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HON. MR. JUSTICE LOUNT.

The appointment of Mr. William Lount, K.C., to the position rendered vacant in the Common Pleas Division of the High Court of Justice of Ontario by the death of Mr. Justice Rose has been received with much satisfaction by the profession. His name had long ago been mentioned in connection with a judicial position, and the hope was generally expressed that he might receive it. We are among those who are glad that he has, and congratulate him upon his promotion to the high and dignified position which he has been called upon to fill. We have every reason to believe that he will perform its duties with credit to himself and satisfaction to the public and the profession.

Mr. Lount was born at Holland Landing, in the County of York, on March 3, 1840, and is the son of Mr. George Lount, who for many years was Registrar of the County of Simcoe, a man highly respected in his county both personally and in his official capacity. He received his education at the Barrie Grammar School, and subsequently at the Toronto University. He studied for several years in the office of Messrs. Wilson & Hector, the senior member of the firm being subsequently Chief Justice Sir Adam Wilson. This firm enjoyed at that time a large share of the legal practice of Toronto. In 1863 Mr. Lount was called to the Bar, and commenced the practice of his profession in the town of Barrie. In 1876 he was made a Q.C., and in 1883 removed to Toronto, where he became the senior member of the firm of Lount, Marsh & Lindsey.

Early in life he went into politics, and sat in the Local Legislature as member for North Simcoe from 1867 to 1871, as a Liberal. In 1896 he was elected as member for the Dominion Parliament for Centre Toronto, resigning his seat, however, in November, 1897.

Mr. Lount took a prominent position at the Bar in the County of Simcoe, his great opponent in counsel business being the late D'Alton McCarthy. Though not the equal of the latter in some of the requirements of a model advocate, Mr. Lount's persuasive eloquence and personal popularity with juries frequently snatched

victory from that great advocate and lawyer, whose untimely death and loss to the country at large is still fresh in our memory.

Of upright character, of good repute among his brethren who know him best, courteous and affable, and a good lawyer, the profession gladly accept the appointment of Mr. Lount to the Bench, and look forward to a successful judicial career, which we trust will continue for many years to come.

His popularity with the profession was evidenced by the very large number of those who attended on the occasion of his installation, when, in appropriate but modest language, he thanked the Bar for their congratulations, and claimed their aid in the discharge of his responsible duties.

THE LATE MR. B. B. OSLER, K.C.

We but voice the thought of ourselves and of others when we say that a feeling of great sadness and sense of loss came to all who knew him when the death was announced of Mr. Osler at Atlantic City. The shock is all the greater from being so wholly unexpected. In a letter to an old friend, written only a few days before his death, he discussed current events in his own sprightly and incisive manner, and said that he was steadily gaining strength and hoped to be back to work within a month or so.

As we have already (vol. 35, p. 289) given some particulars of his life and referred at some length to his career and the position he occupied at the Bar, we need not repeat what was there said.

It is not going too far to say that no man at the Canadian Bar, during the present generation, has occupied, as a great and powerful advocate, a larger space in the mind of the public and of the profession than has the deceased. There have lately been and still are with us advocates in the front rank, perhaps better known by reason of other and widely differing gifts and attainments, such men for example as Christopher Robinson, Edward Blake, the late D'Alton McCarthy, S. H. Blake and perhaps others, all of whom have a Dominion reputation, as well as some who might be named in the various Provinces, who have obtained prominence in many ways, and who have earned the respect and admiration of their fellows; but none of those now living will be more missed than the one who has just gone from us.

Not only on account of his great gifts, the force of his intellect

and his success as an advocate will he be remembered, but, perhaps, most of all, by those who knew him best, for the goodness of his heart, his strong and unfailing friendships, and the genial kindness and companionableness which so distinguished him. Unselfish and helpful whenever the occasion offered, he had no enemies, but those whose ill-will testified to his worth.

In speaking of Mr. Osler it is but natural to refer to other members of his family, through whom he brings us in touch with some of the great interests of the country. No man on the Ontario Bench stands higher in the estimation of the profession than his elder brother, the Hon. Mr. Justice Osler, a courteous gentleman of unsullied life, as well as a profound lawyer, and whom we shall all be glad to see, some day, occupying a still higher judicial position; whilst of his younger brothers—Mr. E. B. Osler, well-known and esteemed, occupies a high position in the financial world, and in public life. Another brother, Dr. Osler, of Baltimore, stands probably at the head of the medical profession on this continent in his own branch of study.

We all mourn the loss of our friend, and it will be long before the memory of that loss will fade away.

MARRIAGE LAWS IN QUEBEC.

The Delpit case is one which has attracted a good deal of attention; and many newspapers, in order to cater to the supposed public taste for something sensational, have with their very frequent disregard of accurate statement, made it an exceedingly difficult thing for any one to know how the case really stands. The truth of the matter appears to be that one Edward Delpit went through the form of marriage with the lady who claims to be his wife in May, 1893, before the Rev. W. S. Barnes, a person duly authorized by the laws of Quebec to solemnize marriage. Children were born of the union of the parties, but unfortunately the parties disagreed.

Mr. Delpit it appears became aware that according to the special laws of the Roman Catholic Church a marriage solemnized by any person other than a priest of that church is invalid where both the contracting parties are Roman Catholics. He then claimed that both he and the lady with whom he went through the

form of marriage were at the time Roman Catholics. He therefore, as a preliminary step to applying for a decree of a secular tribunal to declare the alleged marriage null and void, instituted proceedings before a Roman Catholic Archbishop to enquire into the validity of the alleged marriage, and by sentence pronounced by the Archbishop's Vicar General the marriage was declared null and void according to the laws of their church. Mrs. Delpit was cited before this ecclesiastical tribunal and appeared, and objected that it had no jurisdiction, and defended herself subject to that objection. Having thus fortified himself with an ecclesiastical sentence in favour of the invalidity of the marriage, Mr. Delpit commenced proceedings in the Superior Court of Quebec to have it declared that the marriage was null and void.

No reference, therefore, it will be seen, has been made by any provincial court to an ecclesiastical tribunal, as to the validity of the marriage, and as we have on a former occasion said, no such reference could be made in our opinion by a Provincial judge consistently with his duty. Neither does it by any means follow that any Provincial Court will conceive itself bound to adopt the view of the ecclesiastical tribunal as to the invalidity of the marriage. It may well be that even if the ecclesiastical tribunal has correctly interpreted the laws of their Church, (as to which we refrain from offering any opinion) the marriage though void according to the ecclesiastical law is perfectly valid and binding upon the parties according to the law of the land. And while the parties, if Roman Catholics, may have subjected themselves to the spiritual censure of the Church, yet so far as the legal obligations and status both of themselves and children are concerned the marriage may be absolutely valid and binding on all concerned. For many obvious reasons one might well hope that this may prove to be the case. Here, however, we are content to leave the matter for the present, not doubting for a moment that the judiciary of Quebec will deal with it according to law, being swayed neither by ecclesiastical prejudice or popular clamour.

UNLICENSED CONVEYANCERS.

We have received from Mr. Peter McDonald, Barrister Woodstock, a communication dealing at some length with the subject of unlicensed conveyancers. He calls attention, as we have done times without number, to the fact that practitioners are deprived

of a large share of legal work by depredators, and says that "if the Benchers of our Law Society cannot or will not exert themselves to provide a remedy, they should resign and give place to men who will effect a reform." He very naturally calls attention to the fact that other professions have long ago secured necessary legislation, but that the Benchers have done nothing for those whose interests they are elected to protect. There certainly is no valid reason why the same measure of protection should not be afforded to us as is obtained by the medical fraternity, by dentists or even by vendors of spirituous liquors. Our correspondent urges that an Act should be passed forbidding everyone save solicitors and notaries from practicing as conveyancers for hire, thus safeguarding the public as well as the profession. He also makes a strong plea that an Act or Rule of Court should be passed, requiring every solicitor whose name is appended to an application for grant of probate, etc., to state on affidavit that there is no agreement or understanding between him or any member of his firm or any other person, whereby any sum of money or share of business is payable to any person save only to his professional agent or partners. It is claimed that such an affidavit would be largely efficacious to stamp out a pernicious practice much in vogue in this regard by certain disreputable practitioners. He also urges that concerted action should be taken in this matter and legislation asked for during the coming session of the Ontario Legislature. It is true that the Benchers have considered this matter up to a certain point, and have felt difficulty in dealing with it, but we refuse to believe that nothing can be done to remedy the evil. Our correspondent says that he will be pleased to hear from solicitors interested in the matter, so that something definite may be accomplished.

It has been remarked that in none of the court rooms at Osgoode Hall, Toronto, are the Royal Arms in evidence. In most of the court rooms, not only of Ontario but of the other Provinces of the Dominion this is considered a proper and suitable symbol of the Royal authority under which all courts are held, and it is somewhat curious that in the chief seat of the law in Ontario the Royal Arms are conspicuous by their absence.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

(Registered in accordance with the Copyright Act.)

MARITIME LAW.—SHIP TO BE DISCHARGED "WITH ALL REASONABLE DESPATCH" —DELAY CAUSED BY RAILWAY.

In *The Lyle Shipping Co.* v. *Cardiff* (1900) 2 Q.B. 638, the case turned upon the meaning of a clause in a charter party which provided that the charterers were to unload a cargo "with all reasonable despatch as customary." The custom at the port was to discharge such a cargo into the wagons of certain railway companies; and the charterers arranged with one of these companies for the supply of wagons to take the cargo. Without any negligence on the part of the charterers, but owing to pressure of work at the port, by reason of which there was a deficiency of wagons available, there was delay in unloading the cargo. Bigham, J., who tried the action, which was brought against the charterers for damages for detention of the vessel, held that the defendants having done their best to procure the appliances which were customarily used at the port for discharging such a cargo, and having used them with proper despatch, were not liable for the delay, and he dismissed the action with costs; and this judgment was affirmed by the Court of Appeal (Smith, Williams, and Romer, L.JJ.).

EXPROPRIATION OF LANDS—COMPENSATION—INTEREST IN LAND—RIGHT TO SINK SHAFT FOR MINING PURPOSES.

In re Masters and Great Western Ry. Co. (1900) 2 Q.B. 677. This was a case stated by an arbitrator. A railway company having expropriated land for the purposes of their railway, a lessee of adjoining land claimed a right to compensation in respect to a right which he had, under his lease, to sink a shaft on the land expropriated, for the purpose of mining coal. This right was subject to the reasonable approval of his lessor, who was also the owner of the land expropriated. It was contended by the railway that the interest claimed by the lessee was not the proper subject of compensation under the Land Clauses Act, and that as, under the lease, the lessor was entitled to refuse leave to sink a shaft in

the part sought to be expropriated, it was a reasonable ground for his refusing such leave, that he was about to deal with the surface of the land in a manner inconsistent with the right of the lessee to sink a pit. The arbitrator appointed to fix compensation found as a fact that the right in question had been injuriously affected, and Darling and Bucknill, JJ., agreed that it was properly the subject for compensation.

WILL—TRUST TO ACCUMULATE INCOME WITHIN TWENTY-ONE YEARS—INTESTACY—THELLUSSON ACT (39 & 40 GEO. 3, C. 98)—(R.S.O. C. 111, S. 3.).

In re Travis, Frost v. *Greatorex* (1900) 2 Ch. 541. The question the Court had to decide in this case was whether the trusts for accumulation of income contained in a will were invalid under the Thellusson Act (39 & 40 Geo. 3, c. 99), (see R.S.O. c. 111, s. 3) By the will in question, the testator devised and bequeathed his estate to trustees upon trust to pay out of the income thereof an annuity of £200 to his niece during her life, and he directed the surplus income of the trust estate to be accumulated and invested until the death of his niece, and subject, and without prejudice, to the trusts aforesaid, his trust estate was directed to be held in trust for the children of his niece living at his decease, or born afterwards, who should attain twenty-one, or who, dying under that age, should have issue living at his or her decease, if more than one, in equal shares; and in case there should be no such issue of the niece, then subject, and without prejudice to the trusts aforesaid, after her death and the failure of her issue, as to one-third of the trust estate for some cousins named in the will, and, as to the other two-thirds, for the trustees of a charity. The action was tried by Hall, Vice-Chancellor of Lancaster, who made a declaration that the trusts for accumulation of the surplus income ceased at the expiration of twenty-one years from the testator's death, and that as to the surplus income of the trust estate, including therein the amount of the twenty-one years' accumulations, there was an intestacy. The annuitant being past child bearing, the trustees of the charity appealed, and contended that, subject to the payment of the annuity, they were entitled to immediate payment of two-thirds of the trust funds and the accumulations from the investments. The trustees of the testator's will also cross appealed on the ground that the will did not effectually give the accumulations to the parties ultimately entitled to the trust estate, but only the

original trust estate. The Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.), dismissed both the appeal and cross appeal, being of opinion that there was a valid disposition of the income during the period it could, under the Thellusson Act, be lawfully accumulated, but that there was no disposition of the subsequently accruing income, which, therefore, passed as on an intestacy. The gifts to the cousins and the charity were held to be still contingent until the death of the annuitant, as there is no rule of law which requires it to be assumed that a lady of any age will never have any children. As to the cross appeal the Court of Appeal held that the accumulations for the twenty-one years had been disposed of in the same manner as the capital.

