The
Ontario Weekly Notes

VOL. VI. TORONTO, AUGUST 7, 1914. No. 20

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B. JULY 24TH, 1914.

DOUGAN v. ALLAN.

Will—Invalidity—Incompetence of Testatrix—Evidence—Onus—Testimony of Physician-witness—Declaration of Intestacy—Injunction—Executor—Costs.

Action for a declaration that a will signed by Isabella O. Allan, deceased, was signed when she was not competent to make a will, and that she died intestate.

The action was tried without a jury at St. Catharines.

H. H. Collier, K.C., for the plaintiff.

G. H. Kilmer, K.C., for the defendant.

FALCONBRIDGE, C.J.K.B.:—The plaintiff is a brother and one of the heirs-at-law of Isabella D. Allan, who died on the 20th December, 1910, she having on the 7th of the same month signed a will; the plaintiff asserts that, at the time she is said to have signed and executed the same, she was not of a competent and disposing mind, and was not aware of what she signed. The plaintiff further asks for a declaration that the said Isabella D. Allan died intestate. By the said will, all her real and personal estate was devised and bequeathed to her husband, William B. Allan, who died on the 27th June, 1911; the defendant is his executor.

In Baker v. Batt (1838), 2 Moo. P.C. 317, the head-note is as follows: "The burthen of proof of the genuineness and authenticity of a will lies on the party propounding it; and, if the conscience of the Judge is not judicially satisfied that the paper in question does contain the last will and testament of the

deceased, he is bound to refuse its admission to probate. A will written or procured to be written by a party who is benefited by it is not void; but the circumstance forms a just ground of suspicion against the instrument, and calls upon the Court to be vigilant and jealous; and, unless clear and satisfactory proof be given that it contains the real intentions of the deceased, will be pronounced against."

See also the "notable case," as the Chancellor appropriately calls it, of Barry v. Butlin, reported in the same volume of Moo. P.C. at p. 480, and also in 1 Curt. 537, a judgment of Parke, B. (Lord Wensleydale), by a slip of the pen ascribed to Lord Hatherley in Lamoureux v. Craig (1914), 49 S.C.R. 305, at p. 340, and discussed by the Chancellor in Loftus v. Harris (1914), 30 O.L.R. 479.

In Mitchell v. Thomas (1847), 6 Moo. P.C. 137, it was held: "Where a testamentary disposition is propounded under circumstances of suspicion; as where the party propounding it was the drawer, and was benefited by it, and it was executed at a time when the testator was of doubtful capacity; without any evidence of instructions previously given, or knowledge of its contents; the party propounding it must prove that the testator knew and approved of the contents of the instrument."

On the application of the rules laid down in these cases, I hold that the defendant has failed to satisfy the onus cast upon him.

The evidence is somewhat conflicting, but it does not preponderate in the defendant's favour, but rather the other way.

The attending physician was in Court, having been subpœnaed, I presume, by one or both of the parties. There seemed to be a curious reluctance about calling him. The plaintiff's counsel evidently expected the defendant to call him; but, when the defendant's counsel closed his case without doing so, the plaintiff asked leave to put the doctor in the box. I allowed him to be called, expecting that he would give material aid in the disposition of the case, as he was one of the subscribing witnesses and had made the affidavit of execution.

But his evidence was extremely disappointing and unsatisfactory. It is in effect as follows: "She suffered from heart disease, Bright's disease, and dropsy in consequence of these. Morphia and strychnine administered as heart stimulants. She said she was going to leave money for missions in the North-West and one or two beds in the hospital." (I shall revert to this statement hereafter). "I don't remember saying to Miss Stephens that the will was not worth the paper it was written

on. I would not likely make such a statement." (Miss Stephens was not called.) "Her memory was not very good. I can't recollect whether the will was read over to her or not. I had no idea what was in it. Her mental condition was about the same as ever since she had a stroke about a year before." (According to Mrs. Wilson, the stroke was three years before she died). "If her husband would bring her a paper to sign, I think she would sign it. I did not hear the will read. It may may have been read to her before I went in." Cross-examined: "She had lucid intervals when she was quite bright. I made affidavit of execution on the 15th January, 1911. She knew me when I came in. Her mental condition was impaired from the stroke—it varied—sometimes she was bright. I would not say myself about her mental condition. I would not contradict the nurse" (Matilda Glass, examined on commission.) Re-examined: "Nor Miss Grant" (a witness called by the plaintiff.)

A medical man who avouches a will by signing as a witness ought to be prepared to state that the person purporting to make the will had sufficient mental capacity for the purpose. See remarks on this subject in Trusts and Guarantee Co. v. Fryfogel (1914), 26 O.W.R. 330. They do not appear in the note in 6 O.W.N. 308.

The doctor speaks of her avowed intention to leave money for missions and beds in hospital. She told her cousin, Mary A. Grant, on the day the will was made, and after the doctor and the nurse came out, that she had left quite a sum of her money to missions.

And Miss Glass says (p. 5, questions 29 and 30) that, prior to the actual signing of the document, a remark was made between husband and wife about leaving some money to a public institution in St. Catharines and about some money for furnishing a window in the church. She also says, (p. 15, question 128): "Q. Did it appear to be of more or less passive obedience to any expression of his (the husband's) will to her as to what she ought to do and what not to do? A. Yes."

I find, therefore, against the will, and declare that the said Isabella D. Allan died intestate.

The plaintiff will have an injunction as prayed and his costs against the defendant, of course as executor only, i.e., out of estate of William B. Allan.

MEREDITH, C.J.C.P. JULY 24TH, 1914.

RE CAWTHROPE.

Will—Construction—Residuary Bequest to "Relations who are Needy" — Discretion of Executors as to Persons and Amounts—Limitation to Blood Relations, but not to Next of Kin under Statute of Distributions—Discretion to be Exercised in Good Faith and within Reasonable Time—Executors themselves Included if "Needy Relations."

Motion by the executors of the will of Sarah Cawthrope, deceased, upon the return of an originating notice, for advice to the executors and interpretation of the will.

All persons who could be interested in the result were served with the notice.

The motion was heard at the London Weekly Court on the 4th July, 1914.

D. C. Ross, for the executors.

C. G. Jarvis, for some of the persons interested.

W. C. Fitzgerald, for others.

Many also appeared in person and were heard.

MEREDITH, C.J.C.P.:—The legal advisers of the executors of Sarah Cawthrope's will think it desirable that their clients should not exercise the power conferred upon them, by that will, until the executors have been advised and the will interpreted by this Court, in these respects: (1) as to the meaning of the word "relations," and (2) as to the meaning of the words "who are needy," both contained in the residuary clause of that will, conferring that power upon them; (3) also as to their rights regarding persons and amounts, in exercising such power; and also (4) whether they can include themselves among those benefited.

The residuary clause of the will only is involved; and it contains but few, and only such as would ordinarily be thought plain, words; so that, I have no doubt, the executors themselves would have thought the intention of the testatrix plain enough, and that only the fear of what the law might think of it has brought them here; and, in coming here, it may be that they are right.

The clause is in these words: "All the residue of my estate

not hereinbefore disposed of I give and bequeath unto those of my relations who are needy in such amounts and to such of the same as my executors see fit in their discretion."

The intention of the testatrix, though somewhat awkwardly expressed, is, that the residue of her estate shall go to such of her relations who are needy and in such amounts as her executors shall in their discretion determine.

The words "relations who are needy" seem simple and plain words at first sight; words which ordinary persons might think afforded little excuse for stumbling over; yet such, and like, words have been the subject of not a little judicial consideration, and results have been reached which, to an ordinary person, might at first sight seem extraordinary.

A long line of decisions, running back hundreds of years, has settled that a gift to relations is not a gift to all relations, but only to those who would take under the Statute of Distributions in case of an intestacy; and some of such cases indicate that where such or the like word is qualified by such words as "poor," or "needy," the qualifying word is to be excluded altogether.

In one of the several cases in Ambler—Widmore v. Woodroffe (1766), Amb. 636—the Lord Chancellor is reported to have said, in regard to a will directing that one-third of the residue of the estate there in question should be distributed among the most necessitous of the testator's relations, that several cases, "all proceeding upon the same ground, make the Statute of Distributions the rule to prevent an inquiry, which would be infinite, and would extend to relations ad infinitum. The Court cannot stop at any other line. Thus it would clearly stand on the word 'relations' only; the word 'poor' being added makes no difference. There is no distinguishing between the degrees of poverty; and therefore the Court has, as was unanswerably argued, construed the will as if the word 'poor' were not in it."

But, also, it has been long settled, in like manner, that where power is conferred, as in this case, upon some one to distribute a fund among such relations as he shall in his discretion name, the word "relations" is not restricted to those who would take under the Statute of Distributions in case of an intestacy, but includes all who are actually relations—which, of course, is limited to those of legally provable relationship.

This, too, is plainly laid down in an early case, also reported by Mr. Ambler—Supple and Wife v. Lowson (1773), Amb. 729,

in which Sir Thomas Sewell, Master of the Rolls, is reported to have said, regarding a case such as this: "Am clear that the relations at large are the objects of the bounty, and not the next of kin only."

And, in the case of Grant v. Lynam (1828), 4 Russ. 292, Sir John Leach, Master of the Rolls, dealt with the subject in these words: "The principle, therefore, of that case"—referring to Harding v. Glyn (1739), 1 Atk. 469—"is, that, where the author of the power uses the term 'relations,' and the donee does not exercise the power, there the Court will adopt the Statute of Distributions as a convenient rule of construction, and will give the property to the next of kin; but that the donee, who exercises the power, has a right of selection among the relations of the donor, although not within the degree of next of kin. I cannot find that the doctrine of that case has ever been impeached; on the contrary, it has been repeatedly acted upon, and the same rule has been applied with respect to personal estate, where the word 'family' has been used in the place of 'relations.'"

So, too, there are not wanting cases in which it has been held that in a gift to poor or needy relations the qualifying words are not to be rejected—as in the case of Widmore v. Woodroffe it was said that they are to be—but are to be given effect. The subject is discussed, and the cases referred to, in Jarman on Wills, 5th ed., pp. 978-9, and in Lewin on Trusts, 8th ed., pp. 836-8.

But, however that may be, there is authority for this, that in a case such as this, in which there is a discretion as to the objects of the bounty, the qualifying words are to have effect. I refer to the case of Gower v. Mainwaring (1750), 2 Ves. Sr. 87, in which in a trust deed it was provided that the trustee should give a fund among the donor's friends and relations, where they should see most necessity, and as they should think most equitable and just. The Lord Chancellor, after consideration, directed that the fund should be divided between certain members of the family according to their necessities and circumstances, which the Master should inquire into, and consider how it might be most equitably and justly divided: 2 Ves. 110; adopting the rule that was applied in the case of Grant v. Lynam, that, as to the persons, the Statute of Distributions is the guide when the Court has to act instead of the trustee; and that, where there is a discretion as to persons, such qualifying words as "according to their necessities and circumstances" are to be given effect, not treated as dead letters.

So that, as it seems to me, where there is, as in this case, a discretion to be exercised by executor or trustee, as to the individuals to be benefited, the case is taken out of the rules laid down in Widmore v. Woodroffe, in both respects—the word "relations" is not restricted, so far as the executor or trustee is concerned, to the next of kin, and such qualifying words as poor or needy are to be given effect. A result which I cannot but think satisfactory because it avoids making a new will or deed for the donor, it gives effect to that which the donor intended.

Then does the word "relations," in such a case as this, include relationship by affinity, as well as in blood?

My own idea was that, accurately speaking, the word "relations" could be used only in reference to those of the same blood; that the proper word for relationship by marriage is "connexions;" but, upon referring to the dictionaries—which formerly it was said the Judges might turn to to refresh their memories, but which, in these days, are treated as witnesses competent to give admissible evidence as to the meaning of such words, expressions, and terms as are commonly dealt with in such books—I find that, on all hands, the word "relations" is treated as including connexion or alliance by affinity as well as by blood; and the word "connexions" as also applicable to relationship by blood or marriage. And in the case of Davies v. Baily (1748), 1 Ves. Sr. 84, the Lord Chancellor, speaking of the word "relation," said: "'Relation' is a very general word, and takes any kind of connexion; but the most common use of it is to express some sort of kindred either by blood or affinity; though properly by blood."

But it has long been settled that, in the eyes of the law, the word "relations," used as it is in the will in question, implies consanguinity, and does not include connexions by marriage.

The firmness and fullness with which this technical interpretation of the word is still applied by the Courts is shewn in the case of Hibbert v. Hibbert (1873), L.R. 15 Eq. 372; in which case the learned Vice-Chancellor who decided it also said: "It is not the province of the Court to speculate or consider what the testator would, by strangers, be supposed to have meant;" though that case was one in which, I have no doubt, ninety-nine out of every hundred persons, unfamiliar with the law upon the subject, would have interpreted the will, unhesitatingly, in a way directly opposed to the interpretation of the Court.

Nothing in this will itself, or in any of its numerous codicils, gives any encouragement to connexions by marriage, beyond the use of the word "relations;" with the exception of one gift to a stranger, all of the many gifts, made in them, are to blood relations only; which may seem rather hard upon the deceased husband's relations, the whole of the property in question having come to the testatrix, in the first instance, it is said, under the will of her husband, who died some years ago. But it is always unsafe to express, or form, an opinion of that character; those who make wills may know many things rightly affecting their bounty of which none else may have any knowledge.

There is, then, nothing in this case to take it out of the general rule that only those who are in some degrees blood relations of the testatrix are eligible for a share of her bounty.

These observations cover the whole ground upon which advice is sought, except that upon which the question whether the executors may share in the gift is based. They may, if they really come within the class designated by the testatrix; that is, among her needy blood relations; but they must, of course, execute their power in good faith, and their action, in this as well as in all other respects, must not be influenced by improper motives.

So, too, it may be added, that a gift of that character will naturally be more the subject of suspicion of bad faith, or improper motives, than a like gift to a stranger would be.

That they must be "needy" as well as "relations" seems to me, as I have indicated, to be necessary to qualify them as objects of the bounty of the testatrix; if they come within that class, and if, in good faith and uninfluenced by improper motives, they benefit themselves, the Court cannot interfere.

"Needy" is not such an indefinite word, perhaps, as at first sight it might appear to be. When the circumstances of all the relations are known, as doubtless they have long been to the executors, it may not prove at all a difficult task to separate, as far as may be necessary, the needy from those who are not needy. The testatrix obviously considered some of her relations needy and others not needy; and, with the wide discretion conferred by the will, upon the executors, there is not likely to be any failure to give full effect to all that the testatrix desired and expressed in her will, in this respect; the executors exercising their best judgment conscientiously in the matter.

The law upon the subject of discretionary powers, generally, was thus expressed by Jessel, M.R., in the case of Tempest v. Lord Camoys (1882), 21 Ch.D. 571: "It is very important that the law of the Court on this subject should be understood. It is settled law that when a testator has given a pure discretion to trustees as to the exercise of a power, the Court does not enforce the exercise of the power against the wish of the trustees, but it does prevent them from exercising it improperly. The Court says that the power, if exercised at all, is to be properly exercised . . . But in all cases where there is a trust or duty coupled with the power the Courts will then compel the trustees to carry it out in a proper manner within a reasonable time."

In this case there is, I think, a gift of the residue of the estate, to be distributed among such of the needy relations of the testatrix, and in such amounts, as the executors may see fit; a gift which the Court would carry into effect if the executors failed to exercise their power over it; but with which the Court will not interfere if the executors, in good faith and uninfluenced by improper motive, exercise, within a reasonable time, their power over it: see Burrough v. Philcox, Lacey v. Philcox (1840), 5 My. & Cr. 73; and Brown v. Higgs (1799-1813), 4 Ves. 708, 5 Ves. 495, 8 Ves. 561, and 18 Ves. 192.

Accordingly, the answers to the questions propounded upon the argument of this motion, shortly stated, are:—

The executors' power of distribution of the fund is limited only to this extent: only those who are relations of the testatrix and are needy can share in it, and the executors' discretion in the distribution of the fund must be exercised in good faith, without improper motive. Subject to these limitations, persons and amounts are in the discretion of the executors.

The "relations" of the testatrix are those only of the same blood in some degree; connexions by marriage are not included.

If the executors are needy relations of the testatrix, they are eligible for benefit out of the fund, but subject to the limitations before-mentioned.

And the power should be exercised within a reasonable time.

The executors will be advised, and the will construed, accordingly.

The costs of this motion are to be paid out of the fund, those of the executors as between solicitor and client.

COWPER-SMITH v. EVANS—FALCONBRIDGE, C.J.K.B.—JULY 22.

Master and Servant — Wages — Wrongful Dismissal—Assault—Damages — Counterclaim — Costs.]—Action for wages, damages for wrongful dismissal, and damages for assault. Counterclaim for the value of articles taken by the plaintiff. The learned Chief Justice finds the balance due to the plaintiff for wages to be $200.81; damages for dismissal—one month's wages in lieu of notice—$125; damages for assault, $10: total, $335.81. Against this he allows the defendant, by way of set-off, $114.75 for three articles taken: leaving a balance in favour of the plaintiff of $221.06, for which judgment is given, with County Court costs; the defendant to set off the difference between County Court and Supreme Court costs as between solicitor and client. W. C. Mikel, K.C., for the plaintiff. E. G. Porter, K.C., and W. Carnew, for the defendant.

CANADIAN MALLEABLE IRON CO. v. LOUDEN MACHINERY CO.—FALCONBRIDGE, C.J.K.B.—JULY 25.

Contract — Formation — Correspondence — Consensus as to Quantity of Goods—Evidence—Onus—Counterclaim—Costs.]—Action to recover $860 damages for breach of a contract alleged by the plaintiffs, and $44.21 as the balance due for goods manufactured by the plaintiffs for the defendants. The action was tried without a jury at Owen Sound. The learned Chief Justice said that the correspondence did not form a contract, nor was there any other note or memorandum signed by the defendants. The burthen of proving consensus as to quantity lay on the plaintiffs. It was asserted by the plaintiffs' manager that the bargain was for 100 tons. This the defendants' Canadian manager denied, saying that there was no agreement as to quantity or price. The correspondence did not materially assist the plaintiffs, who, therefore, failed to prove the contract which they set up. On the same principle, the defendants failed to prove their counterclaim for damages for delay in making and shipping the castings which were delivered. Judgment for the plaintiffs for $44.21, with Division Court costs—the defendants to have the usual set-off of costs, not to include any costs of their counterclaim, which was dismissed without costs. W. H. Wright, for the plaintiffs. H. H. Dewart, K.C., and N. Jeffrey, for the defendants.

COUNTY COURT OF THE COUNTY OF HURON.

DOYLE, Co.C.J. JUNE 4TH, 1914.

THOMSON v. CANADA FEATHER AND MATTRASS CO.

