



ANNOTATIONS

TO THE

Revised Statutes of Ontario
1914

Including Statutory Amendments for the Years
1914-1918, inclusive, and various
decided cases.

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TORONTO :

THE CARSWELL COMPANY, LIMITED
LAW PUBLISHERS

1919

LONDON :

SWREET & MAXWELL, LIMITED

KEO 72

0576

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PREFACE

In addition to his well-known work, "Annotations to the Revised Statutes of Ontario," the late Mr. Snider published annual marginal notes of the amendments to the Statutes and of decided cases thereon. Nothing of this nature has, however, been available since the Revision of 1914. The following pages originated in notes and memoranda made for the author's personal use, and therefore made no pretence to contain an exhaustive resumé of the case law, but it is hoped that they will be of assistance to the profession, at any rate as a ready reference to the statutory amendments.

H. E. C

October, 1918.

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AND STATUTES OF 4 GEO. V. TO
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ANNOTATIONS

(Statutory Amendments and Case Law)

TO THE

Revised Statutes of Ontario 1914

and Annual Statutes (1914-1918 inclusive)

CHAPTER 1.

THE INTERPRETATION ACT.

- ✓ **Sec. 9.** Side notes: remarks on the use and effect of marginal notes to statutes: *Hirschman v. Beal*, 38 O. L. R. 40.
- ✓ **Sec. 16.—(b)** "Subsequent transaction, matter or thing": see *Grobe v. Buffalo & Fort Erie F. & R. W. Co.*, 38 O. L. R. 272.
- ✓ **Sec. 27.—(a)** See *MacKay v. City of Toronto*, 39 O. L. R. 34.
- ✓ **Sec. 29.—(cc)** "Shall": Review of authorities on question whether statute is imperative or merely directory: *Re South Oxford*, 32 O. L. R. 1. See *Re Toronto Electric Light Company v. City of Toronto*, 38 O. L. R. 72.
- ✓ **Sec. 29.—(x)** "Any body corporate or politic": the word "person" was held to include a Local Board of Health: *Simpson v. Local Board of Health of Belleville*, 38 O. L. R. 244.

CHAPTER 2.

THE STATUTES ACT.

- Sec. 5.—(2)** Repealed, new sub-section, 1918, c. 20, s. 1.

- Sec. 5a.** New section, 1918, c. 20, s. 2: proclamation bringing Act into force may apply to whole or part and proclamation may be issued as to different parts at different periods.
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CHAPTER 3.

THE TERRITORIAL DIVISION ACT.

- Sec. 2.**—(8) Amended 1917, c. 27, s. 1.
Sec. 2.—(45) Amended 1914, c. 3, s. 1.
Sec. 2.—(51) Amended 1914, c. 3, s. 2.
-

CHAPTER 4.

THE HALIBURTON ACT.

CHAPTER 5.

THE REPRESENTATION ACT.

Repealed: new Act, 1914, chap. 4; amended 1915, chap. 2.

CHAPTER 6.

THE ONTARIO VOTERS' LIST ACT.

- Sec. 2.**—(1) (b) Amended 1914, c. 2, s. 4.
Sec. 6.—(1) to (4) Repealed, new sub-sections 1917, c. 4, s. 2.
Sec. 6.—(7) Amended, 1917, c. 4, s. 3.
Sec. 6.—(9) Amended 1917, c. 4, s. 4.
Sec. 6.—(15) Repealed, new sub-section 1917, c. 4, s. 5.

- Sec. 14.** See 1914, c. 5, s. 2; person entitled to exemption from assessment upon income cannot appeal unless he has complied with R. S. O. c. 195, s. 8.
- Sec. 14.—(6)** New sub-section 1917, c. 27, s. 2.
- Sec. 18.—(2) (c)** Amended 1917, c. 4, s. 6.
- Sec. 24.** "Finality of list": see Sharp and Village of Holland Landing, 34 O. L. R. 186.
- Sec. 73.** Repealed, new section 1914, c. 5, s. 4; see 1914 c. 5, s. 3, as to when Dominion Manhood Suffrage lists may be used.
- Form 1.** Repealed, new forms 1917, c. 4, s. 7.
- Form 11.** Amended 1916, c. 5, s. 1.
- Form 12.** Amended 1917, c. 4, s. 8.
- Form 14.** Amended 1917, c. 4, s. 9.
- Form 22.** Amended 1914, c. 5, s. 5.
- Form 23.** Amended 1914, c. 5, s. 5.

CHAPTER 7.

THE MANHOOD SUFFRAGE REGISTRATION ACT.

Amended 1914, c. 5, s. 6.

Repealed by the Ontario Franchise Act, 1917, c. 5, s. 57.

CHAPTER 8.

THE ONTARIO ELECTION ACT.

- Sec. 12.—(1)** Repealed, new sub-section 1917, c. 6, s. 2.
- Sec. 14.** Repealed 1917, c. 6, s. 3; subject to the provisions of The Ontario Franchise Act, 1917, c. 5, women are entitled to be entered on the voters' list and to vote upon the same qualification as men.

- Sec. 16.** Amended 1917, c. 6, s. 4; as to when Dominion Manhood Suffrage lists may be used, see 1914, c. 5, s. 3.
- Sec. 17.** Repealed 1917, c. 6, s. 4.
- Sec. 18.** Amended 1917, c. 6, s. 5.
- Sec. 18.—(d)** Amended 1914, c. 5, s. 10.
- Sec. 19.** Repealed, new section 1917, c. 6, s. 6.
- Sec. 20a.** New section 1916, c. 6, s. 3, as to removal from one electoral district in city to another.
- Sec. 21.—(1)** Repealed, new sub-section 1917, c. 6, s. 7.
- Sec. 22.—(1)** Amended 1917, c. 6, s. 8.
- Sec. 22.—(2)** Amended 1917, c. 6, s. 9.
- Sec. 54.—(4)** Amended 1914, c. 5, s. 12.
- Sec. 56.** Amended 1914, c. 5, s. 13.
- ✓ **Sec. 71.—(2)** Ballot papers not stamped by the returning officer, though marked by voters and deposited, cannot be counted. Re South Oxford, 32 O. L. R. 1.
- Sec. 73.—(1a)** New sub-section 1917, c. 6, s. 10; as to date of commencing to make up lists.
- Sec. 73.—(2) (3) (4)** Amended 1917, c. 6, s. 11.
- Sec. 73.—(5)** Amended 1917, c. 6, s. 12.
- Sec. 74.** Repealed, new section 1917, c. 6, s. 13.
- Sec. 78.—(1)** Repealed, new sub-section 1917, c. 6, s. 14.
- Sec. 79.** Repealed, new section 1917, c. 6, s. 15.
- Sec. 80.—(1)** Amended 1917, c. 6, s. 16.
- Sec. 90.** Amended 1914, c. 5, s. 14; 1918, c. 20, s. 3.
- Sec. 95.—(a)** Repealed, new clause 1917, c. 6, s. 17.

✓ **Sec. 102.** "Black lead pencil" is not imperative; ballot paper marked in ink is good: Re South Oxford, 32 O. L. R. 1, as to inadvertent marks and incomplete crosses: Re South Oxford, 32 O. L. R. 1.

Sec. 167. See the Political Contributions Act, 1914, c. 6.

Sec. 204.—(1) Repealed, new sub-section 1914, c. 5, s. 15.

Sec. 207.—(1) Repealed, new sub-section 1914, c. 5, s. 16.

Sec. 207.—(2) (3) Amended 1914, c. 5, s. 16.

Sec. 208. Repealed, new section 1914, c. 5, s. 17.

Sec. 209.—(3) Repealed, new sub-section, 1917, c. 27, s. 3.

Form 6a. New form, 1914, c. 5, s. 18.

Form 17. Amended 1916, c. 6, s. 3.

Form 18. Amended 1916, c. 6, s. 3.

Form 19. Amended 1914, c. 5, s. 11.

Schedule B. Amended 1914, c. 5, s. 19.

CHAPTER 9.

THE PUNISHMENT FOR PERSONATION ACT.

This Act applies to the entry of names of voters on the list prepared under the Ontario Franchise Act, 7 Geo. V. c. 5, so far as the same is applicable: 1917, c. 6, s. 18.

Sec. 3. Amended 1917, c. 6, s. 18.

Forms 1, 2, 3, 4. Amended 1917, c. 6, s. 18.

CHAPTER 10.

THE ONTARIO CONTROVERTED ELECTIONS ACT.

Sec. 76. This section applies to offences under the Political Contributions Act, 1914, c. 6.

CHAPTER 11.

THE LEGISLATIVE ASSEMBLY ACT.

- Sec. 10.** Repealed, new section 1914, c. 7, s. 1: amended 1918, c. 20, s. 4.
- Sec. 72.—(2)** New sub-section, 1918, c. 20, s. 5.
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CHAPTER 12.

THE LIEUTENANT-GOVERNOR'S ACT.

CHAPTER 13.

THE EXECUTIVE COUNCIL ACT.

- Sec. 4.—(2)** Amended 1918, c. 20, s. 6.
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CHAPTER 14.

THE ONTARIO PUBLIC SERVICE ACT.

See The Ontario Public Service Act, 1918, 8 Geo. V. c. 5, which is to be read with and as part of R. S. O. c. 14.

- Sec. 9.** Repealed, new section 1914, c. 21, s. 2.
- Sec. 17.—(4)** New sub-section 1915, c. 20, s. 1.
- Sec. 17.—(4) (5)** New sub-sections, 1917, c. 27, s. 12.
See 1914, c. 21, s. 71: authorizing payment out of appropriations to civil servants for special services.
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CHAPTER 15.

THE PUBLIC OFFICERS' ACT.

- Sec. 17.** Amended 1914, c. 2, s. 4, clerical error.

CHAPTER 16.

THE SHERIFFS' ACT.

- ✓ Sec. 17. Action against sheriff for improper sale: Maple Leaf Lumber Co. v. Caldbick and Pierce, 39 O. L. R. 201.
- Sec. 22. Amended 1914, c. 21, s. 3.
- Sec. 40.—(c) Repealed 1918, c. 20, s. 7.
- Sec. 41.—(1) Repealed, new sub-section 1914, c. 21, s. 4; amended 1918, c. 20, s. 8.
-

CHAPTER 17.

THE PUBLIC OFFICERS' FEES ACT.

- Sec. 4.—(1) Amended 1914, c. 2, s. 4, clerical error.
- Sec. 6. Repealed, new section 1915, c. 20, s. 2.
- Sec. 7.—(2) Repealed, 1914, c. 21, s. 5.
- Sec. 8.—(2) New sub-section, 1917, c. 27, s. 4.
- Sec. 12.—New section, 1917, c. 27, s. 5.
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CHAPTER 18.

THE PUBLIC INQUIRIES ACT.

CHAPTER 19.

THE OFFICIAL NOTICES PUBLICATION ACT.

CHAPTER 20.

THE CONSOLIDATED REVENUE FUND ACT.

CHAPTER 21.

THE PROVINCIAL LOANS ACT.

- Sec. 2.**—(3) Repealed, new sub-section 1915, c. 5, s. 2.
Sec. 2.—(4) Repealed, new sub-section 1915, c. 5, s. 3.
Sec. 4.—(4) New sub-section 1914, c. 8, s. 1.
Sec. 10. Repealed, new section 1915, c. 5, s. 4.
-

CHAPTER 22.

THE PUBLIC REVENUE ACT.

CHAPTER 23.

THE AUDIT ACT.

- Sec. 3.** Amended 1914, c. 21, s. 6; 1917, c. 27, s. 6.
Sec. 19. Amended 1914 c. 2, s. 4.
Sec. 21.—(1) Amended 1914, c. 21, s. 7.
-

CHAPTER 24.

THE SUCCESSION DUTY ACT.

- Sec. 6.** Repealed, new section 1914, c. 10, s. 2; amended 1915, c. 7, s. 2; 1917, c. 27, s. 8.
Sec. 6.—(d) Amended 1914, c. 2, s. 4; clerical error.
✓ **Sec. 7.** As to partnership property: see *Boyd v. Attorney-General British Columbia*, 54 S. C. R. 532. As to remission of duty in case of person killed in the war, see 1915, c. 7, s. 6; amended 1916, c. 7, s. 6; 1917, c. 27, s. 7.

As to what is "direct taxation" under s. 92 (2) of The British North America Act, see *Treasurer of Ontario v. Canada Life Assurance Co.*, 33 O. L. R. 433.

Constitutionality: see *Standard Trusts Co. v. Province of Manitoba*, 51 S. C. R. 428, where the effect and meaning of *The King v. Lovitt* (1912), A. C. 212, and *Cotton v. The King* (1914), A. C. 176, are discussed.

"Property situate in Ontario": it was held under the Alberta Act that a debt secured by a mortgage on lands in Alberta, registered under the Land Titles Act, was property within that Province, though the mortgagee was domiciled and died out of the Province, having a duplicate original mortgage in his possession: *Toronto General Trusts Corporation v. The King*, 56 S. C. R. 26.

- Sec. 7.**—(1) Amended 1914, c. 10, s. 3.
- Sec. 7.**—(1) (b) Repealed 1918, c. 6, s. 1.
- Sec. 7.**—(2) (a) Amended 1914, c. 10, s. 4.
- Sec. 7.**—(2) (b) Repealed, new clause 1914, c. 10, s. 5.
- Sec. 7.**—(3) Repealed, new sub-section 1914, c. 10, s. 6; amended 1915, c. 7, s. 3; 1918, c. 6, s. 2.
- Sec. 8.** Repealed, new section 1914, c. 10, s. 7; amended 1915, c. 7, s. 4; 1918, c. 6, s. 3.
- Sec. 9.**—(2) New sub-section 1918, c. 6, s. 4: law of England as to local situs adopted.
- Sec. 11.**—(1) (2) (3) Repealed, new sub-sections 1914, c. 10, s. 11.
- Sec. 12.**—(1) Amended 1914, c. 10, s. 12; 1916, c. 7, s. 2; see also provisions of 1916, c. 7, s. 5, repealing 1914, c. 10, s. 10, whereby the Treasurer can direct a commission of inquiry.
- Sec. 12.**—(7) New sub-section 1916, c. 7, s. 3, providing for examination of persons as to dutiable property.
- Sec. 15.**—(1) Amended 1916, c. 7, s. 4.

Sec. 15.—(3) Amended 1914, c. 10, s. 8.

Sec. 18. Repealed, new section 1914, c. 10, s. 13; amended 1915, c. 7, s. 5.

CHAPTER 25.

THE LAW STAMPS ACT.

CHAPTER 26.

THE MINING TAX ACT.

Sec. 5.—(1) Repealed, new sub-section 1917, c. 7, s. 2.

Sec. 5.—(3) Amended 1917, c. 7, s. 3.

Sec. 5.—(3a) to (3e) New sub-sections 1917, c. 7, s. 4.

Sec. 14.—(1) Amended 1917, c. 7, s. 6.

Sec. 14.—(2) Repealed, new sub-section 1917, c. 7, s. 7.

Sec. 15.—(1) Amended 1917, c. 7, s. 8.

Sec. 15.—(1) (b) Amended 1917, c. 7, s. 8.

Sec. 15a. New section 1917, c. 7, s. 9; as to share of municipality in acreage tax.

Sec. 20.—(3) Amended 1914, c. 21, s. 8.

Sec. 37.—(1) Amended 1914, c. 2, s. 4; clerical error.

Sec. 43. Amended 1914, c. 2, s. 4.

CHAPTER 27.

THE CORPORATION TAX ACT.

Sec. 2.—(e) Amended 1915, c. 8, s. 2.

Sec. 4. Repealed, new section 1914, c. 11, s. 2.

- Sec. 4.—(2)** As enacted by 1914, c. 11, s. 2; amended 1915, c. 8, s. 3, as to banks.
- ✓ **Sec. 4.—(3)** As enacted by 1914, c. 11, s. 2, repealed and new sub-section 1915, c. 8, s. 4, as to insurance companies.
- ✓ Clauses (a) and (e) of sec. 4 (3) were held to be *intra vires*: *Treasurer of Ontario v. Canada Life Assce. Co.*, 33 O. L. R. 432.
- Sec. 4.—(4)** As enacted by 1914, c. 11, s. 2; amended by 1916, c. 8, s. 1, as to loan companies.
- Sec. 4.—(11)** As enacted by 1914, c. 11, s. 2; amended 1915, c. 8, s. 5, as to telephone companies.
- Sec. 4.—(12)** As enacted by 1914, c. 11, s. 2; repealed and new sub-section 1915, c. 8, s. 6, as to gas and electric companies.
- Sec. 4.—(15)** As enacted by 1914, c. 11, s. 2; amended 1916, c. 8, s. 2, as to race track meetings.
- Sec. 6a.** New section 1914, c. 11, s. 3: how profits to be estimated.
- Sec. 7.** Amended 1916, c. 8, s. 3; interest on arrears of taxes.
- Sec. 12a.** New section 1914, c. 11, s. 5; returns as to transfer of stocks.
- Sec. 15.** Amended 1916, c. 8, s. 4.

CHAPTER 28.

THE PUBLIC LANDS ACT.

- Sec. 44.—(3)** Amended 1914, c. 2, s. 4; clerical error.
- Sec. 54a.** New section 1917, c. 10, s. 1; ores to be treated in Canada.
- Sec. 59.** New section 1915, c. 20, s. 3; certain sales validated.

CHAPTER 29.

THE CROWN TIMBER ACT.

- Sec. 6.** Suspension of the operation of the "manufacturing condition" was authorized for 1914, by 4 Geo. V. c. 12; for 1915 by 5 Geo. V. c. 20, s. 4; for 1916 by 6 Geo. V. c. 24, s. 48.

CHAPTER 30.

THE FOREST RESERVES ACT.

CHAPTER 31.

THE BED OF NAVIGABLE WATERS ACT.

CHAPTER 32.

THE MINING ACT OF ONTARIO.

- Sec. 8.** Amended 1914, c. 2, s. 4.
- Sec. 23.**—(7) New sub-section 1918, c. 9, s. 2, as to licen-
see serving in war.
- Sec. 29.**—(2) Amended 1915, c. 13, s. 2, as to refund of
license fee.
- Sec. 41.** Amended 1915, c. 13, s. 3; clerical error.
- Sec. 51.** That which a discoverer is entitled to is 20 acres
laid out in the manner imperatively and minutely,
with diagrams, prescribed in the Act: Re Neilly
and Lessard, 38 O. L. R. 440.
- Sec. 59.**—(5) New sub-section 1914, c. 14, s. 2: when mis-
description shall not invalidate. ✓ The provision

means only that notwithstanding the fact that the discoverer has not laid out his claim in the way the Act requires he may, in the circumstances there provided for, have that which the Act gives him, not that which he had inaccurately laid out: *Re Neilly and Lessard*, 38 O. L. R. 440.

Sec. 63.—(2) Amended 1918, c. 9, s. 3.

Sec. 77.—(4a) New sub-section 1918, c. 9, s. 4; recorder to give notice of his pendants.

Sec. 78.—(1) Amended 1914, c. 14, s. 3.

Sec. 78.—(4) Amended 1914, c. 14, s. 3.

Sec. 78.—(9) New sub-section 1918, c. 9, s. 5; as to working conditions in case of person serving in war.

Sec. 81 (1). Amended 1916, c. 12, s. 2; amended 1918, c. 9, s. 6.

✓ **Sec. 83.** *Semble*, a licensee who has forfeited his claim under this section may have relief under s. 86: *Re Watson and Monahan*, 39 O. L. R. 358.

Sec. 84.—(d) Amended 1916, c. 12, s. 3; clerical error.

Sec. 85. Repealed, new section 1914, c. 14, s. 4.

✓ **Sec. 85.**—(1) As re-enacted by 1914, c. 14, s. 4, repealed: new sub-section, 1918, c. 9, s. 7.

The Commissioner has no power to make an order relieving the holder of a mining claim from forfeiture consequent upon his failure to comply with the requirements of the Act, unless some good reason for the failure, some reason of a preventing character or some preventing cause, is shown: Meaning and construction of the section as enacted by 4 Geo. V. c. 14, s. 4, considered: *Re Watson and Monahan*, 39 O. L. R. 358.

An appeal lies, under s. 151, to a Divisional Court of the Appellate Division from an order of a Commissioner made under this section: *Re Watson and Monahan*, 39 O. L. R. 358.

- Sec. 85.**—(3) New sub-section, 1915, c. 13, s. 4: relief against forfeiture in case of enlistment.
- Sec. 86.** Amended 1914, c. 14, s. 5.
- ✓ **Sec. 106.** As to misdescription of lands in patent: Re Finucane & Peterson Lake, 32 O. L. R. 128.
- Sec. 106.**—(1) Amended 1915, c. 13, s. 5: extended to cover lease.
- Sec. 106.**—(2) Amended 1914, c. 14, s. 6, and repealed, new sub-section 1915, c. 13, s. 6.
- Sec. 111a** New section 1917, c. 11, s. 1: ores to be treated in Canada.
- Sec. 112.**—(1) Amended 1918, c. 9, s. 8.
- ✓ **Sec. 118.** Quarry rock as a mineral: Re McAllister and Toronto & Suburban R. W. Co., 40 O. L. R. 252. Right to stake quarry claim: abandonment: Re Franker & Bartleman, 8 O. W. N. 360.
- Sec. 118.**—(2) Amended 1915, c. 13, s. 13.
- Sec. 119.**—(1) (d) Amended 1914, c. 2, s. 4; 1915, c. 13, s. 7: clerical error.
- Sec. 133.**—(3) Amended 1914, c. 2, s. 4.
- ✓ **Sec. 140.** The Commissioner has power and is bound to decide according to the real merits and substantial justice of the case, but that does not confer upon him, in a conflict between two claimants as to the rights of each, the power to award to either land to which neither has any right: Re Neilly and Lessard, 38 O. L. R. 440.
- ✓ **Sec. 151.** An appeal lies under this section from the order of a Commissioner made under s. 85: Re Watson and Monahan, 39 O. L. R. 358.
- ✓ **Sec. 164.** Results flowing from breach of statutory duty and liability for ensuing accident: Danis v. Hudson Bay Mines Ltd., 32 O. L. R. 335; Kolair v. Mond Nickel Co., 32 O. L. R. 470.

Failure to observe statutory rules: *Doyle v. Foley-O'Brien, Ltd.*, 34 O. L. R. 42.

Sec. 164.—(32a) New rule 1914, c. 14, s. 7: as to construction of elevator cages, etc.

✓ **Sec. 164.**—(45) (98) See *Hull v. Seneca Superior Silver Mines Ltd.*, 33 O. L. R. 557.

Sec. 183a. New section 1916, c. 12, s. 4; notwithstanding contrary agreements, wages must be paid fortnightly.

Sec. 185. Amended 1914, c. 2, s. 4.

Secs. 192, 193. The provisions of these sections are applicable to all mining claims staked and recorded under The Mines Act, 1906, The Mining Act of Ontario, 1908, or The Mining Amendment Act 1916: see 1916, c. 12, s. 5.

Schedule of fees: amended 1915, c. 13, s.-s. 9, 10, 11, 12.

CHAPTER 33.

THE METAL REFINING BOUNTY ACT.

Sec. 2.—(1) Amended 1918, c. 10, ss. 1, 2.

CHAPTER 34.

THE TOWN SITES ACT.

CHAPTER 35.

THE ONTARIO PUBLIC WORKS ACT.

CHAPTER 36.

THE PUBLIC WORKS PEACE PRESERVATION ACT.

CHAPTER 37.

THE BUREAU OF LABOR ACT.

CHAPTER 38.

THE TEMISKAMING & NORTHERN ONTARIO RAILWAY ACT.

Sec. 2.—(5) New sub-section 1918, c. 20, s. 9.

Sec. 3.—(1) Amended 1915, c. 20, s. 5.

Sec. 3.—(3) New sub-section 1915, c. 20, s. 6.

Sec. 27. Repealed, new section 1917, c. 27, s. 13.

Sec. 32. Amended 1914, c. 2, s. 4.

CHAPTER 39.

THE POWER COMMISSION ACT.

See The Power Commission Act, 1914, 4 Geo. V. c. 16.

The Hydro-Electric Railway Act 1914, 4 Geo. V. c. 31.

The Power Commission Act 1915, 5 Geo. V. c. 19.

The Hydro-Electric Railway Act 1915, 5 Geo. V. c. 32.

The Power Commission Act 1916, 6 Geo. V. c. 19.

The Ontario Niagara Development Act, 6 Geo. V. c. 20.

The Hydro-Electric Railway Act 1916, 6 Geo. V. c. 37.

The Power Commission Act 1917, 7 Geo. V. c. 20.

The Ontario Niagara Development Act 1917, 7 Geo. V. c. 21.

The Water Power Regulations Act 1917, 7 Geo. V. c. 22.

The Power Commission Act 1918, 8 Geo. V. c. 14.

- Sec. 2.** See *Howarth v. Electric Steel & Metals Co.*, 35 O. L. R. 596.
- Sec. 5.—(2)** Amended 1914, c. 16, s. 2; repealed, new sub-section 1915, c. 19, s. 2.
- Sec. 6.—(2)** Amended 1916, c. 19, s. 2; 1918, c. 14, s. 2.
- Sec. 6.—(3) (4) (5)** New sub-sections 1916, c. 19, s. 3: salaries of officers, etc.
- Sec. 6a.** New section 1916, c. 19, s. 4; amended 1917, c. 20, s. 2, 1918, c. 14, s. 3: appointment of comptroller.
- Secs. 6b, 6c, 6d, 6e.** New sections 1918, c. 14, s. 4: general fund, reserve fund, etc.
- Sec. 8.—(b)** Repealed 1915, c. 19, s. 3.
- Sec. 8.—(c)** Amended 1915, c. 19, s. 7.
- Sec. 8.—(ee)** New sub-section 1914, c. 16, s. 3: acquiring flooded lands.
- Sec. 8.—(g) (h)** New sub-section 1917, c. 20, s. 3: stock in development companies.
- Sec. 8.—(gg)** New clause, 1918, c. 14, s. 5: leasing works of others.
- Sec. 9.** Amended 1915, c. 19, s. 4.
- Sec. 10.—(1) (2)** Repealed, new sub-sections 1915, c. 19, s. 5.
- Sec. 10a.** New section 1915, c. 19, s. 8: removal of trees, etc.
- Sec. 10b.** New section 1915, c. 19, s. 10: selling lands.
- Sec. 12a.** New section 1917, c. 20, s. 4: lands but not buildings subject to assessment.
- Sec. 14a.** New section 1916, c. 19, s. 6; appropriations.
- Sec. 14b.** New section 1916, c. 19, s. 6: reserve fund.

- Secs. 14c, 14d.** New sections 1917, c. 20, s. 5: guaranteeing bonds, etc.
- Sec. 14e.** New section 1918, c. 14, s. 6: provincial guarantee.
- Sec. 14f.** New section 1918, c. 14, s. 6: general borrowing powers.
- Sec. 15.—(1)** Amended 1916, c. 19, s. 7; repealed, new sub-section 1918, c. 14, s. 7.
- Sec. 15.—(2)** New sub-section 1916, c. 19, s. 7: application of income.
- Sec. 15a.** New section 1916, c. 19, s. 8; amended 1918, c. 14, s. 8: doing work for municipalities.
- Sec. 15b.** New section 1918, c. 14, s. 9.
- ✓ **Sec. 16.** Although the Commission is an emanation from, or agent of, the Crown, and was not created a corporation or body politic and corporate, yet, if consent to action is given under this section, judgment can be given against it: see *Howarth v. Electric Steel & Metals Co., Ltd.*, 35 O. L. R. 596.
- ✓ **Sec. 16.** Necessity for fiat: see *Electric Development Co. v. Atty.-Gen. of Ontario and Hydro-Electric Power Commission*, 38 O. L. R. 383.
- Sec. 18.—(8)** New sub-section 1916, c. 19, s. 9; repealed, new sub-section 1917, c. 20, s. 6: debentures of municipality not to be included in calculating indebtedness.
- Sec. 19.—(4)** New sub-section 1917, c. 20, s. 7: extension of works in police village.
- Sec. 19a.** New section 1917, c. 20, s. 8: township distribution works.
- Sec. 22.** Repealed, new section 1918, c. 14, s. 10.
- Sec. 23.—(a)** Amended 1918, c. 14, s. 11.
- Sec. 23.—(b)** Amended 1918, c. 14, s. 11.

- Sec. 23.**—(c) Amended 1914, c. 16, s. 4; 1915, c. 19, s. 11; 1918, c. 14, s. 11.
- Sec. 23a.** New section 1918, c. 14, s. 12: extending time for payment by municipalities.
- Secs. 23b, 23c, 23d.** New sections 1918, c. 14, s. 13: supplying power to other systems.
- Sec. 24.**—(2) (3). New sub-sections 1918, c. 14, s. 14: annual adjustment of accounts for municipalities.
- Sec. 24a.** New section 1917, c. 20, s. 9, as to approval of commission of certain debentures.
- Secs. 30a, 30b, 30c, 30d,** comprising new part 2a, see 1914, c. 16, s. 5: as to supply of power for street lighting in townships.
- Sec. 37.**—(1) Amended 1914, c. 16, ss. 6, 7.
Repealed, new section 1915, c. 19, s. 12.
Repealed, new section 1916, c. 19, s. 10.
Amended 1917, c. 20, s. 12.
Amended 1918, c. 14, s. 15.
- Sec. 39.**—(aa) New clause, 1917, c. 20, s. 10: erection of office buildings.
- Sec. 39.**—(e) New clause 1915, c. 19, s. 13: application of surplus receipts.
- Sec. 39.**—(2) New sub-section 1915, c. 19, s. 14; 1917, c. 20, s. 11; application of sub-section 1.
- Secs. 47 to 51.** New sections, 1915, c. 19, s. 15: amended 1916, c. 19, s. 11: establishment of commission in every town under contract.

CHAPTER 40.

THE HIGHWAY IMPROVEMENT ACT.

See The Ontario Highways Act, 5 Geo. V. c. 17;
amended 6 Geo. V. c. 15; 7 Geo. V. c. 18.

The Toronto & Hamilton Highway Commission Act, 5 Geo. V. c. 18; amended 6 Geo. V. c. 16; 7 Geo. V. c. 19; 8 Geo. V. c. 18.

The Provincial Highway Act, 7 Geo. V. c. 16.

- Ses. 3.** Amended 1916, c. 14, s. 4; 1918, c. 16, s. 4.
- Sec. 4.** Amended 1917, c. 17, s. 2.
- Sec. 5.—(2)** Amended 1917, c. 17, s. 3.
- Sec. 13.—(1)** Amended 1915, c. 16, s. 5.
- Sec. 13.—(2) (3)** New sub-sections 1917, c. 17, s. 4: final certificate, etc.
- Sec. 15.** Amended 1915, c. 16, s. 2; see 1915, c. 16, s. 4, as to application of proceeds of debentures; 1917, c. 17, s. 8.
- Sec. 15.—(2)** New sub-section 1916, c. 14, s. 5: procuring temporary loan.
- Sec. 18.—(1)** Amended 1917, c. 17, s. 5.
- Sec. 18.—(3)** Amended 1917, c. 17, s. 5.
- Sec. 18.—(4)** Repair and maintain: where county assumes a road it is liable for injuries resulting from non-repair: *Aekersviller v. County of Perth*, 32 O. L. R. 423, affirmed, 33 O. L. R. 598.
- Sec. 22.** See 1915, c. 16, s. 3, as to power to initiate proceedings under the Ditches and Water Courses Act for drainage purposes; see 1917, c. 27, s. 58, as to obtaining gravel for county purposes.
- Sec. 26a.** New section 1916, c. 14, s. 6: by-law as to part of county.
- Sec. 28.** New section 1917, c. 17, s. 6: Provincial county roads.
- Sec. 29.** New section 1917, c. 17, s. 7, as to application of sections 465 and 467 of the Municipal Act in cases where the county has adopted a plan for improvement of highways under this Act, and relegating

disputes as to boundary line bridges or highways to the Railway and Municipal Board.

- Sec. 30.** New section 1918, c. 15, s. 1, closing highways under construction.

CHAPTER 41.

THE COLONIZATION ROADS ACT.

See 1914, c. 17, s. 2, whereby by-laws of certain municipalities are confirmed and vesting in all municipalities the powers necessary for carrying out the provisions of the Act.

CHAPTER 42.

THE PROVINCIAL AID TO DRAINAGE ACT.

CHAPTER 43.

THE MUNICIPAL DRAINAGE AID ACT.

- Sec. 4.** Amended 1916, c. 22, s. 1.
Sec. 5. Amended 1916, c. 22, s. 2.
Sec. 5.—(2) New sub-section 1915, c. 20, s. 8.

CHAPTER 44.

THE TILE DRAINAGE ACT.

- Sec. 2.** Amended 1914, c. 18, s. 1; 1916, c. 23, s. 1; 1917, c. 24, s. 1; 1918, c. 20, s. 10.
Sec. 5. Repealed, new section 1914, c. 18, s. 2.
Sec. 10. Amended 1916, c. 23, s. 2; 1917, c. 24, s. 2.
Sec. 12.—(1) Amended 1914, c. 18, s. 3.

- Sec. 13.—(1) (2) Repealed, 1914, c. 18, s. 4.
Sec. 17. Repealed, new section 1914, c. 18, s. 5.
Sec. 18. Amended 1914, c. 18, s. 6.
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CHAPTER 45.

THE DEPARTMENT OF AGRICULTURE ACT.

- Secs. 2, 3, 4. Repealed, new sections 1917, c. 23, s. 8.
Sec. 5. Amended 1916, c. 24, s. 1; repealed, new section 1917, c. 23, s. 8.
Sec. 6. Repealed, new section 1917, c. 23, s. 8.
Sec. 6a. New section 1916, c. 24, s. 2; repealed, new section 1917, c. 23, s. 8.
Sec. 7. Repealed, new section 1917, c. 23, s. 8.
Sections 9 to 17 (incl.) Repealed 1918, c. 20, s. 11: relative to Bureau of Industries.
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CHAPTER 46.

THE AGRICULTURE ASSOCIATIONS' ACT.

- Sec. 3. Amended 1916, c. 24, s. 3.
Sec. 23.—(1) Amended 1916, c. 24, s. 3.
Sec. 23.—(2) Amended 1916, c. 24, s. 3.
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CHAPTER 47.

THE AGRICULTURE SOCIETIES' ACT.

- Sec. 13. Amended 1918, c. 20, s. 12.
Sec. 16.—(1) Amended 1918, c. 20, s. 13.

- Sec. 18.**—(3) (bb) New clause 1914, c. 21, s. 10: third arbitrator.
- Sec. 24.**—(2) Amended 1914, c. 21, s. 11; repealed, new sub-section 1917, c. 27, s. 14.
- Sec. 24.**—(3) New sub-section 1914, c. 21, s. 12: grant for wet weather.
- Sec. 25.** Amended 1914, c. 21, s. 13.
- Sec. 32.**—(6) Repealed, new sub-section 1918, c. 20, s. 14.
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CHAPTER 48.

THE HORTICULTURAL SOCIETIES' ACT.

- Sec. 6.**—(1) Amended 1917, c. 26, s. 1.
- Sec. 6.**—(2) Amended 1916, c. 24, s. 4.
- Sec. 7.**—(a) Amended 1917, c. 26, s. 2.
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CHAPTER 49.

THE VITAL STATISTICS ACT.

CHAPTER 50.

THE QUEEN VICTORIA NIAGARA FALLS PARK ACT.

- Sec. 4.** Amended 1915, c. 14, s. 2.
- Sec. 4.**—(2) New sub-section 1915, c. 14, s. 3: vesting highways in Commissioners.
- Sec. 9.** Repealed, new section 1915, c. 14, s. 4.
- Sec. 22.** Amended 1917, c. 27, s. 16.
- Sec. 27.**—(2) Amended 1914, c. 2, s. 4.

CHAPTER 51.

THE QUEENSTON HEIGHTS' PARK ACT.

CHAPTER 52.

THE PROVINCIAL PARKS ACT.

Sec. 17. Amended 1914, c. 21, s. 14.

CHAPTER 53.

THE BURLINGTON BEACH ACT.

CHAPTER 54.

THE PRIVY COUNCIL APPEALS ACT.

- ✓ Sec. 2. "Exceeds \$4,000": see Ontario & Minnesota Power Co., and Town of Fort Frances, 34 O. L. R. 365.
- ✓ Sec. 10. The section applies only to the appeals for which it provides, but the Supreme Court, in a case where an appeal to the Privy Council does not lie as of right but the Judicial Committee has given leave to appeal, will stay execution upon security being allowed: Mitchell v. Fidelity & Casualty Co., 38 O. L. R. 543.

CHAPTER 55.

THE DOMINION COURTS ACT.

OK to end 1920

OK to end 1925

CHAPTER 56.

THE JUDICATURE ACT.

Sec. 2.—(r) Plaintiff: A person who lodges a caveat in the Surrogate Court does not originate the proceedings so as to be liable to give security for costs: *Newcombe v. Evans*, 40 O. L. R. 299.

Sec. 3. The Supreme Court of Ontario can entertain an action for damage from collision of two vessels in inland waters: *Shipman v. Phinn*, 31 O. L. R. 113; *affd.* 32 O. L. R. 329.

In view of this provision the proposition of law in *Allen v. Dundas*, 3 T. R. 125, that probate is conclusive until revoked, and that no court can admit evidence to impeach it, is not applicable to this Province in its entirety, the Supreme Court having jurisdiction to try validity of wills, whether probate is granted or not (see *R. S. O. 1897, c. 51, s. 38*): *Hedge v. Morrow*, 32 O. L. R. 218.

The grant by Surrogate Court of letters probate does not stand in the way of a determination by the Supreme Court of the questions involved in an action in which the will is attacked on ground of want of testamentary capacity and undue influence: *Lloyd v. Robertson*, 35 O. L. R. 264, reversed on facts, 37 O. L. R. 498.

Sec. 13. Lands out of jurisdiction: see *Campbell v. Barrett & McCormack*, 32 O. L. R. 157.

As to jurisdiction where foreign lands involved: see *Jones v. Tucker*, 53 S. C. R. 431.

Sec. 13.—(2) See *Wannamaker v. Livingston*, 13 O. W. N. 3.

Sec. 16.—(a) Specific performance: *Township of King v. Beamish*, 36 O. L. R. 325; *Jones v. Tucker*, 53 S. C. R. 431.

Specific performance not decreed where bona fide purchasers for value without notice have acquired

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property through failure to register agreement: *Bennett v. Stodgell*, 36 O. L. R. 45.

Specific performance; inexcusable delay in seeking: *Clergue v. Plummer*, 38 O. L. R. 54.

Equitable relief: lands out of the jurisdiction: *Campbell v. Barrett & McCormack*, 32 O. L. R. 157.

- ✓ **Sec. 16.—(b)** Declaratory judgments: see *Guaranty Trusts Co. of New York v. Hannay & Co.* (1915), 2 K. B. 536; and *Toronto General Trusts Corporation v. McCarkey*, 41 O. L. R. 314.

As to practice of Court of Equity in decreeing cancellation of valid instruments and making declaratory judgments: *Shewfelt v. Township of Kincardine*, 35 O. L. R. pp. 39 and 344.

There is no right of action to compel delivery for cancellation of a valid instrument, not negotiable, where there is a possibility that it has not fulfilled all its purposes: *Shewfelt v. Township of Kincardine*, 35 O. L. R. pp. 39 and 344.

The power to grant relief by declaratory judgment is entirely within discretion of the Court, which discretion was exercised adversely where plaintiff claimed a declaration of title by possession under Limitations Act: *Reaume v. Cote*, 35 O. L. R. 303.

- ✓ **Sec. 16.—(f)** Action commenced before the war by an alien enemy: *Dumenko v. Swift Canadian Co.*, 32 O. L. R. 87; *Luczyeki v. Spanish River Pulp Co.*, 34 O. L. R. 549.

- ✓ **Sec. 16.—(h)** Where remedy is furnished by appeal to another tribunal, the Court will not interfere: e.g., in an action brought to restrain a municipal corporation from enforcing an assessment alleged to be illegal, it was held that the plaintiff's only remedy was by appeal under the Assessment Act: *Foster v. Township of St. Joseph*, 39 O. L. R. 114, 525.

This sub-section expresses the fundamental rule as to determining all matters in controversy, and avoiding multiplicity of legal proceedings: as to

its application, see *Ottawa Separate School Trustees v. Quebec Bank*, 39 O. L. R. 118.

An action to determine the constitutionality of the Extra-Provincial Corporations Act was held to be authorized by this section and section 20: *Attorney-General for Ontario v. Harris Lithographing Co., Ltd.*, 40 O. L. R. 290.

- ✓ **Sec. 16.**—(i) New sub-section 1917, c. 27, s. 17: as to power of court to sanction sale under mortgage securing debentures.
- ✓ **Sec. 17.** Mandamus to council to submit by-law, where statutory duty imposed: *Re Stratford Local Option By-law*, 35 O. L. R. 26.
 Equitable execution: is not a means of reaching assets which from their nature are not exigible, but is a means of freeing exigible assets from impediments in the way of execution. It cannot be made use of to reach assets not in the Province: *Herold v. Budding*, 37 O. L. R. 605. A receiver by way of equitable execution cannot sell: his function is to receive and hold, and sale cannot be indirectly brought about, e.g., by declaring a judgment to form a charge upon railway shares where the case cannot be brought within section 140 et seq. of this Act: *Herold v. Budding*, 37 O. L. R. 605.
- ✓ **Sec. 18.** Discretion to refuse injunction and award damages: *Black v. Canadian Copper Co.*, 12 O. W. N. 243.
- ✓ **Sec. 19.** Relief against forfeiture under acceleration clauses in mortgage: *Schwartz v. Williams*, 35 O. L. R. 33.
- ✓ **Sec. 20.**—(1) See *Attorney-General for Ontario v. Harris Lithographing Co., Ltd.*, 40 O. L. R. 290.
- ✓ **Sec. 24.** An appeal as to costs cannot be had by joining an appeal as to other parts of the judgment as to which appellant fails: *Buckley v. Vair*, 40 O. L. R. 465.
 See *Hibbard v. Township of York*, 34 O. L. R. 377.

- ✓ **Sec. 26.** An appeal lies from order of Judge under s. 8 of the Public Authorities Protection Act, R. S. O. c. 89, protecting a magistrate from action where conviction made by him has been quashed: *Re Lascelle and Wholehan*, 38 O. L. R. 119.
- ✓ **Sec. 27.** Where facts are not disputed, appellate Court will not order new trial on ground of imperfect charge to jury: *MacDonnell v. Woods*, 32 O. L. R. 283.
Facts not in dispute, finding of appellate Court: *Turner v. East*, 32 O. L. R. 375.
Assessment of damages by Appellate Court: *Doan v. Neff*, 38 O. L. R. 216.
- ✓ **Sec. 28.** "Substantial wrong or miscarriage": *Gage v. Reid*, 38 O. L. R. 514, and see *D. v. B.*, 40 O. L. R. 112; *Quillinan v. Stuart*, 38 O. L. R. 623.
- ✓ **Sec. 32.**—(2) Decision of Court of co-ordinate jurisdiction: *Peppiatt v. Peppiatt*, 34 O. L. R. 121.
See *Re Arthur v. Town of Meaford*, 34 O. L. R. 231.
County Court Judge presiding in Division Court is not a "judge of co-ordinate authority" with the Judge of the County Court: and a motion referred to an Appellate Division by a County Court Judge because of a prior known decision of a Division Court Judge was not heard by the Appellate Division: *City of Toronto v. Morson*, 37 O. L. R. 369.
- ✓ **Sec. 54.** See *Jarvis v. City of Toronto* (1917), 13 O. W. N. 79, 103.
- ✓ **Sec. 73.** To justify a judgment for alimony on the ground of cruelty, there must be a finding that the cruelty was such as to cause reasonable apprehension of danger to life, limb or health of the wife, and where that was not found by the Judge (even though an assault was proved) and there was no evidence to justify such finding, a judgment was set aside on appeal: *McIlwain v. McIlwain*, 35 O. L. R. 532.
Wife's ability to maintain herself: see *Peel v. Peel*, 42 O. L. R. 165.

Alimony: amount according to defendant's circumstances: see *Fulford v. Fulford*, 6 O. W. N. 330; *Hudson v. Hudson*, 6 O. W. N. 503. Lump sum awarded: *Berlet v. Berlet*, 26 O. W. R. 817; 7 O. W. N. 67.

Interim alimony was refused where it appeared that plaintiff had sufficient means: *Rossworm v. Rossworm*, 26 O. W. R. 207; 6 O. W. N. 226.

Abusive language and threats amounting to legal cruelty, after resumption of cohabitation, sufficient to revive former acts: *Cherrington v. Cherrington*, 23 W. L. R. 438.

Examination of defendant on discovery as to his estate: *Allin v. Allin*, 9 O. W. N. 411.

When interim alimony is not asked, permanent alimony may be awarded from teste of writ: *Hargrave v. Hargrave*, 27 O. W. R. 150, and see *Cromarty v. Cromarty*, 38 O. L. R. 481.

Where no defence is filed facts in statement of claim are deemed correct, and allowance is based thereon: *Hargrave v. Hargrave*, 27 O. W. R. 150. Defendant's undertaking at trial to receive his wife back is complete answer to action: *Evans v. Evans*, 27 O. W. R. 69.

Plea of invalidity of marriage on the ground that divorce of wife from former husband was obtained from U. S. Court lacking jurisdiction and by fraud: as to whether defendant is estopped by having in a sense procured the divorce: see *C. v. C.*, 39 O. L. R. 571.

Question of liability for alimony and the amount thereof are proper subjects for arbitration: award upheld as good defence to subsequent action: *Harrison v. Harrison*, 41 O. L. R. 195.

- ✓ **Sec 74.**—(1) See *Hibbard v. Township of York*, 34 O. L. R. 377.
- ✓ **Sec. 77a.** New section 1914, c. 21, s. 15; amended 1916, c. 24, s. 5, as to appointment of deputies by registrars, etc.
- ✓ **Sec. 98.**—(9) New sub-section 1915, c. 20, s. 9, as to appointment of deputy by special examiner.

- ✓ **Sec. 106.**—(5) Repealed, new sub-section 1917, c. 27, s. 18.
- ✓ **Sec. 106.**—(6) New sub-section 1917, c. 27, s. 19, as to investment of court funds.
- ✓ **Sec. 126.** A debt of R. to B. and a debt of B. to R. (arising out of unconnected transactions) were both due and payable before the date when B. for value assigned his claim against R. to K.: both claims were disputed and in litigation and the exact amounts were not ascertained: held to be mutual debts, and that R. could invoke the right of set-off as against K: *Burman v. Rosin*, 35 O. L. R. 134. Mutual debts: see *Wade v. Crane*, 35 O. L. R. 402, *affd.* 55 S. C. R. 208.
- ✓ **Sec. 140.** Quere whether a Dominion company, having a place of business in Ontario, but its head office in Quebec, is a "company in Ontario" within the meaning of this section: *Herold v. Budding*, 37 O. L. R. 605.
- ✓ **Sec. 141.** Where a charging order has been obtained, it cannot, under the terms of the statute, be enforced for six months, and then only in a new action; in England a mortgage or other charge may be enforced upon an originating notice (Rule 768a), but this rule has not been adopted in Ontario: *Herold v. Budding*, 37 O. L. R. 605.

CHAPTER 57.

THE EXTRA JUDICIAL SERVICES ACT.

CHAPTER 58.

THE COUNTY JUDGES ACT.

- Sec. 5.**—(3) Amended 1916, c. 24, s. 6.

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CHAPTER 59.

THE COUNTY COURTS ACT.

- ✓ **Sec. 16.** Repealed, new section 1914, c. 21, s. 16; amended 1918, c. 21, s. 1.
- ✓ **Sec. 22.—(7)** The trial Judge has the usual discretion as to costs; the section does not give any prima facie right to Supreme Court costs, but applies where the Judge has made an order for costs generally: *Hibbard v. Township of York*, 34 O. L. R. 377.
- ✓ **Sec. 39.** This section overrides the procedure provided by Supreme Court Rule 499, which provides that where a party does not appear at the trial the judgment may be set aside and a new trial ordered by a Judge: *Colleran v. Green*, 36 O. L. R. 267.
- ✓ **Sec. 40.—(2)** "Final in its nature": *Davis Acetylene Gas Co. v. Morrison*, 34 O. L. R. 155; and see *M. Brennen and Sons Mfg Co. v. Thompson*, 33 O. L. R. 465.
- ✓ **Sec. 42.—(3)** New section 1916, c. 24, s. 7: certifying pleadings on appeal.
- ✓ **Sec. 44.** "Thirty days from the judgment, order or decision": *Carter v. Hicks*, 33 O. L. R. 149.
- ✓ **Sec. 44.—(1)** Amended 1916, c. 24, s. 7.
- ✓ **Sec. 44a.** New section 1918, c. 21, s. 2, as to rehearing of case where Judge dies or does not deliver judgment within six months.