PRACTICE—DISCOVERY—PATENT ACTION—ACCOUNT OF PROFITS—DISCLOSURE OF NAMES OF CUSTOMERS.

Saccharin Corporation v. *Chemicals and Drugs Co.* (1900) 2 Ch. 556, deals with a simple point of practice The action was brought to restrain the infringement of the plaintiffs' patent, and an account of profits made by the defendants from the sale of articles infringing the patent had been ordered. For the purpose of this account the defendant had produced their books, but covered up the names and addresses of their customers. The plaintiffs applied for an order to compel the defendants to disclose those names and addresses. Cozens-Hardy, J., refused the motion, but the Court of Appeal (Lord Alverstone, M.R, and Rigby and Collins, L.JJ.), held that the plaintiffs were entitled to the discovery.

HUSBAND AND WIFE—LOAN BY WIFE'S TRUSTEES TO HUSBAND—BOND IN PENALTY BY HUSBAND—INTEREST ON MONEY SECURED BY BOND—DAMAGES—STATUTE OF LIMITATIONS.

In re Dixon, *Heynes* v. *Dixon* (1900) 2 Ch. 561, the Court of Appeal (Webster, M.R., and Rigby and Collins, L.JJ.) have affirmed the judgment of Byrne, J., (1899) 1 Ch. 561 (noted ante, vol. 36, p. 51). The facts of the case were as follows:—The trustees of a marriage settlement, having power to invest the trust funds, with the consent of the husband or wife, in real or personal security, in 1852 lent part of the fund to the husband upon the security of his bond in a penal sum equal to double the amount advanced. The wife was entitled to the income of the trust fund for life, with remainder to the husband for life, with remainder over. The husband and wife lived together in amity till the wife's death in

1876, and the husband died in 1896. On his death the bond was found among his papers. No interest or principal was ever paid on the bond. The trustees of the settlement claimed to prove as creditors of the husband's estate for the amount advanced, with interest thereon from the date of the husband's death. Byrne, J., allowed the claim, and the Court of Appeal held that he was right in so doing. The representatives of the deceased husband contended that the bond being in a penal sum, and not providing for payment of interest, no interest was payable, or if payable, was payable by way of damages; and also that the bond was barred under the Statute of Limitations (3 & 4 Wm. 4, c. 42) s. 5 (see R.S.O. c. 72, s. 1); and that the fact that it was found among the husband's papers afforded a presumption of payment; but none of these contentions were held entitled to prevail. The Court of Appeal say that the statute 4 & 5 Anne, c. 16 merely recognized and confirmed the doctrine of equity that bonds given as security for money are to be deemed securities for the money advanced and interest thereon not merely to the day fixed for payment, but to the date of actual payment of the principal, and that under the statute interest, though not authorized, is payable as interest, and not as damages. The Court of Appeal fully approved of the conclusion of Byrne, J., that as the hand to pay and receive the interest, down to the husband's death, was the same, the Statute of Limitations was no bar; and also held that the husband having notice of the trust on which the trustees held the fund, when he accepted the loan he became an express trustee, and on that ground also, neither he nor his representatives were in a position to set up the Statute of Limitations.

HUSBAND AND WIFE—TORT OF WIFE AND LIABILITY OF HUSBAND—MARRIED WOMEN'S PROPERTY ACT, 1882 (45 & 46 VICT., C. 75), S. 1, SUB-S. 2, S. 14; (R.S.O. C. 163, S. 3, SUB-S. 2, S. 17).

In *Earle* v. *Kingscote* (1900) 2 Ch. 585, the Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.) affirmed the judgment of Byrne, J. (1900) 1 Ch. 203, (noted ante, vol. 36, p. 221.) It may be remembered that the action was brought against a husband and wife to recover damages for a loss sustained by the plaintiff in consequence of the fraud of the wife, under the following circumstances: The plaintiff and Mrs. Kingscote entered into a contract for a joint speculation in shares, upon Mrs. Kingscote's

representation that she would thereby be able to repay the plaintiff a debt she owed her, and that she would be responsible for any loss the plaintiff might sustain through such speculation. Having made that bargain, Mrs. Kingscote telegraphed the plaintiff that she had bought the shares, and on the faith of the telegram the plaintiff sent Mrs. Kingscote £2,000. The shares were not in fact purchased, and Mrs. Kingscote misappropriated the money. Before Byrne, J., the case was argued on the assumption that the case was one affected by the Married Women's Property Act, 1882, but on the appeal it was contended that the effect of the Married Women's Property Act, 1882, was to relieve a husband from liability for his wife's torts, committed after marriage, and s. 1, sub-s. 2, of that Act was relied on (see R.S.O. c. 163, s. 3, sub-s. 2), and the appellants contended that *Seroka* v. *Kattenburg* (1886) 17 Q.B.D. 177 was wrong and should be overruled, but the Court of Appeal held that the words "need not be joined" in that sub-section do not mean that the husband cannot be joined, but only that he need not be joined where a plaintiff is seeking to obtain satisfaction out of a wife's separate estate alone. Section 14 of the English Act, we may point out, deals only with torts committed by a wife before marriage, whereas the as section adapted in the R.S.O. c. 163, s. 17, extends to "wrongs committed by her after marriage," and this difference in the Ontario statute would possibly be found to render this decision, as to a husband's liability for his wife's tort committed after marriage, inapplicable in Ontario. There is, however, this to be noted, that although the Ontario Act says affirmatively that the husband is to be liable for his wife's torts committed after marriage to the extent of all property belonging to his wife which he shall have acquired or become entitled to, from or through his wife, subject to specified deductions, it does not negatively declare that he is not to be also personally liable. It is possible that this may be deemed to be implied, but in view of the present case that point cannot be said to be free from doubt.

VENDOR AND PURCHASER—QUESTIONS ARISING OUT OF CONTRACT—VENDOR AND PURCHASER ACT, 1874 (37 & 38 VICT., C. 78), S. 9—(R.S.O. C. 134, S. 4).

In re Hughes & Ashley (1900) 2 Ch. 595, an application was made to Kekewich, J., under the Vendor and Purchaser Act, 1874 (37 & 38 Vict., c.78) s. 9, (R.S.O. c. 135, s. 4), to determine a point

arising on the construction of a contract for the sale of land. The statute provides that the judge may on such application determine any question "arising out of, or connected with the contract, *except a question affecting the existence or validity of the contract.*" There was a de facto contract between the parties, and the point which the vendor desired to have determined was one as to the form of conveyance the purchaser was entitled to under it. The purchaser, on the return of the motion, set up facts going to shew that he had bought on the faith of representations made by the auctioneer, which entitled him to a rescission of the contract in case the vendor refused to be bound by them. Kekewick, J., thereupon refused to entertain the application, but the Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.), although admitting that no question as to the existence or validity of the contract can be entertained on such applications, nevertheless thought that there being a de facto contract, any question arising upon its construction should be disposed of, even though there might be facts existing which would disentitle the applicant to specific performance of the contract, and the appeal was allowed.

TRADE UNION—RESTRAINT OF TRADE—EXPULSION OF MEMBER—INJUNCTION—JURISDICTION—TRADE UNION ACT, 1871 (34 & 35 VICT., C. 31), SS. 2, 3, 4—(R.S.C. C. 131; SS. 2, 4, 22), TRADE UNION AMENDMENT ACT, 1876 (39 & 40 VICT., C. 22), S. 16.

In *Chamberlain's Wharf v. Smith* (1900) 2 Ch. 605, the plaintiffs were members of an Association which the Court held to come within the definition of a "trade union" in the Trade Union Act, 1871 (R.S.C. c. 131), which, by its rules, among other things sought to restrain the rights of trade of its members, and to regulate from whom they should buy, and the prices at which they should sell goods, and also provided for a distribution of the surplus funds of the Association among the members. For an alleged breach of the rules of the Association the plaintiffs had been expelled from the Association. The plaintiffs claimed that their expulsion was wrongful, and they claimed an injunction restraining the defendants from depriving them of the privileges of membership. The Trade Union Act, 1871, s. 4 (R.S.C. c. 131, s. 4) provides that nothing in the Act shall enable any Court to entertain any legal proceeding instituted with the object, inter alia, of directly enforcing agreements concerning the conditions on which members may buy or sell their goods, or any agreement for

the application of the funds of a trade union to provide benefits for members. Kekewick, J., granted an interlocutory injunction as prayed, but the Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.) were unanimous that the granting of an injunction in such a case was doing what the statute forbade to be done, as it was in effect in the present case enforcing an agreement for the application of the funds of the Association for the benefit of members; that as the objects of the Association would be illegal but for the Trade Union Act, it was governed by that Act, which prevented the Court from enforcing the agreement in question between the members. This species of legislation is certainly anomalous, in that it purports to give legal rights, and by the same Act declares that such rights shall be incapable of enforcement by the ordinary process of litigation.

WILL—CONSTRUCTION—HOTCHPOT CLAUSE—REAL PROPERTY LIMITATION ACT—RENT DUE TO TESTATRIX IN RESPECT OF PROPERTY OF WHICH CHILD ACQUIRES POSSESSORY TITLE.

In re Jolly, Gathercole v. *Norfolk* (1900) 2 Ch. 616, the Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.) have reversed the decision of North, J. (1900) 1 Ch. 292 (noted ante, vol. 36, p. 299). The case turned on the construction of a hotchpot clause in a will. One of the sons of the testatrix, to whom the clause applied, had during the testatrix's lifetime acquired title by possession as against the testatrix of a freehold farm, by reason of being in possession thereof for more than twelve years without payment of rent. On making a division of the estate, North, J., held that this son must bring into hotchpot the rent of the farm for the period of twelve years while he was acquiring a possessory title; but the Court of Appeal came to the conclusion that under the Real Property Limitation Act all the rights of the reversioner in the farm were extinguished, that, therefore, the unpaid rent was no longer owing to the estate, and should not be deducted from the son's share.

WILL—CONSTRUCTION—LEGATEE'S RIGHT OF SELECTION—EVIDENCE TO EXPLAIN WILL.

In re Cheadle, Bishop v. *Holt* (1900) 2 Ch. 620, an attempt was made to adduce evidence to explain a testatrix's intention in regard to an ambiguous clause in her will, but it was rejected, and it was held that the Court must construe the will without such

extrinsic evidence, and having regard simply to the will itself and the circumstances of the testatrix's estate. The clause in question was a bequest of 140 shares of the testatrix's stock in a certain company. At the time of the making of the will, and also at her death, the testatrix had 280 shares of such stock, but of these forty shares only were fully paid up, and the rest were only half paid up. The legatee claimed the right to select the forty paid up shares as part of the bequest, and Kekewick, J., upheld the claim, and he rejected the evidence of the solicitor who drew the will to the effect that the testatrix intended the bequest to apply to the half paid shares. The Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.) held that he was right in rejecting the evidence of the solicitor, but wrong in holding the legatee had a right to select the paid up shares. The testatrix having two classes of shares, viz., 240 half paid, and forty fully paid, the Court of Appeal was of opinion that the only class out of which the bequest could be met was the 240 half paid shares, and it would not be right to fulfil the bequest partly out of one class and partly out of the other.

VENDOR AND PURCHASER—CHARGE ON PROPERTY SOLD—OUTGOINGS—PARTICULARS—CONDITIONS OF SALE—OMISSION TO DISCLOSE MATERIAL FACT—COMPENSATION—RESCISSION—SPECIFIC PERFORMANCE.

In re Leyland and Taylor (1900) 2 Ch. 625. This was an application under the Vendor and Purchaser's Act to determine whether or not a purchaser was entitled to compensation under the following circumstances: The property in question was a town leasehold property. Prior to the sale the vendor had been served with a notice by the municipal body to pave the street fronting the house. The vendor, without any fraudulent intent, omitted to give the purchaser notice of the fact that the paving notice had been served. The conditions, however, provided that the purchaser should indemnify the vendor against expenses in complying with any requirement enforceable against him and made after the sale by the local authority in respect of paving, etc. No work had been done by the municipal body under the paving notice, and consequently there was no actual charge against the property in respect of such paving at the time of the sale. There was a condition providing that the purchaser should be entitled to compensation for "any error, misstatement or omission in the particulars."

