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There is perhaps no delusion more enticing to the ordinary lay mind than the suggestion that some vast sum of money is in court awaiting claimants. We have had numerous associations formed of late years for the purpose of pursuing these "will-o'-the-wisps," which, after spending large sums of money, have succeeded in neither discovering or recovering anything. It is, therefore, a pleasing change to find that occasionally a pursuit of this kind does end more satisfactorily. Such a case recently occurred in Ireland. It appears that a vintner named Robert Smyth became bankrupt in 1797, and shortly afterwards the creditors' assignee brought a suit in the Irish Court of Chancery to establish the bankrupt's right to a moiety of a rent payable out of certain lands; and a sum of £500 was paid into court to abide the result of the suit. The assignee died, the records of the bankrupt's estate were lost, and the suit in Chancery lapsed. Recently a Mr. Maconochy discovered the fund to be still in court, and has by his researches discovered the creditors entitled to the fund, which, with interest, now amounts to £3,335 3s. 10d., and the rent has also been realized for £1,620, making a total of nearly £5,000 now divisible, and which it is supposed will pay a dividend of 16s. on the pound to the long waiting creditors, or, perhaps we should say, their representatives. The High Court for Ontario has, we think, made a very reasonable provision stopping the allowance of interest, after a certain period, on unclaimed funds in such cases as this.

CONTRABAND AND THE AMERICAN CIVIL WAR CASES.

It has been well said that on the breaking out of war the duties of neutrals are much more in evidence than their rights. Generally speaking, a neutral "is to carry himself with perfect equality between both belligerents, giving neither the one not the other the advantage." In the English view Her Majesty's subjects are forbidden to break any blockade, to carry despatches, officers, soldiers, arms, military stores and material, and any articles considered to be contraband of war according to the law or modern

usage of nations, for the use or service of either of the contending parties. The penalty for the breach is the risk of capture and condemnation, a fate from which the Government expressly disclaims the power or desire to protect.

The warning given above, which forms an excellent prècis of the law of nations on the subject of contraband, forbids the transportation, but not the trade. The traffic is lawful enough, and if the traffic involve ocean carriage it is only on the high seas that the ship and cargo may find itself in peril. But such carrying, while exposing the property of the individual citizen to the hazards of war, and the possibility of loss without the protection of his Government, does not involve the latter in any breach of national neutrality. As has been said, neutrality is not a change but a continuation of a former state, and the breaking out of war does not make that unlawful which was lawful before it.

"A neutral nation," Chancellor Kent says, "has nothing to do with the war, and is under no moral obligation to abandon or abridge its trade. . . . The trade by a neutral in articles contraband of war is, therefore, a lawful trade, though a trade, from necessity, subject to inconvenience and loss" (*a*).

War undoubtedly confers certain rights on belligerents which interrupt peaceful trading. Either belligerent nation may declare goods to be contraband which were not contraband before or blockade the enemy's ports, in which cases traffic carried on by neutrals must suffer some disturbance.

Lord Stowell lays down the rights which a belligerent may exercise against a neutral as follows :—1. To send on board for the ship's papers. 2. To detain such vessels as are carrying cargoes of a contraband character, either wholly or in part, to an enemy's port. 3. To bring in for a more deliberate enquiry than could possibly be conducted at sea, even those vessels which profess to carry cargoes to a neutral destination. But these rights are preliminary only. The search, the detention, and the bringing in, are all merely steps towards a judicial determination, and the question to be decided is always whether what is carried is contraband. And contraband is a term which is very elastic. In fact goods may be made contraband by the declaration of one of the contending nations, provided they are of such a nature as to afford

(*a*) *Seton* v. *Low*, 1 Johnson's cases, p. 1.

nourishment or support to the forces of the other. Hence food-stuffs, innocent though they be in themselves, may be made contraband.

Two important qualifications, however, have heretofore been insisted on, an examination of which will throw much light on the law relating to the recent seizures by British cruisers off the Portuguese port of Lorenzo Marquez. One is that otherwise innocent goods must be in transit to the enemy's forces. Hence Lord Salisbury's declaration that flour bound to a neutral port and not destined for the enemy, will not be deemed contraband, has given satisfaction to the American and German governments. The other qualification is that goods otherwise contraband, if bound to a neutral port are not deemed to possess a hostile quality. It is to be noticed that in the brief cabled reports of the position of the British Government two very significant positions are indicated, namely, that the destination of the goods is yet an element, though the ship be bound for a neutral port, and that a Prize Court must decide the questions involved. The latter proposition is elementary, but taken in connection with the former it may mean much. For it indicates that the British Government intend to secure recognition by the Prize Court of the doctrine involved in what are known as the American Civil War Cases. Broadly speaking, those cases laid down the principle that if a neutral vessel bound for a neutral port carries contraband of war, really in transit, beyond that port, to the enemy, the destination of the vessel did not protect the goods from capture and condemnation. In the *Peterhoff* (*b*) a British ship was, during the American civil war, proceeding to Metamoras, a neutral port in Mexico, carrying contraband of war. She was captured on the high seas and the United States Supreme Court, in appeal from the Prize Court, condemned part of her cargo on the ground that the neutral port was not the real destination of the goods. In this they applied to the carrying of contraband the principle of cases where ships were intending to break the blockade, such as the *Springbok* (*c*). In that case a British ship was seized on a voyage to a neutral port, Nassau, and her cargo was condemned on the ground that the goods were really intended to be carried beyond Nassau into a

(*b*) 5 Wallace 28.

(*c*) 5 Wallace 1.

port in the Confederate States then blockaded by the Federal navy. This seizure elicited an emphatic protest from the British Government, and the Law Officers of the Crown, Sir William Atherton, Sir Roundell Palmer, and Dr. Phillimore advised that the facts afforded no ground for the seizure. The charge was, however, that they intended to break the blockade instituted by the Federal Government against Confederate ports. Under such conditions, intent has always been held to be of the first importance, and the offence was complete if the vessel sailed for the blockaded port with knowledge of the blockade (*d*). But in the *Peterhoff* case the port of destination was a neutral port. Metamoras was on the south bank of the Rio Grande and across the river was Confederate territory. The Supreme Court distinctly held that the voyage was to a neutral port, and it refused to condemn the ship or the neutral cargo for intended breach of blockade, holding that there could be no blockade of a neutral port. But the contention which was ultimately given effect to as the contraband part of the cargo was, that although the goods were to be landed on the south side in neutral territory they were intended for the Confederate States, to which they could be transported with great ease, either with or without the connivance of the Mexican authorities.

Chief Justice Chase says (*e*):—"Contraband merchandise is subject to a different rule in respect to ulterior destination than that which applies to merchandise not contraband. . . . The former" (is liable to capture) "when destined to the hostile country or to the actual military or naval use of the enemy whether blockaded or not. . . . Hence . . . articles of a contraband character, destined in fact to a State in rebellion, or for the use of the rebel military forces, were liable to capture though primarily destined to Matamoras."

Duer, an American writer, in his work on insurance (1845) states this proposition. "Although the ship, in which the goods are embarked, is destined to a neutral port, where the goods are to be unladen, yet if they are to be transported thence, whatever may be the mode of conveyance, to an enemy's port or territory,

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(*d*) The *Columbia*, 1 C. Rob. 154. Walker's Science of International Law (1893) 524.

(*e*) p. 59.

their ultimate destination determines the character of the trade, which is not at all varied by the interposition of the neutral port. In every such case the outward voyage is illegal at its inception. The goods shipped are liable to seizure the instant it commences" (*f*). Dr. Holland, Professor of International Law at Oxford, has, it is stated, recently given his opinion that the present seizures made by British cruisers are justified by the American civil war cases.

