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The last survival of the numerous old-time forensic evils suffered by lawyers and their clients, namely, the despotism of the Bench, is falling into "innocuous desuetude" with the passing of the present century. The demand for the betterment of judicial behaviour which began to be so ably put forward by the professional and leading lay press in England some years ago, was promptly taken up by their colonial contemporaries with the most gratifying results both to the Bar and to suitors. It is only occasionally now that we hear of some ruffian in high judicial place trying to play the role of Jeffreys; and it is very interesting to note how speedily he comes off his high horse when menaced with exposure in the public prints. It was the boast of seventeenth century reformers that even the unspeakable Jeffreys himself was not "Parliament-proof;" it is our peculiar pride to know that his modern disciples are not even "newspaper-proof." In the celebrated Yelverton case, 1893 A.C. 138, their lordships of the Privy Council dealt a staggering blow to the doctrine of constructive contempts subsisting in newspaper criticism of the judges. They there hold that where an article, published in the press, containing criticisms which might have been made the subject of proceedings for libel, was not calculated to obstruct or interfere with the course of justice or the administration of the law, it did not constitute a contempt of court. The press is not afraid of a fair trial in respect of any charge that may be preferred against it; it does object to being made the victim of spite and malevolence through a medium which defies and subverts every cardinal principle of civil liberty.

Some time ago a prominent man of letters in England deplored the decay of sound scholarship in the Imperial Parliament. Comparing the speeches of the members of to-day with those delivered at Westminster a century ago, one is compelled to become an encomiast of times past. In the days of Walpole and Pitt, the speeches of the leading members of both Houses were, on all vital questions, splendid contributions to the literature of their country; to-day who would ever seek for cultured rhetoric, or intellectual stimulus of any kind, in the pages of Hansard—more especially since we have lost Beaconsfield and Gladstone? It would be hard, for instance, to imagine such an incident occurring nowadays as that which subsisted in the classical duel between Walpole and Pulteney in 1741. Pulteney had given notice to the House that he would at a given time bring certain charges against the First Minister. The latter, in repudiating the threatened accusation, theatrically laid his hand on his breast, and said with some emotion:

"Nil conscire sibi, nulli pallescere culpæ."

Pulteney immediately sprang to his feet and declared that the right honourable gentleman's logic was as bad as his Latin, and that Horace's exact words were: *Nulla pallescere culpâ.* Whereupon Walpole wagered a guinea that his quotation was right, and Pulteney accepted the challenge subject to the arbitrament of Mr. Hardinge, the scholarly clerk of the House. The clerk decided against Walpole, who immediately threw the guinea to his learned adversary, who, deftly catching it, held it up to the House and exclaimed: "It is the only money I have received from the Treasury for many years, and it shall be the last!" What is true of Parliament is equally true of the Bar—indeed the former must needs take its vogue from the latter, seeing that it so largely recruits its ranks from the gentlemen of the long robe. The golden age of polite and philosophical learning, so far as English lawyers in the mass are concerned, began with Sir Thomas More and ended with Lord Brougham—truly a long period. There are a few great scholars in the profession to-day, but they are

scholars in despite of the methods under which they were bred to the Bar. There are many of the profession who say that this decadence is a mere phase of modernity which the law is passing through in common with other branches of human activity—in other words, an exploitation of the paradoxical "Art for Art's sake only" formula. But as the sole art which the average latter-day lawyer has any desire to become familiar with is the seductive art of money-getting, we profoundly suspect that his adhesion to it will wax rather than wane as the years go by. Will the mental and moral regimen of the new law schools, as at present constituted, be capable of combating this evil for the younger generation and endue them not only with sound scholarship, but also with a due sense of the august responsibilities of the legal calling? We trow not.

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## *DOWER IN EQUITABLE ESTATES.*

The Common Law as to dower was on the whole tolerably simple and easily understood, but the statutory alterations in the law which have been from time to time made in Ontario, have in some respects created difficulties which are not very easily solved.

At Common Law the right of dower only existed in regard to lands of which the husband was legally seized in fee. It did not attach therefore on any equitable estate. This was considered to be a hardship on the wife, and in the days before it was so widely considered as it is to-day, that the right of dower is altogether an anomalous right, and one which should be abolished altogether, and in lieu thereof a definite proportion of the husband's estate allotted to his widow, it was deemed advisable to extend the widow's right of dower to her husband's equitable estates. But it was thought that the Common Law rule which enabled a widow to claim dower in all the lands of which her husband had at any time during the coverture been seized, and in which she had not barred her dower, ought not to be extended to equitable estates, and so it was provided that her right to

dower therein should be confined to those to which he died entitled (4 W. 4, c. 1.) Thus as far as his equitable estates were concerned, the husband's power of disposition thereof, without the concurrence of his wife, was preserved.

But a further inroad on the Common Law was made in 1879, by 42 Vict., c. 22. It was considered then, that where a wife had a Common Law right of dower, and joined with her husband in a mortgage whereby her husband's estate, subject to such dower, became converted into an equitable one, that in such a case the wife's right to dower in the equity of redemption ought not to be at the mercy of the husband; but that the wife should be dowable out of the equity of redemption, unless she also expressly barred her dower therein, and in short, that to equitable estates of that nature, the Common Law rule should be extended, and that the dower should attach thereto, whether the husband died seized thereof or not. This was accomplished by declaring that no bar of dower in a mortgage should operate to bar dower to any greater extent than should be necessary to give full effect to the rights of the mortgagee, and by also providing that in the event of a sale of the mortgaged property under a power of sale contained in the mortgage, the wife of the mortgagor should be dowable in the surplus "to the same extent as she would have been entitled to dower in the land from which such surplus money shall be derived, had the same not been sold." These last words have been criticized, as not being a very appropriate mode of expressing the idea, possibly intended to be conveyed; and it has been said that as, according to the previous statute giving dower in equitable estates, the wife, in case her husband did not die entitled would have had no dower in the land, therefore under this section she can have no dower in the surplus, unless it is either realized in his lifetime, while he is still owner of the equity of redemption, or unless he dies entitled thereto; and it has been thought that even under this provision, if the husband parted with his equity of redemption in his lifetime his widow's right to dower in any surplus is defeated: (see per Dalton, M.C., *Re Croskery*, 16 O.R. 207) but this view appar-

ently fails to give due weight to the previous restricted effect which the statute gives to a bar of dower in a mortgage, which is no longer to be absolute in its operation, but only so far as may be necessary to give due effect to the rights of the mortgage; and Boyd, C., in the same case, when giving judgment reversing the decision of Mr. Dalton said: "I cannot read these sections (now R.S.O., c. 164, ss. 7, 10), as subject to (now) R.S.O., c. 164, s. 2, which provides for dower out of equitable estates, arising only when the husband died seized. That now covers cases where the wife never had dower in the legal estate, and only by the grace of the legislature does she get it out of the equitable estate, of which her husband is possessed at the time of his death." This opinion of the learned Chancellor, as to the effect of ss. 7, 10, supra, was followed in the case of *Gardner* v. *Brown*, 19 O.R. 202, where the husband being owner of an equity of redemption in lands of which he had never been seized of the legal estate, mortgaged it, his wife joining to bar her dower, and thereafter the husband assigned his equity of redemption for the benefit of his creditors. His wife claimed an inchoate right of dower in the surplus, but MacMahon, J., held that the husband's interest in the first place being but an equitable estate it was governed by (now R.S.O., c. 164, s. 2), and that the husband having parted with it in his lifetime, his wife's dower therein could not attach. Some difference of opinion existed as to the quantum of a wife's interest as doweress where the mortgage was given to secure the purchase money of the land mortgaged, and where it was given to secure a loan (see *Pratt* v. *Brunnell*, 21 O.R. 1, and *Gemmill* v. *Nelligan*, 26 O.R. 307; but the difference of opinion on this point seems to be set at rest by 58 Vict., c. 25, s. 3 (now R.S.O. c. 164, s. 8), which seems to settle the law that where the mortgage is for purchase money, the dower is to be calculated on the surplus after payment of the mortgage, and where the mortgage is to secure a loan, the dower is to be calculated on a third of the whole value of the land. In the recent case of *Re Luckhardt*, 29 O.R. 111, the majority of the Divisional Court (Boyd, C., and Ferguson, J.) adopted the view of Boyd,

C., in *Re Croskery*, supra, as to the effect of R.S.O. c. 164, ss. 2 and 7.

That case presented some peculiar features, and may seem to some persons a somewhat rigorous application of the principle of construction adopted in *Re Croskery*. The facts in *Re Luckhardt* were as follows: Luckhardt, the husband of the woman claiming dower, agreed to purchase three lots of land from one Heinman, free from incumbrances, the lots being at the time of the agreement subject to a mortgage to Winger, which it was understood was to be paid off out of Luckhardt's purchase money. The total purchase money was to be $4,500, $1,200 of which was to be paid to Winger for the discharge of his mortgage, $1,300 was otherwise satisfied, and a mortgage was to be given by Luckhardt to Heinman for $2,000 to secure the balance of the purchase money. This arrangement was carried out as follows: Luckhardt paid Winger and got a statutory discharge of the mortgage in favor of Heinman on 26th Oct., 1894. On the same day Heinman conveyed the land to Luckhardt in fee free from all incumbrances, and Luckhardt executed a mortgage to Heinman to secure the $2,000. The discharge of mortgage and the deed and mortgage were sent to the registry office at the same time for registration, and they were respectively registered on the 29th Oct, in the following order: first, the discharge, then the deed, then the mortgage. Luckhardt and his wife subsequently executed a second mortgage, and the lands were afterwards sold under a power of sale, and a surplus remained after satisfying the two mortgages; this surplus was claimed on the one hand by a receiver appointed by way of equitable execution against the husband, and on the other by Luckhardt's wife, to answer her alleged inchoate right of dower. The majority of the Court held that the husband had never been seized of a legal estate in the land, and consequently the case came within (now R.S.O. c. 164, s. 2), and the husband having parted with his equitable interest in his lifetime could not die entitled, and therefore no dower could attach, and that therefore the husband's creditor was entitled to the fund. Robertson, J.,

in a learned and carefully considered judgment, arrived at a different conclusion, basing it on the ground that the effect of the conveyancing was virtually to vest in the husband though but momentarily a legal estate in the land, and therefore the case was within section 7. The reasoning of the other members of the Court on this point it may be observed seems to rest on the fact that the discharge of the Winger mortgage did not operate to revest the estate until its registration, whereas the deed from, and mortgage to Heinman, operated from their delivery; consequently, only an equitable title passed to Luckhardt, and the legal title which had been outstanding in Winger never passed to Luckhardt at all, but revested in Heinman after he had conveyed his equity of redemption to Luckhardt, and after the latter had reconveyed it by way of mortgage to Heinman. Robertson, J., on the other hand invokes the doctrine of estoppel, and holds that the delivery of the mortgage was by way of escrow, not to be operative until the discharge should be registered, and therefore that the several instruments took effect according to the dates of their registration.

