THE
Canadian Annual Digest
(1898)

COMPRISING

THE CASES REPORTED IN

SUPREME COURT OF CANADA REPORTS, VOL. 28.
EXCHEQUER COURT OF CANADA REPORTS, VOL. 6, NO. 1.
ONTARIO APPEAL REPORTS, VOL. 24, NOS. 5, 6; VOL. 25, NOS. 1, 2, 3.
ONTARIO REPORTS, VOL. 28, NO. 6; VOL. 29, NOS. 1, 2, 3, 4.
ONTARIO PRACTICE REPORTS, VOL. 18, NOS. 1-4.
QUEBEC QUEEN'S BENCH REPORTS, VOL. 7, NOS. 1-5.
QUEBEC SUPERIOR COURT REPORTS, VOLS. 12, 13.
NOVA SCOTIA REPORTS, VOL. 29, NOS. 4, 5; VOL. 30; VOL. 31. NOS. 1, 2.
NEW BRUNSWICK REPORTS, VOL. 33, NO. 6; VOL. 34, NO. 1.
NEW BRUNSWICK EQUITY REPORTS, VOL. 1, NO. 5.
MANITOBA REPORTS, VOL. 12, NOS. 1-3.
BRITISH COLUMBIA REPORTS, VOL. 5.

A SELECTION OF CASES FROM CANADIAN CRIMINAL CASES, VOL. 1; 34 CANADA LAW JOURNAL, 18 CANADIAN LAW TIMES AND 4 LA REVUE DE JURISPRUDENCE; AND THE CANADIAN CASES DECIDED BY THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DURING THE YEAR.

WITH

TABLES OF THE CASES DIGESTED AND CASES AFFIRMED, REVERSED OR SPECIALLY CONSIDERED.

BY

CHARLES H. MASTERS,

BARRISTER-AT-LAW
REPORTER OF THE SUPREME COURT OF CANADA,

AND

CHARLES MORSE, LL.B.

BARRISTER-AT-LAW
REPORTER OF THE EXCHEQUER COURT OF CANADA.

TORONTO:
CANADA LAW JOURNAL COMPANY,
1899.

KA65
A2
C3
fol
1898

73978

Entered according to Act of the Parliament of Canada, in the year one thousand eight hundred and ninety-nine, by CHARLES H. MASTERS and CHARLES MORSE, at the Department of Agriculture.

PRINTED BY
ROBERT G. MCLEAN,
LAW PRINTER,
TORONTO.

Prefatory Note.

Unlike Mr. Mews, who has been able during the last two years to somewhat reduce the size of his Annual Digest of the English Reports, the editors of the Canadian Annual Digest have been obliged to increase the quantity of matter with each issue of their work. This is attributable to greater despatch on the part of some of the reporters of late in publishing their cases, and is not to be taken as a manifestation of any appreciable increase of litigation throughout the country. We now, however, indulge the hope that our Digest has attained its maximum size.

Our subscribers will observe that we have added to this issue matter selected from the new series of reports known as the "Canadian Criminal Cases."

CHIEF JUSTICES AND JUDGES

OF THE

Supreme and Exchequer Courts of Canada

AND OF THE

Superior Courts of the Several Provinces

During the Period of this Digest.

Supreme Court of Canada

CHIEF JUSTICE.

The Right Hon. SIR HENRY STRONG, Knight; P.C.

JUDGES.

The Hon. HENRI ELZÉAR TASCHEREAU.
" JOHN WELLINGTON GWYNNE.
" ROBERT SEDGEWICK.
" GEORGE EDWARD KING.
" DÉSIRÉ GIROUARD.

Exchequer Court of Canada

JUDGE.

Hon. GEORGE WHEELOCK BURBRIDGE.

LOCAL JUDGES.

Quebec District	Hon. A. B. ROUTHIER, J.
Nova Scotia District	" JAMES MCDONALD, C.J.
New Brunswick District	" EZEKIEL MCLEOD, J.
Prince Edward Island District	" W. W. SULLIVAN, C.J.
British Columbia District	" A. J. MCCOLL, C.J.
Toronto District	" JOSEPH L. MCDOUGALL, County Judge.

The Court of Appeal for Ontario

CHIEF JUSTICE.

Hon. Sir George William Burton, Knight.

JUDGES.

Hon. Featherston Osler.
" James Maclennan.
" Charles Moss.
" James Frederic Lister.

The High Court of Justice for Ontario

PRESIDENT.

Hon. John Alexander Boyd.

[*Queen's Bench Division.*]

CHIEF JUSTICE.

Hon. John Douglas Armour.

JUDGES.

Hon. William Glenholme Falconbridge.
" William Purvis Rochfort Street.

[*Chancery Division.*]

CHANCELLOR.

Hon. John Alexander Boyd.

JUDGES.

Hon. Thos. Ferguson.
" Thomas Robertson.
" Richard Martin Meredith.

[*Common Pleas Division.*]

CHIEF JUSTICE.

Hon. Sir William Ralph Meredith, Knight.

JUDGES.

Hon. John Edward Rose.
" Hugh McMahon.

The Court of Queen's Bench for Lower Canada

CHIEF JUSTICE.

Hon. Sir Alexander Lacoste, Knight.

JUDGES.

Hon. Joseph G. Bossé.
" Jean Blanchet.
" Robert N. Hall.
" J. S. C. Wurtele.
" J. A. Ouimet.

The Superior Court for Lower Canada

CHIEF JUSTICE.

Hon. Sir Louis E. N. Casault, Knight.

ACTING CHIEF JUSTICE FOR DISTRICT OF MONTREAL.

Sir Melbourne M. Tait, Knight.

JUDGES.

Hon. A. B. Routhier,
" L. Bélanger,
" M. A. Plamondon,
" L. B. Caron,
" J. B. Bourgeois,
" H. T. Taschereau,
" Charles Gill,
" M. Mathieu,
" L. O. Loranger,
" E. Cimon,
" F. W. Andrews,
" H. C. Pelletier,
" J. E. Larue,
" J. A. Ouimet,
" C. P. Davidson,

Hon. L. Tellier,
" A. N. Charland,
" L. A. DeBilly,
" C. C. DeLorimier,
" H. G. Malhiot.
" S. Pagnuelo,
" W. W. Lynch,
" J. A. Gagné,
" C. J. Doherty,
" J. S. Archibald,
" J. J. Curran,
" W. White,
" J. Lavergne,
" F. X. Lemieux.
" François Charles Stanislaus Langelier.

The Supreme Court of Nova Scotia

CHIEF JUSTICE.

Hon. James McDonald.

JUDGES.

Hon. Robert L. Weatherbe,
" J. Norman Ritchie,
" Charles J. Townshend,

Hon. Wallace Graham,
" Nicholas H. Meagher,
" Hugh McD. Henry.

The Supreme Court of New Brunswick

CHIEF JUSTICE.

Hon. William Henry Tuck.

JUDGES.

Hon. Daniel Hanington,
" Pierre A. Landry,

Hon. James A. Van Wart,
" Fred E. Barker,

Hon. Ezekiel McLeod.

The Court of Queen's Bench, Manitoba

CHIEF JUSTICE.

Sir Thomas Wardlaw Taylor, Knight.

JUDGES.

Hon. Joseph Dubuc,
" Albert Clements Killam,
" John Farquhar Bain.

The Supreme Court of British Columbia

CHIEF JUSTICES.

Hon. Theodore Davie,
" A. J. McColl.

JUDGES.

Hon. John Foster McCreight,
" George A. Walkem,

Hon. M. W. Tyrwhitt Drake,
" A. J. McColl,

Hon. P. A. Irving.

The Supreme Court of Judicature of Prince Edward Island

CHIEF JUSTICE.

Hon. W. W. SULLIVAN.

JUDGES.

Hon. EDWARD J. HODGSON,
" ROWAN ROBERT FITZGERALD.

Supreme Court of the North-West Territories

JUDGES.

Hon. HUGH RICHARDSON,
" CHARLES B. ROULEAU,
" T. H. MCGUIRE,
" D. L. SCOTT,
" EDWARD L. WETMORE.

Attorney-General of the Dominion of Canada

Hon. DAVID MILLS, Q.C.

Solicitor-General of the Dominion of Canada

The Hon. CHARLES FITZPATRICK, Q.C.

Attorney-General of Ontario

Hon. ARTHUR STURGIS HARDY, Q.C.

Attorney-General of Quebec

Hon. HORACE ARCHAMBEAULT, Q.C.

Attorney-General of Nova Scotia

Hon. J. WILBERFORCE LONGLEY, Q.C.

Attorney-General of New Brunswick

Hon. ALBERT S. WHITE.

Attorney-General of Manitoba

Hon. JOHN D. CAMERON.

Attorney-General of British Columbia

Hon. D. EBERTS, Q.C.

Attorney-General of Prince Edward Island

Hon. HECTOR C. MCDONALD.

Key to Abbreviations.

[1898] A. C.	English Appeal Cases.
B. & Ad.	Barnewall & Adolphus's Reports.
B.C.	British Columbia.
B.C.R.	British Columbia Reports.
Beav.	Beaven's Reports.
C.C.	Civil Code (Quebec).
C.C.P.	Code Civil Procedure (Quebec), *New Text.*
Can. C.C.	Canadian Criminal Cases.
Ch. App.	Law Reports Chancery Appeals.
Ch. D.	Law Reports Chancery Division.
C.L.J.	Canada Law Journal.
C.L.T. (Occ. N.)	Canadian Law Times (Occasional Notes).
C.S.C.	Consolidated Statutes of Canada.
C.S.B.C.	Consolidated Statutes British Columbia.
C.S.N.B.	Consolidated Statutes of New Brunswick.
Co.	Sir Edward Coke's Reports.
Col.	Column of Digest.
D.	Dominion of Canada.
E. & A.	Upper Canada Error and Appeal Reports.
E. & B.	Ellis & Blackburn's Reports.
El. & El.	Ellis & Ellis Reports.
Ex. C.R.	Exchequer Court of Canada Reports.
F. & F.	Foster & Finlason's Reports.
Gr.	Grant's Chancery Reports, Ontario.
Imp.	Imperial.
L.C.J.	Lower Canada Jurist.
L.J. (P.C.)	Law Journal, Privy Council Reports.
L.J.Q.B.	Law Journal, Queen's Bench Reports.
L.R.Ch.	Law Report, Chancery Appeals.
L.R.P. & D.	Law Reports, Probate and Divorce.
M.C.	Municipal Code, Quebec.
Man. R.	Manitoba Reports.
M. & W.	Meeson & Welsby's Reports.
N.B.R.	New Brunswick Reports.
N.B. Eq.	New Brunswick Equity Reports.
N.S.R.	Nova Scotia Reports.
O. Ont.	Province of Ontario.
Ont. A.R.	Ontario Appeal Reports.
Ont. Ch. Ch.	Ontario Chancery Chambers Reports.
Ont. P.R.	Ontario Practice Reports.
Ont. R.	Ontario Reports.
Q.R., Q.B.	Quebec Reports, Queen's Bench.
Q.R., S.C.	Quebec Reports, Superior Court.
R.S.C.	Revised Statutes Canada.
R.S.Man.	Revised Statutes Manitoba.
R.S.N.S.	Revised Statues Nova Scotia.
R.S.O.	Revised Statutes Ontario.
R.S.Q.	Revised Statutes Quebec.
Rev. de Jur.	Revue de Jurisprudence.
S.C.R.	Supreme Court Canada Reports.
U.C.C.P.	Upper Canada Common Pleas Reports.
U.C.L.J.	Upper Canada Law Journal.
U.C.Q.B.	Upper Canada Queen's Bench Reports.

INDEX

OF

THE NAMES OF CASES DIGESTED.

A

Abel, Ex parte, 34 N.B.R. 121.....16, 260
Abell v. Craig, 12 Man. R. 81..... 28
Ackerill, Daw v., 25 Ont. A.R. 37..... 70
Adams, Duffy v., 30 N.S.R. 197..... 350
———v. Hockin, 12 Man. R. 11..... 266
———, Hutchings v., 12 Man. R. 118..... 387
———, Masters v., 34 C.L.J. 702 348
———, Ross v., 34 N.B.R. 158.....187, 431
Advocates, In re 18 C.L.T. (Occ. N.) 159..... 435
Agnès, Corporation du Village de, Compagnie de Pulpe de Megantic v., Q.R. 7 Q.B. 339 .....33, 298, 373
———, ———v., Q.R. 7Q.B. 349....18, 210, 392
Alderich v. Humphrey, 29 Ont. R. 427 .....34, 81
Aldous, The Queen v., 5 B.C.R.220 19
Alexander v. Baker, 30 N.S.R. 443..... 381
———v. Irondale, Bancroft, and Ottawa Railway Company, 18 Ont. P.R. 20..... 354
———, Lepage v., Q.R. 12 S.C. 279....311, 416
———v. McAllister, 34 N.B.R. 163..... 327
———, Taylor v., Q.R. 12 S.C. 159..... 39
Allan v. Manitoba and North Western Railway Company, 12 Man. R. 57..... 349
Allard v. Boyer, Q.R. 12 S.C. 330..... 163
———, Cousineau v., Q.R. 13 S.C. 388. 423
Allen v. Ontario and Rainy River Railway Co., 29 Ont. R. 510 75
Alley v. Canada Life Assur. Co., Q.R. 7 Q.B. 293; 28 S.C.R. 608.....245, 419
Alliance Assurance Company v. The Queen, 6 Ex. C.R. 76..... 144
Almond, Neil v., 29 Ont.R. 63..... 189
Amherst Park Land Co., Daly v., Q.R. 13 S.C. 516.....147, 216, 442
Ancient Order of Foresters, Cerri v., 25 Ont. A.R. 22..... 51
Ancient Order of United Workmen, Long v., 25 Ont. A.R. 147 51
Anctil, Manufacturers Life Assurance Co. v., 28 S.C.R. 103..... 220
Anderson, Auberg v., 5 B.C.R. 622....190, 201
———, Bain v., 28 S.C.R. 481.....26, 268
———, Grand Trunk Railway Co. v., 28 S.C.R. 541 400

Anderson, Mutual Life Assurance Co. of New York v., 1 N.B. Eq. 466..... 221
——— v. Poirier, Q.R. 13 S.C. 283....56, 211
———, Stewart v., 5 B.C.R. 622.....190, 201
Andrew v. Canadian Mutual Loan and Investment Co., 29 Ont. R. 365.....159, 196
Ankatell, Miles v., 29 Ont. R. 21..... 194
Annapolis Election Case (McLean v. Mills), 29 N.S.R. 452..... 327
Arcand v. Lamy, Q.R. 13 S.C. 488....209, 340
Archambault, Archibald v., Q.R. 13 S.C. 342 245
———, Dupuis v., Q.R. 7 Q.B. 393 39
Archibald v. Archambault, Q.R. 13 S.C. 342..... 245
———, Mulcahy v., 30 N.S.R. 121; 28 S.C.R. 523.....155, 408
———, Pictou Iron Foundry Company v., 30 N.S.R. 262 415
Armand v. Armand, Q.R. 7 Q.B. 356.... 468
Armour v. Kilmer, 28 Ont. R. 618.....120, 433
Armstrong, re, Armstrong v. Armstrong, 18 Ont. P.R. 55..... 112
——— v. Harrison, 29 Ont. R. 174....165, 457
Arpin, Denton v., Q.R. 12 S.C. 509..... 113
Arthur & Co. v. Runians, 18 Ont. P R. 205 .....344, 356
Ash Estate, In re, 5 B.C.R. 672..... 214
Atkinson v. City of Chatham, 29 Ont. R. 518..... 297
——— v. Stadacona Light & Power Co., Q.R. 12 S.C. 289.....77, 296
Atlantic Trust Co., Consolidated Electric Co. v., 28 S.C.R. 603 .....14, 104
Atlas Canning Co., In re, 5 B.C.R. 661.. 79
———, Doyle v., 5 B.C.R. 279..... 79
Attorney-General v. Parker, 31 N.S.R. 202..... 411
Attorney-General for Canada v. Attorney-General of Ontario [1898], A.C. 247 .....85, 396
———v. Attorneys-General of Ontario, Quebec and Nova Scotia, [1898] A.C. 700 .....83, 193, 200, 460
Attorney-General of Ontario, Attorney-General for Canada v., [1898] A.C. 247 .....85, 396

Attorneys-General of Ontario, Quebec, and Nova Scotia, Attorney-General for Canada v., [1898] A.C. 700 ..... [83, 193, 200, 460
Auberg v. Anderson, 5 B.C.R. 622 ... 190, 201
Auchterlony v. Palgrave Gold Mining Co., 29 N.S.R. 414 282
Auer Incandescent Light Mfg. Co. v. Dreschel, 6 Ex. C.R. 55 336
———, ———v., V. 28 S.C.R. 268, 608 .... [25, 105, 353

B

Bagg v. Wiseman, Q.R. 12 S.C. 12 243
Baillie v. Nolton, Q.R. 12 S.C. 534 ... 71, 182
Bain v. Anderson & Co., 28 S.C.R. 481 .. 26, 268
Baker, Alexander v., 30 N.S.R. 443 381
———v. Forest City Lodge, 24 Ont. A. R. 585 52
———, Hickman v., 31 N.S.R. 208 22
———v. Stuart (No. 2), 29 Ont. R. 388. [169, 175
Balderson v. The Queen, 28 S.C.R. 26 .... 1, 70
Ballantyne, Hesselbacher v., 25 Ont. A. R. 36 415
Ballard, Nevills v., 18 Ont. P.R. 134 .. 361, 434
———, ———v., 1 Can. C.C. 434 ..... 127, 434
Bancroft, Fane v., 30 N.S.R. 33 390
Bank of Hamilton v. Halstead, 28 S.C. R. 235 ..... 37, 48
Bank of Montreal v. Major, 5 B.C.R. 155 368
———v.———, 5 B.C.R. 156 ..... 120, 163
———v.———, 5 B.C.R. 181 ..... 340, 356
———v. Crockett, 34 C.L.J. 579, 638 ..... [362, 384, 435
———, Morton v., 18 C.L.T. (Occ. N.) 157 114
——— v. Richardson, 34 C.L.J. 329 208
Bank of Nova Scotia v. Fish, 33 N.B.R. 604 ..... 38, 105
Bank of Toronto v. Insurance Company of North America, 18 Ont. P.R. 27 372
——— v. Keystone Fire Insurance Co. of St. John, 18 Ont. P.R. 41 355
———v.———, 18 Ont. P.R. 113 380
——— v. Quebec Fire Insurance Company, 18 Ont. P.R. 41 355
Banks v. Batton, 30 N.S.R. 386 346
———v. Burroughs, Q.R. 12 S.C. 184 ... 39, 105
Banque D'Hochelaga v. Maritime Railway News Company, 31 N.S.R. 9 334
———, Marsan v., Q.R. 7 Q.B. 40 ..... 28, 232
Banque du Peuple v. Huot, Q.R. 12 S. C. 370 257
——— v. Marquis, Q.R. 12 S.C. 378 242
——— v. Trottier, 28 S.C.R. 422 25
———, ——— v., Q.R. 13 S.C. 460 338
Banque Jacques Cartier v. Morin, Q.R. 13 S.C. 331 ..... 197, 375
Banque Nationale, Brunet v., Q.R. 12 S.C. 287 ..... 8, 162
Barber v. Crathern, 28 Ont. R. 615 45
Barbour, Union Bank v., 12 Man. R. 166 158
Barden, Brown v., Q.R. 13 S.C. 151 ..... [56, 257, 379
Barette v. Bourbounière, Q.R. 12 S.C. 271 ..... 251, 324

Barker v. Central Vermont Railway Co., Q.R. 13 S.C. 2 ..... 92, 228
——— v. Lawrence, 5 B.C.R. 460 377
Barnes v. Webber, 34 C.L.J. 392 ..... 352, 357
Barrette v. Beaudry, Q.R. 12 S.C. 209 .. 119
Barrington v. Corporation des Huissiers, Q.R. 12 S.C. 284 41
Barrowman v. Fader, 31 N.S.R. 20 418
——— v. ———, 31 N.S.R. 29 117
Bartels, Morgan v., Q.R. 12 S.C. 125 ... 205, 415
Bartlett, Case v., 12 Man. R. 280 407
Bartling, Williams v., 30 N.S.R. 548 ..... [313, 367
Bartram v. London Free Press Printing Co., 18 Ont. P.R. 11 ..... 111, 249
Bastien v. Forget, Q.R. 12 S.C. 425 ... 39, 115
Battisby v. Witherspoon, re Foster, 18 Ont. P.R. 65 108
Batton, Banks v., 30 N.S.R. 386 346
Bauld v. Ross, 31 N.S.R. 33 406
Bauron v. Davies, Q.R. 6 Q.B. 547 ..... [8, 185, 203, 231
Baxter, Campbell v., Q.R. 7 Q.B. 134 ... 55, 256
———, Forget v., Q.R. 13 S.C. 104 ..... [62, 184, 187
Bayard v. Dinelle, Q.R. 7 Q.B. 480 .... 17, 353
Bayne v. Eastern Trust Co., 28 S.C.R. 606 ..... [181, 457
Beal, Kennedy v., 29 Ont. R. 599 31
Beattie v. Holmes, 29 Ont. R. 264 ..... 43, 171
——— v. McDonald, 34 C.L.J. 198 172
Beauchemin v. Corporation of Beloeil, Q.R. 13 S.C. 193 15
Beaudoin, Lefeunteum v., 28 S.C.R. 89 ..... [16, 188
——— v. Village of DeLorimier, Q.R. 13 S.C. 477 286
Beaudry, Barrette v., Q.R. 12 S.C. 209 119
———, DeBellefeuille v., 4 Rev. de Jur. 173 ..... 40, 115
———, Lusher, Q.R. 13 S.C. 294 ..... 4, 40
Beauharnois Election Case, Desparois v. Bergeron, Q.R. 12 S.C. 23 325
Beaulieu, Bouchard v., Q.R. 12 S.C. 499 429
——— v. Cochrane, 29 Ont. R. 151 452
Beausoleil, Proulx v., Q.R. 13 S.C. 508 303
Beaven v. Fell, 5 B.C.R. 453 357
———, Rithet v., 5 B.C.R. 457 ..... 59, 126, 281
Beckett, Tabb v., Q.R. 7 Q.B. 28 ... 209, 230
Beech v. City of Montreal, Q.R. 13 S.C. 187 300
Bélair, Filiatrault v., Q.R. 12 S.C. 449 110
Belanger, Guimond v., 33 N.B.R. 589 .. 253
Béliveau v. Burel, Q.R. 12 S.C. 368 245
Bell v. Cochrane, 5 B.C.R. 211 ..... 40, 101
Bell Telephone Co. and City of Hamilton, in re, 25 Ont. A.R. 351 35
Bellefleur v. Martel, Q.R. 12 S.C. 3 102
Bellingham v. Robb, Q.R. 12 S.C. 454 .. 347
——— v. ———, Q.R. 13 S.C. 248 191
Beloeil, Corporation of, Beauchemin v. Q.R. 13 S.C. 193 15
Benness, Brock v., 29 Ont. R. 468 255
Bennett, Turner v., In re Ferguson, 28 S.C.R. 38 469
Benoleil v. Durocher, Q.R. 13 S.C. 260 .. 67, 310
Bent, Strong v., 31 N.S.R. 1 100

Ber-Bre.] COLUMN

Bergeron, Desparois v. Beauharnois Election Case, Q.R. 12 S.C. 23 325
Bernatchez v. Vézina, Q.R. 12 S.C. 495 119
Berthiaume, Mendel v,, Q.R. 13 S.C. 256 ..... 237, 366
Bertrand v. Canadian Rubber Company, 12 Man. R. 27 157
Bigelow v. Doherty, 30 N.S.R. 393 363
Bird, Cranstoun v., 5 B.C.R. 210 368
Birely v. Toronto, Hamilton and Buffalo Railway Company, 25 Ont. A.R. 88 399
Bisaillon v. Elliott, Q.R. 13 S.C. 289..343, 387
Bishop of New Westminster, Paris v., 5 B.C.R. 450 126
Bissonnette, Brochu v., Q.R. 13 S.C. 271 172
Blacklock, Demers v., Q.R. 12 S.C. 43.. 202
Blair, Jeffries v., 1 N.B.Eq. 420 364
Blanchard, Wilson v., Q.R. 12 S.C. 132..3, 146
Blumenthal, Leet v., Q.R. 13 S.C. 250..52, 390
Boggs v. Scott, 34 N.B.R. 110 370
Boisvert, Crépeau v., Q.R. 13 S.C. 405 .. [65, 189, 229, 332
Bolliver, Rhodenhizer v., 31 N.S.R. 236. 325
Bolton Hop Bitters Co., Diamond Glass Co. v., Q.R. 12 S.C. 221 112
Bossé, Raymond v., Q.R. 12 S.C. 173 209
Bossi, In re, 5 B.C.R. 440 ..... 192, 472
Boston and Nova Scotia Coal Co., O'Dell v., 29 N.S.R. 385 72
Boswell, Macdonald v., Q.R. 12 S.C. 148 360
Bouchard v. Beaulieu, Q.R. 12 S.C. 499 429
———, George Matthews Co. v., 28 S.C. R. 580 318
Boucher, Galarneau v., Q.R. 13 S.C. 470 [68, 162
——— v. Globensky, Q.R. 13 S.C. 129.. [174, 206
——— v. Morrison, Q.R. 13 S.C. 205..174, 230
——— v. Thibaudeau, Q.R. 13 S.C. 394.. 174
Bouffard, Mercier v., Q.R. 12 S.C. 385.... 326
Boulton v. Boulton, 28 S.C.R. 592 179
——— v. Langmuir, 24 Ont. AR. 618 54
Bourbonnière, Barrette v., Q.R. 12 S.C. 271 ..... 251, 324
Bourdais v. Robinson, Q.R. 12 S.C. 201 [61, 252
Bourdon, Brousseau v., Q.R. 13 S.C. 46 [299, 311
Boutin, In re, Q.R. 12 S.C. 186.....52, 146, 391
———, Charrier v., Q.R. 13 S.C. 384.... 348
Bowes, Ex parte, 34 N.B.R. 76....109, 160, 197
Bowness v. City of Victoria, 5 B.C.R. 505 328
Boyd, Smith v., 18 Ont. P.R. 76 339
———, Stevenson v., 5 B.C.R. 626..101, 333
Boyer, Allard v., Q.R. 12 S.C. 330 163
Brady, Teasdall v. Re, 18 Ont. P.R. 104 360
Brais, Stevenson v., Q.R. 7 Q.B. 77....62, 196
Brampton, Town of, Haggert v., 28 S.C.R. 174 ..... 210, 281
Brantford Electric and Operating Co., Thompson v., 25 Ont. A.R. 340 75
Brazier, Brunet v., Q.R. 7 Q.B. 166..... 456
Bready, Holmes v., 18 Ont. P.R. 79..... 115
Brereton v. Canadian Pacific Ry. Co., 29 Ont. R. 57 6
Breton v. Landry, Q.R. 13 S.C. 31 394

Bri-But.] COLUMN

Brissette v. Pillsbury, 4 Rev. de Jur. 243 ..... 9, 258
Brisson v. Lefebvre, Q.R. 12 S.C. 1 ....192, 384
British American Assurance Company, Smedley v., 18 Ont. P.R. 92 355
British Canadian Loan and Investment Company, Graham v., 12 Man. R. 244 [253, 387
British Columbia Goldfields Co., Richards v., 5 B.C.R. 483 ..... 74, 357
British and Foreign Marine Insurance Co., Rudolf v., 30 N.S.R. 380 ; 28 S.C.R. 607 223
British Mortgage Loan Company of Ontario, Re, 29 Ont. R. 641 ..... 35, 304
Broad Cove Coal Company, McIsaac v., 31 N.S.R. 108 351
Broadbent, Hill v., 25 Ont. A.R. 159 165
Brochu v. Bissonnette, Q.R. 13 S.C. 271 172
Brock v. Benness, 29 Ont. R. 468 255
——— v. Tew, 18 Ont. P.R. 30 345
Brodrecht, Gross v., 24 Ont. A.R. 687.. [127, 181, 212
Brousseau v. Bourdon, Q.R. 13 S.C. 46 [299, 311
——— v. Trottier, Q.R 13 S.C. 231 429
Brown v. Barden, Q.R. 13 S.C. 151 ..... [56, 257, 379
———, Legatt v., 29 Ont. R. 530 98
———, Poitras v., Q.R., 12 S.C. 497 ..56, 204
———, Renaud v., Q.R. 12 S.C. 237 .... [61, 204, 350
———, Sinclair, v., 29 Ont. R. 370..169, 440
———, Stussi v., 5 B.C.R. 380 ..... 277, 343
——— v. Town of Edmonton, 28 S.C.R. 510 ..... 165, 179
Brown and Campbell, In re, 29 Ont. R. 402 467
Bruneau v. Corporation of St. Constant, Q.R. 12 S.C. 519 307
Brunelle, Eckersley v., Q.R. 12 S.C. 181 159
Brunet v. Brazier, Q.R. 7 Q.B. 166 456
——— v. Banque Nationale, Q.R. 12 S.C. 287 ..... 8, 162
——— v. Venne, Q.R. 12 S.C. 512 340
Buchanan, The Queen v., 12 Man. R. 190 ..... 127, 139
Budden v. Rochon, Q.R. 13 S.C. 322.... [53, 162, 229, 382
Building and Loan Association v. McKenzie, 25 Ont. A.R. 599 280
———, ——— v., 28 S.C.R. 407 283
Bulmer, Macdonald v., Q.R. 12 S.C. 424.. 257
Bureau des Délégués des Comtes de Megantic et de Lotbinière, Corporation de Ste. Agathe v., Q.R. 12 S.C. 451 299
Burel, Béliveau, v., Q.R. 12 S.C. 368 245
Burland v. Lee, 28 S.C.R. 348 ..... 270, 316
Burns & Lewis v. Wilson, 28 S.C.R. 207 154
Burris v. Rhind, 30 N.S.R. 405 175
Burrows v. Keating, Q.R. 13 S.C. 535.. [47, 354
Burroughs, Banks v., Q.R. 12 S.C. 184.... [39, 105
Burton v. Goffin, 5 B.C.R. 454....56, 180, 459
Bussière v. Ledoux, Q.R. 12 S.C. 438.... 428
Butchart v. Doyle, 24 Ont. A.R. 615.... 463
Butler, Gray, C., v., Q.B. 12 S.C. 145.. 374

C

C—-Car.] COLUMN

C——, In re, 5 B.C.R 530 ..... 246, 435
Cadieux v. Montreal Gas Co. 28 S.C.R. 382 ..... 89, 439
———, ——— v., [1898] A.C. 718 ..... 17, 105
Cairns, Dominion Cartridge Co. v., 28 S.C.R. 361 317
Callaghan v. Howell, 29 Ont. R. 329 370
Cameron, Lott v., Re 29 Ont. R. 70 ..... 171, 393
———, The Queen v., Q.R. 7 Q.B. 162 ..... 137, 247
Cameron and Lee, solicitors, In re, 18 Ont. P.R. 176 434
Campbell v. Baxter, Q.R. 7 Q.B. 134 ..... 55, 256
———, Chapiewski v., 29 Ont. R. 343 ..... [145, 180
——— v. Farley, 18 Ont. P.R. 97 330
———, Fleury v., 18 Ont. P.R. 110 356
———, Maloney v., 28 S.C.R. 228 ..... 8, 280
Canada, Dominion of, Province of Ontario and Province of Quebec v., In re Common School Fund and Lands, 28 S.C.R. 609 82
Canada Life Assur. Co., Alley v., Q.R. 7 Q.B. 293; 28 S.C.R. 608 ..... 245, 419
——— and City of Hamilton, In re, 25 Ont. A.R. 312 35
——— Crawford v., 24 Ont. A.R. 643 44
Canada Paint Co. v. Trainor, 28 S.C.R. 352 ..... 187, 317
Canada Permanent Loan & Savings Co. v. Traders Bank, 29 Ont. R. 479 ..... 58, 195
Canada Settlers' Loan Co. v. Renouf, 5 B.C.R. 243 ..... 282, 352
Canada Sugar Refining Co. v. The Queen [1898], A.C. 735 ..... 411, 438
Canadian Cotton Mills Company, Kervin v., 25 Ont. A.R. 36 271
Canadian Mutual Loan and Investment Co., Andrew v., 29 Ont. 9. 365 ..... 159, 196
Canadian Order of Chosen Friends, Hœfner v., 29 Ont. R. 125 52
Canadian Pacific Railway Co., Brereton v., 29 Ont. R. 57 6
——— v. Corporation of Notre-Dame de Bonsecours, Q.R. 7 Q.B. 121 ..... [292, 401, 437
——— and County and Township of York, In re, 25 Ont. A.R. 65 398
———, Duquis v., Q.R. 12 S.C. 193 ..... 257, 377
———, Jarvis v., Q.R. 13 S.C. 17 ..... 269, 313
———, LeRevers v., Q.R. 12 S.C. 128 ..... 67, 347
——— v. Parke, 5 B.C.R. 507 ..... 215, 368
———, Pearson v., 12 Man. R. 112 271
——— and Toronto Electric Light Co., In re, 34 C.L.J. 791 118
———, Tytler v., 29 Ont. R. 654 6
Canadian Pacific Telegraph Company, In re, 34 C.L.J. 789 36
Canadian Rubber Company, Bertrand v., 12 Man. R. 27 157
Caradoc, Township of, and Ekfrid, In re, 24 Ont. A.R. 576 292
Carbonneau, Dumont v., Q.R. 13 S.C. 416 ..... 65, 441
Card, Ex parte, 34 N.B.R. 11 234
Carey, Mullin v., Q.R. 13 S.C. 115 ..... 206, 389

Car-Chu.] COLUMN

Caribou Gold Mining Company, Farrell v., 30 N.S.R. 199 78
Carleton, County of, v. City of Ottawa, 28 S.C.R. 606 ..... 124, 301
Carling Brewing & Malting Co. v. Fairweather, 18 C.L.T. (Occ. N.) 313 41
Carnew, Weller v., 29 Ont. R. 400 241
Caron v. Kavanagh, Q.R. 13 S.C. 296 ..... 3, 204
Carpenter v. Pinault, Q.R. 13 S.C. 352 383
Carranza, Kellert v., 4 Rev. de Jur. 318 ..... 66, 151
Carruthers v. Hamilton Provident and Loan Society, 12 Man. R. 60 284
Carson, Turner v., In re Ferguson, 28 S.C.R. 38 469
Carter v. McCarthy, Q.R. 6 Q.B. 499 ..... 71, 160
——— v. Overseers of the Poor, Brookfield, 30 N.S.R. 225 48
Cartier, Seguin v., Q.R. 13 S.C. 346 ..... 65, 107
Cartwright, Fillmore v., 33 N.B.R. 621 ..... 164, 342
Cascapediac, Corporation of, Walsh v., Q.R. 7 Q.B. 290 ..... 7, 295
Cascapedia Pulp & Lumber Company, Waterous Engine Works Company v., Q.R. 13 S.C. 315 ..... 410, 414
Case v. Bartlett, 12 Man. R. 280 407
Cassivi v. Kirouack, 4 Rev. de Jur. 352 119
Castonguay, Lefebvre v., Q.R. 13 S.C. 467 4
Caughell, Payne v., 24 Ont. A.R. 556 ..... 27, 463
Central Bank, In re, Hogaboom v. Receiver-General of Canada, 28 S.C.R. 192 ..... 48, 373
Central Canada Loan and Savings Company, Patterson v., 29 Ont.R. 134 ..... 449, 460
Central Vermont Railway Co., Barker v., Q.R. 13 S.C. 2 ..... 92, 228
Cerri v. Ancient Order of Foresters, 25 Ont. A.R. 22 51
Chalmers, Quintal v., 34 C.L.J. 640; 12 Man. R. 231 ..... 186, 376
Channe Mining Co., Gillis v., 18 C.L.T., Occ. N. 110 368
Chapiewski v. Campbell, 29 Ont.R. 343. [145, 180
Charette, Whelan v., 4 Rev. de Jur. 399 ..... 68, 354
Charlebois, Knuckle v., Q.R. 12 S.C. 374 ..... 331, 374
Charlottetown, City of, Wheatley v., 18 C.L.T. Occ. N. 188 290
Charrier v. Boutin, Q.R. 13 S.C. 384 348
Chartier v. Quebec Steamship Co., Q.R. 12 S.C. 261 ..... 269, 312
Chatham, City of, Atkinson v., 29 Ont. R. 518 297
Chatham, Township of, Township of Sombra v., 28 S.C.R. 1 292
Chenevert, Matte v., Q.R. 12 S.C. 141 ..... 322, 369
Chesterville Public School Board, In re, 29 Ont.R. 321 424
Chipman, The Queen v., 5 B.C.R. 349 ..... 236, 286
Chisholm v. City of Halifax, 29 N.S.R. 402 307
——— v. Peters, 31 N.S.R. 16 335
Cholette v. Corporation of Ste. Justine, Q.R. 12 S.C. 543 ..... 15, 326
Christie, O'Brien v., 30 N.S.R. 145 46
Chubbock v. Murray, 30 N.S.R. 23 468

