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The rumour comes from Ottawa that after the present sittings Mr. Justice Armour will retire from the Supreme Court Bench. His health, it is said, has not been good. If this be so, it is much to be regretted. His presence in our highest Court was felt to be a great source of strength, and it would be difficult to fill his place there. We trust there may be nothing in this rumour, and that he may be able to continue there as well as to give his service to the country on the Alaskan Boundary Commission.

The profession will cordially agree with us in wishing Mr. Justice Robertson many years of happiness in his retirement. There are now two vacancies in the Ontario Bench. We trust they will be promptly filled, and that the best available material, without regard to class or politics will be made use of. A strict compliance with the wishes of the country at large in this direction would tend more to the popularity of the party in power (and therefore be the best policy from a pure party standpoint) than the attempt to appease hungry politicians, or satisfy unwarranted and importunate claims, a course which has in the past too often helped to lower the judicial level.

Since the above was written one of these vacancies will be filled by the appointment of Mr. J. V. Teetzel, K.C., of Hamilton. He has been prominent in business affairs and in municipal and political circles there and built up a large practice in his profession. Though not widely known throughout the province as a counsel he enjoys a high reputation in that part of it where he he has practised his profession, which gives promise of a useful judicial career, and we congratulate him upon his appointment. We notice the statement in a leading daily journal that he is to reside in Hamilton, which would be a violation of the provisions of 60 & 61 Vict., c. 34, but we are glad to know that the above statement is incorrect and that he will remove to Toronto.

With remarkable and commendable promptitude the vacancy in the Supreme Court Bench, caused by the death of Mr. Justice Mills, has been filled, and well filled, by the appointment of Mr. Wallace Nesbitt, K.C., of the City of Toronto. Mr. Nesbitt is in the prime of life, having been born in Woodstock, Ont., in 1859, and called to the Bar in 1881. We congratulate the Minister of Justice upon his choice, and are glad of it, not only because it is excellent in itself, but because Mr. Nesbitt, though he has not taken a very active part in politics, is opposed to the party in power, and because the appointment denies the statement (too often given as a reason for appointing a mere politician) that no counsel who enjoys a large and lucrative practice at the Bar can be persuaded to leave it and go on the Bench, at least before he reaches an age when his faculties are declining and his strength waning. As far as Mr. Nesbitt is concerned he will undoubtedly lose very materially from a financial standpoint, and he retires from active life at an age when his capacity and his prospects might naturally lead him to pursue the upward progress he has hitherto made in his profession. We trust we shall now hear less about the best men at the Bar refusing to go on the Bench, and we trust to see more of similar appointments to this one in the future. It is not always a man distinguished as an advocate makes the best judge; but Mr. Nesbitt is not only an able and successful advocate, but he is also a good lawyer, as well as a man of affairs, and familiar with the business of the country and so well prepared for the duties of a position which it should be the ambition of every lawyer in the Dominion to attain.

It is not inappropriate, in connection with the death of Sir Oliver Mowat, the distinguished jurist who lately filled the office of Lieutenant-Governor of Ontario, to note that he has been succeeded by another member of our profession, Mr. William Mortimer Clark, K. C., of Toronto. The duties of the position, as a rule, are neither many nor onerous, but emergencies do occasionally arise which make it very desirable that the person occupying it should have some knowledge of constitutional law and be familiar with the discussion of legal matters. Properly enough the majority of

Lieutenant Governors of the Province of Ontario have been lawyers, viz:—Mr. John Crawford, Mr. John Beverley Robinson, Sir Alexander Campbell, Sir Oliver Mowat, and Mr. W. M. Clark. It is a pleasant surprise to note that the last on the list has never been prominent as a politician, and herein also we congratulate the appointing power. Mr. Clark is a man of means, of sterling worth, interested in the religious life of the country, with a large fund of shrewd common sense, a scholarly man and a courteous dignified gentleman who will well discharge the duties of his office.

It is gratifying to find so ably conducted and influential a journal as the *New York Independent*, favouring an unconditional reference of such international questions as the Alaskan boundary dispute to the permanent Arbitration Court at the Hague. In its issue of May the 7th, after commenting on the well known disinclination of the United States Senate to accept the policy of arbitration, it proceeds to remark: "We would rather lose a bit of Alaska, to which we think we are entitled, than refuse to refer a question of boundary with Canada to fair arbitration." If other journals of standing in the United States would adopt this fair and impartial view the interests of good neighborhood between the two dominant peoples of North America would be immensely enhanced.

A contemporary refers to the increasing tendency on the part of the British Government to appoint judges to extra-judicial work. Lord Alverstone within the past nine months has received three appointments of that character. One connected with India as to the apportionment of the public expenditure in that country. Another on the Martial Commission to South Africa, and now on the Alaska-boundary Commission. Commenting upon this, another legal journal very properly says that the trained minds and recognized impartiality of judges are particularly valuable in inquiries in which the interests of foreign countries are in conflict with our own; but concludes with the very pertinent observation that if the time of the judges is to be taken up in such matters the Government ought to realize the necessity of increasing their numbers so that the due administration of justice may not be interfered with. In matters where national interests are concerned much may

be said in favour of such appointments, but we must hold to the opinion that the growing practice of taking judges from work which properly appertains to their office and employing them in outside matters is not in the best interests of the public.

It was suggested in a letter which recently appeared in our columns that it would be well to take some practical steps towards having notes of decided cases in the various provinces incorporated in the revision of the Dominion statutes; the thought being that these decisions should be confined to subjects of purely Dominion jurisdiction, and that a reference to the decisions of all the provinces should thus be gathered together. We presume it was not contemplated that these statutes should be annotated, but merely that a citation of the cases under appropriate sections should be given. This is all that could well be done in this connection. It was also suggested that the work should be done under the direction of the Law Societies in each province. There is much to be said in favour of this suggestion, but would it not be more appropriate that the work should be done by the Commission or by some one who might act in connection with it? It might be objected that in relation to some sections there would be an immense number of cases which, without some system of digesting, would be cumbersome and practically useless. There is a good deal of truth in this, but possibly some division of the cases might be made of an analytical character where the cases were so numerous as to make this worth while. The proposition has much merit and we commend the discussion of it to the Commissioners as well as to the Law Societies as suggested by our correspondent.

HON. MR. JUSTICE MILLS.

On the 8th inst. the Hon. David Mills, one of the judges of the Supreme Court of Canada, died suddenly at his residence in Ottawa. He had been in Court during the day and was apparently in his usual health until a few minutes before he passed away. A good and kindly man his loss in his home circle and in the larger circle of his many friends will be keenly felt. We have already referred at length to his public career (see vol. 36, p. 393, and vol.

38, p. 141). We need not therefore add anything more to what has already been said in that respect.

The extremely short period for which he was permitted to occupy the Bench, extending over a little more than a year, necessarily prevented Mr. Mills from establishing a reputation as a judge. Whether he possessed the qualifications which would have made him a great judge it is now of course impossible to say; but this we do know that he proved his capacity in other respects, for he was great as a parliamentarian, as a statist, and as a devotee of learning. His most enduring monument is the record of his long and useful parliamentary career. For a period extending over some 30 years there was hardly a constitutional debate in the Canadian Parliament to which the deceased judge did not make some valuable contribution. As a writer his essays on constitutional and historical questions will bespeak for him an honourable place. As a man he was a true Christian gentleman.

At the opening of the Supreme Court on the 11th inst., Sir Elzear Taschereau, C.J., in referring to the death of his colleague, after referring to the loss sustained by the Court and by the country, said: "In the legislative halls and in the councils of the nation, wherein he figured so preeminently before his promotion to the Bench, he proved to be a statesman in the comprehensive sense of the word. He was a deep thinker and was profoundly versed in the science of political economy. He had made a prolonged study of, and was familiar with, the sound principles which are the very soul and life of the organic and paramount laws which govern the Dominion and the provinces respectively, a proper knowledge and application of which is so essentially necessary for the preservation of the autonomy of our institutions by a just delimitation of the specific orbits within which each authority has the right to move so as not only to avoid contrarieties, but also as to secure harmony and peace in our Canada. As a judge he was a man of indefatigable industry, combined with an unusual endowment of strong practical sense and sound judgment, and his opinions always commanded profound respect from all of us. He was of sweet, gentle disposition, with quiet manner and modest and unassuming bearing. His relations with his colleagues and with the officers and personnel of the Court were marked by uniform kindness and courtesy. During his brief career on the Bench he

earned the confidence and respect of the Bar for his patience to hear and his intelligent appreciation of argument, for his industry in the investigation of truth and for his scrupulous care in preparing his opinions. On their face they indicate his close companionship with books, a deep knowledge of the fundamental principles of the law and a keen pursuit of the authorities. It may well and truly be said that a more conscientious and upright judge the country never had. And we, who have been his fellow-workers, have repeatedly noticed that his desire to do exact justice, coupled with his modest opinion of his own ability, caused him in many cases more than the usual anxiety inseparable from the performance of judicial duties."

AUTHORITY OF PARLIAMENT.

In the *Montreal Legal Review* (1902, pp. 346 to 366) Hon. Charles Fitzpatrick, K.C., Minister of Justice, considers the much discussed decision of the Judicial Committee in *Hoy* v. *Canadian Pacific R.W. Co.* (1902) A.C. 220, and examines its bearing on the law of the Province of Quebec. The article is an able and lucid exposition on the subject matter of the judgment.

The judgment in question proceeds upon the well-known doctrine that there is no liability for acts done under statutory authority where there is no negligence in the execution of the power conferred by statute, or as stated by the Lord Chancellor (Halsbury): "The ground upon which the immunity of a railway company for injury caused by the normal use of their line is based, is that the Legislature, which is supreme, has authorized the particular thing done in the place and by the means contemplated by the Legislature."

Thus the decision is based upon the assumed absolute and indisputable authority of Parliament. Parliament, the learned writer shews, is of English origin and is the union of both the executive and legislative authorities.

In France, on the other hand, the tendency, more marked in modern times, is to keep separate and distinct the legislative from the executive and other branches of authority, and to deny to the legislative authority any right to interfere with the other powers.