The point under discussion is a very nice one, and assuming the law as laid down by the majority of the Court to be correct, it serves very forcibly to illustrate the necessity for conveyancers being alive to the fact that discharges of mortgages do not take effect in revesting the estate until actually registered (see R.S.O. c. 136, s. 76) "and the certificate *so registered* shall be as valid and effectual in law as a release of the mortgage, and as a conveyance to the mortgagor," etc., etc., a point which may at times be very important to be borne in mind.

GEO. S. HOLMESTED.

# ENGLISH CASES.

## *EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.*



**NON-SUIT**—DISCONTINUANCE—PRACTICE—ORD. XXVI. RR. 1—(ONT. RULE 430, 779.)

In *Fox* v. *The Star Newspaper Co.* (1898) 1 Q.B. 636, the Court of Appeal (Smith and Chitty, L.JJ., affirmed the decision of Russell, C.J., at the trial, to the effect that a plaintiff cannot at the trial claim as of right to be non-suited, with liberty to bring a fresh action, and that he can then only discontinue by leave of the Court, and a judgment for the defendants was consequently upheld. It may be noticed that in Ontario Rule 779 makes a judgment of nonsuit equivalent to a judgment for defendant, unless otherwise ordered, whereas the corresponding English Rule of 1875 was repealed and not re-enacted by the Rules of 1883.

**BILL OF LADING**—"DEFECTS LATENT ON BEGINNING OF VOYAGE OR OTHERWISE."

*Waikato* v. *New Zealand Co.* (1898) 1 Q.B. 645, is a decision of Bigham, J., sitting in the Commercial Court, which determines that on exception in a bill of lading of losses arising from "defects latent on beginning of voyage or otherwise," does not cover defects which were patent at the commencement of the voyage, and the contention that the words "or otherwise" covered all defects, was considered untenable.

**POWER**—ADVANCEMENT CLAUSE · INVALID EXECUTION OF POWER—BREACH OF TRUST—TRUSTEE.

*Molyneux* v. *Fletcher* (1898) 1 Q.B., 648, was an action brought by certain cestuis que trustent, claiming a declaration that their trustees had been guilty of a breach of trust in paying certain trust moneys in assumed exercise of a power. The power in question was contained in a will, and authorized the trustees "to apply in or towards the advancement in life of each child a sum not exceeding £500 on his or her presumptive share," and the trustees were to be the

sole judges of the advisability of such payment, and of the signification of the term "advancement in life." After the share of one of the children had become vested the trustees at her request advanced £250, she being then married, and her husband heavily indebted to one of the trustees of the will, and the moneys so advanced were handed to him and used by him to pay his debt to the trustee, all of which was done with the knowledge of the trustees. The action was brought by the infant children of the married woman, who were entitled in remainder to the fund on the mother's death, she being still living. The case was tried before Kennedy, J., who held that the pretended exercise of the power was not made in good faith for the advancement in life of the daughter of the testator, but really to enable her to provide her husband with money to pay his debt to the trustee, and was therefore invalid, and the payment made thereunder a breach of trust. He also intimated a strong opinion that after the daughter's interest became vested there was no power to make the advancement at all, as her share then had ceased to be "presumptive."

**CERTIORARI**—MANDAMUS—PRACTICE.

*The Queen* v. *Bowman* (1898) 1 Q.B. 663, was an application for a certiorari to bring up a license to sell liquor, granted by justices, to be quashed; and also for a mandamus to compel them to hear and determine the application for license according to law. The justices had granted the license in question upon the applicant therefor paying to them a sum of money, which they intended to apply towards the reduction of rates, or some other similar public purpose. The present applicants had appeared before the justices to oppose the application for the license. The Court (Wills and Darling, JJ.), held that the granting of the license was not a judicial act, and therefore not quashable, and the certiorari was therefore refused in deference to the case of *Reg.* v. *Sharman* (1898) 1 Q.B. 578, concerning which Wills, J., however, expresses some doubt. The Court, however, held that the act of the justices in taking money for the granting of the license, though they had acted

in good faith, was illegal, and that therefore there had been no real hearing of the application on the merits, and the mandamus was granted as asked.

**JURISDICTION**—JUDGE OF INFERIOR COURT INVESTED WITH POWERS OF HIGH COURT.

*In re New Par Consols* (1898) 1 Q.B. 669, seems to have some bearing on a point recently discussed before the Queen's Bench Divisional Court of Ontario in *The Queen ex rel. Hall* v. *Gowanlock*. Under the English Winding-up Act it is provided that every Court having jurisdiction under that Act to wind up a company, shall have all the powers of the High Court. In the course of proceedings before a judge of a County Court under the Act he made an order of committal for disobedience of an order made by him in the winding-up proceedings. The present application was then made for a prohibition, on the ground that the provisions of certain rules of Court had not been complied with. But the Court of Appeal (Smith, Chitty and Collins, L.JJ.), held that such objections could only be raised by way of appeal, and that prohibition cannot be granted against a County Judge exercising the power of the High Court.

**CONTRACT**—ABANDONMENT—QUANTUM MERUIT—BUILDING ON DEFENDANT'S LAND—EVIDENCE OF NEW CONTRACT.

In *Sumpter* v. *Hedges* (1898) 1 Q.B. 673, the Court of Appeal (Smith, Chitty and Collins, L.JJ.) have followed the case of *Munro* v. *Butt* (1858) 8 E. & B. 738. The plaintiff had entered into a contract to build on the defendants' land certain buildings for a lump sum. After he had done part of the work he abandoned the contract, and the defendant thereupon completed the buildings. The action was brought for a quantum meruit, but the Court held that the action would not lie, there being no evidence of any new contract to pay for the same, and the retention of the buildings on his own land not affording any evidence from which any new contract could be presumed.

**STAYING PROCEEDINGS**—FRIVOLOUS ACTION

In *Stephenson* v. *Garnett* (1898) 1 Q.B., 677, an application was made to stay the action on the ground that it was frivolous and vexatious. The facts of the case were, that the defendant had recovered a judgment in the County Court against the plaintiff for a sum of money and costs, but before the costs were taxed the defendant agreed on a representation of the poverty of the plaintiff to accept a smaller sum than that for which judgment had been given, and executed a release to the plaintiff of the judgment debt and costs. Subsequently the defendant finding the representations as to the plaintiff's poverty were false, applied to the Judge of the County Court for an order to tax his costs; and the judge after hearing evidence found that the release had been obtained by misrepresentation, and ordered that the costs should be taxed and paid, together with the balance due on the judgment. The plaintiff then brought the present action, claiming a declaration that he had been released from the judgment debt and costs, and for an injunction restraining the defendant from enforcing payment thereof; the defendant then moved to stay the action as frivolous and vexatious. It was contended on behalf of the plaintiff that the Judge of the County Court had no jurisdiction on an interlocutory application to inquire into the validity of the release, and that the defendant could only get it set aside by bringing an action for that purpose; but the Court of Appeal (Smith, Chitty and Collins, L.JJ.) held that the judge of the County Court had jurisdiction to make the order which he did, and as the question raised in the action was identical with that before the County Judge, the action was frivolous and vexatious, and should be stayed as asked.

**LEASE**—COVENANT—"ASSIGNS"—UNDERLESSEE.

*Bryant* v. *Hancock* (1898) 1 Q.B. 716, was an action to recover damages for alleged breach of a covenant in a lease of a public house, whereby the lessee covenanted with the lessor, the plaintiff, that he (the lessee), his executors, administrators or assigns, would not wilfully do or suffer anything which

might be a breach of the rules and regulations established by law for the conducting of licensed public houses, etc. The lessee assigned the term to the defendants, who underlet the premises, and the underlessee committed an offence against the license laws, which resulted in a refusal to renew the license. The simple question therefore was whether the word "assigns" in the covenant included an underlessee. Lawrance, J., held that it did, but his judgment was reversed by the Court of Appeal (Lord Halsbury, L.C., and Smith and Collins, L.JJ.) This may be good law, but it does not appear to be very good sense.

**ADMINISTRATION**—MISCONDUCT OF WIDOW—GRANT TO SON OF INTESTATE.

*In the goods of Stevens* (1898) P. 126, was an application for administration made by a son of an intestate, which was granted without citing the widow of the deceased, the estate being small, and it being shown that the widow was a woman of dissipated habits, who had eloped with another man in her husband's lifetime, and sixteen years before the application justifying security was required to be given to the extent of the widow's share in the estate.

**VENDOR AND PURCHASER**—CONDITIONS OF SALE—VENDOR'S RIGHT TO RESCIND—REQUISITION—UNWILLINGNESS OF VENDOR TO COMPLY WITH REQUISITIONS—DEFECTIVE TITLE.

*In re Deighton & Harris* (1898) 1 Ch. 458, was an application made under the Vendors' and Purchasers' Act for the purpose of determining whether under the conditions of sale, a vendor had the right to rescind. The vendor was mortgagee of leaseholds, and had contracted to sell the entire term subject to a condition empowering him to annul the sale if the purchaser should make any requisition or objection "as to title, particulars, conditions, or any other matter or thing relating or incidental to the sale," which the vendor should be unable or unwilling to comply with. In the course of investigating the title it appeared that the vendor held by a sub-demise, the bare legal estate in which was outstanding, and he expressed himself as unable or unwilling to procure the person having the legal estate to join in the conveyance

as required by the purchaser. Kekewich, J., held that the vendor was not entitled to annul the sale, but the Court of Appeal (Lindley, M.R., and Rigby and Williams, L.JJ.) were of the contrary opinion. Kekewich, J., thought the case was governed by *Bowerman* v. *Hyland*, 8 Ch., D. 588, where a vendor having only the last remaining month of a term contracted to sell the fee, and it was held that he could not under a similar condition of sale rescind; the Court of Appeal thought, however, that there is a difference between the case of a man who has no title to the estate he contracts to sell, and one who has a title which is defective.

**TENDER**—"HIGHEST NET MONEY TENDER"—SPECIFIC PERFORMANCE—PRACTICE—STRIKING OUT STATEMENT OF CLAIM—ORD. XXV. R. 4—(ONT RULE 261).

*South Hetton Coal Co.* v. *Haswell S. & C. Co.* (1898) 1 Ch. 465, was an action for specific performance, or damages for non-performance. The defendant had offered certain property for sale by tender, and had agreed to accept "the highest net money tender," other things being equal. The plaintiffs had put in a tender offering £200 more than should be offered by any other proposing purchaser. There was another tender put in for a specified sum. The defendants moved to strike out the statement of claim as disclosing no reasonable cause of action. North, J., granted the application and dismissed the action, basing his decision principally on the ground that the plaintiff's tender was not in other respects equal to that of the other tender: and the Court of Appeal (Lindley, M.R., and Rigby and Williams, L.JJ.) affirmed his decision, but Lindley, M.R., who delivered the judgment of the Court, rested the case principally on the ground that the plaintiffs' tender did not fairly answer the description of what the liquidator had bound himself to accept, viz., "the highest net money tender." As he points out, whether it was a tender at all depended altogether on some other person putting in a tender: and he held that the liquidator was not under any obligation to accept a tender so framed. He, however, also agreed that the tender in other respects was ambiguous, and that the

liqidator was justified in saying that the condition as to all other things being equal and satisfactory had not been fulfilled.