Chu-Cor.] COLUMN

Church of St. Margaret v. Stephens, 29 Ont. R. 185 ..... 70, 321
Cinqmars, Thivierge v., Q.R. 13 S.C. 398 ..... 441, 446
Clairmonte v. Prince, 30 N.S.R. 258 366
Clark v. Keefer, 29 Ont.R. 557 454
——— v. Paynter, 34 C.L.J. 639 54
Clarke v. Webber, 18 C.L.T. (Occ. N.) 314 46
Clarkson, Mail Printing Company v., 25 Ont. A.R. 1 153
Clarry v. Grand Trunk Railway Co., 29 Ont. R. 18 ..... 148, 397
Clattenburg v. Morine, 30 N.S.R. 221 122
Cleary, Cross v., 29 Ont. R. 542 94
Clouthier, The Queen v., 12 Man. R. 183 139
Coal Mines Regulation Amendment Act, 1890, In re, 5 B.C.R. 306 86
Cochrane, Beaulieu v., 29 Ont. R. 151 452
———, Bell v., 5 B.B.R. 211 ..... 40, 101
Colby, Hutchinson v., 12 Man. R. 307 124
Cole v. Duncan, Q.R. 12 S.C. 152 ..... 229, 339
Coll v. Toronto Railway Co., 25 Ont. A.R. 55 272
Colwell's Estate, In re, 34 C.L.J. 578 192
Commercial Bank of Windsor v. Scott, 30 N.S.R. 401 151
Commissaires d'Ecoles de St. Raphael v. Toussignant, Q.R. 7 Q.B. 270 227
Common v. McCaskill, Q.R. 13 S.C. 282 ..... 2, 79
Common School Fund and Lands, In re Province of Ontario and Province of Quebec v. Dominion of Canada, 28 S.C.R. 609 82
Compagnie du Chemin de Peage de Dorval, Fitzgibbon v., Q.R. 12 S.C. 409 298
Compagnie de Pulpe de Megantic v. Corporation du Village d'Agnès, Q.R. 7 Q.B. 339 ..... 33, 298, 373
——— v. ———, Q.R. 7 Q.B. 349 ..... 18, 210, 392
Conlin, The Queen v., 29 Ont. R. 28 136
Conn v. Smith, 28 Ont. R. 629 43
Connery, Flour City Bank v. 12 Man. R. 305 55
Connolly v. Dowd, 18 Ont. P.R. 38 355
Conrod, Fillis v., 30 N.S.R. 441 122
Consolidated Electric Company Cases, 34 N.B.R. 36 105
Consolidated Electric Co. v. Atlantic Trust Co., 28 S.C.R. 603 ..... 14, 104
——— v. Pratt, 28 S.C.R. 603 ..... 14, 104
———, Pratt v., 34 N.B.R. 23 74
Consolidated Railway Co. v. City of Victoria, 5 B.C.R. 266 300
Consumers' Gas Co., Johnston and Toronto Foundry Co. v. [1898], A.C. 447 ..... 7, 72
Cook, Gibson v., 5 B.C.R. 534 106
Cooke v. Hart, Q.R. 12 S.C. 348 ..... 110, 230
——— v. Jacobi, Q.R. 13 S.C. 433 ..... 66, 156
Cope & Taylor v. Scottish Union Ins. Co., 5 B.C.R. 329 ..... 218, 370
Corbin v. Lookout Mining Co. 5 B.C.R. 281 ..... 276, 368
Corby, The Queen v., 30 N.S.R. 330 138
Cornwall, Re Arbitration between the Town of, and The Cornwall Water Works Co., 29 Ont. R. 350 307

Cor-Dal.] COLUMN

Cornwall, Town of, Cornwall Water Works Company v., 29 Ont. R. 605 308
Cornwall Water Works Company v. Town of Cornwall, 29 Ont. R. 605 308
Corporation des Huissiers, Barrington v., Q.R. 12 S.C. 284 41
Corriveau v. Dugas, Q.R. 12 S.C. 220 ..... 11, 351
———, Lewis v., Q.R. 12 S.C. 93 ..... 191, 377
Cossett v. Des Jardins, Q.R. 12 S.C. 539 [188, 358
Coté, Laverdure v., Q.R. 13 S.C. 254 ..... 5, 70, 232
———, The Queen v., Q.R. 12 S.C. 476 6
Coté St. Paul, Corporation de, Legault v., Q.R. 12 S.C. 479 ..... 299, 315
Coughlin, Roberts v., 18 Ont. P.R. 94 111
Coupal, Grand Trunk Railway Co. v., 28 S.C.R. 531 ..... 32, 399
Coursol, City of St. Henri v., Q.R. 13 S.C. 222 ..... 257, 305
Cousineau v. Allard, Q.R. 13 S.C. 388 423
Cowan v. Macaulay, 5 B.C.R. 495 ..... 4, 22
———, Spencer v., 5 B.C.R. 151 23
Cowans v. Marshall, 28 S.C.R. 161 316
Cozens, Gibbons v., 29 Ont. R. 356 423
Craig, Abell, 12 Man. R. 81 28
———, Crowe v., 29 N.S.R. 394 454
Cranstoun v. Bird, 5 B.C.R. 210 368
Crathern, Barber v., 28 Ont. R. 615 45
Craven v. Williamson, 31 N.S.R. 256 267
Crawford v. Canada Life Assurance Company, 24 Ont. A.R. 643 44
Crayston v. Massey-Harris Co., 12 Man. R. 95 123
Crédit Foncier Franco-Canadien v. Loranger, Q.R. 13 S.C. 353 ..... 211, 419
——— v. ———, Q.R. 13 S.C. 360 ..... 323, 420
Creighton v. Sweetland, 18 Ont. P.R. 180 ..... 112, 430
Crepéau v. Boisvert, Q.R. 13 S.C. 405 [65, 189, 229, 332
——— v. Julien, Q.R. 12 S.C. 308 325
Crickmore, Webster v., 25 Ont. A.R. 97 155
Crockett, Bank of Montreal, 34 C.L.J. 638 ..... 384, 435
Cross v. Cleary, 29 Ont. R. 542 94
Croteau, Lacas v., 4 Rev. de Jur. 210 ..... 116, 228
Crowe v. Craig, 29 N.S.R. 394 454
Cull v. Roberts, 28 Ont. R. 591 417
Culton v. Harris, 30 N.S.R. 112 154
Cummings v. Taylor, 28 S.C.R. 337 153
Cunard v. Nova Scotia Marine Insurance Co., 29 N.S.R. 409 222
Cunningham v. Curtis, 5 B.C.R. 472 158
——— v. Hamilton, 5 B.C.R. 539 283
Cunnington v. Peterson, 29 Ont. R. 346 54
Currie v. Rapid City Farmer's Elevator Company, 12 Man. R. 105 424
Curry, In re, Curry v. Curry, 25 Ont. A.R. 267 ..... 369, 449
———, Thomas, ex parte, 1 Can.C.C. 532 232
Curtis, Cunningham v., 5 B.C.R. 472 158
——— v. Millier, Q.R. 7 Q.B. 415 95
Cusson, Delorme D. v., 28 S.C.R. 66 ..... 24, 61, 408

D

Daly v. Amherst Park Land Co., Q.R. 13 S.C. 516 ..... 147, 216, 442

Daly, Désy v., Q.R. 12 S.C. 183 56
Dandy, Watson v., 12 Man. R. 175 376
Daniel v. Daniel, 29 Ont. R. 493 60
Dansereau v. Gervais, Q.R. 12 S.C. 86..183, 331
———, Goulet v., Q.R. 12 S.C. 15 433
Daoust, Schiller v., Q.R. 12 S.C. 185 343
Darling, Desmarteau v., Q.R. 12 S.C. 212 [164, 257
Dartmouth, Town of, Lloy v., 30 N.S.R. 208 316
David v. McDonald, Q.R. 12 S.C. 4 ..... 445, 471
Davidson, City of Montreal v., Q.R. 7 Q.B. 1 298
———, ———, 28 S.C.R. 421 322
———, Fraser v., 28 S.C.R. 272 159
——— v. Merritton Wood and Pulp Company, 18 Ont. P.R. 139 ..... 3, 44
——— v. The Queen, 6 Ex. C.R. 51 396
——— v. ———, 1 Can. C. C. 351 131
Davies, Bauron v., Q.R. 6 Q.B. 547 [8, 185, 203, 231
Davis, Gerhardt v., Q.R. 12 S.C. 137 ..... 32, 335
——— v. Ottawa Electric Railway Co., 28 Ont. R. 654 444
Daw v. Ackerill, 25 Ont. A.R. 37 70
Dawes, Filion v., Q.R. 12 S.C. 494 ..... 312, 356
———, Rolland v., Q.R. 13 S.C. 52 319
Dawson v. London Street Railway Co., 18 Ont. P.R. 223 ..... 356, 444
Day v. Rutledge, 18 Man. R. 290 447
DeBellefeuille v. Beaudry, 4 Rev. de Jur. 173 ..... 40, 115
Defoe v. City of Toronto, 29 Ont. R. 459 308
DeKuyper, Melchers and, In re, 6 Ex. C.R. 82 451
Delong v. Gillis, 31 N.S.R. 61 156
DeLorimier, Village of, Beaudoin v., Q.R. 13 S.C. 477 286
Delorme v. Cusson, 28 S.C.R. 66 ..... 24, 61, 408
Demers v. Blacklock, Q.R. 12 S.C. 43 202
———, Moranville v., Q.R. 13 S.C. 1 342
———, Moreau v., Q.R. 12 S.C. 464 379
——— v. The Queen, Q.R. 7 Q.B. 433 [84, 93, 95
———, ——— v., Q.R. 7 Q.B. 433 ..... 84, 93, 95
Dempster v. Fairbanks, 29 N.S.R. 456 [159, 344
Denis v. Dufresne, Rouville Election Case, Q.R. 13 S.C. 94 326
Denton v. Arpin, Q.R. 12 S.C. 509 113
D'Entrement, Lewis v., 29 N.S.R. 546 [163, 321
Desjardins, Cossette v. Q.R. 12 S.C. 539 [188, 358
———, Lachine v., Q.R. 12 S.C. 225 421
——— v. Roy, Q.R. 7 Q.B. 325 ..... 99, 101, 445
Deslogues v. Desmarteau, Q.R. 6 B. 485 ..... 294, 421
Desmarteau v. Darling, Q.R. 12 S.C. 212 [164, 257
———, Deslogues v., Q.R. 6 Q.B. 485 ..... 294, 421
———, Latour v., Q.R. 12 S.C. 11 ..... 39, 228
———, ——— v., Q.R. 12 S.C. 456 ..... 104, 227
Desnoyers, Tessier v., Q.R. 12 S.C. 35 [235, 394
Desparois v. Bergeron, Beauharnois Election Case, Q.R. 12 S.C. 23 325

Désy v. Daly, Q.R. 12 S.C. 183 56
Diack, Guest v., 29 N.S.R. 504 58
Diamond Glass Co. v. Bolton Hop Bitters Co., Q.R. 12 S.C. 221 112
Dibblee, The Queen v., Ex parte Kavanagh, 34 N.B.R. 1 ..... 63, 235
Dickey v. Thibault, Q.R. 13 S.C. 58 15
Dimock v. Miller, 30 N.S.R. 74 241
Dinelle, Bayard v., Q.R. 7 Q.B 480 ..... 17, 353
Dingwall v. Mason, Q.R. 12 S.C. 333 250
Dion v. Dupuis, Q.R. 12 S.C. 465 336
Dixon, The Queen v., 29 N.S.R. 462 ..... 134, 141
Dodd, Guild v., 31 N.S.R. 193 102
Doerle, Lewis v., 25 Ont. A.R. 206 470
Doherty, Bigelow v., 30 N.S.R. 393 363
———, Gillespie v., Q.R. 12 S.C. 536 ..... 410, 416
Doidge v. Town of Regina, 18 C.L.T. (Occ. N.) 163 358
Dominion Cartridge Co. v. Cairns, 28 S.C.R. 361 317
Dominion Coal Co. v. Kingswell Steamship Co., 30 N.S.R. 397 378
Dominion Cold Storage Company, Re, 18 Ont. P.R. 68 371
Dominion Construction Company, Teetzel v., 18 Ont. P.R. 16 21
Donaldson v. Wherry, 29 Ont. R. 552 ..... 121, 243
Donnelly, Stanton v., Q.R. 13 S.C. 306 243
Dooley, O'Handley v., 31 N.S.R. 121 233
Dorsey v. Dorsey, 29 Ont. R. 475 205
Douglas v. Parker, 12 Man. R. 152 123
——— v. Stephenson, 29 Ont. R. 616 249
Dowd, Connolly v., 18 Ont. P R. 38 355
Dowler v. Duffy, Re; Inglesby, Garnishee, 29 Ont. R. 40 ..... 170, 358
Doyle v. Atlas Canning Co., 5 B.C.R. 279 79
———, Butchart v., 24 Ont. A.R. 615 463
Drake v. Sault Ste. Marie Pulp and Paper Company, 25 Ont. A.R. 251 ..... 308, 461
Drapeau, Langlois v., Q.R. 12 S.C. 92 [250, 342
Dreschel, Auer Incandescent Light Mfg. Co. v., 6 Ex. C.R. 55 366
———, ——— v., 23 S.C.R. 268 ..... 25, 105, 353
Drolet, Poitras v., Q.R. 12 S.C. 461 ..... 192, 374
Drouin, Langlois v., Q.R. 13 S.C. 49 318
Drummond Railway Co. v. Ollivier, Q.R. 7 Q.B. 41 ..... 226, 399
Duclos, Lemire v., Q.R. 13 S.C. 82 ..... 265, 303
Dudevoir, Riendeau v., Q.R. 12 S.C. 273 303
Duffy v. Adams, 30 N.S.R. 197 350
———, Dowler v., Re; Inglesly, Garnishee, 29 Ont. R. 40 ..... 170, 358
Dufresne, Denis v., Rouville Election Case, Q.R. 13 Q.R. 13 S.C. 94 326
Dugas, Coriveau v., Q.R. 12 S.C. 220 ..... 11, 351
Dumont v. Carbonneau, Q.R. 13 S.C. 416 [65, 441
Dun, R. G. & Co., Slattery v., 18 Ont. R. 168 ..... 111, 249
Duncan, Cole v., Q.R. 12 S.C. 152 ..... 229, 339
Dunn and the Expropriation Act, Re, 12 Man. R. 78 447
Dupont v. Lacoste, Q.R. 12 S.C. 13 373
Dupuis v. Archambault, Q.R. 7 Q.B. 393 39
——— v. Canadian Pacific Railway Co. Q.R. 12 S.C. 193 ..... 257, 377

Dupuis, Dion v., Q.R. S.C. 465 336
——— v. Hudon, Q.R. 12 S.C. 227 ..... 55, 256
——— dit Gilbert, King v., 28 S.C.R. 388 ..... 25, 91, 322, 413
——— v. North British & Mercantile Ins. Co. Q.R. 13 S.C 443 ..... 8, 219
Durand v. City of Quebec, Q.R. 13 S.C. 308 ..... 174, 189
Durnford v. Hannah, Q.R. 12 S.C. 431 ..... 40, 108
Durocher, Benoloeil v., Q.R. 13 S.C. 260 [67, 310
Durocher v. Durocher, Q.R. 12 S.C. 282 373 ..... 231, 342, 376
Dussault v. Montreal Harbour Commissioners, Q.R. 12 S.C. 417 ..... 201, 374
Dwyre v. Ottawa, 25 Ont. A.R. 121 359
Dyas, The Queen v., 1 Can. C.C. 534 261

E

Eastern Trust Co., Bayne v., 28 S.C.R. 606 ..... 181, 457
——— v. Forrest, 30 N.S.R. 173 457
Eaton's Aaron Estate, In re 1 N.B. Eq. 527 456
Eckersley v. Brunelle, Q.R. 12 S.C. 181, 159
Eddy v. Eddy, Q.R. 7 Q.B. 300 ..202, 252, 388
Edmonton, Town of, Brown v., 28 S.C.R. 510 ..... 165, 179
———, ———, Heiminck v., 28 S.C.R. 510 ..... 142, 296
Edwards, The Queen v., 29 Ont. R. 451 137
Ekfrid, Township of, and Township of Caradoc, In re, 24 Ont. A.R. 576 292
Electric Service Co., Holmes Electric Protection Co. v., Q.R. 12 S.C. 9 373
Elliott, Bisaillon v., Q.R. 13 S.C. 289..343, 387
Ellis, Roy v., Q.R. 7 Q.B. 222 451
England, Kenny v., [1898] A.C. 743 236
Esplin, Légaré v., Q.R. 12 S.C. 113 ...271, 312
Esquimault & Nanaimo Railway Co., Hobbs v., 5 B.C.R. 461 357
Ethier v. Ewing, Q.R. 12 S.C. 134 295
Ewan, Lee v., Q.R. 12 S.C. 215 .....109, 369
Ewing v. City of Toronto, 18 Ont. P.R. 137 ..... 109, 331
——— v. ———, 29 Ont.R. 197 297
———, Ethier v., Q.R. 12 S.C. 134 295

F

Fader, Barrowman v., 31 N.S.R. 20 418
———, ——— v., 31 N.S.R. 29 117
Fairbanks, Dempster v., 29 N.S.R. 456 .159, 344
Fairweather, Carling Brewing and Malting Co. v., 18 C.L.T. Occ. N. 318 41
Fallenbaum, Haupter v., Q.R. 12 S.C. 538 ..... 65, 151
Fane v. Bancroft, 30 N.S.R. 33 390
Farley, Campbell v., 18 Ont. P.R. 97 330
Farquharson v. Imperial Oil Co., 29 Ont. R. 206 ..... 440, 461
Farrell v. Caribou Gold Mining Company, 30 N.S.R. 199 78
———, Nordheimer v., Q.R. 12 S.C. 150 ..... 329, 377
Fawkes v. Griffin, 18 Ont. P.R. 48 403
———, Morphy v. 18 Ont. P.R. 24 118

Feindel v. Zwicker, 31 N.S.R. 232 167
Fell, Beavan v., 5 B.C.R. 453 357
Ferguson, In re Turner v. Bennet; Turner v. Carson, 28 S.C.R. 38 469
———, Glengoil Steamship Co. v., 28 S.C.R. 146 431
———, Magann v., 18 Ont. P.R. 201 337
———, ——— v., 29 Ont. R. 235 .....46, 242
Filiatrault v. Bélair, Q.R. 12 S.C. 449 110
Filion v. Dawes, Q.R. 12 S.C. 494 .....312, 356
Fillmore v. Cartwright, 33 N.B.R. 621..164, 342
Fillis v. Conrod, 30 N.S.R. 441 122
Finlayson, In re, 5 B.C.R. 517 .....455, 469
Fish, Bank of Nova Scotia v., 33 N.B. R. 604 ..... 38, 105
Fisher v. Fisher, 25 Ont. A.R. 108 51
——— v. ———, 28 S.C.R. 494 17
———, Sands v., 30 N.S.R. 185 362
Fisken v. Ife, 28 Ont. R. 595 449
Fitch, Stratford Turf Association v., 28 Ont. R. 579 133
Fitchett v. Mellow, 18 Ont. P.R. 161..118, 121
——— v. ———, 25 Ont. R. 6 464
Fitzgerald, The Queen v., 29 Ont. R. 203 ..... 137, 395
——— v. Molsons Bank, 29 Ont. R. 105. 285
Fitzgibbon v. Compagnie du Chemin de Peage de Dorval, Q.R. 12 S.C. 409 298
Flaschaet v. Kleinschmidt, 18 C.L.T. Occ. N. 427 29
Flemming v. Harding, 1 N.B. Eq. 515.. 358
Fleury v. Campbell, 18 Ont. P.R. 110 .. 356
Flood, Heaton v., 29 Ont. R. 87 59
Flour City Bank v. Connery, 12 Man. R. 305 55
Flynn, O'Connor v., Q.R. 13 S.C. 435..10, 149
Foisy v. Houghton, Q.R. 12 S.C. 521 243
Fontaine v. Mongeau, Q.R. 12 S.C. 20.. 106
Forbes, In re, 18 C.L.T. Occ. N. 155 435
Forest City Lodge, Baker v., 24 Ont. A.R. 585 52
Forget, Bastien v., Q.R. 12 S.C. 425...39, 115
——— v. Baxter, Q.R. 13 S.C. 104..62, 184, 187
Forrest, Eastern Trust Co. v., 30 N.S.R. 173 457
Fortier, Morency v., Q.R. 12 S.C. 68..199, 213, [383
——— v. Nadeau, Q.R. 13 S.C. 340 421
Fortin v. Voisard, Q.R. 13 S.C. 257 245
Forster, Re Battisby v. Witherspon, 18 Ont. P.R. 65 108
Foster v. Municipality of Lansdowne, 12 Man. R. 41 ..... 294, 341
———, The Queen v. (Estate of Esson), 30 N.S.R. 1 392
Frame, Rennie v., 29 Ont. R. 586 255
France, The Queen v., Q.R. 7 Q.B. 83 ..... [137, 141, 441
Francis v. O'Leary, Q.R. 12 S.C. 254 ... 112
———, ——— v., Q.R. 12 S.C. 243 113
Fraser, Re Estate of Caroline, 30 N.S.R. 272 393
——— v. Davidson, 28 S.C.R. 272 159
——— v. London Street Railway Company, 29 Ont. R. 411 ..... 369, 444
———, Snow v., 30 N.S.R. 80 366
Fraserville, Town of, Mignault v., Q.R. 13 S.C. 421 290

Freeman v. Gray, Q.R. 12 S.C. 10 342
——— v. Mitchell, 30 N.S.R. 513 166
Fry v. O'Dell, Q.R. 12 S.C. 263 .....163, 202, 210
Fulton v. Kingston Vehicle Company, 30 N.S.R. 455 38

G.

Gagné v. Vallée, Q.R. 13 S.C. 112 239
Gagnon, Kyle v., Q.R. 13 S.C. 468 107
——— v. Proulx, Q.R. 13 S.C. 189 .....147, 161
Galarneau v. Boucher, Q.R. 13 S.C. 470..68, 162
Galivan v. Macdonald, Q.R. 12 S.C. 496 14
———, ——— v., 28 S.C.R. 258 24
Gallant v. Mellett, 18 C.L.T. Occ. N. 199 254
Garden v. Neily, 31 N.S.R. 89 .....168, 389
Garesche, Shallcross v., 5 B.C.R. 320..10, 329
Garneau v. North American Transportation Co., Q.R. 12 S.C. 77 386
Garon v. Lévesque, Q.R. 7 Q.B. 284..173, 328
——— v. Noel, 4 Rev. de Jur. 232 .....9, 110
Gates v. Lohnes, 31 N.S.R. 221 247
Gauthier, City of Montreal v., Q.R. 7 Q.B. 100 .....148, 306
———, Jeannotte v., Q.R. 6 Q.B. 520....106, 50
———, Murphy v., Q.R. 12 S.C. 407.... 146
———, Perrault v., 28 S.C.R. 241 .....5, 452
Gauvin, Ouellet v., Q.R. 13 S.C. 542....9, 325
Gavin, The Queen v., 1 Can. C.C. 59 64
Gemmill, O'Connor v., 29 Ont. R. 47..114, 433
Généreux v. Sapuyère, Q.R. 13 S.C. 56.. 390
Genser, Péloquin v., Q.R. 12 S.C. 229 .. 347
George Matthews Co. v. Bouchard, 28 S.C.R. 580 318
Georgian Bay Ship Canal and Power Aqueduct Co., In re, 29 Ont. R. 358.. 80
Gerhardt v. Davis, Q.R. 12 S.C. 137....32, 335
Gervais, Dansereau v., Q.R. 12 S.C. 86..183, 331
———, McKercher v., Q.R. 12 S.C. 336. 241
Gibeau v. City of Montreal, Q.R. 13 S.C. 473 296
Gibbons v. Cozens, 29 Ont. R. 356 423
———, The Queen v., 12 Man. R. 154.. 133
———, McMicking v., 24 Ont. A.R. 586..226, 283
Gibson, v. Cook, 5 B.C.R. 534 106
———, St. Arnaud v., Q.R. 13 S.C. 22..271, 313
———, The Queen v., 29 Ont. R. 660..137, 236
———, Wood v., 31 N.S.R. 15 178
Gignac v. Iler, 29 Ont. R. 147 .....155, 443
Gilbert and St. John Horticultural Association, In re, 1 N.B.Eq. 432 33
Gillard v. Milligan, 28 Ont. R. 645 .....45, 190
Gillespie, Ex parte, Q.R. 7 Q.B. 422 ..... [128, 142, 199, 383
——— v. Doherty, Q.R. 12 S.C. 536....410, 416
———, The Queen v., 1 Can. C.C. 551. 77
Gillis v. Channe Mining Co., 18 C.L.T. Occ. N. 110 368
———, Delong v., 31 N.S.R. 61 156
Giroux, Tufts v., Q.R. 12 S.C. 530 ..343, 413
Glanville v. Strachan, 29 Ont. R. 373.... 46
Glengoil Steamship Co. v. Ferguson, 28 S.C.R. 146 431
——— v. Pilkington, 28 S.C.R. 146 431
Glenn v. Scott, 18 C.L.T. Occ.N. 162.. 281
Globensky, Boucher v., Q.R. 13 S.C. 129 [174, 206
Gnædinger, White v., Q.R. 7 Q.B. 156 311

Gocher, Nichol v., 12 Man. R. 177..... 207
Godin v. Supreme Court I.O.O.F. 4 Rev. de Jur. 236 ..... 9, 50
Goffin, Burton v., 5 B.C.R. 454....56, 180, 459
Gold Medal Furniture Co. v. Lumbers, 29 Ont. R. 75 238
Golden Butterfly Fraction Mineral Claim In re, 5 B.C.R. 445 278
Golden Gate Co. v. Granite Creek Co. 5 B.C.R. 145 378
Goodison, Justin v., 18 Ont. P.R. 174.. 27
Goodstein, Hayden v., 34 C.L.J. 639.... 352
Goodwin v. The Queen, 28 S.C.R. 273.. 96
Gorm, Mireau v., Q.R. 12 S.C. 286..... 380
Gordon v. City of Victoria, 5 B.C.R. 553 .....301, 319
——— v. Gordon, Q.R. 12 S.C. 433 ..... [437, 472
Gosselin, Guimond v., Q.R. 12 S.C. 178 347
Goulet v. Dansereau, Q.R. 12 S.C. 15.... 433
——— v. Whitehead, Q.R. 12 S.C. 15.. 252
Gowanlock, The Queen, Ex rel. Hall v. In re, 29 Ont. R. 435 .....121, 302
Graham v. British Canadian Loan and Investment Co., 12 Man. R. 244 ....253, 387
———, Hardigan v., Q.R. 12 S.C. 177.... [2, 142
——— v. ———, 1 Can. C.C. 437 127
——— v. Smith, Q.R. 12 S.C. 240 ....312, 453
———, The Queen v., 29 Ont. R. 193....28, 108
Grand Trunk Boating Club, Corporation of Verdun v., Q.R. 7 Q.B. 185...4, 245, 294
Grand Trunk Railway Co. v. Anderson, 28 S.C.R. 541 400
———, Clarry v., 29 Ont. R. 18 .....148, 397
——— v. Coupal, 28 S.C.R. 531 .....32, 399
——— v. Hamilton Electric Ry. Co., 29 Ont. R. 143 .....85, 398
——— v. Port Perry, 34 C.L.J. 239..... 35
———, Rainville v., 28 Ont. R. 625..... 184
———, Rainville v., 25 Ont. A.R. 242.... 400
———, Ranger v., Q.R. 13 S.C. 471....401, 437
———, Washington v., 28 S.C.R. 184.... [402, 436
Granite Creek Co., Golden Gate Co. v., 5 B.C.R. 145 378
Grant, Pinsonnault v., Q.R. 12 S.C. 339, 422
———, The Queen v., 30 N.S.R. 368..... 259
Graveley, Spenger v., 34 C.L.J. 135..... 60
Gray v. Butler, Q.R. 12 S.C. 145 374
———, Freeman v., Q.R. 12 S.C. 10.... 342
——— v. McCallum, 5 B.C.R. 462....279, 334
——— v. Purdy, 5 B.C.R. 241 .....160, 403
Greener, North Sydney Mining and Transportation Company v., 31 N.S. R. 41 78
———, Nova Scotia Mining Co. v., 31 N.S.R. 89 404
Greenshields v. Hope, Q.R. 12 S.C. 513 422
Grenier, Houde v., Q.R. 12 S.C. 259, 272, 332
———, Latulippe v., Q.R. 13 S.C. ..... [157, 386, 405
———, The Queen v., Q.R. 6 Q.B 563 248
Grey v. Manitoba and North-Western Railway Company, 12 Man. R. 32..... 163
——— v. ———, 12 Man. R 57 349
Griffin, Fawkes v., 18 Ont. P.R. 48..... 403
———, Smith v., Q.R. 13 S.C. 221....232, 374

Gro-Har.] COLUMN

Gross, In re, 25 Ont. A.R. 83 132
——— v. Brodrecht, 24 Ont. A.R. 687 ..... [127, 181, 212
Grothé v. Maisonneuve, Q.R. 13 S.C. 345 ..... 11, 204, 323, 358
Guardhouse, Real Estate Loan Company v., Re; Newlove, Garnishee, 29 Ont. R. 602 172
Guest v. Diack, 29 N.S.R. 504 58
———, Pitfield v., 18 C.L.T. Occ. N. 144 372
Guild v. Dodd, 31 N.S.R. 193 102
Guimond v. Belanger, 33 N.B.R. 589 253
——— v. Gosselin, Q.R. 12 S.C. 178 347
Guinane, Re, 18 Ont. P.R. 208 45
Gunter v. Williams, 1 N.B.Eq. 401 221

H

Hadley v. Town of St. Paul, Q.R. 13 S.C. 88 287
Haggert v. Town of Brampton, 28 S.C.R. 174 ..... 210, 281
Haight v. Hamilton Street Railway Co., 29 Ont. R. 279 ..... 319, 444
Halifax, City of, Chisholm v., 29 N.S.R. 402 307
———, Lindberg v., 31 N.S.R. 154 176
Halifax Electric Tramway Company, The Queen v., 1 Can. C.C. 424; 30 N.S.R. 469 ..... 86, 446
Halifax South, Corporation of, Schambier v., Q.R. 12 S.C. 197 286
Halstead, Bank of Hamilton v., 28 S.C.R. 235 ..... 37, 48
Halwell v. Township of Wilmot, 24 Ont. A.R. 628 44
Hamilton, Cunningham v., 5 B.C.R. 539 283
———, The Queen v., 30 N.S.R. 322 138
———, In re School Section No. 16, Township of, 29 Ont. R. 390 ..... 425, 441
Hamilton Electric Ry. Co., Grand Trunk Ry. Co. v., 29 Ont. R. 143 ..... 85, 398
Hamilton Mfg. Co. v. Knight Bros., 5 B.C.R. 391 417
Hamilton Police Benefit Fund, Miller v., 28 S.C.R. 475 49
Hamilton Provident and Loan Society, Carruthers v., 12 Man. R. 60 284
———, McBride v., 29 Ont. R. 161 ..... 182, 240
Hamilton v. Stewiacke Valley, etc., Railway Co., 30 N.S.R. 10 401
——— v. ———, 30 N.S.R. 92 76
——— v. ———, 30 N.S.R. 166 402
Hamilton Street Ry. Co., Haight v., 29 Ont. R. 279 ..... 319, 444
Hammond, The Queen v., 29 Ont. R. 211 ..... [102, 130, 437
Haney v. Mead, In re, 34 C.L.J. 330 ..... [103, 215
Hannah, Durnford v., Q.R. 12 S.C. 431 ..... 40, 108
Hannum v. McRae, 18 Ont. P.R. 185 87
Hardigan v. Graham, Q.R. 12 S.C. 177 ..... [2, 142
——— v. Graham, 1 Can. C.C. 437 127
Harding, Flemming v., 1 N.B.Eq. 515 358
Harris, Culton v., 30 N.S.R. 112 154
———, Kinney v., 5 B.C.R. 229 ..... 20, 275
——— v. Township of Whitby, 34 C.L.J. 240 36

Har-Hol.] COLUMN

Harrison, Armstrong v., 29 Ont. R. 174 ..... [165, 457
——— v. Prentice, 24 Ont. A.R. 677 427
Hart, Cooke v., Q.R. 12 S.C. 348 ..... 110, 230
——— v. Lachapelle, Q.R. 12 S.C. 428 242
———, Maguire v., 28 S.C.R. 272 153
——— v. Pearson, Q.R. 12 S.C. 540 432
——— v. Shorey, Q.R. 12 S.C. 84 ..... 149, 202
Hartlen, The Queen v., 30 N.S.R. 317 128
Hatherton v. Temiscouata Railway Co., Q.R. 12 S.C. 481 455
Haupter v. Fallenbaum, Q.R. 12 S.C. 538 ..... [65, 151
Hawke v. O'Neil, 18 Ont. P.R. 164 365
Hawkins v. Snow, 29 N.S.R. 444 265
Hawley, Light v., 29 Ont. R. 25 ..... 60, 339
Hayden v. Goodstein, 34 C.L.J. 639 352
Hayes, Smith v., 29 Ont. R. 283 ..... 214, 310
Heaton v. Flood, 29 Ont. R. 87 59
———, Warminton v., Q.R. 7 Q.B. 234 ..... [164, 295
Hébert v. Lapointe, Q.R. 12 S.C. 123 ..... [250, 306
Heiminck v. Town of Edmonton, 28 S.C.R. 501 ..... 142, 296
Hénault, Marcotte v., Q.R. 13 S.C. 453 149
Henderson and City of Toronto, 29 Ont. R. 669 288
———, Mongenais v., 34 C.L.J. 54 117
——— v. The Queen, 6 Ex. C.R. 39 143
———, The Queen v., 28 S.C.R. 425 ..... [97, 226, 395, 436
Heney, Purtle v., 33 N.B.R. 607 ..... 89, 413
Hermann v. Mandarin Gold Mining Company of Ontario, 18 Ont. P.R. 34 380
Herrell, The Queen v., 12 Man. R. 198 260
Hesselbacher v. Ballantyne, 25 Ont. A.R. 36 415
Hesslein v. Wallace, 29 N.S.R. 424 178
Hesson, Strong v., 5 B.C.R. 217 ..... 164, 321
Hewett v. Jermyn, In re, 29 Ont. R. 383 471
Heywood v. Perry, Ex parte Heywood, 34 N.B.R. 8 ..... 34, 152
Hickey v. City of Montreal, Q.R. 12 S.C. 195 116
Hickman v. Baker, 31 N.S.R. 208 22
Hicks v. Mills, Re, 18 Ont. P.R. 123 118
Higgins, Schimansky v., Q.R. 13 S.C. 348 242
Hill v. Broadbent, 25 Ont. A.R. 159 165
Hjorth v. Smith, 5 B.C.R. 369 ..... 168, 385
Hobbs v. Esquimault & Nanaimo Railway Co., 5 B.C.R. 461 357
———, O'Neil v., 29 Ont. R. 487 ..... 171, 337
Hobson, Tollemache v., 5 B.C.R. 214 357
———, ——— v., 5 B.C.R. 216 ..... 11, 185
———, ——— v., 5 B.C.R. 223 ..... 19, 107
Hockin, Adams v. 12 Man. R. 11 266
Hoefner v. Canadian Order of Chosen Friends, 29 Ont. R. 125 52
Hoffman, Shepperd v. Q.R. 12 S.C. 228. 146
Hogaboom v. Receiver-General of Canada, In re Central Bank, 28 S.C.R. 192 ..... 48, 373
Holloway v. Lindberg, 29 N.S.R. 460; 30 N.S.R. 421 ..... 186, 269
Holmes, Beattie v., 29 Ont. R. 264 ..... 43, 171
——— v. Bready, 18 Ont. P.R. 79 115
———, The Queen v., 29 Ont. R. 362 135

