Vol. III. AUGUST-SEPTEMBER. No. 7

The BARRISTER

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21	.63	7.56	34	.76	9.12	47	1.50	19.20
22	.64	7.68	35	.78	9.36	48	1.90	22.80
23	.65	7.80	36	.80	9.60	49	2.20	26.40
24	.66	7.92	37	.83	9.84	50	2.50	30.00
25	.67	8.04	38	.84	10.08	51	2.60	31.20
26	.68	8.16	39	.86	10.32	52	2.70	32.40
27	.69	8.28	40	.90	10.80	53	2.85	34.20
28	.70	8.40	41	.95	11.40	54	3.00	36.00
29	.71	8.52	42	1.00	12.00			
30	.72	8.64	43	1.10	13.20			

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The Barrister.

VOL. III. TORONTO, AUGUST-SEPTEMBER, 1897. No. 7.

EDITORIAL.

The following appointments have been made by his Honor the Lieutenant-Governor:—Mr. Thos. Murray, Sault Ste. Marie, to be local registrar and clerk of the District and Surrogate Courts of Algoma; Mr. William Hutchinson Hewson, Penetanguishene, to be Police Magistrate; Mr. Matthew Riddell, Galetta, to be clerk of the Fourth Division Court of the County of Carleton, instead of W. P. Taylor, resigned.

The Attorney-General of New South Wales is protesting against the very large charge of £6,000 made by the United States for costs of extradition of Frank Butler from San Francisco, as excessive and unwarranted, and says it would be better to let criminals remain abroad than to pay such enormous costs for their extradition. It is to be hoped that the efficient working of the treaty will not be blocked by causes of complaint of this nature.

At the recent session of the Ontario College of Pharmacy Council, the Infringement Committee reported that every part of the province was visited, and 114 cases were investigated, and fines and arrearages of fees to the amount of $590 were collected. The report further stated that the committee had received counsel's opinion against continuing the fight against the departmental stores. The committee claimed that the legislation governing the case was faulty.

According to the *Statist*, of London, Eng., the comparative figures of the estates in the United Kingdom with personalty of £100,000 each and upwards disposed by wills reported during the first three months of the present year and last year, respectively, showed for 1897, thirty-five estates with an aggregate amount in personalty of £7,126,674, and for 1896, thirty-six estates with a total of £9,266,100. No estate with personalty exceeding £1,000,000 was reported up to March 31 in this year. During the quarter which ended June 30 last there were two estates of over £1,000,000 each. Several estates with personalty over £100,000 each in gross value, but of less than that amount in net value, have been reported during the half-year, but these are not included in the above.

A Toronto alderman, who is not a lawyer, is reported to have said at a recent Council meeting that an injunction would be "easily procurable" to restrain the continuance of a prize fight picture exhibition if a

Municipal by-law were passed prohibiting exhibitions of that character. The alderman's view appears to be that it is wholly optional with a municipality either to take quasi-criminal proceedings to enforce the penalties provided by law, or to apply to the Superior Court for an injunction to prevent the commission of the offence. Happily government by injunction in furtherance of criminal law or of municipal police powers has not invaded Canada, but public utterances of the class mentioned, made by persons who should know better, have given rise to much misconception of legal administration, and a popular idea that interim injunctions can be had for the asking.

The Imperial Law Officers of the Crown have delivered their opinion in the matter of the Canada Customs tariff of 1897 and the Imperial treaties with Germany and Belgium, as follows :

"The Law Officers advise that the Crown is bound by the German and Belgian treaties in respect of trade between those countries and Canada; that the obligation in these treaties that the produce of Germany and Belgium shall not be subject to any higher or other duties than those which may be imposed upon similar articles of British origin is absolute and unqualified, and as the United Kingdom has been admitted to the benefit of the reciprocal tariff, Germany and Belgium are entitled to it also.

"The Law Officers advise also that on the admission of Germany and Belgium the benefit of the reciprocal tariff must be extended to all countries entitled in Canada by treaty to most-favored-nation treatment in tariff matters. Notice was given on the 30th of July to terminate the treaties, and in the meantime effect should at once be given, in accordance with the undertaking given by your Ministers, to the Law Officers' decision, and excess of duties levied repaid on demand."

The Supreme Court of Wisconsin has handed down an interesting decision in the case of Wertheimer v. Saunders, holding that a landlord who, at the request of his tenant, undertakes to put a new roof on a building is liable for injury to the tenant from the negligent conduct of the work, the same as if he were bound by the lease to do the work, and the fact that the work is being done for him by an independent contractor is not sufficient to release the contractor from liability for injury to the tenant's property in the building if it is rained on owing to the negligent manner in which the roof was being put on. Although not bound by the lease to have the work done, and although having it done through the medium of a contract with third parties, the court holds that the landlord, in entering upon the work, owed the tenant a particular duty in the premises, viz., that reasonable care and caution should be used in conducting the work of taking off the old roof and putting on the new one to prevent any injury to the property of the tenant. The court says that this is an absolute duty imposed by law, for the work to be done was naturally attended with risk and danger to the property of the tenant by reason of its exposure to the elements. One upon whom the law devolves a duty cannot shift it upon another so as to exonerate himself from the consequences of its non-performance. Shearman and Redfield on Negligence, 174 to 176; Wood's Master and Servant, sec. 316; Promer v. R. R. Company, 90 Wis., 220; same case, 63 N. W. Rep., 90; R. R. Company v. Morey, 47 Ohio State, 207.—*Law Student's Helper.*

A trial in which the newspaper editors and publishers were deeply interested was concluded recently in Washington, D.C., the result being a victory for the defendant, John S. Shriver, a newspaper correspondent, who was on trial charged with con-

tempt in refusing to answer questions as to the source of his information in relation to the sugar trust investigation. Judge Bradley, who presided at the trial, ordered the jury to bring in a verdict of not guilty, which they did without leaving the box. The court based its decision on two points, viz.: First, that the witness had not been legally summoned by the Senate investigators; and, second, that the question asked him was not pertinent. The contention of the defence, which was ably conducted by former Judge Dittenhoeffer, that newspaper men are privileged as a class, the same as are priests, lawyers and physicians, with respect to communications made to them in confidence, the court refused to sustain, but as the court did, on the other hand, hold that to ask the witness the name of his informant was not a pertinent question, counsel for the defence assert that a precedent is established which virtually brings newspaper witnesses within the privileged class.—*Albany Law Journal.*

The Ontario Government have passed an Order-in-Council remitting penalties incurred by companies for failure to add the full word "limited" to their corporate name. The order is as follows: "Upon consideration of the report of the Attorney-General, dated 12th August, 1897, his Honor the Lieutenant-Governor, by and with the advice of the Executive Council of the Province of Ontario, has been pleased to order that all penalties which up to the date hereof have been incurred by any company by reason of its failure to have the unabbreviated word 'limited' appended or affixed to its name as the last word thereof, in accordance with the provisions of the Act of last section, 60 Victoria, chapter 28, be remitted."