**MARRIED WOMAN**—SEPARATE ESTATE—WIFE ADVANCING MONEY TO PAY HUSBAND'S DEBTS—WIFE'S RIGHT TO INDEMNITY AGAINST HUSBAND—44 & 45 VICT., C. 41, S. 39—(R.S.O. C. 163, S. 9).

*Paget* v. *Paget* (1898) 1 Ch. 470, was a suit between husband and wife, in which the wife claimed to be indemnified by the husband in respect of certain large sums of money which had been paid out of her separate estate to satisfy debts due by her husband. An order had been obtained under 44 & 45 Vict., c. 41, s. 39 (R.S.O. c. 163, s. 9), charging the money so raised against her separate estate, notwithstanding a restraint against anticipation,—and the evidence showed that the debts thus paid had been incurred in order to maintain an extravagant mode of living, in which she participated, and that, on the application for the order above referred to, the wife had referred to the debts in question as "our debts," and the order had been made without any declaration of the right of the wife to be indemnified by her husband in respect of the advances. The Court of Appeal (Lindley, M.R., and Rigby and Williams, L.JJ.) thought that Kekewich, J., had rightly dismissed the action, as the circumstances of the case afforded no ground for the equitable inference that the wife was lending the money, or had any right to be indemnified by her husband in respect thereof. The Court of Appeal, however, express the opinion that the mere silence of the order removing the restraint against anticipation, is no bar to the right of the wife to indemnity, when the circumstances of the case warrant the inference that the advance from the separate estate is by way of loan.

# REPORTS AND NOTES OF CASES

## Dominion of Canada.

### EXCHEQUER COURT.

### TORONTO ADMIRALTY DISTRICT.

McDougall, Loc. J.] WING *v.* THE "FLORA."

*Lien—None for necessaries supplied in home port.*

This was a claim for articles supplied the ship as coming within the meaning of the term "necessaries," and so recoverable only under s. 5 of Admiralty Courts Act, 1861. But

*Held*, that as they were supplied to the owner in Detroit, the home port of the ship and where plaintiff carried on business, they came within the express exception of the statute, therefore the Court had no jurisdiction, there not being any contract expressed or implied on the part of the plaintiff to build, equip or repair within the meaning of s. 4 of the Act.

*Cameron* (St. Thomas), for plaintiff. *Leggatt* (Windsor), for other claimants.

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McDougall, Loc. J.]

WILLIAMS & DETROIT & L. E. R. W. CO. *v.* THE "FLORA."

*Lien—None for money advanced to owner to pay for repairing, equipping and fitting out ship.*

Ship registered at Detroit, U.S. The plaintiff railway company operating a road in Canada having connection at Port Stanley and Windsor, made a traffic agreement with the owner to ply between Port Stanley and Cleveland in connection with their railway. The owner of the ship was without means to properly fit out the ship, and plaintiff agreed in writing to advance $2,000 for fitting out the ship in the season of 1897. That sum was advanced and expended in painting, repairing, furnishing and outfitting steamer. The agreement provided that the earnings of the ship were to be handed over to the plaintiff and credited on advances. The owner employed workmen by the day and purchased material required. The agent of the owner disbursed all the moneys in payment to various workmen employed and merchants supplying goods, and instead of taking receipted accounts he procured payees to sign documents purporting to be assignments of various accounts or claims to the agent of plaintiff.

Objections were taken to plaintiff's right to recover, on the ground that the money was advanced solely on the credit of the owner in home port, and its payment was specifically secured by pledging earnings of ship, and was not therefore advanced on credit of ship; that the "Flora" was a foreign

ship, proceeded against to recover another claim in a British Court of Vice Admiralty, and this claim was for money advanced in a home port, to pay for repairs, etc, executed in the home port, and is a claim for necessaries, and that this action cannot be maintained because it comes within the exception in s. 5 of Admiralty Courts Act, 1861, 24 Vict., c. 10 (Imp.): *The Mecca*, Probate Div., 1895; *The Albert Crosby*, 3 A. & E. 37; *The Sophia*, W. Rob. 368; *The Riga*, 3 A. &. E. 516.

*Held*, that payment by the agent of the owner satisfied and discharged any original claim of workmen or supply-men to the extent of such payments: that the assignment to plaintiff agent did not alter the nature of the transaction between plaintiff and owner. The $2,000 being advanced by plaintiff to owner in home port, and being recoverable as necessaries, the express terms of s. 5, 24 Vict., c. 10 (Imp.) prevent the claim being sued for in this Court.

*Leggatt*, for plaintiff. *Cameron* and *Robinson* (St. Thomas), for other claimants intervening.

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McDougall, Loc.J.] MCELHANEY *v.* THE "FLORA."

*Seamen's wages—Lien—Musician.*

The plaintiffs were musicians, and had an arrangement with the master of the boat that they should have the privilege of meals and state rooms on the boat, and the right to collect from passengers gratuities for musical entertainment furnished.

*Held*, as there was no contract to pay them wages, they were not seamen within the meaning of the Merchants' Shipping Act, and were not entitled to claim any sum for their services on the said boat, nor were they entitled to set up a maritime lien.

*Robinson* (St. Thomas) for plaintiff. *Cameron* (St. Thomas) for plaintiffs in consolidated action intervening.

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McDougall, Loc.J.] BROWN *v.* THE FLORA.

*Seamen's wages—Caretaker—Lien.*

Claim for a lien and for wages earned while acting as watchman on the ship "Flora" during the winter of 1896-97, while the vessel was lying dismantled at a dock in Detroit; the duties performed by the plaintiff were keeping the vessel clear of snow and pumping out any water that accumulated in the hull.

*Held*, that the plaintiff could not rank as a seaman even within the broad lines laid down in the cases; that his services could only be regarded as being those of a landsman or shore laborer engaged by the owner to perform the duties of watchman. The vessel was not in commission or even preparing for a voyage; she was dismantled, a portion of her machinery had been removed, and she had neither master nor crew; and, though still in a legal sense a ship, she was really little better than a hulk: *The Harriet Olcott*, Abb. Adam 299; *The John T. Moore*, 3 Woods (U.S.) 61; *Phillips* v. *Thomas Scattergood*, 1 Gilp.; *Turner* v. *Crocket*, Abb. 490; *The Island City* v. *Towell*, U.S. 375.

*Hanna* (Windsor), for plaintiff. *Cameron* (St. Thomas), for plaintiffs in consolidated action intervening.

McDougall, Loc.J.] COMER *v.* "THE FLORA."

*Seaman's wages—Man in charge of confectionery stand—Lien.*

The plaintiff was engaged on an excursion and passenger boat to look after the confectionery stand; and performed services for about six weeks; the vessel had to employ persons in various capacities in order to successfully carry on the line of business in which she was engaged. The Merchants' Shipping Act, 1854, s. 2, declares that for the purposes of the Act "seaman" shall include every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship," and the interpretation clause of the Inland Waters Seaman's Act, R.S C. c. 75, defines "seaman" as "every person employed or engaged in any capacity on board any ship, except masters and pilots.

*Held*, that the plaintiff was entitled to a maritime lien for wages due.

*Hanna* (Windsor), for plaintiff. *Cameron* (St. Thomas), for plaintiff in consolidated action intervening.

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# Province of Ontario.

## HIGH COURT OF JUSTICE.

Meredith, J.] ORFORD *v.* FLEMING. [March 21.

*Solicitor—Charging order—Form of.*

In this case, noted ante 238, the order, as drawn up and settled, contained no provision for the sale of the judgment charged with the costs of the plaintiff's solicitors. The order was issued in the following form:—1. It is ordered and declared that the applicants are entitled to a charge on the judgment debt or sum mentioned in the notice of motion, and recovered in this action by judgment bearing date . . for the taxed costs, charges and expenses of the said applicants, of or in reference to such suit, as solicitors for the plaintiff, including the costs of and incidental to this application. 2. And it is further ordered that it be referred to one of the taxing officers to tax such costs as between solicitor and client, including the costs of and incidental to this application.

(It appears to have been contemplated that another application should be made after the taxation, if necessary, for an order to enforce the charge.)

*W. R. P. Parker*, for the applicants. *Coatsworth*, contra.

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Rose, J.] MALCOLM *v.* PERTH MUTUAL FIRE INSURANCE CO. [March 28.

*Malicious prosecution—Finding by jury of reasonable and probable cause—Bona fides—Malice.*

In an action for malicious prosecution brought against an insurance company by reason of its laying an information charging the plaintiff with arson, and causing his arrest thereon, the jury found that the company's officers who

laid the charge, believed it to be true ; but that such belief was not under the circumstances reasonable, and that they did not act on it laying the charge, and causing the arrest, but that they were actuated by other and improper motives.

*Held*, that the first finding, being a finding that the defendants acted on their honest belief, and the evidence warranting that finding, absence of reasonable and probable cause could not be held to have been shown, simply because further enquiries might have been made and further facts shown ; that the question of malice was of no importance, and the defendants were entitled to judgment.

*Brewster* and *Heyd*, for plaintiff. *Maybee*, for defendants.

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Street, J.] RE BROWN *v.* CAMPBELL. [April 7.

*Will—Estate tail—Dying without issue—R.S.O. c. 128, s. 32—Construction of.*

Sec. 32 of the R.S.O. c. 128, is to be construed strictly, and is confined to cases in which the word "issue," or some word of precisely the same legal import is used ; and does not extend to cases in which the word "heirs" is used.

Where a testator devised to his grandson, his heirs and assigns forever, certain land with the qualification that in case of his "dying without leaving any lawful heirs" the land was to go to other persons named, the section was held not to apply, and that the grandson took an estate tail.

*F. Denton*, for petitioner. *C. C. Robinson*, contra.

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Armour, C.J., Falconbridge, J. Street, J. } HENDRIE *v.* ONDERDONK. [April 21.

*Railways—Construction—Damages caused by negligence—Action for, against sub-contractors—Limitation clauses--Dominion and Ontario Railway Acts.*

The defendant was a sub-contractor for the construction of a tunnel on the line of a railway company, authorized by statute to construct the railway running through a city. In the course of the work the contractor cut the drains and water pipes connected with an adjoining house, of which the plaintiff was tenant, and prevented access to the house for a time ; the plaintiff's goods were also damaged by blasting, and by dust and smoke occasioned by the work of construction. In an action for damages,

*Held*, (1.) That as no negligence in doing the work was shown the plaintiff could not succeed. (2.) That even if a remedy by action was open to the plaintiff, that as the railway company when it was brought within the jurisdiction of the Dominion Legislature by 54-55 Vict., c. 86 (D.), preserved its righ to set up the limitation clause in the Ontario Act, R.S.O. (1887) c. 170, s. 142, and this statute could be pleaded in bar to the action as well as the limitation clause in the Dominion Railway Act (51 Vict., c. 29, s. 287) ; that this defence was available to the contractor, and the action not having been commenced within six months from the time the damage was sustained was too late.

*Wallace Nesbitt*, for the plaintiff. *Dyce W. Saunders*, for the defendant.

Divisional Court.] CLARK *v.* KEEFER. [April 25.