Holmes Electric Protection Co. v. Electric Service Co., Q.R. 12 S.C. 9 373
Hood, Smith v., Q.R. 13 S.C. 341 ..... 247, 347
Hope, Greenshields v., Q.R. 12 S.C. 513 422
Hopkins, Roper v., 29 Ont. R. 580 125
Horton, The Queen v., 31 N.S.R. 217 139
Houde v. Grenier, Q.R. 12 S.C. 259 ..... 272, 332
Houghton, Foisy v., Q.R. 12 S.C. 521 243
Howarth, The Queen v., 1 Can. C.C. 243 132
Howell, Callaghan v., 29 Ont. R. 329 470
Hudon, Dupuis v., Q.R. 12 S.C. 227 ..... 55, 256
Hughes v. Hume, 5 B.C.R. 278 377
——, The Queen v., 29 Ont. R. 179 258
Hume, Hughes v., 5 B.C.R. 278 377
Humphrey, Alderich v., 29 Ont. R. 427 ..... 34, 81
Hunter v. Town of Strathroy, 18 Ont. P.R. 127 108
Huot, Banque du Peuple v., Q.R. 12 S.C. 370 257
Hutchings v. Adams, 12 Man. R. 118 387
Hutchinson v. Colby, 12 Man. R. 307 124
Huyck v. Wilson, 18 Ont. P.R. 44 ..... 32, 117

I

Ife, Fisken v., 28 Ont. R. 595 449
Iler, Gignac, 29 Ont. R. 147 ..... 155, 443
Imperial Oil Co., Farquharson v., 29 Ont. R. 206 ..... 440, 461
—— v. Young, 34 C.L.J. 579 352
Inch v. Simon, 12 Man. R. 1 59
Inkiel v. Laforest, Q.R. 7 Q.B. 454 ..... 16, 360
—— v. ——, Q.R. 7 Q.B. 456 ..... 53, 164, 182
Insurance Co. of North America, Bank of Toronto v., 18 Ont. P.R. 27 372
——, McLeod v., 30 N.S.R. 480 ..... 224, 367
Irondale, Bancroft and Ottawa Railway Company, Alexander v., 18 Ont. R. 20 354
Irvine v. McCrimmon, Q.R. 13 S.C. 71 ..... 251, 372

J

Jackson, McKenzie v., 31 N.S.R. 70 426
Jacobi, Cooke v., Q.R. 13 S.C. 433 ..... 66, 156
Jarvis v. Canadian Pacific Railway Co., Q.R. 13 S.C. 17 ..... 269, 313
Jeannotte v. Gauthier, Q.R. 6 Q.B. 520 ..... 106, 250
Jeffries v. Blair, 1 N.B.Eq. 420 364
Jenkins, Murray v., 28 S.C.R. 565 ..... 93, 386, 421
Jermyn, Hewett v., In re, 29 Ont. R. 383 471
—— v. Tew, 28 S.C.R. 497 26
Jerry, Nelson & Fort Sheppard Railway Co. v., 5 B.C.R. 166 ..... 24, 114
——, —— v., 5 B.C.R. 396 277
Johnson, Lowther v., 34 C.L.J. 430 241
Johnston v. Miller, 31 N.S.R. 83 189
—— & Toronto Foundry Co. v. Consumers' Gas Co. [1898], A.C. 447 ..... 7, 72
Jolly, Minhinnick v., 29 Ont. R. 238 194
Jonah, Mutual Life Assurance Co. of New York v., 1 N.B. Eq. 482 183
Jones v. Julian, In re, 28 Ont. R. 601 ..... 169, 393
Jordan v. McDonald, 31 N.S.R. 129 262
—— v. Provincial Provident Institution, 28 S.C.R. 554 219
Julian, Jones v., In re, 28 Ont. R. 601 ..... 169, 393
Julien, Crépeau v., Q.R. 12 S.C. 308 325

Jus-Lac.] COLUMN

Justin, a Solicitor, Re, 18 Ont. P.R. 125 ..... 14, 371
—— v. Goodison, 18 Ont. P.R. 174 27

K

Kavanagh, Caron v., Q.R. 13 S.C. 296 ..... 3, 204
——, Ex parte, The Queen v. Dibblee, 34 N.B.R. 1 ..... 63, 235
Keating, Burrows v., Q.R. 13 S.C. 535 ..... 47, 354
Keefer, Clark v., 29 Ont. R. 557 454
—— v. Phœnix Insurance Co. of Hartford, 29 Ont. R. 394 217
Kellert v. Carranza, 4 Rev. de Jur. 318 ..... 66, 151
Kelly v. City of Winnipeg, 12 Man. R. 87 287
—— v. Montreal Street Railway Co., Q.R. 13 S.C. 385 ..... 313, 343
Kennedy v. Beal, 29 Ont. R. 599 31
——, Moore v., 12 Man. R. 173 364
—— v. Nealis, 1 N.B. Eq. 455 432
Kenwood, Wilson v., Q.R. 13 S.C. 390 40
Kerr v. Murphy, 34 C.L.J. 427 119
Kerry v. England [1898], A.C. 743 236
Kervin v. Canadian Cotton Mills Company, 25 Ont. A.R. 36 271
Keystone Fire Insurance Company of St. John, Bank of Toronto v., 18 Ont. P.R. 41 355
——, —— v., 18 Ont. P.R. 113 380
Kidd, Moorhouse v., 25 Ont. A.R. 221 391
Kilbourne v. McGuigan, 5 B.C.R. 233 ..... 275, 375
——, Troup v., 5 B.C.R. 547 379
Kilmer, Armour v., 28 Ont. R. 618 ..... 120, 433
Kilroe, The Queen v., 6 Ex. C.R. 80 359
King v. Dupuis dit Gilbert, 28 S.C.R. 388 ..... 25, 91, 322, 413
King's Dypepsia Cure Co., Piper v., 30 N.S.R. 429 363
Kingston Vehicle Company, Fulton v., 30 N.S.R. 455 38
Kingswell Steamship Co., Dominion Coal Co. v., 30 N.S.R. 397 378
Kinney v. Harris, 5 B.C.R. 229 ..... 20, 275
Kinnear, Mitchell v., 1 N.B.Eq. 427 ..... 110, 284
Kirkpatrick v. Mills, 30 N.S.R. 426 251
Kirouack, Cassivi v., 4 Rev. de Jur. 352. 119
Kleinschmidt, Flaschaet v., 18 C.L.T. (Occ. N.) 427 29
Klock v. Lindsay, 28 S.C.R. 453 238
Knauth Nachod v. Sterne, 30 N.S.R. 251 ..... 227, 332, 345
—— v. ——, 30 N.S.R. 296 21
Knight Bros., Hamilton Mfg. Co. v., 5 B.C.R. 391 417
Knuckle v. Charlebois, Q.R. 12 S.C. 374 [331, 374
Koch, Wolf v., 34 C.L.J. 95 ..... 365, 384
Koksilah Quarry Co. v. The Queen, 5 B. C.R. 525 94
—— v. ——, 5 B.C.R. 600 ..... 20, 442
Kyle v. Gagnon, Q.R. 13 S.C. 468 107

L

Laberge v. Tranquille, Q.R. 12 S.C. 510 [322, 342
Lacas v. Croteau, 4 Rev. de Jur. 210 ..... 116, 228
Lachine v. Desjardins, Q.R. 12 S.C. 225 .. 421
Lachapelle, Hart v., Q.R. 12 S.C. 428 242
Lacoste, Dupont v., Q.R. 12 S.C. 13 373

Lafleur, Laurin v., Q.R. 12 S.C. 381....100, 420
Laforest, Inkiel v., Q.R. 7 Q.B. 454....16, 360
——, —— v., Q.R. 7 Q.B. 456.....
[53, 164, 182
Lafrance v. Lafrance, 18 Ont. P.R. 62.... 12
Lajoie, Lavoie v., Q.R. 13 S.C. 29.....15, 24
Lake Simcoe Ice and Cold Storage Co., McDonald v., 29 Ont. R. 247.....309, 461
Lalonde, The Queen v., Q.R. 7 Q.B. 201 136
——, —— v., Q.R. 7 Q.B. 260..... 136
——, —— v., Q.R. 7 Q.B. 204.....
[102, 129, 182
Lamarre v. Woods, Q.R. 13 S.C. 466.....
[76, 201, 386
Lambert, Lellis v., 24 Ont. A.R. 653 202
Lamy, Arcand v., Q.R. 13 S.C. 488....209, 340
Lancashire Insurance Company, Morrow v., 29 Ont. R. 377 217
Landry, Breton v., Q.R. 13 S.C. 31 394
Lang, Lea v., 18 Ont. P.R. 1..... 111
Langan v. Smith, Q.R. 12 S.C. 529....3, 146, 445
Langevin dit Lacroix v. Corporation of St. Laurent, Q.R. 13 S.C. 302..... 326
Langlois v. Drapeau, Q.R. 12 S.C. 92....250, 342
—— v. Drouin, Q.R. 13 S.C. 49..... 318
Langmuir, Boulton v., 24 Ont. A.R. 618 54
Lansdowne, Municipality of, v. Foster, 12 Man. R. 41.....294, 341
Lapalme, Pelletier v., Q.R. 12 S.C. 97..
[173, 202
Lapierre v. Village de St. Louis du Mile-End, Q.R. 12 S.C. 129..... 304
Lapointe, Hébert v. Q.R. 12 S.C. 123....250, 306
—— v. Wilson, 5 B.C.R. 150..... 383
Latour v. Desmarteau, Q.R. 12 S.C. 11....39, 228
—— v ——, Q.R. 12 S.C. 456.....104, 227
Latulippe v. Grenier, Q.R. 13 S.C. 157..
[386, 405
Laughlan v. Prescott, 1 N.B. Eq. 406.... 145
Laurin v. Lafleur, Q.R. 12 S.C. 381....100, 420
Laverdure v. Coté, Q.R. 13 S.C. 254....5, 70, 232
Lavoie v. Lajoie, Q.R. 13 S.C. 29.....15, 24
——, Paquet v., Q.R. 7 Q.B. 277.....85, 138
Lawlor v. Nicol, 12 Man. R. 224..... 414
Lawrence, Barker v., 5 B.C.R. 460..... 377
——, The Queen v., 5 B.C.R. 160 .....41, 141
Lea v. Lang, 18 Ont. P.R. 1 111
——, Wallace v., 28 S.C.R. 595.....204, 439
Lebel, Soucy v., Q.R. 12 S.C. 203.....173, 191
Leblanc, Ex parte, 34 N.B.R. 88.....64, 187
Leclair, The Queen v., Q.R. 7 Q.B. 287..
[142, 209
Ledoux, Bussière v., Q.R. 12 S.C. 438.. 428
Lee, Mary, Re License of, 34 C.L.J. 642..
[186, 261, 428
——, Burland v., 28 S.C.R. 348....270, 316
—— v. Ewan, Q.R. 12 S.C. 215.....109, 369
Leet v. Blumenthal, Q.R. 13 S.C. 250....52, 390
Lefaivre, Tremblay v., 4 Rev. de Jur. 275 371
Lefebvre, Brisson v., Q.R. 12 S.C. 1....192, 384
—— v. Castouguay, Q.R. 13 S.C. 467.. 4
Lefeunteum v. Beaudoin, 28 S.C.R. 89..16, 188
Légaré v. Esplin, Q.R. 12 S.C. 113.....271, 312
Legault v. Corporation de Coté St. Paul, Q.R. 12 S.C. 479.....299, 315
Legatt v. Brown, 29 Ont. R. 530 98
Leighton, ex parte, 33 N.B.R. 606.....68, 351
Leizert v. Township of Matilda, 29 Ont. R. 98.....297, 440

Lellis v. Lambert, 24 Ont. A.R. 653..... 202
LeMay, Mutual Assurance Co. v., Q.R. 12 S.C. 232.....53, 218
Lemire v. Duclos, Q.R. 13 S.C. 82..... 265
Lepage v. Alexander, Q.R. 12 S.C. 279..312, 416
LeRevers v. Canadian-Pacific Railway Co., Q.R 12. S.C. 128.....67, 347
Léveillé, Pellerin v., Q.R. 13 S.C. 311.... 459
Lévesque, Garon v., Q.R. 7 Q.B. 284 ....173, 328
Lewis, in re Estate of, 29 Ont. R. 609.... 11
—— v. Corriveau, Q.R 12 S.C. 93....191, 377
—— v. D'Entremont, 29 N.S.R. 546..163, 321
—— v. Doerle, 25 Ont. A.R. 206 470
—— v. Walker, Q.R. 13 S.C. 125....161, 190
Light v. Hawley, 29 Ont. R. 25 .....60, 339
Limoilou, Corporation of, v. Seminary of Quebec, Q.R. 7 Q.B. 44.....36, 304, 441
Lindberg v. City of Halifax, 31 N.S.R. 154..... 176
——, Holloway v., 29 N.S.R. 460; 30 N.S.R. 421.....186, 269
Lindsay, Klock v., 28 S.C.R. 453..... 238
—— v. Waldbrook, 24 Ont. A.R. 604 .. 470
Litman v. Montreal City & District Savings Bank, Q.R. 13 S.R. 262.....48, 57
Liverpool, London & Globe Ins. Co. v. Valentine, Q.R. 7 Q.B. 400.....3, 7, 47, 218
Livinson, Métivier v., Q.R. 13 S.C. 39.....
[89, 185, 441
Lloy v. Town of Dartmouth, 30 N.S.R. 208..... 316
Logue v. Prescott, 18 C.L.T. (Occ. N.) 110 431
Lohnes, Gates v., 31 N.S.R. 221..... 247
London Free Press Printing Co., Bartram v., 18 Ont. P.R. 11.....111, 249
London Street Railway Co., Dawson v., 18 Ont. P.R. 223 .....356, 444
——, Fraser v., 29 Ont. R. 411.....369, 444
Long v. Ancient Order of United Workmen, 25 Ont. A.R. 147..... 51
Longueuil, Town of, Page v., Q.R. 7 Q.B. 262.....92, 266, 290
Lookout Mining Co., Corbin v., 5 B.C.R. 281.....276, 368
Loranger, Crédit Foncier Franco-Canadian v., Q.R. 13 S.C. 353.....211, 419
——, —— v., Q.R. 13 S.C. 360....323, 420
Lott v. Cameron, Re, 29 Ont. R. 70....171, 393
Lowther v. Johnson, 34 C.L.J. 430 241
Luckhart, Re, 29 Ont. R. 111 .....175, 281
Luffman v. Luffman, 25 Ont. A.R. 48.... 432
Lumbers, Gold Medal Furniture Co. v., 29 Ont. R. 75 238
Lusher, Beaudry v., Q.R. 13 S.C. 294.... 4, 40
Lussier v. Martineau, Q.R. 12 S.C. 437....
[250, 347
—— v. ——, 5 Q.R. 7 Q.B. 473..... 341
Lyman, Wilson v., 25 Ont. A.R. 303..... 451
Lyon, The Queen v., 29 Ont. R. 497..... 131
—— v. Marriott, 5 B.C.R. 157.....183, 356

M

Macaulay, a solicitor, In re, 18 Ont. P.R. 184..... 434
——, Cowan v., 5 B.C.R. 495 .....4, 22
—— v. O'Brien, 5 B.C.R. 510.....12, 66, 152
Machan, Petrie v., 28 Ont. R. 642.....170, 389
Madden v. Nelson and Fort Sheppard Railway Co., 5 B.C.R. 541.....86, 401

Mad-Mea.] COLUMN

Madden v. Nelson and Fort Sheppard Railway Co., 5 B.C.R. 670 23
Magann v. Ferguson, 29 Ont. R. 235 ..... 46, 242
——— v. ———, 18 Ont. P.R. 201 337
Maguire v. Hart, 28 S.C.R. 272 153
Mail Printing Company v. Clarkson, 25 Ont. A.R. 1 153
———, Palmer v., 28 Ont. R. 656 237
Maillé v. Union des Ouvriers Boulangers, Q.R. 12 S.C. 526 50
Maillet v. Roy, Q.R. 12 S.C. 375 240
Mainville, Ex parte, 1 Can. C.C. 528 231
Maisonneuve, Grothé v., Q.R. 13 S.C. 345 ..... 11, 204, 322, 358
Major, In re, 5 B.C.R. 244 283
———, Bank of Montreal v., 5 B.C.R. 156 ..... 120, 163
———, ——— v., 5 B.C.R. 155 368
——— v. ———, 5 B.C.R. 181 ..... 340, 356
Malcolm, Maxwell v., 33 N.B.R. 595 105
——— v. Perth Mutual Fire Insurance Company, 29 Ont. R. 406 264
Mallet v. Martineau, Q.R. 13 S.C. 510 ..... 150, 311
Mallory, Stockton v., 34 C.L.J. 579 ..... 160, 197
Malone, Renehan v., 1 N.B. Eq. 506 469
Maloney v. Campbell, 28 S.C.R. 228 ..... 8, 280
Mandarin Gold Mining Company of Ontario, Hermann v., 18 Ont. P.R. 34 380
Manitoba and North-Western Railway Company, Allan v., 12 Man. R. 57 349
———, Grey v., 12 Man. R. 32 and 57 ..... 163, 349
Mann, Seyfang v., 25 Ont. A.R. 179 ..... 321, 334
Manning v. Robinson, 29 Ont. R. 483 471
Manufacturers Life Assurance Co. v. Anctil, 28 S.C.R. 103 220
Marcotte v. Hénault, Q.R. 13 S.C. 453. 149
Maritime Railway News Company, Banque d'Hochelaga v., 31 N.S.R. 9. 334
Marquis, Banque du Peuple v., Q.R. 12 S.C. 378 242
Marriott, Lyon v., 5 B.C.R. 157 ..... 183, 356
Marsan v. Banque d'Hochelaga, Q.R. 7 Q.B. 40 ..... 28, 232
Marshall, Cowans v., 28 S.C.R. 161 316
——— v. Matheson, 31 N.S.R. 238 340
Martel, Bellefleur v., Q.R. 12 S.C. 3 102
Martin, Ex parte, 34 N.B.R. 142 36
——— v. Martin, 1 N.B. Eq. 515 332
———, San Francisco v., 5 B.C.R. 538. 107
Martineau v. Lussier, Q.R. 12 S.C. 437 ..... 250, 347
———, ——— v., Q.R. 7 Q.B. 473 341
———, Mallet v., Q.R. 13 S.C. 510 ..... 150, 311
Mason, Dingwall v., Q.R. 12 S.C. 333 250
Massey-Harris Co., Crayston v., 12 Man. R. 95 123
——— v. Warrener, 12 Man. R. 48 183
Masters v. Adams, 34 C.L.J. 702 348
Mathers, Re., 18 Ont. P.R. 13 214
Matheson, Marshall v., 31 N.S.R. 238 340
Mathieu, Re, 29 Ont. R. 546 324
Matilda, Township of, Leizert v., 29 Ont. R. 98 ..... 297, 440
Matte v. Chenevert, Q.R. 12 S.C. 141 ..... 322, 369
Matthews v. City of Victoria, 5 B.C.R. 284 380
Maxwell v. Malcolm, 33 N.B.R. 595 105
Mead, Haney v., In re, 34 C.L.J. 330 ..... 103, 215

Mel-Mon.] COLUMN

Melchers and DeKuyper, In re, 6 Ex. C.R. 82 451
Mellett, Gallant v., 18 C.L.T. (Occ. N.) 199 254
Mellow, Fitchett v., 18 Ont. P.R. 161 ..... 118, 121
———, Fitchett v., 25 Ont. R. 6 464
Menard, Richelieu Valley Railway Co. v., Rev. de Jur. 109 31
Mendel v. Berthiaume, Q.R. 13 S.C. 256 ..... 237, 366
Merchants' Bank of Canada v. Sauvalle, Q.R. 12 S.C. 200 196
Mercier v. Bouffard, Q.R. 12 S.C. 385 326
——— v. Moisan, Q.R. 12 S.C. 337 326
Merritt's Trusts, In re Charles, 1 N.B. Eq. 425 110
Merritton Wood and Pulp Co., Davidson v., 18 Ont. P.R. 139 344
Methodist Church, Macdonald v., 5 B.C.R. 521 ..... 22, 382
Métivier v. Livinson, Q.R. 13 S.C. 39 ..... [89, 185, 441
——— v. Wand, Q.R. 13 S.C. 445 ..... 253, 417
Michaud, ex parte, 34 N.B.R. 123 ..... 235, 260
Might, Ex parte, 34 N.B.R. 127 85
Mignault v. Town of Fraserville, Q.R. 13 S.C. 421 290
Miles v. Ankatell, 29 Ont. R. 21 194
Miller, ex parte; In re Miller v. Smith, 34 N.B.R. 5 191
———, Dimock v., 30 N.S.R. 74 241
———, Johnston v., 31 N.S.R. 83 189
——— v. Hamilton Police Benefit Fund 28 S.C.R. 475 49
——— v. Miller, 34 C.L.J. 743 ..... 466, 472
——— v. Smith, In re; Ex parte Miller, 34 N.B.R. 5 191
——— v. Wolfe, 30 N.S.R. 277 453
Millier, Curtis v., Q.R. 7. Q.B. 415 95
Milligan, Gillard v., 28 Ont. R. 645 ..... 45, 190
Millington, McLennan v., 5 B.C.R. 345 ..... [150, 240
Mills, Hicks v., Re, 18 Ont. P.R. 123 118
———, Kirkpatrick, 30 N.S.R. 426 251
——— McLean v. (Annapolis Election Case), 29 N.S.R. 452 327
Minhinnick v. Jolly, 29 Ont. R. 238 194
Mireau v. Gorm, Q.R. 12 S.C. 286 380
Mitchell, Freeman v., 30 N.S.R. 513 166
——— v. Kinnear, 1 N.B.Eq. 427 ..... 110, 284
Mitten, Wright v., 34 N.B.R. 14 ..... 203, 461
Moisan, Mercier v., Q.R. 12 S.C. 337 326
———, Société Breiveillante St. Roche v., Q.R. 7 Q.B. 128 ..... 50, 221
Molsons Bank, Eitzgerald v., 29 Ont. R. 105 285
Monaghan, The Queen v., 18 C.L.T. (Occ. N.) 45; 34 C.L.T. 55 ..... 140, 212, 409
Monastery of the Precious Blood, Murphy v., 18 C.L.T. (Occ. N.) 225 472
Monetary Times Printing Company of Canada, Rondot v., 18 Ont. P.R. 141 117
Mongrau, Fontaine v., Q.R. 12 S.C. 20 106
Mongenais v. Henderson, 34 C.L.J. 54 117
Monpas v. Corporation de St. Pierre les Becquets, 4 Rev. de Jur. 141 ..... 113, 351
Montgomery, Webb v., 5 B.C.R. 323 ..... 90, 276
Montmagny Assurance Co., Talbot v., Q.R. 12 S.C. 64 ..... 76, 385

Mon-Mul.] COLUMN

Montminy, The Queen v., Q.R. 12 S.C. 143 427
Montpetit v. Morin, Q.R. 13 S.C. 201 458
Montreal and Ottawa Railway Co. and Ogilvie, Re, 18 Ont. P.R. 120 ..... 141, 399
Montreal, City of, Beech v., Q.R. 13 S. C. 187 300
——, ——, v. Davidson, Q.R. 7 Q.B. 1 298
——, ——, Davidson v., 28 S.C.R. 421 322
——, ——, v. Gauthier, Q.R. 7 Q.B. 100 ..... 148, 306
——, ——, Gibeau v., Q.R. 13 S.C. 473 296
——, ——, Hickey v., Q.R. 12 S.C. 195 116
——, ——, v. Mulcair, 28 S.C.R. 458 306
——, ——, Mousseau v., Q.R. 12 S.C. 61 ..... 127, 265
——, ——, Ramsay v., Q.R. 7 Q.B. 214 294
——, ——, Stuart v., Q.R. 6 Q.B. 555 ..... 36, 285
——, ——, Tougas v., Q.R. 12 S.C. 532 ..... 299, 315
——, ——, Vaudry v., Q.R. 13 S.C. 531 ..... 300, 464
—— City and District Savings Bank, Litman v., Q.R. 13 S.C. 262 ..... 48, 57
—— Gas Co. v. Cadieux [1898], A.C. 718 ..... 17, 105
——, ——, v., 28 S.C.R. 382 ..... 89, 439
—— Harbour Commissioners, Dussault v., Q.R. 12 S.C. 417 ..... 201, 374
—— Lithographing Co., Sabiston v., Q.R. 6 Q.B. 510 ..... 80, 198
—— Park and Island Railway Co., Shannon v., 28 S.C.R. 374 ..... 14, 30
——, ——, Ville de St. Louis v., Q.R. 13 S.C. 280 232
—— Street Railway Co., Kelly v., Q.R. 13 S.C. 385 ..... 313, 343
Moore v. Kennedy, 12 Man. R. 173 364
Moore, Township of, Stephens v., 25 Ont. A.R. 42 293
Moorhouse v. Kidd, 25 Ont. A.R. 221 391
Moranville v. Demers, Q.R. 13 S.C. 1 ... 342
Moreau v. Demers, Q.R. 12 S.C. 464 379
Morency v. Fortier, Q.R. 12 S.C. 68 ..... [199, 213, 383
Morgan v. Bartels, Q.R. 12 S.C. 125 .... 205, 415
Morin, Banque Jacques Cartier v., Q.R. 13 S.C. 331 ..... 197, 375
——, Montpetit v., Q.R. 13 S.C. 201 .. 458
Morine, Clattenburg v., 30 N.S.R. 221 .. 122
Morphy v. Fawkes, 18 Ont. P.R. 24 118
Morris, The Queen v., 18 C.L.T. (Occ. N.) 41 64
Morrison, Boucher v., Q.R. 13 S.C. 205 [174, 230
Morrissey, Zweig v., 5 B.C.R. 484 362
Morrow v. Lancashire Insurance Company, 29 Ont. R. 377 217
Morton v. Bank of Montreal, 18 C.L.T. (Occ. N.) 157 114
Mousseau v. City of Montreal, Q.R. 12 S.C. 61 ..... 127, 265
Mulcahy v. Archibald, 30 N.S.R. 121 408
—— v. ——, 28 S.C.R. 523 155

Mul-McG.] COLUMN

Mulcair, City of Montreal v., 28 S.C.R. 458 306
Mullin v. Carey, Q.R. 13 S.C. 115 .... 206, 389
Mullins, McDougall v., 30 N.S.R. 313 .... [372, 381, 395
Munro, McMillan v., 25 Ont. A.R. 288 [180, 407
—— v. Quigley, 30 N.S.R. 360 248
Murphy v. Gauthier, Q.R. 12 S.C. 407 146
——, Kerr v., 34 C.L.J. 427 119
—— v. Monastery of The Precious Blood, 18 C.L.T. (Occ. N.) 225 472
Murray, Chubbock v., 30 N.S.R. 23 468
—— v. Jenkins, 28 S.C.R. 565 .... 93, 386, 421
——, Wilton v., 12 Man. R. 35 462
——, Shaw v., Q.R. 6 Q.B. 571 9
Mutual Assurance Co. v. LeMay, Q.R. 12 S.C. 232 ..... 53, 218
Mutual Life Assurance Co., of New York v. Anderson, 1 N.B. Eq. 466 221
—— v. Jonah, 1 N.B. Eq. 482 183

Mc

Macdonald v. City of Toronto, 18 Ont. P.R. 17 330
—— v. Boswell, Q.R. 12 S.C. 148 360
—— v. Bulmer, Q.R. 12 S.C. 424 257
—— v. Galivan, Q.R. 12 S.C. 496 14
—— v. ——, 28 S.C.R. 258 24
—— v. Methodist Church, 5 B.C.R. 521 [22, 382
Mackenzie v. Building and Loan Association, 28 S.C.R. 407 283
Maclean v. O'Brien, Q.R. 12 S.C. 110 .... 53, 205
McAllister, Alexander v., 34 N.B.R. 163 327
McAskill v. Power, 30 N.S.R. 189 ..... 58, 192
McBean v. Tessier, Q.R. 13 S.C. 242 .... 106, 230
McBride v. Hamilton Provident and Loan Society, 29 Ont. R. 161 ..... 182, 240
McCallum, Gray v., 5 B.C.R. 462 ..... 279, 334
McCann v. City of Toronto, 28 Ont. R. 650 ..... 305, 314
McCarthy, Carter v., Q.R. 6 Q.B. 499 .... 71, 160
McCaskill, Common v., Q.R. 13 S.C. 282 ..... 2, 79
McCauley, Re, 28 Ont. R. 610 466
McClusky, Reinhard v., 5 B.C.R. 226 .... 19, 438
McCoy, ex parte, 33 N.B.R. 605 ..... 63, 235
McCrimmon, Irvine v., Q.R. 13 S.C. 71 [251, 372
McDonald, Beattie v., 34 C.L.J. 198 172
——, David v., Q.R. 12 S.C. 4 ..... 445, 471
——, Jordan v., 31 N.S.R. 129 262
—— v. Lake Simcoe Ice and Cold Storage Co., 29 Ont. R. 247 ..... 309, 461
—— v. McDougall, 30 N.S.R. 298 ..... 340, 465
——, McPherson v., 34 C.L.J. 663 67
—— v. Township of Yarmouth, 29 Ont. R. 259 ..... 297, 315
McDougall, McDonald v., 30 N.S.R. 298 [340, 465
—— v. Mullins, 30 N.S.R. 313 .... 372, 381, 395
McEachern, Therrien v., 4 Rev. de Jur. 87 ..... 133, 236, 394
McEwan, McIlroy v., 12 Man. R. 164 123
McGreevy v. Quebec Harbour Commissioners, Q.R. 7 Q.B. 17 .... 90, 185, 269, 473
McGregor v. McKenzie, 30 N.S.R. 214 .. 54

McGuigan, Kilbourne v., 5 B.C.R. 233.. [275, 375
McIllmurray, Rielly v., 29 Ont. R. 167.. 252
McIlroy v. McEwan, 12 Man. R. 164 123
McIntosh, The Queen v., 28 Ont. R. 603 [28, 108, 136
McIntyre v. McKinnon, 31 N.S.R. 54.... 167
——— v. Silcox, 29 Ont. R. 593..... 220
McIsaac v. Broad Cove Coal Company, 31 N S.R. 108..... 351
McKay, Orwitz v., 31 N.S.R. 243..... 263
McKay's Sons v. The Queen, 6 Ex. C.R. 1.....144, 396
McKenzie, Building and Loan Association v., 24 Ont. A.R. 599..... 280
——— v. ———, 28 S.C.R. 407..... 283
——— v. Jackson, 31 N.S.R. 70..... 426
———, McGregor v., 30 N.S.R. 214..... 54
McKercher v. Gervais, Q.R. 12 S.C. 336 241
McKinnon, McIntyre v., 31 N.S.R. 54.... 167
McLaren, Queen's Hotel Co. v., Q.R. 12 S.C. 171 .....81, 372
McLaurin v. Seguin, Q.R. 12 S.C. 63.....57, 459
McLean v. Mills (Annapolis Election Case), 29 N.S.R. 452 327
McLennan v. Millington, 5 B.C.R. 345.. [150, 240
McLeod v. The Insurance Co. of North America, 30 N.S.R. 480 .....224, 367
———, The Queen, 30 N.S.R. 191..... 234
McMicking v. Gibbons, 24 Ont. A.R. 586 .....226, 283
McMillan v. Munro, 25 Ont. A.R. 288....180, 407
———, Palgrave Gold Mining Co. v., 31 N.S.R. 196 and 198.....116, 362
McNaughton, Vanbuskirk v., 34 N.B.R. 125..... 246
McNeil v. McPhee, 31 N.S.R. 140..... 157
McNichol, Ryan v., 1 N.B.Eq. 487..... 97
McPhee, McNeil v., 31 N.S.R. 140..... 157
McPherson v. McDonald, 34 C.L.J. 663.. 67
McRae, Hannum v., 18 Ont. P.R. 185.... 87

N

Nadeau, Fortier v., Q.R. 13 S.C. 340.... 421
Natural Gas and Oil Co. of Ontario, Tate v., 18 Ont. P.R. 82..... 329
Navert, Willis v., Q.R. 12 S.C. 280..... 242
Nealis, Kennedy v., 1 N.B. Eq. 455..... 432
Neil v. Almond, 29 Ont.R. 63..... 189
Neily, Garden v., 31 N.S.R. 89.....168, 389
Nelson & Fort Sheppard Railway Co. v. Jerry, 5 B.C.R. 166.....24, 114
——— v. ———, 5 B.C.R. 396..... 277
———, Madden v., 5 B.C.R. 541.....86, 401
———, ——— v., 5 B.C.R. 670..... 23
Neville, St. Pierre v., Q.R. 13 S.C. 54.. 309
Nevills v. Ballard, 1 Can. C.C. 434..... 127
——— v. ———, 18 Ont. P.R. 134...361, 434
New Glasgow, Town Council of, In re, 30 N.S.R. 107..... 63
Newman, Wells v., Q.R. 12 S.C. 216.... 254
———, Whitehead v., Q.R. 12 S.C. 14.. 377
New Westminster Gas Co., In re, 5 B.C. R. 618..... 79
Nichol v. Gocher, 12 Man. R. 177..... 207
Nicol, Lawlor v., 12 Man. R. 224..... 414

Noel, Garon v., 4 Rev. de Jur. 232.....9, 110
Nolton, Baillie v., Q.R. 12 S.C. 534.....71, 182
Noonan, Power v., Q.R. 13 S.C. 369..... 430
Nordheimer v. Farrell, Q.R. 12 S.C. 150 [329, 377
Norris, Re, 28 Ont. R. 636.....35, 303
North America Insurance Company, Bank of Toronto v., 18 Ont. P.R. 27.. 372
North American Transportation Co., Garneau v., Q.R. 12 S.C. 77..... 386
North British and Mercantile Ins. Co., Dupuis v., Q.R. 13 S.C. 443 .....8, 219
North Sydney Mining and Transportation Company v. Greener, 31 N.S.R. 41 78
Notre Dame de Bousecours, Corporation of, Canadian Pacific Railway Co. v., Q.R. 7 Q.B. 121 .....292, 401, 437
Nova Scotia Mining Co. v. Greener, 31 N.S.R. 189..... 404
Nova Scotia Marine Insurance Co., Cunard v., 29 N.S.R. 409..... 222
Nunns, Thomas v., Q.R. 12 S.C. 52....198, 391