Thus Napoleon, the author of the Civil Code, held that the legislature should legislate, i.e., construct grand laws on scientific

principles of jurisprudence, but it must respect the independence of the executive as it desires its own independence to be respected : Ilbert on legislative methods and forms, p. 208.

In the Quebec Courts it was strongly contended that the case must be decided according to the French jurisprudence and text writers, because the civil law of Quebec was derived from France, but this statement, the author of the article points out, can only be accepted subject to the reservation that any institution analogous to the English Parliament, to which our legislature is the counterpart, is unknown to the French jurisprudence and text writers.

The key to the solution of the difficulty in reconciling the decisions of the courts of Quebec with the opinion of the Judicial Committee is found in the absence of any such supreme authority in France and consequently their decisions are not applicable. In the judgments appealed from, both Mr. Justice Bossè and Mr. Justice Hall quote the passage : "The State has not granted nor can it grant to railway companies the right of setting fire to adjoining properties without indemnity :" and Mr. Justice Hall adds : "The French authors carry this principle so far as to contend that even the legislature has not power to violate it." The word l'etat or legislature there used, is clearly not our Parliament, which is supreme. A number of other citations are given to the same effect from text writers and judgments of the French courts, for example from the judgment of the 1st Chamber of the Imperial Court of Bordeaux, where the passage first cited is found.

We quote the conclusions of this valuable contribution towards harmonizing the jurisprudence of Quebec with that of the other Provinces of the Dominion :

"(1) Both the English and French law equally recognize the maxim, Sic utere tuo ut alienum non loedas, and under ordinary circumstances hold railway and other companies and individuals liable for damage caused by their fault to another.

(2) By English law when a railway or other company or an individual is expressly authorized by the supreme power in the State to do a particular act there can be no responsibilty for the consequences of doing such act in a proper manner.

(3) It is probable that this would also be good law in France even though there is not in that country so recognized and indisputable a Supreme Authority as our Parliament.

(4) All that has been decided by the Bordeaux case which may be considered the foundation of the jurisprudence in the subject matter is that there has in fact been no such unqualified authority given by a Supreme Power to railway companies as would relieve them from the ordinary law of liability, but that on the contrary the law of the "15 juillet 1845 sur la police des chemins de fer" expressly preserves such liability.

If then we accept (as having a Parliament we at any rate must accept) the doctrine of the consequences that flow from the acts of such an absolute 'Puissance publique' and read the French law in the view of the fact that (contrary to what has happened in France) Parliament has exercised its power to give an unqualified authority to the railway company we shall have little difficulty in reconciling the judgment of the Privy Council with the law of Quebec even as illustrated by French law and as it can be interpreted by the most ardent champions of our Provincial autonomy."

We recently referred to some incidents in connection with litigation in India. We also can boast of some lengthy cases. *The Centaur Cycle Co.* v. *Hill*, which was an action for damages in connection with the sale of some bicycles, was sent by the trial judge to the official referee. This reference lasted 58 days. The appeal books consisted of over 2,000 pages with a supplement in addition, and the argument on the appeal to the Court of Appeal lasted for one week. It is not perhaps surprising to note also that the costs very considerably exceeded the damages claimed.

The Commission which has been sitting to enquire into certain charges in connection with a member of the Ontario Government is frequently spoken of as a "Royal Commission." This is surely a misnomer. The learned judges who compose it are not appointed by virtue of the Royal prerogative, but under the provisions of a provincial statute; and, in this respect, differing from the Commission which in years gone by investigated the Pacific scandal charges. The present Commission like the Assessment Commission (the result of whose labours are embodied in the Bill now before the Ontario legislature) is a statutory commission pure and simple.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

HIRE AND PURCHASE AGREEMENT—CONVEYANCE OF CHATTELS ABSOLUTE IN FORM, INTENDED AS SECURITY—NON-REGISTRATION UNDER BILLS OF SALES ACT—BILLS OF SALES ACT (1878) 41 & 42 VICT., C. 36, S. 4—BILLS OF SALES ACT, 1882, (45 & 46 VICT., C. 43) SS. 3, 9.

Mellor v. *Maas*, (1903) 1 K.B. 226, is a decision of the Court of Appeal (Collins, M.R., and Romer and Mathew, L.JJ.) affirming the judgment of Wright, J., (1902) 1 K.B. 137 (noted ante vol. 38, p. 262). The facts were briefly as follows: The defendant Maas advanced £2,000 to one Mellor, who was purchasing a hotel and furniture, and took by way of security an absolute conveyance of the furniture from Mellor's vendor, and Maas then purported to sell the chattels to Mellor on a hire purchase agreement for £2,412.16, payable in instalments. This agreement was in the usual form and included a license to seize. It was not registered under the Bills of Sales Act. Mellor became bankrupt and his trustee in bankruptcy claimed the chattels on the ground that they were merely a security to Maas for a loan and the security was void for want of registration. Wright, J., upheld this contention, and his decision, as already said, is affirmed by the Court of Appeal, mainly on the ground that it was simply a question of fact as to what the real transaction between the parties, and with the judge's finding on that point there was no ground for the Court to interfere.

DAMAGES—NEGLIGENCE OF ARCHITECT IN PREPARING PLANS—NOMINAL DAMAGE.

Columbus Co. v. *Clowes*, (1903) 1 K.B. 244, is a curious case. The action was brought to recover damages against the defendant, an architect, for negligence in preparing plans. The alleged negligence consisted in his omitting to measure the site on which the proposed building was to be erected, and acting on the assumption that the site was smaller than it was in fact. The plaintiffs paid for the plans, and employed a person to take out the quantities, but, having failed to raise money to erect the proposed building, the

plans were never used and the site was subsequently sold. After the sale the plaintiffs discovered the error in the plans and claimed to recover from the defendant the price paid for them, as upon a total failure of consideration, or, in the alternative, damages for negligence. The action was tried by Wright, J., who admitted that the case was not covered by authority. He came to the conclusion that there was not a total failure of consideration, because notwithstanding the error, the design of the plans would to some extent have been available for the actual site, and a small addition to the quantities would only have been necessary for a building of the proper size. On the other hand he considered the plaintiffs entitled to damages, but as the plans had never in fact been used, no substantial damage had been sustained, and the plaintiffs were therefore only entitled to nominal damages, which he assessed at 40s. for the plans and £40 for adapting the quantities to the actual site.

ARBITRATION—AGREEMENT TO REFER TO FOREIGN COURT · STAYING ACTION—ARBITRATION ACT, 1889 (52 & 53 VICT. C. 49) SS. 4, 27—(R.S.O. C 62, S. 6.)

Austrian Lloyd SS. Co. v. *Gresham Life Assurance Society*, (1903) 1 K.B. 249, was an action brought on a policy of life insurance effected by a foreigner with an English insurance company at Budapest, where it had a branch office. The policy provided that the premium and insurance money should be payable at Budapest and contained a condition to the following effect: "For all disputes which may arise out of the contract of insurance, all the parties interested expressly agree to submit to the jurisdiction of the Courts of Budapest having jurisdiction in such matters." An action on the policy having been commenced in England the defendants applied under the Arbitration Act (52 & 53 Vict., c. 49) s. 4, (R.S.O. c. 62, s. 6), to stay the proceedings. Darling, J., refused the application, but the Court of Appeal (Romer and Matthew, L.JJ.) held that this amounted to an agreement to refer within the meaning of the Act, and therefore that the defendants' application should be granted.

LANDLORD AND TENANT—IMPLIED COVENANT FOR QUIET ENJOYMENT—IMPLICATION ARISING FROM WORD "LET"—INTERRUPTION AND TITLE PARAMOUNT.

Jones v. *Lavington*, (1903) 1 K.B. 253, is a case which has already been incidentally referred to in these columns (see ante p.

96, et seq.). It may now suffice to say that the defendant being lessee of certain premises by agreement not under seal operating as an immediate devise agreed to "let" the premises in question to the plaintiff for the term of three years. The lease under which the defendant held, but of which the plaintiff had no actual notice contained a restrictive covenant as to carrying on any business on the premises in question. The plaintiff's lease contained no such restriction and he entered on the premises and carried on business there until restrained by injunction obtained by the superior landlord. The plaintiff then sued his own landlord for breach of an alleged implied covenant for quiet enjoyment. It now appears from a full report of the case that the Court of Appeal (Collins, M.R., and Romer and Mathew, L.JJ.) did not actually decide that there was no implied covenant for quiet enjoyment arising upon the word "let," but that, whether there was or not, it did not create an unrestricted covenant extending to lawful interruptions by a person claiming under title paramount, but only to the plaintiff's lessor's own acts and those claiming under him. Collins, M.R., however, cites apparently with approval the dictum of Kay, L.J., in *Baynes* v. *Lloyd* (1895) 2 Q.B. 610, that "the weight of authority is in favour of the view that a covenant in law is not implied from the mere relation of landlord and tenant, but only from certain words used in creating the lease," a proposition which has already been dealt with in the article above referred to. Collins, M.R., also points out that according to *Patman* v. *Harland* (1881), 17 Ch. D. 353, the plaintiff must be taken to have had notice of the terms of the head lease.

EMPLOYER AND WORKMAN - DEATH OF WORKMAN FROM ACCIDENT—PARENT IN WORKHOUSE—WORKMEN'S COMPENSATION ACT, 1897, (60 & 61 VICT., C. 37) S. 7, SUB.-S. 2--"DEPENDENT."

Rees v. *Penrikyber Navigation Colliery Co.* (1903) 1 K.B. 259, was an action brought by the father of a deceased child who had been a workman and killed by accident in the defendants' colliery, to recover compensation under the Act of 1897. The plaintiff claimed to be a "dependent" on his deceased son within the meaning of the Act. He was in fact a pauper living in a workhouse, and his deceased son had not contributed to his support. The Court of Appeal (Collins, M.R., and Romer and Mathew, L.JJ.) held that notwithstanding the son's indirect obligation under

the poor law to contribute to his father's maintenance, the plaintiff was not in fact a "dependent" and therefore not entitled to compensation. See R.S.O. c. 166, s. 3.