*Will—Trustees to sell for best price—Power coupled with trust—Discretion of trustees—Right of Court to enforce trust.*

Where a power is coupled with a trust or duty, the Court will enforce the proper and timely exercise of the power, but will not interfere with the discretion of the trustees as to the particular time and manner of their bona fide exercise of it. Where, therefore, lands were devised to trustees upon trust, in their discretion to sell, as soon as they might deem it proper to do so, for the most money that could reasonably be obtained therefor; the trustees by a later clause, not to be answerable for the exercise or non exercise of the powers therein contained, or to the manner of the exercise thereof.

*Held*, that the power of sale was coupled with a trust to sell for the most money, etc., and that the Court would enforce such trust by requiring the most money to be obtained; the powers of the Court being in no way affected by the later clause exonerating the trustees, which extended merely to the time and manner of exercising the trust.

*G. G. S. Lindsey*, for plaintiff. *B. B. Osler*, Q.C., for defendant.

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Ferguson, J., Robertson, J., Meredith, J. [May 6.

REGINA *v.* EDWARDS.

*Criminal Code, s. 821—Indictment for rape—Conviction of common assault—Time within which complaint laid.*

Notwithstanding the provisions of s. 841 of the Criminal Code a prisoner indicted for rape may be found guilty of common assault, although the complaint was not made or information laid within six months from the time when the matter of complaint or information arose.

*Cartwright*, Q.C., Deputy Attorney-General for the Crown.

*Faulds*, for the prisoner.

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Divisional Court.] DAVIDSON *v.* HEAD. [May 9.

*Division Courts—Claims over $100—Dispensing with taking down evidence—Necessity for written consent.*

The consent required by ss. 22—123, of the Division Courts Act, R.S.O., c. 60 (O.), to dispense with the evidence being taken down in writing, in a case where the amount claimed exceeds $100, must be in writing and filed, a verbal consent therefor not being sufficient.

*R. J. Maclennan*, for the appeal. *John Greer*, contra.

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Ferguson, J.] CARROLL *v.* CARROLL. [May 10.

*Destroyed will—Parol evidence of contents by a witness of the will.*

This was to establish the will of Eliza Carroll, deceased, dated in April, 1871. She became insane in 1872, and so continued until her death on December 11, 1897. The alleged will was made in favour of the plaintiffs, one of whom was named therein as an executrix, under a family arrangement

whereby the plaintiffs agreed to support deceased for her lifetime in consideration of a will being made in their favour of all her estate. The evidence showed that the will was deposited in a drawer by the testatrix, locked by her, and the key delivered to a brother, since deceased, who was named as an executor. About ten years after, the testatrix being insane, found the key and destroyed the will, some jewelry, valuable papers and coins by burning, and on the key being found in her possession by the plaintiffs, confessed what she had done. The plaintiffs supported the testatrix during her lifetime. On her death this action was brought by the surviving executrix, who is also one of the beneficiaries, and the other beneficiaries against the other heirs of the testatrix to establish the will or for specific performance of the agreement to make a will in their favour. The defendants did not appear, and the plaintiffs moved for judgment.

*Held*, following *Brown* v. *Brown*, 8 E. & B. 88, that the will could be established by evidence of parties from recollection of contents of the will, and that the will was fully established by the evidence submitted, and that probate should be granted by the proper court to the surviving executrix, according to the practice of the court.

*Duncan* (Woodstock), for plaintiffs. No one appeared for the defendants.

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Street, J.] BAKER *v.* TRUSTS AND GUARANTEE CO. [May 14.

*Bond—Condition—Maintenance and support—From time to time—Not restricted to penal sum—Registration—Lien on land.*

Plaintiff sold her share in her father's real estate to her brother and accepted in payment a bond from him in a penal sum of $400, conditioned for her maintainance and support and giving her a lien on the land, which bond was registered. In an action for her maintenance after her brother's death against subsequent mortgagees of the land,

*Held*, that she was not limited to the amount of the penalty in the bond, but had the right to sue for her support as it accrued from time to time, and that the registration of the bond gave her a lien on the land in the hands of assignees from the brother.

*R. Smith* and *Geo. H. Pettit*, for the plaintiff. *Jas. Leitch*, Q.C., for the defendants.

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Divisional Court.] [May 18.

FRASER *v.* LONDON STREET RAILWAY COMPANY.

*Street railways—Foot-board on side of car—Invitation to ride on—Improper construction of bridge—Negligence—Excessive damages—New trial.*

On an electric car on defendants' railway, there was a step or foot-board running along the side of the car about a foot from the ground, leading to doors in the centre and rear parts of the car, with a brass rail or rod about chest high, for persons standing thereon to hold on by, and electric buttons to communicate with the conductor. The plaintiff seeing that the car was filling up rapidly, all the inside seats being occupied, and the rear platform crowded,

jumped on the foot-board, the car then having started. About six hundred feet from where the plaintiff got on was a bridge, which it had to cross, the approach thereto being on a curve, by reason of which the plaintiff was swayed out from the car, and as the car entered on the bridge, he was struck by one of the side posts of the bridge, thrown off and injured, the space between the post and side of the car being only fourteen inches.

*Held*, that an invitation to the plaintiff to stand on the foot-board, must be implied, and while there he was entitled to be carried safely, which the improper construction of the bridge prevented defendants doing, and which, therefore constituted evidence of negligence.

A verdict for the plaintiff was sustained, except as to the damages, $3,300, which were held to be excessive, and a new trial was directed unless the plaintiff consented to their being reduced to $2,000.

The mode of assessing damages necessary in cases of this kind was considered.

The fact of the plaintiff getting on the car while in motion did not of itself disentitle him to recover, for that was not the cause of the accident.

*Duncan Stuart*, for plaintiff. *I. F. Hellmuth*, for defendants.

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Meredith, C.J., Rose, J.
MacMahon, J. } [May 25.

EWING *v.* CITY OF TORONTO.

*Costs—Third party—Dismissal of action—Discretion of trial judge—Appeal.*

Where a third party has been brought into an action by the defendant, and an order has been obtained by the defendant directing that the question of indemnity as between the third party and the defendant be tried after the trial of the action, and that the third party be at liberty to appear at the trial of the action and oppose the plaintiff's claim, so far as the third party is affected thereby, and at the trial the action is dismissed,

*Semble*, that the third party is entitled against the defendant to costs up to and [illegible] of the trial.

*Held*, however, that the disposition of such costs is in the discretion of the trial Judge, whose order, by R.S.O., c. 51, s. 72, is not subject to appeal without leave.

*Held*, also, that the third party can not be heard in a Divisional Court upon an appeal by the plaintiff from the judgment at the trial, and is entitled to no costs of such appeal.

*G. A. Kingston*, for third party. *Fullerton*, Q.C., for defendants.

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Street, J.] BROCK *v.* BENNESS. [May 26.

*Limitation of actions—Infant heir-at-law—Entry—Evidence of—Lease—Estoppel—Adverse title—Overholding lessees—Tenants in common.*

In an action of ejectment, it appeared that the father of the defendant died intestate in 1849, the owner of the fee and in possession of the lands in question. He had been twice married, but none of the children of his first marriage had been heard of since 1853. His widow continued in possession

after his death with her children, and married again in 1852, and her husband lived with her upon the land until her death intestate in 1871. At this time her husband and the youngest daughter of her first marriage, the defendant, were the only members of the family upon the land. Soon after her death her eldest son made a lease of the land to his stepfather, and his sister, the defendant for five years from the 1st November, 1871, at the yearly rent of one dollar. In this lease, which was executed by the lessees, the lessor was described as the eldest son and heir-at-law of the father, the original owner. This lease was never renewed, and no evidence was given of the payment of any rent under it, but the lessees remained together in possession of the property, without acknowledgment or interruption until 1892, when the stepfather died intestate, leaving a son, one of the plaintiffs, surviving him, and since that time the defendant had been in possession, also without acknowledgment or interruption, until this action was brought in 1897, by the surviving brother and sister of the defendant and her half-brother. The lessor had died in 1878; it was said that he left one son, who, when very young, in 1880, was taken by his aunt, one of the plaintiffs, in the house upon the land, where he stayed one night; and the aunt said that she told her sister, the defendant, that he was the heir to the property.

*Held*, 1. Even if the boy were the time owner, this was not an entry upon the land, as owner, sufficient to stop the running of the statute.

2. The defendant and her stepfather, being in possession without any title, and accepting a lease from the eldest son of the second marriage, as the heir-at-law, were estopped from setting up the adverse title of the real heir-at-law, the eldest son of the first marriage, as against the lessor or persons claiming under him.

3. The plaintiffs' claim to possession under a conveyance from the alleged heir-at-law of the lessor could not be allowed, because there was no evidence that he was the heir-at-law, and because his title, if he had any, had been barred by the possession of the defendant and her stepfather since 1876, when the lease expired.

4. The title acquired by the defendant and her stepfather by length of possession was acquired by them as tenants in common, and not as joint tenants, and therefore upon the death of the latter, his undivided half descended to his son.

*Ward* v. *Ward*, L.R. 6 Ch. 789, distinguished.

*T. H. Luscombe*, for the plaintiffs. *Macbeth*, for the defendant.

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Rose, J.] [May 26.

SCOTTISH ONTARIO AND MANITOBA LAND CO. *v.* CITY OF TORONTO.
DEFOE *v.* CITY OF TORONTO.

*Municipal corporations—Waterworks—Supply of water—Statutory obligation—Breach of contract.*

In actions by consumers of water against a municipal corporation for not providing a proper supply of pure water for the plaintiffs' elevators according to agreement, and for negligently and knowingly allowing the water supplied by them to become impregnated with sand, which greatly damaged the elevators,

*Held*, that there was no right of action in the plaintiffs by reason of any statutory obligation on the part of the defendants.

2. That on the evidence, there was no contract between the plaintiffs and the defendants, by which the latter were bound to supply the former with water free from sand.

The relation was rather that of licensor and licensee than one founded upon contract.

*Ritchie*, Q.C., and *H. M. Mowat*, for the plaintiff company. *Walter Read*, for the plaintiff Defoe. *Robinson*, Q.C., and *Fullerton*, QC., for the defendants.

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Boyd, C.] DORSEY *v.* DORSEY. [May 27.

*Husband and wife—Separate estate of wife—Husband's interest in—Renunciation—Rights of administrator of wife's estate—Evidence of renunciation—Construction of document.*

A husband is beneficially entitled to a share in the personal property of his wife, on her decease, because of his marital relationship and right; and in the same way to his share in her land, by virtue of R.S.O., 1897, c. 127, s. 5. If he renounces this marital right before marriage and in order to it, the law cannot replace him in the benefit out of which he has contracted himself. And where the husband has so renounced, he is not entitled to administration of his wife's estate, for administration follows interest. The administrator of her estate, duly appointed, has a status to set up the husband's renunciation in answer to a claim by him to a share in the estate.

The husband, before marriage, signed a writing as follows: "This is to certify that I, H.D., through marriage to A.E.T., will not assert any right or claim to the property of the said A.E.T., either real estate, cash in bank, household or personal effects."

