gould (1893)	1 Q.B. 498	9 B.C.R. 363.
Leigh v. Lloyd	25 Beav. 455	3 B.C.R. 336, 344.
Leiser v. Cavalsky et al. (1894)	3 B.C. 196	7 B.C.R. 143.
Leisy v. Hardin	135 U.S. 100	5 B.C.R. 296.
Leitch v. G. T. Ry. Co.	12 P.R. 671	5 B.C.R. 184.
Leitch v. G. T. R. Co. (1890)	13 P.R. 380	6 B.C.R. 354.
Leitch v. G. T. R. Co. (1890)	13 P.R. 369 13 P.R. 369	7 B.C.R. 448, 482. 8 B.C.R. 369.
Le May v. C. P. R.	18 Ont. 314	5 B.C.R. 558.
Lemere v. Elliott (1861)	30 L.J.Ex. 350	8 B.C.R. 303.
Lemon v. Newton	2 A. & E. Corp. Cas. 480.	5 B.C.R. 639.
Lenders v. Anderson	12 O.R.D. 50	3 B.C.R. 38.
Le Neve v. Le Neve	3 Atk. 648.	3 B.C.R. 339, 341, 342
Lenoir et al. v. Ritchie (1879)	1 Cartw. 511	7 B.C.R. 283.
Lenoir v. Ritchie	3 Can. S.C.R. 575	2 B.C.R. 194.
Leonard Watson's Case	9 Ad. & Ell. 731	2 B.C.R. 220.
Leonard Watson's Case (1839)	9 Ad. & E. 731	10 B.C.R. 271.
Le Neve v. Le Neve	2 W. & T. Ldg. Cas. 6th ed., 26	4 B.C.R. 406.
Le Neve v. Le Neve	2 Wh. & T. ed., 1886, 72	5 B.C.R. 16; 1 M.M.C. 94; 186.
Lenz & Leiser v. Kirschberg (1899)	6 B.C. 533	7 B.C.R. 364.
Leprohon v. City of Ottawa	40 U.C.Q.B. 478 Ont.App. 522	1 B.C.R., pt. I., 103, 110, 161, 167, 172, 187, 203, 214, 222, 224, 225, 233, 235, 236, pt. II., 142
Leprohon v. City of Ottawa	2 O.A.R. 522	4 B.C.R. 498, 499.
Leprohon v. City of Ottawa (1877)	40 U.C.Q.B. 478	9 B.C.R. 500.
Leprohon v. City of Ottawa (1878)	A.R. 522	9 B.C.R. 299.
Leroy v. Smith (1901)	8 B.C. 293	8 B.C.R. 405.
Leroy v. Smith (1901)	8 B.C. 292	1 M.M.C. 420.
Leslie v. Canada Central Ry. Co.	35 U.C.Q.B. 21	1 B.C.R., pt. II., 10.
L'Esperance v. Great Western Railway Company (1856)	14 U.C.Q.B. 173	6 B.C.R. 592.
Lester v. Garland (1808)	15 Ves. 248	9 B.C.R. 193.
Letterstede v. Braers	9 App.Cas. 371	2 B.C.R. 263. 4 B.C.R. 314. 5 B.C.R. 97.
Leuw v. Dudgeon (1867)	17 L.J.N.S. 146	8 B.C.R. 231.
Levetus v. Newton (1883)	28 Sol.Jo. 166	8 B.C.R. 277.
Levi v. Anderson	L.R. 4 Q.B. 330	3 B.C.R. 31.
Lewis v. Brown	10 Ont.App. 639	3 B.C.R. 74.
Levy v. Rice	L.R. 5 C.P. 119	6 B.C.R. 133.
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Lewis, In re	9 T.L.R. 226 L.R. 6 Ch.App. 626	6 B.C.R. 89, 90. 3 B.C.R. 208.
Lewis, Ex parte (1888)	36 W.R. 653	9 B.C.R. 29.
Lewis v. Arnold	32 L.T. 553 L.R. 10 Q.B. 245	5 B.C.R. 97.
Lewis v. Brass	3 Q.B.D. 667	4 B.C.R. 224.
Lewis v. Earl of Londesborough (1893)	2 Q.B. 191	9 B.C.R. 425.
Lewis v. Dyson	21 L.J.Q.B. 194	4 B.C.R. 87.
Lewis v. Hoare (1881)	44 L.T.N.S. 66	8 B.C.R. 300.
Lewis v. Marsh (1849)	8 Hare. 97	6 B.C.R. 198; 1 M.M.C. 225.
Lewis v. Maverick	1 McCord (Amer.) 24.	1 B.C.R., pt. II., 234.
Lewis v. Toronto	39 U.C.Q.B. 343	5 B.C.R. 643.

Lon-Low] NAME OF CASE.	REFERENCE.	WHERE FOUND.
London, Chatham and Dover Ry. Co. v. Imperial Mercantile Association	L.R. 6 Ch. 201	1 B.C.R., pt. I. 236,.
London County Banking Co. v. Lewis	21 Ch. D. 490	3 B.C.R. 359.
London County Council v. Atty.-Gen. (1902)	71 L.J. Ch. 268	9 B.C.R. 339.
London General Omnibus Co. Ltd. v. Lovell (1901)	1 Ch. 135	9 B.C.R. 45.
London Health Electrical Institute, Limited, Re (1897)	76 L.T.N.S. 98	9 B.C.R. 156, 157.
London Insurance Co., Re	L.R. 4 Ch. 682	4 B.C.R. 68.
London and Lancashire Fire Ins. Co. v. The British Ins. Co. (1885)	52 L.T.N.S. 385	8 B.C.R. 200.
London Joint Stock Bank, The, v. Simmons (1892)	A.C. 201	7 B.C.R. 469.
London Chartered Bank of Australia v. White (1879)	4 App. 413	8 B.C.R. 209.
London, Mayor of v. Cox	L.R. 2 H.L. 239	1 B.C.R., pt. I., 33.
London General Omnibus Co. v. Lavelle (1900)	17 T.L.R. 61	10 B.C.R. 156.
London Mutual Ins. Co. v. City of London (1887)	15 A.R. 629	6 B.C.R. 546.
London Street Railway Co. Assessment, In re (1900)	27 A.R. 83	9 B.C.R. 495.
London Street Tramways Co., Ltd., v. The London County Council (1898)	A.C. 380	8 B.C.R. 157, 167; 1 M.M.C. 490, 499.
London, Tilbury and Southend Ry. Co. v. Kirk and Randall (1884)	51 L.T.N.S. 599	7 B.C.R. 172.
London and Universal Bank v. Clancarty (1892)	1 Q.B. 689	4 B.C.R. 179, 322.
London and Universal Bank v. Clancarty (1892)	1 Q.B. 683 61 L.J.Q.B. 225	9 B.C.R. 29, 137, 138, 139, 142, 147, 148, 150.
London v. Watt (1893)	22 S.C.R. 303	6 B.C.R. 459.
London West v. Bartram (1895)	26 Ont. 161	10 B.C.R. 279.
Long v. Bishop of Cape Town	1 Moo.P.C. (N.S.) 411	1 B.C.R., pt. I., 6, 12, 24.
Long v. Collier	4 Russ. 269	4 B.C.R. 418.
Long v. Crossley (1879)	13 Ch.D. 388	8 B.C.R. 32.
Long v. Hancock	12 S.C.R. 532	2 B.C.R. 269.
	12 S.C.R. 532	4 B.C.R. 471.
Long v. Hancock (1885)		8 B.C.R. 327.
Long v. Storie	9 Hare, 542	4 B.C.R. 528.
Longdendale Cotton Spinning Co., In re (1878)	8 Ch.D. 150	9 B.C.R. 472.
Longman v. East (1877)	3 C.P.D. 142	10 B.C.R. 392.
Longman v. East	3 C.P.D. 156	2 B.C.R. 349.
Longman v. East (1877)	3 C.P.D. 142	8 B.C.R. 200.
Loosemore v. Radford	9 M. & W. 657	3 B.C.R. 291, 295, 296.
Lopez v. Burslem	4 Moo. P.C. 300	5 B.C.R. 612.
Lopez v. Burslem	4 Moo. P.C. 305	6 B.C.R. 481, 483.
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Loranger v. Colonial Building and Investment Association (1883)	3 Cartw. 133	9 B.C.R. 228.
Lord Advocate v. Fleming (1897)	A.C. 151	6 B.C.R. 182.
Lord Beauchamp v. Croft	3 Dyers Rep. 285a	5 B.C.R. 500.
Lord v. Colvin	5 Drew. 222	4 B.C.R. 424.
Lord Elphinstone v. Monkland Co.	11 App. Cas. 332	3 B.C.R. 270.
Lord Hanmer v. Flight (1876)	35 L.T.N.S. 127	10 B.C.R. 110.
Lord v. Hillard	9 R. & C. 621	3 B.C.R. 607, 608.
Lord v. The Queen (1901)	31 S.C.R. 165	8 B.C.R. 391
Lord Lovat's Case	18 St. Tri. 596	2 B.C.R. 108.
Lord Salisbury v. Nugent (1883)	9 P.D. 23	10 B.C.R. 25, 159.
Lothian v. Henderson	7 R.R. 829	5 B.C.R. 337.
Lorton v. Kingston (1850)	2 Mac. & G. 139	10 B.C.R. 170.
Lovering, Ex parte (1874)	L.R. 9 Ch. 590	5 B.C.R. 237; 1 M.M.C. 144.
Love v. Fairview (1904)	10 B.C. 330	10 B.C.R. 451.
Louisville and N. R. Co. v. Hailey (1895)	29 S.W. 367	9 B.C.R. 467.
Low v. Bouverie (1891)	3 Ch.D. 111	3 B.C.R. 441.
Lowe v. G. N. Ry. Co.	62 L.J.Q.B. 524	3 B.C.R. 208, 209.
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Lowther v. Earl of Radnor (1806)	8 East. 113	9 B.C.R. 512.