AUCTIONEER — ADVERTISING PROPERTY FOR SALE—SLANDER OF TITLE — LIABILITY OF PRINCIPAL.

Halbronn v. *International Horse Agency*, (1903) 1 K.B. 270, is another of those queer cases, which from time to time arise to puzzle the judicial mind. The plaintiff was an auctioneer, carrying on business in Paris. He was instructed by the defendants to sell a mare, described in the English Studbook under the name of Pentecost. The plaintiff accordingly advertised the horse for sale in good faith, describing it according to his instructions. It turned out that a Frenchman had another mare of the same name entered in the French Stud Book, and he brought an action in France against the plaintiff and recovered damages against him, on the ground that the advertising of the mare under the name of Pentecost had injured the value of his mare and caused him damage. The plaintiff claimed that the defendants were liable to recoup the damages thus recovered against him; but Bruce, J., who tried the action, held that the damages recovered against the plaintiff in the French Court did not arise from any act done by the plaintiff in pursuance of his employment by the defendants, but arose from a mistake in the identity of the mare Pentecost, arising from the fact that some person in France had procured another mare to be entered in the Paris Stud Book as "Pentecost," for which mistake the defendants were not answerable. If the defendants had sent their mare to be sold under a false description then they would have been liable.

PRACTICE COSTS—TWO DEFENDANTS REPRESENTED BY SAME SOLICITOR—JUDGMENT FOR ONE DEFENDANT AND AGAINST THE OTHER.

In Beaumont v. *Senior*, (1903) 1 K.B. 282, a Divisional Court (Lord Alverstone, C.J., and Wills and Channell, JJ.) held that where two defendants are represented by the same solicitor, and the plaintiff succeeds against one of them, and his action is dismissed against the other, and there is no agreement between the defendants inter se as to how their costs are to be borne, the successful defendant is entitled to recover from the plaintiff one-half of the costs of the defence.

STATUTE OF FRAUDS—(29 CAR. 2, C. 3) S. 4 (R.S.O. C. 338, S 5)—CONTRACT TO BE PERFORMED WITHIN A YEAR—EMPLOYMENT FOR A YEAR—SERVICE TO COMMENCE DAY NEXT AFTER DATE OF CONTRACT.

Smith v. *Gold Coast*, (1903) 1 K.B. 285, is a case in which the plaintiff who appeared in person scored a success. The action was brought to recover damages for breach of a contract to employ the plaintiff as solicitor to the defendant company. The plaintiff's case was that at a board meeting of the defendant company held on December 6, 1901, at which he was present, he was verbally engaged to act as the company's solicitor on the Gold Coast for one year from December 7, 1901. The defendants set up that the contract was invalid under the Statute of Frauds, s. 4 (R.S.O. c. 338, s 5) and the Common Serjeant who tried the case ruled that the agreement was not to be performed within a year and was therefore void under the Statute. The Divisional Court (Lord Alverstone, C.J., and Wills and Channell, JJ.) held that the contract was not as the defendants contended to commence from 8th Dec., but on the 7th Dec., and therefore that it was one for a year, and therefore not within the Statute. No question appears to have been raised to the necessity for the retainer being under seal. See *Brooks* v. *Forguay* (1902) 1 K.B. 601, noted ante p. 484.

SOLICITOR FOR CROWN—DIRECTION TO CROWN SOLICITOR TO APPEAR FOR A SUBJECT IN MATTER IN WHICH CROWN INTERESTED—COSTS OF CROWN SOLICITOR.

In *The King* v. *Archbishop of Canterbury*, (1903) 1 K.B. 289, the Court of Appeal (Collins, M.R., and Romer and Mathew, L.JJ.) decided that where in a matter in which the Crown is interested, the solicitor for the treasury is directed to take up the defence of a subject, such solicitor is entitled to recover costs against the opposite party.

BILL OF LADING—CONCLUSIVE EVIDENCE OF QUANTITY DELIVERED TO SHIP—NON DELIVERY—REDUCTION OF FREIGHT—RECOVERY OF GOODS UNDELIVERED—MEASURE OF DAMAGES.

The Mediterranean & N.Y. S.S. Co. v. *Mackay*, (1903) 1 K.B. 297, was an action by ship-owners to recover freight in which the consignees set up a counterclaim (1) for reduction of freight in respect of goods not delivered and (2) the value of goods not delivered. The bill of lading contained a clause to the effect that it was to the conclusive evidence against the ship owners as

establishing the quantity delivered to the ship. There was a short delivery of one class of goods, and over delivery of another, the total number being in excess of the total number given in the bill of lading. The consignees had taken delivery of the surplus of the one class of goods, but not under circumstances showing any agreement to treat the over delivery as equivalent to the delivery of that class of goods in respect of which there was a shortage. Bucknell, J., held that the defendants were entitled to the relief they claimed, and the Court of Appeal (Collins, M.R., and Romer and Mathew, L.JJ.) affirmed his decision, holding that the shortage in one class of goods was not compensated by the surplus delivered of the other class, and that the value of such shortage was to be ascertained by taking the proportion that the quantity undelivered bore to the quantity specified in the bill of lading; and that the reduction to be made in the freight was to be ascertained in like manner by taking the proportion that the quantity not delivered bore to the quantity specified in the bill of lading.

TRADE UNION—APPLICATION OF FUNDS CONTRARY TO RULES OF TRADE UNION—INJUNCTION—RIGHT OF INDIVIDUAL MEMBER OF TRADE UNION TO RESTRAIN MISAPPLICATION—TRADE UNION ACT, 1871 (34 & 35 VICT., C. 31), S. 4, SUB-S. 3—(R.S.C. C. 131, S. 4, SUB.-S. 3.)

In Howden v. *Yorkshire Miners' Association*, (1903) 1 K.B 308, the plaintiff, a member of the defendant association, a registered trade union, sued to restrain an alleged misapplication of the funds of the union. Several points of interest were raised. First it was contended that under the Trade Union Act, s. 4, sub-s. 3 (see R.S.C. c. 131, s. 4, sub-s. 3) the plaintiff had no right of action, but Grantham, J., who tried the case, and the Court of Appeal (Williams, Stirling, and Mathew, L.JJ.) determined that point in his favour, they holding that an action to restrain the misapplication of the funds of a trade union did not come within any of the class of cases covered by s. 4, sub-s. 3. The main point of the case turned on the construction of the rules of the association. By these rules it was provided that the funds might be applied in the allowance of "strike pay" to members who were permitted to cease work with the sanction of the association in accordance with the rules. What happened was this: Certain members of the union employed in a colliery without any sanction of the

association struck work. After they had thus gone on strike the sanction of the association was obtained to their continuing on strike, and the funds were being applied in payment to the strikers of "strike pay." This the Court held was not a lawful payment under the rules which did not provide for the case of an ex post facto sanction. Another of the rules provided for payment of "strike pay" in case members were "thrown out of employment" in consequence of any action legally taken by the union. After the men had struck without the sanction of the union, the strikers offered to go back to work again, not with a bona fide intention of working, but in order that they might strike with the sanction of the union according to the terms of the rules providing for "strike pay," but the employers being aware of their real intention refused to receive them back, and the Court of Appeal held that this was not being "thrown out of employment" within the meaning of the rule, but Stirling, J., was doubtful on this point.

LANDLORD AND TENANT—RENEWAL OF LEASE "AT COSTS OF LESSEE—COSTS OF ARBITRATION AS TO FINE PAYABLE ON RENEWAL.

In Mostyn v. *Fitzsimmons*, (1903) 1 K.B. 349, the simple point was as to the costs of an arbitration to fix the amount of a fine payable on the renewal of a lease. The lease provided that the renewal was to be at "the costs of the lessee" and on payment of a fine to be fixed by the lessors surveyor, or at the option of the lessee by two arbitrators and an umpire. The lessee elected to refer the amount of the fine to arbitration, and it was held by the Court of Appeal (Williams, Stirling, and Mathew, L.JJ.) that the costs of the arbitration and award were under the terms of the lease payable by the lessee, which covered all costs consequent on the renewal, and not merely the conveyancing costs as Wright, J., had held.

LEASE—POWER TO DETERMINE—TERMINATION OF LEASE ON NOTICE—BREACHES OF COVENANT—LIABILITY OF LESSEE FOR BREACH OF COVENANT NOTWITHSTANDING TERMINATION OF LEASE.

Blore v. *Giulini*, (1903) 1 K.B. 356, is another case on the law of landlord and tenant. In this case the lease contained a proviso that it might be determined on notice and that "in such case this present indenture and every clause, matter and thing therein contained shall upon the expiration of the said notice, cease and

determine and be void, anything hereinbefore contained to the contrary notwithstanding." There was no reservation of the lessors' rights in respect of past breaches of covenant by the lessee, but Wright J., held that notwithstanding that omission, the lessor was entitled to recover in respect of such breaches, and he gave judgment for the plaintiff accordingly.

COSTS—TO ABIDE EVENT—SUCCESS DIVIDED—COSTS OF ISSUE ON WHICH PLAINTIFF SUCCEEDED—DISCRETION AS TO COSTS.

Dunn v. *South Eastern Railway*, (1903) 1 K.B. 358. This was an action in a County Court for negligence. The defendants besides denying liability paid money into Court. At the first trial the action was dismissed, but a new trial was granted, the costs of the first trial to abide the event. On the second trial the plaintiff recovered a verdict, but only for the amount paid into Court. The Judge of the County Court thought he was precluded by the order for new trial in awarding the plaintiff the cost of the issue of negligence on which he succeeded, but intimated that he would have done so if he had the power. The Divisional Court (Lord Alverstone, C.J., and Wills and Channel, JJ.) thought that there was nothing in the order for a new trial to prevent him exercising his discretion. That the success was divided and that the plaintiff's success on the issue of negligence was as much a part of the event as the defendant's on the question of damages. The Court therefore gave the plaintiff his costs of the issue of negligence.