O

O'Brien v. Christie, 30 N.S.R. 145..... 46
———, Macaulay v., 5 B.C.R. 510....12, 66, 152
———, Maclean v., Q.R. 12 S C. 110 .... [53, 205
Ockerman, In re, 18 C.L.T. (Occ. N.) 163 133
O'Connor v. Flynn, Q.R. 13 S.C. 436 .... [10, 149
——— v. Gemmill, 29 Ont. R. 47.....114, 433
O'Dell v. Boston and Nova Scotia Coal Company, 29 N.S.R. 385..... 72
———, Fry v., Q.R. 12 S.C. 263..... [163, 202, 210
Ogilvie, The Queen v., 6 Ex. C.R. 21.... 29
O'Handley v. Dooley, 31 N.S.R. 121 233
O'Keefe, Townsend v., 18 Ont. P.R. 147.....250, 344
O'Leary v. Francis, Q.R. 12 S.C. 243.... 112
———, ——— v., Q.R. 12 S.C. 254..... 113
Ollivier, Drummond Railway Co. v., Q. R. 7 Q.B. 41.....226, 399
Onderdonk, Smith v., 25 Ont. A.R. 171.. 312
O'Neil, Hawke v., 18 Ont. P.R. 163..... 365
——— v. Hobbs, 29 Ont. R. 487.....171, 337
Ontario and Rainy River Railway Co., Allen v., 29 Ont. R. 510..... 75
Ontario, Province of, and Province of Quebec v. Dominion of Canada, In re Common School Fund and Lands, 28 S.C.R. 609..... 82
Orwitz v. McKay, 31 N.S.R. 243..... 263
Ostrom v Sills, 28 S.C.R. 485..... 292
Ottawa, City of, County of Carleton v., 28 S.C.R. 606.....124, 301
———, ———, Dwyre v., 25 Ont., A.R. 121..... 359
Ottawa Electric Railway Co., Davis v., 28 Ont. R. 654..... 444
Ouellet v. Gauvin, Q.R. 13 S.C. 542.....9, 325
Ouimet v. Prévost, Q.R. 12 S.C. 135..... 191
Overseers of Poor, Brookfield, Carter v., 30 N.S.R. 225..... 48
Owen v. Sprung, 28 Ont. R. 607..... 27

P

Pacific Investment Co. v. Swann, 18 C. L.T. (Occ. N.) 124; 34 C.L.J. 207 ... [16, 359, 404
Page v. Town of Longueuil, Q.R. 7 Q.B. 262 ... 92, 266, 290
Palgrave Gold Mining Co., Auchterlony v. 29 N.S.R. 414 ... 282
Palgrave Gold Mining Co. v. McMillan, 31 N.S.R. 196 and 198 ... 116, 362
Palmer v. Mail Printing Company, 28 Ont. R. 656 ... 237
Paquet v. Lavoie, Q.R. 7 Q.B. 277 ... 85, 138
Paquin, The Queen v., Q.R. 7 Q.B. 319 ... [140, 430
Parent v. Schloman, Q.R. 12 S.C. 283 ... [271, 312
Paris v. Bishop of New Westminster, 5 B.C.R. 450 ... 126
Parke, Canadian Pacific Railway Co. v., 5 B.C.R. 507 ... 215, 368
Parker, Attorney-General v., 31 N.S.R. 202 ... 411
——, Douglas v., 12 Man.R. 152 ... 123
Parkin, Sawyer Massey Co. and, Re., 28 Ont. R. 662 ... 170
Patterson v. Central Canada Loan and Savings Company, 29 Ont.R. 134 ... 449, 460
—— v. City of Victoria, 5 B.C.R. 628 ... [301, 371
Paul, Richelieu & Ontario Navigation Co. v., Q.R. 12 S.C. 206 ... 100
Payne v. Caughell, 24 Ont.A.R. 556 ... 27, 463
Paynter, Clark v., 34 C.L.J. 639 ... 54
Pearson v. Canadian Pacific Railway Company, 12 Man.R. 112 ... 271
——, Hart v., Q.R. 12 S.C. 540 ... 432
Peck, ex parte, 33 N.B.R. 623 ... 160, 197
Pellerin v. Léveillé, Q.R. 13 S.C. 311 ... 459
Pelletier v. Lapalme, Q.R. 12 S.C. 97 ... 173, 202
Péloquin v. Genser, Q.R. 12 S.C. 229 ... 347
Perrault v. Gauthier, 28 S.C.R. 241 ... 5, 452
Perry, Heywood v., ex parte Heywood, 34 N.B.R. 8 ... 34, 152
Perth Mutual Fire Insurance Company, Malcolm v., 29 Ont. R. 406 ... 264
Peters, Chisholm v., 31 N.S.R. 16 ... 335
Petersky, The Queen v., 5 B.C.R. 549 ... 289
——, —— v., 1 Can. C.C. 91 ... 140
Peterson, Cunnington v., 29 Ont. R. 346 ... 54
Petrie v. Machan, 28 Ont. R. 642 ... 170, 389
Petty, Wells v., 5 B.C.R. 353 ... 276, 333
Phair, Whitla v., 12 Man. R. 122 ... 97
Phelan, Rae v., Q.R. 13 S.C. 491 ... 244
Phillips v. Prout, 12 Man. R. 143 ... 280
Phœnix Insurance Company of Hartford, Keefer v., 29 Ont. R. 394 ... 217
Piché, Vézina v., Q.R. 13 S.C. 213 ... [55, 239, 340
Picotte v. Wand, Q.R. 13 S.C. 343 ... 375
Pictou Iron Foundry Company v. Archibald, 30 N.S.R. 262 ... 415
Pilkington, Glengoil Steamship Co. v., 28 S.C.R. 146 ... 431
Pillsbury, Brissette v., 4 Rev. de Jur. 243 ... [9, 258
Pinault, Carpenter v., Q.R. 13 S.C. 352 ... 383
Pinsonnault v. Grant, Q.R. 12 S.C. 339 ... 322

Pinsonnault, Tessier v., Q.R. 13 S.C. 382 ... 199, 458
Piper v. King's Dyspepsia Cure Co., 30 N.S.R. 429 ... 363
Pitfield v. Guest, 18 C.L.T. (Occ. N.) 144 ... 372
Plamondon, In re, Q.R. 13 S.C. 377 ... [42, 147, 161
Poirier, Anderson v., Q.R. 13 S.C. 283 ... 56, 211
Poitras v. Brown, Q.R. 12 S.C. 497 ... 56, 204
—— v. Drolet, Q.R. 12 S.C. 461 ... 192, 374
——, Thibault v., Q.R. 13 S.C. 481 ... 8, 12
Polson, Wright v., 30 N.S.R. 437 ... 88
Ponton, The Queen v., 18 Ont. P.R. 210 ... 383
Port Perry, Grand Trunk Railway Co. v., 34 C.L.J. 239 ... 35
Postill v. Traves, 5 B.C.R. 374 ... 124, 233
Poulin, Vachon v., Q.R. 7 Q.B. 60 ... 93, 257
Poupore, The Queen v., 6 Ex. C.R. 4 ... 143
Powell v. Toronto, Hamilton & Buffalo Railway Co., 25 Ont. A.R. 209 ... 400
—— v. Watters, 28 S.C.R. 133 ... 165, 262, 459
Power, McAskill v., 30 N.S.R. 189 ... 58, 192
—— v. Noonan, Q.R. 13 S.C. 369 ... 430
—— v. Pringle, 31 N.S.R. 78 ... 346
Powers and the Township of Chatham, Re, 29 Ont. R. 571 ... 288
Pratt, Consolidated Electric Co. v., 28 S.C.R. 603 ... 14, 104
—— v. ——, 34 N.B.R. 23 ... 74
Prentice, Harrison v., 24 Ont. A.R. 677 ... 427
Prescott, Laughlan v., 1 N.B. Eq. 406 ... 145
——, Logue v., 18 C.L.T. (Occ. N.) 110 ... 431
Prévost, Ouimet v., Q.R. 12 S.C. 135 ... 191
Price, Richards v., 5 B.C.R. 362 ... 277
Prince, Clairmonte v., 30 N.S.R. 258 ... 366
Pringle, Power v., 31 N.S.R. 78 ... 346
Proulx v. Beausoleil, Q.R. 13 S.C. 508 ... 303
——, Gagnon v., Q.R. 13 S.C. 189 ... 147, 161
Prout, Phillips v., 12 Man. R. 143 ... 280
Provincial Provident Institution, Jordan v., 28 S.C.R. 554 ... 219
Purdy, Gray v., 5 B.C.R. 241 ... 160, 403
Purtle v. Heney, 33 N.B.R. 607 ... 89, 413

Q

Quebec, City of, Durand v., Q.R. 13 S.C. 308 ... 174, 189
——, ——, v. Quebec, Montmorency and Charlevoix Railway Co., Q.R. 12 S.C. 276 ... 211, 423
—— Fire Insurance Company, Bank of Toronto v., 18 Ont. P.R. 41 ... 355
—— Harbour Commissioners, McGreevy v., Q.R. 7 Q.B. 17 ... 90, 185, 269, 473
——, Montmorency and Charlevoix Railway Co., City of Quebec v., Q.R. 12 S.C. 276 ... 211, 423
—— North Shore Turnpike Road Trustees, Tremblay v., Q.R. 13 S.C. 329 ... 461
—— Steamship Co., Chartier v., Q.R. 12 S.C. 261 ... 269, 312
Queen, The, v. Aldous, 5 B.C.R. 220 ... 19
——, Alliance Assurance Company v., 6 Ex. C.R. 76 ... 144
——, Balderson v., 28 S.C.R. 261 ... 70

Que-Que.] COLUMN

Queen, The, v. Buchanan, 12 Man. R. 190 ..... 70, 127, 139
——— v. Cameron, Q.R. 7 Q.B. 162 ... 137, 247
———, Canada Sugar Refining Co. v. [1898], A.C. 735 ..... 411, 438
——— v. Chipman, 5 B.C.R. 349 ..... 236, 286
——— v. Clouthier, 12 Man. R. 183 139
——— v. Conlin, 29 Ont. R. 28 136
——— v. Corby, 30 N.S.R. 330 138
——— v. Coté, Q.R. 12 S.C. 476 6
———, Davidson v., 6 Ex. C.R. 51 396
——— v. ———, 1 Can. C.C. 351 131
——— v. Demers, Q.R. 7 Q.B. 433 .. 84, 93, 95
———, ——— v., Q.R. 7 Q.B. 433 .. 84, 93, 95
——— v. Dibblee, ex parte Kavanagh, 34 N.B.R. 1 ..... 63, 235
——— v. Dixon, 29 N.S.R. 462 ..... 134, 141
——— v. Dyas, 1 Can. C.C. 534 261
——— v. Edwards, 29 Ont. R. 451 137
——— v. Fitzgerald, 29 Ont. 203 ..... 137, 395
——— v. Foster (Estate of Esson), 30 N.S.R. 1 392
——— v. France, Q.R. 7 Q.B. 83 ... 137, 141, 441
——— v. Gavin, 1 Can. C.C. 59 64
——— v. Gibbons, 12 Man. R. 154 133
——— v. Gibson, 29 Ont. R. 660 ..... 137, 236
——— v. Gillespie, 1 Can. C.C. 551 77
———, Goodwin v., 28 S.C.R. 273 96
———, ex rel. Hall v. Gowanlock, In re 29 Ont. R. 435 ..... 121, 302
——— v. Graham, 29 Ont. R. 193 ..... 28, 108
——— v. Grant, 30 N.S.R. 368 259
——— v. Grenier, Q.R. 6 Q.B. 563 248
——— v. Halifax Electric Tramway Company, 1 Can. C.C. 424; 30 N.S.R. 469 ..... 86, 446
——— v. Hamilton, 30 N.S.R. 322 138
——— v. Hammond, 29 Ont. R. 211 ..... [102, 130, 437
——— v. Hartlen, 30 N.S.R. 317 ..... 128, 437
——— v. Henderson, 28 S.C.R. 425 ..... [97, 226, 395, 436
———, ——— v., 6 Ex. C.R. 39 143
——— v. Herrell, 12 Man. R. 198 260
——— v. Holmes, 29 Ont. R. 362 135
——— v. Horton, 31 N.S.R. 217 139
——— v. Howarth, 1 Can. C.C. 243 132
——— v. Hughes, 29 Ont. R. 179 258
——— v. Kilroe, 6 Ex. C.R. 80 359
———, Koksilah Quarry Co. v., 5 B.C.R. 525 94
———, ——— v., 5 B.C.R. 600 ..... 20, 442
——— v. Lalonde, Q.R. 7 Q.B. 201 136
——— v. ———, Q.R. 7 Q.B. 260 136
——— v. ———, Q.R. 7 Q.B. 204 ... 102, 129, 182
——— v. Lawrence, 5 B.C.R. 160 ..... 41, 141
——— v. Leclair, Q.R. 7 Q.B. 287 ..... 142, 209
——— v. Lyon, 29 Ont. R. 497 131
——— v. Monaghan, 18 C.L.T. (Occ. N.) 45; 34 C.L.J. 55 ..... 140, 212, 409
——— v. Montminy, Q.R. 12 S.C. 143 .. 427
——— v. Morris, 18 C.L.T. (Occ. N.) 41 64
——— v. McIntosh, 28 Ont. R. 603 .. 28, 108, 136
———, McKay's Sons v., 6 Ex. C.R. 1 .. 144, 396
——— v. McLeod, 30 N.S.R. 191 284
——— v. Ogilvie, 6 Ex. C.R. 21 29
——— v. Paquin, Q.R. 7 Q.B. 319 ..... 140, 430
——— v. Petersky, 5 B.C.R. 549 289
——— v. ———, 1 Can. C.C. 91 140

Que-Ren.] COLUMN

Queen, The, v. Ponton, 18 Ont. P.R. 210 383
———, Poupore v., 6 Ex. C.R. 4 143
——— v. Riley, Q.R. 7 Q.B. 198 142
——— v. Sivewright, 34 N.B.R. 144 ..... [86, 144, 252, 476
——— v. Skelton, 18 C.L.T. (Occ. N.) 205 140
——— v. Stafford, 1 Can. C.C. 239 140
——— v. Sternaman, 29 Ont. R. 33 129
——— v. Stevens, 31 N.S.R. 124 259
———, St. Lawrence Sugar Refining Co. v., 6 Ex. C.R. 1 ..... 144, 396
——— v. Strauss, 5 B.C.R. 486 ..... 343, 438
——— v. ———, 1 Can. C.C. 103 196
——— v. The T. Eaton Co. Ltd., 29 Ont. R. 591 137
——— v. Troop, 30 N.S.R. 339 132
——— v. Viau, Q.R. 7 Q.B. 362 ..... 130, 182
——— v. Victoria Lumber Co., 5 B.C. R. 288 37
——— v. ———, 5 B.C.R. 305 ..... 20, 392
——— v. Walsh, 29 Ont. R. 36 258
——— v. ———, 29 N.S.R. 521 ..... 68, 258
——— v. Williams, 28 Ont. R. 583 129
———, Woodburn, v., 6 Ex. C.R. 12 143
———, ——— v., 6 Ex. C.R. 69 17
——— v. Woods, 5 B.C.R. 585 130
——— v. Wotton, 34 C.L.J. 746 261
——— v. Wyse, 1 Can. C.C. 6 132
Queen's Hotel Co. v. McLaren, Q.R. 12 S.C. 171 ..... 81, 372
Quintal v. Chalmers, 34 C.L.J. 640; 12 Man. R. 231 ..... 186, 370, 376
Quigley, Munro v., 30 N.S.R. 360 248

R

Radam v. Shaw, 28 Ont. R. 612 452
Rae v. Phelan, Q.R. 13 S.C. 491 244
Rainville v. Grand Trunk Railway Co., 28 Ont. R. 625 184
——— v. ———, 25 Ont. A.R. 242 400
Raleigh and Harwich, Townships of, Re, 18 Ont. P.R. 73 ..... 27, 382
Raleigh, Township of, Thackeray v., 25 Ont. A.R. 226 293
Ramsay v. City of Montreal, Q.R. 7 Q.B. 214 294
Ranger v. Grand Trunk Railway Co., Q.R. 13 S.C. 471 ..... 401, 437
Rapid City Farmers' Elevator Company, Currie v., 12 Man. R. 105 424
Rawlins, Worden v., 1 N.B. Eq., 450 119
Raymond v. Bossé, Q.R. 12 S.C. 173 .. 209
Rayworth, ex parte, 34 N.B.R. 74 ..... 63, 109
Real Estate Loan Company v. Guardhouse, Re; Newlove, garnishee, 29 Ont. R. 602 172
Reburn, Virtue v., Q.R. 12 S.C. 343 ... 116, 430
Receiver-General of Canada, Hogaboom v., In re Central Bank, 28 S.C.R. 192 ..... 48, 373
Reid, ex parte, 34 N.B.R. 133 ..... 49, 394
Reinhard v. McClusky, 5 B.C.R. 226 ... 19, 438
Regina, Town of, Doidge v., 18 C.L.T. (Occ. N.) 163 358
Renaud v. Brown, Q.R. 12 S.C. 237 ..... [61, 204, 350
Renehan v. Malone, 1 N.B. Eq. 506 469
Renfrew, Re, 29 Ont. R. 565 411

Rennie v. Frame, 29 Ont. R. 586 255
Renouf, Canada Settlers' Loan Co. v., 5 B.C.R. 243 ..... 282, 352
Rhind, Burris v., 30 N.S.R. 405 175
Rhodenhizer v. Bolliver, 31 N.S.R. 236 325
Rice v. Town of Whitby, 25 Ont. A.R. 191 296
Richards v. British Columbia Goldfields Co., 5 B.C.R. 483 ..... 74, 357
——— v. Price, 5 B.C.R. 362 277
Richardson, Bank of Montreal v., 34 C.L.J. 329 208
Richelieu & Ontario Navigation Co. v. Paul, Q.R. 12 S.C. 206 100
———, Tremblay v., Q.R. 12 S.C. 210 .. 310
———, Wetzlar v., Q.R. 13 S.C. 336 319
Richelieu Valley Railway Co. v. Menard, 4 Rev. de Jur. 109 31
Richer v. Corporation of Ste. Geneviève, Q.R. 13 S.C. 338 ..... 16, 327
Richmond, Corporation of v. Richmond Industrial Co., Q.R. 12 S.C. 81 ..... 19, 354
Richmond Industrial Co., Corporation of Richmond v., Q.R. 12 S.C. 81 ..... 19, 354
Rielly v. Mclllmurray, 29 Ont. R. 167 252
Riendeau v. Dudevoir, Q.R. 12 S.C. 273 303
Riley, The Queen v., Q.R. 7 Q.B. 198 142
Riou v. Riou, 28 S.C.R. 53 428
Rithet v. Beaven, 5 B.C.R. 457 ... 59, 126, 281
Ritz v. Schmidt, 12 Man.R. 138 ..... 362, 378
Robb, Bellingham v., Q.R. 12 S.C. 454 347
———, ——— v., Q.R. 13 S.C. 248 191
Roberge v. Vachon, Q.R. 13 S.C. 72 429
Robert, Sharpe v., Q.R. 13 S.C. 277 190
Roberts v. Coughlin, 18 Ont. P.R. 94 111
———, Cull v., 28 Ont. R. 591 417
Robertson v. Trustees of School District No. 2 Durham, 34 N.B.R. 103 ..... 270, 426
———, Zirkler v., 3 N.S.R. 61 272
Robinson, Bourdais v., Q.R. 12 S.C. 201 .. 61, 252
———, Manning v., 29 Ont. R. 483 471
Rochon, Budden v., Q.R. 13 S.C. 322 [53, 162, 229, 382
Roden and the City of Toronto, In re, 25 Ont. A.R. 12 439
Rolland v. Dawes, Q.R. 13 S. C. 52 319
Rondot v. Monetary Times Printing Co. of Canada, 18 Ont. P.R. 141 117
Roper v. Hopkins, 29 Ont. R. 580 125
Ross v. Adams, 34 N.B.R. 158 ..... 187, 431
———, Bauld v., 31 N.S.R. 33 406
———, Wentzell v., 30 N.S.R. 136 418
Routledge, Day v., 12 Man. R. 290 447
——— v. Routledge, 30 N.S.R. 151 207
Roy, Desjardins v., Q.R. 7 Q.B. 325 ..... [99, 101, 445
——— v. Ellis, Q.R. 7 Q.B. 222 451
———, Maillet v., Q.R. 12 S.C. 375 240
——— v. School Commissioners of Longueuil, Q.R. 12 S.C. 16 425
Rudolf v. British and Foreign Marine Insurance Co., 30 N.S.R. 380; 28 S.C.R. 607 223
Runians, Arthur & Co. v., 18 Ont. P.R. 205 ..... 344, 356
Ryan v. McNichol, 1 N.B. Eq. 487 97

S

Sabiston v. Montreal Lithographing Co., Q.R. 6 Q.B. 510 ..... 80, 198

Sabiston, White v., Q.R. 12 S.C. 345 57
Sands v. Fisher, 30 N.S.R. 185 362
San Francisco v. Martin, 5 B.C.R. 538 107
Sapuyère, Généreux v. Q.R. 13 S.C. 56 390
Sault Ste. Marie Pulp and Paper Co., Drake v., 25 Ont. A.R. 251 ..... 308, 461
Saunders v. City of Toronto, 29 Ont. R. 273 ..... 272, 315
Sauvalle, Merchants Bank of Canada v., Q.R. 12 S.C. 200 196
Savage, Valiquette v., Q.R. 12 S.C. 421 184
Savard v. School Commissioners of Cap Sauté, Q.R. 13 S.C. 276 425
Sawyer Massey Co. and Parkin, Re, 28 Ont. R. 662 ..... 170, 416
Scaife, In re, 5 B.C.R. 153 ..... 87, 129
Scarry v. Wilson, 12 Man. R. 216 ..... 104, 456
Schambier v. Corporation of Halifax South, Q.R. 12 S.C. 197 286
Schiller v. Daoust, Q.R. 12 S.C. 185 343
Schimanski v. Higgins, Q.R. 13 S.C. 348 242
Schloman, Parent v., Q.R. 12 S.C. 283 [271, 312
Schnare v. Zwicker, 31 N.S.R. 177 125
Schmidt, Ritz, 12 Man. R. 138 ..... 362, 378
School Commissioners of Cap Santé, Savard v., Q.R. 13 S.C. 276 425
School Commissioners for the Village of la Coté des Neiges v. Sisters of the Congregation of Notre Dame of Montreal, Q.R. 12 S.C. 444 305
School Commissioners of Longueuil, Roy v., Q.R. 12 S.C. 16 425
School Commissioners of St. Raphael, Tousignant v., Q.R. 7 Q.B. 270 227
School Trustees of St. Henry v. Solomon, Q.R. 12 S.C. 179 425
Scott, Boggs v., 34 N.B.R. 110 370
———, Commercial Bank of Windsor v., 30 N.S.R. 401 151
———, Glen v., 18 C.L.T. (Occ. N.) 162 281
———, Thibadeau v., 1 N.B. Eq. 505 113
Scottish Ontario and Manitoba Land Company and Defoe v. City of Toronto, 29 Ont. R. 459 308
Scottish Union Ins. Co., Cope and Taylor v., 5 B.C.R. 329 ..... 218, 370
Seguin v. Cartier, Q.R. 13 S.C. 346 .... 65, 107
———, McLaurin v., Q.R. 12 S.C. 63 .... 57, 459
Seminary of Quebec, Corporation of Limoilou v., Q.R. 7 Q.B. 44 ..... 36, 304, 441
Seyfang v. Mann, 25 Ont. A.R. 179 ..... 321, 334
Shallcross v. Garesche, 5 B.C.R. 320 ..... 10, 329
Shannon v. Montreal Park & Island Railway Co. 28 S.C.R. 374 ..... 14, 30
Sharpe v. Robert, Q.R. 13 S.C. 277 190
Shaw v. Murray, Q.R. 6 Q.B. 571 9
———, Radam v., 28 Ont. R. 612 452
Shepperd v. Hoffman, Q.R. 12 S.C. 228 146
Sherlock, Re, 18 Ont. P.R. 6 ..... 18, 467
———, Re, 28 Ont.R. 638 466
Shorey, Hart v., Q.R. 12 S.C. 84 ..... 149, 202
Shoultz, St. Denis v., 25 Ont. A.R. 131. 264
Silcox, McIntyre v., 29 Ont.R. 593 221
Sills, Ostrom v., 28 S.C.R. 485 292
Simon, Inch v., 12 Man. R. 1 59
Sinclair v. Brown, 29 Ont. R. 370 ..... 169, 440

Sisters of the Congregation of Notre Dame of Montreal, School Commissioners of the Village of la Coté De Neiges v., Q.R. 12 S.C. 444 305
Sivewright, The Queen v., 34 N.B.R. 144 ..... 86, 144, 252, 476
Skelton, The Queen v., 18 C.L.T. (Occ. N.) 205 140
Slattery v. R. G. Dun & Co., 18 Ont. R. 168 ..... 111, 249
Small v. Thompson, 28 S.C.R. 219 ..... 165, 203
Small Debts Act, In re, 5 B.C.R. 246 ..... 7, 85
Smedley v. British American Assurance Company, 18 Ont. P.R. 92 355
Smith v. Boyd, 18 Ont. P.R. 76 339
——— v. City of Vancouver, 5 B.C.R. 491 301
———, Conn v., 28 Ont.R. 629 43
———, Graham v., Q.R. 12 S.C. 240 ..... 312, 453
——— v. Griffin, Q.R. 13 S C. 221 ..... 232, 374
——— v. Hayes, 29 Ont.R. 283 ..... 214, 310
———, Hjorth v., 5 B.C.R. 369 ..... 168, 385
——— v. Hood, Q.R. 13 S.C. 341 ..... 247, 347
———, Langan v., Q.R. 12 S.C. 529 ..... 3, 146, 445
———, Miller v., In re; Ex parte Miller, 34 N.B.R. 5 191
——— v. St. John City Railway Co., 28 S.C.R. 603 ..... 14, 104
——— v. Onderdonk, 25 Ont. A.R. 171 312
——— v. Smith, 29 Ont.R. 309 ..... 94, 324
Snow v. Fraser, 30 N.S.R. 80 366
———, Hawkins v., 29 N.S.R. 444 265
Société Bienveillante St. Roch v. Moisan, Q.R. 7 Q.B. 128 ..... 50, 221
Solomon, School Trustees of St. Henry v., Q.R. 12 S.C. 179 425
Sombra, Township of, v. Township of Chatham, 28 S.C.R. 1 292
Sonier, Ex parte, 34 N.B.R. 84 ..... 64, 235
Soucy v. Lebel, Q.R. 12 S.C. 203 ..... 173, 191
Southgate, Star Life Assurance Society v., 18 Ont. P.R. 151 361
Sparks v. Wolff, 25 Ont. A.R. 326 466
Spencer v. Cowan, 5 B.C.R., 151 23
Spenger v. Graveley, 34 C.L.J. 135 60
Sprung, Owen v., 28 Ont. R. 607 27
Stadacona Light and Power Co., Akinson v., Q.R. 12 S.C. 289 ..... 77, 396
Stafford, The Queen v., 1 Can. C.C. 239 140
Stanton v. Donnelly, Q.R. 13 S.C. 306 243
———, Taché v., Q.R. 13 S.C. 505 ..... 348, 423
Star Life Assurance Society v. Southgate, 18 Ont. P.R. 151 361
St. Arnaud v. Gibson, Q.R. 13 S.C. 22 ..... [271, 313
St. Constant, Corporation of, Bruneau v., Q.R. 12 S.C. 519 307
St. Denis v. Shoultz, 25 Ont. A.R. 131 264
Ste. Agathe, Corporation de, v. Bureau des Délégués des Comtes de Megantic et de Lotbinière, Q.R. 12 S.C. 451 299
Ste. Geneviève, Corporation of, Richer v., Q.R. 13 S.C. 338 ..... 16, 327
Ste. Justine, Corporation of, Cholette v., Q.R. 12 S.C. 543 ..... 15, 326
Stephens, Church of St. Margaret v., 29 Ont. R. 185 ..... 70, 321
——— v. Township of Moore, 25 Ont. A.R. 42 293

Stephenson, Douglass v., 29 Ont. R. 616 249
Sternaman, The Queen v., 29 Ont. R. 33 129
Sterne, Knauth Nachod v., 30 N.S.R. 251 ..... 227, 332, 345
———, ——— v., 30 N.S.R. 295 21
Stevens, The Queen v., 31 N.S.R. 124 259
Stevenson v. Boyd, 5 B.C.R. 626 ..... 101, 333
——— v. Brais, Q.R. 7 Q.B. 77 ..... 62, 196
Stewart v. Anderson, 5 B.C.R. 622 ..... 190, 201
Stewiacke Valley, etc., Railway Co., Hamilton v., 30 N.S.R. 10 401
———, ——— v., 30 N.S.R. 92 76
———, ——— v., 30 N.S.R. 166 402
St. Henri, City of, v. Coursol, Q.R. 13 S.C. 222 ..... 257, 305
St. John City Railway Co., Smith v., 28 S.C.R. 603 ..... 14, 104
St. Laurent, Corporation of, Langevin dit Lacroix v., Q.R. 13 S.C. 302 326
St. Lawrence Sugar Refining Co. v The Queen, 6 Ex. C.R. 1 ..... 144, 396
St. Louis, Ville de, v. Montreal Park and Island Railway Co., Q.R. 13 S.C. 280 232
St. Louis du Mile-End, Village de, Lapierre v., Q.R. 12 S.C. 129 304
Stockton v. Mallory, 34 C.L.J. 579 ..... 160, 197
St. Paul, Town of, Hadley v., Q.R. 13 S.C. 88 287
———, Coté, Legault, v. Q.R. 12 S.C. 479 ..... 299, 315
St. Pierre v. Neville, Q.R. 13 S.C. 54 309
St. Pierre les Becquets, Corporation of, Monpas v., 4 Rev. de Jur. 141 ..... 113, 351
Strachan, Glamville v., 29 Ont. R. 373 46
Stratford Turf Association v. Fitch, 28 Ont. R. 579 133
Strathroy, Town of, Hunter v., 18 Ont. P.R. 127 108
Strauss, The Queen v., 5 B.C.R. 486 ..... 343, 438
———, ——— v., 1 Can. C.C. 103 196
Strong v. Bent, 31 N.S.R. 1 100
——— v. Hesson, 5 B.C.R. 217 ..... 164, 321
Stuart, Baker v. (No. 2), 29 Ont. R. 388 ..... 169, 175
——— v. City of Montreal, Q.R. 6 Q.B. 555 ..... 36, 285
Stussi v. Brown, 5 B.C.R. 380 ..... 277, 343
Styles v. The Supreme Council of the Royal Arcanum, 29 Ont. R. 38 ..... 220, 440
Supreme Council of the Royal Arcanum, Styles v., 29 Ont. R. 38 ..... 220, 440
Supreme Court I.O.O.F., Godin v., 4 Rev. de Jur. 236 ..... 9, 50
Swann, Pacific Investment Co. v., 18 C.L.T. (Occ. N.) 124; 34 C.L.J. 207 ..... [16, 359, 404
Sweetland, Creighton v., 18 Ont. P.R. 180 ..... 112, 430

T

Tabb v. Beckett, Q.R. 7 Q.B. 28 ..... 209, 230
Taché v. Stanton, Q.R. 13 S.C. 505 ..... 348, 423
Talbot v. Montmagny Assurance Co., Q.R. 12 S.C. 64 ..... 76, 385
Tate v. Natural Gas and Oil Company of Ontario, 18 Ont. P.R. 82 329
Taylor, an Infant, In re, 1 N.B. Eq. 461 214

Tay-Tra.] COLUMN

Taylor, Ex parte, 34 C.L.J. 176 194
——— v. Alexander, Q.R. 12 S.C. 159.. 39
———, Cummings v., 28 S.C.R. 337.... 153
——— and City of Winnipeg, Re 12 Man. R. 18 288
Teasdall v. Brady, Re 18 Ont. P.R. 104 360
T. Eaton Co., Ltd., The Queen v., 29 Ont. R. 591 137
Teetzel v. Dominion Construction Company, 18 Ont. P.R. 16 21
Temiscouata Railway Co., Hatherton v., Q.R. 12 S.C. 481 455
Tessier v. Desnoyers, Q.R. 12 S.C. 35.. [235, 394
———, McBean v., Q.R. 13 S.C. 242....106, 230
——— v. Pinsonnault, Q.R. 13 S.C. 382 [199, 438
Tetley v. City of Vancouver, 5 B.C.R. 276 ..... 287, 438
Tew, Brock v., 18 Ont. P.R. 30 345
———, Jermyn v., 28 S.C.R. 497 26
Thackeray v. Township of Raleigh, 25 Ont. A.R. 226 293
Therrien v. McEachren, 4 Rev. de Jur. 87. [133, 236, 394
Thibaudeau, Boucher v., Q.R. 13 S.C. 394 174
——— v. Scott, 1 N.B. Eq. 505 113
Thibault, Dickey v., Q.R. 13 S.C. 58.... 15
——— v. Poitras, Q.R. 13 S.C. 481..... 8, 12
Thivierge v. Cinqmars, Q.R. 13 S.C. 398 [441, 446
Thomas v. Nunns, Q.R. 12 S.C. 52....198, 391
Thompson v. Brantford Electric and Operating Co., 25 Ont. A.R. 340 75
———, Small v., 28 S.C.R. 219.....165, 203
Tollemache v. Hobson, 5 B.C.R. 214 ... 357
——— v. ———, 5 B.C.R. 216.....11, 185
——— v. ———, 5 B.C.R. 223.....19, 107
Toronto, City of, Defoe v., 29 Ont. R. 459 308
———, Ewing v., 18 Ont. P.R. 137....108, 331
———, ——— v., 29 Ont. R. 197..... 297
———, Macdonald v., 18 Ont. P.R. 17.. 330
———, McCann v., 28 Ont. R. 650.....305, 314
———, Rodan and, 25 Ont. A.R. 12.....
———, Saunders v., 29 Ont. R. 273..... 272, 315
———, Scottish, Ontario and Manitoba Land Co. v., 29 Ont. R. 459..... 308
Toronto Electric Light Company and Canadian Pacific Railway Company, In re, 34 C.L.J. 691 118
Toronto, Hamilton and Buffalo Railway Company, Birely v., 25 Ont. A.R. 88 399
———, Powell v., 25 Ont. A.R. 209..... 400
Toronto Railway Company, In re Assessment of, 25 Ont. A.R. 135 35
——— Coll. v., 25 Ont. A.R. 55 272
Tougas v. City of Montreal, Q.R. 12 S.C. 532 ..... 299, 315
Toussignant, Commissaires d'Ecoles de St. Raphael v., Q.R. 7 Q.B. 270 227
Townsend v. O'Keefe, 18 Ont. P.R. 147 [250, 344
Traders Bank, Canada Permanent Loan and Savings Company v., 29 Ont. R. 479 ..... 58, 195
Trainor, Canada Paint Co. v., 28 S.C.R. 352 ..... 187, 317

Tra-Vid.] COLUMN

Tranquille, Laberge v., Q.R. 12 S.C. 510 [322, 342
Traves, Postill v., 5 B.C.R. 374.....124, 233
Traviss, Winch v., 18 Ont. P.R. 102..... 344
Tremblay v. Lefaivre, 4 Rev. de Jur. 275 371
——— v. Quebec North Shore Turnpike Road Trustees, Q.R. 13 S.C. 329..... 461
——— v. Richelieu and Ontario Navigation Co., Q.R. 12 S.C. 210..... 310
Troop, The Queen v., 30 N.S.R. 339 132
Trottier v. Banque du Peuple, Q.R. 13 S.C. 460 338
———, ——— v., 28 S.C.R. 422..... 25
———, Brousseau v., Q.R. 13 S.C. 231 429
Troup v. Kilbourne, 5 B.C.R. 547..... 379
Trustees of School District No. 2, Durham, Robertson v., 34 N.B.R. 103....270, 426
Tufts v. Giroux, Q.R. 12 S.C. 530.....343, 413
Turner v. Bennet, In re Ferguson, 28 S.C.R. 38 469
——— v. Carson, In re Ferguson, 28 S.C.R. 38 469
Tytler v. Canadian Pacific Railway Company, 29 Ont. R. 654 6

U

Union Bank v. Barbour, 12 Man. R. 166 158
Union des Ouvriers Boulangers, Maillé v., Q.R. 12 S.C. 526 50

