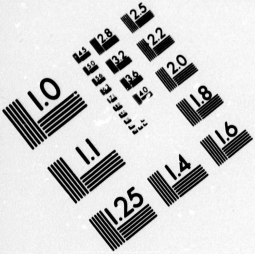

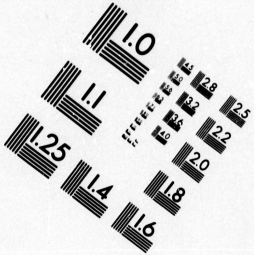

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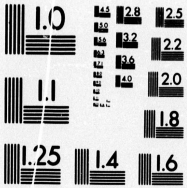

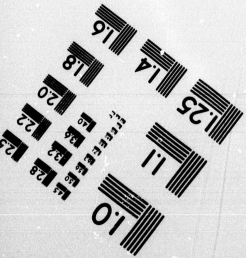

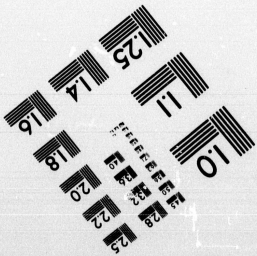

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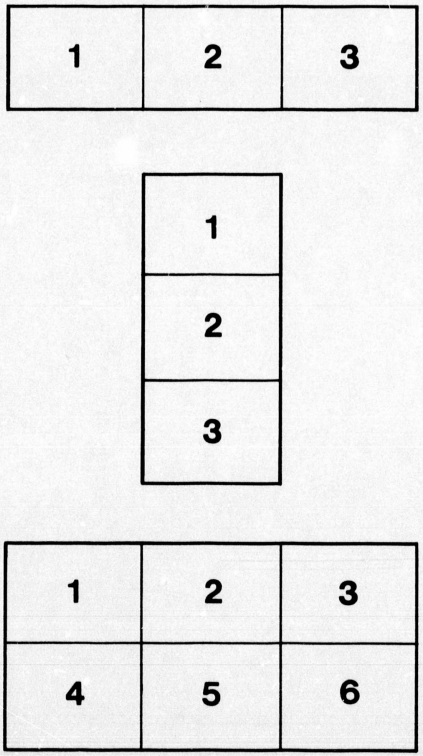


A COLLECTION

OF

LEGAL OPINIONS,

COMPRISING
UPWARDS OF ONE HUNDRED AND
THIRTY LEADING OPINIONS
ON CASES SUBMITTED

TO THE LATE

HON. J. HILLYARD CAMERON, Q.C.

COMPILED BY

W. A. ORR,

(STUDENT-AT-LAW.)

R. CARSWELL,
26 & 28 ADELAIDE STREET, TORONTO.

1878.

PREFACE.

This publication is prepared from copies of cases submitted, and opinions given thereon, during a long course of extensive counsel practice, and is now presented to the profession, who usually are unable to derive any benefit from such resources, with the hope that considerable information and advantage, in both study and practice, may be gained from the perusal of the opinions of one who for so many years stood at the head of the Bar in Ontario.

The compiler wishes to express his thanks to the Administrator of Mr. Cameron's estate for his permission to use the materials from which this work is prepared.

W. A. O.

Toronto, April 25th, 1878.

STATUTES REFERRED TO.

STATUTES REFERRED TO.

INDEX.

OPINIONS

OF THE

HON. J. H. CAMERON.

PETITIONS TO COUNCIL.

CASE.—

On the 16th July, 1858, the Council passed By-law No. 15, dividing the township into wards, under which by-law the Councillors for the year 1859 were elected.

According to the assessment roll the number of resident ratepayers in the township is four hundred and eighteen. On the 29th of August last the Council received the petition of D. B. and two hundred and thirty-two others, praying for a re-division of the township in manner herein set forth. This petition (No. 1) contains the signatures of a majority of twenty-four of the ratepayers of the township: the reception and reading of the same were duly recorded in the minute book. The members of the Council who were favorable to the proposed division were enabled to secure a meeting of the Council, to take place before the expiration of a month from the date of the reception of the petition, intending thereat to pass a by-law to establish the division prayed for, in compliance with the prayer of the petition and in accordance with the 22nd Vic. chap. 29. The Council met accordingly on the 24th of the present month (September), when another petition (No. 2) was laid before the Council, praying that the division into wards under By-law No. 15 might be totally abolished by the repeal of said by-law. This petition contains two hundred and fifty-one signatures, being a majority of forty-two, or, in other words, it is signed by eighteen more qualified electors than the first petition. This second petition has been signed by many who signed the first.

It is the desire of the Council that you should state your opinion fully, not only as to which of the two petitions should be first entertained, but whether one being acted upon, the other should afterwards be complied with, and if so, at what time, and also as to what should be the future course of the Council in regard to the petitions.

OPINION.—

As there are two petitions before the Council, it is in their power to take up either of them, but as the last presented is the most numerously signed, I consider that that petition should be first considered, and on its consideration the whole subject may be disposed of. If *four* members of the Council agree either to abolish the wards altogether, or to re-cast them, they may pass a by-law at once to take effect on the 1st December next if it shall have been previously published for a month in some newspaper in the county or by printed hand bills put up in twenty public places in the township; but if only *three* members concur, then a vote must be taken according to the provisions of the sub-sections of 22 Vic. ch. 99, § 267

My advice to the Council is to comply with the petition of the majorty of the ratepayers, and abolish the division into wards by a by-law, and it would probably be advisable that only three members should vote for such by-law in order that it may be submitted to the ratepayers, and their vote taken upon it before the next annual municipal election.

J. HILLYARD CAMERON.

4th Oct., 1859.

BANKRUPTCY.

OPINION.—

On a careful consideration of the statute 19 & 20 Vic. ch. 93, I am of opinion that any certificate given under that statute to any person having been a trader in Upper Canada within the meaning of the Bankrupt Act, is an absolute discharge of all debts or liabilities due or contracted up to the time of the presentment of the petition, and I am not aware of any decision of any of the Superior Courts to the contrary.

J. HILLYARD CAMERON.

4th Oct., 1859.

ROAD ALLOWANCES.

CASE.—

1. In the month of September, 1858, the Council of the Corporation of the Township of Torbolton passed a by-law authorizing the making of a new road across the second concession, running in a right line from post to post between lots 20 and 21, without reference to any governing line, and of course leaving the original road allowance and running partially through lots 20 and 21.

This road was opened up, and also another at the same lots, on the first concession, and running in the same way from post to post.

The road on the 1st concession was made with the consent of the parties whose lands were affected by it.

The road on the west side of the second concession was made with the consent of the owner of the lot through which it passed, on condition of his getting the original road allowance, which offer was accepted 18th December, 1858. With the regard to the half of the road on the east side of the concession, arbitrators were appointed under the old Municipal Act, but no bond executed.

2. An award was made, and the amount awarded has been paid.

By the new Municipal Act 22 Vic. cap. 99, sec. 300, which came into force 1st December, 1859, it is enacted that "all allowances for roads made by the Crown Surveyors in any town, township or place already laid out, &c., shall be deemed common and public highways." And by sec. 322 of said Act it is further enacted "that every public road, street, bridge, or other highway in a city, township, &c., shall be vested in the municipality."

By the Act 22 Vic. cap. 84, assented to on the 4th of May, 1854, and which from the preamble appears to have been passed in consequence of the petition of the inhabitants of the township of Torbolton, it is enacted that for and notwithstanding anything to the contrary, in the 35th, 36th, and 37th sections of the Act passed in the 12th year of Her Majesty's reign, cap 35, "All the side lines between lots in "the said Township of Torbolton shall be so drawn that

" the *side line between any contiguous lots in any concession*
" of the said township shall be a line drawn from the post
" at one *end* of the concession to the post planted at the
" same side of the lot bearing the same number at the other
" *end* of the concession, and any line so drawn shall be
" deemed to be the true side line of the lots between which
" it shall be drawn."

As the Council wishes to avoid all unnecessary responsibility, and to prevent in as far as possible any disputes as to the original road allowance left useless by the roads before mentioned, and also to prevent any disputes between the inhabitants themselves as to side lines, they request answers to the following questions:

1. Does the Act 22 Vic. cap. 84, make it imperative that all side lines between contiguous lots shall be drawn from post to post, or does it apply only to those which remained to be drawn at the date of the Act, leaving all lines legally drawn by a licensed surveyor under 12 Vic. cap. 35 still untouched?

2. As road allowances made by Crown Surveyors in any township are by 22 Vic. cap. 99 sects. 300 and 302, constituted public highways, and declared to be vested in the municipality, can 22 Vic. cap. 84, which does not even mention the 22 Vic. cap. 99, or make any allusion to roads or road allowances in any way alter the lines bounding original road allowances?

3. Can lots separated by an original road allowance be contiguous lots so as to be affected by 22 Vic. cap 84?

4. Can a line betwixt a lot an original road allowance be deemed a line between lots?

5 If the 22 Vic. cap. 84 be held to apply to original road allowances and to lots separated by original road allowances, did the running of the side lines at lots 20 and 21, 2nd concession, constitute such a running of lines as would take them from under the said Act if it be held that it only applies to lines undrawn when it came into force?

6. Is it possable in any case to draw a side line according to the course laid down by 22 Vic. cap. 84? or would a Court be inclined to give effect to the supposed intention of the act?

7. Under all the circumstances of the case would the Corporation be justified in proceeding to sell the said original road allowances under the Municipal Act, holding them entirely unaffected by 22 Vic. cap. 84?

OPINION.

1. In my opinion the stat. 22 Vic. ch. 84 applies only to side lines to be run after the passing of the statute, and not to side lines legally run out before it was in existence.

2. The 22 Vic ch. 99 being a later statute than the statute 22 Vic. cap. 84, the law respecting original road allowances must be founded on the former statute, and nothing contained in the chap. 84 can affect the lines under chap. 99.

3. Lots seperated by an original road allowance may be contiguous lots within the meaning of cap. 84.

4. Yes.

5. I doubt whether under any circumstances the line drawn between lots 20 and 21 can be upheld as the by-law does not clearly define the course except by reference to something not in the by-law itself, and I therefore should not consider this as a side line run before the passing of the statute.

6. This must depend on the circumstances of each case.

7. I am of opinion that the corporation may proceed to deal with the original road allowance under the Municipal Act, as I do not see that their power is affected by 22 Vic. ch. 84.

J. HILLYARD CAMERON.

6th Dec., 1859.

MISREPRESENTATION.

CASE.—

In security for certain shares of stock purchased in a building society, A. B., by his agent, offered, among other property, certain village lots mentioned in a deed accompanying his offer, which lots are described in said deed as containing seven acres and twenty-three perches of land.

The offer was accepted by the Board of Directors, and the money ordered to be paid upon the solicitor of the society certifying that the title was good, the property unincumbered, and a mortgage duly executed and deposited for registry.

The money was paid upon the solicitor's certificate, which was in the following words:—"I certify that A. B. hath executed to the society a mortgage in due form of law on the property offered, and that the title is free, clear, and unincumbered, and that the mortgage has been deposited for registry, and that no judgments are recorded in the registry office of the County of Welland against the said property or the said A. B., and that there are no executions against lands of A. B."

The certificate of the solicitor was founded upon a certificate of the same tenor and effect from the Registrar of Welland.

The mortgage to the building society was dated the 16th, and registered the 28th of February 1855.

A. B. failed to make the payments to the building society.

It now turns out that by deed dated on the 1st, and recorded on the 11th July, 1851, A. B. conveyed to C. D. 2 roods and 4 perches of the land thus mortgaged to the building society, taking a mortgage from C. D. securing £105 on said 2 roods 4 perches, dated and recorded at the same time as the deed, which mortgage is still unsatisfied in the registry; and that C. D., by deed dated December 31st, 1851, recorded January 2nd, 1852, conveyedthe same land to E. F. Also, that by deed dated 13th November, 1852, recorded 24th June, 1853, A. B. "for and in consid-" eration of the love and affection which he entertains " towards his nephew, G. H., and also for and in consid-" eration of the sum of five shillings to him in hand paid " by K. L.," conveyed 3 acres 3 roods 19 perches and 9-10ths of a perch (part of the 7 acres and 23 perches mortgaged to the building society) to K. L., his heirs and assigns for ever, upon trusts to lease or sell the same, and pay over the rents and proceeds to the said G. H.

With regard to this last mentioned conveyance, A. B.

states verbally that he never delivered it, that he placed it in his desk, and it was taken therefrom and registered without his knowledge or consent.

Your opinion is requested on the following points:—1st. Is any one, and if so, who and to what extent responsible for the misrepresentation under which the building society advanced the money?

2. How is the claim of the building society to the 7 acres and 23 perches affected, under the circumstances above stated, by the conveyances to C. D. and G. H?

OPINION.—

On the facts stated there can be no doubt that the society has a clear right of action against the Registrar of Welland, if the security be insufficient. Tne solicitor would, I think, be protected by the certificate, although it is questionable whether it is not his duty to ascertain by personal examination, himself or by an agent, the true state of the title on the books of the registry. As, however, the case against the Registrar is clear, it will be advisable to proceed against him.

The deed made in November, 1852, by A. B. to G. H. being voluntary, cannot prevail against the mortgage to the society, except as to such portions of the land as G. H. may have sold for valuable consideration.

J. Hillyard Cameron.

6th Jan., 1860.

ASSESSMENTS ON MUTUAL POLICIES.

CASE.—

I beg to enclose you a copy of a resolution passed at a meeting of the Board of Directors, together with a policy, to obtain your opinion thereon.

Resolved, That the Secretary obtain the opinion of the Hon. J. H. Cameron as to the manner in which the assessments on mutual policies are to be realized in cases where parties are unable, or unwilling, or neglect to pay; and

whether the company has power to sell the properties insured, or such part thereof as may be necessary for meeting said assessments without previous legal process, and if such previous process is necessary, of what nature.

OPINION.—

The assessments payable by any member of a Mutual Insurance Company acting under the provisions of the Mutual Insurance Companies Act can be enforced against the real property insured by filing a bill in Equity to establish the lien of the company on the assessment, but no sale can take place unless such lien be established.

J. HILLYARD CAMERON.

13th Dec., 1859.

SELECTION OF COUNTY TOWN.

CASE.

19 Vict. ch. 66 secs. 2, 3, 4.

In October, 1856, a vote of the electors was taken in pursuance of the Act, and a majority of about fifty was in favour of separation.

Owing to uncertainty as to what roll should guide them, some of the returning officers used the assessment roll of the year 1855, and some 1856.

In 1857 the Provisional Council consisted of ten members, a meeting was called at Brampton, five only attended, and no business was done.

In 1858 the Council consisted of twelve members, a meeting was called, six attended at the precise hour appointed, elected a Warden, and settled Brampton as the county town before the other six arrived.

The election of Warden was set aside by the Court of Queen's Bench, on the ground that there was not a quorum present.

No further business was done by the Provisional Council that year. The Council has no corporate seal.

QUÆRIES.—

1. What roll should have governed the voting under the Act? Has the irregularity, if any, been waived by anything submitted, and what can be now done to sustain or set aside that vote?

2. Was the resolution confining the selection of county town to Malton and Streetsville legal?

3. Was the selection of Malton as county town made according to law?

4. Can that selection be set aside and another place selected by any act of the council, and if so, what course should be taken?

5. Assuming (per opinion) that it could be proven that some parties who voted for Malton did so for a consideration or that the selection between Malton and Streetsville was decided by lot, what would be the effect on the question?

6. What course would you advise the supporters of any other place than Malton to pursue if they had a majority of the Provisional Council in favour of that place?

OPINION.—

1. I am of opinion that the vote of the ratepayers, or the validity of the roll on which the vote was taken, cannot now be questioned, as several meetings of the Provisional Council have taken place in successive years.

2 I am further of opinion that the selection of the county town, and the purchase of property for the purpose of building a gaol and court house thereon, should have been by by-law, and that no by-law having been passed that no legal selection of a county town has as yet been made.

3. I am further of opinion that if any of the members voting in the majority in the selection of Malton were influenced by pecuniary considerations, or in other words, received money or monies worth for their vote, or if the selections were decided by lot, the selection would be void.

4. The proper course to be pursued now is that the selection be proceeded with by by-law, as if no other selection had been made.

J. HILLYARD CAMERON.

20th Jan., 1860.

AUDITING ACCOUNTS.

CASE.—

We are instructed by our County Council to obtain your opinion as to the concurrent right of the Council and Quarter Sessions in auditing accounts, and their authority in directing the County Treasurer as to the payment of Quarter Sessions orders. The Consol. Stat. U. C. ch. 121, sec. 1, directs that all accounts, &c., preferred against the county, the auditing of which belongs to the Court of Quarter Sessions, shall be delivered to the Clerk of the Peace on or before the first day of the sessions in each term, to be laid before the Bench. Sec. 3 of the same Act directs how these accounts are to be examined and orders signed. Sec. 4 directs the Clerk of the Peace to furnish the Treasurer with lists of orders, and how the Treasurer shall pay the same. Chap. 119, § 7, of Consol. Stat. U. C. enacts "that the Treasurer of every county shall, without further authority, pay the amount of fees which are payable out of county funds when duly allowed by the Magistrates in Quarter Sessions assembled, as in the order prescribed by law for the payment of the expenses of the administration of justice after the expenses of levying, &c., and managing the rates and taxes imposed in any county are, paid the sheriff, coroner, gaoler, surgeon, &c."

Ch. 54 § 169 of Consol. Stat. U. C. directs the auditors to prepare abstract and detailed statements of receipts, expenditures and liabilities of the Corporation. Sec. 170 enacts that the Council, on the report of the auditors, shall finally audit and allow the accounts of the Treasurer, &c. Sec. 172 enacts that every County Council shall have the regulation and auditing of all monies to be paid out of funds in the hands of the County Treasurer. Chap. 120, § 3, of Consol. Stat. U. C. enacts what shall be deemed the expenses of the administration of justice: see also the schedule to the same Act. Ch. 54, § 160, of Consol. Stat. U. C. enacts that every Treasurer shall receive all monies belonging to the corporation, and pay out the same to such persons and in such manner as the laws of the Province and the lawful by-laws or resolutions of the Council direct.

Have the County Council any authority to interfere with or audit the accounts for the administration of justice, directed by statute to be audited by the Quarter Sessions, or direct the County Treasurer not to pay the orders of the Quarter Sessions signed by the Chairman, these orders being granted on accounts connected with the administration of justice, and audited by the Quarter Sessions?

OPINION.

In reply to your communication on the subject of the authority of a County Council to interfere with or audit the accounts connected with the administration of justice, or to direct the County Treasurer not to pay the orders of the Quarter Sessions for expenses of a similar character, I am of opinion as follows:

The expenses connected with the administration of justice having been defined by statute (Consol Stat. U. C. chap. 120), by the next statute, chap. 121, the manner in which the accounts shall be audited and paid by the order of the Quarter Sessions is distinctly pointed out, and the intention of the Legislature is clear that their expenses shall be mentioned and allowed by the Magistrates in sessions, and paid by the Treasurer without the intervention of any other authority, the law of the land imposing upon that functionary is plain a duty to pay the order of the Quarter Sessions for these expenses as to pay monies under the authority of the council, when such payments are made, in cases within the control of that body; and I am therefore of opinion that the Treasurer is bound to pay monies ordered to be paid by the Quarter Sessions for the administration of justice, although ordered by the council not to pay them, as the council has no authority nor power to direct him to dishonor such orders of the Quarter Sessions.

I am of opinion further that the auditors of the council must audit all the Treasurer's accounts, including those for the administration of justice, as those accounts are paid out of county funds; but such audit is only to establish the correctness of the accounts of the Treasurer, and does not empower the auditors to question the authority of the Quarter

Sessions to grant any order for payments connected with the administration of justice, the production of the order and proof of payment being all that the auditors can require of the Treasurer, in the examination of these accounts.

J. HILLYARD CAMERON.

23rd Jan., 1860.

BREACH OF COVENANT

CASE.—

Extracts from an agreement between the Niagara Falls International Bridge Company, the Niagara Falls Suspension Bridge Company, and the Great Western Railway Company:

"The parties of the first part to allow the directors and employees of the parties of the second part, and such other railway companies as they shall make arrangements with, free tickets to pass their bridge, and the parties of the second part shall allow from their own, and procure from the railroad companies with whom they shall arrange for the use of the bridge as aforesaid, free tickets for the directors and officers of the parties of the first part to pass over their respective railways."

Under this clause, have they a right to charge their employees—they having broken their agreement—and still be in a position to come on them for damages, or must we continue to perform our covenant, and sue for the breach on their part? If any other remedy suggest itself to you, please advise us on it that we may fully understand our position.

OPINION.—

I am of opinion that the directors and officers of the companies, parties of the first part, are entitled to free tickets over the railway of the G. W. Co., whether such directors and officers are travelling on the business of their companies or not, and that the G. W. Co. have no right to enquire the nature of the business in which they may be travelling. I advise that a list of the directors and officers

of your company be at once prepared, and a communication sent to the G. W. Co., requesting free tickets for them for the present year, up to the time of your next annual election. My present opinion is, that an action at law on the covenant will be the most speedy mode of obtaining redress.

J. HILLYARD CAMERON.

24th Jan., 1860.

INVESTMENT OF FUNDS.

CASE.—

The Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, are incorporated under the Act 22 Vic. ch. 66. They des re to know whether they have authority to invest the funds of the Board on mortgages in Upper Canada. Your opinion is sought upon this question.

OPINION.—

I am of opinion that the Board have power to invest in mortgages on real estate in Upper Canada, but those mortgages should not be taken for periods exceeding two years, and should contain powers of sale, so that there may be no question arising under the clause relating to real estate. Of course there would be no real difficulty practically in extending the loans from two years to two years, but there should be no agreement to that effect when the loan or mortgage is made.

J. HILLYARD CAMERON.

12th March, 1860.

BANK DISCOUNT.

CASE.—

The Commercial Bank of Canada discounts a draft upon a person residing in a place within the Province of Canada, where the Commercial Bank has no agency, but

where there is an agency of another bank, through which the Commercial Bank is obliged to send the draft for acceptance and payment. The other bank charges the Commercial Bank one-half per cent. on the amount of the draft for the collection. Can the Commercial Bank, on discounting this draft, charge the person for whom it is discounted the one-half per cent., allowed by Stat. Consol. ch. 58 § 7, in addition to the one-half per cent. paid to the other bank, or in other words, charge the one-half per cent. for its own profit, whatever may be the sum paid to the other bank, in addition to that sum, to the party for whom the draft is discounted.

OPINION.—

By the fifth section of the statute referred to in the case, a Bank discounting any bill or note payable at one of its own agencies is allowed to receive or retain in addition to the discount certain rates per cent., varying from one eighth to one half of one per cent, "to defray the expenses attending the collection of such bill," and by the seventh section when such bill or note is payable at a place where it is not discounted, and where the Bank discounting has no Agency, the discounting Bank may "charge, in addition to the discount, a sum not exceeding one-half per cent. on the amount to defray the expenses of Agency and exchange in collecting the same."

The intention of the Legislature in passing the Statutes, the provisions of which are incorporated in the Act above referred to, was to authorize the Banks to take interest directly as interest at the rate of seven per cent. on the discount of notes &c., and to assess certain rates of commission where notes were payable elsewhere than where discounted, in order to do away with the uncertainty that existed as to the rates of commission that could in such cases be legally charged. The Legislature therefore altered the rates from one-eight to one-half of one per cent., according to the time that the note had to run to maturity, when the note was payable at the Agency of the discounting Bank as a sufficient remuneration for "the expenses attending the collection of such notes, &c.;" but where it was payable at a place where

the discounting Bank had no Agency, it affixed the rate at one-half per cent., without reference to the time the note had to run to maturity, being the highest rate of commission allowed to the discounting Bank, where the note was payable at one of its own agencies.

It is evident that the discount and the commission are chargeable, for different reasons: the discount is the interest of the money advanced, the commission is the remuneration for letters, postage, and transmission of money. Where the whole business is done by the discounting Bank, the remuneration is regulated by the date of payment of the note; but however far distant it may be, no greater charge can be made than one-half per cent., but where the business is divided between the discounting Bank and another Bank or person by which or whom the collection is to be made the discount still remains the same, but the commission is fixed at one-half per cent., without reference to the date of the payment of the note, being the highest rate that any bank can charge on its own collections, and therefore presumed to be gain by the Legislature, as a charge to be made for collection for other Banks.

When a note or bill is payable at the office or agency of another Bank, in a place different from that at which it was discounted, the whole trouble and expense of the transmission of the note or bill for acceptance and payment, and the remittance of the money to the discounting Bank, falls upon the collecting Bank, and there is therefore no reason why the discounting Bank should be remunerated for services which it does not perform; but the law still allows it to charge in such case one-half per cent., and whether that sum is paid to the collecting Bank or divided between the two Banks, is immaterial to the party for whom the note or bill is discounted; but no greater sum can be legally charged, in my opinion, for the profit or advantage of the discounting Bank, although if the collecting Bank charge more than one-half per cent., that sum could be charged as a disbursement by the discounting Bank to the party for whom the discount was made, on a special agreement between them to that effect.

I am of opinion, therefore, that in the case submitted the Commercial Bank cannot charge more than the one-half per cent. paid to the other Bank.

J. HILLYARD CAMERON.

29th Oct., 1860.

ASSESSMENT UNDER BY-LAW.

CASE.—

This by-law came into operation on the 15th January, 1859, and the rate of one and eleven two hundred and fifty-thirds of a penny was based upon the then last revised assessment rolls, upon which the whole rateable property of the municipality amounted to £1,265,000, and by the fourth section of the by-law this rate is to be levied as a special rate on the rateable property, real and personal, according to the last revised assessment rolls for the period of twenty years, for which the debentures were to run, when issued under the by-law. The County Council this year, under the assessment law (Consol. Stat. U. C. ch. 85, § 70), have equalized the assessments of the County, and have increased some and reduced others of the townships from the assessed value as revised in the year before the by-law came into operation, and have ordered in the Township of St. Vincent, in which the assessed value has been increased, that the rate under this by-law shall be levied on such increased value, and not on the value assessed in the year before the by-law came into effect, and the question is, whether this is legal.

OPINION.—

The 77th section of the above Act declares that the Act shall not affect the provisions for rates to raise interest on county debentures, &c., and indirectly is intended to restrain the operation of various clauses in the statute, where such rates might be affected; and as the rate under the by-law is specially charged on specified assessment lists, I am of opinion that the amount to be levied in each township

must be apportioned on the basis of the revised assessment list, on which the rate was originally directed to be levied, and that an equalization of the assessment cannot be made so as to reduce the amount to be paid by one township, and increase the amount to be paid by another, from the amounts which they were required to pay when the by-law was finally passed.

J. HILLYARD CAMERON.

26th Oct., 1860.

VALIDITY OF MARRIAGE.

CASE.—

A. B., in 1850, married C. D., who died intestate in 1854, leaving his widow and one child, a son, him surviving.

The other surviving relations of C. D., are his father and some brothers.

C. D. left some property which he had acquired after his marriage.

The widow of C. D., afterwards, in 1859, in Upper Canada, married the husband of her deceased sister, and by him she has one child.

If the child by the first marriage die intestate and without issue, either before or after attaining the age of 21, what estate does the mother take in the property real and personal, inherited by him from his father, her first husband?

What is the effect of a marriage with a deceased sister's husband in Upper Canada, both as respects themselves and their offspring? Are the children legitimate and capable of inheriting?

OPINION.—

Upon the first question my opinion is that the mother will take absolutly the property, both in the real and personal estate of her son, to the exclusion of all relations whatever on the side of the boy's father.

Upon the second question. The marriage in question is not void by the law of Upper Canada. It is only voidable,

and as there is no tribunal in which it can be questioned the parents are not likely to be troubled during their lives, and after their death, the marriage cannot be called in question by any one.

In England for the last twenty years such a marriage has been absolutely void, before that period it was only voidable by a suit in the Ecclesiastical Court, which must have been commenced during the lives of the parties, and if not so questioned, the children of the marriage were capable of inheriting to the same extent as if their parents had not been connected before their marriage.

This is the law of Upper Canada.

There is no tribunal to question the marriage, nor is it likely that one will be created. The marriage therefore is not *ipso facto* void, but is *prima facie* legal, and the children legitimate and capable of inheriting. When the law was changed in England the Legislature made valid all previously contracted marriages, where suits had not already been brought to set them aside, and if such marriages should ever be declared absolutely void by the law of Upper Canada, there can be no doubt that a similar provision would be made.

J. HILLYARD CAMERON.

Nov. 2nd, 1860.

STREET RAILWAYS.

CASE.—

Application has been made to the Municipal Corporation of the City of Toronto to authorise the construction by a private individual of railways in the streets of the City and to grant exclusive privilege to the builders of these railways for the right to take toll, or for the use of the road, and Counsel is requested to advise whether the Corporation can legally give the authority and privilege asked for under the existing law.

OPINION.—

I am clearly of opinion that the Corporation of the City of Toronto has no power under the existing law to

grant authority to any person to build street railways within the City, with the exclusive privileges that are stated in the case.

I consider that street railways are not of the class of railways coming within the provisions of Consolidated Statutes of Canada, Ch. 66, and if they could be counted as coming within that Act, the authority of the Legislature could alone provide for their construction by a special Act.

The Corporation is in my opinion bound by the statutory provisions as to the rule of the road and can neither construct itself, nor authorize the construction by others, of any railway tract on the streets of the City, which may either obstruct the streets or make their passage difficult to travellers by raising or depressing the streets on particular parts, or require travellers holding to the right side of the road according to law, to turn out for the passage of a carriage on a street railway track, and I therefore advise that the privileges asked for can only be obtained by an Act of the Legistature.

J. HILLYARD CAMERON.

3rd Nov. 1860.

BREACH OF CONTRACT.

CASE.—

1. What effect has the act of suspension on the part of the Department of Public Works—on our position as contractors?

2. Can we be compelled to resume work again before being compensated for the damages sustained by us in the disorganization of our force of 600 to 700 men, the best of whom have many of them left the Province, and for damages in other respects?

3. Can these damages be commuted for a fixed sum, or can we demand that whatever work we may hereafter be required to do, originally included in our contract, be paid for at a valuation, instead of at the old contract rates?

4. By the terms of the contract we are required to protect the works against the frosts of winter. Would our doing so without protest be considered as a recognition on our part, of the continuance of the contract, and if so in what terms should we protest?

5. Would the fact of our building up walls in order to put on roofs, and protect the works in that way, not be considered as a recognition on our part of the existence of the contract, unless we protested against its being so considered?

6. Would the fact of our doing joiners work and other works upon the old contract, during the coming winter at our own expense, and without any order from the Dept. Pub. Works be considered as a recognition on our part of the continuance of the contract?

OPINION.—

1. I see nothing in the contract on the subject of a suspension of the work, except what is found in clause 4, and there it seems only inferential; but there is nothing authorizing a general suspension unless in winter and inclement weather, and the effect of this suspension is to relieve the contractors from all penalties or for non-completion of the work at the specified time, and to give them a claim for damages against the Government.

2. I think not, except under a new contract or arrangement with you.

3. If my view on the second point be correct, any work hereafter may be either on the contract or per measure and value, or on such new terms as you may agree upon, but you cannot be compelled to proceed under this contract. The damages sustained you may compound for a fixed sum, or claim for, as in any other case from the Government.

4. I think you can protect the works without injury to your claims, if you act under protest. The protest should be, that in order to protect the works already constructed from injury, but without acknowledging your liability so to do, and protesting that the suspension of the works by the Government was not in the contract, and releases you from

your covenants, that you will, if the Government desire it, proceed to protect the works.

5. Yes. Act as in fourth answer.

6. Yes, in my opinion.

J. HILLYARD CAMERON.

10th Oct., 1861.

POUNDAGE.

CASE.—

What effect has the Consolidated Statutes of Upper Canada, cap. 21, secs. 270-271, upon the sheriff's right to poundage upon executions against the person, lands, or goods of defendants?

It is assumed that prior to the passing of the Consolidated Statutes the sheriff was entitled to levy the poundage fees, expenses of executions, &c., restricted, however, in the case of goods and chattels to the value of the property actually seized by him under any writ of execution, &c.

There are abundant authorities to support this assumption: Viv. Digest 1841, p. 19, Vannorman v. Com. Bk., Trinity Term, 3 & 4 Vic.; Jurist No. 11, Vol. 6, April, 1850, p. 615, Corbett v. McKenzie; Chamber Reports, Jan. and April, 1852, Nos. 1 & 2, vol. 2, Morris et al. v. Boulton, &c.

In the first quoted reference (Van. v. Com. Bk.), Macaulay, J., states, where a sheriff before William IV. ch. 3 levied on a defendant's goods, he was entitled to poundage, although there was afterwards no sale.

In Morris v. Boulton, Judge Burns says:—I am of opinion that sheriff is not bound by his poundage fees, after he has once made a levy, &c., quotes Chapman v. Bowlby, 8 M. & W., 249; Bell v. Hutchinson, 2 Dowl. & L. 43; 8 Jurist. 895.

Has the Consolidated Statute, Cap. 22, altered and cancelled instead of consolidating the several statutes on the subject of poundage?

The 270th clause of cap. 22 Consol. Stat. has the following reference: 2 Geo. IV cap. 1, sec. 19; 9 Vic. ch. 56, sec.

3; Vide 19 Vic. ch. 90 & 24; and Tariff of Fees, 18 July, 1857, and it enacts thus:

"Upon any execution against the person, lands, or goods, "the sheriff may, in addition to the sum recovered by the "judgment, levy the poundage fees, expenses of the execution "and interest, upon the amount so recovered from the time "of entering the judgment."