Costs—County Courts—Tariff of Fees—Counsel Fee at Trial—Fee for Preparation for Trial—Items 6 and 13—Construction—Increased Fees.

Motion by the defendants for an increased counsel fee at the trial, under item 13 of the "Tariff of Fees to be Allowed Solicitors in County Courts:" Rules of 1913, pp. 205 et seq.

Item 13 is as follows:—

"Counsel fee at trial, up to $25.00

"Subject to an increase in the discretion of the Judge, in cases involving $200 or more, to a sum not exceeding 50.00

"And in cases involving $400 or more, to a sum not exceeding 70.00

"(In cases where the claim is not a money demand the Judge shall determine the amount involved.)"

The defendants also asked for an increased fee under item 6, which is as follows:—

"Preparation for trial, including notice of trial, notice to produce and admit, subpœnas, and advising on evidence $10.00

"Subject to increase in the discretion of the Judge, in cases involving more than $200, to . . . . 25.00."

The action was for $203, the price of goods sold and delivered at so much per pound. The action failed on the ground that the goods (feathers) were not according to contract.

C. Garrow, for the defendants.

W. Proudfoot jun., for the plaintiff.

DOYLE, Co.C.J.:—I consider (a) that the claim herein is simply "a money demand," and that, therefore, by the words in brackets, at the end of item 13, I am impliedly relieved from determining the amount involved: and (b) the plaintiff, having sued for that amount, as the value of the goods in question,

would, ipso facto, be concluded from disputing that $200 was involved, even if I were wrong in holding that the claim was "a money demand," within the above-mentioned paragraph.

The trial occupied about four hours.

I allow $40 increased counsel fee; and $15 fee on preparation for trial.

DOYLE, Co.C.J. JUNE 4TH, 1914.

DAER v. THOMPSON.

Costs—County Courts—Tariff of Fees—Counsel Fee at Trial—Item 13—Construction—Case "Involving $200 or more"—Action for Damages—Amount of Verdict—Increased Fee.

Motion by the plaintiff for an increased counsel fee at the trial, under item 13 of the "Tariff of Fees to be Allowed Solicitors in County Courts:" Rules of 1913, pp. 205 et seq. See the preceding case.

C. Garrow, for the plaintiff.

W. Proudfoot jun., for the defendant.

DOYLE, Co.C.J.:—This was an action for trespass to land, in which the plaintiff claimed $500 damages for the trespass, and the value of a building taken from his land and detained. The value of the building was by the evidence variously estimated at from $50 to $100.

The defendant invited half a dozen, or more, of his neighbours, and forcibly, and in defiance of a personal warning given by the plaintiff to all engaged in the trespass, entered the plaintiff's land and moved therefrom the above-mentioned building, and retained it. The defendant set up some claim of right to the building, on the ground of purchase of it from the plaintiff's brother, who, with the plaintiff's permission, had used it in connection with the adjoining piece of land then owned by the brother, and subsequently sold by him to the defendant, before the trespass.

The case was tried by me without a jury; and the plaintiff got a verdict, and $125 damages. The trial took a day. The evidence shewed that the defendant's assistants in the trespass jeered at the plaintiff when he went out and forbade the tres-

pass. I refer to this as shewing aggravation, as well as the violence above-mentioned, all of which might well have justified a verdict for $200 damages and upwards, including the value of the building, which, under the circumstances, should not "be weighed in golden scales."

I think that, in such a case as this, not simply the amount claimed, nor the sum recovered, but the bona fide amount reasonably in dispute, is what is "involved." And, although the verdict as here, may be for less than $200, yet the contest may really involve $200 and upwards.

I do not feel embarrassed in the opinion at which I have arrived by Re Kirk, 6 O.W.N. 346. There the words of the Act under consideration by Mr. Justice Kelly are: "If the amount of the claim, or the part of it which is contested," etc. The decision there turned upon the part of the claim which was "contested," and which was only $194.

There is no such defined and easy road to the interpretation of the tariff item in question.

The judgment of Meredith, C.J., in Lambert v. Clarke, 7 O.L.R. 130, is interesting, as shewing indirectly how the language of the tariff might be simplified.

I allow $50 increased counsel fee. No application was made for fee preparing for trial, it having been overlooked, as counsel subsequently informed me.

CORRECTION.

In RE NEAL AND TOWN OF PORT HOPE, ante 701, at p. 704, line 21, the word "practically" should be "particularly."

INDEX

The names of cases which have been reported in the Ontario Law Reports are followed by a reference to the volume and page; the names of cases to be reported later in the Ontario Law Reports are marked *.

AFFIDAVITS.

See Trial, 4.

AGENT.

See Contract, 1—Fraud and Misrepresentation, 4—Principal and Agent—Sale of Goods, 2—Writ of Summons, 1.

AGREEMENT.

See Contract.

ALIMONY.

See Husband and Wife.

AMENDMENT.

See Contract, 11—Criminal Law, 4—Principal and Agent, 2—Trusts and Trustees, 2—Vendor and Purchaser, 9.

ANIMALS.

See Contract, 26.

ANNEXATION.

See Highway, 8.

ANNUITY.

See Will, 3, 5, 13.

APPEAL.

1. To Appellate Division—Leave to Appeal from Order of Judge in Chambers—Rule 507—Refusal of Leave—Particulars of Statement of Claim—Practice. *Pierce* v. *Grand Trunk R.W. Co.*, 6 O.W.N. 128.—BRITTON, J. (Chrs.)

2. To Appellate Division—Leave to Appeal from Order of Judge in Chambers—Writ of Summons—Service on Defendants out of Jurisdiction—One Defendant in Jurisdiction—Proper Parties—Rule 25—Conditional Appearance—Rule 48—Refusal of Leave to Appeal. *Bain* v. *University Estates Limited and Farrow, Connor* v. *West Rydall Limited and Farrow*, 6 O.W.N. 79.—MIDDLETON, J. (Chrs.)

3. To Appellate Division—Leave to Appeal from Order Pronounced in Court Issued as Chambers Order—Extension of Time—Leave to Issue Execution upon Judgment Twenty Years Old. *Joss* v. *Fairgrieve*, 6 O.W.N. 640.—MIDDLETON, J.

4. To Judge of High Court Division—Allowance by Surrogate Court Judge of Contested Claim against Estate of Deceased Person—Surrogate Courts Act, R.S.O. 1914 ch. 62, sec. 69, sub-sec. 6—Right of Appeal by Administrators—Amount Involved. *Re Kirk*, 6 O.W.N. 346. KELLY, J.

5. To Judge of High Court Division—Master's Report—Items of Claim. *Re Murdock Brothers' Estate, Donovan's Claim*, 6 O.W.N. 377.—KELLY, J.

6. *To Supreme Court of Canada—Bond Filed as Security for Judgment and Costs of Appeal—Judgment Set aside by Supreme Court—Costs to Abide Event of New Trial—Liability on Bond Confined to Costs of Appeal—Retention of Bond to Answer Costs in Event of Ultimate Success of Respondent—Practice.*]—The plaintiff recovered judgment at the trial. This was affirmed by the Appellate Division. The defendant appealed to the Supreme Court of Canada; that Court set aside the judgment and directed a new trial; the costs of the former trial and of the appeals to abide the result of the new trial. The new trial not having taken place, the defendant asked to have the bond filed by him upon the appeal to the Supreme Court of Canada delivered up to be cancelled—that bond being security for the verdict and judgment had and set aside, and also for such costs as might be awarded upon the appeal:—*Held*, that there could be no liability upon the bond, except for the costs of the appeal, for the bond was not security for any judgment yet to be recovered; but, if the judgment upon the new trial should be in favour of the plaintiff, the costs of the appeal to the Supreme Court of Canada would become payable by the defendant, and would be payable by virtue of the judgment of the Supreme Court of Canada, and be within the terms of the bond; and, therefore, the bond should remain until the ultimate disposition of the action and until the plaintiff, if he recovered, had an opportunity of having his claim against the sureties determined in a way which would bind them. *Dicarllo* v. *McLean*, 6 O.W.N. 290.—MIDDLETON, J. (Chrs.)

See Assignments and Preferences, 2, 5, 6—Company, 2—Contract, 12, 16, 20, 22—Costs, 2—Execution, 3—Fraud and Misrepresentation, 4, 5, 6—Highway, 1, 2, 6, 7—Husband and Wife, 1—Injunction, 1—Master and Servant, 13, 14, 15, 19—Municipal Corporations, 11—Negligence, 1—Partnership, 2—Pleading, 1—Railway, 3, 6, 8—Reference—Solicitor, 1, 2—Trespass to Land—Vendor and Purchaser, 8, 9—Water and Watercourses, 1-4—Will, 24.

APPEARANCE.

See Appeal, 2—Pleading, 2—Practice, 2—Writ of Summons, 2, 3.

APPELLATE DIVISION.

See Appeal.

APPROPRIATION OF PAYMENTS.

See Vendor and Purchaser, 3.

ARBITRATION AND AWARD.

1. *Action to Enforce Award or Valuation Made by two of three Arbitrators or Valuers — Construction of Submission-agreement—Validity of Award or Valuation — Claim for Reformation of Agreement—Evidence of Intention—New Trial.*]—In an action to enforce an award or valuation made by two or three arbitrators or valuers, it was *held*, that no case was made for a reformation of the written agreement of submission; and, also, dealing with the construction of that agreement, that evidence of the intention of the parties could not be given: the Court could not look at the first draft of the agreement for light as to the construction; all that the Court could do was to construe the agreement. —The agreement provided for a reference of the question of the amount of compensation to be paid for land taken for a railway to the determination of H., as valuer appointed by the railway company, and G., as valuer appointed on behalf of the owner, and M., as third valuer; that if H. or G. died or refused or became incapable to act, another valuer should be appointed in his place by the party who appointed him, and if M. died or refused, etc., a Judge should appoint a third valuer in his place; but before this new appointment could be made by a Judge, the two valuers appointed by the parties were to have an opportunity of agreeing upon the amount of compensation, and if they failed to agree they might themselves appoint a third valuer, in which case the decision of any two should be conclusive and binding without appeal; that the fees of all the valuers should be paid by the company; that the decision of "the said valuers" should be final, and there should be no "appeal from the decision of the said valuers or any two of them;" that, upon tender of the amount of compensation fixed by the said valuers with interest the owner would convey. There was also a paragraph providing for a view by the valuers and for the calling of such witnesses and the taking of such evidence or statements as the valuers, "or a majority of them, may think proper," etc.:—*Held*, upon the construction of this agreement, that it provided for a valuation by the valuers named therein or

ASSIGNMENTS AND PREFERENCES.

1. *Action Brought by Assignee for Benefit of Creditors—Appeal from Judgment at Trial Dismissing Action—Abandonment by Assignee—Order of County Court Judge Giving Creditor Leave to Proceed—Jurisdiction — Condition Precedent —Request to Assignee to Proceed—Refusal—Assignments and Preferences Act, R.S.O.* 1914 *ch.* 134, *sec.* 12 (2).]—The plaintiff, as assignee of a man who made an assignment for the benefit of creditors, under the Assignments and Preferences Act, brought this action to set aside a mortgage made by the assignor to the defendant. The trial Judge dismissed the action; the plaintiff launched an appeal, but afterwards notified the defendant that he did not intend to proceed with it. A creditor of the assignor then obtained from a County Court Judge an order, under subsec. 2 of sec. 12 of the Act (R.S.O. 1914 ch. 134), allowing him (the creditor) to intervene and prosecute the appeal at his own expense:—*Held*, upon a motion by the defendant to quash the appeal, that the order of the County Court Judge was made without jurisdiction, the sub-section requiring that a request to the assignee to proceed shall be made by the creditor and refused by the assignee before the jurisdiction of the Judge arises. The motion to quash was adjourned to enable the creditor to take proper proceedings *Maher* v. *Roberts*, 6 O.W.N. 245.—App. Div.

2. Assignment for Benefit of Creditors—Order of County Court Judge Allowing Creditor to Sue in Name of Assignee—Leave to Appeal—Assignments and Preferences Act. *Re Taylor*, 6 O.W.N. 175.—Falconbridge, C.J.K.B. (Chrs.)

3. *Assignment for Benefit of Creditors—Claims upon Insolvent Estate—Contestation by Creditor in Name of Assignee—Order of County Court Judge Permitting—Jurisdiction—Assignments and Preferences Act, R.S.O.* 1914 *ch.* 134, *sec.* 12, *sub-secs.* 1, 2—*Costs.*]—Under sec. 12 of the Assignments and Preferences Act, R.S.O. 1914 ch. 34, a County Court Judge made an order giving a creditor of an insolvent leave to contest certain claims of alleged creditors upon the insolvent's estate in the hands of an assignee for the general benefit of creditors under the Act:—*Held*, upon an appeal by the assignee from this order (for which leave was given by Falconbridge, C.J.K.B., 6 O.W.N. 75, ante 2), that sub-secs. 1 and 2 of sec. 12 must be read together; and, so reading them, the proceeding contemplated by sub-

AUTOMOBILE.

See Contract, 22—Insurance, 2—Motor Vehicles Act.

AWARD.

See Arbitration and Award.

BAIL.

See Criminal Law, 5.

BAILMENT.

See Contract, 21—Railway, 3.

BALLOT.

See Municipal Corporations, 5, 16.

BANKRUPTCY AND INSOLVENCY.

See Assignments and Preferences—Husband and Wife, 5.

BANKS AND BANKING.

See Bills and Notes.

BENEVOLENT SOCIETY.

See Injunction, 2—Insurance, 3, 4, 5.

BEQUEST.

See Will.

BETTING.

See Criminal Law, 3.

BILLS AND NOTES.

Cheque—Dishonour—Delay in Presentment—Unreasonableness—Banks and Banking—Bills of Exchange Act, secs. 101, 121, 126—Liability of Endorser—Protest—Clearing House. **Harris Abbatoir Co.* v. *Maybee & Wilson and Boyd*, 6 O.W.N. 468.—App. Div.

2. Cheque—Dishonour—Presentment — Notice—Time — Discharge of Endorsers—Bills of Exchange Act, sec. 86—Clearing House Regulations—Canadian Bankers' Association—Incorporating Act, 63 & 64 Vict. ch. 93(D.) **Bank of British North America* v. *Haslip*, **Bank of British North America* v. *Elliott*, 6 O.W.N. 466.—App. Div.

3. Promissory Note—Action against Endorser—Absence of Presentment and Notice of Dishonour—Waiver—Conduct — Note Made by Company—Evidence—Assignment by Company for Benefit of Creditors—Relation of Endorser to Company. *Heughan* v. *Short and Binder*, 6 O.W.N. 545.—App. Div.

BUILDINGS.

1. Encroachment on Land of Another—Street-line—Boundaries—Surveys—Dedication—Presumption — Acquiescence in Public User—Conventional Boundary—Projecting Eaves—Discharge of Water—Obstruction to Light—Easement—Implied Grant—Presumption of Intention—Injunction—Damages—Costs. *Rous* v. *Royal Templar Building Co.*, 6 O.W.N. 498.—MIDDLETON, J.

2. Wall between Buildings on City Street—Failure to Establish as Party Wall—Boundary between Lots—Method of Ascertainment—Disappearance of Original Monuments—Mode of Survey—Surveys Act, R.S.O. 1914 ch. 166, sec. 40—Inapplicability—Easement—Injunction. **Home Bank of Canada* v. *Might Directories Limited*, 6 O.W.N. 277.—APP. DIV.

See Contract, 20—Dower—Municipal Corporations, 6—Negligence, 4—Vendor and Purchaser, 5.

BY-LAWS.

See Company, 8—Highway, 1, 4, 8—Mortgage, 4—Municipal Corporations—Street Railways, 2, 3.

CALLS.

See Company, 5, 6, 7.

CANADIAN BANKERS' ASSOCIATION.

See Bills and Notes, 2.

CANCELLATION.

See Vendor and Purchaser.

CARETAKER.

See Limitation of Actions, 2.

CARRIERS.

See Contract, 1—Railway, 2, 3.

CASES.

Ainslie Mining and R.W. Co. v. McDougall, 42 S.C.R. 420, explained and distinguished.]—See MASTER AND SERVANT, 10.

Bain v. Fothergill, L.R. 7 H.L. 158, followed.]—See VENDOR AND PURCHASER, 15.

Delap v. Charlebois (1899), 18 P.R. 417, distinguished.]—See SOLICITOR, 2.

CHILDREN'S PROTECTION ACT.

See Infant, 1, 2.

CLEARING HOUSE.

See Bills and Notes, 1, 2.

CODICIL.

See Will.

COLLISION.

See Supreme Court of Ontario.

COMMISSION.

See Company, 2, 11—Contract, 19—Judgment, 5—Principal and Agent.

COMMON BETTING HOUSE.

See Criminal Law, 3.

COMMON EMPLOYMENT.

See Master and Servant, 10.

COMPANY.

1. Contracting Company—Contract Taken by Majority of Directors as Individuals—Duties and Liabilities of Directors—Trust—Rights of Minority Shareholders — Evidence — Conflict—Finding of Trial Judge. *Cook* v. *Deeks*, 6 O.W.N. 590.—MIDDLETON, J.

2. Managing Director — Transactions with — Claims and Cross-claims—Account — Mortgage — Credits—Salary — Commission—Findings of Trial Judge—Variation on Appeal. *Saskatchewan Land and Homestead Co.* v. *Moore*, 6 O.W.N. 100.—APP. DIV.

3. Mortgage Made by Mining Company to Promoters and Owners of Stock—Action by Creditor to Set aside—Advances Made by Promoters—Judgment in Separate Action for Enforcement of Mortgage—Ultra Vires Transaction — Status of Plaintiff to Attack—Winding-up of Company—Judgment Declaring Mortgage Void in Part—Mortgage to Stand as Valid Security for Liabilities of Company Cancelled when Mortgage Executed. *Northern Electric and Manufacturing Co. Limited* v. *Cordova Mines Limited*, 6 O.W.N. 210, 31 O.L.R. 221—APP. DIV.

4. Prospectus—Misrepresentation as to Existence of Patent—Purchase of Shares—Rescission—Fraudulent Misrepresentation by Agent as to Business of Company—Materiality—

ectors—Minutes—Entries in Books — Ontario Companies Act, sec. 121—Winding-up Act, sec. 144—Repudiation of Liability—Compromise of Liability—Validity. **Re International Electric Co. Limited, McMahon's Case,* 6 O.W.N. 321.—MEREDITH, C.J.C.P.

11. Winding-up—Preferred Claim for Wages—Dominion Winding-up Act, sec. 70—Commercial Traveller—Payment by Commission—Time and Manner of Making Sales for which Claim Made. *Re Hartwick Fur Co. Limited, Murphy's Claim,* 6 O.W.N. 363.—KELLY, J.