But the English view has not at any time been clearly favorable to the underlying principle of those cases, which disregard the interposition of the neutral destination of the vessel. This is very well set out in *Hobbs* v. *Henning* (*g*), a case brought by an owner of part of the cargo of the *Peterhoff* on his insurance policy against the underwriters. Erle, C.J., and Byles, J., who gave judgment, declined to follow the findings of facts of the Judge in the American Prize Court, and after quoting Sir W. Scott's judgment in the *Imina* (*h*), affirmed that the right of capture only attaches when a ship with contraband of war is passing on the high seas to an enemy port and that it must be taken in delicto, that is, in actual prosecution of a voyage to an enemy's port. Strange to say in the most recent edition of Phillimore's Commentaries upon International Law (*i*) it is stated that Lord Chief Justice Erle is in accordance with the decision in the *Peterhoff* case in the Supreme Court, although that Court had affirmed the Prize Court Judge as to the contraband goods, and forfeited them. Dr. Phillimore's view is not that of other law writers nor of the Court in a subsequent insurance case, also on a policy on goods carried in the *Peterhoff* (*j*).

Wheaton points out the difference between the English and American decisions, and says that it cannot be forseen which of

(*f*) Lecture VI., 513.

(*g*) 17 C. B.N.S. 791.

(*h*) 3 Rob. 167.

(*i*) (1885) 3rd Ed. p. 397.

(*j*) *Seymour* v. *L. & P. Insurance Company*, 41 L.J.N.S.C.P. 193, 42 L.J.N.S. C.P., 111 note. It is somewhat singular that Sir William Harcourt in his celebrated letters on International Law should have said in 1863 that the validity or invalidity of an insurance on a contraband voyage had not then been absolutely decided by the English Courts, principally, he observes, because the insurance companies have been too honest or too prudent to dispute the force of liabilities from which they have derived large profits.

these decisions may be followed in the future, but that it is evident that the American view materially increases the rights of belligerents (*k*). Hall says that the English doctrine of continuous voyage was seized upon and was applied to cases of contraband and blockade, and that vessels were condemned on mere suspicion of intention to do an act. He holds that the American decisions have been universally reprobated outside the United States, and would probably now find no defenders in their own country, and thinks that there is no analogy between the grounds on which these and the English cases were decided. He mentions one important fact, that the English Courts were careful not to condemn until what they conceived to be the hostile act was irrevocably entered upon; cargo was confiscated only when captured on its voyage from the port of colourable importation to the enemy's country (*l*).

It is evident from these authorities that they reprehend the application of the old English doctrine of continuous voyage by the American Courts to the case of contraband as well as of blockade though the cases in which it was applied were chiefly blockade cases. It is not possible to draw a distinction, and does not the case of blockade stand on an entirely different basis from that of contraband? The act of violation of the blockade is primarily an offence of the ship, and it is only by the rule of infection that the goods of the shipowner or cargo owner are condemned (*m*). Its evasion is viewed in all cases as a criminal act (*n*), and as Duer says, "No rule in the law of nations is more certain and absolutely established than that the breach of a blockade subjects all the property so employed to confiscation by the belligerent power whose rights are violated (*o*). It is, in fact, the breach of a military cordon drawn around part of the territory of an enemy, and as such must be punishable when attempted or intended, as well as when accomplished. But the trade in contraband is admittedly lawful though subject to the

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(*k*) (1889) 3rd edition, 651-2-3.

(*l*) (1890) 3rd edition, 673. See also Walker (1893) 515, and Halleck (1893) 3rd edition, 219, 220.

(*m*) See Walker, p. 525.

(*n*) Halleck, p. 194.

(*o*) Vol. I., pp. 683-5.

penalty of confiscation, and the modern rule is that the cargo alone is condemned, while the vessel is visited with no other penalty than the loss of time, freight and expenses (*p*), unless the owner of cargo and ship be the same, or if the shipowner is privy to the carriage of the contraband. The injuriousness of the trade results from the nature of the goods and their ultimate hostile destination and not from the mere fact of ocean transport, and the belligerent's desire is only to prevent the goods going to the enemy if he can. No actual obligation to the belligerent is violated if the contraband reaches its destination, for his right is merely that of caption if he can find the goods in transit.

It is true that there are opinions to be found in some of the English cases, and in some English text writers, which do not express this distinction, but enough of authority remains to suggest the adoption of the principle of the American civil war cases as applied to contraband.

That doctrine is given in the language of Chief Justice Chase:—"Contraband merchandise is subject to a different rule in respect of ulterior destination than that which applies to merchandise not contraband. . . . Articles of a contraband character, destined in fact to a State in rebellion or for the use of the rebel military forces were liable to capture though primarily destined to Metamoras." In short, bona fide neutral destination is necessary to save contraband goods from capture though the ship be on a voyage to a neutral port.

In the *Imina* case (*q*), which is the leading case on the doctrine of hostile destination as necessary to constitute contraband, and on which *Hobbs* v. *Henning* is largely founded, Lord Stowell says:—"This is a claim for a ship taken, as it is admitted, at the time of capture sailing for Embden, a neutral port; a destination on which, if it is considered as the real destination, no question of contraband could arise." It is to be observed that this case was one of blockade and Lord Stowell's subsequent remarks are to be read with that in view. In fact the delictum which he was asked to impute to the owner of the goods was intent to break a blockade. The *William*, (*r*) an early but very important case on

(*p*) Hall, p. 671.

(*q*) 3 Rob. 167.

(*r*) 5 Rob. 385.

the question of continuous voyage under the rule of war of 1756, was decided by the Lords Commissioners in Appeal in prize cases on the basis that the true question of the importation of goods into a neutral country was whether it was real or pretended only, and not whether the pretence was carried out by the entry and payment of duty to the neutral State, that is, whether the cargo was from the beginning intended for an enemy port. Sir Wm. Grant in the judgment says (*s*):—"The truth may not always be discernable but when it is discovered it is according to the truth and not according to the fiction that we are to give the transaction its character and denomination." After the case of *Hobbs* v. *Henning* had been decided an action was brought on another policy of insurance on goods on the *Peterhoff* (*t*), in which policy it was warranted that there was no contraband of war. The goods in question included artillery harness, and the Court inferred that they were intended for the Confederate States. In deciding that the underwriters were not liable, Willes, J., discusses the judgment in the case of *Hobbs* v. *Henning* and the question of destination and says (*u*):—"The design and intention from the beginning. . . . was that the goods should go, and they were bound from the time they left England to go, into the Confederate States." After discussing the American Prize Court decisions he proceeds:—"This is a case . . . in which there was an entire adventure which was to be completed in the country into which the goods were to go. . . . I take it to be clear that a neutral can no more rightly import arms of war into a belligerent country without being liable to have his goods seized on the way, than his government, being neutral, can import a cargo of arms into a belligerent country without creating a casus belli. That is the true character in which contraband can be seized. . . . It is an act which is in its character hostile by reason of the destination of the goods." The judgment is also instructive in explaining that Sir Wm. Scott in the *Imina*, when speaking of a "voyage to an enemy's port" meant "destination of the goods to an enemy's port," and that his expression must be construed as equivalent to "the course of procedure to the place were the goods were bound to in the beginning." In that case, however,

(*s*) p. 396.

(*t*) *Seymour* v. *London & Provincial Ins. Co.* 41 L.J.N.S. C.P. 193.

(*u*) pp. 194, 196.

Sir William Scott's definition of the elements of contraband is stated with a precision not always followed and perhaps not always appreciated, that "goods going to a neutral port cannot come under the description of contraband." Sir Wm. Harcourt's remark when quoting this, "in a question of contraband, the destination of the ship is everything," must be taken as intended to relate to a case where no question of ulterior destination arises. M. Thouvenel in his despatch on the Trent affair is clear:—"She (the Trent) was carrying to a neutral country her cargo and her passengers, and, moreover, it was to a neutral port that they were taken." To quote Sir Wm. Harcourt again, there appears in his letters on the affair of the Trent (1863) the opinion that in order to constitute contraband of war it is absolutely essential that two elements should concur, viz., a hostile quality and a hostile destination, and that hostile goods, such as munitions of war, going to a neutral port, are not contraband. He points out by way of illustration (which, however striking, only confuses the point) that a different principle would, assuming that the Confederate delegates were contraband of war, have justified Captain Wilkes in seizing the Dover Packet boat in case Messrs. Mason and Slidell had taken a through ticket from London to Paris. But Lord Russell, replying to Mr. Seward's despatch, accurately quotes Lord Stowell in the *Inina* case: "Goods going to a neutral port cannot come under the description of contraband, all goods going there being equally lawful."