Mr. M. B. Jackson, Official Referee, Osgoode Hall, is to be commended for the stand he has taken in respect to the practice of addressing the presiding officer in Chambers as "my lord," a custom which probably arose from the fact that at one time the session of the Master in Chambers was largely the students' court, where it was desirable that they should become familiarized with the manner of address to be used before the judges. Mr. Jackson presided in Chambers during part of the vacation, and on being addressed by counsel as "my lord" took occasion to say that he did not desire to be credited with a title which was not his right. The referees and the masters are not judges, nor are they appointed by the Federal Government, in which alone the power of judicial appointment is vested under the constitution. The learned Master in Ordinary, Mr. Thomas Hodgins, Q.C., whose duties are of as judicial a nature as those pertaining to any office at the Hall, has on several occasions taken similar objection to being so addressed. It is to be hoped that now that attention is called to the matter, the line will be drawn where it belongs. A County Court judge exercising both civil and criminal jurisdiction of a very extended character is simply "his Honor," and "his Honor" he remains, although he may be a Surrogate Judge in Admiralty of the Exchequer Court of Canada, a Federal court, as compared with the Provincial High Court of Justice at Osgoode Hall. Is it not by courtesy only that superior court judges are called their lordships, and can the courtesy be stretched another degree?

Legal Federation is in the air. Mr. Hazell asked the Secretary of State for the Colonies whether it would be practicable to invite the Colonial premiers while visiting London to consider the desirability of bringing before their respective governments the need for making the conditions of admission into the various professions uniform throughout the Empire,

so that a person entering a profession in any part of it might practice it in any other part without more difficulty than if he remained in the country in which he originally qualified. Mr. Chamberlain said "I shall be glad to see progress made in this direction, and hoped to see the Colonial Solicitors Bill passed this session, but there are so many subjects of pressing importance to be discussed that I fear it will be impossible to consider the details of this question with the premiers." What guarantee will there be that all the examinations are of equal standard?—*Law Notes.*

JUDICIAL ROBES.

In our last issue we took occasion to comment upon a recent article in the *American Lawyer*, which strongly condemns the wearing of gowns by judges, and which, by the way, that magazine now says has awakened a "responsive chord" among the members of the legal profession. A correspondent calls our attention to an article in the *American Lawyer* of January, 1896, which indicates that that able magazine tried the other "chord" first. The last mentioned article was as follows:

"The decision of the justices of the new Appellate Division of the Supreme Court, for the district embracing New York city, to wear gowns when upon the bench, is a commendable return to a practice which was followed by the court up to 1846. Forms have their uses, and it is undeniable that the wearing of a specially regulated dress is a useful idea in public business. The sombre gowns of the judiciary add to the impressiveness of the court, and no sensible means to that end should be omitted. Why the gowns were ever discontinued is not very clear, and we should be glad to see them adopted by all like courts."

We suppose the reader is to take his choice.

THE SANITARY OATH.

Mr. Justice Cave, of England, favors the administration of the oath by the method of the uplifted hand. In a case tried recently he said to a witness: "Why do you not be sworn according to the Scotch system? I like to see it much better than kissing the book, as even the inside of the book becomes dirty, as it generally opens at one place. Some witnesses think judges object to their not kissing the book; I have not the slightest objection, and like to see witnesses sworn in the Scotch fashion." But some judges do not like it at all. One of them sarcastically described the oath taken in Scotch fashion as "the sanitary oath."

STARTING TO PRACTISE.

Almost the first question to be decided by him who has determined to embark in a general legal practice is: Where shall I locate? A lawyer can hardly be a specialist in a rural community, and scarcely anything else in a very large city. The novice intending to practice law generally, should avoid beginning in a metropolis, as there practice inevitably runs to specialties and distinction (which usually means income) in many branches is rarely attained. The famous general practitioners of a large city are either those who won a reputation elsewhere or succeeded to a practice that some one else founded. For other reasons the young lawyer should avoid opening his office where there is not sufficient business and rivalry to afford scope to his powers and yield a fair return for his skill and labor. Let him, however, not fail at the very outset of his career to master the practice in his jurisdiction; he must know thoroughly all the practice acts. And he must keep on knowing them, all the time, as fast as they change in any particular. He must be master

of all the rules of court and have a full and an accurate knowledge of all the general statutes, and then keep abreast of all legislation. He must know all the technical rules of pleading, and right here let it be said, no matter how much legislation in his state may have modified and altered the common law system of pleading, no matter how easy the statutes may have made escape from the consequences of mistakes in pleading, a knowledge of the theories and principles of common law pleading never gets obsolete, courts constantly revert to them, and familiarity with them often proves of great value. He must know the jurisdiction and powers of the court he practices in, and all the procedure from the very beginning of a litigation, on through the trial and review on appeal, to final judgment and execution. Indeed, in a trial especially he must know how and be able to cope with every emergency that arises, instantly, without reference to books at all. In short, he must know everything relating to the methods and manner of reaching results in every ordinary proceeding in a court of justice.—*J. B. Green in Law Students' Helper.*

CORPORATION REFORM.

The first step to protect innocent stockholders, as well as creditors, is to throw greater safeguards about the incorporation and commencement of business. The raison d'etre of corporations aggregate at common law was to avoid the inconvenience of a partnership comprising a large number of members. If so many enter the business that they cannot well conduct it by reason of numbers, a corporation is proper; otherwise not. Therefore, no less than seven persons should be allowed to do business as a corporation. A less number should be forced into partnership action and liability. This is the law in France and some of the states. It is absurd to allow three to incorporate; it is so utterly needless. There is no difficulty in three conducting business as partners. These small numbers incorporate only to float some concern that has become shaky, or to launch a wild scheme. Their sole object is to avoid liability and shift the loss on innocent strangers if they fail; yet they get all the profit if they succeed.

All the capital stock should not only be subscribed, but all actually paid up at par value, so that real assets of the company when incorporated will equal the capital stock. All the stock must be subscribed before incorporation in Belgium, France, Germany and Massachusetts and by the United States National Bank Act. The purpose of it is to prevent a company from imposing on the public by representing that it has $1,000,000 capital when only $1,000 has been subscribed for. It tends to establish in the minds of the uninitiated a false notion of the company's credit. The corporation should not be allowed to sail under such false colors. If the stock is not all subscribed, it should be prevented from advertising more than what had been subscribed. Better than this would be a requirement that they print on their stationery, etc., the amount paid in cash; or, better still, the true excess of assets over liabilities, as shown by their last report.

All the stock subscribed should be actually and fully paid up before incorporation. Upon this proposition most students of the matter agree, although in the states great diversity exists. In Massachusetts no corporation shall transact business until the whole amount of its capital stock has been paid in, and a certificate of that fact, and of the manner in which it has been paid, signed and sworn to by the president, treasurer and a majority of the directors, has been filed in the office of the secretary of the commonwealth. In Washington State three-fifths must be paid in before incorporation is complete; in

the District of Columbia and Missouri, one-half; in France and Vermont, one-fourth; in Alabama, Connecticut and South Carolina, 20 per cent.; in California, Delaware, Florida, Georgia, Pennsylvania and West Virginia, 10 per cent.; in New York, $500; in Indiana nothing.

