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PROPOSED AMENDMENTS TO THE ELECTION LAW.

For the reason promised by Mr. McLeod, your readers who are students of political reform will have welcomed the articles published in THE CANADA LAW JOURNAL. Being of opinion that the arguments of Mr. McLeod, very interesting and excellently put, are nevertheless unsound, I venture a further word upon the subject.

The respective theories of the autocrat and the democrat are doubtless well defined by that writer; but I think that he has misread Judge Wallace in imputing to the latter the autocratic idea in his proposed reform. No one will contend that our Canadian legislative or administrative ideas are other than those of a pure democracy, and I accept his Honour's suggestion as well conceived and in complete harmony with our theories of government and a step forward in perfecting the machinery for the effective enforcement of our election law. It is true that men must be governed in accordance with such well developed customs and sentiments as then exist; and laws to be useful and to be used must be in answer to and supported by the matured sentiment of the mass of the people. This principle, however, must be applied in a reasonable sense.

Again I submit that Mr. McLeod is wrong in assuming that Canadian sentiment is not ripe for a severe and drastic law against electoral corruption. It is precisely because the sentiment is ripe that I applaud Judge Wallace's effort to devise improvement in the existing law. Nor do I agree that such a law is of a sumptuary nature. Political morality is not in our day and country a matter of taste or caprice but an admitted basic principle of our free institutions. Go into any decent community in Canada and you will hear a unanimous deprecation of corrupt methods at elections. Mr. McLeod himself unconsciously admits at least ninety-five per cent. Even those who practise irregular methods will readily confess to the desirability of clean elections and justify the alternative only as necessary to fight "the other side" with their own weapons.

Even if the suggestion now offered involved the idea of an Inquisition I think we should all be prepared to adopt such means in operating against that remaining five per cent. as unworthy of consideration or protection. But the "Inquisition" suggestion is an appeal to prejudice only, and in no way would the proposed commission be analogous to that famous institution. The work of Judge Wallace's commission or officials would be merely the preparation of a case to bring before the courts and not to be adjudicated upon by themselves. To know that the facts and true condition of affairs in any suspected contest will be brought before the judiciary would quickly dispel from the Canadian people this deep-seated distrust of our election methods.

The need of some such department or functionary is one immediately suggested by our social conditions. A free democracy we are—almost too free; and so confident in our possession and security that we have grown careless of the treasure we possess. Democracy having risen against the privileged classes in the home land, and by strenuous measures thrown off the yoke and achieved their rights and the suffrage, through easy and undisturbed possession, has permitted a resulting indifference to set in. While the citizen would be again quick to resent any direct interference or circumscription of his rights and would once more and forcibly vindicate his old possession, nevertheless it must be admitted that he seems indifferent to the true value of his franchise. To see his voice in the government of the country neutralized by the corrupt work of the politician evokes his condemnation, but seldom stimulates him to the prosecution of our penal laws; probably largely owing to the unfortunate element of fear which results from our system of party politics, and partly on account of the necessary loss and expense, costs in almost all cases being prohibitive of individual action to restore the value to his ballot cast and lost.

Mr. McLeod classifies the suggestions of Judge Wallace as threefold as follows:

1. That the practice of saw-offs be prohibited.

2. That the bribed voter, the real criminal, be introduced as a paid informer to convict his accomplices. (Who is the real criminal—the author of the evil idea or his subject who is perhaps most frequently a simple fool—Mephistopheles or Faust?)

3. That a department of government be established directed by an independent chief to enforce the law.

He thinks that No. 1 has the demerit of simple inutility. But I answer, not so if No. 3 be operative.

He condemns No. 2 as reactionary and labels it as a partnership between the State and the criminal. But is the suggestion not already a settled principle of our law. Do we not now offer protection to this very class of witness to obtain his evidence and have we not heard of "King's evidence." In any case the object is not "to elevate the morals of the people" but to root out crime and the criminals.

Tammany was an unfortunate reference by Mr. McLeod, for Tammany was organized as a truly patriotic society with lofty aspirations, but became the noxious political instrument it is only when low and depraved operators such as Tweed and his associates were permitted to get control and ply their trade. Our people are now in inclination and intention as pure as Tammany once was, but wait, as Mr. McLeod would suggest, until the corruptionists and their organizers have become too strong for control and we may see Canada as hopeless as our neighbours are under their present day Tammany. Wait until that impossible time when the five per cent. of corruptibles have become pure in heart, wait until mortal man has become divine, and until when, by reason of universal purity, the need or occasion of laws to control corruption has disappeared!

I do not intend to attempt discussion of new matter along this subject, but may I endorse the suggestion that personal canvass should be included in the category of corrupt acts. It certainly is so where the relations of the parties imply an element of duress, and where the victim, if of opposite political opinion, must either stultify himself with a lying promise or sacrifice himself to the power of the canvasser by a manly refusal. This has long been a fixed conclusion of my own.

It has also occurred to me that a duty might be imposed upon the court to direct an investigation in connection with any cases of election petitions where charges are dropped or where any circumstances might suggest the propriety of an enquiry.

Why could not petitioners under our present proceedure be required to fyle complete particulars and statement of their evi-

dence with some central office before "saw-offs" become in order, and which, while secret and unavailable to the other side would afford in any suspected case a ready means of investigation, and indeed amount almost to confessions. Why not also incorporate in the voter's oath a statement that he has not received and has no promise or expectation of a bribe.

M. B. JACKSON.

Hamiota, Man.

FEDERAL ENFORCEMENT OF THE CRIMINAL LAW.

Crimes of a singularly flagitious nature, the object of which was to defraud electors of their franchise, were lately committed in the ridings of West Hastings and Frontenac in the Province of Ontario. Prosecutions therefor were soon after set on foot by the Dominion Government. Now it might be judged both desirable and convenient that the central body should have the power to stretch forth the arm of the law and bring violators of its own enactments to justice. But is it endowed with such power?

Any appeal to the B. N. A. Act—our patent of nobility issued by the Imperial Parliament—would, if value pertains to judicial authority, result in putting the advancer of such a claim out of court. Confederation was not many years old before the point came up for judgment in proceedings brought against The Niagara Falls International Bridge Company, alleging a failure to live up to its charter. The citation is *Attorney-General* v. *Niagara Falls International Bridge Company,* 20 Grant, 34. A determining question was as to whether the Attorney-General of the Dominion or that of the Province had the requisite locus standi in the matter. Argument was had on a demurrer by the defendants, the Great Western Railway Company, to the information of the Attorney-General for Ontario, at the relation of the Erie & Niagara Railway Company, for want of equity. The objection formally raised by the defendants was that the information had been improperly filed by the Attorney-General for the Province, it being contended that the proper officer to complain of the injury to the public involved in the suit was the Attorney-General for the Dominion. The learned judge before whom the matter came (Vice-Chancellor Strong)

disposed of the objection in these words: "The objection is in my opinion without foundation. The Attorney-General files this information, not complaining of any injury to property vested in the Crown, as representing the Government of the Dominion, but in respect of the violation of the rights of the public of Ontario. The Attorney-General of this Province is the officer of the Crown who must be considered to be present in the courts of the Province to assert the rights of the Crown and those who are under its protection. If an ex-officio information in respect of a nuisance caused by illegal interference with a railway, which is a public highway, were to be filed in a Court of Common Law, there would, I should think, be no doubt but that the Provincial Attorney-General was the proper officer to prosecute. He further intimates: "The power of making criminal laws is in the legislature of the Dominion,, but it has never been doubted that the Attorney-General of the Province is the proper officer to enforce these laws by prosecution in the Queen's Courts of Justice in the Province.