CHAPTER 60.

THE GENERAL SESSIONS ACT.

- Sec. 11.—(2)** Repealed, new sub-section 1918, c. 20, s. 15.

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CHAPTER 61.

THE COUNTY JUDGES CRIMINAL COURTS ACT.

CHAPTER 62.

THE SURROGATE COURTS ACT.

- OK to amend 1925*
- ✓ **Sec. 2.**—(g) New clause, 1918, c. 22, s. 1: meaning of “claim or demand.”
- ✓ **Sec. 19.** An executor may be forced to pay the costs of an unsuccessful action out of his own pocket, but he is entitled to be paid out of the estate reasonable expenses for management and these may include costs of action reasonably defended: the direction of the trial Judge cannot bind the Surrogate Court Judge who must exercise his independent judgment: *Re Dingman*, 35 O. L. R. 51.
- ✓ **Sec. 21.** An appeal lies to the Supreme Court of Canada from the Appellate Division in a case originating in a Surrogate Court: *The Trusts & Guarantee Co. v. Rundle*, 52 S. C. R. 114.
- ✓ **Sec. 23.**—(2) (3) New sub-sections 1918, c. 22, s. 2: as to grant of administration with will annexed without security, where deceased on war service.
- ✓ **Sec. 33.** Property of the deceased does not mean property in Ontario only, but all property which may be affected by the action and where testator had assets of \$100 only in Ontario but over \$2,000 in Massachusetts, and it was shown that by the law of that state where probate has been granted in country of deceased's domicile it is not open to contestation in Massachusetts, an action contesting the will was removed into the Supreme Court: *Re Newcombe v. Evans*, 37 O. L. R. 354.
- ✓ **Sec. 69.**—(5) Persons mentioned in the section have a *locus standi*, and can insist on application of
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Statute of Limitations, even though administrator does not plead it: *Re Rutherford*, 34 O. L. R. 395.

- ✓ **Sec. 75.** Amended 1917, c. 28, s. 1: exemption as to fees on account of military service.
- ✓ **Sec. 76.** Repealed, new section 1918, c. 22, s. 3.
- ✓ **Schedule A. Part 2.** Amended 1914, c. 2, s. 4.

CHAPTER 63.

THE DIVISION COURTS ACT.

- ✓ **Sec. 15.—(3)** Amended 1916, c. 26, s. 1.
- ✓ **Sec. 25.—(2)** Amended 1914, c. 21, s. 17.
- ✓ **Sec. 26.** Repealed, new section 1916, c. 26, s. 2.
- ✓ **Sec. 27, 28, 29, 31, 32.** Repealed, 1916, c. 26, s. 4.
- ✓ **Sec. 33.** Repealed, new section 1916, c. 26, s. 3.
- ✓ **Sec. 36.—(2)** Repealed, new sub-section 1918, c. 20, s. 16.
- ✓ **Sec. 43.—(3)** Amended 1916, c. 26, s. 5.
- ✓ **Sec. 47.—(4)** New sub-section 1914, c. 2, s. 4.
- ✓ **Sec. 53.** Amended 1917, c. 27, s. 20.
- ✓ **Sec. 56.** Amended 1916, c. 26, s. 6.
- ✓ **Secs. 57 & 58.** Repealed 1916, c. 26, s. 4.
- ✓ **Sec. 61.—(a)** Where an action, for return of deposit on sale of land, involves the question of possession by the vendor of a good or defective title, at the date of contract or trial, there is no jurisdiction in the Division Court: *Luttrell v. Kurtz*, 34 O. L. R. 586: *semble*, question whether a restrictive building covenant still binds the lands should not be decided in a Division Court: *Luttrell v. Kurtz*, 34 O. L. R. 586.

- ✓ **Sec. 62.**—(1) (a) It was held in *Harmston v. Woods*, 39 O. L. R. 105, that the Division Court has no jurisdiction to entertain an action for trespass to land, following the dictum in *Neely v. Parry Sound River Imp. Co.*, 8 O. L. R. 128, but this decision was overruled in *McConnell v. McGee*, 39 O. L. R. 460, where such action, provided no question of title is involved, was held to be a personal action within the meaning of this section.
- ✓ **Sec. 62.**—(1) (d) Plaintiff's cheque for \$150 drawn on a bank in favor of defendant and endorsed by him is beyond the jurisdiction, the cheque being evidence of payment of money only and not proof of a loan: *Harty v. Grattan*, 35 O. L. R. 348.
Where in a written lease, the lessee's father covenanted to pay the rent in case the son made default in payment of same when due and payable, it was held that there was no jurisdiction in respect of the claim against the father, proof of the condition upon which his liability was based being necessary: *Walsh v. Webb*, 38 O. L. R. 457.
- ✓ **Sec. 72.** Territorial jurisdiction: contract made by correspondence and not arising wholly within one division: *Re McNeilly v. Bennett*, 34 O. L. R. 400.
Territorial jurisdiction: where merchants at D. sued defendant, living at S., for price of goods shipped to S., it was held in action brought at D., that the place of payment was at D., and even if delivery was to be made at S., that was a fact to be determined by Division Court Judge and until he so determined his jurisdiction would not be ousted, and where defendant disputed jurisdiction but did not appear at the trial, and judgment was given against him, the Supreme Court refused to grant prohibition: *Re Sovereign Mitt Glove v. Cameron*, 35 O. L. R. 143.
- ✓ **Sec. 106.** "Take down the evidence in writing": notes of evidence are not sufficient, unless they contain the substance of what is said: *Barrett v. Phillips*, 33 O. L. R. 203.

- ✓ **Sec. 123.** Where judgment was given in absence of party, caused by error of clerk in notice sent under 79 (2), it was held that an application to set aside did not fall within the limitation as to time fixed by this section: *Re Arnold & Cook*, 36 O. L. R. 504.
- ✓ **Sec. 127.** Where no evidence is taken, a statement of facts agreed to by the parties is insufficient for purposes of appeal; quaere, whether Division Court Judge's certificate as to what was proved before him would suffice: *Luttrell v. Kurtz*, 34 O. L. R. 586.
- ✓ **Sec. 128.**—(1) Amended 1916, c. 26, s. 7: the procedure laid down for the appellant is subject to the Consolidated Rules of the Supreme Court.
- ✓ **Sec. 190.** Provisions as to judgment summons process are not intended to apply to an Indian: he cannot be committed to jail, even though the Judge considers he has means and ability to pay: *Re Caledonia Milling Co. v. Johns*, 42 O. L. R. 338.
- ✓ **Sec. 214.**—(a) Amended 1914, c. 2, s. 4.

CHAPTER 64.

THE JURORS ACT.

- ✓ **Sec. 32.** Repealed, new section 1918, c. 23, s. 1.
- ✓ **Sec. 33.** Repealed, new section 1918, c. 23, s. 2.
- ✓ **Sec. 35.** Repealed, new section 1918, c. 23, s. 3.
- ✓ **Sec. 36.** Repealed, new section 1918, c. 23, s. 4.
- ✓ **Sec. 37.**—(1) Amended 1914, c. 21, s. 18; 1916, c. 24, s. 8; repealed, new sub-section 1918, c. 23, s. 5.
- ✓ **Sec. 44.**—(9) Repealed, 1918, c. 23, s. 6.
- ✓ **Sec. 90.**—(4) Repealed, new sub-section 1916, c. 24, s. 9.
- ✓ **Sec. 102.** Repealed, new section 1918, c. 23, s. 7.

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CHAPTER 65.

THE ARBITRATION ACT.

- ✓ **Sec. 3.** A reference to the Crown, without more, in a Provincial Statute, means the Crown in right of the Province only, and section 5 making a submission irrevocable except by leave of the Court does not apply to a submission by the Crown in right of the Dominion: *Gauthier v. The King*, 56 S. C. R. 176.
- ✓ **Sec. 5.** Where value of buildings by terms of lease were to be found by a board of valuers, the proceedings are a valuation not an arbitration: *Campbell v. Irwin*, 32 O. L. R. 48. See notes to section 3, as to irrevocability of submission by the Crown.
- ✓ **Sec. 10.—(c)** As to power of arbitrator to amend award after time limited for appeal has expired: *Re White and City of Toronto*, 38 O. L. R. 337.
- ✓ **Sec. 11.** See *Harrison v. Harrison*, 41 O. L. R. 195.
- ✓ **Sec. 12.** Where there is an award by two of three arbitrators, the concurrence of both in admitting the mistake is necessary to justify setting aside the award on the ground of mistake not appearing upon its face: *Re Laidlaw v. Campbellford, Lake Ontario & Western*, 31 O. L. R. 209, affirmed 50 S. C. R. 422; see also *Campbellford v. Massie*, 50 S. C. R. 409.
 The Court will set aside an award where an error in law appears on its face, and where the arbitrator gives his reasons in a memorandum accompanying the award error in law may be shown by reference to those reasons: *Parsons v. Township of Eastnor*, 34 O. L. R. 110.
 Misconduct of arbitrator: *Wright v. Toronto R. W. Co.*, 6 O. W. N. 119; *Re Windatt and Georgian Bay & Seaboard R. W. Co.*, 34 O. L. R. 198.
- ✓ **Sec. 13.** Where quality of work under construction contract and all questions in dispute are subject to

decision of engineer, latter being in employ and under influence of one of contracting parties and therefore not an impartial or indifferent arbitrator, his finding held not to be final or binding: see *Brennan & Hollingworth v. City of Hamilton*, 39 O. L. R. 367.

Setting aside award, arbitrator being brother of one of the parties to the arbitration: see *Re Turnbull & Pipestone*, 29 D. L. R. 75 (Man.).

✓ **Sec. 14.** Where the arbitrator has amended his award after the time limited for appeal has expired, the question as to his power to do so should not be determined upon an application under this section for leave to enforce the award as a judgment: *White v. City of Toronto*, 38 O. L. R. 337.

✓ **Sec. 17.** Where there is an appeal the arbitrators should state in writing the reasons for their findings: they should not be obtained *ex parte*, and examination of an arbitrator is not the proper method of obtaining them: *Re Clarkson and Campbellford, L. E. & W. Ry. Co.*, 35 O. L. R. 345.

As to review by Appellate Court of findings relative to amount: see *Re Brantford Golf and Country Club and Lake Erie & Northern Ry.*, 32 O. L. R. 141, 32 D. L. R. 219 (in Sup. Ct.); *Re Billings and Canadian Northern Ry.*, 32 O. L. R. 150, 32 D. L. R. 252 (in Sup. Ct.); *Re Muir and Lake Erie v. Northern Ry.*, 32 O. L. R. 150, 32 D. L. R. 252 (in Sup. Ct.); *Ruddy v. Toronto Eastern Ry. Co.*, 38 O. L. R. 556.

✓ **Sec. 29.** A decision having been rendered by the Court upon a case stated by arbitrators, who have acted upon such opinion, the question involved in such decision cannot be raised upon an application subsequently made to set aside the award; *Re Toronto General Hospital Trustees and Sabiston*, 38 O. L. R. 139.

Stated case is now to be heard by a Judge in Weekly Court: see R. S. O. c. 56, s. 43; *Re McConkey Arbitration*, 42 O. L. R. 380.

See also cases under notes as to arbitration under the Railway Act, c. 185, s. 90, and the Municipal Act, c. 192, s. 325.

- ✓ **Sched. A.—(f)** The clause does not apply where the agreement of submission fixes the date when the award shall be made; but in a case where the arbitrators failed to extend the time and so became functi officii, the award was upheld as valid and binding upon the ground that the parties appeared before the arbitrators, failed to appeal or move against the award and carried out its terms in part, and a parol submission arose by implication: *Harrison v. Harrison*, 41 O. L. R. 195.
- ✓ **Sched. A.—(k)** "Award of majority shall be final and binding": Where there are two or more arbitrators all should execute the award at the same time and place; failure so to do may invalidate the award: see *Nott v. Nott*, 5 O. L. R. 283, but in an action in which the award was in question, the invalidity of the award on the above ground was not pleaded, and leave to amend was refused: *Harrison v. Harrison*, 41 O. L. R. 195.
- ✓ **Sched. A.—(l)** Discretion of arbitrators as to costs: see *Re Hislop & Stratford*, 34 O. L. R. 97; costs in expropriation proceedings abandoned before owner actually surrendered possession: see *Frontenac Gas Co. v. The King*, 51 S. C. R. 594.

CHAPTER 66.

THE BOARDS OF TRADE GENERAL ARBITRATION ACT.

CHAPTER 67.

THE BOUNDARY LINE DISPUTE ACT.

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CHAPTER 68.

THE LUNACY ACT.

- ✓ Sec. 7.—(8) After an order declaring lunacy, the lunatic cannot make legal disposition of his property either himself or by directions to his committee, even after his discharge from asylum, while the order stands: Rourke v. Halford, 37 O. L. R. 92.
- ✓ Sec. 10. This section only contemplates a superseding order for purpose of restoring the person to the management of his own affairs: and such superseding order cannot be made after death of the lunatic: Re Rourke, 33 O. L. R. 519.
- ✓ Sec 11.—(d)The rule laid down in Re Norris, 5 O. L. R. 99, that property of persons not sui juris should not be left for private investment, but should be paid into Court, received legislative sanction on this revision of the Lunacy Act in 1909: Re Rourke, 33 O. L. R. 519.
The fact that a trust company, appointed committee of a lunatic's estate, can under its statutory powers act without giving security does not enlarge its powers in dealing with the funds; yearly balances must be paid into Court: Re Hunter, 37 O. L. R. 463.
- ✓ Sec. 12. The court will not sanction disbursements to charitable and philanthropic objects: Re D., 40 O. L. R. 365.

CHAPTER 69.

THE REPLEVIN ACT.

OK to amend 1925

CHAPTER 70.

THE DOWER ACT.

OK to amend 1925

- ✓ Sec. 10. Where wife bars dower in statutory short form mortgage which does not provide for service upon

her of notice of sale under power, this section does not extend her rights in that respect: Meredith, C. J. C.P., in Girardot v. Curry, 38 O. L. R. 350.

- ✓ **Sec. 14.**—(2) No order can be made until value of dower has been ascertained: Re Haycock, 11 O. W. N. 291.
- ✓ **Sec. 17.** During lifetime of grantor: see Re Haycock, 11 O. W. N. 291.
- ✓ **Sec. 23.** The purpose of the provision is to prevent the widow getting the value arising from permanent improvements, and it is not to be taken as indicating that she is entitled at all events to one-third of the rentable value at the time of alienation or death; where purchaser from husband pulled down the building and erected new buildings, the dowress on her husband's death was held not entitled to the benefit of any claim in respect of the building pulled down, but dower should be computed by ascertaining the reasonable portion of the rent referable to the land and allowing one-third of that, having regard to age of dowress, capitalized: McNally v. Anderson, 31 O. L. R. 561.
- ✓ **Sec. 24.** Unless and until a widow elects to take under the Dower Act and not under the Devolution of Estates Act, she is not a person entitled to apply for partition under Rule 615: being entitled to dower out of the whole of the land, and her dower not being assigned, she is not a person who can compel partition; she has only a right of action to have her dower assigned: Morrison v. Morrison, 39 O. L. R. 163.

CHAPTER 71.

THE LIBEL AND SLANDER ACT.

- ✓ **Sec. 5.** Where the jury found for the defendant, in face of an admission and against evidence, that the

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newspaper statement was untrue as to part—a part clearly libellous—a new trial was ordered: *Govenlock v. London Free Press Co.*, 35 O. L. R. 79. Upon a plea of justification, the defendant is confined to proving the truth of his assertion: *Govenlock v. London Free Press Co.*, 35 O. L. R. 79.

- Sec. 12.**—(1) An affidavit by the defendant that after diligent inquiry he is satisfied that the plaintiff has not property sufficient to answer costs throws the onus upon the plaintiff of displacing this prima facie case, and unless displaced shows insolvency: *Augustine Automatic Rotary Engine Co. v. Saturday Night Ltd.*, 34 O. L. R. 166.
- Sec. 12.**—(4) Substantive order for security: see *Augustine Automatic Rotary Engine Co. v. Saturday Night Ltd.*, 34 O. L. R. 166.
- Sec. 15.** Substantial compliance with provisions of section sufficient: see *Scown v. Herald Publishing Co.*, 56 S. C. R. 305.

CHAPTER 72.

THE SEDUCTION ACT.

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CHAPTER 73.

THE CROWN ADMINISTRATION OF ESTATES ACT.

- Sec. 14.** Amended 1918, c. 20, s. 17.

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CHAPTER 74.

THE SETTLED ESTATES ACT.

OK to amend 1926

CHAPTER 75.

THE LIMITATIONS ACT.

- Sec. 5. What possession is sufficient: As between mortgagor and mortgagee, on the question whether the disability clauses of the Act applied to an action to redeem, the Appellate Division decided in the affirmative in *Smith v. Darling*, 36 O. L. R. 587, in which the reasons for such conclusion are fully given by Meredith, C.J.O., after an exhaustive review of the legislation and authorities, the Court also considering itself bound by the decision of the Court of Appeal in *Faulds v. Harper*, 9 A. R. 537, and holding that the judgment of the Supreme Court, 11 S. C. R. 639, proceeded on an entirely different ground in reversing that decision, and that the expressions of opinion of Strong and Henry, J.J., were merely obiter: *Smith v. Darling*, 36 O. L. R. 587, affirmed, 55 S. C. R. 82.

Kind of possession: actual, continuous and visible: where a fisherman erected a shack upon a small piece of land between road allowance and lake, the land not being enclosed with a fence and, apart from occupation of the shack, the squatter went upon the land only for a few days in spring and autumn, held the acts were simply a series of successive trespasses and title by possession was acquired solely in that part of the land occupied by the original shack: *McLean v. Wilson*, 36 O. L. R. 610.

Continuous possession: Island used as fishing station not actually occupied during winter season: *Mattress v. Goodchild*, 6 O. W. N. 156.

Possession by gates and fences: *Lawson v. Bullen*, 6 O. W. N. 257.

Squatter: actual constant adverse possession limited to small cleared portions: *Cowley v. Simpson*, 31 O. L. R. 200.

Where lands are sold for taxes any possession had by a trespasser prior to the tax deed cannot run in

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his favour, the tax deed creating a new commencement of title: *Soper v. Windsor*, 32 O. L. R. 352.

The Court will not make a declaratory judgment at instance of plaintiff claiming solely by possession: *Reaume v. Cote*, 35 O. L. R. 303.

An action by creditors of an insolvent estate to set aside a conveyance by the assignee for creditors to the mortgagee of lands of the equity of redemption, on the ground that such mortgagee was an inspector of the estate, is an action to recover land within this section: *Taylor v. Davis*, 41 O. L. R. 403.

- ✓ **Sec. 6.**—(7) By this section the statute applies to bar the plaintiff's right of re-entry at the expiration of ten years from one year after creation of the tenancy: nothing is said about the effect upon the operation of the statute of payment, but the law attributes to payment of rent in case of a tenancy at will the effect of a similar payment of rent under sub-section (6): *East v. Clarke*, 33 O. L. R. 624.
- ✓ **Sec. 7.**—(3) See *Stuart v. Taylor*, 33 O. L. R. 20.
- ✓ **Sec. 12.** There is no irrebutable presumption in case of parent and child entitled as tenants in common that the parent holds on behalf of the child: it is a question of fact and the step-mother of infant was held to have acquired title by possession: in such case the right to treat the parent in possession as bailiff for the child rests upon equitable principles, and the child can by acts and conduct preclude itself from invoking the equitable doctrine: *Fry & Moore v. Spears*, 34 O. L. R. 632, 36 O. L. R. 301.
- ✓ **Sec. 13.** The section has no application to a case where, mortgagor dying and leaving his widow and children who continue upon the mortgaged lands, payments on account of interest are made by one of the children; such payment is sufficient to keep the mortgage alive as against all persons claim-

ing under the mortgagor: *McKay v. Hutchings*, 41 O. L. R. 46.

- ✓ **Sec. 14.** Acknowledgment of title in writing as interrupting the adverse possession does not apply to possession of Crown lands: *Hamilton v. The King*, 54 S. C. R. 331.
- ✓ **Sec. 23.** See *East v. Clarke*, 33 O. L. R. 624.
- ✓ **Sec. 24.** As to possible effect of section 13, where payment is made by one of several children of deceased mortgagor: see *McKay v. Hutchings*, 41 O. L. R. 46.
- ✓ **Sec. 24.—(2)** This sub-section did away with the effect of cases such as *Neil v. Almond*, 29 O. L. R. 63 et al. (deciding that writ of fi. fa. in the sheriff's hands is a lien which would expire in ten years even though the writ were duly renewed). It was held that section 49 of the Limitations Act, 10 Edw. VII. s. 34 (then in force), did not bar the right to renew the writ of fi. fa. after 20 years from recovery of judgment: *Poucher v. Wilkins*, 33 O. L. R. 125, where the legislation is reviewed. See also *Doel v. Kerr*, 34 O. L. R. 251, referred to under section 49.
- ✓ **Sec. 26.** Amended 1916, c. 24, s. 10, clerical error.
- ✓ **Sec. 32.** "Concealed fraud": see *Taylor v. Davis*, 41 O. L. R. 403.
- ✓ **Sec. 34.** To substantiate a claim under the statute, ss. 34 et seq., the plaintiff must show that the easement has been actually enjoyed within twelve months prior to commencement of action: *Abell v. Village of Woodbridge*, 39 O. L. R. 382; as to long user unexplained, and the doctrine of lost grant: see *Abell v. Village of Woodbridge*, 39 O. L. R. 382.
- Discussion of claim to right by prescription by virtue of lost grant or as riparian proprietors to arrest the flow of a stream: *Watson v. Jackson*, 30 O. L. R. 517, 31 O. L. R. 481.

From continuous user for 40 years a prior like user may be inferred: see *Rex v. Tweedie*, 52 S. C. R. 197.

The right to lateral support of land is a right of property, not an easement: the owner of land has a right to have it left in its natural plight; what amounts to a wrongful interference necessarily varies according to the nature of the soil, and an excavation which might be harmless in clay might materially affect neighbouring lands if in sand; washing away of sand from beach facilitated by removal of sand from adjoining lot: *Cleland v. Berberick*, 34 O. L. R. 636, 36 O. L. R. 357.

- ✓ **Sec. 35.** Acquisition of right to flow of water in race-way: *St. Mary's Milling Co. v. Town of St. Mary's*, 37 O. L. R. 546.

Where the evidence showed that a fisherman who, as a squatter, had built a shack between lake and road allowance, used several paths or routes by which to pass, held no right could accrue by prescription: *McLean v. Wilson*, 36 O. L. R. 611.

As to what is required to establish prescriptive right, whether under the statute or by lost grant: *Watson v. Jackson*, 31 O. L. R. 481.

Where a municipal corporation using land along a river as a dumping ground acquired title thereto by length of possession, it was held that all riparian rights of the original owners were also lost: *Twin City Ice v. Ottawa*, 34 O. L. R. 358.

- ✓ **Sec. 47.** 47. Where an executor through innocent error paid part of plaintiff's share to other beneficiaries, he was held in an action for an account entitled to plead the statute, being guilty of no fraud or conversion: *Lees v. Morgan*, 40 O. L. R. 233.

- ✓ **Sec. 47.—(2)** Effect of section discussed: *Taylor v. Davis*, 41 O. L. R. 403.

- ✓ **Sec. 47.—(2) (b)** Where a beneficiary, entitled to certain funds upon the death of another, during such other's lifetime accepted a statement and settlement accordingly from the trustee, it was held

that the effect of the transaction was to convert the interest in remainder into an interest in possession, and, as regards an action for accounting, the statute would commence to run from that date and not from the death of owner of life interest: *Lees v. Morgan*, 4 O. L. R. 233.

- ✓ **Sec. 49.**—(1) (b) By section 2 (a), “action” includes any civil proceeding, and an application made in 1915 for leave to issue execution upon a judgment of 1883, being such an “action”: is barred by this provision; the renewal of an execution issued in 1884 from time to time until 1905, gave no new starting point: *Doel v. Kerr*, 34 O. L. R. 251.
This decision was distinguished from that in *Poucher v. Wilkins*, 33 O. L. R. 125, on the ground that where an execution is in force at or after the expiration of 20 years, as in the latter case, the renewal is only the ministerial act of the officer of the Court.
- ✓ **Sec. 49.** The statute of limitations is not applicable to an action for recovery of specific personal property: *McGregor v. Curry*, 31 O. L. R. 261.
- ✓ **Sec. 49.**—(1) (g) The plaintiff, in action under promise by deceased intestate to make provision by will, was held limited, in recovering remuneration for work done in reliance upon such promise, to a period of six years prior to death: *Re Rutherford*, 34 O. L. R. 395.
- ✓ **Sec. 55.**—(1) Written acknowledgment from which a promise to pay is implied: *Wood v. Tromanhauser*, 32 O. L. R. 371.
- ✓ **Sec. 55.**—(2) Where brokers sold shares held by them for a customer and credited proceeds upon the customer’s account, held sufficient payment to form new starting point for the statute. *Stark v. Somerville*, 40 O. L. R. 374, 41 O. L. R. 591.

CHAPTER 76.

THE EVIDENCE ACT.

✓ **Sec. 7.** Upon the examination of an assignor for creditors under the Assignments and Preferences Act, c. 134, s. 38, he is not excused from answering questions on the ground that such answers would tend to criminate him: *Re Ginsberg*, 40 O. L. R. 136.

The former privilege of refusing to answer was a civil right, and may be taken away by a Provincial Legislature as to matters within its legislative powers, and if the privilege were part of the criminal law, it has been abrogated by the Canada Evidence Act, R. S. C. 1906, c. 145, ss. 2, 5: *Re Ginsberg*, 40 O. L. R. 136.

✓ **Sec. 10.** Expert evidence, number of witnesses, medical men not necessarily expert: *Burrows v. G. T. R.*, 34 O. L. R. 142.

As to new trial where provisions of section disregarded, see *Ross v. Scottish Union Insurance Company*, 41 O. L. R. 108.

As to whether restriction on number of expert witnesses applies to arbitration proceedings: see *Canadian North-Western Ry. Co. v. Moore*, 53 S. C. R. 519.

✓ **Sec. 12.** Corroboration: see *McEwan v. Toronto General Trusts Corporation*, 36 O. L. R. 244, 54 S. C. R. 381. Complete duplication of the evidence of the adverse party is not essential, other material evidence pointing to its probability being sufficient: *Cowley v. Simpson*, 31 O. L. R. 200.

Where deceased as member of partnership firm made agreement for firm, as to necessity of corroboration in action against firm: see *Toronto Suburban Ry. Co. v. Beardmore*: (1917), 12 O. W. N. 214, 251.

✓ **Sec. 14.** Amended 1916, c. 24, s. 11.

- ✓ **Sec. 38.**—(1) New sub-section 1916, c. 24, s. 12; affidavits taken out of Ontario may be before a commissioner authorized to take affidavits in Ontario, or a notary public of Ontario. See also, 1916, c. 24, s. 13; amended 1917, c. 27, s. 68; affidavits may be sworn before officers of the Canadian Expeditionary Forces.
- ✓ **Sec. 46.** It is presumed that alterations in a deed were made before execution, but it is not the law that, where such presumption has been rebutted by proof to the contrary, there is any further presumption that the alterations were made with the assent of the grantor; the prima facie evidence afforded by production of certified copy under this section is rebutted by the evidence which rebuts the presumption above referred to: *Hedge v. Morrow*, 32 O. L. R. 218.
- ✓ **Sec. 50.**—(1) Under the Canada Evidence Act (R. S. C. 1906, c. 145, s. 41), an order was made for attendance of witnesses for examination under letters rogatory issued by a French Court: *Re Isler*, 34 O. L. R. 375.

CHAPTER 77.

THE COMMISSIONERS FOR TAKING AFFIDAVITS ACT.

CHAPTER 78.

THE COSTS OF DISTRESS ACT.

CHAPTER 79.

THE JUDGES' ORDERS ENFORCEMENT ACT.

- ✓ **Sec. 2.** As to jurisdiction to award costs: *Township of Ashfield and County of Huron*, 39 O. L. R. 332.

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✓ **Sec. 4.** The statute has no application to an appeal from decision of a Judge under the authority conferred by Part IV. of the Municipal Act, and there is no right of appeal with or without leave; division of opinion in appellate court: *Rex ex rel. Boyce v. Porter*, 33 O. L. R. 575.

CHAPTER 80.

THE EXECUTION ACT.

✓ **Sec. 2 (b)** Action against sheriff for improper sale, and measure of damages in such case: *Maple Leaf Lumber Co. v. Caldbick and Pierce*, 39 O. L. R. 201.

✓ **Sec. 10.** A *fi. fa.* binds the interest of a vendor of lands although placed in the sheriff's hands after a contract made for sale, part of the purchase money remaining unpaid; the scope of the Execution Act has been widened since the decision in *Parke v. Riley*, 3 E. & A. 215: *Robinson v. Moffatt*, 37 O. L. R. 52.

The execution creditor's death does not abate the execution, and where after his death a *fi. fa.* lands was renewed without leave or revivor of the action, a subsequent sale by the sheriff under the writ was held valid: *Mahaffy v. Bastedo*, 38 O. L. R. 192. The renewal is a mere ministerial act of the officer of the Court, and even if irregular, such irregularity would not vitiate the execution so as to enable a stranger to the record to attack the sale: *Mahaffy v. Bastedo*, 38 O. L. R. 192.

The rights of a bona fide purchaser without notice of the writ in the sheriff's hands are protected: *Re Montgomery and Wrights Ltd.*, 38 O. L. R. 335.

As to what constitutes a seizure: *Maple Leaf Lumber Co. v. Caldbick and Pierce*, 39 O. L. R. 201.

- ✓ **Sec. 12.** "In the place where notice is served": as to possibility of enforcing execution against a judgment debtor as regards shares owned in a Dominion company, having a place of business in Ontario, but having its head office in Quebec: see *Herold v. Budding*, 37 O. L. R. 605.
An execution creditor can take under his writ only the true interest of the execution debtor, e.g., the true interest of an apparent owner of stock in a company alone is exigible: *Re Montgomery and Wrights Ltd.*, 38 O. L. R. 335.
- ✓ **Sec. 29a.** New section 1914, c. 21, s. 20: a registered chattel mortgage may be seized in execution by the sheriff, sections 25 et seq. being made applicable.
- ✓ **Sec. 31.**—(3) New sub-section 1915, c. 20, s. 10: an equity of redemption is saleable under execution, even though lands are subject to more than one mortgage.
- ✓ **Sec. 34.** The section is not wide enough to enable a fi. fa: against lands to cover rent: *Holliday v. Bank of Hamilton*, 40 O. L. R. 203.

CHAPTER 81.

THE CREDITORS' RELIEF ACT.

- ✓ **Sec. 6.** The section applies to a case where the sheriff has realized money by sale of a debtor's property under execution, and has made the entry required by sub-section (1) before the making by the debtor of a general assignment for creditors, and the fund is divisible among all creditors coming in within the time limited by sub-section (2) although after the assignment: *Re Harrison*, 35 O. L. R. 45.
- ✓ **Sec. 6.**—(2) "Costs of such proceedings": solicitors who, by attachment proceedings, secured payment into Court of money owed by garnishee to judgment debtor, were held entitled to costs of the

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attachment proceedings, but not of the action in which the judgment was recovered, the balance being distributable by the sheriff according to the statute: *Dales v. Byrne*, 35 O. L. R. 495.

Sec. 30. The section applies to a case where the sheriff has realized money by sale of a debtor's property under execution and made the entry required by sub-section (1) before the making by the debtor of a general assignment for creditors, and the fund is divisible among all creditors coming in within the time limited by sub-section(2), although after the assignment: *Re Harrison*, 35 O. L. R. 45. In this case *Roach v. McLachlan* (1892), 19 A. R. 496, and *Breithaupt v. Marr* (1893), 20 A. R. 689, were distinguished upon the ground that the sheriff's sale in the first case was after the chattel mortgage, and in the second case after the assignment, and so the sheriff was selling the goods of the chattel mortgagee and of the assignee.

Sec. 33.—(11) The direction of the Act is that the groups of execution creditors shall be gathered in one scheme of distribution (irrespective of mortgages), and the proceeds of the sale divided ratably among all as on an equal footing, and the effect appears to be to pay a subsequent mortgage in full by reducing the amount of a prior execution. The court will refuse to extend this method of distribution where moneys are made available for creditors and mortgagees in a suit to set aside a transfer of land as void against creditors: *Union Bank v. Taylor*, 33 O. L. R. 255.

CHAPTER 82.

THE ABSCONDING DEBTOR'S ACT.

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CHAPTER 83.

FRAUDULENT DEBTORS' ARREST ACT.

✓ **Sec. 3.** The provision requiring proof to the satisfaction of the judge that the plaintiff has a cause of action to the amount of not less than \$100 must be strictly complied with: Review of authorities: *Parsons v. Hancock*, 38 O. L. R. 590.

It is not sufficient for the plaintiff to swear to an indebtedness, he must show facts and circumstances evidencing his cause of action, he must also not only express his belief in the defendant's intention to abscond, but must show facts satisfying the judge that there is good ground for that belief: *Parsons v. Hancock*, 38 O. L. R. 590.

The applicant for an order must prove (1), an indebtedness to him of not less than \$100, (2) that defendant is about to quit Ontario, (3) with intent to defraud his creditors generally or the applicant only; the fact of quitting without any provision for payment of debts may be evidence of fraudulent intent, but is not necessarily so; the Act does not provide for arrest of debtors about to quit Ontario without paying their debts: *Simpson v. Genser*, 34 O. L. R. 381.

CHAPTER 84.

THE ONTARIO HABEAS CORPUS ACT.

✓ **Sec. 7.** The right of the defendant to be discharged from custody under the warrant of commitment does not depend on the legality or illegality of the caption, but on the legality or illegality of the detention: *Rex v. Gage*, 36 O. L. R. 183.

✓ **Sec. 8.** As to how far the general right of appeal is curtailed by the Ontario Temperance Act 1916, c. 50, see *Rex v. Martin*, 41 O. L. R. 79.

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CHAPTER 85.

THE CONSTITUTIONAL QUESTIONS ACT.

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CHAPTER 86.

THE DAMAGE BY FLOODING ACT.

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CHAPTER 87.

THE JUSTICES OF THE PEACE ACT.

- ✓ Sec. 3. Amended 1917, c. 27, s. 21: Supreme Court, County and District Judges as ex officio justices of the peace may do alone what is authorized to be done by two or more justices.
- Sec. 11.—(3) (4) Amended 1916, c. 24, s. 14: property qualifications in districts.

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CHAPTER 88.

THE POLICE MAGISTRATES ACT.

- ✓ Sec. 3.—(a) Amended 1914, c. 21, s. 21.
- ✓ Sec. 6—(2a) New sub-section 1915, c. 20, s. 11.
- ✓ Sec. 9.—(1) Repealed, new sub-section 1915, c. 20, s. 11.
- ✓ Sec. 15.—(2) New sub-section 1916, c. 24, s. 15, as to jurisdiction of police magistrate in issuing search warrant.
- ✓ Sec. 30. Amended 1918, c. 20, s. 18.
- ✓ Sec. 32—(2) Amended 1918, c. 20, s. 20.
- ✓ Sec. 35. New section 1918, c. 20, s. 19: as to conferring Provincial jurisdiction on police magistrate.

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CHAPTER 89.

THE PUBLIC AUTHORITIES PROTECTION ACT.

- ✓ **Sec. 4.**—(3) Amended 1916, c. 24, s. 16: clerical error.
- ✓ **Sec. 8.** Amended 1917, c. 27, s. 22: upon quashing conviction, the court may provide that no action be brought against the informant or any officer.
An appeal lies to the Appellate Division from order of Judge giving protection to a Police Magistrate: *Re Lascelle and Wholehan*, 38 O. L. R. 119. On appeal a protection order was limited so as not to protect the magistrate from things done maliciously and without reasonable and probable cause: *Re Lascelle and Wholehan*, 38 O. L. R. 119.
- ✓ **Sec. 13.** It was held in *Creighton v. Sweetland*, 18 P. R. 180, that a sheriff executing a fi. fa. is not fulfilling a public duty; in the next year, 62 Vic. (2) c. 7, s. 3, declared that "a sheriff shall be deemed an officer": in the statute as now revised he is deemed to be discharging a public duty under this section, so that an action must be brought within six months, but he is not entitled to security for costs under s. 16: *Maple Leaf Lumber Co. v. Caldbick and Pierce*, 38 O. L. R. 205.
Section has no application in limiting time for bringing action based on claim of negligence in operation of street railway owned and operated by municipality under a commission created for that purpose: *Kuusisto v. Port Arthur and Public Utilities Commission of Port Arthur*, 37 O. L. R. 146.
- ✓ **Sec. 16.** A sheriff acting under a fi. fa. is not fulfilling a public duty, and is not entitled to security in an action brought against him for something done while so acting: *Maple Leaf Lumber Co. v. Caldbick and Pierce*, 38 O. L. R. 205.
An action against a local board of health and a medical health officer for negligence in discharge of duties imposed by statute, falls within the provi-

sions of this section, and the defendants are entitled to security for costs: *Simpson v. Local Board of Health of Belleville*, 38 O. L. R. 244. The fact that the action is brought under the Fatal Accidents Act does not prevent the application of the provisions of this Act, extending protection to certain individuals: the Acts can be read together: *Simpson v. Local Board of Health of Belleville*, 38 O. L. R. 244.

The section is permissive: as to what defendant must show to entitle him to an order for security: *McTavish v. Lannin and Aitchison*, 12 O. W. N. 174.

- ✓ **Sec. 16.**—(2) As to sufficiency of affidavit: *Simpson v. Local Board of Health of Belleville*, 38 O. L. R. 244.
- ✓ **Sec. 17.** See *Glynn v. Niagara Falls*, 31 O. L. R. 1.

CHAPTER 90.

THE ONTARIO SUMMARY CONVICTION ACT.

- ✓ **Sec. 4.** (Code 1121) amendment of warrant of conviction on appeal: *Rex v. Gage*, 36 O. L. R. 183. (Code 723-725) defects and objections: *Rex v. Gage*, 36 O. L. R. 183.
- ✓ **Sec. 9.**—(1) Amended 1914, c. 2, s. 4.
- ✓ **Sec. 10.**—(3) A motion to quash a conviction for trespass to land was dismissed, an adequate remedy by appeal being provided by sub-section (1) of this section: *Rex v. Chappus*, 38 O. L. R. 576, affirmed 39 O. L. R. 329.
As to whether the right to certiorari is taken away in cases under the Ontario Temperance Act, 6 Geo. V. c. 50, to which s. 92, s.-s. 1 applies, see *Rex v. Thompson*, 39 O. L. R. 109.
The provisions of this Act being made applicable to the Ontario Temperance Act, 6 Geo. V. c. 50, by s. 72 of that Act, there is no right to certiorari in

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cases falling within s. 92, s.-s. 2 of that Act: *Rex v. Warne Drug Co.*, 40 O. L. R. 469.

Where certiorari is taken away, as by the Canada Temperance Act, R. S. C. 1906, c. 152, the Court can only interfere with the magistrate's decision in cases where it appears that his commission did not give him jurisdiction or that he was not in fact proceeding on an alleged violation of the Act: *Rex v. Cantin*, *Rex v. Weber*, 39 O. L. R. 21.

See also cases under 6 Geo. V. c. 50.

- ✓ **Sec. 11a.** New section 1914, c. 21, s. 22: either a conviction or order of dismissal made by a justice of the peace is appealable to a Divisional Court on the certificate of the Attorney-General.
- ✓ **Sec. 13.** New section 1917, c. 27, s. 23: providing schedule of fees on proceedings before justice of the peace.

CHAPTER 91.

THE CROWN ATTORNEY'S ACT.

- ✓ **Sec. 3.** Repealed, new section 1918, c. 20, s. 21.
- ✓ **Sec. 6.** Amended 1914, c. 21, s. 23.
- ✓ **Sec. 14.** Amended 1914, c. 21, s. 23.

CHAPTER 92.

THE CORONERS' ACT.

- ✓ **Sec. 3.—(2)** Amended 1918, c. 24, s. 1.
- ✓ **Sec. 3.—(3)** New sub-section 1918, c. 24, s. 2: conferring extra jurisdiction on coroners.
- ✓ **Sec. 8a.** New section 1914, c. 22, s. 1: It is not necessary for the coroner to obtain a certificate from the Crown Attorney as to inquest having been required.

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- ✓ **Sec. 16a.** Amended by giving coroner the right of summoning expert witnesses: 1914, c. 22, s. 2.
- ✓ **Sec. 36.—(2)** Amended 1914, c. 22, s. 3.
- Sec. 38a.** New section 1918, c. 24, s. 3: as to coroner holding inquest when disqualified by interest.
- Part III.** Repealed 1914, c. 41, s. 17: the investigation of fires being now vested in the Fire Marshal under the last mentioned statute.

CHAPTER 93.

THE DOMINION COMMISSIONERS OF POLICE ACT. *OK to end 1925*

CHAPTER 94.

THE CONSTABLES' ACT.

- Sec. 17.—(5)** Repealed, new sub-section 1915, c. 20, s. 12.
- Sec. 17.—(5a)** New sub-section 1915, c. 20, s. 12.

CHAPTER 95.

THE POLICE CONSTABLES' BAIL ACT. *OK to end 1925*

CHAPTER 96.

THE ADMINISTRATION OF JUSTICE EXPENSES ACT.

- Sec. 5.** Repealed, 1918, c. 25, s. 1.
- Sec. 7. —(2)** New sub-section 1914, c. 21, s. 25: crier's salary.
- Sec. 10.** Repealed, new section 1918, c. 25, s. 2.
- Sec. 14.** Repealed, new section 1916, c. 24, s. 17.

- Sec. 15a.** New section 1916, c. 24, s. 17: employment of interpreter.
- Sec. 16.—(3)** Amended 1914, c. 21, s. 26.
- Sec. 16.—(5)** Amended 1916, c. 24, s. 18.
- Sec. 18.** Amended 1914, c. 21, s. 26.
- Sec. 21.—(1)** Amended 1918, c. 25, s. 3.
- Sec. 21.—(2)** Repealed, new sub-section 1918, c. 25, s. 4.
- Sec. 21.—(3)** Repealed, new sub-section 1918, c. 25, s. 5.
- Sec. 21.—(4)** Amended 1918, c. 25, s. 6.
- Sec. 24.** Amended 1918, c. 25, s. 7.
- Sec. 25.** Repealed, new section 1918, c. 25, s. 8.
- Seco 26.** Amended 1917, c. 29, s. 1.
- Sec. 29.** Amended 1917, c. 29, s. 2.
- Sec. 30.** Amended 1918, c. 25, s. 9.
- Sec. 41.** Repealed, new section 1917, c. 29, s. 3.
- Sec. 42.** Amended 1917, c. 29, s. 4.
- Sec. 43.—(1)** Repealed, new sub-section 1914, c. 21, s. 26.
- Sec. 43.—(2)** Repealed, new sub-section 1917, c. 29, s. 5.
- Schedule A.** (as to sheriff's fees) amended 1917, c. 29, s. 6.
(Crown Attorney's fees) repealed, new schedule 1917, c. 29, s. 8.
(Constables' fees) amended 1914, c. 21, s. 26.
- Schedule C.** (Sheriffs' fees) amended 1917, c. 29, s. 7.
(Crown Attorneys' fees) repealed, new schedule 1917, c. 29, s. 9.
(Other matters) amended 1917, c. 29, s. 10.

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CHAPTER 97.

THE CROWN WITNESSES ACT.

✓ **Sec. 3.**—(2) New sub-section 1917, c. 27, s. 24: Judge may order additional compensation to witnesses.

CHAPTER 98.

THE ESTREATS ACT.

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CHAPTER 99.

THE FINES AND FORFEITURES ACT.

✓ **Sec. 6.** The jurisdiction to remit the fine or penalty cannot be exercised by the Master in Chambers, but may be exercised by a Judge in Court at any time after commencement of the action: *Seagram v. Pneuma Tubes Ltd.*, 40 O. L. R. 301.

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CHAPTER 100.

THE NIAGARA FALLS MAGISTRATES ACT.

*Repealed 1922 cap. 48
n.c.*

CHAPTER 101.

THE PROPERTY AND CIVIL RIGHTS ACT.

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CHAPTER 102.

THE STATUTE OF FRAUDS.

✓ **Sec. 3.** Where solicitor for landlord expressed by letter his client's willingness that tenant should relin-

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quish the premises, held under a lease for more than three years, held his authority so to do was not sufficiently established: *Re Clancy v. Schermehorn*, 31 O. L. R. 435.

- v **Sec. 5.** Memorandum in writing: correspondence between defendant and a third person as to carrying the agreement into execution can be referred to and may furnish the necessary memorandum: *McKinnon v. Doran*, 34 O. L. R. 403; 35 O. L. R. 349, affirmed, 53 S. C. R. 609.

Where lessor by informal writing added an agreement to give tenant an option to purchase at stated price, no time being set for exercise of option, it was held a sufficient memorandum though the vendor's name did not appear except by the signature: *Bennett v. Stodgell*, 36 O. L. R. 45.

Part performance: equity considers it a fraud to set up the absence of an agreement when possession has been given on the faith of it: *Township of King v. Beamish*, 36 O. L. R. 325.

Promise to answer for debt, etc., of another: where vendor of goods on threatening to stop same in transitu obtained the promise of vendee's wife to pay, it was held that what she promised to pay was the debt of her husband, and therefore the statute applied: *Jeffrey v. Alyea*, 36 O. L. R. 391. The application of the statute depends on the fact of the original party remaining liable, coupled with the absence of liability of the party sought to be charged except upon his express promise: *Jeffrey v. Alyea*, 36 O. L. R. 391.

Answer for debt or default of another: when defendant asked plaintiff to advance money to pay workmen of a company to keep operations going and promised to return it, held not within the statute, defendant having made himself primarily liable, and the rendering by plaintiff of the account to the company did not preclude his recovery: *Brown v. Coleman Development Co.*, 35 O. L. R. 219, affirmed, 50 S. C. R. 557.

"Interest in land": where purchaser of lands under sale of court upon being threatened with

proceedings to set sale aside promised that if such proceedings were dropped he would, upon re-sale of the lands, pay any profit to the objector, it was held not to be a contract within the statute: *Leslie v. Stevenson*, 34 O. L. R. 93; affirmed 34 O. L. R. 473.

“Interest in land”: where words used in an agreement of sale were of doubtful meaning, parol evidence to explain the position of the parties and of the subject matter and surroundings was admitted: *Martin v. Jarvis*, 37 O. L. R. 269. There is a growing inclination in the Courts to carry out contracts which are complete so far as essentials are concerned, and yet leave something (e.g., as to manner of payment) to be adjusted between the parties: Review of authorities on this point: *Martin v. Jarvis*, 37 O. L. R. 269.

Where the defendants having used a right of way for four years set up, in answer to a claim for compensation, an oral agreement permitting such user, it was held that the statute had no application, the action not being brought to charge (the defendant) upon a contract of sale of land or any interest in them: *Acton Tanning Co. v. Toronto Suburban Ry. Co.*, 56 S. C. R. 196.

“Fifty acres across the road”: held to be sufficient description and contract enforceable: *Sparks v. Clement*, 40 O. L. R. 487, 41 O. L. R. 344.

- ✓ **Sec. 12.**—“Receipt and acceptance”: *Thames Canning Co. v. Eckhardt*, 34 O. L. R. 72.

As to formation of contract by telegrams and letters, offers and acceptances, see *Ogilvy Flour Mills Company v. Morrow Cereal Company*, 41 O. L. R. 58.

- ✓ **Sec. 13.** New section 1916, c. 24, s. 19, operative after 1st of January, 1917: no action can be brought for commission on sale of real estate unless the agreement upon which the action is brought is in writing signed by the party to be charged or his authorized agent; amended 1918, c. 20, s. 58; the

writing evidencing agreement to pay commission must be separate from the sale agreement.