In 1810, the rule laid down in 1808, that despatches were contraband was modified so as not to include despatches to enemy officials in a neutral country, and the reason given was because the destination was not necessarily hostile. In 1870 Great Britain acted on the principle that destination was the determining factor, and declined to permit coal to be supplied to the French fleet in the North Sea.

Prof. Bernard in writing on the Trent affair says:—"The fact that the voyage is to end at a neutral port is not conclusive against condemnation, but is a strong argument against it" (*v*). Walker, in his work on the Science of International Law says:—"The obnoxiousness of contraband trading consisting in the union of

(*v*) Neutrality of Great Britain during American Civil War, p. 224.

the nature of the goods as useful in war with their intended employment, a hostile destination is a necessary ground for any belligerent seizure. A simulated and innocent may, however, cover a real hostile destination and if the existence of fraud in this respect be made apparent the condemnation of the goods and possibly of the vessel may well follow (*w*).

In international law, as in every other department of jurisprudence, circumstances alter cases, and modern judges are prone to consider the actual facts of the case. If the importation of contraband into a neutral port by a neutral vessel is but part of the transitus, and the circumstances are such that no honest shipowner could doubt the real destination, he cannot complain if a belligerent exercises rights which may detain his ship. In the case of munitions of war shipped from Germany to Lorenzo Marquez, the German Mail Steamship Company could have had no doubt that the cargo was on its way to the Transvaal. The American civil war cases were decided on circumstances practically similar to those now existing. The British Government submitted to the right then claimed, though it was quite possible to argue that the American law was somewhat in advance of English decisions. England must face the changed conditions. If the application of force is required to prevent the Transvaal getting in supplies, neutral nations will have to submit. It is of course a step in advance on the old-fashioned doctrine invoked by the German Chancellor that trade between two neutral ports in a neutral bottom must not be interfered with. But that rule has always been founded on bona fides and the English Courts have evidently assumed it as an element in their decisions. If neutrals are taking a part in conveying contraband of war to the Transvaal and using a neutral port as a transhipping depot they cannot complain if the seizure of the obnoxious articles cause them some loss and annoyance.

(*w*) p. 312.

Toronto. FRANK E. HODGINS.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

LANDLORD AND TENANT — EXECUTION AGAINST TENANT — BANKRUPTCY OF TENANT—RENT IN ARREAR—PRIORITY OF LANDLORD—8 ANNE, C. 14 (C. 18 IN REV. STATS.), S. 1—TRUSTEE—COSTS.

In re Neil Mackenzie (1899) 2 Q.B. 566, is a case which, although a bankruptcy one, deserves careful attention, from the fact that the Court of Appeal has laid down the law under the statute, 8 Anne, c. 14 (c. 18 in the Rev. Stats.) governing the rights of a landlord as against execution creditors and trustees in bankruptcy. In this case the point at issue was this: A sheriff had seized in execution and sold the goods of a tenant, and subsequently received notice from a trustee in bankruptcy of the tenant having been adjudicated bankrupt, and a demand of the proceeds of the sale; the landlord of the premises on which the execution was levied also gave notice to the sheriff of his claim for rent, but the notice was not given until after the sale. The question was, therefore, whether, under these circumstances, the landlord or the trustee had the better right. The Court of Appeal (Lindley, M.R., and Jeune, P.P.D., and Romer, L.J.,) decided that to the extent of one year's arrears of rent the landlord's claim was entitled to priority. With regard to the costs of the appeal, the trustee respondent asked that they should be ordered to be paid out of the bankrupt's estate, but this was refused and he was personally ordered to pay them. The Court refused to follow *Ex parte Stapleton* (1879) 10 Ch. D. 586, holding that the Court must consider what was the trustee's right in each particular case. We may note that the statute of Anne, under which the case was decided, is one of those Imperial statutes in force in this province by virtue of the R.S.O. c. 111, s. 1, and it is greatly to be wished that the Ontario Government would provide the public with an authentic collection of all such statutes.

PRACTICE DISCOVERY EXAMINATION FOR DISCOVERY.

Dalgleish v. *Lowther* (1899) 2 Q.B. 590, turns upon a simple point of practice. The action was for slander and the plaintiff in

the course of his examination of the defendant for discovery put the following questions: "Did you on or about the 1st March or when speak the following words of the plaintiff (*setting out words complained of*) or words to that effect? Were the said words spoken in the presence of (*two persons named in the statement of claim*) and other persons, or any of which of them?" The defendant objected to answer them. Lawrance, J., thought them to be "fishing" and oppressive and sustained his objection. The Court of Appeal (Lindley, M.R., and Jeune, P.P.D.,) after consulting their colleagues of the other division of the Court of Appeal, held that the questions were proper and must be answered, and reversed the ruling of Lawrance, J.

CHOSE IN ACTION—ASSIGNMENT OF DEBT — ABSOLUTE ASSIGNMENT—JUDICATURE ACT, 1873 (36 & 37 VICT., C. 66) S. 25, S.-S. 6—(ONT. JUD. ACT, S. 58, S.-S. 5.)

The Mercantile Bank v. *Evans* (1899) 2 Q.B 613, was an action brought by the plaintiffs as assignees of a debt due under an agreement. The assignment on its face shewed that it was made as security for the repayment of an advance to the assignor, and it empowered the plaintiffs to exercise all the assignor's rights and powers under the agreement. The question raised before the Court of Appeal (Lord Halsbury, L.C., and Smith and Williams, L.JJ.,) was whether the plaintiffs could, under such an assignment, sue in their own names, in other words whether the assignment was "absolute" within the meaning of the Jud. Act, 1873, s. 25, s.-s. 6 (Ont. Jud. Act, s. 58, s.-s. 5), and they determined that it was not. Smith, L.J., (with whom the Lord Chancellor agreed) distinguished the case from *Comfort* v. *Betts* (1891) 1 Q.B. 737, where there was an absolute assignment subject to a trust in respect of the proceeds of the debt assigned; and also from *Tancred* v. *Delagoa Bay Ry.*, 23 Q.B.D. 239 where the assignment, though absolute, was by way of mortgage and subject to an equity of redemption, on the ground that the assignment in the present case was not an assignment of the whole agreement, but only of sufficient thereof to secure the debt due the assignor. Williams, L.J., agreed that the assignment was only partial, but did not discuss the cases above referred to.

MANDAMUS—MUNICIPAL CORPORATION—APPOINTMENT OF VACCINATION OFFICER.

In *The Queen* v. *Leicester* (1899) 2 Q.B. 632, an application was made for a prerogative writ of mandamus to compel a board of

guardians to appoint an officer under the Vaccination Act, which was granted by Darling and Phillimore JJ. The application was resisted on the ground that the Act in question provided that in default of the board of guardians making the appointment within the limited time the Local Government Board, who were the prosecutors in this case, might make the appointment, but the Court was of opinion that the alternative power of appointment was not an equally beneficial remedy, and that the applicants were entitled to compel the board of guardians to perform its statutory duty.

CONTRACT—LOAN OF MONEY—FRAUD—CONCEALMENT OF IDENTITY OF LENDER—REPUDIATION OF CONTRACT.

