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MERCIER v. *CAMPBELL AND THE STATUTE OF FRAUDS.*

In our issue of May 2 (ante, p. 273) we published an article written by F. P. Betts (of London, Ont.), in which he discusses the judgment of the King's Bench Division in the case of *Mercier* v. *Campbell*, 14 O.L.R. 639.

In the July number of the *Law Quarterly Review* (London, England, Sir Fred. Pollock, Bart., D.C.L., editor) there appears a criticism of the above judgment in which the learned editor agrees with the view expressed by Mr. Betts, and strongly dissents from the reasons given for the finding of the court. He concludes by hoping that "the doctrine in *Mercier* v. *Campbell* will be considered by some court of higher authority." We reproduce the article in the *Law Quarterly*. It reads as follows:—

"The CANADA LAW JOURNAL of May 2 calls attention, rather late, to the law laid down by a Divisional Court in Ontario on appeal from a County Court (whereby the decision was final) in 1907, *Mercier* v. *Campbell*, 14 Ont. L.R. 639. The Court appears to have decided that a liquidated damages clause annexed to an agreement subject to the Statute of Frauds is collateral and separable, and if the statute is not satisfied the agreement can nevertheless be indirectly enforced by suing for the liquidated damages assigned for its non-fulfilment.

"We agree with the learned commentator that the decision is wrong. The agreement in question was in writing and intended to be formal, but in fact inartificial amateur work. It was for the sale of real estate on a vaguely expressed condition, of which the uncertainty seems to have been the formal defect relied upon. We confess we should have thought it uncertain enough to spoil the agreement even apart from the statute. However, the agreement was in fact admitted in the Divisional Court to be not enforceable by reason of the statute, but otherwise certain enough to support an action. In the body of the same document two short

paragraphs were added to the effect (the exact words are not material) that either party refusing to perform his part of the agreement should pay the other $300. The action was brought by the vendor to recover that sum from the purchaser for non-performance. In the County Court the judge said (ex relatione the writer in the CANADA LAW JOURNAL): 'This is an attempt to introduce a most startling principle. It amounts to this; that any contract within the Statute of Frauds, however informal it may be, may be the foundation of an action at law for damages, provided the parties have beforehand fixed and agreed upon what sum shall be recoverable in case of breach thereof. . . A stipulation in a contract as to liquidated damages cannot alter the nature of such damages nor indirectly validate a void agreement. Such stipulation must stand or fall with the contract itself.'

"This appears to us very sound, and we find no answer to it in the leading judgment in the Divisional Court, per Riddell, J., save the bare assertion that the promise to pay $300 is a distinct and alternative agreement. It seemed clear to the learned judge that these reciprocal promises are severable from the body of the agreement of which, as a document, they form part. To us it seems clearly otherwise. Here is no more a separate contract than in the penalty of a bond, if the agreement be read as a whole, as every instrument should be, to arrive at its true intent. No doubt collateral agreements have been held enforceable in many cases; but before such authorities become applicable we must be satisfied that the agreement in question is really collateral, and this is the point about which the court says least.

"A large number of cases are cited, mostly American, which we do not profess to examine. But the English cases most nearly in point are easily distinguished. *Jeake* v. *White*, 6 Ex. 873, 86 R.R. 527, was really this: 'In consideration that I investigate your title with a view to a loan, will you pay my costs in any event?' *Boston* v. *Boston*, [1904] 1 K.B. 124 (C.A.), comes to this: 'If you buy Whiteacre I will repay you the purchase money.' In neither case is there any contract for an interest in lands at all; no one is bound to convey or to buy. We hope the doctrine of *Campbell* v. *Mercier* will be reconsidered by some court of higher authority."

HARD CASES MAKE BAD LAW.

The Erie County (New York) Bar Association at its May meeting passed the following resolution: "That it is detrimental to the public welfare for the judges of this state to ignore well-settled principles in order to enable them to render decisions which conform more closely to the sense of justice and right of the individual judge or judges constituting the court." We presume there is good reason for re-stating a proposition which lies at the root of the administration of law, at least in Anglo-Saxon countries. The lay mind naturally runs into error on this subject and thinks that every case should be decided according to his or her individual idea of right and wrong; and the same crude notion prevails in the minds of those professional men who have failed to grasp the principles involved.

Our contemporary, *The Law Notes*, in referring to this matter, discusses some decisions in the New York Supreme Court in an article entitled, "Prevalence of alleged justice on the Bench," and remarks that "we have not noticed any cases decided by the New York Supreme Court where the judges exhibit a disgusting predilection for justice." That, however, is a domestic matter which we must leave to themselves to settle; but we gladly reproduce from the same journal the remarks of a learned western jurist, Mr. Justice Marshall, who says in *Clemons* v. *Chicago, etc., Ry. Co.*, 137 Wis. 387: "Rules of law cannot be changed by the court and adapted to the exigencies of particular cases, however distressing they may be. With indifference to results, except as seriousness thereof may stimulate greater care, established principles must be applied as the infallible test of what is right and what is wrong in the legal aspect. Whether the law as we find it is as we would have it to be if we were permitted to make it, instead of being mere instrumentalities to apply it, is immaterial. Our responsibility begins when we are invoked for its application. It ends when we apply it as we find it. The grade of fidelity with which the duty is performed is to be measured by the vigour and courage with which we labour in our own

special field, leaving the responsibility for changing the law to the department of government in which the constitution has lodged it."

The *Central Law Journal* in a series of articles one of which is entitled "Wrecker of law," makes some observations which are cognate to the matters above referred to; but which have special reference to certainty in pleading for the purpose of definite resultant conclusions in the decisions of the matter really involved in a suit. Unlearned and ignorant men have in this matter the same feminine desire (laudable enough in itself) to get rid of technicalities and get at the merits; but they go to work in the same clumsy and often helpless way as do those who seek to get what they call "justice" as distinguished from what they contemptuously style "law."

As to this we quote the following from our contemporary:—

"The position taken in this series of articles is that 'form' is just as necessary in the law, if its symmetry is to be preserved, and justice is to remain certain, as it is in engineering, chemistry or medicine; or as it is in baseball, or tennis, for that matter. If you want to make an effective stroke in golf, or an effective punch in the prize ring, you must do it according to form. All of which simply means that there are principles underlying all human effort, which, if observed, make the effort effective; if not observed, make it abortive or inefficient. So in the law,—its effort is to keep the peace of the state, to settle, to finish litigation. Interest reipublicæ ut sit finis litium. But this does not mean indiscriminate haste. It means that a cause must be settled according to prescribed rules, to the end that when it is once decided, it will be in fact 'settled.' The cause must not be left, after judgment, in the chaotic condition of having pleadings setting forth one cause of action, evidence developing another, and perhaps a judgment based upon both, or neither. This is not speculation. Specific instances can be given where exactly these things have happened. The technics of the law must be observed, or the law will be destroyed. We are drifting that way at present. Why do not the members of the bar who believe so,

and who are saying so, on all sides, make their protest effective? It can be shewn that a knowledge of the principles of the very subject which has been so long neglected—practice and procedure —would go far to remedy the disease, and to restore the harmony of the law."

In his "Circuit Journeys" Chief Justice Cockburn, in speaking of the trial of some women, mentions that he was greatly diverted by overhearing the opinion entertained by one of the accused of himself and his learned colleague. The virago remarked to one of her associates in the dock, "Twa auld grayheaded blackguards. They gie us plenty o' their law, but deevlish little joostice."

The learned founder of this journal, Sir James Gowan, was, in his capacity as a Division Court judge necessarily compelled in disposing of cases to remember that in deciding questions of law and fact, he was to make such order as might "appear to him just and agreeable to equity and good conscience." He was, however, strongly of the opinion that certainty and uniformity in the administration of the law was of primary importance. He once quoted to the writer a remark which seemed to him appropriate to the occasion, made by a celebrated judge of the United States when one of his associates remarked after his learned brother had delivered his judgment, "That may be law, but in my opinion it is not equity." "Equity," snorted his irritated senior, "Equity! What's equity? Damn equity!" This remark, by the way, would, no doubt, have been heard with much gusto by one of the best and wittiest of our own judges, Chief Justice Hagarty, who often expressed himself somewhat strongly when legislative fusion of law and equity was proposed, and finally carried out, in the Province of Ontario.

It will not be out of place in connection with this subject to reproduce a discussion which appears in a note to s. 54 in O'Brien's Division Court Act (1879). This note (p. 48), though it deals primarily with the incorporation of equity in Division Court administration is of interest in a discussion on the important subject brought to the attention of the Bench by the

resolution of the Bar Association which gave rise to this article. The author there says:—

"It is now generally considered that the words 'just and agreeable to equity and good conscience,' have not reference merely to the (practically) limited equity administered by the Court of Chancery, but refer to something more than that, and signify what has been termed 'natural equity,' or that which is morally just between man and man in each particular case, irrespective of the probable or possible results logically consequent upon a broad application of the principles deducible from the supposed equities of such case, according to the view taken of them by a judge of average capacity." These remarks apply to the construction to be placed on the words of the Division Court Act, but the writer continues:—

"After all, certainty and uniformity in the administration of the laws are practically matters of primary importance, and cannot be too strongly insisted upon. The too numerous complaints on this head shew that something is wrong somewhere. To obtain certainty and uniformity, an intimate knowledge of and strict adherence to first principles on the part of the judge is indispensable, and this must be combined with the salutary maxims of equity, which are of universal application."

