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The application of Miss Clara Brett Martin to be admitted to practice as a barrister-at-law, under the discretionary authority given to the Law Society by 58 Vict. c. 47, has been refused by the Benchers. The majority of those of the late Bench were strongly averse to the admission of women to practice as solicitors, but it was thought wise to make a compromise, so that Miss Martin was admitted as a solicitor. At that point the Benchers have drawn a line, and we must say that we think they are wise in the action they have taken, and are glad that they have had sufficient firmness to refuse to exercise the authority given them by the statute of 1895. There is some reason for the admission of women to the medical profession, but we know of no public advantage to be gained by their being admitted to the Bar, whilst there are many serious objections on grounds which are scarcely necessary to refer to. As a matter of taste it is rather a surprise to most men to see a woman seeking a profession where she is bound to meet much that would offend the natural modesty of her sex.

ONTARIO LEGISLATION IN 1896.

A short summary of the work done by this "busy body" during the past session may be useful.

Chap. 2 deals with Voters' Lists in cities of over 100,000, while ch. 3 is concerned with the Voters' Lists in unorganized territories.

By ch. 4, Sheriffs' offices shall, except during vacations and holidays, be open from 10 a.m. to 4 p.m., and during Vacation from 10 a.m. to 1 p.m.; but in the City of Toronto and County of York, from 10 a.m. to 1. p.m. every Saturday in the year, not

being a holiday. In case of necessary and urgent business, they must be kept open after 1 p.m. on Saturdays and during vacation.

The Succession Duties Act is amended by ch. 5. Property transferred in contemplation of death to any person in trust or otherwise, is made liable to duty, also annuities so purchased, or otherwise whereby payment of duty is sought to be evaded. Property brought into Ontario is liable to duty. Actions arising out of any succession must be commenced within six years from the date of the succession.

By ch. 7, copies of licenses or other documents, signed by the Commissioner of Crown Lands or his deputy, are now receivable in any Court as prima facie evidence.

Chap. 9 concerns the Algonquin National Park, and empowers the Superintendent to be a health officer, and the park rangers to be sanitary inspectors.

Chap. 12 relates to Crown timber lands, and makes a number of amendments concerning licenses, seizure and fire rangers.

The Mines Act, 1892 (55 Vict., c. 9) is amended by c. 13.

Chap. 17 revises and consolidates the Act respecting Registration of Births, Marriages and Deaths.

Chap. 18, to be known as "The Law Courts Act, 1896," amends the Judicature Act, 1895, also R.S.O., caps 47, 52, 56, 65, 91 and 113, and 51 Vict., c. 6; 52 Vict., c. 6; 56 Vict., c. 5; 58 Vict., c. 2, and contains many changes which we may refer to again; in the meantime we note the following:

The court may remove an executor or administrator either for cause or upon his own application. Actions against municipal corporations shall be tried without a jury, and the trial shall take place in the county where the locus in quo is. A Divisional Court may be composed of two members; provided that if the court is divided in opinion the case may be re-argued before a court of three members. Sec 5 of the Evidence Act is repealed, and it is now provided that nothing contained in that Act shall render any person compellable to answer any question tending to subject him to criminal proceedings or to subject him to prosecution for any penalty.

The right to security for costs is extended in regard to all persons against whom actions are brought in respect of cases in which the Act to protect Justices in vexatious actions applies. Costs are to be at the discretion of the Court or a Judge, which shall have full power to determine by and to what extent such costs are to be paid. To remove doubts it is declared that, notwithstanding the Law Courts Act, appeals shall lie from any order of a County Court made after the 1st January, 1896, on any motion to be made or assumed to be made before that date, or at the sittings of the County Court holden in January, 1896; but such appeal shall lie to a Divisional Court instead of as provided by s. 41 of the County Courts Act. Also that an appeal lies to the Court of Appeal any judgment or order of the High Court in court, and from the Court of Appeal has jurisdiction to entertain such an appeal. The Commissioners appointed to revise and consolidate the Rules may incorporate in such consolidation any statutory provisions relating to practice and procedure, with such amendments as may seem to them expedient, and such Rules shall be as valid as if contained in an Act of Parliament, though they may be varied or repealed by the same authority and in the same manner as other Rules of Court.

Chap. 19 amends the County Courts Act, and greatly increases the jurisdiction. Title to land may be tried where the value is under $200, also where the validity of a devise or bequest up to $200 is disputed, provided the value of the estate does not exceed $1,000.

The jurisdiction is increased from $400 to $600 in the case of liquidated damages or where the amount is ascertained, and the Court has jurisdiction to any amount if the parties agree before the issue of the writ, provided the amount is liquidated. The Court has also jurisdiction as follows:—

In actions for the recovery of, or for trespass or injury to land, where the value of the land does not exceed $200. In partnership accounts where the capital was not above $1,000. In actions to recovery a legacy not exceeding $200, where the value of the estate does not exceed $1,000. In actions to enforce a lien upon land where the sum claimed does not

exceed $200. In redemption actions where the sum due does not exceed $200. In creditors' actions to rank upon an insolvent estate where the claim does not exceed $400. Actions may be transferred to the High Court if it appears that the above limits have been exceeded. The excess, however, may be abandoned and the case still remain in the County Court.

Chap. 20 enables an executor or administrator to be removed by the Surrogate Court, where the estate does not exceed $1,000. The Senior Judge of the County Court is no longer to be ex-officio Judge of the Surrogate Court, but this does not affect any Judge now a Judge of the Surrogate Court.

Chap. 21 concerns boundary line disputes. The Act does not apply to lands in a city, town or incorporated village. Questions arising during an action to be referred to a special referee, who shall be an Ontario Land Surveyor.

By ch. 22, creditors holding security on the estates of insolvent deceased persons must value the same, and failing that, the Judge of the Surrogate Court may fix a value, and creditors can be required to assign their security at an advance of ten per cent. on such value.

An abuse of the practice of the Division Courts is prevented by ch. 23, whereby colorable imitations of Division Court forms may not be used. Our readers will remember that we called attention to this matter some time since, and we are glad that action has been taken to prevent the abuse.

Amongst other minor matters we note that the fees of Jurors on Coroners' inquests are fixed by ch. 25. High and County Constables are dealt with in ch. 26. Police Constables in cities are now authorized to take bail in certain cases.

Under the Quieting Titles Act, publication by advertisement is dispensed with when the property is not worth more than $3,000. The Registry Act (ch. 29) alters the hours for keeping offices open, which, except in the City of Toronto, shall not be open on Saturdays during Long Vacation after 1 p.m. The tariff of fees is also amended.

The Assignments and Preferences Act is amended by ch. 31. A creditor who fails to value his security may be barred

by the Judge of the County Court of the Cnunty where the debtor resides, who may also decide in a summary way contested claims, without the necessity of an action being brought. An assignee may distribute assets in the same manner as the sheriff under the Creditors' Relief Act. The remuneration of inspectors and assignees is also dealt with, and provision made for greater facility of ascertaining the position of the assignor's estate.

Chap. 32 concerns bills of sale and chattel mortgages in unorganized districts.

A tariff of fees on the seizure of goods under chattel mortgages and bills of sale is fixed by ch. 23.

Antecedent unregistered agreements for bills of sale and chattel mortgages are dealt with in ch. 34. A contract to give a mortgage or bill of sale, is deemed to be a mortgage or bill of sale, and as such is void against creditors, unless the Act is complied with.

The Mechanics' and Wage Earners' Lien Act, 1896, (ch. 35) repeals all existing Acts. It is provided by the new Act hat where work is done and material furnished upon the lands of a married woman, with the privity of her husband, her interest is presumed to be bound thereby; insurance money takes the place of property destroyed by fire; lien-holders of the same class rank pari passu; "wages" means money earned for work done, whether by the day or as piece work; lien holders may demand from the owner information as to terms of contract; the mode of procedure upon liens is regulated; an attempt has been made to make municipal buildings and railway lands subject to mechanics' liens, but how far the attempt is successful remains to be seen.

By ch. 36 the Woodman's Lien for Wages Act is extended, and ch. 37 secures the payment of wages for labor performed in the construction of public works; whilst the Master and Servant Act, 1896, affords better protection for certain classes of workmen.

The Acts respecting marriage are consolidated in ch. 39. With the exception of two sections validating certain classes of marriages which have taken place prior to the passing of

the Act, the Act does not come into force until August 1st next.

By the Dower Act, 1896, where the wife of a vendor or mortgagor has been living separate for five years, the purchaser or mortgagee may, in certain cases, obtain the same relief as in the case of a lunatic wife. Where a wife under age purports to bar her dower, and the purchaser was at the time without notice of her being under age, the conveyance will bar her dower, unless within 4 years she brings an action or gives notice of her claim. This section is made retroactive. The conveyance of real estate by married women is facilitated by the next chapter.

The Landlord and Tenant Act, 1896, repeals s. 4 of the Act of 1895, under which a doubt existed from the decision of Meredith, C.J., in *Harpelle* v. *Carrol*, 32 C.L.J. 50, 238, as to whether a landlord or his assignee could distrain in the absence of an express contract to that effect. The Overholding Tenant's Act is also amended and the procedure simplified.

The Acts respecting General Roads Companies, Timber Slide Companies and Building Societies are amended.

Chap. 45 amends the law of life insurance, with respect to the declaration by the insured as to the beneficiaries under his policy, and also protects the company paying insurance money before receiving notice of the declaration.

Some amendments are made to various railway and electric railway Acts, and the powers of street railways are enlarged with respect to the adoption of electricity as a motor power. Mechanics are given a lien for wages upon the property of the company.