Gordon v. *Street* (1899) 2 Q.B. 641, is one of those melodramatic cases which one very rarely meets with in the pages of the Law Reports. Here we have "the biter bit," and "the engineer hoist with his own petard" with a vengeance. The plaintiff was a notoriously extortionate money lender, who sought to recover from the defendant the amount of a promissory note for £150 given for a loan of £100 for a few weeks. The defence was that the defendant was induced to enter into the contract on the representation that the person he was dealing with was named Addison; that as soon as he discovered the true identity of the plaintiff he repudiated the contract and offered to repay the loan with ten per cent. interest, and he paid £110 into Court in satisfaction. He also counter-claimed for damages for libel contained in an abusive letter sent to him by the plaintiff in respect of which (as appears by the report of the case in 81 L.T. 237) the defendant recovered a verdict for £400, although the publication was only to the plaintiff's own clerk. At the trial before Bucknill, J., the jury found that the plaintiff had fraudulently concealed from the defendant his name, in order to induce the defendant to enter into the contract, and that the defendant repudiated the contract within a reasonable time after he discovered the plaintiff was the lender; judgment was therefore given for the defendant from which the plaintiff appealed. The Court of Appeal (Smith, Rigby, and Williams, L.JJ.,) unanimously dismissed the appeal, holding that misrepresentation as to the name of the lender was material, and having been fraudulently made, entitled the defendant to repudiate the contract as he had done, and, by the curious irony of fate the Court arrived at its conclusion by the help of the plaintiff's own

letters to the defendant in which, in order to terrify his victim, he graphically described himself as being "the extortionate and usurious money lender with about a gross of aliases, and the hottest and bitterest of creditors," and by his private written instructions to his employees in which he had shewn the importance which he himself attributed to the concealment of his identity. It is seldom that poetic justice is so signally done.

WEIGHTS AND MEASURES—WEIGHING MACHINE—PAPER—"FALSE OR UNJUST"—WEIGHTS & MEASURES ACT, 1878 (41 & 42 VICT., C. 49), S. 25—(R.S.C. C. 104, S. 25.)

Lane v. *Rendall* (1899) 2 Q.B. 673, is a case stated by justices. The defendant was charged with an infraction of the Weights and Measures Act, (see R.S.C. c. 104, s. 25), the facts being that, in weighing tea, a piece of paper was placed under the receptacle on the scales on which tea was weighed, so that the weight indicated by the scale was 1½ drachms more than there really was of tea. The defendant contended that in weighing tea purchased, he was entitled to include the paper in which the tea was packed, but the Court (Ridley and Darling, JJ.,) repudiated the idea that a tea dealer is entitled to sell as a pound of tea, a pound in weight made up of tea and paper, and held that the defendant should be convicted of a breach of the Act.

COMPANY—DIRECTOR—MISFEASANCE—DIVIDENDS PAID OUT OF CAPITAL—LIQUIDATOR, RIGHT OF, TO RECOVER FROM DIRECTOR DIVIDENDS IMPROPERLY PAID.

In re National Bank of Wales (1899) 2 Ch. 629, was an application by a liquidator in a winding up proceeding to compel a director of the company in liquidation to make good certain moneys of the company, part of which had been improperly invested, and part applied improperly in payment of dividends, and part lost by improper advances to customers and allowing them to overdraw their accounts. The company in question had carried on a banking business, and having got into difficulties determined to transfer its business and assets, other than uncalled capital, to another company, subject to the stipulation that if the assets transferred exceeded the liabilities, the surplus should be refunded to the company in liquidation, and if, on the other hand, the assets transferred proved insufficient to discharge the liabilities, the company in liquidation should make good the difference. In the

result it turned out that there was a deficiency of £41,000 which the company in liquidation had to make good. This deficiency could easily be obtained by calling up unpaid capital, but the shareholders objected to a call being made, if the money could be recovered from other sources, and it was therefore practically in their interest that the present proceedings were taken. One ground on which the director in question claimed to be exonerated was that he had relied on the statements and reports presented to the board of directors and had no reason to doubt their accuracy, and that such statements and reports justified his action, and that he had been as much deceived by the chairman and general manager as the shareholders themselves. Wright, J., came to the conclusion that Cory, the director, had not only been negligent but fraudulent, on the ground that the directors' reports stated that they had made provision for bad and doubtful debts whereas they had not; but the Court of Appeal (Lindley, M.R., Jeune, P.P.D. and Romer, L.J.,) thought the evidence failed to justify this inference; and that the director was justified in relying on the statements of the officers of the company. Another branch of the case turned on the effect of Cory's resignation of the office of director. He wrote tendering his resignation, and on 22nd Dec., 1890, he was informed of its acceptance; but the board of directors concealed this from the shareholders and in their report, laid before them on 21st January, 1891, Cory's name appeared as a director, and the evidence was conflicting as to whether his resignation had or had not been mentioned to the meeting held that day. Wright, J., thought Cory must have known that his name so appeared in the report, and that he improperly allowed his retirement to be concealed, and allowed himself to be held out as a continuing director; but the Court of Appeal was of opinion that his resignation had been bona fide and validly effected, and that he ceased to have any responsibility for the subsequent acts of the board of directors, and could not be held liable for the dividend declared in January, 1891, even if he received the directors' report before the meeting and saw his name in it as a director, and did not insist that his name should be struck out As to the dividends previously declared after the loss of the paid up capital, the Court of Appeal, while declaring that the paid up capital of a limited company cannot be returned to the shareholders under the guise of dividends or otherwise, at the same time was of opinion that

the law does not prohibit a limited company from paying dividends unless its paid up capital is intact, the dictum of Jessel, M.R., *In re Ebbw Vale S. & I. Co.*, 4 Ch. D. 827, to the contrary notwithstanding; and that with respect to the losses properly chargeable to capital and income respectively there is no hard and fast legal rule. In determining, however, the liability of a director for dividends improperly paid by reason of the improper charging of losses to capital, the Court of Appeal held that it is the duty of the Court to examine the state of things as it appeared to the director when the dividends were declared, and to determine whether he was justified in what he did by what he then knew, or what he ought to have known; and doing so in the present case, they came to the conclusion that having no ground for suspicion that anything was wrong, Cory was justified in giving faith to the statements and reports of the officers of the company, on the faith of which the dividends had been declared. Another ground on which he was sought to be made liable was for having, as alleged, sanctioned a loan to a director without security. The articles of association provided that the company was to have a first charge on the shares of all shareholders for any debts due by them to the company. The articles also provided that no advances were to be made to directors without security. Advances were made to a director the market value of whose shares at the time largely exceeded the advances, but in respect of which advances a heavy loss was ultimately sustained. The Court of Appeal held that a charge on the shares given by the articles was a "security," and that Cory was not liable, having no reason to suspect that the security was insufficient. The Court of Appeal, however, agreed with Wright, J., that if Cory had been liable for dividends improperly paid out of capital the liquidator might recover the amount from him as an asset of the company, and that it could not be maintained that the liquidator had no right to recover them because he represented the shareholders to whom they had been paid.

TRADE UNION—"WATCHING AND BESETTING"—INTERLOCUTORY INJUNCTION—CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875, (38 & 39 VICT., C. 86), S. 7—(CR. CODE, S. 523)—PARTIES—MISJOINDER—RULE 123 (ONT. RULE 185).

Walters v. *Green* (1899) 2 Ch. 696, is an action founded on *Lyons* v. *Wilkins* (1896) 1 Ch. 811 (noted ante vol. 32, p. 546), and

was brought by a firm of builders against the officials of different Trade Union Societies, to restrain them from watching and besetting workmen brought by the plaintiffs to fill places vacated by men on strike. The present is a report of an application for an interlocutory injunction until the trial. The motion was resisted on the ground that the action was not properly constituted because the plaintiffs had not alleged any joint cause of action against all the defendants, but only separate and distinct torts against each. The plaintiffs, on the other hand, contended that the tort alleged was joint, because it was claimed that the defendants had combined and conspired together to do that which was illegal under the Conspiracy and Protection of Property Act, 1875, s. 7 (see Cr. Code s. 523), viz., to compel the plaintiffs to abstain from doing that which they had a legal right to do. Stirling, J., ruled that the action was properly constituted, both as to the plaintiffs and defendants, as the tort alleged was joint and all the plaintiffs had suffered from the same tort, and even if, in the result of the action, it should turn out that some only of the defendants were liable, judgment could be recovered against them notwithstanding the misjoinder of the others, and on the evidence, being of opinion that it was only shewn that two of the defendants had been guilty of acts forbidden by the statute in question, he granted the interlocutory injunction only as against them.

INJUNCTION—TRIVIAL INJURY—COSTS.