It is well to give timely notice that on the first day of September next, the Revised Statutes of Ontario, relating to Short Forms of Conveyances (10 Edw. VII. c. 53), Leases (Ib. c. 54) and Mortgages (Ib. c. 55) will come into force. One result will be that all forms of conveyances, mortgages and leases will have to be altered to suit the new titles relating to the subjects as they will appear in the various statutes affecting them. We remember that Mr. Alexander Leith, in former days the great authority on real property in this province, used to predict serious consequences if the exact names of those statutes were not followed in all conveyances.

REVIEW OF CURRENT ENGLISH CASES.

FATAL ACCIDENT—FATHER AND TWO SONS KILLED—DEPENDENT—COMMON FUND.

Hodgson v. *West Stanley Colliery* (1910) A.C. 229, although a decision under the English Workmen's Compensation Act of 1906, may nevertheless be found worthy of attention, as also having a bearing on the construction of the Fatal Accidents Act (R.S.O. c. 135). A father and two sons were killed, their wages had been put into a common fund, out of which they and the other members of the family consisting of the mother and other children were supported. It was contended that the mother was solely dependent on her husband, and could recover only in respect of his death; but this was overruled. Then it was contended that the maximum damages in respect of one death allowed by the Act could only be recovered, notwithstanding three workmen had been killed, but this also was overruled, and it was held by the House of Lords (Lord Loreburn, L.C., and Lords Macnaghten, Collins, and Shaw) that the widow and surviving children were dependent on all three of the men killed, and were entitled to recover damages in respect of the death of each of them.

TRADE MARK—PASSING OFF GOODS AS THOSE OF ANOTHER—"CHARTREUSE"—VESTING OF FRENCH BUSINESS UNDER FRENCH JUDGMENT—ENGLISH TRADE MARK—FRENCH LAW.

In *Lecouturier* v. *Rey* (1910) A.C. 262 the House of Lords (Lords Macnaghten, Collins, Atkinson, Shaw, and Loreburn, L.C.) have affirmed the decision of the Court of Appeal (1908) 2 Ch. 715 (noted, ante, vol. 45, p. 71). It may be remembered that the plaintiff as the representative of certain Carthusian monks claimed to restain the defendants from using their English trade mark of "Chartreuse" in connection with a liqueur manufactured by the defendants, who had purchased from the French government the business formerly carried on by the monks in France. The defendants continued to carry on the manufacture of a liqueur, but not by the secret process of the plaintiffs, and claimed to be entitled to use in connection with their manufactures, the English trade mark of the plaintiffs,

which the defendants had procured to be transferred to them in the register, on the representation that they were transferees thereof by virtue of a judgment of a French court. The plaintiffs claimed that this transfer was improper, on the ground that the French court had no jurisdiction to deal with an English trade mark and the plaintiff claimed a rectification of the register. The Court of Appeal so held, and gave judgment for the plaintiffs, and rightly as the House of Lords held. It may be remarked that a French court had in another action held that the monks who had gone to Spain where they continued to manufacture liqueur by their secret process were entitled to use in connection therewith the name "Chartreuse." So that the present case does not in any way conflict with the judgment of the French courts.

HYPOTHETICAL CASE—COURT DECLINING JURISDICTION.

Glasgow Navigation Company v. *Iron Ore Company* (1910) A.C. 293. After the argument of an appeal in this case before the House of Lords (Lord Loreburn, L.C., and Lords Atkinson, and Shaw), it transpired that the argument had been based on an hypothetical and not an actual state of facts, the House declined jurisdiction, and refused to make any order.

FALSE IMPRISONMENT—ENTRY ON WHARF—REFUSAL TO PERMIT PLAINTIFF TO LEAVE WHARF WITHOUT PAYMENT OF TOLL—UNREASONABLE CONDUCT OF PLAINTIFF.

Robinson v. *Balmain New Ferry Co.* (1910) A.C. 295. This was an appeal from the High Court of Australia. The action was for false imprisonment; the facts being, that the defendants carried on a ferry business, and the plaintiff had contracted with the defendants to enter their wharf and stay there until the ferry should start and then be taken thereby to the opposite shore. No breach of the defendants' contract was alleged, but after the plaintiff entered the wharf he changed his mind, and wanted to leave without paying the prescribed toll for exit, and was for a time forcibly prevented. At the trial the plaintiff obtained a verdict for £100, but the High Court had set aside the verdict and nonsuited the plaintiff, on the ground that the defendants were justified in refusing to allow the plaintiff to leave the wharf without paying the toll which was reasonable and proper. The Judicial Committee of the Privy Council (Lord Loreburn, L.C., and Lords Macnaghten, and Collins, and Sir A. Wilson) being

of the opinion that this decision was sound dismissed the appeal and the same time remarked that the plaintiff's conduct was "thoroughly unreasonable."

TORONTO RAILWAY—(8 EDW. VII. c. 112, s. 1, ONT.).

Toronto v. *Toronto Ry.* (1910) A.C. 312 is a case of limited interest, but incidentally shews that where parties wish to reverse a judicial decision by Act of Parliament it is necessary to be extremely carefully to do so in very explicit terms. Probably 8 Edw. VII. c. 112, s. 1, Ont., was intended by the draughtsman to have that effect, but if so, he made use of very inapt language, for by no reasonable construction could the Act be so construed. So it was held by the Railway Board, and so also by the Court of Appeal, and the Judicial Committee (Lords Macnaghten, Atkinson, Collins, and Shaw) declared the appeal of the city "a very idle one."

COMPANY—NON-PAYMENT OF CALLS—FORFEITURE OF SHARES—OWNER OF SHARES FORFEITED ALSO DIRECTOR.

Jones v. *North Vancouver Land Co.* (1910) A.C. 317. This was an appeal from the Supreme Court of British Columbia. The action was brought by Clara B. Jones to obtain a declaration that 240 shares in the defendant company had not been forfeited. The certificate of the shares in question had been made out in the name of the plaintiff, but it appeared by the evidence that she had on the same day assigned the certificate to her husband, and that he was the real owner. The company in 1898 had made a call on the shares, notice of which had been given to the plaintiff at the address given by her husband, and default having been made she was again notified that the shares were forfeited. Her husband was a director of the company, and was present and consenting both to the call and forfeiture of the shares for non-payment. The prospects of the company having improved the action was brought to set aside the forfeiture. The Provincial Court held, in these circumstances, that the action must be dismissed, and the Judicial Committee of the Privy Council (Lords Macnaghten, Atkinson, Collins, and Shaw) affirmed the decision being clearly of the opinion that the plaintiff's husband was the real owner of the shares, and had full notice and knowledge of all the proceedings resulting in their forfeiture, and could not now be heard to dispute its validity on any technical grounds of irregularity in respect to notice, etc.

COVENANT TO RENEW LEASE—ACTION FOR SPECIFIC PERFORMANCE OF COVENANT TO RENEW—RELIEF AGAINST FORFEITURE OF RIGHT TO RENEWAL—(R.S.O. c. 135, s. 13).

Greville v. *Parker* (1910) A.C. 335. This was an appeal from the Court of Appeal of New Zealand. The action was brought for the specific performance of a covenant for renewal contained in a lease. The covenant was conditioned on the lessee performing the covenants contained in the lease up to the expiration of the lease. The lessee had made continual defaults in performing the covenants of the lease, and the lessor for that reason refused to renew. The plaintiff claimed that under statutes enabling the court to relieve against forfeitures (see R.S.O. c. 170, s. 13), the court was enabled to relieve him against the forfeiture of his right to renewal by reason of his non-performance of his covenant, and the Colonial Court held that although the evidence disclosed a persistent course of wilful neglect of his covenants by the lessee, the defendants were in effect enforcing a forfeiture without first giving the defendant notice (see R.S.O. c. 135, s. 13); and granted specific performance. But the Judicial Committee of the Privy Council (Lords Macnaghten, Atkinson, and Collins, and Sir A. Wilson) reversed that decision, their lordships being of the opinion that even if the court had under the statutes power to relieve against the forfeiture, the circumstances in which the covenants had been broken must be such as to give the lessee an equitable claim to relief. But their lordships held that the defendants were not seeking to enforce a forfeiture, and that the Act relied on (which is similar in terms to R.S.O. c. 135, s. 13) gives no power to the court to relieve against the non-performance of a condition precedent. The action was therefore dismissed.

STANDARD BEARER OF SCOTLAND.

Wedderburn v. *Lauderdale* (1910) A.C. 342 is an interesting case from an antiquarian point of view. The plaintiff the Earl of Lauderdale claimed to be entitled to carry the standard of Scotland before the King. The defendant an heir of one Scrymgeour (which means "sharp fighter") claimed to be entitled under a grant conferred on his ancestor by Malcolm III. or one of the Alexanders. The plaintiff claimed under a subsequent grant made on the erroneous assumption that the Scrymgeour family was extinct. The Court of Claims had allowed the defendant's claim, and he had carried the standard before the

late King at his coronation, but it was held this did not amount to res judicata. The Scotch Court of Session had decided in favour of the plaintiff the Earl of Lauderdale, but the House of Lords reversed that decision, holding that the "sharp fighters" had the better right. Their lordships also held that under an Act of the Scotch Parliament of 1455 it was not open to the King to make any grant in derogation of that to Scrymgeour; and that the office was hereditary, and was not capable of alienation voluntarily or in execution.

ESTOPPEL—RES JUDICATA—LANDLORD AND TENANT—AGREEMENT FOR LEASE—ACTION FOR RENT—DEFENCE NO CONCLUDED AGREEMENT—SECOND ACTION—DEFENCE STATUTE OF FRAUDS.