Lowther v. Heaver	41 Ch.D. 248	2 B.C.R. 142.
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Lowndes v. Bettle (1864)	33 L.J.Ch. 451	10 B.C.R. 26.
Lowe's Case	L.R. 9 Eq. 589	1 B.C.R., pt. II., 99.
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Lucas v. Moore	3 O.A.R. 602	3 B.C.R. 425.
Lucas, Tanner & Co., Re (1900)	36 C.L.J. 384. Ont.	8 B.C.P. 26.
Luckie, In re (1880)	W.N. 12	9 B.C.R. 445.
Luffman v. Luffman (1898)	18 C.L.T. 50	6 B.C.R. 204.
Lumb v. Beaumont (1894)	27 Ch.D. 356	6 B.C.R. 360, 363, 365, 374; 1 M.M.C. 270, 272, 274, 280.
Lumb v. Beaumont (1884)	49 L.T.N.S. 772	9 B.C.R. 555.
Lumley v. Hampson	6 Dowl. 558	3 B.C.R. 607.
Lumley v. Gye	2 El. & Bl. 216	4 B.C.R. 471.
Lumley v. Gye (1853)	2 El. & Bl. 216	8 B.C.R. 373.
Lumley v. Osborne (1901)	1 K.B. 532	8 B.C.R. 263.
Lumley v. Wagner	Dea. M. & G. 604	1 B.C.R., pt. I., 121.
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L'Union St. Jacques de Montreal v. Dame Julie Belisle (1874)	L.R. 6 P.C. 36	7 B.C.R. 282.
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Lyell v. Kennedy	18 Q.B.D. 814	2 B.C.R. 51.
Lyell v. Kennedy (1884)	27 Ch.D. 1	7 B.C.R. 171, 172.
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Lygo v. Newbold (1854)	9 Ex. 302	9 B.C.R. 456, 462, 466.
Lyle v. Richards	L.R. 1 H.L. 222	1 B.C.R., pt. II., 58.
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Lyman v. Mossop	36 W.C.Q.B. 230	3 B.C.R. 501, 509.
Lynch v. Seymour (1887)	15 S.C. 341	1 M.M.C. 505.
Lynde v. Lynde (1900)	181 U.S. 187	9 B.C.R. 216; 1 M.M.C. 323.
Lyon v. Wells (1804)	5 East. 438	8 B.C.R. 231.
Lyons & Sons, J., v. Wilkins (1896)	1 Ch. 811	8 B.C.R. 373.
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Lyons & Sons, J., Ltd., v. Clark & Co (1891)	1 Q.B. 552	5 B.C.R. 170.
Lysaght v. Edwards (1876) (1899)	2 Ch. 506	6 B.C.R. 205.
Lyth v. Ault	7 Ex. 669	3 B.C.R. 476, 478, 480.
M ——— falsely called S. v S.	1 B.C., pt. I., 25	4 B.C.R. 318.
Macbryde v. Weeks	22 Beav. 533	4 B.C.R. 466.
Macdonald v. Abbott	3 S.C.R. 278	2 B.C.R. 258.
Macdonald v. Bode (1876)	W.N. 23	9 B.C.R. 446.
Macdonald v. Crombie	11 S.C.R. 107	4 B.C.R. 462.
Macdonald v. Crombie (1883)	9 Ont. 246	
Macdonald v. Crombie (1885)	11 S.C.R. 112	8 B.C.R. 310.
Macdonald v. Law Union Insurance Co.	L.R. 9 Q.B. 328	5 B.C.R. 331.
Macdonold v. McColl (1887)	12 P.R. 9	9 B.C.R. 234.
Macdonald v. Longbottom	28 L.J.Q.B. 293	10 B.C.R. 500.
Macdonald v. Norwich Insurance Co.	10 P.R. 462	5 B.C.R. 215.
Macdonald v. Noxon Brothers Manufacturing Co., Ltd. (1888)	16 Ont. 368	6 B.C.R. 537.
Macdonald v. Noxon Brothers Manufacturing Co., Ltd. (1888)	16 Ont. 368; 8 C.L.T. 435	9 B.C.R. 110.
Macdonell v. Purcell (1894)	23 S.C.R. 101	10 B.C.R. 281.
Macdougall v. Gardnier	1 Ch.D. 25	5 B.C.R. 103.
Macdougall v. Gardnier (1875)	1 Ch.D. 13; 10 Chy. App. 606	9 B.C.R. 283, 293.
Macdougall v. Paterson	11 C.B. 755	5 B.C.R. 625.
Macdougall v. Paterson (1851)	11 C.B. 755	8 B.C.R. 127.
Macdougall v. Paterson (1851)	11 C.B. 755	8 B.C.R. 114.
Macdougall v. Knight (1899)	14 App. Cas. 194	10 B.C.R. 342.
Macfarlane v. Leclaire (1862)	15 Moore P.C. 185	7 B.C.R. 132.
Macfarlane v. Price (1816)	1 Stark. 199	9 B.C.R. 525.
Macgreal v. Taylor (1897)	167 U.S. 688	9 B.C.R. 324.
Machu, In re	21 Ch.D. 838	6 B.C.R. 263; 1 M.M.C. 322.
Mack v. Dobie (1892)	14 P.R. 465	6 B.C.R. 354.
Mack v. Dobie (1892)	14 P.R. 465	7 B.C.R. 356, 358.
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Mac-Man] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Mackay v. Bank of New Brunswick	5 L.R. P.C. 394, 412	3 B.C.R. 174, 178, 181, 190, 194.
Mackay v. Commercial Bank of New Brunswick	L.R. 5 C.P. 394	4 B.C.R. 578, 583.
Mackay v. Douglass	L.R. 14 Eq. 106	4 B.C.R. 170, 171.
Mackay v. Douglass (1872)	L.R. 14 Eq. 106	7 B.C.R. 194, 195.
Mackay v. Hughes (1901)	19 Que. S.C. 367	9 B.C.R. 365.
Mackenzie v. Mackenzie	1 T.R. 716	3 B.C.R. 511.
Macklem and Others Case (1838)	2 Lewin C.C. 255	10 B.C.R. 559.
Mackie v. Caven	5 Cowen. 547	1 B.C.R., pt. I., 248.
Mackinnon v. Keroack (1887)	15 S.C.R. 111	9 B.C.R. 386.
Mackonochie v. Lord Penzance (1881)	6 App. Cas. 435	8 B.C.R. 430.
MacLean v. Dawson	4 D. & J. 150	3 B.C.R. 43.
Maclean v. Dunn (1828)	4 Bing. 722	6 B.C.R. 240.
MacLennan v. Gray	16 Ont. A.R. 224	2 B.C.R. 27.
McLeod v. Attorney-General for N. S. Wales (1891)	A.C. 455	1 M.M.C. 121.
Macleod v. Atty.-Gen. for N. S. Wales (1891)	App. Cas. 455	4 B.C.R. 155.
Macleod v. Atty.-Gen. for N. S. Wales (1891)	App. Cas. 455	5 B.C.R. 314.
Macleod v. Atty.-Gen. for N. S. Wales (1891)		8 B.C.R. 80.
Macleod v. Atty.-Gen. for N. S. Wales (1891)	A.C. 255	9 B.C.R. 176.
Macnamara v. Kirkland (1891)	18 Ont. App. 271	3 B.C.R. 28. 7 B.C.R. 504.
Macrae, Re Forster v. Davis	25 Ch.D. 16	5 B.C.R. 34, 35, 222 224.
Macrow v. The Great Western Railway Co. (1871)	L.R. 6, Q.B. 612	8 B.C.R. 193, 194.
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Madden v. Connell. See Connell v. Madden.		
Madden v. Nelson and Fort Sheppard Railway Co. (1897)	5 B.C. 544	6 B.C.R. 501.
Madden v. Nelson and Fort Sheppard Railway Co. (1897)	5 B.C. 670	8 B.C.R. 83.
Madden v. Nelson and Fort Sheppard Railway Co. (1899)	5 B.C. 396; A.C. 626.	9 B.C.R. 339.
Maddever, In re (1884)	27 Ch.D. 523	7 B.C.R. 195.
Maddison v. Alderson (1883)	8 App. Cas. 467	1 B.C.R., pt. I., 258; 1 M.M.C. 326.
Maddison v. Alderson	8 App. Cas. at 478, 480, 485	3 B.C.R. 452, 457.
Maden v. Catanach	7 H. & N. 360	2 B.C.R. 108, 109.
Magann v. Auger (1901)	31 S.C.R. 186	9 B.C.R. 351.
Magdalen College Case (1851)	6 H.L.C. 189	11 Rep. 716; 1 M.M.C. 63.
Magee v. Hastings (1891)	28 L.R. Ir. 288	7 B.C.R. 364.
Magistrates of Dunbar v. Duchess of Roxburghe (1835)	3 Cl. & F. 354	6 B.C.R. 411; 1 M.M.C. 251.
Maguin v. Dinsmore (1875)	20 Am. Rep. 442	8 B.C.R. 195.
Magurn v. Magurn (1883)	3 Ont. 577	6 B.C.R. 346.
Mahoney v. East Holyford Mining Co.	L.R. 7 H.L. 893	6 B.C.R. 240.
Mahoney v. Le Rennetel (1892)	13 N.S.W. Rep. (Equity 7)	7 B.C.R. 496.
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Mair v. Cameron (1899)	18 P.R. 484	7 B.C.R. 364.
Mair v. Holten	4 U.C.R. 506	1 B.C.R., pt. II., 319.
Maitland v. Mackinnon (1862)	32 L.J. Ex. 49	8 B.C.R. 5, 6.
Major v. Chadwick	11 A. & E. 571, 588	4 B.C.R. 420.
Makin v. Attorney-General for N. S. W. (1894)	App. Cas. 57	5 B.C.R. 585, 591, 598
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Malins v. Freeman	2 Keen. 25	6 B.C.R. 245.
Mallett v. Great Eastern Ry. Co. (1899)	1 Q.B. 309	9 B.C.R. 102.
Mallinson v. Mallinson	L.R. 1 P. & D. 221	6 B.C.R. 90.
Malott v. Queen	1 B.C.R., pt. II., 212	1 B.C.R., pt. II., 238
Malpas v. London and South-Western Ry. Co.	L.R. 1 C.P. 338	1 B.C.R., pt. II., 8.
Manby v. Manby (1876)	3 Ch.D. 103	7 B.C.R. 364.
Mander v. Falcke (1891)	8 B.C. 280	10 B.C.R. 87, 88, 93.
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Manchester Advance, etc., Co. v. Walton (1892)	62 L.T.Q.B. 158	8 B.C.R. 3.
Manchester Banking Co. v. Parkinson	22 Q.B.D. 173	4 B.C.R. 452.

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Manchester, Sheffield and Lincolnshire Railway Company v. Woodcock (1871)	25 L.T.N.S. 336	7 B.C.R. 11.
Manchester, Sheffield and Lincolnshire Railway Company v. Brown (1883)	8 App. Cas. 703	9 B.C.R. 102, 108.
Manchester Ship Canal Co. v. Manchester Racecourse Co. (1901)	2 Ch. 37	9 B.C.R. 9.
Mander v. Evans	5 T.L.R. 75	3 B.C.R. 23.
Mander v. Falcke (1891)	3 Ch. 493	5 B.C.R. 147, 149.
Mander v. Falcke (1891)	3 Ch. 488	9 B.C.R. 434.
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Manley v. St. Helen's Canal	27 L.J.Ex. 159	6 B.C.R. 9.
Mann v. Nunn (1874)	30 L.T.N.S. 527	6 B.C.R. 515.
Mann v. Western Assurance Co.	19 U.C.Q.B. 326	4 B.C.R. 350.
Manners v. Boulton (1843)	6 U.C.Q.R.O.S. 668	8 B.C.R. 137.
Mansel v. Clanricarde	54 L.J.Ch. 982	4 B.C.R. 56, 58, 60.
Mansell, Re	7 Ch.D. 711	5 B.C.R. 606.
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Manufacturers' Life Insurance Co., The, v. Anctil (1897)	28 S.C.R. 103	9 B.C.R. 478.
Manson v. Howison (1894)	4 B.C. 404	6 B.C.R. 542.
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Marchant v. Morton, Down & Co. (1901)	2 K.B. 829	9 B.C.R. 486.
Marcus & Co. v. The Credit Lyonnaise London Agency	50 Law Times 194	1 B.C.R., pt. II., 360.
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Margate Pier Company v. Perry (1876)	W.N. 53	6 B.C.R. 178, 179.
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Margetson and Jones, In re	66 L.J.Ch. 619	6 B.C.R. 162.
Marino v. Sproat		1 M.M.C. 133, 136.
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Markwick v. Hardingham	43 L.T.N.S. 650	3 B.C.R. 426.
Markham v. Markham (1880)	16 Ch.D. 1	6 B.C.R. 491.
Markland, The (1871)	24 L.T.N.S. 596	6 B.C.R. 491.
Marpesia, The (1872	L.R. 4 P.C. 212	10 B.C.R. 515.
Marquis of Biddle Cope and The Assessment Act, Re (1896)	5 B.C. 37	9 B.C.R. 210.
Marquis Townshend, The, v. Strangroom (1801)	6 Ves. 328	10 B.C.R. 498.
Marrin v Graver	8 Ont. 39	5 B.C.R. 347.
Marney v. Scott (1899)	1 Q.B. 986	10 B.C.R. 12.
Marsh v. Horne	5 B. & C. 322	1 B.C.R., pt. II., 181.
Marsh v. Webb (1892)	15 P.R. 64	10 B.C.R. 384.
Marsh v. Isaacs (1876)	45 L.J.C.P. 505	7 B.C.R. 438.
Marsh v. Joseph (1897)	1 Ch. 246	6 B.C.R. 255.
Marsh et al. v. Webb et al. (1892)	15 P.R. 64	7 B.C.R. 378, 512.
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Marshall v. May (1899)	12 Man. 381	8 B.C.R. 310.
Marshall v. McRae	16 O.R. 495; 17 O.A.R. 139	3 B.C.R. 137.
Marshall v. Jamieson (1877)	42 U.C.Q.B. 115	9 B.C.R. 348, 351.
Marshfield, In re	34 Ch.D. 721, 723	2 B.C.R. 48, 50.

Mar-May] Name of Case.	Where Found.	Reference.
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Marriner v. Bishop of Bath and Wells (1863	P. 145	10 B.C.R. 161.
Marriott v. Chamberlain (1886)	17 Q.B.D. 154	10 B.C.R. 24.
Martano v. Mann (1880)	14 Ch.D. 419	10 B.C.R. 225.
Marten v. Rocke, Eyton & Co.	53 L.T. 846	2 B.C.R. 23.
Martin v Great Northern Ry. Co. (1855)	24 L.J.C.P. 209	8 B.C.R. 390.
Martin v Great Northern Ry. Co. (1855)	24 L.J.C.P. 209	9 B.C.R. 268.
Martin, In re Hunt v. Chambers	L.R. 20 Ch.D. 365	1 B.C.R., pt. II., 173, 174.
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Martin v. Barbour (1891)	140 U.S. 634	10 B.C.R. 498.
Martin v. Pycroft (1852)	2 D.E.M. & G. 785	1 B.C.R., pt. II., 60.
Martin v. Crow	22 U.C.R. 485	1 B.C.R., pt. II., 5.
Martin v. Great Indian Peninsular Ry. Co.	L.R. 3 Ex. 9	1 B.C.R., pt. II., 241.
Martin v. Mackonochie	3 Q.B.D. 775	4 B.C.R. 462, 463.
Martin v. McAlpine	8 O.A.R. 675	8 B.C.R. 310.
Martin v. Morden (1894)	9 Man. 565	6 B.C.R. 375.
Martin v. Pye's Trusts, Re (1880)	42 L.T.N.S. 247	9 B.C.R. 385.
Martin v. Sampson (1897)	26 S.C.R. 707	2 B.C.R. 234.
Martins, Ex parte	9 Dow 194 (1840)	9 B.C.R. 118, 121, 125, 126, 127, 415; 1 M. M.C. 67.
Maritime Bank of Canada v. Receiver-Gen. of New Brunswick (1892)	61 L.J.P.C. 77	1 M.M.C. 119, 120, 121.
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Marquette Elections, Re (1896)	11 Man. 381	1 M.M.C. 471.
Mary Lord v. Commissioners for City of Sydney	12 Moo. P.C. 497	1 B.C.R., pt. I., 116.
Marzetti v. Williams (1830)	J.B. & Ad. 415	8 B.C.R. 210.
Maskelyne & Cooke v. Smith (1903)	19 T.L.R. 270	9 B.C.R. 489.
Mason v. Armitage	13 Ves. 25	6 B.C.R. 236.
Mason v. Barker	1 C. & K. at 111	3 B.C.R. 291.
Mason v. Harris (1879)	11 Ch.D. 97	6 B.C.R. 500.
Mason v. Johnston	20 O.A.R. 414	5 B.C.R. 296.
Mason v. Johnston (1893)	20 A.R. 412	9 B.C.R. 262.
Mason & Son v. Mogridge (1892)	8 T.L.R. 805	7 B.C.R. 84.
Mason v. South Norfolk Ry. Co. (1889)	19 Ont. 132	10 B.C.R. 200.
Maspans & Hermano v. Mildred	9 Q.B.D. 53	2 B.C.R. 23.
Massam v. Thorley's Cattle Food Co. (1880)	4 Ch.D. 478	10 B.C.R. 457.
Massey v. Gibson	7 Man. R. 172	2 B.C.R. 164.
Massey v. Gibson (1890)		7 B.C.R. 350.
Massey v. Heynes	21 Q.B.D. 330	5 B.C.R. 504.
Massey v. Heynes (1888)	21 Q.B.D. 330	9 B.C.R. 446, 449.
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Master v. Madison County Ins. Co.	2 Barbour, 628	5 B.C.R. 298.
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Masters v. Jones & Co. (1894)	10 T.L.R. 403	10 B.C.R. 16.
Masuret v. Stewart	22 O.R. 290	2 B.C.R. 268, 269.
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Matheson v. Pollock (1893)	3 B.C. 74	9 B.C.R. 483, 488, 490.
Mathews v. Baxter	L.R. 8 Exc. 132	2 B.C.R. 375.
Mathews v. Ham. Powder Co.	14 O.A.R. 261	2 B.C.R. 143.
Mathews v. Ham. Powder Co. (1887)	14 O.A.R. 261	6 B.C.R. 567, 578.
Mathews v. Ham. Powder Co. (1887)	14 A.R. 261	9 B.C.R. 554.
Matthew, Ex parte	12 Q.B.D. 506	5 B.C.R. 666.
Matthews v. Munster (1887)	20 Q.B.D. 141	7 B.C.R. 193.
Matthews v. The City of Victoria (1897)	5 B.C. 284	7 B.C.R. 364, 368.
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Maule v. Murray	7 T.R. 470	5 B.C.R. 513.
Maund v. Monmouthshire Canal Co.	4 M. & G. 452	3 B.C.R. 178.
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May, In re (1885)	28 Ch.D. 516	7 B.C.R. 340, 311; 1 M.M.C. 393.
May, In re (1885)	28 Ch.D. 516	9 B.C.R. 366.
May v. Burdette	9 Q.B. 101	2 B.C.R. 101, 102.
May v. Chapman	16 M. & W. 355	5 B.C.R. 557.
May v. Platt (1900)	1 Ch. 616	10 B.C.R. 459.
May v. Chidley (1894)	1 Q.B. 451, 453	3 B.C.R. 274, 277.
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May v. Chidley (1894)	1 Q.B. 451-453	9 B.C.R. 161.
May v. Wood	3 Bro. C. Ch. 471	3 B.C.R. 350.
May v. Lane (1894)	64 L.J.Q.B. 236	10 B.C.R. 208.
Maybury v. Mudie	5 C.B. 283	3 B.C.R. 28.