See Bills and Notes, 3—Contract, 1, 31—Executors and Administrators, 1, 2—Fraud and Misrepresentation, 2—Parties, 2—Principal and Agent, 3—Unincorporated Society—Vendor and Purchaser, 1—Writ of Summons, 1.

COMPENSATION.

See Highway, 2—Municipal Corporations, 11—Railway, 6, 7.

COMPROMISE.

See Company, 10—Municipal Corporations, 13.

COMPUTATION OF DAYS.

See Contract, 21.

COMPUTATION OF DOWER.

See Dower.

CONDITIONAL APPEARANCE.

See Appeal, 2—Pleading, 2—Practice, 2—Writ of Summons, 2, 3, 4.

CONDITIONAL SALE.

See Sale of Goods, 3.

CONSENT JUDGMENT.

See Municipal Corporations, 13.

CONSOLIDATION OF ACTIONS.

See Pleading, 2.

CONSPIRACY.

See Fraud and Misrepresentation, 5—Mortgage, 3.

CONSTITUTIONAL LAW.

See Criminal Law, 1.

CONTEMPT OF COURT.

Disobedience of Injunction Order—Intentional Breach—Benefit

CONTINGENT REMAINDER.

CONTRACT.

7. Building Contract—Contractor Delayed in Performance of Work by Delay of Prior Contractor—Claim for Damages —Clause in Contract Exempting Owner—Change in Circumstances—Extras—Special Items—Payment into Court —Costs. *Webb* v. *Pease Foundry Co.*, 6 O.W.N. 416.—BRITTON, J.

8. Construction—Agreement for Release of Rights under Previous Agreement — Nature and Effect — Dependency on Agreement for Sale of Land—Cancellation of Latter Agreement—Effect of. *Clark* v. *Robinet and Healy*, 6 O.W.N. 66.—APP. DIV.

9. Construction—Scope — Partnership—Contemplated Profits from Oil Leases and Agreements—"Extensions"—Profits from Natural Gas Leases and Agreements—"Oil and its Products." *Hay* v. *Coste*, 6 O.W.N. 443.—MIDDLETON, J.

10. Conveyance of Land to Defendant—Security for Moneys Advanced—Binding Agreement to Convey—Tender of Amount of Advances—Interest — Costs — Counterclaim. *Robinett* v. *Marentette*, 6 O.W.N. 606.—LENNOX, J.

11. Dealing with Lands—Share of Profits—Account—Amendment. *Drake* v. *Brady*, 6 O.W.N. 309.—FALCONBRIDGE, C.J.K.B.

12. Exchange of Horses—Evidence—Finding of Fact of Trial Judge—Appeal. *Shaw* v. *Torrance*, 6 O.W.N. 172, 403.—MIDDLETON, J.—APP. DIV.

13. Exhibition "Concession"—Restriction on Sale of Certain Kind of Food—Sale Stopped by Manager of Exhibition—Sole Judge and Interpreter—Bona Fides—Reasonable Conduct—Domestic Forum—Action for Damages—Dismissal. *Hopkins* v. *Canadian National Exhibition Association*, 6 O. W.N. 71.—APP. DIV.

14. Formation of Contract—Correspondence—Consensus as to Quantity of Goods—Evidence — Onus — Counterclaim — Costs. *Canadian Malleable Iron Co.* v. *Louden Machinery Co.*, 6 O.W.N. 722.—FALCONBRIDGE, C.J.K.B.

15. Manufacture and Delivery of Lumber—Shipment—Payment for Lumber Delivered—Inspection of Lumber—Interest. *Olds* v. *Owen Sound Lumber Co.*, 6 O.W.N. 241, 586.—MIDDLETON, J.—APP. DIV.

16. Manufacturing Lumber — Quantity and Price—Measurements—Extra Payment or Bonus—Voluntary Promise—Absence of Consideration—Non-performance of Contract—Non-compliance with Condition—Termination by Consent—Reservation of Rights—Findings of Trial Judge—Variation on Appeal. *Orton* v. *Highland Lumber Co.*, 6 O.W.N. 470.—App. Div.

17. Municipal Corporation — Electric Light Company — Distribution of Electricity—Overhead System — Erection of Poles in City Streets—45 Vict. ch. 19—R.S.O. 1877 ch. 157, sec. 54—Absence of Formal Agreement Evidencing Consent of Municipal Corporation to Use of Streets—Absence of Provision for Determination of Occupation — Implied Agreement and Consent—Extension of System not Limited to Underground Conduits—Implied Term of Supervision and Direction of Municipal Authorities—Covenant to Remove Specific Poles—Knowledge of Municipality of Operations of Company—Estoppel — Application of Right to Erect Poles to Extended Area of City—Injunction—Damages. **Toronto Electric Light Co. Limited* v. *City of Toronto*, 6 O.W.N. 349.—Middleton, J.

18. Promissory Note—Partnership—Liability — Fraud—Findings of Fact of Trial Judge. *Stimson* v. *Baugh and Proctor*, 6 O.W.N. 264.—Middleton, J.

19. Purchase of Land for Speculative Purpose—Agreement to Divide Profits—Absence of Consideration—Misrepresentation — Secret Commission. *Marcon* v. *Coleridge*, 6 O.W.N. 608.—Lennox, J.

20. Removal of Buildings—Default and Delay—Provision for Liquidated Damages—Construction — Actual Damage — Proof of—Finding of Fact of Trial Judge—Appeal—Third Party—Indemnity—Costs. **St Catharines Improvement Co. Limited* v. *Rutherford*, 6 O.W.N. 87, 568.—Falconbridge, C.J.K.B.—App. Div.

21. *Rent of Plant at Sum per Diem—Computation of Days—Construction of Written Agreement—Inclusion of Sundays—Deductions from Contract-price.*]—This action was brought upon a written agreement by which the plaintiff rented to the defendants an excavating plant. The rental stipulated was $62 per day, "to start immediately on outfit leaving main line and to run each and every day:"—*Held*, that, in computing the days for which payment was to be made,

Sundays were to be included, notwithstanding that the law would not suffer any work to be done upon those days. That was the meaning of the agreement, and the intention of the parties, and no case was made for reformation. *Gibbon* v. *Michael's Bay Lumber Co.* (1885), 7 O.R. 746, followed. *Perry* v. *Brandon*, 6 O.W.N. 621.—MIDDLETON, J.

22. Sale of Motor Car—Second-hand Car Taken in Part Payment—Credit of Fixed Amount, to be Increased when Second-hand Car Sold—Refusal of Offer to Buy Car—Evidence — Construction of Agreement — Finding of Trial Judge—Reversal on Appeal. *Ramsay* v. *Crooks*, 6 O.W.N. 180.—APP. DIV.

23. Sale of Right to Manufacture and Sell Patented Envelopes —Agreement to Pay Royalties—Breach — Justification—Representations — Post Office Regulations — Evidence—Repudiation of Contract—Grant to Another of Exclusive Right to Manufacture and Sell—Duty to Mitigate Loss. *Neostyle Envelope Co.* v. *Barber-Ellis Limited*, 6 O.W.N. 43. —APP. DIV.

24. Sale of Standing Timber—Construction of Agreement — Executed Contract — Immediate Sale—Ascertained Chattels upon Severance — Removal of Timber and Payment of Price—Property Passing—Possession—Vendor's Lien—Right to Detain—No Right to Sell—Subsequent Sale — Notice—Action of Trover — Conversion—Bona Fide Purchaser for Value without Notice—Claim of Defendants against Third Party. **McGregor* v. *Whalen*, 6 O.W.N. 553. —APP. DIV.

25. Sale of Timber—Delay in Delivery—Inspection—Time of Shipment — Evidence—Custom of Trade. *Canada Pine Lumber Co.* v. *McCall*, 6 O.W.N. 483.—FALCONBRIDGE, C.J. K.B.

26. Sale of Valuable Animals—Selection by Vendor—Failure to Deliver—Construction of Agreement—"Unforeseen Occurrence or Accident"—Breach of Contract—Damages—Loss to Purchaser. *Coffin* v. *Gillies*, 6 O.W.N. 643.—LATCHFORD, J.

27. Services Rendered—Material Supplied—Money Paid—Claim for Payment of Balance—Counterclaim. *Fauquier* v. *King*, 6 O.W.N. 310.—SUTHERLAND, J.

28. Settlement of Action—Intervention of Stranger—Promise to Pay Costs—Withdrawal of Action—Performance of Promise—Failure to Prove Promise to Pay Damages—Statute of Frauds. *Gnam* v. *McNeil*, 6 O.W.N. 223, 315.—BRITTON, J.—APP. DIV.

29. Supply of Machinery and Plant—Abatement of Price—Several Issues of Fact—Findings of Trial Judge—Costs. *Allis-Chalmers-Bullock Limited* v. *Algoma Power Co. Limited*, 6 O.W.N. 240.—MIDDLETON, J.

30. Timber—Innocent Misrepresentation as to Quantity—Rectification of Contract—Payment for Value of Work Done—Evidence—Findings of Trial Judge. *Grant Campbell & Co.* v. *Devon Lumber Co. Limited*, 6 O.W.N. 673.—LENNOX, J.

31. Transfer of Company-shares—Sale or Pledge—Evidence—Finding of Fact of Trial Judge—Liability of Pledgee to Account for Price of Shares Sold. *Williamson* v. *Playfair*, 6 O.W.N. 174, 462.—LENNOX, J.—APP. DIV.

32. Work and Labour—Construction of Sewer System for Municipality—Interpretation of Contract—Bonus—Cost of Work—Extras. *Armour* v. *Town of Oakville*, 6 O.W.N. 453.—APP. DIV.

See Arbitration and Award, 1—Company, 1, 5, 8, 9—Covenant—Deed—Executors and Administrators, 1—Fraud and Misrepresentation—Guaranty—Highway, 8—Insurance—Landlord and Tenant—Limitation of Actions, 2—Master and Servant, 1, 2, 4—Mortgage, 4—Partnership—Principal and Agent, 3—Railway, 2, 7—Sale of Goods—Settlement of Action—Street Railways, 2, 3—Trusts and Trustees—Vendor and Purchaser—Warranty.

CONTRIBUTION.

See Negligence, 2—Parties, 2.

CONTRIBUTORIES.

See Company, 10.

CONTRIBUTORY NEGLIGENCE.

See Master and Servant, 7, 14, 17—Negligence, 1, 3—Railway, 10—Street Railways, 1.

CONVERSION.

See Contract, 24—Railway, 3—Will, 6, 7.

CONVERSION OF CHATTELS.

Detention — Damages — Scale of Costs—Set-off—Landlord and Tenant—Removal of Fixtures—Short Forms of Leases Act, 10 Edw. VII. ch. 54, sched. B., cl. 10. *Attenborough* v. *Waller*, 6 O.W.N. 171.—FALCONBRIDGE, C.J.K.B.

CONVICTION.

See Criminal Law—Liquor License Act—Municipal Corporations, 3, 15.

CORROBORATION.

See Contract, 3—Evidence, 1, 3—Executors and Administrators, 1—Gift, 2—Limitation of Actions, 2.

COSTS.

1. Action for Interference with Flow of Water—Sale of Properties of both Parties to Common Purchaser—Action of Parties Rendering Determination of Rights Unnecessary—Motion for Disposal of Costs of Action—Dismissal of Action without Order as to Costs—Judicial Discretion. *McClellan* v. *Powassan Lumber Co.*, 6 O.W.N. 302.—MIDDLETON, J.

2. Appeal to Privy Council—Judgment — Interpretation of—Costs Incurred in Court of Appeal—Taxation. *Hyatt* v. *Allen*, 6 O.W.N. 660.—MIDDLETON, J. (Chrs.)

3. County Courts—Tariff of Fees—Counsel Fee at Trial—Fee for Preparation for Trial—Items 6 and 13—Construction—Increased Fees. *Thomson* v. *Canada Feather and Mattrass Co.*, 6 O.W.N. 723.—DOYLE, Co.C.J.

4. County Courts—Tariff of Fees—Counsel Fee at Trial—Item 13—Construction—Case "Involving $200 or more"—Action for Damages—Amount of Verdict—Increased Fee. *Daer* v. *Thompson*, 6 O.W.N. 724.—DOYLE, Co.C.J.

5. Motion for Judgment on Further Directions—Executor—Costs of Reference and Motion. *Wood* v. *Brodie*, 6 O.W.N. 169.—BRITTON, J.

6. Motion to Set aside Award—Costs of Reference—Motion to Vary Judgment. *Wright* v. *Toronto R.W. Co.*, 6 O.W.N. 486.—LENNOX, J.

7. Security for Costs—Evidence of Plaintiff's Residence out of the Jurisdiction—Insufficiency—Property in Jurisdiction—Affidavits. *Patterson* v. *Allan*, 6 O.W.N. 125:—LENNOX, J. (Chrs).

8. Security for Costs—Increased Security—Admissions—Increase of Costs Occasioned by Counterclaim—Admitted Balance Due on Plaintiffs' Claim. *Reynolds* v. *Walsh*, 6 O.W.N. 310.—MASTER IN CHAMBERS.

9. Summary Disposition of Costs of Action Rendered Unnecessary by other Proceedings—Rule as to Costs—Person in the Wrong to Answer. *Anderson* v. *Grand Trunk R.W. Co.*, 6 O.W.N. 123.—KELLY, J. (Chrs.)

See Appeal, 6—Arbitration and Award, 2—Assessment and Taxes—Assignments and Preferences, 3—Bills and Notes, 6—Buildings, 1—Contempt of Court—Contract, 3, 5, 6, 7, 10, 14, 20, 28, 29—Conversion of Chattels—Criminal Law, 4—Evidence, 3—Execution, 2—Highway, 1, 8—Insurance, 4, 5—Judgment, 1, 3—Landlord and Tenant, 3, 5—Master and Servant, 2, 8, 15—Mortgage, 1—Municipal Corporations, 6, 9, 10, 11, 15—Municipal Elections, 3—Negligence, 2—Partition—Partnership, 1—Principal and Agent, 1, 2, 3—Railway, 3, 9, 11, 12—Schools—Settlement of Action—Solicitor—Surrogate Courts—Title to Land—Trespass to Land—Trial—Trusts and Trustees, 2, 4—Vendor and Purchaser, 3, 4, 7, 9, 11, 15—Warranty—Will, 1, 3, 19, 23, 25.

COUNSEL FEES.

See Costs, 3, 4.

COUNTERCLAIM.

See Company, 5—Contract, 6, 10, 14, 27—Costs, 8—Deed, 2—Fraud and Misrepresentation, 5—Landlord and Tenant, 2, 3—Master and Servant, 2—Principal and Agent, 2—Sale of Goods, 1—Trespass to Land—Unincorporated Society.

COUNTY COURT JUDGE.

See Assignments and Preferences, 1, 2, 3.

COUNTY COURTS.

See Costs, 3, 4.

COURT OF APPEAL.

See Criminal Law, 3.

COURTS.

See Appeal—Costs—Marriage—Surrogate Courts.

COVENANT.

1. Restraint of Trade—Agreement between Master and Servant—Sale of Goods—Prohibition Extending to whole Dominion of Canada—Interim Injunction. *Lovell* v. *Pearson*, 6 O. W.N. 357.—KELLY, J.

2. Restraint of Trade—Agreement between Master and Servant Made after Commencement of Employment—Consideration — Servant Employed in Soliciting Orders for Master's Goods—Undertaking not to "Engage in" Similar Business within Limited Territory for Defined Period after Termination of Employment—Employment by Another Person in Similar Business—Breach of Agreement—Injunction. **Skeans* v. *Hampton* 6 O.W.N. 463.—App. Div.

See Contract, 17—Landlord and Tenant, 3, 6—Mortgage, 1, 2—Vendor and Purchaser, 14, 18.

CRIMINAL LAW.

1. *Conviction for Crime—Motion to Quash—Practice—Certiorari—Rules of Supreme Court of Ontario,* 1908—*Criminal Code, sec.* 576—*Authority to Make Rules—Judicature Act, sec.* 63—*"Magistrate"—"Justices of the Peace"—Powers of Provincial Legislature—Criminal Procedure—Power to Regulate Practice in Certiorari—Power to Abolish Writ.*]—Upon a motion by the defendant for a writ of *certiorari* to remove a criminal conviction into the Supreme Court of Ontario, with a view to having it quashed, it was contended that no Court such as that authorised by sec. 576 of the Criminal Code to make Rules respecting the practice in criminal matters in Ontario now exists; and, therefore, that the Rules made in 1908 had ceased to have any effect; and that sec. 63 of the Judicature Act was not applicable, because it dealt with convictions made by a "magistrate" only, whilst the conviction in question was made by "Justices of the Peace;" and the defendant sought to revert to the practice in force before the Rules of 1908:—*Held,* that, if the Rules of 1908 were well made, they would not fall even if there were no Court now competent to make such Rules (Rules 1284 and 1287 being those of importance). There was no reason why the Rules should not be applied by any Court in the Province having power to quash convictions. But in fact the same Court still existed with the same powers; and, even if quite a new Court had come into being, there was no reason why such a Court should not adopt as its practice the procedure embodied in the Rules of 1908. The provisions of the Judicature Act had no application at all—being a provincial enactment, it can have no effect on procedure in criminal matters, which a motion to quash a conviction for a crime must be.—*Quære,* however, whether there was any power to make the Rules of

might have appealed to a local Court, which would have wider power upon the appeal than the Supreme Court on a motion to quash, and he should have done so. *Rex* v. *Roach*, 6 O.W.N. 630.—MEREDITH, C.J.C.P. (Chrs.)

5. Prisoner Serving Sentence Released on Bail—Escape—Recommittal—Interruption of Period of Imprisonment—Liability to Serve out Sentence—Habeas Corpus—Prisons and Reformatories Act, R.S.C. 1906 ch. 148, sec. 3—Criminal Code, secs. 185, 196. *Rex* v. *Rapp*, 6 O.W.N. 69, 31 O.L. R. 117.—APP. DIV.

See Liquor License Act—Municipal Corporations, 3, 15.

CROWN.

See Highway, 4.

CROWN GRANT.

See Water and Watercourses, 1.

CROWN LANDS.

See Trusts and Trustees, 2.

CUSTODY OF INFANTS.

See Infant.

CUSTOM OF TRADE.

See Contract, 25.

DAM.

See Negligence, 1—Water and Watercourses, 2, 4.

DAMAGES.

1. Injury to Land by Excavation—Deprivation of Lateral Support—Subsidence—Expense of Restoration—Cause of Action—Judicature Act, sec. 18 — Actual Damage — Future Damages — Injunction — Assessment of Damages Equally against Separate Defendants. *Gage* v. *Barnes*, 6 O.W.N. 232.—LENNOX, J.

2. Negligence—Street Railway Company—Injury to Property—Moneys Received from Insurance Company — Evidence. **Millard* v. *Toronto R.W. Co.*, 6 O.W.N. 519.—APP. DIV.