V

Vachon v. Poulin, Q.R. 7 Q.B. 60.....93, 257
———, Roberge v., Q.R. 13 S.C. 72..... 429
Valentine, Liverpool, London and Globe Ins. Co. v., Q.R. 7 Q.B. 400.....3, 7, 47, 218
Valiquette v. Savage, Q.R. 12 S.C. 421 184
Vallée, Gagné v., Q.R. 13 S.C. 112..... 239
Vanbuskirk v. McNaughton, 34 N.B.R. 125 246
Vancouver, City of, Smith v., 5 B.C.R. 491 301
———, Tetley v., 5 B.C.R. 276.....287, 438
Van Norman, Warren v., 29 Ont. R. 508 [21, 256, 464
Vaudry v. City of Montreal, Q.R. 13 S.C. 531 ..... 300, 464
Venne, Brunet v., Q.R. 12 S.C. 512..... 340
Verdun, Corporation of, v. Grand Trunk Boating Club, Q.R. 7 Q.B. 185.....4, 245, 294
Vézina, Bernatchez v., Q.R. 12 S.C. 495 [119, 340
——— v. Piché, Q.R. 13 S.C. 213....55, 239 340
———, Werton v., Q.R. 12 S.C. 172 ....5, 115
Viau, The Queen v., Q.R. 7 Q.B. 362....130, 182
Victoria, City of, Bowness v., 5 B.C.R. 505 328
———, Consolidated Railway Co. v., 5 B.C.R. 266 300
———, Gordon v., 5 B.C.R. 553 .....301, 319
———, Matthews v., 5 B.C.R. 284..... 380
———, Patterson v., 5 B.C.R. 628....301, 371
———, Smith v., 5 B.C.R. 491 300
Victoria Lumber Co., The Queen v., 5 B.C.R. 288 37
———, ——— v., 5 B.C.R. 305.....20, 392
Videan v. Westover, 29 Ont. R. 1 and 6 (n) 13, 220, 437

Virtue v. Reburn, Q.R. 12 S.C. 343....116, 430
Voisard, Fortin v., Q.R. 13 S.C. 257 245

W

Waldbrook, Lindsay v., 24 Ont. A.R. 604.... 470
Walker, Lewis v., Q.R. 13 S.C. 125....161, 190
Wallace, Hesslein v., 29 N.S.R. 424 178
——— v. Lea, 28 S.C.R. 595....204, 439
Walsh v. Corporation of Cascapediac, Q.R. 7 Q.B. 290....7, 295
———, The Queen v., 29 Ont. R. 36.... 258
———, ——— v., 29 N.S.R. 521....68, 258
Wand, Metivier v., Q.R. 13 S.C. 445....253, 417
———, Picotte v., Q.R. 13 S.C. 343.... 375
Ward v. Wilbur, 25 Ont. A.R. 262.... 253
Warminton v. Heaton, Q.R. 7 Q.B. 234.. [164, 295
Warren v. VanNorman, 29 Ont. R. 508.... [21, 256, 464
Warener, Massey-Harris Company v., 12 Man. R. 48.... 183
Washington v. Grand Trunk Railway Co., 28 S.C.R. 184....402, 436
Waterous Engine Works Co. v. Cascapedia Pulp & Lumber Co., Q.R. 13 S.C. 315....410, 414
Watson v. Dandy, 12 Man. R. 175.... 376
Watters, Powell v., 28 S.C.R. 133..165, 262, 459
Weatherbe v. Whitney, 30 N.S.R. 49.... 73
——— v. ———, 30 N.S.R. 447.... 88
——— v. Whitney and Dominion Coal Company, 30 N.S.R. 104....151, 351, 372
Webb v. Montgomery, 5 B.C.R. 323....90, 276
Webber, Barnes v., 34 C.L.J. 392....352, 357
———, Clarke v., 18 C.L.T. (Occ. N.) 314.... 46
Webster v. Crickmore, 25 Ont. A.R. 97.. 155
Weir, In re, 31 N.S.R. 97.... 273
Weller v. Carnew, 29 Ont. R. 400.... 241
Wells v. Newman, Q.R. 12 S.C. 216.... 254
——— v. Petty, 5 B.C.R. 353....276, 333
Welsh, Ex parte, 4 Rev. de Jur. 437 .... [128, 200, 234
Wentzell v. Ross, 30 N.S.R. 136 418
Werton v. Vézina, Q.R. 12 S.C. 172....5, 115
Westover, Videan v., 29 Ont. R. 1 and 6 (*n*)....13, 220, 437
Wetzlar v. Richelieu & Ontario Navigation Co., Q.R. 13 S.C. 337.... 319
Wheatly v. City of Charlottetown, 18 C.L.T. (Occ. N.) 188.... 290
Whelan v. Charette, 4 Rev. de Jur. 399.. [68, 354
Wherry, Donaldson v., 29 Ont. R. 552.. [121, 243
Whitby, Township of, Harris v., 34 C. L.J. 240.... 36
———, Town of, Rice v., 25 Ont. A.R. 191.... 296
White v. Gnaedinger, Q.R. 7 Q.B. 156.. 311
——— v. Sabiston, Q.R. 12 S.C. 345.... 57
Whitehead, Goulet v., Q.R. 12 S.C. 15.. 252
——— v. Newman, Q.R. 12 S.C. 14.... 377

Whitford v. Zinc, 30 N.S.R. 193.... 410
Whitla v. Phair, 12 Man. R. 122.... 97
Whitney, Weatherbe v., 30 N.S.R. 49.. 73
———, ——— v., 30 N.S.R. 447.... 88
Whitney and Dominion Coal Company, Weatherbe v., 30 N.S.R. 104....151, 351, 372
Wilbur, Ward v., 25 Ont. A.R. 262.... 253
Williams v. Bartling, 30 N.S.R. 548....313, 367
———, Gunter v., 1 N.B. Eq. 401.... 221
———, The Queen v., 28 Ont. R. 583.. 129
Williamson, Craven v., 31 N.S.R. 256.... 267
Willis v. Navert, Q.R. 12 S.C. 280.... 242
Wilmot, Township of, Halwell v., 24 Ont. A.R. 628.... 44
Wilson v. Blanchard, Q.R. 12 S.C. 132.. [3, 146
———, Burns & Lewis v., 28 S.C.R. 207.... 154
———, Huyck v., 18 Ont.P. R. 44....32, 117
——— v. Kenwood, Q.R. 13 S.C. 390.... 40
———, Lapointe v., 5 B.C.R. 150.... 383
——— v. Lyman, 25 Ont. A.R. 303.... 451
———, Scarry v., 12 Man. R. 216....104, 456
Wilton v. Murray, 12 Man. R. 35.... 462
Winch v. Traviss, 18 Ont. P.R. 102.... 344
Winnipeg, City of, Kelley v., 12 Man. R. 87.... 287
——— Dairy By-law, Re, 12 Man. R. 18 288
Wiseman, Bagg v., Q.R. 12 S.C. 12.... 243
Witherspoon, Battisby v., Re Forster, 18 Ont. P.R. 65.... 108
Wolf v. Koch, 34 C.L.J. 95 ....365, 384
Wolfe, Miller v., 30 N.S.R. 277.... 453
Wolff, Sparks v., 25 Ont. A.R. 326.... 466
Wood v. Gibson, 31 N.S.R. 15.... 178
Woodburn v. The Queen, 6 Ex. C.R. 12.. 143
——— v. ———, 6 Ex. C.R. 69.... 17
Woods, James, The Queen v., 5 B.C.R. 585.... 130
———, Lamarre v., Q.R. 13 S.C 466.... [76, 201, 386
Worden v. Rawlins, 1 N.B. Eq. 450.... 119
Wotton, The Queen v., 34 C.L.J. 746.... 261
Wright, Ex parte, 34 N.B.R. 127.... [85, 128, 200, 403
——— v. Mitten, 34 N B.R. 14....203, 461
——— v. Polson, 30 N.S.R. 437.... 88
Wyse, The Queen v., 1 Can. C.C. 6.... 132

Y

Yarmouth, Township of, McDonald v., 29 Ont. R. 259....297, 315
Yelland v. Yelland, 25 Ont. A.R. 91.... 51
Young, Re, 29 Ont. R. 665.... 213
———, Imperial Oil Co. v., 34 C.L.J. 579.... 352

Z

Zinc, Whitford v., 30 N.S.R. 193.... 410
Zirkler v. Robertson, 30 N.S.R. 61.... 272
Zweig v. Morrissey, 5 B.C.R. 484.... 362
Zwicker, Feindel v., 31 N.S.R. 232.... 167
———, Schnare v., 31 N.S.R. 177 125

CASES

AFFIRMED, REVERSED, OR SPECIALLY CONSIDERED.

A

COLUMN

Agar-Ellis, In re, 10 Ch. D. 49, 71, specially referred to: Re Mathieu, 29 Ont. R. 546 324

Ahrens v. McGilligal, 23 U.C.C.P. 171, followed: Crayston v. Massey-Harris Co., 12 Man. R. 95 123

Aitken v. Doherty, 11 Man. R. 624 and C.A. Dig. (1897) col. 17, followed: Douglas v. Parker, 12 Man. R. 152 123

Aldrich v. Canada Permanent, 24 Ont. A.R. 193, followed: Carruthers v. Hamilton Provident and Loan Society, 12 Man. R. 60 284

Alley v. Canada Life Ins. Co., Q.R. 7 Q.B. 293, affirmed: 28 S.C.R. 608 245

Anderson v. Grand Trunk Railway Co., 24 Ont. A.R. 672, reversed: 28 S.C.R. 541 400

Archambault v. Lalonde, M.L.R. 3 Q.B. 486, followed: Merchants Bank of Canada v. Sauvalle, Q.R. 12 S.C. 200 196

Armour v. Kilmer, 28 Ont. R. 618, followed: O'Connor v. Gemmill, 29 Ont. R. 47 114

Armstrong v. Stokes, L.R. 7 Q.B. 598, followed: Hutchings v. Adams, 12 Man. R. 118 387

Attorney-General v. Butcher, 4 Russ. 180, referred to: Scarry v. Wilson, 12 Man. R. 216 104

Attorneys and Solicitors Acts, In re 1 Ch. D. 573, followed: O'Connor v. Gemmill, 29 Ont. R. 47 114

Atwood v. Atwood, 15 Ont. P.R. 425, distinguished: Lafrance v. Lafrance, 18 Ont. P.R. 62 12

Auer Incandescent Light Mfg. Co. v. Dreschel, 6 Ex. C.R. 55, affirmed: 28 S.C.R. 608 336

Aylesford v. Great Western Railway Co. [1892], 2 Q.B. 626, referred to: Re, Teasdall v. Brady, 18 Ont. P.R. 104 360

B

COLUMN

Bain v. Anderson, 24 Ont. A.R. 296, affirmed: 28 S.C.R. 481 268

Baker v. Forest City Lodge, 28 Ont. R. 238, affirmed: 24 Ont. A.R. 585 .. 52

Baldwin v. Kingstone, 18 Ont. A.R. 63, distinguished: Sparks v. Wolff, 25 Ont. A.R. 326 466

Ball v. Warwick, 50 L.J.N.S.C.L. 328, followed: O'Connor v. Gemmill, 29 Ont. R. 47 114

Bauron v. Davies, Q.R. 11 S.C. 123, reversed: 6 Q.B. 547 8

Bayley v. Great Western Railway Co. 26 Ch. D. 453, referred to: Fitchett v. Mellow, 25 Ont. R. 6 464

Beaulieu v. Cochrane, 29 Ont. R. 151, reversed in part: 29 Ont. R. 598 452

Bellingham v. Robb, Q.R. 13 S.C. 248, referred to: Kyle v. Gagnon, Q.R. 13 S.C. 468 107

Bennetts v. McIlwraith [1896], 2 Q.B. 464, followed: Tate v. Natural Gas and Oil Company of Ontario, 18 Ont. P.R. 82 329

Bevilockway v. Schneider, 3 B.C.R. 88, not followed: Tollemache v. Hobson, 5 B.C.R. 223 19

Birely and Toronto, Hamilton and Buffalo Railway Co., Re, 28 Ont. R. 467 and C.A. Dig. (1897), 325, considered: Powell v. Toronto, Hamilton and Buffalo Railway Co., 25 Ont. A.R. 209 400

Boucher v. Morrison, Q.R. 12 S.C. 162, affirmed: 13 S.C. 205 174

Boyd v. Dagenais, Q.R. 11 S.C. 66, referred to: Garon v. Lévesque, Q.R. 7 Q.B. 284 328

British America Assurance Co. v. Law, 21 S.C.R. 325, followed: Cunard v. Nova Scotia Marine Insurance Co., 29 N.S.R. 409 222

Bro-Com.] COLUMN

Broderick v. Broatch, 12 Ont. P.R. 561, followed: Hermann v. Mandarin Gold Mining Company of Ontario, 18 Ont. P.R. 34 380

Brodie v. Ruttan, 16 U.C.Q.B. 209, applied and followed: Light v. Hawley, 29 Ont. R. 25 60

Browning v. Sabin, 5 Ch. D. 511, distinguished: Golden Gate Co. v. Granite Creek Co., 5 B.C.R. 145 378

Building and Loan Association v. Mackenzie, 24 Ont. A.R. 599, affirmed: 28 S.C.R. 407 283

C

Cameron v. Bradbury, 9 Gr. 67, followed: Gibbons v. Cozens, 29 Ont. R. 356 .. 423

Campbell v. McGregor, 29 N.B.R. 644, not followed: Brereton v. Canadian Pacific Ry. Co., 29 Ont. R. 57 6

Canada Sugar Refining Co. v. The Queen, 27 S.C.R. 395, affirmed: (1898), A.C. 735 411

Canadian Pacific Railway Co. and County and Township of York, In re, 27 Ont. R. 559, affirmed in part and reversed in part: 25 Ont. A.R. 65 398

Cartwright, In re, 41 Ch. D. 532, followed: Patterson v. Central Canada Loan and Savings Co., 29 Ont. R. 134 .. 449

Castor v. Uxbridge, 39 U.C.Q.B. 113, referred to: Rice v. Town of Whitby, 25 Ont. A.R. 191 296

Cerri v. Ancient Order of Forresters, 28 Ont. R. 111, reversed: 25 Ont. A.R. 22 51

Champoux v. Lapierre, Cass. Dig. 2 Ed. 426, distinguished: King v. Dupuis, 28 S.C.R. 388 25

Chapel House Colliery Co. In re, 24 Ch. D. 259, distinguished: In re Georgian Bay Ship Canal and Power Aqueduct, 29 Ont. R. 358 .. 80

Citizens' Ins. Co. v. Parsons, 7 App. Cas. 119, followed; Cope & Taylor v. Scottish Union Co., 5 B.C.R. 329 218

Clarkson v. McMaster, 25 S.C.R. 96, commented on: Heaton v. Flood, 29 Ont. R. 87 59

Clendenan v. Blachford, 15 Ont. R. 285, followed: Warren v. Van Norman, 29 Ont. R. 508 21

Cole v. Hubble, 26 Ont. R. 279, considered: Harrison v. Prentice, 24 Ont. A.R. 677 427

——— v. Rea, 1 Phill. 428 followed: In re Colwell's Estate, 34 C.L.J. 578 192

Companhia de Mocambique v. British South Africa Co. [1892], 2 Q.B. 358 [1893], A.C. 602, followed: Brereton v. Canadian Pacific Ry. Co., 29 Ont. R. 57 6

Com-Ell.] COLUMN

Companies Act, and Hercules Insurance Co., Re, 6 Ir. R. Eq. 207, followed: Re Dominion Cold Storage Company, 18 Ont. P.R. 68 371

Comstock v. Harris, 12 Ont. P.R. 17, referred to: Connolly v. Dowd, 18 Ont. P.R. 38 355

Cowling v. Dickson, 45 U.C.Q.B. 94; 5 Ont. A.R. 549, discussed: Gold Medal Furniture Co. v. Lumbers, 29 Ont. R. 75 238

Currie, Ex parte, 26 N.B.R. 576, discussed: Ex parte Reid, 34 N.B.R. 133 49

Curry, In re, Curry v. Curry, 17 Ont. P.R. 379 and C.A. Dig. (1897), col. 277, affirmed: 25 Ont. A.R. 267 449

D

Davidson v. Douglas, 15 Gr. 347, followed: Bertrand v. Canadian Rubber Co., 12 Man. R. 27 157

Davis v. Kennedy, 13 Gr. 523, followed: Radam v. Shaw, 28 Ont. R. 612 .. 451

Daw v. Ackerill, 28 Ont. R. 452, and C. A. Dig. (1897), 54 affirmed: 25 Ont. A.R. 37 70

Delaney v. Canadian Pacific Railway Co., 21 Ont. R. 11, overruled in part: McMicking v. Gibbons, 24 Ont. A.R. 586 226

Derry v. Peek, 14 App. Cas. 337, followed: Gold Medal Furniture Co. v. Lumbers, 29 Ont. R. 75 238

Dewhurst, John, & Sons, In re Trade Mark of [1896] 2 Ch. 137, referred to: In re Melchers & De Kuyper, 6 Ex. C.R. 82 451

De Wolf v. Vineo, 1 N.S.D. 26, questioned: Craven v. Williamson, 31 N.S.R. 256 267

Doe d. Bather v. Brayne, 5 C.B. 655, followed: Quintal v. Chalmers, 12 Man. R. 231 186

Dominon Bank v. Heffernan, 11 Ont. P.R. 504, followed: Morphy v. Fawkes, 18 Ont. P.R. 24 118

Dwight & Macklam, In re, 15 Ont. R. 148, approved and followed: Hannum v. McRae, 18 Ont. P.R. 185 87

E

Eastern Trust Co. v. Forrest, 30 N.S.R. 173, affirmed: 28 S.C.R. 606, subnom, Bayne v. Eastern Trust Co. 181

Edge v. Boileau, 16 Q.B.D. 117, followed: Gold Medal Furniture Co. v. Lumbers, 29 Ont. R. 75 238

Ellice v. Hiles, 23 S.C.R. 429, considered and distinguished: Thackeray v. Township of Raleigh, 25 Ont. A.R. 226 293

Elliott v. Syndics des chemins à barrières de la rive snd, Q.R. 3 Q.B. 535, distinguished: Page v. Town of Longueuil, Q.R. 7 Q.B. 262 266

Emmett v. Quinn, 7 Ont. A.R. 306, distinguished: Mackenzie v. Building and Loan Association, 28 S.C.R. 407 283

Eno v. Dunn, 15 App. Cas. 252, referred to: In re Melchers & De Kuyper, 6 Ex. C.R. 82 451

Eyre v. McDowell, 9 H.L.C. 619, followed: Case v. Bartlett, 12 Man. R. 280 407

——— v. Wynn-Mackenzie [1894], 1 Ch. 218, distinguished: Phillips v. Prout, 12 Man. R. 143 281

F

Falcke v. Scottish Imperial Insurance Co., 34 Ch. D. 234, followed: Graham v. British-Canadian Loan and Investment Co., 12 Man. R. 244 253

Farrow v. Austin, 18 Ch. D. 58, referred to: Scarry v. Wilson, 12 Man. R. 216 104

Field v. Hopkins, 44 Ch. D. 524, distinguished: Phillips v. Prout, 12 Man. R. 143 281

Findlay v. Miscampbell, 20 Ont. R. 29, followed: Smith v. Hays, 29 Ont. R. 283 214

Fisher v. Fisher, 28 Ont. R. 459 and C.A.Dig. (1897), col. 168, reversed: 25 Ont. A.R. 108 51

Fitzgibbon v. Scanlan, 1 Dow. 261 referred to: Scarry v. Wilson, 12 Man. R. 216 104

Foley v. Township of East Flamborough, 29 Ont. R. 139, distinguished: Atkinson v. City of Chatham, 29 Ont. R. 518 297

Forget v. Ostigny [1895], A.C. 318, followed; Stevenson v. Brais, Q. R. 7 Q.B. 77 62

Forrest v. Laycock, 18 Gr. 611, followed: Morphy v. Fawkes, 18 Ont. P.R. 24 118

Foster v. Reeves [1892], 2 Q.B. 255, followed: Crayston v. Massey-Harris Co., 12 Man. R. 95 123

Fraser v. Davidson, 23 Ont. A.R. 439, affirmed: 28 S.C.R. 272 159

——— v. Ryan, 24 Ont. A.R. 441, followed: Gibbons v. Cozens, 29 Ont. R. 356 421

Fuller v. Alexander, 52 L.J.Q.B. 103, followed: Flour City Bank v. Connery, 12 Man. R. 305 55

G

Gault v. Dussault, 4 L.N. 321, followed: Cooke v. Jacobi, Q.R. 13 S.C. 433.. 66

Gauthier v. Perrault, Q.R. 6 Q.B. 65: affirmed 28 S.C.R. 241 5

Geach v. Ingall, 14 M. & W. 95, followed: Quintal v. Chalmers, 12 Man. R. 231 186

Gendron v. McDougall, Cass. Dig. 2 ed. 429, distinguished: King v. Dupuis, 28 S.C.R. 388 25

Glasgow Bank, Re, 14 Ch. D. 628, not followed: Re Dominion Cold Storage Company, 18 Ont. P.R. 68 371

Goggin v. Kidd, 10 Man. R. 448, distinguished: Nichol v. Gocher, 12 Man. R. 177 207

Graff v. Evans, 8 Q.B.D. 373, distinguished: The Queen v. Hughes, 29 Ont. R. 278 258

Grant v. West, 23 Ont. A.R. 533, applied: Mail Printing Company v. Clarkson, 25 Ont. A.R. 1 153

Great Western Railway Co. v. Braid, 1 Moo. P.C.N.S. 201, followed: Bain v. Anderson & Co., 28 S.C.R. 481 26

Grenier v. City of Montreal, 25 L.C.J. 138, followed: Gibeau v. City of Montreal, Q.R. 13 S.C. 473 296

Guest v. Diack, 29 N.S.R. 504, affirmed by Supreme Court of Canada 58

H

Haist v. Grand Trunk Railway Company, 22 Ont. A.R. 504, followed: Davidson v. Merritton Wood and Pulp Co., 18 Ont. P.R. 139 3

Hall v. Pilz, 11 Ont. P.R. 449, followed: Morphy v. Fawkes, 18 Ont. P.R. 24 118

Halstead v. Bank of Hamilton, 24 Ont. A.R. 152, affirmed: 28 S.C.R. 235 37

Hannum v. McRae, 17 Ont. P.R. 567 and C.A. Dig. (1897), col. 392, affirmed: 18 Ont. P.R. 185 87

Hargreaves v. Hayes, 5 E. & B. 272, followed: Weatherbe v. Whitney, 30 N.S.R. 447 88

Harrison v. Barnly, 5 T.R. 246, distinguished: Lowther v. Johnson, 34 C.L.J. 430 241

——— v. Prentice, 28 Ont. R. 140 and C.A. Dig (1897), col. 345, affirmed: 24 Ont. A.R. 677 427

Hart v. Maguire, 29 N.S.R. 181, affirmed: 28 S.C.R. 272 153

Haseler v. Lemoyne, 5 C.B.N.S. 530, followed: McBride v. Hamilton Provident and Loan Society, 29 Ont. R. 161 240

Hechler v. Forsyth, 22 S.C.R. 489, distinguished: Hutchings v. Adams, 12 Man. R. 118 387

COLUMN

Henderson v. Henderson, 19 Gr. 464, followed: Lafrance v. Lafrance, 18 Ont. P.R. 62 12

Hesselbacher v. Ballantyne, 28 Ont. R. 182 and C.A. Dig. (1897) 335, affirmed: 25 Ont. A.R. 36 415

Hodgson, In re, 31 Ch. D. 177, followed: Campbell v. Farley, 18 Ont. P.R. 97 330

Hoskins, Re, 31 Ch. D. 281, referred to: Scarry v. Wilson, 12 Man. R. 216 104

Howe v. Smith, 27 Ch. D. 89, followed: Gibbons v. Cozens, 29 Ont. R. 356 423

Huggins v. Law, 14 Ont. A. R. 383, distinguished: Re Mathers, 18 Ont. P.R. 13 214

Hughes v. Corporation of Verdun, Q.R. 12 S.C. 95, overruled; Corporation of Verdun v. Grand Trunk Boating Club, Q.R. 7 Q.B. 185 5

I

Ibbottson v. Trevethick, Q.R. 4 S.C. 318, followed: St. Arnaud v. Gibson, Q.R. 13 S.C. 22 271

Inkiel v. Laforest, Q.R. 11 S.C. 534, affirmed: 7 Q.B. 456 53

International Wrecking Co. v. Lobb, 12 Ont. P.R. 207, followed: Videan v. Westover, 29 Ont. R. 6 n 13

J

James v. Kerr, 40 Ch. D. 524, distinguished: Phillips v. Prout, 12 Man. R. 143 281

Jeannotte v. Gauthier, Q.R. 6 Q.B. 520, affirmed: 28 S.C.R. 590 248

Jenkins v. Murray, N.S.R., reversed: 28 S.C.R. 565 93

Johnson v. Grand Trunk Railway Co., 25 Ont. R. 64, followed: Davidson v. Merritton Wood and Pulp Co., 18 Ont. P.R. 139 3

Jones v. Merionethshire Permanent Building Society, [1891] 2 Ch. 587 followed: Legatt v. Brown, 29 Ont. R. 530 98

K

Keith v. Keith, 25 Gr. 110, followed: Videan v. Westover, 29 Ont R. 6 n 13

Kendall v. Hamilton, 4 App Cas 504, followed: Campbell v. Farley, 18 Ont. P.R 97 330

Kennedy v. Protestant Orphans' Home, 25 Ont. R. 235, followed: Manning v. Robinson, 25 Ont. R. 483 .. 471

Kervin v. Canadian Cotton Mills Co., 28 Ont. R. 73 and C.A. Dig. (1897) 207, affirmed: 25 Ont. A.R. 36 271

COLUMN

Kewney v. Attrill, 34 Ch. D. 345, followed: O'Brien v. Christie, 30 N.S.R. 145 46

Kimball v. Smith, 5 U.C. Q.B. 32, considered: Harrison v. Prentice, 24 Ont. A.R. 677 427

Kinney v. Harris, 5 B.C.R. 229, discussed: Cowan v. Macaulay, 5 B.C.R. 495 22

Knickerbocker v. Ratz, 16 Ont. P.R. 191, distinguished: Hunter v. Town of Strathroy, 18 Ont. P.R 127 108

Knight's Will, Re, 26 Ch. D. 82, referred to: Scarry v. Wilson, 12 Man. R. 216 104

Koch v. Wideman, Re, 25 Ont. R. 262, followed: In re Hewett v. Jermyn, 29 Ont. R. 383 471

L

Laberge v. Equitable Life Assurance Soc., 24 S.C.R. 59, distinguished: Bain v. Anderson & Co., 28 S.C.R. 481 26

Lea v. Wallace, 33 N.B.R. 492, reversed: 28 S.C.R. 595 204

Leeson v. General Council, 43 Ch. D. 366, followed: The Queen v. Herrell, 12 Man. R. 198 260

Lellis v. Lambert, 24 Ont. A.R. 664, referred to: Fleury v. Campbell, 18 Ont. P.R. 110 356

Leslie v. French, 23 Ch. D. 552, followed: Graham v. British Canadian Loan and Investment Co., 12 Man. R. 244 253

L'Esperance v. Duchene, 7 U.C.Q.B. 146, considered: Harrison v. Prentice, 24 Ont. A.R. 677 427

Lévesque v. Garon, Q.R. 10 S.C. 514, reversed: 7 Q.B. 284 173

Lewis v. Doerle, 28 Ont. R. 412 and C.A. Dig. (1897), col. 388, affirmed: 25 Ont. A.R. 206 470

——— v. Read, 13 M. & W. 834, followed: McBride v. Hamilton Provident and Loan Society, 29 Ont. R. 161 240

Lindsay v. Klock, Q.R. 7 Q.B. 9 affirmed: 28 S.C.R. 453 238

Lound v. Grimwade, 39 Ch. D. 613, followed: Leggatt v, Brown, 29 Ont. R. 530 98

Lussier v. Martineau, Q.R. 12 S.C. 437, reversed in part: Q.R. 7 Q.B. 473 341

Lyman v. Peck, 12 L.C.R. 368, 6 L.C. J. 214, followed: Shaw v. Murray, Q.R. 6 Q.B. 571 9

M

COLUMN

Macaulay, a Solicitor, Re, 17 Ont. P.R. 461, C.A. Dig. (1897), col. 87, affirmed: 18 Ont. P.R. 184 434

Macfarlane v. Leclaire, 15 Moo. P.C. 181, distinguished: Banque du Peuple v. Trottier, 28 S.C.R. 422 25

Mahony v. East Holyford Mining Co., L.R. 7 H.L. 869, followed: Allen v. Ontario and Rainy River Railway Co., 29 Ont. R. 510 75

Mail Printing Co. v. Clarkson, 28 Ont. R. 326, reversed: 25 Ont. A.R. 1 153

Mainland v. Upjohn, 41 Ch. D. 126, followed: Phillips v. Prout, 12 Man. R. 143 281

Makin v. Attorney-General for New South Wales [1894], A.C. 57, distinguished: The Queen v. James Woods, 5 B.C.R. 585 130

Manufacturers' Accident Insurance Co. v. Pudsey, 29 N.S.R. 124; 27 S.C.R. 374, followed: McLeod v. Insurance Co. of North America, 30 N.S.R. 480 224

Marchessault v. Durand, M.L.R. 5 Q.B. 364, followed: Pelletier v. Lapaline, Q.R. 12 S.C. 97 173

Martindale v. Clarkson, 6 Ont. A.R. 1, distinguished: Re Luckhart, 29 Ont. R. 111 175

Masuret v. Stewart, 22 Ont. R. 290, dissented from: Union Bank v. Barbour, 12 Man. R. 166 158

Maxwell v. Clarke, 4 Ont. A.R. 460, referred to: Rice v. Town of Whitby, 25 Ont. A.R. 191 296

Mercer, Ex parte, 17 Q.B.D. 290, distinguished: McNeil v. McPhee, 31 N.S.R. 140 157

Merchants Bank v. Carley, 8 Man. R. 258, distinguished: Nichol v. Gocher, 12 Man. R. 177 207

Michaud v. Vézina 6, Q.L.R. 353, distinguished: Brunet v. Banque Nationale, Q.R. 12 S.C. 287 8

Millard v. Baddeley, W.N. (1884) 96, followed: Flour City Bank v. Connery, 12 Man. R. 305 55

Miller v. Duggan, 21 S.C.R. 33, distinguished: Case v. Bartlett, 12 Man. R. 280 407

Moisan v. Société Beinveillante de St. Roch, Q.R. 12 S.C. 189, reversed: 7 Q.B. 128 50

Montgomery v. Corbitt, 24 Ont. A.R. 311, distinguished: McNeil v. McPhee, 31 N.S.R. 140 157

Montreal, City of, v. Davidson, Q.R. 7 Q.B. 1, affirmed: 28 S.C.R. 421 .. 298

Montreal Lithographing Co. v. Sabiston, 3 Rev. de Jur. 403, reversed: Q.R. 6 Q.B. 510 80

COLUMN

Moore v. Buckner, 28 Gr. 606, not followed: Huyck v. Wilson, 18 Ont. P.R. 44 32

Moore v. Jackson, 22 S.C.R. 210, referred to: Wallace v. Lea, 28 S.C.R. 595 204

Moorhouse v. Kidd, 28 Ont. R. 35, and C.A. Dig. (1897), col. 315, affirmed: 25 Ont. A.R. 221 391

Morris v. Edgington, 3 Taun. at p. 31, referred to: Fitchett v. Mellow, 25 Ont. R. 6 464

Mulcahy v. Archibald, 30 N.S.R. 121, reversed: 28 S.C.R. 523 155

Mulholland v. Misener, 17 Ont. P.R. 132, referred to: Fleury v. Campbell, 18 Ont. P.R. 110 356

Murphy v. Labbé, 27 S.C.R. 126, approved and followed: Klock v Lindsay, 28 S.C.R. 453 238

Murray v. Jenkins, 31 N.S.R. 172, reversed: 28 S.C.R. 565 421

——— v. The Queen, 26 S.C.R. 203, distinguished: Goodwin v. The Queen, 28 S.C.R. 273 96

Mc

McCorkill v. Knight, Cass. Dig., 2 ed. 694, followed: King v. Dupuis, 28 S.C.R. 388 25

McGreevy v. Quebec Harbour Commissioners, Q.R. 11 S.C. 455, varied: 7 Q.B. 17 90

McIlroy v. McIlroy, 14 Ont. P.R. 264, followed: Hermann v. Mandarin Gold Mining Company of Ontario, 18 Ont. P.R. 34 380

McLachlan v. Morrison, 12 N.S.R. 193, followed: McIsaac v. Broad Cove Coal Co., 31 N.S.R. 108 351

McLeod v. Emigh, Re, 12 Ont. P.R. 450, distinguished and doubted: Re Teasdell v. Brady, 18 Ont. P.R. 104 360

McRae, In re, Forster v. Davis, 25 Ch. D. 16, distinguished: Tollemache v. Hobson, 5 B.C.R. 223 .. 19

McWhirter v. Corbett, 4 U.C.C.P. 203, followed: Creighton v. Sweetland, 18 Ont. P.R. 180 112

N

National Bank of Australasia v. United Hand and Hand, Etc., Company, 4 App. Cas. 391, followed: Carruthers v. Hamilton Provident and Loan Society, 12 Man. R. 60 284

Nevitt v. McMurray, 14 Ont. A.R. 126, applied: McMillan v. Munro, 25 Ont. A.R. 288 180

Newton, In re [1896], 1 Ch. 740, specially referred to: Re Mathieu, 29 Ont. R. 546 324

COLUMN

North British and Mercantile Ins. Co. v. Tourville, 25 S.C.R. 177, followed: Lefeuntum v. Beaudoin, 28 S.C.R. 89 16

O

O'Connell v. The Queen, 11 Cl. & F. 155 followed: The Queen v. Buchanan, 12 Man. R. 190 139

O'Dell v. Gregory, 24 S.C.R. 661, followed: Dickey v. Thibault, Q.R. 13 S.C. 58 15

——— v. ———, 24 S.C.R. 661, followed: Macdonald v. Galivan, 28 S.C.R. 258 24

Ottawa, City of, and County of Carleton, In re, 24 Ont. A.R. 409, affirmed: 28 S.C.R. 606 302

O'Sullivan v. Morphy, 78 L.T. 213, followed: Ritz v. Schmidt, 12 Man. R. 138 362

Ostrom v. Sills, 24 Ont. A.R. 526, followed: Wilton v. Murray, 12 Man. R. 35 462

——— v. ———, affirmed: 28 S.C.R. 485 292

P

Paradis v. Bossé, 21 S.C.R. 419, followed: O'Connor v. Gemmill, 29 Ont. R. 47 114

Parcell v. Grosser, 1 Atl. R. 909 followed: Keefer v. Phœnix Insurance Company of Hartford, 29 Ont. R. 394 217

Payne v. Caughell, 28 Ont. R. 157 and C.A. Dig. (1898), col. 229, reserved: 24 Ont. A.R. 556 27

Peoples' Loan Co. v. Grant, 18 S.C.R. 262, followed: Cunningham v. Hamilton, 5 B.C.R 539 283

Petrie v. Guelph Lumber Company, 10 Ont. P.R. 600, applied and followed: Holmes v. Bready, 18 Ont. P.R. 79 115

——— v. Machan, 28 Ont. R. 642, followed: Re Sawyer Massey Co. and Parkin, 28 Ont. R. 662 170

Pictou v. Geldert [1893], A.C. 524, followed: City of Montreal v. Mulcair, 28 S.C.R. 458 306

Potter v. Edwards, 26 L.J.Ch. 468, followed: Phillips v. Prout, 12 Man. R. 143 281

——— and Central Counties Railway Co., Re, 16 Ont. P.R. 16, approved: Re Montreal and Ottawa Railway Co. and Ogilvie, Re 18 Ont. P.R. 120 ..... 14, 399

Q

Quebec, City of, v. The Queen, 24 Can. S.C.R. 420, referred to: Alliance Assurance Co. v. The Queen, 6 Ex. C.R. 76 144