In *Humphries* v. *Humphries* (1910) 1 K.B. 796, the doctrine of res judicata was applied in somewhat peculiar circumstances. The plaintiff was owner of certain premises and entered into negotiations for leasing them to the defendant, and on 29 Oct., 1907, defendant handed to the plaintiff a stamped document which the plaintiff claimed constituted an agreement by the defendant to take a lease of the premises for fourteen years at a specified rent. The defendant, however, claimed that there was no concluded agreement and refused to take possession. The plaintiff then brought an action to recover rent due up to June, 1908. The defendant in this action denied the existence of any concluded agreement for a lease, but did not set up the Statute of Frauds. The action was tried and judgment given in favour of the plaintiff. Further rent having fallen due the present action was brought in which the defendant set up the fourth section of the Statute of Frauds as a defence. The judge of the County Court held that as in the former action the court had decided that there was a valid and binding agreement for a lease, the matter was res judicata, and the Divisional Court (Phillimore and Bucknill, JJ.) held that he was right.

WATER SUPPLY—"DOMESTIC PURPOSES"—RAILWAY.

Metropolitan Water Board v. *London, Brighton and South Coast Railway* (1910) 1 K.B. 804 may be briefly noticed for the fact that a Divisional Court (Phillimore and Bucknill, JJ.) decided that a supply of water to a railway station for drinking by officials and passengers, and for cleansing the station premises, does not come under the head of a supply for "domestic purposes," but is a supply for "railway purposes."

CRIMINAL LAW—"ENCOURAGING SEDUCTION" OF GIRL UNDER SIXTEEN—CHILDREN'S ACT, 1908 (8 EDW. VII. C. 67), S. 17—(CR. CODE, SS. 215, 217).

Rex v. *Moon* (1910) 1 K.B. 818. This was an indictment of the father and mother of a girl under sixteen for encouraging her seduction. The evidence was that the prisoners and their daughter slept in a barn and that they knowingly suffered the daughter to sleep in a corner of the barn with a man by whom she had been previously seduced. The prisoners were convicted, but the conviction was quashed by Lawrance, Jelf and Bray, JJ., on the ground that "seduction" in the 8 Edw. VII. c. 67, s. 7, means the inducing a female to part with her virtue for the first time, and is not the same as having carnal connection, which by the way are the words used in the Criminal Code ss. 215 and 217; and which may therefore perhaps be found to cover an act like that in question in the present case.

NEGLIGENCE—PUBLIC SCHOOL—DANGEROUS DOOR SPRING—INJURY TO SCHOLAR—LIABILITY OF SCHOOL AUTHORITIES.

Morris v. *Carnarvon County Council* (1910) 1 K.B. 840. In this case the Court of Appeal (Williams, Moulton and Farwell, L.JJ.) have affirmed the decision of the Divisional Court (1910) 1 K.B. 159 (noted ante, p. 170), to the effect, that where a pupil at a public school is injured by getting her fingers pinched in a swing door of the school building, owing to the door being closed by a powerful spring, the school authorities are liable in damages for the injury so occasioned, the door being found by the jury to be unsuitable for an infant school.

PARTNERSHIP—NOTICE OF DISSOLUTION—PARTNERSHIP TERMINABLE BY MUTUAL AGREEMENT—PARTNERSHIP ACT, 1890 (53-54 VICT. C. 39), SS. 26, 32.

In *Moss* v. *Elphick* (1910) 1 K.B. 846 the Court of Appeal (Williams, Moulton and Farwell, L.JJ.) have affirmed the judgment of the Divisional Court (1910) 1 K.B. 465 (noted ante, p. 326), to the effect that under the English Partnership Act where partnership is terminable by mutual consent, it is not open to any of the partners to give notice of dissolution without such consent.

LIBEL—DISCOVERY—DOCUMENTS REFERRED TO IN DOCUMENTS PRODUCED—RELEVANCY—FURTHER AFFIDAVIT OF DOCUMENTS—PRODUCTION.

Kent Coal Concessions v. *Duguid* (1910) 1 K.B. 904. This was an action of libel brought against the defendants as publishers of a newspaper, which libel the plaintiff alleged meant that they, the plaintiffs, had no chance of success. The defendants by their defence denied that the alleged libel bore the meaning attributed to it by the plaintiffs, or any defamatory meaning; and they further pleaded that in so far as it contained statements of fact it was true, and in so far as it consisted of criticism it was fair and bonâ fide comment on a matter of public interest. In answer to an order for production of documents, the plaintiffs produced certain reports made by the directors of the plaintiff company to the shareholders with balance sheet appended, containing statements which on their face were derived from books of account which were not produced. The defendants moved for a further affidavit on production, contending that the books of account should be produced. The Master granted the application and was affirmed by Jelf, J., whose order was affirmed by the Court of Appeal (Farwell and Kennedy, L.JJ.), Williams, L.J., dissenting. The majority of the Court of Appeal thought that as the plaintiff's admitted the relevancy of the documents produced by them, they thereby also admitted the relevancy of the books from which the statements they produced were compiled. Williams, L.J., considered the application was in effect an attempt by the defendants to find out whether there was in fact any justification for their defence of fair comment without undertaking the responsibility of justifying the publication with the meaning attributed to it by the innuendo.

MORTGAGE—PUISNE INCUMBRANCER—CONSENT TO FORECLOSURE—RIGHT OF PUISNE INCUMBRANCER AFTER FORECLOSURE TO SUE ON COVENANT—DEMAND IN WRITING—FOLLOWING ASSETS IN LANDS OF LEGATEES AND DEVISEES—(R.S.O. c. 129, s. 38).

Worthington v. *Abbott* (1910) 1 Ch. 588. Under a mortgage dated in 1897 the plaintiffs in this case were mortgagees of a public house subject to prior mortgages. Proceedings having been taken in 1904 by the prior mortgagees for foreclosure, the plaintiff's consented to a judgment for immediate foreclosure, without the appointment of any day for redemption. The

mortgagor at this time was thought to be worthless. In 1907, however, she died, leaving an estate of £8,000, which was devised and bequeathed to the defendants, and, after due notice, the executors having no notice of the plaintiff's claim, distributed the assets among the defendants, the beneficiaries named in the will. The plaintiffs then brought the present action on the covenant of the deceased mortgagor to compel the beneficiaries to refund so much of the assets paid to them as might be necessary to satisfy the plaintiffs' claim. The covenant provided that upon demand in writing left at the mortgaged premises the mortgagor would repay the principal money and interest. No demand was ever made on the premises. The defendants contended that by consenting to a foreclosure the plaintiffs had debarred themselves from the right to sue on the covenant, and also contended that the action was not maintainable because there was no proof of any demand in writing on the premises. Eve, J., who tried the action held that the consent of the plaintiffs to the foreclosure did not debar them from suing on the covenant. With regard to the demand in writing he thought that was a stipulation in case of the plaintiffs and to enable them to enforce the covenant without personal service by delivering the demand on the premises, and that the true intent of the provision was to bring home to the mortgagor or those claiming under her, that the mortgagees were demanding their money, and on the evidence of demand by letter prior to suit, he thought that the provision had been sufficiently complied with. Judgment was therefore given against the defendants to refund as prayed. We may note that the reporter has appended the form of judgment, which may be useful for reference.

WILL—CONSTRUCTION—CHARITABLE TRUST—"SITE" TRUSTEES—DECISION OF MAJORITY OF TRUSTEES OF CHARITY.

In re Whiteley, Bishop of London v. *Whiteley* (1910) 1 Ch. 600. The late William Whiteley by his will left £1,000,000 in trust for the purchase of freehold "lands situate in some one of the western suburbs of London, or in the adjacent country" to be selected by his trustees "as a site" for the erection of buildings to be used as homes for aged poor persons to be called "Whiteley Homes for the aged poor," or by such other name as the trustees should determine, but so that the name of "Whiteley" should form part of such name or names. The will directed that "the site" to be selected should be in a bright and healthy "spot,"

even if such "site" could only be acquired at an additional expense. The trustees numbered ten. On a summary application for construction of the will, Eve, J., held that the trustees were not entitled to select or acquire more than one site; and that the decision of the majority of the trustees as to its location must govern, in which respect the rule as to charitable trusts is the same as in the case of public trusts.

MARRIAGE SETTLEMENT—AGREEMENT TO SETTLE WIFE'S AFTER-ACQUIRED PROPERTY—GIFT FROM HUSBAND TO WIFE—NEXT OF KIN CLAIMING BENEFIT OF COVENANT—TRUSTEES NOT BOUND TO ENFORCE COVENANT FOR BENEFIT OF VOLUNTEERS.

In re Plumptre, Underhill v. *Plumptre* (1910) 1 Ch. 609. By a marriage settlement it was agreed that the wife's after-acquired property should be settled upon the trusts of the settlement. During coverture in 1884 the husband made a gift to the wife of a sum of money which was invested in railway debenture stock, which stood in her nar at the time of her death intestate. Her husband took out administration to her estate and the stock was now standing in his name. The trusts of the settlement were the usual trusts of a wife's fund with an ultimate trust after the husband's death, in the events which had happened, for the next of kin of the wife. The trustees now made a summary application to the court to have it determined, whether the fund given to the wife by the husband was caught by the covenant, and Eve, J., held that it was; and also whether or not they were bound to enforce the covenant for the benefit of the wife's next of kin, and on this point Eve, J., held that the next of kin being strangers to the marriage consideration were in the position of mere volunteers, and there was consequently no obligation resting on the trustees to enforce the covenant for their benefit, and that the trustees could not now bring an action to recover damages for breach of the covenant in 1884 against either the husband or the estate of the wife; and that the next of kin could have no relief in equity because, as far as they were concerned, there was no trust of the fund in question, but a mere voluntary contract on the part of husband and wife to create a trust.