See Buildings, 1—Contract, 1, 2, 4, 5, 6, 7, 13, 17, 20, 26—Conversion of Chattels—Costs, 4—Evidence, 3—Execution, 2—Fatal Accidents Act—Fraud and Misrepresentation, 4, 5, 6—Highways, 5, 7—Insurance, 4—Landlord and Tenant, 2, 3, 5—Limitation of Actions, 3—Master and Servant—Muni-

DEPOSIT.

See Fraud and Misrepresentation, 5—Vendor and Purchaser, 1.

DEPUTY REEVE.

See Municipal Elections, 1.

DESERTION.

See Husband and Wife, 2.

DETINUE.

See Conversion of Chattels.

DEVISE.

See Contract, 3—Will.

DEVOLUTION OF ESTATES ACT.

See Will, 16.

DIRECTORS.

See Company—Parties, 2.

DISCHARGE OF MORTGAGE.

See Account.

DISCRETION.

See Costs, 1—Executors and Administrators, 2—Highway, 7—Practice, 2—Reference—Vendor and Purchaser, 15—Will, 3, 20.

DISTRIBUTION OF ESTATES.

1. Inquiry as to Heirs-at-Law and Next of Kin—Master's Report—Motion to Confirm—Absentee—Failure to Advertise for—Declaration of Death not Justified—Reference back. *Macdonald* v. *Boughner*, 6 O.W.N. 172.—KELLY, J.

2. Intestate Succession—Shares of Next of Kin Presumed to be Dead — Nephews and Nieces — Exclusion of Children of Nephews and Nieces. *Re Watkins*, 6 O.W.N. 421.—MIDDLETON, J. (Chrs.)

See Will.

DIVORCE.

See Husband and Wife, 3.

DOMESTIC FORUM.

See Contract, 13.

DONATIO MORTIS CAUSA.

See Gift, 2.

DOWER.

Sum in Gross in Lieu of—Principle of Computation—Dower Act, 9 Edw. VII. ch. 39, sec. 23—Alienation of Land by

Necessary—Action for Money Lent. *Bonnell* v. *Smith*, 6 O.W.N. 414.—MIDDLETON, J.

2. Conflict—Written Instrument—Registration against Land—Cloud on Title—Finding of Trial Judge—Removal of Instrument from Register. *Swartz* v. *Black*, 6 O.W.N. 710.—KELLY, J.

3. Corroboration—Action against Executors—Damages—Costs. *Tancock* v. *Toronto General Trusts Corporation*, 6 O.W.N. 609.—FALCONBRIDGE, C.J.K.B.

4. Foreign Commission—Action to Establish Partnership—Immateriality of Proposed Evidence in View of Question to be First Tried. *Haynes* v. *Vansickle*, 6 O.W.N. 88.—MASTER IN CHAMBERS.

See Arbitration and Award, 1, 2—Assessment and Taxes—Company, 8, 10—Contract, 3, 14, 25—Costs, 7, 8—Criminal Law, 4—Damages, 2—Execution, 1—Executors and Administrators, 1—Fraud and Misrepresentation, 1, 2, 5—Gift, 2—Highway, 2, 4, 5, 6—Insurance, 1, 2—Judgment, 2—Limitation of Actions, 1, 2, 3—Liquor License Act—Master and Servant, 15—Money Lent—Municipal Corporations, 13—Municipal Elections, 1—Railway, 3—Trial, 2, 4—Vendor and Purchaser, 1, 4, 6, 16—Will, 1, 23.

EXCAVATION.

See Damages, 1—Vendor and Purchaser, 11.

EXCHANGE OF GOODS.

See Contract, 12.

EXCHEQUER COURT OF CANADA.

See Supreme Court of Ontario.

EXECUTION.

1. Action for Declaration in Aid—Husband and Wife—Interest of Husband in Land Vested in Wife—Evidence. *Labatt Limited* v. *White*, 6 O.W.N. 127.—LENNOX, J.

2. Judgment — Satisfaction — Interpleader Issue — Fraudulent Claim — Judgment for Instalments of Purchase-price of Land—Resale of Mill on Land by Vendor—Sale of Land—Effect upon Judgment—Judgment for Costs—Damages—Independent Cause of Action—Action on Interpleader Bond—Limitation of Amount Recoverable. *McPerson* v. *United States Fidelity and Guaranty Co.*, 6 O.W.N. 677.—MIDDLETON, J.

EXECUTORS AND ADMINISTRATORS.

EXHIBITION CONCESSION.

EXPLOSIVES.

EXPROPRIATION.

EXTRAS.

FACTORY SHOP AND OFFICE BUILDING ACT.

FALSE REPRESENTATIONS.

FATAL ACCIDENTS ACT.

FENCES.

See Deed, 2—Highway, 5—Trespass to Land.

FIDELITY GUARANTEE POLICY.

See Insurance, 1.

FIRE.

See Master and Servant, 9—Railway, 1.

FIRE INSURANCE.

See Insurance, 2—Mortgage, 1.

FIXTURES.

See Conversion of Chattels.

FORECLOSURE.

See Mortgage, 1, 2.

FOREIGN COMMISSION.

See Evidence, 4.

FOREIGN COMPANY.

See Writ of Summons, 1.

FOREIGN DIVORCE.

See Husband and Wife, 3.

FOREIGN LAND.

See Vendor and Purchaser, 17.

FORFEITURE.

See Insurance, 3—Landlord and Tenant, 3—Vendor and Purchaser, 1, 6, 11.

FRAUD AND MISREPRESENTATION.

1. Action to Recover Moneys Paid by Insurance Company on Fraudulent Claim—Evidence—Discredited Witnesses—Inference from Admitted Facts—Duty of Trial Judge. *Ocean-Accident and Guarantee Corporation* v. *Gilmore*, 6 O.W.N. 255.—MIDDLETON, J.

2. Inducement to Buy Company-shares—Proof of Fraud—Onus—Evidence—New Trial. *Smith* v. *Haines*, 6 O.W.N. 150.—APP. DIV.

3. Option for Purchase of Land—Acceptance—Resale at Increased Price — Purchaser for Value without Notice — Remedy of Vendor against Original Purchasers—Payment of Difference in Price—Charge on Mortgage for Amount Due for Principal, Interest, and Costs. *Steers* v. *Howard*, 6 O.W.N. 708.—LENNOX, J.

FRAUDULENT CONVEYANCE.

GIFT.

GUARANTY.

Fraud—Undue Influence—Finding of Trial Judge. *Royal Bank of Canada* v. *Levinson*, 6 O.W.N. 442.—KELLY, J.

See Insurance, 1—Warranty.

GUARDIAN.

See Infant, 4—Will, 15.

HABEAS CORPUS.

See Criminal Law, 2, 5—Infant, 1.

HIGH COURT DIVISION.

See Appeal.

HIGH SCHOOLS ACT.

See Municipal Corporations, 8.

HIGHWAY.

1. Closing and Sale of Unopened Portion of Street as Shewn on Plan — By-law of Council — Order Quashing — Appeal — Order Set aside—Motion to be Renewed before Judge at Trial of Pending Action—Terms—Costs. *Re Jones and Township of Tuckersmith*, 6 O.W.N. 71, 379.—APP. DIV.

2. Closing by Municipality—Injury to Neighbouring Lands—Compensation—Award—Street Closed to Facilitate Railway Construction—Benefit to Property from Railway—Refusal of Arbitrators to Consider—Affirmance on Appeal—Municipal Act, 1913, sec. 325—Nonretroactivity—Evidence—Depreciation of Property in Value. *Re Neal and Town of Port Hope*, 6 O.W.N. 701, 725.—KELLY, J.

3. Electric Lighting Plant Operated by Municipal Corporation —Electric Shock Received by Person Leaning against Pole in Street—Defect—Notice—Nuisance—Findings of Jury—Notice of Action—Time for Bringing Action—Public Authorities Protection Act—Application of—Public Utilities Act —Nonrepair of Highway — Nonfeasance — Misfeasance — Nuisance—Municipal Act, 3 Edw. VII. ch. 19, sec. 606—3 & 4 Geo. V. ch. 43, sec. 2—Nonretroactivity. *Glynn* v. *City of Niagara Falls*, 6 O.W.N. 2, 31 O.L.R. 1.—APP. DIV.

4. Evidence to Establish—Title to Land—Statutes—Surveys—Plan—Patent from Crown—Absence of Proof of Original Survey—Admissibility of Other Plans—Title by Possession—Rights of Crown and Municipality—Municipal Act, 1903,

HIGHWAY CROSSING.

HUSBAND AND WIFE.

1. Alimony—Claim for—Settlement—Repudiation — Claims by Wife against Husband—Statute of Limitations—Evidence —Findings of Trial Judge—Appeal. *Jordan* v. *Jordan*, 6 O.W.N. 543.—App. Div.

2. Alimony—Desertion—Adultery—Amount of Alimony—Judgment—Registration against Land. *Fulford* v. *Fulford*, 6 O.W.N. 330.—Lennox, J.

3. Alimony—Interim Allowance and Disbursements—Motion for —Wife Possessed of Means—Delay in Prosecuting Action—Foreign Divorce. *Rossworm* v. *Rossworm*, 6 O.W.N. 226.—Master in Chambers.

4. Alimony—Quantum of Allowance. *Hudson* v. *Hudson*, 6 O. W.N. 503.—Middleton, J.

5. Voluntary Settlements—Conveyances of Lands by Husband to Wife—Action by Subsequent Execution Creditor to Set aside—Rights of Prior Creditors—Absence of Fraudulent Intent—Evidence—Insolvency—Hazardous Business. *Dancey* v. *Brown*, 6 O.W.N. 137, 31 O.L.R. 152.—App. Div.

IMPROVEMENT OF PUBLIC HIGHWAYS.

See Highway, 7, 8.

IMPROVEMENTS.

See Deed, 1—Dower—Municipal Corporations, 9—Title to Land —Vendor and Purchaser, 7—Will, 8.

IMPROVIDENCE.

See Deed, 1—Gift, 1—Trusts and Trustees, 1.

INDEMNITY.

See Bills and Notes, 5—Contract, 20—Negligence, 2—Parties, 2.

INDEPENDENT CONTRACTOR.

See Master and Servant, 10, 11—Negligence, 4.

INFANT.

1. Custody—Application of Father for Writ of Habeas Corpus —Infant Removed out of Jurisdiction by Foster Parents—Neglected Child—Children's Protection Act of Ontario—Children's Aid Society. *Re Hilker*, 6 O.W.N. 82.—Middleton, J. (Chrs.)

2. Custody—Children's Protection Act of Ontario — Order of Police Magistrate—Application by Father for Custody—

sured to Questions of Insurer—Non-fulfilment of Promises —Change in Salary and Position of Partner without Notice to Insurer—Concealment of Defalcation—Duty to Supply Information not Asked for—Failure to Give Prompt Notice of Defalcation—Extent of Liability—Reference. *Reichnitzer* v. *Employers' Liability Assurance Corporation*, 6 O.W.N. 248.—App. Div.

2. Fire Insurance—Automobile—Addition to Policy of Words "Or Owned by Assured"—Insurance without Reference to Place of Storage—Third Statutory Condition—License of Insurance Company—Confinement to Isolated Risks—Limitation of Amount Recoverable—Buildings not the Property of Assured—Evidence. *Fretts* v. *Lennox and Addington Mutual Fire Insurance Co.*, 6 O.W.N. 13.—App. Div.

3. Life Insurance — Benevolent Society — Member — Status at Time of Death—Annual Payments—Rules of Society—Construction and Operation—Nonretroactivity—Forfeiture or Suspension—Want of Notice—Insurance Corporations Act, 1892, sec. 40(1)—Insurance Act, R.S.O. 1897 ch. 203, sec. 165—Action for Insurance Benefit—Parties—Executors of Assured—Proofs of Loss—Waiver. *Hewitt* v. *Grand Orange Lodge of British America*, 6 O.W.N. 16.—App. Div.

4. Life Insurance—Benevolent Society—Endowment Certificate —Payment to Member on Attaining Certain Age—Change in Constitution—Deprivation of Right—Ultra Vires—Contract to be Bound by Alterations—Death Benefit—Increase in Amounts of Premium Assessments—Intra Vires—Injunction—Damages—Costs. **Grainger* v. *Order of Canadian Home Circles*, 6 O.W.N. 489.—Meredith, C.J.C.P.

5. Life Insurance—Designation by Insured of Wife as Beneficiary under Certificate of Benevolent Society—Subsequent Will Designating another Beneficiary—Trust—Issue—Adjudication—Costs. *Re Reddock and Canadian Order of Foresters*, 6 O.W.N. 307.—Britton, J. (Chrs.)

6. Life Insurance—Failure to Give Affirmative Proof of Death of Assured—Presumption from Long Absence, Unheard of—Evidence—Time-limit for Bringing Action—Insurance Act, R.S.O. 1914 ch. 183, sec. 165—Construction of—Absence of Limitation in Policy—Declaration of Death. *Duffield* v. *Mutual Life Insurance Co. of New York*, 6 O.W.N. 646.—Middleton, J.

3. Settlement of Minutes — Terms — Undertaking — Infants — Costs of Official Guardian. *Moffatt* v. *Grand Trunk R.W. Co.*, 6 O.W.N. 308.—BRITTON, J. (Chrs.)

4. Summary Judgment—Dismissal of Action as Frivolous—Attempt to Re-litigate Questions Disposed of in a Prior Action—Substantial Identity of Causes of Action—Land Titles Act—Caution—Discharge. *Wightman* v. *Coffin*, 6 O.W.N. 112.—KELLY, J.

5. Summary Judgment—Rule 57—Defence—Extension of Time for Payment of Debt—Arbitration—Application of Commissions on Debt—Dispute as to Credit Item—Reference. *A. B. Jardine Co.* v. *Macdonald & Sons, Toledo Pipe Threading Machine Co.* v. *Macdonald & Sons*, 6 O.W.N. 444.—MIDDLETON, J. (Chrs.)

6. Summary Judgment—Rule 577. *McDonald* v. *Miller*, 6 O.W.N. 358.—MIDDLETON, J. (Chrs.)

See Appeal, 3, 6—Assessment and Taxes—Bills and Notes, 5—Company, 3—Costs, 2, 5, 6—Execution, 2, 3—Husband and Wife, 2—Municipal Corporations, 13, 14—Partnership, 3, 4—Practice, 1—Railway, 5—Settlement of Action—Water and Watercourses, 2.

JUDGMENT DEBTOR.

Refusal to be Sworn or Examined—Motion to Commit for Contempt—Dismissal—Order for Further Examination. *Bell* v. *Rogers*, 6 O.W.N. 243.—BRITTON, J.

See Practice, 1.

JUDICIAL DISCRETION.

See Costs, 1.

JURISDICTION.

See Assignments and Preferences, 1, 3—Marriage—Municipal Corporations, 8 — Schools — Street Railways, 2—Supreme Court of Ontario.

JURY.

See Fatal Accidents Act—Highway, 3—Master and Servant, 4-7, 10, 11, 14, 17, 18—Negligence, 1, 4, 5—Principal and Agent, 2—Railway, 4, 5, 10—Street Railways, 1—Trial.

JURY NOTICE.

See Trial, 3, 4.

JUSTICE OF THE PEACE.

See Criminal Law, 1.

KEEPING COMMON BETTING HOUSE.

See Criminal Law, 3.

LACHES.

See Executors and Administrators, 1.

LAND TITLES ACT.

See Injunction, 1—Judgment, 4.

LANDLORD AND TENANT.

1. Building Lease—Assignment or Sublease of Part of Demised Premises—Renewal—Ascertainment of Value of Buildings—Ascertainment of Ground Rent for Renewal Term—Provision for Notice—Failure of Lessor to Give Notice of Intention not to Renew—Valuation—Agreement—Surrender—Possession—Mesne Profits—Rental Value—Reference—Terms. *Ramsay* v. *Proctor*, 6 O.W.N. 428.—MIDDLETON, J.

2. Flooding of Demised Premises—Knowledge of Landlord—Concealment of Defect—Knowledge of Purpose for which Premises Leased—Liability in Damages—Assessment of Damages—Counterclaim. *Miles* v. *Constable*, 6 O.W.N. 362.—KELLY, J.

3. Forfeiture of Lease for Non-payment of Rent—Rent Accrued before Conveyance of the Reversion—Breach of Covenant before Conveyance—Rights of Re-entry—Landlord and Tenant Act, 1 Geo. V. ch. 37, sec. 5—Suspension of Rent—Implied Term of Agreement—Failure to Complete Repairs—Deprivation of Beneficial Occupation—Relief against Forfeiture—Refund of Rent Paid—Trespass—Counterclaim—Damages—Third Party—Breach of Covenant for Quiet Enjoyment—Costs. **Brown* v. *Gallagher & Co. Limited*, 6 O.W.N. 296.—MIDDLETON, J.

4. Lease—Agreement to Determine Tenancy—Surrender by Operation of Law—Authority of Solicitor—Necessity for Writing—Statute of Frauds, R.S.O. 1914 ch. 102, secs. 3, 4. **Re Clancy and Schermehorn*, 6 O.W.N. 478.—APP. DIV.

5. Lease——Option of Purchase of Demised Premises—Covenant not to Assign without Leave—Proviso—Leave Wilfully and Arbitrarily Withheld—Finding of Fact of Trial Judge—Declarations—Damages—Possession—Costs. **Cornish* v. *Boles*, 6 O.W.N. 514.—APP. DIV.

6. Lease—Sublease—Covenant for Quiet Enjoyment—Privilege of Making Fireproof Room—Breach of Covenants—Failure

to Prove. *Dominion Waste Manufacturing Co.* v. *Railway Equipment Co. of Toronto*, 6 O.W.N. 426.—MIDDLETON, J.

7. Overholding Tenant — Tenancy from Year to Year upon Terms of Expired Lease—Provision in Lease for Determination of Tenancy by Notice—Consistency with New Tenancy —Assignee of Reversion Entitled to Benefit of Provision—Landlord and Tenant Act, sec. 5—Time for Giving Notice—"At the End of any one Month." **Re Rabinovitch and Booth*, 6 O.W.N. 58, 31 O.L.R. 88.—APP. DIV.

See Conversion of Chattels — Mortgage, 3 — Vendor and Purchaser, 9.

LANE.

See Way, 1, 2.

LATERAL SUPPORT.

See Damages, 1.

LEADING QUESTIONS.

See Highway, 6.

LEASE.

See Landlord and Tenant—Vendor and Purchaser, 9—Water and Watercourses, 1.

LEAVE TO APPEAL.

See Appeal—Assignments and Preferences, 2—Injunction, 1—Pleading 1.

LEGACY.

See Will.

LICENSE.

See Insurance, 2—Municipal Corporations, 5, 15—Negligence, 3, 5.