*Held*, that this was to be read as an abandonment of any right or claim in the property which might accrue to him through his intended marriage, and was sufficient to protect the estate of the wife from any claim of the husband, after the separate use of the property, to which she was entitled under the Married Women's Act in force at the date of the marriage, 1894, ceased by her death in 1896.

*W. H. Irving*, for plaintiffs. *C. A. Ghent*, for defendant.

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Armour, C.J.] MANNING *v.* ROBINSON. [June 2.

*Will—Construction of—Gift to charities—Validity—Legacies—Deduction of legacy duty—"Protestant charitable institutions."*

On motion for judgment on the pleadings in an action for construction of the will of James Robinson, deceased.

*Held*, 1. The gift of the residue to the executors to be distributed "among such Protestant charitable institutions as my said executors and trustees may deem proper and advisable, and in such proportions as they . . may deem

proper," was a valid gift, having regard especially to s. 8 of 55 Vict., c. 20, R.S.O., c. 112, the provision in force at the time of the testator's death in 1895.

2. The legacy duty payable to the Government is to be deducted from the legacies and should not be paid out of the residue, and the plaintiffs had no discretion to pay such duty out of the residue: *Kennedy* v. *Protestant Orphans' Home*, 25 O.R. 235.

3. The House of Refuge for the Poor of the County of Peel is not within the terms of the residuary gift. The word "Protestant," as used in the will, is referable as well to the objects of the charitable institutions as to their government; and "Protestant charitable institutions" are such charitable institutions as are managed and controlled exclusively by Protestants, and are designed for the bestowal of charity upon Protestants alone.

*Justin*, for plaintiffs. *Holliss*, for Robinson. *J. R. Cartwright*, Q.C., for the Attorney-General.

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Boyd, C., Robertson, J., Meredith, J. } IN RE SOLICITOR. [June 13.

*Appeal—Consent order—Denial of consent—R.S.O., c. 51, s. 72.*

The order of STREET, J., ante 388, was affirmed on appeal, without costs of the appeal to either party.

*T. J. Blain*, for the appellant. *Aylesworth*, Q.C., for the solicitor.

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Meredith, J.] FITCHETT *v.* MELLOW. [June 17.

*Costs—Scale of—Jurisdiction of County Court—Trespass to land—Injunction—Counter claim—Declaratory judgment.*

An injunction is a remedy, not a cause of action; and, semble, that before 59 Vict., c. 19, the County Courts had power under R.S.O. 1887, c. 47, s. 21, to grant injunction in actions within their jurisdiction, in which an injunction would have been the proper remedy. Now under s. 23, sub-s. 8, of R.S.O., c. 55, a County Court can give a judgment for nominal damages, and an injunction in an action for trespass to land where the value of the land does not exceed $200.

An injunction is equitable relief; and semble, that the provisions of sub-s. 13 of the same section would also enable the Court to give such a judgment.

A counter claim upon which no relief is given can make no difference as to the jurisdiction of a Court; and semble, also, that a judgment declaring a right can be given in a County Court by virtue of sub-s. 13.

Where an action of the proper competency of a County Court was brought in the High Court, the successful plaintiff was allowed costs on the County Court scale, with a set-off to the defendants of the excess of their costs over County Court costs.

*Clute*, Q.C., for the plaintiff. *H. E. Rose*, for the defendants.

## FIRST DIVISION COURT OF WENTWORTH.

SHANNON *v.* O'BRIEN.

*Landlord and tenant—Distress—Exemptions, R.S.O. 1897, c. 170, s. 30.*

A monthly tenant's rigt to exemptions is not cut down by sub.-s. 2 of s. 30 R.S.O. 1897, c. 170, and he is entitled to his exemptions, notwithstanding more than two months' rent is owing.

*Harris* v. *Canada Permanent L. & S. Co.*, ante. p. 39, followed.

[HAMILTON, May 30, 1898. SNIDER, Co. J.

This was a monthly tenancy, and three months' rent at $5 per month was in arrear. The landlord seized household goods of the tenant which would be exempt from seizure under an execution. This action was brought to recover the goods which are still held unsold.

*J. G. Farmer*, for plaintiff. *G. Lynch-Staunton*, for defendant.

SNIDER, Co. J.—By R.S.O., 1897, c. 170, s. 1, the tenant has a right to these goods as exempt from seizure for this rent. This right existed under R.S.O. 1887, c. 143, s. 27. But an attempt was made to cut down this right in case of monthly tenancies, in 55 Vict., c. 31. At least I think that is the intention of sub-s. 2 of s. 30, of c. 170. I have endeavoured with the aid of Mr. Staunton's argument to find a meaning for this sub-section that can be applied to this case, but I confess I cannot do so. I recognize that it is my duty to give effect to the intention of the legislature if I can discover it, but I cannot. If it means as argued that the tenant is only to have $10 exempt in this case, how can I give effect to it? By s. 2 of c. 77, R.S.O. 1897, the goods are exempt, there is no alternative right to sell them and give the debtor the money. Here she claims the goods, and I cannot order them to be sold and direct $10 to be given her, even if that is the intention of the sub-section, which I doubt. Then am I to say that she shall have none of the goods? I think not. I cannot select $10 worth and order restoration thereof. She was formerly entitled to the whole exemption. An attempt has been made by this statutory amendment to cut down this right—take away part of it. It should be clearly expressed, as she should not be the loser by any uncertain interpretation. I quite agree with and adopt the conclusions of my learned brother in the judgment in *Harris* v. *Canada Permanent L. & S. Co.*, ante. p. 39. I find that the goods are plaintiff's, and must be restored to her, defendant to pay the costs.

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# Province of Nova Scotia.

## SUPREME COURT.

Full Court.] McISAAC *v.* BROAD COVE COAL CO. [March 8.

*Dismissing action for want of prosecution—Month's notice of intention to proceed under O. 60, r. 9 required.*

The writ of summons herein was issued the 19th July, 1895. Appearance was entered the 2nd September following, and a statement of claim was

demanded, but none was ever delivered or filed. Defendant moved to dismiss the action for want of prosecution, but failed to give a month's notice of intention to proceed in the action by motion to dismiss, under O.LX., R. 9.

*Held*, that it was inexpedient to alter the practice of the court as settled by *McLachlen* v. *Morrison*, 23 N.S.R. 103, in which case it was held that the rule was applicable to such a case, and that a month's notice of intention to proceed was required.

MEAGHER, J., dissented.

*A. McDonald* and *F. Mathers*, for plaintiff. *McNeil*, Q.C., for defendant.

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Full Court.] REGINA *v.* STEVENS. [March 8.

*Liquor License Act of 1886—Conviction—Appeal—Improper reception of evidence—Certiorari—Matter within magistrate's jurisdiction—Only remedy in such case by appeal.*

Application was made for a writ of certiorari to remove into this court a conviction for a violation of the Nova Scotia Liquor License Act of 1886, and amending Acts.

The application was based on the ground that the only evidence offered before the magistrate in support of the charge was that of the informant, a private individual, and that under R.S.N S. (5th series) c. 103, such evidence was not receivable unless the informant in open court, before proceeding to give evidence, renounced the proportion of the penalty (one half) to which he was entitled. It appearing that the matter was in all respects within the jurisdiction of the magistrate,

*Held*, that certiorari would not lie, but that the only remedy was by appeal. *The Queen* v. *Walsh*, 29 N.S.R. 521 followed.

*R. L. Borden, Q.C.*, and *H. A. Lovett*, in support of application. *F. T. Congdon*, contra.

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Full Court.] NORTH SYDNEY MINING, ETC., CO. *v.* GREENER. [March 8.

*Joint stock company—Action for calls—Plea of special agreement as to conditions of subscription—Conflicting evidence—"Commence operations"—Payment of stock—Condition precedent.*

The defendant was sued for a call upon stock, of which he was alleged to be holder in the plaintiff company. The main defence was that defendant's subscription was not an absolute one, but was made on the faith of an agreement between defendant and M., one of the incorporators of the company, under the terms of which defendant was to receive a certain number of shares, non-assessable and fully paid up, as security for the performance of an agreement made between M. and defendant in respect to certain coal areas which were to be acquired by M. from defendant, and subsequently transferred by M. to the company. The trial Judge having found against defendant

*Held*, that as the evidence was conflicting, and there was no preponderance in defendant's favor, the finding could not be set aside.

Section 18 of the company's charter read, "This company shall not commence operations until 50 per cent. of its capital stock is subscribed, and 25 per cent of such subscription paid up."

*Held*, that the words "commence operations" were not intended to prevent calls being made on stock subscribed for, nor to prevent the board of provisional directors created by the Act from doing any acts for and in the name of the company within their power, so long as such acts fell short of what might properly be termed "commencing operations."

*Held*, also, that the subscription and payment called for by the section were not made a condition precedent to the creation of a body corporate, but were intended as a limitation upon the power of the company to commence operations until the pre-requisite was complied with.

*W. B. Ross*, Q.C., for appellant. *R. E. Harris*, Q.C., and *C. H. Cahan*, for respondent.

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Full Court.] IN RE WIER. [March 8.

*Mining law—Lease issued improvidently not containing provisions required by Act, not to be regarded as void but merely voidable—How attacked—Court will not assume facts in favor of forfeiture—Acts of 1889, c. 23, ss. 6, 7, 8—Acts of 1897, c. 4, s. 4—Acts of 1897, c. 5, s. 1.*

On the 15th October, 1806, W. made application to the Commissioner of Mines for a prospecting lease of certain gold mining areas. The application was refused by the Commissioner on the ground that the areas applied for were covered by a lease then outstanding.

By the Act of 1889, c. 23, s. 7, all leases of mines of gold, etc, were required to contain the provisions respecting the payment of rental, and its refund under certain conditions, contained in the sub-sections of section 6; but by s. 8, s. 7 was not to come into force until two months after the date of the passage of the Act (April 17th, 1889).

On appeal from the decision of the Commissioner it appeared that the lease outstanding at the time of the application made by W. was issued nearly a year after the passage of the Act of 1889, in the old form, and did not contain the provisions as to payment of rental, etc., required by that Act, but there was no evidence to show the date of the application for the lease or as to non-performance of work, etc.

By the Act of 1897, c. 4, s. 4, it was enacted that no lease of gold, etc., then outstanding, should be attacked or called in question in any Court unless within a year from the date of the issue thereof, and that all leases, etc., should, after one year from the date thereof be indefeasible and non-forfeitable, except for non-payment of rent or royalty, or in case of leases outstanding not under rental for non-working. By c. 5, s. 1 of the Acts of the same year it was enacted that leases applied for within two months of the 17th of April, 1889 (the date of the passage of the Act of 1889), and which were issued under the provisions of s. 7 of c. 23, without containing the provision in respect to the payment of rent, etc., were to be read and construed as if said leases had been issued containing such clause, etc.

*Held*, per RITCHIE, J. Assuming the application for the lease to have been made prior to the time at which s. 7 of the Act of 1889 came into operation, and that it was not affected by that Act, that it was in all respects in proper form, and that there was no pretence for declaring it void.

2. The Acts of 1897 (chaps. 4 and 5) were inconsistent with the idea that prior to the passage of those Acts leases such as that in question, were to be construed as if they contained the rental clause.