In *Llandudno* v. *Woods* (1899) 2 Ch. 705, the plaintiffs, a municipal body, entitled as lesees of the Crown to the sea shore between high and low water mark, claimed a declaration that the defendant (a clergyman) was not entitled to hold services on such sea shore without the plaintiffs' consent, and for an injunction. Cosens-Hardy, J., who tried the action made the declaration as asked, but refused to grant an injunction, on the ground that the matter was too trivial, and also made no order as to costs.

VENDOR AND PURCHASER PURCHASE MONEY PAYABLE BY INSTALMENTS — REPUDIATION OF CONTRACT BY PURCHASER AFTER PART PAYMENT RIGHT OF VENDOR TO RETAIN PURCHASE MONEY AFTER REPUDIATION BY PURCHASER —SPECIFIC PERFORMANCE—LACHES.

Cornwall v. *Henson* (1899) 2 Ch. 710 is an interesting case on the law affecting vendors and purchasers. In 1892 the defendant agreed to sell to the plaintiff a parcel of land for £150, of which

£40 was paid down and the balance was to be paid in equal quarterly instalments, and in default of payment of any one instalment for thirty days all of the remaining instalments were at once to become payable, and in default of payment the vendor was to have power to sell the land, retain the unpaid instalments out of the proceeds, and pay the balance to the purchaser. The plaintiff went into possession, and in August, 1891, had paid all the instalments but one. No further payment was made, and in 1896 he left the premises, the land being then of less value than the total amount of the instalments paid. The defendant being unable to find the plaintiff, took possession and advertised the property for sale but was unable to find a purchaser. He then let the property in 1898, and gave the tenant an option to purchase. After this tenant had built a house, the plaintiff returned and tendered the remaining instalment, and claimed a conveyance, which being refused the present action for specific performance was brought. Cosens-Hardy, J., tried the action. It was conceded by plaintiff's counsel at the trial that specific performance of the contract could not be granted, and the learned Judge was of opinion that the plaintiff was not entitled to any damages against the defendant for non-performance of the contract, on the ground that his conduct shewed that he had abandoned the land and repudiated the contract, and that the defendant's rights could not be limited to the exercise of the power of sale conferred by the contract, when once it was held that the plaintiff was no longer owner in equity of the land, or entitled to a lien upon it for his purchase money. He held also that the plaintiff had resumed possession as owner, and in that capacity had made the lease with the right of purchase. He also held that the purchase money could not be recovered as money had and received to the use of the plaintiff because, the plaintiff having been let into possession, there could not be said to have been a total failure of consideration, and the action was, therefore, dismissed without costs. The learned Judge in the course of his judgment expresses the opinion that the statement that the effect of a contract of sale is to make the purchaser from that moment in equity owner of the land, needs to be modified by the proviso that the contract is one of which the Court will decree specific performance.

MARRIED WOMAN—SEPARATE ESTATE—RESTRAINT ON ANTICIPATION—DEATH OF HUSBAND—WIFE'S CONTRACT—BANKRUPTCY OF MARRIED WOMAN.

In re Wheeler, Briggs v. *Ryan* (1899) 2 Ch. 717 would seem to shew that the rights of a trustee on bankruptcy of a married woman trader are more extensive than those of a judgment creditor of a married woman. In this case a married woman having separate estate subject to a restraint on anticipation, having carried on a separate trade, was declared bankrupt, and her husband having died, whereby the restraint on anticipation came to an end, the trustee in bankruptcy claimed to be entitled to the married woman's life interest under the settlement, and Cosens-Hardy, J., held that he was entitled thereto. The recent case of *Softlaw* v. *Welch* (1899) 2 Q.B. 419 (noted ante vol. 35, p. 682) would seem to shew that an execution creditor in respect of a contract made before 1893 would not be entitled to levy execution against such a life interest, on the cesser of the restraint.

COMPANY—WINDING UP—FRAUDULENT PREFERENCE BY COMPANY.

In re Blackburn & Co. (1899) 2 Ch. 725, Wright, J., decides that a payment made by a company within the prescribed time, prior to a winding up order, for the purpose of satisfying a claim, because the directors thought it would be a hardship on the creditor and against their consciences to leave him to prove his claim in the winding up, was none the less a fraudulent preference, and as such recoverable by the liquidator.

VENDOR AND PURCHASER—PURCHASE BY TRUSTEE OF SETTLED ESTATE—POSSESSION BY TENANT FOR LIFE—PAYMENT OF INTEREST ON PURCHASE MONEY BY SUCCESSIVE TENANTS FOR LIFE—SPECIFIC PERFORMANCE—VENDOR'S LIEN.

Ecclesiastical Commissioners v. *Pinney* (1899) 2 Ch. 729, was an action for specific performance of a contract for the purchase of lands. The contract had been made in 1873 with the trustees of a settled estate having a power to purchase; the successive tenants for life under the settlement had been in possession of the property from the date of the contract, and had regularly paid the interest on the purchase money to the vicar of the parish of which the lands in question had been the glebe. The principal money had never been paid, and no conveyance was ever executed. The action was brought against the present tenant for life, the legal representatives of the surviving trustee of the settlement who had made the

contract, and the present trustees of the settlement; the present vicar of the parish was also a defendant. There were no trust funds of the settlement available for the payment of the purchase money. Under these circumstances, Byrne, J, held that the plaintiffs were not entitled to judgment for specific performance of the contract, but that, if the tenant in tail of the settlement consented to be added, and submitted to be bound by the judgment, the only relief they could be awarded was a declaration that they were entitled to a vendor's lien for the purchase money.

WILL—CONSTRUCTION—LEGACY—VESTING—REMOTENESS—INTESTACY—MAINTENANCE.

In re Turney, Turney v. *Turney* (1899) 2 Ch. 739 is a case turning on the construction of a will, whereby the testator bequeathed a sum of £12,000 to trustees upon trust to pay the income thereof to a daughter for life; and after her death to pay £1,000 to her husband, if living, and subject thereto, as to capital and income in trust for all the children of the daughter when they should attain 25, but not before, and, in case there should not be "any such child," the fund was to form part of the testator's residue. The testator also declared that until the £12,000 should be invested the trustees should pay his daughter—or, in the event of her death, to her husband and children—interest on their respective portions. The trustees were also empowered to apply for the advancement of any grandchild a sum not exceeding one-half of his expectant share for . .s or her advancement, &c. The trustees were also empowered to apply the whole or any part of the income arising from the expectant share of any grandchild, after the death of the preceding owner for life thereof, for the maintenance and education of such grandchild, and the unapplied income of such shares was to be accumulated and added to the principal. The question was whether the gifts to the grandchildren were vested, subject to being divested if they did not attain 25, or whether they vested only on their attaining 25. Kekewich, J., who tried the case, was of opinion that they did not vest until the grandchildren attained 25, and were, consequently, void for remoteness. The Court of Appeal (Lindley, M.R., Jeune, P.P.D., and Romer, L.J.,) were of a contrary opinion, and held the gifts to be vested, subject to being divested in case the legatees did not attain 25. Jeune, P.P.D., says: "If the language of a will is ambiguous, it is right to lean rather to a construction which will

undoubtedly carry out the intention of the testator, in the sense that it will make his will effectual and not render it void by means of a doctrine from which, if he had known of it, he would certainly have desired to steer clear." The fact that the will spoke of "the share" of a child dying before attaining 25 was, in the opinion of the Court of Appeal, an indication that the testator intended an immediate vesting of the shares.

COPYRIGHT — NEWSPAPER REPORT OF SPEECH — AUTHOR — COPYRIGHT ACT, 1842 (5 & 6 VICT., C. 45), SS. 2, 3, 18.