McE-McW] Name of Case.	Where Found.	Reference.
McEdie v. Watt	1 Can.L.J. 722	4 B.C.R. 464.
McGarrahan v. The New Idria Mining Company (1874)	11 Morr. 641	6 B.C.R. 410.
McGarvey v. The Corporation of Strathroy (1885)	10 A.R. 631	8 B.C.R. 399.
McGarvey v. Strathroy	10 Ont.A.R. 631	2 B.C.R. 10.
McGiffin v. Palmer Shipbuilding Co.	10 Q.B.D. 5	3 B.C.R. 227.
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McGinnis v. Egbert (1884)	15 Morr. 329	6 B.C.R. 400; 1 M.M.C. 216.
McGrath, In re (1893)	1 Ch. 143	6 B.C.R. 75.
McGregor v. McMichall	41 U.C.R. 128	1 B.C.R., pt. II., 60.
McGuire v. Miller (1902)	9 B.C. 1	9 B.C.R. 232.
McHenry v. Lewis (1882)	22 Ch.D. 397	9 B.C.R. 171, 365, 367.
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McIntyre v. Betcher	14 C.B.N.S. 654	3 B.C.R. 137.
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McKay v. Crysler (1879)	3 S.C.R. 436	7 B.C.R. 24.
McKay v. Nanton (1891)	7 Man. 250	8 B.C.R. 310.
McKay Bros. v. Victoria Yukon Trading Co. (1902)	9 B.C. 37	9 B.C.R. 107.
McKelvey v. Le Roi Mining Co. (1902)	9 B.C. 62 1 M.M.C. 477. Supp't. p. 2	10 B.C.R. 345; 1 M.M.C. 319, 381.
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McKenna v. Powell	20 U.C.C.P. 394	2 B.C.R. 338.
McKenzie v. British Co.	6 App.Cas. 82 L.R. 7 Ch.D. 682	5 B.C.R. 535. 1 BC.R., pt. II., 67.
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McKenzie v. McGowan & Bell-Irving	B.C., case not reported	1 B.C.R., pt. II., 75.
McKenzie v. Corporation of Victoria		1 M.M.C. 301.
McKenzie v. Corporation of Victoria (1879)	Sup.Ct. Record No. 4, 157	6 B.C.R. 476.
McKenzie v. Hesketh	7 Ch.D. 675	6 B.C.R. 239.
McKinnon v. McNeill (1882)	16 N.S. 25	9 B.C.R. 309.
McKinnon v. Penson	9 Ex. 609	5 B.C.R. 640, 649.
McLaughlin v. United States (1882)	107 U.S. 526.	5 B.C.R. 430; 1 M.M.C. 184.
McLean's Case	B.C. Case not reported	1 B.C.R., pt. I., 196, 199; pt. II., 210, 209, 244.
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McLean v. Garland	13 S.C.R. 367	2 B.C.R. 33.
McLean v. Garland	13 S.C.R. 366	3 B.C.R. 370.
McLean v. Jacobs (1834)	1 N.S. 9	10 B.C.R. 217.
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McLellan v. Harris et al (1897)	6 B.C. 257	7 B.C.R. 127.
McLenaghan v. Hetherington (1892)	8 Man. 357	7 B.C.R. 134.
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McLeod v. Artola Brothers (1889)	5 A.R. 521	6 B.C.R. 515.
McLeod v. Noble (1897)	24 A.R. 459; 28 Ont. 528	10 B.C.R. 151.
McLeod v. Noble (1897)	28 Ont. 528	9 B.C.R. 566.
McLeod v. Crow's Nest (1903)	10 B.C. 103	10 B.C.R. 222.
McManus v. Bark (1870)	L.R. 5 Ex. 65	5 B.C.R. 327; 1 M.M.C. 482.
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McMullen v. Free	13 Ont. 57	4 B.C.R. 115.
McMullen v. Williams (1880)	5 A.R. 521 L.R. 5 Eq. 527	6 B.C.R. 515. 4 B.C.R. 417
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McNair v. Audenshaw Co. (1891)	2 Q.B. 502	5 B.C.R. 240; 1 M.M.C. 146.
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McPherson v. Irvine (1895)	26 Ont. 438	7 B.C.R. 120.
McQuay v. Eastwood	12 Ont. 402	5 B.C.R. 557.
McRae v. Corbett (1890)	6 Man. 426	7 B.C.R. 30.
McRae v. Marshall (1891)	19 S.C.R. 10	8 B.C.R. 300.
McRae, In re (1886)	32 Ch.D. 613	9 B.C.R. 234.
McShane v. Kenkle (1896)	44 Pac.Rep. 979	5 B.C.R. 418, 429; 1 M.M.C. 175, 183.
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McWhurter v. Royal Can. Bank	17 Gr. 481	2 B.C.R. 34.

Mey-Mol] Name of Case.	Where Found.	Reference.
Meydenbauer v. Stevens et al (1897)	78 Fed.Rep. 787	6 B.C.R. 532; 1 M.M.C. 360.
Meyers v. Kendrick	9 P.R. 363	5 B.C.R. 49.
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North Noonday Mining Co. v. Orient Mining Co. (1880)	11 Q.B.D. 38	5 B.C.R. 272.
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Northern Pacific Express Company, The, v. Martin (1896)	26 S.C.R. 135	8 B.C.R. 207.
Northern Pacific Railway Co., The, v. Grant (1895)	24 S.C.R. 546	9 B.C.R. 222.
Northey Stone Company v. Gidney (1894)..	1 Q.B. 99	9 B.C.R. 440.
Northumberland Avenue Hotel Co., In re ..	33 Ch.D. 16	6 B.C.R. 255.
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North-West Transportation Company, Limited, v. Beatty (1887)	12 App. Cas. 589	6 B.C.R. 502.
North-West Transportation Company, Limited, v. McKenzie (1895)	25 S.C.R. 38	9 B.C.R. 101, 107.
Norton v. L. & N. W. R. Co.	11 Ch.L. 116	5 B.C.R. 138. 7 B.C.R. 127.
Norton v. Seymour	3 B.C. 792	4 B.C.R. 424.
Nottawasaga v. Ham. Ry. Co.	16 Ont. App. 52	2 B.C.R. 380.
Nouvion v. Freeman (1889)	L.R. 15 App. Cas. 1	
Nouvion v. Freeman (1887)	35 Ch.D. 704	
Nouvion v. Freeman (1887)	37 Ch.D. 244	6 B.C.R. 340, 344, 348, 349, 350, 351, 352.
Nouvion v. Freeman (1888)	15 App. Cas. 37 Ch. D. 256	9 B.C.R. 216, 222, 223, 224, 230.
Nugent v. Smith (1876)	1 C.P.D. 423	9 B.C.R. 95.
Nuth v. Tamplin (1881)	8 Q.B.D. 247	8 B.C.R. 44, 127; 1 M. M.C. 430.
Oakes v. Turquand	L.R. 2 H.L. 325	3 B.C.R. 106, 107. 4 B.C.R. 383, 392.
Oakwell Collieries, Re	7 Ch.D. 706	5 B.C.R. 221.
Oastler v. Henderson (1877)	2 Q.B.D. 575.	10 B.C.R. 82.
Obicini v. Bligh (1832)	8 Bing. 335	6 B.C.R. 348, 352.
O'Brian v. Regirfa (1880)	4 Can.S.C.R. 575.....	1 B.C.R., pt. II., 26.
O'Brien, In re (1889)	16 S.C.R. 209	6 B.C.R. 312.
O'Brien v. Cogswell	17 S.C.R. 444	5 B.C.R. 116.
O'Brien v. Cogswell (1890)	17 S.C.R. 463	7 B.C.R. 13, 14, 15, 22, 24, 26.
O'Brien v. Lewis	32 L.J.Ch. 695	4 B.C.R. 74, 76, 82, 84, 86.
O'Connell's Case	11 C. & L. 350	1 B.C.R., pt. II., 241.
O'Connell v. McNamara (1893)	3 Dr. & War. 411.....	9 B.C.R. 425.
O'Connell v. McNamara	3 Dr. & War. 411.....	5 B.C.R. 297.
O'Connell v. The Queen (1844)	11 Cl. & F. 155	9 B.C.R. 295, 296.
O'Connor v. Gemmill (1899)	26 A.R. 27	8 B.C.R. 303.
O'Connor v. The Star Newspaper Co., Ltd., (1893)	68 L.T.N.S. 146	8 B.C.R. 207.

Osb-Par] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Osborne v. Jackson (1883)	11 Q.B.D. 619	8 B.C.R. 347.
Osborne v. Kerr	17 U.C.R. 134	2 B.C.R. 164.
Osborne v. Kerr (1859)	17 U.C.Q.B. 144	9 B.C.R. 132; 1 M.M.C. 517.
Osborne v. London and North-Western Railway Company (1888)	21 Q.B.D. 220	3 B.C.R. 228, 249, 164; 1 M.M.C. 316.
		6 B.C.R. 582.
Osborne v. Jackson (1883)	11 Q.B.D. 619	10 B.C.R. 61.
Osborne v. Morgan (1888)	13 App. Cas. 234	6 B.C.R. 408, 410; 1 M.M.C. 8, 250, 377, 440, 490.
Osborne v. Morgan (1888)	13 App. Cas. 227	7 B.C.R. 44.
Osborne v. Morgan (1888)	13 App. Cas. 234	8 B.C.R. 102, 157.
Osborne v. Morgan (1888)	13 App. Cas. 227	9 B.C.R. 339.
Osgood v. Nelson	L.R. 5 H.L. 636	6 B.C.R. 282.
O'Shea v. O'Shea (1890)	15 P.D. 63	6 B.C.R. 241.
Osler v. Muter	19 O.A.R. 94	4 B.C.R. 97, 456.
Ostmeni v. McElrath (1886)	9 Pac. 731	10 B.C.R. 445.
Ostrom v. Sills	24 A.R. 526	6 B.C.R. 140, 241.
O'Sullivan v. Lake	15 Ont. 544	3 B.C.R. 428.
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Outram v. Morewood	3 East, 354	2 B.C.R. 384, 1 M.M.C. 199.
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Outwater v. Mullett (1890)	13 P.R. 509	9 B.C.R. 208.
Overton v. Freeman	11 C.B. 867	6 B.C.R. 28.
Owen v. Body (1836)	5 A. & E. 28	10 B.C.R. 189.
Owen, Ex parte	20 N.B.R. 487	4 B.C.R. 498.
Owen v. Wilkinson (1885)	5 C.B.N.S. 626	8 B.C.R. 209.
Owen v. Wyn (1878)	9 Ch.D. 29	7 B.C.R. 108.
Oxley v Holden (1860)	8 C.B.N.S. 666	9 B.C.R. 525.
Padstow Total Loss and Collision Assurance Association, In re (1882)	20 Ch.D. 137	7 B.C.R. 132.
Padstow Total Loss and Collision Assurance Association, In re (1882)	20 Ch.D. 137	9 B.C.R. 562, 565.
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Paget v. Marshall	28 Ch.D. 255	5 B.C.R. 67, 71. 6 B.C.R. 241, 252, 255.
Paisley v. Wills	18 Ont. App. R. 210.	3 B.C.R. 616.
Palin v. Reid	11 O.A.R. 63	3 B.C.R. 507, 509.
Pall Mall Gazette, In re	11 T.L.R. 122	5 B.C.R. 153.
Palliser v. Gurney	19 Q.B.D. 519 (C.A.)	3 B.C.R. 158.
Palmer v. Bate (1821)	6 Moore 28	9 B.C.R. 209.
Palmer v. Bate (1821)	6 Moore 28	10 B.C.R. 444, 447
Palmer v. Johnson	L.R. 12 Q.B.D. 32	1 B.C.R., pt. II. 58.
Palmer v. Locke	18 Ch.D. 381	4 B.C.R. 408.
Palmer v. Mallett	36 Ch.D. 411	2 B.C.R. 103, 104.
Palmer v. Palmer (1812)	1 O.B. 319	1 M.M.C. 285.
Palmer v. Paul (1900)	1 Q.B. 725	7 B.C.R. 397.
Palmer v. Temple	9 A. & E. 508	9 B.C.R. 373.
Palmer v. Wallbridge (1888)	15 S.C. 560	1 M.M.C. 505.
Pamphlet v. Irving	B.C. Case not reported	1 B.C.R., pt. I., 109, 164, 190, 237.
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Panton v. Cole (1841)	11 L.J.Q.B. 70	7 B.C.R. 438.
Panton v. Williams	2 T.C.	3 B.C.R. 522.
Panton v. Williams (1841)	22 R. 169	10 B.C.R. 484, 488, 491, 559.
Paradine v. Jane	Aleyn 27	1 B.C.R., pt. II., 360.
Parfitt v. Lawless	2 L.R. & D. 462.	3 B.C.R. 517, 521, 523, 588.
Parfitt v. Lawless (1872)	L.R. 2 P. & D. 462.	10 B.C.R. 549.
Park v. Phenix Insurance Co.	19 U.C.Q.B. 110	5 B.C.R. 331, 341.
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Parkdale v. West (1887)	12 App. Cas. 602	6 B.C.R. 410; 1 M.M.C. 166, 177.
Parkdale v. West (1887)	12 App. Cas. 602	1 B.C.R. 74, 77, 251.
Parke v. George	10 O.R. 496	4 B.C.R. 46.
Parke v. Ollatt	2 Phil. 323	2 B.C.R. 526.
Parke Gate Iron Co. v. Coates (1870)	L.R. 5 C.P. 634	8 B.C.R. 389, 390.
Parker, Re	L.T. (Dec., 1890)	2 B.C.R. 69.