The 271st clause of cap. 22 Consol. Stat. refers to 9 Vic. C. 56 sec. 2.

This 9 Vic. sec. 2 refers to writ issued to *several districts*, and enacts that "where upon any *such writ* of execution sued out against the estate, real or personal, of the defendant, no money shall be actually levied, no poundage shall be allowed to the sheriff, &c."

The 271st clause, however, quotes and consolidates the *third* section of the 9 Vic., and enacts "that in case a part only be levied on an execution against goods and chattels, the sheriff shall be entitled to poundage on the *amount* so levied, whatever be the sum endorsed on the writ."

The *words* of the 3rd sec. of the 9 Vic. are on a greater sum than the value of the property *actually seized* by him, &c., the Consol. Stat. says, "*on the amount so levied.*" Are these synonymous terms?

The 271st clause proceeds:—

"And in case the real or personal estate of the defendants "be seized or advertised on an execution, but not sold by "reason of satisfaction having been otherwise obtained, or "from some other cause, and no money be actually levied "on said execution, the sheriff shall not receive poundage, "but fees only, for the services rendered." Can this last portion of the clause be construed to mean that, notwithstanding seizure and advertisement, if that which has been so seized be not sold the sheriff has not earned poundage?

It is evident that if such be the effect of this 271st clause, it is not a consolidation, but a material alteration of the previously existing statutes.

It is contended on behalf of the sheriff that it would be a forced and inaccurate construction of this clause to require an actual sale as the condition of pouudage, excepting in the cases referred to by the reference made in this clause,

viz., the 9 Vic. sec. 2, having reference to several districts, and that the obvious meaning and intention of the consolidations in the latter part of the clause was to refer to writs to several districts and to such cases, and it is important to observe the words in this clause, "and no money be actually levied on such execution," the words would be without meaning, mere surplusage, if the clause could be construed to restrict the poundage to actual sale in all cases; and it is, therefore, evident that the further condition was made, if the goods be not sold or money levied. This construction would bring this latter portion of the clause strictly within the reference of 9 Vic. sec. 2, and as the money could not be levied in several districts, but only in that in which the money was paid, it provides that in such districts only shall there be a poundage earned.

Not only by the English authorities, but by various decisions of our Judges, it has been determined that sheriffs are entitled to poundage, where parties compromise, vide Colton v. Thomas, and other cases already cited, and others. The levying of the money has been defined to mean by or through the sheriff under the exigency of the writ.

If the construction of the statute now under consideration should be declared to have altered existing statutes, and thereby to have deprived sheriff of all poundage fees, excepting in cases of actual sale, it is obvious, that such alteration has been made in error; and it will be necessary to apply to the Legislature for an amendment to the statute. It can not be the desire of the Legislature to deprive the sheriff of that fee, which constitutes the value of his office, and is intended not only to provide for his official income, but to meet the necessary responsibility of his office.

OPINION.—

Upon the best consideration I can give to the case submitted, I am of opinion that the right of a sheriff to poundage remains upon the same footing as it stood before the consolidation of the statutes.

Whatever phraseology is used in the Consolidated Statutes, it is evident, by the reference to the statutes themselves in their original state, that it is intended that they shall be

referred to in any case of doubtful construction arising from any change or transposition of words in the same statutes when consolidated, and that they are to be void when the interpretation is doubtful according to the wording in the original, and not in the Consolidated Statute. If the words in the 271st sec. of Consol. Stat. ch. 22, are to be read as in all cases requiring an actual sale before a sheriff is entitled to poundage, then would the sheriff be deprived of his poundage, where after seizure, but without sale, the debtor paid the money into the sheriff's hands because it could not be said to be levied on, the execution of an actual sale being required to make the levy complete. There can be no doubt that, as the law originally stood, the sheriff was entitled to poundage of the seizure, however the money was obtained, but it was declared a hardship that if concurrent writs were issued in several districts, and seizures made on all of them, although the money was actually obtained only on one, poundage should be paid by the debtor on all of them, and therefore the changes in the law was made by 9 Vic. ch. 6, by which the poundage was confined as in that statute mentioned.

I consider that the law has not been altered by the consolidation of the Statutes, and that the sheriff is still entitled to poundage to the same extent as before the consolidation.

J. Hillyard Cameron.

24th Nov., 1862.

DEBENTURES.

CASE.—

By statute 16 Vic. ch. 140, the harbour of Port Hope was vested in Commissioners who were authorised to borrow the sum of £30,000 which sum by 18 Vic. ch. 24, was increased to the sum of £75,000 for paying a certain debt, and for improving the harbour.

After the first act was passed, the Town of Port Hope borrowed from the Municipal Loan Fund by by-law approved

by the ratepayers, the sum of £30,000, and after the second act was pa. ed with the same approval, the sum of £15,000 for the purpose of lending, and the Town did lend these respective sums to the Harbour Commissioners for the improvement of the harbour.

The Harbour Commissioners in return for these loans issued their debentures for the sum of £30,000, and £15,000 according to the power vested in them by the above statutes and delivered them to the Town to secure the repayment of the loan.

The by-laws under which the Town borrowed the £45,000 from the M. L. Fund, provided that all payments made by the Commissioners of the harbour, should be paid to the Town Treasurer, and be by him paid over to the Receiver General of the Province, to be placed to the credit of the Town with the M. L. Loan.

After these by-laws were all passed and the harbour debentures received by the Town, the Town Council in 1857, passed a resolution authorising the Mayor of the Town to hypothecate £30,000 of these debentures for a loan of £2,000 to be paid to the contractors, on the Peterboro' branch of the Port Hope and Peterboro' Railway, and in 1858 passed a by-law authorising the Mayor to advance to the railway company, the harbour debentures, to the extent of £45,000, and at the same time by resolution directed their deposit in the Bank of Upper Canada with the view to their disposal by the Bank and authorised the Mayor to apply the proceeds, when they were disposed of to the railway in accordance with the provisions of the by-law. During all this time T. G. R., one of the Harbour Commissioners, was a director of the Port Hope and Peterboro' Railway Company, and chief cashier of the bank of Upper Canada. The harbour debentures or some of them were accordingly deposited with the bank of Upper Canada, and advances made upon them either directly or as collateral security by the Bank, which advances were in fact applied to the assistance of the railway company in accordance with the provisions of the before mentioned by-law.

The Bank had no actual knowledge of the provisions of the by-laws under which the £30,000, and £15,000, were

borrowed from the Municipal L. Fund, but they had an office or agency at Port Hope, where the by-laws were passed and were rated as ratepayers of the town, and their chief cashier was one of the Harbour Commissioners to whom the money obtained by the town from the M. L. Fund was advanced.

The by-law authorising the advance of the harbour debentures to the railway company was not admitted to the ratepayers of the Town.

The question submitted to Counsel, is, the liability of the Bank to the Government, or ratepayers, or Harbour Commissioners, for the debentures on which they had made advances, and which are still in their possession.

OPINION.—

I am of opinion that the liabilitiy of the Bank on the case so submitted, depends altogether upon the fact of notice, as I gather from the facts stated, that the Bank is a holder of these debentures for value.

I consider that there is no doubt that unless by the by-laws which enabled the Town Corporation to obtain the £45,000 from the Government, there was a clear breach of trusts, whereby the Corporation applied the proceeds of the Harbour Debentures, for any other purposes than that which the by-laws, by which the money was obtained from the M. L. Fund, directed, but the consequence of the breach of trust can only be vested on the Bank being *bona fide* holders for value of these debentures, if the Bank had notice of the trusts with which they were clothed, at the time that they received them or made advances upon them, and whether the by-law authorising the payment of the proceeds to the Railway Company, had the sanction of the ratepayers or not.

On the question of notice to the Bank, I am unable to express an opinion as the facts do not sufficiently appear. It is not stated whether the Harbour Commissioners knew the terms on which the Town obtained the loan from the M. L. Fund, or whether the Railway Directors were aware of the terms of those by-laws, or how the Town held those debentures, nor whether T. G. R., the cashier of the Bank

was present at any meetings of the Harbour Commissioners or Railway Board, where the subject was under discussion. In the absence of evidence on these points I cannot advise that the Bank cannot hold these securities although I am clear that if the Bank had notice, the security must be given up.

Under all the circumstances of the case in view of T. G. R's. death, and the doubt that evidence can be obtained to shew that the Bank had notice, my opinion is that the Bank should decline to surrender the Debentures, and allow the parties complaining to proceed for their recovery as they may be advised.

J. Hilyard Cameron.

27th Dec. 1861.

ELECTION OF DIRECTORS.

CASE.—

The annual general meeting of the Bank of Toronto, was held on 25th inst. On the 26th inst. the gentlemen named by the scrutineers, with the exception of A. B., the lowest on the list, met, and organized themselves according to the Act of Incorporation.

The Directors wish to have your opinion on this point, whether the party receiving the largest number of votes, next to A. B. is not duly elected and entitled to take the seat at the Board, or whether a vacancy has occurred which the Directors are entitled to fill under the 7th section of the Act of Incorporation.

OPINION.—

The case submitted is, that A. B. one of the shareholders of the Bank, not being qualified to be, although elected as a Director, is ineligible; and whether, such ineligibility being ascertained, the shareholder, duly qualified and next in order, by a majority of votes at the election is entitled to the seat, or whether the remaining Directors can appoint to it, as upon a vacancy occurring during any current year under the Charter.

My opinion clearly is, that the Shareholders next in order by the majority of votes, is entitled to the seat. A. B. not being qualified, the scrutineer's return confers no right upon him, as it is simply a declaration under the Charter, and therefore the return must be looked to further to ascertain who has the next largest number of votes: and he is, if duly qualified, duly elected. No vacancy has been created which can entitle the other Directors to fill up the seat. To give them that right, the seat must once have been full; but here the seat never has been full, and consequently there is no vacancy to fill up. My opinion, therefore is, that A. B. being ineligible, the Shareholder next on the list in the majority of votes has been duly elected.

J. HILLYARD CAMERON.

1st July, 1862.

FEES OF CLERK OF THE PEACE.

CASE.—

The Clerk of the Peace of the United Counties of Huron and Bruce has been in the habit of charging against the United Counties, in the expenses of the administration of justice under the tariff of fees authorised by law, the sum of five shillings for making up and transmitting to the Inspector General *each list* of convictions returned to him by any Justice or Justices, or before the Court, instead of making a single charge of five shillings for a return of all the convictions of the Justices and the Court in the aggregate; and your opinion is required as to whether the Clerk of the Peace is justified in making the charge in the separate form, or whether he is entitled only to a single fee on the aggregate convictions. There are arrears since 1858, if the claim of the Clerk of the Peace is sustainable; and you are required to state if such arrears are recoverable, and by what means.

OPINION.—

I am of opinion that the Clerk of the Peace is clearly entitled to the remuneration which he claims. The tariff

gives him the fee for each list of convictions, not for an aggregate list of all the lists; and, therefore, if there are twenty lists of convictions sent to him by twenty different Justices he is entitled to twenty dollars for those twenty lists so sent to the Inspector General, and not merely to a fee of one dollar for a single return of all the lists in the aggregate.

The arrears are recoverable from the time that they have remained unpaid; and upon demand being made for them by the Clerk of the Peace, they may be recovered from the County either by mandamus or by action.

J. HILLYARD CAMERON.

3rd July, 1862.

EFFECT OF MARRIAGE ON PROPERTY.

CASE.—

A. B., a native of England, residing there, and engaged in commercial pursuits with parties, visited America in 1832, spending some time in the United States and Canada on business connected with his house, but keeping up his domestic establishment in England during his absence. While in Lower Canada he married without any marriage contract, his wife being domiciled in Lower Canada; but on the day of the marriage he, with his wife, left Lower Canada for England, and on their arrival there they took up their residence in the same place in which A. B. had been residing before he left England to visit America. No residence in Canada was contemplated or intended by A. B. at this time. In the following year, however, it was determined by A. B.'s house that a branch of their business should be opened in Canada, and accordingly A. B. came again to Lower Canada, where he opened a branch of the business of the house, from which he was, however, liable to recall by his other partners. A. B. continued in this business in Lower Canada for several years, when his partnership with his partners in England was dissolved, and he continued to do business in Lower Canada on his own

account, acquiring there and afterwards in Upper Canada considerable property, both real and personal, his domicile during the whole of this period being in Lower Canada, where he still resides.

Under these circumstances, the opinion of counsel is required as to the effect of his marriage in Lower Canada upon his property, real and personal, both in Lower and Upper Canada, at the time of his marriage, or subsequently acquired.

OPINION.—

In this case, on the facts stated, the domicile of the husband was in England, and of the wife in Lower Canada, at the time that the marriage took place. The law is not the same in the two countries. In Lower Canada "Le require de la communant," or nuptial partnership exists: in England it does not. A marriage in Lower Canada, both parties being domicled there, would command the operation of that law; so also would a marriage if the wife were domiciled there, although the husband was not, if the clear and understood intention of the parties was, that the domicile should be in Lower Canada after marriage, and that intention was afterwards acted upon; but in the case submitted no such intention existed, and the subsequent domicile of the parties in Lower Canada was altogether accidental and apart from any intention of residence there at the time that the marriage took place. Where the husband and wife have before marriage had their domiciles in different countries, the domicile of the husband draws to it the domicile of the wife; and the rights of the parties arising out of marriage in relation to property where there has been no contract of marriage must, to the extent that domicile can effect it, be determined by the law of the domicile of the husband under the circumstances of this case.

Therefore I am of opinion that the law of community does not govern; but that in relation to the effect of the marriage on the property of A. B., his personal property will be distributed according to the law of England, his real property in Lower Canada according to the law of Lower Canada generally, and his real property in Upper Canada according to

the law of Upper Canada, subject to such disposition by will respecting all or any part of it as A. B. may make, due regard being had to the wife's right of dower.

J. HILLYARD CAMERON.

22nd July, 1862.

RIGHT OF ENTRY.

OPINION.—

The chattel mortgages submitted authorise the entry of mortgagee into possession on default, and therefore entry can be made by mortgagee or assignee.

Any parties interfering after assignee and bailiff had entered and taken possession, may be sued in trespass, mortgage being forfeited, assignee may maintain replevin against any person holding the property after any part of it has been seized by him and his bailiff.

If both mortgagor and second mortgagee entered, both may be sued in trespass, or if both retain possession of the property, both may be sued in replevin, after demand is made of the property by the assignee of the first mortgage.

J. HILLYARD CAMERON.

18th Aug., 1862.

LIABILITY ETC. OF DIRECTORS.

CASE.—

The Hastings Building Society was formed in 1850, in pursuance of the Act for regulating the formation of such societies, and by-laws were adopted.

We believe that all the provisions of the Act were duly complied with, in the institution of the Society, and the Board of Directors properly elected.

The Society proceeded to invest the funds in the usual manner by loaning the sums to stockholders, or rather

paying shares in advance on the security of mortgages on Real Estate, which mortgages contained power of sale.

The Society held their annual meetings regularly, and at each of those meetings a new board of Directors was elected (in accordance with by-laws,) and at a subsequent meeting of Directors, a President, and other officers were appointed, the last meeting for these purposes having been held in the month of February, 1858, when the Society had been for eight years in existence.

It was at this time thought by the Directors that since additional monthly payments (making 105 monthly payments in all) on each existing share of stock, would be more than sufficient to cover the unpaid shares, and all other liabilities, and they agreed to receive from any of the borrowers, payment up to the 105th instalment in full. From losses in collection of arrears caused by depreciation of property, their anticipations have not been realized in making these collections, the directors advertised certain properties for sale, and for a portion of them they had previously obtained judgment by ejectment. The sale took place, and titles were made out in accordance with conditions of sale which titles were in some cases signed by the President but were not then, nor have they been since delivered to the parties by him, as he was afraid of making himself personally responsible by so doing.

Illness on the part of the then Secretary and other causes have prevented anything being done since in the matter, and also prevented any meeting of stockholders for the election of directors.

The Society would like your opinion upon these points:

1. Are the acts of the Directors since the expiration of the year for which they are elected legal?

2. Was the sale of the properties under the several mortgages legal, and can the President and Secretary give a legal title under such sale?

3. Would the President or Secretary, or either of them, by executing the deeds—whether the sale was or was not legal—make themselves personally or privately responsible to the purchaser, and if so, to what extent?

4. Can a stockholder who had borrowed, under mortgage, and paid up the instalments, and interest up to the 105th instalment act as a Director, his mortgage not being released, the payments having been made recently, since the time at which it was supposed the Society would have expired, or can he if his mortgage has been released?

5. Can the members of the Society be now called together for the election of new Directors, or the re-election of the old Directors, and can such new Board proceed to exercise the powers of sale under the mortgage, and is such new election a necessity, or can the present Directors still proceed without a new election?

OPINION.—

1. The Society was not at any time liable to be dissolved by the non-election of Directors at the proper time, but the Directors last elected continued in office until their successors were appointed, and as a consequence the Directors elected in 1858, continued legally in office after the year for which they were elected had expired, as their successors were not elected.

2. The conditions in the mortgage authorising the sale, having been duly attended to, the sales were perfectly legal, and the President and Secretary could convey a legal title.

3. The sale being legal, no responsibility could arise if it were illegal, the responsibility would be the damage that the purchaser might suffer, if he lost the land from the illegality.

4. A stockholder having borrowed to the extent of his shares, thereby ceased to be a stockholder, and could not be a director, being disqualified, having ceased to be a shareholder, and this whether his mortgage was paid or not.

5. If the Society has not been actually wound up, the non-borrowing shareholders may be called together, and elect Directors, who will have all necessary powers, or the old Directors can proceed to act with the same powers.

J. HILLYARD CAMERON.

13th Nov. 1862.

LEGAL TENDER FOR RENT.

CASE.—

A question is likely soon to arise between the Suspension Bridge Company and the Great Western Railway Company, as to the character of the funds in which the rent of the bridge, to fall due on 1st Dec., shall be payable.

Hitherto, and while Canadian and American funds were at or about par, the Railway Company has usually paid, and the Bridge Company has accepted, half the rent in Canada money, and the other half in a Bill of Exchange on New York—in other words, in American funds—this mode of payment then best suiting the convenience of the Bridge Company; and this course of dealing has so continued ever since the completion of the work. Now, however, that the value of money between the two countries has so materially changed, the Bridge Company is no longer willing to accept half of their rent in a depreciated currency and discharge the claims.

In the Indenture of Lease nothing is said as to the place at which the payment is to be made, nor is there anything to shew in the Lease itself at what place it was sealed and delivered. The rent has always been paid at Hamilton, in Canada. The Lease being silent as to the place at which the rent is payable—as well as to the description of funds in which the payment is to be made—and it being manifestly to the advantage of the railway to pay in a depreciated currency, it is announced that they will tender to the agent of the Bridge such payment as they have hitherto been allowed to make, and contend that the course of dealing between us in past years has established the mode of settlement, which mode, it must be admitted, has been more of our seeking than theirs.

The Bridge Company, on the other hand, maintain that whatever they may hitherto have done in this respect they are not bound to continue a practice which in the now altered state of things permits the debtor to pay us in currency, which gives an actual profit to him, while the creditor is a sufferer to the extent of the depreciation of the money in which he is paid. On this case, then, the questions for the opinion of Counsel are:—

1. The Lessees having their place of business and all their work wholly in Canada, and the Lease being in the joint names of the two Bridge Companies as the party of the first part, and therefore as to their claims indesirable, can the Managers of the railway pass over into the States, where the Government paper currency is a legal tender, and discharge themselves of the rent by paying it there in the manner anticipated?

2 If they cannot pay *all* the rent in the States, can they compel the Bridge Company to accept *any part* of it in the legal tender currency?

3. Under existing circumstances, can the mode of settlement heretofore acceded to, be considered as establishing a precedent, or be construed into a rule for further payments, or be successfully urged as a bar to the demand of the Bridge Company for settlement in gold or its equivelent?

4. Can an action on the lease for arrears of rent after the 1st of December next be successfully prosecuted by the Bridge Company against the railway in the Canadian Courts, in the face of a formal tender made in the States, in the currency indicated, of the amount which represents the sum due to the American Company; and if so when could final payment be obtained?

5. If the Railway can pay *half* of the rent in this way, what is to prevent its paying the *whole*, the two Bridge Companies being but one contracting party, and thus force upon them a large amount of depreciated currency, resulting in a very serious loss to all, but especially to the Canada Company, equal at least at the present time to 30 per cent?

6. Can parol evidence be given to shew where the contract was executed, and will the place of its execution, in the absence of any express stipulation or provision, determine the question? By the law of which country is it to be construed? If executed partly in the one country, and partly in the other, what then?

OPINION—

1. I consider that the Railway Company cannot pass over into the United States, and tender to the International Bridge Company the *whole* of the rent in the current paper

money of the United States, and thereby discharge the *whole* rent under the Lease.

2. The two Bridge Companies being separately entitled, although they have joined in the Lease to the Railway Company, I consider that the Railway Company may apportion the rent, and *on the day on which the rent is due*, tender to the Internationial Bridge Company one-half the rent in Government paper currency of the United States, and the other half to the Niagara Falls Bridge Company in gold, such tender being made to each in their respective countries, or that they may be ready with their money *on the bridge* ready to tender if the rent is demanded.

3. No precedent or usage would make any difference in the above.

4. If the rent is not tendered as before stated, or the Railway Company are not ready *on the bridge* to pay the rent on the day the same is due, an action may be commenced on the 2nd December for its recovery, such action could be tried at the York and Peel January Assizes, and judgment be obtained in February. If the rent were not tendered nor ready, and the action were brought, the payment of the rent must be made in Canadian currency, being legal tender.

5. The reason for the payment being allowed in the different currencies arises from the right of the Railway Company *to apportion* the rent.

6. Parol evidence could not be given so as to control in any way the general effect on the written contract.

J. HILLYARD CAMERON.

26th Nov., 1862.

MARINE INSURANCE LOSS.

CASE.—

On the 1st Nov., 1861, the schooner Linnie Powell was insured with the British America Assurance Company for one year, from 1st Nov., 1861, to the 1st Nov., 1862, at a premium of 15 per cent. less rebate on 15 per cent. on

$5000, net premium $318.75, which sum was secured to said Company by premium note at six months, therefore due 3rd May, 1862. The note contained the usual condition, which is as follows, viz: "And in case this note be not "paid at maturity, the full amount of premium shall be "considered as earned, and the said policy become void "while the note remains overdue and unpaid."

The note was not paid on the 3rd May, when at maturity, nor has it been paid to this date, but remains in the hands of the Company unpaid.

Long after the premium note had matured, and lying unpaid in the hands of the Company, in the month of October, I believe said schooner was found scuttled and abandoned by the officers and crew on Lake Michigan. The crew of the American vessel took the said schooner Linnie Powell into the port of Milwaukee, where I learn she was sold for the benefit of the sailors.

The owners have not, to this date, put in any claim for the loss of said vessel, nor have they caused to be delivered to the Company any of the papers necessary to establish their claim for loss under the policy, had any existed.

1. The Directors respectfully request your opinion as to whether or not the condition in the policy is a condition precedent, and as a warranty binding upon all parties to the contract.

2. Whether the condition on the face of the premium is objectionable, and if so, to what extent?

3. Whether, in the event of a suit to recover the premium, the action should be based upon the premium note or upon the contract?

4. Whether, in the event of a suit at law, the defendant could with advantage, plead the loss of his vessel as a set off, notwithstanding the condition in the policy and on the premium note, and the probable result of such a plea?

5 Whether, in Law or Equity, the defendant could, with effect or advantage, object to the condition rendering the policy of insurance for twelve months void, if, at the end of four or six months (the time specified on the promissory note), the said premium note was not fully paid?

6. Whether, in any case—the premium being paid after

a loss occurred—the note being overdue and unpaid at the time of the disaster, would such payment resuscitate the policy so as to enable the assured to establish a claim for loss or damage occurring during the time the policy had been declared void, and the premium not overdue and unpaid?

OPINION.—

1. The condition in the policy of the payment of the premium note is precedent to enforcing any claim in the policy by the assured, and if a loss happens after the premium note matures, and while it is unpaid, it must be enforced against the Company.

2. The condition on the premium note is not objectionable.

3. The action should be brought on the premium note.

4. He could not plead the loss of his vessel in bar of the action on the note.

5. He could not.

6. The policy would not be levied by the payment of the note on the state of facts suggested.

J. HILLYARD CAMERON.

16th July, 1863.

ASSESMENT UNDER C. S. CH. 55.

CASE.—

The assessment rolls of the Township of Stratford, shew the assessable Property for the year, as follows:

Rental	$23,406 00
Annual value of the Real Property ...	17,225 40
" of Incomes & Personalty	3,210 00
	$43,841 40

In making the appointments on this assessment, how is the County Council to be guided when the assessments are equalized under the Municipal Act Consolidated Statutes, ch. 55.

If the Council of the County does not make the appointment properly, are there any, and if any, what means of compelling them to do so?

OPINION,—

To make Town property equally assessable for County rates with Township property, according to the seventy third section of the Municipal Act, the rental capital where there is *actual* rental, must be calculated at ten instead of six per cent of annual value, while the Real Estate Capital, not producing rental, and personal estate and income capital, must be calculated at six per cent of annual value. Upon the bases which in my opinion is the correct mode, under the seventy third section, the value of the property in Stratford assessable for County rates, on the assessments stated in the case, will be as follows:

Rentals, capital at ten per cent	$23,406 00	= $234,060
Real Estate, not rented, at six per cent.....	17,225 40	= 287,090
Income, and Personalty, at six per sent	3,200 00	= 53,500
	$43,841 40	$574,650

Therefore the correct amount of the assessable property of Stratford on which the equalization is to be based is $574,650.

If the County Council make the appointment incorrectly against the Statute, the Courts of Common Law will grant a mandamus to compel them to do right in the premises.

J. HILLYARD CAMERON.

24th July, 1863.

GLEBE LANDS.

CASE.—

By Letters Patent issued on 3rd September, 1834, the Crown granted to A. H. and four others in fee simple 400 acres of land in Stamford, consisting of Glebe Lots, numbers 2, 83, 89, and 105 upon trust "as a permanent provision

" for the maintainance and support of an Incumbent or " Clergyman for the time being of the Protestant Episcopal " Church of Saint John in the said Township of Stamford, " provided nevertheless that whenever our Governor shall " erect a parsonage or rectory in the said Township of " Stamford, and present to such parsonage or rectory an " Incumbent or Minister of the Church of England, who " shall have been duly ordained according to the rites of the " said Church, then, and whenever the same shall happen " the said A. H. and the other trustees, or the trustee or " trustees for the time being, shall, by a deed under his or " their hand and seal, or hands and seals, and attested by " two or more credible witnesses, transfer and convey all " and singular the said parcel or tract of land and premises, " with the appurtenances hereby given and granted, to such " Incumbent or Minister, being so appointed as aforesaid, " and his successors forever, as a sole corporation to and " for the same uses, and upon the same trusts, as are herein- " before mentioned and expressed, or otherwise, if thereto " required by an order in writing made by our Governor, " &c., and the Executive Council for the time being, after " the execution of such parsonage or rectory, shall surrender " and yield up to us, our heirs and successors forever, the " said parcel or tract of land and premises hereby given " and granted with their appurtenances, together with these " our Letters Patent, any thing herein contained to the " contrary thereof in any case notwithstanding, in default " of all or any of which conditions, provisions, limitations, " and restrictions, this grant and everything herein con- " tained shall be, and we hereby declare the same to be, " null and void to all intents and purposes whatsoever; and " the land hereby granted, and every part or parcel thereof, " shall revert and become vested in us, our heirs and suc- " cessors, in like manner as if the same had never been " granted, anything herein contained to the contrary not- " withstanding."

By Letters Patent issued by the Crown on 1st February, 1836, the same lands as are mentioned above were set apart as a Glebe or Endowment for the parsonage or rectory within the said Township of Stamford, otherwise called the Par-

sonage or Rectory of Trinity Church, in the village of Chippawa.

The churches of Saint John and Trinity Church are both within the Township of Stamford, and A. B., from the time of the first endowment, was the rector of the said Township of Stamford, and performed the duties of the churches, either by himself or curate, to the time of his death last year.

The Trustees named in the first Letters Patent never conveyed the Glebe lands to A. B., nor were they required by any Order in Council to surrender the said lands to the Crown, nor to make any disposition of them, nor did they ever surrender to the Crown.

The question for the opinion of counsel on this statement of facts is, whether these Glebe lands are held in trust for the Incumbent or Minister of the Church of Saint John or of Trinity Church.

OPINION.

The lands were granted by the Patent of 1834 to Trustees in trust "for the incumbent or clergyman for the time being of the Church of Saint John, in the Township of Stamford," subject to the conditions and provisions mentioned above and in the patent. The Trustees never conveyed them to any one, nor were they ever required to surrender them to the Crown. Had they conveyed the lands to the Rector or Incumbent of Trinity Church, he must have held them according to the terms of the trust "for the Incumbent or Clergyman of the Church of Saint John"; and if the two churches had not been served by the same rector, but had two different Incumbents, the beneficial interest in the Glebe would have belonged to the Incumbent of Saint John, and not to the Incumbent of Trinity. The Letters Patent of 1836 had no effect, as they professed to make a different appropriation of the lands from the appropriation made by the Letters Patent of 1834, and the Crown could not by a second patent of its own mere notion annul the grant made by the first. I am of opinion, therefore, that these Glebe lands are held by the Trustees or the sur-

vivor of them, in trust for the Incumbent or Clergyman of the Church of Saint John, in Stamford, and for him only.

J. HILLYARD CAMERON.

15th Oct., 1863.

RIGHTS IN STREAMS.

CASE.—

Certain parties have, within the last two or three years, floated saw logs and timber in rafts down that part of the Grand River flowing through the County of Wellington, and in so doing have destroyed bridges, &c. The part of the river referred to is not navigable, and was first used for these purposes two or three years ago. In one instance parties drew timber upon the ice on the river during winter. When the ice broke up in the spring, the ice and logs formed a *dam* at a bridge. This bridge had two spaces or openings convenient, and sufficient for the passage of logs had there been no ice. The lumbermen cut the bridge away.

Upon this state of facts, your opinion is required upon the following points :

1. Have the parties a right to float timber down the river, except during the Spring, Summer, and Autumn freshets ?

2. To what extent have they a right to float timber during such freshets ?

3. To what extent and law are they liable for injury to, or destruction of bridges, &c ?

4. In the instance mentioned, had the parties the right to cut away the bridge, and if not, what remedies are there against them, and by whom ?

OPINION.—

Upon the case submitted to me, I have considered the questions that have been raised, and my opinion upon them is as follows :

1. Under the Consolidated Statutes of Upper Canada, ch. 47, any person has the right to float timber of this

dimension and description mentioned in the first clause, down the Grand River at any period of the year, when the river can be used for that purpose.

2. No person can float such timber joined together in such a manner as to obstruct the free course of the stream, or do injury to bridges which are placed to cross it in connexion with the highways or public roads.

3. Any person who, by negligent rafting or coupling too many pieces of timber together, or willfully for the purpose of clearing the passage for such timber, injures or destroys any such bridge, is liable civilly or criminally—civilly for the pecuniary amount of damage suffered—criminally for the misdemeanor to the public highway if the bridge is thereby rendered less available for travelling over.

4. In the instance mentioned the parties had not, in my judgment, any right to cut away the bridge, and I consider that they are liable to an information by the Attorney on behalf of the Crown, in trespass, for the pecuniary damage, and to an indictment for the obstruction of the highway, if the injuries to the bridge was of such a nature as to stop or impede the public from travelling over it.

J. HILLYARD CAMERON.

19th Jan., 1864.

CHANGE OF SEAL.

CASE.—

I have this day received a letter from the Court informing me that a new Seal had been adopted by the Canada Company for use in this country by their Commissioner, which Seal would be sent out by the following mail.

Having been thus notified, that a new Seal was to be used for the future, I will thank you to inform me whether it is proper for us now to use the old Seal, until the new one arrives, or does the authority under the new Seal commence on the date of the certificate of adoption (Jan. 28th, 1864), and not upon its receipt by us here.

OPINION.—

I beg to state that the Commissioners cannot now use the old Seal, and also that that Seal was broken by the resolution of the 28th of January last, and could not legally be affixed to any deed or lease, as the Seal of the Company, since that day.

J. HILLYARD CAMERON.

20th Feb., 1864.

DEEDS UNDER CANCELLED SEAL.

CASE.—

Before we had received advice that the Canada Company had adopted a new Seal, which adoption was made on the 28th of January last, we issued deeds under an old Seal to a number of parties.

Will you please advise us as to the best course we should pursue to remedy the difficulty.

This new Seal was shipped by the unfortunate steamer "Bohemian," and sunk with her off Portland, at the time of the accident to that vessel.

OPINION.—

If the deeds have not been registered, the proper course would be to get them back, and issue new ones when you receive the new seal, as they have really no effect in law. If they have been registered, as the record will appear on the register books, and may create a difficulty in the title, it will be advisable when the new Seal arrives to issue deeds of confirmation containing a recital of the facts, and thereby accounting for the appearance of the second deed on the Register.

J. HILLYARD CAMERON.

26 Feb., 1864.

LOSS ON MARINE POLICY.

CASE.—

Does a payment of a partial loss on a Marine Policy reduce the subsequent liability of the Company by the amount so paid?

OPINION.—

After a carful examination of the Policy submitted to me, I find nothing whatever in its provisions that will constitute any agreement between the insured and the Company which can affect the question proposed, and we must therefore look to the general law to determine the point involved, and on its examination it seems really strange that so little is to be found on the subject in works on Marine Insurance.