In the case of a public nuisance caused by an illegal obstruction of a railway, as I have already said, the Provincial Attorney-General would be the proper officer to prosecute in a court of law. A Court of Equity, however, would lend its aid in an information being filed by the proper officer to restrain such a nuisance. Would it not be a strange anomaly that whilst the criminal information could be preferred by the Provincial Attorney-General, the information in the Court of Chancery must be filed by the Attorney-General of the Dominion. Such a conclusion would not result from the exclusive power given to Parliament, and there is nothing else in the Imperial Act which can be suggested as authorizing such a mode of proceeding." It should not be forgotten that maintaining a nuisance constitutes a criminal offence.

Later, in *Attorney-General of Ontario, ex rel. Barrett* v. *International Bridge Company,* 28 Grant 65, Spragge, C., adverting to the objection urged there, as in the former litigation, that the Attorney-General was not the proper party to file the information, but that, if any one, it should be the Attorney-General for the Dominion, concurred with Vice-Chancellor Strong as to the provincial Attorney-General being the officer compe-

tent to intervene where a violation of the rights of the public of Ontario, and not a complaint of injury to property vested in the Crown, as representing the Government of the Dominion, has been charged. He went further, and granted relief (a larger measure being prayed in that case) so far as the use of the bridge by persons crossing on foot was concerned.

The writer reproduces the judgment of the learned Vice-Chancellor in extenso, or nearly so, as much by reason of the way in which it was incidentally referred to by the Court of Appeal, on appeal from the other decision, as on account of the pre-eminent standing of its enunciator. The review of *Attorney-General of Ontario, ex rel. Barrett* v. *International Bridge Company,* will be found in 6 App. 537. There, Mr. Justice Burton, expressing the opinion of the Bench, distinctly upholds the Vice-Chancellor's position by the following declaration: "The information in this case is based on the assumption that the bridge not having been constructed in conformity with the requirements of the Act of Parliament authorizing its construction is not the structure authorized by the legislature, and a nuisance; and the principal prayer of the information is directed to obtaining the decree of the court to abate the nuisance, and remove the structure from the navigable waters of the Niagara River; and I do not doubt, for a moment, the right of the Attorney-General for Ontario to represent the public in any such case, either in equity or by prosecution at law. If the company had proceeded to build one of the piers, and then abandoned the work there could be no question of the right of the Attorney-General to prefer an indictment for a nuisance." Pointing out, afterwards, wherein the court deemed that the Chancellor erred, he says:

"The fallacy consists in calling the abandonment of a portion of the work a public nuisance, instead of what it probably is, an abuse of the Act of Parliament." It may be interesting to know that Mr. Edward Blake, of counsel for the Bridge Company, admitted the correctness of the Vice-Chancellor's law by observing that "a marked difference existed between this case and that of a completed structure, and an information being filed merely to protect the rights of the citizens of Ontario, such as the *Attorney-General* v. *International Bridge Co*., 20 Grant 34."

Some may reply that, from that time to this, no question has been raised that the power of enforcement of the criminal law in the Courts of Assize, Oyer and Terminer and General Gaol Delivery, where they are now likely to conduct these prosecutions, lies with the provincial authorities. But the writer feels that he may properly invoke the authority of the examined judgments in support of the view that the Minister of Justice, or the Attorney-General for the Dominion (as the officer was, in the examples in question, designated), is without status in any forum, exalted or petty, which exercises a criminal jurisdiction. And, while submitting this proposition, he would draw attention to the most notable form of usurpation practised by the Government's representative on the preliminary hearing requiring the prisoners to furnish bail and determining its amount.

The parts intended in the writer's belief to be played by the divisions "Criminal law and procedure" and "Administration of justice," assigned by the B.N.A. Act to Parliament and the provincial legislatures respectively, might be fitly compared with the provision and employment of the plant in some industrial factory. The agent, "Criminal law and procedure" instals it, but that which contributes the motive power and sets the inert pieces running is the force "Administration of justice."

If more were needed to shatter any plea which might be submitted for the Dominion, it can be found in the introductory provisions of the Code, sec. 3, sub-s. 6, which enacts that the expression "Attorney-General" means the Attorney-General and Solicitor-General of any Province in Canada in which any proceedings are taken under this Act." And as going to shew that provincial Attorneys-General have a controlling influence over prosecutions from the moment of their inception, reference, amongst others in point, may be had to the sections providing for their consent in certain cases being obtained to bring prosecutions, and the section providing for the attendance of a witness beyond the limits of the Province at a preliminary enquiry "on request therefor by the informant or complainant or the Attorney-General."

J. B. MACKENZIE.

SIR HENRY CREASE.

A strong and striking character, and one of the best known men belonging to the profession in British Columbia, has just passed off the scene. Henry Pering Pellew Crease was the eldest son of Captain Henry Crease, and was born in Plymouth, England, in the year 1823. In 1849 he was called to the English Bar. In 1858 he went to British Columbia, where he was the first practising barrister and "father of the Bar" in the colonies of Vancouver Island and British Columbia. In 1861 he became by Imperial appointment Attorney-General for the separate colony of British Columbia, and was also a member of its legislature until the union of these colonies on Nov. 10, 1886; becoming subsequently Attorney-General of the united colony of British Columbia. In that capacity he took a leading part in the revision of the provincial laws preparatory to his Province entering Confederation, of which he was a strong advocate. On May 13th, 1870, he received the Imperial appointment of senior puisne Judge of the Supreme Court of British Columbia, serving in that capacity until his retirement in 1896.

The administration of justice in those days and in that country required just such strong and forceful men as Chief Justice Begbie and Mr. Justice Crease. Many incidents are related of their judicial experience which tell of the unusual and often thrilling nature of the self-imposed duties and novel experiences of these judges in the somewhat lawless mining districts of that time and place.

Shortly before the retirement of Mr. Justice Crease from Bench in 1896, the Queen bestowed upon his the honour knighthood. The letter of Lord Aberdeen, the then Governo General, conveying to him the intimation of the Queen's pleasure, stated that he was "now the only remaining judge in Canada appointed directly by the Imperial Government."

His character is well expressed in the words of his obituary in the leading journal of the city where he lived: "During his residence his marked integrity of character, his energy, never failing courtesy and other estimable qualities won him general respect, and his loss will be deeply mourned."

The Law Association of Hastings advocates a change in the rule fixing the time for filing statement of defence after service of statement of claim, on the ground that eight days is universally found too short a period, also urging that there is no reason why there should be three weeks for reply, and only eight days for defence; with a suggestion that the three months allowed after the service of the writ for filing statement of claim might be shortened if time is of importance in the matter of pleadings. There is, we think, good reason why there should be at least three weeks given for reply, as during that period applications to amend must be made, and considerable time is also necessary for examinations on discovery, etc. As to the defence, eight days has been the rule within the memory of the oldest practitioner. In places where suitors can readily be seen by their solicitors the present time limited is generally sufficient; but if not, an order for further time is obtained almost as a matter of course. Where, as is often the case, parties live at a distance, and amongst the farming community, where people generally do not go to the post more than once a week, eight days is sometimes rather short; but it must be remembered that the ten days for appearance is not to be forgotten when considering the time given for putting in the defence. We do not know what virtue there is in the three months' rule as to the life of a writ except possibly to give plenty of time for negotiations for settlement, but even for this one would think that two months would be ample.

We are glad to learn that Chancellor Boyd is recovering from the very serious illness which has prostrated him for some time, and he hopes soon to be at work again.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

TRUSTEE—BREACH OF TRUST—DELAY IN ACCOUNTING—INDEMNIFYING CO-TRUSTEE FOR COSTS—COSTS.