COLUMN

Queen, The, v. Aldous, 5 B.C.R. 220, discussed: Cowan v. Macaulay, 5 B.C.R. 495 22

——— v. Brown, 16 Ont. R. 41, distinguished: The Queen v. Herrell, 12 Man. R. 198 260

——— v. Coney, 8 Q.B.D. 534, followed: The Queen v. Buchanan, 12 Man. R. 190 127

——— v. Deal, 45 L.T.N.S. 439, followed: The Queen v. Herrell, 12 Man. R. 198 260

——— v. McAllan, 45 U.C.Q.B. 402, followed: The Queen v. Monaghan, 34 C.L.J. 55 212

——— v. E. McDonald, 19 N.S.R. 336, reversed: The Queen v. Walsh, 29 N.S.R. 521 68

——— v. Gough, 22 N.S.R. 516, followed: The Queen v. Grant, 30 N.S.R. 368 259

——— v. Granius, 5 Man. R. 153, followed: The Queen v. Herrell, 12 Man. R. 198 260

——— v. Hendershott and Welter, 26 Ont. R. 678, overruled: The Queen v. Williams, 28 Ont. R. 583 129

——— v. Lalonde, Q.R. 7 Q.B. 204, referred to: The Queen v. Viau, Q.R. 7 Q.B. 362 130

——— v. Lloyd, 1 Cox C.C. 51, followed: The Queen v. Herrell, 12 Man. R. 198 260

——— v. McDonald, 8 Man. R. 491, doubted: The Queen v. Gibbons, 12 Man. R. 154 133

——— v. ———, 19 N.S.R. 336, reversed: The Queen v. Walsh, 29 N.S.R. 521 68

——— v. Robertson, L. & C. 483, followed: The Queen v. Gibbons, 12 Man. R. 154 133

——— v. Smith, 4 Cox C.C. 42, followed: The Queen v. Gibbons, 12 Man. R. 154 133

——— v. Tomlinson, 18 Cox C.C. 75, followed: The Queen v. Gibbons, 12 Man. R. 154 133

——— v. Townsend, 28 N.S.R. 468, followed: The Queen v. Buchanan, 12 Man R. 190 139

——— v. Walsh, 29 N.S.R. 521, followed: The Queen v. Stevens, 31 N.S.R. 124 259

——— v. Wehlan, 45 U.C.Q.B. 396, followed: The Queen v. Monaghan, 34 C.L.J. 55 212

——— v. Williams, 28 Ont. R. 583, not followed: The Queen v. Hammond, 29 Ont. R. 211 130

Quick v. Church, 23 Ont. R. 262, overruled: Lellis v. Lambert, 24 Ont. A.R. 653 202

R

Rainville v. Grand Trunk Ry. Co., 28 Ont. R. 625, affirmed: 25 Ont. A.R. 242 400

Raphael v. Maclaren, 27 S.C.R. 319, followed: Macdonald v. Galivan, 28 S.C.R. 258 24

Rawlings v. Coal Consumers' Association, 43 L.J.M.C. 111, followed: Legatt v. Brown, 29 Ont.R. 530. 98

Rees v. Carruthers, 17 Ont. P.R. 51 and C.A. Dig. (1896), col. 278, distinguished: Davidson v. Merritton Wood and Pulp Company, 18 Ont. P.R. 139 3

Reid v. Humphrey, 6 Ont. A.R. 403, distinguished: Cunnington v. Peterson, 29 Ont.R. 346 54

Rex. v. Southerton, 6 East 126, doubted: The Queen v. Gibbons, 12 Man. R. 154 133

——— v. Turnbull, 16 Cox C.C. 110, referred to: The Queen v. Horton, 31 N.S.R. 217 139

Ricard v. Banque Nationale, Q.R. 3 Q.B. 161, followed: Maclean v. O'Brien, Q.R. 12 S.C. 110 53

——— v. ———, distinguished: Boucher v. Globensky, Q.R. 13 S.C. 129 206

Rice v. Town of Whitby, 28 Ont. R. 598, reversed: 25 Ont. A.R. 191 296

Rigby v. Connol, 14 Ch. D. 428, followed: Beaulieu v. Cochrane, 29 Ont. R. 151 452

Rodier v. Lapierre, 21 S.C.R. 69, followed: Macdonald v. Galivan, 28 S.C.R. 258 24

Ross v. Dunn, 16 Ont. A.R. 552, followed: Union Bank v. Barbour, 12 Man. R. 166 158

Rudolf v. British & Foreign Marine Ins. Co., 30 N.S.R. 380, affirmed: 28 S.C.R. 607 223

Rymer v. Cook, Moo. & M. 86n., followed: Quintal v. Chalmers, 12 Man. R. 231 186

S

Sadler v. Great Western Railway Co. [1895], 2 Q.B. 688; [1896] A.C. 450, distinguished: Bowness v. City of Victoria, 5 B.C.R. 505 328

Sauvagean v. Gauthier, L.R. 5 P.C. 494, followed: Banque du Peuple v. Trottier, 28 S.C.R. 422 25

Scott v. Morley, 20 Q.B.D. 120, followed: Bank of Montreal v. Richardson, 34 C.L.J. 329 208

——— v. ———, distinguished: Re Teasdall v. Brady, 18 Ont. P.R. 104 360

Sidney v. Bourke [1895], A.C. 433, followed: City of Montreal v. Mulcair, 28 S.C.R. 458 306

Seal v. Claridge, 7 Q.B.D. 516, distinguished: Inch v. Simon, 12 Man. R. 1 59

Seyfang v. Mann, 27 Ont. R. 631, varied: 25 Ont. A.R. 179 320

Sherwood v. City of Hamilton, 37 U.C. Q.B. 410, followed: Atkinson v. City of Chatham, 29 Ont. R. 518 .. 297

Smith v. Boyd, 17 Ont. P.R. 463 and C.A. Dig. (1897), col. 303, followed: Bank of Toronto v. Insurance Co. of North America, 18 Ont. P.R. 27 372

——— v. Logan, 17 Ont. P.R. 219, distinguished: Macaulay v. O'Brien, 5 B.C.R. 510 66

South Australian Insurance Co. v. Randall, 6 Moo. P.C. N.S. 341, followed; Lawlor v. Nicol, 12 Man. R. 224 414

Stainton v. Carron Co., 18 Beav. 146, distinguished: Graham v. British Canadian Loan and Investment Co., 12 Man. R. 244 387

Steele v. Savory, [1891] W.N. 195, commented upon: Alexander v. Irondale, Bancroft and Ottawa Railway Company, 18 Ont. P.R. 20 354

St. Joseph, Corporation of, v. Quebec Central Railway Co., 11 Q.L.R. 193, followed: Canadian Pacific Railway Co. v. Corporation of Notre Dame de Bonsecours, Q.R. 7 Q.B. 121 292

St. Louis v. The Queen, 25 S.C R. 649, followed: Henderson v. The Queen, 6 Ex. C.R. 39 143

Stuart v. Freeman, 3 Ont. R. 190, followed: Union Bank v. Barbour, 12 Man. R. 166 158

Sugg v. Silber, 1 Q.B.D. 362, distinguished: Alexander v. Baker, 30 N.S.R. 443 381

T

Tapp v. Turner, Q.R. 5 Q.B. 538, followed: Sharpe v. Robert, Q.R. 13 S.C. 277 190

Taylor v. Cummings, 29 N.S.R. 162, reversed: 28 S.C.R. 337 153

——— v. Dowlen, 4 Ch. App. 697, referred to: Scarry v. Wilson, 12 Man. R. 216 104

——— v. Neil, 17 Ont. P.R. 134, referred to: Fleury v. Campbell, 18 Ont. P.R. 110 356

Ten-Vid.] COLUMN

Tennant v. Gallow, 25 Ont. R. 56, followed: Union Bank v. Barbour, 12 Man. R. 166 158

Thomson v. Pheney, 1 Dowl. 441, referred to: Ritz v. Schmidt, 12 Man. R. 138 378

Tollemache v. Hobson, 5 B.C.R. 223, discussed: Cowan v. Macaulay, 5 B.C.R. 495 22

Tomlinson v. Morris, 12 Ont. R. 311, specially referred to: Cull v. Roberts, 28 Ont. R. 591 417

Toms v. Whitby, 37 U.C.Q.B. 100, referred to: Rice v. Town of Whitby, 25 Ont. A.R. 191 296

Toronto Street Railway Co. v. Fleming, 37 U.C.Q.B. 116, referred to as overruled by Consumers' Gas Co. v. Toronto, 27 S.C.R. 453: In re Toronto Railway Co. Assessment, 25 Ont. A.R. 135 35

Toussignant v. Commissaires d'Ecoles de St. Raphael, Q.R. 12 S.C. 457, reversed: 7 Q.B. 270 227

Travis v. Milne, 9 Hare 150, followed: Graham v. British Canadian Loan and Investment Co., 12 Man. R. 244 387

Trimble v. Miller, 22 Ont. R. 500, followed: Re Lott v. Cameron, 29 Ont. R. 70 171

Turcotte v. Dansereau, 26 S.C.R. 578, followed: King v. Dupuis, 28 S.C.R. 388 25

Tylee v. Deal, 19 Gr. 601, distinguished: Sparks v. Wolff, 25 Ont. A.R. 326 466

V

Vachon v. Poulin, Q.R. 12 S.C. 323, affirmed: 7 Q.B. 60 93

Venner v. Sun Life Ins. Co. 17 S.C.R. 394, followed: Jordan v. Provincial Provident Institution, 28 S.C.R. 554 219

Victoria Lumber Co. v. The Queen, 3 B.C.R. 16, distinguished: The Queen v. Victoria Lumber Co., 5 B.C.R. 288 37

Videan v. Westover, 29 Ont. R. 1, distinguished: McIntyre v. Silcox, 29 Ont. R. 593 220

Wag-Yea.] COLUMN

W

Wagstaff v. Wilson, 4 B. & Ad. 339, referred to: McBride v. Hamilton Provident and Loan Society, 29 Ont. R. 161 182

Ward v. Ward, 6 Ch. App. 789, distinguished: Brock v. Benness, 29 Ont. R. 468 255

Warnock v. Kloepfer, 14 Ont. R. 288, qualified: Bertrand v. Canadian Rubber Company, 12 Man. R. 27 157

Warren v. Van Norman, 29 Ont. R. 84, affirmed: 25 Ont. A.R. 508 464

Washington v. Grand Trunk Railway Co., 24 Ont. A.R. 183, reversed: 28 S.C.R. 184 402

Watteau v. Fenwick [1893], 1 Q.B. 349, followed: Hutchings v. Adams, 12 Man. R. 118 387

Westacott v. Powell, 2 E. & A. 525, considered: Harrison v. Prentice, 24 Ont. A.R. 677 427

Wilcox v. Odden, 15 C.B.N.S. 837, followed: Spencer v. Cowan, 5 B.C.R. 151 23

Williams v. Richards, 23 Ont. R. 651, followed: Wilton v. Murray, 12 Man. R. 35 462

Willis v. Watney, 51 L.J. Ch. 181; 30 W.R. 424; 45 L.T.N.S. 739, distinguished: Hill v. Broadbent, 25 Ont. A.R. 159 165

Wilson and Ingersoll, Re, 25 Ont. R. 439, referred to: Dwyre v. Ottawa, 25 Ont. A.R. 121 359

—— v. Jones, L.R. 2 Ex. 146, followed: Cunard v. Nova Scotia Marine Insurance Co. 29 N.S.R. 409 222

Windhill Local Board of Health v. Vint, 45 Ch. D. 351, followed: Leggatt v. Brown, 29 Ont. R. 530 98

Wood v. Ontario and Quebec Railway Co., 24 U.C.C.P. 334, commented on: Allen v. Ontario and Rainy River Railway Co. 29 Ont. R. 510 75

Y

Yeatman v. Yeatman, 7 Ch. D. 210, distinguished; Graham v. British Canadian Loan and Investment Co., 12 Man. R. 244 387

A DIGEST

—OF—

ALL REPORTED CASES DECIDED BY THE FEDERAL AND PROVINCIAL COURTS IN THE DOMINION OF CANADA, AND BY THE PRIVY COUNCIL ON APPEAL THEREFROM, DURING THE YEAR 1898.

ABANDONMENT.

Abandonment of Appeal—Delays—Dismissal.]

See APPEAL, VIII.

—Insolvency—Judicial abandonment—Appointment of curator—Delay—Recourse of debtor—Act 886, C.C.P.]

See BANKRUPTCY AND INSOLVENCY, VII.

—Mining law—Abandonment of claim—Conduct of holder.]

See MINES AND MINERALS.

—Abandonment of property—Art. 876, C.C.P.—Application for order under.]

See PRACTICE AND PROCEDURE. *(Orders.)*

—Abandonment of part of judgment—Payment of costs.]

See COSTS, I.

ABATEMENT.

Of Legacies.]

See WILL.

ABSENT OR ABSCONDING DEBTOR.

See DEBTOR AND CREDITOR.

ABUSIVE LANGUAGE.

Jurisdiction of one magistrate to try such an offence.]

See JUSTICE OF THE PEACE.

ACCOUNT.

See TRUSTS AND TRUSTEES.

ACTION.

I. AUTHORITY TO SUE, 2.
II. BAR TO ACTION, 2.
III. BY AND AGAINST WHOM MAINTAINABLE, 3.
IV. CAUSE OF ACTION, 4.
V. DEFENCES TO ACTION, 4.
VI. DISCONTINUANCE, 4.
VII. FORM OF ACTION, 5.
VIII. FOR WHAT MAINTAINABLE, 5.
IX. HYPOTHECARY ACTION, 5.
X. IN FORMA PAUPERIS, 5.
XI. JURISDICTION TO ENTERTAIN, 6.
XII. PENAL ACTION, 7.
XIII. PETITORY ACTION, 7.
XIV. POSSESSORY ACTION, 7.
XV. PRESCRIBED DELAYS, 7.
XVI. RESTRAINT FROM ACTION, 7.
XVII. REVENDICATION, 7.
XVIII. RIGHT OF ACTION, 7.
XIX. SETTLEMENT OF ACTION, 9.
XX. SUSPENSION OF ACTION, 9.
XXI. VENUE, 9.
XXII. WARRANTY, 9.
XXIII. WHO MAY MAINTAIN, 10.

I. AUTHORITY TO SUE.

—Company in liquidation—Action by liquidator—Judicial authority.]—The judicial authority required to enable the liquidator of an insolvent company to sue a debtor of the company must be obtained before the issue of the writ of summons and must cover the full amount claimed, otherwise the action will be dismissed. *Common* v. *McCaskill*, Q.R. 13 S.C. 282.

II. BAR TO ACTION.

—Assault—Conviction and payment of fine—Arts. 864 & 866, Criminal Code of Canada.]—Where a person, at the instance of the party aggrieved, has been arrested on a charge of assault, and being summarily convicted by a justice, has paid the whole amount of the fine imposed on him, he is not liable to a

civil action of damages for the same assault. Arts. 864 & 866, Criminal Code of Canada. *Hardigan* v. *Graham*, Q.R. 12 S.C. 177.

—School tax — Special assessment — Judgment against ratepayer—Subsequent action to annul Chose Jugée.]

See JUDGMENT.

III. BY AND AGAINST WHOM MAINTAINABLE.

—Settlement of action—Validity—Trial — Issue —Pleading.]—An assignee for the benefit of creditors under a statutory assignment, having brought an action for damages for breach of a contract made by his assignor with the defendants, made a compromise settlement with the defendants before the delivery of pleadings, while he was in gaol, and without reference to the inspectors or creditors. A new assignee appointed in his stead applied for an order directing the trial of an issue to determine whether the settlement was valid:—Held, that it was not necessary to bring another action to vacate the settlement, and it was more convenient to revive the action in the name of the new assignee as plaintiff and let him continue it, leaving the defendants to move summarily to stay it, or to plead the settlement in bar, than to direct the trial of an issue: *Rees* v. *Carruthers*, 17 Ont. P. R. 51, distinguished. *Johnson* v. *Grand Trunk R. W. Co.*, 25 Ont. R. 64, and *Haist* v. *Grand Trunk R. W. Co.*, 22 Ont. A.R. 504, followed. *Davidson* v. *Merritton Wood and Pulp Co.*, 18 Ont. P. R. 139.

—Insurance—Payee of policy—"As his interest may appear"— Insolvency—Curator.] — Insurance made in favour of a person in case of loss "as his interest may appear" can, in case of the insolvency of the payee, be recovered in law by the curator to the insolvent's estate, who then becomes the assignee (*cessionnaire*) or trustee (*fidei-commissaire*) of the interested principal. *Liverpool & London & Globe Ins. Co.* v. *Valentine*, Q.R. 7 Q.B. 400.

—Curator ad hoc—Action against representatives of deceased curator en reddition de compte.]—A curator *ad hoc* to an interdict cannot bring an action *en reddition de compte* against the representatives of the deceased curator; such action can only be brought by the new curator. *Wilson* v. *Blanchard*, Q.R. 12 S.C. 132.

—Substitution—Action by curator.]—An action brought by a person as curator *ad hoc* to a substitution must be dismissed, there being no such quality in law. *Langan* v. *Smith*, Q.R. 12 S.C. 529.

—Husband and wife common as to property—Action for alleged debt of community—Right of wife to plead separately.]—Where husband and wife, common as to property, are sued conjointly for a debt for which plaintiff alleges that the community is liable, the female defendant has a right to appear and plead her own rights, and is entitled to demur to the action on the ground that it should have been brought against the husband alone as head of the community. *Caron* v. *Kavanagh*, Q.R. 13 S.C. 296.

—Splitting causes of action—Mortgagee suing for arrears of interest—Jurisdiction.]

See DIVISION COURTS.

IV. CAUSE OF ACTION.

—Frivolous action — Lis pendens—Action for maliciously fyling and maintaining.]—The statement of claim disclosed that the defendant had brought an action to set aside a conveyance to the plaintiff, a married woman, from her husband, of certain lands, as being made for the purpose of defeating a judgment of the defendant against him; that the defendant had issued a certificate of *lis pendens* in that action and registered it against the lands in question whereby the plaintiff was prevented from making an advantageous sale thereof; that "the defendant, although he was made aware of the circumstances surrounding the transaction in question, and of the loss of profit which he would thereby entail upon the plaintiff, wrongfully and maliciously refused to remove the said *lis pendens*," and that the defendant afterwards discontinued his action. Upon application by defendant to dismiss the present action as frivolous and vexatious, and an abuse of the process of the Court, and, under Rule 235, as disclosing no reasonable cause of action:—Held, that the statement of claim disclosed no reasonable cause of action, and, upon all the facts (which appeared by affidavits fyled for the purpose of defendant's contention that the action was an abuse of the process of the Court) that no truthful amendment could be made to the statement of claim which would disclose a good cause of action.—*Cowan* v. *Macaulay*, 5 B.C.R. 495.

V. DEFENCES TO ACTION.

—Lessee—Trespass against—Damages—Validity of lease.]—In an action for damages by a lessee against an alleged trespasser the question of the validity or regularity of the lease cannot be raised by the defendant. *Corporation of Verdun* v. *Grand Trunk Boating Club*, Q.R. 7 Q.B. 185.

VI. DISCONTINUANCE.

—Settlement by client—Right of attorney to proceed for costs.] — The attorney for the plaintiff in an action cannot, when the parties have settled without his consent, insist on continuing it for his costs. *Beaudry* v. *Lusher*, Q.R. 13 S.C. 294.

—Appearance by attorney — Personal discontinuance.]—A party who has appeared by attorney, and has not revoked the latter's powers, can take no proceedings himself in the cause. Hence, a plaintiff who has brought

an action by an attorney cannot in person, where there has been no such revocation, fyle a notice of discontinuance of the action. *Lefebvre* v. *Castonguay*, Q.R. 13 S.C. 467.

VII. Form of Action.

—Expropriation—Damages to lessee—Recourse of lessee for indemnity—Art. 2128 C.C.]—The lessee of land expropriated for public purposes has a recourse for indemnity against the expropriating party, independently of the proprietor. Such recourse may be exercised by a common law action independently of the expropriation proceedings, the common law remedy always existing unless specially excluded.—Art. 2128 C.C. does not deprive a tenant under an unregistered lease of such recourse against a subsequent acquirer of the property, in a case where there is no question of possession in issue; *Hughes* v. *Corporation of Verdun*, Q.R. 12 S.C. 95, overruled. *Corporation of Verdun* v. *Grand Trunk Boating Club*, Q.R. 7 Q.B. 185.

—Municipal corporation—Maintenance of road—Penal action—Qui tam—Security for costs.]

See Costs, XVI.

VIII. For What Maintainable.

—Trade union—Combination in restraint of trade—Strikes—Social pressure.]—Workmen who, in carrying out the regulations of a trade union forbidding them to work at a trade in company with non-union workmen, without threats, violence, intimidation or other illegal means, take such measures as result in preventing a non-union workman from obtaining employment at his trade in establishments where union workmen are engaged, do not thereby incur liability to an action for damages. *Perrault* v. *Gauthier*, 28 S.C.R. 241, affirming Q.R. 6 Q.B. 65.

—Action for levy under execution on judgment prematurely entered.]—See Executions.

—Railway Company—Trustees for debenture holders—Salary—Annual profits—Authority to sue.]—See Trusts and Trustees.

IX. Hypothecary Action.

—Jurisdiction—Amount.]—An action *en déclaration d'hypothèque* for a sum less than $100 is within the exclusive jurisdiction of the Circuit Court. *Laverdure* v. *Coté*, Q.R. 13 S.C. 254.

X. In Forma Pauperis.

—Second action—Staying proceedings—Payment of costs.]—An action *in forma pauperis* for an alimentary allowance was dismissed, upon exception to the form, with the right of proceeding anew. In a second action, also *in forma pauperis* and for the same relief as the first, the defendant claimed that he should not be called upon to plead until the costs of the former were paid:—Held, that under the circumstances and considering the nature of the action the claim could not be sustained, as to compel the plaintiff to pay the costs of the first action before proceeding with the second would render useless the authority to sue *in forma pauperis*. *Werton* v. *Vézina*, Q.R. 12 S.C. 172.

—Alimentary allowance—Attorney and client—Costs.—See Costs, XVII.

XI. Jurisdiction to Entertain.

—Jurisdiction of Ontario Courts—Injury to land in another province—Local or transitory action.]—The plaintiff complained that the defendants, by negligent use or management of their line of railway, allowed fire to spread from their right of way to the plaintiff's premises, whereby his house and furniture were burnt. The premises were alleged to be in the Province of Manitoba, where the plaintiff himself resided, and in which the defendants were legally domiciled, and actually carried on business. The defendants denied the plaintiff's title to the land upon which the house and furniture were situate:—Held, that the action, as regards the house, was in trespass on the case for injury to land through negligence, and this form of action was, like trespass to land, local, and not transitory, in its nature. The action, therefore, so far as the house was concerned, could not be entertained by the Ontario Court; but *aliter* as to the furniture, on abandonment of the claim for destruction of the house: *Companhia de Mocambique* v. *British South Africa Co.*, [1892] 2 Q.B. 358; [1893] A.C. 602, followed; *Campbell* v. *McGregor*, 29 N.B.R. 644, not followed. *Brereton* v. *Canadian Pacific Ry. Co.*, 29 Ont. R. 57.

—Negligence in another province—Railways—Cause of action—Service of writ.]—A writ of summons in an action to recover damages against a railway company for negligence alleged to have occurred in British Columbia, was issued out of the High Court of Justice for Ontario, and was served on the defendants' claims agent in Toronto, Ontario. The head office of the railway, incorporated by Dominion legislation, was in the Province of Quebec, but the company carried on business in Ontario through which its railway ran, and where large numbers of its officers and servants resided:—Held, that the action was properly brought in Ontario, and the service of the writ therein was valid. *Tytler* v. *Canadian Pacific Railway Co.*, 29 Ont. R. 654.

—Action for ground rents—Jurisdiction of Superior Court—Conclusions.]—An action by the Crown to recover arrears of constituted ground rent *(rente foncière constituée)* even for an amount less than $100, may properly be brought in the Superior Court; and a motion demanding its dismissal for want of jurisdiction will be refused. In this case it was a mixed action as the conclusions were for a declaration of hypothec and the establishment of a new title; consequently, it

was within the jurisdiction of the Superior Court. *The Queen* v. *Coté*, Q.R. 12 S.C. 476.

—Constitutional law—B. N. A. Act, s. 92, (s.s. 14), ss. 96 to 101.]—A Provincial Statute providing that Stipendiary Magistrates and Police Magistrates shall have jurisdiction to hear and determine actions of any kind of debt where the sum demanded does not exceed $100.00, is *intra vires*. *In re Small Debts Act*, 5 B.C.R. 246.

XII. Penal Action.

—Conclusion for imprisonment—Class of action—Taxation of costs.]—See Costs, XIX (*e*).

XIII. Petitory Action.

—Plea of lien for disbursements—Answer of compensation—Admission — Delivery — Demeure —Costs.]—See Costs, XI (*a*).

XIV. Possessory Action.

—Municipal corporation—Right to take land for public road—Expropriation.]—A proprietor of land who has been dispossessed by a municipal corporation taking it for a public road without observing the formalities required by the Municipal Code in respect to expropriation, can, without causing the *procès-verbal* establishing the road to be annulled within thirty days, maintain a possessory action against the corporation and recover damages. *Walsh* v. *Corporation of Cascapediac*, Q.R. 7 Q.B. 290.

XV. Prescribed Delays.

—Insurance—Absolute refusal to pay loss.]—An action on a policy of insurance against fire may be brought before the expiration of the prescribed delay therefor if the insurer has absolutely refused to pay the amount of the insurance. *Liverpool & London & Globe Ins. Co.* v. *Valentine*, Q.R. 7 Q.B. 400.

XVI. Restraint from Action.

—Arrest—Discharge on terms—Appeal—Waiver —Benefit under order.]—See Appeal, X.

XVII. Revendication.

—Encroachment—Demolition of works—Title of and—Appeal.]—See Appeal, XIII (*b*).

XVIII. Right of Action.

—Statutory duties of a corporation—Breach—Cause of action.]—Where by an Act extending the powers of the respondent company certain duties and obligations were imposed on it for the benefit of its customers with a view to the reduction of the price of gas contingent on the amount of surplus net profit, but no pecuniary penalty was imposed for default and no right of action given to persons aggrieved, provision, however, being made for its accounts being audited by direction of the mayor of the corporation with whose assent the company was originally established:—Held, that no individual customer had a right of action against the company for non-compliance with the provisions of the Act. Such a right only arises where given by the Act, and especially so where the Act as in this case is in the nature of a private legislative bargain, and not one of public and general policy. *Johnston and Toronto Foundry Co.* v. *Consumers' Gas Co.* [1898], A.C. 447.

—Conveyance subject to mortgage—Obligation to indemnify — Assignment of — Principal and surety—Implied contract.]—The obligation of a purchaser of mortgaged lands to indemnify his grantor against the personal covenant for payment may be assigned even before the institution of an action for the recovery of the mortgaged debt, and, if assigned to a person entitled to recover the debt, it gives the assignee a direct right of action against the person liable to pay the same. *Maloney* v. *Campbell*, 28 S.C.R. 228.

—Married woman—Authority—Foreign domicile.]—A married woman domiciled in France, common as to property with her husband, who has been authorized by the court of her domicile to collect a legacy of movables, and to *ester en justice* for this purpose, may, without other authorization, bring suit before the courts of this province, against a debtor domiciled herein, for the recovery of a sum of money forming part of such legacy. *Bauron* v. *Davies*, Q.R. 6 Q.B. 547, reversing 11 S.C. 123.

—Action to account—Agent for collection.]—Where the plaintiff alleges that he was employed by the defendant to assist in the collection of certain monies due to the defendant, and that he was to have a percentage of all such monies as the defendant, through his assistance, should collect, the plaintiff was entitled to bring an action to account: *Michaud* v. *Vézina*, 6 Q.L.R. 353, distinguished. *Brunet* v. *Banque Nationale*, Q.R. 12 S.C. 287.

— Fire insurance — Condition of policy — Suit instituted prematurely.]—By one of the conditions of a policy of fire insurance, payment of claims for loss thereunder was to be made within sixty days after production of the oath or affirmation of the claimant, along with such accounts and evidence as might be required by the directors. The insured never produced any such statement, or oath or affirmation, in respect of his alleged loss. The only waiver by the company was of the right to exact production of a statement within the fixed delay of fifteen days from the date of the fire:—Held, that the action for the above reasons, and also because it was instituted before the expiration of sixty days after the loss, was premature. *Dupuis* v. *North British & Mercantile Ins. Co.*, Q.R. 13 S.C. 443.

— Seduction — Illegitimate child — Action by mother — Alimentary allowance.]—A woman seduced under promise of marriage gave birth to a child and sued the father for an ali-

mentary pension:—Held, that without being tutrix, she could maintain such action. *Thibault* v. *Poitras*, Q.R. 13 S.C. 481.

—Maintenance of children—Absent son—Obligation of father for maintenance—Art. 165 C.C.]—The duty cast upon parents by Article 165 of the Civil Code to maintain their needy children must be observed at the paternal domicile.—If a son, without cause, quits the paternal roof for that of a stranger, the hotelkeeper who boards him cannot recover the price of his board unless he can establish that the father had refused to supply the needs of his son and had, therefore, profited by the board furnished by the hotelkeeper. *Ouellet* v. *Gauvin*, Q.R. 13 S.C. 542.

—Statutory proceeding—Exclusion of action.]—The mode of proceeding for injury by improvement to a water-course given by R.S.Q. Art. 5536, namely, a reference to experts, is not exclusive of the right to proceed by ordinary action. *Brissette* v. *Pillsbury*, 4 Rev. de Jur. 243.

XIX. Settlement of Action.

—Settlement by parties—Right of attorneys to proceed.]—The settlement of a cause by the parties, before judgment, even without the consent of the attorneys, is valid and the attorneys cannot continue the proceedings for their costs only. *Garon* v. *Noel*, 4 Rev. de Jur. 232.

XX. Suspension of Action.

—Benefit society—By-laws and constitution—Remedy for grievance.]—When, by the constitution and by-laws of a benefit society a remedy or appeal is provided, a member aggrieved by a decision of the society must exhaust such remedy before taking action before the civil courts. *Godin* v. *Supreme Court*, I.O.O.F. 4 Rev. de Jur. 236.

And see Criminal Law, XX.

XXI. Venue.

—Foreign contract—Joinder of party defendant to save jurisdiction.]

See Practice and Procedure, *(Venue.)*

XXII. Warranty.

—Removal of party wall—Action by tenant against landlord—Warranty against adjoining owner.]—One M., tenant, had taken action against his landlords for unlawfully removing the wall dividing their property from that of an adjoining proprietor. The defendants called in the adjoining owners, *en garantie*, alleging that the removal was the act of the latter, and that there was an agreement between them that the adjoining owners should bear the expense of removing the goods of the tenants and of the erection of a temporary wall to protect them from the inclemency of the season. The principal action, contested by the defendants on refusal of the adjoining owners to intervene, was afterwards dismissed; and the defendants, in the action *en garantie*, obtained judgment against the adjoining owners for costs of the demand *en garantie:*—Held, that the principal action alleging that the removal of the wall had been done by the principal defendants, without alleging any act on the part of the defendants in warranty, there was nothing in that action which made liable the adjoining owners, as warrantors (*garants*) of the principal defendants against the conclusions taken in this principal action; and that the agreement alleged by the principal defendants could not change the scope of such action: *Lyman* v. *Peck*, 12 L.C.R. 368; 6 L.C.J. 214, followed. *Shaw* v. *Murray*, Q.R. 6 Q.B. 571:

—Damages—Joint tort-feasors—Warranty—Demurrer.]—In a suit for damages where two tort-feasors are jointly and severally impleaded, the one may call upon the other to warrant him against the action of the plaintiff in chief. The mere fact that the principal action is directed against both plaintiff and defendant in warranty, and asks their joint and several condemnation in favour of the plaintiff in chief for the whole amount of damages suffered, is no good ground of demurrer to the action in warranty, provided it be made to appear that, although the liability of both to the principal plaintiff be joint and several, yet, as between themselves, the one is liable over to the other for the whole sum for which a condemnation may go in favour of the principal plaintiff. *O'Connor* v. *Flynn*, Q.R. 13 S.C. 435.

XXIII. Who May Maintain.

—Parties—Receiver—Right of action.]—Trustees having refused to bring an action to recover funds of the estate, certain of the beneficiaries brought the action in their own names and obtained an order removing the trustees and appointing a receiver in their place, with leave to substitute the receiver as plaintiff. He was substituted accordingly by a subsequent order. Neither of the above orders was appealed from, but at the trial the defendants while not objecting to the receiver as plaintiff, objected that there was no cause of action in him, whereupon one of the beneficiaries previously struck out asked to be joined as plaintiff:—Held, per Drake, J., that there was no cause of action in the receiver, and that the full court alone had power to restore a plaintiff struck out by order of a judge:—Held, by the full court that the action should be carried on in the names of the receiver and one of the beneficiaries with leave to any of the other beneficiaries to apply to be added as plaintiffs. *Shallcross* v. *Garesche*, 5 B.C.R. 320.

And see Practice and Procedure, I.

ADMINISTRATION.

See Executors and Administrators.

ADVANCEMENT.

Intestacy—Release by son of intestate—Claim by grandchildren.]—A son, in consideration of his father conveying to him certain land, accepted it as an advancement, in lieu of and in full of all claims and demands against his father's estate either for wages or as one of his co-heirs or next of kin, and agreed that neither he nor his heirs would make any claim against the estate, nor attempt to set aside or invalidate any will or conveyance made by the father. On the death of the father intestate, the son's children, he having died in his father's lifetime intestate, claimed as co-heirs or next of kin of the grandfather to share in the estate of the latter:—Held, the children took, if at all, *per stirpes*, *i.e.*, as representatives of their father, and as he would have been precluded by the agreement from taking anything, so were the children. Held, also, that the conveyance by the father to the son was an "advancement." *In re Estate of George Lewis*, 29 Ont. R. 609.

And see WILL.

ADVOCATE.

See ATTORNEY.
" COUNSEL.
" SOLICITOR.

AFFIDAVIT.

Conservatory seizure—Affidavit—Amendment.]—The affidavit required by Art. 955 C.C.P. is a condition precedent to the lawful issue of the conservatory seizure therein provided for. If the affidavit on which the seizure is obtained does not show the plaintiff to come within any of the cases mentioned in said article as giving a right to such process, a petition to set aside the seizure will be granted and the plaintiff will not be allowed to amend his affidavit. *Corriveau* v. *Dugas*, Q.R. 12 S.C. 220.

—Wrong date—Opposition—Nullity.]—The fact that an affidavit accompanying an opposition by error bears date as of 1800 is not a cause of nullity. *Grothé* v. *Maisonneuve*, Q.R. 13 S.C. 345.

—Practice — Commission — Affidavit for.]—A party desiring a commission for his own examination outside the jurisdiction should himself make an affidavit of the facts relied on. *Tollemache* v. *Hobson*, 5 B.C.R. 216.

—Appeal—Amount in controversy—Conflicting affidavits—Costs.] See APPEAL, IX.

—Arrest—Capias ad respondendum—Statement of cause of action.] See CAPIAS.

—Winding-up order—Petition for accompanying affidavit—Form.] See COMPANY, VI (*c*).

—Dominion Controverted Elections Act—Election petition—Sufficiency of affidavit—Belief of deponent.] See PARLIAMENTARY ELECTIONS.

—Municipal corporation—Action for non-repair of road—Penal action—R.S.Q. Art. 5716.]

See PRACTICE AND PROCEDURE, (*Affidavit.*)

AFFREIGHTMENT.

Charter party—Contract—Negligence—Stowage—Fragile goods—Bill of lading—Notice—Arts. 1674, 1675, 1676, 2383, 2390, 2409, 2413, 2424, 2427, C. C.—Fault of servants.]

See SHIPPING, (*Bill of Lading.*)

AGENT.