There are two decisions of an early date, one in 4 Taunton, and the other in 12 East., which appear to affirm the liability of the Underwriter to pay the whole sum insured on a total loss, notwithstanding a large amount may already have been paid on an average or partial loss; and most of the text writers in England and America incline to that opinion, although Philips denies that the decisions I have referred to are express upon the point, and considers the matter still open for discussion. Emerignon and other French writers deny the liability according to French law, and the decisions of the French Courts have been in accordance with their view, but as we have to deal with English and not with French law, my opinion is that the Courts here would decide that an average or partial loss could not be deducted.

J. HILLYARD CAMERON.

27th Feb., 1864.

FORFEITURE OF LAND BY NON USER.

CASE.—

The Niagara Harbour and Stock Company were incorporated by Act of the Parliament of Upper Canada, passed in 4 William IV. and chaptered 13, and under that Act they

commenced their operations, and proceeded with the building of their harbour and dock on the Niagara River on the land specially appropriated for that purpose by the seventh section of that Act.

The Dock Company were also engaged in the building of steamboats and vessels, and employed a portion of the property, respecting part of which the question subsequently stated has arisen, as a timber yard in connection with such shipbuilding.

The Dock Company having become involved in difficulty, all their property was conveyed by them to A. B. in trust, and by Act of the Parliament of Canada passed in the 14 & 15 Vic. ch. 153, the said Dock Company and A. B. were authorized by joint deed to sell and convey all the estate, right, and title of the said Company and A. B. of, in, and to all and singular the tracts of land and premises now held or occupied by, or in any manner vested in, or belonging to the said Company, or the said A. B., in trust as aforesaid, in the Town of Niagara, and particularly the premises mentioned in the 7th sec. Wm. IV. ch. 13, and by the same Act it was declared that the right to build ships, &c., was and always had been within the powers of the Company. The powers of sale given by this Act to the Dock Company and A. B. were confirmed by another Act passed on the 16th Vic. Under these Acts a deed was executed by the Dock Company, A. B., and the Bank of Upper Canada to C. D., by which all the property and rights of the Dock Company were conveyed to him, and on a judgment recovered against his executors by the Bank at a subsequent period, this property was sold under a *fi. fa.* lands, and purchased by the Bank in whose possession it now is. Lately the Erie and Ontario Railroad Company, under a revival and extension of their charter, have commenced the renewal and construction of their railway from the Town of Niagara to Fort Erie, and in preparing to lay their track have undertaken, under some arrangement with the Government, to take a portion of the said property, on the ground that it either never belonged to the Dock Company or has been forfeited by non user. The questions for the consideration of counsel

are: Is the land in question the property of the Bank, on the above state of facts? Can the Railway Company take possession of, and occupy any portion of it, with their railway, without making compensation to the Bank? If they cannot, what steps should be taken by the Bank to prevent it?

OPINION.—

On the facts stated, I am of opinion that the property in question belongs to the Bank, and that there has been no non user which could amount to a sufficient cause of forfeiture to the Crown, nor can the doctrine of non user, in my judgment, be at all applied. Part of the land in question was used as a shipyard long before the passing of the 14 & 15 Vic. ch. 153, and by that Act the Dock Company and A. B. were empowered to sell all the tracts of land or premises then held or occupied by the Company; and this very portion of land had been previously occupied by the Company, and was subsequently used and occupied by C. D.

2. The Railway Company cannot take possession of, and lay the railway upon, any part of the land, without compensation to the Bank.

3. The proper course to pursue, if the Railway Company act without regard to the right of the Bank, will be to apply to the Court of Chancery for an injunction.

J. HILLYARD CAMERON.

25th July, 1864.

STAMP DUTIES.

CASE.—

The opinion of counsel is required for the Bank of Upper Canada upon the following points, suggested under the Act of last session, imposing duties on Promissory Notes and Bills of Exchange.

Are stamp duties under that Act payable on the following documents?

1. Deposit receipts, issued by the Bank for monies deposited specially at interest, payable to the party depositing, and on a certain number of days' notice.

2. Drafts payable on demand drawn by a branch of the Bank on the head office in settlement of the fortnightly balance of another Bank, or issued by one branch of the Bank upon another, to its customers, to a branch, or to another Bank in settlement of daily exchanges.

3. Letters of credit on the Bank, issued by bankers and others, the agents of the Bank in Great Britain, payable on demand, and to which the Imperial stamps have been affixed in Great Britain.

OPINION.—

1. Deposit receipts of the character stated are not liable to duty under the Stamp Act.

2. Drafts of the character stated are in fact cheques payable on demand, and should, after the Act comes into operation, be so made in form. They come within the exemption in the fourth clause, and are not liable to duty.

3. Letters of credit of the character stated are liable to duty.

J. Hillyard Cameron.

25th July, 1864.

RESIDUARY DEVISE.

CASE.—

A. B. in his last will, dated 28th September, 1852, and who died in March, 1864, made, among others, the following devises:

8. "I give and bequeath unto C. D., my daughter, and "wife of E. F., the village lot number three, on the "western side of Broadway, in the said village, to have "and to hold the same, unto the said C. D., her heirs and "assigns forever."

16. "And, whereas, I have given a lease of lot number "six, in the tenth concession of the Township of Durham "aforesaid, containing two hundred acres, more or less,

" dated, Dec. 17th, 1851, to E. F., and to my daughter C. " D., or among their survivors, or to the survivors, " and to the heirs and assigns, of such survivors or sur- " vivor of them. This Lease and grant above referred to, " together with the above bequest to my said daughter, C. " D., is all that I intend to bequeath to my said daughter, " or her husband, and she or her husband is to have no " other claim on my estate. It is also to be understood, " that in the lawful division of my unbequeathed property " the Lot number six, above mentioned, is not to be appor- " tioned, or shared in any way among my heirs not herin- " before mentioned, but to remain as above expressed, and " directed to the use and benefit of the lawful issue of my " said daughter and her husband, after the decease of my " said daughter and her husband as aforesaid."

17. " And in regard to all the rest, and residue of my " property not hereinbefore bequeathed, nor heretofore dis- " posed of by me, I will and direct that the same shall be " disposed of, and divided according to the 14 & 15 Vic. ch.

6. " No other devises or bequests to the said C. D. are " made in the will.

The question for your opinion is:

Does the Testator's daughter, C. D., take any further share in his property, whether real, or personal, under the disposition made by the said seventeenth clause?

OPINION.—

In my opinion, the effect of the devise to C. D. is to exclude her in every participation in the property, including the residuary bequest contained in the seventeenth clause of the will. It is true that clause directs the residue to be divided according to the Statute referred to, and under that devise, if it stood alone, she would be entitled to her share, but the whole Will must be read together, and the effect is that she is, in my judgment, as much excluded from the benefit of that clause as if her name had been expressly excepted from it in words.

J. HILLYARD CAMERON.

28th July., 1864.

CANCELLING LEASES.

CASE.—

We are now proceeding to cancel certain of our Leases, but before doing so we wish to have your opinion on the following points:

There are two classes of cases which require present consideration, namely:

1. Where the Lessee has made considerable improvements, much or more than he covenants to do by the Lease, and when he has abandoned the Land, there being a large arrear due both of rent and taxes.

2. Where the Lessee has made no improvements, but has allowed the Rent and Taxes to fall in arrear.

Do you consider it necessary or advisable that we should send out any letter or notice to these parties, or to either of them, before proceeding to cancel the Leases?

If we can act without letter or notice, it will of course save both time and trouble, and will be most advisable, supposing that it will be equally safe.

OPINION.—

In neither of these cases is any notice whatever necessary from the Company to the Lessee or Assignee. It is the duty of the Lessee to fulfil the covenants in the Lease, and his nonperformance of them gives the Company the right to enter and resume the land without further notice, and it is of no importance whether there are improvements upon the land or not. Of course you will be careful that in no case shall the Company relet or sell the land until the land is again in the possession of the Company by actual re-entry or occupation.

J. Hillyard Cameron.

26th Aug. 1864.

LEASES BY INCUMBENT.

CASE.—

1. What right (if any), he being strict tenant for life, had the late Archdeacon to grant, or give leases over and beyond his incumbency, or 21 years.

2. Admitting he had right for 21 years, or his Incumbency, by what right had he to reserve covenants charging his successor?

3. Admitting he had right, are these leases legal, they not having been countersigned by the Bishop, whose approval and signature is required by law to save the property of the Church, (he being guardian of the Temporalties)?

4. Are not all these leases now null and void by death of Archdeacon?

OPINION.—

The Patent constituting the Rectory in this case has not been submitted to me, but I assume it to be in the same language as other Patents constituting Rectories in Upper Canada, and I therefore reply to the points which have been offered for my opinion as follows:

1. The Archdeacon had no right to give his leases beyond 21 years, or his own Incumbency.

2. He had no right to insert covenants in his lease binding on his successor.

3. Under our law the leases did not require the Bishop's signature.

4. The leases have expired in the Archdeacon's death, unless there may be particular clauses in some of them which may give the Lessees rights of which I cannot speak without seeing the leases. None of the leases are null and void; they have simply expired by the death of the late Incumbent.

J. Hillyard Cameron.

1st Sep., 1864.

PENSION TO WIDOW.

CASE.—

The Church Society wish to have your opinion as to the legal claim of A. B., widow of the late C. D., to the pension of the Society under the by-law regulating the dis-

tribution of the Widows' and Orphans' Fund, sec. 169 in Report of Society.

OPINION.—

Upon an examination of the various papers submitted to me, I find that the late C. D. complied with the terms of the above by-law by the payment of $5 on the 10th Nov., and $40 on 17th Dec., 1863, and that both of these sums were received without any exception being taken to his state of health, although he was well known to be ill.

There is nothing in the by-law which requires any certificate from any clergyman of his state of health before he becomes a subscriber to the Fund; and the small annual payment, without reference to the age of the subscriber, shews that the subscription cannot be looked upon as a premium for life insurance. If C. D. had been accidentally killed on 31st Dec., instead of having died of a protracted illness on that day, no one would have raised any question as to the right of his widow to participate in the benefits of the fund; and as the by-law makes no distinction of age, requires no certificate of health, and settles a uniform rate of payment by all clergymen, I can see no ground for refusing to allow A. B.'s claim, and I am of opinion that she has the right to her pension from the Fund.

J. Hillyard Cameron.

15th Sept., 1864.

FRAUDULENT ASSIGNMENT.

OPINION.—

I have carefully perused the provisions of the deed, among which I find the following: "Provided always that "it shall be the duty of the said Trustees, and their suc- "cessors in the trust hereby created, and they are hereby "required to sell and dispose of the assets of the estate, or "of so much thereof as may be necessary to pay and dis- "charge the amount of the debts due by A. B., with interest "on the same at the rate of six per cent. per annum, within

" seven years from the day of the date of these presents, it " being the intention of the parties to these presents that " there shall be a final dividend declared among the cre- " ditors within the said period of seven years, this proviso " being, however, subject to the understanding that in the " event of there being real estate in the hands of the As- " signees then not disposed of, not through their wilful " neglect or default, but which it shall be necessary to the " final winding up the estate to dispose of, there shall be " such further time granted for the declaration of a final " dividend as shall be deemed requisite by the majority of " the creditors on their lawful representation."

" Provided always, and it is hereby declared and agreed, " that the said Trustees, their heirs, executors, or adminis- " trators shall not be answerable or responsible for, or " chargeable with, any loss or diminution which the said " trust estate shall or may sustain by reason of any default, " negligence, or misconduct, or misappropriation of monies " of or by any person or persons employed by them, or " either of them, in or about the winding up of the said " estate, or the execution of the trusts of these presents, " or anything connected therewith."

I consider that these provisions are clearly objectionable, and that no creditors would be expected to execute the deed with them in it.

The first proviso is clearly in hindrance and delay of creditors. The real estate may remain for seven years unsold, and although the Trustees are then called on to make a final dividend, they may still have the time further extended to an indefinite period by the majority of the creditors in number who may happen to be the minority in value.

The second proviso is also, in my opinion, bad. The Trustees have power to appoint, and have appointed, the Assignors to act in the winding up the estate. They may, in fact, give time in that way, the whole control over the estate which may be wasted by his means or through his other employees, and yet they are not to be held responsible for this. Does not this clearly make him simply a shield between the debtor and his creditors, making the assign-

ment colourable, and therefore fraudulent and void within the meaning of the Statute of Elizabeth?

I am of opinion, therefore, that the introduction of these clauses has vitiated the instrument, and that it is void against the creditors of the Assignors who have not assented to it.

J. HILLYARD CAMERON.

15th Sept., 1864.

LIBEL.

CASE.—

Some time about the middle of the month of November last A. B. came to the Village of Shakespeare, in this County. Some twenty-eight years ago he had been employed in a menial capacity by C. D., in the Town of Stratford, but for several years past he has resided in the United States. He bore the reputation of being a dissolute and idle character. On the 18th of November he came before E. F., Justice of the Peace at Shakespeare, and stated that a servant girl named G H., who lived with him at C. D.'s, *had told him* that C. D. had murdered a man at their house. E. F., instead of taking an "information," in the mode prescribed by law, contented himself with taking down the man's words. This statement was signed by A. B., and witnessed by E. F. and others, but was not *sworn to or affirmed in proper form*. Instead of proceeding at once to investigate so grave a charge, E. F. allowed five days to intervene, and did not move in the matter till Wednesday, the 23rd. In the meantime the rumour had spread all over the county, and had given much pain and concern to the relatives and friends of the accused party. *The rumour derived all its force and consistency from the assumption that an information had been laid in proper form* before E. F. E. F. called upon the accused on Wednesday, the 23rd, and stated the nature and particulars of the charge. He also stated that he could produce A. B. at any time. E. F. prosecuted his enquiries, and found that the woman was

dead, and that she had never mentioned anything of the supposed murder to her husband or her brothers, persons much more likely to be taken into her confidence than a menial of ill repute. The whole turned out a cock and bull story of the most absurd kind, the offspring of either a diseased imagination or of malevolence and ill will. Before E. F. commenced this investigation, A. B. *had left the country*, and when the accused took steps to secure his arrest he was no where to be found.

C. D. desires to know whether an action will not lie against E. F. for the injury which the circulation of such an infamous rumour has done to his character. You will see (1) that by taking a simple statement instead of a *sworn information* C. D. was deprived of her right of proceeding against A. B. for perjury; (2) that it also deprives him of the right to secure A. B. as a witness on the prosecution; (3) that the woman obtained credence solely from the supposed fact which E. F.'s action in taking down the "statement" gave colour to, that A. B. had sworn to its truth.

E. F., fearing an action, *refused to give a copy* of the statement. The wide circulation given to the rumour will be seen from the newspapers. C. D. and her family occupy a most respectable position in the country, and they think some redress should be given for the grievous wrong done them through the culpable negligence of E. F. It is presumed that an action of libel will not lie unless they can compel the production of the statement. They require your advice as to the course which they should pursue to obtain redress.

It can be proven that E. F. *shewed the "statement" to some magistrates and others.* Will not this constitute a sufficient "publication" to sustain an action for libel?

OPINION.—

Upon the facts stated, I am of opinion that E. F. is liable for the publication of the libel against C. D.

It was the duty of E. F., as a Magistrate, if he took the statement as such, to have taken it on *oath*, and even then not to have shewn it to other parties or informed them of the statement in the manner alleged.

If an action for the publication is brought, it will be necessary to prove:

1. That there was such a statement in writing.

2. To produce the statement or give secondary evidence of it, if not produced by E. F. or not forthcoming otherwise.

3. To prove the publication by the reading or exhibiting of the statement to some other party.

4. That it was intended to apply to C. D.

E. F. will no doubt contend that the publication of the statement was privileged, and that will raise the question of malice, which is a question for the jury, but there are sufficient circumstances in the circulation by him of statements connected with the case to shew, in my opinion, that he acted wantonly and not *bona fide*, and that he is, therefore, liable.

J. HILLYARD CAMERON.

2nd Dec., 1864.

STATUTE OF LIMITATIONS.

CASE.—

On the 25th of July, 1832, we sold the east ½ lot 21, 1st con. Burford, to A. B., who received his deed therefor on the 16th of April, 1839. The Patent to the Canada Company is of an old date, more than twenty years.

Our attention has lately been drawn to the fact that A. B. has encroached on the W. ½ of the lot on the one side, and the owner of Lot 22 seems to encroach on the other side of the lot, so that one hundred acres is now reduced considerably.

On the 25th Nov. we wrote A. B. that we did not wish to incur the trouble and expense of legal proceedings, and that if he would write us a letter stating that on the survey being finally settled, he would remove his fences without further trouble, we would allow the matter to remain as it is until the final adjustment of the survey.

To this we have received a reply that he will not consent to do so.

Under these circumstances, you will please advise us whether we have a remedy against A. B., and in what that remedy consists. We fear that, owing to the neglect of our tenant on the W. ½ of the lot that A. B. may have been in possession for more than twenty years, or at all events that we should be unable to prove to the contrary.

OPINION.—

On the facts stated it appears that the Canada Company sold the second half of this Lot on 25th of July, 1832, to A. B., and that he received his Deed for the land on 16th April, 1839, and that the patents from the Crown to the Company for it, was issued more than 20 years ago.

It appears also that A. B. has been in possession of the land encroached upon, and has had it within his fences for more than 20 years, and that he now claims to hold it by such possession irrespective of the true boundaries of his half lots.

If, according to this statement, A.B. has been in possession of the land encroached upon for more than 20 years, the Company have lost it by that possession, whether it is held according to the true line or not, and on the facts stated I am satisfied that if the case were brought to trial, such possession would be proved, and the Company would be involved in the expenses of the litigation.

I am therefore of opinion that the right of the Company is barred by the Statute of Limitations, and that it is not advisable to take legal proceedings against A. B., the occupier of the land.

J. Hillyard Cameron.

12th Dec. 1864.

INTEREST ON ARREARS OF RENT.

CASE.—

You are, I believe, aware that in the case of Lessees falling in arrear with their rents, we always charge interest at 6 per cent. on the arrear from the time it occurred to the time of payment.

In many cases of arrears the lessee has transferred his Lease to another person. The transferee then applies to us to sanction the transfer, and we require before acceding to it that the interest should be paid, as we have such large arrears of Rent due, the question is an important one in the case which has now come before us, and which demands more immediate attention. A. B. holds a transferred Lease, for lot 1 in the 6th con. Downie, the transfer was acceded to and Lease issued on the 19th December, 1854, since which time no rent has been paid. There is now due a large sum.

A short time since C. D. applied at this office for the amount of rent, &c., due in the account, and was furnished with a memorandum of same, with the addition of a transfer for, as he stated that he held a transfer from A. B. The time of the Lease expired on the 1st Feb., 1865. By letter dated the 27th Jan. last, from Quebec, C. D. sent in the sum due, less the interest, but including the transfer fee. We received the money on the 31st January. We at once wrote off, demanding the interest and also requested C. D. to sign the transfer, which he enclosed with the Lease on the 31st of January.

By to-days mail he returned the transfer unsigned, and refers us to his letter of the 27th January, by which we understand he refuses to pay the interest and demands the deed.

As we wish to have your opinion on this case and on the whole question, for future reference, you will please oblige us.

1. Whether we can legally demand interest due on arrears of rent?

2. Whether we can safely receive such interest if parties pay it willingly, without the risk of being called on at a future time to refund?

3. Whether we can make the payment of interest a condition of the acceptance of a transfer, or the refusal to pay interest a valid reason for refusing to accede to a transfer, or in case of breach of covenant can we make it a condition before recognizing the Lease?

4. Whether in the case before set forth, as to C. D., whether we can insist on his paying interest, and in default

of his doing so can we safely refuse to accede to the transfer and to issue the Deed?

OPINION.—

Upon the first question I am of opinion that the Company can legally demand interest upon their arrears of rent. The law gives interest in all cases where any money is payable under a written instrument, or a day certain, and there is no exception with regard to Rent, the law however does not enable any person to enforce the payment of arrears of Rent, or interest charged on land, for a longer period than six years, or action, but if a Lessee has been in default and desires to obtain a deed under the covenant or provision in his lease, the Company can refuse unless all such arrears of rent and interest are paid now although extending six years.

The second question is answered in the first.

On the third question there can be no doubt that the Company can refuse to assent to a transfer if they think proper, without assigning any reason for the refusal, and *a portion* they can do so under the circumstances stated in this query.

On the fourth question, I am of opinion that you can refuse to issue a Deed to C. D. under the facts stated. He has neither himself, nor by the person through whom he claims complied with the covenants and conditions in the Lease, a strict compliance with which the Company has the right to require, and he now demands his deed as if they had all been duly and properly performed.

J. Hillyard Cameron.

16th Jan., 1865.

LESSEES PLUNDERING TIMBER.

CASE.—

Many of the Company's lessees have taken up their leases for the purpose of plundering the timber thereon for their own use on other farms or for sale. On being discovered in the fraud, they set us at defiance, and state that

we have no power to seize the timber or stay their plunder by summary process, as we do in the case of vacant leases.

Our timber agent, A. B., is duly authorized to act on our behalf, and to seize all timber which may be cut on our lands; and where the lands are vacant he finds no difficulty.

On the leased lands, however, this is not the case—some submit quietly, others set us at defiance.

We agree that, the lease not having been complied with, is a nullity, and we are, therefore, at liberty to seize our own property (*i.e.*, the timber) where we can find it.

A. B. is also a Magistrate, and we suggest to him that in his magisterial capacity he can seize any property, by his constable or agent, when he has reason to believe it has been stolen or unlawfully obtained.

Please advise us on the subject as to our rights, and the best way to assert them.

OPINION.—

The Lessee covenants not to cut timber except for the purpose in the lease. If he cuts for plunder and sale, and not for those purposes, the timber when cut is the property of the landlord, and can be seized by him.

In this case you should at once instruct A. B. to seize the timber. It is not necessary that he shall apply to a Magistrate, and if he is prosecuted for a trespass in the seizure, the Company must hold him indemnified, as they may properly do, as the timber is their property.

A. B.'s magisterial position should not be mixed up with his acts as your agent; and he should not act as a Magistrate in any case in which he acts also as the Agent of the Company.

J. HILLYARD CAMERON.

10th Feb., 1865.

BILLS AND NOTES.

OPINION.—

A great deal of difficulty has arisen under the Act respecting interest and discount on the discount of notes by Banks at places other than those where such notes are made payable.

There can never be any question upon the discount of a note or the charge of Bank commission at the statutable rate when the note is *bona fide*, in the course of business, made payable at a place different from that where it is discounted, nor where, even although not so made, it is brought to a Bank for discount in the ordinary course of business.

The difficulty arises where the Bank Agent arranges that the note shall be made payable elsewhere as a condition to its discount, and where the note is an accommodation note of which the Agent has notice; and in such case I advise that no discount shall take place, or rather, that no Bank commission shall be charged, as it is this commission that makes the discount questionable.

Every note or bill brought to a Bank by the maker or acceptor, *and discounted for his credit or use directly*, gives *primæ facie* notice to the Bank that such note or bill is for the accommodation of the maker or acceptor, and therefore would come within the preceding paragraph.

I therefore advise that until some judicial decision is given upon the construction of the provision relating to Bank commissions on notes and bills, no note or bill, payable elsewhere than at the place of discount, shall be discounted, and the statutable commission charged where the note or bill is known to be an accommodation note or bill, or where it may be proved to be such from the circumstances before stated.

J. HILLYARD CAMERON.

28th April, 1865.

DISTRESS FOR RENT.

To the quæres submitted I beg leave to submit the following answers:

QUÆRE.—

1. Can the Canada Company distrain for more than six years' arrears of rent?

ANSWER.—

No; not without the consent of the tenant, but if the tenant does not object the time need not be limited to six years.

QUÆRE.—

2. Must the bailiff actually sell, or may he appraise the goods and buy them for the Company?

ANSWER.—

There must be an actual sale, but that may be by appraisement, with the consent of the tenant. The Company may purchase, but the property purchased should be leased by writing to the tenant.

J. HILLYARD CAMERON.

2nd June, 1865.

GOODS "LOST BY FIRE."

On behalf of the "Liverpool and London" and "British America" Assurance Companies, I am instructed to obtain your written opinion on the following case:

CASE.—

"On the evening of 28th April, about 9 o'clock, a "fire broke out on the premises adjoining those of McD. & "Co., Ingersoll, and subsequently consumed the store of "the parties mentioned. McD. & Co. had their stock in- "sured in the above companies. The books of McD. & "Co. shew stock on hand at time of fire, $8,113.59. The "stock saved amounts to $6,231.53, leaving a deficiency "of $1,882.06."

Assuming the fact that *no goods were burned*, and that

everything was removed from the building previous to its destruction, this item of $1,882.06 stands in the claim as for goods either stolen or lost, either at the time of the fire or before its occurrence.

"Is this a legal claim on the companies?"

OPINION.—

I assume that the policies in both companies are in the usual form, and contain no special clause affecting the question at issue, which is directly, whether goods insured, which are removed for their security from fire, which has attacked a neighbouring building, and are stolen while in course of removal, are recoverable as to their value as goods "lost by fire" within those words in the policy.

That damage or loss by fire does not mean by the action of fire alone is evident from the fact that damage by water used to extinguish fire is recoverable, although no fire has ever touched the goods, or even the building in which they were contained; and such damage is looked upon as damage by, or in consequence of fire, as if it had arisen from the direct action of the fire itself. The damage has clearly arisen from the fire, and although water has been the proximate cause apparently, yet in reality it has been fire.

So in the case of goods stolen in the course of removal from fire. The loss has happened by or in consequence of fire, and is, in my opinion, within the peril insured against. In a case in our Court of Queen's Bench, of Thompson v. The Mutual Insurance Company, 6 U. C. Reports, there is a dictum of the late Chief Justice, to this effect; "and although no English authority is cited in its support, such an authority may be found in the case of Levi v. Baillie et al., 7 Bingham, 349, where the claim of the plaintiff was for £1,085, £85 for goods injured, and £1,000 for goods abstracted (or in other words stolen) in the course of removal from the fire, none of the goods having been burned; and although a defence of fraud in the assured was set up, no objection was urged, either by counsel or court, that the value of the goods stolen could not be recovered."

In a case of this kind, where it is alleged that so large a quantity of goods has been stolen, I think that some evidence of the actual fact that goods were stolen should be produced,

and that the mere production of invoices and accounts of sales, which shew a difference to the amount alleged to have been stolen, is not sufficient, as the insurer is thereby made liable for all the errors, negligence or improper management, in the conduct of the business. It may be said that this is the rule acted upon when the goods were actually burned, but there there is proof that the goods have been actually burned, and here in the same manner there should be proof that goods have been actually stolen before the loss by invoices and account sales should be admitted.

J. HILLYARD CAMERON.

4th July, 1865.

NOTES MADE BY A CORPORATION.

CASE.—

The Corporation of the City of Toronto on the 8th of May, 1865, passed the following resolution: "That His "Worship the Mayor, with the Chamberlain, be empowered "to sign notes and affix the seal of the city to the same, "upon the same being brought before the Finance Com- "mittee and authorized by the said Committee."

In accordance with this resolution, notes have been signed by the Mayor and Chamberlain, with the seal of the city affixed, and have been sanctioned by the Finance Committee, but no by-law of the city has been passed authorizing all or any of such notes, nor is there any resolution or by law of the Corporation showing or declaring for what purpose these notes are given, although it is stated by the Chamberlain that they are for the current expenses of the Corporation, such as interest on debentures falling due within the year, and other similar matters, and in contemplation of the payment of the annual taxes by which such interest, &c., would be paid.

The question for the opinion of counsel on this state of facts is, are these notes valid and binding on the Corporation, and recoverable at law by the lawful holder, in case of default of payment?

OPINION.—

By the Municipal Act, Consolidated Statutes Upper Canada, ch. 54, sec. 215, no Council shall act as bankers or issue any bond, bill, note, &c., to pass as money, &c.; but h ere is nothing in this clause affecting the point, as it is clearly intended to prevent only the issue of notes as a circulating medium to pass for money, and notes for any purpose under the amount of one hundred dollars, and therefore the validity of the notes in question must be determined by the general provisions of the Statute.

The Legislature has not provided for the issue of *notes* by a Municipal Corporation, as any instrument made by such a Corporation for the payment of money must be under seal, and therefore it becomes a specialty or sealed contract, and is no longer a note or simple contract, and the Municipal Act has provided most carefully for the manner in which debts may be contracted by municipalities, and introduced various formalities, which must be observed, to give debentures issued for such debts due validity. These provisions and precautions are, however, generally applicable to sums of money requiring for their repayment periods of time beyond the current year, as well as the imposition of special rates upon the Municipality, but I consider that the principle contained in them is applicable to every loan of money by a Municipal Corporation, and that every such loan, which is to be carried out by a debenture, should be under a by-law or resolution under seal, which shall specify the purpose for which the loan is to be made, provide specially for its repayment, and have the direct sanction of the whole Corporation, and not merely by delegation to a particular committee.

The instruments in question, although under seal, were not made and delivered as debentures, nor were they purposely authorised as such; and they are, therefore, in my opinion, not legal and valid as debentures, nor are they legal and valid as promissory notes, as the Corporation of the City of Toronto not being a trading Corporation, and not being specially authorised to make promissory notes, it is

not bound by and cannot be sued upon them, although bearing the corporate seal of the city signed by the Mayor and Chamberlain.

J. HILLYARD CAMERON.

6th July, 1865.

SALE OF PROPERTY FOR DEBT.

CASE.—

I have got into difficulty about some village property. I write you for the necessary information on the matter. The property in the first place was purchased from the Crown by A. B. about nine years ago, and in 1856 farm lot No. 5, in the 8th con. Howick, was laid out in village lots, and registered on 15th May, A.D. 1856. A. B. sold the greater part of said farm in village lots. I purchased a lot from J. A. The said J. A. purchased from A. B. I received a bond for a deed from J. A. by complying with certain conditions in said bond, with which I complied. I was to receive a deed in *fee simple*, free from all incumbrances, in three months after a deed or Crown patent had been received for farm *lot No. 5, 8th con.* Howick, laid out as above. About *two years ago* C. D. obtained judgment in *Division Court*, also a judgment for a *larger amount* in the County Court. A. B. had no personal property. C. D. said he would register his claims against A. B.'s property. To prevent this A. B. sold the property, or at least transferred it over to his brother. You will understand that the Crown Patents came out in the brother's name. Several persons took deeds from the brother; I and several others did not do so because we considered he had no right to give a deed for A. B.'s property. It appears that C. D. threatened to enter an action in law against the brother about the property. He became uneasy in the matter, and in December or January last he gave back the property to A. B. As soon as C. D. was made aware of this change he at once registered his claim against A. B.'s property, viz.: farm lot No. 5, 8th con. Howick.

You will also consider this *fact*, that C. D. purchased his

property from the said A. B., and did not receive his deed until after *he, C. D.*, had *registered* his *claim* against *the said property*. A. B. does not own any part of farm lot No. 5, 8th con. Howick, with the exception of about six or seven acres of park and village lots, the balance of said farm having been *purchased* seven or eight years ago *and paid for*. You will also recollect that the said C. D. was aware that the said property was *purchased from the above party* at the *above mentioned time*. I would also state that the *bond* which I and J. A. received from A. B. was not registered, neither was the bond which I received from J. A. Other parties have had legal advice on the matter which I consider conflicting. I therefore apply to you for law on the following questions:

QUÆRE.—

1. Can C. D. sell my property for A. B.'s debt, I having complied with the conditions of bond which I received from J. A., he, J. A., also having complied with the conditions of bond from A. B., neither my bond from (*J. A.*) or *J. A.'s* bond from A. B. being registered?

ANSWER.—

He cannot, on the facts stated, legally sell your property under his execution.

QUÆRE.—

2. Has A. B. any right, title, or interest in, and to farm lot No. 5, 8th con. Howick—that is, to that part of said farm which is sold, and for which he has received payment several years ago?

ANSWER.—

A. B. has only the bare legal estate in your property, but no beneficial interest. He can be compelled to make you a deed, which, on the facts stated, will be valid.

QUÆRE.—

3. Is it legal for C. D. to advertise this village properpty as lot No. 5, 8th con. Howick, when said lot was laid out as a village, and registered on May, 1856, when he, C. D., was aware that I purchased from A. B., and at

last purchased from J. A., and he purchased from A. B., said A. B. being paid in full for my lot, I was then to receive a deed free from all incumbrances.

ANSWER.—

I have already stated that C. D. cannot legally sell your property.

QUÆRE.—

4. If C. D. can lawfully sell my property under execution, must not his own property be sold, he, C. D., having purchased his own property from A. B., and did not receive a deed until after he had registered his claim against the same property that he has advertised to sell by the sheriff?

ANSWER.—

Already answered. He cannot sell.

J. HILLYARD CAMERON.

14th July, 1865.

NOTICE TO QUIT.

CASE.—

Many of our lessees have allowed their leases to expire, but still continue living on and cultivating the land. We understood from you a short time since that if such persons were allowed to remain on the land for a year, or longer period from the date of the expiration of the Lease that they became by act of Law, yearly tenants, at the same rate of rent as named in the expired lease. Supposing this to be the case, we should not be safe in redisposing of the land without first giving the occupants a legal notice to quit and which we imagine must be a six months notice, which shall expire on the same day when the tenancy commenced. Should this be the case when did the tenancy commence? does such a tenancy commence at the time of the expiring of the original lease, or when? In such cases have we the power of distress for five years rent, even supposing that the five years to be distrained for all accrued after the

expiration of the original Lease and during the continuance of such unauthorized occupancy? Does our distraining in such a case place us in a worse position with regard to regaining possession of the land, than if we did not try to collect the Rent? The usual course has been to treat the person holding on or under an expired lease as a trespasser and dispose of the land to a new applicant just as if no such occupation was in existence. And hitherto no inconvenience has arisen but if such persons really are tenants from year to year, we are not only liable to trouble with them but we might have difficulty in collecting rent from the new lessee if he alleges that he could not get possession because our tenant from year to year was holding on from having had no legal notice.