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Pearce v. Chaplin	9 Q.B. 802	5 B.C.R. 152.
Pearce v. Foster (1886)	17 Q.B.D. 536	9 B.C.R. 537.
Pearce v. Watts	20 Eq. 492	5 B.C.R. 354; 1 M.M.C. 147.
Pearce v. Schweder & Co. (1897)	A.C. 520	9 B.C.R. 312.
Pearpoint et al. v. Graham (1818)	19 Fed. Cas. 61	9 B.C.R. 194.
Pearsall v. Western Union Telegraph Co. (1891)	21 Am. St. Rep. 662.	10 B.C.R. 77.
Pearsall v. Btierley Hill Local Board (1883)	11 Q.B.D. 735	
Pearsall v. Btierley Hill Local Board (1884)	9 App. Cas. 595	8 B.C.R. 342.
Pechell v. Watson (1841)	8 M. & W. 691	10 B.C.R. 332.
Peck et al. v. Queen	1 B.C.R., pt. II., 11.	1 B.C.R., pt. II., 329.
Peck v. The Queen (1884)	1 B.C.R., pt. II., 11.	8 B.C.R. 250.
Peck v. Harrison	50 Am. Rep. 627 (111).	2 B.C.R. 160.
Peck v. Reginam		1 M.M.C. 2.
Pellas v. Neptune Mar. Ins. Co.	5 C.P.D. 40	2 B.C.R. 220.
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Pellent v. Almoure		1 M.M.C. 2, 78, 229, 231, 372, 393, 433, 504, 528.
Pells v. Boswell	8 O.R. 680	3 B.C.R. 118.
Pember v. Mathers (1779)	1 Bro. C. C. 52	10 B.C.R. 498.
Pendergast v. Turton	L.J. 13 Ch. 269	1 B.C.R. pt. II., 26.
Pender v. War Eagle (1899)	7 B.C. 102	1 M.M.C. 319.
Pendlebury v. Greenhalgh	33 L.T.N.S. 373	6 B.C.R. 45.
Pendlebury v. Greenhalgh	1 Q.B.D. 36	5 B.C.R. 557, 646, 651.
Pendry v. O'Neil	7 Ont. P.R. 52	3 B.C.R. 79.
Penhallow v. Mersey Dock & Harbour Board (1859)	29 L.J.Ex. 21	10 B.C.R. 308.
Peninsular and Oriental Steam Navigation Co., The, v. Shand (1865)	3 Moore P.C. 272	9 B.C.R. 100.
Pennell v. Deffell (1853)	4 DeGex. M. & G. 372	2 B.C.R. 18, 22; 1 M. M.C. 200.
		5 B.C.R. 296, 388.
Pennimann v. Hill (1876)	24 W.R. 245	7 B.C.R. 31.
Pennsylvania Company v. Ray (1880)	102 U.S. 451	9 B.C.R. 467.
People ex rel. Hoyt, The, v. Commissioners of Taxes (1861)	23 N.Y. 228	9 B.C.R. 176.
People's Loan & Deposit Co. v. Grant	18 S.C.R. 262	3 B.C.R. 125, 126.
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People v. Naglee	1 Cal. 232	1 B.C.R., pt. I., 103, pt. II. 152, 261, 264.
People v. Raymond	34 Cal. R. 422	1 B.C.R., pt. I., 106.
People v. Sierra Buttes Quartz Mining Co.	39 Cal. 511	7 B.C.R. 30.
Perera v. Perera (1901)	A.C. 354	10 B.C.R. 543, 544.
Perkins, Ex parte	24 N.B. 66	5 B.C.R. 253.
Perkins v. Adcock	14 M. & W. 808	3 B.C.R. 81, 355.
Perkins v. Dangerfield	51 L.T.C.A. 535	1 B.C.R., pt. II., 173.
Perkins v. Dangerfield (1884)	51 L.T.N.S. 535.	9 B.C.R. 554.
Perkins v. Mississippi and Dominion S. S. Co., Ltd. (1884)	10 P.R. 200	7 B.C.R. 137.
Peru v. Peruvian Guano Co.	36 Ch.D. 489	5 B.C.R. 500.
Peruvian Guano Co. v. Dreyfus (1892)	App. Cas. 187	5 B.C.R. 54.
Petar v. Lailey	W.N. (81) 22	5 B.C.R. 508.
Peters v. Perry & Co. (1894)	10 T.L.R. 366	6 B.C.R. 565.
Peters v. Perry & Co. (1894)	10 T.L.R. 366	9 B.C.R. 158, 459.
Peters v. Sampson (1898)	6 B.C. 405	7 B.C.R. 157, 421; 1 M. M.C. 378, 430, 434, 435, 458, 490, 500, 504.
Peters v. Sampson (1898)	6 B.C. 405	8 B.C.R. 44, 49, 50, 156, 157.
Peterson v. Fredericks (1893)	15 P.R. 361	7 B.C.R. 450.
Peterson v. The Queen (1889)	2 Ex.C.R. 74	6 B.C.R. 408; 1 M.M.C. 8, 250.
Petley v. Eastern Counties Ry. Co.	8 Sim. 483	3 B.C.R. 51.
Petrel, The (1836)	3 Hagg. 300	6 B.C.R. 493.
Petrie v. Hunter et al. (1882)	2 Ont. 233	8 B.C.R. 200.
Peveril Gold Mines, Limited, In re (1898)	1 Ch. 122	9 B.C.R. 283.
Pfeiffer v. Midland Ry. Co.	18 Q.B.D. 243	3 B.C.R. 88, 89, 369. 4 B.C.R. 73.
Pharmaceutical Society, The, v. The London and Provincial Supply Association, Ltd. (1880)	5 Q.B.D.	7 B.C.R. 249, 251, 252

Phi-Pla] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Philadelphia and Reading Railroad Co. v. Derby (1852)	5 U.S. 467	9 B.C.R. 467.
Phelps v. St. Catharines Ry.	19 Ont. 501	4 B.C.R. 155.
Phene v. Popplewell (1862)	12 C.B.N.S. 334	10 B.C.R. 80, 81, 82, 82 1 M.M.C. 229.
Phillips v. Barnet (1876)	1 Q.B.D. 436	6 B.C.R. 433.
Phillips v. Barnet	2 Dow. N.S. 101	3 B.C.R. 270.
Phillips v. Clark (1857)	2 C.B.U.T. 156	
	26 L.J.C.P. 108	8 B.C.R. 56, 231.
Phillips v. Edwards	33 Beav. 440	5 B.C.R. 369.
Phillips v. Evans	12 M. & W. 309	1 B.C.R., pt. I., 118.
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Phillips v. Grand Trunk Ry. of Can. (1901	1 O.L.R. 28	8 B.C.R. 396.
Phillips v. Innes (1837)	4 Cl. & F. 234	7 B.C.R. 397.
Phillips v. London and South-Western Railway Co. (1879)	5 C.P.D. 280	10 B.C.R. 486.
Phillips v. Martin	15 App. Cas. 193.	2 B.C.R. 405, 410.
		5 B.C.R. 336.
		6 B.C.R. 24.
Phillips v. Martin (1890)	15 App. Cas. 193.	9 B.C.R. 538.
Phillips v. Munnings	3 Myl. & Cr. p. 315	2 B.C.R. 22.
Phillips v. Naylor	3 H. & H. 14	5 B.C.R. 500.
Phillips v. Phillips	4 DeG. F. & J. 205	3 B.C.R. 335.
Phillips v. Phillips (1878)	4 Q.B.D. 127	10 B.C.R. 110; 1 M.M.C. 237, 284.
Phillips v. Phillips (1878)	4 Q.B.D. 127	4 B.C.R. 450, 519.
Phillips v. Phillips	4 DeG. F. & J. 205	4 B.C.R. 450, 519.
Phillips v. Phillips (1888)	4 Q.B.D. 127	
Philips v. Ward (1863)	2 H. & C. 717	7 B.C.R. 310.
Philpot v. St. George's Hospital	6 H. & L. 338	3 B.C.R. 602.
Phœnix Bessemer Steel, In re	15 L.J.Ch. 11	5 B.C.R. 611.
Phœnix Life Assurance Co. v. Burgess & Stocks Case, Re (1887)	2 J. & H. 441	9 B.C.R. 216.
Phœnix Life Insurance Co. v. Raddin (1887)	120 U.S. 183	9 B.C.R. 177.
Phœphate Lime Co. v. Green	L.R. 7 C.B. 57	3 B.C.R. 105, 106.
Phosphate Lime Co. v. Green (1871)	L.R. 7 C.B. 43	9 B.C.R. 284.
Pierce, Ex parte (1869)	5 Chy. App. 16	8 B.C.R. 26.
Piche v. City of Quebec (1885)	Cassels Digest 488	8 B.C.R. 388.
Pickard v. Smith	10 C.B.N.S. 470	6 B.C.R. 28, 48.
Picton v. Geldert (1893)	A.C. 524	6 B.C.R. 23, 24, 31.
Pickup v. Thames Insurance Co. (1878)	3 Q.B.D. 600	8 B.C.R. 231.
Pidcock v. Leicester	3 M. & S. 371	1 B.C.R., pt. I., 247.
Pierce v. Palmer (1887)	12 P.R. 308	8 B.C.R. 423.
Pierce v. Richardson	37 N.H. 306	7 B.C.R. 30.
Pierce v. New Hampshire	5 How 504	5 B.C.R. 296.
Pierce v. Palmer	12 P.R. 308	5 B.C.R. 272.
Pierce v. Woodward (1828)	23 Mass. 206	9 B.C.R. 309.
Pigeon v. The Recorder's Court and The City of Montreal (1890)	17 S.C.R. 506	8 B.C.R. 429.
Pigeon v. Moore (1890)	23 N.S. 246	9 B.C.R. 161.
Pike v. Cave	68 L.T.N.S. 651	6 B.C.R. 224.
Pike v. Ongley et al.	18 Q.B.D. 710	3 B.C.R. 452.
Pike v. Street (1828)	Moo. & M. 226	10 B.C.R. 102.
Pilbrow v. Pilbrow's Atmospheric Ry. and Canal Propulsion Co. (1848)	5 D. & L. 730.	9 B.C.R. 494.
Pilgrim v. Southampton & Dorchester Ry. Co.	8 C.B. 25	5 B.C.R. 55.
Pilkington v. Baker	24 W.R. 234	5 B.C.R. 322.
Pilkington v. Cooke	16 M. & W. 615	4 B.C.R. 349.
Pilling v. Stewart et al. (1895)	4 B.C. 94	10 B.C.R. 70, 72.
Pilley v. Robinson (1887)	20 Q.B.D. 155	7 B.C.R. 452.
Pilley v. Robinson (1888)	20 Q.B.D. 155	8 B.C.R. 33.
Pilling v. Pilling (1865)	70 DeG. J. & S. 162	9 B.C.R. 283.
Pince v. Beattie (1863)	32 L.J.Ch. 734	8 B.C.R. 303, 304.
Pine v. Roncoroni (1892)	1 Ch 633	9 B.C.R. 290.
Pink v. Federation of Trades	8 T.L.R. 216, 711	2 B.C.R. 283, 291, 2
Pioneer of Mashonaland Syndicate, In re	3 Rep. 265	5 B.C.R. 93.
Pioneer of Mashonaland Syndicate, In re (1893)	1 Ch. 733	9 B.C.R. 110.
Pitfield v. Oakes et al. (1893)	25 N.S. 116	9 B.C.R. 487.
Pitt v. New	8 B. & C. 654	5 B.C.R. 511.
Pixley v. Clarke	35 N.Y. 520	6 B.C.R. 11.
Place v. Alcock	4 F. & F. 1074	5 B.C.R. 354; 1 M.M.C. 147.
Plant v. Bourne (1897)	66 L.J Ch. 643	
	2 Ch. 281	10 B.C.R. 497, 500, 5 508.

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Precious Metals Case: Bainbridge v. Esquimalt & Nanaimo Railway Co. (1896)	A.C. 561	1 M.M.M.C. 13.
Prendergast v. Turton (1843)	13 L.J.Ch. 269	5 B.C.R. 321; 1 M.M.C. 479.
Preston Banking Co. v. Alsup (1895)	1 Ch. 141	
Preston Banking Co. v. Alsup (1895)	12 R. 147	4 B.C.R. 204, 205.
Preston Banking Co. v. Alsup (1895)	1 Ch. 141	6 B.C.R. 122.
Preston Banking Co. v. Alsup (1895)	1 Ch. 141	9 B.C.R. 64.
Preston Banking Co. v. Luck	27 Ch.D. 497	6 B.C.R. 241.
Preston v. Luck (1884)	27 Ch.D. 497	9 B.C.R. 69, 299.
Preston v. Lamont	L.R. 1 Ex.D. 361	1 B.C.R., pt. II., 85, 86.
Prestney v. Corporation of Colchester (1883)	24 Ch.D. 376	10 B.C.R. 176.
Preston Banking Co. v. William Alsup & Sons (1895)	1 Ch. 141	10 B.C.R. 107.
Pretty v. Solly	26 Beav. 606	4 B.C.R. 439, 440.
Price v. Berrington	3 Mac. N. & G. 485	2 B.C.R. 386, 389.
Price v. Bradley	16 Q.B.D. 148	5 B.C.R. 489.
Price v. Crouch	60 L.J.Q.B. 767	6 B.C.R. 162.
Price v. Manning (1889)	42 Ch.D. 372	7 B.C.R. 357.
Price v. North	2 Y. & Coll. 620; Ex. Cas.	1 B.C.R., pt. I., 80.
Price v. Price (1887)	35 Ch.D. 297	7 B.C.R. 443.
Priestly v. Fowler (1837)	3 M. & W. 1	6 B.C.R. 565, 571, 667.
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Prince v. International & Great Northern R. Co. (1885)	19 Camp.R.C. 102	8 B.C.R. 138.
Prince v. Oriental Bank Corporation (1878	21 Am. & Eng. R. Cas. 152	
	3 App.Cas. 323	8 B.C.R. 213.
Princess Alice, The (1849)	3 W.Rob. 138	10 B.C.R. 380.
Pritchard v. Draper (1830)	1 Russ. & M. 191	9 B.C.R. 309.
Pritchard v. Lang (1889)	5 T.L.R. 639	7 B.C.R. 7, 11.
Probert v. Rogers	3 D.P.C. 170	4 B.C.R. 202.
Proctor v. Bayley	42 Ch.D. 390	3 B.C.R. 453.
Proctor v. Bennis (1887)	57 L.J.Ch. 17	7 B.C.R. 209, 210, 215, 216, 217, 218.
Proctor v. Bennis (1887)	57 L.J.Ch. 11; 36 Ch. D. 740	9 B.C.R. 524, 525.
Prosser v. Hyde	1 T.R. 414	2 B.C.R. 337.
Prosser v. Edmonds (1835)	41 R.R. 322; 1 Y. & C. 481	16 B.C.R. 35.
Provincial Fisheries, In re (1896)	26 S.C.R. 444	7 B.C.R. 225, 226, 240, 241, 243.
Provincial Fisheries, In re (1898)	A.C. 701	10 B.C.R. 489.
Prudential Assurance Co. v. Edmonds (1877)	2 App.Cas. 487	9 B.C.R. 204.
Pryce v. Monmouthshire Canal & Railway Companies (1879)	4 App.Cas. 203	4 B.C.R. 270.
Pryer v. Monmouthshire Canal Co.	4 App.Cas. 202	9 B.C.R. 193, 194.
Pugh v. Duke of Leeds (1777)	2 Cowp. 714	8 B.C.R. 157; 1 M.M.C. 491.
Pugh v. Golden Valley Railway Co. (1880)	15 Ch.D. 334	8 B.C.R. 279.
Pugh v. Kerr (1840)	8 Dowl. 218	9 B.C.R. 176.
Pullman's Palace Car Co. v. Pennsylvania (1890)	141 U.S. 18	3 B.C.R. 433, 440.
Pulsford v. Richards	17 Beav. 87	9 B.C.R. 194.
Purcell v. Kennedy: Glengarry Election Case (1888)	14 S.C.R. 453	8 B.C.R. 321.
Purdon v. Ontario Loan & Debenture Co. (1892)	22 Ont. 597	5 B.C.R. 46, 47.
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Quai Shing, In re (1898)	6 B.C. 88	7 B.C.R. 291.
Quartz Hill Min. Co. v. Beal	20 L.R. Ch.D. 508	2 B.C.R. 296.
Quartz Hill Min. Co. v. Eyre	11 Q.B.D. 674	5 B.C.R. 499.
Quebec, City of, The, v. Her Majesty the Queen (1894)	24 S.C.R. 420	7 B.C.R. 227.
Oueddy Driving Boom Co. v. Davidson	10 S.C.R. 222	2 B.C.R. 313.
Queen, The, v. Ashton (1852)	1 E. & B. 289	7 B.C.R. 179.
Queen, The, v. Barclay (1881)	51 L.J.M.C. 27	9 B.C.R. 114.
Queen, Her Majesty, The, v. The Bank of Nova Scotia et al. (1885)	11 S.C.R. 1	7 B.C.R. 228.
Queen, The, v. Bradlaugh (1877)	2 Q.B.D. 572	6 B.C.R. 370; 1 M.M.C. 278.