The Vice-Chancellor of Lancaster thought that the purchaser was, under the circumstances, entitled to compensation, but the Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.) came to a different conclusion, being of opinion that the neglect to state the service of the paving notice was not an "omission in the particulars" within the meaning of that condition; because a purchaser of such property must be taken to know that the municipal body might serve such a notice at any time; but Rigby, L.J., points out that different considerations might arise if the purchaser were claiming rescission, or the vendor specific performance of the contract, which did not arise on a claim merely for compensation. The condition for indemnity against such a liability he held was not deceptive, nor a holding out that no notice had been served. It was a condition providing for a contingency which had not happened. Collins, L.J., seems to have thought that the failure to state that the paving notice had been served was such an error or omission as entitled the purchaser to compensation, but he thought, with some hesitation, that such compensation could be only nominal.

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Moss, J.A.] IN RE MADOC VOTERS' LISTS. [Dec. 11, 1900.

Parliamentary elections—Voters' lists—Appeal—Notice of complaint—Service on clerk—Registered letter.

Case stated under s. 38 of the Ontario Voters' Lists Act by the Junior Judge of the County Court of Hastings.

The clerk of the municipality posted up the lists of voters in his office Aug. 20, 1900, and on Sept. 21, 1900, notice of the complaint, with the list of names in Form 6 required by the Act, was received by the clerk through the mail by registered letter. The question to be decided was whether the sending of the notice by mail was a compliance with s. 7 of the Act, which requires the "voter, or person entitled to be a voter, making a complaint, shall give to the clerk, or leave for him at his residence or place of business notice in writing."

It was contended on behalf of certain voters that the notice must be

given or left by the voter himself, and that service by any agent was not a compliance with the terms of the section.

Held, that service of the notice may be effected by an agent; that the post-office may be such agent; and that the service in this case was valid.

J. R. Cartwright, Q.C., for Attorney-General. *W. J. Moore*, for certain voters.

Moss, J.A.] IN RE MARMORA AND LAKE VOTERS' LISTS. [Dec. 11, 1900.

Parliamentary elections—Voters' lists—Appeal—Notice of complaint—Loss of—Parol evidence.

Case stated under s. 38 of the Ontario Voters' Lists Act by the Junior Judge of the Coun y of Hastings.

A list of appeals, containing some 225 names to be added to the voters' lists, was prepared, and a voter's notice of complaint in Form 6 to the Act was signed by the complainant, attached to the list of names to be added, and handed to the clerk in his office within the thirty days required by the statute. When the list was produced by the clerk in Court the notice of complaint was absent, and it was objected that there were therefore no appeals before the Court.

The question asked was whether a complaint in regard to a voters' list can be heard without a written notice of the complaint and intention to apply to him being before the Judge, it being shewn by parol evidence that such notice has been left with or given to the clerk at the proper time, but subsequently lost.

Held, that it was competent for the Judge to hear and receive parol evidence as to the form and effect of the notice in question and of its loss; and that, upon his being satisfied by such evidence that a sufficient notice of complaint was duly left with the clerk as by the Act required, the complaint may be dealt with by the Judge as prescribed by it.

J. R. Cartwright, Q.C., for Attorney-General. *W. J. Moore*, for certain voters.

From Snider, Fitzgerald and Carman, Co.JJ.] [Jan. 7.

IN RE QUEENSTON HEIGHTS BRIDGE ASSESSMENT.

Assessment—Bridge—Franchise.

In assessing for the purpose of taxation that part of a bridge, crossing the Niagara River, lying within a township in Canada, regard cannot be had to its value in proportion to the value of the franchise or of the whole bridge, or to the cost of construction, but only to the actual cash price obtainable or the land and materials situate within the township. *In re Bell Telephone Company Assessment* (1895), 25 A.R. 351, and *In re London Street Railway Company Assessment* (1897), 27 A.R. 83, applied.

Judgment of a Board of County Judges reversed.

C. A. Masten, for appellants. *J. H. Ingersoll*, for respondents.

From MacMahon, J.] McINTYRE *v.* THOMPSON. [Jan. 7.

Limitation of Actions—Possession

The acts relied on in support of a claim to title by possession were that the claimant had sold the timber off the land in question; had afterwards cleared it, and had sowed and harvested one crop of wheat; had then for some years taken hay from it; and had then used it as pasture land. The land was not wholly enclosed, one end being bounded by a marsh, and through this marsh cattle could and did stray into it.

Held, that there had not been such possession as is necessary to bar the right of the true owner.

Judgment of MACMAHON, J., affirmed.

Poussette, Q.C., for appellant. *D. W. Dumble*, for respondent.

From Drainage Referee.] [Jan. 7.

PRIEST *v.* TOWNSHIP OF FLOS.

Drainage—Alteration of report and plans.

Before the report, plans, and assessment of the engineer for a drainage scheme have been adopted by the council, it can refer them back to him for further consideration or for amendment, but after they have been adopted it cannot of its own motion change or amend them, and if the drainage scheme is carried out with a material change the municipality are not protected, and are liable to make good any damages resulting from the work.

Judgment of the Drainage Referee affirmed.

Matthew Wilson, Q.C., and *W. F. Lent*, for appellants. *C. E. Hewson*, for respondents.

From Street, J.] [Jan. 7.

JAMES *v.* GRAND TRUNK RAILWAY COMPANY.

Railways—Fences—Culvert—Animals on track—Negligence.

The plaintiff's horses, which were in a field on one side of the defendants' line of railway, passed to a field on the other side through an unfenced culvert over which the line ran, and, the fence in that field being broken, wandered to the highway, and then at a crossing went on the line of railway and were killed:—

Held, that the defendants were bound to fence the culvert, and that not having done so they could not set up that the horses were not lawfully on the highway, or defeat the plaintiff's claim to damages.

Judgment of STREET, J., 31 O.R. 672; 36 C.L.J. 384, affirmed.

H. S. Osler, for appellant. *Teetzel*, Q.C., and *Geo. C. Thomson*, for respondent.

From Boyd, C.] [Jan. 7.

OTTAWA ELECTRIC COMPANY *v.* ST. JACQUES.

Contract—Printed and written clauses.

A lessee of a building entered into a contract with an electric light company for the supply by them to him of light for the building. The contract, drawn on a printed form used by the company, contained a provision that it was "to continue in force for not less than 36 consecutive calendar months, from date of first burning and thereafter until cancelled (in writing) by one of the parties hereto," the whole of this clause, except the figures "36" being printed. A subsequent clause, wholly in writing, under the printed heading, "Special conditions, if any," provided that the contract was "to remain in force after the expiration of the said 36 months for the term that the party of the second part (the lessee) renews his lease for the (building)," with certain provisions as to payment of the expense of wiring:—

Held, that there was no rule of law requiring more weight to be given in a contract of this kind to a written provision than to a printed one; that the clauses must be read together; and that their fair meaning was that the contract was to be in force for at least thirty-six months, and thereafter during any renewal term of the lease, until cancelled in writing.

Judgment of BOYD, C., affirmed.

G. F. Henderson, for appellants. *F. A. Magee*, for respondent.

From Meredith, J.] [Jan. 7.

CHALLONER *v.* TOWNSHIP OF LOBO.

Drainage—Qualification of petitioners — "Last revised assessment roll."

The "last revised assessment roll" which governs the status of petitioners in proceedings under the Drainage Act is the roll in force at the time the petition is adopted by the council and referred to the engineer for enquiry and report, and not the roll in force at the time the by-law is finally passed.

Judgment of MEREDITH, C.J., 32 O.R. 247, 36 C.L.J. 707, reversed.

Talbot Macbeth, for appellants. *T. G. Meredith*, for respondent. *A. Stuart*, for contractor.

From Meredith, C.J.] WARD *v.* BRADLEY. [Jan. 7.

Gift—Donatio mortis causâ—Mortgage.

The holder of two mortgages, while very ill and about to start on a journey for the benefit of his health, handed the mortgages and some title deeds to the defendant, telling her that they were for her and that he would execute an assignment of them to her if one were prepared and sent to him. The mortgagee died two months later, no assignment having been executed by him, and one of the mortgages having been partially discharged by him:—

Held, that there had not been a donatio mortis causa of the mortgages

but merely an incomplete and ineffective gift inter vivos, and that the mortgages formed part of the mortgagee's estate.

Judgment of MEREDITH, C.J., affirmed.

Aylesworth, Q.C., and *Kittermaster*, for appellant. *Riddell*, Q.C., for respondent.

From Meredith, C.J.] [Jan. 7.

ATCHESON *v.* GRAND TRUNK RAILWAY.

Railways—Overhead bridge—Car of another company—"Used on the railway."

When a car of a foreign railway company forms part of a train of a Canadian railway company, it is "used" by the latter company within the meaning of s. 192 of the Railway Act, 51 Vict., c. 29 (D.), so as to make that company liable in damages for the death of a brakesman caused by the car being so high as not to leave the prescribed headway between it and an overhead bridge.

Judgment of MEREDITH, C.J., affirmed.

Wallace Nesbitt, Q.C., and *H. E. R[illegible]*, for appellants. *W. J. Hanna*, for [illegible]spondent.

From Meredith, J.] BOOK *v.* BOOK. [Jan. 7.

Life insurance—Change of beneficiary—Will.

When a policy of insurance is payable to a beneficiary for value, not so named on the face of the policy, who is also one of the preferred class of beneficiaries, the assured cannot by his will transfer the benefit of the insurance to another beneficiary of the preferred class. Such a case is governed by s. 151, and does not fall within s. 160 of the Insurance Act, R.S.O. c. 203.

Judgment of MEREDITH, J., 32 O.R. 206; 36 C.L.J. 596, reversed.

Teetzel, Q.C., and *Geo. C. Thomson*, for appellant. *Armour*, Q.C., and *W. W. Osborne*, for respondent.

From Co. J., Welland.] [Jan. 7.

IN RE ONTARIO SILVER COMPANY AND BARTLE.

Plan—Amendment—"Party concerned."

A plan of sub-division of the land of adjoining owners, prepared and registered upon their joint request, may, upon compliance with the statutory conditions, be amended upon the application of either owner as far as his own land is concerned, without the consent of the other owner, but that other owner is a "party concerned" within the meaning of s. 110 of R.S.O. c. 136, and entitled to notice of the application.

Judgment of the Judge of the County of Welland affirmed.

F. W. Hill, for appellants. *Cassels*, Q.C., for respondents.

From Armour, C.J.] [Jan. 7.

OATMAN *v.* MICHIGAN CENTRAL RAILWAY COMPANY.

Fire—Railways—Negligence—Onus of proof.

In an action against a railway company, carrying on business under legislative sanction, to recover damages resulting from a fire alleged to have been caused by a spark from an engine, the plaintiff must, in addition to giving evidence from which it may reasonably be inferred that the fire was caused as alleged, also give some evidence of negligence on the part of the defendants, *e.g.*, in the construction or management, or want of repair of the engine, and the onus is not upon the defendant to prove that they have adopted and used with due care reasonable contrivances to avoid the danger of fire.

Judgment of ARMOUR, C.J., reversed.

I. F. Hellmuth, and *D. W. Saunders*, for appellants. *Charles Millar*, for respondent.

From Divisional Court.] [Jan. 7.

GLOVER *v.* SOUTHERN LOAN AND SAVINGS COMPANY.

Mortgage—Sale—Execution—Encumbrancers—Collateral security.

Execution creditors, though they probably cannot sell under their writs the interest of their execution debtor in land subject to more than one mortgage made by him, are, nevertheless, encumbrancers upon that interest, and upon the proceeds thereof in the event of a sale of the land by a mortgagee, and entitled to payment thereout according to priority.

A mortgagee who sells the land and pays off an encumbrancer who holds, to his knowledge, collateral security, must take over that collateral security for the benefit of subsequent encumbrancers, including execution creditors, and is liable to them for the value thereof if he fails to do so.

Judgment of a Divisional Court, 31 O.R. 552; 36 C.L.J. 129, affirmed, MACLENNAN, J.A., dissenting.

Armour, Q.C., and *Farley*, Q.C., for appellants. *Aylesworth*, Q.C., and *John Crawford*, for respondents.

From Meredith, J.] LITTLEJOHN *v.* SOPER. [Jan. 7.

Landlord and tenant—Company—Assignments and preferences—Forfeiture—Waiver—Estoppel—Covenant—Sub-lease.