OPINION.—

Your tenants whose leases expire do not become yearly tenants if they remain on the land for a year after the expiration of the leases unless you make them so, either by the acceptance of rent from them after such expiration or do any other act recognizing a tenancy. In the absence of such payment or act, the lessee may be turned out of possession without any notice to quit.

If rent has been paid or a tenancy recognized, the tenancy from year to year begins at the expiration of the lease and a notice to quit must be given six months before the expiration of any year.

A distress may be made of five years rent, even although it all accrued after the lease expired. A distress recognizes a tenancy and therefore places the Company in a worse position, if desirous of obtaining possession.

Whenever the object of the Company is to obtain possession, and sell again, no rent should be received from an outholding tenant and no distress made, but the Company may distrain if it appears advisable to do so. Of course you will understand that in writing about the receipt of rent, I mean rent that you would claim for occupation after the expiration of your written lease, you may receive rent

that was due under the lease although the lease has expired, without any prejudice to your rights.

J. HILLYARD CAMERON.

17th Aug., 1865.

CASE.

The Council of the Township of Howick have empowered me to apply to you for advice on the following points:

STATUTE LABOUR.

QUESTION.—

If a man owns property in two or more road divisions, are we justified in making him perform an equitable proportion of his statute labour in each division? We do so for we think it is evident that every division should have the benefit of the statute labour arising from the property in that division, we conceive that sub. sec. 5, sec. 330, cap. 54, Con. Stat. U. C., page 66, gives us the power to do so?

ANSWER.—

I have no doubt that under the sub. section referred, to the Township Council have the power to require that a portion of the statute labour shall be done in each division but they should pass a by-law for that purpose.

J. HILLYARD CAMERON.

INJURY ON PUBLIC ROAD.

QUESTION.—

Is the Corporation liable for the price of a horse whose leg was broken under the following circumstances? The horse was a young one, three years of age, and when driving him over a crossway made by statute labour, in which a log was broken down, (over which they had driven the same horse in safety a short time before), they were afraid, one of them jumped out and took the horse by the head, the other held the lines and checked it up, it got its

leg into the spot and broke it. They thought the horse would not live, and shot it.

The Council was not aware of its being unsafe, the owner of the horse never having warned them although he lived within a quarter of a mile of the place.

ANSWER.—

The result of this case must depend both upon notice of the non-repair of the road to the Council and the want of care and caution on the part of the person driving the horse. If the Council had no notice of the state of the road, and the drivers of the horse acted so imprudently in driving as described, as to have contributed to the accident by their own want of skill, no action will lie, but it is a question of fact for a jury, and if they were to find a verdict, that there was no notice of the want of the repairs of the road, and that the driver had acted unskillfully, the Council would clearly not be liable.

J. HILLYARD CAMERON.

QUESTION.—

Another horse in the spring, reported to be old and in poor condition was being rode over a crossway, also a short distance from home, about dark, got caught in the crossway almost at the end of the log. The owner procured assistance and got it out, it walked home and lived somewhere about a week. The owner says it died from the effects of injuries it received about the back. The neighbours to the number of six or seven say it died from weakness and being strangled in the stall, signing a paper to that effect, which was submitted to the council forbidding us to pay the damages.

ANSWER.—

Upon the facts stated the Council is not liable in this case.

J. HILLYARD CAMERON.

3rd Oct., 1865.

ACTION ON CONTRACT.

OPINION.—

I am in receipt of your communication, in which you express your wish that I should furnish the Bank of Toronto with my opinion as to an action lying against the Bank in the United States for anything arising out of the transactions in which your late agent in Montreal was engaged.

In every case of a contract made in Canada between a British subject and a foreigner, the law of Canada would govern the interpretation of the contract, whether the contract was sought to be enforced in the courts of this country or in those of the foreign state; but there is nothing either in the law of this country or of the United States which confines the remedy or means of enforcing the contract to the courts of the country in which the contract is made, and to those courts alone.

If a contract were made in Canada between a British subject and an American citizen, under the circumstances alleged here, the American might sue upon it in the courts of his own country, if he could find the other contracting party within the jurisdiction of an American court, so as to serve him with process, or could find property of his within the jurisdiction of the American court which he could attach, property being considered as an equivalent of personal service; but whether it were by personal service or attachment of property that the American court obtained jurisdiction, the interpretation and law of the contract must be determined by the law of Canada.

In this case of the Bank I have no doubt whatever that if the Bank had property in the State of New York, that that property might be attached there by an American citizen to compel the Bank to appear and defend a suit instituted there for a cause of action which related to personal property (as distinguished from real estate), which arose solely in Canada, but that the rule for the interpretation of the alleged contract must be the law of Canada, where the contract was made.

I am therefore of opinion that the property of the Bank is liable to be attached in New York to compel an appearance

to a suit that may be instituted by the complainant there, but that that suit, on the principles of international law, should be decided by the rules of law that would be applied in Canada, and according to those rules, if they were properly and honestly applied in the foreign tribunal, the Bank would be successful in any action if brought.

J. HILLYARD CAMERON.

12th Oct., 1865.

COUNTY RATES.

CASE.—

The by-law for imposing county rate for 1865 includes an assessment for the new gaol under the county by-law of March, 1864, for raising by loan $22,500, which is held to be illegal. *Quære*—Does the assessment of such gaol rate, supposing it illegal, make illegal and void the whole by-law imposing county rate for 1865, in which said gaol is included and forms a part? *Quære.*—Supposing the said gaol rate is illegal, can a Town or Township Municipal Council alter the by-law of the County Council, and strike out or refrain from collecting the gaol rate, but collect the balance of county rates?

Suppose the county sues a town or township for the omitted gaol rate, will not the defence be, that the county by-law imposing the rate is bad, and if bad for the gaol rate, is it not bad also for all other rates included in it?

Is a collector justified in levying the county rate minus the gaol rate, and would a ratepayer have redress against the collector for collecting the county tax so ordered by the County Council, although he does not collect gaol rate?

Must not a county by-law for levying taxes be either wholly good or wholly bad? Or can it be good for one part, to-wit: ordinary county taxes, and bad for a special rate, to-wit: for the gaol?

What remedy has an individual ratepayer of a town or township against the collection of the county rate, minus

the gaol rate, in cases where the council of the municipality does not itself take action to resist the County Council?

OPINION.—

The county by-law divides the several subjects of assessment, and therefore the rates for general purposes are good, although the rate for the gaol is bad.

If the county sues for the omitted rate the defence of the Township or Town Council will be that the rate is illegal.

The collector is not only justified, but bound to collect the other county rates.

If any Township or Town Council levy all the rates of the county, any ratepayer may bring the gaol rate under protest, and sue to get the money back, or he may pay the other rates and allow the collector to seize for the gaol rates, and then sue for the seizure.

J. Hillyard Cameron.

4th Dec., 1864.

REGISTRY LAW.

CASE.—

Please explain the general bearing of the Registry Act on our Deeds and Memorials, so that our future proceedings may be in accordance with the Statute, without further reference except, of course, in extraordinary cases.

OPINION.—

Under the new Registry Law the proper mode of execution of the Company's deeds will be in duplicate, without any memorial. The execution of the deed under the seal of the Company, being a sufficient verification to authorise the registry of the deed.

Deeds executed for registry in duplicate under the new law, should for convenience and avoidance of mistakes be headed 'Duplicate Deeds,' and in the attestation clause or in the commencement of the deed should be declared to be "executed in duplicate for registration."

All deeds executed before the 1st January last may be registered by memorial as formally, but the deed will be copied in the registry books at full length.

J. HILLYARD CAMERON.

5th Jan., 1866.

LICENSE OF FERRY.

CASE.—

In the matter of license of ferry between Ottawa and Hull, please give me your opinion. The facts are as follows. Until last July any man who wished to do so, kept a Ferry Boat and paid no license fee, consequently there were plenty ferrymen on the River and the public was satisfied in that respect.

In June last one A. B. petitioned the Municipal Council of the city of Ottawa, for a lease of ferry between Ottawa and Hull, a by-law was passed recommending said A. B. to the Governor in Council as a fit and proper person to receive license. A. B. then petitioned the Hull Municipal Council for a similar lease and was not recommended, but one C. D. was.

The by-law of the City Council together with a tariff of rates, &c., were sent with the Commissioner of Customs to report upon.

A. B. petitioned the Governor in Council, which petition was signed by the Mayor and several Councillors respectively as Mayor and Councillors of said Township Council, praying that he, (A. B.), might receive the license. Please observe that this petition was signed as if in direct opposition to their by-law passed in Council.

With this last petition and the by-law of the City Council before them, without the report of the Commissioner the Governor in Council on the 19th day of July last, granted a license of ferry to A. B., to ferry between Ottawa and Hull, and to pay the Government $30 per annum therefor, subject to the tariff being approved by the Governor in Council,

which approval has not yet been obtained because the tariff has not been brought before the Council.

Please see Con. Stat. U. C. cap. 46, also 29-30 Vic. cap. 51, sec. 287, and Con. Stat. ch. 24, sec. 41, and sub. sec. 88.

I contend that under sec. 3. ch. 46, C. S. U. C., license should not have been granted unless by public competition. And I have been informed that this very point in this same matter has been referred to the Attorney General.

My object is to have this license tested, and the ferrying left as it was before granting said license.

OPINION.—

Under the Ferry Act, Con. Stat. U. C. ch. 46, the Municipality of Ottawa might have received a license to ferry, and by by-law have sub-let the ferry, but as I understand your letter they did not adopt that course, but recommended a person to the Governor in Council that a license might be granted to him direct by the Crown, without their further intervention.

If my view of the state of facts as conveyed to me by your letter be correct, then this was a ferry granted directly by the Crown and could not be leased except under the formalities prescribed in the third section of the above mentioned statute and after such public competition, as therein mentioned.

J. HILLYARD CAMERON.

12th March, 1867.

ROAD ALLOWANCE.

CASE.—

The Township of Fullerton which forms part of the Huron Tract was granted to the Canada Company, by four patents bearing date respectively, 16th Nov. 1830, 15th Aug. 1831, 5th July 1836, 7th Sept. 1839. The patent of 1st Con. Fullerton beares date Nov. 16th 1830.

In December 1828, and January 1829 the Company surveyed out one tier of lots on each side of the Huron Road

part of which now form the first concession of Fullerton, that Township being situated south of the Huron road.

In surveying this concession the usual side lines were left at every fith lot. The river Thames passes through lots 25 and 26 in 1st Con. Fullerton.

There was a sideline left between lots 25 and 26, but no reservation for a road or tow path appears in the original filed notes to have been surveyed or marked out in any way on either side of the river.

Subsequently the Canada Company laid part of a town plot which was called Mitchell on lots 25 and 26 in 1st Con. Fullerton.

The first map we have of that village bears date Nov. 1845, the survey having been made by J. K., D. P. S., on the map are shown all the buildings which were then erected in the village, and which only numbered 12. Before the village was laid out, the Company located the site for a mill on the north east corner of lot 26 in 1st Con. Fullerton, on the river the mill ground extended from the western boundary of the side line between 26 and 25 to the bend of the river. No tow path or road allowance is shown on the plan of the Town, as surveyed in November 1845. And as the Company sold all the lots extending from the various streets to the bank of the river, without any reservation whatever, there can be no doubt that the Canada Company never intended the tow path or road allowance to exist.

The survey of the township of Fullerton, was made at several times. First one concession was surveyed off, then two others, and it was not until the 21st of January, in the year 1839, that the place and surveys of the Township was finally handed in as a complete work to the then Surveyor Generals Office. This place on the face of it shows two surveys one from the first to the fifth concession, and the other of the remainder of the Township. In this place the surveyor laid off on each side of the river throughout the whole township a tow path or road allowance of 50 links on each side of the River, including the first concession but we cannot find that this tow path was ever mentioned in the filed

notes of the first, second, third and fourth concessions after that in the remaining part of the survey, a tier of lots was made to abut on the river and there is no doubt of the reservation from that point. In conveying the lots 24 and 25, 2nd concession, the Company reserved a tow path on each side of the river after the Village of Mitchell was incorporated, the authorities of the village seem to have wished to establish the tow path or road allowance on each side of the river throughout the extent of the town plot, which extends from the south boundary of the Huron road to the north boundary of the second concession.

Upon the strength of this information the village authorities caused a survey to be made by Mr. R., P. L. S., of the tow path through all the lots already deeded by the Canada Company and which had been so deeded without any such reservation. The purchasers from the Canada Company naturally look to the Company to define the right conveyed by their deeds and complain by the assumption of the village of a portion of their lots which are valuable and which have been paid for and are included in their deeds from the Company.

No by-laws has ever yet been made, that we have had notice of, and we believe that no road has ever been made or used on either bank of the river throughout the boundaries of the town plot south of the Huron road.

The Company argues first, that there never was in the original survey and field notes a reservation made throughout the first concession on the banks of the river, and that the carrying the tow path through the first concession of Fullerton at the time of the laying of the plan and survey in 1839, was a mere error and after thought of the surveyor. And secondly, that even if the Company had at any time made such a reservation that as the whole of the land belonged to the Company, and as no sales had been made which interfered with or were affected by the reservation, and as no public work or statute labour had ever been done on the part so supposed to have been reserved, the Company had full right to resume such allowance or reservation and that they having done so, and the 20 years possession under the sales made by the Company to their settlers, their title

to the said alleged allowance and that of their purchasers cannot now be interfered with or disputed.

The Company first disposed of lots 26 and 27, 1st con. Fullerton, in the year 1829, and afterwards repurchased them. No reservation as to tow path or road was made in either case, nor was the tow path mentioned.

The village authorities on, the other hand, allege that the showing of the tow path in the plans of the township of 1839 was a dedication of the reservation as a road which could not, by any subsequent act, be recalled by the Company.

Your opinion is requested as to the rights of the village to survey and set off the so called tow path, and whether, in so doing, and in planting stakes, marking, building, &c., they have not committed a trespass, and rendered themselves liable to a prosecution for trespass by the parties whose properties have been interfered with.

And you are also requested to advise as to the best method of bringing the question to a decision which may settle the dispute from this time forward.

OPINION.—

On the case submitted by the Canada Company, I am of opinion that there is no tow path or public way along the bank of the river in the Village of Mitchell, which the municipal authorities of the village or any person can set up against the Canada Company or their assigns. There evidently was no original authority given by the Company to the surveyor who laid out the township to make such a reservation through the township, and the fact that he did so in the plan that the Company filed, is not binding upon the Company, when by their acts they have clearly shewn that there was no intention of dedication, but on the contrary actual sales of the property included within the supposed public way.

The Canada Company laid out the Village of Mitchell, and sold lots to the edge of the river, and these lots have been occupied accordingly for many years. The municipal authorities can have no claim as for an original allowance for road, as there never was an allowance made by the Crown,

and they have themselves never obtained the land and established it as a highway under the Municipal Acts. Under these circumstances, the Municipal Corporation has been guilty of trespass in entering upon the land in question, and planting stakes, &c., and actions may be brought against them by the Canada Company or any of the owners or occupiers of the land on which these acts have been committed; and I should advise that a formal notice be at once given to the Corporation that any further trespass on the land will be looked upon as wilful, and the stakes should all be taken up and removed without delay.

J. HILLYARD CAMERON.

4th April, 1868.

DEPOSIT UNDER INSURANCE ACT.

CASE.—

The Edinburgh Life Assurance Company have referred to us to know if, according to their charter, they are entitled to make the deposit, as by the *Gazette* they seem to have done under clause 22 of the new Insurance Act.

The Edinburgh Life Assurance Company are gazetted under the following clause: "The following companies, which have made a deposit in British 3 per cent. consolidated annuities, are provisionally licensed to transact insurance business in Canada pending an examination of the special terms of their charter by the law officers of the Crown in Canada, their licenses to hold good for three months from this date." Clause 22 in the new Insurance Act, enacts that as regards British and other foreign insurance companies actually doing business in Canada at the time of passing of the Act, which cannot, by the terms of their constitutions or charters, or by law, invest in Canadian securities, it shall be lawful for the Minister of Finance, with the approval of the Governor in Council, to receive the amount of the deposit required of them under this Act in British or foreign government securities, &c., at their market value, but with power to him to require from time to time,

if such market value should decline, equivalent to their diminution in value. The Edinburgh Life Assurance Company have, it seems, deposited $150,000 in British 3 per cent. consolidated annuities.

Now, the questions are: Can the Edinburgh Life Assurance Company, by their charter or by-law, invest in Canadian securities? If they are capable of investing in Canadian securities, is not the Act imperative as to their doing so? Do not the general words in clause 2 of the charter of the Edinburgh Company of 1845, as extended by clauses 2 and 3 of the Edinburgh Life Assurance Company Amendment Act, 1858, give the Company power to invest in Canadian securities?

OPINION.—

I am in receipt of your letter, with case, for my opinion in the matter of the license to the Edinburgh Life Assurance under the Insurance Act passed during the last session of the Parliament of Canada.

The points offered by you for my consideration are two:

1. Can the Edinburgh Life Assurance Company, by their charter, invest in Canadian securities?

2. If the Company can so invest, is the late Statute imperative on them to do so?

Upon the first point, I am of opinion that the Company can invest in Canadian securities. They have been in the habit of investing on mortgages on real estate in Canada for many years, and they have held as investments the bonds of the Canadian Government. The fifth section of the Imperial Act, 8 & 9 Vic. ch. 76, gives them power to take, purchase, and hold every description of property, whether real or personal, heritable or moveable, wherever situated, and to lend money on heritable, bond, or bond and disposition in security, or by way of mortgage, or on personal bonds or bills only. This power is clearly ample to authorize an investment in Canadian Government stock or bonds.

Upon the second point my opinion is equally clear. The twenty-second section of the Act of last session, respecting insurance companies, provides as regards British and other

foreign insurance companies doing business in Canada at the time of the passing of this Act, *which cannot, by the terms of their constitutions, or charter, or by-law, invest in Canadian securities.* "It shall be lawful for the Minister of Finance, with the approval of the Governor in Council, to receive the amount of the deposit required of them under this Act in British or foreign Government securities, &c." The Edinburgh Life Assurance Company, being a company which can by law invest in Canadian securities, do not come within the twenty-second section, and therefore could not make their deposits in British consols, and such deposit is of no value whatever as a compliance with the terms of that provision of the Act requiring the deposit in Dominion stock, and the provisional license granted affords the Company no legal protection under the Act, as the Finance Minister had in their case no power to accept a deposit in consols, and no power under the Act to issue any provisional license whatever. My opinion, therefore, is, that the Company must make their investments in Dominion stock, if they desire to continue to transact new business; that their present deposit is not a compliance with the terms of the Insurance Act, and that, in consequence, the provisional license granted to the Company is of no legal validity.

J. HILLYARD CAMERON.

8th Aug., 1868.

PROVISIONAL DIRECTORS.

CASE.—

Some of the Municipalites along the line of the Toronto and Nipissing Railway have voted sums of money, by way of bonus, in its aid, on the understanding that the sums so voted in debentures are to be expended on the railway in the manner specified in a bond to be executed in accordance with a resolution of the Provis.onal Directors, by their President under the seal of the Company. If such a bond be executed, is its execution within the powers of

the Provisional Directors? and if the elected Directors should afterwards deviate from its provisions, and its conditions be broken, would any municipality to which such a bond was given, have any remedy, either at law or in equity, to enforce it or claim damages against the Company?

OPINION.

In my opinion the Provisional Directors have no power to give such a bond. Their powers are all defined in the eighth section of their Act of Incorporation, and they are, simply, to fill vacancies occurring on their Board, to associate with themselves not more than three other persons to act as Provisional Directors, to open stock books, to make a call upon the shares subscribed thereon, and to call a meeting of the subscribers to elect directors, and with all such other powers as under the Railway Act are vested in such bonds; but as under the Railway Act no powers to make such a bond is given to Provisional Directors, they have no authority from that part of the section for such a purpose, and therefore no such bond could be enforced, either at law or in equity, against the Company when it is completely organized.

J. HILLYARD CAMERON.

3rd March, 1864.

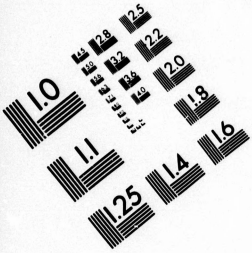
STAMP DUTY.

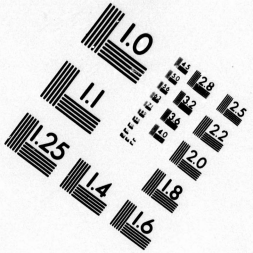
CASE.—

My opinion is required upon the effect of the Stamp Act relating to bills and notes in the following cases, as explained by the Order in Council of September of last year.

1. A bank, banker, or person residing in Canada keeps money in a chartered bank or with a banking house or company in New York, and has cheques dated at New York, but he signs them in Canada, on such bank, banker or person.

2. A bill of exchange is made out of Canada, drawn upon and accepted by a person out of Canada, payable to the order





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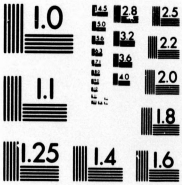
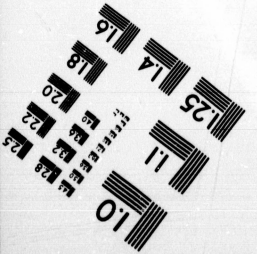
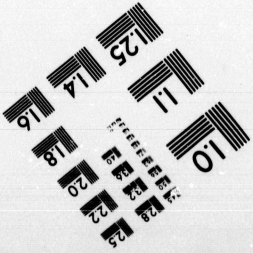






of the drawer, or to a person in Canada, but in both cases negotiated in Canada, although endorsed in Canada in the case only, where it is payable to the order of the person in Canada.

OPINION.—

In my opinion in the first case above, the cheque which is made in Canada is liable to the stamp duty. The Act exempts from duty any cheque upon a chartered bank or licensed banker, but I consider that that exception applies only to banks chartered or bankers licensed in some part of the Dominion of Canada, and not in a foreign country.

In the second case, I am of the opinion that the bill or note is not liable to stamp duty. It is true that the Order in Council referred to has, under the ninth section of the Stamp Act, attempted to affix a duty to the negotiation of certain bills and notes of the class named, but in my opinion that order is beyond their power under the ninth section, which gives authority only to the Governor in Council to declare that any kind or class of instruments, as to which doubts may arise, are or are not chargeable with duty. Now, there is no doubt whatever as to the kind or class of instrument in this case—it is clearly a bill or note. The doubt is as to its negotiation only; and to affix a duty upon the negotiation is an act of legislation, not interpretation, and has, in my opinion, no effect, but leaves the case as it was under the Act without the Order in Council, and therefore free from stamp duty.

J. HILLYARD CAMERON.

6th Nov., 1871.

ELECTION OF SPEAKER.

CASE.—

A general election for the Legislative Assembly of the Province of Ontario was had during this year. Petitions under the Controverted Elections Act of 1871 have been presented, complaining of undue elections of certain per-

sons elected, and after trial had under such Act on certain of such petitions, the judges who tried the same respectively, have determined that the members elected were not duly elected, and that the election is void, and have so duly certified in writing as required by the Act.

The question submitted for the opinion of counsel is, whether, on the next approaching Assembly of the Legislature, any person elected to be a member, who has been certified to have been unduly elected, and whose election has been certified to be void as above named, is entitled to vote for election of Speaker.

The further question submitted is, whether, in case a judge who tries any such petitions shall determine that the member elected whose election is complained of was not duly elected, and that his election is void and that some other person was duly elected, and should so certify in writing, as by the Act such other person so certified to have been duly elected, can vote on such elections for Speaker.

The further question is, whether, for such election the Clerk of the Legislative Assembly can, in case of equality of votes, give a casting vote.

OPINION.—

Upon the first question submitted I am of opinion that a member whose seat has been declared void as stated is entitled to sit and vote at the first meeting of the Legislative Assembly for the Speaker of the Assembly.

By the 44th section of the British North America Act, 1867, provision is made for the election of a Speaker of the House of Commons of Canada on its first assembling after a general election.

By the 45th section provision is made for filling a vacancy in the office of Speaker in case of death, resignation, or otherwise.

By the 87th section the provisions relating to the House of Commons are made applicable to the Legislative Assembly of Ontario in reference to the election of a Speaker originally, and on vacancies, the duties of the Speaker, the quorum, and the mode of voting.

By the 49th section questions arising in the House of Commons shall be decided by a majority of voices other than the Speaker, and when the voices are equal—but not otherwise—the Speaker shall have a vote.

By the Elections Petitions Act, Ontario 34 Vic. ch. 3, sec. 4, for the purpose of this Act the expression "the Speaker," shall mean the Speaker of the Legislative Assembly, and when the office of Speaker is vacant the Clerk of the Legislative Assembly, &c.

By the 16th section of the same Act, at the conclusion of the trial the judge who tried the petition shall determine whether the member whose election or return is complained of, or any and what other person was duly returned or elected, or whether the election was void, and shall forthwith certify in writing and determination to the Speaker, and upon such certificate been given such decision shall be final to all intents and purposes whatever.

By the 21st section of the same Act the Speaker shall, at the earliest practicable moment after he receives the certificate or report or reports, if any, of the Court or Judge, communicate the same to the Legislative Assembly, and the Legislative Assembly shall forthwith thereafter order the same to be entered on its journals, and give the necessary directions for confirming or altering the return or for issuing a writ for a new election or for carrying the determination into execution, as circumstances may require.

The only members who, by the terms of the 42nd section of the Act shall not sit or vote in the Legislative Assembly, are those who have given notice of their intention not to oppose the petition against them.

In my opinion the House of Assembly is not organised until a Speaker is chosen, as there can be no vacancy in the office of the Speaker until such a choice has been made and the office has been filled, and that on the first meeting of the Assembly after a general election, and before the election of Speaker has taken place, the Clerk is not substituted for the Speaker within the terms of the fourth section in the manner he would be if the Speaker had been chosen and had afterwards vacated his office, and that in such case no

report of the Court or judge can be communicated to the Assembly until after a Speaker has been chosen.

The second question is answered in the first—the member substituted by order of the Court or Judge cannot vote for Speaker.

The Clerk of the Legislative Assembly has no casting vote in case of an equality of votes for Speaker. No one can vote except a member. The election must be by the Assembly or House. The Clerk is not a member thereof, and if there is an equality of voices there is no election.

J. HILLYARD CAMERON.

23rd Nov., 1871.

INTEREST ON DEBENTURES.

CASE.—

In 1855 the Town of London was erected into a City, and arbitrators appointed to settle differences existing between the City and County of Middlesex, made their award on the 28th Dec., 1855, which is set out in 14 Q. B. Reports, p. 334, Middlesex v. City of London.

Previously to the separation Middlesex held £25,000 stock in the London and Port Stanley Railway Company, and an equal amount in the Great Western Railway Company, to pay for which the county had granted debentures payable in twenty years, but they were negotiated at different dates and matured at different times.

Some of these debentures have been paid by the county, and others are still outstanding.

The city by the award got one-fifth, or £10,000 of the railway stock, and were to pay the county therefor, as provided in the sixth clause of the award.

The debentures issued by the county had coupons attached for the payment of the interest thereon semi-annually.

The County authorities understood, from the sixth clause of the award, that the city should pay the coupons as they matured.

An action was brought, but it was held that the city was not liable until the debentures were due.

Now some, but not all, the debentures are due, and the County, having paid them, has applied to the city for repayment, which has not been made.

1. Can the County collect the debentures already matured and paid, with the coupons belonging thereto, or must proceedings be delayed until all the debentures are due and paid?

2. Is the city liable to the county for interest upon the coupons from the date of their maturity and payment, or can the County only collect the amount of the debentures and coupons, without interest on the latter?

OPINION.—

I have examined the provisions of the award as set out in the 14th vol. B. R. Reports, and am of opinion as follows:

1. The County can at once proceed to collect any debentures that is due and unpaid.

2. Interest is not payable upon the coupons. The County can collect the debentures and coupons only.

J. HILLYARD CAMERON.

25th Nov., 1871.

RECTORY LANDS FUND.

CASE.—

The Synod passed a resolution in 1870 as follows: "That for the purpose of defraying the necessary expenses incurred in the management of the several trusts or funds, now transferred to or what may hereafter be vested in the Incorporated Synod, whatever sum may be required beyond that produced by the rent of lands or the interest of the investment held for the general purposes of the Synod, shall be raised by one equal rateable per centage on the several funds administered by the Synod."

In accordance with this resolution, the General Purposes,

Statistics and Assessment Committee resolved that, in order to meet the future expenses of managing the investments and the proper share of the general expenses of the Synod chargeable to the rectory lands already or in future to be sold, and the proceeds invested, there be deducted from the proceeds of every sale (whether already effected or to be effected) a sum equal to five per cent. on such proceeds, and that the same be transferred to the General Purpose Fund Committee, to be by it invested as a special fund, the interest upon which shall be applied to meet the share of the said rectory investments in the paying the expenses of management.

The sale of the rectory lands is provided for by a Statute passed by the Parliament of Canada in 1866, ch. 16, and under that Statute the Church Society of the Diocese of Toronto passed a by-law to regulate the sales of the rectory lands and provide for the management thereof. That by-law places the sale and management of these lands in the hands of a committee who, by the fourth section of the by-law, shall keep all necessary books of accounts, may appoint an officer for keeping the same and may remunerate him, and all charges of management shall be apportioned among the several rectories in proportion to the income of each rectory derived from the sales of the rectory lands or any part thereof, or the investments therefrom.

1. Does the Act of 1866, ch. 16, authorise the General Purpose Committee to adopt and carry into effect their resolution alone, and if so, can they deduct from al monies still to come in on account of sales already made, the five per cent which has not been deducted from monies already received on such sales as well as from all monies still to come in?

2. If the General Purpose Committee cannot enforce their said resolution, how can that committee legally under the said Act secure the payment from the Rectorial Funds of the legitimate expenses incurred in managing the said funds?

OPINION.—

The act of 1866, ch. 16, which authorises the sale of the rectory lands and makes the Church Society an Incor

porated Synod of the Diocese in which they are situated, the Trustees for their sale and management, provides by the third section that the proceeds of such sales shall be held first, to pay all expenses attending the management thereof. The Church Society of the Diocese of Toronto, in 1867, passed a by-law under this Act, provided a committee for the sale and management, and by the section set out above, declared from which source the expense of management was to be met, and how it was to be apportioned. That by-law has not been repealed, or altered by the Incorporated Synod, except as to an increase of the number of the committee, and by placing their funds under the management of the increased committee, unless an alteration has been made by the resolution of the Synod of 1870, stated in the case, and in my opinion that resolution does not make any alteration, first, because it does not profess to do so, and secondly, because the resolutions could have no legal or binding effect upon the Rectory Lands Fund. The Synod have no power to assess this Fund for the expenses of management of any other fund administered by the Synod and neither the resolution of the Synod nor of the General Purpose Committee could have any legal operation upon the Rectory Lands Fund. The by-law of 1867 points out the proper mode of assessment, the Rectory land committee may be required to pay for the management of their fund, and may either provide an officer under the by-law for their management, or contribute a specific sum to the Synod for their management, and that sum must be assessed upon the income and not upon the principal of the Fund and in the proportions specified in the fourth clause of the by-law of 1867 as stated in the case.

J. HILLYARD CAMERON.

15th Jan., 1872.

EXTENSION BONDS.

CASE.—

It is important to know if the rights of the holders of the Bonds which have been already issued by the Wellington, Grey and Bruce Railway Company, can be affected by the proposed issue of Bonds for the construction by the same Company of the southern extension of the line from Palmerston to Kincardine.

The Wellington Grey and Bruce Company entered into an agreement with the Great Western Company, dated 15th of June, 1869, whereby they agreed to apply 20 per cent of the traffic of the Great Western line which had been received from or sent over the main line of the Wellington Grey and Bruce Company—which for convenience may be styled "interchanged traffic."

At first the agreement was limited to the issue of Bonds to the amount of $10,000 per mile, and to that portion of the line between Guelph and Fergus, and as lengthening the line was contemplated, the following words were inserted.

"Provided always and it is hereby understood, declared, and agreed that notwithstanding this lease is in terms confined to that portion of the line now about being constructed from Guelph to Fergus, it is intended to apply, and all its provisions shall extend and apply to the whole main line of railway, so intended to be constructed from Guelph to some point in the County of Bruce, or on Lake Huron, as well as to the bonds which shall rank *pari passu* with those to be issued for the first section between Guelph and Fergus, but not to any extension or branches from the same main line and the several covenants and agreements herein contained, shall be held to apply to the several sections of the main line, as from time to time they shall be completed to the satisfaction of the said general manager and engineer, and ready for traffic."

Subsequently by another agreement entered into between the same parties, dated the 3rd of June, 1870, it was agreed that the Great Western Railway should apply $12,000 per

mile of railway in the whole to the same effect as though $12,000 had been originally named in lieu of $10,000.

The Bonds which the Wellington Grey and Bruce Company issued, shew upon the face that in the whole they should not exceed the sum of $12,000 for each mile of railway, and that the payment or liquidation in respect of both principal and interest is limited and confined in accordance with the Lease and agreement made between the two companies bearing date, 15th of June, 1869, and 3rd of June, 1870, and that the Bonds were liable to be acquired before maturity by the Great Western Company, by the application by the said Company of 20 per cent of the interchanged traffic according to the terms of the said agreements.