The purpose of requiring the stock subscribed to be fully paid in before proceeding to do business is to secure creditors, as the money due the corporation from them should be in the treasury instead of the pockets of the promoters, whence it may never come. Also, full payment is required to put the business squarely on its feet at the outset, and thus protect the stockholders. Experience has shown that the rock upon which most corporations have foundered was lack of sufficient working capital at the beginning. It is as absurd to permit a $1,000,000 corporation to begin business with $100 as the reverse. It indicates fraud and too feverish a speculative spirit, both of which should be prevented by our corporation laws. The faith of the promoter should be tested by requiring him to pay up in full in advance, proper allowance being made for his services as promoter. As it is, promoting is largely the art of a defrauder. It is a fine art, and has all the elements of the gold brick fraud. The promoter usually contributes to the corporation nothing but glowing plausibility, and after it is launched often scuttles the ship.

In paying for stock the full face value thereof should in all cases be required to be paid in cash or its full equivalent in property or labor done. The statutes of many states already have this provision, but provide no effectual mode of enforcing it. The word of the promoters or officers is taken, but their doctrine is that the stock is paid up when the management is satisfied. All business men know that a large part of corporate stock is transferred for a song, and most of the remainder for ten to twenty per cent. of the face value. A patent of doubtful validity and value, or an oil well, or equally dangerous asset, is put in at a fabulous sum. All this child's play should be prevented, and the letter of the law enforced. The problem, however, is a most difficult one.

In France, when anything besides cash is offered in payment of stock, its value must be determined by a special meeting of all the stockholders. The persons interested cannot vote. At such meeting a committee must be appointed to determine the value and report to the stockholders at another special meeting, where the value is fixed by a vote. The resolutions at all these meetings must be signed by all the stockholders.

In Massachusetts a statement that the valuation of the property offered is fair and reasonable must be made, signed and sworn to by the president, treasurer, and a majority of the directors, and endorsed by the State Commissioner of Corporations, and filed with the Secretary of State. Of these two methods the latter is the better. The French method is clumsy, and if all the stockholders at the time are promoters, as is often the case, it would be no safeguard. Under the Massachusetts rule the only reliable check is the Commissioner of Corporations. It is deemed advisable, therefore, for the law to forbid any stock to be issued until the Commissioner of Corporations, if there be one, or the County Auditor, or some other proper official, has examined the payment or property offered, and has certified on the back of the certificate that the stock has been fully paid up at par in cash or its actual equivalent. And an officer of the corporation violating this provision should be imprisoned, not fined.

Such a provision would also prevent the watering of stock after the corporation has begun business. It is needless to point out the harm of this habit of corporation managers.

Especially is it harmful in quasi-public corporations. It should be stopped, and would be by the above method. Most of the states have already enacted that stock shall not be issued below par, or that fictitious stock shall not be issued, or that stock shall not be issued for anything but money or property received, or labor done. But these statutes provide no sufficient means of enforcing the provisions. In Indiana there is no provision of any kind about this whole matter of honestly paying for stock, and we know from experience that in this respect many of our corporations are farces, and all the transactions relating to the issue and payment of stock are purely fictitious. They are made only on paper. This is very harmful to creditors, stockholders and the public, and is not excusable. —*V. H. Lockwood in National Corporation Reporter.*

BUILDING COVENANTS.

Building covenants are inserted in building agreements, leases and conveyances with the object of providing for the building of houses of prescribed description and value, restricting users of the land in prescribed manner, the making of roads, sewers, drains, and other similar objects, says the *Contract Journal*. Although the vendor propose to sell the whole of his land absolutely, yet if he does so in several lots it will be important to insert restrictive covenants to prevent the land being used for purposes other than those for which it is sold, for otherwise some lots may be used in such a way as to decrease the value of the remaining lots.

A covenant by a person to build such a house as he should think fit binds him to nothing, as a promise cannot be conditional on the mere will of the promiser. Where a lessee covenanted to repair buildings comprised in the lease, and, further, within the first fifty years of the lease to take down the demised messuages as occasion might require, and in their place erect not less than four other good and substantial brick messuages, it was held that, if the lessor had the original houses substantially as good as new in the course of fifty years by being repaired, the covenant would be satisfied, and the lessee need not actually rebuild (Evelyn v. Raddish, 7 Taunt., 411). But where certain premises in a state of dilapidation were demised, and the lessee covenanted to new build the brick houses within three years, he must rebuild the whole, it was held that making extensive repairs by pulling down and rebuilding the fore and back fronts was not a performance of the covenant (city of London v. Nash, 3 Atk., 512). A covenant entered into by the owner of certain land with a purchaser that an adjoining plot "should never be hereafter sold but left for the common benefit of both parties and their successors," is enforceable, and does not contravene any rule of law (McLean v. McRay, L.R. 5, P.C. 327). When land is sold in lots, and there are mutual restrictive covenants by the purchasers that the land shall not be used so as to create a nuisance to the original vendor, or the occupiers or proprietors for the time being of the "adjoining" property, the word "adjoining" means the property adjoining each lot, and not merely the property adjoining the whole piece of land originally sold; and the owner of any lots is entitled to enforce the covenant against the owner of any other lot. A covenant for "the free use of the newly intended road whenever the same may be made," will not apply to a road which, when the parties contracted, was newly intended to be made, but was executed and completed before the sealing of the deed (Crisp v. Price, 5 Taunt., 548). Land having been laid out for building, and streets projected across it, the defendant bought one plot with a right of way over the projected streets, the ven-

dors reserving a similar privilege over the street in front of the plot sold; and the defendant covenanted with the vendors that he would not erect any building on the plot within the distance of six feet from the intended streets. It was held in the case Child v. Douglas (1 Ray, 560) that a subsequent purchaser of a neighboring portion of the land might obtain an injunction against the first purchaser to restrain him from infringing his covenant, and this whether the plaintiff at the time of his purchase knew of the existence of the defendant's covenant or not, as the plaintiff must be taken to have bought all the rights connected with this portion of the land, especially if he has bound himself by a similar covenant. An owner of building ground upon which the houses of uniform height and depth had been built sold it in plots, and conveyed each plot in fee, subject to a perpetual rent charge, and each purchaser covenanted with the grantor that there should be no trees or any building whatever in the garden that should exceed the level of the parlor floor; it was held (Western v. McDermitt, 2 L.R., Ch. 72) that it was a breach of covenant to erect any building above the prescribed height extending beyond the back of the house, though the ground upon which it was built was never used as a garden. Where a covenant was that "no buildings" except dwelling-houses not to cost more than £200 each to front with the road should be erected on certain land, and the defendant, having thrown the land into pleasure ground, built a garden wall alongside the road eight feet six inches high, and in one part eleven feet high, behind which part he also erected a vinery with a roof leaning against the wall; it was held (Bowes v. Law, L.R. 9, Eq. 636) that the building of the wall to the height of eight feet six inches was not a breach of covenant, but that the building of the wall to the height of eleven feet and the erection of the vinery were breaches of the covenant. The erection of wooden hoardings for the purpose of advertisement, fastened to the premises, is a breach of covenant not "to erect or make any building or erection on any part of the demised premises." But the erection of an advertisement boarding is not a breach of covenant that any "building" which should be erected on the land should be of a certain height and have a stuccoed front and slated roof, and be used only as a dwelling-house (Foster v. Fraser, [1893], 3, Ch. 158). A covenant in the purchase deed of a house in a terrace that no building shall be erected on any part of the land of the vendor lying on the other side of the terrace, and opposite to the plot of land thereby conveyed, applies only to the part of land which is immediately opposite to, and is the width of the plot conveyed. The right to a prospect can be acquired only by grant or covenant, and not by prescription. Where a lessor, pending an agreement for a building lease, represented to the intended lessee that he could not obstruct the sea view from the houses to be built by the lessee, pursuant to the proposed lease, because he himself was a lessee under a lease of 999 years, containing covenants which restricted him from so doing; but after the building lease had been taken, and the houses built upon the faith of this representation, the lessor surrendered his 999 years' lease, and took a new lease, omitting the restrictive covenants, the Court restrained him, by injunction, from building so as to obstruct the sea view.