The lessors to a company in a lease containing the usual provision as to forfeiture in the event of an assignment for the benefit of creditors by the lessees, held all the shares in the company except three. The company made an assignment under the Act, one lessor moving, and the other seconding, the resolution authorizing this to be done, and both executing the assignment as assenting creditors:—

Held, per ARMOUR, C. J. O., and MACLENNAN, J. A., that the lessors were estopped, under these circumstances, from taking advantage of the

forfeiture clause, and, per Curiam, that, upon the evidence, they had waived the right to forfeit if it had accrued.

When the owner of the reversion accepts a surrender of a lease, he becomes liable upon all such covenants in a sub-lease as concern the demised premises; in this case a covenant by the lessees to supply the sub-lessees with heat and power.

Judgment of MEREDITH, J., reversed.

Thomson, Q.C., and *W. E. Tilley*, for appellants. *Ritchie*, Q.C., and *A. T. Kirkpatrick*, for respondent Soper. *Shepley*, Q.C., for respondents Fane and Lavender.

From Boyd, C.] KING *v.* ROGERS. Jan. 7.

Limitation of actions—Acknowledgment in writing—Agent—Power of Attorney.

A power of attorney from the executor, resident out of the jurisdiction, of a deceased maker of a promissory note to the surviving maker, within the jurisdiction, "to do all things which may be legally requisite for the due proving and carrying out of the provisions" of the will, which, among other things, direct the payment of the testator's debts, does not authorize the surviving maker to bind the estate by an acknowledgment of a debt of which the executor knows nothing, and which is barred at the time.

A letter from the executor of one maker of a note to the holder thereof, advising the holder to look to the surviving maker for payment, as he is now doing well, is not a sufficient acknowledgment.

A direct acknowledgment of the debt in a letter by the executor of one maker of a note to the surviving maker is of no avail to the holder.

Judgment of BOYD, C., 31 O.R. 573; 36 C.L.J. 340, affirmed.

Thomson, Q.C., for appellants. *F. E. Hodgins*, for respondent.

From Drainage Referee. [Jan. 17.

MCKIM *v.* TOWNSHIP OF EAST LUTHER.

Drainage—Mandamus—Notice—View—Damages.

A letter written by the complainant's solicitor to the council of the municipality, stating that the land in question has been flooded by water from a drain constructed by the municipality, but not saying anything as to the drain's condition, and asking them to construct and maintain such drainage work as is required to relieve the land, is not a sufficient notice under s. 73 of the Drainage Act to justify the issue of a mandamus. It is the claimant's duty to shew that proper notice has been given if a mandamus is asked for, and objection to the sufficiency of the notice may be taken by the defendants at any stage of the action without pleading want of notice.

The Drainage Referee in trying an action may proceed partly on view, but in so doing must follow strictly the directions of the Act, and not make the view without appointment or notice to the parties. If he do so proceed, however, his finding, though based partly on the view, may be upheld, if the evidence supports it.

A complainant is entitled to recover for any injury to the use and enjoyment of his land or for its depreciation in value, if caused by failure to keep a drain in repair, but not for depreciation in value based upon the alleged insufficiency in size of the drain as originally made, and, the Court holding, on the construction of the Referee's judgment, that this element had been allowed to enter into the computation of the damages, reduced them from $250 to $50.

Judgment of the Drainage Referee varied.

Mabee, Q.C., for appellants. *Matthew Wilson*, Q.C., for respondent.

From Meredith, C.J.] [Jan. 19.

VALLEE *v.* GRAND TRUNK RAILWAY COMPANY.

Railways — Highway crossing — Neglect to give statutory warning — Contributory negligence.

Persons lawfully using a highway are entitled to assume that the statutory warning will be given by a train crossing the highway, and are not guilty of contributory negligence because while driving a restive horse they approach, in the absence of warning, so close to the crossing as to be unable to control the horse when the train crosses, and are injured, even though they probably, by looking or listening, would have learned of the approach of the train in time to stop far enough away to be in safety.

Judgment of MEREDITH, C.J., affirmed.

Wallace Nesbitt, Q.C., for appellants. *C. W. Colter*, for respondent.

From Street, J.] [Jan. 19.

PETERBOROUGH *v.* GRAND TRUNK R. W. CO.

Railways—Diversion of stream—Substituted bridge—Liability to repair.

An appeal by the plaintiffs from the judgment of STREET, J., reported 32 O.R. 154, was argued before ARMOUR, C.J.O., OSLER, MACLENNAN, and MOSS, JJ.A., on the 17th of January, 1901, and at the conclusion of the argument was dismissed with costs, the Court agreeing with the reasons for judgment in the Court below.

Edwards, Q.C., for appellants. *Wallace Nesbitt*, Q.C., for respondents.

Province of Ontario.

HIGH COURT OF JUSTICE.

Boyd, C.] RODGER *v.* NOXON COMPANY. [Oct. 6, 1900.

Pleading—Statement of claim—Amendment—Conformity with writ—Rule 300—Incorporated company—Slander—Joinder of causes of action—Trial.

The writ of summons claimed damages against an incorporated company for wrongful dismissal and slander. The original statement of claim was confined to the former cause of action, but, after defence and before reply due, the plaintiff amended on præcipe by adding a claim for slander.

Held, that it was competent for plaintiff to do so, under Rule 300.

Semble, that an incorporated company may be liable if slander is spoken by its servants or agents in direct disobedience to its orders; and

Held, that, at all events, the pleading setting up slander should not be struck out summarily, but should be adjudicated on.

Leave to the defendants to have the question of law first determined.

The two causes of action were properly joined; but application might be made under Rule 227 to direct the method of trial.

F. A. Anglin, for plaintiff. *T. Wells*, for defendants.

MacMahon, J.] BOLAND *v.* JENKINS. [Oct. 15, 1900.

Assessment and taxes—Failure to distrain—List of lands—Non-delivery by clerk to assessor—Omission to notify occupants—Non-delivery by assessor to treasurer of certified lists—R.S.O. (1887) c. 193, ss. 140, 141, 142, 143.

In a sale of land for taxes there was a failure to distrain, although sufficient goods were on the premises to have paid the taxes; the account furnished by the assessor did not, as required by s. 140 of R.S.O. (1887) c. 193, shew the reason why the taxes had not been collected; there was no delivery to the assessor by the clerk of the list furnished him by the treasurer, as required by s. 141; no notification, as also required by that section, by the assessor to the occupants or owners of the lands of their liability to be sold for taxes; no certificate verified by oath as required by s. 142; nor any list furnished by the clerk to the treasurer of the lands which had become occupied or were incorrectly described, as required by s. 143.

Held, that the sale was invalid; and the invalidity was not cured by ss. 189, 190, which validate a sale on the expiration of two years from the making of the tax deed.

C. Macdonald, for plaintiff. *J. A. Gibson*, for defendant.

Rose, J.] [Nov. 6, 1900.

ARMSTRONG *v.* MERCHANTS' MANTLE MANUFACTURING CO.

Company—Cause—By-law—Time for payment of—Forfeiture of stock.

Under s. 35 of R.S.O. (1897) c. 191, stock may be forfeited, where the amount payable on a call for stock is not paid within the time limited by special Act incoporating the company, or by the letters patent, or by a by-law of the company.

Where therefore, no time was limited in the statute, or letters patent, or in the by-law making the call, such call was held to be illegal, and an attempted forfeiture of the stock ineffectual.

Gibbons, Q.C., for plaintiff. *A. Mills*, for defendant.

Rose, J.] STRUTHERS *v.* HENRY. [Nov. 7, 1900.

Guarantee—Duration of.

Where a guarantee given by the defendant to the plaintiff was that in consideration of his endorsement for one F. of certain promissory notes given by him for the purchase of a bankrupt stock, he, the defendant would guarantee the due payment of such notes at maturity, provided he was not called upon to pay in all more than $2,000, the effect thereof was that it was to continue in force to the full extent of $2,000, until the last of the notes was paid; and that the defendant could not before such event relieve himself from liability by transmitting to the plaintiff $2,000, which he had received from F., being the proceeds of a portion of the stock.

Gibbons, Q.C., for plaintiff. *J. J. Scott*, for defendant.

Rose, J.] [Nov. 8, 1900

AGRICULTURAL SAVINGS & LOAN COMPANY *v.* LIVERPOOL, LONDON & GLOBE INSURANCE COMPANY.

Insurance—Prior insurance—Non-instalment of prior insurance—Renewal of policy—Effect of.

Where at the time of effecting an insurance against fire, there was a prior insurance in force, and no statement thereof was made, either in the application or policy issued thereon, the renewal of such policy without any such statement being then made, such prior insurance having then expired, does not validate the policy, for the renewal constitutes merely a continuation of the policy, and not a new insurance.

Bayley, Q.C., and *R. A. Bayley*, for plaintiffs. *Riddell*, Q.C., and *A. Hoskin*, Q.C., for defendants.

Divisional Court.] HIGHLAND *v.* SHERRY. [Nov. 26, 1900

Patent—Locatee—Improvements—Claim for.

On an application being made for the patent on certain lands, a claim was made by the defendant, who had married the wife of the locatee and

had improved the land, to be allowed the value of such improvements, whereupon, the Commissioner of Crown lands directed that before the patent issued, the amount, if any, payable to the defendant for his improvements and work on the land, after proper deductions, should be ascertained. A consent judgment was obtained referring it to the Master to enquire and report as to what sum, if any, the defendant was entitled to for permanent improvements and work done upon the land; for maintainance of the family of the locatee; and for any advances made to the family, after making all proper deductions:—

Held, that while the consent judgment was silent as to the principle to be applied in ascertaining the amount payable to the defendant for the improvements, etc., that, having regard to the object of the Crown Lands Department, the proper mode was to award such sum as in foro conscienti the defendant ought to receive.

The cost of fruit trees and of the planting of them is not the limit of the amount to be allowed in estimating such improvements, for beyond that there was the care of the trees, interest on outlay, etc.

George Kerr, for plaintiff. *G. H. Tucker*, for defendant.

Trial of Action, Street, J.] [Nov. 28, 1900.

GENTLES *v.* CANADA PERMANENT, ETC., MORTGAGE CORPORATION.

Mortgage—Sale under power—Tender—Place and time of tender.

The defendants under power of sale in a mortgage advertised a sale of lands at Walkerton, in the proximity of which place the mortgage lands were situated, on January 19th. On January 17th, the mortgagor telegraphed the defendants at Toronto asking amount required to pay mortgage, to which the defendants telegraphed a reply. At ten o'clock on January 19th, the defendants received in a registered letter the amount required to redeem the mortgage, but in accordance with the procedure adopted in respect to monies received by them, this payment did not come to the accountant's attention till about 11 a.m. when the defendants at once telegraphed and telephoned to their inspector, who had gone to Walkerton to superintend the sale, that the money had been paid. The inspector received this message a few minutes after he had signed a contract for the sale of the property to the plaintiffs, the auction sale having been held at eleven o'clock, the hour advertised.

Held, that the plaintiff was entitled to specific performance of his contract for that under the circumstances the defendants were not obliged to receive the money in payment of the mortgage, as the mortgagor had not tended it a reasonable time before the sale.

J. H. Moss, for plaintiff. *Monro Grier*, for defendants.

Divisional Court.] [Nov. 29, 1900

KNISELEY *v.* BRITISH-AMERICA INSURANCE COMPANY.

Insurance—Apprehension of incendiary danger—Application filled in by local agent—Untrue answer.

An application for insurance on the contents of a barn, contained the question: "Is there any incendiary danger threatened or apprehended?" to which the answer was "No." The plaintiff, who had not previously carried any insurance, stated that he effected the insurance, having learned that the owner of the barn had placed a high insurance on it, as well as on the adjacent dwelling-house. This was told by the plaintiff to the company's agent, who filled in the application and the answers to the questions. The application was then signed by the applicant, who was not an illiterate man, but he did not read over the application, and was not told that the question had been answered in the negative:—

Held, that the plaintiff was bound by the answer to the question, as filled in the application, it being material to the risk, and that it was untrue, for the reasonable inference was that the apprehension of incendiary danger as a fact existed.

Graham v. *Ontario Mutual Insurance Co.* (1887) 14 O. R. 318, *Chatillion* v. *Canadian Mutual Fire Co.* (1877) 2 C. P. 450, considered and commented on.

Quære, whether the inquiry raised by the question was not as to the apprehension of the applicant of incendiary danger, and not whether, as a fact, any incendiary danger was to be apprehended.

German, Q.C., for plaintiff. *H. D. Gamble*, for defendant.

Divisional Court.] CLAYTON *v.* PATERSON. [Nov. 29, 1900

Principal and agent—Hotel manager—Moneys received by—Liability to account.