The Wellington Grey and Bruce Company obtained amendments to its Acts of its Incorporation, 34 Vic. ch. 37, (Ontario), 15th Feb., 1871, whereby the issue of $12,000 per mile of Railway which the Wellington Grey and Bruce Company had been authorised to construct and which by this Act the said Company was further authorised to construct, was declared to be the lawful issue subject to certain conditions as to work done and money subscribed in the undertaking, which Act further authorised the construction of the southern branch from some point on the main line to Kincardine.

The second clause of the 34 Vic. ch. 37 enacts, that the Bonds or Debentures which the Company may issue under the borrowing powers and shall with those already issued be a first charge under the Mortgage referred to in the said lease and agreements with the Great Western Railway Company dated respectively the 15th day of June, 1869, and the 3rd day of June, 1870, shall not exceed in the whole with those already issued, $12,000 for each mile of the railway by the said recited Acts, or this Act authorized to be constructed and which shall be actually completed and worked by the Great Western Railway Company.

It would seem therefore to be quite clear that assuming the proper basis being in existence for the issue of the Bonds, viz., work done, bonus voted, or stock subscription

paid, that the Wellington Grey and Bruce Company have a right to issue $12,000 per mile on the whole mileage of either main line or extension which Bonds shall be a first charge.

The Great Western, and the Wellington Grey and Bruce Company have since agreed and although the agreement has not been executed it is fully intended to act upon its terms which are, that the Great Western Company should in like manner apply the same terms and conditions which are in every respect the same in relation to the southern extension as have been made in relation to the main line with the single exception that the issue of bonds was to be confined to $10,000 per mile on the extension.

But the point is whether the holders of Main line Bonds can claim that as between themselves and the holders of Extension Bonds are entitled to be first redeemed out of the main line traffic to the exclusion of the extension bonds which should be limited to the fund of traffic arising out of the extension and not participate in the main line traffic until all the main line Bonds are absorbed.

And granting that it is nevertheless true that all the Bonds are a first charge *pari passu*, but that relatively to each other there are two classes.

On the ground that the rights of the main line Bond holders are secured by the agreements of 1869, and 1870, and that the act of Ontario, of 1871, did not expressly deprive them off their rights thereunder.

As the Act legalized the issue of Bonds as the first charge in respect not only of the line agreed to be worked, in the agreements but also in the southern extension (as authorized to be constructed by that Act,) the Great Western and the Wellington Grey and Bruce Company as of one issue *pari passu* so that the bonds about to be issued for $10,000 per mile on the southern extension may participate on equal terms and conditions in the redemption fund to be provided by the Great Western.

Therefore the point arises:

Upon the affect of the Great Western executing the agreement to apply 20 per cent of traffic from the main line and extension, for the aquisition of all the Bonds upon like

terms disregarding the restriction contained in the proviso in the agreement of 1869, which states that the agreement was not to extend to any extension or branches from the same main line.

The objections which the main line bondholders might raise:

The relief which the extension bondholders could claim from the Great Western Company by reason of the disappointment sustained by being limited to the traffic on the extension, while the agreement relating to such extension, led enquirers for Bonds to look to the whole line;

And whether the Great Western should only agree to apply the traffic interchanged with the extension only to the acquisition of the bonds to be issued for the extension until all the main line bonds were acquired and then secure to the extension bonds the benefits of the entire traffic.

And then further, whether the main line bondholders can insist that the rental received from the Great Western, namely, the 20 per cent from gross traffic is not by the agreement of 15th of June, 1869, appropriated to the main line bonds before an appropriation therefrom is made to pay interest to the extension bonds.

And whether any interest at all should be paid to the extension bondholders while the main line bond holders are unpaid.

And whether the extension bonds are not by the previous agreements of the two companies really made a second charge notwithstanding the Act assumed to make them generally a first charge.

And whether the second section of the Act of 1871 by the term "The bonds * * * referred to in the lease and agreements * * * shall not exceed in the whole with those already issued $12,000 for each mile of the railway by the said recited Acts or this Act authorised to be constructed and which shall be actually completed and worked by the Great Western Railway Company introduced into the general plan of the agreements of 1869, and 1870, the bonds of the extension line in disregard of that part of the proviso which said that the agreements should not apply to any extension or branches from the same main line.

Did the Legislature (perhaps inadvertently) deprive the existing main line bondholders of a certain traffic from the whole line, applied exclusively to their bonds, by admitting the extension bonds to share therein.

Vide Acts relating to W. G. & B. Co. 26 & 28 Vic. O. 93; 31 Vic. O. 13; 34 Vic. O. 37.

OPINION.—

Upon a careful consideration of the case submitted, my opinion upon the various points is as follows:

1. It is clear that the conditions being performed, the Wellington, Grey and Bruce Company have the right to issue bonds to the extent of $12,000 a mile on the whole mileage of both their main line and extension.

2. Considering the agreement between the Great Western and Wellington, Grey and Bruce Companies as to the extension bonds as executed, there were or will be two classes of bonds, one for $12,000 a mile and the other for $10,000 a mile, and I am of opinion that without express words in the Act of Parliament the right held by the bondholders of the first cannot be abridged or transferred to those of the second class. The holders of the first class of bonds are entitled to all the benefits of the interchanged traffic, and their bonds must receive all the advantages intended for them under the agreements of June, 1869 and 1870, to the exclusion of the bonds of the other class until they are redeemed.

3. The Great Western should apply the interchanged traffic to the main line bonds only until they are all redeemed.

4. As between the holders of bonds of the two classes as described above, I consider that the bonds of the first class are to be treated as if they were the only bonds in existence until they are all acquired, and that in respect of interest as well as principal their holders are entitled to the application of all the traffic arranged by the agreements of 1869 and 1870, and the holders of the bonds of the second class can claim only on the extension until all the first class bonds are satisfied.

J. HILLYARD CAMERON.

6th Feb., 1872.

ESTATE IN FEE BY DEVISE.

CASE.—

In a codicil to his will a testator devises as follows: "I will and direct that my son A. B. do have the west half of said lot No. 16, east side of East Lake, and C. D. the east half of the said lot, to have and to hold the same to them, their heirs and assigns forever. Should my sons A. B. and C. D. die without heirs, I hereby will and bequeath the said lot No. 16, 1st con. east side of East Lake, to E. F.'s two eldest sons, share and share alike."

A. B. sold the land and, gave a deed of his part of it in fee. He had a son, but he is dead, and he has no other children. If he dies without leaving any children, will the land go to the two eldest sons of E. F., or has the purchaser from A. B. good title in fee to the west half of the lot.

OPINION.—

My opinion is, that A. B. had an estate in fee simple to the west half of the lot under the will, and that the purchaser from him had an estate in fee in the west half, which cannot be interfered with by either of the eldest sons of E. F. on the death of A. B., as they have no title nor interest in the land under the will.

J. Hillyard Cameron.

19th Feb., 1862.

RIGHTS IN BOUNDARY STREAM.

CASE.—

The Etobicoke River or creek forms the boundary line between the Counties of York and Peel, and also between the Townships of Toronto and Etobicoke.

These boundary lines are usually four rods wide.

QUESTIONS.—

1. Have the owners of the lots on each side of the river the right to the stone in the river, or have the Township Councils? And can the Councils pass a by-law to sell same?

2. Does it make a difference whether the grants of the lots state boundary to be to high or low water mark?

OPINION.—

The River Etobicoke is not a navigable river, and although the boundary line be as stated in the case, the proprietors of the land on each bank would be entitled to the middle of the stream on their respective sides.

If the Crown granted only to the edge of the stream, whether to high or low water mark, and re-sold the river, the bed of the river and all on it would be in the Crown.

If the grant was granted to the edge of the stream, without reservation, or if the lots were granted generally on each side of the river, the owners of the lots would be entitled to the middle of the river from each side, and each, therefore, to the stone on his own side.

J. HILLYARD CAMERON.

1st June, 1872.

RIGHTS OF LESSEES.

OPINION.—

I have had a great deal of difficulty in coming to a conclusion as to the correct course to be pursued in reference to the lessees and occupants of lot 12 W. Belle River. From the papers sent to me it appears that A. B. was the first lessee, and his lease gives him "the south fifty acres of lot twelve, west side of Belle River, extending from front to rear of lot, containing fifty acres." C. D. was the second lessee, and his lease is for "the northerly part, extending from front to rear of lot twelve, west of Belle River, containing fifty acres, be the same more or less." E. F. was the third lessee, and his lease is for "the south half of the north one hundred acres of lot twelve, west of Belle River, containing fifty acres, be the same more or less."

No lease has been issued for "the north part of the south part" of the lot, but it was applied for by G. H., who paid

the amount required by the Company, and has, as I understand, gone into possession of his supposed part, and made improvements.

The lessees are all for parts of the lot "as described by patent from Crown to the Canada Company."

On the best consideration that I have been able to give the case, the rights of the several parties, as far as the Canada Company is concerned, are as follows:

A. B. is entitled to the south fifty acres of the lot, as that exact quantity is leased to him without the words "more or less."

C. D. is entitled to whatever quantity there may be in the north half of the north half of the lot.

E. F. is entitled to his deed for whatever quantity there may be in the south half of the north half of the lot, and any surplus of purchase money must be returned.

G. H. is entitled to whatever may remain of the south half after giving A. B. his fifty acres.

As believing the several parties themselves by reason of knowledge of occupation or agreement, they may be unable to interfere with the actual occupation of each other, but the rights as between each of them and the Canada Company appear to me as above; and I accordingly advise the Company to act on this view, unless the parties can be induced to take leases or deeds for the exact number of acres of which each of them is in possession.

J. HILLYARD CAMERON.

28th Jan., 1873.

BONDS UNDER ACT OF INCORPORATION.

OPINION.—

The power of the T. & N. R. Company to issue bonds is given by the 22nd sec. of 31 Vic. ch. 41, their Act of Incorporation.

There is nothing in that section, nor elsewhere in their charter, declaring in what currency or at what date the bonds are to be issued, and the authority of the share-

holders having been obtained to the issue of a prescribed amount, to that extent they may be issued in sterling or currency, and payable in England or elsewhere.

If the bonds have been issued, and the Directors can obtain the control of them, they may be cancelled, and these issued in their stead. If they have not been issued there will be a rightful issue under resolution of the shareholders.

J. HILLYARD CAMERON.

12th Feb., 1873.

DOUBLE INSURANCE.

OPINION.—

I understand that this case is submitted for my opinion as to the effect of the double insurance clause in the policy on the value placed upon the property insured in the application for the insurance, the insured having valued the property at $2,000, when it was really worth only $1,400, and by such over-valuation obtained an insurance for $1,000, which would not otherwise have been granted to that amount. The double insurance clause applies only in cases where there is *another insurance on the same property*, and not to a case of over-valuation, which is provided for under another condition of the policy, viz.: "Provided always that if the property insured be over-valued this Company shall be liable for loss only on such proportion of the actual value as the amount insured bears to the estimated value given in the application."

If the over-value was fraudulent the policy would be invalid altogether, if not fraudulent, and the actual value was only $1,400, the Company is responsible for $700 only.

J. HILLYARD CAMERON.

20th May, 1873.

APPROPRIATION FOR SCHOOL.

CASE.—

We are reques ed to get your opinion on the following facts: Th. Trustees of the incorporated village of Forest have laid an estimate before the Municipal Council of that village, requesting them to raise the sum of $5,400 to purchase a school site, build a school, &c. In addition to stating the time at which the Trustees desired the money, they requested the Council to raise the money by debentures payable over 18 years, paying small sums the first few years, increasing in amount till the end of the time.

The questions to which answers are required are as follows:

1. Is the Council bound to raise the money for the Trustees? 2. Have the Trustees authority to instruct the Council in what manner the money should be raised by them? 3. If the Trustees instruct the Council to raise the money by debenture, as done in this case, can the Council pass a by-law in pursuance of such instructions without submitting it to the people? 4. Can the Council, under any circumstances for school purposes, pass a by-law to raise money on debentures without submitting it to the people? 5. Can the amounts be made payable annually without forming a sinking fund for payment of debt and interest? 6. If amount required to be levied annually according to last revised assessment roll to meet premium and interest asked for by School Trustees should require a rate of $\frac{80}{100}$ part of a cent on the dollar extended over a period of 18 years, would such a demand be considered increasonable so as to excuse Council from raising amount, and would it justify them in resisting the demand?

OPINION.—

I send my answers to the questions in the order in which you have placed them.

1. Yes.

2. No. The Council are to provide the monies for school purposes in the manner directed by the Board of School

Trustees, but that does not, in my opinion, apply to the mode in which the money is to be raised.

3. No.
4. No, if the debentures extend beyond the current year.
5. No.
6. No.

J. HILLYARD CAMERON.

12th June, 1873.

RESERVATION OF TIMBER.

CASE.—

Under notice of the Crown Lands Department of Ontario bearing date 4th Sept., 1860, in which the public lands in *Tudor* and other townships, all offered for sale under the "Land Mining Act of 1869," at $1 per acre, and applications to purchase directed to be made to C. D. at Belleville, on the 29th day of April, 1872, we delivered the necessary papers to and paid the said C. D. in full for lot 17, in the 18th con. of the Township of Tudor; and on the 15th day of May, 1872, the patent for the said lot "as mining lands" was issued to us.

On the 17th Dec., 1872 we sold the said lot to one A. B., who lives upon it, but we reserved in the sale to him all the cedar and tamarac timber and trees lying or being on the said lands. During the last winter the said A. B. cut upon the said lot and delivered to us on the banks of a creek near by his place a quantity of the cedar standing on the said lot, and we paid him for doing so, and marked the cedar so got out by him with our own registered mark. Then in the month of March last G. & Co.'s men went to the said cedar and put their mark upon it, on and over our marks. Under the reservation clause in the patent the said lot will be kept in G. & Co.'s timber license for that township, and their license for last year bears date May 1st, 1872. Can we, in your opinion, hold the cedar so got out and marked, and if so, please advise what course is best to take and hold it. Messrs. G. & Co. claim that they now

have it in their possession, but we consider we have it as much in our possession as they, for it is intermixed with timbers of different parties, besides theirs and ours descending the River Trent.

OPINION.—

I suppose that your patent for lot 17, con. 13 Tudor, is the usual patent in the reservation of pine timber under the Mining Act, and it can only be to such timber that the license of G. & Co. can apply.

The cader and tamarac trees not being excepted in your patent are yours under the reservation in your deed of the lot to A. B., and therefore you have a right to it.

Your proper course is to notify G. & Co. that their men have erased your trade mark from the timber and put on theirs contrary to the statute, that the timber is yours, and ask them if they claim it, as you wish to hold them responsible for its value and damages. If they dont answer you take it away, or if you choose, take it away instead of notifying them, but the former is the better course.

J. Hillyard Cameron.

13th June, 1873.

LIABILITY OF BANK STOCK TO TAXATION.

CASE.—

Upon the question of the liability of Bank stock to municipal taxation under the assessment law of Ontario, I am of opinion as follows:

OPINION.—

By the assessment Act the stock of incorporated companies is liable to municipal taxation in the hands of the stockholders but the stock of Banks was exempt from such taxation so long as the issues of such Banks were liable to the general tax existing when the assessment Act was passed, and this exemption being exceptional and temporary as to these Banks the issues of which are no longer taxable under the General Banking

Act, and therefore in my opinion such Bank stock is now liable to municipal taxation, but I consider that Bank dividends should not also be taxed although I do not say that they are not also taxable.

The stock of any such Bank doing business and having offices or agencies in Ontario, the stock of which may be transferred by law within Ontario although the head office may be without this province is taxable as the personal property of the person owning the same and resident in the said province.

The stock is taxable at the time when other personal property is assessed.

J. HILLYARD CAMERON.

14th June, 1873.

MUTUAL INSURANCE ACT.

OPINION.—

I consider that if the Beaver or any other Mutual Company with special acts, avails itself of any of the provisions of the Mutual Insurance Act lately passed, which are of a more extensive or beneficial character than those contained in the former Mutual Act, that company should not exercise any powers which are directly opposed to the express provisions of the new Act and that under such circumstances the cash policies of such Company should be limited to three years.

AMENDING ASSESSMENT.

If there be any error in any resolution of assessment there is no reason why the assessment should not be amended, always taking care that the premium notes of those policies only are issued on which losses and expenses were incurred during the currency of the policies for which the premium notes were given.

J. HILLYARD CAMERON.

27th June, 1873.

ANNUAL MEETING OF SHAREHOLDERS.

CASE.—

We want your opinion on the legal construction of secs. 12 & 13 of the Western Ins. Co's charter respecting the time of holding annual meetings. The books are balanced at 30th June, in each year and general statement of the companys affairs made up to that date annually. The question now is, suppose that one annual meeting of shareholders was held on 28th Aug., 1872, would it follow of necessity by the sections referred to that the annual meeting this year must be held not later than the 27th Aug., so as to keep within the 12 months, or does the charter admit of the annual meetings being held in each and every year on the construction that if held last year in August, it might be held this year in September, or any time within the year. Your early attention will oblige us as we have to give immediate public notice of thirty clear days should you favour the opinion that the annual meeting shall take place within the twelve months following that of last year.

OPINION.—

Upon considering the clauses referred to, and the amending Acts, substituted for the twelfth clause in the amended Act, I am of opinion that the directors may call the stockholders together on *any day* they may appoint in any year on giving the necessary notice, and that it is not necessary that in this year the annual meeting shall take place within twelve months from the time it took place last year.

J. HILLYARD CAMERON.

24th July, 1873.

DIVIDENDS.

CASE.—

The Canada Car Company will shortly be in a position to declare a dividend on their stock and the Directors are anxious to be advised whether in declaring this dividend

they may take into consideration the number of calls paid by each shareholder, and the time of the payment of each call, and declare the dividend pro rata according to the amount paid and the time of each payment, or whether every shareholder is equally entitled to a dividend, such dividend being declared on the shares, irrespective of the amount paid thereon or the time of payment.

The Company was originally incorporated by charter under the Canada Joint Stock Companys Letter Patent Act, 1869, under the name of the "Canada Car Company," and nearly all the present shareholders subscribed for their stock before the said Charter was obtained and with the object of obtaining it. At the last Session of the Dominion Parliament the Directors obtained a special Act giving them fuller powers, and authorising them among other things to change the name of the company to the "Canada Car and Manufacturing Company," and constituting them a body "politic and corporate," and with all "and every "the incident powers and privileges to such Company "heretofore belonging and hereinafter mentioned. Pro- "vided always that nothing therein contained shall be "construed in any way whatever to effect any right or "liability of the said Canada Car Company under its "charter of Incorporation, or the rights or liabilities of the "shareholders of the Company on their subscriptions for "stock, and their payments made on account of the same "or otherwise in respect of any contract matter or thing "affecting the said Company on any action, suit or pro- "ceeding commenced on behalf of or against the Company "at the time of the passing of the Act."

The Canada Joint Stock Companies Act, 1869, except in so far as its provisions are inconsistent with the special Act, was incorporated with this Act.

Under the Canada Joint Stock Companies Act, 1869, the Directors of the Company had power in all things to administer the affairs of the Company and make by-laws not contrary to laws nor to the Act, to regulate the making and payment of calls on the stock, the forfeiture of stock for nonpayment, and the declaration and payment of divi-

dends thereon; and by *sec. 26* of the same Act "the Directors of the Company may call in and demand from the shareholders thereof respectively all sums of money by them subscribed, at such times and places, and in such payments and instalments as the letters patent, or this Act, or the by-laws of the Company may require or allow, and interest shall accrue and fall due at the rate of six per centum per annum upon the amount of any unpaid call from the day appointed for the payment of such call." And by *sec. 29*, "If, after such demand, a notice as by the letters patent or by-laws of the Company may be prescribed, any call made upon any share or shares be not paid within such time as by such letters patent or by-laws may be limited in that behalf, the Directors in their discretion, by vote to that effect, reciting the facts and duly recorded in the minutes, may summarily forfeit any shares whereon such payment is not made, and the same shall thereupon become the property of the Company, and may be disposed of as by by-law or otherwise they shall ordain." And by *sec. 31* "No shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the Company."

Similar powers to these last were conferred on the Canada Car and Manufacturing Company by their special Act and the Canada Joint Stock Companies Act, 1869.

The Directors have from time to time made calls on the shareholders of the Company amounting to about fifty per cent. of their subscribed stock. A few of the shareholders are a good deal in arrear in their payments, and the Directors do not feel that it would be just to those shareholders who have paid their calls to allow those who have not paid to receive an equal dividend. They are therefore allowed, if they can legally do so, to declare a pro rata dividend, as has been above said.

They have already passed a resolution authorising an interest dividend of seven per cent. on the calls paid, and which resolution is as follows: "The Board ordered that "all the shareholders in this Company be placed on one "equality, and that this be effected by means of an interest "account, the rate of interest to be seven per cent. per

"annum. It being understood this does not embrace the "the $30,000 paid up stock given for the property of the "Company"; but as it is probable that the amount of profit to be divided even after this interest dividend will be considerable, they wish to have your opinion on the questions now submitted to you.

You are referred in these questions to *Lindley on Partnership*, pages 653-655; and to the cases of Adley v. Whitstable Co. 17 Vic. 315, and Lowes v. Currie, 1 Kay 617; and to the *Imperial Joint Stock Companies Act of 1845-48-62*, which make special provisions for a case like the present.

You are therefore requested to advise in writing the Company.

1. Whether they can legally, in addition to paying the interest dividend above referred to, divide the profits of the Company among the shareholders according to the amount paid up by each shareholder and the time of their several payments.

2. If you are of opinion that they can, whether a shareholder in arrear can put himself in a position to claim the whole divided by paying up the amount he owes the day before the dividend is declared; and

3. Whether the resolution of the Board above referred to, declaring an interest dividend, is a good resolution?

OPINION.—

Upon the case submitted for my consideration I am of opinion as follows:

1. I am of opinion that the resolution providing for the payment of interest on stock paid up is a good resolution, provided that the holders of the $30,000 stock mentioned in it have either agreed to it expressly or by the terms of sale of their property to the Company, otherwise it is invalid as excluding so much stock that is entitled to share in any dividend that may be declared by the Directors.

2. I consider that dividends may be declared pro rata on the amount of the stock paid up by each shareholder.

3. Any stockholder can entitle himself to a full dividend upon the payment of all due upon calls before a dividend is declared.

4. To obviate any difficulty whatever that all calls have been legally made, and that the Directors are in a position to forfeit the stock upon which the calls have not been paid, I would advise that such forfeiture should be made, and that the defaulting shareholders should be informed that their stock will be restored to them on the payment of their calls and interest, and that they will then be credited with the dividends declared upon the amount of their stock actually paid up before forfeiture.

J. HILLYARD CAMERON.

24th July, 1873.

ASSESSMENTS ON MUTUAL POLICIES.

CASE.—

The financial committee of Beaver Insurance Co., desire a formal opinion from you on the subject of assessments generally and particularly with a view to the powers of the Board to assess in accordance with the new Ontario statute.

The Agricultural Co. of London, originated the practice of assessing annually on farm polices under their special Act passed in 1863, of which one special Act of 1864, sec. 3, is a copy nearly. We were advised at the time that we could assess annually under this section, and as the ordinary assessment on farm risks is 20, very small averaging not more than $5, and has never been disputed it would be undesirable to change our system unless upon some pressing necessity. The Agricultural Co. collect but one assessment of half the premium note. We collect two assessments of one fourth the premium note each. All parties, farmers and merchants alike, prefer an average assessment of an understood amount to the old mutual system of fluctuating assessments at regular intervals it would scarcely pay us to collect smaller sums than we now do.

With respect to assessments on mercantile risks, we have assessed yearly on an average calculation of the probable losses and expenses of all kinds,—that is yearly on each

separately—it would seem now proper to declare this assessment by a monthly resolution so as to include every policy distinctly and to meet the objection in a late decision that we cannot declare an assessment until the losses and expenses have actually accrued, we propose to make our assessments always *ex post facto*. As in the case of risks legal objections are not unfrequently taken, it is desirable to keep strictly within the law. There seems to be no limit to the *first payment* under the statutes, and by increasing it we can manage to assess for every loss than we can legally do. But it is highly important that our assessments for ordinary purposes should be on the average principle if at all practicable as that principal best meets the views of mercantile men, and all others.

OPINION.--

There are four purposes for which assessments may be made by the Company, 1, losses; 2, expenses; 3, guarantee fund; 4, reserve fund. The first and second class can be assessed for, only after they have been incurred, and must embrace only such policies as are in force while they have been incurred the third and fourth class embrace all policies in force when the assessments are made, these latter may clearly be assessed for annually, and so in my opinion may the first and second under the terms of the Beaver Act. The 49 section of the new Mutual Fire Insurance Company Act authorises an annual assessment for the reserve fund *only*.

The Beaver Acts allow such an assessment for that and *other* purposes, I would therefore continue the annual assessment in any cases in which it is found most convenient, always bearing in mind that in the first and second class of cases as above that the assessment might be only on those premium notes in force when the loss or expense was incurred.

J. HILLYARD CAMERON.

26th July, 1873.

PREFERENCE BONDS.

CASE.—

Under the Act of 1864, the Welland Railway issued £50,000 preference bonds at 8 per cent interest payable in ten years and due in 1874. The company desire to issue or substitute the same amount £50,000 bearing a different rate, say six per cent interest with a different period to run, say twenty years. Can this be done, and if not, what other course should be adopted with a view to lower the rate of interest if new bonds cannot be created under the Act holding their preferential position.

Please give me your opinion on above.

OPINION.—

Under the 13th section of your Act of 1864, your directors have full power to issue bonds in lieu of the present preference bonds, as these bonds become due, and not to compel any holder of these bonds to take new bonds either for a longer period or for a less rate of interest or in fact new bonds at all unless by agreement, and of course by agreement with the present holders such new bonds can be issued, and they will hold exactly the same position and preference as the present bonds.

If the holder can not be induced to agree the only way by which an arrangement can be made is by the amendment of your present Act by Parliament.

J. HILLYARD CAMERON.

11th Aug., 1873.

LIABILITY OF SURITIES OF AGENTS.

CASE.—

I am to give my opinion on the position of surities for agents of a company under the usual forms of bonds and letters of appointment, in cases where the agents do not pay over monies collected in accordance with the terms of their letter of appointment, and the company continue

them in their position without notifying their surities of the default.

OPINION.—

If the terms of the appointment are communicated to the surities then their bond is based upon it. As a matter of contract, and if the company do not notify them of the default they may be discharged from the payment for future defaults, and if as in the case on which the question has arisen, the agent is allowed to continue it should only be with the consent and knowledge of his surities, and their agreement, that time being allowed the agent for payment they should not be discharged.

J. HILLYARD CAMERON.

5th Sept., 1873.

RATE OF DISCOUNT OR INTEREST.

CASE.—

Quære 1. Under the Banking Acts as at present in force in Canada, does a chartered Bank or its officers incur any, and what penalty or penalties by stipulating in reserving or exacting a rate of discount or interest beyond seven per centum, per annum.

Quære 2. A chartered Bank having for some years done a discounting business with a customer and having reserved or exacted a larger rate of discount or interest on each note or bill, as discounted, than seven per cent. could the excess be recovered against Bank by action or otherwise, or could such excess be set of in an action brought by them against such customer alone on one of such notes or bills held by such Bank and made by such customer as money had and received to the use of such customer or under a special plea like the fifth plea in suit of the Bank of Montreal v. Butt, and would it make any difference that such customer had knowledge of the rate exacted and acquiesced in or voluntarily paid the same.

OPINION.—

Answer 1. No.

Answer 2. The excess could not be recovered by action or set off if aquiesced in or voluntarily paid by customers but if it were retained by the Bank without the customers consent or knowledge and repudiated by him, I consider it could be made the subject either of action or of set off.

J. HILLYARD CAMERON.

2nd Sept., 1873.

AGREEMENT ON GRANTING BONUS.

CASE.—

By-law passed 1st Dec., 1870, under Canada Southern Railway Act, 1869, cap. 32, granted $15,000 to the Canada Southern Railway Company.

By-law calls for an agreement stipulating that, 1st, $7,500 should be payable when road graded and bridged; that, 2nd, $7,500 should be payable when the railway should have constructed their railway through the said township, so that the same is in a fit condition to carry traffic.

The stipulation as to the 1st is, that it should be done within the time limited by the Act of Incorporation, Oct., 1873.

As to the 2nd, by the 1st of Dec., 1872.

The Act provides that the debentures should have been delivered to the Trustees appointed under the Act, within six weeks of the passage of the by-law.

The Municipality was largely indebted to the Municipal Loan Fund, and on this account the officers of the municipality refused to execute the debentures or hand them to the Trustees, and as an agreement in compliance has been made, the municipal indebtedness is now wiped out.

By the Canada Southern Railway Act, 1873, the by-law was legalized, Ont. 36 Vic. cap. 86, sec. 4.

The road was bridged and graded long prior to Dec. 1st, 1872, but the rails were not laid all through the township.

The municipal officers are unwilling to execute the debentures, because they contend that the terms of the by-law as to time have not been complied with, and that they might be personally responsible if they executed the debentures.

The Company having now fully complied with all the terms of the by-law, the Council are desirous of giving them the benefit of the by-law.

The only existing difficulty appears to be the non compliance of the Company with the time limitations as to the 2nd $7,500.

The Canada Southern Railway Act, 1872, cap. 48, sec. 2, gives the corporation of any municipality which has granted aid to the Canada Southern Railway Company power to grant such extension of time as the Corporation may think fit for the performance or fulfilment by the Company of any works stipulated for in respect of such aid or assistance.

The opinion of counsel is asked on the terms of the above.

OPINION.—

The by-law has been legalized, and therefore there is no longer any question about its validity. The question now is, Is the Municipality bound to deliver the whole or any part of the debentures to the Trustees?

In my opinion upon the delivery to the Municipality by the Canada Southern Railway Company of the agreement recited in the by-law, the Municipality is bound to deliver to the Trustees one half, or seven thousand and five hundred dollars, of the debentures; but they are not bound to deliver the other half unless the Corporation of the Municipality agree and resolve to extend the time for the fulfilment of the Railway Company's agreement as mentioned in the conditions in the by-law. I consider that the Corporation of the Municipality have the power to extend the time under the Canada Southern Railway Company's amended Act of 1872, ch. 48, sec. 2, and that that power can be exercised by the Corporation of the Municipality without any member of such Corporation incurring any personal responsibility by agreeing to such extension of time.

J. HILLYARD CAMERON.

18th Oct., 1873.

LEASE WITH RIGHT TO PURCHASE.

CASE.—

In the matter of leases for which money has been paid for grant.

Leases in this position are now often turning up in which the lessee is dead intestate, and the heirs either infants or unknown to us. You are aware how very important it is to us to be able to deal with this class of leases in the same manner as we can in the class of leases where no money has been paid, and in which cases you have long since decided that the administrator can relinquish the lease to the Company, and we can then safely deal with the land. There is a case now before us in which A. B., the lessee, is dead intestate. He left no children. His wife claims as heir at law, but has not administrated; there was a sum of money, £31 5s. 0d., paid for grant. Could we not, in a case like this, treat the matter in this way: Allow the administrator to relinquish the lease to the Canada Company, *and to withdraw the money deposited for grant of lease as part of the lessee's personal estate*, we of course consenting to the arrangement, and getting up the lease and all papers. Or do you consider that the fact of the amount paid for grant of lease creates such an equity in favour of the heirs that it cannot be got rid of without suit in Equity and the decision of the Court?

In the case of infant heirs who would not attain majority during the existence of the lease a manifest injustice would be done if the lease were to expire without any one having the power or right to exercise the privilege of purchase; and we do not understand you to say that by the reception of money for grant of lease such an estate arises as exists beyond the term granted, even as an equity?

OPINION.—

In the particular case mentioned, in which the lessee, A. B., is dead, there can be no difficulty in taking a release from the administrator of the lessee, with return of the £31 5s. 0d. paid, as there are no children.

On the general question in cases of this description, I am unable to say decisively that if the lessee dies pending the

lease, and when there has been no breach of covenant on his part, that there is not an equity in his heirs. If the lease has terminated without the exercise of the right of purchase the case is different, and there I consider no equity could exist if the lessee died, but when the lease still exists, and there has been no forfeiture from any cause, as the lessee might claim the fee simple if alive, so might his heirs if he were dead; and in that case the release of the lease by his executor or administrator would be insufficient to replace the Company in their original position.

The Company cannot themselves file a bill, as that would admit the equity. They must await the filing a bill against them.

J. HILLYARD CAMERON.

10th Nov., 1873.

PARTICIPATION OF PROFITS.

CASE.—

The Ontario Trust and Investment Company (incorporated by cap. 68 Stat. Ontario) opened stock books, and stock was subscribed.

The only by-laws passed by the shareholders, giving the Directors power as to stock, are in these words:

"The Directors shall have full power to increase the capital stock of the company to the extent allowed by the Act of Incorporation, or by any Act hereafter passed amending the same at any time, and on such terms as the Directors decide, and may charge such premium as they think proper on such increased capital, such premium shall be carried to the credit of the Company, and form part of its general assets."

"The Company shall have a lien on the stock of any shareholders indebted or liable to the Company until such indebtedness or liability is removed, and without the consent of the Directors no shareholder, whilst indebted or liable to the Company either as principal or surety, shall be allowed to transfer his stock in the Company."

"The Directors may call in the amounts due on subscribed stock in such sums and at such times as they may, but no one call shall exceed twenty per cent. of the subscribed stock or be payable until thirty days shall elapse after the last preceding call was payable."

The Act was amended, but the amendments do not affect the present question.

The Directors passed a resolution in these words:

"It was ordered that parties desiring to pay their sub-
"scribed stock in full or any part of it be allowed to do
"so."