MORTGAGE—CLOG ON REDEMPTION—PUBLIC HOUSE—COVENANT TO PURCHASE FROM MORTGAGEE FOR 28 YEARS—PROVISO AGAINST REDEMPTION WITHOUT CONSENT OF MORTGAGEE FOR 28 YEARS.

Morgan v. *Jeffries* (1910) 1 Ch. 620 was an action by a mortgagor for redemption. The mortgaged premises consisted of a

public house and the mortgagor had covenanted to buy all beer, etc., required therefor from the mortgagee for 28 years, or so long after as any money remained due on the mortgage; and the mortgage also provided that the mortgagor should not, without the consent of the mortgagee, redeem the mortgage before the expiration of 28 years. The mortgage was made in 1896. The plaintiff claimed that these stipulations were a clog on redemption and as such void. Joyce, J., who tried the action, was of the opinion, that the plaintiff's contention was right, and held that even if the proviso against redemption might be supported where there was a similar provision against calling in the mortgage, it could not be so in the absence of such provision as it exceeded all reasonable limits. As to the covenant to purchase beer, etc., he says nothing, but that also would seem to be a covenant which could not be enforced after redemption: see *Noakes* v. *Rice* (1902) A.C. 24.

COMPANY—PROSPECTUS—FACTS TO BE STATED IN PROSPECTUS—OMISSION OF FACTS FROM PROSPECTUS—REMEDY FOR OMISSION—COMPANIES ACT, 1908 (8 EDW. VII. c. 68), s. 81—(7 EDW. VII. c. 34, s. 99 (ONT.).

In re Wimbledon Olympia (1910) 1 Ch. 630. This was a motion on behalf of the shareholder of a company to rectify the register of shareholders, by striking out the applicant's name, on the ground that the prospectus issued by the company omitted to state facts which ought to have been stated. Neville, J., held that the omission of facts required by statute to be stated in a prospectus did not per se entitle a shareholder to rectification of the register, although he conceded that there might be omissions of such a character as, on other grounds than mere omission, would entitle a shareholder to relief. But bare omission was not enough.

COMPANY—PROSPECTUS—OMISSION TO STATE FACTS REQUIRED IN PROSPECTUS—EFFECT OF OMISSION—COMPANIES ACT, 1908 (8 EDW. VII. c. 69), s. 81—(7 EDW. VII. c. 34, s. 99(O.)).

In re Wimbledon Olympit (1910) 1 Ch. 632. This was an application on the part of a shareholder of a limited company to have his name removed from the register of shareholders. The application succeeded on the ground that the applicant had been misled by the actual statements contained in the prospectus, but Neville, J., held that the mere omission from the prospectus of

facts required by law to be stated therein does not per se entitle a shareholder who has taken shares on the faith of the prospectus to a rectification of the register.

STOCK EXCHANGE—BROKER AND CLIENT—PURCHASE OF SHARES—CARRYING OVER—ACCOUNT RENDERED BY BROKER TO CLIENT—OMISSION BY BROKER TO GIVE PARTICULARS OF HIS CHARGES—EQUITABLE MORTGAGE—IMPLIED POWER OF SALE—REASONABLE NOTICE TO MORTGAGOR.

In *Stubbs* v. *Slater* (1910) 1 Ch. 632, an appeal was had from the decision of Neville, J. (1910) 1 Ch. 195 (noted ante, p. 166), holding that where a broker who had purchased shares for the plaintiff on margin, and who in his accounts for carrying the shares over, had charged a sum of 8½d. per share net, which included both his own and the jobber's charges, but how much the jobber and how much the broker were respectively charging was not specified, the broker in such a case is not entitled to recover his own charges against his client because they were in the nature of "a secret profit." The Court of Appeal (Cozens-Hardy, M.R., and Buckley, L.J., and Joyce, J.) were unable to agree with this view, and held that the defendant having made his charges in a way customary according to the well-known practice of the stock exchange, and the charges being proper and reasonable, he was entitled to recover them. On the other point in the case as the right of the defendant, as the holder of an equitable mortgage of shares to secure the balance due by the plaintiff, to an implied power of sale of the security and as to the sufficiency of the notice given for the purpose of exercising that power the Court of Appeal agreed with Neville, J.

MORTGAGE TO SECURE CURRENT ACCOUNT—BANK—SUBSEQUENT MORTGAGE—APPROPRIATION OF PAYMENTS—RULE IN CLAYTON'S CASE.

Deeley v. *Lloyd's Bank* (1910) 1 Ch. 648. In this case the well-known rule in *Clayton's* case as to the appropriation of payments was unsuccessfully invoked. The facts were as follows. One Glaze in 1893 mortgaged property to the defendants to secure an overdraft on his current account limited to £2,500, and the bank held other security for the overdraft to the amount of £1,000. In 1895 he mortgaged the same property to the plaintiff subject to the prior mortgage. Notice of plaintiff's mortgage was given to the defendants, and they without opening any new

account continued their current account with Glaze, who from time to time paid moneys to the defendants. These payments, if applied according to the rule in *Clayton's* case would, by 6 Jan., 1896, have paid off the debt due to the bank when the second mortgage was given. The defendants never allowed Glaze to overdraw more than £3,500 except temporarily on deposit of additional security. Glaze also occasionally appropriated payments to meet particular cheques. The plaintiff through her husband, who was Glaze's solicitor, had full knowledge of all his dealings with the defendants. In 1899 Glaze became bankrupt and the defendants realized their securities for a price sufficient to pay the amount due them. The plaintiff did not then complain and he procured the defendant to release a guaranty given by Thomas Glaze for the debt of John Glaze, and thereupon he obtained a release of a counter guaranty which the plaintiff had given to Thomas Glaze. In 1905 the present action was commenced for an account, the plaintiff contending that the defendants were not entitled to charge as against the plaintiff for advances made to John Glaze after notice of the plaintiff's mortgage. But Eve, J., held that there was no intention on the part of the bank to appropriate payments according to the rule in *Clayton's* case, and that the debt for which they held their mortgage was never satisfied except by the sale, and he dismissed the action, and the Court of Appeal (Moulton and Buckley, L.JJ., Cozens-Hardy, M.R., dissenting) affirmed his decision. The majority of the court thought, that having regard to the circumstances of the case, and the conduct of the parties, no appropriation of payments by the bank according to the rule in *Clayton's* case could be presumed to have been made, but Cozens-Hardy, M.R., considered the case was governed by *Hopkinson* v. *Rolt*, 9 H.L.C. 514, and *Ratcliffe's Case*, 6 App. Cas. 722, and that the presumption of appropriation when there is a second mortgage is conclusive.

WILL AND CODICIL—CONSTRUCTION—SUBSTITUTION OF EXECUTOR—SUBSTITUTED EXECUTOR TO BE TREATED AS NAMED "THROUGHOUT," INSTEAD OF EXECUTOR ORIGINALLY NAMED—LEGACY TO EXECUTOR AS REMUNERATION—LEGACY TO EXECUTOR OF SHARE IN RESIDUE—IMPLIED REVOCATION.

In re Freeman, Hope v. *Freeman* (1910) 1 Ch. 681 is one of those cases in which the court had to solve a difficulty created by a testator, by reason of his apparently having followed a common

form of expression without due regard to its application to the actual circumstances. By the will in question one Bowyer Nichols was appointed executor, and to him was given (1) a legacy of £1,000 "if he shall prove my will," and (2) a legacy of a share in the testator's residuary estate. By a codicil the testator revoked the legacy of £1,000 to Bowyer Nichols and his appointment as executor, and appointed in his place Harry Freeman, to whom he bequeathed £200 for his trouble in acting as executor, and the codicil adopting a common form proceeded as follows: "And I declare that my said will shall be construed as if the name of the said Harry Freeman were inserted in my said will throughout instead of the name of the said Bowyer Nichols, and in all other respects I confirm the said will." It was contended that this clause had the effect of substituting Harry Freeman as the legatee of the share of the residue by the will bequeathed to Bowyer Nichols. Joyce, J., came to the conclusion that it was so doubtful on the reading of the codicil that the testator intended to substitute Freeman for Nichols as the legatee of the residuary share, that he ought not to give that effect to the codicil, but to read the concluding clause as merely applying to Nichols in his character of executor, and the Court of Appeal (Cozens-Hardy, M.R., and Buckley and Kennedy, L.JJ.) agreed that that was the proper conclusion.

WILL—GIFT OF INCOME TO DAUGHTER TILL MARRIAGE—GIFT OVER OF FUND ON MARRIAGE—DAUGHTER DYING UNMARRIED—ABSOLUTE GIFT—DETERMINABLE LIFE INTEREST.

In re Mason, Mason v. *Mason* (1910) 1 Ch. 695. In this case a testatrix directed the trustees of her will to pay the income of her residuary estate to her daughter until she should marry and after her marriage to pay thereout a legacy of £3,000, and divide the balance between the testatrix's surviving sons. The daughter died unmarried, and the question to be determined was whether the gift to the daughter was an absolute gift of the income, or whether it terminated at her death so that the gift over might then take effect. Joyce, J., held that he was bound by *Rishton* v. *Cobb*, 5 My. & Cr. 145, to hold that in the event which had happened, this bequest of income amounted to an absolute gift of the residue to the daughter, but the Court of Appeal (Cozens-Hardy, M.R., and Buckley and Kennedy, L.JJ.) thought that *Rishton* v. *Cobb* was distinguishable because in that case there was no gift over, and this notwithstanding the dictum of Lord Cottenham regarding the state of widowhood and spinsterhood, the former, in his opinion, being terminated by death, and the latter not.