- ✓ Decision under Alberta Statute (6 Edw. VII. c. 27, s. 1): *Howard v. George*, 49 S. C. R. 75.

CHAPTER 103.

THE MORTMAIN AND CHARITABLE USES ACT.

- ✓ **Sec. 2** (2) (d) "Purpose beneficial to the community": see *Re Orr*, 40 O. L. R. 567. The Courts may look to the Act, which enumerates the purposes which shall be deemed charitable uses, to determine what in law is a charitable gift of personalty: *Re Orr*, 40 O. L. R. 567. Since the enactment of this subsection, the view expressed in English cases, that a gift is not necessarily charitable because it is for advancement of object of public utility, does not apply in Ontario: *ibid*.
- ✓ **Sec. 3**. "Statute for time being in force": applies only to statute of Province: Dominion company is subject to and bound to obey the statutes of Ontario as to Mortmain, and this applies to a trading company: the Mortmain Act is a "law of general application" as that expression is used in *John Deere Plow Co. v. Wharton* (1915), A. C. 330; *Attorney-General for Ontario v. Harris Lithographing Co.*, 41 O. L. R. 475.
- ✓ **Sec. 9**. See *Brown v. Kellar* (1917), 11 O. W. N. 401.
- ✓ **Sec. 14.**—(2) Amended 1914, c. 2, s. 4.

CHAPTER 104.

THE ESCHEATS ACT.

CHAPTER 105.

THE FRAUDULENT CONVEYANCES ACT.

CHAPTER 106.

THE POWERS OF ATTORNEY ACT.

CHAPTER 107.

THE SWARMS OF BEES ACT.

CHAPTER 108.

THE ALIENS REAL PROPERTY ACT.

CHAPTER 109.

THE LAW AND TRANSFER OF PROPERTY ACT.

- ✓ **Sec. 7.** Where the owner of lands, by signing a charge by way of mortgage in blank and delivering same to C., put it in C.'s power to fraudulently fill in his wife's name, the latter subsequently assigning the charge for value, it was held enforceable: *Dodds v. Harper*, 37 O. L. R. 37.
- ✓ **Sec. 15.** Watercourses: flow of water in race-way: see *St. Mary's Milling Co. v. Town of St. Mary's*, 37 O. L. R. 546.
Strip of land adjacent to lots passes as appurtenant thereto: *Re Brenzel and Rabinovitch*, 42 O. L. R. 394.
- ✓ **Sec. 21.** Where the mortgagee was absent from the country, an order was made enabling the mortgagor to clear the title by paying mortgage money into Court with interest and costs: *Re Worthington & Armand*, 33 O. L. R. 191.
- ✓ **Sec. 49.** Subject to all equities: where there is a statutory right to set-off, the assignee takes a claim

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against which there is a valid defence, which is one of the "equities": *Burman v. Rosin*, 35 O. L. R. 134; there is another equity, sometimes called set-off, but not depending upon the statute, which arises when the claims are upon the same contract, or are so interwoven by the dealings between the parties that the Court can find there has been established a mutual credit, or an implied agreement that the claims shall be set off, and this equity also attaches in the hands of an assignee: *Burman v. Rosin*, 35 O. L. R. 134.

The section does not apply to an assignment of a mortgage which in equity effects a transfer of the debt, of which notice would not be necessary except to intercept payments which might be made in ignorance of the assignment: *Neveren v. Wright*, 39 O. L. R. 398, per Meredith, C.J.C.P.

Equitable assignment: Where a building contractor gave a written order upon the owner in favor of plaintiff for materials supplied, which order though presented was not accepted, but was held over to await time for payments under the contract, upon subsequent failure of the contractor it was held that while the order was effective as an assignment of money payable under the contract, it could not be enforced as an equitable assignment in the absence of a promise to pay out of the fund, or of facts precluding the owner from denying sufficiency of the fund: *Ritchie v. Jeffrey*, 52 S. C. R. 243.

See also *Abbott v. St. Catharines Silk Co.* (1917), 12 O. W. N. 35.

✓ Sec. 49.—(1) Amended 1914, c. 2, s. 4; clerical error.

CHAPTER 110.

THE ACCUMULATIONS ACT.

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CHAPTER 111.

THE PETTY TRESPASS ACT.

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CHAPTER 112.

MORTGAGES OF REAL ESTATE.

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- ✓ **Sec. 6.**(2) Where insurance policy is payable in the first instance to first mortgagee, and in the second instance to a subsequent mortgagee, "as their interest may appear": the premiums being paid by the first mortgagee and charged to the mortgagor, it was held that all the insurance money should be applied on the first mortgage, being insufficient to satisfy it in full: as a result such mortgage was accordingly reduced for the benefit of the execution creditors intermediate between the mortgagees: *Midland Loan and Savings Company v. Geritti*, 36 O. L. R. 163.
- ✓ **Sec. 11.**—(2) (3) (4) (5) (6). New sub-sections, 1915, c. 21, s. 1, authorizing payment of mortgage moneys into court where payment to the mortgagee is impossible, such payment releasing the mortgagor, the registration of a certificate of the courts having the same effect as a registered discharge.

CHAPTER 113.

THE ESTATES TAIL ACT.

OK to amend 1925

- ✓ **Sec. 21.** Amended 1914, c. 2, s. 4.

CHAPTER 114.

THE PARTITION ACT.

✓ **Sec. 5.**—(1) A widow is not a “person interested in land” within the meaning of the section; the interest must be a property interest and a partitioning interest, i.e., an interest held in unity which justice requires may be enjoyed in severalty at the instance of any one entitled to a share in it: a widow whose dower has not been assigned has no right to possession and is not a person who can compel partition: *Morrison v. Morrison*, 39 O. L. R. 163.

✓ **Sec. 5.**—(2) Having regard to the provisions of the Devolution of Estates Act, c. 119, ss. 3, 13, 21, an application for partition made within three years from the death of testator or intestate and before a personal representative is appointed, is unwarranted: the provisions of this sub-section, prohibiting partition proceedings until one year after death of persons in whom the lands were vested, do not conflict with the view that, so long as the land is vested in the personal representative to enable him to perform his duties, there can be no right to compel partition: *Morrison v. Morrison*, 39 O. L. R. 163.

CHAPTER 115.

THE SHORT FORMS OF CONVEYANCES ACT.

CHAPTER 116.

THE SHORT FORMS OF LEASES ACT.

✓ **Sched. B.**—(8) Where lease contained covenant “not to assign without leave, but such leave shall

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not be wilfully or arbitrarily withheld," an agreement to assign was held insufficient to cause a forfeiture, and leave being arbitrarily withheld before the formal assignment was executed, the tenant was at liberty to assign without consent: *Cornish v. Boles*, 31 O. L. R. 505.

 CHAPTER 117.

THE SHORT FORMS OF MORTGAGES ACT.

- ✓ **Sched. B.**—(12) See *Midland Loan Savings Co. v. Geritti*, 36 O. L. R. 163.
- ✓ **Sched. B.**—(14) Sale under power: sufficiency of notice: a notice, in the body of which the names of the mortgagor and mortgagee were mentioned, but not signed by the mortgagee, is not a valid notice: it is essential that the identity of the person giving the notice should appear in the notice itself, and a sale based upon such defective notice was set aside: *Ansell v. Bradley*, 37 O. L. R. 142.
- ✓ **Sched. B.**—(16) Where a mortgage pursuant to the Short Forms Act contained additional covenants and provisoes, it was held that a provision for acceleration of time for payment of principal upon default as to any of the covenants or provisoes, was an addition to or qualification of the statutory covenant for acceleration upon default of payment of interest, and for relief upon payment of arrears of interest, and the same addition or qualification should be read into the power to relieve so that where default was made in respect of the covenant for payment of taxes, the mortgagors should upon payment of taxes be relieved from payment of the principal: *Schwartz v. Williams*, 35 O. L. R. 33.

 CHAPTER 118.

THE ACCIDENTAL FIRES ACT.

See the Fire Accident Act, 5 Geo. V., c. 41.

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CHAPTER 119.

THE DEVOLUTION OF ESTATES ACT.

✓ **Sec. 5.** The order in which assets are liable for payment of debts remains as heretofore: where the personalty is insufficient to pay debts and real estate is sold for that purpose, the balance of the proceeds of the lands is not available for general legacies as against the specific devisee: *Re Steacy*, 39 O. L. R. 548.

Sec. 13.—(1) Amended 1918, c. 20, s. 22.

✓ “Vested in the persons beneficially entitled”, see *Re Waugh*, 42 O. L. R. 87.

While lands are vested in the personal representative to enable him to perform his duties, there is no right to compel partition: *Morrison v. Morrison*, 39 O. L. R. 163.

Sec. 13.—(7) New sub-section 1918, c. 20, s. 22: title in lands not to vest under unprobated will or intestacy until the affidavits required by the Succession Duty Act have been filed.

✓ **Sec. 14.** While the Act confers on executors an additional power to sell, it in one way derogates from the powers expressly given either by the will itself or by any statutory implication: *Kennedy v. Suydam*, 36 O. L. R. 513.

Where executor has power under the Trustee Act: *Re Waugh*, 42 O. L. R. 87.

CHAPTER 120.

THE WILLS ACT.

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✓ **Sec. 20.—(3)** Where testatrix, a British subject, made a will in Ontario in 1880, and died in 1915 a resident of New Jersey, it was held that the Surrogate Court has power to grant letters of administration,

or letters probate, irrespective of the question of domicile: History of legislation reviewed: *Re Dartnell*, 37 O. L. R. 483; while probate of such a will in quoad form is conclusive, the will would still be open to attack on ground of incapacity of testatrix, or as containing provisions contrary to law of the domicile: *ibid.*

- ✓ **Sec. 23.** Where a testator subsequently ran his pen through the signature of his will and wrote: "I hereby revoke this will", it was held that the will was not effectually revoked: *Re Mullholland & Van der Berg*, 34 O. L. R. 242.
- ✓ **Sec. 24.** See *Re Mullholland & Van der Berg*, 34 O. L. R. 242.
- ✓ **Sec. 25.** Where testator made will (1913) revoking prior will of (1909) and its codicils, and subsequently executed a codicil (1915), referring to the prior will of 1909 by date, and expressly confirming such prior will and its codicils, no mention being made of the revoking document (of 1913), it was held that the will of 1909 and its codicils were revived: *Finlay v. Pae*, 37 O. L. R. 318.
- ✓ **Sec. 27.** The fact that the will points to distribution of the estate which the testator had at the date of the will and does not operate upon property subsequently acquired is not to be viewed as the expression of a contrary intention so as to exclude operation of the section: *Re Ingram*, 42 O. L. R. 95.
- ✓ **Sec. 33.** See *Re McLellan*, 12 O. W. N. 233.
- ✓ **Sec. 37.** Repealed, new section 1914, c. 21, s. 27; it is immaterial whether the death of the devisee or legatee (child or issue of the testator) takes place before or after the making of the will.
- ✓ **Sec. 38.**—(1) Where testator left whole estate to trustees to convert and to pay debts, and "any charge by way of mortgage that may be against my property at my death": held that he had expressed the "contrary or other intention" necessary to dis-

place the effect of the section: *Re Le Brun*, 36 O. L. R. 135.

- ✓ **Sec. 38.**—(2) It is not necessary that the testator create or designate a particular fund for payment of the mortgage debt, and where a testator left his whole estate to trustees to convert and to pay debts, and “any charge by way of mortgage against my property at my death”: held that contrary or other intention was sufficiently expressed: *Re Le Brun*, 36 O. L. R. 135.

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CHAPTER 121.

THE TRUSTEE ACT.

- ✓ **Sec. 2.**—(q) During continuance of mortgage there is no relationship of trustee and cestui que trust between the mortgagor and mortgagee, and there is no power in the court to vest mortgaged lands in the mortgagor where no discharge of the mortgage can be obtained owing to his absence: *Re Worthington & Armand*, 33 O. L. R. 191.
- ✓ **Sec. 4.**—(1) (Removal of trustee).
Review of the authorities in regard to conflict between the interest and the duty of a trustee: *Semble*, the principle of the decisions extends to any act where it is established that there is a direct conflict and to cases where it may be reasonably said that such a conflict may arise: *Rose v. Rose*, 32 O. L. R. 481.
- ✓ **Secs. 8, 9.** Sections considered, *re Worthington v. Armand*, 33 O. L. R. 191.
- ✓ **Sec. 28.**—(1) Amended 1914, c. 21, s. 28; 1915, c. 20, s. 15; 1916, c. 28, s. 1: extending authorized trust investments. The trustee may entrust trust moneys to a trust company licensed in Ontario to invest as his agent in the authorized trust investments as contemplated by the Loan and Trust Corporations Act, c. 184, s. 17, s.-s. 2.

- ✓ **Sec. 29.**—(1) (a) (b) Amended 1918, c. 20, s. 23; restriction based on market value of stock suspended during present war.
- ✓ **Sec. 37.** Sums improperly paid out of capital for maintenance of infant not allowed on passing of trustee accounts: *Re Rundle*, 32 O. L. R. 312; affirmed, 52 S. C. R. 114.
- ✓ **Sec. 38.** Moneys in the hands of executors or administrators belonging to persons who are enemy subjects may be paid to the consul general: see 1914, c. 21, s. 67.
- ✓ **Sec. 38.**—(2) "Passing of final accounts": where administration of estate of intestate domiciled in a foreign country was granted in such country, and letters of administration were granted in Ontario in reference to Ontario assets, the proceeds realized in Ontario can be remitted to the foreign administrator and the share mentioned by the section need not be paid into Court: *Re Law*, 34 O. L. R. 222.
- ✓ **Sec. 41.** The section is intended to prevent the wrongdoer escaping liability by reason of the death of the injured person, but does not create a right of action which did not exist before the enactment, and no action can be brought by his personal representatives for damages by reason of the death of the person injured: *England v. Lamb*, 42 O. L. R. 60.
- ✓ **Sec. 44.** Implied direction: see *Re Waugh*, 42 O. L. R. 87.
- ✓ **Sec. 47.**—(1) Where a testator devised realty to his executor, charged with an annuity of \$400, it was held that the executor had power to sell (under R. S. O. 1897, c. 129, s. 16, now incorporated herein), which power might be exercised without the purchaser being put on enquiry to ascertain if the power was being duly exercised: see R. S. O. 1897, c. 19, s. 129, now sub-section (5) of this section: *Kennedy v. Suydam*, 36 O. L. R. 513.
"Subject to the provisions of the Devolution of Estates Act": this amendment made by Geo. V. c. 26, s. 46 to the former Trustee Act, R.

S. O. 1897, c. 129, s. 16, does not derogate from the express or implied powers of sale found in the will, which are expressly preserved by the Devolution of Estates Act: *Kennedy v. Suydam*, 36 O. L. R. 513.

- ✓ **Sec. 47.**—(5) See *Kennedy v. Suydam*, 36 O. L. R. 513.
- ✓ **Sec. 58.** See *Re Aspel*, 42 O. L. R. 191; where no next of kin, the executors hold in trust for the Crown.
- ✓ **Sec. 63.**—(1) The section abolishes all priority among creditors in the administration of estates of deceased persons; and any lien derived from an execution against the executor, placed in the sheriff's hands, gives the execution creditor no priority over the other creditors; the assets of the deceased become in the hands of his representative, a trust for the creditors, which trust, by virtue of this section, has priority over any execution: *Re William-son, Pennell & McCutcheon*, 39 O. L. R. 413.
- ✓ **Sec. 66.** An assignee for creditors under the Assignments and Preferences Act is not entitled to have conflicting claims of right to rank upon the estate determined under this section: *Re Fearnley's Assignment*, 33 O. L. R. 492.
- ✓ **Sec. 67.** As to costs of unsuccessful defence by executors to action to set aside a will: See *Lloyd v. Robertson*, 35 O. L. R. 264, 37 O. L. R. 498.

An executor may be forced to pay the costs of an unsuccessful action out of his own pocket, but he is entitled to be paid out of the estate reasonable expenses for management, and these may include costs of action reasonably defended; the direction of the trial judge cannot bind the Surrogate Court Judge, who must exercise his independent judgment: *Re Dingman*, 35 O. L. R. 51.

In this Province executors and trustees have a right to be paid for their services and generally by a percentage on the receipts: where there is no error in principle, the Supreme Court on appeal is

loath to interfere as to quantum even though more liberal than the Appellate Court would in the first instance have given: *Re Smith*, 38 O. L. R. 67.

- ✓ **Sec. 67.**—(4) In estimating the value of executor's services, legal business done by a solicitor-executor, for which, but for his position, he might have made professional charges, are properly taken into account: *Re Smith*, 38 O. L. R. 67.

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CHAPTER 122.

THE VENDORS AND PURCHASERS ACT.

- ✓ **Sec. 4.** Where upon an application under the Act, the vendor's title had been declared doubtful, but no formal order was issued, held that purchasers, had they asked it, would have been entitled to an order for return of their money with interest; further that the order, although not passed and entered, was effective, the parties having changed their position in consequence of it, and purchasers could recover in an action the money paid with interest and damages for breach of contract, matters subsequent to the breach of contract being inefficient to cure the breach existing when action was commenced: *McNiven v. Pigott*, 31 O. L. R. 365.

CHAPTER 123.

THE QUIETING TITLES ACT.

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CHAPTER 124.

THE REGISTRY ACT.

- ✓ **Sec. 2.**—(d) Instrument includes an award under the Ditches and Water Courses Act: *Deldridge v. Township of Brantford*, 40 O. L. R. 443.

- Sec. 18. Amended 1914, c. 23, s. 1; 1917, c. 27, s. 25.
- Sec. 23.—(8) (a) New clause 1915, c. 20, s. 13: registration of certain discharges in general register.
- Sec. 26.—(1) Amended 1918, c. 27, ss. 2, 3, 4.
- Sec. 48.—(2) Amended 1916, c. 24, s. 20.
- Sec. 48.—(3) Amended 1918, c. 27, s. 5.
- Sec. 56.—(1) (b) Amended 1918, c. 27, s. 6.
- Sec. 56.—(5) New sub-section 1918, c. 27, s. 7: recording wills.
- ✓ Sec. 58. Circumstantial evidence, upon which a County Court Judge granted a certificate that he was satisfied of the due service of notice of sale, which certificate upon registration became prima facie evidence, was held sufficient in an action subsequently brought by mortgagor attacking the sale proceedings: *Giradot v. Curry*, 38 O. L. R. 350.
- Sec. 62. Amended 1918, c. 27, s. 8.
- Sec. 68.—(7) New sub-section 1918, c. 27, s. 9, as to registering notice of withdrawal from seizure of mortgage.
- Sec. 70.—(1) Amended 1918, c. 27, s. 10.
- ✓ Sec. 71. "Instrument affecting land" includes an award under the Ditches and Water Courses Act, and if not registered will not bind an innocent purchaser of lands affected by the award: *Deldridge v. Township of Brantford*, 40 O. L. R. 443.
- Sec. 81.—(6) The provisions of the section do not apply to plans of burial lots, 1914, c. 23, s. 2.
- Sec. 81.—(7) Amended 1918, c. 27, s. 11.
- Sec. 81.—(11) Amended 1918, c. 27, s. 12.
- Sec. 81.—(14) Repealed, new sub-section 1917, c. 30, s. 1; all plans showing streets or roads must be approved by the Municipal Council, and if showing a

highway less than 66 feet wide must also be approved by the Ontario Railway and Municipal Board.

Sec. 81.—(18) Repealed, new sub-section 1917, c. 30, s. 1; surveys under the Planning and Development Act, 1917, c. 24, must be approved as therein required before registration.

Sec. 92.—(b) Amended 1918, c. 27, s. 13.

Sec. 92.—(g) Amended 1918, c. 27, s. 14.

Sec. 92.—(h) Amended 1918, c. 27, s. 15.

Sec. 92.—(p) Amended 1918, c. 27, s. 16.

Sec. 92.—(s) Amended 1918, c. 27, s. 17.

Sec. 99.—(5) Amended 1917, c. 27, s. 26.

Secs. 101, 102, 103. Repealed, new sections 1918, c. 27, s. 18.

Sec. 106. Repealed, new section 1918, c. 27, s. 19.

Sec. 106.—(2) Amended 1917, c. 27, s. 27.

Sec. 109. Amended 1914, c. 23, s. 5; repealed, new section 1918, c. 27, s. 20.

Schedule A. Amended 1918, c. 27, ss. 21 to 24.

CHAPTER 125.

THE CUSTODY OF DOCUMENTS ACT.

✓ Sec. 5.—(4) New sub-section 1916, c. 24, s. 21; deposited documents referring to lands to be entered on abstract index.

✓ Sec. 7. Amended 1918, c. 20, s. 24.

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CHAPTER 126.

THE LAND TITLES ACT.

- Sec. 40.**—(2) See amendment of 1914, c. 24, s. 1; providing that where the master refuses the instrument and the applicant for registration fails to appeal, the master may proceed with other registrations unaffected by notice of the instrument refused.
- Sec. 45.** Where after a mortgage under the Short Forms Act was given the lands were brought within this Act, and subsequently an instrument in the proper form under the Act was given to the mortgagee, but meanwhile an assignment for creditors by the mortgagor had been registered, it was held that the assignee not being a transferee for value, the mortgagee was entitled to priority: *John MacDonald & Co. v. Tew*, 32 O. L. R. 262.
- Sec. 54.**—(4) Section 54 must be read in conjunction with ss. 2 and 7 of the Conveyancing and Law of Property Act, R. S. O. c. 109; no notice having been brought home to the assignee of a charge, that the consideration acknowledged by the chargor had not in fact been paid, the assignee is not affected by the provision and the charge was held to be enforceable: *Dodds v. Harper*, 37 O. L. R. 37.
- Sec. 58.** Repealed, new section 1918, c. 28, s. 2.
- Sec. 62.**—(1) The *fi. fa.* binds the interest of vendor in lands even though placed in sheriff's hands after agreement for sale made, part of purchase money remaining unpaid: *Robinson v. Moffat*, 37 O. L. R. 52.
- Sec. 66.** Repealed, new section 1914, c. 24, s. 2.
- Sec. 72.**—(1) Amended 1918, c. 28, s. 3.
- Sec. 73.**—(1) Amended 1918, c. 28, s. 4.

- Sec. 73.**—(4) Amended 1918, c. 28, s. 4.
- Sec. 73.**—(4a) New sub-section 1918, c. 28, s. 4; where caution affects part of land transferred only.
- Sec. 81.**—(1) Amended 1918, c. 28, s. 5.
- Sec. 83.** Amended 1918, c. 28, s. 6.
- Sec. 105a.** New section 1915, c. 20, s. 14: survey of township subsequent to grant from Crown.
- Sec. 109.**—(1) Repealed, new sub-section 1917, c. 31, s. 1: all plans showing streets or roads must be approved by the municipal council, and if showing a highway less than 66 feet wide must also be approved by the Ontario Railway Municipal Board; surveys under the Planning and Development Act 1917, c. 24, must be approved as therein required before registration.
- ✓ **Sec. 115.** Where an unregistered mortgage was declared to have priority over a registered assignment for value, the members of the Appellate Court were divided in opinion as to directing an amendment of the records: *John MacDonald & Co. v. Tew*, 32 O. L. R. 262.
- Sec. 116a.** New section 1918, c. 28, s. 7; power of court as to costs of proceedings to rectify register.
- Sec. 123.**—(1) Amended 1918, c. 28, s. 8.
- Sec. 123.**—(12) Amended 1914, c. 24, s. 3.
- Sec. 123.**—(13) Amended 1918, c. 28, s. 8.
- Sec. 123.**—(15), (16). New sub-sections 1918, c. 28, s. 8: as to payment of assurance fees in certain cases.
- Sec. 151.**—(1) Amended 1918, c. 28, s. 9.
- Sec. 154.**—(1), (2), (3) Repealed, new sub-sections 1915, c. 20, s. 14.
- Sec. 161.**—(1) Amended 1918, c. 28, s. 10.

CHAPTER 127.

THE FERRIES ACT.

CHAPTER 128.

THE MILLERS ACT.

CHAPTER 129.

THE WATER PRIVILEGES ACT.

CHAPTER 130.

THE RIVERS AND STREAMS ACT.

- ✓ **Sec. 3.** Where defendants, having acquired timber rights in an unsurveyed territory owned by the Crown, during their operations constructed a series of dams, and plaintiffs were using the river some 15 miles below, it was held that as to flotation of logs in the river the parties had equal rights, but as to the use of the water above the dams the defendants had preferential rights as statutory licensees to further their operations by construction of the dams and were not liable for illegal detention of the water: *Hunt v. Beck*, 34 O. L. R. 609; affirmed 36 O. L. R. 33.
- ✓ **Sec. 4.** Unnecessary damage means damage which could be avoided by the exercise of reasonable care and caution; *semble*, damage cannot be said to be unnecessary when it is occasioned by what is done in the ordinary course of the business contemplated by the statute: *Lowrey & Goring v. Booth*, 34 O. L. R. 204.
See the Rivers and Streams Act, 1915, 5 Geo. V. c. 15, which is to be read with and as part of this Act.

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CHAPTER 131.

THE SAW LOG DRIVING ACT.

✓ **Sec. 13.** Amended 1914, c. 2, s. 4.

CHAPTER 132.

THE DEFINITION OF TIME ACT.

✓ **Sec. 2.—(4) (5)** New sub-sections 1918, c. 20, s. 25.

OK to amend 1925

CHAPTER 133.

THE MERCANTILE LAW AMENDMENT ACT.

OK to amend 1925

CHAPTER 134.

THE ASSIGNMENT AND PREFERENCES ACT.

OK to amend 1925

✓ **Sec. 5.—(1)** Mere proof of existence of debts prior to a voluntary conveyance does not, without more, establish fraudulent intent: which, however, can be inferred from state of settlor's affairs at the time of conveyance: A creditor whose claim arises subsequently to a voluntary conveyance can rely, in attacking it, upon prior claims still existing and unpaid, provided the claimants themselves could maintain an action: *Dancey v. Brown*, 31 O. L. R. 152.

✓ **Sec. 5.—(4)** The sub-section deals with a transaction such as is mentioned in sub-sections (1) and (2), which results in preferring a creditor; if it takes place within 60 days, there are two presumptions, one that the transaction is in fact an unjust preference, and the other that it was so intended, and if there be insolvency or consciousness that insolvency is impending, the creditor must, in order to

discharge the statutory onus, shew that there was no intent to prefer unjustly: *Clifton v. Towers*, 39 O. L. R. 292.

- ✓ **Sec. 8.** The assignee takes no greater title to land than the assignor can give: under the Act the assignee has certain rights that the assignor has not, but these rights are purely statutory, and apart from them he stands in the same position as the assignor: *Re Wilson Estate*, 33 O. L. R. 500.
- ✓ **Sec. 9.** A conveyance upon trust to manage business, complete and sell unfinished houses, collect debts and pay proceeds ratably to creditors is not an assignment for creditors within this section, because the controlling idea was evidenced of giving the trustee uncontrolled management, which could not be effected by ordinary assignment for creditors: *Foster v. Trusts & Guarantee Co.*, 35 O. L. R. 426.
- ✓ **Sec. 12.** Where an arrangement was made by an insolvent firm with three principal creditors, that the latter should look after affairs of the firm upon basis of all creditors being paid pro rata, and a chattel mortgage was taken by one of such three creditors, it was held, in an action by a subsequent assignee to avoid the mortgage, that the arrangement precluded the defendant from securing an advantage, and that the mortgage formed part of the assets in the hands of the assignee for distribution, the claims of the creditors being equalized as they existed at the date of the arrangement: *Mortimer v. Fesserton Lumber Co.*, 40 O. L. R. 86.
- ✓ **Sec. 12.—(2)** The County Court Judge has no jurisdiction to make an order authorizing a creditor to intervene and prosecute an appeal in an action brought by the assignee, until such creditor move that the estate should prosecute such appeal: *Maher v. Roberts*, 6 O. W. N. 245.
- ✓ **Sec. 22.** Where a mortgagee of land forming part of the estate was appointed an inspector, it was held that he was not thereby constituted an express trustee

in respect of the equity of redemption conveyed to him by the assignee: he was at most a constructive trustee to whom the plea of the Statute of Limitations was open: with respect to his claim against the estate and his rights as a secured creditor, a mortgagee can deal with the assignee and creditors as freely as if he was not appointed inspector: *Taylor v. Davis*, 41 O. L. R. 403.

- ✓ **Sec. 25.**—(4) The bringing of an action for foreclosure by a mortgage creditor (provided neither redemption or foreclosure has actually taken place, thus disposing of the security so as to put it out of the power of the mortgagee to bring it under control of the assignee) does not preclude such creditor from ranking on the estate, the mortgage action being dismissed as against the assignee as a term of relief: *Barber v. Wade*, 37 O. L. R. 459.
As to whether the conduct of the parties may evidence a consent by the assignee to the retention by the creditor of his security, and whether a strict compliance with the procedure prescribed by the Act as to claims of secured creditors is essential to establish such consent: see *Taylor v. Davis*, 41 O. L. R. 403.
- ✓ **Sec. 25.**—(6) As to guarantee: See *Brown v. Coughlin*, 28 O. L. R. 481, affirmed in 50 S. C. R. 100.
- ✓ **Sec. 27.**—(4) New sub-section 1914, c 21, s. 29: assignee may compel plaintiff to proceed with an action commenced against assignor prior to the assignment, and the plaintiff may apply to add the assignee as party defendant in the same action.
- ✓ **Sec. 31.** As to right of set-off as against liquidator of company in Winding-up proceedings: See *Wade v. Crane*, 35 O. L. R. 402.
- ✓ **Sec. 34.**—(1) This section provides machinery for determining conflicting claims of right to rank upon the estate, and an application for direction or advice should not be made under the Trustee Act, s. 66: *Re Fearnley Assignment*, 33 O. L. R. 492.

- ✓ **Sec. 38.** Upon his examination the assignor has no right to refuse to answer questions on the ground that the answers tend to incriminate him, that privilege having been abrogated by the Ontario Evidence Act, c. 76, s. 7 and the Canada Evidence Act, 1906, c. 145, s. 5: *Re Ginsberg*, 40 O. L. R. 136.

CHAPTER 135.

THE BILLS OF SALE AND CHATTEL MORTGAGE ACT.

- ✓ **Sec. 5.** The omission from the affidavit of execution of a chattel mortgage of the day of the month invalidates the mortgage as against the assignee for creditors of the mortgagor: *Martin v. Shapiro*, 32 O. L. R. 640.
- ✓ **Sec. 5.—(b)** Where a chattel mortgage was given to secure an existing debt and also future indebtedness, and was invalid as to future indebtedness because of defect in affidavit of bona fides, it was held a good security for the existing indebtedness, the affidavit being sufficient under this sub-section: *Hunt v. Long*, 35 O. L. R. 502.
- “Justly and truly indebted”: where a bill of sale between near relatives is impeached as being in fraud of creditors, and the circumstances attending its execution are such as to arouse suspicion, the Court may exact corroborative evidence as to reality of the consideration and the bona fides of the transaction: *Koop v. Smith*, 51 S. C. R. 554.
- ✓ **Sec. 6.—(1) (b)** Chattel mortgage in form prescribed for a direct loan, when the transaction is in fact to secure endorsement of promissory note, is void, and the defect is one which can be taken advantage of by creditors: *Barchard v. Nipissing Coca Cola Bottle Works*, 42 O. L. R. 196.
- ✓ **Sec. 6.—(1) (d)** A chattel mortgage given for securing existing debt and also future indebtedness in which the affidavit of bona fides does not comply

with the requirements of this sub-section, may be good quoad the existing debt: *Hunt v. Long*, 35 O. L. R. 502.

- ✓ **Sec. 8.** Bona fide purchaser for value: *McGregor v. Whalen*, 31 O. L. R. 543.
- ✓ **Sec. 21.** "Creditors of the person making the same": where H., having given a chattel mortgage on certain goods to B., transferred the goods to M., and upon default B. took possession and sold to R., giving a bill of sale, it was held that an execution creditor of M. could not impeach the validity of the chattel mortgage by reason of non-renewal: *Brown Bros. v. Modern Apartments Co.*, 37 O. L. R. 642.
- ✓ **Sec. 24.—(4)** Amended 1916, c. 24, s. 22.

CHAPTER 136.

THE CONDITIONAL SALES ACT.

- ✓ **Sec. 3.—(1)** Proving a claim in liquidation proceedings against the purchasers is not an election by vendors to treat the property as having passed, there not being in the contract in question an obligation upon the conditional vendor, in case of default, to call in the balance or in the alternative to retake possession: *Canadian Westinghouse Co. v. Murray Shoe Co.*, 31 O. L. R. 11.
- ✓ **Sec. 3.—(5)** Name plates: unauthorized removal by the purchaser of the vendor's name plate does not diminish the vendor's rights which are to be tested by the contract whereby possession of the goods is given up: *Canadian Westinghouse Co. v. Murray Shoe Co.*, 31 O. L. R. 11.
- ✓ **Sec. 9.** Effect of section considered in action against surety by original vendor, who had retaken possession of the land to which the goods were attached and had operated the plant in which they

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were comprised: the case where the vendor of the goods is also the owner of the lands has not been provided for by the statute (per Garrow and McGee, J.J.A.): *Crane v. Hoffman*, 35 O. L. R. 412; affirmed 55 S. C. R. 219.

- Sec. 9a.** New section 1916, c. 24, s. 23: the landlord may distrain goods on the premises, which are subject to a lien under the statute upon paying the amount due under such lien, and may then add such amount to his claim for rent.

CHAPTER 137.

THE FACTORS ACT.

CHAPTER 138.

THE LIMITED PARTNERSHIP ACT.

CHAPTER 139.

THE PARTNERSHIP REGISTRATION ACT.

- ✓ **Sec. 10.** Action by an informer: reduction of penalties: See *Shakell v. Harber*, 12 O. W. N. 213.

CHAPTER 140.

THE MECHANICS' AND WAGE EARNERS' LIEN ACT.

- ✓ **Sec. 2.—(c)** "At whose request": where a sub-lessee, under agreement with lessee to build upon the lands according to plans approved by the lessee, contracted with plaintiff for that purpose, held that this amounted to a request by the lessee whose

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interest as "owner" would be subject to plaintiff's lien: *Orr v. Robertson*, 34 O. L. R. 147.

The lien only attaches to the estate of the "owner" as herein defined: and it was held that B., the purchaser of the lands from one S., who was erecting houses thereon, was not liable as owner for work and material supplied by a company, the claimant of a lien, in and for the building of the houses, some of the work having been done after B. took possession, but the company having no communication with him; the work was not done at B.'s request, express or implied, nor upon his credit, nor on his behalf nor with his assent: *Cut-Rate Plate Glass Co. v. Solodinski*, 34 O. L. R. 604.

Knowledge that building is going on upon the land is not actual notice, in the absence of which priority of registration must prevail, and the purchaser of lands with an unfinished house upon it, to be taken over as soon as house was completed, who registered his deed before registration of liens for work and material of which he had no actual notice, was held not to be within the definition of an "owner" which depends upon consent or benefit coupled with request: *Sterling Lumber Co. v. Jones*, 36 O. L. R. 153.

Direct benefit: where contractor made one offer to two owners of adjoining lots for erection of semi-detached houses, and on the evidence it appeared that on acceptance two separate contracts were made, it was held that a lien for plumbing material supplied, which went into both houses, would only attach on each house to the extent actually used therein: *Compaigne v. Carver*, 35 O. L. R. 232.

Where owners of land sold it, one condition of sale being that purchaser should build according to his own plans (vendors to supply money for construction), and the work was done by purchaser's contractors, over whom the vendors exercised no control, it was held that vendors were in position of mortgagees under s. 14 (2), and were not "owners", the material not being furnished upon their request, credit or behalf or for their direct benefit:

Marshall Brick Co. v. Irving, 35 O. L. R. 542, affirmed 54 S. C. R. 569, q.v. for review of authorities.

“Owner”: lands held for public school purposes are within the Act: Benson v. Smith & Son, 37 O. L. R. 257.

- ✓ **Sec. 3.** See Benson v. Smith & Son, 37 O. L. R. 257.
- ✓ **Sec. 6.** Although it is not proved that the material is actually used in construction, it is sufficient if it is delivered for the purpose of being so used, being “placed or furnished to be used”: Kalbfleisch v. Hurley, 34 O. L. R. 268.
- The rights of the lien holders are measured by the amount “justly owing” by the owner to the contractor, and the owner is not liable for a greater sum than is payable to the contractor: see s. 10, and Deldo v. Gough Sellers Investments Ltd., 34 O. L. R. 274. Where a contract provided that the work should be paid for, “80 per cent. as the work proceeds” and certain specified payments, \$300 on completion of stone work, etc., it was held that liens would attach not only upon the 20 per cent. drawback, but also upon the \$300 which was justly due and payable subject to any deduction which the owner could establish for non-completion of the entire contract: Deldo v. Gough Sellers Investment Co., 34 O. L. R. 274.
- The statute providing that only by written agreement can the right to a lien be waived, a person cannot by his conduct estop himself from claiming: Anderson v. Fort William Commercial Chambers Ltd., 34 O. L. R. 567.
- The section was amended by 1918, c. 29, s. 1, to provide for a lien in respect to material placed adjacent to (as well as upon) the land: under the section before such amendment it was held that the materials must be placed upon or reach the lands to be affected: Milton Pressed Brick Co. v. Whalley, 42 O. L. R. 369.

✓ **Sec. 8.** The Act does not authorize a direction that the mortgage be sold to realize the lien: *Cnt Rate Plate Glass Co. v. Solodinski*, 34 O. L. R. 604.

✓ **Sec. 8.—(1)** Amended 1918, c. 29, s. 3: see also new s.-s. (4) *infra*.

✓ **Sec. 8.—(3)** Where a lien is claimed as against a prior mortgagee, it is not essential that it shall be made in the registered claim of lien: *Whaley v. Linnenbank*, 36 O. L. R. 361.

“Prior mortgages or charges” are those existing upon the land or upon an estate or interest therein before the work or furnishing of materials began: *Cook v. Koldoffsky*, 35 O. L. R. 555. As against the mortgagee the lien is given not upon the land but upon the value produced by way of increase over that which the land previously had, and the increased value is not the cost of the work or materials, but what is thereby added to the selling value: *ibid*.

The apparent right to a lien upon the increased selling value in priority to a prior mortgage may be overridden by the provisions of s. 14 (1), which deal with competing priorities: where a mortgage for \$50,000 was made in March and registered in April, upon which \$7,000 was advanced in May to pay off a prior mortgage, and further advances were made in same month up to \$20,000, the balance of the mortgage moneys being advanced after June, during which month liens arose, but before registration of such liens, of which no written notice was given under s. 14 (1), it was held that the mortgage had priority to its full extent, and that the lien holders were not entitled in respect of the increased selling value created by their work, the improvements being, to their full value, subject to the prior charge created by s. 14: *Warwick v. Sheppard*, 39 O. L. R. 99.

✓ **Sec. 8.—(4)** New sub-section 1918, c. 29, s. 4: the selling value of land encumbered by a prior mortgage shall be deemed to be increased by the value of the

work performed and of the material furnished upon the land or adjacent thereto.

- √ Sec. 11. Amount owing to a contractor: where the building was destroyed by fire, the contract work being completed, except as to small item involving less than \$5, it was held in *Taylor Hardware Co. v. Hunt*, 39 O. L. R. 85, that a mechanic's lien for the price, less \$5, could be enforced notwithstanding that a small portion of the work had not been done: the apparently contrary decision of *King v. Law*, 3 O. L. R. 234 was referred to, but the Appellate Division followed the principle laid down in *H. Dakin & Co. Ltd. v. Lee* (1916), 1 K. B. 566.
- √ Sec. 14. Under this section the increased value referred to in s. 8 (3) is not an element: this section deals with priorities among competing claims all arising after the work or the furnishing of materials has been commenced, and upon land and buildings together: *Cook v. Koldoffsky*, 35 O. L. R. 555.
- √ Sec. 14.—(1) Where advances were made by a mortgage, under a mortgage registered in April, after liens arose in June but before their registration, it was held that as no written notice of the liens was given nor registration effected, the mortgage had priority to the full extent of the advances made thereunder: *Warwick v. Sheppard*, 39 O. L. R. 99. In view of this definite provision dealing with mortgages, whether registered or unregistered, and declaring that payments or advances under them may be defeated by a registered or unregistered lien, either by notice in writing of such lien or registration of a claim for such lien, any other right accruing or arising under the Registry Act, which deals solely with priorities as between registered instruments, is overridden: *Cook v. Koldoffsky*, 35 O. L. R. 555.
- √ Sec. 14.—(2) Where owners of land sold it, one condition of sale being that purchaser should build according to his own plans (vendors to supply money for construction), and the work was done by pur-

chaser's contractors over whom the vendors exercised no control, it was held that vendors were in position of mortgagees and were not "owners" under s. 2 (c): *Marshall Brick Co. v. Irving*, 35 O. L. R. 542; affirmed 54 S. C. R. 569. Mere knowledge and non-interference will not render a mortgagee liable as owner (*Riddell, J.*): *Marshall Brick Co. v. Irving*, 35 O. L. R. 542.

See *Charters v. McCracken*, 36 O. L. R. 260.

- ✓ Amended 1918, c. 29, s. 5: the sub-section is made subject to other provisions of the Act.
- ✓ **Sec. 16.** "Placed in the building": see *Benson v. Smith & Son*, 37 O. L. R. 257.
- ✓ **Sec. 16.—(2)** Amended 1918, c. 29, s. 2: material actually brought adjacent to as well as upon the land is now subject to the lien: this amendment was probably the result of the decision in *Milton Pressed Brick Co. v. Whaley*, 42 O. L. R. 169, where the necessity of the material actually reaching the land was pointed out.
Where claimants of a lien upon land insist upon the terms of a conditional sale contract whereby they have a lien upon material until payment, they cannot rank as lien-holders under this Act and compete with others who have no rights as against the materials: *Hill v. Storey*, 34 O. L. R. 489, where the provisions of the Conditional Sales Act are contrasted with this section.
- ✓ **Sec. 17.** Where a claimant within proper time registers a claim containing everything required by this section, and brings his action in due time, the registration is effectual to preserve his lien against prior mortgagees, notwithstanding that they are not named in the registered lien: *Whaley v. Linenbank*, 36 O. L. R. 361.
- ✓ **Sec. 19.** Form of lien: *Campaigne v. Carver*, 35 O. L. R. 232.
- ✓ **Sec. 19.—(1)** Amended 1916, c. 30, s. 4: substantial compliance with s. 31 is also sufficient.

- √ **Sec. 21.** Unregistered liens existing at the time of sale which are not registered until after registration of the conveyance, and of which the purchaser has no actual notice, are ineffectual against him and he has priority by virtue of the Registry Act, s. 71: *Charters v. McCracken*, 36 O. L. R. 260.

As to priority of registered mortgage over liens of which no written notice has been given (under s. 14) prior to advances made by the mortgagee: *Warwick v. Sheppard*, 39 O. L. R. 99.

The fact that the section merely confers on the registered lien-holder the status of a purchaser pro tanto and excludes the Registry Act in other respects indicates that a specific provision in this Act must be read as exclusive of any other provision of the Registry Act: e.g., under section 14 actual notice is not provided for but only written notice in lieu of registration, and actual notice will not suffice under that section: *Cook v. Koldoffsky*, 35 O. L. R. 555.

Semble, the current of authority has steadily set against the view that this section takes the lien out of the provisions of the Registry Act so far as they enact that registration is necessary to preserve priority: *Sterling Lumber Co. v. Jones*, 36 O. L. R. 153. Priority of registration, in the absence of actual notice, must prevail, and knowledge that building is going on upon the land is not actual notice; and where a purchaser of land with an unfinished house upon it, under an agreement to take same over on completion of building, paid the purchase money and registered his deed without actual notice of liens, he was held entitled to priority under the Registry Act over liens subsequently registered: *Sterling Lumber Co. v. Jones*, 36 O. L. R. 153.

- √ **Sec. 22.**—(1) Where a sub-contractor left his work under the belief that the contract was completed, but afterwards, on it being decided that he was wrong, went on and finished his work, registration of lien within 30 days of finishing was held to be in time, the first cessation not being an “abandonment”:

Anderson v. Fort William Commercial Chambers Ltd., 34 O. L. R. 567.

Where work is being done under contract and a small portion remains undone when building destroyed by fire, as to right of contractor to lien: See Taylor Hardware Co. v. Hunt, 39 O. L. R. 85.

- ✓ **Sec. 22.**—(2) “Lost material”: Benson v. Smith & Son, 37 O. L. R. 257.
History of the legislation: see Hurst v. Morris, 32 O. L. R. 346. It is now immaterial whether the material is furnished under one contract or more, and the right is independent of the completion of the work.
- ✓ **Sec. 24.** Proceedings by other persons: Baines v. Curley, 38 O. L. R. 301.
The fact that action is commenced too late under this section does not prevent recovery of personal judgment under section 49, where an application to vacate the lien has not been made under section 27 (5): Kendler v. Bernstock, 33 O. L. R. 351.
- ✓ **Sec. 31.** A substantial compliance with the provisions of this section is sufficient, the provisions of section 19 (1) having been extended to cover this section by 1916, c. 30, s. 4.
- ✓ **Sec. 31.**—(2) An affidavit may be made by any of the persons named in section 17 (2); 1916, c. 30, s. 5.
- ✓ **Sec. 32.** A person whose claim for lien has been duly registered, but who has brought no action, may have the benefit of an action brought by another claimant, even though that claimant fail at the trial: Baines v. Curley, 38 O. L. R. 301.
Meaning of “lien-holder”: Baines v. Curley, 38 O. L. R. 301.
- ✓ **Sec. 33.** Repealed, new section 1916, c. 30, s. 1: the action is now to be tried by the Master in Ordinary in York county, and by the County or District Judge in other counties.
- ✓ **Sec. 34.** Repealed, new section 1916, c. 30, s. 2.

- ✓ **Sec. 37.** Rights and liabilities of the persons appearing: *Baines v. Curley*, 38 O. L. R. 301.
- ✓ **Sec. 37.**—(1) Amended 1914, c. 21, s. 30: the application may be made *ex parte*.
- ✓ **Sec. 38.** Amended 1914, c. 21, s. 30: the officer reporting on the sale may add his fees as well as disbursements.
- ✓ **Sec. 41.** Repealed, new section 1916, c. 30, s. 3.
- ✓ **Sec. 47.**—(1) Amended 1914, c. 21, s. 31: as to distribution of fees in Court.
- ✓ **Sec. 49.** Where no application to vacate the registered lien is made under section 27 (5), the fact that action is commenced too late under section 24 does not prevent recovery of personal judgment under this section: *Kendler v. Bernstock*, 33 O. L. R. 351.

CHAPTER 141.

THE WOODMEN'S LIEN FOR WAGES ACT.

- ✓ **Sec. 11.**—(1) Several claimants, each for less than \$200, but in the aggregate exceeding \$200, may join in one action in the District Court: *McNulty v. Clark*, 34 O. L. R. 434.
- ✓ **Sec. 33.** See *McNulty v. Clark*, 34 O. L. R. 434.

CHAPTER 142.

THE PUBLIC AND OTHER WORKS WAGES ACT.

CHAPTER 143.

THE WAGES ACT.

- ✓ **Sec. 2.** Agent of incorporated trading company for sale of goods held not entitled, in respect of commis-

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sions, to priority under Dominion Winding-up Act, not being "salary or wages": Re Parkin Elevator Co. Ltd., 37 O. L. R. 277.

CHAPTER 144.

THE MASTER AND SERVANT ACT.

- ✓ **Sec. 3.** Similar legislation in British Columbia considered: see *Donkin v. Disher*, 49 S. C. R. 60.
- ✓ **Sec. 3.—(2)** "Fraud" in this section means something more than mere mistake or an erroneous mode of interpreting the contract and unless something dishonest or morally wrong be shown, the statement must be accepted: *Washburn v. Wright*, 31 O. L. R. 138.
 Right to share in profits does not include right to share in amount obtained on sale of the goodwill: *Washburn v. Wright*, 31 O. L. R. 138.
- ✓ **Sec. 4.—(1)** Amended 1914, c. 21, s. 32: jurisdiction of magistrate increased to \$80 in judicial districts.

CHAPTER 145.

THE TRADES DISPUTES ACT.

CHAPTER 146.

THE WORKMEN'S COMPENSATION FOR INJURIES ACT.