LIEN.

See Assessment and Taxes—Contract, 24—Partnership, 4—Vendor and Purchaser, 7—Will, 8.

LIFE INSURANCE.

See Assignments and Preferences, 5—Injunction, 2—Insurance, 3, 4, 5, 6.

LIGHT.

See Buildings, 1.

LIMITATION OF ACTIONS.

1. Claim on Promissory Notes — Acknowledgment in Writing within Six Years before Action Brought—Other Defences—Notes Made in Representative Capacity—Accommodation Maker—Evidence. *British Whig Publishing Co.* v. *Harpell*, 6 O.W.N. 694.—SUTHERLAND, J.

LIQUIDATED DAMAGES.

LIQUOR LICENSE ACT.

LIS PENDENS.

LOCAL OPTION.

LOST GRANT.

LUMBER.

LUNATIC.

Petition for Order Declaring Person of Unsound Mind—Trial of Issue—Dismissal of Petition. *Re Robins*, 6 O.W.N. 359.—MIDDLETON, J. (Chrs.)

See Deed, 1—Gift, 1.

MAGISTRATE.

See Criminal Law, 1, 3, 4—Liquor License Act.

MAINTENANCE.

See Infant, 4—Will, 9, 10.

MALPRACTICE.

See Surgeon.

MANDAMUS.

See Municipal Corporations, 7, 10.

MARITIME LAW.

See Supreme Court of Ontario.

MARRIAGE.

Action for Declaration of Nullity of Marriage of Infant over 18 *—Jurisdiction of Supreme Court of Ontario—Marriage Act, R.S.O.* 1914 *ch.* 148*—Intervention of Attorney-General—Motion by him to Dismiss Action—Right to Intervene before Trial—Secs.* 36 *and* 37 *of Act—Preliminary Question of Law—Determination before Trial of Issues of Fact.*]—This action was brought to obtain a declaration that a pretended marriage between the plaintiff and defendant was null and void, being procured by the defendant by deceit and fraud. The Attorney-General for Ontario was served with notice of trial, pursuant to the Marriage Act, R.S.O. 1914 ch. 148; and, before the action came on for trial, he launched a motion for an order dismissing the action or staying all further proceedings, on the ground that the Supreme Court of Ontario had no jurisdiction to declare void a marriage which had been duly solemnised, unless the case could be brought under sec. 36 of the Marriage Act. (This case could not, because the plaintiff was not, at the time of the ceremony, under 18) :—*Held*, that, under sec. 37 of the Act, the Attorney-General has the right to intervene, not only in a case under sec. 36, but in all cases in which a declaration of the invalidity of a marriage is sought.—*Held*, also, that the right to intervene was not limited to the trial of the action; and the Court could entertain the application of the Attorney-General.—*Held*, also, that the question of jurisdiction

Care on Part of Deceased—Findings of Fact of Trial Judge —Costs. *Soden* v. *Tomiko Mills Limited*, 6 O.W.N. 656.—LENNOX, J.

9. Death of Servant in Master's Burning Building—Absence of Fire-appliances—Non-compliance with Factory Shop and Office Building Act, 3 & 4 Geo. V. ch. 60—Cause of Death —Conjecture—Negligence or Breach of Duty not Proved to be Cause of Death. *Birch* v. *Stephenson*, *McDougall* v. *Stephenson*, 6 O.W.N. 124—FALCONBRIDGE, C.J.K.B.

10. *Injury to and Death of Servant—Action under Fatal Accidents Act—Explosion of Hot Water Range in Hotel Kitchen —Common Law Liability—Employment of Competent Persons by Hotel Company—Independent Contractor—Findings of Jury—Negligence of Fellow-servants—Common Employment—Evidence.*]—The plaintiffs' daughter was killed by the explosion of a hot water range in the kitchen of the defendants' hotel, where she was employed as a servant; and this action was brought under the Fatal Accidents Act to recover damages for her death. The plaintiffs did not claim under the Workmen's Compensation for Injuries Act; but charged that the defendants so negligently set up and installed the range and attachments as to cause the explosion, and that the defendants had failed in their duty to provide a safe place for the deceased to work in. The hotel manager employed G. to do the work. The jury found that the defendants were guilty of negligence which caused the death; that the negligence was, not having the hot water system properly installed and inspected; that the manager neglected his duty, which was to have the work examined when he found it was not satisfactory; that danger to persons in the kitchen would reasonably be expected to arise from the range as installed, unless measures were adopted to prevent danger; that the defendants did not take reasonable care to prevent danger; that the defendants took reasonable care in employing a manager; that the manager was competent; that he did not exercise reasonable care in the employment of G. to install the work; that negligence on the part of the manager and G. led to the explosion; that G. left things undone and did things which led to the explosion; and they assessed the plaintiffs' damages:—*Held*, that the defendants could invoke for their defence the doctrine of common employment; that, upon the undisputed evidence, the negligence which caused the death was that of G.; that there was

—Costs to be Paid by Appellants. *Kostenko* v. *O'Brien*, 6 O.W.N. 99.—App. Div.

16. Injury to Servant — Negligence — Electric Current — Evidence—Finding of Fact of Trial Judge. *Raynor* v. *Toronto Power Co.*, 6 O.W.N. 604.—Falconbridge, C.J.K.B.

17. Injury to Servant—Negligence of Foreman of Works—Contributory Negligence—Findings of Jury—Failure to Find what Negligence of Foreman Consisted in—Supplemental Finding by Court. *Phillips* v. *Canada Cement Co.*, 6 O.W.N. 185.—App. Div.

18. Injury to Servant—Railway Brakesman—Negligence—Liability—Findings of Jury—Evidence. *McIntyre* v. *Grand Trunk R.W. Co.*, 6 O.W.N. 618.—Kelly, J.

19. Profit-sharing Enterprise—Statement of Master as to Servant's Share of Profits—Right to Impeach for Fraud—Master and Servant Act, 10 Edw. VII. ch. 73, sec. 3, subsecs. 1(*a*), 2—Findings of Fraud by Trial Judge—Reversal on Appeal. *Washburn* v. *Wright*, 6 O.W.N. 131, 31 O.L.R. 138.—App. Div.

See Covenant.

MASTER IN CHAMBERS.

See Municipal Elections, 2.

MASTER'S REPORT.

See Appeal, 5.

MEDICAL PRACTITIONER.

See Surgeon.

MESNE PROFITS.

See Landlord and Tenant, 1.

MINISTER OF EDUCATION.

See Schools.

MISCONDUCT.

See Arbitration and Award, 2—Railway, 7—Trial, 1.

MISDIRECTION.

See Trial, 2.

MISFEASANCE.

See Highway, 3, 7.

MISREPRESENTATION.

See Fraud and Misrepresentation.

MISTAKE.

See Highway, 8—Railway, 7.

MONEY-LENDERS ACT.

See Bills and Notes, 6.

MONEY LENT.

Action for—Onus—Failure to Discharge—Statute of Limitations. *Soady* v. *Soady*, 6 O.W.N. 240.—BRITTON, J.

See Bills and Notes, 6—Evidence, 1—Mortgage, 4.

MORTGAGE.

1. Action for Foreclosure and Possession—Interest and Instalments of Principal Provided for not in Arrear—Breach by Mortgagor of Covenant to Insure—Inability to Obtain Insurance—Redemise Clause—Right of Mortgagee to Possession, but not Foreclosure—Costs. *Carrique* v. *Pilgar*, 6 O.W.N. 101.—MIDDLETON, J.

2. Action to Enforce by Foreclosure—Covenant for Payment—Part of Mortgage-moneys not Payable till Majority of Person Interested in Land—Effect as to Remedies of Mortgagee—Provisoes—Construction. **Willson* v. *Thomson*, 6 O.W.N. 506.—APP. DIV.

3. Power of Sale—Exercise of—Absence of Notice to Mortgagor—Conspiracy—Landlord and Tenant—Rent—Surplus Proceeds of Sale. *Keane* v. *McIntosh*, 6 O.W.N. 650.—BRITTON, J.

4. Security for Loan by City Corporation to Manufacturing Company—Agreement — By-law — Construction of Mortgage-deed—Enforcement of Security—Bonus—Assignment for Benefit of Creditors. *City of Woodstock* v. *Woodstock Automobile Manufacturing Co.*, 6 O.W.N. 403, 610.—APP. DIV.

See Account—Assignments and Preferences, 7—Company, 2, 3—Fraud and Misrepresentation, 3—Railway, 11—Settled Estates Act—Will, 7, 14.

MOTOR VEHICLES.

See Contract, 22—Highway, 6—Will, 16.

MOTOR VEHICLES ACT.

Injury to Property by Negligence of Driver of Motor Vehicle—Vehicle Stolen by Driver—Absence of Negligence of Owner

—Liability of Owner for Negligence of Thief—2 Geo. V. ch. 48, secs. 10, 11, 19, 23. **Cillis* v. *Oakley*, 6 O.W.N. 575. —App. Div.

MUNICIPAL CORPORATIONS.

1. *Board of Water Commissioners—Rights and Duties—Alterations and Extension of Plant and Equipment—Surplus of Revenue over Cost of Operation—Payment to Municipal Treasurer—Power of Commissioners to Draw upon—Right of Commissioners to Determine what Extensions Necessary —Municipal Waterworks Act, R.S.O.* 1897 *ch.* 235, *secs.* 2, 38, 40, 47—*Public Utilities Act*, 3 & 4 *Geo. V. ch.* 41, *secs.* 3, 26, 34, 35, 43.]—Under the provisions of the Municipal Waterworks Act, R.S.O. 1897 ch. 235, secs. 2, 38, 40, 47, and the Public Utilities Act, 3 & 4 Geo. V. ch. 41, secs. 3, 26, 34, 35, 43 (both Acts being embodied in R.S.O. 1914 ch. 204), a municipal corporation may construct, operate, and maintain waterworks, and the council may be the executive body for the purpose of exercising the powers conferred, or, if it is seen fit to appoint a commission, the commissioners become the executive body; and, once the election in favour of a commission is made, all the powers conferred upon the municipality must be exercised by the commission, and not by the council; everything that the municipality is authorised to do must be done through the commission; the commission alone has authority to "construct, operate, and maintain," and those words are to be interpreted as covering the entire municipal authority.—The provision for payment over of the surplus of income over expenditure is ancillary to this. Before paying over, the commissioners have the right to deduct all outgoings. If there is then a surplus, it is to form part of the general funds of the corporation, but is not to be used for general purposes unless "not required for the purpose of the work." In the meantime, even when paid over, it is to be placed to the credit of the account of the public utility work; and, while it is there, the commissioners have power to draw upon it if required.—The commissioners, and they alone, have the right to determine what extensions are necessary and proper; and they may apply moneys in their hands to meet the cost of such works, and may draw upon any money which they have in the interim paid to the council. Any money paid over from time to time must remain to the credit of the waterworks system until the com-

missioners determine that it is not required for it; and then only may it be used for ordinary municipal purposes. *Re City of Berlin and Breithaupt*, 6 O.W.N. 423.—MIDDLETON, J. (Chrs.)

2. Bridge across River Dividing City and County—Liability for Cost of Construction and Maintenance—Ascertainment of Boundary between City and County—Municipal Act, R.S. O. 1914 ch. 192, sec. 452—Territorial Division Act, R.S. O. 1914 ch. 3, sec. 9—Joint Undertaking—Originating Notice—Municipal Act, sec. 465 (1). *Re City of Ottawa and County of Carleton*, 6 O.W.N. 615.—BOYD, C.

3. By-law — Seal—Municipal Act, 1913, sec. 258(3)—Prosecution for Offence—Objection—Affixing Seal — Conviction—Motion to Quash. *Rex* v. *Faux*, 6 O.W.N. 663.—MIDDLETON, J. (Chrs.)

4. By-law Authorising Conveyance of Public Square to Public Library Board for Library Building Site—Powers of Corporation—58 Vict. ch. 88 (O.)—Conveyance to Board — Public Libraries Act, 9 Edw. VII. ch. 80, secs. 8, 12. *Re McKenzie and Village of Teeswater*, 6 O.W.N. 32.—BRITTON, J.

5. *By-laws Reducing Number of Shop and Tavern Licenses in City—Liquor License Act, R.S.O.* 1914 *ch.* 215, *sec.* 16—*Submission to Electors—Form of Ballot—Non-compliance with Form Authorised by Municipal Act—Misleading Electors—Order Quashing By-laws.*]—Under the Act 1 Geo. V. ch. 54, sec. 21, now sec. 16 of the Liquor License Act, R.S. O. 1914 ch. 215, the council of a city is compelled to submit to the electors a by-law limiting the number of tavern or shop licenses. A city council, instead of submitting the by-laws which had been introduced and read in council, submitted, by ballot papers headed "Plebiscite re Tavern Licenses" and "Plebiscite re Shop Licenses," the questions, "Are you in favour of limiting" the number of shop licenses . . . to ten . . . ?" and "Are you in favour of limiting the number of tavern licenses . . . to thirty-six?" The voter was directed to mark his ballot "yes" or "no:"—*Held*, that this was a substitution of an entirely different form of ballot from that required by the Legislature; and the by-laws passed after an affirmative vote upon the questions submitted were quashed: those whose property-rights are being taken away from them by the will of a bare maj-

ority have the right to insist that this shall be done only in the manner which the law permits. *Re Milne and Township of Thorold* (1912), 25 O.L.R. 420, followed. *Re Wall and City of Ottawa, Re Couillard and City of Ottawa*, 6 O. W.N. 291.—MIDDLETON, J.

6. By-law Regulating Erection of Buildings—Municipal Act, 1903, sec. 542—By-law Going beyond Terms of Statute—Prohibition of Iron Buildings unless Approved of—Injunction—Damages Caused by—Costs. *City of Toronto* v. *Elias Rogers Co.*, 6 O.W.N. 146, 31 O.L.R. 167.—APP. DIV.

7. Construction of Drain or Sewer—Drainage of Surface-water into Creek—Pollution of Waters of Creek—Injury to Riparian Owners—Evidence—Consent—Findings of Fact of Trial Judge—Joinder of two Plaintiffs in Respect of Injury to Respective Lands—Injunction—Mandatory Order. *Scrimger* v. *Town of Galt*, 6 O.W.N. 75.—KELLY, J.

8. Debenture By-law—Township Council—Purchase of Site for School—High School District Composed of Township and Village — School-house Situate in Village — High Schools Act, R.S.O. 1914 ch. 268, sec. 38—Jurisdiction to Pass By-law Vested in Village Council only. *Re Dougherty and Township of East Flamborough*, 6 O.W.N. 487.—LENNOX, J.

9. Drainage—Insufficiency of Drain—Improvement and Extension—Report of Engineer—Cost of Improvement—Assessment against Adjoining Townships—Costs and Damages in Action against one Township—"Surface Water"—Cut-off—Muincipal Drainage Act, R.S.O. 1914 ch. 198, sec. 3, subsec. 6—Spreading Excavated Earth on Township Line Road. *Township of Sandwich South* v. *Township of Maidstone*, 6 O.W.N. 538.—APP. DIV.

10. Drainage — Natural Watercourse—Obstruction by Inadequate Culvert—Injury to Private Property—Negligence—Placing of Proper Culvert—Mandatory Order—Damages—Costs. *Ruddy* v. *Town of Milton*, 6 O.W.N. 253.—APP. DIV.

11. Expropriation of Land—Severance of Farm by Taking Strip for Deviation Road—Arbitration and Award—Compensation for Land Taken—Value of Trees in Orchard—Damage by Severance—Award Made by two of three Arbitrators—Validity—Municipal Act, 1913, secs. 332 *et seq.*—

Interpretation Act, R.S.O. 1914 ch. 1, sec. 28 (*c*)—Appeal from Award—Evidence—Increase in Amount—Costs. *Re Fowler and Township of Nelson*, 6 O.W.N. 409.—LATCHFORD, J.

12. Land in Township Acquired by City Corporation for Cemetery—Municipal Institutions Act, 29 & 30 Vict. ch. 51, sec. 269, sub-sec. 3 — Road Bordering on Cemetery — "Boundary-line between County and City"—Municipal Act, R.S.O. 1914 ch. 192, sec. 452—Municipal Institutions Act, 36 Vict. ch. 48, sec. 379, sub-sec. 7—Obligation to Erect and Maintain Bridges over Streams Crossing Highway. **Re Township of Harwich and County of Kent and City of Chatham*, 6 O.W.N. 681.—MEREDITH, C.J.C.P.

13. Local Option By-law—Action to Restrain Town Council from Submitting to Electors—Liquor License Act, sec. 141, sub-secs. 1, 5, sec. 143*a*—By-law Submitted in Previous Year and Defeated—Judgment Declaring Submission Illegal—Consent Judgment—Compromise — Ineffectiveness—Validity of Previous Submission of By-law—Absence of Evidence—Necessity for Proof—Rights of Electors—Refusal of Injunction—Appeal—Enjoined Act Performed before Hearing. *Hair* v. *Town of Meaford*, 6 O. W.N. 115, 176, 31 O.L.R. 124.—APP. DIV.

14. Submission of Question to Vote of Electors—Municipal Act, sec. 398 (10)—Proceeding Previously Determined to be Illegal—Injunction—Motion for Judgment. *Gaulin* v. *City of Ottawa*, 6 O.W.N. 38.—MIDDLETON, J.

15. Transient Traders' By-law—Municipal Act, R.S.O. 1914 ch. 192, sec. 430 (7)—Company Occupying Warehouse and Selling Goods without Being on Assessment Roll or Having License—Conviction of Servant or Agent—Evidence—Quashing Conviction—Costs. *Re Lang*, 6 O.W.N. 629.—MEREDITH, C.J.C.P. (Chrs.)

16. *Water Supply—Scheme for—By-law Providing for Submission to Electors—Municipal Act*, 1913, *sec.* 398(10)—*Form of Ballot—Prevention of Expression of Wishes of Electors—Order Quashing By-law.*]—Section 398, sub-sec. 10, of the Municipal Act, 1913, permits the passing of a by-law "for submitting to the vote of the electors any municipal question not specifically authorised by law to be submitted:"—*Held*, that the provisions of the Act and the forms provided

by the Act indicated that the intention of the Legislature, in permitting this reference to the electors, was, that the question should be submitted in such a form as to permit of an answer "Yea" or "Nay."—The municipality, having difficulty in obtaining a water supply, desired to obtain the opinion of the electorate as to several schemes suggested. A ballot was provided which, instead of containing two compartments in one of which the elector might place his cross as indicating an affirmative or negative answer, divided the affirmative section into five sub-heads, one for each of the suggested schemes. The voter was then told that, if he was opposed to all these, or to any change, he should mark his ballot in the negative; if he approved of any one scheme, he was to place his mark opposite that. The by-law authorising the submission of the question to the electors in this form was quashed because it precluded any true expression of the views of electors upon the question proposed to be submitted. *Re Gaulin and City of Ottawa*, 6 O.W.N. 30.—MIDDLETON, J.