3. The effect of the legislation was to show that the legislature did not regard leases issued without such clause as void, but that they were recognized as existing leases.

4. If the lease in question was to be regarded as outstanding in 1897, the effect of c. 4, s. 4 of the Act of that year was to make it indefeasible, and forfeitable only for non-working.

5. Assuming that the lease had been improvidently issued and might have been set aside before the passage of the Act of 1897, after due investigation, that it was not competent of the Commissioner of Mines of his own mere motion and without investigation or notice to the lessee to set aside the lease as not having been issued in accordance with the terms of the statute, or for alleged breach of conditions which the lease did not contain.

*Held*, per TOWNSHEND, J., 1. Assuming that it was not competent to the Commissioner to grant the lease in question at the time he did, it was not open to a person in the position of W. to question its validity in such a proceeding as the present, but that the commissioner alone could question it in proper proceedings for that purpose.

2. The lease was at most voidable at the suit of the crown, and not void, and that therefore, the areas in question were not vacant at the time of the application by W.

3. The commissioner having decided that the lease was in force at the time of the application by W. it must be presumed that the work had been done in accordance with the terms of the Act, and, at any rate, it would not be presumed that it had not been done.

4. In the absence of any exception, the court must construe s. 4 of c. 4, of the Acts of 1897, as covering the lease in question.

5. The court could not assume in favour of a forfeiture facts which it was incumbent upon the party attacking the lease to prove. (Meagher, J., concurred on this point.)

*Held*, per HENRY, J., 1. Assuming the application for the lease in question to have been made under the old Act, that the rights and liabilities of the lessee were those provided for by that Act, and that the lessee could not be injuriously affected by the fact that the lease to which he became entitled prior to the 17th June, 1889, was not delivered until after that date.

2. S. 7 of c. 23 of the acts of 1889 could not be regarded as affecting every lease issued after the coming into operation of the Act, but must be confined to leases applied for under the new law.

*F. T. Congdon*, in support of appeal. *R. L. Borden*, Q.C., amicus curiae.

Full Court.] JORDAN *v.* MCDONALD. [March 8.

*Criminal Code, ss. 25, 242, 262—Unlawfully wounding—Causing actual bodily harm—Arrest by constable holding warrant not indorsed for service out of jurisdiction—Arrest made independently of warrant—Question of fact for jury improperly excluded—Vindictive damages.*

The Criminal Code, c. 25, enacts that if any offence, for which the offender may be arrested without warrant, has been committed, anyone who on reasonable and probable grounds believes that any person is guilty of that offence is justified in arresting him without warrant.

*Held*, that the words "may be" in s. 25 refer to those provisions of the code which authorize arrest without warrant, and include the offence of unlawfully wounding, under s. 242, that being one of the following sections referred to in s. 552, which provides for arrest without warrant in certain cases.

Defendant, a police officer in and for the town of Windsor in the County of Hants, arrested plaintiff at Halifax, in the County of Halifax, on a charge of having unlawfully assaulted, beaten, wounded and illtreated P., a police officer, while in the discharge of his duty, occasioning actual bodily harm. Defendant, at the time, held a warrant for plaintiff's arrest, but it had not been indorsed for service out of the jurisdiction. Apart from the warrant defendant had actual knowledge of the commission of the offence for which the arrest was made. In an action by plaintiff claiming damages for unlawful arrest and imprisonment,

*Held*, setting aside the verdict for plaintiff with costs, and ordering a new trial, that it was competent for defendant to contend that the arrest was made independent of the warrant, and to justify such arrest by showing that at the time the arrest was made he was aware that plaintiff had committed the offence of unlawfully wounding.

*Held*, also, that the question whether the arrest was in fact made under the warrant or for the offence apart from the warrant, was one that should have been submitted to the jury, and that the trial Judge acted improperly in excluding it from their consideration.

*Held*, also, that there was no distinction in principle between the position of the defendant in this case and the position of a constable who holds two warrants, one of which is defective.

*Held*, also, that the trial judge erred in leaving it open to the jury to understand that they were at liberty to give vindictive damages in the absence of evidence of malice, oppression, or misconduct on defendant's part.

*Held*, also, that the trial judge erred in rejecting evidence offered to show that plaintiff had wounded P. in the assault for the commission of which the warrant was issued.

*W. E. Roscoe*, Q.C., for appellant. *R. L. Borden*, Q.C., for respondent.

Full Court.] MCNEIL *v.* MCPHEE. [March 12.

*Statute of Frauds—Setting aside deed—Knowledge on part of grantee of grantor's indebtedness and circumstances—Absence of valuable consideration—Not necessary to show fraud.*

On the 23rd March, 1891, plaintiff commenced proceedings against the defendant, M. M., to recover the amount of a debt due him by M. M. On the 29th January of the following year judgment was entered by consent in plaintiff's favor for a smaller amount, which he agreed to accept, with costs.

On the 24th June, 1891, M. M. executed and delivered to his son and co-defendant, A. M., a deed of his farm, upon which he resided.

In an action brought by plaintiff to set aside the deed as made fraudulently, and in violation of the provisions of the statute, 13th Eliz., the defence was that some four years before the recovery of the judgment, A. M. being about to leave home, his father, M. M., promised that if he would remain at home and work and contribute to the support of the family as he had been doing before, he would give him a deed of the farm, and that A. M. did remain at home and contribute to the support of the family, and that the deed was given in consideration of and in fulfilment of the promise so made.

The evidence showed that both when the alleged bargain was made and at the time when he took the deed A. M. knew of his father's indebtedness to plaintiff, and that he had no other means of paying his indebtedness than the property in question, and that the effect of the giving of the conveyance would be to defeat and delay the plaintiff in the recovery of his debt.

*Held*, allowing plaintiff's appeal with costs, that the deed made under these circumstances was fraudulent within the meaning of the statute, and that A. M. in view of his knowledge of plaintiff's claim, and the inability of the grantor to pay stood in no better position than his father.

*Held*, also, that the consideration for the deed was at most meritorious, and that in the absence of valuable consideration the rule requiring the party attacking the deed to prove fraud did not apply.

*Montgomery* v. *Corbit*, 24 App. Rep. 311, and *Ex parte Mercer*, 17 Q.B.D. 290, distinguished.

*W. H. Fulton*, for appellant. *H. Mellish*, for respondent.

# Province of New Brunswick.

## SUPREME COURT.

Full Court ] GORMAN *v.* URQUHART. [June 7.

*Taxation of costs—Repeal of former table of fees.*

Costs in Supreme Court suits for services performed before the coming into force of the Supreme Court Act, 60 Vict., c. 24, which repealed the old table of fees, alike with those performed after the coming into force of the said Act, are taxable under the new scale.

Rule for review of taxation refused.

*A. J. Gregory*, in support of rule.

Full Court.] DAYTON *v.* VERRETT. [Jun

*Replevin—Suit in County Court—Motion to Supreme Court en banc.*

The Supreme Court Act, 60 Vict., c. 24, s. 357, does not contemplate that the motion in behalf of the party dissatisfied with the finding of the judge or jury on the claim of property in a replevin suit in a County Court shall be made to the Supreme Court en banc; the motion in a County Court suit must be made before the County Court judge "according to the course and practice of the Supreme Court." as per s. 56 of the County Courts Act, 60 Vict., c. 28. Motion dismissed.

*John M. Stevens*, in support of motion. *Arthur R. Slipp*, contra.

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Full Court.] LEGER *v.* FIDEL. June 10.

*False imprisonment—Direction by defendant to constable—Non-suit.*

In an action for false imprisonment the plaintiff proved an arrest by a constable, and that while the officer was driving him to gaol they met defendant, who asked the constable if he "was taking Julian down to gaol," and when the officer said yes, remarked, "all right, take him down," or "all right, go along."

*Held*, that this was not sufficient to make the defendant a party to the imprisonment. Appeal allowed with direction to County Court to enter a non-suit.

*J. D. Phinney*, Q.C., for appellant. *H. B. Rainsford*, for respondent.

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Full Court. MACPHERSON *v.* LYONS. [June 10.

*City of Fredericton Civil Court—Double fees—Copy of proceedings for review.*

The City of Fredericton Civil Court Act, c. 55, s. 5, providing that "the fees to be taxed or taken for or by the Police Magistrate . . . in such civil actions" shall be double the amount of those "as provided for in Justices' Civil Courts," when such actions are for a larger amount than $[illegible], extends to a copy of proceedings for review.

*O. S. Crocket*, in support of order nisi. *J. L. Marsh*, Police Magistrate, contra.

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## SAINT JOHN COUNTY COURT.

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Forbes, Co. J.] KERR *v.* MURPHY. [June 6.

*Action in County Court—Amount recoverable in Justice's Court—Costs—60 Vict., c. 28, s. 69.*

Plaintiffs, residing and carrying on business in Saint John Co., recovered judgment for $16 in an action in the Saint John County Court against the defendant residing at Hayt Station, Sunbury Co., forty miles from St. John, and on a line of railroad. Plaintiffs to prove their case required the attendance of four witnesses, all of whom reside in St. John.

*Held*, that plaintiffs were entitled to County Court costs, under 60 Vict., c. 28, s. 69.

*C. J. Coster*, for the plaintiffs. *J. R. Armstrong*, Q.C., for the defendant.

# Province of Manitoba.

## QUEEN'S BENCH.

Full Court.] REGINA *v.* GIBBONS. [May 21.

*Criminal Code, s. 404—Demanding money with intent to steal—Menaces.*

Case reserved for the opinion of the Court on the following question: "Do the facts established by the evidence taken at the trial constitute a demand of money with menaces with intent to steal such money within the meaning of section 404 of the Criminal Code?" The prosecutor kept a licensed hotel, and stated in his evidence that the prisoner came to him and told him he was going to "pull" him, and wanted $75 from him as a condition of not prosecuting him. Prisoner went away, but returned and told prosecutor he must have the money to go away with. The prosecutor subsequently went to the license inspector, who had the prisoner arrested. The prosecutor admitted that he had previously been convicted of a violation of the Liquor License Act. Sir Thomas W. Taylor, C.J., before whom the prisoner was tried, found him guilty, but before passing sentence upon him remanded him to gaol, to obtain the opinion of the Court on the above question.

*Held*, KILLAM, J. dissenting, that the evidence was sufficient to justify the verdict of "guilty." Any menace or threat that comes within the sense of the word menace in its ordinary meaning, proved to have been made with the intent to steal the thing demanded, would bring the case within section 404, and it is not necessary that the menace should be such as a firm and prudent man might and ought to have resisted, but it would be sufficient if it was such as would be likely to affect any man in a sound and healthy state of mind. *Reg.* v. *Smith*, 4 Cox C.C. 42; *Reg.* v. *Robertson*, L. & C. 483; *Reg.* v. *Tomlinson*, 18 Cox C.C. 75 (1895), 1 Q.B. 403, followed.