Calls to the extent of 50 per cent. of the subscribed stock have been made and paid.

No calls beyond this 50 per cent. have been made.

One shareholder has paid up in full, and several have paid in advance of the calls, and the remaining shareholders have merely paid up all calls.

It is desired to wind up business and divide the cash and assets amongst the shareholders.

What are the rights of those who have been paid in advance of the calls in respect of such excess?

OPINION.—

Under the resolution of the Directors, as set out in the case, shareholders paying in advance were mere volunteers without any definite rights as to such payments.

All shareholders paying their calls stood on the same footing, and knew their position. Those paying in advance could at most claim interest on their advances, but could not claim a share of profits on their advances.

I am of the opinion that the shareholders who paid their calls are entitled to a participation of profits or liabilities for losses in proportion to the calls due, but that those who paid in advance are entitled neither to a participation of profits on their advance beyond the calls, nor are they subject to a liability on their advances beyond the calls, but they are entitled to legal interest on their advances.

The shareholders who have paid in excess of their calls

are entitled to be repaid such excess, and interest in full, accounting for any dividend thereon, and ranking with the others as to the amount of calls.

J. HILLYARD CAMERON.

10th Nov., 1873.

FORFEITURE OF LEASEHOLD.

CASE.—

A. B. is in treaty to purchase C. D.'s property, but wishes to be advised of the effect of the limitations contained in the lease, as stated more fully below.

1. It will be seen that the deed of the freehold is an absolute statutory deed. See last recital, "And whereas "the said parties of the first part have agreed with the said "parties of the second part *absolutely to sell* and convey for "$11,620."

2. The first recital in the lease is that C. D. had *purchased* the property referred to in the deed of the freehold, thus recognising the fact of an absolute estate of freehold.

3. The next recital shews the consideration for creating the leasehold term at a *nominal* rental ($20 a year and so on), viz., the expenditure of $85,000 on the freehold, and of $40,000 on the leasehold.

4. The vendors are advised that the covenant in the lease to expend the monies does not give a charge on the freehold, either at law or in Equity, and does not create any restriction in dealing with the freehold. This is the first matter to be considered for the vendee. It will be observed that the consideration stated in the lease for making the demise is the performance of certain conditions, the principal of which is the expenditure of $125,000; and "that until the whole of the said sum shall be expended," &c. the lessees shall pay as and for rent such further sum of money (beyond the $20, &c.) as would equal the difference between the taxes on the premises, and what they would be if the expenditure of $125,000 had been made.

This rate C. D. has been paying the city since 1864.

It is not necessary to consider the question of forfeiture for breach of performance so far as the past is concerned, as it is proposed to get the consent of the city to an assignment of the term; but it is necessary to consider what, if anything, would be necessary to do for the future in order to avoid a forfeiture.

5. What, in other words, would be the position of the vendee with reference to the expenditure of $125,000, required by the lease, and what is the meaning of the clauses bearing on this point?

The vendors are advised that the word "premises" refers to the *leasehold* only, looking at the habendum, the context, and the reference in the same sentence, by way of contrast to the "purchased" premises.

They contend, therefore, that it is only the leasehold premises that it is obligatory to use for manufacturing purposes only, and that the freehold can be used for any purpose; and that any erections on the freehold would be to the extent of $85,000, a compliance with the covenant to expend $125,000.

And they read the second sentence as follows: "And shall and will expend in and upon the said premises so purchased as aforesaid $85,000, and in the said premises hereby demised in permanent improvements, erections, buildings, and machinery *for manufacturing purposes* ("such purposes"), together with storehouses and wharves, not less than $40,000;" and they read the preceding paragraph thus: "And also shall and will use and occupy the said *demised* premises for manufacturing purposes only, or for building storehouses, wharves or other erections used with or belonging to buildings and machinery for manufacturing purposes which may be erected on the premises so purchased as aforesaid."

It is understood by all parties that $85,000 will have to be expended on the *freehold*. Must they be of the same character as those on the leasehold?

OPINION.—

The points submitted for my consideration are: 1. Is the covenant in the *lease* to expend $85,000 on the free-

hold a charge upon he *freehold?* In my opinion it is clearly *not* a charge upon the freehold.

2. As to causes of *future* forfeiture of the leasehold premises. All forfeiture for any *past* cause being abandoned, there can be no forfeiture for the non expenditure of the money covenanted to be expended, as the expenditure was to be made during the first three years of the lease, and if all past cause of forfeiture is abandoned, that being a past cause can no longer be acted on. The causes of forfeiture that still exist are as follows: Non-payment of rent and taxes, use of the *demised* premises for other than manufacturing purposes, or for buildings, stores, wharves or other erections used with or belonging to the buildings, and machinery for manufacturing purposes erected on the freehold property referred to; carrying on any noisome, noxious or offensive trade or business on the demised premises; carrying on any trade or manufacture carried on at the date of the lease on any part of the property of the lessors then under lease, or assigning or sub-letting demised premises or any part thereof without written covenant of lessor; refusal of entry on demised premises to surveyor, &c., of lessors to view state and condition thereof.

3. The position of the vendee with reference to the expenditure of the $125,000 stated in the lease, and the meaning of the clauses in the lease bearing on this point. The covenant for the expenditure of the $125,000 is clearly divisible into $85,000 on the freehold, and $40,000 on the leasehold premises, and that covenant will therefore be binding on the vendee as the assignee of the leasehold to the extent of $40,000 only.

J. HILLYARD CAMERON.

22nd Nov., 1873.

BRIBERY IN ELECTIONS.

CASE.—

What will be sufficient to make out a case of bribery sufficiently strong to render void an election, under the Act of 1873?

Also what connection required to establish the Act committed by the party acting and the candidate, also the election clerk?

OPINION.—

Any general or systematic acts of bribery, or corrupt practices on the part of members of the committee of the member elected, even although done without the knowledge of the Candidate himself will avoid the election.

If the member elect is to be disqualified the acts must be brought home to him as done with his knowledge or consent.

J. HILLYARD CAMERON.

10th Feb., 1874.

MILL DAMS.

OPINION.—

I have carefully examined the plans and survey sent to me in reference to these dams, and the statement submitted in relation to them.

The mill-dam has been existing a sufficient time since the issue of patents to the Company, in 1846, to give the owner of the saw mill easement on this lot, if no greater quantity of water is backed by the mill now than was backed for the last twenty years that is a question of fact to be ascertained hereafter, but if the facts are in favour of the owners of the saw mill, they have acquired a right to the easement and the right of action of the Company is lost.

As to the retaining dam no date of its erection is given, but if it has existed and been in use for twenty years the

right of action of the Company is barred as to it also, although another question may be raised here as to whether or not the use was of such a continuous character as the statute requires, that is a question of fact to be ascertained.

I advise that an immediate action shall be brought as to both dams against the owners and occupants of the saw mill.

J. HILLYARD CAMERON.

28th Feb., 1874.

PUBLICATION OF BY-LAW FOR BONUS.

OPINION.—

After a careful consideration of the various statutes relating to money granted to Railways, by Municipal Corporations, by way of bonus, I am of the opinion that the by-law providing for the grant of said bonus, requires to be published in only one newspaper in the municipality.

J. HILLYARD CAMERON.

11th April, 1874.

APPEAL AGAINST ASSESSMENT.

OPINION.—

The amended clause of the assessment law came into force as soon as the Act was passed, and therefore the time fixed for the return of the assessment became the first of May, and notices of appeal could then be given for 14 days from that day, or if the roll was not returned on first of May, within fourteen days from the time of the return. If your Court of Revision sat before the 25th May, or before fourteen days had elapsed after the return of the assessment roll, if it were returned after the first of May, then the sitting was invalid and a new court should be held.

If however the Court sat on or after the 25th May, the sitting was good, and no new Court should be held.

The time for giving notices of appeal to the Court expired on the 14th May, or fourteen days after the return of the roll, if it were returned after the first of May, and any notice of appeal given afterwards would be out of time and useless. The Court of Revision or any member of it, or the party who appeals, or his attorney or agent, may swear any person appealed against as to his right to vote.

J. HILLYARD CAMERON.

30th May, 1874.

DIVORCE.

CASE.—

A. B. was married at Toronto, in Upper Canada, in December, 1851. He and his wife both being British subjects and domiciled there at that time, they continued to reside in Canada after their marriage, and had several children born there. In 1859 in consequence of difficulties arising between them the wife left Upper Canada for the United States, where she has since continued to reside, part of the time in the State of New York, and part of the time in the State of Illinois. In 1870, she then residing in the state of Illinois, filed a bill for a divorce in a court of competent jurisdiction in that State, and process in the suit having been duly served on A. B. a decree of divorce was duly pronounced in July of that year, by which the marriage in Upper Canada was annuled and both parties were permitted to marry again. A. B. continued to reside in Upper Canada until September, 1871, when he went to the United States with the *bona fide* intention of taking up his permanent residence there, and he married his present wife in the State of Michigan, on the 21st of that month his former wife having married again in the United States, in Feb. 1871, and she and her second husband being both alive and resident in the United States at the time of A. B's. second marriage.

The questions submitted on this statement are as follows;

1. Is the decree of divorce of July 1870 valid according to the law of the State of Illinois?

2. Is the second marriage of A. B. valid in the United States?

3. Is the second marriage of A. B. valid in Canada?

OPINION.—

There is no difficulty in answering the first and second questions in the affirmative, according to the law of the State of Illinois, and the principal generally acted on in the courts of the United States. The marriage in Upper Canada was dissolved by the sentence of divorce pronounced in July, 1870, and the subsequent marriage of A. B. in the State of Michigan was a valid marriage, and therefore recogniazble in the United States.

The third question cannot be answered quite so conclusively. There is no Court in Ontario, formally Upper Canada, which can decree a divorce. The Parliament of the Dominion alone having authority to grant a divorce by statute, but the decree of divorce of July, 1870, being regular according to the law of Illinois, and the second marriage being valid in the United States, it is also *prima facie* valid in Canada, and is liable to be questioned here only on the grounds of fraud or collusion, either in respect of domicile, or in the proceedings prior to the decree, but if in point of fact there was neither fraud or collusion in those respects, the second marriage is also absolutely valid in Canada.

J. HILLYARD CAMERON.

15th June, 1874.

CHARTER PARTY.

OPINION.—

The St. Lawrence Tow Boat Company being the owners of the steamer Clyde, had proposals made to them for her charter for the season of 1874, to run on Lake Ontario, and A. B. one of the proposers, proceeded to

Quebec, the headquarters of the Company, where the steamer was, to carry out the terms, A. B. took with him a power of attorney from the other proposing parties, and a form of Charter Party to be executed by the Tow Boat Company. This was objected to by the latter in some particulars, and a new power of attorney was sent to A. B. which also was not satisfactory. And A. B. then received a telegram from the proposers on which he executed the Charter Party as altered by the Tow Boat Company, paid the part of the Charter money to be paid down, received the Clyde, brought her to Toronto, and she has been running across Lake Ontario in the interests of the charterers ever since. The charterers now object that A. B. in executing the amended Charter Party exceeded his powers, and allege that they are not bound by its provisions, but the Tow Boat Company are entitled to carry out the Charter Party and agreement for sale as executed, A. B. not having exceeded his powers, and his payment of part of the Charter Party, his taking possession of the vessel, and her use ever since, all being after the Charter Party was executed and known to the charterers are clear and sufficient evidence of the ratification of the execution of the Charter Party by A. B.

J. HILLYARD CAMERON.

15th June, 1874.

CONSTRUCTION OF BRIDGE.

CASE.—

In the matter of the "Lake Burwell Drainage" a point has arisen which does not appear to have been foreseen in preparing the Act 35 Vic. cap. 52 Ontario.

In constructing the channel into which the river is to be turned we interfere with a travelled road; and to keep up communication a bridge will be necessary—temporary in the first place, but a permanent bridge as soon as the effect of the drainage is fully ascertained.

In the first place the Township, by their Reeve, agreed to be at the expense of the temporary bridge, provided the Canada Company would find the necessary timber, and to this arrangement we consented. The matter was reduced to writing, but no regular by-law was passed to that effect, although the Township advertised for tenders to build the temporary bridge.

Now, however, the Township seems inclined to back out of the arrangement; and the Township not only claims that (we) the Canada Company should build the temporary and the permanent bridge, but that we should also *maintain* it. The question, therefore, assumes a somewhat serious aspect.

Will you please look into the matter and advise us how far the legal liability of the Canada Company is likely to extend.

It must be remarked that the road in question is not on the concession line, nor is it a regularly established road. It just wanders over the Canada Company's land in the manner which is found to be most convenient to the travelling public, and is, in fact, only a mere track across a barren plain, altered and varied as it becomes more or less cut up by the traffic.

The regular concession line is altogether impracticable, and cannot be travelled.

We have surveyed a new concession line, which will be available as soon as the drainage is completed, and it is across where this new concession line passes, that the permanent bridge should be built.

We consider that by virtue of the Act the new cut becomes in fact the *Aux Sable River*, and that the Township is equally liable to be called on to build a bridge over it, as over any other part of that stream.

The Township on the other hand (now that they are sure of the improvement being completed), are willing to involve the Canada Company in any way they can. They seem to think we have made too good a bargain as to the *freedom from taxation*, and will not hesitate in forcing the Company to build and maintain the bridge, if the law will bear them out, notwithstanding what has passed with the Reeve.

The Township Council voted $1,000 for the bridge. The minutes of the meeting will show this, as it is of course now a matter of record.

OPINION.—

Upon the case submitted, it appears that the road, which requires the bridge, is not a regularly established road, and runs entirely through the land of the Company at the point where the bridge is required.

By the Act of Ontario, ch. 102 of 35 Vic., the Canada Company are authorised to divert and turn the waters of the river Aux Sable into the new channel or drain mentioned in the Act, but not so as to impair or interfere with the navigable character of the river.

As the river passes through the Company's land, either in its old or new channel, no obligation lies upon the Company to build a bridge over any part of it which runs through the Company's land, except for the convenience of the Company, or those claiming under it, any interest in these lands, but not for the benefit, use oradvantage of the public generally.

If there is a road over these lands which has become a highway, either by dedication, long uses, or in any other mode by which it would become a highway, then all the incidents of a highway attach to it, and among them the liability to repair it, and to connect one part of it with another, where it may cross a stream or river, by a bridge, would by law be on the municipality as the construction or repair of a part of the highway, which a bridge clearly is, and no liability would attach to the Canada Company.

J. HILLYARD CAMERON.

25th Aug., 1874.

RESIDENT AND OCCUPANT.

CASE.—

I wish to submit the following question to you for your opinion: A. B. lives in the Township of Yonge, close

to the line of the Township of Elizabethtown; his farm is part in Yonge and part in Elizabethtown; he works the part in Elizabethtown, but does not live or reside upon it; there is no tenament or building upon it; no notice was sent to Township Clerk of Elizabethtown requiring his name to be placed on roll; the Assessor for Elizabethtown refused to put his name on roll as a resident; A. B. appealed to Court of Revision; Court held that he was properly assessed as a non-resident, as he had not given the Clerk the notice required by law; A. B. then appealed to County Judge. The Judge held that as he worked the land, though he did not live upon it, he was an occupant, and entitled to be placed on the roll as a resident. What constitutes an occupant so as to be assessed? Was A. B. an occupant?

2. C. D. resides in Brockville, is jailor, owns ten acres of pasture land in Elizabethtown, pastures it in summer; no building upon land, nor is it occupied by any one except as above; no notice sent to Clerk. The Assessors assessed the land as land of non-resident. Were they right?

3. One E. F. lives in Mallorytown, in Township of Yonge, has an interest in a business of merchandise in Leyn, which is in Elizabethtown; he pays his proportion of rent. Has he a right to be assessed as tenant?

OPINION.—

I am in receipt of your letter, with questions in relation to three persons on the assessment roll of Elizabethtown.

1. On the facts stated, I consider the decision of the Judge to be correct, and that A. B. is not only an *occupant* but a *resident* of both the Townships of Yonge and Elizabethtown. His farm lies in both Townships, he lives upon and works it, and no other person has anything to do with it. His case, in my view, is clear, and has been rightly decided by the Judge.

2. C. D. could, on the facts stated, never have been assessed as resident as to the ten acres in Elizabethtown.

3. On the facts stated, E. F. has a right to be assessed as tenant.

J. HILLYARD CAMERON.

4th Sept., 1874.

EXAMINATION OF TITLE.

CASE.—

A. B., of Hamilton, declines to receive a deed for the following reasons:

He demands abstract of title.

He demands a sight of the Company's charter, and an examination of the patent, to see if the patent corresponds with the charter, and he refuses to pay fee for the preparation of the deed.

He also refuses the deed because the mineral reservations in it do not correspond *verbatim* with the reservations in the lease.

In reply, we have informed him by letter that the Company do not consider themselves bound to furnish an abstract of their title, and that the patent cannot be given up because it covers 101,946 acres of land.

With respect to the sight of the Company's charter we verbally refer him to the registry office, and we offer to shew him that the land is included in the patent, but refuse to allow him to examine the whole patent and compare it with the charter. We also inform him that the Company's original charter is not in Canada, and that we do not feel bound to shew him our copy—which he can get at the registry office—and that, as both the patent from the Crown, and also the charter, are matters of record, he can examine the public documents if he is not satisfied with our certificate.

That with respect to the difficulty about the mineral reservations, the wording of the deed is synonymous with the reservations in the lease, and that we would consult you on it. The chief (and indeed we believe only) difficulty lies in our requiring that fee for the deed should be paid.

A. B. threatens legal proceedings, and said yesterday that his object is to put the Company so far in the wrong as to put a bill of costs on them.

OPINION.—

The Company agree in their form of lease to make their deed *at their own costs and charges*, and therefore they

cannot charge anything for the deed, however complicated the matter may be, unless the other party agree to it. In this case, therefore, if he did not agree to pay the fees he cannot be compelled to do so; and as that appears, from your letter, to be really the point of difficulty, you must waive the payment, if it was not agreed to.

Upon the demands made by A. B., you shall inform him:

1. That the title of the Company is by patent from the Crown, giving him the date of the patent.

2. That he may examine the charter of the Company, and so much of the patent as applies to the lot in question, in the office of the Company, at such day and hour as he and the Company may arrange, or whenever he presents himself at their office for that purpose. Probably, however, if you give up the question of the fees you will hear nothing more about any difficulty.

J. HILLYARD CAMERON.

5th Sept., 1874.

QUALIFICATION OF VOTERS.

CASE.—

Your opinion is required upon the question, whether the qualification of voters in the Townships of Hagarty, Richards, Sherwood, Burns, and Jones, townships added to and included in the South Riding of Renfrew, for the purpose of representation in the House of Commons, in 1872, continues to be, that such voters shall be male persons of the full age of 21 years, subjects of Her Majesty by birth or naturalization, and not otherwise disqualified, being at the time of the election owners of real estate in the said South Riding of the value of $200 or upwards, or householders in the same, and having been such owners or householders during the six months next preceding the election.

OPINION.—

In the same session in 1872 in which those townships were added to the South Riding of Renfrew, the Act "to amend the Interim Parliamentary Elections Act, 1871,"

was passed, and under that Act the qualification of voters in those added townships was declared to be the qualification set out above in the question submitted to me.

"The Interim Parliamentary Elections Act, 1871," was a temporary Act for two years only, and expired in April, 1873, but there was no time limited for the continuance of the above Act to amend it, passed in 1872. In May, 1873, another temporary Act was passed, to be in force for a year, and from thence until the end of the next session of Parliament, and no longer. And this Act contained the same provisions as to qualification of voters in those new townships as were in the Act of 1872.

By the 40th section of the Act passed during the session of the Dominion Parliament held in this present year, 1874, respecting the election of members of the House of Commons, it is enacted that "all persons qualified to vote at the election of representatives in the House of Commons or Legislative Assembly of the several Provinces comprising the Dominion of Canada, *and no others*, shall be entitled to vote at the election of members of the House of Commons for the several electoral districts comprised within such Provinces respectively"; and by the 133rd section of the same Act, the Act of 1873 above referred to is repealed.

The effect, therefore, of the law, as it now stands, as to the qualification of voters for the election of a member of the House of Commons, is to give to such persons only as are entitled to vote for a member of the Legislative Assembly of Ontario the right to vote for a member of the House of Commons in an electoral district in Ontario; and as no special qualification is admitted for those added townships, in an election for the House of Assembly, so none now exists in an election for the House of Commons, and the qualification of voters in these townships is, therefore, exactly the same now as in any other township in Ontario, and can only be exercised in the same manner and under the same circumstances as in other townships, and the special qualification given by the Acts of 1872 and 1873 is at an end.

J. HILLYARD CAMERON.

1st Oct., 1874.

EXTRADITION.

CASE.—

A firm doing business in the United States having an officer in England simply for office (not for general business) purposes, fails in the United States, in 1870 is put into (involuntary) bankruptcy in the United States by an English creditor. The failed firm's indebtedness consists of acceptances *dated*, given and payable in England for merchandise got and ordered in England, acceptances at 4 months, and all given and dated in 1870. Bankruptcy proceedings still pending.

QUÆRE.—

1. Can English claims against a firm as herein described, claims proven in bankruptcy in the United States, follow a debtor, if found in Canada, whether residing there or not?

ANSWER.—

Yes.

QUÆRE.—

2. Can claims, unproven in bankruptcy in the United States, follow in Canada, as above?

ANSWER.—

Yes.

QUÆRE.—

3. Can a failed firm, such as named herein, or any member of that firm, go (voluntarily), if in Canada, into bankruptcy or insolvency? Or can any protection be obtained, or any discharge be obtained, under Canadian laws?

ANSWER.—

No.

QUÆRE.—

4. Is there any extradition law between Canada and England, or Great Britain, under which an English creditor, whose claim *is* or *is not* proven in pending bankruptcy proceedings in the United States, can be demanded or claimed successfully in alleged fraud by misrepresentations made

by any of the firm in England, to obtain goods, &c? An exasperated creditor might allege anything. Look carefully into all the above, and answer fully as to *extradition*, so that a *lay man* can understand your answer.

ANSWER.—

For any criminal offence committed in any part of Great Britain the offender can be arrested in Canada and taken to England. Canada being a colony of England, no extradition exists, as that is required only between foreign countries, and not between countries bearing the same relation to each other as Great Britain and Canada.

QUÆRE.—

7. Does your Canadian law, or extradition, &c., with England or with the United States operate in any way in such a case as described herein?

ANSWER.—

No.

QUÆRE.—

8. Any imprisonment for debt in the within named case, whether a resident or not, if found in Canada?

ANSWER.—

A debtor *resident* in Canada may be arrested by order of a judge of one of the Superior Courts on proof of his intention to leave Canada with intent to defraud his creditor of his debt.

QUÆRE.—

9. Can the debtor, or any of the firm, if in Canada, be molested? If yes, by whom and how?

Answered in former answer.

QUÆRE.—

10. If the failed firm, or any of them, should go to Canada, or reside there, what course would you recommend to be adopted?

ANSWER.—

If they come to Canada they will be liable, as stated in the foregoing answer. They must take their chance of being proceeded against.

J. HILLYARD CAMERON.

21st Aug., 1874.

COMMUTATION FUND.

CASE.—

A. B. claims to be the first entitled to be placed on the Commutation Trust Fund whenever the surplus permits or a vacancy occurs, and has submitted to me the various documents introduced herein as furnishing the grounds on which his claim is based.

The Clergy Trust Fund is administered under certain by-laws of the late Church Society and canons of the Synod of the Diocese of Toronto, and by them it is provided, that, "The surplus shall be appropriated to the maintenance of the Clergy of the Diocese being in priest's orders *according to length of service in the Diocese*"; and service is defined to be "the time during which the clergyman has been employed in *bona fide* parochial or missionary duty in the diocese," with a provision for the deduction of any period of intermission of service, and when the Trust Committee report a surplus of $400 it shall be paid to the senior clergyman (as above defined) not being in the commutation list.

After the passing of this by-law and canon a committee was appointed by resolution of the Church Society shewing the order in which they should become participators in this fund. And this committee made a final report of such list up to 13th Nov., 1867, which was on that day adopted by the Church Society and was ordered to be published in the Church Chronicle, and was so published accordingly. The Church Society and the Synod afterwards become one body by Act of Parliament, and the Synod now stands in all respects in place of the Church Society. Under the by-laws of the Church Society, the clerical members of the Clergy Trust Committee were selected from those Clergymen only who had helped to create the Clergy Trust Fund. And in 1873, a canon was passed by the Synod in amendment of that provision by which it was enacted that the selection might be made "From those who from time to time be placed on the said Fund, and also from the twenty clergymen whose names appear as the Senior, on the list of non-commuted clergymen, who

will be benefited by the fund, when the surplus permits." Another canon was passed by the Synod in 1874, by which it is declared "That as soon as a surplus arises in the commutation fund, it shall be the duty of the Commutation Trust Committee to request the Lord Bishop to furnish the committee with a list, in the order of seniority of those clergymen who might be entitled to claim under this canon."

A. B. came into the diocese of Toronto in 1856, and was licensed by the Bishop in 1857, and is entered on the list of the clergy, as adopted by the Church Society on 13th November, 1867, as of the date of February 27th, 1859, in the order of seniority, but his case being affected by intermission of duty was not to be considered determinate, till examined and decided by the Bishop and his seniority was subsequently under his Lordships direction, entered as of 27th April, 1857, and was so published in the Church Chronicle. Since this period A. B. has had the license of the Bishop and although he has been engaged a large portion of the time in the school work as head master of the Barrie Grammar School he has nevertheless during almost the whole period been engaged in the performance of clerical duties which not only in his own opinion but in the opinion of the committee of the Church Society constituted *bona fide* parochial or missionary duty and entitled him to be in the order of seniority on the list of non-commuted clergy, where the committee placed him.

The question for my consideration on this state of facts is, has A. B. a legal claim to be placed on the list in the order of his seniority as stated above, when their is a surplus or a vacancy?

OPINION.—

It appears to me that both the Church Society and the Synod have recognized the action of the committee who prepared the list of the non-commuted clergy, the former by formally adopting it by resolution, and the latter by making it the guide, in the selection of clerical members of the Trust Committee in the canon of 1873, and although the canon of 1874, makes it the duty of the Trust Com-

mittee to ask the Bishop for a list, that does not in my opinion set aside the action of both the Church Society and the Synod, as to the list recognized by both, or enable the Bishop to nullify the lists which both those bodies have adopted but rather gives him the opportunity to point out any disqualification making those lists the basis: I am of opinion therefore that upon the facts stated, A. B. is entitled to be placed on the Commutation Fund whenever there is a vacancy or surplus.

J. HILLYARD CAMERON.

7th Nov., 1874.

LIABILITY OF CARRIERS.

OPINION.—

I now confirm the view which I expressed to you, that under the circumstances and the forms of the bills of lading and freight receipts no action can be successfully maintained by yourselves, or your assignees under those documents, which afford a defence to the carriers by the express words used by them and accepted by you.

In any case where goods to reach their destination must pass into the possession of various companies or individuals the protection that the parties interested in the goods should endeavour to secure is, first, the undertaking of one of the Companies of forwarders to send the goods to their final destination, without any exception as to the termination of their own liability, when their own particular undertaking terminates, so that any one of them should contract for the transmission for the whole distance however many distinct companies of forwarders may intervene between the point of departure and the place of destination, and secondly, for the guarantee of the delivery of goods at their destination without loss or diminution by theft or robbery by any persons whatever, whether in or out of their own employment. If you can succeed in obtaining from

the forwarders with whom you do business a contract to the above effect you will in my opinion effectually protect yourselves from such losses as you have sustained in the cases which you submitted to me.

J. HILLYARD CAMERON.

18th July, 1875.

LIMITATION OF ACTIONS.

CASE.—

I duly received your letter, with copy of the Act of the Legislature of Ontario for the further limitation of actions and suits relating to real property, and have carefully examined its provisions with the view of meeting the difficulties that may arise in dealing with the overholding tenants and squatters on the lands of the Company, and of answering your quære, whether the Company will be considered as non-resident within the terms of the Act.

The points therefore now requiring consideration are :

1. The non-residence of the Company.
2. The position of overholding tenants.
3. The position of squatters.

OPINION.—

Upon the first point, I am of opinion that the Company would not be considered as non-resident, and even if the point were more doubtful, than I think it is, it would not be advisable to risk the loss of any of the property of the Company, by allowing the time given to residents to pass by, in the belief that the Company might act as non-resident at a late period. It is not improbable that it may become necessary to raise the point in some case hereafter, but in dealing with the question now the Company should consider themselves as resident.

As to the second and third points, I consider that the Company should deal in the same manner with both over-

holding tenants and squatters, in obtaining acknowledgments of title to their lands, and whenever any person declines to sign one, proceedings should at once be taken by the Company to obtain possession of the land.

J. HILLYARD CAMERON.

5th Feb., 1875.

RECEIVER OF COMPANY.

CASE.—

In the event of a Canadian railway passing into the hands of a receiver, what is the status of the claim of an employee for services rendered before appointment of receiver?

Is the matter affected by reason of the employee having his office in the United States, and being paid salary in United States currency?

Can an agent of such a Company, who holds assignments of pay from other employees, use such assignments to balance accounts between himself and the Company?

OPINION.—

An employee will be in the same position as any other creditor. His position is not affected by his office being in the United States or his payment in United States currency.

On the explanation made of the nature of the claims for pay assigned, the employee may retain in his hands money of the Company to meet them at any rate to the amount he has paid for them.

J. HILLYARD CAMERON.

9th Feb., 1875.

CONSTRUCTION OF DAM.

CASE.—

The Canada Company propose to throw a dam across the River Aux Sable, at a point in lot 30, in 1st con. Bosanquet, where said river forms the boundary line between the Townships of Bosanquet and McGillivray, and also between the Counties of Lambton and Middlesex. The object of the dam, if constructed, is to force the whole, or nearly the whole, of the water of the river above the dam through the new channel now under construction, as authorized by the Company's Act 35 Vic. cap. 102 (1871-'72 Ont. p. 354).

Two questions now arise:

1. Must the Canada Company maintain this dam, and if so, for what length of time?

2. Should the dam break, would the Company be liable for damages to crops or buildings situate below the dam?

OPINION.—

1. The Canada Company must maintain the dam idefinitely.

2. Yes.

J. HILLYARD CAMERON.

23rd April, 1875.

INSURANCE ACT OF 1875.

OPINION.—

In answer to your communication upon the question "Whether, under the new Dominion Insurance Act the Beaver & Toronto have still the right to reinsure for the Provincial Company risks taken in the Province of Manitoba, or anywhere else outside of Ontario and Quebec, and also on any other matters affecting you in the same statute," I beg leave to state that I am clearly of opinion that you have still the same right to reinsure the Provincial on properties outside of Ontario and Quebec that you had before the passing of the new Act, that Act only preventing your Company opening offices and doing business outside of those

Provinces without a deposit and license; but not preventing you in the Provinces of Ontario and Quebec from insuring properties any where in the Dominion or any where else.

There are no matters affecting you in the new Statute, as Companies situated as you are, are required neither to make a deposit nor obtain a license, unless they transact business and issue policies outside of the Provinces of Ontario and Quebec.

J. HILLYARD CAMERON.

28th April, 1875.

LOSS FROM EXPLOSION OF GUNPOWDER.

CASE.—

In this case property insured by the Beaver in Toronto was destroyed by fire, which was caused by the explosion of gunpowder, which was not on the premises insured, but in a shed in premises adjoining, is the Company liable?

OPINION.—

On the best consideration that I can give to the case, I am of opinion that this loss comes within the exceptions in the policies of the Company, being a loss "by fire arising from explosion," and that therefore the Company is not liable.

J. HILLYARD CAMERON.

31st May, 1875.

CONTRACT FOR PURCHASE.

OPINION.—

I am in receipt of your letter, enclosing form of seven years' lease, in those cases where a sum of money has been paid to the Company prior to a lease being granted.

In these cases it is clear that the whole contract is one of purchase. The payment of the money for the grant of the lease is taken as a payment of a part of the purchase money of the land. The rent is stated to be for interest. The price per acre is stated, and the sum on the payment of which the deed will be made is the balance of the aggregate average price after the deduction of the money paid down for the grant of the lease.

Under these circumstances I consider that this transaction is a contract of purchase; the right to the final acquisition of the title to the land being made dependant upon the punctual payment of the balance of the purchase money, and the performance of all of the covenants with regard to the money consideration, such as the payment of the rent and taxes, and that at the expiration of the lease if these covenants have been broken, and the forfeiture is insisted on, if the balance of the purchase money is not paid, there is no equity left in the lessee, and the Company can decline to carry out the sale.

Also, if, while the lease is current, the Company forfeit it for breach of covenant, and obtain possession of the land, I consider that the Equity is gone, and that the lessee cannot afterwards compel the Company to give him a deed, but that while the forfeiture is not enforced, and the lease is current, he may.

When, therefore, the term of the lease is at an end, and the balance of the purchase money is not paid, the Company can sell the land again and carry the money paid for grant of the lease to profit and loss account without any difficulty, and they can do the same when the lease is forfeited and during the currency of it, if they have acted on the forfeiture and taken possession of the land.

The only case remaining is where a forfeiture has been incurred, but possession has not been taken. In such case I should advise the Company not to sell, the lease being still current, but to bring ejectment and refuse the lessee's claim, if made, for a deed, and thus compel him to file a bill for a conveyance, and have this point finally settled by the Courts; and in view of the new limitation act, and

the consequences that may arise from it, I advise that the Company should take steps to have this point settled as soon as possible.

J. HILLYARD CAMERON.

23rd June, 1875.

LIABILITY OF UNDERWRITERS.