A covenant by the lessee to "rebuild" a house on the site of the demised messuage, which he covenants to pull down, involves no obligation to build a new house in the same manner, style, and shape, or with the same elevation, as the old building. If it is intended, therefore, that the

house should be rebuilt in the same style, the covenant should be so framed as to clearly express this agreement. Bay windows carried from the foundation to the roof, and projecting three feet beyond the line of existing houses are a breach of covenant not to erect any "building" nearer to the road than the line of frontage of the then present houses in that road, and to observe the straight line of frontage with the line of the houses. Where, at the date of the covenant, the houses were already built, and the covenant prohibited any trees or buildings whatsoever in the garden exceeding a certain height, it was held that "garden" meant the whole space from the back wall of the house to the extremity of the plot, although not used as a garden, and that a bow of eight feet at the rear of the house, and above the prohibited height, was a violation of the covenant. If building land is to be laid out with private residences, a covenant is inserted to restrain the lessee from erecting any buildings on the premises to be used for carrying on trades or businesses generally or to particular businesses. A covenant restrictive of the user of premises is not void as being in restraint of trade; such a covenant in a lease runs with the land. A covenant not to carry on any trade, business, or calling in a house, or to otherwise use or suffer to be used, to the annoyance, nuisance, or injury of any of the houses of the estate, is broken by carrying on a girl's school, and the covenantee does not waive the benefit of the covenant though he has permitted other houses held under the like covenant to be used as schools (Kemp v. Sober, 1 Sim. N.S 516; Johnstone v. Hall, 2 C. and J. 414). The object of the covenant, sometimes, is to restrain the erection of buildings for the purpose of carrying on certain specified trades or businesses only, and in such cases questions may arise as to whether a particular trade is within the meaning of the covenant. Such a prohibition goes only to those trades or businesses which are actually specified, and implies that other trades may be carried on. The test whether a covenant not to carry on a "similar business" to that of the lessor has or has not been broken, is whether the one business is sufficiently like the other to compete with it. A covenant that land should not be used "as a site for any hotel, tavern, public-house, or beerhouse," nor "should the trade or calling of an hotel or tavern keeper, publican or beershop keeper, or seller by retail of wine, beer, spirits, or spirituous liquors" be "used, exercised, or carried on at or upon" the same is not broken by the sale of wines and liquors in bottle by a grocer in the course of his trade. Nor is a covenant not to use premises as a public-house, inn, tavern, or beershop, or for the sale of wine and liquor, broken by the sale to members of a club for the benefit of the club held on the premises. Nor, apparently, by the user as a private hotel—i.e. by sale only to guests and travellers staying at the hotel. But a covenant to use the premises "as and for offices, and the storage of wines and liquors only," is broken by selling wine by the glass; and a covenant not to permit any house to be used as a beershop or public-house is broken by the sale of beer in the shop, in pursuance of an Excise retail of beer to be consumed off the premises.

If the covenant provide against the exercise of certain trades or businesses, specifying them, "or any other offensive trade," omitting the words "or business," the Court will not extend to the word "trade" in the latter part of the sentence the meaning of the word "business" in the former part; but will treat the word "trade" as applicable to the dealing by buying and selling only, for every business is not a trade, though every trade is a business. In

some cases there is only a general covenant, which is so framed as to restrain the erection of houses and buildings for the exercise of offensive trades or businesses, or to prohibit occupations which may be a nuisance or annoyance to the other tenants of the lessor: and in constructing such covenants much will depend on the situation of the premises and the particular circumstances of each case. The word "nuisance" in a covenant is sufficient to prevent an act causing annoyance only. "Annoyance" and "grievance" are wider terms than nuisance, and include anything that will disturb the reasonable peace of mind and pleasure of an ordinary sensible person, although it do not amount to physical detriment to comfort. Where the covenant prohibits the erection of buildings for the exercise of trades which may grow to the annoyance or damage of the lessor, etc., without his written license, the mere fact of the lessor's suffering the tenant to carry on one trade will not, afterwards, authorize the carrying on of another without his written license.

In framing covenants against nuisances and trade in building leases, it should be observed that the omission of the words "offensive trade, business, or occupation" may be of very great importance to the lessor, having regard to the liability of the owner or occupier of land both at law and in equity in respect of nuisances committed, or caused, by those whom he brings on the land, or at any rate where he licenses the acts causing the nuisance. The landlord may not be liable where a nuisance is caused by the act of a tenant, yet if the act is one expressly contemplated in and authorized by the lease, the landlord may be liable for any injury caused thereby, although the tenant, if sued, might have no defence to the action.

Lands were conveyed to A for the purpose of erecting villas upon them. By the conveyance parts were allotted for roads, and it provided that the owners and occupiers of the villas should at all times have a full and complete right of road or passage over, along, and upon the same, in as absolute a mode of enjoyment as if the same were public roads; and A entered into a covenant to that effect. Villas were built upon the land, and let to several persons. Some of the lessees, without the consent of the others, requested a gas company to open up the roads and lay down pipes for the supply of gas to their villas, which the company accordingly proceeded to do. On a bill by the devisees of A for an injunction to restrain the company from so doing, it was held that whether the roads were public or private, the devisees were bound by his covenant, and that the occupiers of the villas were entitled to have gas laid on to their houses (Selby v. Crystal Palace District Gas Company, 31 L.J., Ch. 595).

A JUDGE of Janesville, Wisconsin, granted a decree of divorce to a woman whose husband puffed tobacco smoke through the keyhole of a door leading into a room where her mother lay sick.

The Ohio Legal News says: "They have a good one just at present on a well known Bangor lawyer who is noted for his absent-mindedness. He went up his own stairs the other day, and seeing a notice on his door, 'Back at 2 o'clock,' sat down to wait for himself."

U. S. Senator Voorhees once had succeeded in delivering an appeal which had brought tears to the eyes of several jurymen. Then arose the prosecuting attorney, a gruff old man, with a piping voice and nasal twang. "Gentlemen," said he, deliberately, "you might as well understand from the beginning that I am not boring for water." This proved so effectual a wet blanket to the emotions excited by Mr. Voorhees that he realized the futility of his own "boring."

NOTES OF CASES, ONTARIO.

FIFTH DIVISION COURT, Northumberland and Durham. KETCHUM, J. J. | AUG. 3, 1897.

KERR v. ROBERTS.

Chattel Mortgage—Renewal.