In re Linsley, Cattley v. *West* (1904) 2 Ch. 785 was an action against trustees for an account; there were two of them, one a solicitor who had the management of the trust; owing to his delay in accounting the action was brought, and on the trial it appeared that all the investments had been called in or made good by the solicitor trustee, and that no loss had been occasioned to the trust estate, and the only question remaining was as to the disposition of the question of costs. The co-trustee of the solicitor claimed that the solicitor trustee should indemnify him against his own costs of the action and also those which he should be called on to pay the plaintiff, the action having been occasioned by his negligence and delay in rendering a proper account, and Warrington, J., so ordered.

FIXTURES—MACHINERY ATTACHED TO FREEHOLD—HIRE-PURCHASE AGREEMENT—MORTGAGEE'S RIGHT TO FIXTURES—OWNER OF MACHINERY—REMOVAL OF TRADE FIXTURES.

Reynolds v. *Ashby* (1904) A.C. 466. This case, and another to be presently referred to, deal with questions arising on the law of fixtures. In the present case the fixtures consisted of machinery required for the purposes of a factory, which had been supplied on a hire-purchase agreement whereby the vendor was to remain the owner of the machinery until it should be paid for, and was to have a right to enter on the purchaser's premises and resume possession of the machines. The machines were duly fixed to the freehold by being placed on beds of concrete, to which they were secured by bolts and nuts, and it was possible to remove them from such beds of concrete by unscrewing the nuts without injury to the building. The purchaser had previously mortgaged the premises, and the mortgage having fallen into default the mortgagee had taken possession and refused to deliver up the machinery to the vendor thereof, who therefore brought the present action. The Court of Appeal (1903) 1 K.B. 87, noted ante, vol. 39, p. 191, dismissed the action, holding that the machines were annexed to the freehold and passed to the mort-

gagee, and this decision the House of Lords (the Lord Chancellor and Lords Macnaghten, James, and Lindley) have now affirmed, not without some expression of dissatisfaction with the result by the Lord Chancellor.

TRUST—CHURCH—INDENTITY--FUNDAMENTAL DOCTRINES—UNION OF CHURCHES—RIGHTS OF AMALGAMATED BODY—DISSENTIENT MINORITY.

General Assembly of Free Church v. *Overtoun* (1904) A.C. 515 is the cause celebre regarding the rights of the Free Church of Scotland to property of that church which by the votes of a majority of that church had been purported to be transferred to a new church composed of members of the United Presbyterian Church and the majority of the members of the Free Church, which united body is known as "the United Free Church." A dissentient minority of the Free Church had persistently refused to consent to the union, and no statute had been passed vesting the property of the Free Church in the new body. The appellants, who were substantially the dissentient minority, but who claimed to be now "the Free Church," contended that they were the proper custodians of the property of the Free Church; the Scotch Court of Session decided against them, but the House of Lords (Lord Halsbury and Lords Macnaghten, Davey, James, Robertson, Lindley and Alverstone) after hearing the case twice argued, have reversed the decision of the Scotch Court and given judgment in favour of the appellants (Lords Macnaghten and Lindley, dissenting). In arriving at this conclusion their Lordships lay down the principle that the indentity of a church consists in the indentity of its doctrines, creeds, confessions, formularies and tests, and on a comparison of those of the United Free Church with those of the Free Church, their Lordships found such divergencies as precluded them from saying that the two bodies were identical; and on the principle established by the well-known case of *Craigdallie* v. *Aikmen*, 2 Bli. 529, they held that it was a breach of trust to divert the property of the Free Church to the uses and purposes of the new body. We may remark that though the decision has come with a painful surprise to a great number of Scotch people, and has involved them in sore straits, yet they have vindicated their character as a law-abiding people and have patiently bowed to the decision. It is to be earnestly hoped that some legislative means may be found which, while amply protecting the just rights of the minority, may, at the same time, give reasonable effect to the wishes of the majority of the former members of the Free Church. It certainly seems surprising that steps were not taken to secure statutory sanction for the union before it was carried out.

PUBLIC LANDS—ORDERS IN COUNCIL—CONSTRUCTION—GRANTS OF LAND AS SUBSIDY—EXCEPTION OF MINERALS—50 VICT. C. 4 (D.).

Calgary & Edmonton Ry. v. *The King* (1904) A.C. 765 was an appeal from the Supreme Court of Canada, that Court having been equally divided. The appellant railway company was entitled to a grant of public lands, under 53 Vict. c. 4 (D.), and an Order in Council passed in pursuance thereof, in aid of the construction of their railway. The Dominion Lands Act, 1886, and the regulations made thereunder, provide that in grants made thereunder all mines and minerals are to be reserved; and the question was whether this provision of the Lands Act and the regulations made thereunder applied to grants in aid of the appellant railway. The Judicial Committee of the Privy Council (Lords Macnaghten, Davey, Robertson and Lindley and Sir Arthur Wilson) hold that it does not, but only to lands sold or granted for the purpose of settlement, and that the appellants were entitled to their grants free from any reservation of mines and minerals, except gold and silver, as to which no question was raised.

STATUTE—CONSTRUCTION—"ADJACENT."

Wellington v. *Lower Hutt* (1904) A.C. 773 was an appeal from the Court of Appeal of New Zealand, and turned upon the meaning of the word "adjacent" in a colonial statute. This Act empowered the construction of bridges by municipal councils, and provided that in certain circumstances the local authority of an "adjacent" district should contribute. The Court appealed from had determined that the appellant city was adjacent to the respondent borough for the purposes of the Act in question, although there was a distance of six miles between their respective boundaries and three other municipal divisions intervened. The Judicial Committee (Lords Davey and Robertson and Sir Arthur Wilson and Sir Henri Taschereau) refused to interfere with this decision, being of opinion that the word "adjacent" is not a word of precise and uniform meaning, and the degree of proximity intended by it must depend on the circumstances of the case.

SPECIAL LEAVE TO APPEAL TO KING IN COUNCIL.

Daily Telegraph v. *McLaughlin* (1904) A.C. 776 was an application for leave to appeal from the High Court of Australia to His Majesty in Council. By the Australia Commonwealth Act no appeal lay except by leave, and the Judicial Committee determined that the same rule will be followed in such cases as in

appeals from the Supreme Court of Canada, viz., that leave will not be granted unless the case is one of gravity involving matter of public interest or some important question of law, or involving property of some considerable amount, or is otherwise a case of public importance, or of a very substantial character. In the present case a limited company acting upon a transfer executed by attorney, the power of attorney having been signed by the plaintiff when of unsound mind, had transferred shares standing in the plaintiff's name, and the High Court had held the power was void, and the transfer a nullity. Their Lordships did not see any reason to doubt the correctness of the decision, and refused leave to appeal. This case at all events shews one of the dangers of acting on the faith of a power of attorney.

R.S.C. c. 47, s. 4—Construction.

In *Attorney-General of Manitoba* v. *Attorney-General of Canada* (1904) A.C. 799, the meaning of R.S.C. c. 47, s. 4, was in question. That act provides that all Crown lands in Manitoba that may be shewn to the satisfaction of the Dominion Government to be swamp lands shall be transferred to the Province of Manitoba and enure wholly to its benefit and uses. The question was whether the Province was entitled to the benefit of such swamp lands as from the date of the Act. The Judicial Committee of the Privy Council (Lords Macnaghten, Davey, Robertson and Lindley and Sir A. Wilson) affirmed the judgment of the Supreme Court, holding that the section did not operate as an immediate transfer to the Province, but only from the date of an Order of Council made after survey and selection as prescribed by the Act, directing that the selected lands be vested in the Province, and down to that date, the profits of such lands belonged to the Dominion Government.