The municipal Acts are as usual amended, and municipal law is again reaching that state of perplexity which existed before the consolidation in 1892. The nomination of councillors and the duties of deputy returning officers are dealt with. Notice of action against cities, towns or incorporated villages in actions for damages must be given within seven days of the accident. In case of townships the limitation of thirty days still remains. Actions for negligence in non-repair of highways must be brought only against the muni-

cipality. The Canadian Wheelmen's Association may maintain sign posts to guide travellers, show distances and give danger signals. The number of county councillors is reduced, but this does not take effect until the general municipal elections of 1897. The Municipal Arbitrations Act extends the Act to the county of York, and any municipality which passes a by-law to that effect, and in such case the official arbitrator in Toronto shall be the arbitrator. An Act Respecting Provincial Municipal Auditors (c. 54), gives power to appoint a board of three chartered accountants instead of the commissioners under sec. 380 of the Municipal Act.

Chap. 58 amends the Assessment Act, and provides that in the case of distress for non-payment of taxes, where the owner or person assessed is not in possession, the goods and chattels on the premises not belonging to the person liable for the taxes may not be seized; but this does not apply when the property is claimed by relatives. Goods and chattels of the owner may be seized, whether or not such owner is assessed in respect of the premises. When a tenant has not agreed with his landlord to pay taxes, he may pay the same to the collector and deduct the amount from his rent.

Farmers are now added to the class of persons prohibited from exercising their calling on the Lord's Day.

The inspection of meat and milk supplies in cities and towns is regulated by ch. 63, and The Bake Shops Act, 1896, makes necessary provisions respecting this business.

The Drainage Act and the Ditches and Watercourses Act are amended as per usual.

The amendments to the Game Laws (ch. 8) relate chiefly to deer, which may no longer be hunted in the water or immediately after leaving it, nor may they be hunted unless a a license (with coupons attached), signed by the Chief Fish and Game Warden and Provincial Secretary, is first obtained; such license is for one season only, and the fee is $2. No deer may be had in possession, except from November 1st to 22nd, unless accompanied by an affidavit that the same was taken during the open season, and unless one of the coupons above mentioned is attached to each deer. Certain districts

may, by Order-in-Council, be set apart, in which it will be unlawful to kill deer. No settler may hunt moose, elk, reindeer or cariboo before November 1st, 1900.

In regard to matters of education, ch. 69 consolidates the laws respecting the Education Department. Chap. 70 consolidates the Public Schools Act, and ch. 71 consolidates the laws respecting High Schools, while ch. 72 amends the Separate Schools Act. By. ch. 73 some alterations are made to the Industrial Schools Act, and ch. 74 makes some similar provisions respecting the Industrial Refuge for Girls.

LEGISLATION AND LIQUOR DEALERS.

The delivery of the long expected judgment of the Privy Council upon the reference in respect to prohibitory liquor legislation,[1] seems to be a fitting moment at which to endeavour to trace the high water mark of judicial decision in reference to legislative power in Canada over matters immediately affecting the business of wholesale and retail dealers in intoxicating liquors.

The dealer in liquor who desired to know whether his business lies at the mercy of the Dominion Parliament or of the Provincial Legislature, might probably express that desire in the form of three specific questions:—(1) Which of them can prohibit my business? (2) Which of them can regulate my business? (3) Which of them can tax my business? It will at any rate be a convenient method of dealing with the subject, to answer these three questions in their order. But in view of the present position of the authorities a concise reply may be at once given for the ease and comfort of the liquor dealer, to the effect that in different ways, and legislating from different aspects, both of them can prohibit his business, both of them can regulate his business, and both of them can tax his business.

It is, of course, perfectly clear that the power to legis-

[1] Reported sub nom. *Attorney-General for Ontario* v. *Attorney-General for the Dominion of Canada and the Distillers' and Brewers' Association of Ontario*, 11 T.L.R. 388.

late in all imaginable ways in respect to the liquor trade and all other of the internal affairs of the Dominion, resides either in Parliament or in the Provincial Legislatures, for decisions of the Privy Council have long since established that the Federation Act exhausts the whole range of legislative power, and that whatever is not thereby given to the Provincial Legislatures, rests with the Parliament;[1] and in this is found an important point of divergence between our constitution and that of the United States. The question, however, as to which has the power to prohibit the wholesale trade in intoxicating liquors seems only to have come up fairly and squarely in one reported case prior to the late Privy Council decision, namely, *Lepine* v. *Laurent*.[2] In the Canada Temperance Act, 1878, which was held to be intra vires in *Russell* v. *The Queen*,[3] trade in wholesale quantities as there defined, and for the purposes there mentioned was excepted from the prohibitory clauses. The Act, however, which came in question in *Lepine* v. *Laurent*, was an Act of the Province of Quebec, and authorized a municipal council to pass by-laws to restrain, regulate, and prohibit the sale of any spirituous, vinous, alcoholic or intoxicating liquors by retail or wholesale; and Lynch, J., entirely in accordance with what the Privy Council have now decided, as will presently be seen, held that the enactment was intra vires.

It will be convenient, however, first to deal with the question of prohibition of the retail trade. The right to prohibit that had come before the Courts in several cases, and until the cases of in *Re Local Option Act*,[4] in the Ontario Court of Appeal, and the case of *Village of Huntingdon* v. *Moir*,[5] it had been held to be outside the powers of the Provincial Legislatures. In most of the cases the ground on which this was put was that it would infringe upon the exclusive power of

[1] *Dow* v. *Black*, L.R., 6 P.C. at p. 280, 1 Cart at p. 105, (1875); *Valin* v. *Langlois*, 5 App. Cas. at p. 120, 1 Cart. at p. 163, (1879); *Russell* v. *The Queen*, 7 App. Cas. at p. 836, 2 Cart. at p. 19, (1882); *Bank of Toronto* v. *Lambe*, 12 App. Cas. at p. 588, 4 Cart. at pp. 23-4, (1887).
[2] 17 Q.L.R. 226, (1891).
[3] 7 App. Cas. 829, 2 Cart. 12, (1882).
[4] 18 A.R. 572, (1891).
[5] M.L.R. 7 Q.B., 281.

the Dominion Parliament to regulate trade and commerce,[1] but this ground of objection the Judicial Committee have entirely nullified in their late judgment [2]by holding in accordance with their recent decision in *City of Toronto* v. *Virgo*,[3] that "there is marked distinction to be drawn between the prohibition or prevention of a trade, and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed." But in *Regina* v. *Justices of Kings*,[4] and in one or two other cases, further ground of objection to the possession of such a power by the provinces was found in the fact that it would be an interference with the Dominion control of inland revenue and excise. This point was also argued before the Judicial Committee on the recent appeal,[4] but was ineffectual, as indeed might have been anticipated from the principle laid down by their lordships in *Bank of Toronto* v. *Lambe*,[5] namely, that if it be found that "on the due construction of the British North America Act a legislative power falls within section 92, it would be quite wrong to deny its existence, because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament." It must always be remembered, as pointed out by their lordships in that case, that the British North America Act "provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself, except under the control of the whole, acting through the Governor-General,"—another point in which our constitution is distinguishable from that of the United States. The proper view to take of this matter of prohibition of the liquor trade, as is now authoritatively established by the Privy

[1] And so in *Regina* v. *Justices of Kings*, 2 Pugs. 535, 2 Cart 499, (1875); *Hart* v *The Corporation of the County of Missisquoi*, 3 Q.L.R. 170, 2 Cart. 382, (1876); *Cooey* v. *The Municipality of the County of Brome*, 21 L.C.J. 182, 2 Cart. 385, (1877); *De St. Aubyn* v. *LaFranc*, 8 Q.L.R. 190, 2 Cart. 392, (1882); *ex parte Foley*, 29 N.B. 113, (1889).

[2] 11 T.L.R., at p. 391.

[3] [1896] A.C. 88.

[4] See transcript from Marten & Meredith's shorthand notes of the argument, 2nd day at p. 27, 3rd day at p. 96 et seq.

[5] 12 App. Cas. at p. 587, 4 Cart. at pp. 22-3.

Council, is that in some aspects it may fall within the power of Provincial Legislatures to deal with, while in other aspects it may fall within the competence of Parliament under its general residuary power to make laws for the peace, order and good government of Canada. A law, their lordships hold,[1] such as the enactment in section 18 of the Ontario Liquor License Law, 53 Vict., c. 56, "which prohibits retail transactions and restricts the consumption of liquor within the ambit of the province, and does not affect transactions in liquor between persons in the province and persons in other provinces or in foreign countries, concerns property in the province which would be the subject matter of the transactions if they were not prohibited, and also the civil rights of persons in the province,"—and as such it may be that it comes within No. 13 of section 92 of the British North America Act, "property and civil rights in the province." However, their lordships hold that it is not necessary to decide whether it does or does not come within No. 13, because, even if it does not, if the vice of intemperance prevails in a particular locality in a province, the prohibition of the sale of liquor there would be a matter of a merely local or private nature in the province, and therefore falling prima facie within No. 16 of that section.[2]

But none the less the Dominion Parliament has power to pass such an Act as the Canada Temperance Act, 1878, to promote temperance by means of a uniform law throughout the Dominion, and abolishing all retail transactions in intoxicating liquors within every provincial area in which its enactments have been adopted by a majority of the local electors. As held in *Russell* v. *The Queen*, Parliament has power to pass such an Act under its general power to legislate for the peace, order and good government of the Dominion. Nor does this conflict with the provision of section 91 of the British North America Act confining the general legislative power of Parliament to matters "not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the pro-

[1] 11 T.L.R. at p. 391.
[2] See, also, per Strong, C.J., in *Huson* v. *The Township of South Norwich*, 24 S.C.R., at p. 147.

vinces," for what is assigned to the provinces by No. 16 of section 92 is expressly confined to matters of a merely local or private nature in the province; and where we get a subject matter admitting, as this matter of prohibition does, of being legislated upon, both in a merely local aspect, and also in a general Dominion or national aspect, it may fall in the one aspect within the power of the Provincial Legislatures, and in the other aspect within those of the Dominion Parliament. But as their lordships point out in their late judgment, in entire accordance with their recent decisions in *Tennant* v. *the Union Bank*,[1] and *Attorney-General of Ontario* v. *Attorney-General of Canada*, [2]if both Parliament and the Provincial Legislature have passed Acts upon the subject, each in its own sphere, then so far as the provisions of an existing Dominion Act are in conflict with those of provincial legislation, the latter is over-ridden and its operation suspended. But in the case of such an Act as the Canada Temperance Act, which is only to be brought into operation by a process of local option, where its provisions have not been brought into effect by the electors, the ground is left clear for the operation of the provincial legislation. Of course Parliament might have made the Act compulsory, allowing no local option.