17. *Water Supply—Scheme for—Submission to Vote of Electors, after Quashing of By-law Authorising Submission—Municipal Act, sec.* 398 (10)*—Injunction — Motion for Judgment.*]—Prior to the enactment of what is now sec. 398(10) of the Municipal Act, 1913, the right of a municipal council to submit any question to the electorate was not clear; and the enactment was for the express purpose of defining the conditions under which a vote on any municipal question may be taken.—Where a by-law authorising the taking of a vote has been quashed, the vote cannot be taken independently of the by-law; and an injunction will be granted to restrain a proceeding already determined to be illegal. See the preceding case, *Re Gaulin and City of Ottawa*, 6 O.W.N. 30.—A motion for an interim injunction was turned into a motion for judgment, and a judgment was granted restraining the defendants from submitting the question stated in the previous case to the electors. *Gaulin* v. *City of Ottawa*, 6 O.W.N. 38.—MIDDLETON, J.

18. Waterworks By-law—Expenditure of Money—Powers of Council—Special Act, 3 & 4 Geo. V. ch. 109 (O.)—Necessity for Submission of By-law to Electors. *Re Clarey and City of Ottawa*, 6 O.W.N. 116.—APP. DIV.

See Assessment and Taxes—Contract, 17, 32—Fatal Accidents Act—Highway—Mortgage, 4—Municipal Elections—Negligence, 2—Nuisance, 1—Street Railways, 2, 3.

MUNICIPAL WATERWORKS ACT.

See Municipal Corporations, 1.

MUNICIPAL ELECTIONS.

1. Deputy Reeve of Town—Right of Town to Have Deputy Reeve—Municipal Act, 1913, sec. 51—Number of Municipal Electors—Count—Name of any Person to be Counted only once—Evidence—Affidavits—Onus — Tenants — Right to Vote—Secs. 2(*n*), 48, 161, 177, 178 of Act—Remedy by Summary Proceeding under Act to Unseat Person Elected where Town not Entitled to Deputy Reeve—Municipality not a Party. *Rex ex rel.* v. *Sullivan* v. *Church*, 6 O.W.N. 116, 365.—MASTER IN CHAMBERS.—BRITTON, J. (Chrs.)

2. *Proceeding to Avoid Election—Service of Notice of Motion on Defendant—Extension of Time for—Illness of Defendant—Municipal Act*, 1913, *sec.* 165—*Scope of—Powers of Judge or Master in Chambers.*]—Section 165 of the Municipal Act, 1913, provides that "the notice of motion" (to void an election to municipal office) "shall be served within two weeks of the date of the fiat, unless upon a motion to allow substituted service the Judge or Master in Chambers otherwise orders," and that it shall be served personally, unless the person to be served avoids personal service, in which case an order may be made for substituted service." In a case where the defendant did not avoid personal service, but the relator was unable to effect service within the proper time because of the defendant's serious illness, it was *held*, that the Judge or Master had power to extend the time for effecting service; and that the power was properly exercised, the failure to effect personal service not being due to inactivity or want of diligence on the part of the relator. *Rex ex rel. Band* v. *McVeity*, 6 O. W.N. 105.—KELLY, J. (Chrs.)

3. Validity of Election of Mayor of City—Attempt to Disqualify—Liability for Arrears of Taxes—Municipal Act, 1913, sec. 53, sub-sec. 1(*s*)—Evidence — Settlement with Treasurer—Collector's Rolls—Mayor Elect Acting as Solicitor in Actions against City Corporation—Termination of Relationship of Solicitor and Client before Election—Litigation Ended before Election—Costs—Payment of Cheque of Corporation for. *Rex ex rel. Band* v. *McVeity*, 6 O.W.N. 369.—BRITTON, J. (Chrs.)

NAME.

See Trade Name.

NATURAL GAS.

See Contract, 2, 9.

NAVIGABLE RIVER.

See Water and Watercourses, 3, 4.

NEGLECTED CHILDREN.

See Infant, 1, 2, 3.

NEGLIGENCE.

1. Death by Drowning of Person Attempting to Cross River—Action under Fatal Accidents Act—Broken Dam—Findings of Jury — "By not Having Watchmen" — Other Grounds of Negligence Relied on, not Found, and so Negatived—Liability for Wrongful Act of Stranger—Destruction of Property—Voluntary Assumption of Risk—Contributory Negligence of Deceased—Dismissal of Action—Appeal. *Hudson* v. *Napanee River Improvement Co.*, 6 O. W.N. 11, 31 O.L.R. 47.—APP. DIV.

2. Death Caused by Electric Shock—Action under Fatal Accidents Act against Municipal Corporation, Operating Electric Lighting Plant, and Telephone Company—Cause of Death—Independent Acts of Negligence of both Defendants—Each Act Innocuous save for the other—Defendants not Joint Tort-feasors—Dangerous Nature of Substance under Defendants' Control—Recovery against both Defendants—Claim for Contribution or Indemnity by each Defendant against the other Negatived—Damages—Expectation of Life—Action for Benefit of Widow and Children of Deceased — Costs — Contribution between Defendants. *Till* v. *Town of Oakville*, 6 O.W.N. 390.—MIDDLETON, J.

3. Death of Person from Injury Received on Defendants' Premises—Action by Widow under Fatal Accidents Act—Deceased in Position of Licensee or Invitee—Duty of Owner of Premises—Failure of Plaintiff to Shew Trap or Hidden Danger—Nonsuit—Contributory Negligence—Admission of Deceased. *Parker* v. *Dyment-Baker Lumber Co.*, 6 O.W.N. 559.—APP. DIV.

4. Death of Servant of Contractor for Demolition of Building—Collapse of Wall—Dangerous Condition—Action against Contractor and Owner—Independent Contractor—Workmen's Compensation for Injuries Act—Findings of Jury. *Simberg* v. *Wallberg*, 6 O.W.N. 398.—BRITTON, J.

NOTICE OF SALE.

See Mortgage, 3.

NUISANCE.

1. Noise and Vibration from Operation of Electric Pumps—Evidence—Depreciation in Value of Neighbouring House—Acts Authorising Municipal Corporation to Construct Waterworks not a Justification of Nuisance—Necessity for Pumping Water for Municipal Purposes—Damages in Lieu of Injunction. *Chadwick* v. *City of Toronto*, 6 O.W.N. 167.—MIDDLETON, J.

2. *Vapour and Dust from Smelter—Poisonous Deposit—Special Injury to Plaintiff—Bringing Injurious Substance on Land—Right of Action—Damages—Evidence — Injunction.*]—*Held*, reversing the judgment of BOYD, C., 5 O.W.N. 562, that the depositing of arsenic on the plaintiff's land from the defendants' smelter did not affect the rights enjoyed by citizens generally, but merely those of the plaintiff. The principle involved was the same as in *Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330; and the plaintiff was entitled to damages and an injunction and full costs. *Cairns* v. *Canada Refining and Smelting Co.*, 6 O.W.N. 562.—APP. DIV.

See Highway, 3—Limitation of Actions, 5—Water and Watercourses, 4.

OBSTRUCTION.

See Water and Watercourses, 3.

OFFICIAL GUARDIAN.

See Judgment, 3—Solicitor, 3.

ONTARIO RAILWAY AND MUNICIPAL BOARD.

See Highway, 8—Street Railways, 2, 3.

OPTION.

See Fraud and Misrepresentation, 3—Landlord and Tenant, 5—Vendor and Purchaser, 9.

ORIGINATING NOTICE.

See Municipal Corporations, 2—Will, 9, 24.

OVERHOLDING TENANT.

See Landlord and Tenant, 7.

PARENT AND CHILD.

See Deed, 1—Fatal Accidents Act—Highway, 5—Infant — Trusts and Trustees, 1.

PART PERFORMANCE.

See Vendor and Purchaser, 10.

PARTICULARS.

See Appeal, 1.

PARTIES.

1. Joinder of Plaintiffs—Motion to Compel Plaintiffs to Elect which will Proceed — Enlargement till Trial — Special Circumstances. *City of Toronto and Gooderham and Worts Limited* v. *National Iron Co. and Cawthra Mulock*, 6 O. W.N. 377.—HODGINS, J.A. (Chrs.)

2. Third Party—Action by Company against Executors of Deceased Director for Breach of Trust—Third Party Claim against Co-director — Contribution or Indemnity — Companies Act, sec. 108—Trial of Issues between Defendants and Third Party. *Guelph Carpet Mills Co.* v. *Trusts and Guarantee Co.*, 6 O.W.N. 311.—MASTER IN CHAMBERS.

3. Third Party Notice—Motion to Set aside. *Wolseley Tool and Motor Co.* v. *Jackson Potts & Co.*, 6 O.W.N. 400.—FALCONBRIDGE, C.J.K.B. (Chrs.)

See Appeal, 2—Bills and Notes, 5—Contract, 5, 20, 24—Insurance, 3—Landlord and Tenant, 3—Municipal Corporations, 7 — Municipal Elections, 1 — Partnership, 4—Practice, 2—Railway, 3—Schools—Street Railways, 2—Vendor and Purchaser, 9—Writ of Summons, 2.

PARTITION.

Application for Order for Partition or Sale—Administration—Rules 612, 613—Caution—R.S.O. 1914 ch 119, sec. 15 (*d*)—Executor — Costs. *Steele* v. *Weir*, 6 O.W.N. 400.—FALCONBRIDGE, C.J.K.B. (Chrs.)

See Will, 8.

PARTNERSHIP.

1. Action to Establish—Evidence—Costs. *Arbrick* v. *Ryan*, 6 O.W.N. 706.—LENNOX, J.

2. Action to Establish Agreement and for Share of Profits of Sale of Mining Claim—Evidence—Findings of Fact of Trial Judge—Appeal. *Labine* v. *Labine*, 6 O.W.N. 100.—APP. DIV.

3. Operation of Theatres—Pooling Agreement—Construction—Death of Partner—Dissolution of Partnership—Right of Personal Representative—Judgment — Account — Refer-

ence. *Whitney* v. *Small*, 6 O.W.N. 185, 266, 31 O.L.R. 191.—App. Div.

4. Purchase of Farm by Syndicate—Profits Received by two Members—Non-disclosure to Third Member—Liability to Account—Judgment — Injunction—Direction for Payment into Court—Enforcement under Rule 534—Declaration—Lien—Dissolution of Partnership—Parties. *Bell* v. *Coleridge*, 6 O.W.N. 200.—App. Div.

See Contract, 9, 18—Evidence, 4—Insurance, 1—Trade Name.

PARTY WALL.

See Buildings, 2.

PASSENGER.

See Street Railways, 1, 3.

PASSING-OFF.

See Trade Name.

PATENT FOR INVENTION.

See Contract, 23.

PAYMENT.

See Judgment, 2.

PAYMENT INTO COURT.

See Account—Contract, 7—Injunction, 2—Partnership, 4.

PENALTY.

See Contract, 5—Solicitor, 3—Vendor and Purchaser, 1.

PENITENTIARY.

See Criminal Law, 2.

PETITION.

See Lunatic.

PHYSICIANS AND SURGEONS.

See Surgeon.

PLANS.

See Assessment and Taxes—Highway, 1, 4—Vendor and Purchaser, 13.

PLEADING.

1. Reply—Departure — Leave to Appeal from Order of Judge in Chambers. *Snider* v. *Snider*, 6 O.W.N. 80.—Middleton, J. (Chrs.)

2. Reply—Relevancy—Departure from Claim Originally Made — Conditional Appearance — Consolidation of Actions. *Snider* v. *Snider*, 6 O.W.N. 254.—App. Div.

PLEDGE.

See Contract, 31—Sale of Goods, 1.

POLICE MAGISTRATE.

See Criminal Law, 3—Infant, 2.

POSSESSORY TITLE.

See Limitation of Actions, 2-5—Will, 8.

POSTPONEMENT OF TRIAL.

See Trial, 5.

POWER OF SALE.

See Mortgage, 3.

PRACTICE.

1. Ex Parte Order—Rules 213-216—Extending Time for Moving against Order—Rule 217—Setting aside Order, Execution, and Appointment for Examination of Judgment Debtor—Motion to Commit Judgment Debtor—Renewal of Judgment and Execution. *Joss* v. *Fairgrieve*, 6 O.W.N. 401, 640.—FALCONBRIDGE, C.J.K.B.—MIDDLETON, J.

2. *Third Party Notice—Service of, on Certain Third Parties out of the Jurisdiction—Order Permitting — Rule* 25 (*g*) *— Necessity for Previous Service on Third Parties in Jurisdiction—Conditional Appearance — True Function of — Leave to Withdraw—Discretion.*]—A third party notice having been issued and served, certain of the third parties who were served out of the jurisdiction entered a conditional appearance, reserving to them leave to move to set aside the third party notice:—*Held*, that a conditional appearance was inapplicable: it is not a provisional appearance, but an appearance to be entered where it is not convenient to determine the question whether the case can be brought within Rule 25 until the hearing of the action. The conditional appearance is substituted for the practice which prevailed in the Common Law Courts of requiring the plaintiff to prove at the hearing the facts necessary to bring the case within the provisions of the law permitting service out of the jurisdiction and in default to submit to a nonsuit.—In this case it was *held*, that the Master in Chambers had exercised a proper discretion in allowing the third parties to withdraw their conditional appearance.—Rule 25 (*g*) does not apply unless the person within Ontario has been served at the time of the making of the application for an order permitting service out of the jurisdiction; and an order was in this case properly made setting aside the order for ser-

vice out of the jurisdiction; and, after service on the third parties in the jurisdiction, an order was properly made permitting fresh service out of Ontario. *Wolseley Tool and Motor Car Co.* v. *Jackson Potts & Co.*, 6 O.W.N. 109.—MIDDLETON, J. (Chrs.)

See Appeal—Costs—Criminal Law, 1—Execution, 3—Executors and Administrators, 2—Judgment—Judgment Debtor—Municipal Corporations, 2, 7—Municipal Elections, 2—Parties—Partition—Pleading—Reference — Settlement of Action—Solicitor—Surrogate Courts—Trial — Trusts and Trustees, 3—Venue—Writ of Summons.

PRECATORY TRUST.

See Will, 15.

PREFERENCE.

See Assignments and Preferences—Company, 9, 11.

PRESCRIPTION.

See Water and Watercourses, 2—Way, 1.

PRESENTMENT.

See Bills and Notes, 1, 2, 3.

PRESUMPTION.

See Buildings, 1—Insurance, 6—Judgment, 2—Liquor License Act.

PRINCIPAL AND AGENT.

1. Account — Commission—Secret Dealings of Agent—Costs. *Brodey* v. *Le Feuvre*, 6 O.W.N. 175.—LENNOX, J.

2. Agent for Purchase of Goods—Claim for Moneys Advanced and Commission—Findings of Jury—Interest — Amendment—Counterclaim—Costs. *Petch* v. *Newman*, 6 O.W.N. 705.—KELLY, J.

3. Agent's Commission on Sale of Company-shares—Action against two Companies—Contract—Terms of Employment—Evidence—Right to Commission—Liability of Companies respectively—Costs. *Kidd* v. *National Railway Association and National Underwriters Limited*, 6 O.W.N. 710.—HODGINS, J.A.

4. Agent's Commission on Sale of Goods—Commission-agreement—Construction — "Commission on all Accepted Orders"—Evidence. *White* v. *National Paper Co.*, 6 O.W.N. 83, 521.—MIDDLETON, J.—APP. DIV.

Common Law Liability—"Injury Sustained by Reason of the Construction or Operation of the Railway"——Time-limit on Action—Railway Act, R.S.C. 1906 ch. 37, sec. 306. **Greer* v. *Canadian Pacific R.W. Co.*, 6 O.W.N. 438.—MIDDLETON, J.

2. Carriage of Goods—Claim for Value of Goods not Delivered—Contract—Change in Destination—New Contract—Liability of Railway Company for Full Value—Inapplicability of Condition Limiting Liability—Evidence—Finding of Fact of Trial Judge—Ascertainment of Value of Missing Goods. *Laurin* v. *Canadian Pacific R.W. Co.*, 6 O.W.N. 281.—KELLY, J.

3. Carriage of Goods—Sale of, to Pay Charges—Liability of Railway Company—Conversion and Abstraction of Goods—Absence of Evidence—Liability as Involuntary Bailee—Wilful Neglect or Misconduct—Onus—Acts of Auctioneers Employed by Railway Company—Proof of Loss of Plaintiff's Goods—Negligence—Findings of Fact of Trial Judge—Appeal—Evidence as to Receipt by Railway Company of Missing Goods—Inventories—New Trial as to Part of Goods Alleged to be Missing — Judgment Disposing of Others—Relief against Third Parties—Costs. *Swale* v. *Canadian Pacific R.W. Co.*, 6 O.W.N. 93.—APP. DIV.

4. Death of Servant—Brakesman—Action under Fatal Accidents Act—Cause of Death—Fault of Deceased—Disobedience of Rule—Negligence of Railway Company—Joint Negligence of both—Findings of Jury—Efficient Cause of Accident—Proximate Cause. *Cook* v. *Grand Trunk R.W. Co.*, 6 O.W.N. 177, 31 O.L.R. 183.—APP. DIV.

5. *Destruction of Timber—Action for Damages — Statutory Limitation of Amount Recoverable—Trial—Findings of Jury—Judgment—Issue—Negligence—Rule* 523 — *Order Staying Execution of Judgment pending Trial of Issue.*]—The plaintiff brought this action for damages for the destruction of timber on his land by fire originating from the defendants' railway. At the trial, the main issue was whether there was one fire only, or two independent fires. It was agreed that, if there was only one fire, it would be necessary for the jury to ascertain whether there was negligence, as in that case the loss would exceed the statutory limit of $5,000. The jury found that there were two fires, but did not answer the question given to them, whether

there was negligence. Counsel for the plaintiff stated that he accepted the finding of the jury as conclusive; and the trial Judge gave judgment for the amounts payable in respect of the first fire, these being agreed upon and being less than $5,000. The defendants afterwards discovered that there were claims made for losses which would make the total exceed $5,000, and asserted that these fell within the area of the first fire:—*Held*, that, even though there were those losses, it did not follow that the $5,000 limit applied—that would depend upon the determination of the issue as to negligence; and the plaintiff would have the right to test the existence of these other claims and whether they were in respect of the same fire.—*Held*, therefore, upon the application of the defendants to the trial Judge to stay the operation of the judgment, that the situation could be dealt with under Rule 523; and an order was made directing the trial of an issue to determine whether the fire which destroyed the plaintiff's timber was the result of negligence on the part of the defendants, and whether there were any other claims for damages recoverable in respect of that fire, and, if so, the amount of such claims; and staying the execution of the judgment meanwhile. *Fawcett* v. *Canadian Pacific R.W. Co.*, 6 O.W.N. 634.—MIDDLETON, J. (Chrs.)