Special leave to appeal to King in Council.

Ewing v. *Dominion Bank* (1904) A.C. 806 was an application for special leave to appeal to His Majesty in Council. The applicant had appealed to the Supreme Court of Canada and had failed. No important question of law was raised and the leave to appeal was refused.

Erratum:—On p. 260, in the third line from the end of the page, for 1893 read 1903. And on p. 261, line 7, for s. 14 read s. 4.

REPORTS AND NOTES OF CASES.

Dominion of Canada

EXCHEQUER COURT.

QUEBEC ADMIRALTY DISTRICT.

Burbidge, J.] GAGNON v. THE KING. [May 25, 1904.

Public work—Injury to property—Barge wintering in Lachine Canal—Lowering level of water—Omission to notify owner—Negligence—50-51 Vict. c. 16, s. 16 (c).

In the autumn of 1900 the suppliant placed his barge for winter quarters at a place in the Lachine Canal which he had before used for a similar purpose. The practice is now changed, but up to and including the year 1900 it was sufficient for any owner of a barge, without asking leave or notifying anyone on behalf of the Crown, to leave his barge in the canal, and, during the winter some officer of the Canals Department would take the name of the barge, measure it, make up an account, based on the tonnage, for such use of the canal, and in the spring collect the amount thereof from the owner of the barge before she was permitted to leave the canal, the whole in conformity with the provisions of Art. 32 of the Tariff of Tolls framed by that department and issued in the year 1895. Some time after the suppliant had so placed his barge in the canal, Mr. Marceau, the Superintending Engineer, for the Province of Quebec, of the Canals Department, wrote officially to Mr. O'Brien, the Superintendent of the Lachine Canal, directing him to have the water lowered on certain dates during the winter to facilitate certain work then being done by the Grand Trunk Railway Company on their swing bridge at St. Henri. Mr. Marceau also gave a verbal order to Mr. O'Brien to comply with the usual practice of notifying the owners of barges wintering in the canal before lowering the water on any occasion. In pursuance of such verbal order Mr. O'Brien directed one of the employees of the canal to notify the barge owners whenever the level of the water was to be lowered. This employee failed to notify the suppliant before the water was lowered a certain date, and his barge was so injured by the lowering of the level of the water that she became a total loss.

Held, confirming the report of the Registrar, that as the canal was a public work a case of negligence was established for which

the Crown was liable under the provisions of The Exchequer Court Act, 50-51 Vict. c. 16, s. 16(c).

C. Archer, K.C., for suppliant. *A. Delisle*, for respondent.

Routhier, C.J., Loc. J.] [Nov. 19, 1904.

RICHELIEU & ONTARIO NAVIGATION CO. *v.* SS. CAPE BRETON.

Shipping — Collision — Look-out — Evidence—Special rule contrary to general rule—Approaching ships—Uncertainty as to course—Damages.

A pilot in charge of the ship, or the man at the wheel, is not a proper look-out within the meaning of Art. 29 of the Rules for Preventing Collisions of 1897, made under the provisions of R.S.C., c. 79, intituled "An Act respecting the navigation of Canadian Waters." The look-out should have nothing else to do than to scan the horizon and report. The place on the ship where he is stationed need not necessarily be the bows, but it should be the best place on the ship for the purpose.

2. Where there is no proper look-out the burden of proof is on the deliquent vessel to shew that such fault did not contribute to the collision.

3. In finding upon conflicting evidence, the court will give more weight to the affirmative testimony of those who swear to having seen a given thing than to the merely negative testimony of those who swear that they did not see it.

4. Where a ship undertakes to follow a course authorized by custom and a special rule in entering a certain port, but which to another ship approaching her may appear to be an unusual course and contrary to the general rule, it is the duty of the former to signal her course to the latter, and if she fails to do so the latter has a right to presume that the former will follow the general rule.

5. Where there is a danger of collision between two vessels, and they both obstinately follow out to the letter the rules regulating their respective courses when there is no such danger in the event of a collision occurring by reason of their adherence to such rules, both vessels are at fault under Rule 27, which provides that in following general rules due regard must be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the general rule necessary.

6. Where two steam vessels are approaching each other and each is uncertain and perplexed as to the course of the other, it is

the duty of both to slacken speed, reverse and completely stop until their respective courses may be ascertained.

A. R. Angers, K.C., *Peuliand*, K.C., and *A. B. Cook*, K.C., for plaintiffs. *F. Meredith*, K.C., *A. Geoffrion*, K.C., and *E. E. Harris*, K.C., for defendants.

BOARD OF RAILWAY COMMISSIONERS.

Before Killam, Ch., Mills and Bernier.] [Feb. 23.

IN RE GRAND TRUNK RY. CO. AND CITY OF TORONTO.

Expropriation for station purposes—Jurisdiction of the Board—Lands necessary for railway traffic—Meaning of "railway" and "traffic"—Compensation—Terms and conditions.

This was an application by the Grand Trunk Ry. Co. for authority to expropriate certain lands in the City of Toronto for station purposes.

Sec. 139 provides that "Should the company require at any point on the railway, more ample space than it then possesses or may take under the preceding section, for the convenient accommodation of the public, or the traffic on its railway, or for protection against snowdrifts, it may apply to the Board for authority to take the same for such purposes, without the consent of the owner."

Under s. 2, sub-s. (s) "railway" includes stations, depots, etc., and in sub-s. (z) "traffic" includes passengers, goods and railway stock.

Sec. 139, sub-s. 4, provides that "the Board may, in its discretion, and upon such terms and conditions as the Board deems expedient, authorize in writing the taking of the whole or any portion of the lands applied for.

It was urged by the opponents of expropriation that not only it did not appear that the enlarged tract of land now sought to be taken was necessary for the traffic of the Grank Trunk Ry. Co., but that the original application and the circumstances before the Board shewed that it was desired for the purposes of the traffic of other railways as well.

Held. 1. The section should be liberally construed. The Board may consider not merely the traffic which the continuation of the railway lines of the applicant company brings to a station, but that any traffic which comes to that railway either at a distance from a particular station or immediately at the station, and which seeks entrance to the station, should be considered as "traffic on the railway," including the station.

2. The convenient accommodation of the public is a separate purpose for which such an application may be made, and whether or not the applicant states, in express words, this to be one of its purposes, yet if the purposes stated appear to be such as will serve for the convenient accommodation of the public, the Board may consider the application as founded on that as one of the grounds.

3. Upon an application of this kind it is future traffic and future accommodation that have particularly to be taken into consideration. The existing traffic and the existing accommodation serve only as bases for consideration.

4. The probability or otherwise of any new railway seeking to enter the City may be taken into consideration in reference to the adequacy of the accommodation for further traffic.

5. Under s. 139, sub-s. 4 the Board has very wide powers and may refuse an application in connection therewith or impose any such terms and conditions as it sees fit to be performed or acceeded to by the applicant company in the event of its being allowed to take the whole or any portion of the lands applied for.

6. The expression "terms and conditions," being so wide the Board can require the company to do any act including the payment of money, or the paying of any compensation, in addition to that which is authorized by the statute, or to refrain from doing any act or to be subject to any liability or disability whatever.

7. Care however must be taken that such large powers should be exercised with great caution, and additional compensation should only be allowed under very peculiar circumstances.

M. K. Cowan, K. C., for the applicant company. *Fullerton;* K. C., for City of Toronto. *Watson*, K. C., *Thomson*, K. C., *H. Cassels*, K. C., *J. Shirley Denison*, *J. A. Macdonald and Strachan Johnston*, for other interests.