And now as to regulation of the liquor traffic, the decisions of the Judicial Committee in *Hodge* v. *The Queen*, [3]and the Matter of the Dominion License Acts, 1883-4,[4] clearly established that mere local municipal regulation for police purposes, for the preservation of law and order in the municipalities or other local districts in each province, is exclusively a matter for the provincial legislatures. A perusal of the shorthand notes of the argument before their lordships in the latter case makes it very clear that as Sir Horace Davey stated (who was himself of Counsel in the matter) on the occasion of the recent argument in respect to probibitory liquor legislation, their lordships' decision against the constitutionality of the Dominion License Act, 1883, was grounded

[1] [1894] A.C. 31.
[2] [1894] A.C. 189.
[3] 9 App. Cas. at p. 130, 3 Cart. at p. 160, (1883).
[4] Cas. Dig. S.C 509, 4 Cart, 342, n. 2.

on the fact that "the machinery of the Act was local in its character, that is, it created local boards with the power to make local by-laws." And so said Mr. Edward Blake also, referring to that matter upon the recent argument:[1] "It seems plain from the decision in that case and from the general tone of the discussion that it was held that the Dominion could not generalize in a matter which was purely local, purely local as had been decided by *Hodge* v. *The Queen*; that their attempt to deal with that subject, to appropriate it to themselves, it being a local subject, by acting for the whole Dominion and appointing their own officers, and so forth, did not alter the character of the Act or deprive the provinces of that power which they had under 'merely local or private;' that it remained a local and private subject, and therefore the Dominion License Act was void, while the Local License Act was maintained." So that to adopt the language of Gwynne, J., in *Molson* v. *Lambe*,[2] what is established by the decisions of the Privy Council in *Hodge* v. *The Queen*,[3] and In the Matter of the Dominion License Acts, is that laws which make, or empower municipal institutions to make, regulations for granting licenses for the sale of intoxicating liquors in taverns, shops, etc., and for the good government of taverns and shops so licensed, and for the peace and public decency in the municipalities, and for the repression of drunkenness and disorderly and riotous conduct in the municipalities, and imposing penalties for the infraction of such regulations, are laws which deal with subjects which are exclusively within the jurisdiction of the Provincial Legislature.[4]

But inasmuch as the liquor trade is part of the trade and commerce of the country, it is of course clear that the Dominion Parliament has also certain powers of regulating it under No. 2 of sec. 91, "the regulation of trade and commerce."

[1] Transcript from Marten & Meredith's notes, 3rd day, at p. 99.

[2] 15 S.C.R. at p. 287, 4 Cart. at pp. 347-8, (1888).

[3] 9 App. Cas. 117, 3 Cart. 144.

[4] As to the effect of the Privy Council's decision in the matter of the Dominion License Acts, see also per Sedgewick, J., in In re Prohibitory Liquor Laws, 24 S.C.R. at p 249; per King, J., S C., at pp. 256-7; and for a synopsis and extracts of the argument before the Privy Council, see Todd's Parl. Gov. in Brit. Col., 2nd Ed. at p. 551, etc.

What is exactly included in this class of legislative power has not yet been determined. In the well known passage in *Citizens Insurance Co.* v. *Parsons*, [1] their lordships stated that construing the words "regulation of trade and commerce" by such aids to their interpretation as may be found in the use of the expression "regulation of trade," in the Act of Union between England and Scotland, 6 Anne, c. 11, and in Acts of State relating to trade and commerce:—"They would include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade and commerce of inter-provincial concern, and it may be that they will include general regulations of trade affecting the whole Dominion," but that in their view they do not comprehend "the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province." Burton, J.A., in *Regina* v. *Wason*, [2] says that they "must be held to refer to regulations relating to trade and commerce in their general and quasi-national sense, and not to the contracts or conduct of particular trades." And similarly in *Sulte* v. *The Corporation of Three Rivers*, [3] Gwynne, J., says that the words "regulation of trade and commerce," "are to be construed as applying to subjects of a general public and quasi-national character in which the inhabitants of the Dominion at large may be said to have a common interest as distinct from those matters of a purely provincial, local, municipal, private and domestic character, in which the inhabitants of the several provinces may as such be be said to have a peculiar and local interest." As Johnson, J., says in *Angers* v. *The City of Montreal*: [4] "The trade and commerce of the Dominion is a very distinct thing from the individual trades or callings of persons subject to the municipal government of cities."

But whatever power over regulation of the liquor traffic Parliament has under No. 2 of section 91, it is, as their lord-

[1] 7 App. Cas. at pp. 112-3, 1 Cart. at pp. 177-8, (1881).
[2] 17 A.R. at p. 237, 4 Cart. at p. 595 (1890).
[3] 11 S.C.R. at p. 45, 4 Cart. at p. 525, (1885).
[4] 24 L.C.J. at p. 260, 2 Cart. at p 337, (1876).

ships point out in their recent judgment,[1] "at liberty to exercise its legislative authority, although in so doing it should interfere with the jurisdiction of the provinces," for the enumerated classes of subjects assigned to the Dominion Parliament by section 91 are expressly so assigned, "notwithstanding anything in this Act"; and, moreover, the effect of the concluding clause in that section is, their lordships hold, to derogate from the legislative authority given to the provincial legislatures, "to the extent of enabling the Parliament of Canada to deal with matters local or private, in those cases where such legislation is necessarily incidental to the exercise of the powers conferred upon it by the enumerative heads of clause 91."

It would, however, seem impossible to doubt that, apart from No. 2 of section 91, the Dominion Parliament could regulate the liquor traffic under its general residuary powers, for the peace, order and good government of Canada, but its jurisdiction here would be restricted by inability to encroach upon the provincial powers of regulation above referred to, for by the express opening words of section 91, the general legislative power of Parliament only extends to matters "not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces." And notwithstanding some dicta to the contrary,[2] it seems equally clear that the Dominion Parliament in regulating the trade so far as its powers extend, might do so by means of licenses. Indeed, as Hagarty, C.J.O., observes in *In re Local Option Act*,[3] The Canada Temperance Act, 1878, which was held intra vires in *Russell* v. *The Queen*, itself contemplated the issuing of licenses to brewers and distillers and manufacturers of native wines. The fact of an Act imposing the necessity of taking out a license before dealing with intoxicating liquors, is not the crucial point to be considered in determining whether such Act is or is

[1] 11 T.L.R. at p 391.

[2] Per Fournier, J. in *Molson* v. *Lambe*, 15 S.C R. at p. 265, 4 Cart. at p. 343. See also per Ritchie, C.J., S.C., 15 S.C.R., at p. 259, 4 Cart. at p. 339.

[3] 18 A.R., at p. 580, (1891).

not within the exclusive power of the Provincial Legislatures, but rather whether the Act so requiring a license does or does not come within one of the classes of subjects enumerated in section 92. "Constitutional limitations," says Palmer, J., in *Ex parte Danaher*, "look only to results and not to the means by which results are reached."[1]

And now as to the power to tax the liquor trade, the somewhat disputed point of whether *Severn* v. *The Queen*,[2] in spite of the various aspects in which it has been assailed,[3] still remains a binding decision[4] as to the main point passed upon by the Judges, namely, that the rule of ejusdem generis applies to No. 9 of sec. 92 of the British North America Act, whereby Provincial Legislatures have power to make laws in relation to "shop, saloon, tavern, auctioneer and other licenses," and that a license fee imposed upon a person carrying on the trade of a brewer does not come within that class, is now matter of indifference to persons concerned in the liquor business, inasmuch as although all the Judges in *Severn* v. *The Queen* agreed that such a license fee was indirect taxation, it has now been clearly decided that a tax upon a trade or business, whether imposed by license or not, is direct taxation. The holding that it was indirect taxation was not necessary to the decision of *Severn* v. *The Queen* in the view that the Judges took in that case, inasmuch as they all agreed that such a tax as was there in question fell within what is meant by "the regulation of trade and commerce," in No. 2 of sec. 91. If this was the case, in accordance with the principle which, as we have already mentioned, is so clearly expressed by the Privy Council in their recent judgment, the matter would be exclusively for the Dominion Parliament

[1] Cf. Story on the Constitution of the United States, 5th ed., vol. 2, at p. 14, 27 N.B at p. 590.

[2] 2 S.C.R. 70, 1 Cart. 414, (1878).

[3] See *Bank of Toronto* v. *Lambe*, 12 App. Cas. at p. 584, 4 Cart. at pp. 18-9; per Ramsay, J., in *Molson* v. *Lambe*, M.L.R., 2 Q.B. at pp. 397-8, 4 Cart. at pp. 363-4; per Osler, J.A., in *Regina* v. *Halliday*, 21 A.R. at pp. 46-7.