The defendant was the manager of the plaintiffs' hotel, and at the close of each day went over the receipts and disbursements and entered a summary thereof in a book, called the "cash-book," the receipts being classified acording to the department of the business from which they were derived, and took over the money which constituted the balance on hand, as shewn by such entries, which he kept in his possession all night and subsequently made deposits with the plaintiffs' bankers. During the day the money was kept in a safe in the office, to which a clerk and a stenographer employed in the office, as well as one of the plaintiffs, who for two or three days in each week took part in the management and supervision of the hotel, had access. When any money was taken out, it was the duty and practice to put in a slip shewing the amount so taken and the purpose. The defendant, while admitting the accuracy of the balance up to a specified date, claims that he was not responsible thereafter, by reason

of his not being then able, through overwork, to actually count the money taken over by him:—

Held, under the circumstances and in the absence of a positive statement shewing the inaccuracy of the daily balance the defendant was bound to account therefor.

The power conferred by Consol. Rule 615 authorizing the Court to give judgment on the evidence before them may be exercised though the result may be to disregard the finding of a jury but it must be used with great caution.

Heyd, Q.C., for appellants. *Malone*, Q.C., for respondents.

Divisional Court.] DAVIDSON *v.* MCCLELLAND [Nov. 30, 1900

Sale of goods—Undisclosed principal—Judgment against husband and wife—Married Woman's Act—Form of judgment—Division Court—Jurisdiction of.

A husband, as agent for his wife, purchased goods from the plaintiffs, who were ignorant that she was the purchaser, but on becoming aware of it and the goods not having been paid for, sued both husband and wife, but on the husband giving a promissory note, signed by him, for part of the debt, and the wife paying the balance in cash, the action was not further proceeded with. The note not having been paid at maturity, an action was brought in the County Court for the balance due on the goods, being the amount for which the note had been given, and judgment was entered against both husband and wife:—

Held, on appeal to the Divisional Court, that the proper inference was that the husband's note was not taken in satisfaction of the debt, nor any election to look to him alone for payment, it being merely a temporary arrangement, and the plaintiffs were therefore entitled to sue on the original cause of action; but that they could not have judgment against both husband and wife; but must elect as to which they desired to hold it, and that they could properly hold it against the wife, a recovery against her being now maintainable under the Married Woman's Property Act, R.S.O. c. 168.

Wagner v. *Jefferson* (1876) 37 U.C.R. 551, distinguished.

Held, also, that the debt was not cognizable by the Division Court, the claim not having been ascertained by the signature of the wife, that the note signed by the husband could not be treated as such, it not having been signed by the husband as her agent, but as his own promise.

The judgment having been entered as if it were a judgment against a feme-sole, it was directed to be amended so as to make it recoverable against her separate estate only.

Herbert Mowat, Q.C., for plaintiffs. *Kidd*, for defendants.

Boyd C., Ferguson J., Robertson J.] Dec. 12, 1900.

SHERA *v.* OCEAN ACCIDENT AND GUARANTEE COMPANY

Insurance—Accident—Cause of—"Immediate"—Cause or causation—Time.

In a clause contained in an accident insurance policy in these words "Or if such accidental injuries shall not cause death, but shall immediately, continuously and wholly disable and prevent the assured from pursuing his usual business or occupation or attending to any business affairs whatsoever, the Corporation will pay" etc.

Held that the word "immediately" is used in reference to cause or causation and not as to time.

Judgment of the District Court of the District of Thunder Bay affirmed.

W. Nesbitt, Q.C., for the appeal. *J. H. Moss*, contra.

Boyd, C.] [Dec. 13, 1900.

TORONTO PUBLIC LIBRARY BOARD *v.* CITY OF TORONTO.

Mandamus—Municipal corporation—Statutory duty—Prerogative writ—Summary application—Action.

Motion, in an action, for a mandamus to compel the defendants to levy a special rate for library purposes for the year 1900, under the provisions of the Public Libraries Act, R.S.O. c. 232.

Held, that the rule in England is, that when a public body is required to perform a statutory duty at the instance of one entitled to call for such performance, the proper method is to move summarily for the prerogative writ of mandamus, according to the prescribed procedure in the Crown office: *Glossop* v. *Heston and Isleworth Local Board*, 12 Ch. D. 102, 122; *Smith* v. *Chorley District Council* (1897) 1 Q.B. 532, 538; *Re Paris Skating Rink Co.*, 6 Ch. D. 731. But in this province all the divisions have co-ordinate jurisdiction; *Re Board of Education of Napanee and Town of Napanee*, 29 Gr. 395; and the practice in cases of the prerogative writ is assimilated to that in ordinary applications of a summary nature. See Rules 1084, 1090, 1091, 1092.

In this case the affidavits should be re-sworn and intituled as in an application (not in an action) for the prerogative writ.

Widnes Alkali Co. v. *Sheffield and Midland R. W. Co.'s Committee*, 37 L. T. 131, distinguished.

Du Vernet, for plaintiffs. *Fullerton*, Q.C., for defendants.

Boyd, C.] IN RE MARTIN & TOWNSHIP OF MOULTON. [Dec. 17, 1900.

Municipal corporations—By-law for stopping road allowance—Notice of intention to pass—Sufficiency of—R.S.O. c. 223, s. 632.

A municipality included in notices posted up and published by them of intention to pass a by-law closing a road allowance, the following intima-

tion: "Any person whose land may be prejudically affected by the carrying out of the intended by-law and who petitions within one month from the date hereof to be heard, will be heard in person or by counsel or solicitor by the council before the by-law is passed."

Held, that this satisfied the requirements of the Municipal Act, R.S.O. c. 223, s. 632, and it was not necessary to specify in the notices the day on which the council intended to consider the by-law; and application to quash the by-law on the ground that such day was not so specified, dismissed, with costs, and applicants left to seek by litigation or arbitration any remedy they might have for injuries sustained by the action of the council in closing road allowance.

J. H. Moss, for plaintiff. *Bradford*, for defendant.

Master in Chambers.] LIDDELL *v.* COPP, CLARK CO. [Dec. 26, 1900.

Pleading—Copyright in book—Registration—Infringement—Particulars.

In an action for infringement of copyright in a book, the statement of claim alleged that the plaintiffs were the proprietors of a subsisting copyright duly registered, and further alleged that the defendants printed for sale a large number of copies of another book, a part whereof was an infringement of the plaintiffs' copyright.

Held, that the defendants were entitled to particulars, shewing the date of registration of the plaintiffs' copyright, and shewing what part of the defendants' book infringed the plaintiffs' right.

Sweet v. *Maugham*, 11 Sim. 51, not followed. *Mawman* v. *Tegg*, 2 Russ. 385, 390, and *Page* v. *Wisden*, 20 L.T.N.S. 435 followed.

John Greer, for plaintiffs. *J. B. Holden*, for defendant company. *C. A. Moss*, for other defendants.

Robertson, J.] [Dec. 27, 1900.

MORANG & CO., LIMITED *v.* PUBLISHERS' SYNDICATE.

Copyright—Books—Infringement—5 & 6 Vict., c. 45 (Imp.)—Application to colonies—Importation of foreign reprints—Assignment of proprietorship—Necessity for registration—Status to maintain action.

Upon a motion for an interim injunction restraining the defendants from importing into Canada for sale and from exposing and offering for sale copies of a book written by Francis Parkman, known as "A Half Century of Conflict," in infringement of the plaintiffs' copyright in such book, it appeared that at the time of the author's death he was the owner of and entitled to the copyright in such book for the British dominions, including Canada, and that after his death such copyright and ownership had been assigned and transferred to the plaintiffs by those upon whom they devolved; that the defendants had imported copies of the book from

the United States of America and were offering them for sale in Canada:—

Held, 1. Section 17 of the Imperial Act to Amend the Copyright Act, 5 & 6 Vict., c. 45, prohibiting the importation of foreign reprints by any person, not being the proprietor of the copyright or some person authorized by him, is in force in Canada; and the plaintiffs were therefore entitled to prohibit the importation of foreign reprints into Canada.

2. But the plaintiffs had no right to maintain this action or proceeding, for, although they were the assignees of the proprietorship and ownership of the books they had not complied with s. 24 of 5 & 6 Vict., c. 45 by causing an entry of their proprietorship to be made in the book of registry of the Stationers' Company, the word "proprietor" in s. 24 meaning the person who is the present owner of the work.

Dictum of COCKBURN, C.J., in *Wood* v. *Boosey*, L.R. 2 Q.B. 340, not followed.

Weldon v. *Dicks*, 10 Ch. D. 253, and *Liverpool General Brokers' Association* v. *Commercial Press Telegram Association* (1897) 2 Q.B. 1, followed.

Walter Barwick, Q.C., and *J. H. Moss*, for plaintiffs. *J. L. Ross* and *A. W. Holmested*, for defendants.

Master in Chambers.] [Dec. 31, 1900.

McIVER *v.* CROWN POINT MINING CO.

Mechanics' liens—Writ of summons—Service out of jurisdiction—Statement of claim—Time for delivering defence—Trial—Appointment in writing—Notice of trial.

An order permitting service out of the jurisdiction of the writ of summons should also authorize service of the statement of claim at the same time and fix a time for delivery of the statement of defence. *Young* v. *Brassey*, 1 Ch. D. 277 followed.

Where the order makes no provision as to the statement of claim or defence, the defendant should have eight days from the last day for appearance within which to deliver his statement of defence, and the pleadings cannot be noted closed before the expiry of such eight days.

Under sec. 35 (1) of Mechanics' Lien Act, R.S.O. c. 153, the Judge or officer fixing a day for the trial of an action brought under that Act, is to do so in writing; and a notice of trial under that section given by a party who has not obtained a signed appointment from the Judge or officer is not effective. The notice of trial must be served at least eight clear days before the day fixed, as provided by sec. 36.

Levesconte, for defendant Barton. *W. N. Ferguson*, for plaintiffs.

Meredith, C.J., Rose, J., McMahon, J.] [Jan. 3.

DOWNEY *v.* STIRTON.

Libel and slander—Evidence—Admissibility—Publication of previous libel by plaintiff—Subsequent libel—Mitigation of damages.

In a libel action the defendant in order to mitigate the plaintiff's damages may shew that he was provoked to libel the plaintiff, because the plaintiff had previously libelled him, but (ROSE, J., dissentiente) no subsequent libel or slander can be given in evidence.

The defendant being sued for libel contained in a newspaper set up in mitigation of damages an alleged libel against himself published the day before in another newspaper by the plaintiff, for which latter libel he had himself in another action already recovered damages. The judge directed the jury that it was for them to consider whether it was consistent that the defendant should recover damages for what was contained in the previous libel and then come and claim in this action that the said previous libel was an answer to this action against him; but that as a matter of law it was competent for the defendant so to do.

Held, no misdirection.

Per ROSE, J. *Semble*, evidence of the conduct of the plaintiff in a libel action subsequent to the publication of the libel complained of may sometimes be admissible in evidence in mitigation of damages, as for example, if the plaintiff had after publication of the libel taken the law into his own hands and assaulted the defendant severely, such conduct might be given in evidence before the jury as taking away from the plaintiff much claim to punitive damages; so, too, if the plaintiff had sought redress by subsequent libel on his part.

Lynch Staunton, Q.C. and *Drew*, for plaintiff. *Riddell*, Q.C. and *Guthrie*, for defendant.

The above decision was followed by FALCONBRIDGE, C.J. and STREET, J., in the case of *Down* v. *Armstrong*, decided Jan. 8th, 1901.

Master in Chambers.] [Jan. 12.

VANSYCLE *v.* PARISH.

Pleading—Defamation—Defence—Privilege—Mitigation of damages.

In an action for slander the complaint was that the defendant had falsely and maliciously accused the plaintiff of stealing the defendant's newspaper. The defendent pleaded "that if he spoke the words complained of, which he does not however admit, but denies, they were so spoken in good faith and without any malice whatever towards the plaintiff, under the following circumstances"—setting out the circumstances which led the defendant to believe that the plaintiff had stolen his newspaper.

Held, that this was substantially a plea of privilege. *Switzer* v. *Laidman*, 18 O. R. 420, distinguished.

Held, also, following *Beaton* v. *Intelligencer Printing and Publishing Co.*, 22 A. R. 97, that a subsequent paragraph of the defence setting up the same facts in mitigation of damages was properly pleaded.

R. U. Macpherson, for plaintiff. *Tremeear*, for defendant.

Armour, C.J.] O'DONNELL *v.* FAULKNER. [Jan. 12.

Receiver—Equitable execution—Judicature Act—Trustees—Rents.