6. Expropriation of Land—Arbitration and Award—Appeal from Award—Question of Amount—Method of Ascertainment—Evidence of General Rise in Value of Lands in Neighbourhood—Relevancy—Frontage Value — Potential Value—Allowance for Clay "Filling"—Increase in Amount Awarded. **Re C. M. Billings and Canadian Northern Ontario R.W. Co.*, 3 O.W.N. 272.—APP. DIV.

7. Expropriation of Land—Compensation and Damages—Ascertainment by "Valuers"—Agreement between Land-owner and Company—Motion to Set aside "Award" of Valuers—Valuation or Arbitration—Railway Act, R.S.C. 1906 ch. 37, sec. 191 — Misconduct of Valuers—Interview with Owner in Absence of Representative of Company—Validity of Decision not Affected—Mistake in Award—Ground for Setting aside—Failure to Shew Admission of Mistake and Willingness of Arbitrators to Review Decision. *Re Laidlaw and Campbellford Lake Ontario and Western R.W. Co.*, 6 O.W.N. 196, 31 O.L.R. 209.—APP. DIV.

8. Injury to and Death of Person Employed in Removing Ice from Tracks—Spur Line in Yard of Industrial Company —Negligence in Moving Cars on Tracks—Liability of Railway Company—Finding of Fact of Trial Judge—Appeal. *Mercantile Trust Co.* v. *Steel Co. of Canada*, 6 O.W.N. 1.—App. Div.

9. Injury to Pickman in Yard by Shunting Cars—Negligence—Evidence—Defective System—Common Law Liability — New Trial—Indulgence—Costs. *Kreuszynicki* v. *Canadian Pacific R.W. Co.*, 6 O.W.N. 1.—App. Div.

10. Level Highway Crossing—Destruction of Vehicle by Train —Injury to Person in Vehicle — Negligence—Contributory Negligence—Findings of Jury—Damages. *City of London* v. *Grand Trunk R.W. Co., Summers* v. *Grand Trunk R.W. Co.*, 6 O.W.N. 494.—Kelly, J.

11. Mortgage to Secure Bondholders—Resignation of Trustee—Appointment of New Trustee—Security—Costs. *Harrisburg Trust Co.* v. *Trusts and Guarantee Co.*, 6 O.W.N. 110.—Lennox, J.

12. Receiver—Payments to Bondholders — Costs. *Trusts and Guarantee Co.* v. *Grand Valley R.W. Co.*, 6 O.W.N. 113.—Lennox, J.

See Contract, 1—Highway, 2—Master and Servant, 3, 6, 18—Street Railways.

RECEIPT.

See Release.

RECEIVER.

See Railway, 12.

RECTIFICATION OF AGREEMENT.

See Arbitration and Award, 1—Contract, 30—Vendor and Purchaser, 6, 16.

RECTIFICATION OF DEED.

See Deed, 2.

REDEMISE.

See Mortgage, 1.

REFERENCE.

Stay of Reference pending Appeal to Supreme Court of Canada—Discretion—Balance of Convenience — Practice.]— Where an appeal is pending from a judgment directing a reference, the granting of a stay or of an order to proceed,

whichever is necessary, is discretionary.—*Sharpe* v. *White*, 20 O.L.R. 575, followed.—In this case, where the judgment of the trial Judge determined most of the disputes as to items of an account, and directed a reference as to minor matters, and the judgment of the trial Judge was varied by a Divisional Court of the Appellate Division, and an appeal was pending to the Supreme Court of Canada, it was *held*, that the balance of convenience was in favour of allowing the reference to proceed; and an order was made accordingly.—*Monro* v. *Toronto R.W. Co.*, 5 O.L.R. 15, distinguished. *Saskatchewan Land and Homestead Co.* v. *Moore*, 6 O.W.N. 262, MIDDLETON, J.

See Account—Costs, 6.

REFORMATION OF AGREEMENT.

See Arbitration and Award, 1—Contract, 30—Vendor and Purchaser, 6, 16.

REFORMATION OF DEED.

See Deed, 2.

REGISTRY LAWS.

See Evidence, 2—Vendor and Purchaser, 13—Water and Watercourses, 2.

RELEASE.

Action for Damages for Personal Injuries—Settlement after Action Brought—Validity—Payment of Money—Receipt — Liability—Injury Sustained from Barbed Wire Fence on Lawn Adjoining City Street—Safe Distance from Highway —Liability of City Corporation and Owner of Land.]—An action for personal injuries sustained by the plaintiff by running against a barbed wire fence erected by the defendant C. on his own land, ten feet away from the highway, was dismissed, upon the ground that the plaintiff had released her claim by accepting $150 from the defendant and signing a receipt in full settlement of her claim; and also upon the ground that, as the fence at the point where the accident occurred did not substantially adjoin the highway, there could be no liability either on the part of the defendant C. or of the city corporation, also a defendant in the action. The test as to liability is, whether the dangerous fence is so near the highway as to interfere with the ordinary use of the same by the public. In this case, the plaintiff, who was walking upon the highway, was fright-

ened by runaway horses and ran upon the land of the defendant C. and against the fence. *Elmer* v. *Crothers*, 6 O. W.N. 288.—SUTHERLAND, J.

See Contract, 8—Settled Estates Act, 2—Master and Servant, 4—Vendor and Purchaser, 14.

RELIEF AGAINST PENALTY OR FORFEITURE.

See Landlord and Tenant, 3—Vendor and Purchaser, 1, 6, 11.

RENEWAL OF LEASE.

See Landlord and Tenant, 1.

RENT.

See Landlord and Tenant, 1, 3—Mortgage, 3.

REPLY.

See Pleading, 1, 2.

REPUDIATION.

See Company, 4, 10—Contract, 4, 23—Fraud and Misrepresentation, 5—Husband and Wife, 1—Vendor and Purchaser, 12.

RESCISSION.

See Company, 4—Contract, 8—Vendor and Purchaser.

RESTRAINT OF TRADE.

See Covenant.

RETAINER.

See Solicitor, 1.

REVOCATION.

See Vendor and Purchaser, 9—Will, 4.

RIPARIAN OWNERS.

See Municipal Corporations, 7—Water and Watercourses, 1.

RIVERS AND STREAMS.

See Municipal Corporations, 2—Negligence, 1 — Water and Watercourses.

ROYALTIES.

See Contract, 23.

RULES.

RULES of 1908 made by the Supreme Court of Ontario under the authority of sec. 576 of the Criminal Code.

See Criminal Law, 1.

(CONSOLIDATED RULES, 1913.)

23.—See Writ of Summons, 1.

25.—See Appeal, 2—Practice, 2—Writ of Summons, 2, 3, 4.

26.—See Writ of Summons, 5.

28.—See Writ of Summons, 5.

SALARY.

SALE OF ANIMALS.

SALE OF GOODS.

by Vendor against Person in Possession of Motors—Rights of Vendor — Conditional Sales Act — Election—Common Law Rights — Estoppel. *Canadian Westinghouse Co.* v. *Murray Shoe Co.*, 6 O.W.N. 5, 31 O.L.R. 11.—APP. DIV.

4. Sale of Goods—Refusal to Accept—Breach of Contract—Damages. *British Columbia Hop Co.* v. *St. Lawrence Brewery Co.*, 6 O.W.N. 114, 333.—LEITCH, J.—APP. DIV.

See Contract, 14, 22, 26—Covenant—Principal and Agent, 4.

SALE OF LAND.

See Contract, 8—Execution, 2—Fraud and Misrepresentation—Injunction, 1—Partition—Settled Estates Act, 2—Vendor and Purchaser—Will, 7.

SALE OF SHARES.

See Contract, 31—Executors and Administrators, 2.

SALE OF TIMBER.

See Contract, 24, 25, 30.

SATISFACTION.

See Execution, 2—Judgment, 2.

SCALE OF COSTS.

See Contract, 5—Conversion of Chattels.

SCHOOLS.

Separate School—Trustees of Rural Section—Engagement of Unqualified Teacher—Teaching of French in School—Action for Injunction — Jurisdiction — Separate Schools Act, sec. 80—Domestic Forum—Minister of Education — Parties—Regulations of Department of Education—Language "Prevailing" in School Section—Trustees not Acting in Good Faith—Damages—Costs. **McDonald* v. *Board of Trustees of School Section* 14 *Lancaster*, 6 O.W.N. 328. —FALCONBRIDGE, C.J.K.B.

See Municipal Corporations, 8.

SEAL.

See Municipal Corporations, 3—Vendor and Purchaser, 1.

SECRET COMMISSION.

See Contract, 19.

SECURITY.

See Contract, 10—Mortgage—Railway, 11.

SECURITY FOR COSTS.

See Appeal, 6—Costs, 7, 8.

SENTENCE.

See Criminal Law, 2, 3, 5.

SEPARATE SCHOOLS.

See Schools.

SERVICE OF WRIT OF SUMMONS.

See Writ of Summons.

SERVICE OUT OF THE JURISDICTION.

See Practice, 2—Writ of Summons.

SET-OFF.

See Conversion of Chattels.

SETTLED ESTATES ACT.

1. Interests of Life-tenant and Remainderman—Infant—Authority to Mortgage Land—Application of Mortgage-moneys—Repairs—Taxes—Insurance Premiums—Terms of Order. *Re Darch,* 6 O.W.N. 107.—LENNOX, J.

2. Order for Sale of Lands—Proceeds Invested by Executors in Mortgage Taken in Name of Accountant of Supreme Court—Mortgage-moneys Paid to Executors — Special Order Authorising Accountant to Execute Release. *Re McInnes,* 6 O.W.N. 672.—MIDDLETON, J. (Chrs.)

SETTLEMENT.

See Husband and Wife, 1, 5—Master and Servant, 1—Municipal Elections, 3—Title to Land.

SETTLEMENT OF ACTION.

Agreement for—Enforcement—Judgment—Costs. *Michener* v. *Sinclair,* 6 O.W.N. 502.—LENNOX, J.

See Contract, 28—Release.

SEWER.

See Municipal Corporations, 7.

SHARES AND SHAREHOLDERS.

See Company—Contract, 31—Executors and Administrators, 1, 2—Fraud and Misrepresentation, 2—Principal and Agent, 3.

SHIP.

See Supreme Court of Canada—Water and Watercourses, 3, 4.

SHOPS.

See Municipal Corporations, 5.

SHORT FORMS OF LEASES ACT.

See Conversion of Chattels.

SOCIETY.

See Unincorporated Society.

SOLICITOR.

1. Action for Bill of Costs — Husband and Wife — Action Brought in Name of Wife—Liability of Husband—Absence of Written Retainer — Finding of Trial Judge — Appeal. *Beck* v. *Lang*, 6 O.W.N. 253.—App. Div.

2. *Costs — Taxation — Retrospective Application of Tariffs of Costs Appended to Rules of* 1913—*Appeal from Taxation of Local Officer—Right of Appeal under Rule* 508—*Objections to Taxation—Procedure under Rules* 681, 682—*Application of—Reference to Senior Taxing Officer.*]—Whether a statute or Rule is or is not retrospective is a question of intention. Generally statutes and Rules respecting procedure are considered retrospective. "Costs are practice;" and, in the absence of any provision to the contrary, statutes regulating costs apply to pending suits.—A foot-note to the Tariffs of Costs appended to the Rules of the Supreme Court, 1913, declares that these tariffs "shall be used in all taxations after these Rules come into force:"—*Held*, that these Rules and tariffs, having been given, by legislation, the same force and effect as if embodied in a legislative enactment, the foot-note must be given the same force and effect as if part of such an enactment; and, therefore, the tariffs were applicable to costs incurred before as well as after they came into force, not taxed before they came into force.—*Delap* v. *Charlebois* (1899), 18 P.R. 417, distinguished.—Rule 508 gives a right of appeal against a solicitor and client taxation under the Solicitors Act, as if it were an appeal from a Master's report: the partial restriction contained in Rule 509, respecting items as to which objections in writing must have been filed, affects only appeals against taxations other than of a solicitor's bill under the Act. And the party appealing from the taxation of the solicitors' bill by a local officer was not obliged to file objections, etc., as a condition of a right of appeal: Rules 681 and 682 do not apply.—The items in question upon the appeal were referred to the senior taxing officer for consideration and report. *Re Solicitors*, 6 O.W.N. 625.—Meredith, C.J.C.P.

R.S.O. 1897 ch. 245, sec. 141, sub-secs. 1, 5, sec. 143*a*.—See MUNICIPAL CORPORATIONS, 13.

63 & 64 Vict. ch. 93 (D.) (Incorporating Canadian Bankers' Association)—See BILLS AND NOTES, 2.

1 Edw. VII. ch. 32 (O.) (Improvement of Public Highways)—See HIGHWAY, 8.

1 Edw. VII. ch. 33 (O.) (Toll Roads Expropriation Act)—See HIGHWAY, 8.

3 Edw. VII. ch. 15 (O.) (Amending Insurance Act)—See INJUNCTION, 2.

3 Edw. VII. ch. 19, secs. 558, 606 (Municipal Act)—See HIGHWAY, 7.

3 Edw. VII. ch. 19, secs. 598, 599, 601(O.).—See HIGHWAY, 4.

3 Edw. VII. ch. 19, sec. 606 (O.).—See HIGHWAY, 3.

4 Edw. VII. ch. 23, secs. 22, 89 (O.) (Assessment Act)—See ASSESSMENT AND TAXES.

6 Edw. VII. ch. 34, sec. 1 (O.) (Municipal Amendment Act)—See HIGHWAY, 8.

R.S.C. 1906 ch. 37, sec. 191 (Railway Act)—See RAILWAY, 7.

R.S.C. 1906 ch. 37, sec. 306.—See RAILWAY, 1.

R.S.C. 1906 ch. 119, sec. 86 (Bills of Exchange Act)—See BILLS AND NOTES, 2.

R.S.C. 1906 ch. 119, secs. 101, 121, 126.—See BILLS AND NOTES, 1.

R.S.C. 1906 ch. 120 (Interest Act)—See BILLS AND NOTES, 6.

R.S.C. 1906 ch. 122, secs. 6, 7, 8, 9, 10, 11 (Money-Lenders Act)—See BILLS AND NOTES, 6.

R.S.C. 1906 ch. 144, sec. 70 (Winding-up Act)—See COMPANY, 11.

R.S.C. 1906 ch. 144, sec. 144.—See COMPANY, 10.

R.S.C. 1906 ch. 146, sec. 576 (Criminal Code)—See CRIMINAL LAW, 1.

R.S.C. 1906 ch. 146, secs. 682, 686, 710(3), 714, 715, 721, 942, 943, 944.—See CRIMINAL LAW, 4.

R.S.C. 1906 ch. 146, sec. 1016 (2).—See CRIMINAL LAW, 3.

R.S.C. 1906 ch. 147, secs. 64, 65 (Penitentiary Act)—See CRIMINAL LAW, 2.

R.S.C. 1906 ch. 148, sec. 3 (Prisons and Reformatories Act)—See CRIMINAL LAW, 5.

7 Edw. VII. ch. 16 (O.) (Improvement of Public Highways)—See HIGHWAY, 7, 8.

7 Edw. VII. ch. 34, sec. 95 (O.) (Companies Act)—See COMPANY, 5.

3 & 4 Geo. V. ch. 43, sec. 2 (O.) (Municipal Act)—See HIGHWAY, 3.

3 & 4 Geo. V. ch. 43, secs. 48, 51, 161, 177, 178 (O.).—See MUNICIPAL ELECTIONS, 1.

3 & 4 Geo. V. ch. 43, sec. 53, sub-sec. 1(*s*) (O.).—See MUNICIPAL ELECTIONS, 3.

3 & 4 Geo. V. ch. 43, sec. 165 (O.).—See MUNICIPAL ELECTIONS, 2.

3 & 4 Geo. V. ch. 43, sec. 258(3) (O.).—See MUNICIPAL CORPORATIONS, 3.

3 & 4 Geo. V. ch. 43, sec. 325 (O.).—See HIGHWAY, 2.

3 & 4 Geo. V. ch. 43, secs. 332 et seq. (O.)—See MUNICIPAL CORPORATIONS, 11.

3 & 4 Geo. V. ch. 43, sec. 398 (10) (O.).—See MUNICIPAL CORPORATIONS, 14, 16, 17.

3 & 4 Geo. V. ch. 60 (O.) (Factory Shop and Office Building Act)—See MASTER AND SERVANT, 9.

3 & 4 Geo. V. ch. 71, sec. 80 (O.) (Separate Schools Act)—See SCHOOLS.

3 & 4 Geo. V. ch. 109 (O.) (Ottawa Waterworks)—See MUNICIPAL CORPORATIONS, 18.

R.S.O. 1914 ch. 1, sec. 28(*c*) (Interpretation Act)—See MUNICIPAL CORPORATIONS, 11.

R.S.O. 1914 ch. 3, sec. 9 (Territorial Division Act)—See MUNICIPAL CORPORATIONS, 2.

R.S.O. 1914 ch. 56, sec. 18 (Judicature Act)—See DAMAGES, 1.

R.S.O. 1914 ch. 62, sec. 69, sub-sec. 6 (Surrogate Courts Act)—See APPEAL, 4.

R.S.O. 1914 ch. 76, sec. 12 (Evidence Act)—See EVIDENCE, 1—LIMITATION OF ACTIONS, 2.

R.S.O. 1914 ch. 102, secs. 3, 4 (Statute of Frauds)—See LANDLORD AND TENANT, 4.

R.S.O. 1914 ch. 119, sec. 15(*d*) (Devolution of Estates Act)—See PARTITION.

R.S.O. 1914 ch. 119, sec. 30.—See WILL, 16.

R.S.O. 1914 ch. 134, sec. 12 (Assignments and Preferences Act)—See ASSIGNMENTS AND PREFERENCES, 1, 3.

R.S.O. 1914 ch. 146, sec. 4 (Workmen's Compensation for Injuries Act)—See MASTER AND SERVANT, 11—NEGLIGENCE, 4.

R.S.O. 1914 ch. 148, secs. 36, 37 (Marriage Act)—See MARRIAGE.

R.S.O. 1914 ch. 166, sec. 40 (Surveys Act)—See BUILDINGS, 2.

R.S.O. 1914 ch. 183, sec. 165 (Insurance Act)—See INSURANCE, 6.

STAY OF EXECUTION.

STAY OF REFERENCE.

STOCK EXCHANGE.