- Sec. 3.—(a)** "Common employment": where a statutory obligation is cast, as by Rule 45 of section 164 of the Mines Act, prescribing signals for hoisting in a mine elevator, etc., and the negligence is that of the employers, they cannot escape liability on the ground of negligence of fellow employer: *Hull v. Seneca Superior Silver Mines Ltd.*, 33 O. L. R. 557.

- Sec. 3.**—(c) The obedience of the workman to the orders of one to whose order he is bound to conform need not be the causa causans of the injury: *Turner v. East*, 32 O. L. R. 375.
The Act was repealed by 4 Geo. V. c. 25.

CHAPTER 147.

THE APPRENTICES AND MINORS ACT.

- ✓ **Sec. 3.**—(1) Considered: *Re D'Andrea*, 37 O. L. R. 30.
✓ **Sec. 4.** Effect of: *Re D'Andrea*, 37 O. L. R. 30.

CHAPTER 148.

THE MARRIAGE ACT.

- ✓ **Sec. 1.** Powers of Dominion and Provinces: see *Peppiatt v. Peppiatt*, 36 O. L. R. 427.
- Sec. 2.**—(2) New sub-section 1914, c. 21, s. 33: temporary locum tenens to be deemed resident in Canada, if otherwise qualified.
- Sec. 8.**—(2) New sub-section 1916, c. 32, s. 2: regulations as to license and certificates.
- ✓ **Sec. 15.** The consent is not a condition precedent to the formation of a valid marriage: the provisions are merely directory: *Peppiatt v. Peppiatt*, 36 O. L. R. 427.
Semble, apart from authority, that the provision requiring consent is ultra vires, as being in effect a restriction upon marriage: *Peppiatt v. Peppiatt*, 36 O. L. R. 427.
- Sec. 16a.** New section 1916, c. 32, s. 3: issue of licenses at discretion of Registrar-General in special cases.
- Sec. 19.**—(1) (c) Repealed, new clause 1916, c. 32, s. 4: residence in Ontario for 15 days is sufficient.

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Sec. 19.—(2) Repealed, new sub-section 1916, c. 32, s. 5.

Sec. 19.—(3) Repealed, new sub-section 1916, c. 32, s. 6.

Sec. 24. Repealed, new section 1916, c. 32, s. 7.

✓ **Sec. 36.** The Supreme Court of Ontario has no jurisdiction to declare void a marriage duly solemnized, unless the case can be brought under this section: the jurisdiction is as defined in the Judicature Act, R. S. O. 1897, c. 51, ss. 25, 26, 28, 34 (see R. S. O. 1914, c. 56, s. 3), and does not include that formerly possessed by the Ecclesiastical Courts: *Reid v. Aull*, 32 O. L. R. 68.

The Supreme Court has no power under this section, nor has it power otherwise, to entertain an action for a declaration that a valid marriage was not entered into, the provisions of this section being ultra vires; and the power to pronounce a declaratory judgment under the Judicature Act, c. 56, s. 16 (b) is not applicable in such a case: *Peppiatt v. Peppiatt*, 34 O. L. R. 121; 36 O. L. R. 427.

✓ **Sec. 37.** The Attorney-General has the right to intervene under this section, although the case does not fall within section 36: and such right is not limited to intervention at the trial: *Reid v. Aull*, 32 O. L. R. 68.

Sec. 38. New section 1916, c. 32, s. 8: as to penalties for false statements or violation of the Act.

Form 3. Repealed, new form, 1916, c. 32, s. 9.

CHAPTER 149.

THE MARRIED WOMEN'S PROPERTY ACT.

✓ **Sec. 4.—(2)** Where judgment was obtained in a County Court and affirmed on appeal against the defendant as a feme sole, nothing appearing on the face of the proceedings to show that she was a married woman, an order of the County Judge seeking to

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rectify the original judgment was set aside as made without jurisdiction: the defendant, not having pleaded coverture, would be estopped from afterwards setting up that she was a married woman: *Pearson v. Calder*, 36 O. L. R. 458.

Where a married woman signed as security for her husband's indebtedness, without independent advice, no undue influence being exercised, it was held that the principle of *Bank of Montreal v. Stuart*, 1911, A. C. 120, did not apply, and that she was liable: *Macdonald v. Fox*, 39 O. L. R. 261.

In regard to a transaction between husband and wife, for the benefit of the husband, there is no presumption of undue influence, and proof that she had independent advice is not cast upon the person supporting the transaction: the person attacking it must prove affirmatively undue influence by the husband and knowledge thereof by the creditor: *Hutchinson v. Standard Bank of Canada*, 39 O. L. R. 286.

- Sec. 7.**—(1) The section is intended to permit a married woman to make use of her skill and ability to acquire separate property, provided the employment is not one in which her husband has a proprietary interest: in a case where she invested separate property in her husband's business, she was held to be a partner (s. 4 (2)): *Reid v. Morwick*, 42 O. L. R. 224.

CHAPTER 150.

THE MARRIED WOMEN'S CONVEYANCES ACT.

CHAPTER 151.

THE FATAL ACCIDENTS ACT.

- Sec. 3.** Where death was caused by two independent acts of negligence on part of two defendants respectively, each of which acts would have been innocu-

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ous save for the other negligent act, both defendants were held liable as each act was a proximate cause of the injury: *Till v. Town of Oakville*, 31 O. L. R. 405. In such case there is no right of contribution or indemnity: *ibid*.

"Allurement" as a cause of fatal accident to child: *Robinson v. Village of Havelock*, 32 O. L. R. 25. It is essential to bring home to the defendant knowledge of the situation or temptation which a reasonable man would know to be dangerous: *ibid*. "Caused by such wrongful act": where the jury found negligence and stated in what such negligence consisted and negatived contributory negligence, the action was sent back for retrial on the ground that the jury had not found how the negligence was the cause of the accident: *Ryan v. Canadian Pacific R. W. Co.*, 37 O. L. R. 543.

Liability of electric company for death of servant through faulty condition and negligent construction of pole: *Christie v. London Electric Co.*, 33 O. L. R. 395.

Liability of railway company for death of employee killed while walking along track on his way home from work: *Sharpe v. C. P. R.*, 33 O. L. R. 402.

Liability for neglect of statutory duty: lack of fire escape and storing of combustible material: *Birch v. Stephenson*, 33 O. L. R. 427: see now 1915, c. 41, s. 2.

Liability for negligent failure to test insulation on electric wire: *Oskey v. City of Kingston*, 32 O. L. R. 190.

Wrongful act: where there was no other reasonable explanation of the accident than that it was occasioned by negligence of defendant's servants, a verdict was upheld: *St. Denis v. Eastern Ontario Live Stock Association*, 36 O. L. R. 640.

Negligence: alleged defective roadbed: *Lewis v. Grand Trunk R. W. Co.*, 52 S. C. R. 227.

Liability of company to teamster employed to draw gravel from pit where recent explosion had

occurred: exclusion of Workmen's Compensation Act 1914, 4 Geo. V. c. 25: Durant v. Ontario & Minnesota Power Co., 41 O. L. R. 130.

Liability of municipality for negligent construction of telephone line: Magill v. Township of Moore, 31 O. L. R. 375.

See the Workman's Compensation Insurance Act, 5 Geo. V. c. 25: as to claim of workmen on insurance moneys payable to employer who has insured against his liability for damages.

- ✓ **Sec. 4.**—(1) Action cannot be brought for benefit of alien enemies of the King: Dangler v. Hollinger Gold Mines, 34 O. L. R. 78.

Where the relatives are not within the limited class an action cannot be maintained by the administrator under this Act for damages for the death: England v. Lamb, 42 O. L. R. 60.

- ✓ **Sec. 7.**—(3) Leave to file affidavit granted: Durant v. Ontario & Minnesota Power Co., 41 O. L. R. 130.

CHAPTER 152.

THE DESERTED WIVES' MAINTENANCE ACT.

CHAPTER 153.

THE INFANTS ACT.

- ✓ **Sec. 2.** Custody of illegitimate children: while the desire of the mother of an illegitimate child should be considered, unless prejudicial to the child's interests, the Court will have first regard for the welfare of the child, and an order for its removal from home of foster parents was refused: Re Gerasso, 36 O. L. R. 630.

The section is not, so far as it expresses concern for the welfare of the infant, intended to exalt the

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interest of the infant into one of paramount importance; other things being equal, the Court will have regard to the father's immemorial right to control where he has done no wrong and is able and willing to furnish support: *Re Searth*, 35 O. L. R. 312.

- ✓ **Sec. 3.**—(1) Father of an infant cannot make a binding adoption agreement: the changes embodied in this section have not altered the law in this respect: *Re Clarke*, 36 O. L. R. 498; but he may (in equity) by his conduct preclude himself from asserting his natural and common law right: *ibid*.
- ✓ **Sec. 5.**—(3) (4) New sub-sections 1915, c. 20, s. 16: the court may authorize exchange of unproductive for productive lands.
- ✓ **Sec. 28.** Provisions of section considered and review of authorities: *Re Taggart*, 41 O. L. R. 85.
- ✓ **Sec. 36.** Provisions of section considered and review of authorities: *Re Taggart*, 41 O. L. R. 85.

CHAPTER 154.

THE ILLEGITIMATE CHILDREN'S ACT.

- ✓ **Sec. 3.** Omission of word "really" is fatal to validity of the affidavit: *Broderick v. McKay*, 40 O. L. R. 363.

CHAPTER 155.

THE LANDLORD AND TENANT ACT.

- ✓ **Sec. 2.**—(b) The "person giving or permitting occupation" must be some one of the character of a landlord, and the "occupant" (2 (d)) must be some one of the character of a tenant: a County Court Judge has no power under the "Overholding Tenants" provisions to order issue of writ of posses-

sion at instance of one of several mortgagees against the mortgagor in possession: *Re Mitchell & Fraser*, 40 O. L. R. 389.

✓ **Sec. 5.** Where there was a clause in a lease providing for its determination at the end of any one month by one month's notice, the assignee of the reversion was held entitled to its benefit: *Re Rabinovitch v. Booth*, 31 O. L. R. 88.

Rent which has accrued due does not pass to a purchaser of the reversion unless expressly assigned to him, nor does he obtain (in Ontario) any right of re-entry for breach of covenant to pay rent which took place before conveyance of the reversion to him: in England the law has been changed upon this point: *Brown v. Gallagher & Co.*, 31 O. L. R. 323.

✓ **Sec. 20.**—(2) The notice is necessary as a preliminary to re-entry without action as well as to suit for recovery of the premises: *Greenwood v. Rae*, 36 O. L. R. 367. Where landlord re-entered without action (following on breach by tenant of provision re chattel mortgage), but without giving the notice specified by this section, the tenant was held entitled to nominal damages only for the wrongful ejection: *Greenwood v. Rae*, 36 O. L. R. 367.

✓ **Sec. 23.** Amended 1914, c. 2, s. 4.

✓ **Sec. 38.** "Preferential lien of the landlord for rent" means that the landlord has a statutory lien upon goods available for distress, independent of actual distress or possession, for the amount of the rent as limited by the section: and where, after an assignment for creditors by an incorporated company, a winding-up order is made under the Dominion statute, the assets become vested in the liquidator subject to the landlord's preferential lien: *Re Fashion Shop Company*, 33 O. L. R. 253.

"Execution of the assignment": the words are used in their strict legal sense and mean the completion of the deed of assignment by delivery as

well as by signing and sealing: *Re Metropolitan Theatres Ltd., Magee's Case*, 40 O. L. R. 345.

Where an assignment was signed and sealed on the day on which a month's rent in advance was due, but was not completed or intended to be completed by delivery until the following day, it was held that rent was in arrear, when the deed was "executed", and the landlord was entitled to a preferential lien for four months' rent: *Re Metropolitan Theatres Ltd., Magee's case*, 40 O. L. R. 345.

Where the landlord distrained and the goods or proceeds thereof were also claimed by a chattel mortgagee and by an assignee for creditors of the tenant, it was held that while under this section the landlord's claim as against the assignee was limited to one year's rent, there was no such limitation as against the chattel mortgagee: and the assignee being entitled to nothing because the chattel mortgage exceeded the value of the goods, the landlord could assert his full claim: the limitation of this section can only be invoked by the assignee to protect his own interest, it cannot enure for benefit of a chattel mortgagee: *Alderson v. Watson*, 36 O. L. R. 502.

The usual acceleration clause in a lease, as affected by this section, was considered in *Alderson v. Watson*, 35 O. L. R. 564, where it was held that the right to distrain is not taken away, and the acceleration clause is not to be regarded as fraudulent and void against creditors: the view of *Garrow and Maclaren, J.J.*, was that the lien is reduced to one year's rent if so much or more is owing, that is no more than one year's arrears prior to the assignment, whether actual or accelerated, can be claimed.

Sec. 65. See *Little & Beattie*, 38 O. L. R. 551.

Sec. 75. The exercise of the Judge's power is discretionary: *Re Mitchell & Fraser*, 40 O. L. R. 389.

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CHAPTER 156.

THE APPORTIONMENT ACT.

- Sec. 4. While under the common law rent is not due for any intermediate broken period, and the rent accruing is forfeited by re-entry before the gale day, that result has been changed by this section: and where tenant gave up possession and notified the landlord, who re-let the premises, this was held to be an acceptance of the surrender, and the landlord could recover for period of tenant's occupation and for period between his going out and incoming of new tenant: *Crozier v. Trevarton*, 32 O. L. R. 79.

Where lands were leased at an annual rental, payable on 1st November in each year, it was held that an attaching order obtained in September did not attach the rent due in the following November, nor even a pro rata part thereof: *Barnett v. Eastman* (1898), 67 L. J. N. S. Q. B. 517, was followed in preference to *Massie v. Toronto Printing Co.* (1887), 12 P. R. 12. and other Canadian cases: *Holliday v. Bank of Hamilton*, 40 O. L. R. 203.

CHAPTER 157.

THE LAW SOCIETY ACT.

- Sec. 7.—(2), (b) Amended 1914, c. 2, s. 4.
Patriotic grants confirmed, 1915, c. 26, s. 1; 1916, c. 33, s. 1.

See 1915, c. 26, s. 2: as to power of Benchers to fix limits of financial year.

CHAPTER 158.

THE BARRISTERS ACT.

CHAPTER 159.

THE SOLICITORS ACT.

- ✓ **Sec. 49.** As to unconscionable and inequitable agreement to share in proceeds: See *McMahon v. Taugher*, 32 O. L. R. 494.
Agreement with solicitor to share in profits: solicitor, subsequently achieving result through other channels, held to still occupy fiduciary position and liable to account: *Read v. Cole*, 42 O. L. R. 176.
- ✓ **Sec. 70.** Legal business done and advice given by a solicitor-executor, for which but for his position he might have made professional charges, are properly taken into account by the Surrogate Court in fixing his compensation: *Re Smith*, 38 O. L. R. 67.
As to commission on cash receipts which did not actually pass through the hands of a solicitor-executor, but as to which he renders advice and assistance: *Re Smith*, 38 O. L. R. 67.

CHAPTER 160.

THE NOTARIES ACT.

CHAPTER 161.

THE ONTARIO MEDICAL ACT.

- Sec. 4.**—(1) (a) Amended 1914, c. 2, s. 4.
- Sec. 5.** See 1918, c. 20, s. 26.
- Sec. 21.**—(1) Repealed, new sub-section 1915, c. 27, s. 1: amended 1916, c. 24, s. 24.

CHAPTER 162.
THE ANATOMY ACT.

CHAPTER 163.
THE DENTISTRY ACT.

CHAPTER 164.
THE PHARMACY ACT.

- Sec. 4.—(3) Amended 1917, c. 35, s. 1.
- Sec. 6, Amended 1917, c. 35, s. 2.
- Sec. 12.—(2) Amended 1915, c. 28, s. 1.
- Sec. 12.—(4) Amended 1915, c. 28, s. 2: grants to Red Cross, etc.
- Sec. 23. Amended 1917, c. 35, s. 3.
- Sec. 31.—(1) Amended 1917, c. 35, s. 4.
- Sec. 31.—(3) Amended 1917, c. 35, s. 5.
- Sec. 31.—(4) Amended 1917, c. 35, s. 6.
- Sec. 31.—(5) New sub-section 1917, c. 35, s. 7.
- Sec. 33.—(2) New sub-section 1915, c. 28, s. 4.
- Sec. 37. Amended 1914, c. 21, s. 34: repealed: new section 1917, c. 35, s. 8.
- Sched. B. Amended 1917, c. 35, ss. 9 and 10.

CHAPTER 165.

THE ONTARIO LAND SURVEYORS ACT.

- Sec. 25.** Amended 1917, c. 36, s. 2.
- Sec. 26.** Repealed, new section 1917, c. 36, s. 3.
- Sec. 28.**—(1) Amended 1917, c. 36, s. 4.
- Sec. 34.**—(3) New sub-section; 1917, c. 36, s. 5.
- Sec. 39.** Amended 1914, c. 26, s. 1; amended 1917, c. 36, s. 6.
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CHAPTER 166.

THE SURVEY ACT.

- Sec. 31.**—(2) Amended 1914, c. 27, s. 1.
- Sec. 40.** The section is applicable only to original surveys in townships made by or under authority of Crown: *Home Bank of Canada v. Might Director-ies Ltd.*, 31 O. L. R. 340.
- Sec. 44.** See *Jones v. Tuckersmith*, 33 O. L. R. 634.
- Sec. 47.** New section 1915, c. 29, s. 1: marking angles by monuments.
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CHAPTER 167.

THE ONTARIO ARCHITECTS ACT.

CHAPTER 168.

THE STENOGRAPHIC REPORTERS ACT.

CHAPTER 169.

THE CHARTERED ACCOUNTANTS ACT.

CHAPTER 170.

THE STATIONARY ENGINEERS ACT.

- Sec. 1.** The Title to the Act is now the Stationary and Hoisting Engineers Act: 1914, c. 28, s. 1.
- Sec. 2.**—(d) New sub-section 1914, c. 28, s. 2.
- Sec. 3.** Amended 1914, c. 28, s. 3: excepting from the operation of the Act boilers used for agricultural purposes.
- Sec. 4.** Amended 1914, c. 28, s. 9.
- Sec. 4.**—(2) New sub-section 1915, c. 20, s. 17.
- Sec. 6.** See 1914, c. 28, s. 4.
- Sec. 7.** Amended 1914, c. 28, s. 9.
- Sec. 8.** Amended 1914, c. 28, s. 5.
- Sec. 9.** Amended 1914, c. 28, s. 9.
- Sec. 11.** Amended 1914, c. 28, s. 6.
- Sec. 13.** Amended 1914, c. 28, s. 7.
- Sec. 14.** Amended 1914, c. 28, s. 10.
- Sec. 15.** Amended 1914, c. 28, s. 10.
- Sec. 16.** Repealed, new section 1914, c. 28, s. 8.

CHAPTER 171.

THE VETERINARY SURGEONS ACT.

- Sec. 3.**—(2) New sub-section 1918, c. 20, s. 27: as to application of penalties.

CHAPTER 172.

THE ONTARIO CULLERS ACT.

CHAPTER 173.

THE INNKEEPERS ACT.

- Sec. 3.**—(2) The provisions of the Act are supplementary to the common law: the statute is not a codification of the whole law as to innkeeper's lien, and the common law lien on the property of a stranger brought to the inn by a guest remains: main object of statute defined: *United Typewriter Co. v. King Edward Hotel*, 32 O. L. R. 126.
- Sec. 4.** Where plaintiff engaged rooms at the defendants' hotel for three months and sent her trunk there pursuant to arrangement, and upon her arrival the next day it could not be found: held, that while defendants' status and liability was that of a boarding-house keeper rather than that of an innkeeper, they were bound to take reasonable care of the trunk; distinction between liability of boarding-house keeper and innkeeper pointed out: *Macdonell v. Woods*, 32 O. L. R. 283.
Semble, it is not necessary to plead the statute: *Macdonell v. Woods*, 32 O. L. R. 283.
- Sec. 6.** The onus is upon innkeeper to prove compliance with the statute: *Macdonell v. Woods*, 32 O. L. R. 283.

CHAPTER 174.

THE EMBALMERS AND UNDERTAKERS ACT.

- Sec. 5.** Amended 1914, c. 21, s. 35.
- Sec. 7.**—(e) Amended 1914, c. 21, s. 36.

CHAPTER 175.

THE ONTARIO MONEY LENDERS ACT.

Refer to Dominion Money Lender's Act, R. S. C. 1896, s. 122: See *Bellamy v. Timbers* (1914), 31 O. L. R. 613, explaining *Bellamy v. Porter* (1913), 28 O. L. R. 572.

- Sec. 4.** In an action upon promissory notes bearing interest at 2 per cent. per month, at which rate interest had been paid, the plaintiffs were shown to have been formerly engaged as builders and contractors, and at the date of the trial were engaged in manufacturing hats, but that they also carried on the business of money lending and had made other similar loans: held that they were not money lenders within the meaning of the Act, and that the transactions were not harsh and unconscionable, within the meaning of this section: *Shaw v. Hossack*, 39 O. L. R. 440; 40 O. L. R. 475.

CHAPTER 176.

THE ONTARIO PAWNBROKERS ACT.

CHAPTER 177.

THE PRIVATE DETECTIVES ACT.

- Sec. 4.** Amended 1914, c. 21, s. 37.
- Sec. 4.—(2) (3)** New sub-sections 1916, c. 34, s. 1.
- Sec. 5.—(2)** New sub-section 1916, c. 34, s. 2.
- Sec. 8.** Amended 1916, c. 34, s. 3.
- Form 1.** New form 1916, c. 34, s. 4.

CHAPTER 178.

THE ONTARIO COMPANIES ACT.

- Sec. 3.** As to cemetery company: see *Smith v. Humbervale Cemetery Co.*, 33 O. L. R. 453.
- Sec. 15.—(1)** Amended 1915, c. 20, s. 18: providing for distribution of assets where both preference and common shares are issued.
As to whether proceedings under this section would be a ratification of a distribution of dividends already made by directors out of capital contrary to section 95, see opinion of Masten, J., in *Crawford v. Bathurst Land & Development Co.*, 37 O. L. R. 611; 42 O. L. R. 256.
- Sec. 15.—(3)** New sub-section 1915, c. 20, s. 18: confirmation of by-law for distribution.
- Sec. 16.—(1) (d)** Amended 1916, c. 35, s. 2.
- Sec. 23.—(1)** Where three directors owned all the stock of a mining company to which they had advanced \$43,000, and, the company having no other means of procuring money, it was agreed that two of the directors should sell their stock to the third for \$60,000 to be secured by mortgage on the company's property, the \$43,000 debt to be discharged, it was held by the Appellate Division in an action by one who subsequently became a creditor of the company that the mortgage was ultra vires as to the excess over the company's indebtedness at the time it was made: this decision was reversed in the Supreme Court, which held the mortgage to be valid, the real consideration being the discharge of the company's existing indebtedness (*Fitzpatrick, C.J.*, and *Idington, J.*, dissenting); *Northern Electric & Mfg. Co. v. Cordova Mines Ltd.*, 31 O. L. R. 221, 50 S. C. R. 626, sub. nom. *Hughes v. Northern Electric*.
Where a company was incorporated to carry on business of real estate brokers, with power to

acquire lands, erect buildings, etc., it was held that it had power and authority to sign a promissory note upon purchase of machinery and patent rights for pressing clothes: *The Bonanza Creek Gold Mining Co. v. The King* (1916), 1 A. C., applied and section 210 of this Act (added by 6 Geo. V. c. 35, s. 6) considered: *Edwards v. Blackmore*, 42 O. L. R. 105.

Sec. 23.—(1) (k) An industrial company has no power to guarantee payment of advances by a bank to another company (whose sole connection with the guarantor is that of a customer) for the general purposes of the latter's business, and such a contract is ultra vires and void: *Union Bank v. McKillop*, 30 O. L. R. 87, affirmed 51 S. C. R. 518.

Where a company having lots for sale gave option on parcel to J., and guaranteed payment for work done by a contractor for J. in erection of a factory thereon, such guaranty was held to be intra vires, J. being a person having dealings with the company: *Diebell v. Stratford Improvement Co.*, 37 O. L. R. 493, affirmed 38 O. L. R. 407. The amendment of 6 Geo. V. c. 35, s. 6, adding s. 210, appears to confer complete corporate autonomy on statutory incorporated companies and to put them on the footing of Crown chartered companies with unrestricted corporate capacity: *Diebel v. Stratford Improvement Co.*, 37 O. L. R. 493; this point not discussed on appeal.

Sec. 28a. New section 1915, c. 20, s. 18: clubs not to be exempt from municipal regulations as to billiard tables, etc.

Sec. 34.—(5) New sub-section 1916, c. 35, s. 3: as to penalty for using the word "limited" without authority.

Sec. 43. Amended 1918, c. 20, s. 28: first meeting to be within six months.

Sec. 50. A person whose name stands without qualification on the share register as a holder of shares has

the right to represent such shares and vote in respect of them: it need not be shown that he is the beneficial owner, and the presiding officer at a meeting of the company has no power to question the right of a registered holder to vote: *Tough Oakes Gold Mines Ltd. v. Foster*, 39 O. L. R. 144.

Sec. 54.—(2) As to certificate being evidence of title to the shares mentioned in it: see *Lorsch & Co. v. Shamrock Consolidated Mines Ltd.*, 39 O. L. R. 315.

Sec. 56. Validity of agreement whereby none of the shares should be transferred without consent of all shareholders considered: *Re Belleville Driving and Athletic Association*, 31 O. L. R. 79.

Sec. 60. Although a transfer of shares must be duly recorded to complete the title, any unrecorded dealing is not void, but is valid as "exhibiting the rights of the parties thereto": and the pledgee of a certificate (held as security for a loan) was held entitled as against a purchaser of the stock at a sheriff's sale under an execution against the registered owner: *Re Montgomery and Wrights Ltd.*, 38 O. L. R. 335.

Sec. 80.—(2) Amended 1916, c. 35, s. 4.

Sec. 83. Amended 1916, c. 35, s. 5.

Sec. 89. As to unauthorized election of directors: see *Re Carpenter Ltd.*, *Hamilton's Case*, 35 O. L. R. 626; 10 O. W. N. 122.

Sec. 90.—(1a) New sub-section 1918, c. 20, s. 29.

Sec. 92. The section has been construed to relate to any payment made to a director either in his capacity of director or for services rendered by him in some other capacity, and the result of subsequent decisions is that the judgment of *Rose, J.*, in *Re Ontario Express & Transportation Co.* (1894), 25 O. L. R. 587, must be taken to be overruled: *Masten, J.*, in *Crawford v. Bathurst Land and Develop-*

ment Co., 37 O. L. R. 611; but see *Canada Bonded v. Leonard Parmiter* (infra), 42 O. L. R. 141.

Money paid to a director as commission on sale of land was ordered to be refunded, and the directors authorizing the payment were also made liable for it: *Crawford v. Bathurst Land & Development Co.*, 37 O. L. R. 611, affirmed 42 O. L. R. 256.

Money paid to a director for his services as promoter of a syndicate by the vendor to the syndicate out of profits received by such vendor (himself a promoter) ordered to be paid to the company, such director as promoter being held to occupy a fiduciary position; ratification of such payments by subsequent resolution of shareholders held invalid: *Crawford v. Bathurst Land & Development Co.*, 37 O. L. R. 611; aff'd 42 O. L. R. 256.

The section only applies to remuneration to a director as such, and there is no reason why one who happens to be a director should not serve the company in some other capacity and receive remuneration therefor without a by-law authorizing such payment, provided the services are not such as only a director can perform: *Canada Bonded Atty. & Legal Directory v. Leonard Parmiter Ltd.*, 42 O. L. R. 141.

Lack of good faith on part of directors: by-law authorizing payment to them for services, though confirmed at shareholders' meeting, declared ineffective: *Cook v. Hinds*, 42 O. L. R. 273.

Sec. 93. Directors taking personal profit: liability to account, in action by shareholder: *Theatre Amusement Co. v. Stone*, 50 S. C. R. 32. Such contracts cannot be ratified by a majority of the shareholders as the matter is not one merely of internal management: *ibid.*

See *Re Owen Sound Lumber Co.*, 34 O. L. R. 528, 38 O. L. R. 414.

"Interested or concerned in a contract:" see *Cook v. Deeks*, 33 O. L. R. 209.

Sec. 95. Dividend paid in part out of capital is to that extent ultra vires of the directors and incapable of

ratification by the shareholders, and the directors may be ordered to repay the sum improperly paid out: a shareholder who receives and retains his share of such dividend, knowing that it involved an impairment of the capital, is personally incompetent to maintain an action attacking such payment, even though he sue on behalf of himself and others: *Crawford v. Bathurst Land & Development Co.*, 37 O. L. R. 611, 42 O. L. R. 256.

More than honesty is required of a director: reasonable intelligence and diligent attention to business are also essential: see *Owen Sound Lumber Co.*, 34 O. L. R. 528, where de facto directors were held liable under the misfeasance section of the Dominion Winding-up Act (R. S. C. 1906, c. 144, s. 123) for dividends in fact paid out of capital, but not for sums paid to themselves as bonuses upon becoming sureties for advances made to the company: varied on appeal, 38 O. L. R. 414.

Sec. 98. The liability of the directors being several as well as joint, they can be sued separately: discontinuing an action as against one director does not release the others: *Renckwald v. Murphy*, 32 O. L. R. 133.

Where plaintiff, keeper of a store, supplied goods to employees of company, and pursuant to arrangement with the company part of wages were deducted from pay checks and separate checks made out to cover store bills, an adjustment being made between company and plaintiff, the plaintiff, having recovered judgment against the company and execution being unsatisfied, was held not entitled to sue the directors, as by the arrangement he had become a creditor of the company and the demands ceased to be "demands for wages": *Coveney v. Glendenning*, 33 O. L. R. 571.

Sec. 101.—(3) Misrepresentation as to existence of a patent is a material one, and a subscription induced thereby can be rescinded: similarly a false

representation by an agent that the company's business rendered it necessary to erect another factory justifies the subscriber in repudiating: *Howard v. Canadian Automatic Trans. Co.*, 6 O. W. N. 285.

Under the provisions of 6 Edw. VII. c. 27, s. 3 (3), that no subscription for stock induced or obtained by verbal representations shall be binding upon the subscriber unless, prior to his so subscribing, he shall have received a copy of the prospectus, it was held in *Morrisburg and Ottawa Electric Ry. v. O'Connor*, 34 O. L. R. 161, that that section had no greater effect than to make the subscriber's contract voidable, and that he could elect to approve or disaffirm and that the right to avoid, if exercised at all, must be exercised promptly on discovering the facts: in the same case doubt was expressed whether 6 Edw. VII. c. 27, had been repealed by the Ontario Companies Act 1907, incorporated in 2 Geo. V. c. 31, and now R. S. O. c. 178.

Sec. 112, et seq. The enactments of Part VIII. are for the protection of shareholders: non-compliance entitles subscribers, notwithstanding winding-up proceedings, to have subscriptions cancelled and names removed from list of contributories: *Re Carpenter Ltd.*, *Hamilton's Case*, 35 O. L. R. 626; 10 O. W. N. 122.

Agreement to take shares: *Fort William Commercial Chambers Ltd. v. Braden*, 6 O. W. N. 24.

Sec. 113. Objection of want of prospectus: allotment as affected by subscriber's written waiver of compliance with provisions as to first meeting, notice thereof, etc.: *Fort William Commercial Chambers Ltd. v. Braden*, 6 O. W. N. 24.

No valid board of directors having been elected, no valid allotment can be made: *Re Carpenter Ltd.*, *Hamilton's Case*, 35 O. L. R. 626, 10 O. W. N. 122.

Sec. 114. See *Re Owen Sound Lumber Co.*, 34 O. L. R. 528, 38 O. L. R. 414.

- Sec. 121.** Contributory: the power of the Court will not be exercised except in a reasonably clear case: election by conduct to become and remain a shareholder: *Re Gramm Motor Truck Co. and Bennett*, 35 O. L. R. 224.
- Sec. 123.** The books are made prima facie evidence in any action against the corporation or against any shareholder or member, and they are not evidence against a person sought to be made liable unless and until he is otherwise proved to be a shareholder: *Re International Electric Co., McMahan's Case*, 31 O. L. R. 348.
- Sec. 126.** See 1914, c. 29, ss. 1, 2, 3, as to investigation into affairs where relations with another company cause unfairness to shareholder.
- Sec. 127.** As to how far non-compliance with provisions of section 127, et seq., as to auditors' examination and report constitutes misfeasance on the part of the directors: *Re Owen Sound Lumber Co.*, 34 O. L. R. 528, 38 O. L. R. 414.
- Sec. 135.** As to action for penalties: see *Seagram v. Pneuma Tubes Ltd.*, 40 O. L. R. 301.
- Sec. 141.** Where agreement for sale of lands is made by a company with a view to enable company to purchase other lands to carry on its business, the contract is one in furtherance of the objects of the company, and the president and treasurer being authorized by by-law to make contracts and engagements for the company and concurring in the agreement, it is sufficiently signed without corporate seal: *Vansiekler v. McKnight Construction Company*, 31 O. L. R. 531, aff'd 51 S. C. R. 374.
- Sec. 151.—(6) (7)** New sub-sections 1918, c. 20, s. 30: company may maintain action for sale of shares on non-payment of calls, or to determine right to sell.
- Secs. 152a to 152s.** New sections, comprising new part XIV. added by 1917, c. 38: as to companies operating upon a co-operative basis.

- Sec. 167.** Ratification by infant subscriber after majority by receipt of dividends, etc.: see *Re Sovereign Bank, Clark's Case*, 35 O. L. R. 449.
A person may become shareholder by allowing his name to be on register and by acting as owner of the shares; conduct may take the place of both actual subscription and actual allotment: *Re Gramm Motor Truck Co. and Bennett*, 35 O. L. R. 224.
- Sec. 173.**—(1) See *McCarthy & Sons of Prescott*, 38 O. L. R. 5 (under similar section of Dominion Statute).
- Sec. 174.**—(a) Where guarantors pay a secured creditor they may rank for the amount so paid, notwithstanding compromise by such creditors with liquidator: *Re Stratford Fuel Co.*, 28 O. L. R. 481; affirmed 50 S. C. R. 100.
- Sec. 174.**—(g) Infant subscriber held liable as contributory by reason of laches and acquiescence: *Re Sovereign Bank, Clark's Case*, 35 O. L. R. 448.
- Sec. 177.** As to how far an inspector of an insolvent estate, appointed by the creditors, is in a fiduciary position as regards disposal of the assets; *Taylor v. Davies*, 39 O. L. R. 205, 41 O. L. R. 403 (under the Assignment and Preferences Act, c. 134).
- Sec. 187.** To ascertain whether it is just and equitable that a company should be wound up on the ground that its substratum is gone (see R. S. C. 1906, c. 144, s. 11), the Court has regard to the objects for which it was formed, and where a company had sold most of its assets, and apart from moneys due to it the assets were of small value, and no active business was being carried on, a winding-up order was made: *Re Hamilton Ideal Mfg. Co. Ltd.*, 34 O. L. R. 66.
- Sec. 190.** See *Re McCarthy & Sons of Prescott*, 38 O. L. R. 5 (under similar section of Dominion Statute).
- Sec. 193.** The winding up establishes a forum for determination of all questions incident to liquidation

and adjustment of the rights of all interested, including distribution of assets, and to this forum all must resort: all such matters are within the jurisdiction of the Referee: *Re Ontario Bank*, 38 O. L. R. 242.

- Sec. 194.**—(3) Where it appeared that insolvent company had transferred its land to another company, misfeasance of directors being charged, an order was made at instance of liquidator for inspection of books of transferee company (Dominion Act): *Re Toronto Rowing Club*, 37 O. L. R. 23.
- Sec. 195.** See *Re Owen Sound Lumber Co.*, 34 O. L. R. 528, 38 O. L. R. 414.
- Sec. 195.**—(1) As to right of person charged as contributory to obtain discovery, under Dominion Winding-up Act, R. S. C. 1906, c. 144, s. 117: see *Re Sovereign Bank of Canada*, Newman's case, 34 O. L. R. 577.
- Sec. 195.**—(2) Misfeasance of directors: examination of books: *Re Toronto Rowing Club*, 37 O. L. R. 23.
- Sec. 200.** See *Re McCarthy & Sons of Prescott*, 38 O. L. R. 5 (under similar section of Dominion Statute).
- Sec. 208.**—(f) New sub-section, 1914, c. 29, s. 4; this amendment extends the application of the Company's Act to every company incorporated under any general or special Act of Legislature.
- Sec. 210.** New section, 1916, c. 35, s. 6: extends to all corporations, whether created by general or special Act, the general corporate capacity possessed by corporations created by charter: effect of section considered: *Edwards v. Blackmore*, 42 O. L. R. 105.

CHAPTER 179.

THE EXTRA-PROVINCIAL CORPORATIONS ACT.

The provisions of the Act, in so far as they purport to apply to a company incorporated under Dominion authority, are *intra vires* with the exception of section 16 (prohibiting an unlicensed company from maintaining an action): *Attorney-General for Ontario v. Harris Lithographing Co.*, 41 O. L. R. 475 (reversing on this question, *Masten, J.*, in 40 O. L. R. 290), where the authorities are reviewed and the decision in *John Deere Plow Co. v. Wharton* (1915), A. C., was explained and distinguished.

Sec. 7.—(1) A company incorporated under R. S. C. 1906, c. 73, was held to be prohibited, by reason of not being licensed, from carrying out its objects and undertakings in this province and to be subject to the penalties of the Act: *Attorney-General for Ontario v. Harris*, 41 O. L. R. 475.

Sec. 7.—(3) Repealed 1914, c. 21, s. 38.

Sec. 12. Unlicensed companies are incapacitated from holding lands: *Attorney-General for Ontario v. Harris*, 41 O. L. R. 475.

Sec. 16.—(1) This section, so far as it prohibits an unlicensed company from maintaining an action in Ontario, was held to be *ultra vires* in *Attorney-General for Ontario v. Harris*, 41 O. L. R. 475: since that decision the section has been amended by 1918, c. 20, s. 31, restricting such prohibition to unlicensed companies falling within class 9: see. s. 4.

Similar legislation in Saskatchewan (R. S. Sask. 1909, c. 73, s. 10) was considered by *Anglin, J.*, to be *ultra vires* so far as it affected companies under a Dominion charter: *Canadian Refrigerator Co. v. Saskatchewan Creamery Co.*, 51 S. C. R. 400.

CHAPTER 180.

THE ONTARIO TELEGRAPH ACT.

CHAPTER 181.

THE TIMBER SLIDE COMPANIES ACT.

CHAPTER 182.

THE WHARFS AND HARBOURS ACT.

CHAPTER 183.

THE ONTARIO INSURANCE ACT.

- Sec. 2.**—(5a) New sub-section 1914, c. 30, s. 2: defining automobile insurance.
- Sec. 2.**—(13) Amended 1917, c. 27, s. 28.
- Sec. 2.**—(16) Amended 1917, c. 27, s. 28.
- Sec. 2a.** New section 1917, c. 27, s. 28: Re-insurance outside Ontario.
- Sec. 13.**—(2) (4) Amended 1914, c. 30, s. 3.
- Sec. 13.**—(4a) New sub-section 1914, c. 30, s. 3.
- Sec. 13.**—(6) Repealed, new sub-section 1914, c. 30, s. 3.
- Sec. 13.**—(6a) New sub-section: 1914, c. 30, s. 3.
- Sec. 36.**—(1) Rules of society: Grainger v. Order of Canadian Home Circles, 31 O. L. R. 461, 33 O. L. R. 116.
- Sec. 47.**—(5) (b) Amended 1914, c. 30, s. 4.
- Sec. 62.**—(2) (dd) New clause 1914, c. 30, s. 4.

- Sec. 78a.** New sections 78a to 78l inclusive, 1916, c. 36, s. 2: as to report of Friendly Societies: amended 1918, c. 20, s. 32.
- Sec. 99a.** New section 1914, c. 30, s. 5; amended 1918, c. 20, s. 33: as to agent's authority.
- Sec. 99c.** New section 1914, c. 30, s. 6: as to registration, etc., of underwriters' agency.
- Sec. 108.** See new section 78a, 1916, c. 36, s. 2.
- Sec. 108.**—(5) Repealed, 1916, c. 36, s. 3.
- Sec. 156.**—(5) Amended 1915, c. 20, s. 19.
- Sec. 164.** Where after days of grace had lapsed, premium in arrear was paid to agent and by him forwarded to company, held that there was no waiver by the company of the right to insist upon a certificate of health: *Foxwell v. Policy Holders Mutual Life Insurance Company*, 42 O. L. R. 347.
- Sec. 165.**—(2) This section gives a time to sue notwithstanding any agreement or stipulation in the contract limiting the time: it does not itself purport to limit the time for bringing the action, but in ease of the assured it gives the time stipulated notwithstanding the provisions of the contract: where the contract contains no restriction the statute does not apply: *Duffield v. Mutual Life Insurance Co.*, 32 O. L. R. 300. In the same case, *Clute and Riddell, J.J.*, expressed the opinion that the seven years meant the seven years next before the bringing of the action, but this dictum was not followed in *Olsson v. Ancient Order of United Workmen*, 38 O. L. R. 268 (*Middleton, J.*), where it was held to mean the seven years next following the disappearance.
- Sec. 165.**—(5) Costs of an action were refused where the sufficiency of proof of death might have been determined in a summary way under this section: *Olsson v. A. O. U. W.*, 38 O. L. R. 268.
- Sec. 166.** Where the defendants failed to comply with provisions of s.-s. (7) and s.-s. (9), they were held

to have admitted the age mentioned in the application, s.-s. (10); *Willoughby v. Canadian Order of Foresters*, 36 O. L. R. 507, affirmed 37 O. L. R. 290.

Sec. 166.—(11) Repealed, new sub-section 1916, c. 36, s. 4.

Sec. 169. A policy effected by testator's wife upon his life and another effected by the testator for the benefit of his wife, but in which the insurers contracted to and with the assured, her executors, etc., to pay to the assured, her executors, etc., were both held to be the property of the wife, and not affected by any declaration made by the husband: *Re Cole*, 36 O. L. R. 173.

Sec. 169.—(4) Amended 1917, c. 27, s. 29.

Sec. 170. The provisions of this section (passed in 1912) were held applicable to policies effected in 1850, the insured dying in 1915: *Re Standard Life Assurance Co. & Keefer*, 34 O. L. R. 235.

Sec. 171.—(3) As to sufficiency of declaration: see *Re Cole*, 36 O. L. R. 173.

Writing, identifying the policy: see *Arnold v. Dominion Trust Co.* (under similar British Columbia Statute), 56 S. C. R. 433.

Sec. 171.—(5) See *Re Baeder and Canadian Order of Chosen Friends*, 36 O. L. R. 30, where the cases are collected: notwithstanding a previous declaration by the assured in his lifetime, a bequest of "all my policies" of life insurance is effective to change the beneficiary.

As to sufficiency of declaration: *Re Cole*, 36 O. L. R. 173.

"My personal estate I bequeath to my wife" held sufficient declaration where printed form (not part of the will) stated that "personalty" includes insurance policy: *Re Monkman v. Canadian Order of Chosen Friends*, 10 O. W. N. 29.

Identification of policies by will: *Re Rutherford*, 40 O. L. R. 266.

- Sec. 171.**—(9) This provision should be read subject to s. 178 (7), under which children of a deceased child are entitled to a share: *Re Standard Life Assurance Co. & Keefer*, 34 O. L. R. 235.
- Sec. 175.** Repealed, new section 1914, c. 30, s. 9.
- Sec. 176.** Repealed, new section 1914, c. 30, s. 10.
The provisions of the Hospitals for the Insane Act, c. 295, s. 36, were held to override this section (as amended by 1914, c. 30, s. 10), and the insurance company was ordered to pay the moneys to the inspector of prisons: *Re Nash and Canadian Order of Chosen Friends*, 40 O. L. R. 530.
- Sec. 178.** If the wife obtains a divorce, she ceases to be within the preferred class: *Re Banks*, 42 O. L. R. 64.
Considered: *Re Baeder and Canadian Order of Chosen Friends*, 36 O. L. R. 30.
A stepmother does not come within the preferred class: *Re Rutherford*, 40 O. L. R. 266.
- Sec. 178.**—(3) Amended 1914, c. 30, s. 11.
- Sec. 178.**—(3a) New sub-section 1914, c. 30, s. 11: as to insurance for benefit of wife only or wife and children.
- Sec. 178.**—(4) Repealed, new sub-section 1914, c. 30, s. 11; again repealed, new sub-section 1916, c. 36, s. 5.
- Sec. 178.**—(7) Notwithstanding that a policy had been declared by the insured to be for the benefit of his wife and children, the children of deceased children were held entitled to share, and not merely the survivor of the original class who would alone be entitled under section 171 (9): *Re Standard Life Assurance Co. and Keefer*, 34 O. L. R. 235.
- Sec. 179.**—(1) Where the insured, then domiciled in Ontario, nominated three children as beneficiaries and subsequently changed his domicile to New York where he died, bequeathing all his insurance

policies to a grandchild, it was held that, although by the law of New York beneficiaries in an insurance policy cannot be changed by will, the declaration of beneficiary in what has been made a trust fund by the Ontario Statute was validly made, and the grandchild was entitled: *Re Baeder and Canadian Order of Chosen Friends*, 36 O. L. R. 30.

As to policies effected by the testator's wife, and as to which he had no power to make declaration: see *Re Cole*, 36 O. L. R. 173.

Sec. 184.—(3) Amended 1915, c. 30, s. 1.

Sec. 185.—(1) Amended 1915, c. 30, s. 2.

Sec. 194.—(1) Where the assured left the insurance agent to fill in the application and forward it, and the question as to incendiarism being apprehended was left unanswered, but the facts creating the apprehension of incendiarism were disclosed by the assured to the agent who was a general agent of the company with large powers, it was held that notice to him was notice to the company, and that the company had waived an answer to the question: *Gabel v. Howick Farmers Mutual Fire Insurance Co.*, 40 O. L. R. 159.

Sec. 194.—(2) As to effect of vacancy of one of several dwelling houses upon the insurance of the occupied houses regarded as a change material to the risk: see *Ross v. Scottish Union Insurance Company*, 41 O. L. R. 108.

Where the company when issuing a policy knew that a gasoline engine had been installed, and must have known that a reasonable quantity of gasoline would be kept close at hand, keeping a barrel 15 feet from a building under an adjacent platform was held not to be a circumstance "material to the risk", non-disclosure of which would avoid the policy: *Evangeline Fruit Co. v. Provincial Fire Insurance Co.*, 51 S. C. R. 474.

Sec. 194.—(6) (a) The assured was held entitled to recover for loss as regards goods insured as the

“property of the assured”, notwithstanding that they were purchased by lien under conditional sale agreement, and that by that agreement the ownership in them had not passed to him: the articles were his “property” in the popular sense: *Drumbolus v. Home Insurance Co.*, 37 O. L. R. 465. Upon the wording of the condition itself, the term “owner” is not synonymous with “holder of an exclusive title”: *Drumbolus v. Home Insurance Co.*, 37 O. L. R. 465.

Sec. 194.—(6) (f) Gasoline on the premises: *Evangeline Fruit Co. v. Provincial Fire Insurance Co.*, 51 S. C. R. 474.

Knowledge of the soliciting agent that coal oil is kept is not knowledge of the company so as to affect an express condition of the policy: *Laforest v. Factories Insurance Co.*, 53 S. C. R. 296.

Sec. 194.—(8) Where insurers issue an interim receipt (which by s. 2, cl. 14, is a contract of insurance) and fail to point out in writing the particulars wherein it differs from the application, it must be deemed to be a policy in accordance with the terms of the application, and therefore in force, even though a loss occur after the period limited on the face of the receipt: *Beury v. Canada National Fire Insurance Co.*, 38 O. L. R. 596, 39 O. L. R. 343. See *Sharkey v. Yorkshire Insurance Co.*, 54 S. C. R. 92.

Sec. 194.—(11) Enclosing a sum said to represent the portion of the premium for the unexpired term in a letter addressed to the assured was held not to be a sufficient tender by the insurance company. *Veltre v. London & Lancashire Insurance Co.*, 40 O. L. R. 619. As to necessity of notice reaching the insured: see *ibid.*

Sec. 194.—(18) Proof of loss: it is not open to a defendant company to set up non-delivery of proofs of loss, where it has denied liability and the existence of insurance: *Beury v. Canada National Fire Insurance Co.*, 38 O. L. R. 596, affirmed 39 O. L. R. 343.