Plaintiff and defendant were mortgagees of the same chattels; defendant, under a mortgage made in December, 1889, and plaintiff under one made in February, 1894. Both mortgages were made in good faith and for valuable consideration. The plaintiff's mortgage was duly renewed in 1895, 1896 and 1897. Statements, duly verified and intended to renew defendant's mortgage, were filed in each year from 1890 to 1896 inclusive. Payments were made on defendant's mortgage in 1890, 1891, 1892 and 1896, that in 1890 being the interest payable under the mortgage for that year. In the statements filed on renewal, each of these payments was shown and credited, but in the statement of the year in which it was made only. Thus the statement of 1891 contains no reference to the payment made in 1890, and shows and credits the payment made in 1891 only. The statement of 1892 contains no reference to the payments made in 1890 and 1891, and shows only the payment made in 1892. The statements of 1893, 1894 and 1895 contain no reference to any payments, and show none; and the statement of 1896 contains no reference to the earlier payments, and shows only the payment made in that year. And the statements as to payments made are, in effect, as follows: In 1891 and 1892, that no payments have been made on account of the mortgage, except the payment made in that year; in 1893 and 1894, that no payments have been made on account of the mortgage *since last renewal;* in 1895, that no payments have been made on account of the mortgage; and in 1896, that no payments have been made on account of the mortgage, except the payment made in that year. But the mortgage account, in the statements after 1891, is carried on from year to year as a continuous account, balanced yearly, beginning in each case with the balance or amount still remaining due at the date of the former statement, and dealing only with the charges and credits of that year. In the statement of 1891 the account begins as follows: "Principal, $150.00." A charge for interest for a year, and another for costs of renewal, are added, and the payment of that year is deducted, leaving a balance of $136 as the amount still remaining due. The account in 1892 begins with that balance, described as "Principal as per last renewal, $136,00," to which charges are added for interests and costs, and the payment made in 1892 is deducted, leaving a balance that is carried forward as the beginning of the account in the following year. This process is repeated in each of the succeeding years, except that, as already stated, there is no credit or deduction in any year in which no payment was made, and in each statement the first item in the account is referred to as being the balance shown by the previous statement. There is, also, in each of the renewals from 1891 to 1896 inclusive a statement that the mortgage had been previously renewed, mentioning the year or years in which it was so renewed. In April, 1897, the defendant seized and sold the chattels under his mortgage, and received the proceeds, amounting to $135. The plaintiff sued to recover those proceeds, claiming $100 and abandoning the excess, contending that the defendant's mortgage had not been legally renewed, and that it had ceased to be valid as against him. For the defendant, it was argued that the course pursued in the re-

newals was a substantial compliance with the provisions of the Act, and that, as sec. 11 (of R.S.O., ch. 125, sections 14 and 17 of the Act of 1894 being re-enactments of sections 11 and 14 of R.S.O. reference is made only to the latter) requires a statement that manifestly covers only the preceding year, the statements under sec. 14 will be "in accordance with the provisions of sec. 11," if they also are each confined to the transactions of the preceding year; and it was stated that this is the view and practice of many able and careful lawyers. It was also argued that in any case the earlier statements being on file and open to inspection, and being referred to in the later ones in the manner described, might and should be read with the later statements, so that each statement shall include all prior ones and show all the payments made; also, that there being no fraud or improper motive on the part of the defendant, and all the payments being duly credited, the error (if there is error) should be held to be immaterial and not fatal to the security; also, that the plaintiff's cause of action (if any) is one under sec. 70*a* of the D.C. Act, in which the jurisdiction of the Division Courts is limited to $60.

There was no attempt to correct the statements under sec. 15 of the Act of 1894.

Held that the words in sec. 11 "and showing all payments made on account thereof" (which must be deemed to be incorporated in sec. 14 by the language of that section), and the words of the form, schedule B, "No payments have been made on account of the said mortgage," or, "The following payments, and no other, have been made on account of the said mortgage," are plain, and cannot be judicially construed to authorize the omission of payments that have not been made within a year, and that, to satisfy the plain requirements of the Act, every statement on renewal must show all payments made on account of the mortgage *since the date of the mortgage*.

That the earlier statements in this case cannot be read with, or in aid of, the later statements, so as to supply to the latter information required by the Act, which they lack: for, first, sec. 14 requires "another statement," that is, a separate and distinct statement from that required by sec. 11, and from any previously filed under sec. 14; secondly, the earlier statements were not filed with the later ones, or within the thirty days mentioned in sec. 14, and statements filed prior to the thirty days mentioned are of no effect as renewals under that section, Beaty v. Fowler, 10, U.C.R. 382; Griffin v. McKenzie, 46, U.C.R. 93; and, thirdly, if a statement filed in one year could be re-filed with the statement of the following year, it could not be read in aid of the latter, unless it was referred to in the later statement in such a manner as to make it a part of that statement, and the references to the earlier renewals and statements contained in the later ones, in this case, are insufficient to connect the earlier with the later as parts of one statement.

Held also, though admitting the good faith of the defendant and the hardness of the decision in his case, that the object and purpose of the Act demand a strict construction and observance of its provisions in all cases where a departure from that course would sanction questionable methods, which, though innocent and harmless in some cases, might in other cases be used for a fraudulent purpose; and that, where the statute expressly requires that certain information shall be given in a statement the omission of that information from the statement, whether intentional or otherwise, must be regarded as a material omission and fatal to the validity of the statement and of the security.

Held, therefore, that defendant's

mortgage ceased to be valid as against creditors, and subsequent purchasers and mortgagees in good faith, in December, 1891, and that plaintiff was entitled to recover.

As to the question of jurisdiction, held that a person whose goods have been wrongfully taken and sold by another, and who waives the tort and adopts the sale, may recover from that other person the proceeds of the sale received by him to an amount not exceeding $100 in the Division Court, the cause of action being the breach of an implied contract by the defendant to pay over the proceeds to the plaintiff, and within sec. 70 *b* of the D.C. Act.

Judgment for plaintiff for $100 and costs.

J. W. Kerr, plaintiff, in person.

E. C. S. Huycke for defendant.

* * *

CHAMBERS.] [AUG. 3.
FALCONBRIDGE, J.]

TRIPP v. PAGET.

Solicitor—Witness Fee—Lapse of Certificate.

Appeal from præcipe order changing solicitor for plaintiff, and from order of Master in Chambers allowing plaintiff to issue execution.

Held, that under the present practice there is no provision for payment of costs before granting the præcipe order changing a solicitor, see Rule 463 and cases cited in Holmsted and Langton, pp. 467-8. The fact that a solicitor does not take out his annual certificate would not prevent his getting costs as between party and party from the other side (Scott v. Daly, 12 P.R., 610).

Held, also, that when a solicitor has made an affidavit on a motion as to a question of fact, he is entitled only to the ordinary witness fee with subpœna for cross-examination; and if the subpœna and appointment are not only for his cross-examination on affidavit, but to give evidence on a pending motion, the opposing counsel is entitled to examine or cross-examine generally.

H. E. Caston claiming to appear for plaintiff.

C. E. Hewson for defendant.

J. F. Canniff for W. H. Hewson, solicitor for plaintiff under præcipe order.

* * *

TRIAL COURT.] [AUG. 11.
FALCONBRIDGE, J.]

FLINT v. HUNT.

Title by Possession—Mistake of Title—Improvements.

Action tried at Ottawa, brought to recover possession of lands. The defendant claimed title by possession, and in the alternative asked allowance for improvements as made under mistake of title. The learned judge finds, as facts, that the defendant's father was the tenant of plaintiff, and her predecessors in title, and that the defendant knew, or could have easily ascertained, that he had no title, and that no sufficient possession was proved.