Province of Ontario.

COURT OF APPEAL.

Full Court] [Jan. 23.

RE MCINTYRE AND LONDON & WESTERN TRUSTS CO.

Will—Infants—Legacies—Interest and maintenance.

Judgment of STREET, J. 7 O.L.R. 548, affirmed, which declared that the legacies of $4,000 given to each of the testator's

infant sons carry interest from the death of the testator for the purposes of their maintenance, and directed the retention and setting apart by the executors of the sum of $8,000 to provide for the payment of $4,000 each to the said infants when they attain 25 years of age, and the payment out of the interest or income to accrue upon the said sum, of a certain sum annually to their mother for their maintenance; but direction given that the question of the proper amount to be allowed, having regard to the income from the infants' shares in the residue should be now settled by the Master, unless otherwise agreed upon.

Where there is a general provision for maintenance and no amount specified, there seems to be no absolute bar to recourse, if necessary, to interest upon a contingent legacy. Much less where there is no express provision of any kind. The amount of the allowance in such cases must be governed by a consideration of the circumstances and due regard to such other sources or funds as may be properly resorted to for maintenance.

Aylesworth, K.C., for plaintiff. *Tolingsbee*, for adult defendants. *H. Cronyn*, for Official Guardian.

From Falconbridge, C.J.K.B.] [Jan. 23.

REX v. MARTIN.

Murder—Criminal law—Joint trial of two persons for—Confession of one implicating the other—Admissibility—Caution to jury—Addresses to jury—Right of reply—Counsel representing Attorney-General—Crim. Code, ss. 592, 661 (2).

Upon the joint trial of two accused persons for murder, a statement or confession of one, which tended to incriminate the other, was admitted in evidence, the jury being cautioned that it was evidence only against the one who had made it.

Held, properly admitted.

Semble, that in order to the admissibility of a statement made by an accused, having regard to s. 592 of Crim. Code, it need not appear that it is a full acknowledgment of guilt so as to be a confession in the strictest sense of the term. If it connects or tends to connect the accused, either directly or indirectly, with the commission of the crime charged, it cannot be excluded on the ground that it is not a plenary confession.

Held, that under s. 661(2) of the Code, the Crown represented by counsel acting on the instructions of the Attorney-General had the right of reply, although no witnesses were examined for the defence.

Rulings of FALCONBRIDGE, C.J.K.B., upheld.

Hassard, for prisoner. *Cartwright*, K.C., for Crown.

Full Court] [Jan. 23.

METALLIC ROOFING CO. v. LOCAL UNION SHEET METAL WORKERS.

Parties—Foreign incorporated association—Local branch—Right to sue and serve with process—Representative action for tort—Rule 200—Selection of representatives.

Held, affirming the decision of a Divisional Court, 5 O.L.R. 424, that the defendant associations, being trade unions not registered under the Trade Unions Act, one being a general association of the metal workers of the United States and Canada, and the other a local union or branch of the general association, were not corporations nor quasi corporations nor partnerships, and were not capable of being sued and served with process as such in the ordinary way.

Held, also, varying the decision of MACMAHON, J., that both associations could be sued in respect of wrongs committed within the jurisdiction, in a representative action, under Rule 200.

Temperton v. *Russell* (1893) 1 Q.B. 435 not followed, in view of the remarks in *Duke of Bedford* v. *Ellis* (1901) A.C. 1, and *Taff Vale R.W. Co.* v. *Amalgamated Society of Railway Servants*, ib. 426.

Semble, that a wider selection of representatives of the general association should have been made, instead of confining it to the first vice-president; but upon that point the defendants had concluded themselves by a consent.

Tilley, for plaintiff. *O'Donoghue*, for defendant.

HIGH COURT OF JUSTICE.

Teetzel, J.] WHITESELL v. REECE. [Dec. 9, 1904.

Costs—Scale of—Damages at trial $400—To be paid into Court—Present value $180—Payment over—Defences—County Court jurisdiction.

In an action by remaindermen against a life tenant of a farm for selling the timber, the trial Judge found for the plaintiff and assessed the damages at $400, to be paid into Court, to be paid out to the plaintiffs on the death of the life tenant, who was to have the interest in the meantime. On an appeal to a Divisional Court the judgment was affirmed as to amount of damages, but varied by directing that instead of the $400 being paid into Court and the life tenant receiving the interest, the present value of the plaintiffs' interest should be paid to them fixed at $180.

Held, 1. Although the formal judgment adjudged that the trial judgment "is hereby varied by reducing the sum payable

by defendant to the plaintiffs for damages from $400 to $180, which latter sum shall be paid forthwith by defendants to the plaintiffs," the plaintiffs were entitled to costs on the High Court scale.

2. The effect of a defence by the life tenant, that payments had been made by her on an existing mortgage in excess of the amount due for interest thereon, and she "should be subrogated to the mortgagee's rights"; and by the purchaser, that he had bought the timber for value without notice raised the question of title to an interest in land to a greater value than $200 and the County Court had no jurisdiction.

Tremeear, for the appeal. *C. A. Moss*, contra.

Teetzel, J.] [Jan. 9.

RE POWELL AND LAKE SUPERIOR POWER CO.

Arbitration—Non-compliance with direction of Court—Refusal to state special case—Setting aside award.

On a motion to set aside an award,

Held, that an arbitrator to whom an award had been remitted "to find and make his award as to the ownership" of certain property had not not complied with that direction by vesting the property in one of the parties as owner.

Held, also, that an application having been made bona fide to him before the award was signed to state certain questions of law in a special case for the opinion of the Court or to adjourn the matter until an application to the Court to direct him to state a special case had been disposed of, his refusal to do so was a ground for setting aside the award.

In re Palmer & Co. (1898) 1 Q.B. 131 followed.

Douglas, K.C., and *S. C. Wood*, for the appeal. *Watson*, K.C., contra.

Divisional Court.] SOVEREIGN BANK *v.* GORDON. [Jan. 26.

Bill of exchange—Indorsement in blank—Alteration to special indorsement—Subsequent substitution of name of new special indorsee.

A bank being the holders in due course as collateral security to the account of a customer of a promissory note indorsed in blank put their name with a stamp immediately above the indorser's name thus converting the indorsement into a special one. Subsequently and after maturity of the note the account was taken over by the plaintiff bank, the intention being that the note in question and other collateral notes should pass with the account. The manager of the transferring bank handed the notes to the manager of the plaintiff bank, who with a stamp superimposed upon the name of the transferring bank, the name

of the plaintiff bank, the manager of the transferring bank authenticating the change by his initials;

Held, STREET, J., dissenting, that there had been a valid transfer and that the plaintiffs were holders of the notes in due course.

Judgment of MORGAN, Co. J., affirmed.

Grayson Smith, for appellants. *S. B. Woods*, for respondents.

Falconbridge, C.J.K.B., Britton, J., Idington, J.] [Jan. 31.

CLARK *v.* CAPP.

Master and servant—Wrongful dismissal—Writing solicitor's letter—Imperfect workmanship—Isolated instance.

Action for wrongful dismissal. The plaintiff entered into a written agreement to serve the defendants, who were wholesale manufacturing jewelers, as a general mounter. The agreement provided that the defendants might dismiss the plaintiff instantly "if guilty of disobedience to orders, theft, drunkenness or other misconduct."