- Sec. 194.**—(18) (c) Where the statutory declaration was not made by the assured, but by his representative upon the board of inspection and valuation, the proofs of loss in other respects being in proper form and the company not being prejudiced, it is inequitable that the insurance should become void or forfeited (see s. 199): *Gabel v. Howick Farmers Mutual Fire Insurance Company*, 40 O. L. R. 159.
- Sec. 194.**—(22) Proofs of loss are furnished when the letter containing them is posted, from which date the 60 days can be computed: *Muldover v. Norwich Union Fire Insurance Co.*, 40 O. L. R. 532.
- Sec. 197.** A condition or provision in the application, to the effect that disclosure of facts to the agent shall not bind the company, may in certain circumstances be held unreasonable and ineffective: *Gabel v. Howick Farmers Mutual Fire Insurance Co.*, 40 O. L. R. 159.
- Sec. 199.** When forfeiture through imperfect compliance with conditions inequitable: *Gabel v. Howick Farmers Mutual Fire Insurance Co.*, 40 O. L. R. 159.
As to relief under this section: see *Muldover v. Norwich Union Fire Insurance Company*, 40 O. L. R. 532.
- Sec. 241.** Amended 1918, c. 20, s. 34.
- Sched. E.**—(9) New clause, 1914, c. 30, s. 7.
- Sched. G.**—(h) New clause, 1914, c. 30, s. 8.

CHAPTER 184.

THE LOAN AND TRUST CORPORATIONS ACT.

- Sec. 18.**—(e) It is not competent for a trust company to be appointed guardian of an infant, and the appointment of an officer of the company is an invasion of the spirit of the Act: in such case no com-

pensation will be allowed: *Re Rundle*, 32 O. L. R. 312, affirmed 52 S. C. R. 114.

- Sec. 35.** The provisions of the section are complied with if the facts stated in the mortgage show the amount of the principal and the rate of interest calculated as required: a special statement complete in itself is not essential: see *Canadian Mortgage Investment Co. v. Cameron*, 55 S. C. R. 409 (Alberta) and *Standard Reliance Mortgage Corporation v. Stubbs*, 55 S. C. R. 422 (Manitoba).
- Sec. 36.** The section of the Mortgages' Act applicable are sections 15 and 16: 1914, c. 2, s. 4.
- Sec. 94.—(3) (4)** New sub-sections 1917, c. 27, s. 30: as to transfer of shares under letters probate, etc., issued out of Ontario.
- Sec. 98.—(7)** Amended 1914, c. 2, s. 4.
- Sec. 115.—(4)** New sub-section 1918, c. 20, s. 35.
- Sec. 122.—(1) (a)** Amended 1914, c. 2, s. 4.
- Sec. 122.—(1) (b)** Amended 1914, c. 21, s. 39, and prior registry validated.
- Sec. 136.—(6) (7)** New sub-sections 1918, c. 20, s. 36.

CHAPTER 185.

THE ONTARIO RAILWAY ACT.

- Sec. 2.—(z)** Amended 1916, c. 31, s. 10.
See *Grobe v. Buffalo & Fort Erie F. & R. W. Co.*, 38 O. L. R. 272.
- Sec. 48.** "Working expenditure:" effect of change in wording of section on revision of 1913 (prior Act being 1906, 6 Edw. VII. c. 30, s. 44) in respect of mortgage to secure bondholders: see *Grobe v. Buffalo & Fort Erie F. & R. W. Co.*, 38 O. L. R. 272.

- Sec. 79.** Amended 1918, c. 30, s. 1.
Under similar provision of the Dominion Act, R. S. C. 1906, c. 73, s. 167, it was held that the Dominion Railway Board has no power to order deviations or changes in a constructed line of railway, of which the location has been definitely established, except upon request of the railway company: *City of Hamilton v. Toronto, Hamilton & Buffalo Ry. Co.*, 50 S. C. R. 128.
- Sec. 89.** Similar section, Dominion statute, considered: *Saskatchewan Land & Homestead Co. v. Calgary & Edmonton Ry. Co.*, 51 S. C. R. 1.
- Sec. 89.**—(2) "Date with reference to which the compensation shall be ascertained": see *Toronto Suburban Ry. Co. v. Everson*, 54 S. C. R. 395.
- Sec. 90.**—(1) Where upon application of city corporation an Order in Council directed construction of subway at railway crossing, "all land damages to be paid by the city", it was held that no action lay against the city by a person claiming injurious affection to land: the railway company actually constructing the work was liable to the plaintiff as trespassers, the necessary proceedings to ascertain and pay compensation not having been taken: *Burt v City of Sydney*, 50 S. C. R. 6.
- Sec. 90.**—(9) Price obtained for neighboring property for subdivision purposes is fair test of value: *Re Muir and Lake Erie & Northern Railway*, 32 O. L. R. 150.
Obstruction of access to river and loss of attractive feature of a river front: *Re Muir and Lake Erie & Northern Railway*, 32 O. L. R. 150.
Where the most advantageous use has been made of property by its owner, it is that value that the taker must pay and the taker cannot reduce that value by limiting the damage to what lies immediately near the part taken, if the owner suffers through his whole property by its being reduced to an area too restricted to be used to the same advantage: *Re Brantford Golf & Country*

Club & Lake Erie & Northern Railway Company, 32 O. L. R. 141, 32 D. L. R. 219 (in Sup. Ct.).

Method of computation: the correct principle is to ascertain the value of the whole before the taking and the value of the remaining portion after the taking, the difference being the proper compensation: *Re Hannah & Campbellford, Lake Ontario & West. Ry.*, 34 O. L. R. 615.

Where property expropriated is, owing to its location and adaptability for business, worth more to the owner than its intrinsic value, he is not entitled to have the capital amount representing the excess added to the market value: the proper compensation is the amount which a prudent man in the position of the owner would be willing to pay: *Re Schooley and Lake Erie and North Co.*, 34 O. L. R. 329, varied in 53 S. C. R. 416.

In the case of expropriation of an easement, the land owner was held entitled to be paid not only for the damage caused to him by what had been done, but for all the damage caused by the power given to the company, whether it had in fact exercised it or not: what was to be valued was the property in the owners' hands, subject to the restrictions or easements by which it was affected, though their discharge or the unlikelihood of their use or enforcement must be considered in ease of the loss; and it was beyond the power of the company to enter into an agreement to limit the easement to that actually in use: *Re Coleman and Toronto & Niagara Power Co.*, 40 O. L. R. 130.

In determining the compensation to be paid to the owner, the value of the land must be taken to consist in all advantages which it possesses present or future, in so far as the possession of them enhances the value of the land: see *Cedar Rapids Manufacturing and Power Co. v. Lacoste* (1914), A. C. 569, and *Pastoral Finance Association Ltd. v. The Minister* (1914), A. C. 1083.

Where owner's registered plan covers several lots they are distinct properties, and no compensation should be allowed for injurious affection of any

lot not taken: Canadian Northern Ont. Railway Co. v. Holditch, 50 S. C. R. 265, affirmed (1916), 1 A. C. 536.

Amount of damage: see *Re Brown and City of Toronto*, 36 O. L. R. 189; *The King v. Hearn*, 55 S. C. R. 562; *The King v. Larivee*, 56 S. C. R. 376. Opinion evidence as to general course of values in surrounding properties: *Re Billings and the Canadian Northern Ry. Co.*, 31 O. L. R. 329. Basis of estimating damage: see *Rex v. McLaughlin*, 15 Ex. C. R. 417; *Re Slater and Ottawa*, 10 O. W. N. 401.

For other cases as to proper method of computation of compensation by arbitrators, see notes under the Arbitration Act, c. 65, and the Municipal Act, c. 192, s. 325.

Sec. 90.—(10) Misconduct of arbitrators: *Re Windatt and Georgian Bay & Seaboard R. W. Co.*, 34 O. L. R. 198.

Provisions of Dominion Railway Act, R. S. C. 1906, c. 37, ss. 199 and 204, discussed: *Re Windatt and Georgian Bay & Seaboard R. W. Co.*, 34 O. L. R. 198.

Award set aside on the ground that arbitrators examined more than three expert witnesses: *Canadian North Western R. W. Co. v. Moore*, 53 S. C. R. 519 (Alberta).

Sec. 90.—(13) As to compensation for damages sustained in consequence of expropriation proceedings in event of abandonment of the whole parcel as well as in case of abandonment of a portion only: (Dominion Act) *Gibb v. The King*, 52 S. C. R. 402.

Sec. 90.—(15) The award should be treated as the judgment of a subordinate Court subject to re-hearing: the amount should not be interfered with unless clearly wrong, does not represent the honest opinion of the arbitrators, or the basis of valuation is erroneous: see *Toronto Suburban Ry. Co. v. Everson*, 54 S. C. R. 395.

As to arbitrators exceeding the scope of their jurisdiction, see *Montmagny v. Letourneau*, 55 S. C. R. 543.

Where the amount awarded is so grossly excessive as to show that the correct principles of valuation have not been applied: see *The King v. Hearn*, 55 S. C. R. 562.

The element of generosity does not enter into the arbitrators' consideration in fixing compensation for compulsory purchase, and an allowance of ten per cent., for compulsory taking, cannot be claimed as of right for all kinds of property and under all circumstances: *The King v. Larivee*, 56 S. C. R. 376. As to ten per cent. allowance, see also *Rex v. Hunting*, 32 D. L. R. 331 (Sup. Ct.).

It is desirable on an appeal to have the written reasons of the arbitrators, but they must not be obtained *ex parte*, and the examination of an arbitrator, pending an appeal, is not the proper way of obtaining the information: *Re Clarkson & Campbellford Lake Ont. R. W. Co.*, 35 O. L. R. 345. The arbitrators are *functi officio* when their award is delivered and there is no power to refer the matter back: *Anglin and Duff, J.J.*, in *Canadian Northern Ont. Ry. v. Holditch*, 50 S. C. R. 265.

Where arbitrators found that certain lands had added value as a quarry, but allowed nothing therefor, being uncertain whether it constituted a mineral (s. 133), the Court upon appeal determined the question upon the evidence instead of remitting the case: *McAllister and Toronto & Suburban R. W. Co.*, 40 O. L. R. 252.

Sec. 90.—(16) Practice regarding appeals from arbitrators: *Re Billings and Canadian Northern Ont. R. W. Co.*, 29 O. L. R. 608; *Re Ruddy and Toronto Eastern R. W. Co.*, 7 O. W. N. 796, 38 O. L. R. 556; *Re Ketcheson and Canadian Northern Ont. R. W. Co.*, 29 O. L. R. 339.

The Court can increase or diminish the amount awarded, and it may reject the method of ascertaining the amount adopted by the arbitrators if, upon the evidence, another is preferable: *Re C. M.*

Billings & Can. Northern Ont. Ry., 31 O. L. R. 329, 31 D. L. R. 687 (in Sup. Ct.).

Upon an appeal, the award is in a position similar to that of the judgment of a trial judge, from which an appeal is always open both upon fact and law: where the Appellate Division increased the amount of compensation but the Supreme Court restored the award, the latter judgment was upheld in the Privy Council upon the ground that the arbitrators did not proceed upon a wrong principle and were fairly seized of all the facts: *Ruddy v. Toronto Eastern R. W. Co.*, 38 O. L. R. 556.

- Sec. 91.** For consideration of question whether compensation is necessarily confined to injury or damage to the land itself: see *J. F. Brown Company and City of Toronto*, 36 O. L. R. 189, where the question arose under s. 325 of the Municipal Act.
- Sec. 92.** Similar section, Dominion Statute, considered: *Saskatchewan Land and Homestead Co. v. Calgary & Edmonton Ry. Co.*, 51 S. C. R. 1.
- Sec. 94.** Similar section, R. S. C. 1906, c. 37, s. 226, considered, especially with reference to s.-s. (3): *Grand Trunk Ry. v. Hepworth Silica Pressed Brick Co.*, 51 S. C. R. 81.
- Sec. 99.**—(1) (c) Where automatic couplers were duly inspected, it was held that the statutory and common law duty resting on the company was thereby discharged, and no further duty arises with regard to unusual conditions not perceivable by ordinary inspection: *Phelan v. Grand Trunk Pacific Ry.*, 51 S. C. R. 113.
- Sec. 99.**—(3) Defective ladder: injury to conductor: conductor's duty to inspect (under R. S. C. 1906, c. 37, s. 264, ss. (5)): *Smith v. G. T. R.*, 32 O. L. R. 380.
- Sec. 105.**—(8) See *Toronto & York Radial R. W. v. City of Toronto*: order of Railway Board reversed, 35 O. L. R. 57, and restored by Privy Council, 38 O. L. R. 88.

- Sec. 107a.** New section 1917, c. 39, s. 1: as to use of certain lights on electric railways.
- Sec. 108.** Exposed switch rods: *Caleb v. Winnipeg Joint Terminals*, 53 S. C. R. 323.
- Sec. 118.**—(1) Compensation to owner of adjacent or abutting land is to be awarded by the Railway Board and is not a matter for arbitration: *Canadian Northern Ont. Ry. v. Holditch*, 50 S. C. R. 265; (1916) 1 A. C. 536.
As to effect of order of Railway Board, see *Brant v. Canadian Pacific R. W. Co.*, 36 O. L. R. 619 (under R. S. C. 1906, c. 37, s. 238): owner of adjoining property has no right of action against company proceeding under such order of the Board, his remedy for obtaining compensation being obtainable by arbitration proceedings: *ibid.*
- Sec. 120.** As to company proceeding under authority of Railway Board: see *Brant v. Canadian Pacific Ry. Co.* (distinguishing *Parkdale v. West*, 12 A. C. 602), 36 O. L. R. 619.
Where the company constructs without taking necessary proceedings under ss. 81-90: *Burt v. City of Sydney*, 50 S. C. R. 6.
- Sec. 123.** See *Brant v. Canadian Pacific Ry.*, 36 O. L. R. 619; where Board acts of its own motion and in invitum of the company, an owner of land has no right of action against the railway for alteration of grade or closing of street: his remedy is by arbitration under the Act.
- Sec. 133.** Rock ordinarily found in the district is not a mineral: *Re McAllister and Toronto & Suburban R. W. Co.*, 40 O. L. R. 252.
- Sec. 155.** As to what is a highway crossing: see *Gowland v. Hamilton, Grimsby and Beamsville Railway*, 33 O. L. R. 372.
- Sec. 155.**—(1) Failure to ring bell: competence of witnesses: findings of jury: See *Jaroshinsky v. Grand Trunk Ry.*, 37 O. L. R. 111.

Failure to ring bell: *Gray v. Wabash Ry. Co.*, 35 O. L. R. 510.

- Sec. 157.** See *Minor v. Grand Trunk Ry.*, 38 O. L. R., decided under similar section of Dominion Act, R. S. C. 1906, c. 37, s. 275.
- Sec. 159.** Cf. s. 279, of R. S. C. 1906, c. 37. Meaning and effect of similar section in Dominion Statute discussed and explained: *Garside v. G. T. R.*, 33 O. L. R. 388.
- Sec. 163.** Violation of company's rules, if it contributes to the accident, precludes recovery: *Cook v. G. T. R.*, 31 O. L. R. 183.
- Sec. 200.** The Dominion Railway Board has no power to authorize a Dominion railway company to use or occupy lands at the time of the application of the property of a Provincial railway: *Montreal Tramways Co. v. Lachine Jacques Cartier and Maison-neuve Ry. Co.*, 50 S. C. R. 84.
- Sec. 210.**—(2) Amended 1918, c. 30, s. 2.
- Sec. 216.** As to agreement limiting railway's liability in consideration of reduced rate: see *Canadian Pacific Ry. v. Parent*, 51 S. C. R. 234.
- Sec. 234.**—(2) Amended 1914, c. 21, s. 40; 1917, c. 27, s. 31.
- Sec. 239.** See *Vandry v. Quebec Ry. Light, Heat & Power Co.*, 53 S. C. R. 72.
- Sec. 243.** Amended 1918, c. 30, s. 1.
- Sec. 250.** See *Toronto & York Radial R. W. v. City of Toronto*: order of Railway Board reversed: 35 O. L. R. 57, and restored by Privy Council, 38 O. L. R. 88.
- Sec. 256a.** New section 1918, c. 30, s. 3: one man as motor-man and conductor forbidden.
- Sec. 260.**—(1) Considered: *Re Toronto & York R. W. Co.*, 35 O. L. R. 57, 38 O. L. R. 88.

As to power of board to punish as for contempt for disobedience of judgment in an action: *City of Toronto v. Toronto R. W. Co.*, 39 O. L. R. 310.

Sec. 260a. New section 1918, c. 30, s. 4: penalty for failure to supply additional cars.

Sec. 265. A claim for damages caused by fire set out to burn wornout ties is a claim for damages sustained "by reason of the operation" of the railway (under the Dominion Railway Act): *Greer v. C. P. R.*, 31 O. L. R. 419, affirmed 32 O. L. R. 104, 51 S. C. R. 338.

Damages: in estimating damages for injury sustained by collision with street car, fact of insurance moneys received or receivable is immaterial and cannot be inquired into: with the rights of the plaintiff and the insurance company inter se the wrongdoer has no concern: *Millard v. Toronto R. W. Co.*, 31 O. L. R. 526.

"Construction or operation": derailment caused by alleged want of maintenance and repair of a diamond crossing: *Grand Trunk R. W. Co. v. Sarnia St. Ry. Co.*, 37 O. L. R. 477.

Operation of the railway: see *Canadian Northern Ry. Co. v. Pszenienzy*, 54 S. C. R. 36 (under R. S. C. 1906, c. 37).

Action for damages sustained by passenger in safe and proper conduct of his person to its destination is not subject to the time limit imposed in respect of actions for damages sustained by reason of the construction or operation of the railway: *Traill v. Niagara St. Catharines & Toronto R. W. Co.*, 38 O. L. R. 1.

"Continuation of damage": improper construction of road bed and track at crossing creating a nuisance: see *Kuusisto v. Port Arthur*, 37 O. L. R. 146.

Sec. 285. Use of excessive force by brakeman in ejecting man stealing a ride: *Canadian Northern v. Diplock*, 53 S. C. R. 376.

Sec. 302. Amended 1918, c. 30, s. 5.

CHAPTER 186.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD ACT.

- Sec. 3.**—(a) Amended 1915, c. 31, s. 1.
- Sec. 9.** See *Re Toronto and Hamilton Highway Commission and Crabb*, 37 O. L. R. 656.
- Sec. 21.** This section (and see s. 38) practically confers on the board the status of a court: in matters referred under the Public Works Act, R. S. O. c. 35, s. 29, the board acts as a court and not merely as arbitrators: see *Toronto & Hamilton Highway Commission and Crabb*, 37 O. L. R. 656.
- Sec. 21.**—(2) Amended 1915, c. 31, s. 2.
- Sec. 22.** The board has no power to punish, as for contempt, disobedience of a judgment in an action, even if such judgment is based on consent of the parties: *City of Toronto v. Toronto R. W. Co.*, 39 O. L. R. 310.
- Sec. 26.** Amended 1916, c. 24, s. 25.
- Sec. 27.** Amended 1916, c. 24, s. 25.
- Sec. 38.**—(1) See *Re City of Toronto and Toronto R. W. Co.*, 42 O. L. R. 82.
- Sec. 48.**—(6) Where an appeal lies under this section, section 3 of chapter 54 applies as fully as if the appeal were brought within section 2 of chapter 54: *Re Toronto R. W. Co. & City of Toronto*, 34 O. L. R. 465. See *Ontario and Minnesota Power Co. and Town of Fort Frances*, 34 O. L. R. 365.
- Sec. 48.**—(6a) New sub-section 1916, c. 24, s. 26: no appeal to Privy Council.
- Sec. 48.**—(8) See *Re City of Toronto and Toronto R. W. Co.*, 42 O. L. R. 82.
- Sec. 52.** See *Re Toronto and Hamilton Highway Commission and Crabb*, 37 O. L. R. 656.

CHAPTER 187.

THE HYDRO-ELECTRIC RAILWAY ACT.

Repealed by the Hydro-Electric Railway Act 1914:
4 Geo. V. c. 31.

CHAPTER 188.

THE ONTARIO TELEPHONE ACT.

The Act, together with all amendments, was repealed by the Ontario Telephone Act 1918, 8 Geo. V. c. 31.

Prior to consolidation, the following were amendments to the original Act.

- Sec. 2. Amended 1914, c. 32, s. 4.
- Sec. 2.—(d) Amended 1914, c. 32, s. 1.
- Sec. 2.—(f) Amended 1914, c. 32, s. 2; 1917, c. 40, s. 2.
- Sec. 2.—(j) Amended, new sub-section 1914, c. 32, s. 3.
- Sec. 3.—(2) Amended 1914, c. 32, s. 4.
- Sec. 8. History of section reviewed: Temiskaming Telephone Co. v. Town of Cobalt, 42 O. L. R. 385.
- Sec. 8.—(6) New sub-section as to powers of board in unorganized territory: 1914, c. 32, s. 5.
- Sec. 9. Amended 1914, c. 32, s. 6.
- Sec. 10. Such particulars as board requires: 1914, c. 32, s. 7.
- Sec. 10.—(2) New sub-section as to obligation of new petitioner: 1914, c. 32, s. 8.
- Sec. 13.—(2) New sub-section as to extensions in unorganized townships: 1915, c. 33, s. 2.
- Sec. 14.—(1) Suit to be brought by Board of Commissioners: 1915, c. 33, s. 3.
- Sec. 14.—(4) New sub-section 1915, c. 33, s. 4: as to validity of special rate.
- Sec. 14.—(5) New sub-section as to auditing of accounts: 1915, c. 33, s. 4.
- Sec. 16. Approval of board is required: 1914, c. 32, s. 9.

- Sec. 16.** Consent of board is necessary to purchase or lease: 1915, c. 33, s. 5.
- Sec. 17.—(2)** Amended 1914, c. 32, s. 10; 1915, c. 33, s. 6.
- Sec. 17.—(3)** Repealed, new sub-section 1915, c. 33, s. 7.
- Sec. 17.—(7)** Amended 1914, c. 32, s. 11.
- Sec. 17.—(8)** Amended 1914, c. 32, s. 12; 1915, c. 38, s. 8.
- Sec. 17.—(9)** Amended 1915, c. 33, s. 9.
- Sec. 17.—(10)** Amended 1916, c. 38, s. 2; 1917, c. 40, s. 3.
- Sec. 17.—(11a)** New sub-section as to damages resulting from severance: 1916, c. 38, s. 3.
- Sec. 17.—(12)** Amended 1916, c. 38, s. 4.
- Sec. 18.—(2)** New sub-section as to special rate for extensions: 1917, c. 40, s. 4.
- Sec. 20.** Amended 1914, c. 32, s. 13; 1917, c. 40, s. 5.
- Sec. 20.—(2)** New sub-section 1917, c. 40, s. 6.
- Sec. 21.** Amended 1914, c. 32, ss. 14, 16.
1915, c. 33, ss. 10, 11, 12, 13, 14, 15.
1917, c. 40, ss. 7, 8, 9, 10.
- Sec. 26.—(1)** New section, every company shall furnish a prompt and efficient service: 1914, c. 32, s. 17.
- Sec. 26.—(2a)** New sub-section 1916, c. 38, s. 5.
- Sec. 26.—(6)** Amended 1914, c. 32, s. 18; 1915, c. 33, s. 16; 1916, c. 38, s. 6.
- Sec. 26.—(7a)** 1915, c. 33, s. 17: prohibition of improper language.
- Sec. 26.—(7b, 7c)** New sub-sections 1917, c. 40, s. 11: prohibition as to divulging conversation.
- Sec. 26.—(8, 9)** New sub-sections 1914, c. 32, s. 19.
- Sec. 29.** Amended 1914, c. 32, s. 20; 1917, c. 40, s. 12.
- Sec. 30.—(2)** Amended 1915, c. 33, s. 18.
- Sec. 30.—(3)** New sub-section 1915, c. 33, s. 20: the board may fix tolls notwithstanding agreement or by-law.
- Sec. 31.—(1)** Amended 1915, c. 33, s. 19.
- Sec. 32a.** New section 1916, c. 38, s. 8.
- Sec. 33a.** New section 1917, c. 40, s. 13.
- Sec. 34.** Amended 1914, c. 32, s. 21.
- Sec. 38.** Repealed, new section 1915, c. 33, s. 21; amended 1916, c. 38, s. 7.
- Sec. 38a.** New section 1916, c. 38, s. 8.
- Sec. 39.** New section 1915, c. 33, s. 22.

CHAPTER 189.

THE PUBLIC UTILITIES CORPORATIONS ACT.

CHAPTER 190.

THE GUARANTEE COMPANIES SECURITIES ACT.

CHAPTER 191.

THE CHEESE AND BUTTER EXCHANGE ACT.

CHAPTER 192.

THE MUNICIPAL ACT.

- Sec. 2.**—(m) The Municipal Board may direct means of determining population: 1915, c. 34, s. 1.
- Sec. 2.**—(o) By-law is invalid, although publication is made in newspaper of neighbouring municipality: the principle of the Act being disregarded: Poulin and Village of L'Original, 42 O. L. R. 6; 14 O. W. N. 57.
- Sec. 10.** Consideration of power of municipal corporation, in exercise of its discretion as a branch of civil government, to transact business within the limit of its powers without interference from the Court: *Norfolk v. Roberts*, 28 O. L. R. 593, 50 S. C. R. 283.
Interference by the Court in matters within statutory authority of council: see *Re Davis and Village of Creemore*, 38 O. L. R. 240; *Rogers v. City of Toronto*, 33 O. L. R. 89; *Jones v. Tuckersmith*, 33 O. L. R. 634.
- Sec. 11.** Amended 1915, c. 34, s. 2.

- Sec. 13.**—(1) Amended 1915, c. 34, s. 3.
- Sec. 13.**—(9) Where liabilities have been incurred by the municipality and no substantial injustice done, the by-law will not be quashed: *Bell v. Town of Burlington*, 34 O. L. R. 410, 619.
- Sec. 14.**—(1) Amended 1914, c. 33, s. 1.
- Sec. 14.**—(2) Amended 1914, c. 33, s. 2.
- Sec. 14.**—(4) Amended 1914, c. 33, s. 3.
- Sec. 19.**—(2) Amended 1915, c. 34, s. 4.
- Sec. 21.**—(1) Amended 1918, c. 32, s. 1.
- Sec. 24.**—(3) Amended 1917, c. 43, s. 2: introducing Women's Suffrage.
- Sec. 31.**—(1) Amended 1915, c. 34, s. 5: repealed, new sub-section 1918, c. 32, s. 2.
- Sec. 32.** Amended 1915, c. 34, s. 6.
- Sec. 33.** Where contract (as for supply of gas) relates to the area then within the corporation limits, and a district is subsequently annexed: see *Union Natural Gas Co. v. Chatham Gas Co.*, 38 O. L. R. 488.
- Sec. 38.**—(1) Amended 1915, c. 34, s. 7.
- Sec. 39.**—(1) Amended 1915, c. 34, s. 8.
- Sec. 39.**—(2) Amended 1915, c. 34, s. 9.
- Sec. 44.** Repealed, new section 1915, c. 34, s. 10.
- Sec. 46.**—(7) Amended 1916, c. 39, s. 2.
- Sec. 52.**—(1) (a) Repealed, new clause 1915, c. 34, s. 11.
- Sec. 53.**—(1) "Election" includes nomination, and a candidate who is liable for arrears of taxes at the time of nomination, though not on the day of polling, is ineligible: *Rex ex rel. Mitchell v. Mackenzie*, 33 O. L. R. 196. See also *Kennedy v. Dickson*, 7 O. W. N. 769.

- Sec. 53.**—(1) (e) The meaning of an “officer, employee or servant” is defined by 1918, c. 32, s. 3.
- Sec. 53.**—(1) (p) Grounds of disqualification: secretary of fair association to whom grants are made, and contracts let by the municipal corporation: *Rex ex rel. Stephenson v. Hunt*, 36 O. L. R. 385.
- Sec. 53a.** New section 1918, c. 32, s. 3: defining “officer, servant,” etc.
- Sec. 56.**—(1) Amended 1917, c. 43, s. 2: introducing Women’s Suffrage.
- Sec. 73.** Amended 1914, c. 33, s. 4: extending authority to any local municipality; further amended 1915, c. 34, s. 12.
- Sec. 91.** Amended 1915, c. 34, s. 13.
- Sec. 101.** See provisions of the Railway Employees Voting Act 1918, c. 33, whereby provisions are made for holding a poll to take the votes of such employees on the three days immediately preceding the day for holding the poll at the annual municipal election.
- Sec. 128.** As to postponement of an election on account of an epidemic or contagious disease: see the Public Health Act, R. S. O. c. 218, s. 115.
- Sec. 150.** Ballot not in prescribed form: *Re Wall and City of Ottawa*, 6 O. W. N. 291.
As to the important practical difference between this section and the former curative section (1903, 3 Edw. VII. c. 19, s. 204): see *Re Sharp and Village of Holland Landing*, 34 O. L. R. 185. Under the former section the onus was upon the respondent seeking to uphold the by-law of proving (1) compliance with the principles of the Act, and (2) that the irregularities did not affect the result; as now enacted the section throws upon the applicant the burden of showing that the result was affected by the proved irregularities: *Re Sharp and Village of Holland Landing*, 34 O. L. R. 186.

Sec. 150.—(a) “Preliminary to the poll”: the use of a list prepared under the Voters List Act, c. 6, s. 24, certified by the County Judge, is a matter preliminary to the poll, and the objection that such list was not the list required by s. 266 of this Act fails: *Re Sharp and Village of Holland Landing*, 34 O. L. R. 186.

Sec. 161.—(2) Amended 1914, c. 33, s. 5.

Sec. 162. If fiat is improperly granted by County Court Judge, the interest of the relator as an elector who had voted, see s. 161 (2), not appearing from the material, it should be set aside by the Judge, and he has power so to do: there is no appeal: *Rex ex rel. Boyce v. Porter*, 33 O. L. R. 575.

If the facts which form the real ground for the application are known at the time of the election, the time will not be extended simply because the relator afterwards becomes aware of facts which are mere evidence, or additional evidence, of the facts forming the ground known at the time of the election: *Rex ex rel. Stephenson v. Hunt*, 36 O. L. R. 385: *semble*, the dismissal of the application would not prevent an application by another relator: *Township of King v. Beamish*, 36 O. L. R. 325.

Sec. 189. The statement in a public address to the electors that if they did not vote for the speaker, he being the candidate of the party controlled by a power company, the lights would be cut off, was held to be not such as could properly be determined to be a threat: *Rex ex rel. Mitchell v. Mackenzie*, 33 O. L. R. 196.

Sec. 193.—(1) Amended 1917, c. 42, s. 1.

Sec. 209a. New section 1915, c. 34, s. 14: as to the board of control in certain cities.

Sec. 210.—(4) New sub-section 1915, c. 34, s. 15: by-law to remain in force five years.

- Sec. 215.** There is no statute requiring the mayor to sign contracts, and the corporate seal being the essential thing the council may by resolution authorize the sealing and delivery, with the countersign of any designated person, of any contract: *Wilson v. Ingersoll*, 38 O. L. R. 261.
- Sec. 219.** Municipalities in Ontario are not an evolution from the common law municipal corporations, but are the product of statutory enactments: an inhabitant or person, in regard to affairs of the municipality, has no rights of examination or inquiry except such as are expressly or impliedly given by statute: newspaper reporters are entitled at reasonable times to access to the office of the clerk for inspection under this section: *Journal Printing Co. v. McVeity*, 33 O. L. R. 166.
- Sec. 227.**—(1) Amended 1915, c. 34, s. 16.
- Sec. 237.** As to right of inspection: see *Journal Printing Company v. McVeity*, 33 O. L. R. 166.
- Sec. 241.** Amended 1917, c. 42, s. 2.
- Sec. 248.** Inquiry is limited to matters within the jurisdiction of the municipal council, and is to be made with a view to obtaining a report for guidance of council in dealing with matters over which it has authority, and, upon a reference to a County Court Judge, charges of misconduct in the police force cannot be inquired into, the regulation of its affairs being vested in the police commissioners: *Re City of Berlin and County Judge of County of Waterloo*, 33 O. L. R. 74 (distinguishing *Lane v. City of Toronto*, 7 O. L. R. 423).
- Sec. 249.** By-law passed by council acting honestly and within the limits of its powers is not open to review in any Court: it is for the council to say what is in the public interest: *Jones v. Tuckersmith*, 33 O. L. R. 634: see also *Davis v. Creemore*, 38 O. L. R. 240.
Notwithstanding this section, the rule that part performance will prevent a company from setting

up a defence grounded on the absence of a corporate seal applies in the case of a municipal corporation: *Township of King v. Beamish*, 36 O. L. R. 325.

Absence of a by-law held fatal to claim for compensation for services rendered as accountant under instructions from the mayor, and fact that contract was executed by plaintiff and that corporation had received benefit was not sufficient to prevent defendants from setting up the absence of by-law: review of authorities: comment on *King v. Beamish* (supra): *MacKay v. City of Toronto*, 39 O. L. R. 34.

Ratification by the council of the acts of its executive officers must be by by-law: see *MacKay v. City of Toronto*, 39 O. L. R. 34.

Distinction between the legislative and administrative powers of the council pointed out, and sufficiency of resolution in certain cases: *Wilson v. Town of Ingersoll*, 38 O. L. R. 260.

A by-law is not void because passed in violation of some domestic rule or practice of the council: *Wilson v. Town of Ingersoll*, 38 O. L. R. 260.

- Sec. 249.**—(2) As to these large discretionary powers: see *Stewart v. Town of St. Marys*, 34 O. L. R. 183.
- Sec. 253.**—(4) Amended 1916, c. 24, s. 27: whereby the discretion is made subject to the Theatre and Cinematograph's Act.
- Sec. 254.** A by-law in town of 4,000 inhabitants limiting billiard and pool-room licenses to one was held not obnoxious to this section and the by-law was upheld: Re *Stewart v. Town of St. Marys*, 34 O. L. R. 183.
- Sec. 254.**—(2) New sub-section 1916, c. 39, s. 3: preserving powers under s. 420 (1).
- Sec. 257.** See 1916, c. 40, s. 2: debentures covering patriotic grants not to be included in ascertaining borrowing power.

See 1916, c. 37, s. 8, amended 1917, 27, 32: debentures under the authority of the Hydro-Electric Ry. Act not to be included.

See R. S. O. c. 39, s. 18; 1916, c. 19, s. 9; 1917, c. 20, s. 6: debentures under the Power Commission Act.

Sec. 258. That a by-law is not signed by the head of the municipality is no ground for quashing it, the signature being compellable by mandamus: *Re Davis and Village of Creemore*, 38 O. L. R. 240.

Sec. 263.—(3) Repealed new sub-section 1914, c. 33, s. 6.

Sec. 263.—(5) By-law is invalid, although publication is made in newspaper of neighbouring municipality, the principle of the Act being disregarded: *Poulin and Village of L'Original*, 42 O. L. R. 6, 14 O. W. N. 57.

Sec. 274. This section makes applicable the provisions of s. 150, and where the voting is not conducted in accordance with the principles laid down, e.g. lack of publication of by-law as directed in section 2 (o), section 150 cannot cure the defect: *Poulin v. Village of L'Original*, 42 O. L. R. 6; 14 O. W. N. 57.

Sec. 278.—(3) Amended 1915, c. 34, s. 17.

Sec. 280.—(5) New sub-section 1914, c. 33, s. 7: providing for extension by the railway board of time for passing by-law.

Sec 283. As to quashing by-laws of police commissioners under s. 422: see *Re Major Hill Taxicab Co. v. City of Ottawa*, 33 O. L. R. 243.

Where there was a dispute as to whether certain land had been dedicated as a highway and the council passed a resolution instructing the removal of certain obstructions thereon, it was held that the question of "highway or no highway" could not be determined upon an application to quash the resolution: *Re Sanderson and Township of Sophiasburgh*, 38 O. L. R. 249.

- Sec. 285.** Application to quash by-law granting bonus to business established elsewhere in Ontario: Re Town of Alliston and Town of Trenton, 38 O. L. R. 341, affirmed 38 O. L. R. 579.
- Sec. 288.—(1)** "The object for which": semble, the money by-law may be in furtherance of a single scheme including more than one object, e.g., the building of several bridges: Meredith, C.J.C.P., Re Poulin and L'Original, 42 O. L. R. 6: reversed on another ground in 14 O. W. N. 57.
- Sec. 288.—(1) (d)** New clause, 1918, c. 32, s. 4: approval of Provincial Board of Health must be recited in certain cases.
- Sec. 288.—(4)** Amended 1917, c. 42, s. 3.
- Sec. 288.—(4a)** New sub-section 1917, c. 42, s. 3: the principal may be repaid in equal annual instalments with interest annually or semi-annually upon the balance from time to time unpaid.
- Sec. 288.—(5)** Amended 1917, c. 42, c. 3.
- Sec. 289.—(1)** As to by-law not published in newspaper of municipality: Re Poulin and Village of L'Original, 42 O. L. R. 6: reversed 14 O. W. N. 57.
- Sec. 289.—(2) (c)** Amended 1915, c. 34 s. 18: repealed, new sub-section 1916, c. 39, s. 4.
- Sec. 295.—(3a)** New sub-section 1914, c. 33, s. 8: as to approval of by-laws in matters requiring approval of board of health.
- Sec. 295.—(4)** Where the board set aside its approval certificate before a motion to quash was decided, it was held that the section did not prevent the validity of the by-law being determined by the court: Re Harper & Township of East Flamboro, 32 O. L. R. 490.
- Sec. 296.—(5)** Amended 1915, c. 34, s. 19.

- Sec. 296.**—(6) Repealed, new sub-section 1915, c. 34, s. 19.
- Sec. 296.**—(8) Amended 1915, c. 34, s. 19; failure to publish notice of registration does not invalidate the by-law.
- Sec. 297.**—(1) Amended 1917, c. 42, s. 4.
See 1916, c. 40, s. 2: rates levied for patriotic grants to be excluded in calculation under this section.
- Sec. 305.**—(6) New sub-section 1915, c. 34, s. 20: as to disposition of sinking fund paid to treasurer.
- Sec. 314.**—(1) Amended 1914, c. 33, s. 9.
- Sec. 314.**—(2a) New sub-section 1914, c. 33, s. 9.
- Sec. 319a.** New section 1914, c. 33, s. 10: where the corporation has power to borrow without the assent of the electors, it may do so by agreement with a bank for temporary advances as well as by debenture.
- Sec. 321.**—(d) Amended 1917, c. 42, s. 5.
- Sec. 322.** Faulty description: see *Watson v. Toronto Harbour Commissioners*, 42 O. L. R. 65.
- Sec. 322.**—(3) See *Twin City Ice Co. v. City of Ottawa*, 34 O. L. R. 358.
- Sec. 325.**—Expense incurred by corporation in lowering a gas main belonging to a gas company, necessitated by construction of a corporation sewer, was held not recoverable from company, the company being entitled to compensation for damages resulting from exercise by city of its power to construct the sewer: *City of Toronto v. Consumers Gas Co.*, 32 O. L. R. 21, aff'd 37 O. L. R. 586.
As to method of computing damages for "special adaptability" interest in the lands expropriated: see *Re Schooley & Lake Erie & Northern R. R. Co.*, 34 O. L. R. 328, varied 53 S. C. R. 416.

Review of authorities and consideration of principle upon which damages are recoverable: see *Re J. F. Brown Co. and City of Toronto*, 36 O. L. R. 189, affirmed 55 S. C. R. 153.

Damages necessarily resulting: the Divisional Court was divided in opinion as to the right of land owners, claimants under this section, to compensation for injurious affection of their land by the erection and maintenance by the municipality, on a street upon which the land abutted, of public conveniences such as lavatories, no land being taken and the highway not being obstructed: *Re J. F. Brown Company and City of Toronto*, 36 O. L. R. 189, affirmed 55 S. C. R. 153.

Method of computing compensation: where leasehold rights, including water power rights, were expropriated, the possible business profit or possible business loss were excluded, and the value of the use and occupation and value of the power and a reasonable sum for removal, less rental for the term expropriated, were allowed: *Re Perram & Town of Hanover*, 36 O. L. R. 583.

Damages for severance: see *Re O'Neil & City of Toronto*, 37 O. L. R. 447.

As to ten per cent. allowance for compulsory taking: see *Rex v. Macpherson*, 15 Ex. C. R. 215, *Rex v. Hunting*, 32 O. L. R. 331, and *In re Watson and City of Toronto*, 38 O. L. R. 103.

Other expropriation cases: *Re Neal and Port Hope*, 6 O. W. N. 701, 7 O. W. N. 264, *Burt v. City of Sydney*, 50 S. C. R. 6, *Laurentide Paper Co. v. Rex*, 15 Ex. C. R. 499.

- Sec. 326.** See *Twin City Ice Co. v. City of Ottawa*, 34 O. L. R. 358.
- Sec. 333.** The arbitration provisions of this part apply to expropriation proceedings under the Public Utilities Act, c. 204: *Re Perram v. Hanover*, 36 O. L. R. 583.
- Sec. 343.**—(1) As to amendment of award by arbitrator after hearing concluded: see *Re White and Toronto*, 38 O. L. R. 337.

Sec. 344. The arbitrators have a discretion under which they can disallow costs: *Re Hislop & Stratford Park Bd.*, 34 O. L. R. 97.

Sec. 345. Arbitrators proceeding upon a wrong principle: see *Campbell v. Irwin*, 32 O. L. R. 48; 51 S. C. R. 358; *Re Clarkson and Campbellford L. E. & W. Ry.*, 35 O. L. R. 345; *Re Parsons and Eastnor*, 34 O. L. R. 110.

Sec. 347. Amended 1917, c. 42, ss. 6, 7.

The effect of the section is that where the arbitration is only as to amount of compensation, and the expropriating by-law does not authorize permanent entry on the land, the award as to amount does not become binding unless adopted by by-law within three months and, where possession has not been taken and no provision is made in the by-law for entry, interest should not be allowed on amount awarded: *Re Hislop & Stratford Park Rd.*, 34 O. L. R. 97.

The provisions of this section are not by s. 332 made inapplicable to municipalities coming under R. S. O. c. 199: *Re City of Toronto and Grosvenor St. Presbyterian Ch. Trustees*, 41 O. L. R. 352.

Although the expropriating by-law professes to authorize an entry on the land, the corporation may avail itself of its right to desist, providing such authorization has not been acted on by actual use of the land: *City of Toronto and Grosvenor St. Presbyterian Church Trustees*, 41 O. L. R. 352.

Sec. 347.—(2) (3) New sub-sections 1917, c. 42, s. 8: as to power to repeal by-law before award.

Sec. 350. *Ex officio* Justice of the Peace: *Rex v. Lake*, 38 O. L. R. 262.

Sec. 354. See 1914, c. 21, s. 24: authorizing the formation by every county having a police magistrate of a Board of Police Commissioners consisting of the warden, a County Judge and magistrate.

Sec. 354.—(7) Amended 1917, c. 42, s. 9.

- Sec. 355.** Sections 355-357 and 360-363, inclusive, apply mutatis mutandis to the County Board of Police Commissioners authorized by 4 Geo. V. c. 21, s. 24.
- Sec. 381.** Repealed, new section 1918, c. 32, s. 5.
- Sec. 393.** Amended 1917, c. 42, s. 11.
- Sec. 395.—(a)** "Bonus": where there is no statutory prohibition it is not illegal for a municipality, in the bona fide exercise of its discretion and to carry out an undertaking with a ratepayer, to refrain from collecting taxes levied over and above a fixed annual stipulated sum: and a ratepayer has no status to compel the corporation to collect the balance of taxes: *Norfolk v. Roberts*, 28 O. L. R. 593, 50 S. C. R. 283.
- Sec. 395.—(f)** See *Norfolk v. Roberts*, 28 O. L. R. 593, 50 S. C. R. 283.
- Sec. 396.** Amended 1915, c. 34, s. 21: extending power to bonus to arena, sanitarium and hospital.
- Sec. 396.—(c)** Change of wording in this section, as compared with 63 Vic. c. 33, s. 9 (e), as amended by 3 Edw. VII. c. 19, s. 591 (12) (e), pointed out and discussed: bonusing an industry already existing elsewhere in Ontario is not permitted, even though (1) the same individual is to carry on both, or (2) some other person deriving title through him is to do so, or (3) the same proprietor operates it in partnership with others, or by joint stock company: what is aimed at is the entire elimination of competing bonuses (*Hodgins, J.*): *Re Town of Alliston and Town of Trenton*, 38 O. L. R. 341, affirmed 38 O. L. R. 579.
- The clause deals with the ownership, i.e., the business and financial control, and a by-law granting a bonus to establishment of what was in fact a branch of a large concern already operating a branch elsewhere in Ontario was quashed: *Town of Alliston and Town of Trenton*, 38 O. L. R. 341, aff'd p. 579.

- Sec. 396.**—(d) Amended 1915, c. 34, s. 22.
- Sec. 396.**—(e) The legislation comprised in this section and chapter 266, section 39, is not confined to a by-law passed under the general powers of the municipality but it limits the effect of a special by-law granting exemption from municipality assessment “of any nature or kind whatsoever”, even where the by-law is confirmed by special Act declaring it valid “notwithstanding anything contained in any Act to the contrary”: *Ontario Power Co. of Niagara Falls and Township of Stamford*, 30 O. L. R. 391, affirmed 50 S. C. R. 168.
- Sec. 399.**—(15) Amended 1915, c. 34, s. 23; extending enactments to theatres and cinematographs.
- Sec. 399.**—(17) See *Toronto Electric Light Co. v. City of Toronto*, 33 O. L. R. 267, 38 O. L. R. 72, (1917) A. C. 84.
- Sec. 399.**—(34) See 1915, c. 41, s. 2: as to presumption of cause of death where provisions of by-law are not complied with: see also *Birch v. Stephenson*, 33 O. L. R. 427, decided before the amendment.
- Sec. 399.**—(39a) New sub-section 1917, c. 42, s. 12: as to power of municipalities to buy and sell fuel and food.
- Sec. 399.**—(50) History of sub-section reviewed: *Temiskaming Telephone Co. Ltd. v. Town of Cobalt*, 42 O. L. R. 385.
- Sec. 399.**—(55a) New sub-section 1917, c. 42, s. 13: as to purchase and donation of seeds.
- Sec. 399.**—(59) A by-law prohibiting establishment of slaughter houses except such as are specially approved by resolution in council is bad, as tending to restrain trade or create monopoly: *Nash v. McCracken* (1873), 33 U. C. R. 181, cited with apparent approval in *Milk Farm Products Co. v. Buist*, 35 O. L. R. 325.
- Sec. 400.**—(3) Amended 1914, c. 33, s. 11.

- Sec. 400** (4a) New sub-section 1915, c. 34, s. 24: regulating removal of buildings.
- Sec. 400.**—(5) Repealed, new sub-section 1918, c. 32, s. 6.
- Sec. 400.**—(9a) New sub-section 1915, c. 34, s. 25: licensing and registration of dogs.
- Sec. 400.**—(18) A by-law prohibiting erection of building, the outside and party walls of which are not constructed of brick, stone, concrete or other incombustible material, goes beyond this section: *City of Toronto v. Rogers*, 31 O. L. R. 167.
- Sec. 400.**—(43) (b) New clause 1916, c. 39, s. 5: making sewer rents a charge on the land.
- Sec. 400.**—(45) This sub-section does not apply to a locomotive engine, the top of the smoke stack not being a "flue, stack or chimney": *Rex v. C. P. R.*, 33 O. L. R. 248.
The ventilating flue of a round house occupied by locomotive engines is not a "flue, stack or chimney" within the meaning of the statute: *Rex v. Grand Trunk R. W. Co.*, 37 O. L. R. 457.
- Sec. 400.**—(45) (b) Amended 1915, c. 34, s. 26.
- Sec. 400.**—(49) Amended 1918, c. 32, s. 7.
- Sec. 400.**—(51) As to power to pass by-law permitting entry on vacant lands for cultivation during the present war: see 1918, c. 39.
- Sec. 400.**—(52) New sub-section 1916, c. 39, s. 6: regulating construction of water tanks.
- Sec. 401.**—(11) to (17) New sub-sections 1918, c. 32, s. 8: as to weighing coal, and measuring wood, etc.
- Sec. 402.**—(5) Amended 1918, c. 32, s. 8.
- Sec. 406.**—(1) Repealed 1917, c. 48, s. 5.
- Sec. 406.**—(2) Repealed, 1915, c. 34, s. 27.
- Sec. 406.**—(4) Repealed, 1917, c. 42, s. 12.