SHIP—CHARTER PARTY—WARRANTY OF SEAWORTHINESS—SUPPLY OF COAL FOR STEAMER CHARTERERS LIABLE TO PROVIDE COAL.

In *McIver* v. *Tate*, (1903) 1 K.B. 362, Kennedy, J., decided a neat little point, to the effect that where by the terms of a charter party the charterers agree to provide and pay for all the coal needed for the voyage, that does not relieve the ship owners from the obligation of seeing that the ship was in a seaworthy condition in respect of her supply of coal at the commencement of each step of the voyage for which the vessel is chartered, and this decision was affirmed by the Court of Appeal (Williams, Stirling, and Mathew, L.JJ.)

ADMINISTRATION—WITH WILL ANNEXED - LIMITED GRANT TO SPECIFIC LEGATEE—PROBATE ACT, 1857 (20 & 21 VICT., C. 77, S. 73—(R.S.O. C. 59, SS. 57, 59.)

In the Goods of Baldwin (1903) P. 61, was an application for administration with the will annexed. The applicant was the specific legatee of the only property bequeathed by the will and was an aunt of the testatrix. Application had been made by her to the next of kin to execute a power of attorney to the applicant to authorize her to apply for general administration, but they refused to give it; under the circumstances, Barnes, J., granted administration with the will annexed to the applicant limited to the property specifically bequeathed to her, without requiring the next of kin to be cited.

ADMINISTRATION—SURETIES DISPENSED WITH.

In the Goods of Cory, (1903) P. 62, was an application for administration made by the widow of a deceased person, and the applicant asked the authority of the Court to carry on the business of the deceased. The total net value of the estate was sworn at £870, 8 s., 1 d., and it was shewn that if the business were sold the estate would probably not realize more than £534. The deceased had left two girls, aged 20 and 15, and one boy, aged 13. The eldest child made affidavit concurring in the application and corroborating the statements of her mother. Jeune, P.P.D., thought that he had no power to authorize the carrying on of the business, but granted administration, taking only the widow's own bond and dispensing with sureties, in order that she might have a free hand in dealing with the estate.

WILL—CONSTRUCTION—DOUBLE PORTIONS—"ADVANCES OR MONEYS"—HOTCHPOT.

In re Jaques, Holgson v. *Braisby*, (1903) 1 Ch. 267. There was a direction in the will of a testator that his daughter should not take the benefit of a specific devise of real estate or bequest of a share of his residuary personal estate "without first bringing into hotchpot as part of my residuary estate the total amount of any advances or moneys lent by me to my said daughter and her husband or either of them." After the making of the will the testator purchased real estate for the benefit of his daughter and her husband, and, by his direction, part was conveyed to the daughter and the rest to her husband; he also expended moneys

on the lands so purchased. Buckley, J., held that the real estate and moneys expended thereon were not "advances or moneys" within the meaning of the hotchpot clause, and with this conclusion the Court of Appeal (Williams, Stirling, and Cozens-Hardy, L.JJ.) agreed.

VENDOR AND PURCHASER—LEASEHOLD HOUSE—BREACH OF COVENANT TO REPAIR.

In re Highett and Bird, (1903) 1 Ch. 287. The Court of Appeal (Williams, Stirling, and Cozens-Hardy, L.JJ.) have affirmed the decision of Eady, J., (1902) 2 Ch. 214 (noted ante vol. 38, p. 670). This was a question between vendor and purchaser. The subject of sale was a leasehold house, the lessee being bound by a covenant to repair. The time fixed for completion was the 6th November. On the preceding 27th September the vendor had been served with notice by a municipal authority requiring him to pull down or render secure part of the buildings on the premises as being a dangerous structure. On 9th November the vendor was served with a police notice requiring him to do the repairs within fourteen days. The vendor then applied to the Court for a declaration that the purchaser was liable for the expense of complying with the order. Eady, J., held that he was not, and the Court of Appeal agree. As it appeared that the vendor had accepted a low price in consequence of the bad state of repair of the premises, Romer, L.J., intimates that it was not a case in which specific performance would be enforced against him.

COPYRIGHT—AUTHOR AND PUBLISHER—ARTICLES CONTRIBUTED TO ENCYCLOPÆDIA—COPYRIGHT IN ARTICLES—COPYRIGHT ACT 1842 (5 & 6 VICT. C. 45) S. 18.

In *Aflalo* v. *Lawrence*, (1902) 1 Ch. 318, the Court of Appeal, (Williams, Romer, and Stirling, L.JJ.) have affirmed the judgment of Joyce, J., (1902) 1 Ch. 264 (noted ante vol. 38, p. 299). The plaintiffs were employed by the defendants to write articles for an encyclopædia to be published by the defendants. There was no express bargain as to the copyright of the articles, and the plaintiffs were registered as the proprietors of four specified articles. These articles having been republished by defendant in a publication called "The Young Sportsman" without the consent

of the plaintiffs, the present action was brought. Joyce, J., came to the conclusion that there was nothing in the bargain between the plaintiffs and defendant to warrant the inference that the defendant was to be the owner of the copyright, and with this conclusion the majority of the Court of Appeal agreed, but Williams, L.J., dissented.

WILL—EXECUTOR—CHARGE OF DEBTS—POWER TO SELL REAL ESTATE—LAW OF PROPERTY AMENDMENT ACT, 1859 (22 & 23 VICT., C. 35) SS. 16, 18—(R.S.O. C. 129, SS. 18, 20.)—DEVISE TO PERSON IN FEE—POWER OF EXECUTOR TO GRANT EASEMENT.

In re Barrow-in-Furness Corporation and Rawlinson, (1903) 1 Ch. 339, was an application under the Vendors' and Purchasers' Act to determine whether the vendor had power to sell the land in question. The vendor was executrix of an estate under a will whereby the testator charged his real estate with the payment of his debts and legacies, and whereby the debtor devised his real estate in fee to his son who should first attain 25. Thirteen years had elapsed since the testator's death, and his eldest son was now upwards of 25. The question turned on the construction of ss. 16 and 18 of the Real Property Amendment Act, 1859, (see R.S.O. c. 129, ss. 18, 20.) Kekewich, J., held that the devise to the son who should first attain 25 was not a devise to a person in fee charged with debts or legacies within s. 18, (s. 20 of the Ont. Act). In his view, that section only applied to devises taking effect when the will took effect, and therefore that the executrix had power to sell under s. 16, (s. 18 of the Ontario Act), but that she, having no estate or interest in the land, had no power to grant an easement.

WILL—CONSTRUCTION—TRUST FOR INVESTMENT—RAILWAY OR OTHER PUBLIC COMPANY—FOREIGN COMPANY.

In re Castlehow, Lamonby v. *Carter*, (1903) 1 Ch. 352, a testatrix after empowering the trustees of her will to postpone the sale or conversion of any part of her estate, declared that any money by her will directed to be invested should be invested inter alia "upon the stocks, shares or securities of any railway or other public company." At the time of her death she owned two shares in an English company, the White Star Steamship Co. After her death these two shares were exchanged for preference and ordinary shares in an American steamship company which had

taken over the business of the English company. The question was whether the trustees were empowered under the will to retain the shares in the American company. Byrne, J., held that they were not, and that the words "public company" must be taken to mean an English public company. We see by the way according to this report that the two shares were exchanged for over $41,500 in cash and over $100,500 in shares, or $142,000 for $10,000.

REAL ESTATE—POWER OF APPOINTMENT—APPOINTMENT UPON TRUST FOR SALE AND TO DIVIDE PROCEEDS.

In re Redgate, Marsh v. *Redgate*, (1903) 1 Ch. 356, involved a neat point on the law of powers. By a will the trustees thereof were directed to convey certain property to such child or children, and for such estate or estates, manner or form, as the donee of the power should appoint. The donee appointed the land to be sold by the trustees of her own will, and the proceeds divided among the objects of the power, and it was held by Buckley, J., that this was a good execution of the power.

TRUST—CONSTRUCTION—TRUSTS FOR WIFE'S NEXT OF KIN "AS IF SHE HAD NEVER BEEN MARRIED"—CHILDREN EXCLUDED—WEEKLY NOTES

In re Smith, Wilkins v. *Smith*, (1903) 1 Ch. 373. A marriage settlement contained trusts for the children of the marriage attaining twenty-one or marrying, and an ultimate trust in default of children, and in case the wife predeceased her husband, for her statutory next of kin as if she had died intestate and had never been married. The wife died intestate leaving her husband surviving. There were three children of the marriage, all of whom died infants and unmarried. The first died during the wife's life-time, the second after her death but before her husband's death, and the third died after the husband's death. The question therefore was whether under the will the trust funds had devolved on the two children who survived the wife, or whether they had devolved on the wife's next of kin excluding children. Eady, J., held that the latter was the proper construction and that the words "as if she had never been married" had the effect of excluding the children of the wife. A case from the Weekly Notes being cited the learned judge took occasion to say that except on points of practice the Weekly Notes should only be cited as interim reports of cases during the period required for their publication in the Law Reports.

INSURANCE—BREACH OF WARRANTY BY SHIP OWNER—WARRANTY OF SEAWORTHINESS—NEGLIGENCE OF MASTER—PROXIMATE CAUSE OF LOSS.

Greenock Steamship Co. v. *Maritime Insurance Co.*, (1903) 1 K.B. 367, was an action to recover under a policy of insurance on a ship, which covered a round trip from the United Kingdom to ports on the west coast of Africa, with leave to call at any ports on the east coast of South America. The insurance included general average. It covered losses occasioned by the negligence of the master, and also contained a clause, "Held covered in case of any breach of warranty at a premium to be hereafter arranged." During the voyage the vessel left one port for another, and through the negligence of the master the ship was insufficiently provided with coal to enable her to reach her destination, and the master consequently burnt as fuel some of the ship's fittings, spars, and some of the cargo, and if he had not done so the vessel was in danger of becoming a total loss. The action was brought to recover for the loss thus occasioned. The plaintiffs claimed that the loss was due to the negligence of the master, and therefore covered by the policy; and also as for a general average loss. On the part of the defendants it was contended that there was an implied warranty of seaworthiness at the commencement of each step of the voyage, and that leaving port without sufficient coal was a breach of that warranty. That the loss was proximately caused by the burning, and was not the result of negligence on the part of the master, but done intentionally for the purpose of saving the vessel, and therefore the "held covered" clause did not apply. Bingham, J., who tried the action, gave judgment in favour of the defendants. He agreed that the deficient supply of coal was a breach of an implied warranty of seaworthiness. Also that the negligence of the master was not the proximate cause of the loss, though causa sin qua non it was not causa causans. That the "held covered" clause applied, but under it, the additional premium which the insurers would be at least entitled to, would be equal to the amount of the loss, and therefore that nothing was recoverable by the plaintiffs under the policy.