See PRINCIPAL AND AGENT.

ALIEN.

Arrest of alien — Capias — Foreign cause of action.]—An alien passing through the jurisdiction may be arrested on a *capias ad respondendum* upon a cause of action arising in a foreign country. In the absence of proof it will be assumed that the foreign law is the same as that here. *Macaulay* v. *O'Brien*, 5 B.C.R. 510.

—Constitutional law—Alien labour—Trade and commerce.]

See CONSTITUTIONAL LAW, IV (*b*).

ALIMENTS.

Seduction — Illegitimate child — Action by mother for alimentary allowance.]—A woman seduced under promise of marriage can, without being tutrix, bring an action against her seducer for an alimentary pension for the child to which she gave birth. *Thibault* v. *Poitras*, Q.R. 13 S.C. 481.

—Maintenance of child—Monthly allowance—Appeal—Amount in controversy.]

See APPEAL, XIII (*a*).

—Personal pensions—Appeal—Future rights.]

See APPEAL, XIII (*a*).

—Action en declaration de paternite—Appeal from judgment in—Payment of alimentary allowance pending appeal—Finality of judgment.]

See APPEAL, IV.

—Action in forma pauperis — Attorney and client—Costs.]—See COSTS, XVII.

Father-in-law and mother-in-law — Nature of obligation.]

See PARENT AND CHILD.

ALIMONY.

Interim allowance—Consent judgment in former action—Payment—Separation deed—Change of circumstances.]—In 1897 a wife brought an

action against her husband for alimony and to set aside a judgment pronounced by consent in a former action for alimony begun in 1884, under which the wife had received $200. The defendant pleaded the judgment as a bar, and also adultery by the wife, and a deed of separation. The plaintiff disputed the deed of separation, and impeached the judgment as obtained by fraud and without her knowledge or consent; the payment of $200 she attributed to a release of dower given by her. She also alleged expulsion and desertion by her husband, and that he had been living in adultery after the judgment:—Held, that, under these circumstances, the plaintiff was entitled to an order for interim alimony: *Atwood* v. *Atwood*, 15 Ont. P.R. 425, distinguished; *Henderson* v. *Henderson* 19 Gr. 464, followed. *Lafrance* v. *Lafrance*, 18 Ont. P.R. 62.

AMENDMENT.

See PLEADING.
" PRACTICE AND PROCEDURE.

APPEARANCE.

See PRACTICE AND PROCEDURE.

APPEAL.

I. APPEAL GENERALLY.
II. APPEAL AS TO COSTS.
III. COSTS OF APPEAL.
IV. IN PARTICULAR MATTERS.
V. INSCRIPTION.
VI. INTERFERING WITH QUESTIONS OF FACT.
VII. INTERLOCUTORY JUDGMENTS.
VIII. LEAVE TO APPEAL AND TIME TO APPEAL.
IX. PRACTICE AND PROCEDURE.
X. RIGHT OF APPEAL.
XI. RIGHT TO TAKE NEW GROUNDS.
XII. SECURITY FOR COSTS.
XIII. TO PARTICULAR COURTS.
(a) *Supreme Court of Canada.*
(b) *Ontario Court of Appeal.*
(c) *Ontario Divisional Court.*
(d) *Ontario Weekly Court.*
(e) *Ontario County Court.*
(f) *Court of Queen's Bench for Lower Canada.*
(g) *Court of Queen's Bench, Manitoba.*
(h) *Supreme Court of North-West Territories.*

I. APPEAL GENERALLY.

—Acting on judgment—Appeal—Waiver.]—Defendant was held to have waived his right of appeal by acting upon the judgment of the trial judge in obtaining his costs out of the fund in court, which, with the plaintiff's costs, also paid out, exhausted the fund: *International Wrecking Co.* v. *Lobb*, 12 Ont. P.R. 207 and *Keith* v. *Keith*, 25 Gr. 110 followed. *Videan* v. *Westover*, 29 Ont. R. 6 n.

—Manitoba County Court—Appeal—Amount in controversy.]—See COUNTY COURT.

II. APPEAL AS TO COSTS.

—Discretion of court appealed from—Costs.]—It is only when some fundamental principle of justice has been ignored or some other gross error appears that the Supreme Court will interfere with the discretion of provincial courts in awarding or withholding costs. *Smith* v. *The Saint John City Railway Co.*, *The Consolidated Electric Co.* v. *The Atlantic Trust Co.*, *The Consolidated Electric Co.* v. *Pratt*, 28 S.C.R. 603.

See COSTS, II.

III. COSTS OF APPEAL.

Bond for security—Statement of condemnation—Particularity.]—See COSTS, XVI.

IV. IN PARTICULAR MATTERS.

—Jurisdiction of Supreme Court—Prohibition—Application to Quebec.]—The provisions of the second section of 54 and 55 Vict. ch. 25, giving the Supreme Court of Canada jurisdiction to hear appeals in prohibition cases, apply to such appeals from the Province of Quebec as well as from all other parts of Canada. *Shannon* v. *Montreal Park & Island Railway Co.*, 28 S.C.R. 374.

—Consent order—R.S.O., c. 51, s. 72.]—There can be no appeal from an order appearing on its face to be made by consent, unless by leave of the court or judge making it, even though the appeal is on the ground that no consent was given. R.S.O., ch. 51, sec. 72. *Re Justin*, a solicitor, 18 Ont. P.R. 125.

—Award—Railway act—Forum—Transfer to proper court—Rule 784.]—The proper forum for the hearing of an appeal from an award under the Dominion Railway Act is a judge in court, and not a Divisional Court; the provision of Rule 117 respecting proceedings directed by any statute to be taken before the court, and in which the decision of the court is final, is not applicable to an appeal of this kind: *In re Potter and Central Counties R. W. Co.*, 16 Ont. P.R. 16, approved. Where an appeal was brought in the wrong court an order was made under Rule 784 transferring it to the proper court, upon payment of costs. *Re Montreal and Ottawa Railway Co. and Ogilvie*, 18 Ont. P.R. 120.

—Action en declaration de paternite—Alimentary allowance.]—The defendant in an action for declaration of paternity had been declared the father of the plaintiff's child, and condemned to pay an alimentary allowance

for such child. Having appealed from this judgment the plaintiff claimed that he should be ordered to pay the allowance until the termination of the proceedings in appeal:—Held, that the defendant having carried the cause to appeal, there was no final judgment establishing that he was the father of the child, and he could not, until the filiation was finally established, be called upon to pay the alimentary allowance. *Galivan* v. *Macdonald*, Q.R. 12 S.C. 496.

—Quebec Election Act of 1895—Appeal to a judge from decision of council—59 V., c. 9, s. 46 (P.Q.).]—Under section 46 of the Quebec Election Act of 1895, 59 Vict., c. 9, which provides that by means of a petition, any elector of the electoral district may appeal from any decision of the council, confirming, etc., the list of electors "within fifteen days following such decision," the petition must be presented within the fifteen days. Service of a copy within fifteen days is insufficient to give the right to appeal. *Cholette* v. *Corporation de Ste. Justine*, Q.R. 12 S.C. 543.

—Interdiction—Review.]—No appeal from a judgment removing an interdiction exists by law. The rule is: "An appeal does not exist, unless specially given." *Lavoie* v. *Lajoie*, Q.R. 13 S.C. 29.

—Appeal from Circuit Court—Jurisdiction—Ultimate jurisdiction of Court—Arts. 1053, 1054 C.C.P. (old text)—Penalties—Deposit in Review—Art. 1196 C.C.P.]—In an action for a penalty of $50, a deposit of $50 is sufficient to inscribe the case in review. The fact that coercive imprisonment lies to enforce payment, does not make the amount in controversy different nor even add to the costs taxable on the judgment. The right of appeal does not exist by implication or because it is thought just that an appeal should lie, it exists only where expressly given.—The Circuit Court sitting at a *chef-lieu* is a court of ultimate jurisdiction, and therefore no appeal lies from its judgments in any case whatever.—An action brought for a penalty to be paid totally or partly to the Crown does not constitute a demand appealable by its nature.—The articles of the Code of Civil Procedure which render appealable suits for "fees of office, duties, rents, revenues, or sums of money payable to the Crown," do not include suits for penalties. The maxim "*noscuntur a sociis*" applies in this case: *Odell* v. *Gregory*, 24 S.C.R. 661, followed. *Dickey* v. *Thibault*, Q.R. 13 S.C. 58.

—Judgment of Circuit Court—Appeal to Court of Review—Quashing municipal by-law.]—There is an appeal to the Court of Review from a judgment of the Circuit Court dismissing a petition for the quashing of a municipal by-law authorizing the opening of a winter road upon the land of the petitioners for an indefinite time, such a by-law having relation to real rights and affecting the future rights of the petitioners. *Beauchemin* v. *Corporation of Belœil*, Q.R. 13 S.C. 193.

—Quebec Election Act—Appeal from decision of municipal council—Service of petition.]—A petition in appeal from the decision of a municipal council, on a complaint concerning the electoral list, was presented to a judge of the Superior Court on the tenth day after it was rendered, and the judge having ordered that it be immediately served on the corporation respondent, service was made the same day:—Held, that service of the petition before presentation was not necessary to make the appeal effectual, and it was therefore duly taken within the delay of fifteen days allowed by law (59 Vict. ch. 9, s. 46). *Richer* v. *Corporation of Ste. Geneviève*, Q.R. 13 S.C. 338.

—Liquor License Act, 1887—Appeal—Evidence—Trial de novo—50 V. c. 4 (N.B.).]—On an appeal to a judge of the County Court from a conviction for selling liquor contrary to the provisions of the Liquor License Act, 1887, (Acts of Assembly, 50 Vict. c. 4) the appellate judge has power to adjudicate on the evidence taken before the convicting magistrate; or, he may hear the evidence of witnesses other than those examined below, or the further evidence of the witnesses already examined. *Ex parte Abel*, 34 N.B.R. 121.

—Order dissolving injunction—Interim injunction pending appeal—Security—Terms—Proviso.]—*Pacific Investment Co.* v. *Swann*, 18 C.L.T. Occ. N. 124.

—Thirty party—Dismissal of action—Appeal.]

See PARTIES.

V. INSCRIPTION.

—Procedure—Inscription in appeal—Art. 1121 C.C.P. (old text).]—The inscription of a case in appeal to the Court of Queen's Bench must be filed in the office of the prothonotary of the court which rendered the judgment, before service of notice on the adverse party or his attorney. *Inkiel* v. *Laforest*, Q.R. 7 Q.B. 454.

VI. INTERFERING WITH QUESTIONS OF FACT.

—Questions of fact—Reversal in Court of Appeal.]—The Supreme Court of Canada may take questions of fact into consideration on appeal; and if it clearly appears that there has been an error in the admission or appreciation of evidence by the courts below, their decisions may be reversed or varied: *The North British and Mercantile Insurance Company* v. *Tourville* (25 S.C.R. 177) followed. *Lefeunteum* v. *Beaudoin*, 28 S.C.R. 89.

—Conversion—Question for trial judge.]

See CONVERSION.

—Negligence—Master and servant—Employer's liability—Concurrent findings of fact—Contributory negligence—Duty of Appellate Court.

See MASTER AND SERVANT.

VII. Interlocutory Judgments.

—Interlocutory judgment—Consideration of, on appeal from final judgment.]—Where there has been no application for leave to appeal from an interlocutory judgment of the Superior Court, the Court of Queen's Bench sitting in appeal, when the case comes before it on the final judgment, is not precluded from revising and reversing an interlocutory judgment which laid down a principle which the Court considers to be erroneous, and which was re-affirmed by the final judgment in the case. But interlocutory judgments settling mere matters of procedure, representing as they usually do the exercise merely of a judge's discretion, and not affecting the principle upon which the final judgment is based, should not be subject as a general rule, to reconsideration either upon the final hearing upon the merits in the first court, nor, *a fortiori*, upon appeal to the Court of Queen's Bench from such final judgment. Where such interlocutory judgments seriously affect the rights of the parties, application for leave to appeal should be made within the stipulated delay of thirty days, and if not so made, the party should be held to have acquiesced in them. When an appellant from a final judgment is serious (even if mistaken) in considering that such final judgment has been controlled or modified by an erroneous principle laid down in an interlocutory judgment, it is his right to seek relief from it on the final appeal, and it is his duty to give his adversary notice of that intention, either in the inscription, as in this case, or by a notice accompanying an inscription in the ordinary form. *Bayard* v. *Dinelle*, Q.R. 7 Q.B. 480.

VIII. Leave to Appeal and Time to Appeal.

—Special leave to appeal—Condition as to costs.—Special leave to appeal may be given on terms that the appellants should be liable to pay the respondent's costs in any event. *Montreal Gas Co.* v. *Cadieux*. [1898] A.C. 718.

—Special leave—60 & 61 V. (D.) c. 34, s. 1 (e) —Benevolent Society—Certificate of Insurance.]—An action in which less than the sum or value of one thousand dollars is in controversy and wherein the decision involves questions as to the construction of the conditions indorsed upon a benevolent society's certificate of insurance and as to the application of the statute securing the benefit of life insurance to wives and children to such certificates, is not a matter of such public importance as would justify an order by the court granting special leave to appeal under the provisions of subsection (*e*) of the first section of the statute 60 & 61 V. c. 34. *Fisher* v. *Fisher*, 28 S.C.R. 494.

—Extension of time—Order of reference—Amendment of record—Laches.]—An order of reference had been settled in such a way as to omit to reserve certain questions which the court expressly withheld for adjudication at a later stage of the case. Both parties had been represented on the settlement and had an opportunity of speaking to the minutes. The order was acquiesced in by the parties for a period of some eighteen months; the reference was executed and the referee's report fyled. After final judgment in the action, the Crown appealed to the Supreme Court. Subsequent to the lodging of such appeal, an application was made to the Exchequer Court to amend the order of reference so as to include the reservations mentioned, or, in the alternative, to have the time for leave to appeal from such order extended. Under the circumstances, the Court extended the time to appeal but refused to amend the order of reference as settled. *Woodburn* v. *The Queen*, 6 Ex. C.R. 69.

—Application by executor under Rule 938 (*a*)—Will—Divisional Court—Court of Appeal—Interest of executor—Reimbursement of costs—Security—Legatees as appellants—Contending beneficiaries.]—Under Con. Rule 938 (*a*), an executor applied in Chambers, by way of originating notice, and obtained a determination of a question affecting the rights of legatees under the will, which involved the construction of the will; but, upon appeal by residuary legatees, the order in Chambers was reversed by a Divisional Court, which put a different construction upon the will:—Held, that the judgment of the Divisional Court was a sufficient protection to and indemnity of the executor, and, if he sought to appeal to the Court of Appeal, he must do so at his own risk as to reimbursement of the costs, in the event of failure, and his application for leave to appeal could be granted only upon the usual terms as to giving security for costs. The legatees interested in the bequest then applied for leave to appeal from the decision of the Divisional Court, and to dispense with security. It was objected on behalf of the residuary legatees that the intervention of the applicants raised a question between contending beneficiaries, and that there was no jurisdiction to deal with such a question under Con. Rule 938:—Held, that the question was one which a master, in taking the accounts and making the inquiries directed to be taken and made in an administration proceeding, would have jurisdiction to deal with; and if, for the purpose of ascertaining and determining the persons to whom legacies were payable, and the amount of the legacies, it should become necessary incidentally to place a construction on the will, the master had jurisdiction to do so; and the test of jurisdiction under Con. Rule 938 was whether the question was one which, before the existence of the rule, could have been determined under a judgment for the administration of an estate or execution of a trust. Leave to appeal granted, and the security required reduced below the usual amount. *Re Sherlock*, 18 Ont. P.R. 6.

—Discretion.]—The Court of Queen's Bench for Lower Canada cannot, like the Privy

Council, grant leave to appeal at discretion but only in the cases allowed by the Code of Procedure. *Cie de Pulpe de Megantic* v. *Corporation du Village d'Agnès*, Q.R. 7 Q.B. 349.

—Procedure—Hypothecary action—Delay to surrender land—Appeal—Date of judgment.]—Where a defendant is condemned in a hypothecary action to surrender certain lands within fifteen days from the date of service upon him of a copy of the judgment, and the judgment is appealed from, the delay runs only from the date of the final judgment in appeal. Where the appellant was granted by the Supreme Court a specific delay to fyle factum, and, in default, the appeal should be dismissed without further order, and the appellant made default to fyle the factum, the date of the final judgment of the Supreme Court is not the date of the order fixing the delay, but the day on which the appeal stood dismissed by reason of appellant's default to fyle factum. *Corporation of Richmond* v. *Richmond Industrial Co.*, Q.R. 12 S.C. 81.

—Abandonment—Time—Setting down—Supreme Court Amendment Act, 1896, s. 16—B.C. Rule 678.]—The Supreme Court Amendment Act, 1896, s. 16, regulating the time for appeals must be read with Rule 678, and an interlocutory appeal which has not been set down two days before the day for the hearing of the appeal will be treated as abandoned, and will be dismissed on motion by the respondents. *Semble*, a motion to quash the appeal is proper practice. *Quaere*, whether "days" in Rule 678, means clear days. *The Queen* v. *Aldous*, 5 B.C.R. 220.

—Abandonment—Time—Setting down—Supreme Court Amendment Act, 1896, s. 16—B.C. Rule 678—Waiver of irregularity by appearance of counsel—Costs.]—Supreme Court Amendment Act, 1896, s. 16, regulating the time for setting down and bringing on appeals for hearing, is imperative, and an appeal set down for the Full Court next after the entry of the order appealed from, being more than twelve days thereafter, is out of time and will be struck out.—Appearance of counsel to take such an objection is not an appearance upon the appeal so as to waive the irregularity: *In re McRae, Forster* v. *Davis*, 25 Ch. D. 16, distinguished; *Bevilockway* v. *Schneider*, 3 B.C.R. 88, not followed.—The Court will not extend the time for appealing except on substantial grounds.—Omitting to give notice of a preliminary objection to an appeal is not a sufficient ground for depriving a respondent who succeeds in dismissing the appeal thereon, of his costs. *Tollemache* v. *Hobson*, 5 B.C.R. 223.

—Time—Extending—Supreme Court Amendment Act, 1896, s. 16—B.C. Rule 684—County Court Amendment Act, 1896, s. 6.—Section 16 of the Supreme Court Amendment Act, 1896 (made applicable to County Court Appeals by the County Court Act Amendment Act, 1896, s. 6), supersedes Supreme Court Rule 684, and exclusively governs as to the time for bringing appeals from final judgments. The time for bringing such an appeal will not be extended unless strong circumstances in favour of such extension are shewn.—On respondent's succeeding on a preliminary objection as to the appeal being out of time, the appellant will not be given an opportunity of procuring material to support an application for such an extension. He should be prepared with such material on the argument. *Reinhard* v. *McClusky*, 5 B.C.R. 226.

—Time — Extending — Abandonment — Form of case on appeal.]—Owing to the nature of the subject matter the Court requires stronger grounds for extending the time for appealing from judgments in mining cases than in other matters. The provision in sec. 29 of cap. 82 C.S.B.C. 1888, that appeals from judgments of mining Courts "may be in the form of a case settled and signed by the parties" is not imperative, but such appeal may be brought in the same form as in ordinary cases.—Defendants gave notice of appeal from a judgment of a County Court in a mining cause rendered 11th March, 1896, within the time provided by sec. 29, *supra*, for the next Court, but being unable to procure the notes of the trial judge, did not set it down for that Court. In December, 1896, they obtained the notes, and in January, 1897, gave notice of moving the Full Court to extend the time for setting down the appeal, shewing that the Registrar refused to enter the appeal without appeal books containing the judge's notes being fyled:—Held, that the appellants were bound to set the appeal down for argument at the next Full Court, or to move that Court for an extension of time for setting it down, and that the neglect to take either course constituted an abandonment. *Kinney* v. *Harris*, 5 B.C.R. 229.

—Appeal to Privy Council—Leave by Court appealed from.]—Under the Privy Council Rules the leave to appeal from a judgment of the Supreme Court of British Columbia may be granted by any quorum of the Full Court, although not constituted of the same judges as those who delivered the judgment proposed to be appealed from. *The Queen* v. *Victoria Lumber Co.*, 5 B.C.R. 305.

—Time — Extending — Res judicata — Crown — Estoppel against — Supreme Court Amendment Acts, 1896, 1897—Statutes—Retroaction.]—At the trial judgment was given for the suppliants, and the order for judgment was duly entered. Upon application by the Crown to extend the time for appealing from the judgment on the ground that the solicitor misapprehended the effect of sec. 16 of the Supreme Court Amendment Act, 1896, Drake, J., refused the application, holding that the formal judgment not having been entered on the order for judgment, the time for appealing had not commenced to run; and intimated that the certificate of judgment granted to the suppliants under sec. 16 of the Crown Procedure Act, C.S.B.C. [1888], ch. 32,

should not have been obtained *ex parte*. Upon motion to the Full Court that the appeal might be brought on notwithstanding the non-entry of the formal judgment, or for a stay of proceedings until it was entered, or, in the alternative, to extend the time for appealing. Held, that the time for appealing from a final judgment commences to run when the decree or order for judgment is put into intelligible shape, so that the parties may clearly understand what they have to appeal from, and not from the entry of the formal judgment upon the order of the Court. 2. (After examining the manager of the Bank of B.N.A. as to the bona fides of an assignment of the judgment to it) That no grounds had been shewn by the Crown to warrant an extension of the time.—After the passing of the Supreme Court Amendment Act, 1897, the Crown gave a new notice of appeal to the next Court, and the suppliants moved the Full Court to quash the appeal, the Crown making a cross motion to extend the time if necessary:—Held, that the former decision of the Full Court had finally determined the rights of the parties, and the appeal should be quashed. Per Drake, J.:—Statutes affecting the right to appeal are not statutes relating to procedure, and are not retroactive. *The Koksilah Quarry Co.* v. *The Queen*, 5 B.C.R. 600.

IX. Practice and Procedure.

—Appeal—Admission of new evidence.]—The plaintiff, having omitted to give formal proof of his title at the trial, was allowed to supply it upon the appeal. Upon the plaintiff's assent, the judgment below was varied by awarding to the defendant leave to erect and maintain a gate across the end of the way in question: *Clendenan* v. *Blatchford*, 15 Ont. R. 285 followed. *Warren* v. *Van Norman*, 29 Ont. R. 508, affirming 29 Ont. R. 84.

—Printed case—When ordered—Rule 802—Terms.]—Except where for the convenience of the Court appeal cases ought to be printed, the Court will not, as a rule, force that course upon an unwilling appellant at the instance of the respondent, upon a motion under Rule 802 (3). If the respondent desires to have the appeal case printed, he may have it done at his own expense; and the appellant may be put upon terms, in the event of a further appeal by him, upon which a printed case will be necessary, as to the use of the books printed by the respondent. *Teetzel* v. *Dominion Construction Co.*, 18 Ont. P.R. 16.

—Notice to dismiss for want of prosecution—Affidavits—Security for costs.]—An order was granted at Chambers directing defendant to give security for costs of his appeal, and staying the hearing of the appeal, until such security was given. The cause was entered upon the list of causes for argument, but was not proceeded with, and notice to dismiss the appeal was given on the 16th for the 19th December, at 10 o'clock a.m. The affidavits were fyled on the 17th before 11 a.m.:—Held, that the notice to dismiss was in accordance with the practice. Held, also, that there is no practice or rule requiring the affidavits to be fyled before the hearing of the motion; the only effect, where they are not fyled in time, being to work a postponement.—When the order to give security was made, plaintiff's solicitor was informed that defendant would not go on with the appeal, and by the terms of the order the appeal could not be heard until ten days, at least, after security had been given:—Held, that, under these circumstances, plaintiff was not entitled to costs of the appeal, but only to costs of the application to dismiss. *Knauth Nachod* v. *Sterne*, 30 N.S.R. 295.

—Action for money had and received—Change of position—Application for leave to adduce further evidence.]—Plaintiff shipped a quantity of fish by the schooner "Gleaner," of which J. was master, with the understanding that the fish were to be sold by J., and the balance, after deducting freight and expenses, remitted to plaintiff. The fish were sold by J. and the defendant B., and at the request of J., the money was paid over to B., who sought to retain it in satisfaction of an amount due him by J. The evidence shewed that B. was twice informed by J. that he had the fish on freight, and he had the means of ascertaining, by the exercise of due diligence, that the fish were the property of plaintiff. It appearing that nothing had occurred to induce B. to change his position in any way to his prejudice, and that he sought to retain the money and apply it in satisfaction of the debt due by J., without having received any authority therefor from anyone:—Held, that the judge of the County Court was right in finding in plaintiff's favour, and that defendant's appeal should be dismissed with costs. Held, further, that defendant's application for leave to adduce further evidence must be refused with costs, the rule which permits that to be done upon appeal being limited to cases originating in the Supreme Court. *Hickman* v. *Baker*, 31 N.S.R. 208.

—Lis pendens—Action for maliciously fyling and maintaining—Appeal—Setting down—Time—Rule 678—Supreme Court Amendment Act, 1897, s. 7, s.s. 5, s. 12, s.s. 1.]—The omission to set down an appeal two days before the day for hearing, as prescribed by S.C. Rule 678, is an irregularity only, and should be relieved against under sec. 12, sub-sec. 1, and sec. 7, sub-sec. 5, of the Supreme Court Amendment Act, 1897: *The Queen* v. *Aldous*, 5 B.C.R. 220, *Tollemache* v. *Hobson*, 5 B.C.R. 223, and *Kinney* v. *Harris*, 5 B.C.R. 229, discussed. *Cowan* v. *Macaulay*, 5 B.C.R. 495.

—Time—Practice—Preliminary objection—Notice of—Supreme Court Amendment Act, 1897, s. 12.]—The trial judge submitted certain questions to the jury with the following stated reservation:—"subject to the law governing

the contract and its construction," but judgment was given, for reasons stated by the Court, at variance with the findings of the jury thereon:—Held, that the trial judge should have explained the law governing the contract and its construction to the jury and then taken their opinion on the questions submitted; and that so long as the findings of a jury stand unreversed judgment must be entered in accordance therewith.—At the close of the appellant's argument, counsel for the respondents moved to quash the appeal on the ground that notice thereof was given before the signing or entry of the order for judgment. The order had been entered since giving of the notice of appeal:—Held, that this was a preliminary objection, and should have been taken before the appellant opened, and that notice thereof should have been given in pursuance of Supreme Court Amendment Act, 1897, sec. 12. *Macdonald* v. *Methodist Church*, 5 B.C.R. 521.

—Order for security—Dismissal of appeal for non-compliance with.]—See COSTS XVI.

—Incomplete record—Certiorari.]

See PRACTICE AND PROCEDURE, *(Appellate Court.)*

—Reception of new evidence on appeal.]

See MANITOBA REAL PROPERTY ACT.
And see PRACTICE AND PROCEDURE, *(Appellate Court.)*

X. RIGHT OF APPEAL.

—Practice—Privy Council appeal—P.C. rules of 1887 R. 1—Leave.]—Judgment was given for the defendant company in an action for damages for the death of plaintiff's horses, caused, as alleged, by the non-fencing of the defendant's railway line, and an appeal by the plaintiff to the Full Court was dismissed. The value of the horses was proved at $110. The action was based on the 54 Vic. (B.C.), c. 1, providing that Dominion railways should be liable in damages to the owner of any cattle killed by their engines or trains unless their line was fenced as provided by the Provincial Fence Act, 1888. The judgment held the Act to be unconstitutional. The plaintiff applied for leave to appeal to the Privy Council under the P.C. Rules, 1887, Rule 1 (*a*), on the ground that the judgment indirectly involved a claim respecting a civil right of the value of 300:—Held, that the expression "civil right," required to found an appeal, as being indirectly involved, contemplates such rights as easements and franchises, and other rights of a similar nature; that the plaintiff's only interest in the matter was the $100 damages. *Madden* v. *The Nelson & Fort Sheppard Railway Co.*, 5 B.C.R. 670.

—Waiver by taking benefit under order appealed from—Arrest.]—Defendant, having been arrested under a *ca. re.*, applied to a judge for his discharge on the ground that he had not intended to leave the jurisdiction. The judge made the order, imposing as a term that the defendant should bring no action in respect of the arrest. The defendant served the order on the sheriff and was discharged thereunder:—Held, following *Wilcox* v. *Odden*, 15 C.B.N.S. 837, that the defendant, having taken a benefit under the order, could not appeal from the term restraining him from bringing an action in respect of the arrest. *Spencer* v. *Cowan*, 5 B.C.R. 151.

—Waiver—Mandatory injunction—Liability to attachment.—See MUNICIPAL CORPORATIONS.

XI. RIGHT TO TAKE NEW GROUNDS.

—Appeal—Review—Additional evidence.]—The introduction of new proof after judgment has been rendered on the merits, is illegal, and can have no effect on the judgment to be rendered in appeal, if the case was appealable. *Lavoie* v. *Lajoie*, Q.R. 13 S.C. 29.

XII. SECURITY FOR COSTS.

—Foreign corporation—Security for costs—C.S. B.C. 1888, c. 21, s. 71 (*a*).]—A foreign corporation appealing to the Full Court from a judgment against it at the trial, cannot be ordered to give security for payment of the costs of the action found against it by the judgment appealed from, as well as security for the costs of the appeal. *Nelson and Fort Sheppard Railway Co.* v. *Jerry*, 5 B.C.R. 166.

And see COSTS, XVI.

XIII. TO PARTICULAR COURTS.

(*a*) *Supreme Court of Canada.*

—Jurisdiction—Title to land—Petitory action—Encroachment—Demolition of works.]—An action to re-vindicate a strip of land upon which an encroachment was admitted to have taken place by the erection of a building extending beyond the boundary line, and for the demolition and removal of the walls and the eviction of the defendant, involves questions relating to a title to land, independently of the controversy as to bare ownership, and if appealable to the Supreme Court of Canada under the provisions of the Supreme and Exchequer Courts Act. *Delorme* v. *Cusson*, 28 S.C.R. 66.

—Appeal—Jurisdiction—Appealable amount—Monthly allowance—Future rights—"Other matters and things"—R.S.C., c. 135, s. 29 (*b*)**—56 V., c. 29 (D.)—Established jurisprudence.**]—In an action *en déclaration de paternité* the plaintiff claimed an allowance of $15 per month until the child (then a minor aged four years and nine months) should attain the age of ten years, and for an allowance of $20 per month thereafter "until such time as the child should be able to support and provide for himself." The Court below, following the decision in *Lizotte* v. *Descheneau* (6 Legal News, 107), held that under ordinary circumstances such an allowance would cease at the age of fourteen years:—Held, that the *demande* must be understood to be for allowances only up to the time the child should

attain the age of fourteen years and no further, so that, apart from the contingent character of the claim, the *demande* was for less than the sum or value of two thousand dollars, and consequently the case was not appealable under the provisions of the twenty-ninth section of "The Supreme and Exchequer Courts Act," even if an amount or value of more than two thousand dollars might become involved under certain contingencies as a consequence of the judgment of the Court below: *Rodier* v. *Lapierre* (21 S.C.R. 69) followed: — Held, also, that the nature of the action and *demande* did not bring the case within the exception as to "future rights" mentioned in the section of the Act above referred to: *O'Dell* v. *Gregory* (24 S.C.R. 661); *Raphael* v. *Maclaren* (27 S.C.R. 319) followed. *Macdonald* v. *Galivan*, 28 S.C.R. 258.

—Jurisdiction—Amount in controversy—Affidavits—Conflicting as to amount—50 & 51 V. c. 16, ss. 51-53 (D.)—54 & 55 V. c. 26, s. 8 (D.)—On a motion to quash an appeal where the respondents fyled affidavits stating that the amount in controversy was less than the amount fixed by the statute as necessary to give jurisdiction to the appellate Court, and affidavits were also fyled by the appellants, showing that the amount in controversy was sufficient to give jurisdiction under the statute, the motion to quash was dismissed, but the appellants were ordered to pay the costs, as the jurisdiction of the Court to hear the appeal did not appear until the fyling of the appellants' affidavits in answer to the motion. *Dreschel* v. *Auer Incandescent Light Mfg. Co.*, 28 S.C.R. 268.

—Jurisdiction—Amount in controversy—Opposition afin de distraire—Judical proceeding—Demand in original action—R.S.C. c. 135, s. 29.]—An opposition *afin de distraire*, for the withdrawal of goods from seizure, is a "judical proceeding" within the meaning of the twenty-ninth section, of "The Supreme and Exchequer Courts Act," and on an appeal to the Supreme Court of Canada, from a judgment dismissing such opposition, the amount in controversy is the value of the goods sought to be withdrawn from seizure and not the amount demanded by the plaintiff's action or for which the execution issued: *Turcotte* v. *Dansereau*, 26 S.C.R. 578, and *McCorkill* v. *Knight*, Cass. Dig. 2 ed. 694, followed; *Champoux* v. *Lapeirre*, Cass. Dig. 2 ed. 426, and *Gendron* v. *McDougall*, Cass. Dig. 2 ed. 429, discussed and distinguished. *King* v. *Dupuis dit Gilbert*, 28 S.C.R. 388.

—Appeal — Jurisdiction — Future Rights — Alimentary allowances—R.S.C. c. 135, s. 29, s.s. 2; 54 & 55 V. c. 25, s. 3; 56 V. c. 29, s. 2.]—Actions or proceedings respecting disputes as to mere personal alimentary pensions or allowances do not constitute controversies wherein rights in future may be bound within the meaning of the second sub-section of the twenty-ninth section of "The Supreme and Exchequer Courts Act" as amended, which allows appeals to the Supreme Court of Canada from judgments rendered in the Province of Quebec in cases where the controversy relates to "annual rents or other matters or things where rights in future might be bound:" *Macfarlane* v. *Leclaire*, 15 Moo. P.C. 181, distinguished; *Sauvageau* v. *Gauthier*, L.R. 5 P.C. 494, followed. *La Banque du Peuple* v. *Trottier*, 28 S.C.R. 422.

—Assuming jurisdiction—Amount in controversy—60 & 61 V. c. 34, s. 1.]—Where the jurisdiction of the Supreme Court of Canada to entertain an appeal is doubtful the Court may assume jurisdiction when it has been decided that the appeal on the merits must be dismissed: *Great Western Railway Company of Canada* v. *Braid*, 1 Moo. P.C.N.S. 101, followed. — By 60 & 61 V. c. 34, ss. (*c*), no appeal lies from judgments of the Court of Appeal for Ontario unless the amount in controversy *in the appeal* exceeds $1,000, and by sub-sec. (*f*), in case of difference, it is the amount demanded, and not that recovered which determines the amount in controversy:—Held, per Taschereau J., that to reconcile these two sub-sections, paragraph (*f*) should probably be read as if it meant the amount demanded upon the appeal. To read it as meaning the amount demanded in the action, which is the construction the Court has put upon R.S.C. c. 135 s. 29 relating to appeals from the Province of Quebec, would seem to be contrary to the intention of Parliament: *Laberge* v. *The Equitable Life Assurance Society*, 24 S. C.R. 59, distinguished. *Bain* v. *Anderson & Co.*, 28 S.C.R. 481.

—Jurisdiction—Matter in controversy—Interest of second mortgagee—Surplus on sale of mortgaged lands—60 and 61 V., c. 34, s. 1 (D.)—Statute, construction of—Practice.]—While an action to set aside a second mortgage on lands for $2,200 was pending, the mortgaged lands were sold under a prior mortgage, and the first mortgagee, after satisfying his own claims, paid the whole surplus of the proceeds of the sale, amounting to $270, to the defendant as subsequent incumbrancer. Judgment was afterwards rendered declaring the second mortgage void, and ordering the defendant to pay to the plaintiff, as assignee for the benefit of creditors, the amount of $270 so received by him thereunder, and this judgment was affirmed on appeal. Upon an application to allow an appeal bond on further appeal to the Supreme Court of Canada, objections were taken for want of jurisdiction under the clauses of the Act 60 & 61 Vict., ch. 34, but they were overruled by a judge of the Court of Appeal for Ontario, who held that an interest in real estate was in question, and the appeal was accordingly proceeded with, and the appeal case and factums printed and delivered. On motion to quash for want of jurisdiction when the appeal was called for hearing:—Held, that the case did not involve a ques-

tion of title to real estate or any interest therein, but was merely a controversy in relation to an amount less than the sum or value of one thousand dollars, and that the Act 60 & 61 Vict., ch. 34, prohibited an appeal to the Supreme Court of Canada. *Jermyn* v. *Tew*, 28 S.C.R. 497.