Under the provisions of the Judicature Act a receiver may be appointed in all cases in which it shall appear to the Court to be just or convenient that one should be appointed; s. 58, sub-s. 9. But this provision does not give jurisdiction to appoint a receiver in cases where prior to that Act no Court had such jurisdiction. And, in order to justify the making of an order for the appointment of a receiver at the instance of a judgment creditor, the circumstances of the case must be such as would have enabled the Court of Chancery to make such an order before the Judicature Act: *Harris* v. *Beauchamp* (1894) 1 Q.B. 801.

Where the plaintiffs were judgment creditors of the defendant and were also the trustees entitled to receive the rents and other property in respect of which they asked that they should be appointed receivers, to which the defendant was beneficially entitled:—

Held, that there was no impediment in the way of their receiving such rents and other property, and their motion for an order appointing them receivers was unnecessary.

J. D. Montgomery, for plaintiffs. *F. H. Denton*, for defendant.

Boyd, C.] PRITCHARD *v.* PATTISON. [Jan. 12.

Security for costs—Nominal plaintiff—Proof of want of interest—Inference—Perjury.

Very clear proof should be given of the lack of substantial interest of the plaintiff in litigation begun by him, before the Court should intercept it at the outset by an order for security for costs.

And where, although it was shewn that the plaintiff was without means, it was not established by any legal evidence, but was rather a matter of conjecture and inference, that he was merely a nominal party suing for the benefit of some one outside of the litigation, a motion for security for costs was refused.

There may be strong suspicion or even probable inference that the action, if successful, may enure to the benefit of the outsider; but where the contrary is sworn by all parties to the transaction, the court hesitates to find perjury for the purpose of ordering security for costs.

Roche, for plaintiff. *W. E. Middleton*, for defendants.

Boyd, C.] IN RE DODS. [Jan. 14.

Will—Devise—Sale of land devised—Mortgage for purchase money—R.S.O. c. 128, s. 25.

The testator bequeathed all his personal estate to his wife, absolutely, and devised his land to his executors in trust for her benefit during life or widowhood, and then over. Between the date of the will and his death, the testator sold all his land, and took back a mortgage for part of the purchase money, which mortgage was an asset of his estate at his decease.

Held, that s. 25 of the Wills Act, R.S.O. c. 128, had not the effect of making the devise applicable to the interest in the land which the testator had at the time of his death by virtue of the mortgage; the mortgage was part of the personal estate and fell under the absolute bequest to the wife.

H. D. Gamble, for executors. *H. L. Dunn*, for widow. *F. W. Harcourt*, for infants.

Masters in Chambers.] [Jan. 16.

IN RE UNDERFEED STOKER CO. OF AMERICA.

Interpleader—Shares—Certificate and transfer—Claim for damages—Parties out of jurisdiction—Laches—Collusion.

A transfer of certain shares of the capital stock of the company was executed by the holder of the shares in favour of her brother-in-law on the 29th September, 1900, and application to the company was at once made by the transferee for a certificate, but, owing first to the absence of the assignee from the country, and afterwards to the objections of the company to the transfer, he was unable to obtain the certificate, and on the 25th October he was informed by the company that his transferor had set up a claim that the transfer was procured by fraud. On the 19th November the transferor brought an action against the company and the transferee to restrain the company from transferring the shares, for a declaration that the shares belonged to the plaintiff, and to set aside the transfer executed by her. On the 23rd November the transferee began an action against the company to compel the delivery of a certificate or for damages equal to the value of the shares, and for a mandatory injunction. On the 28th November the company applied for an interpleader order. Pending the application the transferee discontinued his action, and asserted his claim against the transferor and the company as a counterclaim in the action brought by the former.

Held, that the company were entitled to relief by way of interpleader notwithstanding the claim against them for damages made by one of the claimants.

Held, also, that, although both claimants were out of the Province, and the company's head office was also outside of the Province, there was jurisdiction to make an interpleader order, the claimants themselves having

brought the company into the jurisdiction and the documents being within the jurisdiction.

Held, also, that the laches of the company had not been so great as to disentitle them to the relief claimed, and the charge of collusion between the company and the transferor was not sustained.

Held, also, that the transferee was entitled to have preserved to him any claim he might have for damages against the company.

A. W. Holmested, for the applicants. *W. R. Smyth*, for the claimant Eldred. *C. A. Moss*, for the claimant Weekes.

Ferguson, J.] FENWICK *v.* WHITWAM. [Jan. 17.

Mortgage—Power of sale—Notice of exercising—Sufficiency—Service—Persons entitled to notice—Agent—Registration of notice—Statutes.

A contract for the purchase and sale of land was made in 1895. In an action brought by the purchaser there was a decree for specific performance and a reference as to title, upon which it appeared that the vendor was professing to sell under power of sale contained in a mortgage.

The notice of sale was addressed to the mortgagor, then resident abroad, G. A. M. (as his agent), E. M. and W. M., J. M. and J. A., and said: "I, C. W., hereby give you notice," etc. It was dated and signed by the solicitor for the mortgagee.

Held, that on its face it was a sufficient notice.

It was shewn that G. A. M. was acting generally as agent of the mortgagor in respect of the mortgaged lands, and other matters. The agent accepted service for the mortgagor, saying in his acceptance that he was the mortgagor's agent in Canada for the mortgaged property. This notice was forwarded by the agent to the mortgagor, and received by him in due time, and he never made any objection to it or to the service.

Held, that the service was effective.

J. M. and J. A. were subsequent mortagagees who had assigned their mortgages to G. A. M., who accepted service of it for them, saying in his acceptance that he was the assignee of their mortgages. The assignment to him was not registered.

Held, that J. M. and J. A. were not entitled to notice.

The notice was not served upon E. M. and W. M., but the evidence shewed that their mortgage was paid and satisfied.

Held, that they were not entitled to notice.

Held, also, that the notice was a good notice to G. A. M. in respect of all claims that he might have or profess to have in the matter.

Held, lastly, that, owing to the provisions of s. 8 of 63 Vict., c. 19, the provisions of sub-s. 5 of s. 6 of 62 Vict. (2), c. 16, providing for registration of notice of sale, did not apply to this case; here the sale was

"effected" prior to the 1st January, 1900, and the conveyance, when drawn, would be "in pursuance" of that sale.

Armour, Q.C., and *W. A. Wilson*, for plaintiff. *Watson*, Q.C., for defendants.

Boyd, C.] IN RE HAMILTON. [Jan. 21.

Will—Gift of income to child—Condition as to marriage—Consent of executors—Invalidity—Mixed or massed fund.

Testator died May 1, 1900, leaving a will dated March 14, 1898, in which he gave to his son out of and from the annual income and profits of the investments and rents of his real and personal estate $300 per year while unmarried, "but, if he marries to the satisfaction of and with the consent of the executors, then he is to receive the whole annual income of the estate during his life." There was no bequest over in case the son married without consent, nor any subsequent disposal of the estate affecting these assets. The son married without consent.

Held, nevertheless, that he was entitled to the whole income.

With regard to personalty the Court of Chancery long ago adopted the rule of the civil and ecclesiastical law, by which such a condition is void or regarded as merely in terrorem; and according to modern rules a mixed or massed fund is to be treated in the same way as personalty.

Review of English authorities.

Clute, Q.C., for the son. *Denmark*, for executors and other legatees. *F. W. Harcourt*, for infants.

Armour, C.J., Falconbridge, C.J.] [Jan. 22.

REGINA *v.* TORONTO R. W. Co.

Street railways—Municipal by-law—Conviction under—Operating car without proper vestibules—Uncertainty—Persons operating car—Conductor—Valid conviction—Evidence.

Motion to make absolute a rule nisi to quash the conviction of the defendants by the police magistrate for the city of Toronto, dated the 2nd of April, 1900, "for that the said Toronto Railway Company on the 1st day of February, 1900, (being an electric railway company operating its railway within the limits of the said city) did at the said city run and operate . . . . a street car . . . which was not provided with proper and sufficient vestibules to protect the motormen and persons in charge of such car from exposure to cold, snow, rain and sleet, while engaged in operating such car, contrary to the by-law of the municipality . . . passed on the 24th September, 1894, numbered 3280, and intituled: a by-law to provide for the construction of vestibules for the shelter of motermen and others upon the cars of electric railway companies."

James Bicknell, for the defendants, contended that the by-law was bad

upon its face, because it did not shew in what respect the vestibules were not proper and sufficient, nor what person or persons were not protected, citing *Regina* v. *Spain*, 18 O. R. 385, *Regina* v. *Somers*, 24 O.R. 244, *Regina* v. *Coulson*, ib. 246, *Cotterill* v. *Lempriere*, 24 Q.B.D. 634. The car in question had a vestibule in front for the motorman, but none behind for the conductor, as the evidence shewed; the by-law was bad because it went beyond the terms of the statute (Municipal Act, s. 569, sub-s. 4) in providing that there should be more than one vestibule upon a car.

Lobb, for the complainant not called upon.

THE COURT held that the conviction was valid upon its face, being in the terms of the by-law, and that the offence was sufficiently stated; also that the by-law was warranted by the statute.

Semble, per ARMOUR, C.J., that the conductor unless he is acting instead of the motorman, is not a person engaged in operating the car; but that point would only arise upon the evidence, which the Court could not look at where the conviction was valid on its face and the magistrate had jurisdiction.

Rule nisi discharged with costs.

Boyd, C., Lister, J. A.,] [Jan. 29.

STEWART *v.* JONES.

Receiver—Equitable execution—Claim against Crown—Voluntary payment.

Held, reversing the decision of MEREDITH, C.J., 19 P. R. 227; 36 C.L.J. 601, that payment of the money in question was to be made by the Crown to the judgment debtor purely out of bounty, and was not enforceable by any court, and was not to be made in pusuance of any contract; and therefore the money could not be reached by the judgment creditor by means of a receiver order. *Willcock* v. *Terrell*, 3 Ex. D. 323, distinguished.

Shepley, K. C., for defendant. *Glyn Osler*, for plaintiff.

COUNTY COURT—GREY.

Creasor, Co.J.] ERNSCLIFFE, L.O.L. v. LETHBRIDGE. [July 6, 1900.

Excessive distress—Fire—Remoteness of damages.

Held, where a landlord makes an excessive distress, and the goods, while so distrained, are destroyed by fire, the tenant is entitled to damages for such excessive distress to the value of the excess in distress, and that such damages are not too remote.

A. G. McKay, for plaintiffs. *H. G. Tucker*, for defendants.

On appeal to a Divisional Court the above decision was upheld.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] IN RE GREENER. [July 18, 1900.

Mining lease—Appeal from Commissioner sustained with costs—Contest between applicants for same area—Amendment of description—Application for lease without previous license—Acts (1892), c. 1, s. 103.

An application for a mining lease made by appellants, Nov. 10, 1893, was refused by the Commissioner of Mines on the ground that at the date of the application the area applied for was covered by a license to search issued by the department to W. It appeared that on July 16, 1890, appellants applied for a license to search, which would come into force May 13, 1892, and expire Nov. 13, 1893. When the application was originally made it covered other areas, but, subsequently, on the application of appellants, assented to by the Deputy Commissioner of Mines, and indorsed on the application, it was amended so as to cover the area in dispute. The application subsequently made by W. contained no description except one incorporated by reference to the application made by appellants.

Held, 1. If the application made by appellants was defective, that made by W. was equally so, and the parties relying upon it, in attacking the application made by appellants, had no locus standi.

2. Assuming the license applied for by W. to be invalid, it was competent for appellants, under the provisions of the Acts of 1892, c. 1, s. 103, to apply for a lease without a previous license to search.

3. The judgment appealed from must be reversed with costs, and the application made by appellants, being a valid one, must be granted.

H. Mellish, for appellant. *C. H. Cahan*, for respondents. *D. MacNeil*, for the Attorney-General.

Full Court.] SHARP V. POWER. [July 18, 1900.

Promissory note — Presentation — Waiver — Contract — Jurisdiction of County Court—Amendment of pleadings.

Plaintiffs inserted defendant's advertisements in two of their publications for the sums of $10 ar d $15 respectively. Separate agreements were made in respect to each publication, but the agreements were made at the same time, and defendant, at the same time that the agreements were made and signed, gave plaintiffs his promissory note for the sum of $25, payable four months after date at defendant's office.

Plaintiffs' statement of claim contained claims based upon the note and upon the original consideration.

Held, 1. reversing with costs the judgment of the County Court, that the claim based upon the original consideration was within the jurisdiction of the court.

2. That the defence that the note was not presented for payment, and that while it was current, the remedy upon the consideration was suspended must be pleaded.

3. That if defendant were allowed to amend by pleading such defence plaintiffs should also be allowed to amend by alleging that presentment was waived by subsequent promises in writing to pay.