BICYCLE—"CARRIAGE"—LIABILITY OF BICYCLE TO TOLL.

In *Simpson* v. *Teignmouth & Shaldon Bridge Co.*, (1903) 1 K.B. 405, a case was stated by consent, and the point presented for the decision of the Court was whether a bicycle was a "carriage"

within the meaning of an Act (5 Geo. 4) giving a right to the defendants to collect tolls 'on certain specified vehicles' or other carriage hung on springs" passing over the defendants' bridge. Wright, J., held that the bicycle in question was "a carriage hung on springs," but that it was not a carriage liable to toll under the Act, because the carriages within the contemplation of the Act were carriages drawn by horses or other beasts. The Court of Appeal (Lord Halsbury, L.C., and Lord Alverstone, C.J, and Jeune, P.P.D.) affirmed his decision, at the same time approving of the decision in *Taylor* v. *Goodwin*, 4 Q.B.D. 228, where it was held that a bicycle was a carriage for the purpose of an Act against furiously driving a carriage. The Lord Chancellor in the course of his judgment says: "The broad principle of construction put shortly must be this: What would, in an ordinary sense, be considered to be a carriage (by whatever specific name it might be called) in the contemplation of the Legislature at the time the Act was passed? If the thing so sought to be brought within the Act would substantially correspond to what the Legislature meant by a carriage (called by whatever name you please) I think that the tax would apply; but if not, it is not for the Court to make an effort by ingenious subtleties, to bring within the grasp of the tax something which was not intended in substance by the Legislature at that time to be the subject of taxation."

CRIMINAL LAW—TREASON—MOTION TO QUASH INDICTMENT FOR SWEARING ALLEGIANCE IN TIME OF WAR—NATURALIZATION IN ENEMY'S COUNTRY IN TIME OF WAR—NATURALIZATION ACT, 1870 (33 & 34 VICT., C. 14) S. 6.

In *The King* v. *Lynch*, (1903) 1 K.B. 444, a motion was made at the trial to quash an indictment for treason which the Court refused to entertain, but left the prisoner to his remedy by motion in arrest of judgment, or by writ of error. The trial having proceeded, the prisoner claimed to be protected by virtue of the Naturalization Act, 1870 (33 & 34 Vict., c. 14) s. 6, which provides that "any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under any disability, voluntarily become naturalized in such state, shall from and after the time of his so having become naturalized in such foreign state be deemed to have ceased to be a British subject and be regarded as an alien." It appeared in evidence that the prisoner in January, 1900, being then a British

subject, had signed an agreement in writing to take up arms for the late South African Republic, which was then at war with Great Britain, and had thereafter taken an oath of allegience to the enemy during the war. The Divisional Court (Lord Alverstone, C.J., and Wills and Channell, JJ.) unanimously came to the conclusion that the Act relied on does not empower a British subject to become naturalized in an enemy state in time of war; and that the act of becoming naturalized under such circumstances was itself an act of treason, and consequently afforded no protection to the prisoner, and judgment was given for the Crown on the point of law.

GAMING—PLACE USED FOR BETTING—BAR OF PUBLIC HOUSE—BETTING ACT, 1853 (16 & 17 VICT., C. 119) S. 3—(CR. CODE, S. 197).

The King v. *Deaville*, (1903) 1 K.B. 468, was a case stated by Justices in which the Court for Crown Cases Reserved (Lord Alverstone, C.J., and Wills, Wright, Bruce, and Ridley, JJ.), following *Belton* v. *Busby* (1899) 2 O.B. 280 (noted ante vol. 35, p. 679) and *Tremans* v. *Hodkinson* (1903) 1 K.B. 30 (noted ante, p. 187), held that where a bookmaker is in the habit of frequenting the bar of a public house for the purpose of carrying on the business of ready money betting with other persons resorting there, but does not for the purposes of that business occupy any specific part of the bar, the question of whether he uses the bar for the purpose of betting within the meaning of the Betting Act, 1853, s. 3 (see Cr. Code, s. 197) depends on whether he carries on his betting business there with the knowledge and permission of the occupier of the house. The conviction of the prisoner was affirmed where the knowledge and permission of the occupier to his use of the bar for betting was proved; but in two other cases, argued at the same time, the convictions were quashed for want of such evidence.

STATUTE OF FRAUDS, S. 4 (R.S.O. C. 338, S. 5)—CONTRACT TO BE PERFORMED WITHIN A YEAR.

In *Smith* v. *Gold Coast*, (1903) 1 K.B. 538, the Court of Appeal (Williams, Stirling, and Mathew, L.JJ.) have affirmed the decision of the Divisional Court (1903) 1 K.B. 285.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

N.S.] [March 26.

LIVERPOOL & MILTON R.W. Co. *v.* TOWN OF LIVERPOOL.

Municipal corporation—Tramway—Operation of railway—Use of streets—Regulations—Crossings—Powers—By-laws or resolution—Construction of statute.

By the Nova Scotia statute, 63 Vict., c. 176, the company was granted powers as to the use and crossing of certain streets in the town, subject to such regulations as the town council might from time to time see fit to make to secure the safety of persons and property.

Held, reversing the judgment appealed from (DAVIES, J., dissenting) that such regulations could only be made by by-law and that the by-law making such regulations would be subject to the provisions of s. 264 of The Towns Incorporation Act (R.S.N.S.) (1900), c. 71). Appeal allowed with costs.

Newcombe, K.C., for appellant. *W. B. A. Ritchie*, K.C., for respondent.

Ont.] DEMPSTER *v.* LEWIS. [April 20.

Contract—Sale of monument—Sample—Evidence—Questions of fact.

There is no rule of law or of procedure which prevents the Supreme Court or an intermediate Court of Appeal from reversing the decision, at the trial, on the facts.

In an action for the price of a tombstone, the defence was that it was not of the design ordered. It had been ordered from photographic samples and an order form was filled in which, when produced at the trial, contained the words "E. M. Lewis Reporter Design" which the defence claimed was not in it when it was signed by the purchaser, but which was there two or three hours later when handed to one of the vendors by his foreman who had taken the order and filled in the form. The evidence at the trial was conflicting, and the chancellor, trying the case without a jury, decided for the defence and dismissed the action. His judgment was reversed by the Court of Appeal.

Held, per TASCHEREAU, C.J., that the evidence established that the words in dispute were on the order when it was signed and the plaintiffs were entitled to recover.

Held, per SEDGEWICK and DAVIES, JJ., MILLS, J., hesitante, that even if these words were not originally on the order the circumstances disclosed in evidence shew that the design supplied was substantially that ordered and the judgment appealed from should stand.

Held, per GIROUARD, J., following *Village of Granby* v. *Menard*, 31 Can. S.C.R. 14, that the evidence being contradictory and the trial judge having found for the defendant which finding the evidence warranted, his judgment should not have been reversed on appeal. Appeal dismissed with costs.

Watson, K.C., and *Hislop*, for appellants. *Aylesworth*, K.C., and *Fish*, for respondents.

Ont.] HENNING *v.* MCLEAN. [April 20.

Will—Construction—Dying "at same time."

H. by his will provided for disposal of his property in case his wife survived him, but not in case of her death first. The will also contained this provision: "In case both my wife and myself should, by accident or otherwise, be deprived of life at the same time, I request the following disposition to be made of my property" . . . H. died sixteen days after his wife, but made no change in his will.

Held, affirming the decision of the Court of Appeal, 4 O.L.R. 666, which affirmed the judgment of the Divisional Court, 2 O.L.R. 169, that H. and his wife were not deprived of life at the same time and he therefore died intestate. Appeal dismissed with costs.

Aylesworth, K.C., for appellants. *H. J. Scott*, K.C., and *H. O'Brien*, K.C., for respondents.

Ont.] THORNE *v.* THORNE. [April 20.

Will—Devise of all testator's property—Chose in action.

A devise of all "my real estate and property whatsoever and of what nature and kind soever," at a place named does not include a debt due by the devisee, who resided and carried on business at such place, to the testator. Judgment of the Court of Appeal, 4 O.L.R. 682, affirmed. Appeal dismissed with costs.

D. O. Cameron and *Blain*, for appellants. *S. H. Blake*, K.C., and *Saunders*, for respondent, except W. H. Thorne. *Lee*, for W. H. Thorne.

Province of Ontario.

COURT OF APPEAL.

From Divisional Court.] [March 6.

MONRO *v.* TORONTO RAILWAY CO.

Partition—Parties—Tenants in common—Lease—Infant—Repudiation.

The plaintiff, having when he came of age repudiated a lease to the defendants of land of which he and his brother and sister were tenants in common, made when he was an infant, and having made a partition by deed with his brother and sister, to which the defendants were not parties,

Held, MACLENNAN, J.A., dissenting, that the brother and sister were necessary parties to the plaintiff's action for a partition as against the defendants in respect of their possession under the lease.

Judgment of a Divisional Court, ante p. 39; 4 O.L.R. 36, reversed, and judgment of MEREDITH, C.J., restored.

J. Bicknell, K.C., for appellants, defendants. *C. Millar*, for plaintiff.

From MacMahon, J.] [April 14.

LEE *v.* CANADIAN MUTUAL LOAN CO.

Building Society—Mortgage—Mortgagor becoming shareholder—Liability for losses.