[4] As stated per Gwynne, J., in *Molson* v. *Lambe*, 15 S.C.R. at p. 288, 4 Cart. at p. 438, (1888); per Cross, J., S.C., M.L.R. 2 Q.B. at p. 394, 4 Cart. at p. 360; per McDonald, C.J., in *Queen* v. *McDougall*, 22 N.S. at p. 468, 1889); per Ritchie, J., S.C. at p. 486; per Strong, C.J., in *Fortier* v. *Lambe*, 25 S.C.R. at p. 427, (1895); per Gwynne, J.S.C. at p. 433

whether it amounted to direct taxation or not; but as will presently appear, the authorities, as they now stand, no longer support the view that the regulation of the trade of a brewer, or other wholesale dealer, stands on any different footing in respect to being within No. 2 of sec. 91, than the regulation of any other trade or business. The view of the Judges in *Severn* v. *The Queen*, says Osler, J.A., in *Regina* v. *Halliday*,[1] appears to be "no longer sustainable in the face of *Hodge* v. *The Queen*,[2] which confirms the power of the Legislatures to regulate the sale and disposal of intoxicating liquors."

Leaving this for the present, however, in the recently reported case of *Fortier* v. *Lambe*,[3] the Judges of the Supreme Court have unanimously held that a license fee imposed upon the business of traders, whether wholesale or retail, is direct taxation,[4] and it may be remarked that in the Court below, Tait, J., cites a very apposite passage from Cooley on Taxation, where that author states: "Taxes are said to be direct, under which designation would be included those which are assessed upon the property, person, business, income, etc., of those who are to pay them, and indirect are those which are levied on commodities before they reach the consumer and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market prices of the commodity."

And now, in conclusion, as to the distinction made in the cases between wholesale trade and retail trade, and the observation of Osler, J.A., cited above from *Regina* v. *Halliday*, it will be remembered that in the matter of the Dominion License Acts,[5] whereas the Supreme Court of Canada held those Acts to be intra vires as to wholesale and vessel

[1] 21 A.R. at p. 47.

[2] 9 App. Cas. 117, 3 Cart 144, (1885).

[3] 25 S.C.R 422, (1895).

[4] To follow the line of authorities along which this result has been reached, see *Bank of Toronto* v. *Lambe*, 13 App. Cas. at p. 584, 4 Cart at pp 18-9 (1887); per Weatherbe, J., in *Queen* v *McDougall*, 22 N.S at p. 478, (1889); per Townshend, J., S.C at p. 499; per Strong, J., in *Pigeon* v. *The Recorders Court and City of Montreal*, 17 S.C.R. at pp. 503-4, 4 Cart at pp. 447 8 (1890); per Osler, J.A., in *Regina* v. *Halliday*, 21 .A.R. at p. 47, (1893); and the decisions in *Fortier* v. *Lambe*, in the Courts below, 5 R.J Q. 5 S.C. 47. 355.

[5] Cas. Dig. S.C. 509; 4 Cart. 342, n.e.

licenses, [1]while ultra vires as to retail licenses,—the Privy Council held them to be ultra vires in respect to all the licensing provisions alike. And so Weatherbe, J., in *Queen* v. *McDougall*, [2]says that the main question determined by the Privy Council in that matter was: "That if the province has the right, as was held, to require licenses for carrying on what is called the retail trade, it has the right, also, to impose a tax by means of license respecting the wholesale trade," and adds: "Though I have paid attention to all that has been said before the Supreme Court of Canada and the Privy Council, I am unable to see that the words 'wholesale and retail' are anything but mere arbitrary terms adopted for convenience." And in the argument before their lordships in this matter of the Dominion License Acts, [3]Sir Farrer Herschell, referring to the distinction taken by the Supreme Court between wholesale and retail licenses, observed: "I suppose they have considered for some reason or other that the wholesale trade is more a matter of trade to be regulated than the retail trade. I know it seems a very difficult distinction not only to follow in point of law, but to see the practical effect of it in the wording of this Act. The Act is held valid so far as regards wholesale licenses, and of course all the provisions relate to wholesale licenses. Well, what is wholesale and what is retail? Is the definition of wholesale, which is given by this Dominion Act we are considering, to be taken as determining what is wholesale and what is retail? If so, your lordships have said that, although the Dominion Parliament has no power to legislate with regard to the retail trade, it can determine by its own legislation what is the wholesale and what is the retail trade. If your lordships did not say that, then what is to determine what is the wholesale and what is the retail trade? It certainly strikes me that to say that the legislative power of Canada extends

[1]By sec. 7, subs. (d) of the Dominion License Act of 1843, 43 Vict., c. 30, "wholesale licenses" authorized the licensees to sell any quantity of not less than two gallons.

[2]22 N S. at p. 477, (1889).

[3]See transcript from Marten & Meredith's shorthand notes, at pp. 90-1; see also per McDonald, C.J., in *Queen v. McDougall*, 22 N.S., at pp. 472-73, 476; per Weatherbe, J., S.C., at p. 477; per Ritchie, J., S C., at p. 485; per Townshend J., S.C., at pp. 495-7.

to the regulation of wholesale trades, and not to the regulation of retail trades, is a distinction which does not find any warrant in the legislation of this section 91, and which would be impracticable in its working throughout the Dominion." And Mr. Horace Davey in the same argument says:—[1] "I agree that no logical distinction whatever can be drawn between wholesale and retail licenses, that there is no logical distinction between regulating the power of a shopkeeper to sell a dozen bottles at a time and regulating the power of a tavern keeper to sell one bottle at a time, or half a bottle, or a pint. Wholesale licenses may be a convenient expression in the Act, but it is merely retail trade." Whereupon Sir Montague Smith, sitting as a member of the Board, observes: "Whether he sells one bottle or twelve it is selling by retail," and Mr. Davey replies: "Yes, there is no logical distinction between the two. It is a different kind of retail trade." And Sir Montague Smith rejoins: "It is a convenient phrase to express the meaning instead of repeating every time the number of bottles." Their lordships evidently supported the above view, and their decision justifies the dictum of Townshend, J., in the *Queen* v. *McDougall*,[2] that the distinction between wholesale and retail so far as making it a test of the respective powers of the two Legislatures of the British North America Act has been abandoned.[3]

It must be remembered that in the cases upon the British North America Act heretofore, the distinction between wholesale trade and retail trade has been generally treated as one depending upon the amount sold. What would seem to be the essential difference between wholesale and retail trade, namely, that the wholesale merchants supply the trade, whereas the retailers deal directly with the general public, and whether any line of severance of legislative power can be founded on this distinction, does not seem to have been discussed in any of the cases except so far as the wholesale

[1] At p. 137.
[2] 22 N.S. at p. 491.
[3] See also per Sedgwick, J., in *In re Prohibitory Liquor Laws*, 24 S.C.R. at pp. 251-2; per King, J. S.C., at p. 262; and per Maclaren, Q.C., arguendo, s. c. 24 S.C.R., at p. 180.

merchant in this sense may be identified with the manufacturer. As to the manufacturer, however, in their recent judgment[1] the Privy Council expresses the opinion (for they carefully state that answering as they are questions "in their nature academic rather than judicial," their answers are "not meant to have and cannot have the weight of a judicial determination") that power to control his business is not exclusively in the Dominion Parliament or in the Provincial Legislature, that what they state as to the two aspects in which the regulation of the retail trade may be treated by legislation, applies also to wholesale manufacturers, for in answer to the question submitted: "Has a Provincial Legislature jurisdiction to prohibit the manufacture of such liquors within the province?" they reply: "In the absence of conflicting legislation by the Parliament of Canada, their lordships are of opinion that the Provincial Legislatures would have jurisdiction to that effect, if it were shown that the manufacture was carried on under such circumstances and conditions as to make its prohibition a merely local matter in the province."

A. H. F. LEFROY.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

The Law Reports for May comprise, (1896) 1 Q.B., pp. 461-567; (1896) P. pp. 129-148; and (1896) 1 Ch. pp. 573-684.

RESTRAINT OF TRADE, VALIDITY OF—REASONABLENESS.

Dubowski v. *Goldstein*, (1896) 1 Q.B. 478, was an action to recover damages for, and also to restrain the breach of, an agreement in restraint of trade. The defendant had been an employee of the plaintiffs in their business as dairymen, and had agreed as a condition of employment that he would not,

[1] 11 T.L.R. at p. 393.

during the continuance of his service, or at any time thereafter, serve or solicit, or in any way interfere with, any of the customers who should at any time be served by, or be then longing to, the plaintiffs in their business. After leaving the plaintiffs' employ the defendant started business as a milkman and served with milk and solicited customers of the plaintiffs. The defendant contended that the agreement was invalid, on the ground that it was unreasonable and too wide, both as regards space and time,—also because it purported to prevent the defendant from soliciting plaintiffs' customers, who became such after defendant's employment ceased. The Divisional Court (Williams and Wright, JJ.), on appeal from the County Court, limited the injunction to persons who were customers of the plaintiffs at any time while the defendant was in the plaintiffs' employment, and the Divisional Court (Lord Esher, M.R., and Lopes and Rigby, L.JJ.), held that this judgment could not properly be interfered with, that the agreement must be taken to refer to the particular business carried on by the plaintiffs at the time it was made, and was therefore not open to the objection of being too wide as regards space, and that it was severable as regarded the customers to whom it was intended to apply, and that though it was too wide as to customers becoming such after the defendant quitted the plaintiffs' employment, yet it was good as to those who had been customers at any time during his employment. According to Rigby, L.J., judicial opinion on the subject of restraint of trade is undergoing, or rather has undergone, a considerable change since the earlier cases were decided, and the only test of the validity of such agreements is now considered to be, is whether or not it is reasonably necessary for the protection of the person in whose favor it is made.

CRIMINAL LAW—EXTRADITION—FALSIFICATION OF ACCOUNTS—EXTRADITION ACT, 1870 (33 & 34 VICT., C. 52)—(R.S.C., C. 143).