The plaintiff, after being in the defendants' service for some months, was instructed to do a particular piece of work and did it so imperfectly that it was found unmerchantable, and the defendants told the plaintiff he would have to make it over again "in his own time." The plaintiff made it over and took 12 hours to do it, and the defendants' manager fined him on the next pay day $1.45, the equivalent of 6 hours' time. The plaintiff went to a solicitor, who wrote the defendants a letter asking payment of the $1.45. The defendants asked the plaintiff to withdraw this letter, and on his refusing, paid him the $1.45, but instantly dismissed him.

Held, that complaining through his solicitor about the $1.45 was not "disobedience to orders or other misconduct" within the meaning of the agreement, and the plaintiff was entitled to judgment.

Per IDINGTON, J.:—Even if it were open to the defendants to justify their dismissal by reference to the imperfect piece of workmanship, above mentioned, an isolated failure to maintain perfection in workmanship, even though tainted with negligence would not suffice to justify dismissal. It was not evidence of habitual neglect. It was not such evidence of incompetence, as might within the cases be held to be misconduct of one offering to do a certain class of work and failing to do it.

Lee, for plaintiff. *W. R. Smyth*, for defendant.

Trial—Anglin, J.] [Jan. 31.

CALEDONIA MILLING CO. v. SHIBRA MILLING CO.

Watercourses—Grant of water power—Construction—Specific use—"Their own purposes"—"Surplus water."

The plaintiffs and defendants were respectively the owners of grist mills and were each seised in fee of an undivided half of a dam on a river, and both had the right, by an agreement between their predecessors in title, made in 1880, to draw water therefrom "for their own purposes." The agreement provided for the maintenance and repair of the dam at the joint and equal expense of the parties, and that both should be equally interested in rents derived from supplying water to others. For many years the parties and their predecessors had used the waters stored by the dam as they required them. The owner of a saw-mill above the defendants' grist mill had, under a lease from the common grantor of the plaintiffs and defendants, the right to use "surplus waters" stored by the dam and not required by the grist mills. This right was continued by the separate owners of the grist mills; and the plaintiffs and defendants, under the agreement, shared equally in the rents. Shortly before this action was begun, the defendants became the owners of the saw-mill.

Held, that a construction of a grant of a water power which will restrict the grantee to the specific use to which the water was applied when the grant was made, will not be adopted, unless the language of the grant unmistakably indicates such to have been the intention of the parties.

Held, upon the documents and evidence, that each party had an absolute right to use, in a reasonable manner, for their own purposes, so much of the dammed water as might properly be used for generating power as they required, not exceeding one-half of the whole, and so much of the remaining water, which might be properly so used, as would not interfere with or impair the user in a reasonable manner by the other party of the water to which he was entitled, and which he from time to time required.

"Their own purposes" meant any lawful uses to which the water might reasonably be put in a business owned and conducted by the party, as distinguished from a grant or lease to a third party of the right to use such water; and any water not required by either party "for their own purposes," thus defined, was "surplus water."

Lynch-Staunton, K.C., and *O'Heir*, for plaintiffs. *DuVernet* and *Arrell*, for defendants.

Divisional Court.] MENDELS *v.* GIBSON. [Feb. 2.

Mortgage—Sale on credit—Account of proceeds—Removal of building from mortgaged property—Subsequent action on covenant.

A mortgagee who without special power to that effect sells the mortgaged property on credit, is chargeable with the purchase price as if it had been received by him in cash.

The principle that a mortgagee cannot sue the mortgagor on his covenant unless he is in a position to reconvey the mortgaged property to him intact does not apply to the case where the mortgagee is in a position to restore the whole of the mortgaged property, but owing to the removal or destruction of a building on the mortgaged property it is not in the condition in which it was when the mortgagee took possession, unless, semble, the building is of such a character that compensation in money, which the mortgagor is in such an event entitled to, would not be an adequate indemnity.

Re Thuresson (1902), 3 O.L.R. 271, distinguished.

Judgment of ANGLIN, J., reversed.

Watson, K.C., for appellant. *Delamere*, K.C., for respondent.

Meredith, C.J.C.P., Anglin, J., Magee, J.] [Feb. 6.

REX v. BAILEY.

Summary conviction—Application to quash—Liquor License Act—Information in writing—Improperly laid.

The defendant had been convicted before the Police Magistrate for the City of Belleville for drinking liquor on premises in the County of Hastings not under license at the time of the purchase of such liquor. The information, though stated in the body thereof to have been laid by George W. Faulkner, License Inspector for the North Riding of the County of Hastings, instead of having his own signature appended thereto, bore the name George W. Faulkner, per P. A. Lott.

Held, that the information, laid as it was by one person on behalf of another, was not a compliance with s. 94 of the Act, which, read with form E, in the schedule incorporated therewith, required that the information should be "laid and signed by the informant in writing."

DuVernet, for defendant. *McGregor Young*, for magistrate.

Idington, J.] BRENNAN *v.* FIN[illegible] [Feb. 8.

Limitation of actions—Landlord and t[illegible]nt—Payment of taxes by tenant.

The lessee of a house at a yearly rental without taxes agreed with the lessor after he had been in possession of the house for some time to pay the municipal taxes and water rates chargeable in respect of the house on the understanding that the amount would be deducted from the rent payable by him. He remained in possession of the house for more than eleven years and up to the time of the bringing of the action having paid the taxes and water rates each year to the municipal authorities, but not having made any payments to the lessor:

In an action by a mortgagee of the lessor under a mortgage made subsequent to the lease it was held that even assuming the agreement had been intended to relate to future years (which was doubtful) the payments of taxes and water rates did not operate to prevent the bar of the statute.

Finch v. *Gilray* (1889), 16 A.R. 484, applied.

Geo. F. Henderson and *A. W. Green*, for plaintiff. *Glyn Osler* and *F. M. Burbidge* for defendant.

Province of Manitoba.

KING'S BENCH.

Perdue, J.] BLACK *v.* WICHE. [Feb. 3.

Mechanics' lien—Building contract—Lien for materials furnished to contractor—Occupation of building by owner—Acceptance of work.

Action to enforce a lien under R.S.M., 1902, c. 110, against a house built for defendant Hiebert by the defendants Wiebe and Jardine, for the price of lumber supplied to the latter and used in the construction of the house. The contractors built the house under a written contract with Mrs. Hiebert, who was to pay $30 in advance, $470 "when the roof of the building was covered in," $1,500 "on or before the completion of the building," and the balance, $600, as should be arranged between the parties. The house had been for some time occupied by Mrs. Hiebert, but it had not been completed according to the contract, and, consequently, no part of the $1,500 payment, or of the balance of $600, had become due and owing to the contractors, although they had received the proceeds of a loan of $1,000 on the property and applied them on account of the $1,500 payment in accordance

with a specified term in the contract. Of the $470 instalment, there was still $270 unpaid; the amount for which the plaintiffs were entitled to a lien was $221.66, and there were several other liens registered against the property.

Held, 1. Sub-contractors supplying materials are not entitled to the benefit of the provisions of section 12 of the Act by which, in the event of a contract not being completed, wage-earners may enforce liens against the percentage of the contract price which the owner is required to hold back under section 9 of the Act.

2. When the contract price is payable by instalments, as the work progresses, the general lien-holders may enforce their claims to the extent of any earned instalments in so far as the same remain unpaid in the hands of the owner: *Brydon* v. *Lutes*, 9 M.R. 463.

3. The occupation of the house and the mortgaging of it by the proprietor did not stop her from setting up that the house had not been completed, and that, consequently, no more money was owing by her under the contract. *Pattinson* v. *Luckley*, L.R 10 Ex. 330, and *Sumpter* v. *Hedges* (1898) 1 Q.B. 673 followed.

4. Plaintiffs and the other lien-holders were entitled to share pro rata in the unpaid balance of the $470 instalment.

Robson and *Harvey*, for plaintiffs. *Elliott*, for defendant Riebert.