SECURITY FOR COSTS—LEAVE TO SUE IN FORMA PAUPERIS.

In *Willé* v. *St. John* (1910) 1 Ch. 701 the Court of Appeal (Cozens-Hardy, M.R., and Williams, Moulton, Farwell and Buckley, L.JJ.) held that where after an order had been made staying proceedings until security for costs of an appeal should be given, and before the time limited for complying with the order expired, the appellant had obtained leave to sue in formâ pauperis, that this put an end to the stay of proceedings contained in the order for security.

PARTNERSHIP—MORTGAGE OF PARTNER'S INTEREST—RIGHT OF MORTGAGEE TO AN ACCOUNT—ARBITRATION CLAUSE—DISCRETION—STAY OF PROCEEDINGS—ARBITRATION ACT, 1889 (52-53 VICT. C. 49), S. 4—(9 EDW. VII. C. 35, S. 8, ONT.).

Bonnin v. *Neame* (1910) 1 Ch. 732. This was an action by the mortgagees of a partner's share in a partnership, for an account of the partnership in order that their mortgagor's share might be ascertained. The defendants applied to stay proceedings on the ground that the partnership deed contained the usual arbitration clause in case of disputes arising between the partners, and it was claimed there was a dispute as to the partner's share claimed by the plaintiffs. It appeared that under the arbitration clause arbitrators had been appointed by the partners, who had expressed strong opinions in favour of their respective appointors. In these circumstances Eady, J., held that it was in the discretion of the court as to whether or not a stay should be granted; and in the exercise of that discretion, the fact that partisans had been appointed arbitrators might be properly taken into account, and he refused the stay; being also of the opinion that the plaintiffs were not bound by the arbitration clause, which did not extend in terms to persons claiming under the partners.

VENDOR AND PURCHASER—CONVEYANCE—PLAN.

In re Sansom & Narbeth (1910) 1 Ch. 741. The simple question submitted to Eady, J., in this matter under the Vendors and Purchasers' Act was whether or not a purchaser is entitled where land has not been sold according to any plan, nevertheless to have a plan made and referred to in the conveyance from his vendor. This question Eady, J., answers in the affirmative, having regard to the fact that prior conveyances under which the

vendors acquired title had been made with reference to a plan; and he expresses the opinion that in all simple cases where a plan would assist the description, the purchaser has a right to have a plan on the conveyance.

WILL—TRUSTS OF REAL ESTATE—POWER OF SALE—CONVERSION AFTER DEATH OF HEIR AT LAW—REAL OR PERSONAL ESTATE.

In re Dyson, Challinor v. *Sykes* (1910) 1 Ch. 750. Perhaps since our Devolution of Estates Act in Ontario, questions of the kind discussed in this case may not be of much importance here. The facts were that land had been devised in trust for Jane Dyson for life with a gift over upon trusts that failed in Jane Dyson's lifetime, so that the equitable remainder in fee became vested in the testator's heir at law, under the will the trustees had an absolute power of sale over the land. This power was not exercised until after the death of the heir at law, and the question was whether the proceeds were to be regarded as real or personal estate. Neville, J., held that the person entitled to the heir at law's real estate at the date of the sale, and not his personal representative, was entitled to the proceeds of sale, because the conversion did not take place until the power of sale was exercised.

LANDLORD AND TENANT—COVENANT NOT TO ASSIGN WITHOUT LEAVE—CONSENT NOT TO BE WITHHELD FROM "A RESPECTABLE AND RESPONSIBLE PERSON"—ASSIGNMENT TO A LIMITED COMPANY AFTER CONSENT REFUSED—FORFEITURE OF LEASE.

Wilmott v. *London Road Car Co.* (1910) 1 Ch. 754 turns upon the construction of a covenant in a lease not to assign without the lessor's consent. The lease provided that the consent of the lessors would not to be withheld to an assignment "to a respectable and responsible person." The lessee desired to assign to a limited company, and the lessors refused to consent, whereupon the lessee assigned to the company without consent, and Neville, J., held that by so doing he had forfeited his lease, because a limited company is not "a respectable and responsible person" within the meaning of the convenant.

LANDLORD AND TENANT—AMBIGUITY IN LEASE—COUNTERPART—FORFEITURE—RELIEF AGAINST FORFEITURE—NEGLIGENCE.

In *Matthews* v. *Smallwood* (1910) 1 Ch. 777 three points are decided by Parker, J. First, that where there is a patent am-

biguity in a lease, a counterpart of the lease may be referred to for the purpose of removing it. Second, a lessor does not waive a right of entry unless, knowing the facts, he does something unequivocal which recognizes the continuance of the lease; and third, where a lease containing a clause against assignment without the consent of the lessor, is assigned by way of mortgage to trustees, the trustees are guilty of negligence if they accept the assignment without inquiry as to the consent, and cannot be relieved from the consequent forfeiture of the lease assigned.

WILL—TENANT FOR LIFE AND REMAINDERMAN—TRUST FOR IMMEDIATE CONVERSION—GIFT OF INCOME—PROFITS PRIOR TO CONVERSION—CAPITAL OR INCOME.

In re Elford, Elford v. *Elford* (1910) 1 Ch. 814. A testator gave inter alia his business at Sicily on trust for immediate conversion. He gave the income of his estate to his widow for life with remainder to his daughter. The will contained a clause that "all the income arising from my estate" should be applied as if it were income arising from the proceeds of the conversion, no part thereof being liable to be retained as capital. Prior to the sale of the Sicily business profits had been derived therefrom, and the question was raised there being a trust for immediate conversion of that business, whether such profits were to be treated as capital or income. Eve, J., decided that the expression "all the income of my estate" included the profits arising from the business, and that there was no sufficient ground for limiting the clause giving the tenant for life the income of unconverted property to that part of the estate which was subject to a discretionary power to postpone conversion. The widow was therefore adjudged to be entitled to the profits of the Sicily business.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.] ONTARIO BANK *v.* MCALLISTER. [June 15.

Banking—Security for debt—Transfer of business—Operation by bank—Assignment of lease—R.S.C. (1906) *c.* 29, *s.* 76, *ss.* 1(*d*) *and* 2(*a*), *s.* 81.

A bank entered into an agreement with a company heavily in its debt carrying on a milling business, which agreement provided that the company should pay the bank $10,000 and surrender all its assets including an assignment of the lease of its business premises, and that the bank should assume payment of its debts and release it from all further liabilities. By a subsequent agreement it was provided that the business of the company should be carried on as before with a view to reducing the debt due to the bank and disposing of it as a going concern as soon as possible, the bank to indemnify against any liabilities incurred while it was so carried on. No assignment of the lease of the business premises to the bank was executed, and the lessors having brought action against the company for rent due thereunder, the bank was brought in as a third party by the company claiming indemnity against payment of such rent under said agreements.

Held, affirming the judgment of the Court of Appeal (17 O.A.R. 145), DUFF and ANGLIN, JJ., dissenting, that the bank should indemnify the company against such payment, the agreements to take an assignment of the lease and to carry on the business as a going concern not being illegal as a violation of provisions of the Bank Act. Appeal dismissed with costs.

Morine, K.C., and *McKelcan*, for appellants. *Nesbitt*, K.C., and *O'Connell*, for respondents.

N.S.] CITY OF SYDNEY *v.* CHAPPELL BROS. [June 15.

Municipal council—Offer of money to build library—Special Act of Legislature—Power to procure site—Contract for building—Powers of municipality.

A sum of money was offered the city of Sydney for a public library on condition that the city procured the site and provided

for its maintenance. An Act of the Legislature empowered the city to purchase a site and tax the ratepayers for the cost. The library committee of the city council entered into a contract with C. for plans of the building which were prepared, but the scheme afterwards fell through, the money offered was not paid, nor the library built. In an action by C. for the price of the plans,

Held, that the city had no power to make a contract for the building and the action could not be maintained. Appeal allowed with costs.

O'Connor, K.C., and *Finlay McDonald*, for appellant. *Newcombe*, K.C., for respondent.

N.S.] SYDNEY POST PUBLISHING CO. *v.* KENDALL. [June 15.

Libel—Election contest—Withdrawal of candidate—Allegation of improper motives—Trial of action—Verdict for defendant—New trial.

K. was a member of the House of Commons prior to the election in 1908, and in August of that year a letter was published in the Sydney Post, which contained the following, which referred to him: "The doctor had a great deal to say of the elections in 1904. Well, I have some recollections of that contest myself, and I ask the doctor: Why did you at that time withdraw your name from the Liberal convention? The majority of the delegates came there determined to see you nominated. Why did you not accede to their request? Doctor Kendall, what was your price? Did you get it? Take the good Liberals of this county into your confidence and tell them what happened in those two awful hours in a certain room in the Sydney Hotel that day? The proceedings of the convention were held up for no reason that the delegates was, but for reasons which are very well known to you, and three or four others whom I might mention. One speaker after another killed time at the Alexandria Hall, while you were in dread conflict with the machine. Finally the consideration was fixed and you took off your coat and shouted for Johnston. What was that consideration?"

On the trial of an action by K. against the proprietors of the Post, the jury gave a verdict for the defendants.

Held, DAVIES and DUFF, JJ., dissenting, that the publication could only be construed as charging K. with having withdrawn his name from the convention for personal profit, and was libellous. The verdict was, therefore, properly set aside by the

court below, and a new trial ordered. Appeal dismissed with costs.