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Queen, The, v. Burah (1878)	3 App Cas. 906	6 B.C.R. 409; 1 M.M.C. 250.
Queen, The, v. Brennant (1896)	4 C.C.C. 41	10 B.C.R. 559.
Queen v. Canadian Agricultural Coal Co. (1895)	24 S.C.R. 713	1 M.M.C. 505
Queen ex rel. Andrews v. Collins	2 Q.B.D. 30	3 B.C.R. 59, 60.
Queen, The, v. Coney (1882)	8 Q.B.D. 534	9 B.C.R. 3.
Queen v. Cooper (1846)	15 L.J.Q.B. 206	8 B.C.R. 37.
Queen v. Crossen (1899)	3 C.C.C. 152	8 BC.R. 110, 112.
Queen, The, v. Maria Clarke (1857)	1 C.C.C. 211	10 B.C.R. 288.
Queen v. De Grey (1900)	7 E. & B. 186	7 B.C.R. 293, 296.
Queen v. Douglas (1896)	1 Q.B. 524	8 B.C.R. 157; 1 M.M.C. 490.
Queen, The, v. Demers	22 S.C.R. 482	5 B.C.R. 402, 424, 437; 1 M.M.C. 67, 165, 174, 180, 440.
Queen, The, v. Demers (1895)	22 S.C.R. 482	8 B.C.R 102.
Queen v. Diplock	L.R. 4 Q.B. 549	3 B.C.R. 59, 60.
Queen v. Doutre	6 S.C.R. at 394	3 B.C.R. 385.
Queen v. Doutre (1884)	9 App. Cas. 745	9 B.C.R. 412, 414, 415.
Queen v. Edmundson (1859)	28 L.J.M.C. 213	6 B.C.R. 441; 1 M.M.C. 293.
Queen v. Farwell (1887)	14 S.C. 392	
Queen v. Farwell (1893)	3 Ex. 271	1 M.M.C. 67.
Queen v. Farwell (1894)	22 S.C. 553	
Queen v. Fitzgerald (1898)	1 C.C.C. 420	9 B.C.R. 34.
Queen v. Gray (1900)	5 C.C.C. 24	9 B.C.R. 273.
Queen, The, v. The Great North of England Railway Company (1846)	9 Q.B. 314	7 B.C.R. 249, 255, 258, 259.
Queen v. Gibson (1887)	18 Q.B.D. 537	10 B.C.R. 559.
Queen, The, v. Gyngall (1893)	2 Q.B. 232	7 B.C.R. 294, 295.
Queen v. Hammond (1898)	29 Ont. 211	10 B.C.R. 288.
Queen v. Harden	2 E. & B. 188	2 B.C.R. 98, 100.
Queen v. Inhabitants of Brighton (1861)	1 B. & S. 447	8 B.C.R. 93.
Queen v. Jones et al. (1884)	2 Q.B. 382	6 B.C.R. 89, 103.
Queen v. Judge of City of London Court (1892)	1 Q.B. 273	4 B.C.R. 222, 245.
Queen v. Judge of City of London Court (1892)	1 Q.B. 273	10 B.C.R. 523.
Queen v. Judge of City of London Court	1 Q.B. 273	7 B.C.R. 504.
Queen v. The Bishop of Oxford (1879)	48 L.J.Q.B. 609	9 B.C.R. 114.
Queen v. The Justices of Essex (1892)	61 L.J.M.C. 120	7 B.C.R. 400.
Queen v. Middlesex (1843)	12 L.J.M.C. 59	9 B.C.R. 320.
Queen, The, v. The Justices of Shropshire (1838)	8 A. & D. 173	9 B.C.R. 81.
Queen v. La Force (1884)	4 Ex.C.R. 14	9 B.C.R. 525.
Queen v. Lapierre (1897)	1 C.C.C. 413	7 B.C.R. 258, 259.
Queen v. Registrar of Leeds County Court (1886)	55 L.J.Q.B. 305	10 B.C.R. 174.
Queen v. The Leeds and Bradford Railway Company (1852)	18 A. & E. (N.S.) 343	6 B.C.R. 482, 485.
Queen v. The Local Government Board (1882)	10 Q.B.D. 321	8 B.C.R. 428.
Queen v. London County Council (1893)	2 Q.B. 491	6 B.C.R. 408; 1 M.M.C. 249.
Queen v. Lord Mayor of London (1886)	16 Q.B.D. 772	6 B.C.R. 433.
Queen v. McBerny (1897)	3 C.C.C. 339	9 B.C.R. 254, 256, 257.
Queen v. Meyer	1 Q.B.D. 173	2 B.C.R. 265.
Queen v. Murdoch (1900)	4 C.C.C. 82	3 B.C.R. 22.
Queen v. Payne (1896)	1 Q.B. 577	6 B.C.R. 312.
Queen ex rel. Piddington v. Riddell	4 Ont. P.R. 80	3 B.C.R. 59.
Queen, The, v. Smith (1873)	L.R. 8 Q.B. 146	6 B.C.R. 469; 1 M.M.C. 296.
Queen, The, v. Steele (1876)	L.R. 1 Q.B. 482	8 B.C.R. 277.
Queen v. Stevens (1898)	31 N. Sc. Rep. 124	7 B.C.R. 54.
Queen v. St. Mary Warwick (1853)	22 L.J.M.L. 109	9 B.C.R. 55.
Queen v. Taylor	36 U.C.Q.B. 183	4 B.C.R. 261.
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Queen v. Theriault (1877)	2 C.C.C. 444	10 B.C.R. 559.
	1 S.C.R. 65	6 B.C.R. 481; 7 B.C.R. 374, 378, 379, 380, 384.
Queen v. Theriault (1894)	2 C.C.C. 444	8 B.C.R. 399.
Queen v. Thompson (1893)	2 Q.B. 12	6 B.C.R. 145.
Queen, In re, v. The Toronto Railway Company (1898)	30 Ont. 224	
	2 C.C.C. 47	7 B.C.R. 249, 251.

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Queen, The, v. Townsend (1896)	3 C.C.C. 29	9 B.C.R. 295, 296.
Queen, The, Tyler and the International Commercial Company, Limited (1891)	2 Q.B. (C.A.) 588	7 B.C.R. 251.
Queen, The, v. The Victoria Lumbering and Manufacturing Company (1897)	5 B.C. 288	8 B.C.R. 290.
Queen, The, v. Vine	L.R. 10 Q.B. 195	5 B.C.R. 614.
Queen, The, v. Vaughan (1868)	L.R. 4 Q.B. 190	8 B.C.R. 342.
Queen, The, v. Weir (1899)	3 C.C.C. 102	7 B.C.R. 250, 254, 259.
Queen, The, v. Williams	9 App. Cas. 413	6 B.C.R. 32.
Queen Victoria Niagara Falls Park Commissioners v. Howard et al. (1889)	13 P.R. 14	4 B.C.R. 507. 6 B.C.R. 443.
Queen v. Leathem (1901)	A.C. 495	10 B.C.R. 432, 490.
Queen's Insurancce Company, The, v. Parsons (1881)	1 Cartw. 265	8 B.C.R. 30.
Queensland National Bank v. Peninsular and Oriental Steam Navigation Co. (1898)	1 Q.B. 567	8 B.C.R. 231, 239. 3 B.C.R. 410.
Quene Ordinance Case		
Quigley v. Waterloo Manufacturing Co. (1901)	1 Ont. 606	8 B.C.R. 263.
Quilter v. Mapleson (1882)	9 Q.B.D. 675	5 B.C.R. 613, 614; 7 B.C.R. 378.
Quin v. Leathem (1901)	A.C. 495	8 B.C.R. 373.
Quin v. Leathem (1901)	A.C. 495	9 B.C.R. 147.
Quinlan v. The Union Fire Insurance Company (1883)	31 U.C.C.P. 618 8 A.R. 376	5 B.C.R. 338. 7 B.C.R. 340, 341.
Quintal v. Chalmers (1898)	12 Man. 231	8 B.C.R. 13.
Quirt v. The Queen (1891)	19 S.C.R. 510	8 B.C.R. 290.
Raatz, In re (1897)	2 Q.B. 80	5 B.C.R. 666.
Raba v. Ryland (1819)	21 R.R. 806; Gow. 132.	9 B.C.R. 484, 486.
Radley v. London and North-Western Railway Company (1876)	1 App. Cas. 754	3 B.C.R. 228, 235; 1 M.M.C. 315.
Radley v. London and North-Western Railway Company (1876)	1 App. Cas. 754	8 B.C.R. 395, 263.
Radley v. London and North-Western Railway Company (1876)	1 App. Cas. 754	10 B.C.R. 350.
Rae v. Gifford (1901)	8 B.C. 272	6 B.C.R. 582. 9 B.C.R. 81.
Raikes v. Townsend	2 Smith's Rep. 9	5 B.C.R. 189.
Railton v. Wood	15 App. Cas. 363	4 B.C.R. 155, 325.
Railton v. Wood (1890)	15 App. Cas. 366	5 B.C.R. 412; 1 M.M.C. 172.
Railway Commr. v. Brown	13 App. Cas. 133	2 B.C.R. 405.
Railroad Co. v. Husen	95 U.S.S.C.R. 465	1 B.C.R., pt. II., 261, 262.
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Railway Sleeper Supply Company, In re (1885)	29 Ch.D. 204	9 B.C.R. 193.
Railway Time Table Publishing Co.	12 R. 199	5 B.C.R. 93.
Railway Time Table Publishing Co., In re Exp. Sandys	42 Ch.D. 98	3 B.C.R. 105.
Rains v. Buxton	14 Ch.D. 537.	2 B.C.R. 137.
Rainy v. Bravo	L.R. 4 P.C. 287, 298.	2 B.C.R. 144.
Rajotte v. The Canadian Pacific Railway Company (1889)	5 Man. 372	6 B.C.R. 563, 566, 567, 568, 575, 577, 578.
Rajotte v. The Canadian Pacific Railway Company (1889)	5 Man. 372	9 B.C.R. 554.
Raleigh v. Goschen (1898)	1 Ch. 73	8 B.C.R. 395.
Raleigh v. Goschen (1898)	1 Ch. 73	10 B.C.R. 167.
Ramsay v Margaret (1894)	2 Q.B. 18	4 B.C.R. 144. 6 B.C.R. 529.
Ram Coomar Coondo v. Chunder Canto Mookerjee (1876)	2 App. Cas. 187	10 B.C.R. 311, 320.
Ram Coomar Coondo v. Chunder Canto Mookerjee (1876)	2 App. Cas. 186	8 B.C.R. 303.
Rammelmeyer v. Curtis (1900)	8 B.C. 383	8 B.C.R. 307; 1 M.M.C. 2, 289, 433, 504
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Ramsden v. Langley (1705)	2 Vern. 536	10 B.C.R. 88.
Ramsden v. Lupton	L.R. 9 Q.B. 28	6 B.C.R. 149.
Randall v. Lithgow	12 Q.B.D. 525	3 B.C.R. 304.
Randall v. Newsom	2 Q.B.D. 102	4 B.C.R. 108, 119, 120.
Randall v. Raper	6 W.R. 445	3 B.C.R. 291.
Randall v. Robertson (1896)	16 C.L.T. 203	9 B.C.R. 173.
Ranelagh v. Melton (1864)	34 L.J.Ch. 227	1 B.C.R., pt. II., 26; 1 M.M.C. 13.
Ranger v. Great Western Ry.	L.R. 5 H.L. 88	1 B.C.R., pt. I., 242.
Ranger v. Great Western Ry (1854)	5 H.L. Cas. 72	7 B.C.R. 488.
Rankin v. Great Western Railway Co. (1854)	4 U.C.C.P. 463	9 B.C.R. 74.
Rapid City Farmers' Co.	Re 9 Man. 574	5 B.C.R. 666.
Rasche, The	L.R. 4 A. & E. 127.	3 B.C.R. 375.
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Ratcliffe v. Evans (1892)	2 Q.B. 524	8 B.C.R. 399.
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Rawlins v. Turner	Ld. Raymond, 736	5 B.C.R. 345.
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Rawlins v. Wickham (1858)	3 DeG. & J. 317	1 M.M.C. 262.
Rawston v. Taylor	11 Ex. 369	2 B.C.R. 159,162.
Raymond v. Tapson (1882)	22 Ch.D. 431	10 B.C.R. 291.
Read v. Pope (1834)	1 C. M. & R. 302	9 B.C.R. 439, 442.
Read v. Victoria Station and Pimlico Railway Company (1863)	1 H. & C. 826	8 B.C.R. 342.
Read v. Whitehead	19 Grant. 448	3 B.C.R. 335.
Read v. Wotton (1893)	2 Ch. 171	3 B.C.R. 39.
Readhead v. Midland Ry. Co. (1867)	L.R. 2 Q.B. 419	1 M.M.C. 230.
Real and Personal Advance Company v. McCarthy (1881)	18 Ch.D. 362	7 B.C.R. 506.
Rede v. Oakes	2 DeG. J. & S. 518	4 B.C.R. 407, 408.
Redfield et al. v. Wickham	13 App. Cas. 467	4 B.C.R. 154; 5 B.C.R. 612.
Redford v. Eadie	6 Taunt. 240	3 B.C.R. 270.
Redford v. Mutual Fire Insurance Co.	1 Rob. & Jos. 1811	5 B.C.R. 331.
Redgrave v. Hurd (1881)	20 Ch.D. 1	6 B.C.R. 209, 214; 1 M.M.C. 261.
Redondo v. Chaytor et al. (1879)	4 Q.B.D. 453	8 B.C.R. 85.
Reedie v. London & N. W. Ry. Co.	4 Ex. 244	6 B.C.R. 42.
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Reese River Mining Co., In re	L.R. 4 H.L. 64	3 B.C.R. 477, 478.
Reese River Co. v. Atwell	7 L.R. Eq. 347	1 B.C.R., pt. II., 97-101.
Reese River Co. v. Atwell		2 B.C.R. 92, 93, 95, 96, 99.
Reese River Mining Co. v. Smith	L.R. 4 H.L.	4 B.C.R. 47.
Reeves v. Lambert (1825)	4 B. & C. 214	3 B.C.R. 64.
Reg. v. Britton (1893)	17 Cox C.C. 627	9 B.C.R. 91.
Regent Stores Co., Re	8 Ch.D. 82	10 B.C.R. 289, 290.
Regent's Canal Ironworks Co., Ex parte Grissell (1875)	3 Ch.D. 411	5 B.C.R. 666.
Regina v. Davidson (1898)	1 C.C.C. 351	9 B.C.R. 563, 567.
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Regina v. Dean of St. Asport (1783)	21 Hew. St. Ir. 847	2 B.C.R. 99.
Regina v. Abergele	1 N. & P. 235	10 B.C.R. 559.
Regina v. Errington (1838)	2 Lew. C.C. 148	2 B.C.R. 208.
Regina v. Ah Pow (1880)	1 B.C. (Pt. I.) 151	10 B.C.R. 4.
Regina v. Fick (1866)	16 U.C.C.P. 379	7 B.C.R. 179.
Regina v. Aldous (1897)	5 B.C. 220	10 B.C.R. 490.
Regina v. Allen	15 East. 333	5 B.C.R. 495, 498, 608, 610; 1 M.M.C. 139.
Regina v. Gibson (1887)	56 L.T.N.S. 367; 18 Q.B.D. 537	2 B.C.R. 337, 338.
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Regina v. Goddard (1882)	15 Cox C.C. 7	10 B.C.R. 4.
Regina v. Anderson	L.R. 1 C.C.R. 168	10 B.C.R. 5.
Regina v. Arscott (1885)	9 Ont. 541	4 B.C.R. 575.
Regina v. Ashton	22 L.J.M.C. 1	8 B.C.R. 173.
Regina v. Aspinall	2 Q.B.D. 48	1 B.C.R., pt. I., 152.
Regina v. Hamilton (1898)	2 C.C.C. 390	2 B.C.R. 284.
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	Regina v. Learmont	23 N.S. 24	4 B.C.R. 594.
	Regina v. Lee	9 Q.B.D. 396	2 B.C.R. 265.
	Regina v. Lees	27 L.J.Q.B. 403	1 B.C.R., pt. II., 248.
	Regina v. Lesley	Bell C.C.R. 220	4 B.C.R. 573, 574, 580, 581, 582.
	Regina v. Lewis (1844)	1 Dowl. & L. 822	9 B.C.R. 161.
	Regina v. Litchfield	16 L.J.Q.B. 334	1 B.C.R., pt. II., 169.
	Regina v. London, Chatham & Dover Ry. Co.	L.R. 3 Q.B. 170-37; L.J.Q.B. 428	2 B.C.R. 343.
	Regina v. Lords of Treasury	L.R. 7 Q.B. 387	1 B.C.R., pt. I., 121.
	Regina v. Lovett (1839)	9 C. & P. 462	8 B.C.R. 37.
	Regina v. Lynch	12 O.R. 372	2 B.C.R. 235.
	Regina v. Manchester & Leeds Railway Co. (1838)	8 A. & E. 413	9 B.C.R. 505.
	Regina v. Mankletow	22 L.J.M.C. 115	
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	Regina v. Martin	12 Cox. 204	2 B.C.R. 117, 120.
	Regina v. Martin	L.R. 1 C.C.R. 378	2 B.C.R. 129.
	Regina v. Mason	5 P.R. 125	6 B.C.R. 116.
	Regina v. Mayor, etc., of Bodmin (1892)	2 Q.B. 21	9 B.C.R. 505.
	Regina v. McGauley (1887)	12 P.R. 259	9 E.C.R. 273.
	Regina v. McKenzie	23 N.S. 6; 6 Ont. 165	4 B.C.R. 594.
	Regina v. McLeans & Hare	B.C. Case not reported.	1 B.C.R., pt. I., 196, 129; pt. II., 210, 219, 244.
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	Regina v. Mee Wah	3 B.C. 403	5 B.C.R. 38.
	Regina v. Miller	13 Cox. C.C. 179	4 B.C.R. 297.
	Regina v. Mills	Dears. & Bell, 205	2 B.C.R. 192.
	Regina v. Minnie	4 Exch. (Can.) 151; 3 B.C. 61	4 B.C.R. 346.
	Regina v. Mitchell	17 Cox, 503	5 B.C.R. 590, 598.
	Regina v. Mondelet	21 L.C. Jur. 154	4 B.C.R. 297.
	Regina v. Morby	8 Q.B.D. 571	5 B.C.R. 65.
	Regina v. Morris	L.R. 1 C.C.R. 90	5 B.C.R. 545.
	Regina v. Moseley	2 Burr. 10, 11	2 B.C.R. 99.
	Regina v. Mosher (1899)	3 C.C.C. 312	9 B.C.R. 366.
	Regina v. Munro	24 U.C.Q.B. 44	3 B.C.R. 485.
	Regina v. Mycock	12 Cox. C.C. 28	4 B.C.R. 278, 283, 286, 291, 292, 295.
	Regina v. Nash	10 Q.B.D. 454	6 B.C.R. 90, 93, 97, 101.
	Regina v. Nelson	1 Ont. Rep. 500	2 B.C.R. 330.
	Regina v. Newhouse (1853)	22 L.J.Q.B. 127	9 B.C.R. 368.
	Regina v. Newman (1852)	3 C. & K. 260	7 B.C.R. 31.
	Regina v. Newport Dock Co.	31 L.J.M.C. 266	4 B.C.R. 362, 375.
	Regina v. Newton	24 L.J.Q.B. 246	1 B.C.R., pt. II., 248.
	Regina v. Nichol et al. (1876)	40 U.C.Q.B. 76	9 B.C.R. 36.
	Regina v. Nunn	10 P.R. 397	5 B.C.R. 488.
	Regina v. O'Brien (1880)	6 V.L.R. 429	9 B.C.R. 194.
	Regina v. Olifier	10 Cox. C.C. 464	4 B.C.R. 286, 293.
	Regina v. O'Rourke	1 Ont. Rep. 464	1 B.C.R., pt. II., 209, 243, 246, 247
	Regina v. Orton (1878)	14 Cox. C.C. 226	9 B.C.R. 3.
	Regina v. Osler	32 U.C.Q.B. 324	5 B.C.R. 551.
	Regina v. Over	14 Q.B. 425	4 B.C.R. 594.
	Regina v. Payne	1 C.C.R. 27	3 B.C.R. 406; 5 B.C.R. 38, 39.
	Regina v. Payne (1896)	1 Q.B. 577	5 B.C.R. 153.
	Regina v. Pears	5 Q.B.D. 389	5 B.C.R. 419.
	Regina v. Peterman	23 U.C.Q.B. 516	3 B.C.R. 485.
	Regina v. Petrie (1890)	20 Ont. 317	8 B.C.R. 21, 23.
	Regina v. Pickles (1842)	12 L.J.Q.B. 40	9 B.C.R. 505.
	Regina v. Poirier (1898)	7 Que. Q.B. 483	9 B.C.R. 575.
	Regina v. Ponton et al. (1898)		
	Regina v. Ponton et al. (1899)	18 P.R. 210 & 429	7 B.C.R. 279.
	Regina v. Pratt	4 E. & B. 860	2 B.C.R. 318.
	Regina v. Primett	1 F. & F. 50	4 B.C.R. 286.
	Regina v. Purdy	34 L.J.M.C. 4	2 B.C.R. 209.
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	Regina v. Rees (1834)	6 Carr & Payne, 606	6 B.C.R. 429.