- Sec. 406.**—(5) Amended 1917, c. 42, s. 14: powers extended to villages, see s. 211a.
- Sec. 406.**—(6) Amended 1917, c. 42, s. 14: powers extended to villages, see s. 211a.
- Sec. 406.**—(6) (c) New clause 1917, c. 42, s. 15: as to special rates on churches.
- Sec. 406.**—(8) As to liability of municipal corporation for damages necessarily resulting to adjoining owners by exercise of powers hereby conferred: *Re J. F. Brown Co. and City of Toronto*, 36 O. L. R. 189, affirmed 55 S. C. R. 153.
- Sec. 406.**—(9a) New sub-section 1916, c. 39, s. 7: as to regulating massagists.
- Sec. 406** (10) The erection of steps extending across the prescribed line was held not to be a construction within the prohibition of by-law passed under this section: *Re Masonic Temple Co. & City of Toronto*, 33 O. L. R. 497.
Powers extended to villages, see s. 211a.
- Sec. 406.**—(13) (a) Repealed, new clause 1914, s. 33, s. 12.
- Sec. 406a.** New section 1914, c. 33, s. 13: conferring power, (1) to license users of wheeled vehicles, (2) to allow buildings encroaching on highway, (3) to permit use of highway for building purposes, (4) to license public garages: amended 1917, c. 42, s. 16; amended 1918, c. 32, s. 9, power to license bailiffs.
- Sec. 407.**—(1) Amended 1915, c. 34, s. 28.
- Sec. 408.**—(7) New sub-section 1917, c. 42, s. 17: as to refuse from grass or clover seed.
- Sec. 409.**—(2) See *Beamish v. Glenn*, 36 O. L. R. 10.
- Sec. 409**—(2a) New sub-section 1914, c. 33, s. 14: regulating plumbers' shops, etc.

- Sec. 409.**—(2b) New sub-section 1916, c. 39, s. 8: regulating location, etc., of private hospitals, dancing halls, etc.
- Sec. 409.**—(2c) New sub-section 1917, c. 42, s. 18: by-law not to prevent extension of existing building.
- Sec. 409.**—(2d) New sub-section 1917, c. 42, s. 18: prohibiting sale of goods within defined area.
- Sec. 409.**—(2e) New sub-section 1918, c. 32, s. 10: location of warehouses, gasoline stations, etc.
- Sec. 410.**—(1) (b) New clause, 1918, c. 32, s. 11: defining garages to which section applies.
- Sec. 411.**—(1a) New sub-section 1917, c. 42, s. 19: removal of ashes, garbage, etc.
- Sec. 411.**—(8) Amended 1914, c. 33, s. 15.
- Sec. 411a.** New section 1915, c. 34, s. 29: amended 1916, c. 39, s. 9: extending to villages powers mentioned in s. 406 (5), (6), (10).
- Sec. 412.**—(2) Repealed 1915, c. 34, s. 30.
- Sec. 412a.** New section 1915, c. 34, s. 31: as to regulating bill posters.
- Sec. 416.**—(1) Amended 1915, c. 34, s. 32.
Under a by-law which followed the wording of the section, as amended by 5 Geo. V. c. 34, ss. 32, 33, it was held that obtaining from purchasers orders on an oil company to ship named quantities to be delivered at stated places, cash on delivery, did not constitute a sale, and convictions thereunder were quashed: *Re Garnham*, 34 O. L. R. 545, 35 O. L. R. 54.
- Sec. 416.**—(1) (d) As to operation of this section having regard to the provisions of section 420: *Rex v. Scales & Roberts Ltd.*, 41 O. L. R. 229.
- Sec. 416.**—(1) (e) Amended 1915, c. 34, s. 33.
- Sec. 416.**—(4) New sub-section 1914, c. 33, s. 16: regulating dry cleaners and pressers.

- Sec. 416a.** New section 1914, c. 33, s. 17: County by-law under s. 416 applies to sales on boundary line.
- Sec. 417.—(6)** New sub-section 1918, c. 32, s. 12: regulating sale of cakes, etc.
- Sec. 419.—(1)** Repealed, new sub-section 1918, c. 32, s. 13.
- Sec. 420.—(1)** Clubs are not to be deemed exempt from provisions of by-law passed under this sub-section, by the terms of the charter incorporating them: see new section 28a added to the Companies Act, R. S. O. chap. 178 by 1915, c. 20, s. 18.
- Sec. 420.—(1) (a)** Repealed, new clause 1915, c. 34, s. 35.
- Sec. 420.—(3)** Amended 1916, c. 24, s. 27: the licensing is subject to the Theatres and Cinematographs' Act.
- Sec. 420.—(4)** Repealed, new sub-section 1917, c. 42, s. 20.
- Sec. 420.—(6)** A transient trader, as compared with a hawker or pedlar, is one whose trade is localized by the occupation of premises or in some other way: *Rex v. Scales & Roberts*, 41 O. L. R. 229.
- Sec. 420.—(6) (7)** History, object and scope of legislation: *Rex v. Geddes*, 35 O. L. R. 177: the exemption made throughout the legislation as to commodities, which are the growth or produce of the Province, extends to dealings of persons who might otherwise be called temporary traders, and a farmer selling his own produce in a town from a railway car was held not to be a transient trader under a by-law which followed the wording of this section: *Rex v. Geddes*, 35 O. L. R. 177. "Other persons" means other trading persons: *Rex v. Geddes*, 35 O. L. R. 177.
- Sec. 420.—(7) (c)** Amended 1915, c. 34, s. 34.
- Sec. 422.** Apart from statute there is no inherent right in the Court to quash a municipal by-law, and the

Court has no jurisdiction to quash a by-law of police commissioners passed under this section: *Re Major Hill Taxicab & City of Ottawa*, 33 O. L. R. 243.

The language is sufficient to authorize municipalities to exact license fees and the fact that a company trades under a Dominion charter does not conflict with the proper exercise of such right: *Re Major Hill Taxicab and City of Ottawa*, 33 O. L. R. 243.

- Sec. 425a.** New section 1914, c. 33, s. 18: payment to aldermen.
- Sec. 427.** Repealed, new section 1914, c. 33, s. 19.
- Sec. 432.** As to estoppel by recognition of street shown on a plan of lands covered by grant from the Crown: *Niagara Navigation Co. v. Town of Niagara*, 31 O. L. R. 17.
A street laid out on plan of survey of part of township, made after provisions as to plans were extended to townships, is a public highway and may be closed by the township: *Jones v. Tuckersmith*, 33 O. L. R. 634.
- Sec. 442.** See *Township of Ashfield and County of Huron*, 38 O. L. R. 538.
- Sec. 449.** A County Court Judge acting as *persona designata* has power to award costs by virtue of the Judges' Orders Enforcement Act, c. 79, s. 2: *Re Township of Ashfield and County of Huron*, 39 O. L. R. 332.
- Sec. 449.—(1)** The approaches to a bridge are not to be considered in determining the length of the bridge for the purposes of this section (see s. 442, where the approaches are treated as independent of the bridge): *Re Township of Ashfield and County of Huron*, 38 O. L. R. 538. (*Re Maidstone and Essex*, 12 O. W. R. 1190, being overruled).
- Sec. 449.—(2)** Bridge means an existing bridge: where a bridge less than 300 feet in length had been de-

stroyed, and none erected in its place, the order of a County Court Judge declaring a proposed bridge (exceeding 300 feet) to be a county bridge was set aside: Re Township of Malahide and County of Elgin, 38 O. L. R. 600.

“Maintain”: discussion as to meaning of: Township of Malahide and County of Elgin, 38 O. L. R. 600.

Sec. 449.—(11a) New sub-section 1917, c. 42, s. 21: as to when approaches shall form part of bridge.

Sec. 449.—(11b) New sub-section 1917, c. 42, s. 21: application of section to construction and renewal of bridge.

Sec. 449.—(11c) New sub-section 1917, c. 42, s. 21: determination by Judge as to length of bridge required.

Sec. 449.—(11d) New sub-section 1917, c. 42, s. 21: provision for new application in certain cases.

Sec. 449.—(12) Amended 1917, c. 42, s. 21.

Sec. 452. As to what highway forms boundary line between county and city: Re Township of Harwick and County of Kent, 31 O. L. R. 654.

Sec. 458. A substantial change was made in the section (originally enacted by 48 Vic. c. 39, s. 22) by the Municipal Act of 1913, incorporated herein: the law is more inclusive in that the provision is effective for all purposes of the Act and not simply of the section, less inclusive in that only such roads are provided for as have been or may be “laid out and opened” (a) on account of physical difficulties, and (b) to obtain a better line of road; and where a road was not laid out and opened with the intention of following the boundary line, even in part, and was not intended to deviate in some place or places from the boundary line, it was held not to be a deviation: *Township of Euphrasia v. Township of St. Vincent*, 36 O. L. R. 233.

Sec. 459. Repealed, new section 1916, c. 39, s. 10.

Sec. 460. The duty of repair remains upon the corporation though work is being done upon the highway under the Highway Improvement Act, R. S. O. c. 40: *Weston v. County of Middlesex*, 31 O. L. R. 148.

Neglect in allowing originally corrugated cement sidewalk to become smooth: notice to corporation through long existence of defect: plaintiff's knowledge of dangerous condition is not per se contributory negligence: *Huth v. Windsor*, 34 O. L. R. 245, affirmed 34 O. L. R. 542.

Want of repair: review of authorities: the statutory duty is imposed to make the road reasonably safe for purpose of travel, and so safe from any additional danger incident to the use of motor vehicles: *Davis v. Township of Usborne*, 36 O. L. R. 148.

Sec. 460.—(1) Steam roller adjacent to sidewalk on city street: *Poulin v. City of Ottawa*, 9 O. W. N. 454.

As to principle that contributory negligence or failure to observe statutory duty on the part of the driver is not an answer to action by occupant of vehicle: *Linstead v. Township of Whitechurch*, 35 O. L. R. 1, aff'd 36 O. L. R. 462.

Meaning and construction of section, and its application to other than accident cases: *Ormsby v. Township of Mulmur*, 36 O. L. R. 566.

See *Jamieson v. City of Edmonton*, 54 S. C. R. 443. *Semble*, the enactment covers only what may be in a general way described as "accident" cases: loss sustained by a thresher in taking circuitous route, by reason of a bridge's limited carrying power through alleged want of repair, is not damages sustained by him by reason of the default of the corporation within the meaning of the section, and in any event such damages are too remote: *Dick v. Township of Vaughan*, 39 O. L. R. 187.

Sec. 460.—(2) Where the municipal corporation is added defendant by order made more than three months from date of injury, the claim is barred by

this section even though the action was brought within three months: *Burrows v. G. T. R.*, 34 O. L. R. 142.

Provisions as to limitation of time for bringing action have no application where claim is based on negligence in operation of street railway owned and operated by municipality: *Kuusisto v. Port Arthur*, 37 O. L. R. 146.

Cases of nuisance are outside the statute, as regards notice of action and time of suing: *Glynn v. Niagara Falls*, 6 O. W. N. 2.

- Sec. 460.**—(3) Reasonable opportunity must be afforded for performance by the municipality of the duty of keeping in repair imposed by the statute: snow and ice cleared by corporation earlier in the day on which injuries sustained: *Palmer v. City of Toronto*, 38 O. L. R. 20.

Gross negligence: effect of weather conditions: *Killeleagh v. City of Brantford*, 38 O. L. R. 35.

The provision limiting liability to cases of gross negligence is remedial legislation intended to curtail the right of action, and as such must be given its full effect: question of fact having regard to weather conditions: *German v. City of Ottawa*, 39 O. L. R. 176, affirmed 56 S. C. R. 80.

- Sec. 460.**—(4) Meaning and construction of sub-section, and its application to other than accident cases: *Ormsby v. Township of Mulmur*, 36 O. L. R. 566.

Where water naturally ran from highway upon plaintiff's land, but township corporation in repairing highway diverted the course of the water so that it gathered and deposited sand on plaintiff's land, held that the action was not one for non-repair, and that failure to give notice required by this sub-section did not bar the action: *Ormsby v. Township of Mulmur*, 36 O. L. R. 566.

Defective bridge: as to necessity of notice to, or knowledge of the defects by, the corporation, a statutory obligation having been imposed: see *Linstead v. Township of Whitechurch*, 35 O. L. R. 1, aff'd 36 O. L. R. 462.

The purpose of the notice is to give the corporation fair opportunity to investigate the claim, and a notice which did not state the date and in specifying the locus referred to the south instead of the north side of the street was held sufficient, in the absence of anything showing prejudice to corporation through the mistake: *Killeleagh v. City of Brantford*, 38 O. L. R. 35.

Where a notice of action was given within the proper time in another action against the same defendants, and the reeve of the defendant corporation was aware of the accident on the day following, and an account for repairs was also rendered within thirty days, it was held that there was reasonable excuse for the want or insufficiency of the notice: See *Pipher v. Township of Whitechurch*, 39 O. L. R. 244.

Sec. 460.—(5) Belief by person injured that the injury was not severe, for which reason notice was not given in time, is not reasonable excuse: *Wallace v. City of Windsor*, 36 O. L. R. 62; Review of the English and Scotch Cases and rules deducible therefrom: *ibid.*, the Judges being divided in opinion.

Lack of notice not prejudicial to defendants: *Pipher v. Whitechurch*, 39 O. L. R. 244.

Sec. 464. Negligent construction of electric light company's equipment: where jury found negligence on part of corporation, claim for remedy over against the light company was not allowed: *Lambert v. City of Toronto*, 36 O. L. R. 269, affirmed 54 S. C. R. 200.

Sec. 472.—(1) (c) See *Jones v. Tuckersmith*, 33 O. L. R. 634.

Sec. 473.—(2) See *Jones v. Tuckersmith*, 33 O. L. R. 634.

Sec. 479. Repealed, new section 1914, c. 33, s. 20.

Sec. 481.—(2) Repealed, and non-compliance with section not to render the by-law invalid: 1914, c. 33, s. 21.

- Sec. 483.**—(3) Amended 1917, c. 42, s. 22.
- Sec. 491.**—(5) New sub-section 1918, c. 32, s. 14: as to traffic signs.
- Sec. 492.** The council cannot sell without first offering the closed road allowance to the abutting owners at a price fixed by the council: *Jones v. Tuckersmith*, 33 O. L. R. 634.
- Sec. 495.** "Rebuilding": see *Weston v. County of Middlesex*, 31 O. L. R. 148.
- Sec. 500.**—Amended 1915, c. 34, s. 36.
- Sec. 502.**—(3) New sub-section 1915, c. 34, s. 37: as to power of Railway and Municipal Board to erect police village on failure of county.
- Sec. 503.**—(1a) New sub-section 1914, c. 33, s. 22: as to extension of limits of police village.
- Sec. 516.**—(1) (d) Amended 1917, c. 42, s. 23.
- Sec. 516.**—(1) (e) New clause 1915, c. 34, s. 38.
- Sec. 516.**—(5) (6) Amended 1915, c. 34, s. 38.
- Sec. 518a.** New section 1915, c. 34, s. 39: repealed 1917, c. 20, s. 7: q.v. as to contract by trustees with Hydro-Electric Power Commission.
- Form. 2.** Amended 1917, c. 42, s. 24.
- Form 9.** Amended 1918, c. 32, s. 15.
- Form 20.** Amended 1917, c. 42, s. 25.
- Form 23.** Amended 1917, c. 42, s. 26.

CHAPTER 193.

THE LOCAL IMPROVEMENT ACT.

- Sec. 3.**—(1a) New sub-section 1914, c. 21, s. 41: as to commencement of powers conferred by s. 1 (e).
- Sec. 3.**—(1) (e) See 1914, c. 21, s. 41.
- Sec. 3.**—(1) (m) New clause 1915, c. 35, s. 1: constructing subway under railway.
- Sec. 4.**—(1) Repealed, new sub-section 1915, c. 35, s. 2.
- Sec. 6.** Amended 1915, c. 35, s. 3.
- Sec. 9.**—(2) New sub-section 1914, c. 21, s. 42: as to objection to construction of work on two-thirds vote of the council.
- Sec. 9.**—(3) New sub-section 1914, c. 21, s. 42: sufficiency of petition to be determined under section 16.
- Sec. 9.**—(4) New sub-section 1915, c. 35, s. 4: as to time for deposit of petition.
- Sec. 12.** “One-half in value of the owners liable to assessment”: where large blocks of the lands to be affected were (by special Act) relieved from liability for taxation, the owners are not qualified or competent to sign the petition, the sufficiency of which is to be ascertained without reference to such blocks: *Upper Canada College v. Toronto*, 37 O. L. R. 665, affirmed 55 S. C. R. 433.
- Sec. 18a.** New section 1915, c. 35, s. 5: as to power to undertake part of work only.
- Sec. 23.**—(1) Amended 1915, c. 35, s. 6.
- Sec. 40.**—(2) Amended 1915, c. 35, s. 7.
- Sec. 41a.** New section 1914, c. 2, s. 4: one by-law may cover several works.

- Sec. 47.** The provisions of this section were held to be subject to the special Act relative to Upper Canada College: see 37 O. L. R. 665, 55 S. C. R. 433. The collection of money for local improvements is taxation: Crown lands are exempt from taxation under the Assessment Act, R. S. O. c. 195, s. 5 (1), and there is nothing in this Act cancelling or varying such exemption, and hence Crown lands are not subject to taxation for local improvements: Upper Canada College v. Toronto, 37 O. L. R. 665, affirmed 55 S. C. R. 433.
- Sec. 48.** Under this section it was held that a college, exempt from assessment for local improvement by virtue of its special Act, was not an essential party to a petition for local improvements affecting its lands: Upper Canada College v. Toronto, 37 O. L. R. 665, affirmed 55 S. C. R. 433.
- Sec. 50a.** New section 1915, c. 35, s. 8: construction of bridge between municipalities.
- Sec. 51.—(2)** Repealed, new sub-section 1915, c. 35, s. 9.

CHAPTER 194.

THE CITY AND SUBURBS PLANS ACT.

Repealed 1917, c. 44, s. 18: see the Planning and Development Act, 7 Geo. V. c. 44.

CHAPTER 195.

THE ASSESSMENT ACT.

- Sec. 2.—(e)** The words "from a trade or commercial or financial or other business or calling" do not qualify the word "salary," but only the word "profits": City of Toronto v. Morson, 40 O. L. R. 227.

- Sec. 5.—(1)** The exemption of Crown lands from taxation is not cancelled or varied by the Local Improvement Act, R. S. O. c. 193, and Crown lands are not subject to taxation for local improvements: *Upper Canada College v. Toronto*, 37 O. L. R. 665, affirmed 55 S. C. R. 433.
- Sec. 5.—(5)** (a) New clause 1917, c. 45, s. 1: as to farm lands used by public hospital.
- Sec. 5.—(7)** Amended 1917, c. 45, s. 2: exempting property leased by a municipality.
Amended 1918, c. 20, s. 37: see new section 45a.
- Sec. 5.—(9)** An orphan asylum and its lands are exempt, notwithstanding that the orphans admitted are restricted to a certain class: *Re Independent Order of Foresters and Town of Oakville*, 34 O. L. R. 525.
- Sec. 5.—(12a)** New sub-section 1916, c. 41, s. 2: exempting battle sites.
- Sec. 5.—(15)** The income of a County Court Judge is not exempt from municipal taxation under provincial legislation: *City of Toronto v. Morson*, 37 O. L. R. 369, 40 O. L. R. 227.
Omission from the present section of the word "Imperial", as used in sec. 5 (14) of the Act of 1912, discussed: *City of Toronto v. Morson*, 40 O. L. R. 227.
See opinion of Meredith, C.J.C.P., that salaries of Judges or other Dominion officers are not exempt from taxation, and comment on change in language of this sub-section made upon revision of 1914: "His Majesty's Treasury" formerly reading "His Majesty's Imperial Treasury": *City of Toronto v. Morson*, 37 O. L. R. 369.
Amended 1917, c. 45, s. 3: His Majesty's Treasury means Imperial Treasury.
- Sec. 5.—(20)** Amended 1917, c. 45, s. 4: income from mortgages, securities, etc. exempt where such income does not exceed \$600 and the total income does not exceed \$600.

- Sec. 8.** See 1914, c. 5, s. 2: compliance with this section is condition precedent upon right of appeal to Judge under R. S. O. c. 6, s. 14.
- Sec. 10.—(1) (a)** What is the business of a distiller is a question of fact, to be decided by the Ontario Ry. & Municipal Board, from which no appeal lies, see s. 80 (6): *Re Hiram Walker and Sons and Walkerville*, 40 O. L. R. 154.
- Sec. 10.—(1) (a) (b)** Business tax remitted for 1918: see 1918, c. 40, s. 33.
- Sec. 10.—(10) (1) (j)** "Or business not . . . specially mentioned": these are general words used for the purpose of including, and therefore are to be construed as including, any business not expressly mentioned, see s.-s. (11): an unlicensed hotel is assessable for business tax: *Re Clarke and Town of Leamington*, 38 O. L. R. 405.
- Sec. 10.—(1) (k)** Amended 1917, c. 45, s. 5: excepting electric railways owned or operated by municipalities.
- Sec. 10.—(3)** See *Re Hiram Walker and Sons and Walkerville*, 40 O. L. R. 154.
- Sec. 10.—(11)** Specially considered: *Re Clarke and Town of Leamington*, 38 O. L. R. 405.
- Sec. 14.—(1)** Amended 1915, c. 36, s. 1.
- Sec. 22.—(1) (d)** Description of lots: *Sturgeon Falls v. Imperial Land Co.*, 31 O. L. R. 62.
- Sec. 22.—(3)** Amended 1915, c. 36, s. 2; 1916, c. 41, s. 3: assessment roll to state whether the person is a British subject.
- Sec. 23.** Amended 1917, c. 45, s. 6.
- Sec. 26.** Repealed 1917, c. 4, s. 1. New section 1918, c. 20, s. 38: legislative franchise.
- Sec. 27.** Repealed 1917, c. 4, s. 1.

- Sec. 28.** Repealed 1917, c. 4, s. 1.
- Sec. 37.—**(11) Repealed, new sub-section 1917, c. 43, s. 2: notice by wife to enable husband to vote in her stead.
- Sec. 39.** Repealed, new section 1917, c. 45, s. 7.
- Sec. 40.—**(1) In assessing land it is proper to take into consideration its special adaptability, e.g., its use in developing a valuable water power: *Re Ontario & Minnesota Power Co. and Town of Fort Frances*, 35 O. L. R. 459.
The principle of the "Scrap-iron" cases, in *Re Bell Telephone Co. and City of Hamilton*, 25 A. R. 351, and later cases of the same group, if still binding (since the change made by this section in the statute, c.f. R. S. O. 1897, c. 224, s. 28 (1)) should not be extended to subjects of assessment with which they do not deal: *Re Ontario & Minnesota Power Co. and Town of Fort Frances*, 35 O. L. R. 459.
The rule settled in expropriation cases such as *Cedar Rapids and Manufacturing Power Co. v. Lacoste* (1914), A. C. 569, that, in determining the compensation to be paid to the owner, the value of the land must be taken to consist in all advantages which it possesses present or future, in so far as the possession of them enhances the value of the land, is applicable in ascertaining the "actual" value of the land for purpose of assessment: *Re Ontario & Minnesota Power Co. and Town of Fort Frances*, 34 O. L. R. 459.
- Sec. 40.—**(4) Whether land is or is not mineral land is a question of fact: buildings in connection with working deposit of trap-rock held not to be "buildings on mineral land": *Foster v. Township of St. Joseph*, 39 O. L. R. 114, affirmed p. 525.
- Sec. 40.—**(9) Repealed, new sub-section 1917, c. 7, s. 5.
- Sec. 43a.** New section 1915, c. 36, s. 3: as to exemption of farm lands from taxes for certain expenditures.

- Sec. 45a.** New section 1918, c. 20, s. 39: assessment of land used by municipal public utilities.
- Sec. 47.**—(3) “Structure on railway lands”: as to bridge over river, see *Re Ottawa & New York R. W. Co. and Township of Cornwall*, 34 O. L. R. 55, affirmed 52 S. C. R. 466, (1917) A. C. 399.
- Sec. 54.** Amended 1917, c. 45, s. 8: appeal is governed by section 118.
- Sec. 56.** As to effect of removal from municipality of person taxed: see s. 95 (3) and *City of Toronto v. Quebec Bank*, 40 O. L. R. 544.
- Sec. 56.**—(1) Where there has been no legal assessment, taxes cannot be exacted: *Bell v. Town of Burlington*, 34 O. L. R. 410, 619.
- Sec. 58.** Amended 1916, c. 41, s. 4: localities added to villages now included.
- Sec. 69.**—(3a) New sub-section 1916, c. 41, s. 5: affidavit as to temporary absence to be received by Court of Revision as evidence.
- Sec. 70.** As to finality of roll and power of Court of Revision to remit the tax under s. 118 (1): see *Toronto v. Quebec Bank*, 40 O. L. R. 544.
The manner in which the assessor sets out details of the assessment in the assessment roll, his description of the lands, &c., are matters over which the Court of Revision has full control with power to grant relief, and are therefore not the proper subject of an action: *Hislop v. City of Stratford*, 38 O. L. R. 470.
- Sec. 72.**—(1) Amended 1915, c. 35, s. 4: appeal from the Court of Revision to the County Judge lies at the instance of any person assessed.
- Sec. 73.** Amended 1915, c. 36, s. 5: decision to be notified to parties.
- Sec. 79** Amended 1915, c. 36, s. 6: telephone companies may appeal from the local board to Ontario Railway and Municipal Board.

- Sec. 80.**—(4) Amended 1915, c. 36, s. 7.
- Sec. 80.**—(5) Question of the kind of business carried on upon the lands assessed for business tax is a question of fact for decision of the Railway and Municipal Board, and is not subject to appeal: *Hiram Walker & Sons and Walkerville*, 40 O. L. R. 154.
- Sec. 80.**—(6) Amended 1916, c. 41, s. 6: leave to appeal now unnecessary, and grounds of appeal extended.
- Sec. 81.** Repealed, new section 1916, c. 41, s. 6.
As to form of appeal: the new practice as to assessment appeals forms but one section, sec. 81 of the Assessment Act, and in no way curtails the power conferred upon the Court by other sections: *Canada Co. and Township of Colchester North*, 38 O. L. R. 183.
- Sec. 83.** This section provides the remedy in case of improper or illegal assessments, and an action does not lie to restrain a municipal corporation from enforcing an assessment alleged to be illegal: *Foster v. Township of St. Joseph*, 39 O. L. R. 114, *aff'd* 39 O. L. R. 525.
- Sec. 84.**—(2) Amended 1914, c. 34, s. 1.
- Sec. 85.** Upon final equalization of the assessments for county purposes any fixed assessments granted by the various municipalities (under Municipal Act, secs. 395, 396) must, for all except school rate purposes, be accepted as the actual value of the properties: *Consideration of secs. 85 to 93: Re Township of Stamford and County of Welland*, 37 O. L. R. 155.
- Sec. 87.** As to when appeal lies to County Judge from action of county council in fixing assessments for equalization purposes, see opinion of Meredith, C.J.C.P.: *Re Township of Stamford and County of Welland*, 37 O. L. R. 155.
- Sec. 94.** "In priority to every claim privilege": the tax sale extinguishes the dower right of the wife of

the owner: *Tomlinson v. Hill*, 5 Gr. 231: the tax sale also extinguishes all rights of one claiming under adverse possession and affords a new commencement of title: *Soper v. City of Windsor*, 32 O. L. R. 352; and any easement rights possessed by a dominant tenement over the lands sold, as under restrictive building covenants: *Re Hunt & Bell*, 34 O. L. R. 256.

Sec. 95.—(3) New sub-section 1917, c. 45, s. 9: as to liability for taxes on income and business in case of death or change of residence.

A bank which had, prior to year in which business tax was claimed, transferred its assets in a municipality to another bank was held under this section as amended, to be a "person who had removed from the municipality": *City of Toronto v. Quebec Bank*, 40 O. L. R. 544.

Sec. 104.—(2) Amended 1914, c. 2, s. 4: includes townships.

Sec. 109. See 1916, c. 24, s. 28: municipal council may direct that during the war collection of taxes by distress be dispensed with, and that arrears may be collected in the same manner as if there were no goods and chattels liable for distress.

The claim for taxes upon a business assessment of an incorporated trading company in proceedings under the Dominion Winding-up Act is the ordinary claim of a creditor, and not a preferential claim upon the assets, the corporation not having distrained as it might have done: *Re Faulkner Ltd., City of Ottawa's claim*, 34 O. L. R. 526.

Sec. 109.—(11) New sub-section 1917, c. 45, s. 10, as to notice of taxes where goods are under seizure.

Sec. 118.—(1) Repealed, new sub-section 1917, c. 45, s. 11.

It was held under the sub-section as it stood before its enactment by 1917, c. 45, s. 11, that neither the Court of Revision nor the Judge of the County Court has jurisdiction to remit or reduce taxes

which have been paid; such authority being confined to "taxes due", no relief can be given in respect of taxes for previous years or in respect of taxes which have been paid and apparently no change has been made by the amendment: Taylor v. City of Guelph, 41 O. L. R. 33.

- Sec. 128.** "Not occupied": see Excelsior Mining Co. v. Lohead, 35 O. L. R. 154.
- Sec. 135.** Amended 1917, c. 45, s. 12.
- Sec. 140.**—(1) Repealed, new sub-section 1917, c. 45, s. 13: amended 1918, c. 20, s. 40.
- Sec. 148.** Inquiry by treasurer as to value: see Excelsior Mining Co. v. Lohead, 35 O. L. R. 154.
- Sec. 150.** "Ninety-one days": see Excelsior Mining Co. v. Lohead, 35 O. L. R. 154.
- Sec. 154.**—(2) Amended 1916, c. 41, s. 7.
- Sec. 154.**—(3) Amended 1915, c. 36, s. 8.
- Sec. 155.**—(1) Amended 1917, c. 45, ss. 14, 15.
- Sec. 170.** Amended 1916, c. 41, s. 7.
- Sec. 171.**—(2) If the owner being non-resident does not notify the treasurer of an address to which notice may be sent, he cannot complain if the notice sent under this section fails to reach him: Excelsior Mining Co. v. Lohead, 35 O. L. R. 154.
Amended 1916, c. 41, s. 7.
- Sec. 171.**—(5) Repealed 1916, c. 41, s. 7.
- Sec. 172a.** New section 1916, c. 41, s. 7: as to application of redemption money.
- Sec. 177.** Considered: Excelsior Mining Co. v. Lohead, 35 O. L. R. 154.
- Sec. 178.** The two years are to be computed from the day of sale, not the date of the deed, and the section

is applicable for protection of the purchaser: *Excelsior Mining Co. v. Lohead*, 35 O. L. R. 154.

As to extinguishment of possessory titles and easements by tax deeds: see *Hunt v. Bell*, 34 O. L. R. 256.

Sec. 192. Amended 1915, c. 36, s. 9; 1916, c. 41, s. 8; 1917, c. 45, s. 16.

Sec. 194.—(2) Amended 1916, c. 41, s. 9.

Sec. 194.—(2a) New sub-section 1916, c. 41, s. 9.

Sec. 233.—Upon final equalization of the assessments for county purposes, any fixed assessments granted by the various municipalities (under Municipal Act, secs. 395, 396) must, for all except school rate purposes, be accepted as the actual value of the properties: *Re Township of Stamford and County of Welland*, 37 O. L. R. 155.

CHAPTER 196.

THE STATUTE LABOUR ACT.

Sec. 4. Amended 1916, c. 42, s. 1; 1917, c. 46, s. 1: council may raise poll tax to \$5.

Sec. 4.—(2) (3) New sub-sections 1918, c. 35, s. 1: payment by employer out of wages.

Sec. 5. Amended 1918, c. 35, s. 2.

Sec. 9a. New section 1916, c. 42, s. 2: township council may regulate manner in which labour shall be performed.

Secs. 10, 11, 12. Amended 1918, c. 35, s.-s. 3, 4, 5, altering amount of commutation.

Sec. 30.—(2) Amended 1918, c. 35, s. 6.

Sec. 31. Amended 1918, c. 35, s. 7.

Sec. 33. Amended 1918, c. 35, s. 8.

CHAPTER 197.

THE MUNICIPAL FRANCHISES ACT.

- Sec. 2.** The provisions of the Act do not apply to a telephone company: *Temiskaming Telephone Co. v. Cobalt*, 42 O. L. R. 385.
- Sec. 5.—(a)** Amended 1915, c. 38, s. 1.
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CHAPTER 198.

THE MUNICIPAL DRAINAGE ACT.

- Sec. 2.—(h)** Amended 1914, c. 21, s. 44.
- Sec. 2.—(i)** Amended 1914, c. 21, s. 44.
- Sec. 3.—(1)** The construction of a drain may be authorized even though it follows in the main the course of an existing drain, and the comprehensive words of this section should not be limited: where an existing drain is made use of, for purposes of new drainage work, the value of it should be credited to the persons who had been assessed for it in the proportions in which they were assessed: *Township of Gosfield South and Township of Gosfield North*, 39 O. L. R. 93.
- Sec. 6.—(1)** Repealed, new sub-section 1916, c. 43, s. 1.
- Sec. 9.—(1a)** New sub-section 1916, c. 43, s. 2: as to general by-law assuming assessments for culverts, bridges, etc.
- Sec. 9.—(2)** Repealed, new sub-section 1916, c. 43, s. 3.
- Sec. 9.—(5a)** New sub-section 1916, c. 43, s. 4: allowance for right of way, etc.
- Sec. 67.** A drainage scheme which cannot be carried out, except at a cost in excess of the benefit, should not be proceeded with, and the drainage referee has

jurisdiction to prevent such work, where there is an appeal to him from report of an engineer: *Re Township of Colchester North and Township of Anderdon*, 34 O. L. R. 437.

- Sec. 68.**—(1) The referee under the drainage laws may hear appeals under the Ditches and Watercourses Act, c. 260, and has similar powers to those conferred by this section: see 1917, c. 56, s. 5.
- Sec. 75.**—(1) Repealed, new sub-section 1916, c. 43, s. 5. As to necessity of permission of referee, as prerequisite to varying original assessment: see *Township of Gosfield South and Township of Gosfield North*, 39 O. L. R. 93.
- Sec. 77.** This section was designed to afford an alternative mode of effecting the improvement of an existing drain and to dispense, in the cases with which it deals, with the necessity of the petition for which sec. 3 provides: but there is nothing in this section excluding the right to proceed under sec. 3: *Township of Gosfield South and Township of Gosfield North*, 39 O. L. R. 93.
- Sec. 77.**—(1) Amended 1916, c. 43, s. 6.
- Sec. 79.**—(1) Repealed, new sub-section 1918, c. 20, s. 41.
- Sec. 80.**—(2) This section does not exclude a person, who claims original malconstruction of the drains, from claiming damages accruing to him before service of the notice: *Parsons v. Township of Eastnor*, 34 O. L. R. 110.

CHAPTER 199.

THE MUNICIPAL ARBITRATIONS ACT.

- Sec. 2.**—(1) Amended 1916, c. 44, s. 1.
- Sec. 2.**—(2) (e) As to power of arbitrator to amend award after time limited for appeal has expired: *Re White and City of Toronto*, 38 O. L. R. 337.

- Sec. 4.** Where the arbitrator fails to furnish the statement, as to special knowledge, &c., required by the section, an Appellate Court will attribute no special advantage to him, but the omission of the statement is not a reason for setting aside the award: *Re Watson and City of Toronto*, 38 O. L. R. 103.
- Sec. 7.** Amended 1917, c. 27, s. 33: the appeal is subject to sec. 347 of the Municipal Act.
The function and duty of the Appellate Court discussed: *Re Watson and City of Toronto*, 38 O. L. R. 103.
As to whether, no appeal being made within the six weeks provided by the section, the right of the corporation to desist from the work lapses (see c. 192, s. 347): *Re City of Toronto and Grosvenor Presbyterian Church Trustees*, 40 O. L. R. 550, 41 O. L. R. 352.

For principles upon which arbitrators should proceed, method of computing compensation, powers of Appellate Court to review, &c., see notes to the Arbitration Act, c. 65, the Railway Act, c. 185, s. 90, the Municipal Act, c. 192, s. 325.

CHAPTER 200.

THE MUNICIPAL AND SCHOOL ACCOUNTS AUDIT ACT.

CHAPTER 201.

THE FIREMEN'S EXEMPTION ACT.

CHAPTER 202.

THE PUBLIC LIBRARIES ACT.

- Sec. 3.** Amended 1916, c. 45, s. 1, includes townships.
- Sec. 4.—(1)** Amended 1916, c. 45, s. 2, includes townships.
- Sec. 7.—(2a)** New sub-section, 1916, c. 45, s. 3, as to township boards.
- Sec. 7.—(3)** Amended 1916, c. 45, s. 4.
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CHAPTER 203.

THE PUBLIC PARKS ACT.

- Sec. 17.** As to effect of s. 347 of Municipal Act, incorporated herein by this section: see *Hislop v. Stratford Park Bd.*, 34 O. L. R. 97.
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CHAPTER 204.

THE PUBLIC UTILITIES ACT.

- Sec. 4.** This section incorporates Part XV. (sections 321-331) of the Municipal Act, of which section 325 (2) provides that the compensation, if not agreed on, shall be determined by arbitration: the provisions of the Municipal Act, Part XVI., relative to arbitration are therefore necessarily also applicable to this Act, including the right to appeal from the award, expressly conferred by Part XVI.: *Re Perram and Town of Hanover*, 36 O. L. R. 583.
- Sec. 19.** Amended 1914, c. 2, s. 4.
- Sec. 26.** Right of ratepayer to compel municipal corporation to collect water rates: *Norfolk v. Roberts*, 38 O. L. R. 593, 50 S. C. R. 283.

- Sec. 29.** Date of commencement of Act: *Glynn v. Niagara Falls*, 31 O. L. R. 1.
The section has no retrospective operation: *Glynn v. Niagara Falls*, 31 O. L. R. 1.
The section has no application in limiting time for bringing action, based on claim for negligence in operation of street railway owned and operated by municipality under commission created for that purpose: *Kuusisto v. Port Arthur and Public Utilities Commission of Port Arthur*, 37 O. L. R. 146.
- Sec. 32.** Repealed, new section 1917, c. 47 s. 1.
- Sec. 34.** The trust fund theory, that persons intrusted with performance of public duty, and discharging it gratuitously, are not responsible for negligence of servants employed by them, is no longer law in England or Ontario: *Lavere v. Smith's Falls Public Hospital*, 35 O. L. R. 98.
- Sec. 34.**—(1) Amended 1916, c. 24, s. 29: repealed, new sub-section 1917, c. 47, s. 2.
- Sec 38.**—(2) New sub-section 1917, c. 47, s. 3: as to salaries of Municipal Commissioners.
- Sec. 45.**—(3) Amended 1917, c. 47, s. 4.
- Sec. 63.** New section, 1914, c. 35, s. 1; sale of gas containing sulphuretted hydrogen may be prohibited.

CHAPTER 205.

THE MUNICIPAL ELECTRIC CONTRACTS ACT.

CHAPTER 206.

THE HIGHWAY TRAVEL ACT.

- Sec. 2.** Repealed, new section 1917, c. 48, s. 1.
- Sec. 3.—(3)** New sub-section 1917, c. 48, s. 2: as to right of way at cross roads.
- Sec. 7a.** New section 1918, c. 36, s. 1: bicycle not to be attached to other vehicle in motion.
- Sec. 9.** Repealed, 1917, c. 48, s. 4.
- Sec. 9a.** New section 1916, c. 46, s. 1: requirement as to vehicle, etc., approaching standing street car.
- Sec. 9b.** New section 1918, c. 36, s. 2: prohibition as to passing street cars on left side: as to motor vehicles see 1918, c. 37, s. 7.
- Sec. 10a.** New section 1917, c. 48, s. 3: as to municipal by-laws inconsistent with the statute.
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CHAPTER 207.

THE MOTOR VEHICLES ACT.

- Sec. 3.—(6)** New sub-section 1916, c. 47, s. 4: administration of declarations and affidavits.
- Sec. 3.—(7)** New sub-section 1917, c. 49, s. 2: local issue of permits.
- Sec. 3a.** New section 1918, c. 37, s. 2: owner to notify department of change of address.
- Sec. 4.—(3)** Amended 1916, c. 47, s. 5.
- Sec. 4.—(4)** Repealed, new sub-section 1916, c. 47, s. 5.
- Sec. 4a.** New section 1918, c. 37, s. 3: penalty for false statement.

- Sec. 6.**—(2) Amended 1914, c. 36, s. 2: as to motor bicycles: repealed and new sub-section 1917, c. 49, s. 3: again repealed, new section 1918, c. 37, s. 4.
- Sec. 7.**—Repealed, new section 1917, c. 49, s. 4.
- Sec. 8.**—(1) Amended 1914, c. 36, s. 4; 1917, c. 49, s. 5.
- Sec. 8.**—(2) Amended 1914, c. 36, s. 1.
- Sec. 8a.** New section 1918, c. 37, s. 5: marker to be property of Crown.
- Sec. 9.**—(1) Amended 1916, c. 47, s. 5.
- Sec. 9.**—(3) Repealed, new sub-section 1917, c. 49, s. 6.
- Sec. 9.**—(4) New sub-section 1917, c. 49, s. 7: restriction as to strength of head light with reflector; no proclamation bringing this amendment into force has been issued prior to this date, October 15th, 1918.
- Sec. 9.**—(5) New sub-section 1917, c. 49, s. 8: as to improper use of markers.
- Sec. 10.**—(1) Amended 1917, c. 49, s. 9.
- Sec. 10.**—(1a) New sub-section 1916, c. 47, s. 6: as to suspension of certain sections with respect to residents of the United States.
- Sec. 10.**—(2) Amended 1916, c. 47, s. 7.
- Sec. 13.** Repealed, new section 1917, c. 49, s. 10.
- Sec. 14a.** New section 1918, c. 37, s. 6: depositing glass on highway.
- Sec. 15.** Amended 1916, c. 47, s. 8.
- Sec. 15a.** New section 1918, c. 37, s. 7: prohibition as to passing street car on left.
- Sec. 16.**—(1) Amended 1917, c. 49, s. 11.
The Appellate Division interpreted the section literally in *Bradshaw v. Conlin*, 40 O. L. R. 494, holding that a motor driver is bound to restrict his

speed to seven miles an hour (outside towns or cities) when within 100 yards of a horse vehicle whether he has knowledge of the presence of such vehicle or not.

Sec. 17. Amended 1917, c. 49, s. 12.

Sec. 18. Amended 1917, c. 49, s. 13.

Sec. 19. Amended 1914, c. 36, s. 3; 1917, c. 49, s. 14; 1918, c. 37, s. 8.

The section as amended now reads: "The owner of a motor vehicle shall be responsible for any violation of this Act or of any regulation prescribed by the Lieutenant-Governor in Council unless at the time of such violation the motor vehicle was in the possession of some person other than the owner without his consent, express or implied, not being a person in the employ of the owner, and the driver of a motor vehicle not being the owner shall also be responsible for any such violation."

Under the section as it stood prior to the first amendment of 1914, it was held that the owner of an automobile placed in a garage for repair, and taken thereout by an employee of the garage for demonstration purposes, was responsible for injuries sustained through such employee's negligence: *Downs v. Fisher*, 33 O. L. R. 504; but that the owner of a motor which had been stolen was not liable for damage occasioned by negligence of the thief: *Cillis v. Oakley*, 31 O. L. R. 603.

Following the amendment of 1914 exempting the owner from liability in cases where the motor was in possession of some one not being in his employ who had stolen it from the owner, it was held that where the foreman of a repair shop took a car left for repairs out to test it, and having done so proceeded to drive it for his private purposes without authority from the owner, such foreman had not "stolen it from the owner", the *animus furandi* being lacking: *Hirshman v. Beal*, 38 O. L. R. 40; it was further held that, while section 285B of the Criminal Code (enacted by 9 and 10 Edw. VII. c. 11) makes it an offence to take a motor vehicle

for use without the owner's consent, such taking does not necessarily constitute the taker a thief, and the marginal note to the section, "theft of motor car", does not affect the interpretation: *Hirshman v. Beal*, 38 O. L. R. 40.

Apart from the statute, owner would not be liable for negligence of chauffeur while not engaged in performance of act appertaining to his employment: *Halparin v. Bulling*, 50 S. C. R. 471.

- Sec. 21.** Amended 1917, c. 49, s. 15: 1918, c. 37, s. 9.
- Sec. 22.** Amended 1917, c. 49, s. 16.
- Sec. 23.** The effect of the section is merely to shift the onus and the plaintiff need only prove damage: but all defences, including that of contributory negligence, are still open to the owner or driver of the motor vehicle: *Bradshaw v. Conlin*, 40 O. L. R. 494.
- Sec. 24.—(1)** Amended 1917, c. 49, s. 17: prior to the amendment, several magistrates held that the figures represented the minimum as well as the maximum penalty.
- Sec. 26.—(3)** Repealed, new sub-section 1916, c. 47, s. 9.
- Sec. 26.—(4)** New sub-section 1917, c. 49, s. 18: as to sum for complainant added to costs in certain cases.
- Sec. 31.—(1)** Amended 1917, c. 49, s. 19: peace officer may arrest without warrant for suspected breach of provisions against excessive rate of speed and reckless driving.

See 1916, c. 47, ss. 2, 3: administration of the Act vested in Department of Public Highways.

See provisions of 1918, c. 37, s. 10: whereby the owner of a motor vehicle, summoned to appear in a county other than in which he resides, may substantiate, by evidence before a justice of the peace in his own county, the defence that his motor vehicle was not at the place named at the time alleged.

CHAPTER 208.

THE SNOW ROADS ACT.

CHAPTER 209.

THE TOLLS EXEMPTION ACT.

CHAPTER 210.

THE TOLL ROADS ACT.

CHAPTER 211.

THE SNOW FENCES ACT.

Sec. 2.—(1) Amended 1916, c. 48, s. 1: extending powers to counties.

Sec. 4.—(1) Amended 1916, c. 48, s. 2.

CHAPTER 212.

THE TRACTION ENGINE ACT.

Sec. 5.—(4) As to whether the laying down of planks is an absolute statutory duty and a condition precedent to recovery of damages for faulty construction or maintenance of the bridge: *Linstead v. Township of Whitechurch*, 35 O. L. R. 1, 36 O. L. R. 462, where the history of the legislation is reviewed and the apparently adverse decision of *Goodison Thresher Co. v. Township of McNab*, 44 S. C. R. 187, is considered.

See *Pipher v. Township of Whitechurch*, 39 O. L. R. 244.

Sec 14. New section 1916, c. 49, s. 9, making the Act subject to the provisions of the Load of Vehicles Act, 6 Geo. V. c. 49.

CHAPTER 213.

THE TREE PLANTING ACT.

CHAPTER 214.

THE TRAVELLING SHOWS ACT.

- Sec. 3.** Amended 1915, c. 20, s. 20.
- Sec. 3.—(2)** New sub-section 1914, c. 21, s. 45: refund of license fee where performance not given.
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CHAPTER 215.

THE LIQUOR LICENSE ACT.

For amendments prior to repeal, see 1914, c. 37, and 1915, c. 39.

The Act was repealed by the Ontario Temperance Act, 6 Geo. V. c. 50.

Prior to repeal the following is memo. of cases decided under various sections.

- Sec. 2.—(i)** *Rex v. Scaynetti*, 34 O. L. R. 373.
- Sec. 78.** *Rex v. Armstrong*, 36 O. L. R. 2.
- Sec. 92.** *Rex v. Gage*, 36 O. L. R. 183.
- Sec. 106.** *Rex v. Hurley*, 36 O. L. R. 159.
- Sec. 113.** *Rex v. Gage*, 36 O. L. R. 183.
- Sec. 137.—(4)** *Re Stratford Local Option By-law*, 35 O. L. R. 26: *Re Owen Sound Local Option By-law*, 35 O. L. R. 48.
- Sec. 139.** *Re Sharp and Village of Holland Landing*, 34 O. L. R. 186.

Sec. 141. Re Rex v. Scott, 37 O. L. R. 453; Rex v. Leitch, 36 O. L. R. 1.

Sec. 155. Rex v. Wright, 33 O. L. R. 237.

CHAPTER 216.

THE MINORS' PROTECTION ACT.

CHAPTER 217.

THE GAMING ACT.

CHAPTER 218.