In re Arton, (1896) 1 Q.B. 509, the rule nisi, granted for a habeas corpus, as noted ante p. 187, was argued. The ground upon which the rule was obtained was that the crime for which the applicant had been committed for extradition was

not within the Extradition Act, 1870 (33 & 34 Vict., c. 52), or the extradition treaty with France. The crime of which he was accused was known to French law as "faux," or "faux en ecritures de commerce"; in England it would come under the head of the statutory offence of falsification of accounts by a director, public officer, or member of a public company, and although the offence would not be forgery according to the English law, yet the Court (Lord Russell, C.J., and Wright and Kennedy, JJ.), held that the offence was a crime within both the French and English versions of the extradition treaty between France and England, and the Extradition Act, and the rule was accordingly discharged: and this decision seems, in effect, to support the opinion maintained by a writer in this journal, vol. 31, p. 594, as to the construction of the Canadian Extradition Act and treaties.

PRACTICE—PLEADING—DOCUMENT, STATEMENT OF ITS EFFECT—ACTION FOR RECOVERY OF LAND—ORD. XIX. R. 21 (ONT. RULE 406.)

Darbyshire v. *Leigh*, (1896) 1 Q.B. 554, is a decision of the Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) on a point of practice, involving the construction of Ord. xix., r. 21 (Ont. Rule 406.) The action was for recovery of land, and in the statement of claim the plaintiff, among other things, stated "By the will of the said Holt Leigh, made on 27 February, 1875, and duly proved July 18 of that year, the said Mary Taberner or Leigh became entitled to the said estates in fee in reversion on the determination of certain estates tail limited in the said will." The defendants moved in chambers to compel the plaintiff to amend the statement of claim by setting forth the precise words of the will by which she became entitled to the estates in fee in reversion, or in default that the paragraph above quoted should be set aside as embarrassing. The Master refused the application, but the Judge in Chambers reversed his decision. The Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) considered the statement of claim sufficient under Order xix., r. 21 (Ont. Rule 406), and restored the order of the Master.

PROBATE—EXECUTOR OF EXECUTOR—EXECUTOR TO WHOM POWER TO PROVE RESERVED—CITATION BY ADVERTISEMENT.

In the goods of Reid, (1896) P. 129, a grant of probate had been made to one of two executors, power being reserved to make the like grant to the other executor. The acting executor died without having fully administered, but leaving a will and appointing executors. The other executor had not been heard of for fourteen years. The sole next of kin of the original testator, with the assent of the executors of the deceased executor, moved for a grant to herself of letters of administration de bonis non; but Barnes, J., refused the application, holding that upon the non-appearance of the absentee executor to a citation, the executors of the deceased executor would, without further grant, become executors of the original testator: and he gave leave to serve the citation on the absent executor by advertisement.

PRACTICE—COSTS—SET-OFF OF COSTS—SOLICITOR'S LIEN—ORD. XLV., RR. 14, 27, (21)—(ONT. RULE 1204).

Hassell v. *Stanley*, (1896) 1 Ch. 607, was an application to set off costs in a County Court proceeding against costs in the High Court. The English Ord. xlv., r. 14, provides that a set-off "for (sic) damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought." But of this no counterpart appears in the Ontario Rules, and on the contrary, Rule 1205 expressly declares that no set-off of damages and costs shall be allowed to the prejudice of the solicitor's lien for costs in the particular action against (sic) which the set-off is sought; but even under the English Rule it was held by Chitty, J., in this case, that although the proceedings were between the same parties, yet the Rule did not apply so as to enable costs in independent proceedings to be set off to the prejudice of the solicitor's lien: Ord. xlv., 27 (21), which is to the same effect as Ont. Rule 1204, was held to have no application.

WILL—LIFE INTEREST—PROVISION FOR DIRECTING.

In re Sampson, Sampson v. *Sampson*, (1896) 1 Ch. 630, was an application against the trustees of a will to compel them

to refund money under the following circumstances: By the will in question the testator had bequeathed an annuity of £100 out of his residuary real and personal estate to his son William Henry, subject to a provision that the trustees were to apply so much of the said annuity as would, if the same were payable to the son, be by his act or default, or by operation of a process of law so disposed of, as to prevent his personal enjoyment thereof, for the benefit of his wife and children. The trustees had in their hands on the 16th April, 1895, a sum of £132 7s. 5d., payable to the son in respect of the annuity. On the following day they were served with a garnishee order, at the suit of a creditor of the son, and in pursuance of an order to pay over, had paid the amount to the attaching creditor. The son's wife and children claimed that the money should have been applied by the trustees for their benefit. Stirling, J., however, considered that the above mentioned provision in favor of the wife and children could only take effect, when at the time the money was payable, the son was debarred from receiving it for his own use, and could not apply to any subsequent alienation by process of law or otherwise. And as on the 16th April, 1895, the son was actually entitled to receive the money for his own use, the subsequent attachment of the money by his creditor could not divest his title.

VENDOR AND PURCHASER—LEASEHOLDS—ONEROUS COVENANTS IN LEASE—VENDOR'S DUTY TO DISCLOSE ONEROUS COVENANTS—CONSTRUCTIVE NOTICE.

In *Re White & Smith's contract*, (1896) 1 Ch. 637, leaseholds were offered for sale by auction; the advertisement and particulars failed to disclose that the lease under which the premises were held contained onerous and unusual covenants. The purchaser at the sale, on the delivery of the abstract, having discovered the existence of these covenants, applied to the vendor to be released from his purchase, which having been refused, he applied to the Court under the Vendors' and Purchasers' Act. It was not disputed that the covenants were unusual, but it was claimed on the part of the vendor that as the lease was referred to in the advertisement and particulars, the purchaser had constructive notice of its con-

tents and might have examined it before the sale if he had asked to do so. Stirling, J., however, was of opinion that the case was governed by *Reeve* v. *Berridge*, 20 Q.B.D. 523, and that it was the vendor's duty to make known to intending purchasers the existence of the onerous and unusual covenants, and not having done so, nor in any way notified intending purchasers that the lease could be inspected before the sale, the purchaser was not bound to complete the sale; and constructive notice of the covenants could not be imputed to him.

PRACTICE—REDEMPTION ACTION—EXTENDING TIME FOR REDEMPTION AFTER DEFAULT BUT BEFORE FINAL ORDER—DEFAULT—DISMISSAL OF ACTION—MISTAKE.

Collinson v. *Jeffery*, (1896) 1 Ch. 644, was an action for redemption, in which judgment had been granted directing the payment into Court of the amount due to the defendant within two months from the date thereof, and in default that the action be dismissed. By the mistake of the plaintiff's solicitor it was assumed that the two months began to run from the entering of the judgment instead of from its date, and the money was not paid in until the time limited by the judgment had expired. An application to extend the time for redemption was opposed on the ground that the action was dismissed and the Court had no jurisdiction now to extend the time; but Kekewich, J., considered that the action, though in a moribund or comatose condition, was not dead, as the final order had not been pronounced, and he therefore extended the time as asked: although the case might have been different if the judgment had provided that on default the action should stand dismissed "without further order."

MORTGAGE—MORTGAGEE—SIX MONTHS' INTEREST OR SIX MONTHS' NOTICE—TENDER—MORTGAGEE TAKING POSSESSION.

Bovill v. *Endle*, (1896) 1 Ch 648, is not, since 51 Vict., c. 15, s. 2 (O.), of much importance in Ontario. The simple question was whether a mortgagee who had entered into possession of the mortgaged premises could require six months' interest in lieu of six months' notice of payment of his debt, the time fixed by the mortgage for payment not having expired. Kekewich, J., held that he could not, and that going into possession was in effect a demand of payment.

DOMINION LEGISLATION, 1896.

The sixth session of the seventh Parliament has produced but little legislation of either general or special interest, if we exclude some twenty-six Acts concerning various railways, and half as many more relating to private companies and associations. These statutes are not yet but shortly will be in the hands of the printer.

The public Acts might easily be compressed into thirty pages. For this dearth of a great deal of necessary legislation and freedom from a considerable amount of necessary statute law, we can thank our friend the Remedial Bill.

An Act respecting the Behring Sea Claims Convention, gives to the Commissioners who may be appointed to investigate the claims which will become due under the Paris award, the same powers as a Judge in Court in regard to the subpœnaing and examination of witnesses, and any of the parties interested may be represented by counsel or solicitor.

The next Act provides separate subsidies for steamship services between Canada and the United Kingdom, and between Canada and France and Belgium. Formerly there was but one subsidy and one service, the arrangement being that the contracting line should call at a French port on its way to the English terminus.

A somewhat loosely drawn Act relates to the liability of the Crown and public companies in regard to labor used in the construction of public works. Money paid in by a contractor as security may be used to pay workmen to whom the contractor makes default. The Act also specifies the manner in which the workman may enforce his lien.

Chapter 6 dispenses with the revision of the voters lists this year, and chapter 7 is the usual bonus of 12 days pay to Senators and members who have been absent for that number of days during the session just concluded. Another chapter makes an alteration of the customs' tariff in regard to the date of importation of mining and smelting machinery.

A few amendments are made to the Railway Act in regard to by-laws by the directors, and the expropriation of lands. Other chapters deal with the Montreal Harbour Commissioners and the Turnpike Trust, the debentures of loan companies, the adulteration of honey by feeding sugar, etc., to bees, and the Animal Contagious Diseases Act.

The last of the public Acts gives the title of Chief Justice of Canada to the Chief Justice of the Supreme Court. The want of a quorum in this Court, which has been of frequent occurrence of late, by reason of the illness of judges, is now partly obviated by constituting any four judges a quorum where the parties consent.

CORRESPONDENCE.

LEGAL JOURNALISM IN CANADA.

To the Editor of the Canada Law Journal.