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	5 Camp. B.C. 734	10 B.C.R. 170.
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Schibsby v. Westenholz (1870)	L.R. 6 Q.B. 155	5 B.C.R. 159.
Schomberg v. Holden et al. (1899)	6 B.C. 419	8 B.C.R. 46, 47, 48, 227.
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Schofield v. Solomon	52 L.Y.N.S. 679	2 B.C.R. 259.
Schofield v. Solomon (1885)	54 L.J.Ch. 1, 101	7 B.C.R. 443.
Scholfield v. Lord Londesborough	65 L.J.Q.B. 593	5 B.C.R. 455.
Scholes v. Brook	63 L.T.J.N.S. 837	
	64 L.T.N.S. 674	2 B.C.R. 426, 429.
Schomberg v. Holden (1899)	6 B.C. 419	7 B.C.R. 2; 1 M.M.C. 83, 115, 283, 291 360, 370, 386, 388, 389, 428, 432, 433, 447, 449, 508.
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Scothorn v. South Staffordshire Railway Co. (1853)	8 Ex. 340	9 B.C.R. 222.
Scotland v. Staffordshire Ry. Co.	8 Ex. 341	1 B.C.R., pt. II., 10.
Scott v. Brown, Doering, McNab & Co. (1892)	2 Q.B. 724	10 B.C.R. 310, 324, 453, 455.
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Scott v. B. C. Milling Co. (1895)	24 S.C.R. 702	7 B.C.R. 7.
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Scott v. Brown, Doering, McNab & Co. (1892)	2 Q.B. 724	8 B.C.R. 99; 1 M.M.C. 336.
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Scott v. Imperial Loan Company (1896)	2 Q.B. 724	10 B.C.R. 310, 324, 453, 455.
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Scott v. Liverpool Corporation (1858)	28 L.J.Ch. 230	7 B.C.R. 488, 489.
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Scott v. McCrea	3 U.C.P.R. 16	1 B.C.R., pt. II. 256.

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Shannon v. Fortune (1876)	16 N.B. 263	8 B.C.R. 92.
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Shardlow v. Cotterell (1881)	20 Ch.D. 90	10 B.C.R. 497, 503.
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Sharpe v. San Paulo Railway Company (1873)	8 Ch.App. 597	7 B.C.R. 496.
Shaw, Ex parte	L.R. 2 Q.B.D. 463	1 B.C.R., pt. II., 97.
Shaw v. Canadian Pacific Railway Co. (1889)	16 S.C.R. 703	9 B.C.R. 386.
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Shaw v. Foster	5 DeG. M. & G. 338	5 B.C.R. 292.
Shaw v. Reckitt (1893)	1 Q.B. 779	3 B.C.R. 117.
Shaw v. Smith	18 Q.B.D. 193	4 B.C.R. 424.
Shaw v. St. Louis (1883)	8 S.C.R. 385	9 B.C.R. 386.
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Sheehan v. Great Eastern Ry. Co. (1880)	16 Ch.D. 59	9 B.C.R. 246; 1 M.M.C. 524.
Sheerman v. The Toronto, Grey & Bruce Ry. Co. (1874)	34 U.C.Q.B. 451	8 B.C.R. 136, 137.
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Sheffield Water Works Act, 1864, Re (1865)	L.R. 1 Ex. 54	9 B.C.R. 374.
Sheldon v. Baker (1786)	1 Term. Rep. 83	6 B.C.R. 462.
Shelfer v. City of London Electric Lighting Co. (1895)	1 Ch. 287	9 B.C.R. 75, 386.
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Shephard, In re (1889)	13 Ch.Div. 131	10 B.C.R. 233.
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Shephard v. White (1876)	11 N. S. 31	9 B.C.R. 309.
Shephard, Re	43 Ch.D. 131	4 B.C.R. 452.
Shephard v. Bonanza Nickel Mining Co. (1895)	25 Ont. 305	8 B.C.R. 320, 321.
Shepley et al. v. Cowan et al. (1875)	1 Otto. 338	7 B.C.R. 274; 1 M.M.C. 308.
Sheridan v. Pidgeon (1886)	10 Ont. 632	9 B.C.R. 310.
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Shields v. Peek (1882)	8 S.C.R. 579	9 B.C.R. 386.
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Shoolbred v. Clarke, In re Union Fire Insurance Company (1890)	17 S.C.R. 265	7 B.C.R. 390.
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Shore v. Wilson (1839)	9 Cl. & F. 355	10 B.C.R. 507.
Short v. Federation (1849)	7 B.C. 35	10 B.C.R. 36.

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Short v. Roberts (1886)	2 Chy.App. 13	9 B.C.R. 114.
Shrewsbury Peerage Case (1857)	7 H.L.Cas. 1	8 B.C.R. 245.
Shrewsbury v. Scott	29 L.J.C.P. 53	5 B.C.R. 334.
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Shrosbery v. Osmaston (1877)	37 L.T.N.S. 792	7 B.C.R. 150, 153, 154, 155.
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	20 S.C.R. 259	6 B.C.R. 23, 25, 31, 32.
Sievewright v. Leys	9 Ont.P.R. 200	2 B.C.R. 254.
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Silber Light Company v. Silber et al. (1879	27 W.R. 427	6 B.C.R. 500.
Silesia, The	5 P.D. 177	3 B.C.R. 376.
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Simm v. Anglo-Am. Telegraph Co.	5 Q.B.D. 202	2 B.C.R. 383.
Simons v. Patchett (1857)	7 El. & Bl. 568	10 B.C.R. 249.
Simmons v. Campbell (1870)	17 Gr. 612	8 B.C.R. 292.
Simmons v. Stover	14 Ch.D. 155	4 B.C.R. 455.
Simpson v. Charing Cross Bank (1886)	34 W.R. 568	9 B.C.R. 482, 483, 485, 486, 490.
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Simpson v. Lamb (1856)	17 C.B. 614	6 B.C.R. 515.
Simpson, Ex parte (1809)	15 Ves. 476	10 B.C.R. 455.
Simpson v. Murray (1890)	13 P.R. 418	7 B.C.R. 134.
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Simpson v. Thompson	L.R. App.Cas. 279	3 B.C.R. 315.
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Simpson v. Westminster Palace Hotel Company (1860)	8 H.L.Cas. 719	6 B.C.R. 501
Simnott v. Scoble (1884)	11 S.C.R. 571	9 B.C.R. 407.
Sioux City v. Iowa Falls Town Lot and Land Co.	143 U.S. 32	5 B.C.R. 417; 1 M.M.C. 175.
Sirdar Turdyal Singh v. Rajah of Faridkote (1894)	A.C. 670	9 B.C.R. 215, 226.
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Six Carpenters' Case	1 Sm. Lead. Cas. 144	3 B.C.R 202.
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Smith v. Cork & Brandon Ry. Co. (1870)	5 Ir. R.Eq. 65	9 B.C.R. 283.
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Smith v. Crump	1 Dowl. 519	7 B.C.R. 366.