THE PUBLIC HEALTH ACT.

Sec. 8.—(dd) (ddd) New sub-sections 1916, c. 51, s. 1: regulations as to plumbing, etc.

Sec. 13.—(10) New sub-section 1916, c. 51, s. 2: enforcement of sanitary by-laws.

Sec. 14. The board is not to be regarded as a mere emanation from the Crown: it is a body created for the discharge of very important administrative and quasi-judicial functions, and constitutes a public authority performing a statutory duty: Re City of Ottawa and Provincial Board of Health, 33 O. L. R. 1: q.v. as to power of Court to interfere and review acts of board.

Sec. 25.—(2) Amended 1918, c. 41, s. 3.

Sec. 26. The fact that the municipality assumes the defence of an action against the local board of health, or any officer thereof, does not disentitle the defendants to ask for security for costs under the Public Authorities Protection Act, R. S. O. c. 89: Simp-

son v. Local Board of Health of Belleville, 38 O. L. R. 244.

Appointment of municipal solicitor to conduct the action does not disentitle the defence to costs: Simpson v. Belleville Local Board, 41 O. L. R. 320.

- Sec. 29.** Amended 1918, c. 41, s. 4.
- Sec. 32a.** New section 1917, c. 51, s. 1: amended 1918, c. 41, s. 5: medical inspection of public schools in large cities.
- Sec. 34.—(3)** Repealed, new sub-section 1914, c. 21, s. 46.
- Sec. 37.—(2)** New sub-section 1916, c. 51, s. 3: dismissal of M. O. H. for neglect of duty.
- Sec. 41.—(2)** New sub-section 1918, c. 41, s. 6: temporary absence of M. O. H.
- Sec. 52a.** New section 1918, c. 41, s. 7: disputes as to remuneration of Medical Health Officer.
- Sec. 53.—(3)** New sub-section 1916, c. 51, s. 4: notice of communicable disease to be included in weekly report.
- Sec. 54.** Amended 1918, c. 41, s. 8.
- Sec. 58.** The object of the section is protection of the public against contagious disease: as to whether any duty towards a patient is imposed upon a local board of health for the breach of which an action would lie: Simpson v. Local Board of Health of Belleville, 40 O. L. R. 406.
- Sec. 74.—(i)** As to whether a cause of action necessarily arises for injuries sustained through breach of duty imposed by the statute: Reid v. Ellis, 38 O. L. R. 123.
- Sec. 75.** Repealed, new section 1916, c. 51, s. 5.
- Sec. 76.** Repealed, new section 1916, c. 51, s. 5.
- Sec. 85.—(2)** New sub-section 1915, c. 40, s. 1: right of appeal to chief officer of health.

- Sec. 92.** Amended 1918, c. 41, s. 9.
- Sec. 94.—(7) (8)** New sub-sections 1914, c. 21, s. 47: sewerage works of city.
- Sec. 94.—(9) to (15)** New sub-sections 1918, c. 41, s. 10: order of Provincial Board as to sewerage, and powers of Railway and Municipal Board.
- Sec. 103.—(1), (2)** Amended 1916, c. 51, s. 6.
- Sec. 110.—(2)** Amended 1918, c. 41, s. 11.
- Sec. 110.—(4)** New sub-section 1916, c. 51, s. 7.
- Sec. 115.—(3)** New sub-section 1916, c. 51, s. 8: the by-law set out in Schedule B, has the same force as a regulation of the Provincial Board under the Act.
- Sec. 125.—(2)** Amended 1916, c. 51, s. 9.

CHAPTER 219.

THE VACCINATION ACT.

CHAPTER 220.

THE HOUSING ACCOMMODATION ACT.

- Sec. 3.** Amended 1914, c. 21, s. 48.
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CHAPTER 221.

THE MILK ACT.

CHAPTER 222.

THE MILK, CHEESE AND BUTTER ACT.

CHAPTER 223.

THE DAIRY PRODUCTS ACT.

- Sec. 5.—(1)** Repealed, new sub-section 1916, c. 24, s. 30.
- Sec. 5.—(3)** Amended 1916, c. 24, s. 30.
- Sec. 5.—(4)** New sub-section 1916, c. 24, s. 30: as to cancellation of certificate.
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CHAPTER 224.

THE BREAD SALES ACT.

- Sec. 2.** Repealed, new section 1917, c. 53, s. 2.
- Sec. 3a.** New section 1918, c. 43, s. 1: bake shops must be licensed by the municipality, under regulations imposed by by-law, and upon certificate of medical health officer.
- Sec. 6.** Amended 1917, c. 53, s. 3.
- Sec. 7.—(1)** Amended 1917, c. 53, s. 4.
- Sec. 8.** Amended 1917, c. 53, s. 5.
- Sec. 9.** Repealed, new section 1917, c. 53, s. 6.
- Sec. 11.** Repealed, new section 1917, c. 53, s. 7.
- Sec. 12a.** New section 1917, c. 53, s. 8: as to penalties.
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CHAPTER 225.

THE FRUIT SALES ACT.

CHAPTER 226.

THE ENTRY OF HORSES AT EXHIBITIONS ACT.

CHAPTER 227.

THE DEBT COLLECTORS' ACT.

CHAPTER 228.

THE BUILDING TRADES PROTECTION ACT.

- Sec. 6.** Operation of hoist: *Schofield v. Blome*, 6 O. W. N. 149, 26 O. W. R. 389.

CHAPTER 229.

THE FACTORY, SHOP AND OFFICE BUILDING ACT.

See the Factory, Shop and Building Act 1918, 8 Geo. V. c. 44, which is to be read with and as part of R. S. O. c. 229.

- Sec. 2.**—(j) See 1918, c. 44, s. 3: definition of office building enlarged.
- Sec. 7.** See 1918, c. 44, s. 2: part one applies to all factories where machinery is operated by power.
- Sec. 14.** See 1918, c. 44, s. 4: enlarging operation of section.
- Sec. 18.** See 1918, c. 44, ss. 6, 8: enlarging inspection powers.
- Sec. 18.**—(5) New sub-section 1914, c. 40, s. 1: as to inspectors' duties in enforcing provisions as to steam plants, etc.
- Sec. 23.** See 1918, c. 44, s. 7.
- Secs. 25, 26.** Repealed 1918, c. 44, s. 9: employment of children in factory prohibited.
- Sec. 30.** See 1918, c. 44, s. 12.
- Sec. 31.** Repealed, 1918, c. 44, s. 9.

- Sec. 31a.** New section 1914, c. 40, s. 2: as to employment of women by orientals.
- Sec. 35.** Repealed 1918, c. 44, s. 10.
- Sec. 36.** Amended 1914, c. 40, s. 3: hours of labor for children shortened to eight: repealed 1918, c. 44, s. 9.
- Sec. 43.** See 1918, c. 44, s. 11: dressing rooms, &c., for females.
- Sec. 43.—(7)** New sub-section 1914, c. 40, s. 4: as to sanitary regulations by Order in Council.
- Sec. 55.** The maxim *volenti non fit injuria* does not apply where defendant is guilty of breach of statutory duty: *Danis v. Hudson Bay Mines*, 32 O. L. R. 335. See 1918, c. 44, s. 13: notice by inspector to employer of matters prejudicial to health or safety.
- Sec. 57.** Repealed, new section 1918, c. 44, s. 14: takes effect 1st January, 1919.
- Sec. 57.—(5)** New sub-section 1914, c. 40, s. 5: provisions of section made applicable to all boilers except those used for residential buildings and agricultural purposes.
- Sec. 58.—(5)** New sub-section 1914, c. 40, s. 6: minor under 18 not to operate elevators.
- Sec. 59.** Lack of fire escape, and contravention of s. 56 as to inflammable material, is not *ipso facto* proof of cause of death: see *Birch v. Stephenson*, 33 O. L. R. 427; see also 1915, c. 41, s. 2, possibly passed in consequence of that decision, enacting that lack of preventive measures raises the presumption that death was caused thereby.
- Sec. 81.** See 1918, c. 44, s. 15.
- Sec. 82.** See 1918, c. 44, s. 15: as to minimum penalties.
- Sec. 84.—(4)** Amended 1914, c. 2, s. 4: clerical error.
- Sched. A.** Amended 1918, c. 44, s. 16.

CHAPTER 230.

THE MATERNITY BOARDING HOUSE ACT.

CHAPTER 231.

THE CHILDREN'S PROTECTION ACT.

- Sec. 2.**—(1), (g) Repealed, new clause 1916, c. 53, s. 2.
- Sec. 4.** Amended 1914, c. 21, s. 49.
- Sec. 4.**—(ff) New clause 1914, c. 21, s. 49: superintendent to keep books.
- Sec. 5.** Repealed, new section 1914, c. 21, s. 50.
- Sec. 6.**—(1) As to liability of local municipality, as distinguished from the county, to pay for hospital treatment of indigent ward of Children's Aid Society: Toronto Free Hospital for Consumptives v. Town of Barrie, 39 O. L. R. 63.
- Sec. 9.**—(3) Amended 1918, c. 20, s. 42.
- Sec. 9.**—(4a) New sub-section 1916, c. 53, s. 3: as to taking evidence.
- Sec. 9.**—(4b) New sub-section 1916, c. 53, s. 3: as to notification of the parents.
- Sec. 9.**—(8a) New sub-section 1916, c. 53, s. 3: proceedings to be certified to superintendent.
- Sec. 14.** The society becomes the legal guardian, and the foster parent to whom the society hands over the person of the child is also constituted legal guardian (see R. S. O. c. 147, s. 3 (1)): the legislation is the embodiment of the well recognised principle that the Court will leave the child alone, unless satisfied that some other course is for its welfare, i.e., moral and religious as well as physical welfare: Re D'Andrea, 37 O. L. R. 30.

- Sec. 14.**—(2) As to liability of local municipality, as distinguished from the county, to pay for hospital treatment of indigent ward of Children's Aid Society: *Toronto Free Hospital for Consumptives v. Town of Barrie*, 39 O. L. R. 63.
- Sec. 15.** See 1914, c. 21, s. 52: the Court may suspend sentence and impose conditions.
- Sec. 18.**—(d) There is no right to punish unless it is shown that there is an actual injury to the child: where the child is of such tender years as to be unable to appreciate the moral quality of its mother's conduct, her immorality does not ipso facto make the child a neglected child within the meaning of the Act: *Rex v. Davis*, 40 O. L. R. 352: following *Rex v. Owens* (1915), unreported. *Semble*, in this enactment the Legislature has exceeded its powers, has made a statutory crime and has made it punishable before a tribunal of its own creation, although the Province has not the power to appoint Judges: *Rex v. Davis*, 40 O. L. R. 352 (*Middleton, J.*).
- Sec. 27.**—(5) "Power of the Judge" means the discretionary power exercised by a Judge in equity to inform himself as to the child's mind and wishes, even if of tender years, and the "right of the child" refers to the power of vetoing or consenting given by the Apprentices and Minors Act (R. S. O. c. 147, s. 3 (1)) to boys of 14 and girls of 12: *Re D'Andrea*, 37 O. L. R. 30.
- Sec. 28a.** New section 1916, c. 53, s. 4: as to when a child is to be deemed Protestant or Roman Catholic.
- Sec. 31.**—(2) Repealed 1914, c. 21, s. 51.
- Sec. 32.** Repealed 1914, c. 21, s. 51.

CHAPTER 232.

THE FEMALE PATIENTS' AND PRISONERS' PROTECTION ACT.

CHAPTER 233.

THE JUVENILE COURTS ACT.

Repealed 1916, c. 54, s. 20: The Juvenile Courts Act 1916, 6 Geo. V. c. 54.

CHAPTER 234.

THE MINORS' TOBACCO SALES ACT.

CHAPTER 235.

THE EGRESS FROM PUBLIC BUILDINGS ACT.

CHAPTER 236.

THE THEATRES AND CINEMATOGRAPHS ACT.

- Sec. 2.** Amended 1916, c. 24, s. 31: regulations by Order in Council prevail over other statutory provisions.
- Sec. 3.** Amended 1917, c. 27, s. 34: repealed, new section 1918, c. 20, s. 43.
- Sec. 4.—(1)** Amended 1914, c. 21, s. 53; 1915, c. 20, s. 21.
- Sec. 4.—(4)** New sub-section 1915, c. 20, s. 21: clerical assistance for inspector.
- Sec. 6.** Amended 1914, c. 21, s. 53.
- Sec. 7.—(1)** Amended 1914, c. 21, s. 53; 1917, c. 27, s. 35.
- Sec. 7.—(2)** Amended 1914, c. 21, s. 53; 1915, c. 20, s. 21.
- Sec. 9.** Amended 1914, c. 21, s. 53; 1916, c. 24, s. 32.
- Sec. 10.** Repealed, new section 1914, c. 21, s. 53: again repealed, new section 1915, c. 20, s. 21.

- Sec. 11.** Amended 1914, c. 21, s. 53.
- Sec. 13.** Amended 1914, c. 21, s. 53.
- Sec. 17.** New section 1914, c. 21, s. 53: as to statistical returns required by Order in Council.
- Sec. 18.** New section 1918, c. 20, s. 44: declarations and affidavits, how taken.

CHAPTER 237.

THE PREVENTION OF ACCIDENTS BY FIRE IN HOTELS ACT.

CHAPTER 238.

THE THRESHING MACHINES ACT.

CHAPTER 239.

THE OFFENSIVE WEAPONS ACT.

CHAPTER 240.

THE COUNTIES REFORESTATION ACT.

CHAPTER 241.

THE FOREST FIRE PREVENTION ACT.

Amended 1914, c. 42.

Repealed by Forest Fires Prevention Act 1917, 7
Geo. V. c. 54 (amended 1918, c. 45, s. 2).

CHAPTER 242.

THE FIRE GUARDIANS ACT.

CHAPTER 243.

THE FIRES EXTINGUISHMENT ACT.

CHAPTER 244.

THE BEACH PROTECTION ACT.

CHAPTER 245.

THE BEACHES AND RIVER BEDS ACT.

CHAPTER 246.

THE DOG TAX AND SHEEP PROTECTION ACT.

Amended 1916, c. 56.

Repealed: see new Act, 8 Geo. V. c. 46.

- Sec. 18.** Under the original statute it was held that nothing in the Act, or otherwise, made the municipal corporation liable in a court of law: the right to relief was merely given to sheep owners on an application satisfactory to the council: and prohibition was granted of an action against a township corporation to recover value of sheep killed: *Re Hogan v. Township of Tudor*, 34 O. L. R. 571. This case was referred to in *Hogle v. Township of Ernesttown*, 41 O. L. R. 394: where the plaintiff claimed an amount in excess of that awarded by the valuer of the municipality and tendered by the municipality: dismissal of his action was approved

on appeal, Meredith, C.J.C.P., expressing the opinion that an action lay against the municipality to compel compliance with the statute but not by way of appeal in respect of the amount awarded: Riddell, J., was of the opinion that *Hogan v. Township of Tudor* was rightly decided, but that an action lay for the amount awarded in a case where the municipality has directed a valuation.

The point was further considered by Mulock, C.J., in *Noble v. Township of Esquesing*, 41 O. L. R. 400, where the opinion was expressed that the direction to the council to award compensation was mandatory.

The question is now settled by s. 13 of the new Act of 1918; s. 14 providing procedure for ascertaining the amount of damage.

CHAPTER 247.

THE POUNDS ACT.

CHAPTER 248.

THE INJURED ANIMALS ACT.

CHAPTER 249.

THE ONTARIO STALLION ACT.

- Sec. 3.** Amended 1914, c. 44, s. 1.
- Sec. 4.** Amended 1914, c. 44, s. 2.
- Sec. 5.** Repealed, new section 1914, c. 44, s. 3: amended 1915, c. 20, s. 22.
- Sec. 6.—(1)** Repealed, new sub-section 1914, c. 44, s. 4.

- Sec. 6.—(3)** Repealed, new sub-section 1914, c. 44, s. 4.
- Sec. 6.—(4)** Amended 1914, c. 44, s. 5.
- Sec. 6.—(5)** Repealed, new sub-section 1914, c. 44, s. 6.
- Sec. 7.** Repealed new section 1914, c. 44, s. 7.
- Sec. 8.** Repealed, new section 1914, c. 44, s. 8.
- Sec. 9.** Repealed, 1914, c. 44, s. 9.
- Sec. 10.** Repealed, new section 1914, c. 44, s. 10.
- Sec. 12.—(1)** Amended 1914, c. 44, s. 11.
- Sec. 13.—(1)** Amended 1914, c. 44, s. 12.
- Sec. 16.** Repealed, 1914, c. 44, s. 9.

CHAPTER 250.

THE NATURAL GAS AND OIL WELLS ACT.

- Sec. 12a.** New section 1916, c. 57, s. 1: as to inspection of mains, procedure upon default of owner, etc.
- Sec. 12b.** New section 1916, c. 57, s. 1: cancellation of charter upon default.
- Sec. 12c.** New section 1916, c. 57, s. 1: powers of entry for inspection.

CHAPTER 251.

THE STEAM THRESHING ENGINES ACT.

CHAPTER 252.

THE STEAM BOILER ACT.

- Sec. 2.—(d)** Amended 1916, c. 58, s. 1: repealed, new clause 1918, c. 20, s. 45.

Sec. 3.—(a) Amended 1916, c. 58, s. 2: 1918, c. 20, s. 46.

Sec. 3.—(c) Amended 1916, c. 58, s. 2.

Sec. 3.—(e) New clause, 1916, c. 58, s. 2: regulations as to fees.

CHAPTER 253.

THE NOXIOUS WEEDS ACT.

Sec. 7.—(1) Amended 1916, c. 59, s. 1: as to how notice to owner may be given.

CHAPTER 254.

THE FRUIT PEST ACT.

CHAPTER 255.

THE BARBERRY SHRUB ACT.

CHAPTER 256.

THE GINSENG ACT.

CHAPTER 257.

THE BEE PROTECTION ACT.

Sec. 3. Amended 1914, c. 21, s. 54: 1916, c. 24, s. 33: raising penalty.

CHAPTER 258.

THE FOUL BROOD ACT.

CHAPTER 259.

THE LINE FENCES ACT.

CHAPTER 260.

THE DITCHES AND WATERCOURSES ACT.

- Sec. 3.**—(f) Repealed, new clause 1918, c. 47, s. 1.
- Sec. 3.**—(j) “Guardian of an infant owner” means such guardian as has by law the management and control of the infant’s lands and not merely the guardian of his person: a notice to the father of infant, where land is affected (the father not having been appointed guardian of the infant’s estate) is insufficient and, the infant not being bound, the whole drainage scheme falls to the ground: *Healy v. Ross*, 33 O. L. R. 368.
- Sec. 6.** “Sufficient outlet:” see *Otto v. Roger & Kelly*, 39 O. L. R. 127.
- Sec. 7.** Amended 1917, c. 56, s. 2.
- Sec. 8.**—(1) As to service on infant “owner:” see *Healy v. Ross*, 33 O. L. R. 368.
The engineer or road superintendent appointed by the county council or under the Highway Improvement Act, may initiate and carry on proceedings under this Act to procure drainage for roads: see 1915, c. 16, s. 3.
- Sec. 16.**—(1) As to whether non-attendance is an incurable defect: see *Otto v. Roger & Kelly*, 39 O. L. R. 127.
- Sec. 16.**—(3a) New sub-section 1917, c. 56, s. 3: certificate of engineer as to fees.
- Sec. 19.**—(1) The award subjects the lands affected by it to an easement and should be registered to bind

subsequent purchasers without notice: *Deldridge v. Township of Brantford*, 40 O. L. R. 443.

- Sec. 21.**—(1) An appeal to the Judge furnishes the proper method of taking exception to the regularity of the proceedings, the curative provisions of s. 23 being very wide: see *Otto v. Roger & Kelly*, 39 O. L. R. 127.
- Sec. 23.** Defect in form or in the proceedings: the Act is intended to simplify local drainage works, to prevent litigation and to make an award under the Act, after expiry of time for appealing, binding upon all parties who have notice of the proceedings notwithstanding failure to comply strictly with provisions of the Act: Section held to cover failure of engineer to attend personally (sec. 16), insufficiency of outlet (sec. 6), &c.: *Otto v. Roger & Kelly*, 39 O. L. R. 127.
- Sec. 31.** Repealed, new section 1917, c. 56, s. 4.

CHAPTER 261.

THE CEMETERY ACT.

- Sec. 14.**—(4) The Act gives legislative sanction to this particular form of perpetual trust which would otherwise be void, the purpose not being charitable: executors, if so directed in the will, may pay the moneys to the person in control of the cemetery: *Re Jones*, 42 O. L. R. 62.
- Sec. 36.**—(1), (c) Acquiring land in an adjacent township: the provisions of 29, 30 Vic. c. 51, s. 269 (3), whereby land so acquired became part of the acquiring municipality have apparently not been re-enacted nor can they be found in the Municipal Act.
- Sec. 38a.** New section 1914, c. 45, s. 1: council may transfer cemetery to board of park management.
- Sec. 38b.** New section 1914, c. 45, s. 1: as to township cemetery board, amended 1915, c. 42, s. 1: as to village cemetery board.

CHAPTER 262.

THE ONTARIO GAME AND FISHERIES ACT.

- Sec. 3.—(i)** Repealed, new clause 1916, c. 60, s. 2.
- Sec. 3.—(m)** Repealed 1916, c. 60, s. 2.
- Sec. 3.—(n)** Amended 1916, c. 60, s. 2.
- Sec. 5.—(1)** Amended 1916, c. 60, s. 3.
- Sec. 5.—(2)** Amended 1916, c. 60, s. 3.
- Sec. 8.—(c)** Amended 1916, c. 60, s. 4.
- Sec. 8.—(h)** Amended 1916, c. 60, s. 4.
- Sec. 9.** Repealed, new section 1916, c. 60, s. 5: amended 1917, c. 27, s. 36.
- Sec. 10.—(1) (c)** Amended 1916, c. 60, s. 6: 1918, c. 48, s. 2.
- Sec. 10.—(1) (d)** Amended 1916, c. 60, s. 6: repealed, new clause 1918, c. 48, s. 2.
- Sec. 10.—(e) (f)** Amended 1916, c. 60, s. 6.
- Sec. 10.—(1) (g) (h) (j)** Amended 1916, c. 60, s. 6: repealed, new clause 1918, c. 48, s. 2.
- Sec. 10.—(1) (i)** Repealed 1916, c. 60, s. 6.
- Sec. 10.—(1) (k)** Repealed, new clause 1916, c. 60, s. 6.
- Sec. 10.—(2)** Amended 1916, c. 60, s. 6.
- Sec. 10.—(3)** Amended 1916, c. 60, s. 6.
- Sec. 11.—(1)** Amended 1915, c. 20, s. 23.
- Sec. 11.—(2)** Amended 1916, c. 60, s. 7.
- Sec. 11.—(3)** Repealed 1916, c. 60, s. 7.
- Sec. 11.—(4)** Amended 1916, c. 60, s. 8.
- Sec. 11.—(7)** Amended 1918, c. 48, s. 3.

- Sec. 11.**—(8) Amended 1916, c. 60, s. 9.
- Sec. 13.**—(3) Repealed, new sub-section 1918, c. 48, s. 13.
- Sec. 13.**—(7) New sub-section 1916, c. 60, s. 10: flesh and skin not to be wasted.
- Sec. 14.**—(1) (3) Amended 1916, c. 60, s. 11.
- Sec. 14.**—(4) New sub-section 1914, c. 46, s. 1: limiting number of duck to be taken.
- Sec. 14.**—(5) New sub-section 1916, c. 60, s. 11: traffic in water fowl prohibited.
- Sec. 18.** Amended 1916, c. 60, s. 12.
- Sec. 20.** Amended 1916, c. 60, s. 13.
- Sec. 21.**—(1) Amended 1916, c. 60, s. 14.
- Sec. 23.**—(3) (b) Repealed, new clause 1914, c. 46, s. 2.
- Sec. 26.** Amended 1914, c. 46, s. 3.
- Sec. 28.** Amended 1916, c. 60, s. 15.
- Sec. 29.**—(1) Amended 1918, c. 48, s. 4.
- Sec. 32.** Amended 1916, c. 60, s. 16.
- Sec. 35.** Amended 1916, c. 60, s. 17.
- Sec. 39.**—(a) Amended 1916, c. 60, s. 18.
- Sec. 39a.** New section 1918, c. 48, s. 5: possession of unprime skin prohibited.
- Sec. 40.**—(1) (a) Amended 1918, c. 48, s. 6.
- Sec. 40.**—(3) Amended 1914, c. 46, s. 4: 1916, c. 60, s. 19.
- Sec. 41.**—(4) Amended 1916, c. 60, s. 20.
- Sec. 41.**—(5) New sub-section 1914, c. 46, s. 11: trading in fur-bearing animals or skins must be licensed.
- Sec. 41.**—(6) (7) New sub-sections 1916, c. 60, s. 20: permit for propagating or scientific purposes.

- Sec. 43.**—(6) New sub-section 1916, c. 60, s. 21: export permits
- Sec. 45.**—(2) Amended 1916, c. 60, s. 22.
- Sec. 47.**—(1) Repealed 1916, c. 60, s. 22.
- Sec. 47.**—(3) (5) Amended 1916, c. 60, s. 22.
- Sec. 48.**—(1) (a) Amended 1916, c. 60, s. 23.
- Sec. 48.**—(1) (b) Amended 1918, c. 48, s. 7.
- Sec. 48.**—(1) (d) Amended 1914, c. 48, s. 5.
- Sec. 48.**—(1) (e) New clause 1916, c. 60, s. 23: fee for license to hunt or trap fur-bearing animals.
- Sec. 48.**—(2) Amended 1916, c. 60, s. 23.
- Sec. 49.**—(a) Amended 1916, c. 60, s. 24.
- Sec. 49.**—(b) Amended 1914, c. 46, s. 6: 1918, c. 48, s. 8.
- Sec. 49.**—(d) New clause, 1914, c. 46, s. 6: amended 1918, c. 48, s. 9: fee for license to trade in fur-bearing animals.
- Sec. 50.**—(a) (b) Repealed 1914, c. 46, s. 7.
- Sec. 52.** Amended 1916, c. 60, s. 25.
- Sec. 53.** Amended 1914, c. 46, s. 8.
- Secs. 53b-53h.** New section 1918, c. 49: introducing new part VA, dealing with procuring, etc., of fish.
- Sec. 54.**—(a) (b) Amended 1916, c. 60, s. 26.
- Sec. 55.** Repealed, new section 1916, c. 60, s. 27.
- Sec. 55ⁿ.** New section 1914, c. 46, s. 9: repealed and new section 1916, c. 60, s. 27: Deputy Minister of Game and Fisheries.
- Sec. 57.** Amended 1918, c. 48, s. 10.
- Sec. 59.** Amended 1916, c. 60, s. 28.
- Sec. 60.**—(1) Amended 1916, c. 60, s. 29.

- Sec. 61.**—(1) (11) Amended 1916, c. 60, s. 30.
- Sec. 62.**—(1) Amended 1916, c. 60, s. 31.
- Sec. 63.**—(6) Amended 1914, c. 46, s. 10.
- Sec. 65.**—(1) Repealed, new sub-section 1916, c. 60, s. 32.
- Sec. 65.**—(4) Amended 1918, c. 48, s. 11.
- Sec. 65.**—(7) Amended 1918, c. 48, s. 12.
- Sec. 65.**—(13) New sub-section 1918, c. 48, s. 12: relief from forfeiture.
- Sec. 65.**—(a) New sub-section 1916, c. 60, s. 32: penalties as to deer.
- Sec. 65.**—(b) New sub-section 1916, c. 60, s. 32: general penalties.
- Sec. 66.** New section 1917, c. 27, s. 37: authorizing regulations by order in council varying statutory provisions to conform to treaties.

CHAPTER 263.

THE PROTECTION OF BIRDS ACT.

CHAPTER 264.

THE WOLF BOUNTY ACT.

- Sec. 2.**—(c) Repealed 1916, c. 61, s. 1.
- Sec. 4.** Amended 1916, c. 61, s. 2; 1918, c. 20, s. 47.
- Sec. 5.** Amended 1916, c. 61, s. 3.
- Sec. 6.**—(3) Amended 1916, c. 61, s. 4; 1918, c. 20, s. 48.

CHAPTER 265.

THE DEPARTMENT OF EDUCATION.

- Sec. 6.—(1) (c) Amended 1917, c. 27, s. 38.
- Sec. 6.—(1) (j) Amended 1916, c. 24, s. 34.
- Sec. 6.—(1) (l) Amended 1917, c. 27, s. 39.
- Sec. 6.—(1) (m1-m4) New clauses 1918, c. 51, s. 2: powers of Minister extended.
- Sec. 6.—(1) (n) Amended 1917, c. 27, s. 40.
- Sec. 6.—(1) (nn) New clause 1917, c. 27, s. 40: certificates, to whom granted.
- Sec. 9. See 1915, c. 43, s. 2: as to term of office of members of advisory council and filling of vacancies, etc.
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CHAPTER 266.

THE PUBLIC SCHOOLS ACT.

- Sec. 11.—(1) Amended 1916, c. 24, s. 35: provisions extended to case where it is deemed expedient to change the site of an existing school house.
- Sec. 15.—(4) Amended 1914, c. 21, s. 55.
- Sec. 15.—(6) (7) New sub-sections 1917, c. 27, s. 41: as to readjustment of boundaries of school sections in counties.
- Sec. 15.—(8) New sub-section 1917, c. 27, s. 41: as to readjustment of boundaries of school section in townships.
- Sec. 21.—(20) (a) Amended 1914, c. 21, s. 56: 1917, c. 27, s. 42.
- Sec. 29.—(1) The finding of the assessors is binding and any irregularity in manner in which such finding

is based does not excuse municipality from levying proper amount under sec. 47, and as to proper principle on which assessors should proceed: *Eastview Public School v. Township of Gloucester*, 41 O. L. R. 327; the assessments are those referred to in the Assessment Act, c. 195, s. 50, not the final revised assessments: *ibid.*

Sec. 36.—(3) Amended 1914, c. 21, s. 57.

Sec. 39. The legislation is not confined to the case of a by-law passed under the general powers of the municipality, but it limits the effect of a special by-law granting exemption from municipal assessment "of any nature or kind whatsoever," even where the by-law is confirmed by special Act declaring it valid" notwithstanding anything contained in any Act to the contrary:" *Ontario Power Co. of Niagara Falls and Township of Stamford*, 30 O. L. R. 391, affirmed 50 S. C. R. 168.

Sec. 43. A by-law will not be interfered with by the Court merely upon the ground that it is unreasonable because the cost of the proposed school is excessive: *Re Davis and Village of Creemore*, 38 O. L. R. 240.

Sec. 43.—(1) The school board having no power to create debts extending beyond the year without sanction of the ratepayers and on debentures of the municipal council, the trustees cannot make a binding contract to purchase or build until assured of the means to pay, but they may secure options on sites or make contracts conditional upon the lawful issue of debentures: *Birch v. Public School Board, Township of York*, 37 O. L. R. 392. Trustees of rural school board were restrained from taking further action towards purchase of new site until debentures had been duly issued. *Birch v. Public School Board, Township of York*, 37 O. L. R. 392.

Sec. 53.—(1) Amended 1917, c. 27, s. 43.

Sec. 54.—(4) Amended 1918, c. 52, s. 1: as to form of oath.

- Sec. 54.**—(6) Amended 1917, c. 27, s. 44.
- Sec. 54.**—(11) The view that where the inspector has heard and determined an appeal under this section the jurisdiction of the Court is ousted was disapproved in *Birch v. Public School Board, Township of York*, 37 O. L. R. 392.
- Sec. 59.**—(1) Repealed, new sub-section 1918, c. 52, s. 2.
- Sec. 60.**—(e) Amended 1918, c. 52, s. 3.
- Sec. 60.**—(g) Amended 1918, c. 52, s. 4: new form of oath.
- Sec. 63.**—(3) New sub-section 1917, c. 27, s. 45: as to appointment of trustees on failure of qualified persons.
- Sec. 73.**—(j) Amended 1917, c. 57, s. 1.
- Sec. 87.**—(1) As to termination by the board of a teacher's engagement: see *Smith v. Campbellford Board of Education*, 39 O. L. R. 323.
- Sec. 101.**—(1) (g) Amended 1917, c. 27, s. 46.
- Sec. 102.**—(1a) New sub-section 1918, c. 51, s. 3: addition to salary of inspectors.
- Sec. 102.**—(2) (3) Repealed, new sub-section 1918, c. 51, s. 3.
- Sec. 102.**—(3) Action against County Council for salary of inspector: *Carlyle v. County of Oxford*, 30 O. L. R. 413.
- Sec. 102.**—(8) Amended 1918, c. 51, s. 3.
- Sec. 106.**—As to effect of the Teachers and Inspectors Superannuation Act, 7 Geo. V. c. 58, upon teachers and inspectors in receipt of superannuation allowance under secs. 106 to 108 of this Act; see 1917, c. 58, s. 15.
- Secs. 124, 125.** The scope of these sections was enlarged by 1916, c. 24, s. 36.

CHAPTER 267.

THE CONTINUATION SCHOOLS ACT.

- Sec. 3.** Appointment of trustees: members of township council were compelled by mandamus to fill the vacancies caused by trustees' resignations: *Re West Nissouri Continuation School*, 38 O. L. R. 207.
- Sec. 8.—(4)** Repealed, new sub-section 1915, c. 43, s. 3.
- Sec. 8.—(4) (a)** New clause 1916, c. 24, s. 37: balance of grant payable to district representative.
- Sec. 12.** See 1914, c. 21, s. 58; 1915, c. 43, s. 4; 1916, c. 24, s. 38; 1917, c. 27, s. 47: *Re West Nissouri School*.
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CHAPTER 268.

THE HIGH SCHOOLS ACT.

- Sec. 6.—(2)** Amended 1915, c. 43, s. 5: as to date of operation of this amendment: see 1916, c. 24, s. 39; 1917, c. 27, s. 48.
- Sec. 24.—(j)** Determination of the board to give notice terminating the engagement of teacher may be evidenced by resolution: no particular form of words is necessary to effect a removal: *Smith v. Campbellford Board of Education*, 39 O. L. R. 323.
- Sec. 25a.** New section 1918, c. 51, s. 4: as to scholars' attendance at other high schools.
- Sec. 28a.** New section 1914, c. 21, s. 59: as to discontinuing high school with the approval of the Minister.
- Sec. 33.—(2)** Repealed, new sub-section 1915, c. 43, s. 6.
- Sec. 37.** Amended 1915, c. 43, s. 7.

- Ses. 38.**—(4) Amended 1914, c. 21, s. 60.
Sec. 38.—(8) Amended 1915, c. 43, s. 8.
Sec. 47.—(2) (a) Amended 1917, c. 27, s. 49.
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CHAPTER 269.

THE BOARDS OF EDUCATION ACT.

- Sec. 5.**—(1) (f) New clause 1914, c. 21, s. 61: first election of new members on increasing representation.
Sec. 5.—(4) Amended 1917, c. 27, s. 50.
Sec. 6.—(4a) New sub-section 1917, c. 61, s. 1: annual election of board, vote of ratepayers on question.
Sec. 13.—(4) New sub-section 1915, c. 43, s. 11: unions of high and public school boards.
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CHAPTER 270.

THE SEPARATE SCHOOLS ACT.

- Sec. 18.**—(a) Regulations: see notes to s. 78.
Sec. 54.—(1) Amended 1917, c. 27, s. 51.
Sec. 66. See Regina Public School District v. Gratton Separate School District, 50 S. C. R. 589.
Sec. 70. The section does not confer on the council power to impose the rates; the school board imposes the rates and having imposed them may proceed to collect them by its own collector, s. 67, or require the council to collect; "levied" in this section means "collected;" a by-law of the council imposing a rate which would produce a sum in excess of the board's requisition was quashed: Re Therriault and Town of Cochrane, 30 O. L. R. 367.
Sec. 75.—(6) Amended 1914, c. 2, s. 4.

- Sec. 78.** Regulation No. 15: "school sections where the French language prevails": see *Macdonald v. Lancaster Separate School Trustees*, 31 O. L. R. 360; aff'd 34 O. L. R. 346.
- Constitutional powers of Provincial Legislature in control of education: validity of regulation No. 17 confirmed; use of French language; *Mackell v. Ottawa Sep. Sch. Trustees*, 32 O. L. R. 245; aff'd 34 O. L. R. 335, aff'd (1917), A. C. 62.
- See 5 Geo. V. c. 45, an Act respecting the trustees of the Roman Catholic separate schools of the City of Ottawa, whereby regulations No. 17 of 1912 and No. 17 of 1913, were declared valid and binding: the Act was held to be ultra vires in *Ottawa Separate School Trustees v. Ottawa Corporation* (1917), A. C. 76, reversing judgments in Ontario Courts, 34 O. L. R. 624, 36 O. L. R. 485.
- See also 7 Geo. V. c. 59, appointing a commission for the conduct of separate schools in Ottawa: the Act was held intra vires by the Appellate Division in *Re Ottawa Separate Schools*, 41 O. L. R. 259 (distinguishing the Privy Council decision supra). See also 7 Geo. V. c. 60, whereby the commissioners appointed under 5 Geo. V. c. 45 (afterwards declared to be ultra vires) were protected as to disbursements of moneys: the Act was held to be ultra vires in *Ottawa Separate School Trustees v. Quebec Bank*, 41 O. L. R. 594 (Clute, J.), as being an ineffectual means of getting rid of the Privy Council decision holding 5 Geo. V. c. 45, to be ultra vires; this decision was reversed on appeal, see 15 O. W. N. 88.
- Sec. 80.** Provisions inapplicable to action by ratepayer of separate school section against the trustees for illegal employment of teacher: *McDonald v. Lancaster Separate School Trustees*, 31 O. L. R. 360, affirmed 34 O. L. R. 346: (as to enforcement of judgment in this case, see 35 O. L. R. 614).
- Sec. 99.** See *Mackell v. Ottawa Separate School Trustees*, 4 O. L. R. 270.

CHAPTER 271.

THE INDUSTRIAL SCHOOLS ACT.

- Sec. 2.** Amended 1916, c. 24, s. 42.
- Sec. 14.** As to provisional judicial districts, see 1914, c. 48, s. 4.
- Sec. 15.**—(2) New sub-section 1914, c. 48, s. 1: copy of the order to be forwarded to the municipality declared liable for maintenance.
- Sec. 15.**—(3) New sub-section 1914, c. 48, s. 1: order to be binding on municipality unless moved against within one month.
- Sec. 24.** Repealed, new section 1914, c. 48, s. 2: amended 1918, c. 20, s. 49.
- Sec. 28.**—(1) Repealed, new sub-section 1914, c. 48, s. 3: amended 1918, c. 20, s. 49.
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CHAPTER 272.

THE SPECIAL CLASSES ACT.

This Act was repealed by the Auxiliary Classes Act, 4 Geo. V. c. 49.

CHAPTER 273.

THE SCHOOLS FOR THE DEAF AND BLIND ACT.

CHAPTER 274.

THE TRUANCY ACT.

- Sec. 7.**—(11) New sub-section 1914, c. 21, s. 62: as to notice to parent by inspector.

- Sec. 7.—(12)** New sub-section 1914, c. 21, s. 62: amended 1917, c. 27, s. 52: as to ascertaining cases of truancy.
- Sec. 7.—(13)** New sub-section 1914, c. 21, s. 62: duty of inspector.
- Sec. 7a.** New section 1914, c. 21, s. 63; 1917, c. 27, s. 53; municipal clerk to send school census to school boards.
- Sec. 11.—(1)** Amended 1917, c. 27, s. 54.

CHAPTER 275.

THE ADOLESCENT SCHOOL ATTENDANCE ACT.

Repealed by the Adolescent School Attendance Act, 6 Geo. V. c. 62.

CHAPTER 276.

THE INDUSTRIAL EDUCATION ACT.

- Sec. 7.—(1) (b)** Amended 1917, c. 27, s. 55.
- Sec. 7.—(3) (4)** New sub-sections 1915, c. 43, s. 9: as to admission to technical schools and agricultural schools or courses.
- Sec. 11.—(5)** New sub-section 1918, c. 51, s. 12: advisory committee on vocational training.
- Sec. 15.** Amended 1915, c. 43, s. 10.

CHAPTER 277.

THE SCHOOL SITES ACT.

CHAPTER 278.

THE SCHOOL TRUST CONVEYANCES ACT.

CHAPTER 279.

THE UNIVERSITY ACT.

See the University Aid Act, 8 Geo. V. c. 53: financial assistance to Connaught Laboratories.

- Sec. 32.**—(u) New clause 1916, c. 63, s. 1: as to power of board to borrow money.
- Sec. 44.** See 1918, c. 20, s. 50: no election during present war.
- Sec. 128.**—(1) Amended 1914, c. 21, s. 64.
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CHAPTER 280.

THE UPPER CANADA COLLEGE ACT.

- Sec. 10.**—(3) New sub-section 1918, c. 54, s. 1: taxable lands in York township.
- Sec. 14.** Amended 1916, c. 24, s. 43.
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CHAPTER 281.

THE AGRICULTURAL COLLEGE ACT.

- Sec. 7.** Repealed, new section 1916, c. 24, s. 44.
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CHAPTER 282.

THE VETERINARY COLLEGE ACT.

CHAPTER 283.

THE MINING SCHOOLS ACT.

CHAPTER 284.

THE COLLEGE OF ART ACT.

CHAPTER 285.

THE ROYAL ONTARIO MUSEUM ACT.

Sec. 16. Repealed, new section 1914, c. 50, s. 2.

CHAPTER 286.

THE RELIGIOUS INSTITUTIONS ACT.

The Act governs the appointment of trustees for religious institutions and impliedly excludes the corresponding provisions of the Trustee Act, c. 121; Re Lutheran Church of Hamilton, 34 O. L. R. 228.

Sec. 16. Where land was conveyed to six persons named as trustees of a certain church taking as joint tenants, the trust not being defined nor any provision being made for appointing new trustees, and in 1915 the congregation by resolution approved the original appointment and provided a mode for appointing successors, held that, the technical requirements of the Act being complied with, the congregation had ample power and that the lands would vest in the trustees so appointed, without conveyance: Re Lutheran Church of Hamilton, 34 O. L. R. 228.

CHAPTER 287.

THE ONTARIO REFORMATORY ACT.

- Sec. 4.** Amended 1915, c. 20, s. 24.
- Sec. 5.** Amended 1915, c. 20, s. 24.
- Sec. 12.** Repealed, new section 1915, c. 20, s. 24.
- Sec. 13.** Amended 1915, c. 20, s. 24.
- Sec. 14.—(1)** Amended 1915, c. 20, s. 24.
- Sec. 15.** Amended 1915, c. 20, s. 24.
- Sec. 23a.** New section 1914, c. 51, s. 1: procuring lands for farm purposes.
- Sec. 28.** Amended 1915, c. 20, s. 24.

CHAPTER 288.

THE ANDREW MERCER REFORMATORY ACT.

CHAPTER 289.

THE FEMALE REFUGES ACT.

CHAPTER 290.

THE HOUSES OF REFUGE ACT.

- Sec. 14a.** New section 1914, c. 21, s. 65: break in residence, when not to affect liability of county.

CHAPTER 291.

THE DISTRICT HOUSES OF REFUGE ACT.

CHAPTER 292.

THE INDUSTRIAL FARMS ACT.

- Sec. 4.** Repealed, new section 1914, c. 52, s. 1.
- Sec. 6.** Repealed, new section 1914, c. 52, s. 2.
- Sec. 10.** Amended 1914, c. 52, s. 3.
- Sec. 10.—(2) (3) (4) (5)** New sub-sections 1914, c. 52, s. 4: extra mural employment of inmates.
- Sec. 11.** Repealed, new section 1914, c. 52, s. 5.

CHAPTER 293.

THE GAOLS ACT.

CHAPTER 294.

THE DISTRICT COURT HOUSES ACT.

CHAPTER 295.

THE HOSPITALS FOR THE INSANE ACT.

- Sec. 2.—(b)** Amended 1916, c. 64, s. 1.
- Secs. 5, 6.** These sections are applicable to the hospital for epileptics: see 1914, c. 55, s. 8.
- Sec. 21.—(4)** New sub-section 1914, c. 53, s. 1: as to maintenance of persons apprehended after being deported to Ontario.
- Sec. 21.—(5)** New sub-section 1914, c. 53, s. 1: right of corporation to recover maintenance paid under preceding sub-section.

- Secs. 29 to 49.** These sections apply to a reception hospital for the insane, see 4 Geo. V. c. 54, s. 9: and also to the hospital for epileptics, see 4 Geo. V. c. 55, s. 8.
- Secs. 32 et seq.** See *Dunlop v. Ellis*, 41 O. L. R. 304.
- Sec. 36.** This section overrides s. 10 of the Insurance Act, as enacted by 1914, c. 30, s. 10, directing payment of the insurance moneys into Court: *Re Nash and Canadian Order of Chosen Friends*, 40 O. L. R. 530.
- Secs. 50 to 59.** New sections 1916, c. 64, s. 2: as to admission of alcoholic and drug habituates.

CHAPTER 296.

THE PRIVATE SANITARIUM ACT.

CHAPTER 297.

THE HOSPITAL FOR EPILEPTICS ACT.

Repealed, see the Hospital for Epileptics Act, 4 Geo. V. c. 55.

CHAPTER 298.

THE SANATORIA FOR CONSUMPTIVES ACT.

- Sec. 16.—(1)** Amended 1914, c. 56, s. 1; 1916, c. 24, s. 45; 1917, c. 27, s. 56; 1918, c. 20, s. 51.
- Sec. 16.—(2)** Amended 1916, c. 24, s. 45; 1917, c. 27, s. 56.
- Sec. 24.** Amended 1914, c. 56, s. 2; repealed, new section 1916, c. 24, s. 45; repealed, new section 1917, c. 27, s. 56.

CHAPTER 299.

THE TORONTO GENERAL HOSPITAL ACT.

- Sec. 15.** Amended 1918, c. 20, s. 52.
- Sec. 22.—(1)** Amended 1918, c. 20, s. 53.

CHAPTER 300.

THE HOSPITALS AND CHARITABLE INSTITUTIONS ACT.

- Sec. 18.—(2)** New sub-section 1914, c. 21, s. 66: penalty for using title of registered nurse when unqualified.
- Sec. 23.—(1)** The corporation liable for hospital charges of the indigent is the corporation of the local municipality, town, village or township, in which the person is resident, not the county municipality; the word "municipality" in this Act has not the same meaning as that word in the Children's Protection Act, c. 231; no distinction is made between adults and infants, and an orphaned infant placed by a magistrate's order under the Children's Aid Protection Act, in the care of the Children's Aid Society, at the town of B., is a "resident" of that town so as to make the town liable under this section: *Toronto Free Hospital for Consumptives v. Town of Barrie*, 39 O. L. R. 63.
- Sec. 23.—(1a)** New sub-section 1916, c. 24, s. 46: liability of townships in certain cases depends on order of member of township council. Semble, this amendment makes it clear that the liability for hospital treatment of an indigent lies upon the local municipality of which he is resident, and not upon the county: *Meredith, C.J.C.P., in Toronto Free Hospital for Consumptives v. Town of Barrie*, 39 O. L. R. 63.
- Secs. 23-25.** These sections apply to a reception hospital for the insane, 1914, c. 54, s. 9.
- Sec. 24.** Amended 1917, c. 27, s. 57.

CHAPTER 301.

THE PRISONS AND PUBLIC CHARITIES INSPECTION ACT.

- Sec. 4.** Repealed, new section 1916, c. 24, s. 47.
The Act applies to a Reception Hospital for the Insane, see 1914, c. 54, s. 9.
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4 GEO. V. CHAP. 4.

THE REPRESENTATION ACT.

- Sec. 2.** See 1915, c. 2: as to boundaries of certain electoral districts.
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4 GEO. V. CHAP. 6.

THE POLITICAL CONTRIBUTIONS ACT.

4 GEO. V. CHAP. 15.

THE RADIUM ACT.

4 GEO. V. CHAP. 19.

THE COUNTY PUBLICITY ACT.

4 GEO. V. CHAP. 20.

THE DISTRICT REPRESENTATIVE ACT.

The Act was amended 1915, c. 20, s. 27, and repealed by the Agricultural Representatives Act, 8 Geo. V. c. 19.

4 GEO. V. CHAP. 25.

THE WORKMEN'S COMPENSATION ACT.