SIR,—Just now the legal profession are deluged with a series of so-called legal journals, to which they are asked to subscribe. A number of these seem to be chiefly advertising mediums, and contain but little information really valuable to a practising lawyer, and a great deal of what they do contain is copied—often incorrectly—from other legal journals. The question then is how many of these journals are of any value to lawyers. A few pages are put together and called a legal journal—be its name what it may—the profession are sent copies without orders express or implied, and a few days afterwards, if the copies are not returned, they receive drafts, and every one who takes a copy out of the post office and inadvertently opens it is expected to pay, although he never subscribed. It seems to me that the legal profession in Canada are being imposed on by law publishers.

There are only three thousand lawyers in Canada all told, many of whom are not practising and take no interest in current legal topics. Surely, then, there is no room for the eight legal journals now published in Canada, of which half emanate from Toronto, to say nothing of the many useful American and English journals. If the profession would support one or two good journals these would be able to furnish the very best matter obtainable, and this is without reflection on the CANADA LAW JOURNAL, which, to my mind, remains at the head of the list; and if I had not thought so I would not have written.

I cannot expect you to comment too freely on this subject, but I wish to invite the attention of the profession throughout Canada to the methods by which we lawyers are imposed on by law publishers, who, without authority, persist in sending us papers, often followed by drafts. Yours, etc.,

AVERY CASEY.

[Our only comment is that if a person does *not* desire to subscribe he should return the paper to the post office, and refuse the draft when presented.—ED. C.L.J.]

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario.] [March 24.

ADAMSON *v.* ROGERS.

Lessor and Lessee—Water lots—Filling in—"Buildings and erections"—"Improvements."

The lessor of a water lot, who had made crib-work thereon and filled it in with earth to the level of adjoining dry lands, and thereby made the property available for the construction of sheds and warehouses, claimed compensation for the works done under a proviso in the lease by the lessor to pay for "buildings and erections" upon the leased premises at the end of the term.

Held, affirming the judgment of the Court below (22 Ont. App. R. 416) that the crib-work and earth filling became part of the ground leased, and were not "buildings and erections" within the meaning of the proviso.

Appeal dismissed with costs.

Laidlaw, Q.C., for appellant.

Robinson, Q.C., and *McDonald*, Q.C., for respondent.

Ontario.] [May 16.

ROBERTSON *v.* JUNKIN.

Will—Legacy—Bequest of partnership business—Acceptance by legatee—Right of legatee to an account.

J. and his brother carried on business in partnership for over thirty years, and the brother having died, his will contained the following bequest: "I will and bequeath unto my brother J. all my interest in the business of J. & Co. in the said City of St. Catharines, together with all sums of money advanced by me to the said business at any time, for his own use absolutely forever, and I advise my said brother to wind up the said business with as little delay as possible."

Held, affirming the decision of the Court of Appeal, that J., on accepting the legacy, could not be called on to contribute to any deficiency in the assets to pay creditors, and did not lose his right to have the accounts taken in order to make the estate of the testator pay its share of such deficiency.

Appeal dismissed with costs.

Aylesworth, Q.C., for appellant.

McCarthy, Q.C., for respondent.

Ontario] [May 18.

CARROLL *v.* PROVINCIAL NATURAL GAS AND FUEL CO.

Contract—Subsequent deed—Inconsistent provision.

C., by agreement of April 6th, 1891, agreed to sell to the Erie County Gas Co. all his gas grants, leases and franchises, the company agreeing among other things to "reserve gas enough to supply the plant now operated or to be operated by them on said property." On April 20th a deed was executed and delivered to the company, transferring all the leases and property specified in said agreement, but containing no reservation in favor of C. such as was contained therein. The Erie Company, in 1894, assigned the property transferred by said deed to the Provincial Natural Gas & Fuel Co., who immediately cut off from the works of C. the supply of gas, and an action was brought by the company to prevent such interference.

Held, affirming the decision of the Court of Appeal, that as the agreement was embodied in the deed subsequently executed, the rights of the parties were to be determined by the latter instrument, and as it contained no reservation in favor of C., his action could not be maintained.

Appeal dismissed with costs.

Aylesworth, Q.C., and *German*, for appellants.

McCarthy, Q.C., and *Cowper*, for respondents.

Quebec.] [May 6.

MONTREAL GAS COMPANY *v.* LAURENT.

Negligence—Obstruction of street—Assessment of damages—Questions of fact—Action of warranty.

Where there is evidence to support it, a judgment assessing actual present damages sustained through injuries will not be interfered with upon an appeal to the Supreme Court.

In cases of delit or quasi-delit, a warrantee may, before condemnation, take proceedings en garantie, and the warrantor cannot object to being called into the principal action as a defendant en garantie. *Archibald* v. *Delisle*, 25 Can. S.C.R. 1, followed.

Appeal dismissed with costs.

Bissaillon, Q.C., for appellant, Montreal Gas Co.

Madore, for appellant and respondent, City of St. Henri.

Geoffrion, Q.C., and *D'Amour*, for respondent, St. Laurent.

Quebec.] [May 6.

LACHANCE *v.* LA SOCIETE DE PRETS DE QUEBEC.

Appeal—Amount in controversy.

L., a creditor of an insolvent firm in the sum of $525, contested the claim of another creditor on the ground that a hypothec held by the latter on the insolvent's property was null, and that the amount thereof, $2,044, should belong to the estate for collocation among all the creditors. The contestation was unsuccessful, and L. sought to appeal to the Supreme Court from the

judgment of the Court of Queen's Bench, by which it was dismissed. The respondents moved to quash the appeal.

Held, that to determine the amount in controversy necessary to entitle L. to an appeal, only his own pecuniary interest could be looked at, and that being less than $2,000, the appeal would not lie; the fact that the contestation, if successful, would give the estate the benefit of more than $2,000, did not give the Court jurisdiction.

Appeal quashed with costs.

Turcotte, for the motion.

Geoffrion, Q.C., contra.

Province of Ontario.

COURT OF APPEAL.

From MEREDITH, C.J.] [May 12.

FLOOD *v.* VILLAGE OF LONDON WEST.

Negligence—Contributory negligence—Negligence of driver of carriage—Injury to occupant.

The doctrine that the occupant of a carriage is not identified as to negligence with the driver, applies only where the occupant is a mere passenger, having no control over the management of the carriage.

Where, therefore, the hirer of a carriage allows one of his friends to drive and an accident results from the latter's negligence, the former cannot recover.

Judgment of MEREDITH, C.J., affirmed.

P. McPhillips, for the appellant.

E. R. Cameron, for the respondents.

[May 12.

KNICKERBOCKER TRUST COMPANY OF NEW YORK *v.* WEBSTER.

Security for costs—Interpleader—Party out of jurisdiction.

Where the sheriff obtains an order directing the trial of an interpleader issue between the execution creditor and the claimant of the goods seized under the execution, the party out of the jurisdiction, whether plaintiff or defendant, must give security for costs to his opponent in the issue. BURTON, J.A., dissenting.

G. G. Mills, for the appellant.

J. B. Clarke, Q.C., for the respondents.

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.] [April 10.

RE ROBINSON.

Infant—Indentured as domestic servant—Right of mother to custody of—Charitable institution.

Where a child under the protection, with her mother's consent, of the

Girl's Home, a charitable institution incorporated by 26 Vict., cap. 63 (C.), and 50 Vict., cap. 91 (O.), was, under the powers conferred by these Acts, indentured as a domestic servant, an application by the mother to have such indenture set aside and for the custody of the child was refused.

J. E. Jones, for the applicant.

R. S. Neville, contra.

DIVISIONAL COURT.] [April 10.

ALDRICH *v.* CANADA PERMANENT LOAN & SAVINGS CO.

Mortgage comprising several parcels—Sale under power of sale en bloc—Right of mortgagor to recover damages sustained.

A mortgage contained two separate parcels of land, namely, a farm and some village lots, the latter not belonging to the mortgagor, but to his mother, who had become surety for the mortgagor, and for such purpose had become a party to and included the land in the mortgage. The land, under the power of sale, was sold by the mortgagees en bloc, whereas the evidence disclosed that had the parcels been sold separately, a very much larger amount would have been obtained.

Held, that the mortgagors were entitled to the damages they had sustained thereby.

G. Macdonald, for the plaintiff.

Moss, Q.C., and *G. McKenzie*, for the defendants.

DIVISIONAL COURT.] [April 21.

YOUNG *v.* WARD.

Creditors Relief Act—Division Court execution—Return of nulla bona exeeution to sheriff—57 Vict., cap. 23 (O.).

Where, on the return of a nulla bona to a Division Court execution, the plaintiff, under 57 Vict., cap. 23 (O.), amending the Division Courts Act, issued out of said Division Court an execution to the sheriff and placed it in his hands, but before the sherift had taken any steps to enforce it, the defendant's solicitor paid him the amount of the execution and his fees, with the request to apply it on plaintiff's execution.

Held, reversing the judgment of the County Court Judge, that the Creditors' Relief Act applied to the moneys so received by the sheriff.

J. E. Jones, for the plaintiff.

Swazie, for the defendant.

Macdonald, for another execution creditor and the sheriff.

DIVISIONAL COURT.] [April 30.

CENTRAL BANK *v.* ELLIS.

Receiver—Appointment—Equitable execution—Unliquidated damages.

The appointment of a receiver to receive, on behalf of a creditor, money due to a debtor, is only made where a proper case is made out, showing the debtor to be entitled to rights, which would be subject to ordinary execution if they had been legal instead of equitable in their nature, and does not apply to the case of a claim for unliquidated damages.

C. Miller, for the plaintiffs.

W. R. Raney, for the defendant.

STREET, J.] [April 13.

STEPHENSON *v.* VOKES.