Walter v. *Lane* (1899) 2 Ch. 749 is an important decision on the law of copyright. The plaintiffs, the publishers of *The Times*, claimed a copyright in reports of public speeches published in *The Times*. The reporters who had reported the speeches in question had assigned such copyright as they had to the plaintiffs. The plaintiffs applied for an interim injunction, which was granted by North, J.; but the Court of Appeal (Lindley, M.R., Jeune, P.P.D., and Romer, L.J.,) reversed his decision, on the ground that the reporter of a speech cannot in any sense be considered the author of it. They, however, intimate that if a reporter of a speech gives the substance of it in his own language; if, although the ideas were not his, his expression of them is his own and not the speaker's, with immaterial differences, the reported speech, in such a case, would be an original composition, of which the reporter would be the author, and he would be entitled to copyright in his own production; and that is said to be the ground on which copyright in law reports is based. The appeal was allowed, and the action dismissed with costs.

The Forum.

A CAUSERIE OF THE LAW.

CONDUCTED BY CHARLES MORSE.

An interesting case in the law of contempt of court is that of *McLeod* v. *St. Aubyn*, 48 W.R. 173, noted ante p. 58. The appellant, who practiced his profession as a barrister in St. Vincent, had received by mail some copies of a certain newspaper published in Grenada containing a defamatory article against the Acting Chief Justice of the Supreme Court of St. Vincent, the respondent. Without any knowledge of the contents of the newspaper, he handed one of the copies he had received to his friend the custodian of the public library of St. Vincent, to be returned to him on the following morning. Some days thereafter he was served with an order nisi to shew cause why he should not be committed for contempt of court in publishing the said article. Although he filed an affidavit to the effect that he had not read the said article nor was aware of its contents at the time of the alleged publication by him, he was committed to prison for fourteen days by the respondent. On appeal from the order for commitment, the Judicial Committee of the Privy Council held that there was no obligation on the appellant to make himself acquainted with the contents of the newspaper, and should scandalous matter reflecting on the court thus become known, the circumstances were not in themselves sufficient to justify a committal for contempt of court. In the course of the judgment Lord Morris said that "committals for contempt of court by scandalizing the court itself have become obsolete in this country."

* * * The late R. D. Blackmore was one of that bright galaxy of English writers in the present century who, being bred to the Bar, early forsook what Macklin is pleased to term the "hocus-pocus science" for the more congenial profession of letters. Mr. Blackmore, after taking a B.A. degree at Exeter College, Oxford, studied law and was called to the Bar of the Middle Temple in 1852. Two years afterwards he made his début as a litterateur with a volume of verse; but it was not until 1864 that he tried his hand at fiction, producing in that year "Clara Vaughan," and two years later "Cradock Nowell." In 1869 he won immortality by his meister-stück "Lorna Doone," which is one of the best novels ever written.

* * * In December last the Supreme Court of the United States decided, in the case of *The Pedro*, that a vessel owned by a Spanish corporation, having a Spanish register, sailing under a Spanish flag and a Spanish license, and officered and manned by Spaniards, must be regarded as a Spanish ship for the purpose of capture as a prize, although British subjects were the legal owners of a portion, and equitable owners of the remainder, of the stock in the corporation; and intended to restore the vessel to British registry if war rendered the change desirable. The decision arrived at by the Court is in accord with the principle laid down in Hall's International Law, sec. 169; and see *The Vigilantia*, 1 C. Rob. at p. 13.

* * * Apropos of the rumours of intervention by European powers on behalf of the Boers, we would refer to what Lord Castlereagh said in his Note on the Affairs of Spain, in May, 1820, namely, that "the right of intervention consists of a state of things in a foreign country which threatens other States with that direct and immediate danger, which has always been, at least, in his lordship's country, regarded as constituting the only case which justifies foreign intervention." The facts, so far as they appear at the time of writing, do not establish the right to intervene on the principle above stated; nor on the ground of the preservation of the balance of power, or any other ground sanctioning intervention under the rules of International Law.

* * * In the course of an admirable address on "Our Imperial Tribunals," by Mr. Haldane, Q.C.; M.P., before the Scots Law Society recently, he delivered himself of these sage observations concerning colonial obligation to the Judicial Committee of the Privy Council: "The influence of the Privy Council had not lain only in the interpretation of the law. It had—and he might take as an example, the constitution of Canada, as created in our time by the Confederation Act of 1867 — clothed what was a mere skeleton with flesh and blood, by a process of judge-made law. Gaps in the colonial constitutions had on more than one occasion been filled up, and their general law had often been amplified and moulded in the same fashion. That brought him to what was a serious matter. The colonies had developed enormously within the last few years. They had shown a desire for closer relations with the mother country in the administration

of justice, as well as in other matters. Under the bill which Lord Roseberry introduced, and which Mr. Chamberlain finally passed into law, they had for a time sent three judges, representative of different parts of the Empire, to sit in the Privy Council. Sir Henry Strong, the Chief Justice of Canada, has come over from that country; Sir Henry de Villiers, Chief Justice of the Cape, and Sir Samuel Way, one of the Australasian Chief Justices, had for a time come over as representatives of their colonies. But these eminent lawyers were required at home. They were paid no salaries for the assistance they gave to the Imperial Government, at much expense and inconvenience to themselves, and they had, in a large measure, ceased to sit at Downing Street." This last remark reveals a state of affairs unfortunate indeed, and Canada, at least, ought to be aware that it is in her best interests to enable the Chief Justice to make his duties at Downing Street of paramount importance. So far as the profession is concerned this seems to be the prevalent opinion.

REPORTS AND NOTES OF CASES

Dominion of Canada.

EXCHEQUER COURT.

Burbidge, J.] [June 14, 1899

GENERAL ENGINEERING CO. *v.* DOMINION COTTON MILLS CO. (1)

Patent of Invention—Furnace stoker—Combination—Infringement.

On the 15th October, 1892, Jones obtained a patent in Canada for alleged new and useful improvements in boiler furnaces. The distinctive feature of Jones' invention was that instead of using a fuel chamber or magazine bowl-like in shape, such as that claimed in Worthington's United States patent, he employed an oblong trough or bath-tub shaped fuel chamber with upwardly and outwardly inclined closed sides. This form of fuel chamber was suggested in the Worthington patent, but was not worked out by its inventor, it being his view apparently that several magazines or chambers bowl-like in shape could be used within the trough-shaped chamber. The Worthington patent was not commercially successful. Jones, using an oblong or trough-shaped chamber, was the first to manufacture a mechanical stoker that was commercially successful.

Between Worthington's and Jones' patent there was all the difference between failure and success.

Held, that Jones' patent was valid.

J. L. Ross and *C. A. Duclos*, for plaintiffs. *D. Macmaster*, Q.C., and *F. S. Maclennan*, Q.C., for defendants.

Burbidge, J.] [June 14, 1899.

GENERAL ENGINEERING CO. *v.* DOMINION COTTON MILLS CO. (2)

Re-opening trial—Affidavit meeting evidence produced at trial.

An application was made after the hearing and argument of the cause but before judgment, for the defendants to be allowed to file as part of the record certain affidavits to support the defendant's case by additional evidence in respect of a matter upon which evidence had been given by both sides. It was open to the defendants to have moved for leave for such purpose before the hearing was closed, but no leave was asked. It also appeared that the affidavits had been based upon some experiments which had not been made on behalf of the defendants until after the hearing.

Held, that the application must be refused. *Humphrey* v. *The Queen*, 2 Ex. C.R. 286; and *DeKuyper* v. *VanDulken*, 3 Ex. C.R. 88, distinguished.

B. B. Osler, Q.C., and *J. L. Ross*, for defendants. *D. Macmaster*, Q.C., and *F. S. Maclennan*, Q.C., for plaintiffs.

Burbidge, J.] [Jan. 10.

THE QUEEN EX REL. AMERICAN STOKER CO. *v.* GENERAL ENGINEERING CO.

Scire facias to repeal patent—The Patent Act, s. 34, s.-s. 2—Expiry of foreign patent—"Cause as aforesaid"—Jurisdiction.

Upon a proceeding by scire facias to set aside a patent for invention because of an alleged expiry of a foreign patent under the provisions of s. 8 of the Patent Act,

Held, that there was so much doubt as to that being one of the causes included in the expression "for cause as aforesaid" in clause 2 of s. 34 of the Act that the action should be dismissed.