Held that, where the case is that of a stranger building on land which he knows to be the property of another, there cannot be invoked in his aid any doctrine of equity apart from the statute, Ramsden v. Dyson, L.R., 1 H.L., 129, followed; and the statute does not apply where, as here, the improvements were not made under belief of ownership. Judgment to be entered for plaintiff for possession of land, with $60 mesne profits, and full costs of action.

Hutcheson (Brockville) for plaintiff.

Watson, Q.C., for defendant.

* * *

TRIAL COURT.] [AUG. 11.
FALCONBRIDGE, J.]

KUNTZ v. MESSNER.

Fraudulent Preference — Antecedent Promise — Costs.

Action brought by assignee for benefit of creditors of defendant Messner to set aside as fraudulent and void an assignment of mortgage dated November 17th, 1896, made by defendant Messner to defendant Kieffer, for the expressed considera-

tion of $1,050. The defendant Kieffer made two promissory notes, dated respectively May 5th, 1896, and September 1st, 1896, payable six and three months after date, for $1,000 and $500, in favor of Messner, and for his accommodation, and Messner promised at the time of the making of the first note to give him "land security." Messner assigned for benefit of creditors on December 16th, 1896. The assignment of mortgage was registered December 4th, 1896. This promise, though general in its terms, is sufficient to support the security, Lawson v. McGeoch, 20 A.R., 464. The circumstances of the case, however, justified the plaintiff in making this enquiry, and therefore, though the action must fail, it is dismissed without costs.

O'Connor, Q.C., for plaintiff.
Shaw, Q.C., for defendant.

* * *

MACMAHON, J.] [AUG. 10.

DWYER v. CITY OF OTTAWA.

Injunction—Appeal—Stay of Proceedings.

Motion by plaintiff to commit S. Bingham, the Mayor of Ottawa; Edward Wallace, Chairman of the Board of Works, and R. Surtus, engineer of the city, and A. A. Maclean, president of defendants, the Canadian Granite Company, and John Charles Roger, its manager, for contempt, for breach of injunction granted by Robertson, J., restraining defendants, the corporation, from paying over certain moneys to their co-defendants, the company, and defendants, the company, from continuing certain paving work upon certain streets in the city. The plaintiff had contended that the work forbidden had been proceeded with vigorously after notice of the injunction, and that the corporation had paid over to the company $10,000 in breach of it. The defendants had taken the steps required by the rules to prosecute their appeal.

Held, that the addition by Rule 1,487 (805) of the words, "and also all further proceedings in the action in the Court appealed from shall be stayed," to the provisions of former Rule 805, which are taken verbatim from the Judicature Act, 1895, ch. 12, sec. 78 (2), has much extended the wide construction to be placed upon the statute, and, therefore, from the express wording of the new Rule 1,487 when a notice of appeal has been given, and the appeal set down, and notice thereof signed by the registrar has been served as required, the effect is to stay all proceedings in the action in the Court appealed from, including an interim injunction. Motion dismissed. Costs to defendants in the action.

W. M. Douglas for plaintiff.
W. R. Riddell for defendants.

* * *

SUPREME COURT OF CANADA.] [MAY 1.

CONSUMERS' GAS CO. v. TORONTO.

Assessment and Taxation—Exemptions—Gas Pipes in Highways—Legislative Grant of Soil in Highway—Ontario Assessment Act, 1892.

Gas pipes laid under the streets of a city which are the property of a private corporation are real estate within the meaning of the "Ontario Assessment Act of 1892," and liable to assessment as such, as they do not fall within the exemptions mentioned in the sixth section of the Act.

By the appellant's Act of incorporation power was conferred upon them "to purchase, take and hold lands, tenements and other real property for the purposes of the said company, and for the erection and construction and convenient use of the gas works of the company, and, further, power was conferred by the thirteenth clause "to break, dig and trench so much and so many of the streets, squares and public places of the said City of Toronto as may at any time be necessary for the laying

down the mains and pipes to conduct the gas from the works of the said company to the consumers thereof, or for taking up, renewing, altering or repairing the same when the said company shall deem it expedient.

Held, that these enactments operated as a legislative grant to the company of so much of the land of the said streets, squares and public places of the city, and below the surface, that it might be found necessary to be taken and held for the purposes of the company and for the convenient use of the gas works, and when the openings are made at the places designated by the city surveyor, as provided in said charter, and they are placed there, the soil they occupy is land taken and held by the company under the provisions of the said Act of incorporation.

That the proper method of assessment of the pipes so laid and fixed in the soil of the streets and public places in a city ought to be as in the case of real estate and land generally, and separately in the respective wards of the city in which they may be actually laid.

Appeal dismissed with costs.

McCarthy, Q.C., and Miller, Q.C., for the appellant.

Robinson, Q.C., and Fullerton, Q.C., for the respondent.

* * *

MR. PROCTOR, Official Arbitrator.

WRIGHT v. CITY OF TORONTO.

Municipal Law—Deviation of Highway.

A municipality is liable under the Ontario Municipal Act, sec. 483, for damages done by closing and deviation of a highway (York Street) to the business of claimant, a tenant of hotel property abutting on the highway closed, and the municipality is liable to compensate claimant, although no by-law authorizing work was passed; that damage to business was recoverable, though no land was taken, and that claimant was entitled to compensation for future damage caused by deviation of highway. It was contended on behalf of the city that they had the right to close up York Street, below Esplanade Street, having acquired from the crown the right to the water lots in front of York Street, and that in thus using their property they were not legally bound to give any compensation to claimant, even though the destruction of the thoroughfare down York Street to the water front did cause the claimant damage. It was established that there was a public thoroughfare down York Street, passing the hotel in question to the water. That right was established by user for many years (if not by actual grant), and could not be destroyed by the corporation of the city without compensation to those specially injured. "The contention cannot be well founded that the municipality could, by acquiring the land or water lot at the foot of York Street, or any other street, fill it and thus stop up the approach to the water which the public may have for years enjoyed, without compensation to those specially injured beyond the effect on the general public. It is true that the municipality is the owner of the streets as trustee for the people, but it is equally well established that the corporation cannot alter or change the streets or use them for another purpose without compensation to any person specially injured. So that anyone holding or occupying property upon any such street so altered or changed or stopped up may claim compensation if his injury is of a special character. This doctrine is laid down in the American and English Encyclopædia of Law, volume 6, page 557." The claimant as the occupier of the premises is entitled to compensation for the injurious affecting of his interests; in other words, "owner or occupier" in the statute includes a tenant.

YORK COUNTY COURT.] [AUG. 6.
McDOUGALL, Co. J.]

CITY OF TORONTO v. TORONTO RAILWAY CO.

Municipal Assessment—Street Railway —Wires and Poles Assessable—Right of Appeal.