Company—New stock—By-law for allotment by shareholders—Right of directors to allot—Directors—By-law passed at annual general meeting for duration of office—Right of shareholders at special general meeting to vary.

Where a by-law is passed at the annual general meeting of a company providing for the allotment of certain new stock by the shareholders, the directors have no power to pass a by-law directing its repeal and providing for the allotment by themselves.

At a meeting of the directors of a company a by-law was passed providing that they should hold office for one year and until their successors were appointed, which was subsequently confirmed by the shareholders at the annual general meeting of the company, and certain persons were appointed directors.

Held, the by-law so passed could only be repealed at the next annual general meeting of the company, and therefore a by-law passed during the director's year of office, by the shareholders at a special meeting of the company, providing that the appointment should be terminable by resolution, was invalid.

Mulvey and *McBrady*, for the plaintiffs.

S. H. Blake, Q.C., and *Denton*, for defendant Vokes.

Bicknell, for defendant Oxenham.

BOYD, C.] [April 18.

FROWDE *v.* PARRISH.

Copyright—Person procuring book to be compiled for him—Proprietor—Residence in England—Agent copyrighting—Printing infringement.

A person, resident in England, who procures a book, for valuable consideration, to be compiled for him, is the proprietor thereof, and entitled to copyright the same under the Dominion Copyright Act, R.S.C., cap. 62 (in this case a book called "Helps to the Bible"), and printing and publishing the same from stereotype plates imported into Canada, is a sufficient "printing" within the meaning of the Act, though no typographical work is done in preparation thereof. American reprints of the plaintiff's copyright book added as an appendix to American reprints of the Bible imported into Canada, was held to be a violation of the plaintiff's rights.

T. W. Hodgins, for the plaintiff.

J. A. Macdonald, for the defendant.

ARMOUR, C.J.] [April 28.

BROWN *v.* COUGHILL.

Arbitration and award—Motion to set aside—When to be made.

Where an award under a consent reference was made on the 27th of January, 1896, and published on the 30th, a motion to set same aside, made on the 17th of April following, is too late.

Crothers, for the applicant.

Moss, Q.C., and *McLean*, (St. Thomas) contra.

ARMOUR, C.J.] [May 18.

RE TORONTO, HAMILTON & BUFFALO RAILWAY AND BROWN.

Railway—Award—Appeal from—Weight of evidence—Improper reception and rejection of evidence.

On an appeal from an award made under sec. 161 of the Railway Act, 51 Vict., cap. 29 (D), the learned Judge before whom the appeal was heard refused to interfere, being unable to say that the decision arrived at was wrong, and in view of the fact that the arbitrators resided at the place where the land was situate and were conversant therewith, and had the benefit of seeing and hearing the witnesses.

Quaere.—Whether objections to the reception or rejection of evidence are properly subjects of appeal from an award under the Railway Act, or whether not rather matters for a motion to revoke the submission, or for a motion prior to the award to compel or prevent the reception of such evidence, and where the course pursued by the arbitrators amounts to misconduct.

G. Lynch-Staunton, for the appellant.

D'Arcy Tate, contra.

STREET, J.] [May 6.

IN RE WILLIAM RODDICK.

Insurance—Voluntary settlement—R.S.O. c. 136.

William Roddick insured in a mutual insurance society by way of benefit certificates expressed to be payable to his mother, and by contract between himself and the society it was agreed that the benefit certificate should not be payable to any one else than the wife, children, dependents, father, mother, sister or brother of the insurer; and that the certificate could not be transferred or assigned by him to any one else than the above named, and that if he died without having made any further direction as to payment, the money should be paid to the above beneficiaries in the above order, if living.

William Roddick died intestate, his mother predeceasing him, and his two sisters claim as entitled by reason of the above contract to the policy moneys. His estate was insolvent and his administrator claimed that the money was available for the creditors.

Held, that the insurance amounted in effect to a voluntary settlement on the sisters of the insured, who though not within the protection of R.S.O. c. 136, were beneficiaries named in the policy, and it was not shown that the insured was not in a position to make a voluntary settlement at the time he effected the insurance or at any time.

J. A. Paterson, for the claimants.

Duncan, for the administrator.

STREET, J. [May 7.

RE STONEHOUSE AND PLYMPTON.

Municipal corporation—Drainage by-law—Engineer's report—Erroneous basis of fact.

Motion to quash a by-law of the township of Plympton, providing for the repairing and deepening throughout of what was therein spoken of as the

Stonehouse drain in the townships of Plympton, Enniskillen and the village of Wyoming.

The by-law set out the report of the engineer of the corporation of Plympton, wherein he recommended the work to be done, and assessed the costs in different proportions against the three corporations respectively. In his said report he spoke throughout of the drain as constituting all one drain, whereas it consisted of at least two drains built at different times and for different purposes.

Held, that the by-law must be quashed.

Held, also, that the persons affected were entitled to have the engineer's judgment when assessing them, upon the true state of facts, because he might have assessed the lands of one of the three townships lower had he made his estimate upon the basis that the drain in it was not a part of the original system, but was itself a separate original drain, designed to carry off only the natural soakage, and not the volume brought upon it at times by the drain in another of the three townships, and the same applied to the council who had to act upon his report.

Aylesworth, Q.C., and *Shaunessy*, for the plaintiff.

Shepley, Q.C., and *Cowan*, for the defendants.

STREET, J.] [May 7.

IN RE DAVIS TRUSTS.

Trustee—Removal—Summary application.

The Court has no power upon a summary petition, or otherwise than in an action, to remove a trustee in invitum.

D. Macdonald, for the petitioner.

G. G. S. Lindsey, for the trustee.

Province of Nova Scotia.

SUPREME COURT.

EN BANC.] [May 18.

MCSWEENY *v.* REEVES.

Meaning of "Effectually prosecute appeal"—Appeal being dismissed the judgment below revives—Amendment of order for judgment by C.C.J.

Plaintiff having recovered judgment in the County Court against S., the latter appealed and furnished a bond with defendants as sureties, as provided by Acts, 1889, ch. 9, sec. 45. It was conditioned "that if the said S. shall effectually prosecute his said appeal and respond, the judgment to be finally given thereon, then, etc., etc." On appeal the same was dismissed, and an order was taken that the appeal be dismissed and that S. pay the costs thereof. S. paid the costs but not the judgment affirmed. Plaintiff now brought action against the bondsmen, defendants.

Held, that the phrase "Effectually prosecute his said appeal" is synonymous with "Prosecute his said appeal with success." *Perreau* v. *Beven*, 5 B. & C. 284, that having failed in his appeal, the appeal had not been successfully prosecuted, and that defendants must pay on the bond on which they were sureties the amount of the judgment recovered.

Held, also, that a County Court judge can amend his final order for judgment, and add words which have been omitted through error or accidental slip.

Harrington, Q.C., for defendants.

Tremaine, Q.C., for plaintiff.

EN BANC.] [May 18.

MCISAAC *v.* MCNEIL.

Adjournment of motion for writ of certiorari to allow defective affidavit under C.R. 1891, rule 29, to be remedied.

Plaintiff having recovered judgment against defendant in a Justices' Court, defendant moved for a writ of certiorari, to remove it into this Court.

Plaintiff objected that the affidavits of justification of bail required by Rule 29 of the Crown Rules were defective, and that a copy of the judgment was not attached in accordance with the practice. Leave to file further affidavits of justification, to bring in a copy of the judgment, and an adjournment to enable him to do so, were granted to defendant. An order was taken out which also contained provisions that the affidavits be served on plaintiff before the adjourned hearing, and that he be at liberty to raise at said adjourned hearing any question as to the filing so allowed. Plaintiff appealed from this order.

Held, that the Judge might adjourn in this way, and that plaintiff was premature in his appeal. He should have awaited the result of the adjourned hearing.

TOWNSHEND, J., delivered the judgment of the Court, WEATHERBE and HENRY, J.J., concurring.

J. Meagher, contra.

Cahan, for defendant.

Fulton, for plaintiff.

EN BANC.] [May 18.

MAGUIRE *v.* CARR.

Satisfaction of judgment—Irregularity as to filing satisfaction piece.

Plaintiff recovered judgment in 1883 against defendant, which with the exception of $110 was shortly satisfied.

The judgment was thereafter assigned several times, but no notice of any such assignments was given defendant. In October, 1885, one H., as agent of plaintiff, delivered to defendant a satisfaction piece signed by the plaintiff, taking a note for $110. Defendant thereupon filed the satisfaction piece with the registrar of deeds, believing this to be the correct practice. Shortly afterwards the note was renewed in three parts, payable to H., who subsequently hearing of the irregularity as regards the filing of the S.P., and being

then the assignee of the judgment, returned the notes to defendant and applied for leave to issue execution.

Held, that H. could not take advantage of defendant's mistake, that the note had been taken in satisfaction of the judgment, and that execution should be refused, but that an assignee of the judgment without notice might have execution.

TOWNSHEND, J., In Chambers. [May 1.

MCDONALD *v.* CURRY; THOMPSON, THIRD PARTY.

Amendment—Adding statutory plea to defence—Indorsement of memo. of fees by sheriff on return of execution.

The third party having obtained judgment against N., placed an execution in the hands of the defendant, the sheriff of Hants County, who took charge of certain property of N. thereunder, and employed plaintiff to look after same.

Plaintiff sued and recovered judgment against defendant for his wages as caretaker. Defendant thereupon claimed over against third party. Third party now moved to amend his defence by adding a plea that defendant in returning the execution omitted to endorse thereon a memo. of his fees and charges, in accordance with the statutory provision, which would include plaintiff's wages as caretaker, in accordance with the statutory provision.

Held, that the third party might so amend, but upon the terms that defendant should have ten days in which to amend the return upon the execution, in order that the statute might be complied with.