It was held that, under the mortgage in question in this case and the by-laws and rules of the defendants and their predecessors in interest applicable thereto, the plaintiff was entitled to a discharge of his mortgage, given in form as collateral security for the payment of shares subscribed for by him, upon payment of the principal and interest as therein provided; and that the defendants could not charge against the mortgage a share of osses incurred in the management of the company.

Judgment of MACMAHON, J., 3 O.L.R. 191, reversed.

W. J. Clark, for appellant. *Shepley*, K.C., and *A. McLean Macdonnell*, for respondents.

From County Court.] [April 14.

IN RE EQUITABLE SAVINGS LOAN ASSOCIATION.

Companies—Winding up—Final order—Appealable order—Order dissolving company—Order rescinding—Cons. Rule 358.

On March 24, 1902, a County Court Judge made an order upon an affidavit of one of the liquidators declaring that the above named association should be and was dissolved. On June 21, 1902, upon the

application of a certain dissatisfied shareholder an order was made by him revoking his former order, and also another order which had been made by him on April 7, 1902, that no action should be proceeded with against the association except by leave of the Court.

Held, that the order of June 21, 1902, was an appealable order, for even if the appeal given to the Court of Appeal by s. 27 of the Winding-up Act was to be restricted in its construction to appeals from final orders, yet the order of June 21, 1902, might be properly described as a final order, since it put an end to the order of dissolution theretofore made.

Held, also (MACLENNAN, J.A., dissentiente), that the County Court Judge had no authority to make an order such as the one of June 21, 1902, inasmuch as he had no other material before him when making the order than he had had when making that of March 24, and there was no reason for saying that he had been misled in making the former order or that any fact had been suppressed; and that, therefore, the proper way to have attacked the order of March 24 was by appeal and not by application to the County Court to rescind it, after it had been acted upon and became effective.

Held, per MACLENNAN, J.A., that the County Court Judge had been misled when making the order of March 24, 1902, inasmuch as he had made it upon an affidavit that the affairs of the association had been duly wound up by the liquidators, which was not the case, and that the County Court Judge had therefore authority to make the order rescinding it of June 21, whether such authority is to be rested upon Con. Rule 358 or upon the well established and general practice of the Court, independent of express rules.

Shepley, K.C., and *C. D. Scott*, for respondents. *Aylesworth*, K.C., and *A. M. Macdonnell*, for liquidators and appellant.

HIGH COURT OF JUSTICE.

Meredith, J.] IN RE LLOYD AND PEGG. [Feb. 3.

Arbitration and award — Order for leave to enforce award — Time — Arbitration Act, s. 45 — Motion to set aside award.

An application under s. 13 of the Arbitration Act, R.S.O. 1897, c. 62, for an order giving leave to enforce an award, need not be made within six weeks after the publication of the award.

Sec. 45 of the Act does not apply to such an application, but only to applications to set aside awards.

An order under s. 13 is necessary when the reference has been made out of Court.

Objections properly the subject of a motion to set aside the award were not considered upon appeal from an order under s. 13.

A. B. Armstrong, for Pegg. *R. L. Johnston*, for Lloyd.

Winchester, M. C.] [Feb. 18.

LIDDIARD *v.* TORONTO RAILWAY CO.

Joinder of parties (plaintiffs) by amendment.

Con. Rule 206 is to be read in connection with Con. Rule 185, and parties to an action who might have been joined under the latter may be added by way of amendment under the former. In an action brought againt a street railway company for damages for running an electric car into the plaintiff and his horse and wagon, in which his son was seated with him, who was also injured,

Held, that the son should be added as a party plaintiff by his father as next friend in an action already commenced by the father alone.

Cooke, for plaintiff. *Bain*, for defendants.

NOTE.—There was an appeal from this decision, but as the case was settled it became unnecessary to press it.

Street, J.] REX *v.* MULLEN. [March 2.

Criminal law—Crown case reserved—Application for—Grounds—Misapprehension of jurors—Statements by.

It is no ground for stating a reserved case, after a trial and conviction, that two of the jurors who joined in the verdict of guilty did so under a misapprehension; it is contrary to principle to allow the statements of jurors, even under oath, to be used for the purpose of an application for a reserved case.

G. S. Henderson, for defendant Murphy.

Trial—Street, J.] [March 3.

CITY OF TORONTO *v.* CONSUMERS' GAS CO.

Company—Toronto Gas Company—Increase of capital—Statutory restrictions—Payments to directors—Dividends—Reserve fund—Investment in business—Plant and buildings renewal fund—Reduction in price of gas—Audit by municipality—Charges for depreciation or loss—Construction of statute.

By 50 Vict., c. 85 (O.), "An Act to further extend the powers of the Consumers' Gas Company of Toronto," the defendants were given authority to raise their capital stock to $2,000,000. By s. 4 it was provided that the new stock should be sold and that all surplus realized over the par value of the shares should be added to the reserve fund until it should be equal to one-half of the paid up capital stock, the true intent and meaning being that the defendants might at all times have a reserve fund equal to but not exceeding one-half of the then paid up capital, which fund might be invested in specified securities. By s. 6 it was enacted that there

should be created and maintained by the defendants a plant and buildings renewal fund to which should be placed each year five per cent. on the value at which the plant and buildings in use by the defendants stood in their books at the end of their then fiscal year, and that all usual and ordinary repairs and renewals should be charged against this fund. By s. 7, any surplus of net profit remaining at the close of any fiscal year, after payment of (1) fees to the directors not exceeding $9,000 per annum, (2) a dividend at ten per cent. on the paid up capital, (3) the establishment and maintenance of the reserve fund, and (4) providing for the plant and building renewal fund, was to be carried to a special surplus account, and whenever the amount of such surplus should be equal to five cents per 1,000 cubic feet on the quantity of gas sold during the preceding year, the price of gas should be reduced for the current year at least five cents per 1,000 cubic feet. By s. 8, if in any year the net profits should not be sufficient to meet the requirements of the defendants for the payment of fees, dividends and provision for the plant and buildings fund (as in s. 7), the directors were empowered, in their discretion, to draw upon the reserve fund to the extent of such deficiency, and to restore from earnings any amount so drawn, but it was provided that the reserve fund should not otherwise be drawn upon. By s. 9 the plaintiffs were authorized to be parties to the annual audit of the defendants' affairs.

Held, 1. Defendants were not bound to keep the reserve fund, as an actual separate sum of money, apart from their other property, and invested in the securities mentioned in s. 4, but were at liberty to use it in their business, as they did from year to year, without objection by the plaintiffs' auditors; and were not bound to carry to the credit of the fund its share of the increase in the value of the defendants' property which it helped to acquire while invested in the business.

2. Charges for decrease in the value of gas mains, for iron gas lamps which become useless, and for gas meters destroyed, were not charges for renewal or repair, but for depreciation and loss, and did not come within s. 6 so as to be chargeable to the plant and buildings renewal fund.

3. Under s. 6 the defendants were entitled to continue to contribute to the plant and buildings renewal fund the five per cent. authorized even although it should not appear necessary to do so for the purposes for which the fund was to be used.

These sections were construed in *Johnston* v. *Consumers' Gas Co.*, 27 O.R. 9, upon a special case, but the decision was reversed (23 A.R. 566, [1898] A.C. 447), although not on the question of construction.

Held, that the Court was not bound by the views expressed in that case.

Johnston, K.C., and *Lobb*, for plaintiffs. *S. H. Blake*, K.C., *Aylesworth*, K.C., and *A. M. Stewart*, for defendants.

Boyd, C.] CRERAR *v.* CANADIAN PACIFIC R.W. Co. [March 6.

Mechanics' lien—Action—Practice—Affidavit verifying statement of claim—Particulars of residence of plaintiffs.

In the case of an action under the Mechanics' and Wage Earners' Lien Act, R.S.O. 1897, c. 153, the affidavit verifying the statement of claim, required by s. 31 (2), may be made by the plaintiffs' solicitor as agent.

The plaintiffs were day labourers who did work for the defendants on a railway in an unorganized district, and it was set forth in the statement of claim that they resided in that district; the name and address of the plaintiffs' solicitor was also stated therein.

Held, that it was not necessary to give more precise particulars of the places of residence of the plaintiffs.

Spence, for plaintiffs. *H. L. Drayton*, for Vigeon Brothers.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [March 12.

REX *v.* WALSH.

Liquor Act, 1892—Referendum—Question to electors—Power of legislature—Trial of offenders—Constitution of Court—"To conduct the trial"—Trial and sentence—County Judge—Special Court—Issue of summons—Adjournment for sentence.

On a motion to quash a conviction for attempting to put a paper other than the ballot paper authorized by law into a ballot box contrary to the provisions of s. 191 of the Ontario Election Act and s. 91 of the Liquor Act, 1902.

Held, that the inference of such a question by the legislature as that mentioned in s. 2 of the Liquor Act, 1902, to the vote of electors instead of deciding it themselves is unusual but well within their powers.

Held, also, that the intention of the legislature under sub-s. 4 of s. 91 was to create a tribunal with authority to try certain specified offences and that the Court so created had power under the words "to conduct the trial" to bring the party charged before the Court, try him for the offence and sentence him if found guilty; and that the County Judge appointed to conduct the trial does not act as a County Judge but as a Court specially created and who should act out of his own county in holding the actual trial and that he may issue his summons in his own county or elsewhere, and has power after finding the accused guilty to adjourn the Court to a subsequent day for the purpose of passing sentence.

S. 191 of R.S.O. 1897, c. 9 is wide enough not only to meet the case of an offending returning officer or deputy returning officer but that of any other person.

J. A. Robinson, for motion. *Cartwright*, K.C., and *O'Donohoe*, contra.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [March 28.

NOLAN *v.* OCEAN ACCIDENT AND GUARANTEE CORPORATION.

Insurance—Condition on policy—Arbitration before action.

In an action on a policy on which was endorsed a condition that in case any question should arise "it is a condition of this policy which the assured by the acceptance thereof agrees to abide by . . . every such difference shall be referred to the arbitration and decision of a mutual person . . . and the decision of the arbitrator shall be final and binding on all parties and shall be conclusive evidence of the amount payable, . . . and it is hereby expressly stipulated and declared that the obtaining of an award by such arbitrator shall be a condition precedent to the liability or obligation of the corporation to pay or satisfy any claim under this policy," etc. "Provided also that compliance with the stipulation endorsed hereon is a condition precedent to the right to recover on this policy," etc.