W. B. A. Ritchie, K.C., for appellants. *Mellish*, K.C., and *D. A. Cameron*, K.C., for respondent.

Ref. P.C.] IN RE CRIMINAL CODE. [June 15.

Reference by the Governor-General in Council—Criminal Code—Procedure—Alberta and Saskatchewan—Indictable offence Preliminary inquiry—Preferring charge—Consent of Attorney-General—Powers of deputy—Lord's Day Act, s. 17.

Sec. 783a of the Criminal Code (6 & 7 Edw. VII. c. 8) provides that in the provinces of Alberta and Saskatchewan it shall not be necessary to prefer any bill of indictment before a grand jury, but it shall be sufficient that the trial of any person charged with a ... minal offence shall be commenced by a formal charge in writing setting forth as in an indictment the offence with which he is charged. 2. Such charge may be preferred by the Attorney-General or an agent of the Attorney-General or by any person with the written consent of the judge of the court or of the Attorney-General or by order of the court.

Held, 1. IDINGTON, J., dissenting, that a preliminary inquiry before a magistrate is not necessary before a charge can be preferred under this section.

2. The deputy of the Attorney-General for either of said provinces has no authority to prefer a charge thereunder without the written consent of the judge or of the Attorney-General or an order of the Court.

Sec. 17 of the Lord's Day Act provides that "no action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney-General for the province in which the offence is alleged to have been committed . . ."

Held, that the deputy of the Attorney-General of a province has no authority to grant such leave.

Newcombe, K.C., for Dominion of Canada. *Ford*, K.C., Deputy Atty.-Gen. for Saskatchewan. *C. A. Grant*, for Alberta.

Province of Ontario.

HIGH COURT OF JUSTICE.

Magee, Riddell, Latchford, JJ.] [June 2.

WOODS *v.* CANADIAN PACIFIC RY. CO.

Railway—Construction of drain—Right of way—Flooding adjoining lands.

Appeal from judgment of MACMAHON, J.

The statement of claim was modelled upon the Railway Act, R.S.C. 1906, c. 37, s. 250. The judgment of the trial judge was based upon his reading of the above Act and he held that the plaintiff had no cause of action.

Held, that s. 250 gave the plaintiff no rights in this action. Sub-section 1 refers only to the future construction of railways, and not to those already constructed. It imposes a burden for which these companies were previously free unless where they had voluntarily assumed it as a matter of contract or otherwise. It has no retrospective effect. Appeal allowed and action dismissed with costs.

C. A. Moss, for plaintiff. *W. L. Scott*, for defendant.

Boyd, C., Magee, J., Latchford, J.] [June 2.

THOMPSON *v.* COURT HARMONY OF ANCIENT ORDER OF FORESTERS.

Benefit Society—Sickness—Certificate of medical officer—Domestic tribunal—Interference with by court—No jurisdiction to interfere with the decision of a benefit society unless the conclusion has been the result of corrupt motives.

Appeal by defendants from judge of the County Court of York in favour of plaintiff in an action by a member of the defendant court for $168 for sick benefit. The medical officer of the defendant society certified that the plaintiff's illness was due to alcoholism which under the defendants' rules deprived the plaintiff of any benefit. Another physician called in by the plaintiff certified that the illness was not due to alcoholism, but to something else; the defendants, however, acted on the certificate of their own medical officer. The County Court judge whilst

agreeing that the defendants could not pay in the face of the certificate of the defendants' medical officer held that as, in his opinion, alcoholism did not cause the plaintiff's illness, the certificate amounted to a legal fraud, although the officer had acted honestly and given judgment for the plaintiff.

BOYD, C.:—The inquiry as to the man's condition was prepresented as usual upon the doctor's certificate, and considered upon all the materials that the plaintiff desired to submit. That something else was not done by him is not a ground for disregarding the conclusion of the defendants and their officers. There was really no exclusion of evidence, because there was no tender of it; and, upon the materials before the defendants, the conclusion reached was right. Nothing was laid before the defendants or the officers who found upon the claim to indicate that the opinion or judgment of Dr. Pyne was erroneous, or that, when the doctors differed, the later opinion was to be preferred to his. The defendants did not take steps to investigate the soundness of Dr. Pyne's opinion by original inquiries, but that is not a matter provided for; they dealt with what was laid before them; and it is no reason for displacing their conclusion or their jurisdiction that a subsequent investigation in a court of law has led to a different result. The matter is one to be disposed of by the methods of the Order to which the plaintiff subjected himself on becoming a member. The action of the defendants is final unless it is made to appear that such action is contrary to natural justice or in violation of the rules of the body or done mala fide, as said in *Essery* v. *Court Pride of the Dominion* (1882) 2 O.R. 596, at p. 608.

The judgment in appeal introduces a new and further exception, in that an erroneous medical certificate, given honestly, but by mistaken diagnosis, is, though not intentionally fraudulent, to be regarded as "legal fraud." But it needs mala fides or dishonesty to annul the finding of a domestic forum. Lord Bramwell has taken particular pains to exterminate the expression "legal fraud."

The English authorities point out that all the officers or persons selected to deal with claims and disputes are to be regarded as arbitrators, and in respect of their findings relief is to be given in courts of law or equity only when the persons designated have misconducted themselves or abused their powers. *Callaghan* v. *Dolwin* (1869) L.R. 4 C.P. 288, 295. These officers have nothing to do with getting up a case for a complainant or claimant or with getting witnesses or otherwise initiating any method of investigation beyond dealing with what is laid before them and

acting thereon to their best judgment—as was unquestionably done in this protracted controversy: *In re Enoch and Zaretzky Bock & Co.'s Arbitration*, [1910] 1 K.B. 327, 332.

In brief it may be said as to these society disputes, where the officials deal as best they can with the materials brought before them, it is not enough to say they have reached an erroneous conclusion or that they have upheld an erroneous certificate; it must further appear, to give a foothold to the ordinary courts of law, that the conclusion has been the result of corrupt motives; see *Armitage* v. *Walker* (1855) 2 K. & J. 211, and *Bache* v. *Billingham*, [1894] 1 Q.B. 107.

I think that no jurisdiction exists, as to this claim of the plaintiff, to warrant the judgment of the County Court. It should be vacated and the action dismissed without costs.

Rose, K.C., for plaintiff. *Heyd*, K.C., for defendants.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] LONGMORE v. MCARTHUR. [May 18.

Negligence—Right of action by employee against contractor and sub-contractor—Recovery of judgment a bar to subsequent action.

Appeal from judgment of MATHERS, C.J.K.B., noted, ante, p. 390, dismissed with costs.

Full Court.] ARDEN v. MILLS. [June 6.

Contract—Repudiation before time for performance—Election to treat contract as ended except for the purpose of an action for breach.

If B. repudiates his agreement to lease property from A. for a term to commence at a future date, A. may treat the contract as at an end except for the purpose of bringing an action for the breach of contract, and he may remain in possession during the whole of the term agreed on and then bring such action. *Johnstone* v. *Milling*, 16 Q.B.D., per Lord Esher, at p. 467, followed.

McKerchar, for plaintiff. *Sullivan*, for defendant.

Full Court.] HIGLEY *v.* WINNIPEG. [June 6.

Negligence—Employer and workmen—Defect in ways, works, machinery and plant—Workmen's Compensation for Injuries Act, R.S.M. 1902, c. 178—*Negligence of foreman or person entrusted with duty of seeing that machinery and plant are in proper condition.*

The plaintiff, a carpenter in the defendant's employ under the superintendence of a foreman, was directed to assist in doing some work which necessitated the moving of a plank from one position to another in a frame building. The plank being above his reach when standing on the floor, the plaintiff, without specific directions from, and in the absence of the foreman, took a ladder about six feet long that was nearby, placed it in position, stepped on the lowest rung, held on to the top rung with one hand and with the other tried to raise the plank. In so doing the rung on which he was standing broke under the pressure, and the plaintiff fell upon some machinery underneath and was severely injured. The ladder was the property of the defendants. It was made of cross pieces or cleats nailed to studding but not "checked in," and had been frequently used on defendants' premises by the plaintiff and other workmen. In answer to questions submitted to them, the jury found that the ladder was defective, but they also in effect found that the plaintiff had been negligent in not using some other and safer method of reaching up to and shifting the plank.

Held, PERDUE, J.A., dissenting, that the ladder was a part of the ways, works, machinery and plant, which it was the duty of the foreman to see were in proper condition, that there was evidence to support the jury's finding that the ladder was not properly constructed and that the defect in it had not been remedied owing to the negligence of the foreman, thereby entitling the plaintiff to recover damages under ss. 3(a) and 5(a) of the Workmen's Compensation for Injuries Act, R.S.M. 1902, c. 178, and that the jury's finding as to the plaintiff's negligence would not prevent such recovery.

Held, also, that the damages assessed by the jury ($1,500), being well within the maximum allowed by the statute, were not excessive, and should not be reduced on the contention that the plaintiff had unreasonably neglected to follow the advice of a medical specialist. *Marshall* v. *Orient Steam Navigation Co.*, 79 L.J.K.B. 204, followed.

Per PERDUE, J.A.:—The plaintiff should be nonsuited because he had negligently adopted a dangerous method of reaching the

plank when several safer methods were open to him, without directions from the foreman to use the ladder and without taking care to see that the ladder was safe. *Cripps* v. *Judge*, 13 Q.B.D. 583, and *Weblin* v. *Ballard*, 17 Q.B.D. 122, distir uished.

Hagel, K.C., for plaintiff. *T. A. Hunt*, and *...ld*, for defendants.

Full Court.] [June 15.