B. B. Osler, Q.C., and *J. L. Ross*, for defendants. *D. Macmaster*, Q.C., and *F. S. Maclennan*, Q.C., for plaintiffs.

Province of Ontario.

COURT OF APPEAL.

Practice]. ALLCROFT *v.* MORRISON. [Nov 20, 1899.

Security for costs—Residence out of Ontario—"Ordinary resident"—Rule 1198.

Rule 1198 provides that security for costs may be ordered, among other cases, in the following: "(a) where the plaintiff resides out of Ontario; (b) where the plaintiff is ordinarily resident out of Ontario, though he may be temporarily resident within Ontario." The defendant's affidavit stated that the plaintiff was now residing out of the jurisdiction, and also that he had no certain place of abode within the jurisdiction; that he had hitherto resided out of the jurisdiction, and at the conclusion of the pending suit intended to reside out of the jurisdiction of the Court. The plaintiff's affidavit stated that he had not for the past year nor had he now any fixed or ordinary place of abode either in or out of the Province of Ontario, his occupation requiring that he should be from time to time in England, the Province of Ontario, and the Province of New Brunswick.

Held, that the actual residence abroad was still what prima facie entitled the defendant to security, and the plaintiff could not answer the application by shewing that he had no fixed residence at all. *Denier* v. *Marks*, 18 P.R. 465, overruled. Judgment of a Divisional Court reversed.

J. M. Clark, Q.C., for appellant. *H. D. Gamble*, for respondent.

Practice]. INDEPENDENT ORDER OF FORESTERS *v.* PEGG. [Jan. 25.

Summary judgment—Rule 603—Mortgage action—Claim for immediate possession—Recovery of land—Rules 138, 141.

A writ of summons was indorsed under Rule 141 with claims for foreclosure of a mortgage, and for immediate delivery of possession of the mortgaged premises, and for immediate payment of the mortgage money.

Held, that it could not be said to be specially indorsed under Rule 138 so as to entitle the plaintiffs to move under Rule 603 for summary judgment for recovery of land. Decision of a Divisional Court affirmed.

James Bicknell, for appellants. *S. B. Wood*, for respondent.

Practice]. [Jan. 25.

IN RE CONFEDERATION LIFE ASSOCIATION AND CORDINGLY.

Interpleader—Summary application—Rule 1103 (a)—Insurance moneys—Adverse claims—Foreign claimants—Notice of motion—Service out of jurisdiction—Rule 162 (3).

Certain moneys were payable by an insurance company under several

life policies in favour of the assured, his executors, administrators, or assigns. The moneys were claimed by the executors, who resided in Manitoba, where the assured died, and who were threatening suit there, and also by the widow, who resided in Quebec, and had brought an action against the company there. The company's head office was in Ontario, and they launched an application in the High Court for a summary interpleader order.

Held, reversing the decision of a Divisional Court, 19 P.R. 16; 35 C.L.J. 537, 615, and restoring that of MEREDITH, C.J., that the company were entitled to avail themselves of the provisions of Rule 1103(*a*), as persons under liability for a debt in respect of which they were, or expected to be, sued by two ormore persons; and service out of Ontario of the company's notice of motion for the interpleader order was properly allowed under Rule 162 (3).

Riddell, Q.C., and *Snow*, for appellant. *Maclaren*, Q.C., for respondent.

HIGH COURT OF JUSTICE.

Divisional Court.] [Dec. 16, 1899.

HARPER *v.* TORONTO TYPE FOUNDRY COMPANY.

Replevin—Indemnity of defendant—Replevin bond—Consol. Rule 1074.

The Consol. Rule 1074, dealing with the question of indemnity of the defendant in replevin proceedings is the statute 48 Vict., c. 13, s. 8 (O.), imported into the rules and does not give an independent cause of action, merely adding another condition to the replevin bond required to be taken by the sheriff.

Poussette, Q.C., for plaintiffs. *Ryckman*, contra.

Boyd, C.] ATTORNEY GENERAL *v.* NEWMAN. [Dec. 18, 1899.

Succession duties—Money deposited in banks—By foreign resident—Death of—Deposit receipts—R.S O. 24.

The Succession Duty Act, R.S.O. 24, contemplates a site or locality being given to all kinds of personal property and that the domicile of the deceased owner is not to be regarded.

A resident of the United States deposited moneys in Ontario Banks at interest and took deposit receipts thereof.

Held, on his death in the States, that the moneys were liable to the Ontario succession duties.

Alfred Macdougall (Solicitor to the Treasury) and *W. E. Middleton*, for plaintiffs. *Aylesworth*, Q.C., and *J. H. Rodd*, for defendants.

Boyd, C.] MITCHELL *v.* TOWN OF PEMBROKE. [Dec. 21, 1899.

Police Magistrate — Police office — Accommodation to transact business — Room or chamber—Municipal building—Town hall—Stationery.

In an action by a police magistrate of a town who was also a justice of the peace for the county in which the town was situated, to compel the corporation of the town to establish a police office, as required by statute, and to reimburse him for rents paid for premises used as such and for stationery, etc.,

Held, that the defendants were not called upon to furnish facilities for the transaction of business not strictly appertaining to the office of police magistrate for the town, such as troubles arising in the county but outside the town limits.

Held, also, that it was not needful that the police office should be a separate building; that the allocation of a suitable room or chamber in any building belonging to the municipality, such as the use of the council chamber in the town hall although only up to four o'clock in the afternoon, was sufficient.

Held, also, following *Newcombe* v. *County of Oxford* (1895) 28 O.R. 442 that he was entitled to stationery.

Semble, that the police magistrate has no right to claim a private office in addition to a public one. *Regina* v. *Lee* (1887), 15 O.R. p. 359, referred to.

J. R. Metcalf, for plaintiff. *J. J. O'Meara*, for defendants.

Armour, C.J., Falconbridge, J.] [Jan. 4.

IN RE HARRISON.

Life insurance—Benefit society — Certificate—Indorsement for benefit of wife—Subsequent revocation by will—By-laws of society—R.S.O. c. 203.

A certificate of life insurance issued to a member by a benefit society stated on its face that it was subject to the provisions of the by-laws, rules and regulations of the society. One of the by-laws provided for the payment of the insurance money to any person nominated by indorsement, which indorsement might be revoked. The member, by endorsement on the certificate, directed that all money accruing upon it should be paid to his wife upon his death; but, subsequently, by will, directed that only a portion of it should be paid to her, and the balance to his half brothers and sisters.

Held, that the insurance was subject to the provisions of the Ontario Insurance Act, R.S.O. c. 203; and the by-laws and rules of the benefit society, in so far as they were inconsistent with such provisions, were to be regarded as modified and controlled by them. The statute provided in effect that when the indorsement was in favour of the wife of the member,

he could not revoke it, and the by-law was in this respect modified and controlled by the statute. *Mingeaud* v. *Packer*, 21 O.R. 267; 19 A.R. 290, applied and followed.

F. A. Anglin, for the widow. *R. S. Smellie*, for the executor. *G. F. Macdonnell*, for the beneficiaries under the will.

Divisional Court.] FRASER *v.* ORBERNDORFER. [Jan. 15.

Division Court — Certiorari — Descretion of High Court Judge — Res judicata — Refusal of Divisional Court to interfere.

After a trial and judgment in a Division Court as to the right of a landlord to recover a month's rent under a lease, another action was brought for three months' subsequent rent, whereupon the defendant applied to a Judge of the High Court for a certiorari, which was refused, on the ground that though the case might be of importance as affecting cases of a similar nature, that was not of itself sufficient, no difficult questions of law or fact appearing to be involved.

On appeal to a Divisional Court the judgment was affirmed, the Court holding that the granting of the certiorari being left to the descretion of the judge, and he having exercised it the Court would not interfere; and moreover by the judgment of the Division Court in the first action the matter was res judicata.

E. Tayleur English, for the appellants. *Slaght*, contra.

Meredith, C.J., Rose, J., MacMahon, J.] [Jan. 18.

PHAIR *v.* PHAIR.