A. Whitman, for appellant. *F. F. Mathers*, for respondent.

Full Court.] McKEEN v. McKEEN. [July 18, 1900.

Will—Construction—Liability of party accepting legacy to perform conditions—Investment for support of beneficiary—Charge on land—Future payments—O. 25, R. 5, Power of court under, as to future rights.

Testatrix, by her last will, bequeathed the balance of moneys remaining in the banks to her credit, after her death, after payment of certain specified charges, to M.M. and E.M., share and share alike. To her son, A., she bequeathed her half of the homestead property charged with the comfortable maintenance of M.M. and E.M. upon such homestead during their lives.

Per GRAHAM, E.J., WEATHERBE, J., concurring.

Held, 1. The maintenance of M.M. and E.M. under the terms of the will was made a charge upon the property and not upon A. personally.

2. A declaration made in the decree with the consent of plaintiff, the surviving beneficiary, restricting the liability of A. to a charge upon the land could not be varied by the Court of Appeal.

3. A sum of money having been set apart which would be sufficient for the support of plaintiff for the period of 13 years, and such maintenance being a charge upon the land, binding it as effectually as a mortgage, it was not necessary to provide for securing future payments.

4. No partition having been asked for in the statement of claim that the appeal from the decree, on the ground that partition had not been ordered, must be dismissed.

Per TOWNSHEND, J.:—1. A. having accepted the bequest, and performed its condition during his lifetime, it was impossible for him or his estate to escape personal liability for the maintenance of plaintiff, and that, so far as the decree appealed from refused such relief, it was wrong and must be set aside.

2. The profits arising from the estate belonged to A., especially where, as here, he was held personally responsible for the plaintiff's maintenance.

3. While the court had power under O. 25, R. 5, to make a declaration as to future rights, it must depend upon the circumstances of the particular

case whether it would do so or not, and that nothing appeared in this case to justify the making of such declaration.

4. The court should not interfere as to the portion of the real estate to be occupied by plaintiff until the matter came before the trial judge.

5. As plaintiff had succeeded on the principal question before the court she should have the costs of the appeal.

F. B. Wade, Q.C., for appellant. *W. B. A. Ritchie*, Q.C., and *A. Roberts*, for respondent.

Full Court.] BRUHM v. FORD. [July 18, 1900.

Contract to erect mill—Counterclaim for damages for defective performance—Evidence—New trial.

In an action brought by plaintiff to recover an amount claimed by him for work done and materials supplied in constructing a mill for defendants, defendants counterclaimed for damages arising from the defective performance of the work which plaintiff was employed to do.

Held, that defendants were entitled to damages suffered by reason of the loss of the use of the mill during the sawing season, but as there was no evidence to fix the amount of damage, and as damages were allowed, to which defendants were not legally entitled, there must be a new trial.

F. B. Wade, Q.C., for appellant. *J. A. McLean*, Q.C., for respondent.

Full Court.] IN RE WHEELOCK. [July 18, 1900.

Probate Court—Settlement of estate—Jurisdiction—Parties—Improper rejection of evidence—Costs.

In settling the estate of W. in the Probate Court the judge of the court, at the instance of the next of kin of deceased, undertook to dispose of the sum of $1,000, which the administrator, a brother of the deceased, contended had been given him by deceased, two years before her death, as a gift for his two sons. Evidence was tendered by the administrator for the purpose of shewing that the money received by him from deceased had been invested for the two boys by paying off a mortgage held by R., and that the fact of the investment had been communicated to the donees. The judge declined to receive the evidence on the ground that at the time it was tendered the court had been adjourned solely for the purpose of hearing argument by counsel, and that he could not receive further evidence.

Per TOWNSHEND, J., RITCHIE, J., concurring.

Held, 1. The probate judge had power to hear and consider evidence at any time before making his final decree, and he was wrong in refusing to receive the evidence tendered.

2. The judge in dealing with and deciding the question of gift or no gift, where the rights of third parties had intervened who were not before him, and to compel the appearance of whom he had no process, went beyond his jurisdiction and his decree must be set aside.

Per GRAHAM, E.J., WEATHERBE, J., concurring, that the appeal should be allowed with costs, and the consideration of the accounts adjourned until the ownership of the money was decided in a proper action.

J. J. Ritchie, Q.C., for appellant. *W. E. Roscoe*, Q.C., for respondent.

Full Court.] MOORE v. DICKIE. [July 18, 1900.

Verdict—Entered against evidence—New trial ordered—Findings of jury set aside with costs.

On the trial of an action brought by plaintiff against defendants for the purpose of having delivered up and cancelled an order given by plaintiff in favour of the defendant D. upon the defendant S., as a means of avoiding a threatened arrest upon a charge of having been a participant in the blowing up of defendant's dam, the jury, in answer to several questions submitted to them, negatived the fact of plaintiff's complicity in the offence charged, and in settlement of which the order was given, and upon their findings a verdict was entered for plaintiff. There being strong evidence to shew that plaintiff although not an actual participator in the offence charged was conspiring with and aiding and abetting those by whom the dam was blown up, that he received sums of money from people in the neighbourhood which was used for the purchase of dynamite, to be used in blowing up the dam, and that although not actually present at the time, he was in the vicinity and knew all about the intentions of those by whom the act was committed.

Held, that the findings must be set aside, with costs to be paid by plaintiff, and a new trial ordered.

F. A. Laurence, Q.C., *H. McInnes*, and *H. McKenzie*, for appellants. *R. E. Harris*, Q.C., *C. H. Cahan*, and *S. E. Gourley*, for respondent.

Full Court.] THE QUEEN *v.* BOWERS. [Nov. 23, 1900.

Habeas corpus—Order by County Court Judge—Acts of 1897, c. 32, s. 2—Costs.

Defendant was convicted for stealing the property of B., and was sentenced to be imprisoned in the city prison of the city of Halifax. An order made by the Judge of the County Court under Acts of 1897, c. 32, s. 2, for defendant's discharge under a writ of habeas corpus, directed that the informant B. pay to defendant his costs of the application and order for his discharge. There was nothing to shew that B. was the informant

except a statement to that effect in the affidavit of defendant, upon which the application for the order was made, which was not borne out by either the conviction or the commitment.

Held, that the order was wrong and must be set aside.

Per MEAGHER, J. B. was not bound to appear in answer to the summons for the writ of habeas corpus, and that the fact of his not appearing was not to be regarded as conduct or acquiescence justifying the imposition of costs.

Quære, also, whether the judge had jurisdiction to make the order.

C. P. Fullerton, for appellant. *J. J. Power*, for respondent.

Full Court.] PEARCE *v.* ARCHIBALD. [Dec. 19, 1900.

Husband and wife—Authority of wife to carry on business—Goods taken for husband's debt—Words "the place"—R.S.N.S. c. 94, s. 53.

Under the provisions of R.S.N.S. c. 94, s. 53, when a married woman does, or proposes to do, business on her separate account, in addition to filing her husband's consent thereto in the office of the Registrar of deeds for the county, she shall record, in the office of the clerk of the city or town in which she proposes to do such business, a certificate in writing setting forth her name and that of her husband, the nature of the business, and the place where it is or is proposed to be carried on, and giving, if practicable, the street and the number on the street; and where the nature of the business, or the place where it is carried on, is changed, a new certificate shall be filed accordingly.

Plaintiff who carried on business as a grocer in the city of Halifax under a license from her husband, enabling her to carry on such business separate and apart and free from his control, filed a certificate giving the particulars required by the act, except as to the street and the number on the street, as to which it was set out that it was not practicable to do so as the premises had not yet been selected.

Goods claimed by plaintiff as her separate property having been levied upon by defendant, as sheriff of the county, under a writ of execution,

Held, 1. Affirming the judgment of the trial judge in defendant's favour, that it was incumbent upon plaintiff to select the premises before filing her certificate.

2. The words "the place" mean the place in the city, town, or municipality where it is proposed to do the business, and where the place is changed a new certificate must be recorded.

F. T. Congdon and *J. J. Power*, for appellant. *J. A. Chisholm* (not called on), for respondent.

Townshend, J.] GREENWOOD v. HOME LIFE INS. CO. [Jan. 2.

Life insurance—Premium note—Condition as to non-payment not indorsed on face of policy, R.S.C. c. 124, s. 27.

G. made application for a policy of insurance upon his life in the defendant company, the amount insured to be paid in case of the death of the insured to plaintiff. The defendant company accepted the risk, and issued and delivered the policy, the premium upon which was to be paid half-yearly in advance. G. paid the first premium partly in cash and partly by giving his promissory note payable two months after date. The form of application signed by G. contained an agreement on his part that if any note given for the first or any subsequent premium or any part thereof were not paid when due, any policy issued under said application should cease to be in force without any notice or action on the part of the company. The note given by G. fell due on the 18th July and was not paid. G. died on the 7th August, and after his death the amount due on the note was tendered to the company and refused.

Held, 1. The stipulation avoiding the policy for non-payment of the note was inoperative, not being set out on the face of the policy in compliance with the provisions of R.S.C. c. 124, s. 27.

2. Under all the circumstances of the case the note given by G. and accepted by the company was an absolute payment.

3. Plaintiff was entitled to judgment for the amount of the policy with costs, less the amount unpaid on the note.

W. E. Thompson, for plaintiff. *J. W. Longley*, A.G., for defendant.

Townshend, J.] IN RE GOUGH. [Jan. 2.

County Court judge—Jurisdiction of judge—Acting in case of illness—Writ of possession—Acts of 1889, c. 9, s. 12.

Under the provisions of the Acts of N.S., 1889, c. 9, s. 12, whenever by reason of sickness, disability, etc., any judge of a County Court shall be unable to act, or shall be disqualified from acting, such judge may call in and designate any other judge of any other County Court in this province to act therein, and such judge so called in and designated as aforesaid shall have the same powers as the regular judge of such court would have otherwise had.

S., who was designated by the judge of the County Court for district No. 1 to act for him in his absence on account of illness, heard an application for a writ of possession.

After the death of the District Judge, S. gave judgment in favour to the applicant for the writ, and application was thereupon made to TOWNSHEND, J., at Chambers, for a writ of prohibition to prohibit S. from signing the order on the ground that his authority to act terminated with the death of the judge for the district.

Held, that a judge when once called in and designated under the provisions of the Act was fully invested with all the authority of the judge of the court to try and dispose of any cause or matter upon the trial of which he had entered, and that one of the powers he would have was that of giving judgment and signing the order necessary to give effect to it, after the recovery of the judge or removal of the disability, etc.

Held, also, that the making of an order for the possession of land under a sheriff's deed, was not a question of title to land within the meaning of s. 19, sub-s. (1st.), and so excluded from the jurisdiction of the court.

J. J. Power, for applicant for writ of prohibition. *B. H. Eaton*, Q.C., for applicant for writ of possession.

Province of New Brunswick.

SUPREME COURT.

Barker, J.] [Oct. 16, 1900.

BREWSTER *v.* BAPTIST FOREIGN MISSION BOARD.

Will—Construction—Blank in will—Charitable gift—Trust for benevolent purposes—Uncertainty—Failure of trust.

A testator by will provided for a bequest of money to the defendants, to be paid yearly, or, at such times as his executor shall think advisable, but omitted to fill in the amount. In the same paragraph of the will it was then declared that, where "Home Missions" were considerably more needy, an amount might be given to it, or to any such good and benevolent Christian objects as the executor should consider most deserving. The will then directed the executor to sell a part of the testator's real and personal estate, "and the proceeds to be placed so as to be conveniently drawn to assist in aiding good and worthy objects."

Held, that the gift of an unnamed amount of money to the defendants was void, and that the gift in the rest of the will was not a gift to charitable, but to benevolent uses, and failed for uncertainty.

C. N. Skinner, Q.C., and *C. A. Peck*, Q.C., for plaintiff. *A. J. Trueman*, Q.C., for next of kin. *A. A. Wilson*, Q.C., for the Board.

Barker, J.] BOURGUE *v.* CHAPPELL. [Dec. 18, 1900.

Deed—Quit claim—Competing purchasers—Priorities—Registry Act.

It is not a deed of quit claim where the grantor remises, releases and quit claims unto the grantee, his heirs and assigns, a lot of land, and covenants that the land is free from incumbrance made by him, and that he

will warrant and defend the same to the grantee, his heirs and assigns, against the demands of all persons claiming by or through the grantor, and the grantee under such a deed if registered, will not be postponed under the Registry Act, 57 Vict., c. 20, to the equities of a prior purchaser, of which he had no notice.

Chandler, Q.C., for plaintiff. *Powell*, Q.C., for defendant.

In Equity, Barker, J.] EX PARTE WELCH. [Dec. 18, 1900.
CHAPMAN *v.* GILFILLAN.