Perdue, J.] IN RE ALEXANDER AYOTTE. [Feb. 4.

Contempt of Court—Refusal of witness to answer question on investigation before magistrate—Materiality of question—Habeas corpus—Criminal Code, s. 585.

Application for a writ of habeas corpus for the release of Ayotte, who had, under s. 585 of the Criminal Code, been committed to gaol for a week for contempt of court in refusing to answer a question put to him on the preliminary investigation before a magistrate, of a charge laid against one Rittson, under section 503 of the Code, for having erased a name from a voters' list in his hands as deputy returning officer at the last Dominion election. Ayotte was the returning officer for the electoral district, and deposed that he had received from Ottawa the voters' lists, and had transmitted the list in question to the accused deputy, but stated that he could not tell by what means the lists had reached him from Ottawa. He was then asked from whom he had received the lists, but, on advice of counsel, refused to answer, on the ground that the question was not relevant. Further questions were then asked, when he stated that when he first received the lists there were red lines struck through some of the names on them. He was again asked from whom he

had received the lists, but refused to answer, though the magistrate ruled that the question was relevant. He was then committed. The particular list from which the accused was charged with striking off a name could not be produced, as it was not with the other documents relating to the election, which had been transmitted by the Clerk of the Crown in Chancery to the prothonotary of the Court of King's Bench.

Held, 1. Under s. 585 of the Code, a magistrate would not be justified in committing a witness to gaol for refusal to answer a question unless it were in some way relevant to the issue, as that section only applies when the refusal is made "without offering any just excuse," and the form of the warrant of commitment contains the words "now refuses to answer certain questions concerning the premises now put to him."

2. If the list in question had been produced, the question from whom Ayotte had received it before sending it to Rittson would have been immaterial to the issue as to whether the latter had altered it or not.

3. But, as the list was not forthcoming, the prosecution might have to give secondary evidence of its contents and to shew that it contained the name alleged to have been struck out, and the proof of the contents might necessarily involve as a part of the chain, information as to the source from which the returning officer obtained it, and whether that particular list had been furnished by the Clerk of the Crown in Chancery, or by a provincial officer, as it might have been, under the legislation governing the matter, furnished by either; and, in that view, it could not be held that the question objected to was not in some way material. Application refused without costs

Mathers, for applicant. *A. J. Andrews*, for the Crown.

Province of British Columbia.

SUPREME COURT.

Full Court.] [Nov. 25, 1904.

WILES v. THE VICTORIA TIMES PRINTING & PUBLISHING CO.,

Libel—Newspaper article—Fair comment.

Appeal from judgment of IRVING, J., dismissing an action for damages for libel. Defendants published on page 1 of their newspaper an article stating that some women from Seattle had been canvassing some time ago in Victoria for subscriptions for a bogus foundling institution, and on being questioned by the po-

lice had left town; on page 8 of the same issue there was an article stating that two ladies for the past few days had been selling tickets for a recital by one Greenleaf, and that the tickets were being sold "in the manner similar to those for a recital by a gentleman of the same name nearly two years ago, which was ostensibly for the benefit of the orphanage, but which the promoters were obliged to abandon." The manner of selling tickets was as a fact the same in both cases.

Held, that the article on page 1 did not necessarily refer to the plaintiff, and that the article on page 8 was fair comment on a matter of public interest and was true.

Cassidy, K.C., for appellant. *Rodwell*, K.C., for despondent.

Hunter, C.J.] [Feb. 8,

PEIRSON v. CANADA PERMANENT MORTGAGE CO.

Specific performance—Agreement for sale of land—Option to cancel on failure to pay balance—Time of essence of contract—Laches—Conveyance—Conditional execution of.

Action for specific performance tried before HUNTER, C.J., at Victoria. Plaintiff agreed to purchase land from defendant and to pay the balance of the purchase money on 1st July, 1904, the agreement providing that time should be of the essence of the contract, and that in case of the plaintiff's failure to pay the balance at the time agreed defendants should be at liberty to treat the contract as cancelled; a deed of the property was executed in Toronto and sent to defendants' agent in Vancouver to deliver to plaintiff when he paid up; plaintiff did not pay the balance on 1st July, and on 18th July defendants notified him they treated the agreement as cancelled and that they had re-sold the land. Plaintiff had done clearing on the land to the value of about $500, but of this the defendants were not aware.

Held, that defendants had exercised their option of rescinding within a reasonable time, and that plaintiff was not entitled to any relief. Action dismissed.

Harold Robertson, for plaintiff. *A. E. McPhillips*, K.C., for defendants.

Martin, J.] [Feb. 13.

ALASKA PACKERS' ASSOCIATION v. SPENCER.

Practice—Order for special jury—New trial—Whether order is exhausted after first trial.

Summons for trial with a special jury.

Pursuant to an order for trial before a judge and a special jury the trial took place: on an appeal a new trial ordered. Defendant now applied for a trial with a special jury.

Held, that the first order for a special jury was not exhausted and the summons was unnecessary.

Peters, K.C., for the summons. *J. H. Lawson, Jr.*, contra.

Hunter, C.J.] [Feb. 23.

DICKINSON v. ROBERTSON.

Execution—Seizure—Exemption—Privilege or right.

Motion for an order allowing defendant's claim to an exemption in pursuance of the Homestead Act, ss. 17, 18, and for an order restraining the sheriff from selling. Under an execution against defendant's goods the sheriff on 14th February seized the defendant's goods in her house in Victoria, and notified her thereof, and also that her goods on Moresby Island about 20 miles away were under seizure, but the latter goods were not actually taken possession of by the sheriff until the 15th.

Held, that the seizure of the goods in Victoria and the notice did not operate as a seizure of the goods on Moresby Island.

Quære, whether a debtor's right of exemption is absolute or a privilege to be exercised within two days: *Sehl* v. *Humphreys* (1886) 1 B.C. (Pt. 2) 257, and *In re Ley* (1900) 7 B.C. 94 questioned in this regard.

Semble, goods cannot be seized by telephone.

Prior, for the motion. *Higgins*, contra.

PROCEEDINGS OF LAW SOCIETIES.

COUNTY OF YORK LAW ASSOCIATION.

The 19th annual report tells us that it numbers at present 295 members. The number of volumes on their shelves are 5,116, 182 having been added during the year. The report speaks of successful dinners last April and May, and calls attention to the fact that the purpose of the Association is not merely the formation and support of a law library, but to "promote the general interest of the profession and good feeling and harmony among its members." The report refers to the suggestion of extending Long Vacation to September 15th, a memorandum in favour of the change having been submitted to the Judges at Osgoode Hall. They declined, however, to make any change at present, but said that they would endeavour as far as possible to hold no Courts or chambers before September 15th in each year. Reference was also made to suggested legislation to allow solicitors to make their own bargains with clients, but nothing was done as the majority of the members were opposed to any

such change. The proposed legislation as to unlicensed conveyancers is also referred to. The legislature refused to adopt the proposed bill, but it is intended to re-introduce it at the coming Session, but to be amended by leaving out the provision contained in the bill requiring an annual fee to be paid by others than solicitors. The report also speaks of the circumstances attending the amendment of last Session to the Judicature Act as regards appeals. Mr. Hamilton Cassels, K.C., and Mr. Walter Barwick, K.C., are again respectively President and Treasurer.

COUNTY OF HASTINGS LAW ASSOCIATION.