Arrest — R.S.O. c. 80, s. 1 — Intent to quit Ontario — Intent to defraud creditors.

It is not sufficient for a creditor applying for an order for arrest under R.S.O. c. 80, s. 1, to shew the existence of a debt, and that the debtor is about to quit Ontario; he must shew some other fact or circumstance which, coupled with those facts, points to an intent to defraud. *Shaw* v. *McKenzie*, 6 S.C.R. 181, *Toothe* v. *Frederick*, 14 P.R. 287, and the opinions of BURTON and MACLENNAN, JJ.A., in *Coffey* v. *Scane*, 22 A.R. 269, followed. The opinions of HAGARTY, C.J.O., and OSLER, J.A., in *Coffey* v. *Scane*, and the case of *Robertson* v. *Coulton*, 9 P.R. 16, dissented from. *McVeain* v. *Ridler*, 17 P.R. 353, discussed.

Whether or not there is good and reasonable cause for believing that the intent to defraud exists, is a question of fact.

Where the defendant believed that his wife had no claim against him for alimony:—*Held*, that he could not be intending to defraud her by leaving Ontario.

Grayson Smith, for plaintiff. *J. H. Moss*, for defendant.

Boyd, C.] RE ALLEN AND NASMITH. [Jan. 23.

Lessor and lessee—Renewable lease—Buildings erected by tenant—Absence of covenant as to—Fixing rent on renewal—"Ground rent."

A renewal lease is a continuation of the old lease and if rent for the buildings erected by the tenant is not provided for under the first lease, neither should it be under the extension in the absence of express provision. And an application to refer back an award in a case where a tenant had a renewable lease and had during the first lease erected buildings on the premises, nothing being said in the lease about buildings, and where the arbitrators in arriving at the rent for the renewed term had fixed a "ground rent" without taking the buildings into consideration was dismissed with costs.

Aylesworth, Q.C., for the motion. *Snow*, contra.

Armour, C.J., Falconbridge, J., Street, J.] [Jan. 29.

STANLEY *v.* LITT.

Interlocutory judgment—Assessment of damages—Slander—Rule 578.

The action was commenced by writ of summons indorsed, "The plaintiff's claim is for damages for slander." No appearance having been entered, the plaintiff signed interlocutory judgment against the defendant according to form 146, and set the cause down for assessment of damages at the sittings of the High Court.

Held, that there being nothing to shew that the action was brought under R.S.O. c. 68, s. 5, it must be treated as an ordinary action of slander; Rule 578 therefore applied to the case; the delivery of a statement of claim was unnecessary; and the plaintiff had the right to sign interlocutory judgment and have the damages assessed as he proposed.

R. S. Robertson, for plaintiff. *R. T. Harding*, for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.] IRON MASK *v.* CENTRE STAR. [Nov. 22, 1899.

Practice—Trial—Costs on adjournment of.

Appeal by plaintiff to the Full Court from an order of WALKEM, J., pronounced 28th April, 1899, whereby the defendant Company was allowed to continue the sinking of the winze within the boundaries of the mineral claim of the plaintiff company, and from a further order of WALKEM, J., pronounced April 29, 1899, ordering the plaintiff to pay the cost of the adjournment of the trial and in addition thereto all outlay and expenditure of the defendant company connected therewith, the words of the order

being: "And it is further ordered that all disbursements, expense and outlay of every kind (including costs) occasioned to the defendants by the said adjournment be costs to the defendants in any event of the cause; the intention being that the plaintiffs shall reinburse the defendants for and indemnity them against any and all loss that they may suffer by reason of the said adjournment." The defendant applied for leave to inspect the mining workings and premises in question and to do certain experimental work for the purpose of obtaining full information and evidence requisite for the trial but the application was refused, and an appeal from the refusal was dismissed by the Full Court in December, 1898.

The trial afterwards been begun before WALKEM, J., at Rossland, and, it appearing to the learned judge's satisfaction after some evidence had been taken, that the inspection previously asked for was then proper, he made an order accordingly upon the defendant's application. The plaintiff then asked for an adjournment of the trial on the ground that it would be necessary for the plaintiff to do certain work in order to preclude the evidence which the defendant expected to derive from the inspection from being evidence, or at all events being conclusive evidence of the continuity of the vein. The application for the adjournment was resisted by counsel for the defendant on the grounds, first, of the great expense, stated to be over $40,000.00, that it would occasion and, second, on the ground of the danger that the adjournment would prevent the defendant having the benefit of the attendance of certain witnesses, eminent mining engineers, whose presence it was unlikely could be procured at an adjourned trial. The learned trial judge granted the adjournment but ordered that the costs occasioned by it should be costs to the defendant in any event. The plaintiff appealed from both orders.

Held, that the order as to costs should be varied so that the costs should abide the result of the issues to which the inspection related. *Forester* v. *Farquhar* (1893) 1 Q.B. 564, followed. Costs the of appeal to be costs in the cause.

Bodwell, Q.C. (*MacNeill*, Q.C., with him), for appellant. *Davis*, Q.C. (*Galt*, with him), for respondent.

INTERCOLONIAL RAILWAY.—The following letter from a prominent citizen speaking of the excellent service and courteous treatment on the I.C.R. has been received by the General Passenger Agent:

"A number of our party who attended the Dominion W.C.T.U. Convention feel that we should at least write and tell you how very much we all enjoyed the trip to Halifax by the I.C.R. Personally speaking I have been travelling for many years but never remember a line so smooth, drawing-room cars so comfortable, officials so extremely courteous, and meals so beautifully served and well prepared as by your line We are grateful for the low rates you kindly gave us. Rest assured that we will always put in a good word for the I. C. Railway. Thanking you for the courtesy and kindness shown to these delegates en route to, and return, from Halifax."

COUNTY OF YORK LAW ASSOCIATION.

The annual meeting was held on the 29th of January last, when the fourteenth annual report of the trustees was received and discussed.

This report states that out of 598 solicitors residing in Toronto, only 306 are members of the Association, of whom twenty-seven have not paid their fees for the past year. Attention was called to the fact that not only is there a thoroughly serviceable working library, but that the aim of the Association has been to promote useful reforms in legislation and practice. The Board also speak of their efforts to procure proper accommodation in the new Court House, and to the removal of the library there when proper accommodation shall have been provided.

The report also alludes to a meeting of delegates from the various County Library Associations, where the following requests were made to the Benchers of the Law Society: (1) To permit the members of the various County Associations to deduct from the annual fee payable to the Society, the sum payable by each member to their respective Associations to the extent of $5.00 (2) To procure the Dominion and Ontario statutes for the profession and arrange for the publication of a work on practice. (3) To devise a scheme for making the Law School self-supporting. It was reported that as to the first the Benchers had stated that the funds of the Law Society did not permit any such reduction. As to the second that the satutes could be had by the addition of $2.00 to the annual fees, but that no arrangement could be made for the publication of a work on practice. As to the third that it was intended to increase the yearly fees payable by students, which it was hoped would place the Law School on a self-supporting basis.

The Board of Trustees called the attention of the members to the unsatisfactory condition of things as to appeals to the Court of Appeal, in that so large a portion of the time of the Court was spent in hearing appeals from Judges sitting in single Courts or at assizes or non-jury sittings, that appeals from the Divisional Courts were sometimes not heard at all during the sittings, and that much more work was imposed upon the Court than it could deal with; and it was suggested that during the present year amendments should be considered and submitted to the proper authorities for adoption.

HAMILTON LAW ASSOCIATION.

The twentieth annual report of the above Association, being for the year 1899, was presented at the recent annual meeting.

The report calls attention to the satisfactory condition of the Library, and to some important additions thereto during the past year. Also to the thorough renovation of the premises of the Association for the convenience of the members. It concludes by recognizing the assistance of the Ontario Government in the past to County Libraries, but suggesting that a change should be made in the basis of distribution of the Government grant by fixing a minimum amount for each Association, to be increased in proportion to the amount contributed by each member thereof. Seventy-one members were reported as having paid their subscriptions for the past year.