CASE.—

Your opinion is requested on Insurance Policies issued by "the Marine Association of Ontario," as to whether each member of that Association is liable individually for the whole sum insured by any policy, or only for a proportional amount?

OPINION.—

Every policy of insurance is a contract between the insurer and the insured, and the liability of the insurer must be decided by the terms of the contract.

In the form of policy in question, as the insurers expressly stipulate "each for himself only and not for the others," taking of the risk a certain sum only; and in the last condition but one endorsed on the policy it is declared and agreed" that each Underwriter of this policy underwrites for himself only, and not for the others or any of them, and for the part or portions within mentioned, of the whole sum within named, and for no other or greater sum;" and this policy is accepted by the insured upon this express condition and agreement.

This is therefore, an express contract by which each insurer limits his liability to the sum which he individually agrees to pay by the terms of the policy, and no one of the insurers is responsible for the whole sum insured or beyond the amount he has agreed to pay.

J. HILLYARD CAMERON.

11th Aug., 1875.

SURRENDER OF POLICY.

CASE.—

1. In the case of a policy issued prior to August, 1865, upon the life of a husband when he, within the year limited by that Act, executed a declaration in favor of his wife.

Can the husband or wife, or the two together, execute a valid surrender of such policy to the Company?

2. In the case of a policy issued under the act of 1865, or the subsequent Acts of the Legislature of Ontario, on the life of a husband for the benefit of his wife.

Can the husband or wife, or both together, execute a valid surrender of such policy to the Company?

3. In the case of a policy issued prior to 1865 upon the life of a husband, and under the Act of 1865, declared to be for the benefit of his wife and child, and also in the case of a policy issued under the Act of 1865, or the subsequent Acts, on the life of a husband for the benefit of his wife and child.

Can the husband or wife, or both together, make a valid surrender to the Company of the half or other proportion of the policy which, in the event of death of husband at the time of such surrender, would be payable to the wife, the child being a minor?

4. Section 6 of the Act 33 Vic. ch. 21 Ont. provides for the insurance money in the event of death of one or more of the beneficiaries being payable to survivors.

Has not the minor child in such a case an interest in the share or portion eclared to be for the benefit of the wife?

5. In the case of a policy on a man's life, issued prior to 1865, and declared under the Act of 1865 to be for the benefit of his wife, or for the benefit of his wife and children, or for the benefit of his children alone, can he, under the Act 33 Vic. ch. 21 Ont. sec. 4, or otherwise, surrender such policy to the Company and require a paid up policy in favor of himself and his personal representatives?

6. In the case of a policy on a man's life, and declared

to be or issued for the benefit of his wife, or of his wife and children, *with profits*, not by the terms of the policy payable in cash.

Can the Company with safety pay a sum in cash equivalent to the bonus addition to the insured above, or can they, when the policy is for the benefit of the wife only, safely pay such sum to the husband and wife? Can the Company be compelled to pay such sum in either case?

7. In the case of a policy on a man's life, issued in favor of himself and his representatives, and by him declared, under the provisions of the Ontario Act 35 Vic. ch. 16 sec. 4, as amended by 36 Vic. ch. 19 sec. 5, to be for the benefit of his wife, or for the benefit of his wife and children, or for the benefit of his children alone.

The same question is asked as in No. 4.

OPINION.—

1. In answer to the first question my opinion is, that the husband and wife can together execute a valid surrender to the Company.

2. In answer to the second question, my opinion is the same as in my answer to the first.

3. In answer to the third question, I am of opinion that in none of the cases put can the husband and wife, or either of them, make a valid surrender of the wife's interest, as shown in the policy of the Company.

4. In answer to the fourth question, I am of opinion that the minor child has such an interest in the share or portion declared to be for the benefit of the wife.

5. In answer to the fifth question, I am of opinion that in the case of a surrender under the circumstances mentioned in sec. 4, 33 Vic. ch. 21, the paid up policy must be granted to the insured in the same manner, that is, subject to the same declaration or direction as to appointment as attached to the surrendered policy at the time of its surrender.

6. In answer to the sixth question, I am of opinion that the Company cannot safely pay accrued profits in cash in any of the cases put, except where the policy is declared for the benefit of the wife alone, and she and her husband

both come in for the benefit of the money and the release and discharge of the Company, but the Company cannot, in either case, in my opinion, be compelled to pay the profits in cash.

7. In answer to the seventh question, I am of the same opinion as in my answer to the fourth question.

J. HILLYARD CAMERON.

18th Oct., 1875.

STREET RAILWAY TRACK.

CASE.—

I have had under my careful consideration the agreement between the city and the Street Railway Company, the contract and specifications for the construction of the sewer on Yonge street, the report of the engineers, and the other papers submitted to me with the view of giving you my opinion upon the following questions, which have been raised in reference to their construction:

1. Have the City Corporation a right to take up the track of the street railway without being liable to replace the same?

2. If the track is so taken up, are the Street Railway Company entitled to demand compensation?

3. Would the right to compensation only accrue after the expiration of a reasonable notice?

4. The sewer has been constructed according to the contract and specifications, but the track of the street railway has not been reinstated according to the contract within the time limited. Can the City Corporation now take the work into their own hands and constitute it at the expense of the contractors?

OPINION.—

The contract between the Corporation and the Street Railway Company contains the following provisions: "The city authorities shall have the right to take up the streets traversed by the rails, either for the purpose of altering the

grade thereof, constructing or repairing drains, or for laying down or repairing water or gas pipes, and for all other purposes within the province and privilege of the Corporation, without being liable for any compensation or damage that may be occasioned to the working of the railway or the works connected therewith"; and the Corporation also covenant "that when and so often as it may be necessary for them to open any of the streets as aforesaid a reasonable notice shall be given to the Street Railway Company of their intention to do so, and the work thereon shall not be unnecessarily delayed, but shall be carried on and completed with all reasonable speed, due regard being had to the proper and efficient execution thereof;" and the Street Railway Company on their part covenant to "construct, maintain, and operate the said railways within the terms, in the manner and upon the conditions therein set forth," also that "they shall and will from time to time, and at all times during the continuance of this grant, and the exercise by them of the rights and privileges thereby conferred operate the said railway, &c."; and further, that it was the clear understanding of the Company "that the privileges hereby conferred were to insure the completion and working of their lines of railway."

By this agreement it is clear that the Street Railway Company agree to maintain and operate the railway during the grant, and that, as a part of the consideration for it, the City Corporation may break up the streets for the purposes mentioned above, neither being liable for any compensation or damage that may be occasioned to the working of the railway, or the works connected therewith, but that the Corporation shall provide that "the work thereon shall not be necessarily delayed, but shall be carried on and completed with all reasonable speed, due regard being had to the proper and efficient execution thereof."

On the construction of this agreement, I am of opinion that the clause exempting the Corporation from compensation or damage must be read in connection with the clause requiring the work to be carried on and completed with all reasonable speed, and therefore that the Corporation would

not be exempt from liability, where there was unnecessary delay in the completion of the work, nor are they exempt from liability to replace the track, although both parties have agreed that they may break up the street railway tracks for constructing drains, without being liable for compenstion or damage that may be occasioned to the working of the railway, or the works connected therewith.

My answer, therefore, to the questions submitted in the Street Railway agreement are as follows:

1. The City Corporation is bound to replace the track.

2. The Street Railway is not entitled to compensation if the track is relaid without unnecessary delay on the terms of the covenant of the Corporation.

3. As the breaking up is the act of the Corporation, and the sewer work is under their control, they are bound to have their work completed with a due regard to its efficiency without unnecessary delay; and if there be such delay, and the track is not relaid as soon as it should be in consequence, the Corporation is responsible without any notice from the Company.

Upon the fourth question it is necessary to examine the contract and specifications relating to the Yonge street sewer.

The contract provides for the performance of the work, "in strict accordance with the specification, plans, and profiles," and that if not so proceeded with, so as to ensure its satisfactory completion in accordance therewith by the 17th June, the corporation may complete it. The 47th section of the specification provides that the contractors shall with all practical expedition, relay and make good, &c., or pay and satisfy the expense of relaying and making good all foot pavements, &c., and all those that may be damaged removed, disturbed, or injured," and if on the report of the City Engineer, it shall be made to appear to the Board of Works that the contractor has failed with practical dispatch to relay, &c., or pay, &c., it shall be competent to the Board of Works to relay and make good the same at the expense of the contractors, or to pay and satisfy the expense thereof or deduct from monies due

or to become due to the contractors, and the contractors expressly agree as to the street railway for taking up the line of railway affected by the sewer work to adopt special measures to ensure a rapid and permanent consolidation of the railway bed in order to be able to relay and in every respect reinstate to the entire satisfaction of the City Engineer, and leave in perfect safe running order the whole or so much of the street railway as may be affected by the work, likewise to make good all damages that may be inflicted either to ties, rails, sleepers or other work connected therewith, by the execution of the sewer works. There are also various other provisions in the specifications providing for the assumption of the work by the corporation under different states of circumstances as the work proceeds.

The fourth question submitted assumes the work of the sewer proper to have been completed according to the contract and specifications, and confirms the question to the effect of the non-completion of the part of the specifications that applies to the Street Railway alone, and in answer to that question my opinion is, that the City Corporation can under the contract and specifications take that part of the work into their own hands, and complete it at the expense of the contractors.

J. HILLYARD CAMERON.

18th October, 1875.

BANKRUPTCY.

QUÆRE—

1. Does your new or any Insolvency or Bankruptcy Law affect or afford protection to a debtor, if residing in Canada, or if found by an English creditor who had proved his claim in a Bankrupt Court in the United States?

ANSWER.—

Yes.

QUÆRE.—

2. What of a creditor who being not found in the United States ?

ANSWER.—

His claim remains unaffected.

QUÆRE.—

If a debtor as herein described if in Canada as a resident or otherwise could be sent to England for alleged fraud for obtaining goods there on false representations made there by himself or by any of his partners during or prior to 1870 ?

ANSWER.—

If a debtor was guilty of such fraudulent representations as would bring within the terms of the Criminal Law, he could be arrested in Canada and taken to England.

QUÆRE.—

4. Does it make any difference whether the claim was or was not proven in the Bankruptcy Court in the United States ?

ANSWER.—

That would depend upon the provisions in the United States Insolvency Law in relation to such frauds.

QUÆRE.—

5. Does lapse of time affect or outlaw such debtors, viz : Book Accounts or acceptances, given in England during 1870, the latter all given dated and payable in England by this American firm ?

ANSWER.—

Yes. Six years residence in Canada will bar such debtor, if not during that period acknowledged in writing or payment made upon them.

QUÆRE.—

6. If you were such a debtor would you fear residing in Canada ?

ANSWER.—

No.

QUÆRE.—

7. What would you advise such a debtor to do if residing in Canada?

ANSWER.—

Nothing but live quietly.

QUÆRE.—

8. As to the lapse of time please recollect that the firm failed in October, 1870, was put into Bankruptcy in the United States in December, 1870; was declared Bankrupt in January, 1871; an Assignee appointed in February, 1871; and the case is still in Bankruptcy in the States?

ANSWER.—

These facts make no difference as to lapse of time here.

QUÆRE.—

9. What would be the position of any of the failed firm if in Canada?

ANSWER.—

The position would be such as is described in my previous answers as to their former liabilities.

QUÆRE.—

10. Would—or is—the property in Canada of a deceased wife of either of the partners liable? the wife an American always residing in the United States—died there—had property obtained in Canada after the firm's failure?

ANSWER.—

No.

J. HILLYARD CAMERON.

19th October, 1875.

INSURABLE INTEREST.

CASE.—

On 17th February, 1874, W. & D. insured certain chattel property for one year, for $2,000. In the policy it is stated "loss, if any, payable to A. B."

In the month of January previous A. B. had lent W. & D. $1,000; and as security therefor had taken a Mortgage on certain lands upon which their Foundry and Machine Shops stood; and also a Chattel Mortgage on certain Machinery in the said Foundry. These Mortgages bore interest at the rate of eight per cent. per annum. Only a portion of the Machinery insured was mentioned in the Chattel Mortgage, and no portion of the implements.

In May 1874, W. & D. made a voluntary assignment under the Insolvency Act of 1869 to an Official Assignee, and at the first meeting of Creditors C. D., of Montreal, was appointed Assignee, and transfer was duly made to him by the Official Assignee.

No notice of the Assignment or of the transfer to C. D. was given to the Insurance Company, A. B. having the Policy in his possession neither assignees knew anything about it.

C. D. was instructed by the creditors to carry on the business, and did so from May 1874 till February 1875, when he by resolution of the creditors sold the entire Estate to the Peterborough Manufacturing Company.

In January 1875, A. B's. Mortgage having become due, and he wishing to realize sold his Mortgage to E. F. of Montreal, for the amount then due, viz: $1,080, principal and interest for which amount A. B. took a draft accepted by E. F., payable three months after date. The Mortgages were both assigned, but no assignment of the Policy was executed. It and the assignments being left in my hands by A. B., to be held until the acceptance was paid.

On the 17th February 1875, I went to the agent of the Phœnix in Peterborough and informed him of the assignment and paid him the renewal premium to keep the Policy then in my hands in force, and got an Interim receipt. At

this time negotiations were going on for the sale of the property by C. D. the assignee, to persons who were to become incorporated as the Peterborough Manufacturing Company. Subsequently the sale was completed to take effect as of the 15th of February, 1875, and a conveyance was executed by C. D. to three Trustees to hold the property until the necessary steps for the Incorporation of the Company were completed and a charter obtained—as soon as the conveyance to the Trustees was executed, they paid to me the premium paid by E. F. to renew this policy—but no assignment of the Mortgages or of the Policy by E. F. to the Trustees or to the Company was ever made. E. F. was appointed one of the Directors of the Company. I did not have the Mortgages or the Policy assigned by E. F. as the Company had given his firm notes for $8,000 the purchase money of the property.

No new Policy was issued to E. F., nor any receipt other than the Interim Receipt above mentioned, and no notice of the sale by C. D. to the Peterborough Manufacturing Company was given to the Company.

A fire occurred on the 1st of August 1875, by which loss was sustained.

The 1st claim papers were put in in August shortly after the fire, and the affidavit as to total amount of loss was made by A. B. The Company wanted more particulars of the loss, and amended claim papers were given the Agent of the Insurance Company, in which the President of the Company made the affidavit as to loss sustained by the Peterborough Manufacturing Company.

Since then the Inspector of the Insurance Company was here and examined into the claim and was furnished by me with a copy of A. B's. Chattel Mortgage.

No policy was issued and no Head Office receipt was delivered to the Company or to any one for them and the matter lay in that state until after the fire, when in course of conversation with the Agent he told me he had a Head Office receipt in the name of W. & D. and the receipt attached to the Interim receipt was then given to me? The Insurance Company does not now appear to know that

A. B's. interest in the assured property has ceased to exist, and it had as a matter of fact ceased to exist before the fire occurred, but it was deemed advisable as no notice had been given to get him to make the claim in the first instance. You will also consider that the Company offer to pay the amount of A. B's. claim, provided he assigns the Chattel Mortgage to the General Agent of the Insurance Company. If they are entitled to an assignment of the Chattel Mortgage, they would also be entitled to an assignment of the Mortgage on the land. The property saved has been sold by the Peterborough Manufacturing Company for something like $800, and the Mortgage on the land is good security for the whole amount of the interest that could be claimed under the Mortgages—both principal and interest.

Under the foregoing statement of facts can the Peterborough Manufacturing Company maintain their claim for the amount of the Policy $2,000, either at Law or in Equity ?

OPINION.—

On the case submitted to me, I am of opinion, that the Phœnix Insurance Company is liable for the loss under the Policy affected by W. & D.

There is no consent nor condition making the Insurance void upon an assignment of the property without notice and therefore the sole ground upon which the liability of the Company can be disputed is that which the Company appears to have taken, viz: that the assured had no insurable interest,. Now to determine that point, the whole of the circumstances must be examined, and the case states that they were all known to the Agent of the Company at the time he renewed the 2nd premium and granted the several receipts. Under the state of facts I consider that the Company is liable to the Manufacturing Company, who were at the time of the loss the beneficial owners and represented both W. & D. and A. B.

J. Hillyard Cameron.

20th Nov., 1875.

BONDED AND FLOATING DEBT.

OPINION.—

At your request I place before you my views of the position of a railway company in relation to its bonded and floating debt, and the policy that should be pursued in a depressing state of its affairs.

The bonded debt of the Company is $1,600.000 00, the floating debt about $500,000.00. More than $260,000.00 of the bonded debt has matured and is unpaid, and a fourth part of the floating debt, which is all due and unpaid, has gone to judgment.

There are, therefore, now two classes of creditors of the Company who can take action for the appointment of a receiver by application to the Court of Chancery—the general creditors and the creditors by bond, the latter of course having the preference as holding a first lien on the road, if any contest arises, as to their respective positions and rights.

The Company, under the Act of the Ontario Legislature had the power conferred upon them of creating a loan capital of $2,250,000.00, which would, when properly created, take the place of the present bonded debt; and the Act was no doubt passed by the Legislature with that view, but it has not as yet been brought into operation, and therefore the Company cannot at present derive any benefit from its provisions.

In my opinion, the first thing to be done is to bring this Act into operation, and to submit to the bondholders a proposal for exchanging their present bonds for the loan capital under this Act, and for the reduction of their interest from 8 per cent. to 6 per cent. This can be effected by the united action of two-thirds of the bondholders under this Statute, as whatever action two-thirds take the remaining one-third are bound by; and when the Act is once in operation and acted upon by the bondholders, the provisions in it as to the appointment of a receiver and other beneficial provisions would at once be in force.

I need hardly describe to you the practical effect of the

road passing into the hands of a receiver. The Board of Directors would be comparatively useless, and the whole machinery of the road would be worked for the mere receipt and expenditure of the monies earned by the Company under the direction of the Court of Chancery, and the final result would probably be, that the bondholders would bring the road to sale, and the creditors of the floating debt, including the contractors who had built the road, and to whom the balances due upon their contracts were still unpaid, would be deprived of all means of obtaining their just claims, as they could never become the purchasers of the road.

Under these circumstances there are, in my view, but two courses that can be pursued so as to bring about any final result, either that the bondholders shall bring the road to sale, or bring the Act of last session into operation and exchange their bonds, as I have already stated.

I consider the latter course to be the more fair and just to the general creditors, as they will then have a chance of payment, which, if the former were adopted, will be utterly lost, and under the latter the loan capital will receive an interest of 6 per cent. per annum, and the capital itself be well secured.

J. HILLYARD CAMERON.

1st Dec., 1875.

MUNICIPAL LOAN FUND DEBTS.

OPINION.—

I have had under my consideration the various Municipal Loan Fund Acts, and the memorandum and schedule of debentures prepared by the Ontario Treasury Department, on the liability of the Town of St. Catharines to the Municipal Loan Eund.

Shedule B. of the Ontario Act 36 Vic. cap 47, makes the debt of the town $165,182.48, but the correct amount I

understand to be $160,571.52, the interest on which, at 5 per cent., is $8,028.57 per annum, which amount, by the sixth section of the Act, was payable in the year 1873, or all or any part of it, instead of being paid in money, might, under the authority of the Lieutenant Governor, be included in the debentures to be issued under the Act.

The effect of this Act, when brought into operation, as to any municipality, is to suspend the operation of the former Municipal Loan Fund Acts, except as provided in the 17th section, which continues the existing Municipal Loan Fund debts as security for the debentures to be issued under this Act.

The mode of providing for the payment of the Loan Fund Debt of the Municipality under the Act is by debentures, to be issued either by the Municipality or by Trustees appointed by the Lieutenant Governor in Council, and the debentures so issued are by the seventh secton "to provide for pay-"ment by the same sums per annum, as nearly as may be, "as the municipalities are now liable to pay"; but at the same time they are declared valid against almost every possible objection that could be urged against them.

The debentures, under this Act in this case, have been issued by the Trustees, and not by the Municipality, and while providing for the payment of the interest at 5 per cent. every year, they provide for the payment of but small portions of the principal yearly, until twenty years shall have passed, when debentures to the amount of $144,977.42 will become due.

Under the seventh section of the Act no more than two cents in the dollar on the assessment of 1872 can be levied in any year for the purpose of paying these debentures, and none of the debentures shall have more than twenty years to run.

The assessment of 1872, as given to me, for the town, was $3,077,770.00, and two cents on the dollar, on that sum, would produce a sum that would soon pay off all the principal and interest of these debentures; but only a small sum is actually required for the payment of principal until twenty years, when nearly all the principal is made payable

at once, and the amount is more than two cents in the dollar on the assessment of 1872 could possibly produce.

The question then arises, are these debentures legal? and the further question, is interest payable on the debt in schedule B., or beyond the interest that by the Act is expressly made payable for 1873, is any interest payable for any subsequent year? or is the schedule debt to be made payable at the end of, or scattered over twenty years, without any interest?

I am of opinion that the debentures are legal, and that interest at the rate of five per cent. per annum, the rate fixed by the Lieutenant Governor in Council, is payable every year on the amount of the schedule debt until the whole debt is paid for.

I consider that the Municipality is not limited in its assessment in any year to the mere amount falling due in that year, for principal and interest, under the debentures, as the amounts fall due, but that they may pass a by-law in any year to levy any sum within two cents on the dollar, to provide for debentures thereafter falling due, so that in no one year shall it be necessary to levy a greater assessment than is allowed by the Act; and that although in the last year, of the twenty debentures to the amount of $144,977.42 will be due, those debentures are perfectly valid, although it would be impossible to pay them all by an assessment of two cents on the dollar on the whole of the real and personal property of the town, according to its assessed value in 1872.

J. HILLYARD CAMERON.

1st Dec., 1875.

SHERIFF'S FEES.

CASE.—

Is the Sheriff of a County entitled for the period from the passing of the Act respecting jurors and juries, Consolidated Statutes of Upper Canada ch. 31, until the passing

of the Act of the Legislature of Ontario 32 Vic. ch. 11, to the fees mentioned below, in addition to the fees mentioned in the former Statute sec. 161, sub-sec. 3, for every summons served upon the jurors on any panel, the sum of twenty-five cents?

Sheriff summoning each Grand Jury for the Assizes or Quarter Sessions.....	£	3	0 0
Summoning each Petty Jury for do		6	0 0

These two sums of £3 and £6 having been fixed by the Judges of the Courts of Queen's Bench and Common Pleas, under the authority of the Statute passed in the eighth year of Her Majesty's reign, entitled, "An Act to regulate the fees of certain district officers in that part of the Province called Upper Canada."

OPINION.—

From the question put to me, it appears that this tariff was acted upon, and these two sums paid to the Sheriff, until the passing of the "Jurors and Jury Act" above, and that such payment was then discontinued on the ground that the allowance of 25c. for every summons served upon the jurors or any panel had been substituted for it.

The Statute 8 Vic. ch. 8, under which the Judges framed the tariff by which these fees are authorised is recognised by and included in the provisions of the Consolidated Statutes of Upper Canada, ch. 31, and was in force as to the tariff framed under it until that clause was repealed by the Ontario Act 32 Vic. ch. 11, but the Ontario Act enacts the new tariff of fees promulgated by the Judges on the 6th of June, 1868, in which tariff these two fees of £3 and £6 for summoning the Grand and Petty Jury for the Assizes or Quarter Sessions are allowed, and, as I understand, have, since 1868, been paid, in addition to the sum of twenty-five cents for the service of each summons under the "Jurors and Jury Act."

Upon the best consideration that I can give to the question submitted to me, I am of opinion that the Sheriff continued to be entitled to the fees of £3 and £6, as authorised

by the tariff, as well after as before the Jurors and Jury Act, and that the allowance in that Act of twenty-five cents for every summons *served* upon the jurors in *any* panel was not in substitution of those fees named in the tariff. There is no express repeal of these tariff fees, but on the contrary the existence of that tariff as a subsisting tariff is recognized by the Judges in their amended tariff of 1868, which is confirmed by the Ontario Act. 32 Vic. ch. 11, and there is not, in my judgment, any more reason for refusing the allowance of these fees, before the Ontario Act was passed, than since its passage, as from that period they have been invariably allowed.

J. HILLYARD CAMERON.

7th Dec., 1875.

POWERS TO ISSUE POLICIES.

CASE.—

We are directed by the Direc ors of the Mutual Fire Insurance Company of Clinton to obtain your opinion as to the powers of the Company to do business in the Lower Provinces previous to the Act of last session of the Dominion Parliament.

The Company was incorporated in 1858 under the general Act then in force relating to Mutual Insurance Companies.

In July, 1873, the Company commenced to do a *premium note* business in the Provinces of New Brunswick, Nova Scotia, and Prince Edward Island, and continued to do such a *premium note* business until the Act of last session, when they discontinued business there, except to wind up the old business and collect the notes they held. A large number of the parties now are refusing to pay the assessment upon the premium notes given, and the questions now are these:

1. Had the Company, previous to last session, power to take such notes and issue policies in these Provinces?

2. If the Company had not power to do business in these Provinces, would they be liable upon the policies issued upon property there?

3. Did the Act of 1868, 31 Vic. cap. 48, require Mutual Insurance Companies not doing a cash business, but a premium note business, to obtain a license before doing business in the Maritime Provinces?

OPINION.—

1. I consider that a Mutual Fire Insurance Company, incorporated as the Clinton was, had no power to issue policies out of the old Provinces of Canada, as the evident construction of the Statutes under which such companies were incorporated was to confine their operations to Canada. See secs. 20, 83, &c.

2. Any policies issued by the Company on property out of old Canada were ultra vires, and the Company could neither recover upon premium notes granted upon such policy, nor be liable upon them.

3. The Clinton Company did not require to obtain a license under the Act 31 Vic. ch. 48.

J. HILLYARD CAMERON.

4th Dec., 1875.

APPROPRIATION OF MONEY BY BY-LAW.

OPINION.—

By-laws have been passed to appropriate the monies to be paid to the Town of Brampton under the Act relating to the Municipal Loan Fund debts, passed by the Ontario Legislature in 1873.

The first by-law, No. 5, appropriated the monies to make permanent improvements in the erection of a market house, &c. The second by-law, No. 25, repeals By-law No. 5, and appropriates the monies to the purchase of debentures issued by the town.

The appropriation in both by-laws is within the Act, but

both require the sanction of the Lieutenant-Governor in Council.

If the first has been sanctioned, and the second has not, or *vice versa*, the one sanctioned stands good, and the other is invalid. If neither has been sanctioned, then the one that may be sanctioned will be binding.

By-law No. 11 is to raise $6,000 by debentures to aid in the erection of a market house building, &c., and I am asked if the debentures issued under the by-law can be applied, either directly or indirectly, for any other purpose, such as to pay or replace the bonus to the Credit Valley Railway instead of being used for the purpose for which this by-law directs them to be issued.

My opinion clearly is, that they cannot be used or appropriated for any other purpose than the purpose authorised by the by-law under which they were issued.

J. HILLYARD CAMERON.

4th Dec., 1872.

FRAUDULENT PREFERENCE.

CASE.—

In this matter A. and B., debtors of a bank to a large amount, are partners, each having one-fourth interest in the firm, which consists of C., A. and B.

A. and B. are unable to pay the Bank out of the assets of their firm, and the Bank desires to know, in the first place, whether they have any, and if so, what recourse against the partnership interest of A. and B. in the firm, who, as a firm, are not indebted to the Bank?

OPINION.—

It is in the power of the Bank to make A. and B. insolvents, and if they are made insolvents such insolvency will work a dissolution of the firm, although it will not make that firm, as a firm, insolvent also.

The property, which will then pass to the assignees of A. and B., will be the whole of the joint estate of A. and B., together with such part of the estate of the firm as A. & B. would be entitled to. This would render it necessary that the account of the whole partnership should be taken in order to ascertain what was to be administered, and would effectually terminate the existence of that firm, although it would not entirely do so if the other partner desired to go on with the assignee as a partner, although he could not in any way avoid the taking of the whole partnership accounts.

In the second place, A. and B. now claim that the partner of A., being also the partner in law of B., is the separate creditor of A. & B., for advances made to each of them to enable them to go into the business, and they profess to have secured him, the partner, upon their separate property for such advances, and the Bank desires to know if the Bank has any remedy in this respect.

The first question on this point is, "Is this separate debt to the partner *bona fide?*" If that be assumed, or it be determined to test it, the next question is, assuming it to be all right, will the security be good against the Bank? Here has to be considered the question of fraudulent preference, and all the various difficulties that may arise upon the facts upon such a question; but I have no hesitation in saying that, on the circumstances of this case, I shall advise the Bank to investigate the whole matter with the more rigid scrutiny, both as to the fact of the existence of the debt, as a debt, and also as to all the circumstances attendant upon the security given for it.

In addition to these points there are circumstances connected with the representations made of the partnership assets and liabilities by the partners, that may involve more serious consequences than the distribution of the estate or the setting aside of a fraudulent preference.

J. HILLYARD CAMERON.

28th Dec., 1875.

COPYRIGHT.

OPINION.—

The Copyright Act of 1868 has been repealed by the Act of 1875, but copyrights under the former Act are valid as to the unexpired terms thereof.

In June, 1875, before the Act of 1875 became law, a book was entered for copyright at Ottawa under the Act of 1868, which had been printed and published in England, but it was professed that the copyright had been purchased by and assigned to a firm in Canada.

The copies of the book so printed at Ottawa had been printed in England, with the exception of the title page, which was printed in Canada. No other reprint has ever taken place.

Is such a reprint sufficient, under either Act, and can any person import the work and sell it in Canada irrespective of any copyright so obtained?

In my opinion no copyright has been secured in this work under either of the Acts referred to. It is doubtful if the copyright has ever actually been purchased by the professed owner; but if it has been, it has not been properly secured by the deposit of a copy of the book printed and published in England, and therefore the sale of the book involves no penalty nor liability on the part of the party selling.

The Act also provides for the sale of the foreign reprint of any copyright work when such foreign reprint has been imported previous to the date of entry of such work upon the registry of copyright, which I understand to be the case with the work in question.

J. HILLYARD CAMERON.

28th Dec., 1875.

HYPOTHECATION OF BONDS.

CASE.—

The A. & B. Railway Company had an account with the Bank of Toronto; contractors were then building portions

of their line. The Company had not money to pay the contractors for prosecuting their work, and required supplies for the line, which they could not get without cash. They asked the Bank to advance them money; the Bank refused, unless secured; the Company offered to deposit with the Bank bonds to be issued under their charter as security, the deposit to be made at 80c. on the dollar; the Bank agreed to advance on this promise by the Company; agreements under the Company's seal were given to the Bank, providing for the deposit of the bonds so soon as they could be issued; the Bank advanced monies from time to time, which were used by the Company in paying for building the line and for necessary supplies for carrying on the undertaking; bonds were duly issued under the provisions of the charter, and the agreed amount was duly deposited with the Bank as security for the allowances. The Bank now have the bonds, and the advances remain unpaid.

On another occasion, when the interest on the bonds held in England matured, the Company had no money to pay it, and could not obtain any except on security. The Bank agreed to advance the money on the Company's notes being endorsed. The notes were given and endorsed, and the Bank made the advance, and the money was used to pay the interest. The bonds were issued and deposited as security at the rate agreed on.

On some other occasions the Company were in want of funds to pay the men working on line and contractors building the line, and could not get it except in the same manner as above referred to; and some parties advanced monies on the Company's note, with a deposit of the bonds, others endorsed notes as above; and the money raised was applied for above purposes, and in no case were bonds deposited to secure a past debt, always for raising money for the purpose of prosecuting the undertaking.

Your opinion is requested as to the validity of the above transactions, so far as the hypothecation is concerned.

OPINION.—

I am in receipt of your letter, asking for my opinion on the legality of the hypothecation of the mortgage bonds

of the A. & B. Railway on the several occasions and in the various transactions mentioned in your letter, and in reply beg leave to state, that in my opinion the hypothecation of the bonds in those several cases was perfectly legal and valid.

J. HILLYARD CAMERON.

10th Jan., 1876.

CAUSE OF ACTION.

CASE.—

In a case of Shaw v. The Grand Trunk Railway, the plaintiff stepped on to buffer of post-office car, and from there to baggage car, as he did so an engine on the track west of the baggage car struck the latter and brought it into collision with the post-office car. Plaintiff's left foot, which was on the post-office car, was caught by the Miller coupler between the buffers. The probabilities are, that his first squeeze was not severe. When first caught, plaintiff saw the station master motioning towards the engineer with his arms, and station master was fully aware of and saw the accident. Plaintiff fully believes that station master signalled engineer to advance and release plaintiff, but engineer, seeing that some accident had occurred by the people running towards the train, got excited and reversed engine, and gave plaintiff a second squeeze. There is no doubt that station master saw plaintiff when first caught; there is no doubt, also, that the plaintiff received a second squeeze, which he felt much more than the other, but the brakesman told plaintiff that after the first squeeze he was signalled to advance, and he did so, but as he did so the coupling of the car broke, another car rebounded back, and gave the second squeeze in this way. Plaintiff's case is, that after seeing the accident and being signalled to go forward, the defendants reversed the engine and gave the second squeeze. Defendants admit they saw the first squeeze; they admit also the signalling to go forward, but

say that they did so, that in doing so the coupling between the engine and baggage car broke, and the baggage car therefore bounded back and gave second squeeze to plaintiff.

OPINION.—

Upon the best consideration that I can give this case, my opinion is, that the plaintiff has no cause of action on the facts stated against the Grand Trunk Railway. It is clear that his own negligence contributed to the injury in the first place; and I see nothing in what is termed the second squeeze that, on the facts stated, takes the case out of the general rule that contributory negligence destroys any right of action.

J. HILLYARD CAMERON.

12th Jan., 1876.