I have considered the objection raised in this appeal by Mr. Laidlaw, viz., that the right to appeal from the decision of the Court of Revision, provided for by section 68 of the Assessment Act, is conferred only upon the person assessed, or sought to be assessed, and is not open to the municipal corporation who assessed or omitted to assess the person or corporation complaining before the Court of Revision. To hold that when the legality of an act done by the municipal corporation has been questioned before the Statutory Court the decision of that Court cannot be reviewed at the instance of the corporation whose act is impeached, but may be questioned by the original complainant only, is repugnant to common sense and common justice. It would require express words of limitation to that effect to induce me to construe so narrowly a general clause giving a right of appeal against a decision of the Court of Revision. Section 68 says an appeal to the County Judge shall lie not only against a decision of the Court of Revision, but also against the omission, neglect or refusal of the said Court to hear or decide the appeal. It is urged that the limitation contained in section 76, confining the right of appeal to a Board of Judges to the person assessed, should be looked at as showing the intention on the part of the Legislature to limit the right of appeal, under section 68, to the party assessed.

The insertion of this limitation in section 76 appears to me to be rather an argument the other way, for without that limitation it is clear that the appeal to the Board of Judges could be open to either party to the original complaint before the Court of Revision. But this special Court for the hearing of particular appeals has no general jurisdiction to hear all appeals. It can be called into existence only, the Legislature says, if the person assessed desires it. It is a special right given to assessed persons, but it in no way affects the rights and privileges created by section 68, save where the amount involved is a certain sum and the person assessed alleges himself to be aggrieved. All other cases remain to be dealt with under the provisions of section 68. The Board of County Judges is therefore an alternate court of strictly limited jurisdiction. If not invoked *sub modo*, the County Judge possesses sole appellate jurisdiction; but the appeals he is directed to hear and determine are appeals against the decisions of the Court of Revision.

The person in whose favor the Court of Revision has decided cannot appeal; but the opposite party, or the person who has been unsuccessful in his contention before the Court of Revision, is the person entitled to appeal. Sub-section 6 of section 7*a* in the Assessment Act is a clause which clearly indicates this to be the intention of the Legislature. Section 7*a* deals with matters of special exemption of farm lands from certain local improvement taxes, and with by-laws to be passed in connection therewith, and giving a direct appeal to the County Judge in case the party assessed deems he is not fairly dealt with by the by-law. It makes, by sub-section 5, the practice and procedure under section 67, sub-sections 3, 4, 5 and 6, all the following sections, 69-74, applicable to appeals under section 7*a*. But for fear that there might be some doubt raised as to these provisions affecting or superseding the case of by-law appeals, the right to any appeal conferred by section 68, sub-section 6, is enacted, reading: Nothing in the

last two preceding sub-sections contained shall be deemed "to prevent or affect the right of appeal to the County Judge from the decision of a Court of Revision upon any appeal against an assessment." This puts the nature of the existing right to appeal to the County Judge to be an appeal from the decision of a Court of Revision upon any complaint against an assessment. In the case of the present appeal, the Court of Revision have decided against the assessment. The corporation of the City of Toronto have duly lodged an appeal against the decision. As County Judge I am bound to hear and determine that appeal. The objection to my jurisdiction to hear the appeal will, therefore, be overruled.

During the argument I dealt with the technical objections to the service of the notices, etc., and held that all services had been made, properly bringing the appeal before me.

It is now urged that the question to be determined, viz., the liability of the Toronto Railway Company to an assessment upon their rails, poles and wires is *res adjudicata*, it having been decided in an appeal from the assessment in question heard before the Board of County Judges in July last that the Railway Company are not liable to such assessment. It is true that this is the effect of the judgment pronounced by the judges composing the board; but the question had been already decided by the same two judges in an appeal heard in 1896. But since that date a judgment has been rendered in the Supreme Court of Canada in the case of the Consumers' Gas Company v. Toronto (May 1, 1897, not yet reported), affirming the liability of the Gas Company to assessment for their mains; and the Chief Justice of the Court, besides so holding, went on to point out that there was no distinction between gas mains and street rails, and stated expressly that the case of Fleming v. Street Railway Company, decided by the Court of Appeal, 37 U. C., R. 116, must now be held to have been wrongly decided. It was largely, though not entirely, upon the strength of this case of Fleming v. Toronto Street Railway Company that the two county judges decided, in 1896, that the rails, poles and wires of the Toronto Railway Company were not liable to assessment. In the later judgments of July last, Judge Dartnell says he expresses no opinion as to the effect of the Supreme Court decision in the Consumers' Gas cases upon the appeal then being considered, and reaffirms his former judgment on other grounds. Judge McGibbon says that the judgment in the Consumers' Gas case does not, in his opinion, govern this appeal.

The Chief Justice of Canada says, in the Consumers' Gas case: "I can see no difference between the case of pipes thus placed on the highway and pipes or mains placed or affixed under the surface of the land, the property of which might be in a private owner. The Court of Appeal were no doubt embarrassed by their previous decision in the case of Fleming v. Toronto Street Railway Company. The Chancellor attempted to distinguish that case from the present; but I confess I do not think it is susceptible of distinction. I was a party to that decision, but I do not hesitate to say that I now think rails were things affixed to the land, and as such liable to assessment as real property, and that the case was consequently wrongly determined."

I have to decide in this case—in which there is no appeal from me, sitting alone as County Judge—whether I shall follow the judgment of my learned county brothers or the judgment of the learned Chief Justice of Canada, and formulated in such precise terms as appear in the extract quoted by me from his recent judgment (not yet printed) in the Gas Company's case. With all

due deference to my recent colleagues, the Board of Judges, I feel that I must follow the latest judgment of the learned jurist who presides over the highest Court in our land.

It is unfortunate that this conflict of decision occurs; but I am bound to express my individual view, supported as it is by the judgment of the Supreme Court—a Court itself of appellate jurisdiction, and whose decisions are binding on all inferior Courts—rather than follow the opinion of my two learned brothers as expressed in a Court having only a co-ordinate jurisdiction with myself.

The appeal will be allowed, and the original assessment made by the Assessment Department against the rails, poles and wires of the Toronto Railway Company be restored to the roll.

I must decline to state a case under 57 Vic. (Ont.), cap. 51, section 5.

* * *

ROBERTSON, J.] [AUG. 4.

RE JOHN EATON CO., LIMITED.

Company—Winding-up—Assignment for Creditors.

Petition of Reid, Taylor and Bayne, creditors, for a winding-up order under R.S.O., ch. 129, and of Edward Hughes & Sons for a similar order. Where there will in all probability arise many questions of a complicated character, such as ascertaining contributories, and as to whether or not the stock of the company is paid up, and probably questions as to the assignment of the policies of fire insurance which could not properly be disposed of under the assignment for benefit of creditors already made, an order should be made for winding-up under the statute, notwithstanding the assignment, and notwithstanding that the desire of the majority of the creditors in point of number and value was for an ordinary liquidation under the Assignment Act.

The case of Re Hamilton Whip Co., 24, O.R. 107, is distinguishable, as in that case there were no complications and all the stock was paid up, while here it is certain that there will be complications arising out of the amounts of stock owing to the company by members of the co-partnership.

Order appointing provisional liquidator and for winding up, with a reference to the Master-in-Ordinary to issue to Reid & Co., the first applicants. Petition of second applicants dismissed without costs.

James Parkes, for Reid & Co.

Ritchie, Q.C., for E. Hughes & Sons.

Armour, Q.C., for assignee.

J. Baird, Strachan Johnston, W. E. Middleton and C. A. Masten for other creditors.

UNITED STATES.

GEORGIA.] [27 S. E. 174.