STREET RAILWAYS.

any other point, got upon a car which ran from a point in Hamilton to a point in Dundas without stopping; and sued the company for breach of contract, the conductor of the car having refused to stop at the point where she wished to get off:—*Held*, that there being no provision in the Act of incorporation nor in the Ontario Railway Act, and no regulation made by the Ontario Railway and Municipal Board and no by-law of the city and nothing in the agreement between the city and the company which was opposed to the defendant company having the right to run a car which did not stop between the two points referred to, the company had that right, and was justified in refusing to carry upon such a car a passenger intending to stop at an intermediate point, or to stop there to let off a person who had mistakenly or otherwise taken passage on the car. Judgment of the Senior Judge of the County Court of the County of Wentworth, dismissing the action, affirmed. *Fielding* v. *Hamilton and Dundas Street R.W. Co.*, 6 O.W.N. 474.—App. Div.

See Damages, 2—Highway, 8.

SUBDIVISIONS.

See Assessment and Taxes.

SUBLEASE.

See Landlord and Tenant, 1, 6.

SUBSIDENCE.

See Damages, 1.

SUMMARY JUDGMENT.

See Execution, 3—Judgment, 4, 5, 6.

SUNDAY.

See Contract, 21.

SUPREME COURT OF CANADA.

See Reference.

SUPREME COURT OF ONTARIO.

Jurisdiction in Cases of Negligence Resulting in Collision of Ships in Inland Waters—Concurrent Jurisdiction of Exchequer Court of Canada, Admiralty Side. *Shipman* v. *Phinn*, 6 O.W.N. 73, 31 O.L.R. 113.—Middleton, J.

See Appeal—Marriage.

SURGEON.

Negligence—Malpractice—Finding of Fact—Damages. *Casson* v. *Haig*, 6 O.W.N. 437.—Falconbridge, C.J.K.B.

See Landlord and Tenant, 1, 4.

SURROGATE COURTS.

1. Removal of Action into Supreme Court. *Spettigue* v. *Wright*, 6 O.W.N. 129.—LENNOX, J.

2. Tariff of Costs—Increased Fees—Solicitors. *Re Martin*, 6 O. W.N. 404.—MIDDLETON, J. (Chrs.)

See Appeal, 4—Will, 24.

SURVEY.

See Buildings, 1, 2—Highway, 4.

SYNDICATE.

See Partnership, 4.

TAVERNS.

See Municipal Corporations, 5.

TAX SALE.

See Limitation of Actions, 3.

TAXATION OF COSTS.

See Costs, 2—Solicitor, 2.

TAXES.

See Assessment and Taxes—Vendor and Purchaser, 10.

TENANTS IN COMMON.

See Will, 12.

TENDER.

See Contract, 1, 10—Vendor and Purchaser, 8.

TERRITORIAL DIVISION ACT.

See Municipal Corporations, 2.

TESTAMENTARY CAPACITY.

See Will, 1, 23, 25.

THEFT.

See Motor Vehicles Act.

THIRD PARTIES.

See Bills and Notes, 5—Contract, 5, 20, 24—Landlord and Tenant, 3—Parties, 2, 3—Practice, 2—Railway, 3.

TIMBER.

See Contract, 15 16, 24, 25, 30—Railway, 5—Title to Land—Will, 21.

TIME.

See Appeal, 3—Bills and Notes, 1, 2—Contract, 21—Executors and Administrators, 1—Highway, 3—Insurance, 6—Judg-

ment, 5—Landlord and Tenant, 7—Limitation of Actions—Municipal Elections, 2—Practice, 1—Railway, 1—Vendor and Purchaser.

TITLE TO LAND.

Improvements — Timber — Basis of Settlement — Conveyance upon Payment of Half of Value of Property and Rent Chargeable—Costs. *Hedge* v. *Morrow*, 6 O.W.N. 224.—LENNOX, J.

See Evidence, 2—Highway, 4—Limitation of Actions, 3—Vendor and Purchaser—Will, 8.

TOLL ROAD.

See Highway, 8.

TOLL ROADS EXPROPRIATION ACT.

See Highway, 8.

TRADE NAME.

Right to Use Partnership Name—Similarity to Firm Name of Plaintiffs—Passing-off—Action for Injunction—Evidence. *Cox* v. *Rennie*, 6 O.W.N. 293, 474.—MIDDLETON, J.—APP. DIV.

TRADING COMPANY.

See Vendor and Purchaser, 1.

TRANSFER OF SHARES.

See Company, 8—Contract, 31.

TRANSIENT TRADERS.

See Municipal Corporations, 15.

TRESPASS TO LAND.

Access to Land—Right of Way—Fences—Boundaries—Counterclaim — Injunction — Damages—Costs — Appeal — Variation of Judgment. *Mulholland* v. *Barlow*, 6 O.W.N. 72.—APP. DIV.

See Landlord and Tenant, 3—Limitation of Actions, 2, 3, 5—Vendor and Purchaser, 10—Water and Watercourses, 1—Way, 2.

TRIAL.

1. Jury—Communication of Jurors with Plaintiff and Witnesses during Progress of Trial of Civil Action—Verdict for Plaintiff Set aside——Misconduct of Plaintiff and Jurors—Costs. *Kellum* v. *Roberts*, 6 O.W.N. 141, 31 O.L.R. 159.—APP. DIV.

2. Jury—Irrelevant Evidence—Misleading Observations—General Verdict—Prejudice—New Trial. *Laird* v. *Taxicabs Limited*, 6 O.W.N. 505.—APP. DIV.

UNDUE INFLUENCE.

See Deed, 1—Guaranty.

UNINCORPORATED SOCIETY.

Property of Society—Dissident Members—Ultra Vires Action of Majority—Breaking-up of Society into Factions—True line of Succession—Counterclaim—Damages. *Wirta* v. *Vick*, 6 O.W.N. 599.—BOYD, C.

USE AND OCCUPATION.

See Vendor and Purchaser, 7.

USURY.

See Bills and Notes, 6.

VALUATION.

See Arbitration and Award, 1—Landlord and Tenant, 1—Railway, 7.

VENDOR AND PURCHASER.

1. Agreement for Sale of Land—Action by Purchaser for Specific Performance—Evidence to Vary Written Agreement—Delay — Time of Essence — Forfeiture — Penalty — Relief against—Return of Deposit — Company — Agreement not under Seal —Trading Corporation — Powers of Officers — Furtherance of Objects of Corporation—Ontario Companies Act, sec. 139. **Vansickler* v. *McKnight Construction Co.*, 6 O.W.N. 526.—APP. DIV.

2. Agreement for Sale of Land—Action by Purchasers for Rescission — Possession — Alteration in Property — Title to Land — Objection — Validity — Order under Vendors and Purchasers Act—Order not Issued, but Acted upon—Taking Possession — Acceptance of Title — Abandonment — Doubtful Title—Cloud on Title. **McNiven* v. *Pigott*, 6 O. W.N. 341.—APP DIV.

3. Agreement for Sale of Land—Action for Instalment of Purchase-money—Ability of Vendor to Convey—Right of Rescission—Damages—Limitation of—Abatement of Purchase-money—Application of Payment—Costs. *Fehrenbach* v. *Grauel*, 6 O.W.N. 39, 584.—LENNOX, J.—APP. DIV.

4. Agreement for Sale of Land—Assignment by Purchaser to Sub-purchaser — Rights of Sub-purchaser — Dispute as to whether Water Lot Included in Agreement—Construction of Agreement — Estoppel — Evidence—Notice to Sub-purchaser of Terms of Bargain—Acceptance of Payments by Vendor — Specific Performance — Costs. *Allan* v. *Petrimoulx*, 6 O.W.N. 593.—LENNOX, J.

Vendor—Repudiation by Vendor—Time of Essence of Contract—Right of Vendor to Treat Agreement as Terminated and to Recover Money Paid—Equitable Relief. *Winnifrith* v. *Finkleman*, 6 O.W.N. 432.—MIDDLETON, J.

13. Agreement for Sale of Land—Time Made of Essence—Failure of Purchaser to Close Transaction on Day Named—Registration of Plan—Dismissal of Action for Specific Performance. *Lawson* v. *Hunt*, 6 O.W.N. 89.—BRITTON, J.

14. Agreement for Sale of Land—Title—Objection of Purchaser—Deed—Building Restrictions—Covenants Running with Land—Release—Conveyance Free from Restrictions—Application under Vendors and Purchasers Act—Evidence—Reference. *Re Rooke and Smith*, 6 O.W.N. 382, 503.—HODGINS, J.A.

15. *Agreement for Sale of Land—Writing Evidencing Completed Bargain—Finding of Fact—Inability of Vendor to Make Title—Knowledge of Purchaser—Absence of Deceit—Damages for Breach of Contract—Limitation to Amount of Expenses Incurred by Purchaser—Recovery of Small Sum—Costs—Discretion.*] In an action for specific performance of an agreement for the sale of land by the defendant to the plaintiff or for damages for breach of contract:—*Held*, upon the evidence, that the written agreement signed by the parties was intended to be and comprised a completed and binding bargain between the parties, and was not merely an escrow.—There was no allegation or proof of deceit; the plaintiff knew that the title was in a land company, not in the vendor, who was but a shareholder and director of the company, and who, according to his evidence, believed that his fellow-directors would join in a conveyance, which they refused to do:—*Held*, following *Bain* v. *Fothergill* (1874), L.R. 7 H.L. 158, and *Ontario Asphalt Block Co.* v. *Montreuil* (1913), 29 O.L.R. 534, that the plaintiff could not recover damages for the loss of his bargain—his damages were limited to the expenses incurred by him in the transaction; and these were assessed at $10.—Judgment was given for the plaintiff for $10 with costs of action upon the Supreme Court scale and without any set-off of costs; a discretion being exercised as to costs in favour of the plaintiff, because the defendant might have found some means to keep his bargain unbroken, and he afterwards profited by his breach of contract, obtaining a share of a larger price for the land. *Brett* v. *Godfrey*, 6 O.W.N. 484.—MEREDITH, C.J.C.P.

WAREHOUSE RECEIPTS.

See Assignments and Preferences, 8.

WARRANTY.

Contract—Sale and Installation of Gas Engine and Producer Plant—Guarantee as to Fuel Consumption and as to Loss Owing to Failure of Plant—Breach—Delay in Installation—Limitation of Liability—Consequential Damages—Construction of Contract—Defects in Material and Workmanship—Principle upon which Damages Allowed—Reference to Assess Damages—Costs. *Baldwin* v. *Canada Foundry Co.*, 6 O.W.N. 152, 346.—LATCHFORD, J.—APP. DIV.

WASTE.

See Dower.

WATER AND WATERCOURSES.

1. Crown Grant of Land Bounded by Highway Running near Bank of Lake—Encroachment of Water upon Highway and Land beyond—Right of Grantee to Land Covered by Water—Lease by Crown—Trespass—Evidence—Riparian Owners—Appeal—Questions of Fact—Reversal of Judgments of Trial Judge and Divisional Court. **Volcanic Oil and Gas Co.* v. *Chaplin*, 6 O.W.N. 334.—APP. DIV.

2. Lands Bordering on Stream—Bonâ Fide Purchaser of, without Notice of Existence of Old Dam Upstream—Protection of Registry Act—Contemplated Erection by Land-owners on their own Land of New Dam on Site of Old—Creation of Pond—Diminution of Flow of Water—Loss by Evaporation and Seepage—Prescription—Lost Grant—Unlawful Use of Dam—"Sensible Injury"—Injunction—Restriction—Form of Judgment—Variation on Appeal. **Watson* v. *Jackson*, 6 O.W.N. 509.—APP. DIV.

3. Navigable River—Obstruction by Saw-logs—Delay in Navigating Vessel—Injury to Business—Evidence—Findings of Fact of Trial Judge—Appeal—Damages. *Rainy River Navigation Co.* v. *Watrous Island Boom Co.*, 6 O.W.N. 537.—APP. DIV.

4. Navigable River—Power Companies' Dam—Decrease in Supply of Water for Navigation—Injury to Steamboat Business—Nuisance—Special Injury to Plaintiffs—Findings of Fact of Trial Judge — Appeal — Damages — Increase — Loss of Trade—Expenses—Possible Decrease—Reference. *Rainy River Navigation Co.* v. *Ontario and Minnesota Power Co.*, 6 O.W.N. 533.—APP. DIV.

Purchase-money—Claim of Devisees to Mortgage—Conversion—Bequest to Daughter of Moneys in Hand or Bank at Time of Decease for Current Housekeeping Expenses—Large Fund in Bank—Absolute Right of Legatee to whole Fund. *Re Robert George Barrett*, 6 O.W.N. 268.—App. Div.

8. Construction—Devises—Estates for Life and in Remainder—Contingent Remainder upon Contingent Remainder—Rule against "Double Possibilities" — Intestacy as to Second Remainder — Right of Heirs of Testator, Ascertained at his Death—Improvements under Mistake of Title—Lien for—Alternative Retention of Lands on Payment of Value—Possession of Land — Title — Limitations Act — Partition. *Stuart* v. *Taylor*, 6 O.W.N. 217.—Middleton, J.

9. Construction—Devise and Bequest to Son, Subject to Charge for Maintenance of Widow—"Comforts she has been Used to" — Ascertainment of Proper Sum for Maintenance — Powers of Court—Originating Notice — Rule 600 — Additional Bequest to Widow of Life Income from Insurance Moneys. *Re Leishman*, 6 O.W.N. 653.—Britton, J.

10. Construction—Devise of Farm to Trustees—Trust for Payment of Income or Portion thereof for Maintenance and Education of Daughter during Minority and after Majority to Pay whole Income to Doughter during Lifetime—Right of Daughter to Accumulations of Rentals during Minority—Interest on Accumulations. *Re Carr*, 6 O.W.N. 327.—Kelly, J.

11. Construction—Devise of Life Estate to Wife for Benefit of Family—Direction to Executors to Sell at Death of Wife and Divide Proceeds among Children—Vested Estates of Children—Share of Daughter Dying after Death of Testator and Leaving Issue since Deceased—Right of Surviving Husband. *Re McLaughlin*, 6 O.W.N. 121.—Boyd, C.

12. Construction—Devise to three Daughters Jointly and to Survivor or Survivors—In Event of Death of all without Issue, Devise over—Joint Tenancy for Life and Tenancy in Common in Tail with Cross-remainders in Tail and Ultimate Remainder over—Death of all three, two Leaving Issue—Rights of Issue—Estate Tail in Undivided Moiety to each Family. *Re Harrison*, 6 O.W.N. 394.—Boyd, C.

13. Construction—Gift to Daughters—Annuity out of Rents of Land or Estate Tail in Land—Bequest to Granddaughter

20. Construction—Residuary Bequest to "Relations who are Needy" — Discretion of Executors as to Persons and Amounts—Limitation to Blood Relations, but not to Next of Kin under Statute of Distributions—Discretion to be Exercised in Good Faith and within Reasonable Time—Executors themselves Included if "Needy Relations." *Re Cawthrope*, 6 O.W.N. 716.—MEREDITH, C.J.C.P.

21. Construction—Testator Owning three Parcels of Land—Devise of First Parcel to Son—Devise of "Balance" to Daughter, Followed by Description of Second Parcel—Right of Daughter to Third Parcel—Dominant Clause—Residuary Devise—"Timber"—Separate Devise of — Scope of Word —Moneys to be Invested by Executors—Payment of Interest to Legatees—When Interest Begins to Run. **Re Fletcher*, 6 O.W.N. 235, 585.—MIDDLETON, J.—APP. DIV.

22. Insufficiency of Estate to Pay Debts and Legacies—Abatement of Legacies—Legacy to Widow in Lieu of Dower—Election to Take—Legacy of Specific Chattels—Abatement of Other Legacies. *Re Lambertus*, 6 O.W.N. 300.—LATCHFORD, J.

23. Invalidity—Incompetence of Testatrix—Evidence—Onus—Testimony of Physician-witness—Declaration of Intestacy —Injunction—Executor—Costs. *Dougan* v. *Allan*, 6 O. W.N. 713.—FALCONBRIDGE, C.J.K.B.

24. Legacies—Insufficiency of Estate to Pay in Full—Abatement—Legacy to Creditor in Satisfaction of Debt—Claim to Priority—Payment of Legacy in Full by Executors—Allowance by Surrogate Court Judge—Appeal—Originating Notice—Determination of Question Arising on Will. *Re Rispin*, 6 O.W.N. 669.—MIDDLETON, J.

25. Validity — Construction—Devise and Bequest—Absolute Ownership of Subject of Gift—Costs. *Meagher* v. *Meagher*, 6 O.W.N. 361.—LENNOX, J.

See Contract, 3—Insurance, 5.

WILLS ACT.

See Will, 19.

WINDING-UP.

See Company, 3, 9, 10, 11.

WITNESSES.

See Judgment, 2—Trial, 1.

WORDS.

"Valuers"—See RAILWAY, 7.

"Workman"—See MASTER AND SERVANT, 11.

WORK AND LABOUR.

See Contract, 32.

WORKMEN'S COMPENSATION FOR INJURIES ACT.

See Master and Servant—Negligence, 4.

WRIT OF SUMMONS.

1. *Action against Foreign Company—Service on Agent in Ontario—Rule 23—Transacting Business for Company—Traffic Soliciting Representative.*]—Rule 23 provides that any person who, within Ontario, transacts or carries on any of the business of, or any business for, any corporation whose chief place of business is without Ontario, shall, for the purpose of being served"—with a writ of summons—"be deemed the agent thereof:"—*Held*, that the defendants, a foreign railway corporation, with an office in a city in Ontario, occupied by M., who called himself "traffic soliciting representative" of the company for the Province of Ontario, were properly served with the writ of summons, by service effected upon M., who "transacted business" for the defendants. *Wagner Braiser & Co.* v. *Erie R.R. Co.*, 6 O.W.N. 386.—BOYD, C. (Chrs.)

2. Service on Defendants out of Jurisdiction—One Defendant in Jurisdiction—Proper Parties—Rule 25—Conditional Appearance—Rule 48. *Bain* v. *University Estates Limited and Farrow, Connor* v. *West Rydall Limited and Farrow*, 6 O.W.N. 22, 79.—LATCHFORD, J. (Chrs.)—MIDDLETON, J. (Chrs.)

3. Service out of the Jurisdiction—Action for Deceit—Tort Committed in Ontario—Rule 25 (*e*)—Conditional Appearance. *Green* v. *University Estates Limited*, 6 O.W.N. 128.—MASTER IN CHAMBERS.

4. Service out of the Jurisdiction—Conditional Appearance—Rules 25 (*g*), 48—Nature of Plaintiff's Claim. *Marshall* v. *Dominion Manufacturers Limited*, 6 O.W.N. 385.—LATCHFORD, J. (Chrs.)

5. Service out of the Jurisdiction—Order Permitting—Irregularities — Rules 26, 28, 32, 298—Setting aside Order and Service. *Heaman* v. *Humber*, 6 O.W.N. 221.—SUTHERLAND, J. (Chrs.)

See Appeal, 2.

WRONGFUL DISMISSAL.

See Master and Servant, 2.