PRAIRIE CITY OIL CO. *v.* STANDARD MUTUAL FIRE INS. CO.

Fire insurance policy—Condition requiring notice of loss to be given in writing forthwith.

Appeal from judgment of METCALFE, J., noted, ante, p. 271, dismissed without costs as the court was equally divided; HOWELL, C.J.A., and PERDUE, J.A., being in favour of allowing the appeal, and RICHARDS and CAMERON, JJ.A., of dismissing it.

KING'S BENCH.

Mathers, C.J.] CANADA SUPPLY CO. *v.* ROBB. [May 27.

Fraudulent conveyance—Proceedings to set aside—Sale of land to realize judgment—Affidavits and evidence—Gift from husband to wife made prior to incurring of debt.

1. A motion under rules 742 and 743 of the King's Bench Act for an order to set aside an alleged fraudulent conveyance of land, and for the sale of the land to realize the amount of a registered judgment, is not an interlocutory motion within the meaning of rule 507, and affidavits grounded merely on information and belief are not sufficient to support such motion. *Gilbert* v. *Endean*, 9 Ch.D. 259, followed.

2. The only proper evidence of the registration of a certificate of judgment is a certified copy of it: *Massey-Harris* v. *Warener*, 12 M.R. 48.

3. Where the debt for which a judgment was recovered was incurred more than a year after the gift from the debtor to his wife complained of, and it was not shewn that the property conveyed constituted the whole or even a substantial part of the property owned by the debtor at the time, the conveyance should not be held to be fraudulent.

Affleck, for applicant. *Robson*, K.C., and *Bowles*, for defendants.

Metcalfe, J.] GRAVES *v.* HOME BANK. [May 27.

Banking—Release by customer of claims against bank—Monthly acknowledgment of correctness of balance.

The plaintiff's claim was for damages for an alleged illegal sale at a loss of certain goods hypothecated by him for advances. He subsequently, but before action, signed, either personally or by his authorized agent, nine or ten successive monthly acknowledgments of the correctness of the balances due to him as shewn by the books of the bank. These documents contained the following clause: "And in consideration of the account of the undersigned being not now closed, and subject to the correction of clerical errors, if any, the bank is hereby released from all claims by the undersigned in connection with the charges or credits in the said account and dealings of the said day."

Held, that, in the absence of any suggestion of fraud on the part of the bank in procuring such releases, they were sufficient in form to bar the plaintiff's action and, being founded on a sufficient consideration, were valid and binding upon him.

Chalmers, for plaintiff. *Minty,* and *C. S. Tupper,* for defendants.

Metcalfe, J.] [May 27.

In re RURAL MUNICIPALITY OF SOUTH CYPRESS.

Liquor License Act—Local option by-law—Municipal Act—Posting up notices of voting—Fixing time and place for summing up of votes.

Held, that s. 68 of the Liquor License Act, R.S.M. 1902, c. 101, should be construed as requiring the council of a municipality, in passing a local option by-law, to follow the directions of ss. 376 and 377 of the Municipal Act, R.S.M. 1902, c. 116, and therefore to provide for the posting up of notices of the voting and to fix a time and place for the clerk to sum up the votes, and that a local option by-law which did not make such provisions was illegal and should be quashed.

Andrews, K.C., and *Burbidge,* for applicant.

Robson, K.C., *Taylor,* K.C., and *Foley,* for municipality.

Prendergast, J.] May 31.

IN RE RURAL MUNICIPALITY OF SWAN LAKE.

Liquor License Act—Local option by-law—Municipal Act—Posting up notices of voting—Ballots marked with assistance of deputy returning officer—Secrecy of ballot.

Held, 1. Sec. 66 of the Liquor License Act, R.S.M. 1902, c. 101, provides completely for the giving of notice of the voting on a local option by-law under the Act and there is nothing in the Act which incorporates the provisions of s. 376 of the Municipal Act, R.S.M. 1902, c. 116, so as to require the notices provided for by that section.

2. Sec. 68 of the Liquor License Act does not incorporate any provisions of the Municipal Act with respect to matters prior to the polling, especially the matter of notice of the voting which is independently and specifically dealt with in s. 66.

3. The vote of an elector who requests assistance in marking his ballot cannot be legally taken without strict compliance with s. 116 of the Municipal Act, and when four votes were so taken without the oath prescribed by that section, a by-law carried by a majority of only two should be quashed because without violating the secrecy of the ballot it could not be shewn that a majority of the electors voted for the by-law.

Andrews, K.C., and *Burbidge*, for applicant. *Robson*, K.C., and *Foley*, for municipality.

NOTE:—It will be seen that the view of Metcalfe, J., in *Re South Cypress* is exactly the opposite of that of Prendergast, J., in *Re Swan Lake* on the question whether s. 376 of the Municipal Act is imported into the Liquor License Act by s. 68 of the latter Act. The *South Cypress* case is to be taken to the Court of Appeal.

Mathers, C.J.] [June 2.

IN RE RURAL MUNICIPALITY OF PORTAGE LA PRAIRIE.

Liquor License Act—Local option by-law—Form of ballot—Meaning of words "as soon as possible"—Recount—Failure to have polls open during prescribed hours—Appointment of scrutineers.

Held 1. The use of the form of ballot prescribed by s. 4(*a*) of 9 Edw. VII. c. 31, amending s. 68 of the Liquor License Act, R.S.M. 1902, c. 101, at the voting on a local option by-law, together with the directions for the guidance of voters in the form

prescribed by schedule F to the Municipal Act, is not a fatal objection to the by-law, notwithstanding the inconsistency of the two forms.

2. A few days' delay in publishing the notice of the voting on a local option by-law required by s. 66 of the Act will not be fatal, notwithstanding the section says it shall be done "as soon as possible" and the council of a rural municipality is not bound to make use of a daily newspaper published in an adjoining city because thereby the notice might be published a few days sooner.

3. A local option by-law may be given its third reading without waiting for the time for applying for a recount to elapse. *Re Coxworth and Hensall*, 17 O.L.R. 431, followed.

4. Sec. 65 of the Liquor License Act, as re-enacted by s. 4 of c. 26 of 7 & 8 Edw. VII., governs as to the time and place of the voting, superceding sub-s. (*a*) of s. 376 of the Municipal Act, R.S.M. 1902, c. 116, even if that section was incorporated into the Liquor License Act by the language of s. 68, as to which no opinion was expressed.

5. A delay of an hour in opening one of the polls, caused by a snow-storm, which prevented the deputy returning officer from reaching the polling station in time, should not be held fatal to the by-law if it is not shewn that the result of the voting was affected by such delay: Maxwell on Statutes, 4th ed., 564. *Re Oakland*, not yet reported, distinguished.

6. That the by-law did not provide for appointment of scrutineers as required by s. 377 of the Municipal Act was not a sufficient reason for quashing it after it was carried at the polls, when scrutineers were actually appointed and acted as such.

F. M. Burbidge, for applicant. *Robson*, K.C., for the municipality.

Mathers, C.J.] [June 2.

ANDERSON v. CANADIAN NORTHERN RY. CO.

Railways—Negligence—Damages sustained by reason of the construction or operation of the railway—Limitation of time for action—Railway Act, R.S.C. 1906, c. 37, s. 306.

The statement of claim alleged that the plaintiff was employed by the defendant company as a labourer and as such took part in blasting and in thawing frozen dynamite for that purpose under the order and directions of the defendant's roadmaster, that he was injured by an explosion of such dynamite, and that the defendant is a railway company owning and operating lines of railway

within the province and was guilty of negligence in certain particulars specified.

Held, on demurrer, that these allegations did not of themselves shew that the action was one to recover damages or injury sustained "by reason of the construction or operation of the railway" within the meaning of s. 306 of the Railway Act, R.S.C. 1906, c. 37, and therefore barred by the lapse of one year from the date of the injury.

Deacon, for plaintiff. *Clarke*, K.C., for defendants.

Book Reviews.

The Law and Practice of Civil Proceedings by and against the Crown and Departments of the Government. By GEORGE STUART ROBERTSON, M.A., of the Inner Temple and Oxford Circuit, Barrister-at-law, Eldon Law Scholar, etc. London: Stevens & Sons, Limited, 119-120 Chancery Lane, Law Publishers, 933 pages.

We know of no law book which tells more of diligent and exhaustive research than the one before us, and there are few to compare with it in a masterly arrangement of the numerous subjects discussed, or where there has been more lucid treatment of difficult questions.

This work, as the author tells us, is the first attempt that has been made in modern times to deal comprehensively and practically with civil proceedings by and against the Crown and government departments. For practical use it supersedes all other works on the subject; and except perhaps for some matters of historical interest, leaves but little use for such works as Chitty's Prerogative of the Crown, published in 1820; West's Crown Practice in relation to Extens, published in 1817; Sargeant Manning's Proceedings at Law on the Revenue side of the Exchequer, in 1826; Fowler's Exchequer Practice, in 1827; Mr. Clode's book on Petition of Rights, in 1887, and some other minor works.

Mr. Robertson's large experience in connection with Crown practice has been a great help to him in the production of this comprehensive treatise, and we can easily imagine the time and labour and intelligence required even by one so competent for the task as the author, to bring this varied information into the

convenient form in which it now appears in the volume before us. We notice, moreover, that Mr. Robertson has not hesitated when occasion requires to state very freely his own opinion wherever the authorities seemed to conflict, or where there was no authority. This being done by one who is a master of his subject adds largely to the value of the work, and will help to settle doubtful points of practice.