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Soper v. Arnold	37 Ch.D. 102	6 B.C.R. 209.
Souter v. Drake	5 B. & Ad. 992	6 B.C.R. 241.
South African Territories v. Wallington (1898)	A.C. 313	6 B.C.R. 301.
South American & Mexican Co., In re (1894)	12 R.I.	6 B.C.R. 344.
South E. Ry. Co. v. Brown	6 Ex. 344	3 B.C.R. 206.
South of Ireland Colliery Co. v. Waddle	3 L.R.C.P. 463	3 B.C.R. 492.
South Norfolk, Municipality of, v. Warren, In re (1892)	12 C.L.T. 512	8 B.C.R. 290.
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Spence v. The Union Marine Insurance Company, Limited (1868)	L.R. 3 C.P. 427	7 B.C.R. 469.
Spencer v. Birmingham Ry. Co.	8 Sim. 193	1 B.C.R., pt. I., 120.
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Spencer v. Met. Bd. of Works	22 Ch. Div. 157	5 B.C.R. 292.
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Spice v. Bacon (1877)	2 Ex.D. 463	9 B.C.R. 320.
Spiers v. The Queen (1896)	4 B.C. 394	7 B.C.R. 350.
Spiers v. The Queen (1896)	4 B.C. 388	8 B.C.R. 310.
Spindler v. Grellet	1 Ex.Rep. 384	2 B.C.R. 335.
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Spokes v. The Grosvenor Hotel Co. (1897)	2 Q.B. 128	8 B.C.R. 70.
Spooner v. Browning (1898)	1 Q.B. 528	7 B.C.R. 435.
Spooner v. Browning (1898)	1 Q.B. 528	9 B.C.R. 458.
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Sproule, In re Robert Evan (1886)	12 S.C.R. 140	8 B.C.R. 172.
Spurgin v. White (1860)	2 Giff. 473	9 B.C.R. 292.
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Standard Discount Co. v. La Grange	3 C.P.D. 67	3 B.C.R. 285. 5 B.C.R. 605. 6 B.C.R. 120, 123.
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Stubbins, Ex parte	17 Ch.D. 58	4 B.C.R. 470.
Stuckey v. Bailey (1862)	1 H. & C. 413	6 B.C.R. 515.
Studdert v. Grosvenor (1886)	33 Ch.D. 528	6 B.C.R. 331.
Stum v. Dixon	58 L.J.Q.B. 183	5 B.C.R. 54.
Stum v. Dixon (1888)	58 L.J.Q.B. 186	8 B.C.R. 278.
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Stumore v. Campbell & Co. (1892)	1 Q.B.D. (C.A.) 314	2 B.C.R. 312.
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Sturla v. Freccia (1880)	5 App. Cas. 623	8 B.C.R. 13.
Stussi v. Brown	5 B.C. 380	6 B.C.R. 265; 1 M.M.C. 83, 97, 152.
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Suburban Hotel Co., In re	L.R. 2 Ch. App. 737	1 B.C.R., pt. I., 24.
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Suffield v. Watts, In re	20 Q.B.D. 693	4 B.C.R. 205, 206, 6 B.C.R. 122.
Sullivan v. Jackson (1900)	7 B.C. 133	7 B.C.R. 185.
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Sumpter v. Hedges (1898)	1 Q.B. 673	8 B.C.R. 297.
Sung v. Lung (1901)	8 B.C. 423	9 B.C.R. 387, 514, 516, 505; 1 M.M.C. 139.
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Sutherland v. East Nissouri	10 U.C.Q.B. 626	4 B.C.R. 240. 3 B.C.R. 118.
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Sutor v. McLean	18 U.C.Q.B. 490	4 B.C.R. 424.
Sutton v. Doggett (1840)	3 Beav. 9	9 B.C.R. 234.
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Sutter, In re	2 F. & F. 267	6 B.C.R. 89.
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Swain v. Follows	18 Q.B.D. 585	3 B.C.R. 80.
Swainson v. North Eastern Railway Co. (1878)	3 Ex.D. 341	10 B.C.R. 14.
Swaisland v. Dearsley	29 Beav. 430	6 B.C.R. 239.
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Swan v. North British Australasian Co.	2 H. & C. 175	5 B.C.R. 456.
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Swanston v. Lishman (1881)	45 L.T.N.S. 361	7 B.C.R. 110.
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Swyny v. North-Eastern Ry. Co. (1896)	74 L.T.N.S. 88	6 B.C.R 478.
Swyny v. North-Eastern Ry. Co. (1896)	74 L.T.N.S. 88	10 B.C.R. 484; 1 M.M.C. 302.
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Taff Vale Railway Co. v. Amalgamated Society of Railway Servants (1901)	A.C. 426	8 B.C.R 370 373.

Taf-Tei] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Taff Vale Railway Co. v. Amalgamated Society of Railway Servants (1901) ..	A.C. 426	9 B.C.R. 533.
Tagart & Co. v. Marcus & Co. (1889)	9 Ch.D. 574.	9 B.C.R. 143.
Tai Lung's Case	Appendix G., 379 B. C. Chinese Commission Report.	3 B.C.R. 410, 411, 414.
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Tamplin v. James	15 Ch.D. 215	6 B.C.R. 241.
Tancred v. Delagoa Bay & East Africa Railway Co. (1889)	23 Q.B.D. 239	9 B.C.R. 152.
Tapling v. Jones (1865)	11 H.L.Cas. 290	8 B.C.R. 420.
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Tarry v. Ashton	1 Q.B.D. 314	6 B.C.R. 31.
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Tasmania, The (1890)	15 App.Cas. 223	8 B.C.R. 165; 1 M.M.C. 83. 497.
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Taylor v. Brewer (1813)	1 M. & S. 290	8 B.C.R. 405.
Taylor v. Brewer (1813)	1 M. & S. 290	9 B.C.R. 309.
Taylor v. Brown (1893)	147 U.S. 640.	9 B.C.R. 194.
Taylor v. Chichester & Midland Ry. Co. (1867)	L.R. 2 Ex. 356.	9 B.C.R. 486.
Taylor v. Coenen (1876)	1 Ch.D. 636.	4 B.C.R. 171. 7 B.C.R. 195.
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Tho-Tor] NAME OF CASE.	WHERE FOUND.	REFERENCE.
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Vere v. Ashley	10 B. & C. 294	3 B.C.R. 452.
Vermilyea v. Canniff	12 Ont. 164	6 B.C.R. 210.
Vespre v. Cook	26 U.C.C.P. 182	6 B.C.R. 32.
Vestry of St. Mary v. Goodman	23 Q.B.D. 154	5 B.C.R. 296.

Vic-Wal]	NAME OF CASE.	WHERE FOUND.	REFERENCE.
	Vicksburg, etc., Ry. v. Dennis	116 U.S. 665	5 B.C.R. 294.
	Victor v. Butler (1900)	8 B.C. 100	8 B.C.R. 168; 1 M.M.C. 37, 51, 92, 500.
	"Victoria," The	3 Wm. Robb. 52	3 B.C.R. 313.
	Victoria Lumber Co. v. The Queen (1898)	3 B.C. 16	8 B.C.R. 290.
	Victoria Lumber Co. v. The Queen	3 B.C. 16	5 B.C.R. 297, 299.
	Victoria, Corporation of the City of, v. Patterson (1899)	A.C. 615	8 B.C.R. 195.
	Victoria Mutual Fire Insurance Co. v. Bethune (1876)	23 Gr. 568	
	Victoria Mutual Fire Insurance Co. v. Bethune (1877)	1 A.R. 398	8 B.C.R. 310.
	Vigeon v. Northcote	15 Ont.P.R. 171	2 B.C.R. 261.
	Village of Granby, The, v. Menard (1900)	31 S.C.R. 14	10 B.C.R. 500.
	Village of Granby v. Menard (1900)	31 S.C.R. 14	9 B.C.R. 41, 44, 45.
	Vine, Ex parte, In re Wilson (1878)	8 Ch.D. 364	10 B.C.R. 71.
	Viney v. Bignold	20 Q.B.D. 172	5 B.C.R. 331.
	Vince, In re, Ex parte Baxter (1892)	2 Q.B. 478	8 B.C.P. 405.
	Vince, In re, Ex parte Baxter (1892)	61 L.J., Q.B. 836	9 B.C.R. 309.
	Vint v. Hudspith	29 Ch.D. 322	2 B.C.R. 374, 392.
	Virginia Midland R. Co. v. Roach	34 Am. & Eng. R. Cas. 271	8 B.C.R. 138.
	Virginia Midland R. Co. v. Roach (1887)	34 Am. & Eng. R.R. Cas. 271	9 B.C.R. 458, 462.
	Virgil, The (1843)	2 W.Rob. 201	10 B.C.R. 515.
	Vogel v. Grand Trunk Ry. Co. (1883)	2 Ont. 197	8 B.C.R. 396.
	Vogel v. Mayor of New York	2 A. & E. Corp. Cas. 537	6 B.C.R. 23, 25, 32, 46.
	Von Lederer v. Burton	87 L.T.Jo. 316	3 B.C.R. 271.
	Vowel v. Regina	B.C. Case not reported	1 B.C.R., pt. II., 31. 329
	Vye v. McNeill	3 B.C. 24	4 B.C.R. 456.
	Vye x. McNeill (1893)	3 B.C. 24	10 B.C.R. 65, 67, 69, 71. 72.
	Wade v. Corporation of Brantford	19 U.C.Q.B. 207	1 B.C.R., pt. II., 359. 360.
	Wade v. Lutcher & Moore Cypress Lumber Co. (1896)	74 Fed. 517	9 B.C.R. 456.
	Wagstaff v. Anderson (1880)	5 C.P.D. 171	9 B.C.R. 90, 102.
	Waikato (Owners of Cargo on S. S.) v. New Zealand Shipping Co. (1898-1899	1 Q.B. 647	
		1 Q.B. 56	8 B.C.R. 231.
	Waite v. Spurgin (1836)	4 Dowl. 575	8 B.C.R. 278, 279.
	Wakefield v. Duke of Buccleugh (1865)	12 L.T.N.S.	6 B.C.R. 224.
	Wakefield Rattan Co., The, v. The Hamilton Whip Co., Ltd. (1893)	24 Ont. 107	9 B.C.R. 156.
	Wakefield v. Turner (1898)	6 B.C. 216	1 M.M.C. 453.
	Wakelin v. London and South-Western Ry. Co. (1886)	12 App.Cas. 41	6 B.C.R. 581; 1 M.M.C. 315. 3 B.C.R. 263.
	Wakelin v. L. & S. W. Ry. Co.	2 Ex.Div. 384	4 B.C.R. 194.
	Wakelin v. L. & S. W. Ry. Co. (1886)	12 App.Cas. 41	8 B.C.R. 178, 394, 396; 1 M.M.C. 315.
	Wakelin v. L. & S. W. Ry. Co. (1896)	1 Q.B. 190	
	Walcott v. Lyons	20 Ch.D. 584	5 B.C.R. 322.
	Waldock v. Cooper (1754)	2 W[illegible] 16.	9 B.C.R. 439, 442.
	Walford v. Walford	L.R. 3 Ch. 812	4 B.C.R. 481.
	Walker's Case	L.R. 6 Eq. 30.	1 B.C.R., pt. II., 97.
	Walker, In re	L.R. 8 Ch. 614	4 B.C.R. 463.
	Walker v. Bunkell (1883)	22 Ch.D. 722	10 B.C.R. 395.
	Walker v. Baird	L.R. (1892) A.C. 491	4 B.C.R. 577, 576.
	Walker v. Bradford's Old Bank (1884)	12 Q.B.D. 511	9 B.C.R. 152.
	Walker v. Brown (1868)	14 Gr. 237	1 B.C.R., pt. II., 26; 1 M.M.C. 12.
	Walker v. Brunkell (1882)	22 Ch.D. 722	8 B.C.R. 200
	Walker v. Fletcher (1804)	3 Bligh. 168	9 B.C.R. 428
	Walker v. Frobisher	6 Ves. 71	3 B.C.R. 280.
	Walker v. Hicks	3 Q.B.D. 8	2 B.C.R. 212. 4 B.C.R. 172, 174.
	Walker v. Hicks	13 Q.B.D. 8	6 B.C.R. 59.
	Walker v. Hicks (1877)	3 Q.B.D. 8	8 B.C.R. 3.
	Walker v. Hicks (1877)	3 Q.B.D. 8	9 B.C.R. 146.
	Walker v. Hirsch	27 Ch.D. 473 51 L.T.N.S. 481	4 B.C.R. 11, 12, 15, 429.

War-Web] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Ware v. Hylton	3 Dallas (Amer.) 199.	1 B.C.R., pt. I., 109.
Ware v. Regent's Canal Co. (1858)	3 DeG. & J. 212	9 B.C.R. 74.
Ware v. Regent's Canal Co. (1858)	3 DeG. & J. 212	10 B.C.R. 440.
		8 B.C.R. 344.
Warmington v. Palmer (1902)	32 S.C. 126	1 M.M.C. 319.
Warne v. Housley (1886)	3 Man. 547	10 B.C.R. 70.
Warner v. Mosses	16 Ch.D. 100	6 B.C.R. 68.
Warner v. Murdoch	4 Ch.D. 750	5 B.C.R. 612.
Warner v. Don (1896)	26 S.C. 380	1 M.M.C. 505.
Warren's Case	Grind Comp. 408	1 B.C.R., pt. I., 6, 14.
Warren v. Joyce	10 Ch.App. 222	1 B.C.R., pt. I., 247.
Warren v. Whittingham (1902)	18 T.L.R. 508	9 B.C.R. 210.
Waring v. Waring (1848)	6 Moore P.C. 341	10 B.C.R. 545.
Warrington v. Early	23 L.J.Q.B. 47	6 B.C.R. 83.
Washburn and Moen Mfg. Co. v. Patterson (1885)	29 Ch.D. 48	8 B.C.R. 351.
Washington and Georgetown Rv. Co. v. McDade (1890)	135 U.S. 554	6 B.C.R. 566.
W. A. Sholton, The	13 P.D. 8	5 B.C.R. 286, 287.
W. A. Sholton, The (1887)	13 P.D. 8	9 B.C.R. 169, 494.
Waterbury v. New York C. & H. R. R. Co. (1883)	17 Fed. 671	8 B.C.R. 138.
Waterbury v. New York C. & H. R. R. Co. (1883)	17 Fed. 671	9 B.C.R. 464, 467.
Waterhouse v. Liftchild (1897)	6 B.C. 424	6 B.C.R. 420, 424, 1 M.M.C. 37, 115, 208, 290, 291, 374, 387, 500, 504.
Waterhouse v. Liftchild (1897)	6 B.C. 424; 1 M.M.C. 153	10 B.C.R. 134, 135.
Waterhouse v. Liftchild (1897)	6 B.C. 424	7 B.C.R. 3, 156.
Waterland v. Greenwood (1901)	8 B.C.R. 396	10 B.C.R. 480, 490.
Waterlow v. Dobson (1857)	27 L.J.Q.B. 55	5 B.C.R. 574; 1 M.M.C. 50.
Waterous v. Palmerston (1892)	19 A.R. 47; 21 S.C.R. 556.	1 B.C.R., pt. I., 186; pt. II., 247.
		4 B.C.R. 444.
		10 B.C.R. 240, 245, 246.
Waters v. Share (1851)	2 Gr. 457	7 B.C.R. 349.
Watkins v. Rymil	10 Q.B.D. 178	2 B.C.R. 250.
Watson's Leonard Case	9 Ad. & Ell. 731	2 B.C.R. 220.
Watson v. Swann (1862)	11 C.B.N.S. 756	10 B.C.R. 82.
Watson, Re	25 Q.B.D. 27	4 B.C.R. 144, 147.
Watson, Ex parte (1888)	21 O.B.D. 301	8 B.C.R. 332, 333.
Watson v. Clarke (1813)	1 Dow. 336	8 B.C.R. 231.
Watson v. Pears (1809)	Camp. 294	9 B.C.R. 198.
Watson v. Pearson (1848)	2 Ex. 281	9 B.C.R. 144.
Watt v. The City of London (1892)	19 A.R. 675	6 B.C.R. 547.
Watt v. Robinson	32 U.C.Q.B. 362	3 B.C.R. 479.
Watteau v. Fenwick (1893)	1 Q.B. 346	6 B.C.R. 240.
Watton v. Watton	35 L.J.P. & M. 95	5 B.C.R. 612.
Watts v. Brains	(Cro. Eliz. 778) H.P.C. 229, 309	1 B.C.R., pt. II., 233.
Watts v. Christie (1849)	11 Beav. 546	
Watts v. Cooke (1690)	Shower P.C. 139	8 B.C.R. 144, 209, 211, 212.
Watts v. Kelson (1870)	6 Ch.App. 166	8 B.C.R. 92.
	2 Vern. 124	
Wauchope v. North British Railway Company (1862)	4 Macq. H.L. 348	8 B.C.R. 5.
Waugh v. Morris (1873)	L.R. 8 Q.B. 202	8 B.C.R. 384.
Waydell v. Provincial Ins. Co.	21 U.C.Q.B. at 620	10 B.C.R. 188.
Weall v. James	68 L.T. 515	3 B.C.R. 304.
	7 R. 157	5 B.C.R. 485.
Wear Engine Works Co., In re	L.R. 10 Ch. 188	5 B.C.R. 666.
		6 B.C.R. 113.
Weare, In re (1893)	2 Q.B. 439	6 B.C.R. 282.
Webb v. Fairmanner (1838)	3 M. & W. 473	9 B.C.R. 193.
Webb v. Hughes	L.R. 10 Eq. 281	4 B.C.R. 417.
Webb v. Montgomery		1 M.M.C. 266, 484.
Webb v. Mancel	2 Q.B.D. 117	5 B.C.R. 221.
Webb v. Rennie (1865)	4 F. & F. 608	6 B.C.R. 565, 567, 574, 578.
Webb v. Sharman (1873)	34 U.C.Q.B. 410	9 B.C.R. 348, 351.
Webb v. Stenton	11 Q.B.D. 518	5 B.C.R. 47, 56.
Webber, In re (1889)	24 O.B.D. 313	7 B.C.R. 389.
Weblin v. Ballard (1886)	17 Q.B.D. 122	7 B.C.R. 167.