Held, that no action lies on the policy nor does the amount payable under it become due until the determination of the arbitrator to be appointed under the agreement to refer contained in the condition and that the plaintiff could not claim under the policy without assenting to its terms and that the condition was not in contravention of section 80 of R.S.O., c. 203.

Spurrier v. *La Cloche* (1902) A.C. 446 followed.

Judgment of MEREDITH, J., affirmed.

S. A. Jones, for the appeal. *E. Cassels*, K.C., contra.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [March 30.

SMALL *v.* AMERICAN FEDERATION OF MUSICIANS.

Stay of proceedings—Party appealing in contempt—Service on unincorporated association—Rights of parties in contempt.

On a motion by the plaintiffs to stay a pending appeal from a judgment dismissing an application, to set aside service on an individual for the defendant Federation on the ground that the Federation was not an incorporated body or a partnership and could not be served as a body, for the reason that the Federation were in contempt for disobedience of an injunction.

Held, following *Metallic Roofing Co.* v. *Amalgamated Sheet Metal Workers' Union*, ante p. 329, that the federation were not a body capable of being sued or being served, and if so they were not capable of being enjoined or of committing a contempt and that as the very object of the appeal was to determine whether it can be sued and served with process, it could not be determined whether a contempt had been committed without hearing the appeal.

Held, also, that the rule is not universal that persons guilty of contempt can take no step in the action. A party notwithstanding his contempt is entitled to take the necessary steps to defend himself, and as the defendants here are ordered to appear within ten days on pain of having judgment signed against them, they have the right to shew if they can that the service upon them is not permitted by the practice: and the motion was refused under the circumstances without costs.

Fry v. *Ernest* (1863) 9 Jur. N.S. 1151, and *Ferguson* v. *County of Elgin* (1893) 15 P.R. 399, followed.

C. A. Moss, for the motion. *O'Donoghue*, contra.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [April 4.

RE JOHNSTON, CHAMBERS *v.* JOHNSTON.

Will—Devise—Proceeds of realty and personalty—For the use of a church

A testator who died on the 12th April, 1895, by his will, made the 6th September, 1894, directed land to be sold, and out of the proceeds thereof and some personalty directed $2,000 to be paid to N.W. for the use of the Reformed Presbyterian Church, such sum to be expended by N.W. in the manner best calculated by him to advance the principles of that church. N.B. assigned the whole fund to the church.

Held, a good bequest.

Held, also, that the assignment by N.W. to the trustees of the church was a valid exercise of the discretion given him by the will.

Judgment of BOYD, C., affirmed.

O'Donoghue, for appellants. *Saunders*, for trustees. *Douglas*, K.C., for executor.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [April 4.

REX *v.* LEWIS.

Criminal law—Information—Warrant differing from—Arrest—Information amended—Read to prisoner but not resworn—Trial, without objection—Fine—Commitment—Form of conviction—Distress.

The prosecutor hired a boy to work for him and purchased his railway ticket to get him to his farm. The boy worked a few hours at the farm but not long enough to repay the price of the ticket, refused to work any longer and left his employ. The prosecutor then swore to an information before a justice of the peace, that "W. L. did . . . accept the sum of $1.30 to pay his fare to B. on the condition that the said amount was to be worked out and that the said W. L. refused to work after reaching this place with the exception of four hours and thirty minutes." The magis-

trate issued a warrant with the facts stated in the information substantially set out and these words added "consequently obtaining money under false pretences," and the boy was arrested. The magistrate amended the information by adding "as per section 14 (5a) Master and Servant Act, Ontario Statutes 1901," but the information as amended was not resworn. The amended information was read over to the prisoner and he was informed he was to be tried under it as amended. He made no objection, the prosecutor gave evidence and the prisoner was sworn and gave evidence on his own behalf, and the magistrate adjudged that he should be fined $5 and $4.88 costs, and if the amounts were not paid forthwith he was to be committed to goal. A note of the conviction was made and a formal conviction drawn up. After an hour in custody the prisoner gave security and was released. The conviction form was headed "Conviction for a penalty to be levied by distress," but no such term was mentioned in the body of it. On a motion to quash the conviction it was:

Held, 1. The nature of the offence intended to be charged against the boy was sufficiently clear in the original information and any doubt was removed by the addition to it of the reference to the Act.

2. The information having been read over to and the trial proceeding without objection by the prisoner and the magistrate having the prisoner before him even if brought there improperly, might try him on the amended information not resworn, although the Act under which he was tried required an information on oath provided he did not protest.

3. The Court being satisfied that an offence of the nature described in the conviction had been committed and that the magistrate had jurisdiction and that the punishment imposed was not excessive it should not hold the conviction invalid because the date and place of offence were not stated and which it had power to amend by stating.

4. The heading formed no part of the conviction which was correctly drawn under the statute.

5. The costs of conveying the accused to gaol being omitted was a matter which could be amended if necessary, but here there were no such costs as the prisoner never went to gaol.

6. There was special power under the section (14 5a) under which the prisoner was convicted to award imprisonment in default of payment and that by R.S.O. 1897, c. 90 s. 4, that power covered costs as well as the fine.

S. B. Woods, for prisoner. *Jas. Bicknell*, K.C., for prosecutor. *Scanlan*, for magistrate.

Divisional Court.] [April 8.

COBBAN MANUFACTURING CO. *v.* LAKE SIMCOE HOTEL CO.

Mechanics' lien — Costs — "Actual disbursements."

The "actual disbursements," which by s. 42 of the Mechanics' Lien Act, R.S.O. 1897, c. 153, may be allowed as against an unsuccessful

claimant in addition to an amount equal to twenty-five per cent. of the claim, do not include counsel fees paid by the defendant's solicitor to counsel retained in the course of the proceedings, and a fortiori not counsel fees charged by the solicitor himself when acting as counsel.

Judgment of FALCONBRIDGE, C.J.K.B., affirmed.

Creswicke, for appellants. *Gwynne*, for respondents.

Street, J., Britton, J.] [April 17.

MCINNES *v.* TOWNSHIP OF EGREMONT.

Municipal corporation—Negligence—Non-repair of bridge Absence of railing—Necessity of notice.

Action for damages sustained by plaintiff who was crossing a bridge in the defendant's township during a thunderstorm between 9 and 10 o'clock at night on May 6, 1902, when a sudden flash of lightning caused his horse to swerve, and the horse's foot went into a gap in the logs of which the bridge was constructed, close to the edge of the bridge, and there being no railing at the side of the bridge, they all fell into the water, which was within eighteen inches of the bottom of the bridge, and the plaintiff sustained injury. On May 26 the plaintiff gave a notice to the defendants of the accident as having occurred on May 7 instead of on May 6, describing the circumstances and stating it was during a thunderstorm, and also that he had rescued his horse by the aid of a certain neighbor, whom he named.

Held, that the cause of the accident as a matter of law and fact was the negligence of the defendants in not providing the bridge with a proper railing, and that the thunderstorm was one of those ordinary dangers which ought to have been thus provided against, and that the notice given to the defendants was sufficient within sub s. 3 of s 606 of the Municipal Act and the defendants were liable.

Kingston, for defendants. *McKay* for the plaintiff.

Street, J., Britton, J.] [April 28

PETERBOROUGH *v.* GOLD MEDAL CO.

Libel and slander Privilege Publication—Stenographer.

Held, that the fact that the Manager of the above company had in the ordinary course of the correspondence of the company, handed to the company's stenographer, to be typewritten by him, a draft letter containtaining defamatory statements, but of a privileged nature did not amount to such a publication of the letter as took away the privilege.

Cooke, for motion. *J. E. Jones*, for plaintiff.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] [Feb. 21.

McDONALD *v.* DOMINION COAL COMPANY'S RELIEF FUND.

Miners' Relief Society—Right of member to participate in fund—Construction of rule.

The 12th rule of defendant's society, "No member shall participate in the benefits of the society until two full months after the date of his first payment."

Held, per TOWNSHEND J., RITCHIE, J., concurring, that a member was absolutely excluded from any participation in the benefits of the society in case of illness or accident happening within the period of two months, and that the right to participate only began in cases where the inability to work was due to cases arising after the lapse of two months.

Held, per GRAHAM, E.J., McDONALD, C.J., concurring, that the only effect of the rule in question was to delay the right to participate until two full months from the date of the first payment, and that if it was the intention to exclude a member from participation in respect to an incapacity subsequent to the two months because it was due to an accident or illness which first commenced within that period, it should have been expressly so stated.

Robertson, for appellant. *O'Connor*, for respondent.

EXCHEQUER COURT.

Burbidge, J.] THE "DAVID WALLACE" AND BAIN. [March 9.

Admiralty law—Foreign vessel—Necessaries—Charter party Authority of master—Liability of owner.

Appeal from the Nova Scotia Admiralty District.—The action was brought by the plaintiff against a foreign vessel and owners for necessaries supplied on her account at a Canadian port. At the time the necessaries were supplied the vessel was under charter, the owner having by the charter party transferred to the charterers the possession and control of the vessel. The charterers appointed the master, and he for them the crew. The charterers paid the wages of the master and crew and the running and other expenses of the vessel. The plaintiff knew that the vessel was under

charter, but he did not know the terms of the charter party. On the trial there was a conflict of testimony between the plaintiff on the one hand, and the master of the vessel, and the port captain or agent of the charterers on the other hand, as to whether or not the necessaries were supplied on the order of the master on the credit of the vessel and owners, or on his order or that of the port captain on the credit of the charterers. The learned judge by whom the case was tried found that the necessaries were supplied on the order of the master and the credit of the vessel and owners, and he held the vessel liable therefor.

Held, on appeal, that the plaintiff ought under the circumstances to have the benefit of the finding in his favour, but that as the master was the servant and agent of the charterers and not of the owner, he had no authority to pledge the latter's credit, and that as the owner was not liable for such necessaries the vessel could not be made liable.