Our readers have already seen something of his capacity in the article which recently appeared in this journal (ante, p. 100), entitled, "The Power Commission and the Attorney-General's fiat from the standpoint of the common law," in which Mr. Robertson shewed the indefensible character of the refusal of the acting Attorney-General of Ontario on an application for a fiat for an action against an emanation of the Crown on the ground that, "in his wisdom the plaintiffs would not succeed in their claim if he allowed them to go on." Further, that without right, precedent or authority he "constituted himself not only a court which arrogates to itself the right to hear and determine questions of law and fact, and to supersede the ordinary courts," but also that he adopted "the novel and unprecedented method of interpreting a statute by deciding the matter on his personal knowledge of what the legislature meant, and not on what it said."

The table of contents contains not less than 24 pages, and the index nearly 100 pages. This gives some idea of the mass of matter which required arrangement and elucidation.

The volume is divided into seven books entitled as follows:—

I. Civil proceeding by and against the Crown, members of the Royal family and government department. II. Proceedings of the revenue side of the King's Bench Division. III. Petition as of right. IV. Escheats. V. Other civil proceedings in which the Crown is a party. VI. Points of practice and proceedings. VII. Actions against Executive Officers of the government.

This book deals with matters as they exist at the present day and as modern conditions require them to be dealt with; the forms and precedents are also as far as possible modern, and have been apparently selected and arranged with great care.

Company Law. By WILLIAM FREDERICK HAMILTON, LL.D., K.C. 3rd edition. London: Butterworth & Co., Bell Yard, Law Publishers. 1910.

This edition was rendered necessary by the repeal of the Act of 1907, and the passing of the Companies (Consolidation) Act,

1908, which came into operation on the first of April, 1909. In addition to the matter contained in the previous edition there is a chapter dealing with actions and legal proceedings by and against companies; and the material sections of the Assurance Company's Act of 1909 have been incorporated. The principle adopted in the construction of the work has been to state the law in the form of general rules with examples from decided cases by way of illustration.

Company Law. A practical hand book for lawyers and business men with an appendix containing the Companies Consolidation Act, 1908, etc. By SIR FRANCIS BEAUFORT PALMER, of the Inner Temple. 8th edition. London: Stevens & Sons, Limited, Chancery Lane, Law Publishers, 1910. Arthur Poole & Co., Law Booksellers, Toronto, sole agents for Canada.

A standard work on a most important subject and one that is growing day by day. Whilst company law in this country does not conform in many respects to the English statute, a book such as this and that of Mr. Hamilton already referred to are necessary additions to every practicing lawyer's library and not only to them but to business men generally, for there are but few of them who can safely avoid the task of acquiring some knowledge on company law.

Practice and Law in the Divorce Division of the High Court of Justice and on appeal therefrom. By WILLIAM RAYDEN, of the Inner Temple, Barrister-at-law. London: Butterworth & Co., Bell Yard, Law Publishers. 1910.

This book comes to the public with an introduction from Lord Mersey, lately fifth president of the Divorce Division of the High Court of Justice, in which he says that he readily consented that it might be dedicated to him, being satisfied that it would be of great practical use to the profession, and that he was glad to have his name associated with it. He adds, "I have examined the proof sheets with some care, and I think that practitioners in the court will find the law and the procedure accurately stated, and so arranged as to be easily and quickly accessible." This is a sufficient recommendation of Mr. Rayden's very full and complete compendium of Divorce law in England.

Happily for us we have not much use for a book on this subject in this country; but those who have to deal with cases of this sort will find here all that can be said on the subject of practical value.

Law Societies.

LAW SOCIETY—SASKATCHEWAN.

Westerners are nothing if not practical and up-to-date. The Secretary-Treasurer of the above Society, writing from Regina, desires us to call the attention of our readers to the fact that his Benchers have authorized the institution by him of a register of vacancies for students and others, and correspondence is invited from all who meditate entry into a solicitor's office in that province, as clerks under article, with a view to qualify as solicitors and barristers. It is intended also to deal with applications from those who have knowledge of legal work and seek employment of that character. It is proposed to systematize this register, so as to make it as useful as possible to the profession in that province. Anyone desiring to take advantage of it is requested to notify the Secretary-Treasurer at Regina.

United States Decisions.

A bank summoned as garnishee in an action against one of its depositors, may set off against the depositor's general account unmatured notes held by it at the time of the service of the garnishee summons, when it appears that the depositor is insolvent. (Supreme Court of Minnesota, Jan. 14, 1910.)

Flotsam and Jetsam.

Samuel Untermeyer was being congratulated at the Manhatten Club on his recent successful conduct of a murder case.

The distinguished corporation lawyer modestly evaded all these compliments by the narration of a number of anecdotes of criminal law.

"One case in my native Lynchburg," he said, "implicated a planter of sinister repute. The planter's chief witness was a servant named Calhoun White. The prosecution believed that Calhoun White knew much about his master's shady side. It also

believed that Calhoun, in his misplaced affection, would lie in the planter's behalf.

"When on the stand Calhoun was ready for cross-examination, the prosecuting counsel said to him sternly:

"'Now, Calhoun, I want you to understand the importance of telling the truth, the whole truth, and nothing but the truth in this case.'

"'Yas, sah,' said Calhoun.

"'You know what will happen, I suppose, if you don't tell the truth?'

"'Yas, sah,' said Calhoun, promptly. 'Our side'll win de case.'"—*Central Law Journal.*

A colleague of the late Henry W. Paine approached him on one occasion with the offhand inquiry, "Mr. Paine, what is the law on such and such a subject?" The famous counsellor took out his watch, studied it a moment, and shook his head. "I don't know," he answered. "The Legislature hasn't adjourned yet."—*Boston Transcript.*

In these teetotal days it is interesting to note the opinion of an old judge on water. On one occasion the bailiff of a court over which Mr. Justice Maule was presiding had been sworn to keep the jury locked up "without meat, drink, or fire, candles only excepted." One of the jurymen being thirsty asked for a glass of water and the bailiff asked the judge if it could be allowed. "Yes," said the latter, "it certainly isn't meat, and I shouldn't call it drink."—*Law Notes.*

In their younger days Sir John A. Macdonald and Sir Oliver Mowat practised law in Kingston at the same time. The former was never oppressed with this world's goods, and, on one occasion, was being dunned by the latter for a claim due to his client, and he finally told him that unless he paid the amount or gave some good security, he would be compelled to sue for the amount. After some delay he received a letter from the debtor enclosing an endorsed note which he hoped would be satisfactory. The en-

dorser on the note was Mr. Mowat's father. It requires no great stretch of imagination to see how the genial maker of the note must have chuckled when in imagination he saw the plaintiff's solicitor examining the note.

HARDWORKING JUDGES.—According to an English physician of high repute nobody works harder than a judge. "The most intricate mental processes," he says, "are in progress all the time he is hearing a case. He has, for instance, to analyze and dissect all that he hears. Nothing is more mentally fatiguing.

"No brain work that I can imagine could make greater demands. Not once, of course, must the judge's attention flag. If it does so, he is neglecting his duty. For this reason, a judge should never continue sitting when he is tired. A fatigued judge cannot, however, much he tries, keep the grip of a case that he does when he is mentally and physically fresh."—*Green Bag.*

A LITTLE TOO PREVIOUS.—Judge Thrasher, county judge of Cattaraugus County, New York, has an exceptionally deliberate manner of speech. At a recent term of the County Court of that county, a certain W—— was convicted for a violation of the Liquor Tax Law. In the imposition of sentence, the judge said: "I will fine you $200.00." Before anything further was said, the prisoner reached into his pocket and while taking out a roll of bills said, "I thought that would be about the size of it, and I have that money right here in my pocket." The judge thereupon concluded the terms of sentence as follows: "and three months in the Erie County Penitentiary. Have you got that in your pocket?"

JUST AS HE EXPECTED.—Court had opened at one of the county seats of West Virginia when a member of the Bar strolled in, took a seat, put his feet on a table, and lighted a cigar. The judge called the bailiff and directed him to see that the attorney took his feet down and stopped smoking. The officer obeyed his instructions, and was requested by the lawyer to tell his honour to "go to ——." Beckoning the bailiff to him the

judge inquired what it was the attorney had said, and the bailiff, somewhat reluctantly, delivered the message verbatim: "Yes," said the judge, thoughtfully, "I thought that was what the —— old scoundrel would say."

SUFFICIENCY.—The following legal notice recently posted by a citizen of Hillsboro, N. H., calls for no comment:

"My wife, Margrette Cilley, and her children have flew the coop, and did not ask anybody; left my bed and board. I shall pay no debts of her contracting after this day, and any man trusting her on my account will be the loss for you.

"No reward offered for their return.

"Wife wishes her mail addressed to Miss Margrette Clark, leave off the Cilley. Thus it will please her and I am satisfied.

"O, yes! I have been married plenty, now.

"FRANK C. CILLEY."

The inventor of the finger-print system of identification will be gratified to learn that even the criminal classes are beginning to have a flattering appreciation of his invention. A man was tried recently by a county Wicklow petty sessional court for the larceny of money from a church. An expert on the subject stated that he had examined a small pane of glass from the church window, which had on it finger prints. He found that these marks corresponded with a right forefinger print in his office which belonged to the prisoner. During the hearing of the case, some general remarks were made by the magistrates and the witnesses as to the usefulness of the system. The prisoner joined in the conversation, and declared with every mark of fervour that the finger-print system for the detection of criminals was the most wonderful invention of the day. He then proceeded to add, incidentally, that he threw himself on the mercy of the court. The court expressed itself as satisfied with the prisoner's views as to the finger-print system, but returned him for trial at the assizes.