STODDER v. SOUTHERN GRANITE CO.

Fraudulent Release—Rescission.

The plaintiff was injured by defendant's negligence. Afterwards, while still weak in body and mind on account of his injury, he was induced through fraud to sign a paper purporting to be in full settlement of all claim for damages. For this paper plaintiff received twenty dollars, which sum he alleged that he was utterly unable to repay. Accordingly, he asked to be allowed to rescind the contract without returning its benefits. The Court denied this request (Atkinson, J., dissenting), laying down the general rule as applying alike to fraudulent contracts and to those of parties mentally incapable that a plaintiff desiring to rescind a fraudulent contract must offer and be willing to perform such acts on his part as will restore the defendant to the position which he occupied before the transaction.

U.S. CIRCUIT COURT OF APPEALS, THIRD CIRCUIT. [JUNE, 1897.

CLARK & CO. v. THE SIGUA IRON COMPANY.

Equitable Assignment—Litigation Agreement.

The defendants held $24,500 of the corporation plaintiffs' bonds as collateral security for the payment of plaintiffs' note of $30,000 held by them. The defendants agreed to surrender these bonds to the plaintiffs, and in consideration of such surrender the plaintiffs contracted to put in suit certain claims it held for stock subscriptions, and to place the litigation in the hands of attorneys to be selected by defendants, and that any judgments recovered should be assigned to plaintiffs, and any sums collected upon the stock subscriptions should be for the benefit of plaintiff and be paid to them. Held, that this constituted an equitable assignment of the stock subscriptions to the defendants.

ENGLAND.

HOUSE OF LORDS.] [JULY 29.

THE GRETA HOLME.

Ship—Damage by Collision—Remoteness of Damage.

The Mersey Docks and Harbor Board, who are the statutory conservancy authority of the port of Liverpool, claimed damages from the owners of the *Greta Holme* for the loss of the use of a dredger sunk by the negligence of those in charge of the *Greta Holme*. The Board alleged that they might have let the dredger at the rate of 100*l.* a week during the fifteen weeks she was under repairs. The Court of Appeal held that the damages were too remote to be recovered. The appeal was twice argued in the House—the first time on March 19 and 23 before Lord Herschell, Lord Macnaghten, Lord Morris and Lord Shand, and the second time on April 6 before the same noble lords, with the addition of the Lord Chancellor (Lord Halsbury) and Lord Watson.

Their Lordships (Lord Morris dissenting) reversed the decision of the Court of Appeal (65 Law J. Rep. P. D. & A. 69; L. R. (1896) P. 192), without costs, and assessed the damages at 500*l.*

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HOUSE OF LORDS.] [JULY 16.

EARL RUSSELL (APPELLANT) v. COUNTESS RUSSELL (RESPONDENT).

Husband and Wife — Separation — Cruelty.

Persistence by a wife in a charge against her husband that he has committed an unnatural offence, which has been disproved to the satisfaction of a jury, and in which the wife herself does not believe, is not legal cruelty such as to entitle the husband to a decree for judicial separation.

Decision of the Court of Appeal, 64 Law J. Rep., P. D. & A. 105; L. R. (1895) P. 315, affirmed by the majority of the House (Lord Watson, Lord Herschell, Lord Macnaghten, Lord Shand and Lord Davey), the Lord Chancellor (Lord Halsbury), Lord Hobhouse, the Lord Chancellor of Ireland (Lord Ashbourne) and Lord Morris dissenting.

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COURT OF APPEAL.] [JULY 14.

HILL v. ROWLANDS.

Mortgage—Foreclosure—Interest.

A foreclosure decree had been made in a mortgagee's action, and the master had made his certificate in the usual form, finding the amount due for principal and interest up to the date of the certificate, and the amount of interest calculated up to the time fixed for redemption, six months from the date of the certificate.

The mortgagor applied that he might be allowed to redeem before the expiration of the six months upon payment of interest only up to the time of payment.

Held, affirming Romer, J., that

whatever might be the case if the mortgagor tendered his money before judgment, he could not, after the judgment and certificate, redeem except on the terms therein contained. The period of six months allowed was in accordance with the usual practice, and was for the benefit of both parties, giving the mortgagor time to obtain his money, and the mortgagee time to find a new investment.

(Lindley, Lopes and Chitty, L.J.J.)

PERSONAL.

James M. Stewart, attorney, Pictou, N.S., is dead.

Mr. John R. Cartwright, Deputy Attorney-General, spent a short vacation in the Eastern States.

Judge Malhiot, of the judicial district of Ottawa and Pontiac, has been superannuated on account of the loss of his sight.

J. B. Mills, M.P., and H. E. Gillis, attorneys at Annapolis, N.S., came to blows in a court room, and were each fined $50 and costs.

Mr. Justice McGuire, of the Supreme Court of the North-West Territories, has been transferred to the Yukon and Klondyke districts.

An Order-in-Council has been passed creating the provincial district of Yukon a land registration district, with an office at Fort Cudahy.

The law firm of Wilson, McKeough & Kerr, Chatham, has been dissolved by the withdrawal of Mr. W. E. McKeough, who will open a separate office there.

Major Walsh, of Brockville, has been appointed Chief Executive Officer of the Government of Canada in the Yukon district, with the title of Commissioner of Yukon district.

Mr. F. C. Wade, barrister, of Winnipeg, has been appointed registrar, Crown prosecutor and Clerk of the Court for the district of Yukon at a salary of $2,500 and rations for the winter.

Judge Creasor, of Owen Sound, has been gazetted a Surrogate Judge in Admiralty of the Exchequer Court for that portion of the Toronto Admiralty District comprised in the counties of Grey, Bruce and Simcoe.

Mr. Jos. Lavergne, M.P. for Drummond and Arthabaska, and law partner of Sir Wilfrid Laurier, has been appointed a judge of the Superior Court of Quebec in the place of Judge Malhiot, superannuated.

The Hon. T. H. McGuire, Justice of the Supreme Court of the North-West Territories, has been appointed a Commissioner to enquire into and report upon a charge against Sheriff Hughes, of the Saskatchewan Judicial District.

Among those in attendance at the annual meeting of the Harvard Law School Association, held in the Boston Bar Association's room in the Federal Building recently, were the following Canadians: The Hon. George Hoadley Weldon, '49, New Brunswick, and the Hon. Hugh McDonald Henry, LL.B., '73, Nova Scotia.

The Bench and Bar of Montreal recently defeated the St. James' Club of that city in a cricket match, the respective teams being: Bench and Bar—Hon. Sir Melbourne Tait, Acting Chief Justice Superior Court; Hon. Mr. Justice J. A. Ouimet, Court of Appeals; Hon. Mr. Justice Davidson, Superior Court; Donald Macmaster, Q.C., Harry Abbott, Q.C., C. J. Fleet, A. R. Oughtred, J. F. Mackie, C. H. St. Louis, Charles Baynes, J. H. Dunlop, Peers Davidson. St. James' Club—Lieut.-Col. E. A. Whitehead, F. Hilton Green, Herbert S. Holt, E. A. Small, A. W. Stevenson, Henry Joseph, Duncan McIntyre, R. P. McLea, Major A. H. Sims, T. D. Bell, Dr. Charles McEachran, Allan McKenzie.