An action for necessaries at the suit of the person who supplies them cannot be maintained against the ship if the owner of the ship is not the debtor.

Where the owner of the ship is the debtor the action cannot be maintained against her if the necessaries are supplied at the port to which the ship belongs; or if at the time of the institution of the action any owner or part owner of the ship is domiciled in Canada: Admiralty Courts Act 1861, s. 5; Colonial Courts of Admiralty Act 1890, s. 2 (3) (*a*).

Where by the charter party the owner transfers the possession and control of the ship to a charterer and the latter appoints the master and crew and pays their wages and other expenses, the master in incurring a debt for necessaries is the agent and servant of the charterer and not the agent or servant of the owner. In such a case the owner is not the debtor, and an action for such necessaries cannot be maintained against the ship.

The want of notice of the terms of the charter party in such a case is not material, notice of the charter party not being essential where the owner completely divests himself of the possession and control of the ship: *Bramwell &c. Scheibler* v. *Furness*, [1893] A.C. 8.

J. B. Kenney, for appellant. *R. G. Code*, for respondent.

Province of British Columbia.

SUPREME COURT.

Full Court.] NIGHTINGALE *v.* UNION COLLIERY COMPANY. [April 9.

Negligence Railway company—Passenger—Mere licensee—Duty of company—Verdict—No evidence to support—Setting aside.

Action by the widow and administratrix of Richard Nightingale for compensation for his death caused while travelling on the defendants' railway by reason of the train falling through a bridge. Nightingale had a

contract with defendant company to repair a bridge, and while riding on the locomotive of the company's coal train on his way to the work he was killed by reason of the train falling through the bridge. The engineer in charge of the train (there being no conductor) had no authority to take passengers, and had instructions not to allow people to travel on the engine without permission from some competent authority, but the company's officers and servants and other persons authorized by the manager and master mechanic used to ride on the coal train. A few days before the accident Nightingale and the defendants' manager had gone down to the bridge on the engine of a coal train and returned the same way the same day. In an action by Nightingale's representatives to recover damages from the company for his death, the jury held that the company had undertaken to carry Nightingale as a passenger :

Held, on appeal, setting aside judgment in plaintiff's favour that there was no evidence to support such a finding, and that Nightingale was a "mere licensee."

The relation of common carrier and passenger does not exist when a person travels on the locomotive of a coal train without the permission of some officer who has permission to give such authority, and if injured such a person has no right of action unless injured through the dolus as distinguished from the culpa of the carrier.

Per HUNTER, C.J.: The power which a judge has to take a case away from the jury should be exercised only when it is clear that plaintiff could not hold a verdict in his favour; if the matter is reasonably open to doubt the judge should let the case go to the jury, and then decide, if necessary, whether there is any evidence on which the verdict can be supported.

A. P. Luxton, for defendants. *D. G. Macdonnell*, for plaintiffs.

Book Reviews.

Conditional Sales and Bailment, with Forms, by W. W. Morrill, of the Troy Bar, Albany, N.Y., Matthew Bender, Law Publisher, 1902

This little book of 134 pp. is of special use in the United States; but will also give useful information to those of the profession in the Dominion who may have transactions across the border.

Sociologic Studies of a Medico-Legal Nature. By Louis J. Rosenberg, LL.B., Associate of the Victorian Institute, London, Eng., and N. E. Aronstam, M.D., Ph. G., with introduction by Hon. Clark Bell, LL.D., President of the Medico-Legal Society. G. P. Engelhard & Company, Chicago 1902. 142 pp. $1.

A collection of interesting essays on crime and its cause the drink evil—Enthanasia—Stirpiculture—Education of feeble minded children—Premature burial—Amnesia—Tuberculosis.

The Living Age.—Boston Mass., U.S.A. We would again call the attention of our readers to this excellent publication. It gives a careful selection of the most interesting of the articles from all the leading reviews of England, America and Europe. It is not only valuable for present reading month by month, but also a repertory of current literature for reference as the days go by.

Flotsam and Jetsam.

HUMOR OF THE LAW. The man stammered painfully. His name was Sissons. Especially difficult to him was the pronunciation of his own name. He had the misfortune to stay out late and uproariously one night, and to account for it before the magistrate at the police court next morning. "What is your name?" asked the court. Sissons began his reply: "Sss—ss—sss—ss—siss—" "Stop that noise and tell me what is your name," said the judge impatiently. "Siss sss—sss—sissss——" "That will do," said his honor, severely; "officer, what is this man charged with?" "I think, your Honor, he's charged wid sodywater."

The following is alleged to be a copy of a letter written by a French-Canadian lawyer's clerk addressed to the owner of a parrot whose presence considered a nuisance to the neighborhood. We are not prepared to vouch for its authenticity, but in any case as a jocular effort it is good, and as a precedent for similar cases it will no doubt be useful:—

"DEAR MISTER,—

I have the honer to tole you that the Reverend Messieurs of the Seminary have ordained me with instructions to poursuivre you for the scandalous nuisance that was cause to that vicinity by the paroquet which you have on your residence which was make much abominable fracas. The Reverend Messieurs are interfered with in their devotions, and when the band of the Seminary of III pupils begin for to play and your dam paroquet was begin screech, it is dreadful. Also, one of the neighbors on the same Street with yourself was very mad and can't sleep on the afternoon, and when he go for play the piano your bird yell and spoil his improvisions. Altogether you must put away that bird. Please give me some undertaking without delay, otherwise I must institute procedures Receive the assurance of my considerations.

Your obedient servant, &c."

Judge Scarritt, falling into a recital of unexpected answers from witnesses told the following as happening while he was on the bench:—Senator Ballingal, desiring to be particularly severe with a negro witness, and thoroughly to discredit his testimony, began his cross examination with,

"Rastus, do you drink?" "Not to-day, sah, thank you, Mr. Ballingal," came the darkey's unexpected reply.—*Central Law Journal.*

It is said that on one occasion the late B. B. Osler, Q. C., a prince among cross-examiners, had a witness in charge who made what the learned counsel thought an extravagant statement as to figures. The conversation then ran somewhat as follows: Q:—"Now, you say that there were twenty, don't you think there might have been thirty? Ans:—Well there might have been. Q:—What would you say to forty? Ans:—Can't say as to forty. Q:—Come now couldn't you stretch a point and make it fifty?" The unexpected answer to this question closed the examination:—"Look here, guvner, this here business ain't no bloomin' auction, is it?

TRIAL BY JURY.—The following is well worth reproducing and none the less because it appeared in *Punch* in its spicy days in 1877:—

The jury then retired to consider their verdict.

* * * * * * * *

Foreman. Well, gentlemen, what shall it be? For the defendant or for the plaintiff? I say for the plaintiff—damages £1000.

Number Two. Nonsense! you mean the defendant. He was in the right, and nothing shall make me give in if I stay here all night.

Number Three. Don,t say that. Because I have a dinner party at seven.

Number Four. And I promised my wife to be back by six.

Number Five. I say ditto to mister foreman Only make it a farthing damages. Nothing shall move me from that!

Number Six. Which was the plaintiff?

Number Seven. Why the man who refused to pay the bill, don't you know.

Number Eight. Lor, bless me, I thought he was the defendant!

Number Nine. Come, gentlemen, it's getting late. Make up your minds. I don't care which you give it for; in fact I thought both sides in the wrong.

Number Ten. Did you? I thought both sides in the right.

Number Eleven. It's no use talking. I tell you I mean to stick to the defendant.

Number Twelve. And I to the plaintiff. Damages £1000. Not a penny less, mind you, not a penny less!

Foreman. I see, Gentlemen, we must decide it in the usual way. I will toss the shilling, if you will be good enough to cry heads or tails.

* * * * * * * *

The jury returned after a few minutes' absence. Verdict for the plaintiff—damages forty shillings.

UNITED STATES DECISIONS.

OSTEOPATHY:—The practice of osteopathy is held, in *Bragg* v. *State* (Ala.) 58 L. R. A. 925, to be a practice of medicine within the meaning of the statute requiring a license to engage in such practice.

PRESUMPTION OF DEATH:—In case of the death of two persons in a common calamity it is held in *United States Casualty Co.* v. *Kacer* (Mo.) 58. L. R. A. 436, that there is no presumption of survivorship.

HUSBAND AND WIFE:—A husband's common-law liability for his wife's torts is held, in *Henley* v. *Wilson* (Cal.) 58 L. R. A. 941, not to be changed by statutes preserving to her her separate estate and empowering her to manage it.

ACCIDENT—RAILWAY:—If one in charge of an electric car, seeing that a horse is frightened by the approach of the car, and that its driver is in danger, continues to sound the gong or ring the bell, and further frightens the horse and causes it to run away, the car company is held, in *Oates* v. *Metropolitan Street Ry. Co.* (Mo.) 58 L. R. A. 447, to be liable for the injuries thereby caused to the driver.

NEGLIGENCE.—Where a licensee walking upon railroad tracks was approached by a train, and stepped therefrom to avoid collision, but was pushed upon the rails by a stray cow pasturing on the right of way, it is held in *Schreiner* v. *Great Northern R. Co.* (Minn.) 58 L.R.A. 75, that the failure of the company to build the statutory fences cannot be held the proximate cause of the accident, for which it would be liable to answer in damages.

WATERCOURSE.—The title to accretions is held, in *De Lassus* v. *Faherty* (Mo.) 58 L.R.A. 193, not to be lost by the fact that a stream changes its course, and, forcing its way through the newly formed land, cuts the portion in controversy off from the main land. One who, for his own benefit, whether as a riparian owner or under the right of eminent domain, erects an embankment on a stream in such a way as to change the current of the stream and destroy its habit of forming alluvial deposits on the opposite bank, is held, in *Freeland* v. *Pennsylvania R. Co.* (Pa.) 58 L.R.A. 206, to be liable for the damage caused to the riparian owner by the loss of future alluvial deposits. With these two cases is a note discussing the law of accretions to shore lands.