- Sec. 2.**—(1) (b) Amended 1915, c. 24, s. 1.
- Sec. 2.**—(1) (f) “Workman temporarily let or hired to another”: see *Caplin v. Walker Sons*, 35 O. L. R. 291.
- Sec. 2.**—(1) (p) Amended 1915, c. 24, s. 2; 1917, c. 34, s. 4.
- Sec. 3.**—(1) As to date of operation, see s. 111.
- Sec. 6.** Repealed, new section 1915, c. 24, s. 2; amended 1917, c. 34, s. 5.
- Sec. 8.**—(2) Amended 1915, c. 24, s. 3.
- Sec. 9.** Cause of action against some person other than employer: *Caplin v. Walker Sons*, 35 O. L. R. 291.
- Sec. 9.**—(5) New sub-section 1915, c. 24, s. 4; amended 1916, c. 31, s. 1: as to right of action as between persons in schedule one.
- Sec. 10.**—(2) (3) (4) (5) Repealed, new sub-sections 1915, c. 24, s. 5.
- Sec. 11.** Amended 1915, c. 24, s. 6.
- Sec. 12.** Repealed, new section 1915, c. 24, s. 7, amended 1917, c. 34, s. 4.
- Sec. 13.** No action shall lie, etc.: see *Caplin v. Walker Sons*, 35 O. L. R. 291.
- Sec. 15.** Repealed, new section 1915, c. 24, s. 8.
- Sec. 17.**—(2) Amended 1915, c. 24, s. 9.
- Sec. 20.**—(5) Amended 1916, c. 31, s. 2.
- Sec. 22.**—(2) Amended 1915, c. 24, s. 10.
- Sec. 22a.** New section 1915, c. 24, s. 11; special medical treatment in certain cases.

- Sec. 25.**—(4) New sub-section 1915, c. 24, s. 32: advances on account of compensation.
- Sec. 28.** Amended 1915, c. 24, s. 12; 1916, c. 31, s. 3.
- Sec. 29.** Amended 1915, c. 24, s. 13.
- Sec. 31a.** New section 1916, c. 31, s. 4: requiring deposits by employers in schedule 2.
- Sec. 33.**—(1) (c) Amended 1917, c. 34, s. 6: see 1917, c. 34, s. 18.
- Sec. 33.**—(1) (e) (f) Repealed, new clause 1915, c. 24, s. 14.
- Sec. 33.**—(2a) New sub-section 1917, c. 34, s. 6, dependents to whom workman stood in loco parentis.
- Sec. 33.**—(2b) New sub-section 1917, c. 34, s. 6: compensation to invalid child.
- Sec. 33.**—(5) Amended 1915, c. 24, s. 14.
- Sec. 35.** Amended 1917, c. 34, s. 7: exception in case of invalid child.
- Sec. 36.** Amended 1915, c. 24, s. 15.
- Sec. 38.**—(3) New sub-section 1917, c. 34, s. 8: estimating impairment of earning capacity.
- Sec. 41.**—(6) New sub-section 1915, c. 24, s. 16: compensation may be based on earning capacity at time of accident.
- Sec. 43.** Amended 1915, c. 24, s. 17.
- Sec. 44a.** New section 1917, c. 34, s. 9: as to medical aid: see also 1917, c. 34, s. 18.
- Sec. 44b.** New section 1917, c. 34, s. 9; reports of medical men: see also 1917, c. 34, s. 18.
- Sec. 45.** Amended 1915, c. 24, s. 18.
- Sec. 59.** Amended 1915, c. 24, s. 19.
- Sec. 60.** Considered, and jurisdiction of Court to inquire whether parties to suit have brought themselves

under protection of the Act explained: see *Murphy v. City of Toronto*, 41 O. L. R. 156.

The Board cannot be added as third parties to an action, to answer any claim for anything done under the Act: see *Murphy v. City of Toronto*, 41 O. L. R. 156.

- Sec. 60.**—(4) New sub-section 1917, c. 34, s. 10: decisions of the Board to be upon the real merits, not following legal precedents.
- Sec. 60a.** New section 1917, c. 34, s. 11: certificates of secretary as evidence.
- Sec. 63a.** New section 1917, c. 34, s. 12: fees of county clerk.
- Sec. 64.**—(3) Amended 1916, c. 31, s. 5: Leave of the Board necessary to prosecution.
- Sec. 76a.** New section 1916, c. 31, s. 6: additions to schedules.
- Sec. 78.**—(1) Amended 1915, c. 24, s. 20.
- Sec. 78.** —(1a) New sub-section 1916, c. 31, s. 7; amended 1917, c. 34, s. 13: employer must keep account of wages paid.
- Sec. 78.**—(3) The Board cannot delegate the making of the estimated assessment to one of its officers: see *Murphy v. City of Toronto*, 41 O. L. R. 156.
- Sec. 78.**—(4) Amended 1916, c. 31, s. 7.
- Sec. 78a.** New section 1916, c. 31, s. 8: municipal assessors to make returns of industries and employees.
- Sec. 79.**—(1) Amended 1915, c. 24, s. 21.
- Sec. 79.**—(3) New sub-section 1915, c. 24, s. 21: officers may take declarations.
- Sec. 84.**—(3) Repealed 1915, c. 24, s. 22.
- Sec. 85.**—(1) Repealed, new sub-section 1915, c. 24, s. 23.
- Sec. 85.**—(4) New sub-section 1917, c. 34, s. 14; merit rating in making annual assessment.

- Sec. 86.** There must be an official act of the Board in making the assessment: it cannot delegate its authority: and as to ratification: see *Murphy v. City of Toronto*, 41 O. L. R. 156.
- Sec. 86.—(1)** Repealed, new sub-section 1915, c. 24, s. 24: amended 1917, c. 34, s. 15.
- Sec. 86.—(2)** Amended 1915, c. 24, s. 24.
- Sec. 86.—(3)** New sub-section 1915, c. 24, s. 24: revision of assessments.
- Sec. 87.** Amended 1915, c. 24, s. 25.
- Sec. 88.** Amended 1915, c. 24, s. 26.
- Sec. 88.—(2)** New sub-section 1915, c. 24, s. 26: Board may assess for special fund.
- Sec. 93a.** New section 1915, c. 24, s. 27: additional liability for failure to pay assessment.
- Sec. 98a.** New section 1915, c. 24, s. 28: assessments and compensation have priority as preferred claims in distribution of assets under the Assignments and Preferences' Act, c. 134, the Trustee Act c. 121, and the Companies Act c. 178.
- Sec. 99.—(1)** Amended 1915, c. 24, s. 29.
- Sec. 99.—(3)** New sub-section 1917, c. 34, s. 16: default in reporting accident or claim.
- Sec. 100.—(6a)** New sub-section 1917, c. 34, s. 17: charging compensation to particular classes: see 1917, c. 34, s. 18.
- Sec. 100.—(7)** Amended 1917, c. 34, s. 17.
- Sec. 101.—(4) (5) (6)** New sub-sections 1915, c. 24, s. 30, as to grant by Board to safety associations.
- Sec. 105.** Amended 1915, c. 24, s. 31: application of Part Two to outworkers, clerks and casual employees.
- Sec. 111.** Date fixed by proclamation, Jan. 1st, 1915.

- Sched. 1, cl. 43. Amended 1915, c. 24, s. 33: "navigation" struck out.
- Sched. 2.—(1) Amended 1915, c. 24, s. 33.
- Sched. 2.—(6) Amended 1915, c. 24, s. 33.
- Sched. 2.—(8) New clause 1916, c. 31, s. 9; inter-provincial bridge work.
- Sched. 3. Amended 1917, c. 34, s. 17.

4 GEO. V. CHAP. 38.

THE EMPLOYMENT AGENCIES ACT.

Repealed: see the Employment Agencies Act 1917,
7 Geo. V. c. 37.

4 GEO. V. CHAP. 39.

THE TICKET SPECULATION ACT.

4 GEO. V. CHAP. 41.

THE FIRE MARSHALS ACT.

- Sec. 3.—(4) Amended 1917, c. 55, s. 2.
- Sec. 6a. New section 1916, c. 55, s. 1: amended 1917, c. 55, s. 3: investigation by superintendent of provincial police.
- Sec. 6b. New section 1916, c. 55, s. 1: amended 1917, c. 55, s. 4: appointment of deputy.
- Sec. 6c. New section 1917, c. 55, s. 5: employment of expert assistants.
- Sec. 8.—(4) New sub-section 1916, c. 55, s. 2: particulars to be furnished by insured.

- Sec. 8.**—(5) New sub-section 1917, c. 55, s. 7: claimant to furnish information.
- Sec. 8.**—(6) New sub-section 1917, c. 55, s. 7: adjuster to furnish report.
- Sec. 10.**—(1) Repealed, new sub-section 1916, c. 55, s. 3: amended 1917, c. 55, s. 8.
- Sec. 10.**—(1a) New sub-section 1916, c. 55, s. 3: contribution of person insured with unregistered companies.
- Sec. 10.**—(2) Amended 1916, c. 55, s. 3.
- Sec. 10.**—(3) New sub-section 1916, c. 55, s. 3: preliminary assessment for expenses.
- Sec. 15.**—(2) (3) (4) New sub-sections 1917, c. 55, s. 9: crown attorney to act at investigation.
- Sec. 15a.** New section 1916, c. 55, s. 4: place for holding investigation.
- Sec. 15b.** New section 1917, c. 55, s. 10: provision for expenses.
- Sec. 16a.** New section 1917, c. 55, s. 11: suspension of deputy, etc.

4 GEO. V. CHAP. 43.

THE PROTECTION OF PURE BRED CATTLE ACT.

4 GEO. V. CHAP. 49.

THE AUXILIARY CLASSES ACT.

- Sec. 4.**—(3) New sub-section 1917, c. 62, s. 1.
- Sec. 11.**—(2) New sub-section 1917, c. 62, s. 2.

4 GEO. V. CHAP. 54.

THE RECEPTION HOSPITALS FOR THE INSANE ACT.

4 GEO. V. CHAP. 55.

THE HOSPITAL FOR EPILEPTICS ACT.

5 GEO. V. CHAP. 3.

THE PROVINCIAL WAR TAX ACT.

Sec. 6.—(3) New sub-section 1916, c. 10, s. 1: arrears of tax to bear interest.

Sec. 9.—(1) Amended 1916, c. 10, s. 2.

5 GEO. V. CHAP. 6.

THE NORTHERN AND NORTH WESTERN ONTARIO DEVELOPMENT ACT.

The Act provides for government purchase of seeds, grain, etc., for settlers in the northern and north-western districts of Ontario and for recording liens against lands as security for payment: see 6 Geo. V. c. 11, providing for loans and advances: 7 Geo. V. c. 12, providing for compensation to injured workmen: and 8 Geo. V. c. 8, making provision for further loans and advances.

Sec. 5. Repealed 1917, c. 12, s. 4: new provision.

5 GEO. V. CHAP. 15.

THE RIVERS AND STREAMS ACT 1915.

5 GEO. V. CHAP. 17.

THE ONTARIO HIGHWAYS ACT.

- Sec. 7.**—(2) New sub-section 1917, c. 18, s. 2: designation of source of salary.
- Sec. 9.** Amended 1917, c. 18, s. 3.
- Sec. 11.**—(1) Amended 1916, c. 15, s. 2.
- Sec. 11.**—(4) Amended 1916, c. 15, s. 2.
- Sec. 11.**—(5) New sub-section 1916, c. 15, s. 2: term of employment not continuous.
- Sec. 17.**—(4) New sub-section 1916, c. 15, s. 3: appointment of commissioner by municipal council.
- Sec. 17.**—(5) New sub-section 1917, c. 18, s. 4: successors to retiring members.
- Sec. 17.**—(6) (6a) New sub-sections 1918, c. 17, s. 1: removal of suburban commissioners.
- Sec. 19.**—(a) New sub-section 1917, c. 18, s. 5: procedure for payment: see also 1917, c. 18, s. 5: as to expropriation of land for right of way.
- Sec. 38.** Date fixed by proclamation for operation of Act, Jan. 18th, 1916.
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5 GEO. V. CHAP. 18.

THE TORONTO AND HAMILTON HIGHWAY COMMISSION ACT.

- Sec. 9.** Amended 1916, c. 16, s. 2: 1917, c. 19, s. 2; 1918, c. 18, s. 1.
- Sec. 9a.** New section 1917, c. 19, s. 3: amended 1918, c. 18, s. 2: entrance to city of Hamilton.
- Sec. 10.** Expropriation: see Re Toronto and Hamilton Highway Commission and Crabb, 37 O. L. R. 656.

- Sec. 11.**—(1) Amended 1916, c. 16, s. 3: 1917, c. 19, s. 4: 1918, c. 18, s. 3.
- Sec. 11.**—(4) Amended 1918, c. 18, s. 3.
- Sec. 11.**—(5) (6) New sub-sections 1918, c. 18, s. 4: determination of disputes by Railway Board.
- Sec. 12.** Amended 1917, c. 19, s. 5: 1918, c. 18, s. 5: 1918, c. 18, s. 6.
- Sec. 13.**—(2) Amended 1918, c. 18, s. 7.
- Sec. 16a.** New section 1917, c. 19, s. 6: appointment of Police Magistrate for this Act and the Motor Vehicles Act: amended 1918, c. 18, s. 8, includes offences under Ontario Temperance Act committed on highway.
- Sec. 17.**—(3) Repealed, new sub-section 1918, c. 18, s. 9.
- Sec. 17.**—(4) Repealed, new sub-section 1916, c. 16, s. 4: repealed, new sub-section 1918, c. 18, s. 9.
- Sec. 17.**—(4a) (4b) New sub-sections 1918, c. 18, s. 9: appointment of municipal constable.
- Sec. 17.**—(5) (6) (7) New sub-sections 1917, c. 19, s. 7: payment of constables.
- Sec. 17a.** New section 1917, c. 19, s. 8: guide and mile posts.
- Sec. 18.**—(9) (10) (11) (12) New sub-sections 1916, c. 16, s. 5: issue of bonds: amended 1918, c. 18, s. 10.
- Sec. 19.** Repealed, new section 1916, c. 16, s. 6: amended 1917, c. 19, s. 9: 1918, c. 18, s. 11.
- Sec. 20.** Repealed, new section 1916, c. 16, s. 6.
- Sec. 21.**—(1) Repealed, new sub-section 1918, c. 18, s. 12.
- Sec. 21.**—(2) Amended 1918, c. 18, s. 13.
- Sec. 22.**—(1a) New sub-section 1917, c. 19, s. 10: pathways and trees.

- Sec. 22.**—(2) (3) (4) Repealed, new sub-sections 1916, c. 16, s. 7.
- Sec. 22.**—(5) Amended 1918, c. 18, s. 14.
- Sec. 22a.** New section 1917, c. 19, s. 11: application of revenue from fines: amended 1918, c. 18, s. 15.
- Sec. 24.**—(1) Repealed, new sub-section 1916, c. 16, s. 8: amended 1918, c. 18, s. 16.
- Sec. 24.**—(2) Repealed, new sub-section 1918, c. 18, s. 17.
- Sec. 25.** New sections 25 to 30, 1916, c. 16, s. 9: confirming certain conveyances.
- Sec. 31.** New section 1918, c. 18, s. 18: certain agreements confirmed.

5 GEO. V. CHAP. 22.

THE MORTGAGORS AND PURCHASERS RELIEF ACT.

- Sec. 2.**—(1) (a) The statute calls for liberal interpretation and the case of a derivative mortgage falls within its provisions and proceedings upon a derivative mortgage were stayed at the instance of the mortgagees, the makers of the derivative mortgage: *Shepard & Rosevear & Moyes Ltd.*, 42 O. L. R. 184.
- Sec. 2.**—(2) Though the procedure is by originating notice according to the practice of the Supreme Court, this does not import the provisions of Rule 507 to the extent of giving a right of appeal: the Judge's discretion is absolute (sec. 5), and his order is final: *Re George and Lang*, 36 O. L. R. 382.
- Sec. 3.**—(2) New sub-section 1918, c. 26, s. 1: no principal money under mortgage made before the war shall be deemed to be in default so as to affect any provisions giving the right to ask for partial discharges: Judge may decide amount payable for obtaining such partial discharge.

- Sec. 4.**—(1) The effect of this section as amended was considered in *Appelbe v. Windsor Security Co.*, 40 O. L. R. 548, 41 O. L. R. 217.
- Sec. 4.**—(1) Amended 1916, c. 27, s. 1: the Act does not apply to any extension or renewal, made after the 4th day of August, 1914, of a mortgage made prior to that date, where such extension or renewal is for not less than three years and the rate of interest is not increased.
- Sec. 4.**—(3) Amended 1918, c. 26, s. 2: where money is paid into Court, the plaintiff may take it out of Court and tax his costs, as provided by the Rules: where the money is tendered the mortgagee is entitled to the costs already incurred.
The onus of showing that his claim comes within the exception as to interest, taxes, &c., lies upon the mortgagee: the exception only applies to interest contracted, in the ordinary manner, to be paid, and does not apply to interest accruing *de die in diem* under a special clause in the mortgage: *George v. Lang*, 36 O. L. R. 180.
- Sec. 5.**—(1) In his absolute discretion: see *Re George and Lang*, 36 O. L. R. 382: no appeal lies from the order of the Judge: *ibid.*
- Sec. 13a.** New section 1916, c. 27, s. 2: the Act applies where the lands in question are outside Ontario, or the mortgage or agreement is made outside Ontario.
- Sec. 14.** Operation of Act extended 1916, c. 27, s. 3: 1917, c. 27, s. 59: 1918, c. 26, s. 3.

5 GEO. V. CHAP. 23.

THE CHARITIES ACCOUNTING ACT.

- Sec. 6.**—(1) New clause 1916, c. 24, s. 50: powers of court as to appointment of trustee of charitable bequest.

See 1915, c. 20, s. 25: whereby the Treasurer of Ontario is authorized to accept gifts or bequests for the endowment of charitable and educational objects: see *Re Carter*, 42 O. L. R. 57.

5 GEO. V. CHAP. 25.

THE WORKMEN'S COMPENSATION INSURANCE ACT.

5 GEO. V. CHAP. 37.

CONFIRMING MUNICIPAL PATRIOTIC GRANTS.

- Sec. 1.**—(bb) New clause 1917, c. 41, s. 3: includes British Red Cross fund.
- Sec. 1.**—(bbb) New clause 1918, c. 34, s. 1: includes the Navy League.
- Sec. 1.**—(e) Amended 1917, c. 41, s. 1.
- Sec. 1.**—(f) Amended 1917, c. 41, s. 2.
- Sec. 1.**—(f) (g) Moneys appropriated under these clauses are not liable to attachment: 1917, c. 41, s. 7.
- Sec. 1.**—(i) New clause 1916, c. 40, s. 1: providing barrack accommodation.
- Sec. 1.**—(j) New clause 1916, c. 40, s. 1: assisting recruiting.
- Sec. 1.**—(k) New clause 1916, c. 40, s. 1: providing band instruments.
- Sec. 1.**—(l) New clause 1916, c. 40, s. 1: providing machine guns.
- Sec. 1.**—(m) New clause 1916, c. 40, s. 1: repealed, new clause, 1917, c. 41, s. 4: amended, 1918, c. 34, s. 2: fund for aiding dependants.

- Sec. 1.—(n)** New clause 1917, c. 41, s. 5: grants to returned soldiers.
- Sec. 1.—(o)** New clause 1918, c. 34, s. 3: Y.M.C.A. grants.
- Sec. 1.—(2)** New sub-section 1917, c. 41, s. 6: expenditures for certain purposes, 1918, c. 34, s. 4.
- Sec. 1a.** New section 1916, c. 40, s. 2: definition of rateable property on which special rates shall be levied.
- Sec. 2.—(1)** Amended 1916, c. 40, s. 3: debentures may be for 20 years.
- Sec. 6a.** New section 1918, c. 34, s. 5: assignment of policy by corporation insured.

5 GEO. V. CHAP. 41.

THE FIRE ACCIDENT ACT.

6 GEO. V. CHAP. 3.

THE SOLDIERS' AID COMMISSION ACT.

- Sec. 7a.** New section 1917, c. 27, s. 60: commission authorized to administer gifts, devises and bequests, and providing for cases where a bequest would otherwise be void for uncertainty.
- Sec. 7b.** New section 1917, c. 27, s. 60: commission may acquire lands for cemetery purposes.

6 GEO. V. CHAP. 4.

THE ORGANIZATION OF RESOURCES ACT.

- Sec. 2.** Amended 1917, c. 27, s. 61: as to objects of committee.

- Sec. 6.**—(2) (3) (4) New sub-sections 1917, c. 27, s. 62: authorizing payment of honorarium and expenses.
- Sec. 9.** New section 1917, c. 27, s. 63: executive committee.
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6 GEO. V. CHAP. 9.

THE AMUSEMENT TAX ACT.

- Sec. 4.** Amended 1917, c. 27, s. 64.
- Sec. 8.**—(2) New sub-section 1918, c. 20, s. 54: penalty.
- Sec. 10.** Amended 1917, c. 27, s. 65.
- Sec. 12.** New section 1918, c. 20, s. 55: as to declarations and affidavits.
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6 GEO. V. CHAP. 13.

THE TRADES AND LABOR BRANCH ACT.

- Sec. 9.** Amended 1917, c. 15, s. 1: includes the administration of the Employment Agencies Act, 7 Geo. V. c. 37.
- Sec. 10.**—(d) Amended 1917, c. 15, s. 2: as to employment agencies.
- Sec. 11.** New section 1917, c. 15, s. 3: amended 1918, c. 20, s. 56: powers of superintendent to obtain information and conduct investigation.
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6 GEO. V. CHAP. 20.

THE ONTARIO NIAGARA DEVELOPMENT ACT.

- Sec. 7.** The Legislature having expressly stated that the Hydro-Electric Power Commission, in discretion of the Lieutenant-Governor in Council, may do certain things which shall not be deemed to contra-

vene the covenants in the Park Commissioner agreement, it is not possible for the Court to control or direct such discretion: *Electric Development Co. of Ontario v. Att'y-General for Ontario and the Hydro-Electric Power Commission*, 38 O. L. R. 383.

6 GEO. V. CHAP. 21.

THE WATER POWERS REGULATION ACT.

- Sec. 6a.** New section 1918, c. 20, s. 57: inspectors' remedy when obstructed, etc.
- Sec. 13.** New section 1917, c. 22, s. 2: appointment of commission when inspector reports owner is exceeding his rights as to development.

6 GEO. V. CHAP. 29.

THE EXECUTION OF TRUSTS ACT.

6 GEO. V. CHAP. 49.

THE LOAD OF VEHICLES ACT.

6 GEO. V. CHAP. 50.

THE ONTARIO TEMPERANCE ACT.

It is not incompetent for a Provincial legislature to pass an Act for repression or even total abolition of the traffic in intoxicating liquors within the province, provided the subject is dealt with as a matter of a merely local nature, and the Act is not repugnant to any Act of the Parliament of Canada: In any conflict between Dominion and Provincial legislation in a field open to both, the former must

prevail: where the Canada Temperance Act is in force the provincial prohibitions are inoperative: *Rex v. Thorburn*, 41 O. L. R. 39.

- Sec. 2.—(e)** Amended 1917, c. 50, s. 2: licensee means a person holding a license under the Act for sale of liquor.
See *Rex v. Boileau*, 38 O. L. R. 607.
- Sec. 2.—(ee)** New clause, 1917, c. 50, s. 2: defining "license".
- Sec. 2.—(f)** "Conclusively deemed to be intoxicating": see *Rex v. Axler*, 40 O. L. R. 304.
Amended 1917, c. 50, s. 3.
- Sec. 2.—(g)** Amended 1917, c. 50, s. 4.
- Sec. 2.—(i)** Amended 1917, c. 50, s. 5: includes boarders and lodgers: 1918, c. 40, s. 3, defining private dwelling house where ground floor is used as a shop: 1918, c. 40, s. 2, defining dwelling house in apartment block.
A private dwelling, which is part only of a building, another part of which is used as a shop, is not a "private dwelling house" within s. 41 (1): *Rex v. Purdy*, 41 O. L. R. 49.
A duplex house, two dwellings under one roof, an upper flat and a lower flat, is not a "house or building the rooms or compartments in which are leased to different persons," and is therefore a private dwelling house where liquor may be kept: *Rex v. Carswell*, 42 O. L. R. 34.
A railway car in which railway employees live, sometimes used as a means of transportation, is not a private dwelling house within the meaning of the section: *Rex v. Gulex*, 39 O. L. R. 539.
- Sec. 7.** Amended 1917, c. 50, s. 6.
- Sec. 14.** Amended 1917, c. 50, s. 7.
- Sec. 35.—(1)** Amended 1917, c. 50, s. 8: includes other liquor.
- Sec. 38.** Amended 1917, c. 50, s. 9.

Sec. 40. As to presumption under s. 67 that the liquor is kept for sale: liquor owned by defendant found upon premises of another where it has been placed with privity of that other was held to be "kept" by the defendant: *Rex v. Riddell*, 38 O. L. R. 222. Evidence of attempt to conceal liquor is not irrelevant on a charge laid under this section, distinguishing *Rex v. Melvin*, 38 O. L. R. 231; *Rex v. Lake*, 38 O. L. R. 262. Sufficiency of evidence: *Rex v. Grassi*, 40 O. L. R. 359.

Sec. 41. An Indian, beyond the limits of a reserve, is subject to provincial legislation and may therefore be convicted for an offence under this Act: *Rex v. Martin*, 41 O. L. R. 79.

Sec. 41.—(1) Upon a charge under this section, evidence that defendant and other men were seen leaving the premises in a state of intoxication is irrelevant and inadmissible: *Rex v. Melvin*, 38 O. L. R. 231. As to whether possession of small quantity left in an old receptacle is keeping liquor in the sense implied by the statute: *Rex v. Toyne*, 38 O. L. R. 224. "Private dwelling house": see *Rex v. Purdy*, 41 O. L. R. 49.

A railway car in which railway employees live, sometimes used as a means of transportation, is not a private dwelling house within the meaning of the section: *Rex v. Gulex*, 39 O. L. R. 539.

Cellar of apartment house used by occupant of suite of rooms held to form part of a "private dwelling house": *Rex v. Obernesser*, 40 O. L. R. 264.

A duplex house, two dwellings under one roof, an upper flat and a lower flat, is a "private dwelling house": *Rex v. Carswell*, 42 O. L. R. 34.

"Keep liquor in any place wheresoever": see 1918, c. 40, s. 30. Nothing in the Act shall be deemed to prevent the owner of liquor in his private capacity within the province transporting the same or any part thereof, from any place where the same may be lawfully kept to any other premises or place where the same may be lawfully kept, and which

such owner controls within the province, provided that the ownership in such liquor remains unchanged.

- Sec. 41.—(1a)** New sub-section 1917, c. 50, s. 10: person drinking liquor in a place where it cannot lawfully be kept contravenes the section.
- Sec. 41.—(3)** Amended 1917, c. 50, s. 11: includes other liquor.
- Sec. 41.—(3a)** New sub-section 1917, c. 50, s. 11: purchase of alcohol for university, etc.
- Sec. 41.—(3b)** New sub-section 1917, c. 50, s. 11: liquor in room of sick person.
- Sec. 41.—(4)** Amended 1917, c. 50, s. 12: includes certain institutions.
- Sec. 41.—(4a)** New sub-section 1917, c. 50, s. 13: keeping liquor for first aid in factories.
- Sec. 42.** It is immaterial whether the person receiving the order transmits it to another province to be filled up, or makes no use of it: his offence is complete when he receives the order: he is personally liable even if, in receiving the order, he is acting as agent for a company or person out of Ontario: the sending of the order to another province does not undo the previous act, the receiving of the order: and the transaction is not saved by s. 139: *Rex v. McEvoy*, 38 O. L. R. 202.
The true meaning of the section, read with s. 139, is to prohibit all canvassing and soliciting of orders for liquor within the province, no matter whence the liquor is to come: a conviction for receiving an order contrary to this section was upheld, notwithstanding a signed document giving the dealing the appearance of a transaction in liquor through the purchaser's agent for a vendor abroad: *Rex v. Toyne*, 38 O. L. R. 224.
- Sec. 42.** As to receiving order for liquor: see *Rex v. Thompson*, 39 O. L. R. 108.

Soliciting orders: distribution of circulars, containing price list, form of order, etc.: see *Rex v. Lynch-Staunton*, 41 O. L. R. 317.

Sec. 43. Amended 1917, c. 50, s. 14.

Under this section as amended it was held that whether the defendant is bona fide carrying or conveying the liquor from a place where lawfully kept to another place where it may be lawfully kept is entirely a question of fact for the magistrate: *Rex v. Tugman*, 40 O. L. R. 349.

As to effect of Dominion legislation: see 1918, c. 40, s. 30.

Sec. 45. Amended 1917, c. 50, s. 15.

As to effect of Dominion legislation: see 1918, c. 40, s. 30.

Sec. 45.—(a) New clause 1917, c. 50, s. 15.

Sec. 46. As to effect of Dominion legislation: see 1918, c. 40, s. 30.

Sec. 48.—(a) New clause 1917, c. 50, s. 16: record of sales by brewers.

Sec. 48a. New section 1918, c. 40, s. 10: entry of deferred delivery sales in books of dealer.

Sec. 49. The section applies to a carrier: absence of direct proof of sale: proper inferences: see *Rex v. McEwan*, 41 O. L. R. 324.

Sec. 50.—(3) Amended 1917, c. 50, s. 17.

Sec. 51.—(1) Amended 1917, c. 50, s. 18: prescription must be in form given in schedule E. 1.

Sec. 51.—(1) (b) (c) New clauses 1918, c. 40, s. 11: prescription must certify that the quantity is the minimum necessary for the patient.

Sec. 51.—(1) 261 orders or prescriptions in one month, while raising suspicions as to good faith, held not to be proof of a violation: *Rex v. MacLaren*, 39 O. L. R. 416.

There is an evasion or violation of the Act where a physician gives a prescription when he does not deem intoxicating liquor necessary for the health of the patient: the physician is the judge in the first instance, and if he deems liquor necessary there is no offence: *Rex v. MacLaren*, 39 O. L. R. 416.

Semble, it is not necessary to the validity of the conviction that it should disclose in what manner the Act was evaded or violated: *Rex v. MacLaren*, 39 O. L. R. 416.

Under the section as amended by 1917, c. 50, s. 18: it was held that evidence showing issue of a large number of prescriptions is admissible, the question of motive being involved: *Rex v. Welford*, 42 O. L. R. 359.

- Sec. 51a.** New section 1918, c. 40, s. 12: medical practitioner may have ten gallons of liquor in his office or dwelling.
- Sec. 52.** Amended 1918, c. 40, s. 13.
- Sec. 53.—(4)** Amended 1917, c. 50, s. 19.
- Sec. 55.—(4)** New sub-section, 1918, c. 40, s. 14: intoxicated person found drinking in public place may be arrested without a warrant.
- Sec. 55a.** New section 1917, c. 50, s. 20: covering restrictions of sale to inebriates: this is an adaptation of the provisions and procedure formerly obtaining under the Liquor License Act, restricting the possession and consumption of intoxicating liquor by persons addicted to the habit: amended 1918, c. 40, s. 6.
- Sec. 55a.—(1) (2)** Amended 1918, c. 40, s. 6: prohibited persons cannot purchase, procure or attempt to procure liquor.
- Sec. 55a.—(5a) (5b)** New sub-sections 1918, c. 40, s. 4: setting aside order forbidding sale to inebriate.
- Sec. 55a.—(7)** Amended 1918, c. 40, s. 7: changing form of notice.

Sec. 55a.—(10) Amended 1918, c. 40, s. 8: penalty is as provided by s. 58.

Sec. 55a.—(13) New sub-section 1918, c. 40, s. 5: dwelling house in which prohibited person resides not to be deemed a private dwelling house.

Sec. 58. Amended 1917, c. 50, s. 21.

If the fine or penalty is remitted under R. S. O. ch. 99, the conviction is annulled: see 1917, c. 50, s. 55.

Imprisonment may include hard labour: see Interpretation Act, R. S. O. c. 1, s. 25; and *Rex v. Martin*, 40 O. L. R. 270, 13 O. W. N. 187.

Discretion of magistrate as to penalty: a magistrate should not increase severity of sentence because he considers defendant to be guilty of some other offence with which he has not been charged: penalty reduced on motion to quash: *Rex v. Harris*, 41 O. L. R. 366.

Sec. 61.—(3) Licensee means licensed to sell liquor and does not include keeper of a standard hotel: a conviction by a single justice of the keeper of a standard hotel for having liquor for sale was therefore quashed: *Rex v. Boileau*, 38 O. L. R. 607.

Sec. 65. Amended 1918, c. 40, s. 15.

Sec. 66.—(1) Amended 1917, c. 50, s. 22: extending the provisions of right of search of places where liquor is reputed to be kept in contravention of the Act.

Sec. 67. Amended 1917, c. 50, s. 23: extended to cover other cases where liquor is kept contrary to the Act.

The statutory presumption that liquor found under a search warrant is kept for sale is against the owner of the premises, and a conviction of the owner of the liquor, who was not owner of the premises where found, made by a magistrate under s. 40, was quashed, there being no other evidence that it was kept for sale: *Rex v. Riddell*, 38 O. L. R. 222.

Sec. 68.—(1) Amended 1917, c. 50, s. 24.

- Sec. 69.** Amended 1917, c. 50, s. 25.
- Sec. 70.—(1)** Amended 1917, c. 50, s. 26.
- Sec. 70.—(2)** Amended 1917, c. 50, s. 26.
- Sec. 70.—(6)** Amended 1917, c. 50, s. 26.
- Sec. 70.—(7)** Amended 1917, c. 50, s. 26.
- Sec. 70.—(8)** Amended 1917, c. 50, s. 26.
- Sec. 70.—(9)** The provisions of the section have no application to prosecutions under s. 40 (keeping liquor for sale), or any of the general provisions of the Act: the section is confined to the seizure of the liquor in transit: *Rex v. LeClair*, 39 O. L. R. 436.
- Sec. 70.—(10)** New sub-section 1918, c. 40, s. 16: accepting delivery of liquor unlawfully.
- Sec. 70a.** New section 1917, c. 50, s. 27: record of shipments to be kept by common carriers.
New section (also numbered 70a) 1918, c. 40, s. 16: proclamation forbidding possession of liquor in certain area.
- Sec. 72.** While this section makes applicable the Summary Convictions Act, R. S. O. c. 90, and s. 10 of that Act under certain conditions prohibits certiorari, s. 10 is itself excluded by the provisions of s. 92, s.-s. (1) in cases falling within that sub-section: *Rex v. Thompson*, 39 O. L. R. 108.
- Sec. 73.** Amended 1917, c. 50, s. 28: other magistrates may sit at the request of the first police magistrate.
- Sec. 74.** Failure to cause the depositions to be read over and signed by the witnesses does not invalidate a conviction: at all events unless it is shewn that the defendant is in some way prejudiced thereby: *Rex v. Tugman*, 40 O. L. R. 349.
- Sec. 76.** Amended 1917, c. 50, s. 29: the offence may be charged under the alternative where the alternative is referred to in the same section.

- Sec. 84.**—(2) New sub-section 1917, c. 50, s. 30: the actual offender personally incurs the penalty and may be prosecuted jointly with, or separately from the occupant, but both of them cannot be convicted of the same offence, and the conviction of one is a bar to the conviction of the other.
- Sec. 88.** Once possession of intoxicating liquor is proved, a conviction may follow if the accused cannot satisfy the magistrate that he is not guilty of offence with which he is charged, i.e., an offence against some provision of the Act; the magistrate's decision cannot be reviewed upon a motion to quash: *Rex v. LeClair*, 39 O. L. R. 436.
Where defendant was charged under s. 41, and it was proved that a quantity of liquor was delivered to him, it was held that the onus was cast upon him of showing what he had done with it, being the "liquor concerning which he was being prosecuted": *Rex v. Moore*, 41 O. L. R. 372.
Onus on the defendant: *Rex v. Axler*, 40 O. L. R. 304; *Rex v. Tugman*, 40 O. L. R. 349.
- Sec. 92.**—(1) In *Rex v. Thompson*, 39 O. L. R. 108, it was held (Masten, J.) that there was no statutory prohibition against certiorari in cases coming within this sub-section; notwithstanding that s. 72 imports the provisions of the Summary Convictions Act (R. S. O. c. 90), and that s. 10 of that Act under certain conditions takes away the right to certiorari, yet s. 10 itself is excluded by this sub-section.
- Sec. 92.**—(2) Amended 1917, c. 50, s. 31: licensee in this section includes the holder of a standard hotel license: 1918, c. 40, s. 17: procedure on appeals.
In cases falling within this sub-section the provisions of s. 10, s.-s. (3) of the Summary Convictions Act (R. S. O. c. 90), which are made applicable by s. 72 of this Act, take away the right to certiorari: *Rex v. Warne Drug Co., Ltd.*, 40 O. L. R. 469: q.v. for opinion of Masten, J., who considered himself bound by *Rex v. Cantin*, 39 O. L. R. 20, and *Rex v. Chappus*, 39 O. L. R. 329.

- Sec. 92.**—(6) Amended 1918, c. 40, s. 18.
- Sec. 95.** As to how far the section curtails the general right of appeal in habeas corpus proceedings, R. S. O. 1914, c. 84, s. 8, see *Rex v. Martin*, 41 O. L. R. 79.
- Sec. 96.** A conviction as for a second offence is not necessarily void by reason of the magistrate's admitting in evidence the former conviction before making any finding of guilt upon the second offence, provided it appears that no injustice is done to the accused: *Rex v. McDevitt*, 39 O. L. R. 138.
- Sec. 96.**—(a) As to contravention of section by inquiry by magistrate into previous conviction before disposing of the second offence charged: see *Rex v. Hanley*, 41 O. L. R. 177.
- Sec. 96.**—(d) Amended 1917, c. 50, s. 32: where the first offence is covered by s. 59, a conviction for a subsequent offence mentioned in s. 59 is to be deemed a conviction for a second offence.
- Sec. 102.**—(2) New sub-section 1917, c. 50, s. 33: notice of motion to quash the conviction must be served within 30 days from date of conviction or order.
- Sec. 102a.** New section 1918, c. 40, s. 19: remitting case for rehearing on ground of exclusion of evidence.
- Sec. 105.** Amended 1918, c. 40, s. 20.
- Sec. 110.**—(2) Amended 1917, c. 50, s. 34: penalty goes to the local municipality.
- Sec. 116.** Repealed, new section 1918, c. 40, s. 21.
- Sec. 118.**—(1) Amended 1918, c. 40, s. 22.
- Sec. 118.**—(6) New sub-section 1917, c. 50, s. 35: as to proof of regulation or order of the board of license commissioners.
- Sec. 118.**—(7) New sub-section 1917, c. 50, s. 35: the license board may take evidence under oath in determining any matter.

- Sec. 119.**—(2) Amended 1917, c. 50, s. 36: includes provincial officers and provides form of oath.
- Sec. 120.** Amended 1917, c. 50, s. 37: none of the penalty goes to the officers appointed by councils.
- Sec. 120a.** New section 1917, c. 50, s. 38: the provisions of the Act prevail over by-laws inconsistent therewith.
- Sec. 121.**—(1) (2) (3) (4) Amended 1917, c. 50, s. 39.
- Sec. 122.** Amended 1917, c. 50, s. 40, 1918, c. 40, s. 23 (as originally enacted the section apparently provided for the seizure and removal of the manufacturer).
- Sec. 123.**—(a) Repealed, new clause 1917, c. 50, s. 41: alcohol is as defined by the British pharmacopoeia.
- Sec. 124.** Amended 1918, c. 40, s. 24.
- Sec. 125.** Amended 1918, c. 40, s. 25.
Sale by grocer of "Hall's wine" containing 31.33 per cent. proof spirits: see *Rex v. Axler*, 40 O. L. R. 304. The Dominion Proprietary or Patent Medicine Act, 7 and 8 Edw. VII. 56, which is a statute regulating the sale of patent medicines and making it an offence to sell an alcoholic beverage as a medicine, does not license or sanction the sale of alcoholic patent medicines even when medicated: its operation does not in any way restrict the specific prohibition of the Ontario Statute (see 7 Geo. V. and 8 Geo. V. (Dom.) c. 30, s. 4 D.): *Rex v. Axler*, 40 O. L. R. 304.
- Sec. 125a.** New section 1918, c. 40, s. 26: sale of essences, tinctures, and flavoring extracts.
- Sec. 126.** Repealed, new section 1918, c. 40, s. 27.
- Sec. 128.**—(1) Amended 1917, c. 50, s. 42.
- Sec. 128.**—(1) (a) New clause 1917, c. 50, s. 42: dentist's right to keep ethylic alcohol.

- Sec. 128.**—(2) Amended 1917, c. 50, s. 43: changes penalties to those provided by sec. 59.
- Sec. 128.**—(4) Amended 1918, c. 40, s. 28.
- Sec. 128.**—(6) Amended 1917, c. 50, s. 43.
- Sec. 129.** Amended 1917, c. 50, s. 44: the mixture must contain sufficient medication to prevent its use as an alcoholic beverage.
- Sec. 130.**—(2) Amended 1917, c. 50, s. 45.
- Sec. 131.** Amended 1917, c. 50, s. 46: 1918, c. 40, s. 9.
- Sec. 139.** Canvassing or soliciting is not a "transaction in liquor": it is a separate act from which a transaction may result, and as such is not necessarily protected by this section: *Rex v. Toyne*, 38 O. L. R. 224.
As to power of License Board to regulate solicitation for orders: see 1917, c. 50, s. 53.
- Sec. 145.** Amended 1917, c. 50, s. 47.
As to effect of Dominion legislation, see 1918, c. 40, s. 30.
As to effect of section, *Rex v. McEvoy*, 38 O. L. R. 202.
- Sec. 146.**—(1) Amended 1917, c. 50, s. 48: the license shall be deemed to be a license to the person, and for the premises therein described.
- Sec. 146.**—(6) Amended 1918, c. 40, s. 31.
- Sec. 147.**—(2) Amended 1917, c. 50, s. 49; proceedings for taking a vote to be fixed by proclamation.
- Sec. 147.**—(4) Amended 1917, c. 50, s. 49.
- Sec. 148.**—(2) New sub-section 1917, c. 50, s. 50: conditionally extends sub-section (1) to 1917: further extended for 1918, see 1918, c. 40, s. 33.
- Sec. 148.**—(3) New sub-section 1917, c. 50, s. 50: exemption of standard hotels from business tax for 1917, 1918, and 1919.

Sched. E.—(1) New schedule 1917, c. 50, s. 18, providing general form of prescription for liquor by medical practitioner.

As to power of municipalities to grant certain exclusive rights to standard hotels: see 1917, c. 50, s. 51.

As to consent of Board of License Commissioners to actions or proceedings (1) respecting formerly licensed premises, see 1917, c. 50, s. 52, amended 1918, c. 40, s. 13, (2) respecting certain contracts for hops, see 1917, c. 50, s. 54.

As to power of License Board to regulate solicitation for liquor orders, see 1917, c. 50, s. 53.

As to cancellation of conviction where fine remitted, see 1917, c. 50, s. 55.

6 GEO. V. CHAP. 52.

THE DAIRY STANDARDS ACT.

Sec. 10. Repealed, new section 1917, c. 52, s. 1: operation of Act postponed until proclamation of Lieutenant-Governor in Council; no such proclamation has been issued prior to this date, Oct. 15th, 1918.

6 GEO. V. CHAP. 54.

THE JUVENILE COURTS ACT.

6 GEO. V. CHAP. 62.

THE ADOLESCENT SCHOOL ATTENDANCE ACT.

7 GEO. V. CHAP. 4.

TO AMEND THE ONTARIO VOTERS LISTS' ACT.

Sec. 10. Date of operation of Act fixed by proclamation, May 12th, 1918.

7 GEO. V. CHAP. 5.

THE ONTARIO FRANCHISE ACT.

- Sec. 1.** Date of operation of Act fixed by proclamation,
May 12th, 1917.
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7 GEO. V. CHAP. 6.

THE ELECTION LAW AMENDMENT ACT 1917.

- Sec. 19.** Date of operation of Act fixed by proclamation,
May 12th, 1917.
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7 GEO. V. CHAP. 14.

THE BUREAU OF MUNICIPAL AFFAIRS ACT.

7 GEO. V. CHAP. 16.

THE PROVINCIAL HIGHWAY ACT.

7 GEO. V. CHAP. 25.

THE FARM LOANS ACT.

- Sec. 17.** No proclamation bringing the Act into force has
been issued prior to this date, Oct. 15th, 1918.
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7 GEO. V. CHAP. 32.

THE FORT WILLIAM LAND TITLES AND REGISTRY OFFICE
ACT, 1917.

- Sec. 3.** Date fixed by proclamation, July 2nd, 1917.

7 GEO. V. CHAP. 33.

THE BULK SALES ACT.

Sec. 11. Amended as to commencement of Act: 1918, c. 20, s. 60.

7 GEO. V. CHAP. 37.

THE EMPLOYMENT AGENCIES ACT.

7 GEO. V. CHAP. 44.

THE PLANNING AND DEVELOPMENT ACT.

Repealed by 8 Geo. V. c. 38.

7 GEO. V. CHAP. 54.

THE FOREST FIRES PREVENTION ACT.

Sec. 6a. New section 1918, c. 45, s. 2: arrangements with owner for additional fire protection.

7 GEO. V. CHAP. 58.

THE TEACHERS AND INSPECTORS SUPERANNUATION ACT.

Sec. 4.—(2) New sub-section 1918, c. 51, s. 6: contributions to superannuation fund.

Sec. 8.—(2a) New sub-section 1918, c. 51, s. 7: payment to superannuation fund by persons serving in war.

Sec. 9. Repealed, new section 1918, c. 51, s. 8.

Sec. 11.—(4) Amended 1918, c. 51, s. 9.

246 7 GEO. V. CHAPS. 58, 63. 8 GEO. V. CHAPS. 3, 5, 7, 11.

Sec. 16a. New section 1918, c. 51, s. 10: gifts and bequests to fund.

Sec. 17.—(bb) New clause 1918, c. 51, s. 11: defining temporary employment.

7 GEO. V. CHAP. 63.

THE ONTARIO PAROLE ACT.

8 GEO. V. CHAP. 3.

THE ONTARIO ELECTION ACT 1918.

To be read and construed with the Ontario Election Act, R. S. O. c. 8.

8 GEO. V. CHAP. 5.

THE ONTARIO PUBLIC SERVICE ACT 1918.

To be read with and as part of the Ontario Public Service Act, R. S. O. c. 14.

Sec. 13. The Act came into force by proclamation, on Sept. 5th, 1918.

8 Geo. V. CHAP. 7.

THE GENERAL PURCHASING AGENT'S ACT.

Sec. 8. No proclamation bringing the Act into force has been issued prior to this date, Oct. 15th, 1918.

8 GEO. V. CHAP. 11.

THE INDUSTRIAL AND MINING LANDS COMPENSATION ACT
1918.

8 GEO. V. CHAP. 12.

THE NATURAL GAS ACT 1918.

8 GEO. V. CHAP. 13.

THE FUEL SUPPLY ACT 1918.

8 GEO. V. CHAP. 19.

THE AGRICULTURAL REPRESENTATIVES ACT.

8 GEO. V. CHAP. 31.

THE ONTARIO TELEPHONE ACT 1918.

Consolidating R. S. O. 1914, c. 188: 4 Geo. V. c. 32:
5 Geo. V. c. 33: 6 Geo. V. c. 38; and 7 Geo. V. c. 40.

Sec. 75. As to liability of municipality for improper erection of poles, wires, etc.: *Magill v. Township of Moore*, 41 O. L. R. 375.

8 GEO. V. CHAP. 33.

THE RAILWAY EMPLOYEES' VOTING ACT.

8 GEO. V. CHAP. 38.

THE PLANNING AND DEVELOPMENT ACT 1918.

8 GEO. V. CHAP. 39.

THE VACANT LAND CULTIVATION ACT.

Authorizing cities, towns, and villages to pass by-laws for entering upon and using, for cultivation only, vacant lands during the present war, without compensation to the owner.

8 GEO. V. CHAP. 42.

THE VENEREAL DISEASES PREVENTION ACT.

8 GEO. V. CHAP. 46.

THE DOG TAX AND SHEEP PROTECTION ACT.

8 GEO. V. CHAP. 49.

THE FISH SALES ACT 1918.

8 GEO. V. CHAP. 50.

THE BIRDS PROTECTION ACT.