LIABILITY OF CONTRACTORS.

CASE.—

Your opinion is required on the question in difference between the Water Works Commission and the contractors for the works, as to the liability of the contractors for the injury to the works arising from the lifting up of the conduit pipe after the works had been in the possession of the Commission, and used for the supply of water to the city from the 25th Nov. to the 7th Dec.

Under the specifications attached to the contract in reference to the conduit pipe, it is provided that "whatever plan the contractor may adopt of building and sinking this pipe, he must take the risk of making it tight. It will be subjected to the test of closing the end gates and pumping it dry, so that the engineer may pass through it from mouth to mouth. The expense of this pumping must be borne by the contractors."

The engineer of the works, without reference to the contractor, proceeded to pump the pipe dry—the engineer and

his officers having thus been in possession of the work for twelve days—and in the course of that pumping the pipe rose from its position, the engineer stating that it so rose because there was not a sufficient depth of earth over it according to the contract, the contractor saying that the rising of the pipe was in consequence of the water in the basin having been pumped too low, so that air got into the pipe and caused it to rise, and that the contractor warned the engineer that if the pumping was continued this result would follow more than twenty-four hours before the accident occurred.

The contractors also allege that the pipe was perfectly tight, and I understand that there is no statement in contradiction to this.

OPINION.—

Upon this state of facts, and after a careful perusal of the contract, specifications, &c., I am of opinion that the engineer in charge had the right to test the tightness of the pipe without reference to the contractor, if he thought proper to do so, and whether the works were then in the possession of the Commission or not; and that the contractor could not object to his applying the test, as the engineer was, by the terms of the contract, himself to construe the several clauses of the contract and specifications, as a part of it, but that such test was to apply only to the tightness of the pipe, and not to the question of its being laid sufficiently deep, or covered with a proper amount of earth, and that the rising of the pipe as a consequence of the pumping, and without any deficit in tightness, was not a liability of the contractors, within the clause of the specification referred to, in that rising was referable to the improper manner in which the pumping was carried on.

It is alleged that there was not a sufficient depth of earth over the pipe according to the contract; and assuming this to be so, if the pipe rose in consequence of the injudicious pumping, the contractor is not liable for the consequences, if the want of a sufficient depth of earth over the pipe had no effect upon the result.

Under the clause in the contract which states that all surplus material not scowed away is to be deposited as required by the engineer in charge, I am of opinion that the contractors are authorised to scow away surplus material of the character mentioned in the clause referred to.

J. HILLYARD CAMERON.

8th Feb., 1876.

EXEMPTION FROM TAXATION.

CASE.—

In the matter of the carrying out of the Act 35 Vic. cap. 102, authorising the diversion of the stream of the Aux Sables and the freedom of the lands mentioned in that Act from taxes.

In this case, as you are aware, we have now completed the diversion of the Aux Sables, and the operation so far is completely successful.

On claiming the exemption from taxation we, however, meet with the following difficulties:

The County of Huron has done everything we require so far as legislation is concerned, but upon our sending out tax lists the Treasurer refuses to accept the exemption, and charges us with the full taxes due.

The County of Middlesex has done nothing to comply with the Act.

The County of Lambton passed the by-law exempting our lands in Bosanquet in accordance with the Act, but at their next meeting they repealed the former by-law.

The *Township* legislation has been as follows:

Stephen has passed the by-law in accordance with the Act, but the Township Clerk sent in the tax-list the same as usual, taking no notice of the action of the County or of the Act.

McGillivray has done nothing whatever. We have sent an agent three times to meet the township in session.

They offered to pass a by-law exempting the land from all taxes except school tax—that is to say, "municipal taxes," but they refuse to pass the exemption of the school tax, so that they have left the whole matter in *status quo*, and they send in the bill for taxes as usual.

Bosanquet passed the by-law for exemption. They did all that could be asked for at the time, and we believe that they would still carry out what they promised if legal pressure were brought to bear on them, but the Treasurer of the County of Lambton advises us that the Township Clerk is the only person who has power to take the lands in question off the tax lists, and he either refuses or neglects to do so; and the bill for the entire taxes comes in as if there were no exemption from taxation embodied in the above mentioned Act of Parliament or in the by-laws already passed.

It is therefore clear that the Company must stand on their legal and equitable rights, and oblige the counties and townships to do what was promised to be done. The various Township Councils, as well as numbers of the inhabitants, petitioned the Legislature for the passing of the Act in question, and it was not till after these petitions had been sent in that the Company agreed to proceed with the work.

It will therefore be perceived that the Company has fully carried out its share of the bargain, for the drainage and that what the Company has done has been effectual, and done at a cost of about $25,000; and it now seems a grievous thing that the counties and townships will not carry out their share of the bargain, when it was upon the faith of the promises made that we have expended this large sum.

You will please, therefore, advise us as to our legal and equitable remedies.

You will also please advise us whether we should, in the first place, pay the taxes as imposed under protest, and thus avoid all questions of surcharge, &c., or whether we should at once make a stand and refuse to pay the taxes on the exempted lots altogether.

OPINION.—

In the matter of exemption from taxation of the

lands of the Company under Statute of Ontario 35 Vic. ch. 102.

The lands to which this Act applies are situated in the Townships of Stephen, McGillivray, and Bosanquet, and in the Counties of Huron, Middlesex, and Lambton.

Upon the case sent to me, it appears that the County Council of Huron and the Township Council of Stephen have both passed the necessary by-laws for exemption, but that the Treasurers of those municipalities refuse to recognize the exemption, and have made up their tax lists against the Company as if no such exemption were in existence.

The County Council of Middlesex and the Township Council of McGillivray have passed no by-laws for exemption.

The County Council of Lambton at one sesssion passed a by-law for exemption, but repealed it at the next session; and the Township Council of Bosanquet passed the by-law for exemption, but the Township Treasurer refuses to carry it out, and the tax lists have been sent to the Company without any exemption.

Under these circumstances, I am of opinion that the Company shall *at once* tender the taxes according to the several tax lists, omitting the amounts claimed on the exempted lands.

That if the sum so tendered is refused, immediate steps shall be taken against the refusing municipalities to have the rights of exemption settled.

J. HILLYARD CAMERON.

2nd May, 1876.

LIQUOR LICENSES.

CASE.—

Under the authority vested in them by the Act of last session of the Ontario Legislature respecting spirituous liquors, ch. 26, the Commissioners of North Grey have

decided on granting only two shop licenses for the Town of Owen Sound, thus cutting off five shops which are now carrying on business, and one of them being an old and respectable house of twenty years' standing. And as to the two shopkeepers to whom licenses have been granted, the condition is imposed of confining the business of their shop solely to the sale of liquor. We are desirous of obtaining your opinion in this matter for the guidance of our clients, the rejected shopkeepers, as well as to the validity of the Act of the Ontario Legislature restricting shops, as to the best course for our clients to adopt to get the validity of the Act tested; and also whether the Commissioners have any power under the Ontario Act to refuse wholesale licenses. We have advised our clients to tender the License Inspector the retail license money, and to demand a license. We suppose that there are strong reasons in support of the decision that the Ontario Legislature can impose a license for revenue purposes, and therefore the tender of the license money is advisable. Of course the Inspector will refuse to accept the money. What next should the shopkeepers do? Will it be advisable to sell without license, and if fined, what course should be adopted?

OPINION.—

The License Commissioners have no power to limit the number of shop licenses, nor to confine the business of any person to whom a shop license is given to the sale of liquors alone, nor to refuse a wholesale license.

The Ontario Legislature has not acted, *ultra vires*, in requiring licenses, and therefore you are right in advising your clients to tender the license fee.

If the money is refused, let the party sell, and on conviction let him either appeal or allow a seizure to take place for the penalty, or remove the conviction by *certiorari*.

J. HILLYARD CAMERON.

May 3rd, 1876.

SHOP LICENSES.

CASE.—

As to the right of shopkeepers holding retail licenses selling in larger quantities than the limit of wholesale dealers. It has been the custom of retail dealers to sell in unlimited quantities, and such a thing as a wholesale license was never taken out. The question is now raised, whether a retail license does not confine the holder to selling in quantities under those which wholesale dealers sell. See secs. 2, 3 & 4 of 37 Vic. cap. 32.

That is to say, that a holder of a retail license, or "shop license," selling a quantity of five gallons or over could be prosecuted for selling without a license.

OPINION.—

If the Municipal Council has no by-law on the subject, the holder of a shop license is not prohibited from selling any quantity of liquor, in such case the construction of the 3rd sec. 37 Vic. ch. 32 is clear. He is to sell, barter, or traffic by retail, in quantities not less than three half pints, at any one time, to any one person; and such quantities shall, at the time of sale, be wholly removed and taken away, being not less than three half pints at a time. You will observe that the *least* quantity is the only quantity mentioned, and therefore there is nothing to prevent the sale, under a shop license, of any larger quantity, provided that the sale being made, the quantity sold is at once taken away.

J. Hillyard Cameron.

3rd May, 1876.

STATUTORY TITLE.

CASE.—

In making up the reports on lands in which the A. B. Company has an interest — although they may be under Lease—we find a number of them thus situated:

the lots in question have been occupied by squatters for many years; they have thus undoubtedly acquired a possessory *title*, which is running on, and only requires to be perfected by lapse of time, and the effect of the Statute which comes into operation on the 1st July next. Meantime we have leased the lands to other parties, who take it with the full knowledge of all the facts,—they have all paid down one-fourth of the price, and many of them paid rent besides. These Lessees have entered into arrangements—verbal and otherwise—with the squatters, which are doubtless satisfactory to themselves, and which would also be satisfactory to us, were it not for the fact, that if the possessory title of the squatter is running on and will be perfected on the 1st July next into a Statutory Title,—that Statutory Title may be considered to over ride our lease—and the agreements entered into by the squatters with the Lessees—provided those agreements are only verbal or are improperly made.

This would be the less matter were the agreements made by our *leases compulsory* as to the purchase, but they are not,—were they otherwise, we could sue for the purchase money and give only such form of deed that if by his own act the Lessee has allowed a title to be acquired, superior to ours, we should not be considered answerable to him for a more perfect title than he had left to us to give. There is no doubt that in all cases we should recover the rent under the Covenants of the Lease, but we might lose the remaining three-fourths of the purchase money.

Under these circumstances we think it would be advisable to communicate with the Lessees, and to inform them how the case really stands.

Under these circumstances may I request your *immediate attention* to this case, and that you will favour us with your suggestions.

The possibility must not be lost sight of that the squatter and the Lessee may continue together to allow the occupant to obtain a Statutory Title, and thus to cut the Company out of the three-fourths of the purchase money which would be coming under the Lease.

It is also quite probable that many of the Lessees may allow the squatter to be continuing in possession without agreement of any kind. In some cases from pity to the man, and in others because he was really doing no harm, and very probably protecting the property from plunder by others.

OPINION.—

It is absolutely necessary in these cases, and under the circumstances mentioned in your letter, that you shall, with as little delay as possible, ascertain the actual facts, in *each* of the cases mentioned, as otherwise the consequences may be most disastrous, if the 1st July pass, and no action be taken by the Company.

I advise that in any case, where there was a squatter on the land, when the Company sold or leased, that the Company shall ascertain whether the squatter, or any one claiming under him, is still on the land and if so, whether he is there with the consent of the purchaser or lessee from the Company, with an acknowledgment of his title, either by the payment of rent or interest to him, or by writing. If he is so in possession there will be no difficulty, but if there is no such acknowledgment, then a writ of ejectment must be issued against the party in possession before the 1st July.

J. HILLYARD CAMERON.

13th May, 1876.

DUNKIN ACT.

CASE.—

The Temperance Act 1864, was brought into operation in the month of April 1876, in the County of Prince Edward, by a By-law of the Municipality duly approved by a majority of the Municipal Electors.

On the first day of May, a wholesale License was granted to A. B., under the Acts of the Province of Ontario,

passed in the thirty-seventh and thirty-ninth years of Her Majesty's Reign, he being a Brewer, residing in and carrying on business at Picton, in the said County of Prince Edward.

On this statement of facts my opinion is asked for on the following points:

1. Can A. B. under this License sell in addition to his own manufacture, all liquors in wholesale parcels, according to the terms of his license?

2. Can he use any building on his property on Ferguson Street for that purpose, or must he confine himself to the building in which his business was carried on when the license was granted?

3. Can he import Spirituous Liquors in hogsheads, and on his own premises licensed, rack into smaller parcels or quantities, such as stated in the License, and send out in such parcels, or must he import in the parcels or quantities in which he sends it out?

OPINION.—

My opinion on the foregoing case is as follows:—

First. To the first question my answer is "Yes."

Secondly. To the second question my answer is "That the sale should be confined to the building licensed."

Thirdly. To the third question my answer is "That he may import in hogsheads and draw off and send out in the smaller quantities authorised by the License."

J. HILLYARD CAMERON.

19th May, 1876.

LICENSE ACT 39 VIC.

CASE.—

1. Is License Act 39 Victoria, chapter 26 constitutional?

2. If constitutional, have the persons who have been deprived of their Licenses any remedy in Law or in Equity

for damages or indemnity against the Provincial Government, or their Municipalities, for such losses as they have sustained?

OPINION.—

The British North America Act, 1867, gives to the Dominion Parliament the exclusive right to legislate upon all matters relating to the regulation of Trade and Commerce, and the Provincial Legislatures the exclusive right to legislate upon all matters relating to Municipal Institutions, Shop, Saloon, Tavern, Auctioneer, and other Licenses, in order to the raising of a Revenue for Provincial, Local, or Municipal purposes, and property and civil rights, all to be exercised within the Province.

The exclusive right of Legislation in the regulation of Trade and Commerce being thus given to the Dominion Parliament, the Provincial Legislature can have only such power to Legislate in relation to Trade and Commerce within their respective Provinces as are governed by or legally arise out of any of the above classes of subjects on which they may exclusively legislate. They may therefore under the heads Municipal Institutions, and Shop, Tavern, &c., Licenses, make Police regulations, which will cover many things enacted in this license law, they may require a license to be taken out and exact a license fee, and they may make or authorise the making of regulations in reference thereto, but they cannot under either of those heads prohibit or prevent the carrying on the trade or business, for which they may declare a license to be necessary. Under the head of property and civil rights they might pass the law were not the power conferred upon them in subordination to the exclusive power relating to Trade and Commerce conferred upon the Dominion Parliament, and therefore excluded from the action which the Provincial Legislature might otherwise take under this head.

I have no doubt that the Provincial Legislature have the power to require that a license shall be necessary to sell spirituous liquors, &c., to determine the fee or duty that shall be payable therefor, and to make regulations respect-

ing the issuing of licenses. But, I am of opinion that whenever any person has complied with these requirements, he is entitled to a license on payment of the license fee, and that the Provincial Legislature have no power to enact a law that he shall have his license only at the discretion of Municipalities or Commissioners, under such circumstances.

I am therefore of opinion that such parts of the License Act referred to, as prohibit or limit the traffic in spirituous or fermented liquors in the manner which I have pointed out are beyond the powers of the Provincial Legislatures and cannot legally be conferred, as they relate to the regulation of Trade and Commerce.

I am further of opinion that if the act be within the powers of the Provincial Legislatures no remedy nor indemnity can be had either at Law or in Equity, against either the Provincial Government or any Municipalities for any damages or injury sustained by any person in consequence of the refusal of a license to him.

J. HILLYARD CAMERON.

20th May, 1876.

MECHANIC'S LIEN.

CASE.—

A client of mine took a Mortgage from a Builder on a vacant parcel of land for a sum sufficient to cover the price of the land and what was the estimable cost of the building to be erected. He advanced the money as the work went on to the full amount of the Mortgage and the builder has gone into insolvency leaving the building unfinished. *Since the assignment* liens have been put on the premises under the Mechanic Lien Act. The questions now present themselves: (1) Does the assignment prevent these liens from obtaining priority or attaching on the premises? (2) Do they obtain any priority over the Mort-

gage, and if so to what extent? It may be explained that my client had no notice of these liens and paid his money in good faith, and also so far as I can understand that all his Mortgages were made and the money advanced prior to the doing of the work for which liens are put on the premises. It may be further explained that my client has several Mortgages on the premises the latter ones being made after the buildings had progressed so far.

OPINION—

The facts are not as fully stated as I would wish, but as I understand from your statement, the Mortgages were made by your client, and the monies were all advanced under the Mortgages by him to the builder prior to the doing of any of the work, for which liens were afterwards registered on the premises. Under these circumstances I am of opinion, that none of the liens have priority to his Mortgage, as by the Statute, the lien is limited to the estate or interest of the person, at whose request and upon whose credit the work was done, and in this case, the credit and interest was that of a Mortgagor, to whom money had been advanced to the amount of the Mortgage, prior to any possible claim of lien, and the lien would attach as against the Mortgagee on the facts stated, and the Equity of Redemption of the Mortgagor and the Mortgagees must be first satisfied before the lien could come in.

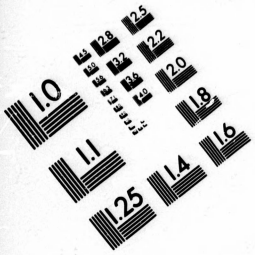
J. HILLYARD CAMERON.

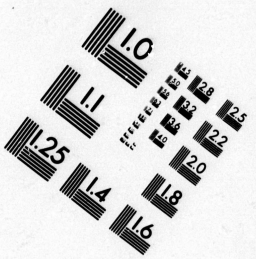
10th June, 1876.

SURRENDER OF BONDS.

CASE.—

Referring to our conversation in reference to the arrangement made by the A. & B. Railway with the bondholders who held bonds issued prior to the 1st March, 1875, and which arrangement was as follows, viz.: that the bondholders would take the new bonds at 80 per cent. of





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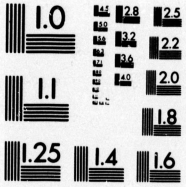

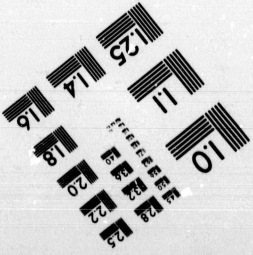

their full value, and that to pay the holders for the balance, viz., 20 per cent., the Comp. ny should issue scrip for fully paid up shares, which would be in the proportion of 1 share of $100 for each $500 bond. A large majority of shareholders have in writing authorised and instructed the Directors to carry out this arrangement. Bondholders holding bonds to the extent of $1,400,000 out of the $1,600,000 have exchanged their bonds. Your opinion is requested as to what are the rights of any bondholder who does not come in and exchange his bonds, and what course the Company should pursue in reference to such persons.

OPINION.—

In answer to your communication on the subject of the rights of any bondholders who have not come into the arrangement, sanctioned by the shareholders, and exchanged their bonds for those of the new issue, and asking me what course the Company should pursue in reference to such persons, I beg leave to say, that in my opinion the Directors should offer to those persons bonds and stock in the same proportion that they have given them to those persons who have surrendered their old bonds, and if they are refused the Directors should await such action as those persons may determine to take.

J. HILLYARD CAMERON.

22nd June, 1876.

NOTICE TO INSURERS.

CASE.—

S. C. & Sons, of Kingston, had two policies with us, as follows: No. 56077, for $4,000 for three years from the 24th Dec., 1873; and 56671, for one year from the 10th Feb., 1874, $2,000. The former was reinsured in the Canada Farmer's Insurance Company for $2,000. The yearly policy was renewed from year to year. In October, 1875, C. & Sons took in a partner, and the firm became C. & W.,

but we did not receive any notice of the change until the 14th Feb., 1876.

W., through failing health, has since gone out of the firm, but no dissolution has taken place formally.

Policy 56671 was renewed in Feb., 1876, in the name of C. & W., but no new policy issued or endorsement made.

The fire occurred on the 12th June, 1876, and S. C., as a member of the firm of C. & W., claims under both policies. The question arises, whether this Company is liable under policy 56077, and also how far the liability of the reinsuring company is affected by want of notice to them of change of firm.

OPINION.—

I am in receipt of yours of the 22nd inst. I am of opinion that on the facts stated therein, that the Company is discharged from policy No. 56077, as any change of partnership which affects the property insured should always be notified to the insurer.

J. HILLYARD CAMERON.

26th June, 1876.

CANCELLATION OF POLICIES.

CASE.—

I am instructed to obtain from you a formal opinion on the general subject of cancellation of policies for the information of the Board of Directors. It appears to me that the following points call for consideration:

1. What policies require cancellation.

(*a.*) Policies written, but not issued, on account of subsequent objections.

(*b.*) Policies issued and found undesirable.

(*c.*) Policies under which suspicious claims have occurred.

(*d.*) Policies void from any and what other causes.

2. Assessments. When and for what cause should we cease to assess on a P. N. policy under which a claim has arisen?

3. Mode of cancellation, whether by the Board alone or by any other agency.

(*a.*) The Examining Committee at their weekly meetings.

(*b.*) The Managing Director.

(*c.*) One of the Inspectors or the Secretary.

4. Repayment of premium any time actually insured. How to be made or tendered.

Should any other points occurr to you, will you kindly give it your attention?

OPINION.—

The points for consideration in your letter are: 1. The cancellation of your policies; 2, the circumstances under which the Company should cease to make assessments on premium notes; 3, how repayment of premium should be made or tendered.

1. Cancellation of policies. No policy requires cancellation which has not been actually issued—that is, which has not been completed with the seal of the Company attached. Any policy which has not become void by any act of the insurer must be cancelled if the Company desire to avoid liability upon it. Any policy which has become void by an act of the assured does not require cancellation. Any policy which becomes void only at the option of the Directors should be cancelled, if the Directors wish to exercise that option. An interim receipt stands on the same footing as a policy while it is current. The Board of Directors may confer upon the Examining Committee and Managing Director the power of cancelling policies, but such policies, when so cancelled, should be reported to the Board of Directors and the cancellation confirmed.

2. When assessment should cease. When the premium note has been assessed to its full amount, when the policy has been cancelled, when the policy has become void by the act of the insured and the Company intend to insist upon its avoidance.

3. Repayment of premium. Strictly payment or tender should be made in specie or Dominion notes by an officer or agent of the Company.

J. HILLYARD CAMERON.

15th July, 1876.

CONFIRMATORY DEEDS.

CASE.—

We have a number of applications from parties interested, who want us to make a confirmatory conveyance in each case. This is, of course, out of the question, as we should not know what interests we were interfering with. No doubt the laws of the Province on the subject of plans and altered plans in the registry offices are very strict, and necessarily so; but those laws cannot surely prevent a landholder from conveying "on view" any real estate, notwithstanding it may not be strictly described for the registry office. The fact remains the same, that the vendor sells to the vendee certain property which he has set out by survey and placed the vendee in possession of. The vendee goes into possession, and receives and accepts the deed. Surely this kind of transaction cannot be invalidated by mere registry office regulations; and one would suppose a proper document ought to be admissible evidence of the intention of the parties.

OPINION.—

I think that you cannot very well execute a general form of conveyance, but that any deeds that are given should be given to the parties respectively and at their expense, as to enquiry into present title, &c. As I understand the matter, all these lots, whether taken by the old one or by the new one, have been actually conveyed by the Company to various parties, and those parties, therefore, can, by their own acts, and independently of the Company, change the land among themselves, and make the whole of the titles right without any further conveyance from the Company.

If, however, they all prefer confirmatory deeds from the Company, then I would advise them to be given only to each party separately, and at the expense of the parties requiring them.

J. HILLYARD CAMERON.

2nd Aug., 1876.

GOVERNMENT COMMISSIONS.

OPINION.—

Having been required by the N. R. Company to advise them in reference to the Commission issued by the Dominion Government for the investigation of various accounts of the Company, with power to the Commissioners to summons and examine witnesses on oath, and call for the production of any books or documents of the Company, I beg leave to state for the information of the Board, that in my judgment, the Government have taken an erroneous view of their powers in the issue of this Commission.

The Statute 31 Vic. ch. 38, under which it is recited that the Commission is issued, authorises the issue of a Commission by the Government, when it is deemed expedient to enquire into any matter connected with the good government of the Dominion or the conduct of any part of the public business thereof, and in no other case, and I am unable to understand how the accounts or affairs of the N. R. Company come within either of these classes of subjects, merely because the Government is a creditor of the Company, and has a lien on the railway, as stated in the Commission, a lien to which Parliament has given a special protection, which it would have been hardly necessary to afford, if it had been considered possible that this extraordinary power of the crown, could be invoked on the suggestion of any one, to investigate the Company's affairs.

In addition to this position the Parliament of Canada have sanctioned an arrangement between the Government and the Company to compromise the Government Lien of £475,000 stg. for £100,000 stg., have extended the time for the payment of the £100,000 to a day which has not yet arrived, and have declared that on that payment the Company shall be released from all further liability, and the Lien of the Crown shall be discharged.

The Directors are aware, although the Government may not be, that a Bill has been filed in Chancery in Ontario, against the Managing Director of the Company and the

Company itself, to investigate and enquire into the very matters, which are to be made the subject of this Government enquiry, and it may be prejudicial to the defence of the Company in that suit, that an investigation shall be made by the Commission, before the suit is brought to a hearing.

The Directors are also aware that the Act of Parliament under which the debt of the Company to the Crown was confirmed, provides for the appointment of a Government Director, whose special duty it is, to look after the interests of the Crown in the Company; that the Government has appointed such a Director, who is able, by his position, to make all the investigation and enquiry sought for by the Commission, except to examine witnesses upon oath, which he may have quite as good a right to do as the Commissioners themselves.

The Board are further aware that the issue of a Government Commission and an enquiry thereunder into alleged irregularities in the accounts, and false and fraudulent entries in the Books of the Company, to the prejudice of the Government Lien, is a matter of such grave moment, that it may seriously affect the interests of the Company, and render nugatory all their efforts to obtain the money necessary to pay the £100,000 to the Government, and to carry out the other objects of the Company provided for by the Act of Parliament.

I therefore advise that under these circumstances and with the view also of communicating with the Shareholders and Bondholders, who are the constitutents of the majority of the Directors, and whose interests may be prejudicially affected by these proceedings, the Government should be informed of the points which I have brought to the notice of the Board, and requested to suspend any action under the Commission, until they have been considered by the First Minister, and if necessary the Company heard thereon, and also an opportunity given to the Board to communicate with their constituents on the subject, the Board themselves undertaking to pursue at once a searching inquiry into any matters which may have been brought under

the notice of the Government, and which the Government may desire to have investigated.

I need hardly add that the action of the Government places the Board under a grave responsibility as to the course to be adopted. If my view of the Commission be correct, every oath administered will be extra judicial, and every witness summoned may refuse either to appear or be sworn, and every Shareholder or Bondholder may file a Bill to prevent the Company from submitting to the inquiry or allowing their books to be produced before or examined by the Commissioners.

J. HILLYARD CAMERON.

20th July, 1876.

DIVERTING COURSE OF RIVER.

CASE.—

About twenty-five years ago we purchased a mill site on Snake River, and built thereon a Saw and Grist Mill in a short time, we found that the stream did not supply sufficient water for the Mills, and in a year or two after we built the Mills, or about twenty-three years ago we built a reserve dam to retain the water in the river at a higher level which we could draw on in the dry season, the banks of the river being very low allowed the water to spread over on each side, as the land flooded was Crown Lands, and at that time considered of very little value, no objection was made. Recently the lots bordering on the stream have been settled on, and the owners wish to get the water off the flooded portions, they have been advised by legal authority that they cannot compel us to remove the dam on accounnt of the length of time it has been up, failing in this they are trying to divert the stream above our mills into another channel, which owing to the formation of the country can be easily done. As we have spent upwards of twenty-five thousand dollars in the erection of buildings and machinery, which would be rendered worthless could the stream or any considerable portion of

it be diverted, we must resist as far as possible. What we wish to know is to what level we can restrict them in the attempt to drain this land, the owners of the land say that they can drain all the water over the original bank of the stream, we wish to confine them to the level the water has stood at for the last twenty-one years. If the law would bear us out in deterring these parties from drawing off any water that naturally flows into the stream it would be of great benefit to us. Such legal advice as we can obtain here give the opinion that the stream cannot be diverted, as we have considerable at stake in the matter we wish to have advice from the highest legal authority.

OPINION.—

I am in receipt of your letter requesting my opinion on the case stated therein, in reference to the right of parties, who are Grantees of the Crown, to direct Snake River from its natural channel, and thereby deprive you of the flow of the water to your mill, which you have enjoyed in its present state without interruption for upwards of twenty years.

In my opinion on the facts stated the parties have no right to divert the stream to your detriment, and you will be entitled to obtain an injunction from the Court of Chancery against them, if they attempt to do so.

J. HILLYARD CAMERON.

23rd of August, 1876.

BONDS UNDER 38 VIC. CH 57.

OPINION.—

I have carefully examined the various Statutes affecting T. & N. R. Co., and the proceedings taken by the Company under the Ont. Stat. 38 Vic. ch. 57, to authorise the issue of $900,000 of the bonds of the Company, and I am of opinion that every thing that is necessary has been done to give validity to such parts of the said amount of $900,000

of bonds as the Company has already issued, and of such part up to the said extent as may be hereafter issued by the the authority of the Board of Directors, and that such debentures as have been issued in accordance with the said proceedings are legal and valid, and form part of a first charge on the said railway and property, according to the terms of the said Act 38 Vic. ch. 57.

J. HILLYARD CAMERON.

26th Aug. 1876.

REDUCTION OF SPECIAL RATES.

CASE.—

It has been submitted to me that certain by-laws of the City of Toronto provide for the payment of the principal and interest of debentures issued thereunder as required by law by a certain special rate in the dollar, to be levied yearly and calculated at eleven per cent., being six per cent. for interest, and five per cent. for sinking fund, for the ultimate payment of principal, the debentures being payable at the end of twenty years; and that such rate, as far as it is applicable to the sinking fund, has produced and is producing so much more than is required for the sinking fund, that the sum may be reduced from five per cent. to three per cent., and still produce a sufficient sum to extinguish the debt within the time limited, and I have been requested to advise whether in any, and if so, in what manner, by by-law or otherwise, such reduction can be effected.

OPINION.—

I am of opinion that such reduction may be made, but only by a by-law which shall receive the sanction of the Lieutenant-Governor in Council, and shall contain the

various recitals and statements required by the Municipal Act in the case of the passage of by-laws for the reduction of special rates.

J. HILLYARD CAMERON.

26th Aug., 1876.

DEBENTURES BY WAY OF LOAN.

CASE.—

My opinion is required upon the question, whether a municipality can issue debentures by way of loan to a person for establishing and maintaining a manufacturing establishment within the bounds of said municipality, under the subsection added to sec. 349 of 31 Vic. ch. 30 as follows: "For granting bonuses to any railway, and to any person or persons, or company, establishing and maintaining manufacturing establishments within the bounds of said municipality, and for issuing debentures, payable at such time or times, and bearing or not bearing interest, as the municipality may think meet for the purpose of raising money to meet such bonuses."

OPINION.—

I am of opinion that the Municipality has a legal right to grant a bonus by way of loan for the purpose stated.

The law grants a Municipality the power to make the gift absolutely, and it certainly does not prevent the recipient of it from entering into an engagement with the municipality to repay it.

It is equally a bonus whether it is a gift or a loan, and if the debentures are issued according to the terms of the municipal law, they will be perfectly valid.

J. HILLYARD CAMERON.

12th Sept., 1876.

MAINTAINING ROAD.

CASE.—

The point on which the Council wanted your legal opinion was respecting the liability of the Corporation to maintain the road which runs along the banks of the River St. Clair on the front concession.

In the original deed from the Crown to the settlers whose lots front the river, a chain width was reserved across the lots for a public road on the river bank.

In many places the action of the water has entirely washed away the original road allowance. In such cases, can the Council of Moore exact another road allowance free of cost, or must the right of way be bought from the parties interested in the usual way of procuring land for public uses?

Some have asserted that the reservation of a chain width for a public road was made for all time, irrespective of future encroachments of the river. The list of parties to whom the patents were issued, with the dates thereof, sent you, will show how the matter stands in the Crown Land Office.

Of course the road must be kept up for public travel, being one of the most public thoroughfares in the county along the western frontier, and the Council have at great expense built and constructed embankments for its protection in several places, but were the road not there the settlers would have to protect the lands at their own expense. Is it the duty of the settlers or the Council to protect the road? As the road runs on the river bank, the protection of the road protects the fronts of the farms. Another difficulty the frontier townships have to contend with regarding this road is, that whereas the other boundary lines of roads in the County of Lambton are maintained equally by the counties interested, the local municipalities through which this road runs have to support it at their own expense, there being no municipalities on the west to co-operate with them.

Could not the County Council of Lambton be made legally to contribute a share of the expense of keeping the road in repair? Running on the western frontier, with the River

St. Clair and Michigan on the one side, some are of opinion that the Government should assist in keeping the road passable.

OPINION.—

According to statement of facts, in the original grants from the Crown a chain in width was reserved across the lots on the river bank for a public road, and that reservation has been used as a public road, and been maintained and kept in repair by the Township, and the action of the waters of the river having in many places washed it away, the question has arisen whether the Township can take land for the road in such places, to replace the road, or whether the land so taken must be paid for by the Township.

In my opinion the Township is entitled to take the land in such places without making any compensation to the owners. Independently of the provision in the original grant from the Crown, the road through the land is by the Common Law a way of necessity and every one can use it, but the Township Council must in such case, maintain and keep in repair the land so taken, in the same way as any other part of the road.

The County Council cannot be compelled to contribute maintenance of the road as there is no provision for such a case in the Municipal Law, but they can contribute if they think proper, as there is express provision in the Municipal Law enabling them to do so.

J. HILLYARD CAMERON.

28th Sept., 1876.