W. B. A. Ritchie, for third party.

McInnes, for defendant.

TOWNSHEND, J., In Chambers. [May 22.

QUEEN *v.* WHEELER.

Trial for murder—Change of venue—Adverse comments of local newspapers.

Defendant being under arrest and awaiting trial at Digby, in the County of Digby, for murder of A. K., his counsel now moved to change the place of trial. Numerous affidavits were read showing great popular prejudice existing at Digby against prisoner, making it unlikely that he would obtain a fair trial there. To these were exhibited various local newspapers, containing comments on the murder adverse to the prisoner. Affidavits directly contradicting these were read by the Crown.

Held, that while the affidavits from their contradictory character necessarily left a doubt as to the true state of feeling existing in the county towards the prisoner, the evidence furnished by the newspapers annexed could not be disregarded; that it would be impossible to obtain an untainted jury, when the feelings of the community whence the jury must be taken had been so excited

and worked upon by the press, always to the disadvantage of the accused; that the place of trial accordingly should be changed to the town of K., in the county of Kings.

Harrington, Q.C., for the accused.

Congdon, for the Crown.

Province of Manitoba.

QUEEN'S BENCH.

BAIN, J.] [May 20.

RE ELLIOTT AND CITY OF WINNIPEG.

Municipality—By-laws—Quashing by-law—Dairy inspection—Ultra vires.

This was an application under section 385 of the Municipal Act for an order to quash, in whole or in part, on the ground of illegality, a by-law passed by the city of Winnipeg providing for the inspecting and regulating of dairies and stables, and licensing vendors of milk. By secs. 593 and 607 of the Municipal Act, and by sec. 17 of 57 Vict., c. 20, the council is authorized to pass by-laws for inspecting and regulating dairies and stables, and licensing vendors of milk, and it is provided that the licensee shall submit to an inspection, whenever desired, of his dairy, etc., whether inside or outside of the city, by an officer to be appointed by the council.

The first section of the by-law in question required the owners of all dairies whose milk was sold in the city, to submit to an inspection, and to take out a license whether their dairies were in the city or not.

Held, that this section so far as it applied to the owners of dairies who did not sell their milk in the city, but to other persons who might or might not sell it in the city, was ultra vires and illegal.

Held, also, that section 3 of the by-law which required applications for licenses to satisfy the health officer of the city before their licenses could issue, and left it in his power to decide who should have a license and who should not, was also ultra vires as an illegal delegation of authority which the council itself should exercise.

Sections 1 and 3 quashed with costs.

Martin, for applicant.

Isaac Campbell, Q.C., for City of Winnipeg.

DUBUC, J.] [May 26.

GOUENLOCK *v.* FERRY.

Practice—Appeal from order—Compliance with part of order—Striking out defence—Counter claim.

This was an appeal from the order of the Local Judge for the Western Judicial District, striking out the twelfth paragraph of the defendant's statement of defence. The action was for possession of certain lands, and that paragraph, by way of counter-claim, claimed damages from the plaintiff for illegal seizure, distress and sale of his goods, under an alleged claim for rent. The objection to this paragraph was that it raised an issue which should be

tried by a jury under sec. 49 of the Queen's Bench Act, 1895, unless a jury trial should be waived by the parties, and the subject matter of such counter-claim ought for that reason to be disposed of in an independent action.

It was shown, however, by affidavit, that the cause of action thus set up arose through the conduct of the plaintiff in connection with defendant's tenancy of the land in question, under an agreement set out in the statement of claim, and out of one connected series of transactions.

Held, following *Dockstader* v. *Phipps*, 9 P.R. 204, and *Goring* v. *Cameron*, 10 P.R., 456, that the counter-claim in question should not have been struck out; that it was not only natural and proper, but even desirable, that it should be disposed of in the present action; and that the fact that a jury might be called to determine this particular branch of the case is not sufficient ground for requiring the defendant to bring a separate action.

The order appealed from, in another clause, permitted the defendant to amend another paragraph of his defence within six days, in default of which amendment it was to be struck out, and the defendant availed himself of the privilege of amending that paragraph.

Held, that by compliance with such part of the order, he had not precluded himself from appealing against the other part.

Appeal allowed without costs.

Clark, for plaintiff.

Wilson, for defendant.

TAYLOR, C.J.] [May 30.

DOLL *v.* HOWARD.

Misrepresentation—Rescission—Waiver.

The defendant in this action had purchased from W. F. Doll at par certain shares in the stock of a jewelry company, and had given his notes for the purchase money. The plaintiff to whom W. F. Doll had indorsed the notes sued in this action upon one of them, which the defendant refused to pay, claiming that the payee of the note had been guilty of fraud and misrepresentation in the sale of the shares, and that the plaintiff was not the holder of the note in due course, or an indorsee for value. The learned Judge found, as a fact that there had been material misrepresentations which induced the defendant to enter into the contract of purchase and sign the note in question, but it also appeared that defendant, after he became aware of the misrepresentations did not repudiate the contract, but continued to carry on the business, and long afterwards paid two of the notes originally given, and renewed others, with the idea, as he said, of putting off Doll until he could secure further evidence of the fraud.

Held, following *Campbell* v. *Fleming*, 1 A. & E., 40; *Sharpley* v. *South & East Coast Railway Co.*, 2 Ch. D., 663; and *Walton* v. *Simpson*, 6 O. R., 213, that the defendant had waived his right to rescind the contract for misrepresentation, and that the plaintiff was entitled to a verdict for the amount of the note and interest.

Martin and *Mathers*, for plaintiff.

Howell, Q.C., and *Hough*, Q.C., for defendant.

TAYLOR, C.J.] [June 4.

HECTOR *v.* CANADIAN BANK OF COMMERCE.

Practice—Production of documents—Appeal from the referee.

The question in dispute on this application was whether the defendants could be required to file a further and better affidavit on production. In the affidavit filed they set out in a schedule a number of documents which they produced, and in another schedule a number of documents which they objected to produce. Amongst these were the books of the bank, consisting of deposit, and other ledgers and letter books, and the reason for refusing production of these was stated to be that the books are in daily use at Brantford in Ontario, and could not be produced without great inconvenience and interruption to the bank's business, but the solicitor for the bank offered to give the plaintiff's solicitor copies of all the accounts in these books which relate to the matters in question.

Held, that the plaintiff should be satisfied with this.

Defendants also objected to produce letters that had passed between the managers at Brantford and Winnipeg, giving as a reason that they were privileged communications relating solely to the said bank's case and defence, and did not concern the plaintiff's case.

Held, following *Coombe* v. *Corporation of London*, 1 Y. & C. 631; *Bewicke* v. *Graham*, 7 Q.B.D. 400; *Budden* v. *Wilkinson*, (1893) 2 Q.B. 432; *Morris* v. *Edwards*, 23 Q.B.D. 287, 12 App. Cas. 309, that such an affidavit is conclusive against the opposite party, and the Court will not order a production or inspection of the documents claimed to be protected, unless it can be proved out of the mouth of the party by whom it is filed, or by his admissions, that the affidavit is untrue.

Documents are sufficiently described in an affidavit on production if the Court is thereby enabled to make an order for their production in case it becomes necessary: *Taylor* v. *Batton*, 4 Q.B.D. 85.

Appeal dismissed with costs.

Mulock, Q.C., for plaintiff.

Perdue, for defendants.

Province of British Columbia.

SUPREME COURT.

DAVIE, C.J., McCREIGHT, J., WALKEM, J. } [May 11.

McADAM *v.* HORSEFLY HYDRAULIC MINING CO.

Contract—Inspection.

Appeal from decision of Walkem, J., reported ante p. 169, dismissed with costs.

Wilson, Q.C., for appellants.

McNeill, for respondent.

McCREIGHT, J., WALKEM, J., DRAKE, J. [May 11.

ATKINS *v.* COY.

Mineral Act—Registration—Priority.

This was an appeal from decision reported ante p. 170.

Held, notwithstanding that the location and record were made before the enactment of the Mineral Act (1891) Amendment Act (1893), the priority of location governs the recording having been done within 15 days allowed by the statute. Appealed allowed. Plaintiff's counter appeal for a new trial as to priority of location refused, but plaintiff allowed three months in which to proceed to a new trial on the question of the genuineness of the defendant's claim of title. Leave was subsequently given to appeal to the Privy Council.

Taylor and *Cassidy*, for appellant.

McColl, Q.C., and *Bodwell*, for respondents.

DAVIE, C.J., McCREIGHT, J., DRAKE, J. [May 15.

IN RE APPEAL OF THE MARQUIS DE BIDDLECOPE.

Assessment of income—Profits

The appellant, who resides in England, owns real estate in Vancouver which returns a gross rental of $3,400. His necessary outgoings for this property left him a net profit of about $1,100. The Court of Revision held that he must pay on the gross return, and from this decision he appealed.

Held, that the Assessment Act does not tax incomes when under $1,500, and that "income" means the balance of gain over loss, and where there is no such balance of gain there is no income capable of being assessed.

Appeal allowed.

Davis, Q.C., for the appellant.

Hunter and *Duff*, contra.

DRAKE, J., In Chambers. [May 5.

CLARK *v.* KENDALL.

Notice of intention to appeal—Practice.

This case having been argued before the Full Court and decision rendered in favor of plaintiff, defendant's solicitor gave notice of intention to appeal to Supreme Court of Canada.

When the summons to allow appeal came up in Chambers, it was argued by caunsel for plaintiff that no notice of appeal had been given, only a notice of intention to appeal, and that according to Cassel's Practice of the Supreme Court of Canada, there was a decided difference between notice of intention to appeal and notice of appeal.

Held, that the notice was sufficient.

A. M. MacNeill, for plaintiff.

Davis, Q.C., for the defendant.