Web-Whe] NAME OF CASE.	WHERE FOUND.	REFERENCE.
Webster v. Bray (1848)	7 Hare, 159	5 B.C.R. 358; 1 M.M.C. 151.
Webster v. Foley (1892)	21 S.C.R. 580	8 B.C.R. 396.
Webster v. Foley (1892)	21 C.C.R. 580	9 B.C.R. 554.
Webster v. Friedeberg	17 Q.B.D. 736	2 B.C.R. 406, 410. 6 B.C.R. 34.
Webster v. Friedeberg (1886)	17 Q.B.D. 736	9 B.C.R. 389.
Webster v. Myer	14 Q.B.D. 231	6 B.C.R. 68.
Webster v. Power (1868)	L.R. 2 P.C. 81	6 B.C.R. 501.
Wedderburne v. Wedderburne	4 M. & C.R. 41	2 B.C.R. 25.
Wedge v. Berkeley	6 A. & E. 663	4 B.C.R. 420.
Wedgewood & Co., In re Anderson's Case.	7 Ch.D. 95	3 B.C.R. 104.
Wedgwood v. Adams	6 Beav. 600	1 B.C.R., pt. II., 67.
Weed v. Ward (1889)	40 Ch.D. 555	8 B.C.R. 200.
Weeks v. Gallard	21 L.T. 655	1 B.C.R., pt. II., 67.
Weeks v. McNulty (1898)	48 S.W. 809	10 B.C.R. 334.
Weems v. Matthieson	4 Macq. 215	2 B.C.R. 137, 150.
Weems v. Matthieson	4 Macq. (H.L.Sc.) 226	6 B.C.R. 570. 1 M.M.C. 378.
Weir, In re (1898)	31 N.Sc.R. 97	4 B.C.R. 583.
Weir v. Barnett	3 Ex.Div. 42	10 B.C.R. 439.
Weise v. Wardell (1874)	L.R. 19 Eq. 171	
Welbourne v. Canadian Pacific R. W. Co. (1894)	16 R.R. 343	10 B.C.R. 311.
Weldon v. Neal (1887)	19 Q.B.D. 394	10 B.C.R. 171.
Weldon v. Neal (1887)	19 Q.B.D. 394	7 B.C.R. 364, 367.
Welland v. Buffalo and Lake Huron Railway (1870-1871)	30 U.C.Q.B. 147; 31 U.C.Q.B. 539	9 B.C.R. 74.
Wells v. Oddy	7 C. & P. 410	2 B.C.R. 316.
Wells v. Trust and Loan Co. of Canada (1884)	9 Ont. 170	10 B.C.R. 88.
Wells v. Petty (1896)	5 B.C. 353	6 B.C.R. 265; 1 M.M.C. 2, 83, 202, 239, 288, 324.
Wells v. Petty	5 B.C. 353	8 B.C.R 405.
Welton v. Saffery (1897)	A.C. 299	9 B.C.R. 110, 112, 281, 283, 289.
Wentworth v. Bullen	9 B. & C. 848	5 B.C.R. 500.
Wentworth v. Bullen (1829)	9 B. & C. 850	6 B.C.R. 349.
West Derby Union v. Metropolitan Life Assurance Society (1897)	A.C. 647	6 B.C.R. 335, 417.
West Derby Union v. Metropolitan Assur. Co. (1897)	A.C. 653	1 M.M.C. 256.
West v. Dowman	42 L.T. 340.	2 B.C.R. 98.
West v. Dowman (1897)	27 W.R. 697	7 B.C.R. 322.
West v. Devon, etc., Mine, Re	38 Ch.D. 51	
	36 W.R. 342	
	58 L.T. 61	
	57 L.J.Ch. 850	5 B.C.R. 10; 1 M.M.C. 90.
West Surrey Tanning Co., In re (1886)	L.R. 2 Eq. 737	7 B.C.R. 390, 393.
West Surrey Tanning Co., In re (1866)	L.R. 2 Eq. 737	9 B.C.R. 113.
West Wisconsin v. Supervisors	93 U.S. 597	5 B.C.R. 294.
Western Assurance Co. v. Doull	12 S.C.R. 144	4 B.C.R. 130.
Western National Bank of New York v. Perey, Triana & Co. (1891)	1 Q.B. 304	9 B.C.R. 168, 170.
Westham Case (1892)	2 Q.B. 680	4 B.C.R. 236.
Westhead v. Riley	25 Ch.D. 413	4 B.C.R. 452.
Westinghouse v. Midland Ry. Co. (1883)	48 L.T.N.S. 462	7 B.C.R. 172.
Weston v. Collins (1865)	34 L.J. 354	1 B.C.R., pt. II., 26; 1 M.M.C. 13.
Wetham v. Vane	49 L.J.Ch. 242	4 B.C.R. 354.
Wetherfield v. Nelson (1869)	L.R. 4 C.P. 571	9 B.C.R. 116.
Weymouth v. Channel Islands S. P. Co. (1891)	1 Ch. 66	
	63 L.T. 686	5 B.C.R. 93.
Whalley v. The Lon. & York Ry Co	13 Q.B.D. 131	2 B.C.R. 159, 162. 5 B.C.R. 188, 189, 194, 196, 204.
Whalley v. The Lancashire and Yorkshire Ry. Co. (1884)	13 Q.B.D. 133	6 B.C.R. 593, 597.
Whalls v. Learn (1888)	15 Ont. 481	9 B.C.R. 324.
Whatley v. Holloway (1890)	6 T.L.R. 353	8 B.C.R. 347.
Whatman v. Pearson	L.R. 3 C.P. 422	6 B.C.R. 28. 4 B.C.R. 579.
Wheatcroft v. Mausley	11 C.B. 677	5 B.C.R. 150.
Wheeldon v. Burrows (1878)	12 Ch.D. 31	6 B.C.R. 592.

Whe-Wil] Name of Case.	Where Found.	Reference.
Wheeler v. Smith (1893)	32 Pac.Rep. 785	5 B.C.R.407, 419, 428; 1 M.M.C. 168, 176, 183.
Wheeler v. Wheeler (1895)	17 P.R. 45	6 B.C.R. 346, 348.
Whelan v. Ryan (1891)	20 S.C.R. 67	7 B.C.R. 24.
Whiches v. Hume (1858)	4 Jur. N.S. 933, 15 Jur. N.S. 567	10 B.C.R. 282, 283.
Whiffen v. Malling (1892)	1 Q.B. 362	8 B.C.R. 423.
Whincup v. Hughes (1871)	L.R. 6 C.P. 78	9 B.C.R. 446.
Whitaker v. Dunn (1887)	3 T.L.R. 602	7 B.C.R. 437.
Whitby, Corporation of, v. Liscombe	23 Gr.Ch. 1	1 B.C.R., pt. I., 34, 50.
Whitcombe, In re (1844)	8 Beav. 140	8 B.C.R. 393.
White, Ex parte, In re Neville	6 Ch.App. 497	2 B.C.R. 45.
White, In re	9 T.L.R. 575	6 B.C.R. 89, 94, 98.
White v. City of London Brewery Co	42 Ch.D. 237	6 B.C.R. 303.
White v. Cohen	68 L.T. 305	3 B.C.R. 467.
White v. Crawford	2 U.C.C.P. 352	3 B.C.R. 425.
White v. Cuddon	8 Cl. & F. 776	1 B.C.R., pt. II., 67.
White v. Hindley Local Board	L.R. 10 Q.B. 219	32 L.T.N.S. 869	5 B.C.R. 560, 640.
White v. Lord	13 U.C.C.P. 289	4 B.C.R. 464.
White v. Macgregor (1882)	64 J.P. 775	7 B.C.R. 137.
White v. Morley (1899)	2 Q.B. 34	8 B.C.R. 415.
White v. Morris	21 L.J.C.P. 185	1 B.C.R., pt. I., 94.
White v. Neaylon	11 App.Cas. 171	4 B.C.R. 555. 5 B.C.R. 71, 76.
White v. Neaylon	11 App.Cas. 175	
White v. Neaylon (1886)	11 App.Cas. 171	6 B.C.R. 532; 1 M.M.C. 360.
White v. Parnther (1828)	1 Kn. 179, 425	9 B.C.R. 395.
White v. Witt (1877)	5 Chy.L. 589	10 B.C.R. 395.
White v. Witt	5 Ch.D. 589	4 B.C.R. 380.
White's Case (1879)	12 Ch.D. 511	9 B.C.R. 354.
Whitefield v. Langdale	L.R. 1 Ch.D. 61	1 B.C.R., pt. II., 58, 75.
Whitehead v. Tuckett	15 East, 400	6 B.C.R. 240.
Whitehead v. Greetham	2 Bing. 464	3 B.C.R. 428.
Whitehouse v. Fellows	10 C.B.N.S. 765	5 B.C.R. 643.
Whitehouse v. Hemmant	27 L.J.Ex. 297	2 B.C.R. 107.
Whiteley v. Armitage (1864)	13 W.R. 144	9 B.C.R. 512, 513.
Whiteley v. Bailey	21 Q.B.D. 154	3 B.C.R. 59.
Whiteley v. Roberts Arbitration, In re (1890)	1 Ch. 558	10 B.C.R. 51, 55.
Whitfield v. The South-Eastern Ry. Co. (1858)	E. B. & E. 114	7 B.C.R. 260.
Whiting v. Hovey (1886)	13 A.R. 7	9 B.C.R. 489.
Whiting v. Hovey (1887)	14 S.C.R. 515	
Whittaker v. Vandermesson	4 T.L.R. 707	3 B.C.R. 159.
Whittingham v. Murdy (1889)	60 T.L.N.S. 956	9 B.C.R. 323.
Whittle v. Frankland	21 L.J.M.C. 81	1 B.C.R., pt. I., 246.
Whitworth v. Gaugain (1846)	1 Ph. 727	7 B.C.R. 349.
Wickham v. The New Brunswick and Canada Ry. Co. (1865)	L.R. 1 P.C. 64	7 B.C.R. 349.
Wier, Ex parte (1871)	6 Chy.App. 879	6 B.C.R. 409.
Wier, Ex parte (1871)	6 Chy.App. 875	7 B.C.R. 478.
Wier, Ex parte (1871)	6 Chy.App. 875	8 B.C.R. 157.
Wier, In re (1898)	31 N.Sc.Rep. 97	7 B.C.R. 45.
Wiggett v. Fox (1856)	25 L.J.Ex. 188	10 B.C.R. 11, 12, 13, 14, 15.
Wiggins Ferry Co. v. Ohio Ry. Co	142 U.S. 396	5 B.C.R. 614.
Wight v. Moody (1857)	6 U.C.C.P. 502	9 B.C.R. 310.
Wigle v. Setterington	19 Gr.Ch. 519	1 B.C.R., pt. II., 140.
Wigle v. Stewart	28 U.C.R. 427	1 B.C.R., pt. II., 61.
Wigram v. Buckley	7 R. 469	4 B.C.R. 508.
Wigsell v. School for Indigent Blind	8 Q.B.D. 357	3 B.C.R. 202.
Wilby v. West Cornwall Ry. Co. (1858)	2 H. & N. 703	9 B.C.R. 220.
Wilcox v. Odden	15 C.B.N.S. 837	5 B.C.R. 151, 152.
Wilcoxon, In re, Ex parte Griffith	23 Ch.D. 69	1 B.C.R., pt. II., 327.
Wilde v. Gibson	1 H.L.Cas. 632	6 B.C.R. 209, 210.
Wilding v. Bean (1891)	1 Q.B. 100	4 B.C.R. 212, 216.
Wilding v. Bean (1891)	1 Q.B. 100	3 B.C.R. 32, 301. 8 B.C.R. 423.
Wildings v. Sanderson (1897)	2 Ch. 534	6 B.C.R. 241, 251, 254, 255.
Wilkie v. Jellet (1895-1896)	6 West. L.T. 115	26 S.C.R. 282	7 B.C.R. 350.
Wilkin v. Reid	15 C.B. 192, 22 L.J.C.P. 195	2 B.C.R. 141.

Woo-Yer	NAME OF CASE.	WHERE FOUND.	REFERENCE.
	Woodgate v. Field	2 Hare, 211	2 B.C.R. 31.
	Woodhill v. Great Western Ry. Co.	4 U.C.C.P. 449	6 B.C.R. 28.
	Woodland v. Fuller (1840)	11 A. & E. 859	9 B.C.R. 132; 1 M.M.C. 517.
	Woodley v. Metro. Dist. Ry. Co.	2 Ex.D. 384	3 B.C.R. 227, 254. 4 B.C.R. 124.
	Woodley v. Metro. Dist. Ry. Co. (1877)	2 Ex.D. 384	9 B.C.R. 457.
	Woods v. Caledonia Ry. Co. (1886)	23 Sc. L.R. 261	10 B.C.R. 51, 55.
	Woods v. Leadbitter (1845)	13 M. & M. 38	1 M.M.C. 151.
	Woods v. Eason	9 Can. S.C.R. 239	1 B.C.R., pt. II., 309.
	Woodward v. Ball	6 C. & P. 577	4 B.C.R. 308.
	Woodward v. Sarsons	L.R. 10 C.P. 733	5 B.C.R. 622.
	Woolridge v. Norris	6 L.R.Eq. 410	3 B.C.R. 294, 296.
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