The Annual Meeting was interesting, and the year's work was satisfactory. The Library shelves have now complete sets of reports and text books. A resolution of condolence and tribute of respect was passed in connection with the death of the late A. G. Northrup, for 52 years Deputy Clerk of the Crown, and Clerk of the Surrogate Court. During the coming year Mr. W. H. Biggar, K. C., appointed General Counsel of the Grand Trunk Railway, and Mr. Justice Clute, both former officers of the Association, will be banqueted by the members. A motion insisting upon the rights of the profession within the Bar at the Courts was passed, and forwarded to the judges and Sheriff. The following officers were elected:—President, William N. Ponton; Vice-President, W. S. Morden; Treasurer, J. F. Wills; Curator, W. C. Mikel; Secretary, W. J. Diamond.

OSGOODE LITERARY AND LEGAL SOCIETY.

The dinner of this Society was given at the King Edward Hotel, Toronto, on the 3rd inst. About 250 sat down. The President of the Society, Mr. Alex. MacGregor, B.A., JJ.B., presided. The affair was a great success, and too much praise cannot be given to the President (ably assisted by his executive) for his energy and tact in connection with it. He made an admirable Chairman, proving himself a most worthy representative of this very useful Society.

A striking feature of the dinner was the presence of three distinguished members of the Quebec Bar, Hon. Rodolphe Lemieux, K.C., M.P., Solicitor-General for Canada; Mr. F. D. Monk, K.C., M.P., and Mr. E. F. Surveyer. There was no mistaking the warm fraternal feeling, as well as the broad Canadian spirit, pervading the speeches of these gentlemen from Quebec.

"With us Canadians," remarked Mr. Lemieux (reading from a paper which crystalized his thoughts), "racial and religious

strifes should be things of the past. French and English, Catholics and Protestants, have equal rights. The more opportunities we have of becoming acquainted, the more we like each other. . . . What we need above all in this country is a closer union of the two great preponderating races. . . . Canada draws her life-blood from many nations, and her great need is union." In reference to another train of thought he said: "The British Empire would be a mere geographical term if the colonies had not borrowed from the Mother Country those eternal principles of freedom that are at the basis of the British Constitution."

This address was an admirable essay on a very interesting subject. Our only regret is that want of space prevents our giving it in full.

Mr. Monk in the course of an eloquent speech said: "I am bound to say, speaking here amongst members of my own calling, that I have been impressed with a peculiar and to a certain extent sad, sensation, viz., that under that flag which shelters us all, we have not sufficiently developed that warm solidarity, that feeling of union, that broad enthusiasm so necessary to give its proper impetus to the patrimony which we have received from Heaven. We require some stronger grasp to mould together the varying elements of creed and nationality that are found to exist here. How shall we develop those great ideals which are so necessary if we are to carry to its infinity this great Confederation? It is here that one might possibly suggest to the members of our profession, without any distinction between those who remain faithful to the noble work of our calling, as well as to those who through circumstances have partly deserted it, that a mission suggests itself. Where shall we find a company of men more capable of developing a healthy, sound and patriotic public opinion than amongst the members of the Bar? Where would we find men more fitted to dispel the prejudices and the differences of races, the differences that arise from the diversity of origin throughout the length and breadth of this wide land, than among those who are called lawyers? Surely these men banded together, foremost amongst those who have the greatest intellectual development in the country, can perform a most useful service in becoming more closely united together."

Hon. Mr. Justice Garrow responded in felicitious and happy vein to the toast to the Bench, proposed by Mr. Hamilton Cassels, K.C. Hon. Mr. Justice Clute fittingly proposed the toast of the Bar. Mr. Aylesworth, K.C., responded on behalf of the Ontario Bar (as did Mr. Monk and Mr. Surveyer for that of Quebec) in an inimitably amusing after-dinner speech, the solemnity of some of his utterances leading many to think that one of his propositions which has been much criticised, namely, opening the pro-

fession to the public, was laid down in sober earnest rather than in jest. Mr. Z. A. Lash, K.C., and Mr. E. Douglas Armour, K.C., responded to the toast to the Law School, and happily combined both wit and wisdom. Mr. Leighton McCarthy, K.C., M.P.; Mr. Claude Macdonell, M.P., and Mr. M. S. McCarthy, M.P., of Calgary, acquitted themselves well.

An outstanding incident of the function was the spontaneous and enthusiastic reception to Mr. Christopher Robinson, K.C. Each reference to the name of that distinguished leader of the Bar called forth vigorous applause. Though Mr. Robinson had declined to speak on the toast list, in order that younger men might be heard, those present would not be denied; and so, in answer to a request, made amidst a storm of cheers, that "the Prince of the Bar" might be persuaded to say something, he gracefully yielded:—"I did not expect to speak to-night, but I could not help feeling that this call for me has very vividly brought to my recollection the fact that very many years ago, at a dinner given to my father when he was retiring from the Bench, when his health was proposed by a voice that was so welcome to his ears, he said what I might say on this occasion, that he could not help feeling that when he was called to the Bar a very small number of those then present had then been born. I never thought at that moment that the time would come when his son might repeat that remark with much wider application to a much larger representative assembly of the profession, for if I were to go around this room and single out the men who were born before I was called to the Bar, we should find but a very small number. In the present state of that controversy which has more than once been referred to to-night, as to whether a man past 60 could possibly do anything that was worth doing, or say anything that was worth saying, I think the best thing I can do is to say just as little as possible. I should, however, like to hear a discussion of the question, whether if nature is going to turn its cycle every twenty years, and if a man up to the age of 40 is good for everything, and if a man after the age of 60 is good for nothing, what happens to a man who gets to 80! Is it not just possible that a time may come for recovery and amendment? Might he not do better than he ever did before in his life? That is a question of some interest to me. I thank you, gentlemen, for the kindness with which you have called upon me."

Book Reviews.

Principles of Equity, by EDMUND H. T. SNELL, of the Middle Temple, Barrister-at-law. 14th edition by Archibald Browne, M.A., Barrister-at-law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1905.

This is a book published for the use of students, but not for them alone, as practitioners are well aware. As the egg is full of meat so is this book full of law; so full indeed that a cold shudder comes over most law students as they receive the paper set thereon at examinations. It is too well known to need further notice.

How to attract and hold an audience, by J. BERG ESENWEIN, A.M., Lit. D. Hinds, Noble & Eldridge, publishers, 31-35 West 15th Street, New York, 1904.

This is a popular treatise on the nature, preparation and delivery of public discourses and though not a law book is a useful as well as interesting book for lawyers to read, especially for those whose duties call them to speak in public. It is divided into four parts: The theory of spoken discourse; preparation of the discourse; preparation of the speaker, and delivery; these being again divided into a variety of sub-heads.

The English Press has taken it for granted that the assassin of the Grand Duke Sergius, whose name seems still to be unknown, is foredoomed to the gallows. This, however, is not the case. Murder, unless the victim be either the Czar himself or the heir to the throne, is not in Russia necessarily punished with death. Capital punishment for this crime was abolished as long ago as 1753. Since that date murderers in Russia have merely been condemned to hard labour, the sentence being from eight years up to twenty—parricides for life. On the expiration of the term they are settled free in Siberia, but may in no circumstances return to Russia. Eastern Siberia swarms with liberated assassins, yet, says Prince Kropotkin (in "Russian and French Prisons"), there is hardly another country where one may travel or sojourn in greater security. On the other hand, throughout Western Siberia, a region to which murderers are not exiled, murder and robbery are common offences. As regards the assassin of the Grand Duke, although his fate is not a foregone conclusion, we may be pretty sure that a way will be found to send him to execution. If he cannot be condemned under the civil laws, he will almost certainly be tried by a military tribunal, which would have power to pass sentence of death.—*Law Times*,