Per KILLAM, J.—To warrant the inference of an attempt to steal, in the party making a demand of money under a threat to lay a charge or give information, it would not be sufficient to show that the prisoner expected the threat to be successful, but it should be of such a character, or made in such a manner that he may reasonably expect that it will so unsettle the mind of the party threatened as to take away the element of voluntary action. There should be a terror inspired similar to that necessary to constitute robbery, though it need not be a threat of violence to person or property. There should be something from which it would be proper to infer the express intent to steal, to warrant a conviction under this section, and such is, apparently, not necessarily to be inferred from the attempt to extort or obtain money. *Regina* v. *McDonald*, 8 M.R. 491, and *Rex* v. *Southerton*, 6 East 126, doubted.

*McLean*, for the Crown.

Taylor, C.J.] CHAZ *v.* LES CISTERCIENS REFORMES. [May 27.

*Fire—Damages—Negligence.*

The defendants in the autumn of last year used fire to burn a ring or guard round some of the hay-stacks on their farm, and, as they thought, effectually put it out before leaving it; but a high wind having arisen two days afterwards, some smouldering embers were blown into flame, and spread to the plaintiff's property causing damage to him. On the evidence given at the trial before the Chief Justice he was satisfied that the defendants' use of fire under the circumstances was a customary one for purposes of agriculture in this province, and was even justified by a statute of the provincial legislature, R.S.M., c. 60, s. 2; and he also found as a fact that the defendants were not guilty of negligence, having used every reasonable precaution to extinguish the fire, and having had reason to believe that it was completely extinguished.

*Held*, following *Owens* v. *Burgess*, 11 M.R. 75, and *Buchanan* v. *Young*, 23 U.C.C.P. 101, that the defendants were not liable to the plaintiff for the damages suffered by him. Action dismissed with costs.

*Howell*, Q.C.; and *Haney*, for plaintiff. *Aikins*, Q.C., and *Dubuc*, for defendants.

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# Province of British Columbia.

## SUPREME COURT.

Walkem, J.] CARSON *v.* DAVIDGE. [May 12.

*Right of witness to appear by counsel at trial.*

At the trial of this action the manager of the C.P.R. telegraph office at Victoria, having been served with a subpœna duces tecum to produce certain telegrams filed in his office at Victoria by the defendants, appeared and objected to produce the documents on the ground that they were privileged.

*Gordon Hunter* appeared as counsel for the witness to contend that he was not bound to produce the documents, and he was proceeding to argue the question when counsel for the plaintiff objected to his right to appear.

*Held*, following *Doe d. Rowcliffe* v. *Earl of Egremont*, 2 Moo. & Rob. 386, that the witness must himself state the grounds on which he contends he is not bound to produce the doeuments required, and the Judge is to decide on the validity of those grounds, and to give the witness the protection claimed if he finds him to be entitled to it.

Mr. Hunter was therefore not heard.

*Archer Martin* and *W. H. Langley*, for plaintiff. *L. P. Duff*, for defendants.

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McColl, J.] REGINA *v.* WILLIAMS. [May 31.

*Criminal Code, ss. 766, 777—Right of prisoner to re-elect as to mode of trial.*

*Herbert Robertson*, for the prisoner, who had been committed for trial on the charge of theft, and had previously elected to be tried by jury, moved on the day of the opening of the assizes at Victoria for leave to abandon such

election, and to re-elect to be tried by a judge without a jury, citing *Reg.* v. *Prevost*, 4 B.C.R. 326, and *Reg.* v. *Lawrence*, 5 B.C.R. 160. The sheriff had been notified to produce the prisoner before the judge, but under instructions had not done so.

*Smith*, Deputy Attorney-General, objected that the prisoner not being before the judge, the case differing in this respect from *Reg.* v. *Prevost*, no order could be made, and that *Reg.* v. *Ballard*, 28 O. R. 489, 1 Can. Crim. Cases 96, showed there were no means of securing his presence.

Application refused.

## North-West Territories.

### NORTHERN ALBERTA JUDICIAL DISTRICT.

### SUPREME COURT.

Rouleau, J.] LOWTHER *v.* JOHNSON. [April 1.

*Distress for rent—Tenants in common.*

The defendant and one Fulmer became on January 2, 1896, tenants-in-common of a certain lot. On May 1, 1896, Fulmer leased the premises to the plaintiff in his own name, without the knowledge or consent of the defendant, and collected and retained the whole of the rents. In November of the same year defendant notified the plaintiff of his half interest in the premises demised, and demanded payment for the future of half of the rents to him, and at the time notified his co-tenant of his demand. The plaintiff continued to pay the whole rent to Fulmer, and on July 22, 1897, defendant caused a distress to be made on the plaintiff's goods, whereupon the plaintiff brought the present action for illegal distress, claiming $50 damages.

*Held*, that the distress was illegal, as there was no demise from defendant to plaintiff. The defendant's remedy is by action for use and occupation. *Harrison* v. *Barnby*, 5 T. R. 246, distinguished.

*P. McCarthy*, Q.C., for plaintiff. *James Short*, for defendant.

## Book Reviews.

*A Digest of the Law of Agency* by WILLIAM BOWSTEAD, of the Middle Temple, Barrister-at-law, Second Edition; London: Sweet & Maxwell, Ltd., 3 Chancery Lane, 1898.

This book, like many of those of the present day, is made on the principle of a code, the law relating to agency being reduced in a concise statement of definite rules and principles, illustrated by cited cases. It will readily be seen that this method involves great labour and accuracy, a very different thing from the pitchforking together of cases practised by many authors. A full index is

a helpful addition. Several new articles have been added to the first edition, and the number of illustrations of cases cited have been considerably increased. Those reported to the end of 1897 have been noticed, and references made to those appearing in *The Times* Law Reports. This book has been well received in England, where it has met with great success.

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*A Yearly Abridgment of Reports of all Cases decided in the Superior Courts in England during the Legal Year, 1896-7*, by ARTHUR TURNOUR MURRAY, B.A., Oxon, Lincoln's Inn, Barrister-at-law; London, Butterworth & Co., 7 Fleet St., E.C., 1898.

This abridgment is a digest of the cases from the 24th October, 1896, to the 24th October, 1897, in all the English Reports, together with a selection from the Scotch and Irish Reports, preceded by complete lists of all cases, statutes and rules cited, and concluding with a copious is index to the points of law considered, similar to the analytical index which given at the conclusion of each volume of this journal. Mr. Murray's system seems to be a very complete one. Unlike an ordinary digest it is not a mere compilation of existing head notes, but consists of an analysis, the result of a careful perusal by the editor of each case. This combination of systems is new, and is strongly recommended by those who have used the book. Part I. contains a list of the cases cited, the statutes and Rules, with list of defendants and cross references alphabetically arranged. Part II. gives the analysis above referred to with a list of the cases cited on the argument, the results of all appeals from the cases appearing in the abridgment, so far as they are reported, up to and including February 1st, 1898. Part III. is the distinctive feature, consisting of a subject index to points of law judicially considered, arranged alphabetically. This seems to be carefully prepared, and is a valuable addition to a work of this kind. We have no doubt that this work will become as popular with the profession in England, as that of Messrs. Masters & Morse is in Canada.

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*A Treatise on the Insurance Laws of Canada*, embracing Fire, Life, Accident, Guarantee, Mutual Benefit, etc., by CHARLES M. HOLT, L.L.L., Barrister, Montreal Bar; Montreal, C. Theoret, Law Publisher, 11 & 13 St. James Street, 1898.

This is a book of nearly 900 pages. Its subject matter was first prepared by Mr. Holt in lecture form, and delivered at the Law Faculty of Laval University. We doubt whether this may be generally considered as a good foundation for a law book, though it indicates a familiarity on the part of the author with the subject matter.

The preface states that the aim of the author has been to cover as far as possible the whole ground of the subject matter of insurance; to give in digested form, with comments and notes, all enactments on this subject of the Dominion Parliament and of the Local Legislature; to analyze the jurisprudence of the courts of each of the provinces under the Supreme Court, deducing therefrom general principles applicable to insurance contracts, and com-

paring Canadian legislation and jurisprudence with that of foreign countries and that of each of the provinces with the others.

The author begins with a history of the contract of insurance, its nature, and the different kinds of insurance. These chapters are of much interest, well written and unattainable elsewhere, so far as we know, in any collected form. The more strictly legal portion of the work commences with chapter 3, which speaks of the powers of parliament and the local legislatures over the subject matter of insurance, followed by a discussion on the making of the contracts and the many subjects which necessarily come up for discussion in detail n the construction of a work on this very important subject.

That Mr. Holt has devoted to his task great diligence and thoroughness of research, and has given the profession a large amount of useful information is beyond question.

But everyone is not sufficiently familiar with book making and legal literature, to give the matter in that accurate and workmanlike shape which the profession expects in these days of law book making, and we fear that defects in this respect will, so far as the casual observer is concerned, detract from the value of the work done. For example: the names of cases cited sometimes appear in one type, and sometimes in another; mistakes in spelling are not unknown; cases are cited in various different ways, and some of them will be difficult to find by those not familiar with the reports, some of which, moreover, do not appear in the table of abbreviations. We suppose we may fondly assume that the reason the name of this journal does not appear in these abbreviations, though our reports are freely cited, is because the profession at large of course know all about us, and we have therefore no cause of complaint. And here we would suggest to the readers of the book before us to note that as to the case of *In re Darling*, which is referred to on p. 554, the valuable judgment delivered by His Honour Judge Morgan (not "Mr. Justice Morgan") is to be found reported in full in 33 C.L.J., p. 439, and not elsewhere. It would have been convenient for the author to have given this citation.

These, however, are small matters, and will doubtless be remedied in a future edition, for most certainly we should have a good Canadian book on this subject, and it may be that Mr. Holt's work will take that position. Whilst feeling compelled to draw attention to these minor defects, we are satisfied that Mr. Holt has given to the profession a volume which will be of great value, and will doubtless find a ready sale.

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The addition of the word "trustee" to the name of the payee of a note is held, in *Tradesmen's Nat. Bank* v *Looney* (Tenn.), 38 L.R.A. 837, ineffectual to defeat the negotiabiltty of the note if inquiry would have shown that the word was merely descriptive, and that the note was given to be turned over by him, as was done. It is also held that the addition of the word "trustee" to his name when indorsing the note does not affect his liability as such indorser.

## LAW SOCIETY OF UPPER CANADA.

### MICHAELMAS TERM, 1897.

Tuesday, Nov, 16th.

Present, between 10 and 11 a.m.: The Treasurer, Messrs Barwick, Bayly, Edwards, Shepley and Strathy, and in addition, after eleven, the Attorney-General and Messrs. Bruce, Douglas, Gibbons, Guthrie, Hogg, Hoskin, Idington, Martin, O'Gara, Osler, Robinson and Wilkes.

Ordered that the following gentlemen be called to the Bar: W. H. Burns (with honors), H. N. German, C. Kappele, J. C. T. Thompson, W. A. Hollinrake, J. E. Ferguson, J. R. Brown, S. B. Harris. Ordered that the gentlemen last mentioned, with the exception of Mr. S. B. Harris, whose time had not expired, receive their certificates of fitness.

Ordered that Mr. E. H Cleaver, who had completed the additional period of service ordered by Convocation, be called to the Bar and receive his certificate of fitness.