Power of attorney—Authority to receive surplus proceeds of mortgage sale—Death of grantor before sale—Revocation—Equitable assignment.

Pending a suit for the foreclosure of a mortgage and sale of the mortgaged premises the mortgagor executed and delivered a writing in favour of a creditor authorizing him to collect, recover and receive, and apply on account of his debt, any surplus from the sale, and declaring that the power might be exercised in the name of the grantor's heirs, executors and administrators, and should not be revoked by his death.

Held, that the writing was not an equitable assignment, but a power of attorney revocable by the grantor's death.

Wilson, Q.C., for applicant. *Chandler*, Q.C., contra.

In Equity, Barker, J.] ABELL *v.* ANDERSON. [Dec. 18, 1900.

Pleading—Demurrer and answer to whole bill—Amendment—Costs—Act 53 Vict., c. 4, s. 47—Setting demurrer down for argument—Waiver of objection to demurrer—53 Vict., c. 4, s. 41—Demurrer ore tenus.

A defendant may not answer and demur respectively to the whole bill, for thereby the demurrer is overruled, notwithstanding 53 Vict., c. 4, s. 47. Consequently where a demurrer professed to be to a part, and the answer professed to be to the residue, of a bill, but the demurrer was extended to the whole prayer of the bill, it was held that unless the answer were withdrawn, for which purpose leave of court was given, the demurrer should be overruled with costs, but that if the answer were withdrawn, the demurrer being successful on the merits should be allowed with costs.

In an answer and demurrer the defendant ought to specify distinctly what part of the bill it is intended to cover by the demurrer.

The objection that an answer and demurrer are respectively to the whole bill, is not waived by the plaintiff setting the demurrer down for argument under s. 41 of Act 53 Vict., c. 4.

A defendant cannot demur ore tenus where there is no demurrer on the record, as where the demurrer on the record is overruled by the answer.

W. B. Wallace, Q.C., for plaintiff. *W. Pugsley*, A.-G., and *A. P. Barnhill*, for defendants.

In Equity, Barker, J.] CARROL *v.* ROGERS. [Dec. 18, 1900.

Deed—Registry Act—Competing purchasers—Unregistered deed—Sale of part of lot—Subsequent registered mortgage of remainder—Reference in description to previous conveyance—Subsequent deed of whole lot—Notice—Priorities.

A part of a lot of land was sold to the plaintiff by M. by deed, which the plaintiff neglected to register. Subsequently M. mortgaged by registered conveyance the remainder of the lot to S. The description in the mortgage of the land followed the original description of the whole lot, but "excepted the portion sold and conveyed by the said" M. to C. (the plaintiff). Subsequently M. sold and conveyed by registered deed for valuable consideration the whole lot of land to the defendant, who had notice of the mortgage, but not of its contents. By 57 Vict., c. 20, s. 29, an unregistered conveyance shall be fraudulent and void against a subsequent purchaser for valuable consideration whose conveyance is previously registered. By s. 69 of the Act the registration of any instrument under the Act shall constitute notice of the instrument to all persons claiming any interest in the lands subsequent to such registration.

Held, that by the Act the registration of the mortgage constituted actual notice of its contents to the defendant, whose title therefore should be postponed to the plaintiff's.

L. J. Tweedie, Q.C., for plaintiff. *R. Murray*, Q.C., for defendant.

Barker, J.] RAMSAY *v.* RAMSAY. [Dec. 18, 1900.

Statute of Limitations, c. 84, s. 13, C.S.—Tenants in common—Death of co-tenant—Adverse possession by survivor—Title of heir extinguished.

Land was conveyed in fee to two brothers as tenants in common. One brother died on May 9, 1876, intestate, leaving him surviving his co-tenant, his mother and three sisters, of whom the plaintiff is one. The mother died September 5, 1876. The surviving brother had from the time of his brother's death until his own death on November 8, 1896, exclusive possession and use of the land and the receipt of the rents and profits therefrom without accounting. He and his sisters lived together on premises situated elsewhere until his marrage in 1890. He always contributed to their support, but the contributions were not meant to be a share to the sisters in the rents and profits of the land. In a suit commenced September 21, 1899, by the plaintiff for the partition of the land:—

Held, that the plaintiff's title was extinguished by c. 84, s. 13, C.S.

L. J. Tweedie, Q.C., for plaintiff. *M. G. Teed*, for defendants.

Barker, J.] LAWTON LAW CO., *v.* MACHUM. [Dec. 18, 1900.

Partnership—Loss of capital—Depreciation in machinery—Referee's report—Exceptions—Costs.

Where under a partnership agreement a partner gave to the partnership business his time and skill, and the use of, but not the property in, certain machinery, in consideration of a weekly salary, and one half of the net profits of the business, it was held that he was not entitled to an allowance for the depreciation in the value of the machinery arising from ordinary wear and tear on the taking of the partnership accounts, as a loss to him of capital put into the business.

Where exceptions to a Referee's report were allowed in part, costs to either party were refused.

A. J. Trueman, Q.C., and *E. R. Chapman*, in support of exceptions. *J. D. Hazen*, Q.C., contra.

THORNE *v.* PERRY. [Dec. 18, 1900.

Donatio mortis causâ—Savings bank deposit book—Trust.

A deceased person in her last illness, and shortly before her death, handed to the defendant a government savings bank pass book in which was credited in the names of the defendant and the deceased a sum of money deposited in their names, and at the same time told the defendant to pay to the plaintiff $400 out of the bank, pay some debts owing by the deceased, and her funeral expenses, to which the defendant assented. The money on deposit belonged to deceased, but could be withdrawn by the defendant on delivery up of the pass book, whether before or after the deceased's death.

Held, 1. The pass book was a good subject of a donatio mortis causa.

2. There was a valid donatio mortis causa constituted by trust, and enforceable in equity, in favour of the plaintiff.

W. B. Wallace, Q.C., and *G. H. V. Belyea*, for plaintiff. *J. D. Hazen*, Q.C., and *E. P. Raymond*, for defendant.

Province of British Columbia.

SUPREME COURT.

Walkem, J.] KETTLE RIVER MINES *v.* BLEASDEL. [Dec. 2 , 1900.

Joint Stock Companies—Shares purporting to be fully paid—Whether purchaser liable for calls.

Action tried at Rossland. On the formation of a joint stock company with 1,200,000 shares, 165,000 shares were alloted to L., one of the three

promoters, who were the trustees of the company. L. sold 30,000 of his shares to defendants and had them issued direct from the company, with the statement on the face of the certificates that the shares were "fully paid and non-assessable." The company became embarrassed, and the shareholders passed a resolution making all promoters' shares assessable, and on a call of two cents a share being made, the defendants refused payment.

Held, in an action by the company, that the defendants were not liable.

Nelson, for plaintiff. *Galt*, for defendants.

Obituary.

Hon. Mr. Justice Rose.

John Edward Rose, whose death we have already referred to, was a son of the late Rev. Samuel Rose, D.D., a well-known Methodist minister in this province, and was born at Willowdale, October 4th, 1844. He received his education at the Dundas Grammar School, and subsequently at Victoria University, Cobourg, taking from time to time the degrees of B.A., M.A, LL.B., and LL.D. He was called to the Bar in 1867, commencing the practice of his profession in the city of Toronto. He subsequently became head of the firm of Rose, Macdonald, Merritt & Blackstock. He was not so well known at nisi prius and in term as he was in connection with important counsel work in his own chambers. In 1881 he was made a Q.C., and on December 4th, 1883, was appointed to take the place of Mr. Justice Osler, on the transfer of that eminent Judge from the Common Pleas Division to the Court of Appeal. Mr. Justice Rose was one of the Commissioners for the Revision of the Ontario Statutes in 1886 and again in 1896, and also devoted much attention to the revision and consideration of the rules of practice under the Judicature Act of Ontario. It fell to his lot as Judge to try a number of very important cases, and his quickness of apprehension, sound judgment and knowledge of law gave entire satisfaction to the Bar, in whose favour he was growing until his death. We have in another place (ante page 49) referred more at length to his judicial career.

Mr. Britton Bath Osler, K.C.

Mr. Britton Bath Osler, K.C., of Osgoode Hall, Toronto, whose sudden death at Atlantic City, New Jersey, U.S., on the 5th inst., is referred to elsewhere (ante page 90), was born in the County of Simcoe on June 19th, 1839, being the second son of the late Rev. F. L. Osler, of the Church of England. He had been in failing health for some time past,

suffering from nervous prostration, resulting, doubtless, from the strain of overwork. Strong hopes were entertained that the rest he was compelled to take would restore him to health, and there seemed good prospect that this happy result would soon take place. Shortly before his death he seemed much better, attending to his correspondence and going about much as usual. A sudden access of weakness came on arising from heart failure, but nothing could be done, and he soon passed away. His brother, Dr. Osler, was summoned from Baltimore and brought the remains to Toronto, where they were interred on the 7th inst. A large concourse of his many friends followed his body to the grave. As we have so recently given a sketch of the life and career of this great advocate, we need only refer our readers to what was said on that occasion (vol. 35, page 289). An excellent likeness of the deceased will be found at the same place.

COUNTY OF YORK LAW ASSOCIATION.

At the recent meeting of this association the following officers were appointed for the present year: President, J. H. Macdonald, K.C.; Vice-President, J. B. Clarke, K.C.; Treasurer, Walter Barwick, K.C.; Curator, Angus MacMurchy; Secretary, Shirley Denison; Auditors, H. L. Dunn and E. F. Gunther. The Board of Trustees consists of Messrs. R. J. Maclennan, D. W. Saunders, N. W. Rowell, H. H. Dewart, K.C., W. E. Middleton, Goodwin Gibson and A. W. Anglin. The following were chosen as the Legislation Committee: John Hoskin, K.C., LL.D., E. D. Armour, K.C., D. E. Thomson, K.C., T. Langton, K.C., D. W. Saunders, E. T. English, C. A. Masten, W. D. McPherson, Gordon Waldron, A. T. Kirkpatrick, W. E. Raney and Geo. Kerr.

Flotsam and Jetsam.

All clients knew that, with "Old Abe Lincoln" as their lawyer, they would win their case—if it was fair; if not, that it was a waste of time to take it to him. After listening some time one day to a would-be client's statement, with his eyes on the ceiling, he swung suddenly round in his chair and exclaimed:—"Well, you have a pretty good case in technical law, but a pretty bad one in equity and justice. You'll have to get some other fellow to win this case for you. I couldn't do it. All the time while standing talking to that jury, I'd be thinking, 'Lincoln, you're a liar,' and I believe I should forget myself and say it out loud."—*Ex.*

The following suggestions were made some time ago by His Honour Judge Dean, and referred to an address by him to the grand jury at Lindsay as to changes in the administration of justice in Ontario:—

1. Let the County Courts be merged in the High Courts. All actions will then be brought and writs issued in the one Court.

2. Let the Judges of the now County Courts be known as 'Local Judges of the High Court,' or as 'County Judges of the High Court.' (In this memo: I speak of them as County Judges, and the present Judges of the High Court as High Judges.)

3. Let the County Judge have exclusive jurisdiction in his County in all actions up to $ (say in such actions and for such amounts as are fixed by the Bill respecting County Courts, which was before the Legislature last session), and also in any action up to any amount in which neither of the parties proposes that it shall be tried before a High Judge.

4. Let there be a Spring and Fall Sittings of the Court for the trial of causes by a jury to which the usual panels would be summoned.

5. Let the actions, Civil and Criminal, required to be tried at such sittings by a High Judge, be first tried and disposed of by him, and let the remaining causes be immediately thereafter disposed of by the County Judge.

6. Notwithstanding anything in paragraph 3, any cause above the present jurisdiction of the County Court may, by consent of the parties thereto, or, upon an order made on notice by a High or County Judge, be tried by a High Judge.

7. Let all civil causes for trial with a jury be set down not less than days before the day fixed for the Sittings of the Court, and let the Local Registrar, or Deputy Clerk of the Crown, not later than the next day thereafter, by registered letter, notify the High Judge assigned to take said Sittings, as to what causes have been set down for trial by a High Judge.

If no cause is set down for trial by a High Judge, he need not attend such Sittings, unless required to attend for the trial of a criminal matter.

13. Let all criminal matters to be heard at such Sittings, not within the jurisdiction of the General Sessions of the Peace (or such other limits as may be fixed) be tried and disposed of by the High Judge, and all other criminal matters be tried by the County Judge. Nevertheless, any criminal case may be tried by a High Judge upon the order of the Attorney-General; and any criminal case may be tried by a County Judge upon the consent of the Crown and of the accused."