The complaint of Mr. R. Bowker against Mr. ——— was read, and the Secretary was ordered to inform the complainant that his complaint did not present a case in which Convocation ought to interfere

A report was presented from the Discipline Committee setting forth that the complainants against Mr. G. had not appeared on the day appointed for the investigation, and had intimated that the complaint would be abandoned.

Mr. Barwick, in the absence of Mr. Aylesworth, moved pursuant to notice, that in view of the expense and delay necessarily involved in the preparation of a consolidated digest for the century, the scheme be abandoned.—Lost. Yeas 4. Nays 10.

Ordered that the Reporting Committee be placed in charge of the publication of the Century Digest, and that they be asked to report upon the cost of editing and compilation at the meeting of Convocation on the 3rd of December next, and that the Joint Committee of the Reporting and Finance Committees shall be continued as to any printing contract, and as to the price at which the Digest is to be issued.

Convocation then entered upon consideration of the Report of the Discipline Committee, upon the complaint of John O'Connors against Mr. T. C. Robinette. Mr. Robinette was in attendance. Ordered that the Report be adopted, and that Convocation deal with the question of discipline on the first day of the sitting in Hilary Term, 1898. Mr. Robinette was informed of the decision.

Ordered that Mr. F. C. S. Knowles be allowed his third year examination, passed prematurely, and that he be called to the Bar to receive his certificate of fitness, and that Mr. J. R. L. O'Connor, who had completed the additional period of service ordered by Convocation, be also called to the Bar and receive his certificate of fitness.

The following gentlemen were then called to the Bar: Messrs. W. H. Burns, C. Kappele, J. T. C. Thompson, W. A. Hollinrake, J. E. Ferguson, J. R. Brown, S. B. Harris, E. H. Cleaver and, F. C S. Knowles.

Ordered upon a report from the Legal Education Committee that Mr. G. F. Kelleher attend forty lectures of the third year, in addition to those already attended by him, and that upon the principal being satisfied with his attendance and conduct, he be called to the Bar and receive his certificate of fitness.

Mr. Shepley laid on the table the schedule of the Christmas Examinations of the second and third year.

Ordered upon a report of the Legal Education Committee, that the following gentlemen, whose notices have remained posted since last Term, be

admitted as of Trinity Term: Messrs. T. Gibson, H. V. Hamilton and W. A. McKinnon, of the Graduate Class, and Messrs. A. H. Armstrong, C. H. Dunbar, W. Elmo Marshall and F. L. Sutherland, of the Matriculant Class.

Ordered that the following gentlemen be admitted as students-at-law: Graduate Class—Messrs. J. L. Counsell, J. H. Couch and A. E. McNab. Matriculant Class—Messrs. A. G. Austin, F. L. Button, A. E. Bowles, C. R. Deacon, J. M. Kerns, A. E. Millican, Alec. McLonald, W. A. Nisbett, W. E. Payne and T. A. Watterston.

Ordered upon a report of the Legal Education Committee, that the following gentlemen whose applications for admission are irregular, viz.: Messrs. W. G. R. Bartram, W. E. Dunn, W. A. Duff, H. K. Gray, A. M. McLean, G. H. Smythe (Grad.), W. E. Seaborn and G. E. Taylor (Matr.), under the special circumstances be admitted as of Trinity Term, and that the general question of irregular admissions be considered on Friday the 3rd inst.

A report was presented from the Legal Education Committee recommending that certain persons, not members of the Society, be permitted to attend the lectures of the Law School subject to proper arrangements with regard to fees, and pointing out that no objection existed to the opening of the School to the extent proposed, as this course would tend greatly to popularize the School, and extend its usefulness and make it a centre of legal education. The report was received and referred to the Legal Education Committee, to formulate a scheme.

A report was presented from the Legal Education Committee upon the proposals of the Principal as to honors at the Law School and compulsory attendance on lectures. The consideration of the report was deferred until the first Sittings in Hilary Term, and it was ordered that special notice of such consideration be given.

On the report of the Legal Education Committee it was ordered as follows: That Mr. J. C. L. White be permitted under the special circumstances of his case, to present himself for examination at the coming Christmas examination in the subjects of Practice, Equity and Evidence, and in the meantime to proceed with the work of the third year. That Mr. C. A. S. Body serve until the day before the last day of Michaelmas Term, and that he be then called to the Bar and receive his certificate of fitness. That Mr. R. H. M. Temple be transferred to the Graduate Class, as of Michaelmas Term, 1897. That the petition of Mr. W. B. S. Craig be not granted. That Mr. J. Campbell Elliott be allowed the second year examination with honors.

The complaint of the Huron Law Association against Mr. R. L. Taylor was referred to the Finance Committee with power to act.

Ordered upon the report of the Committee on Journals and Printing that the annual sum of $100 be paid to the publishers of the CANADA LAW JOURNAL for publishing the resume of proceedings and furnishing extra copies, and that in the event of the resume exceeding 25 pages in any year the excess be paid for at the rate of $3 a page.

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Wednesday, 17th Nov., 1897.

There being no quorum at the hour of 10.30, the senior barrister present adjourned the meeting until Friday, December 3rd.

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Friday, 3rd Dec., 1897.

Present: The Treasurer, Messrs. Aylesworth, Bayly, Blake (E.), Britton, Bruce, Clarke, Martin, Ritchie, Robinson, Shepley, Wilkes.

Ordered that Mr. S. B. Harris receive his certificate of fitness. That Mr. C. A. S. Body be called to the Bar and receive his certificate of fitness. That Mr. R. R. Bradley be admitted as a student of the Graduate Class, as of

Trinity Term; that Mr. W. E. Smith be admitted as a student of the Matriculant Class as of Trinity Term. The following gentlemen were then called to the Bar: Messrs. C. A. S. Boddy, J. R. L. O'Connor and E. C. Wragge.

Ordered upon the report of the Legal Education Committee as follows: that the fee in respect to the Christmas examinations be $20, and that $10 thereof be forfeited in case of a student failing to pass his examination, and that the whole sum of $20 or the balance of $10, as the case may be, be credited upon the fees payable for call and admission as solicito ; that the offer of the Edward Thompson Co., Publishers, to give a prize in connection with the Law School Examinations, be respectfully declined; that the terms upon which persons not members of the Law Society should be admitted to attend lectures in the Law School, be left to the Committee to be dealt with in its discretion, according to circumstances in each case.

A report was presented from the Legal Education Committee recommending under the peculiar circumstances of the case that the holding of his present position by Mr. J. G. O'Donoghue be not deemed to be inconsistent with the requirements of the Society as to service, and recommending that in future candidates for admission be required to make declaration that they do not hold and will not hold during their service under articles or attendance in chambers any office of emolument, and that they are not and will not be employed in any occupation whatever other than student in chambers or clerk under articles, as the case may be, or to specify for the information of Convocation the nature of such office or occupation if any. The report, so far as it referred to Mr. O'Donoghue, was adopted on a division; the remainder of the report was referred back to the Committee to consider what amendment, if any, to Rule 150, would be required if the report were adopted.

The Joint Committee to which was referred the recommendation of the Finance Committee regarding the Phillips Stewart Library, reported that they were of opinion that a supplemental grant was not now necessary to the efficient maintenance of the Library, having regard to the purposes which it is intended to serve, and recommending its discontinuance, but that such discontinuance should not have any retroactive effect prior to the date upon which Convocation adopted the prior recommendation. The report was adopted

The following report was presented from the Legal Education Committee upon the subject of irregular applications for admission:—

Your Committee has under consideration a practice which has grown up under which applicants for admission to the Society, whose qualifications are not in fact obtained in time for action by Convocation during Trinity Term, have been admitted as of that Term

As to the obtaining of such qualifications the applicants may be divided into two classes. (1) Those whose qualifying examinations have in fact been held during or before Trinity Term, but whose certificates or diplomas cannot be produced either because the result of such examinations is not yet known, or because of delay in the issuing of such certificates or diplomas. (2) Those whose qualifying examinations have not been held until after the end of Trinity Term.

As to their notices each of these classes of applicants may be subdivided as follows:—(1) Those who have given regular notice before Trinity Term, or have given such shorter notice before or during that Term as Convocation, upon explanations made has been willing to accept, directing the notice to remain posted for an additional period. (2) Those who have not given notice until after the end of Trinity Term.

Your Committee is of opinion with regard to the first class, viz.:—those whose examinations have been held during or before Trinity Term, that if applicants of that class fall also within the first subdivision (having given either regular notice or such shorter notice, before or during Trinity Term, as Convocation has hitherto been willing to accept upon terms) there is reason-

able ground for permitting such applicants, upon completing their papers before Michaelmas Term to be entered upon the books of the Society as of Trinity Term. In such cases the applicant has done all that lay in his power to obtain the qualifications within the Term as of which he seeks admission, and it is not his fault that there has been delay either in announcing the result of the examinations or in the issuing the certificates.

But with regard to the second class, viz.:—Those whose qualifying examinations do not in fact take place until after Trinity Term, and also with regard to those of the first class who fall within the second sub-division (not having given any notice until after the end of Trinity Term):—Your Committee is of opinion that there is no satisfactory principle upon which such applicants can during Michaelmas Term be given a status upon the books of the Society relating back to Trinity Term. The Committee recommend accordingly that the practice in such cases be discontinued, and that the circular or curriculum issued for the information of intending applicants be amended accordingly.

GEO. F. SHEPLEY,
Chairman.

Dated 16th November, 1897.

The report was adopted.

Mr. Shepley, on behalf of Mr. Watson, gave notice of motion to rescind the resolutions of Convocation relating to the publication of a Century Digest.

The report of the Inspector of County Libraries was presented, and was referred to the County Libraries Committee, and it was ordered that the Inspector, Mr. Eakins, be paid $200 for his services and expenses.

Ordered that the petition of Mr, C. C. Grant for admission as a student be referred to the Legal Education Committee.

## Flotsam and Jetsam.

Several years ago, the late Sir Francis Lockwood got a prisoner off by proving an alibi. Some time afterward the judge met him and said, "Well, Lockwood, that was a very good alibi." "Yes, my Lord," was the answer; "I had three offered me and I think I selected the best."

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A young lawyer was appointed to defend a negro who was too poor to hire counsel of his own. After the jury was in the box the young lawyer challenged several jurymen who, his client said, had a prejudice against him. "Are there any more jurymen who have a prejudice against you?" whispered the young lawyer." "No, boss, de jury am all right, but now I wants you to challenge de jedge. I has been convicted under him several times already, and maybe he is beginnin' to hab prejudice agin me."

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The Calcutta *Weekly Notes* gives occasionally some choice morsels in the way of names. For example:—Sri Rajah Rao Lakshmi Kantaiyammi v. Sri Raja Inuganti Rajagopal Rao is the name of a suit which covers a point of practice, and was heard before the Privy Council. In another case the counsel representing Dya Gazi, Ram Kumar Brindabun Chunder Kar and Ram Lal Sukul were respectively Babu Jogendra Chunder Ghosh and Babu Hari Mohun Chuckerbutty. The Madras *Law Journal* has, however, something distinctly superior in the following name: Sri Raja Chelli Kani Venkatarama-nayamna Garu v. Appa Rao Bahadur Garu.