(b) Ontario Court of Appeal.

—Appeal—Drainage Act, 57 V., c. 56, s. 106—Rules applicable to High Court appeals—Time—Vacation—Motion to confirm proceedings—Costs.]—The Rules applicable to appeals from the High Court to the Court of Appeal are to be applied, as far as possible, to appeals from reports of the Drainage Referee under the Drainage Act, 57 V., c. 56 (O.), and the Christmas vacation is to be excluded in the computation of the month within which, by s. 106 of that Act, such an appeal is to be made.—Where the respondents' solicitors, by letter, insisted that the appeal was not regularly or properly brought, the appellants were justified in making a motion to extend the time for taking certain steps or to confirm the proceedings taken, and were entitled to the costs of such motion, although it was, strictly speaking, unnecessary, because the proceedings were found to be regular. *Re Township of Raleigh and Harwich*, 18 Ont. P.R. 73.

—Order adding parties—Merits tried in Divisional Courts—Appeal.—Where the judge presiding at the trial of an action directs it to stand over to have parties added, and both parties apply to a Divisional Court to set aside this direction and, by consent and without prejudice to the right of appeal, ask the Divisional Court to hear the case on the merits, either party may, without leave, appeal to the Court of Appeal for Ontario from the judgment of the Divisional Court. *Payne* v. *Caughell*, 24 Ont. A.R. 556.

(c) Ontario Divisional Court.

—Division Courts—Appeal—Fyling case—Extension of time—Delay of clerk—Jurisdiction of Divisional Court—58 V., c. 13, s. 47 (O.)]—Where through the delay of the clerk in furnishing a certified copy of the proceedings, the appellant in a Division Court Action was unable to fyle the same within the two weeks prescribed by 58 Vict., c. 13, s. 47 (4), while the junior County Court Judge refused to make an order allowing any other period for so doing:—Held, that the Divisional Court had no jurisdiction to grant relief but application might be made to the senior County Judge. *Owen* v. *Sprung*, 28 Ont. R. 607.

—Surrogate Courts—Removal of cause into High Court—Appeal from order made before removal.]—Immediately upon the making of an order removing a cause or matter from a Surrogate Court into the High Court, under sec. 34 of the Surrogate Courts Act, R.S.O. c. 59, such cause or matter becomes an action in the High Court, and ceases to be a cause or matter in the Surrogate Court; and therefore an appeal under sec. 36 of the Act from an order made in the Surrogate Court before the removal, cannot be entertained, if launched after the removal. The practice to be followed is the practice prescribed in High Court proceedings. *Justin* v. *Goodison*, 18 Ont. P.R. 174.

(d) Ontario Weekly Court.

—Removal of conviction—Jurisdiction.]—After the removal of a conviction into the High Court, the convicting magistrate moved to have an affidavit fyled by the defendant, removed from the fyles of the Court, which was refused with costs payable by the magistrate to the defendant. Subsequently, under the belief that secs. 897-898 of the Code applied, the defendant obtained an *ex parte* order varying the previous order by making the costs payable to the clerk of the peace and then to the defendant, and an appeal from such amended order by the magistrate to the judge sitting in Weekly Court, was dismissed; the magistrate then appealed to the Divisional Court from the order of the judge of the Weekly Court, and, also, by leave, direct from the above amended order, when the former appeal was dismissed and the latter allowed.—The judge sitting in the Weekly Court has no jurisdiction to entertain an appeal from an order of a judge of the High Court made in a criminal proceeding. *The Queen* v. *Graham*, 29 Ont. R. 193.

(e) Ontario County Court.

—Summary conviction—Appeal—County Judge—Costs sessions—52 Vict., ch. 43 (D.)—Criminal Code, secs. 879, 880—High Court—Prohibition.]—On an appeal to a County Judge from a summary conviction under the Act to provide against frauds in the supplying of milk to cheese, butter and condensed milk factories (52 Vict., ch. 43, sec. 9), the judge has the same powers to award costs as the Sessions of the Peace under sections 879-880 of the Criminal Code (55 & 56 Vict., ch. 29 (*D*).—Under the Criminal Code, section 880, the Court may, on appeal, award such costs, including solicitor's fee, as it may deem proper, and there is no power in the High Court to review such discretion. *The Queen* v. *McIntosh*, 28 Ont. R. 603.

(f) Court of Queen's Bench for Lower Canada.

—Jurisdiction—Security—Dismissal for want of—Art. 1213 C.C.P.]—Under the new Code of Procedure, which leaves the Court of first instance seized of an appeal until security has been given, the Court of Appeal has no jurisdiction to dismiss for default of security. *Marsan* v. *La Banque d'Hochelaga*, Q.R. 7 Q.B. 40.

(g) Court of Queen's Bench, Manitoba.

—County Court—Leave to appeal—Striking out—County Courts Act, ss. 315, 321, 326, 327—59 V. (Man.) c. 3, s. 2—Queen's Bench Act, 1895, Rule 168 (*b*)—Costs.]—Held, that under secs.

326 and 327 of the County Courts Act, as amended by 59 Vict., c. 3, s. 2, a single judge of the Queen's Bench has power, on a motion before him under Rule 168 (*b*), Queen's Bench Act, 1895, to strike out an appeal brought under sec. 315, to give the appellant liberty to proceed with his appeal, notwithstanding the failure to comply with any requirements of the statute, and although the appeal is to the Full Court; and that such leave should be given in this case, as the appellant's failure to fyle the affidavit of intention to appeal required by sec. 317 within ten days from the decision complained of was entirely owing to the neglect of the County Court clerk in not notifying the appellant's attorney of the decision when given, and the affidavit was fyled the day after the attorney was informed of the decision, and all other steps in the appeal had been regularly taken. The appellant, however, must pay the costs of the motion, as the defendant had made it in good faith and in ignorance of the special circumstances:—Held, also, that it was not necessary on entering the appeal with the Prothonotary to produce to him evidence that the appellant had furnished the security for costs of the appeal required by sec. 321, although it may be a reasonable and prudent thing to do. *Abell* v. *Craig*, 12 Man. R. 81.

—Appeal from County Court—Amount in question.]—See COUNTY COURT.

(*h*) *Supreme Court of N. W. Territories.*

—Appeal from Yukon District—Action begun before separation of territory by virtue of the Yukon Territory Act, 61 V., c. 6.]—Held, that inasmuch as the Yukon Territory Act (61 Vict., c. 6) while constituting a Superior Court of record in and for that Territory to be called the "Territorial Court" did not provide for any appeal therefrom to the Supreme Court of the North West Territories, no right of appeal to said Court otherwise existed. *Flaschaert* v. *Kleinschmidt*, 18 C.L.T. Occ. N. 427.

And see COUNTY COURTS.
DIVISION COURTS.

APPROPRIATION.

Of payments—Conflict of law between Ontario and Quebec—Receipt given—Error—Rectification.]—The doctrine that where a contract is made in one Province in Canada and is to be performed either wholly or in part in another, then the proper law of the contract, especially as to the mode of its performance, is the law of the province where the performance is to take place, may be invoked against the Crown as a party to a contract.—While both the English law and the law of the Province of Quebec give to a debtor owing several debts the option of appropriating any payment he may make to any particular one of such debts, provided he exercise his option at the time of such payment, yet under the Quebec law where the debtor does not exercise such option and thus give a right to the creditor to appropriate the payment, the creditor must exercise his option immediately upon payment being made, and cannot delay exercising it up to the time of trial as he may do under the doctrine of the modern English cases.—Where a person owing several debts has accepted a receipt from his creditor by which a specific imputation is made, he may afterwards have the payment applied upon a different debt by showing that he had allowed the former imputation to be made through error, unless the creditor has been thereby induced to give up some special security. *The Queen* v. *Ogilvie*, 6 Ex. C.R. 21.

ARBITRATION AND AWARD.

I. ARBITRATOR.
(*a*) Appointment.
(*b*) Capacity.
(*c*) Misconduct.
II. AWARD.
III. SETTING ASIDE AWARD.
IV. STATUTORY ARBITRATION.

I. ARBITRATOR.

(*a*) *Appointment.*

— Railways — Expropriation — Arbitration — Death of arbitrator pending award—51 V. c. 29, ss. 156, 157—Lapse of time for making award—Statute, construction of—Art. 12, C.C.]—In relation to the expropriation of lands for railway purposes, sections 156 and 157 of "The Railway Act" (51 V. c. 29, D.) provide as follows:—"156. A majority of the arbitrators at the first meeting after their appointment, or the sole arbitrator, shall fix a day on or before which the award shall be made; and, if the same is not made on or before such day, or some other day to which the time for making it has been prolonged, either by consent of the parties or by resolution of the arbitrators, then the sum offered by the company as aforesaid, shall be the compensation to be paid by the company." "157. If the sole arbitrator appointed by the judge, or any arbitrator appointed by the two arbitrators dies before the award has been made, or is disqualified, or refuses or fails to act within a reasonable time, then, in the case of the sole arbitrator, the judge, upon the application of either party, and upon being satisfied by affidavit or otherwise of such death, disqualification, refusal or failure, may appoint another arbitrator in the place of such sole arbitrator; and in the case of any arbitrator appointed by one of the parties, the company and party respectively may each appoint an arbitrator in the place of its or his arbitrator so deceased or not acting; and in the case of the third arbitrator ap-

pointed by the two arbitrators, the provisions of section one hundred and fifty-one shall apply; but no recommencement or repetition of the previous proceedings shall be required in any case. (Section 151 provides for the appointment of a third arbitrator either by the two arbitrators or by a judge.):—Held, that the provisions of the 157th section apply to a case where the arbitrator appointed by the proprietor died before the award had been made and four days prior to the date fixed for making the same; that in such a case the proprietor was entitled to be allowed a reasonable time for the appointment of another arbitrator to fill the vacancy thus caused and to have the arbitration proceedings continued although the time so fixed had expired without any award having been made or the time for the making thereof having been prolonged. *Shannon* v. *Montreal Park and Island Railway Co.*, 28 S.C.R. 374.

(b) Capacity.

—Railway expropriation — Arbitration — Objection to arbitrators—Causes of objection—Arts. 397, 412 C.C.P.]—In case of expropriation by a railway company having a provincial charter, the arbitration proceedings are regulated by the Revised Statutes of Quebec, Art. 5164, ss. 16 to 26.—The causes of incapacity of the arbitrators not being enumerated, recourse must be had to the common law therefor.—The reasons for objection to the arbitrators are the same as for experts (Art. 412 C.C.P.) and those relating to experts are enumerated in Art. 397 C.C.P.—The enumeration of the reasons for objection contained in Art. 397 C.C.P. are limitative. —A notary employed merely to receive certain documents not important or of a nature to be serviceable to the parties, or merely to explain to the expropriated proprietors their rights and the proceedings they should adopt, is not for that reason incapable of acting as arbitrator.—The law does not prohibit all relations between the arbitrators and the proprietor expropriated by a railway company; on the contrary, it allows and makes necessary these relations, in providing that certain notices shall be signified, not to the proprietor, but to the arbitrators.—An expression of opinion by an arbitrator, to be a reason for rejection, should have such publicity as to make evident his partiality or animosity, or a prejudice which would influence his decision. *Richelieu Valley Railway Co.* v. *Menard*, 4 Rev. de Jur. 109.

(c) Misconduct.

—Misconduct of arbitrator—Consent—Arbitration—R.S.O. c. 62, ss. 12, 35, 42—Consolidated Rule 652.]—By sec. 12 of R.S.O. c. 62, the Court may set aside an award when an arbitrator has misconducted himself, and by sec. 35 the Court has the same powers as to references under order as are by the Act conferred on it as to references out of Court.—By Consolidated Rule 652 the Court may remit the case referred or any part back for further consideration.—When an arbitrator appointed in Court by consent of the parties improperly heard evidence behind the back of one of the parties which affected a portion of the award:—Held, that under the above sections Rule 652 does not apply to the case of an arbitration ordered by consent in Court to an arbitrator selected and agreed on between the parties, and that the whole award must be set aside. *Semble*, sec. 42 of the above statute gives a discretion to the Court setting aside an award to deal with the costs. *Kennedy* v. *Beal*, 29 Ont. R. 599.

II. Award.

—Action upon award—"Publication"—Motion against award — Interest — Notice — Costs — Liquidation—Taxation—Judgment—Special Indorsement—Rule 575.]—"Publication" of an award, signifying its completion so far as the arbitrator is concerned, is made when he executes it in the presence of a witness or does any other act shewing his final mind, upon which he becomes *functus officio;* and when an award is thus complete, an action may be brought upon it forthwith, though the defendant has the right to move against it within the proper time after "publication" to the parties; and a motion by the defendant to set aside the award may go on concurrently with an action to enforce it: *Moore* v. *Buckner*, 28 Gr. 606, not followed.—Interest upon the amount of an award does not begin to run until notice of the award has been given to the defendant.—Costs of arbitration incurred by a party thereto, if untaxed, do not form a liquidated amount, and cannot be the subject of a special indorsement upon a writ of summons.—Judgment for default of appearance upon a specially indorsed writ in an action upon an award (of which notice had not been given to the defendant) allowed to stand to the extent of the amount awarded and the amount paid as fees to the arbitrators, without prejudice to any motion by the defendant against the award. *Huyck* v. *Wilson*, 18 Ont. P.R. 44.

III. Setting Aside Award.

—Railways—Eminent domain—Expropriation of lands—Evidence.]—On an arbitration in a matter of the expropriation of land under the provisions of "The Railway Act," the majority of the arbitrators appeared to have made their computation of the amount of the indemnity awarded to the owner of the land by taking an average of the different estimates made on behalf of both parties according to the evidence before them:—Held, that the award was properly set aside on the appeal to the Superior Court, as the arbitrators appeared to have proceeded upon a wrong principle in the estimation of the indemnity thereby awarded. *Grand Trunk Railway Co.* v. *Coupal*, 28 S.C.R. 531.

—Partnership—Clause in deed for valuation of assets after dissolution — Valuators exceeding powers—Nullity of award.] — Where it was

provided in a deed of partnership that at the expiration of the partnership the assets should be valued by valuators named by the parties, which valuators should fix and determine the cash value of the interest of one of the partners (now plaintiff) in the business; and the valuators who were appointed entered into questions of account between the partners, and decided a question of law, viz., that the partners had the right to pretake their nominal capital before division of the assets; it was held that the award was irregular and must be set aside—and especially as a subsequent clause of the deed of partnership provided for the appointment of arbitrators to settle any dispute which might arise between the partners. *Gerhardt* v. *Davis*, Q.R. 12 S.C. 137.

—Arbitration—Appeal—Duty of judge on appeal—Prospective capabilities of land—Evidence of arbitrator.]—By Act 57 Vict., c. 74, providing for the expropriation of lands by the Saint John Horticultural Association by arbitration, it is enacted that "any party to the arbitration may, within one month after receiving a written notice from one of the arbitrators of the making of the award, appeal therefrom upon any question of law or fact to a judge of the Supreme Court, and upon the hearing of the appeal the judge shall, if the same is a question of fact, decide the same upon the evidence taken before the arbitrators, as in a case of original jurisdiction. The judge, upon such appeal, shall have the right to hear additional evidence and decide the question upon the original as well as the new evidence." On an appeal from an award made under the Act:—Held, that the judge appealed to was not to disregard the award and the reasoning in support of it, and deal with the evidence *de novo*, but that he was to examine into the justice of the award on its merits, both upon the facts and the law, and whether a reasonable estimate of the evidence had been made in accordance with the principles of compensation.—In assessing damages upon the expropriation of land, regard should be had to its prospective capabilities. Rule considered as to when evidence of an arbitrator will be admitted in explanation of the award. In re *Gilbert and Saint John Horticultural Association*, 1 N.B. Eq. 432.

IV. Statutory Arbitration.

—Improvement of watercourse—Resulting damages—Mode of determining—Art. 5536 R.S.Q.]—Art. 5536 of the Revised Statutes of Quebec, which provides a special mode, namely, by arbitration, of determining the damages therein mentioned, does not deprive the party damnified of his recourse to the ordinary tribunals. *Compagnie de Pulpe de Megantic* v. *La Corporation du Village d'Agnès* Q.R. 7 Q.B. 339.

ARREST.

Constable—Warrant—Territorial jurisdiction—Absence of backing—Notice of action—R.S.O. (1887) ch. 73—24 Geo. II. ch. 44, sec. 6.]—It is not necessary to the execution of a warrant of commitment by a constable that he should actually lay hands on or physically interfere with the person to be arrested. It is an arrest if the person to be arrested asks for and peruses the warrant and agrees to accompany the constable: and, *semble*, it is sufficient if he agrees to accompany the constable on his statement that he has the warrant in his possession.—A constable executing a warrant in good faith outside of the territorial jurisdiction of the magistrate issuing the same, without procuring the indorsement of a magistrate of the county where the arrest is made, is entitled to notice of action and to the protection of R.S.O. (1887), ch. 73. A notice of action which wrongly states the name of the township in the county in which the arrest took place is insufficient.—A constable in an action against him for wrongfully arresting the plaintiff without a proper indorsement of the warrant by a magistrate of the county in which the arrest is made is entitled to plead "not guilty by statute."—A constable is not entitled to the protection of 24 Geo. II. ch. 44, sec. 6, unless there is want of jurisdiction in the magistrate issuing the warrant. *Alderich* v. *Humphrey*, 29 Ont. R. 427.

—Con. Stat. c. 38—Arrest, discharge from—Signing as to truth of answers.—To give the magistrate jurisdiction to grant an order for discharge from arrest, under Con. Stat. c. 38, it must appear that the defendant is in custody. It is also imperative that he should sign as to the truth of all his answers. *Ex parte Heywood*. In *re Heywood* v. *Perry*, 34 N.B.R. 8.

—Capias ad respondum—Discharge—Restraint from action—Benefit under order—Appeal—Waiver.]—See Appeal, X.

—Capias—Sufficiency of affidavit—Alien.]
See Capias.

—False arrest—Charge of larceny—Detention without warrant—Damages.]
See Criminal Law, I.

—Without warrant—Detention—Justification.]
See Criminal Law, I.

—Capias ad respondum—Intent to leave country.]
See Debtor and Creditor, I.
And see Bail.
" Malicious Arrest.

ASSAULT.

Summary conviction—Payment of fine—Civil remedy—Crim. Code, ss. 864, 866.]
See Action, II.

ASSESSMENT AND TAXES.

Toronto Railway Company—Rails, poles and wires—Highways—Street Railway.]—The rails, poles and wires of the Toronto Railway Company, used by them in operating their electric railway, and laid and erected in and upon the public highways of the city of Toronto, are subject to assessment under the Consolidated Assessment Act, 1892, 55 V. c. 48 (O.): *Toronto Street R. W. Co.* v. *Fleming*, 37 U.C.Q.B. 116, has been overruled by *Consumers' Gas Co.* v. *Toronto*, 27 S.C.R. 453. In *re Toronto Railway Company Assessment*, 25 Ont. A. R. 135.

—Life insurance company — Reserve fund — Income—Divisible profits.]—The net interest and dividends received by the Canada Life Assurance Company from investments of their reserve fund form part of their taxable income, though to the extent of ninety per cent. thereof divisible, pursuant to the terms of the company's special Act, as profits among participating policy holders and not subject to the control or disposition of the company. In *re Canada Life Assurance Company and City of Hamilton*, 25 Ont. A.R. 312.

—Telephone company—Poles, wires, conduits and cables.]—In assessing for purposes of taxation the poles, wires, conduits and cables of a telephone company, the cost of construction, or the value as part of a going concern, is not the test; they must be valued, in the assessment division in which they happen to be, just as materials which, if sold or taken in payment of a just debt from a solvent debtor, would have to be removed and taken away by the purchaser or creditor. In *re Bell Telephone Company and the City of Hamilton*, 25 Ont. A.R. 351.

—Court of Revision — Petition — Remission of Taxes — By-law — Mandamus.]—The Court of Revision of a municipality is obliged to receive and decide upon a petition for remission of taxes, presented under sec. 67 of 55 Viet. ch. 48 (O.), notwithstanding that the municipality has not passed any by-law on the subject. A mandamus granted. *Re Norris*, 28 Ont. R. 636.

—Municipal Corporations—Court of Revision—Appeal to County Judge—Assessor—Right to appeal.] — The appeal from the Court of Revision to the County Judge in a case where such court allows an appeal by the party assessed, against an assessment, cannot be made by the assessor as such, nor as a ratepayer, but must be by the corporation itself. Re *British Mortgage Loan Company of Ontario*, 29 Ont. R. 641.

—Railway tanks and platforms—Sub-tenant.]—Water tanks and platforms are part of the superstructure of a railway and are not assessable.—The assessment of a sub-tenant of a railway company should be deducted from the total assessment. *Grand Trunk Railway Company* v. *Port Perry*, 34 C.L.J. 239.

—Church property—Parsonage.]—In 1885 two acres of land were conveyed to the Church Society in trust for a churchyard and burial ground for the use of the members of the Church of England. A church, and, subsequently, a parsonage, were erected thereon:—Held, that since 1890 the parsonage and a reasonable curtilage surrounding it were liable to taxation for municipal purposes. *Harris* v. *Township of Whitby*, 34 C.L.J. 240.

—Telegraph instruments — Switchboards — Fixtures.]—Switchboards and telegraph instruments, with their attachments, connected with the poles and wires, and being in use in the business of a telegraph company, are assessable as realty. In *re Canadian Pacific Telegraph Co.*, 34 C.L.J. 789.

—Exemption from taxes—By-law, interpretation of.]—The council of a municipality adopted a resolution to the effect that the secretary be authorized to announce in the public newspapers that all manufacturers desirous of establishing themselves in the municipality should have exemption from taxes. Subsequently, a formal by-law was adopted which provided that all new manufactures introduced and established in the municipality should be exempt from all real estate taxes for a period of ten years, and that all existing manufactures should have a right to the same exemption on proof that they were within the conditions imposed by the by-law. The appellants established a bakery in the municipality after the adoption of the resolution:—Held, that the effect of the resolution and by-law was not to establish an exemption *de plein droit*. The resolution was merely an invitation to establish manufactures, with an assurance that exemption from taxation would be granted, but the council under the by-law had the right to pronounce upon each application upon its merits; and there being no such decision in favour of appellants prior to the amalgamation of the municipality with the city respondent, appellants could not claim exemption from taxes. *Stuart* v. *The City of Montreal*, Q.R. 6 Q.B. 555.

—Educational institutions — Property of — Exemption from taxation—Art. 712 par. 3 M.C.]—Under par. 3 of Art. 712 of the Municipal Code, the only property of religious corporations established for the purposes of education which is exempt from taxation is that occupied by such corporations for the purposes for which they were established and property possessed for purposes of revenue only is not exempt. *Corporation of Limoilou* v. *Seminary of Quebec*, Q.R. 7 Q.B. 44.

—Rates and Taxes—Assessor—De facto officers—C.S.N.B. c. 99, s. 69—Notice.]—The Court refused a writ of *certiorari* to quash an assessment of rates and taxes when one of the assessors himself had not paid the rates of the year previous, his acts being those of a *de facto* officer. *Ex parte Martin*, 34 N.B.R. 142.

—Exemption—E. & N. Railway Act—"Alienated" — Res judicata—Crown whether bound by.] — By the Stat. B.C. 47, Vic. c. 14 (E. & N. Ry. Act), sec. 22, it was provided that certain public lands granted by the Act to the railway in aid of its construction "shall not be subject to taxation unless and until the same are used by the company for other than railway purposes, or leases, occupied, sold or alienated." In January, 1889, the E. & N. Ry. Co., by agreement, gave to H. the right to enter and select 50,000 acres of the said lands, to be paid for at the rate of $5.00 per acre, in certain instalments, with interest, etc., the lands to be conveyed as soon as the purchase money was paid, etc. H. in February, 1890, assigned all his interest under the agreement to the Lumber Company. The lands had been selected and surveyed, but the purchase money had not been fully paid. The Provincial Government assessed the lands for the purpose of taxation, but the Court of Revision, upon the authority of *Victoria Lumber Co.* v. *The Queen*, 3 B.C.R. 16, discharged the assessment:—Held, that the question was not concluded by *Victoria Lumber Co.* v. *The Queen*, *supra*, as counsel for the Crown in that case did not press the point involved; that the word "alienated," in view of the sense in which it is used throughout the Act, must be given a construction sufficiently wide to include such an agreement as that in question. *Semble*, That, *proprio vigore*, the word included such a transaction. *The Queen* v. *Victoria Lumber Co.*, 5 B.C.R. 288.

—Costs on appeal from Assessment Board.]

See COSTS, XIX (*d*).

—School tax—Special assessment—Judgment against ratepayer—Subsequent action to annul—Chose Jugée.]—See JUDGMENT.

—Drainage—Extra cost—Repairs—Misapplication of funds — Intermunicipal works — Negligence — Damages — By-law — Re-assessment — R.S.O. [1877] c. 174—46 V., c. 18 (Ont.).]

See MUNICIPAL CORPORATIONS.

—Sale of Land—Covenant to pay taxes—Date at which taxes become due.]—See SALE OF LAND.

—School tax—Special tax—Non-payment—Chose Jugée.]—See SCHOOLS.

—Assessment for school purposes.]

See SCHOOLS.

ASSIGNMENT.

Banking—Collateral security—R.S.C. c. 120, Schedule "C"—53 V. c. 31, ss. 74, 75—Renewals.] —An assignment made in the form "C" to the "Bank Act" as security for a bill or note given in renewal of a past due bill or note is not valid as a security under the seventy-fourth section of the "Bank Act." *Bank of Hamilton* v. *Halstead*, 28 S.C.R. 235 affirming 24 Ont. A.R. 152.

—Assignment, &c., executed under threat of criminal proceedings — Original parties where there was a debt actually due—Case of third party distinguishable— Duress — Trial judge—Findings of jury—Practice—Costs.]—Plaintiffs sought to set aside an assignment and confession of judgment, given by the plantiff, F., to the defendant company, on the ground that they were executed in consequence of a threat of criminal prosecution. It was shewn that the defendant company had considered the question of plaintiff's arrest, and that a warrant was actually issued for that purpose, and that proceedings would have been taken in the event of his refusal to execute the documents required of him, but the jury found, among other things, that there was no agreement, express or implied, on the part of the company, with plaintiff, to abandon the criminal prosecution, conditionally, upon his giving the security demanded. The trial judge, notwithstanding this finding, directed judgment to be entered for plaintiffs:—Held, that he was wrong in so ordering, and that the judgment must be set aside with costs; that there being a debt actually due from F. to the defendant, the security given was not invalidated by the fact that it was given in consequence of a threat to take criminal proceedings against him, there being at the same time no agreement on the part of the defendant, that, if the security was given, they would not prosecute; that the case of a party seeking to evade payment of a debt actually due is distinguishable from the case of security given by a third party (*e. g.*, a relative), not a party to the original transaction; that the threat made being only to do that which might lawfully be done, there was no duress which would avoid the transaction; that the jury having distinctly negatived any agreement, express or implied, on the part of defendant to stifle the proceedings against F., it was not competent for the judge, under the practice of the Court, to disregard that finding, and enter judgment the other way; that if the warrant for the arrest of F. was obtained without just cause, it was incumbent upon plaintiffs to show it. *Fulton* v. *Kingston Vehicle Company*, 30 N.S.R. 455.

—Conveyance subject to mortgage—Obligation to indemnify—Assignment of obligation—Implied contract.]—See MORTGAGE.

And see BANKRUPTCY AND INSOLVENCY, IV.

DEBTOR AND CREDITOR, II.

ATTACHMENT.

Costs—Attachment for—Supreme Court of Canada.]—A rule *nisi* for an attachment for the non-payment of costs taxed to the plaintiff on appeal to the Supreme Court of

Canada was made absolute. *Bank of Nova Scotia* v. *Fish*, 33 N.B.R. 604.

—**Money in hands of receiver—Debt—Garnishee.**] See GARNISHEE.

—**Prohibitory injunction — Breach — Remedy—Attachment or Committal.**]—See INJUNCTION.

—**Receiver — Default in paying monies into Court when ordered — Attachment — Rescinding.**]—See RECEIVER.

And see DEBTOR AND CREDITOR, IV.

ATTORNEY.

Delivery of documents to—Interest of parties—Disavowal.]—The delivery of an obligation or a note to an attorney authorises the latter to take legal proceedings against the debtor, but such delivery only binds the party if made by himself or under power of attorney, and he can disavow the acts of the attorney when the delivery of the documents has been made by the deceit or fraud of a third party and without his participation.—The delivery of the documents by one party carries with it the authority to act for others who have the same interest, even if the deliyery has been made without their knowledge or consent, especially when the document is common to all.—The action in disavowal is only receivable in so far as the act upon which it is based has been prejudicial to the disavowing party. *Dupuis* v. *Archambault*, Q.R. 7 Q.B. 393.

—**Attorney ad litem—Abandonment of judgment—Authority.**]—An attorney *ad litem* cannot abandon, in whole or in part, a judgment given in favour of his client without special authority from the latter. *Latour* v. *Desmarteau*, Q.R. 12 S.C. 11.

— **Attorney ad litem — Authority to engage counsel.**]—The attorney *ad litem* cannot oblige his client for the payment of fees of counsel retained by the attorney without his client's authorization or knowledge, and especially where the client had already paid his attorney all necessary monies in connection with the suit. *Taylor* v. *Alexander*, Q.R. 12 S.C. 159.

—**Attorney conducting his own case—Right to fees.**]—Where an advocate appears personally in his own case and conducts it as attorney of record, he is entitled to the usual attorney's fees as well as the disbursements. *Banks* v. *Burroughs*, Q.R. 12 S.C. 184.

—**Attorney and client—Action in forma pauperis—Costs.**]—In an action *in formâ pauperis* for an alimentary allowance, and subsequent proceedings connected therewith, the plaintiff's attorneys are entitled to recover from their client the full amount of their costs on proceedings taken to protect and secure his or her rights in respect of the alimentary allowance, and also any costs beyond what they have recovered from the defendant in the suit for *aliments* on their taxed bill. *Bastien* v. *Forget*, Q.R. 12 S.C. 425.

—**Authority—Review—Abandonment—Costs.**]—The attorney of a party on the trial, who has been served with notice of an inscription in review, continues to represent his client before the Court of Review, and has a right, even without having appeared, to the fees fixed by the tariff when the cause is settled before hearing, but he cannot claim the costs of an appearance fyled after the opposite party has abandoned his inscription in review. *Durnford* v. *Hannah*, Q.R. 12 S.C. 431.

—**Settlement of action by client—Proceeding for costs.**]—An attorney, being only the agent of his client, and the latter being always able to act without reference to him, cannot, when the parties have settled their dispute without his consent, insist on proceeding with the action for his costs. *Beaudry* v. *Lusher*, Q.R. 13 S.C. 294.

—**Retainer—Custody of documents.**]—The fact that an attorney has the custody of documents signified to one of the parties to an action raises a presumption that such documents have been entrusted to him by said party, or that he holds them with the latter's knowledge and consent, and that the attorney has been authorized to appear for such party and in his name. *Wilson* v. *Kenwood*, Q.R. 13 S.C. 390.

—**Withdrawal from cause—Liability of client for costs—Substitution of attorney.**]—An attorney who has acted for the defendant in a cause may give notice to his client and to the plaintiff's attorney that he will no longer so act, and in such case, although the cause may not be terminated, the attorney will be entitled to payment of his costs and fees from his client, if the latter has appointed another attorney in his place. *De Bellefeuille* v. *Beaudry*, 4 Rev. de Jur. 173.

— **Solicitor and client — Contract between — Fraud.**]—Plaintiff being unable to raise money to pay off a mortgage upon his lands applied to a solicitor, who, in consideration of certain interest and commissions, agreed to advance the necessary amount, and also to obtain time from defendant's unsecured creditors, and took as security a conveyance of plaintiff's equity of redemption in the property, with a short period for payment and redemption. Upon the evidence, it appeared that there was no fraud or improper dealing on the defendant's part:—Held, there is no principle upon which any agreement a solicitor and client choose to make in the circumstances of the particular case is to be invalidated, if no deception is practised and no advantage taken, merely because of the existence of the relationship. *Bell* v. *Cochrane*, 5 B.C.R. 211.

—**Appearance by—Revocation—Personal discontinuance by client.**]—See ACTION, VI.

—Distraction of costs—Attempt of debtor to deprive of costs — Second judgment — Fraud — Waiver of delays—Remedy of Attorney.]

See COSTS, XIX (*d*).

— Settlement of cause by parties — Right of attorney to proceed for costs.]—See COSTS, XV.

And see COUNSEL.

" SOLICITOR.

ATTORNEY-GENERAL.

—Scire-facias—Permission to issue—Discretion—Prima facie evidence.]—See SCIRE-FACIAS.

BAIL.

Criminal law—Speedy trial—Election—Admission to bail—Criminal Code, s. 610.]—A person accused of an indictable offence who has been admitted to bail under Code, sec. 601, by the magistrate before whom he is brought for preliminary examination upon the charge, has a right to a speedy trial under Code, sec. 765, to the same extent as if the magistrate had committed him for trial under sec. 596. *The Queen* v. *Lawrence*, 5 B.C.R. 160.

—Affidavit to hold to bail—Variance from words of statute—59 V., c. 28, s. 1 (N.B.)—Arrest set aside.]—*Carling Brewing and Malting Co.* v. *Fairweather*, 18 C.L.T. Occ. N. 313.

—Capias—Notice—Arts. 910, 913, 915 C.C.P.]

See CAPIAS.

And see ARREST.

BAILEE.

Contract, construction of—Agreement to secure advances—Sale—Pledge—Delivery of possession —Arts. 434, 1025, 1026, 1027, 1472, 1474, 1492, 1994c. C.C,—Bailment to manufacturer.]

See CONTRACT, V (*c*).

BAILIFF.

Appointment of minor as guardian to effects seized — Responsibility — Damages.] — A bailiff who, contrary to law, appoints a minor as guardian to effects under seizure, is responsible for the damage suffered by the party seizing in consequence of the disappearance of the effects and his being deprived of the right of proceeding against the guardian for not producing the same; and the Corporation of Bailiffs, as guarantor of its members, is bound to make good such loss. The measure of damages in such case is the amount which the effects not produced would have realized if they had been sold in satisfaction of the debt. *Barrington* v. *La Corporation des Huissiers*, Q.R. 12 S.C. 284.

And see LANDLORD AND TENANT.

BAILMENT.

Bailment of goods—Sale—Statute of frauds.]

See SALE OF GOODS.

BALLOT.

Election—Scrutiny—Evidence.]

See CANADA TEMPERANCE ACT, IV.

BANKRUPTCY AND INSOLVENCY.

I. ADMINISTRATION OF ESTATE, 42.
II. ADVANCES BY BANK, 43.
III. ASSIGNEE, 43.
IV. ASSIGNMENT, 44.
V. CLAIMS AGAINST ESTATE, 46.
VI. CURATOR, 47.
VII. JUDICIAL ABANDONMENT, 47.
VIII. RECEIVER, 47.

I. ADMINISTRATION OF ESTATE.

—Cession de biens—Resolution of inspectors—Powers of Curator—Tierce-opposition by creditor of estate to judgment obtained by curator.]—In virtue of a resolution of the inspectors, the curator had paid Roy $150 for costs incurred by the latter in legal proceedings which they thought were in the interest of the estate. Ellis instituted an action against Roy to compel him to return this money into the hands of the curator, and another action to annul the said resolution as *ultra vires* and illegal. After service of this action, the curator presented to Hon. Mr. Justice Caron, in Chambers, a petition to approve of the said resolution authorizing the said payment of money to Roy, and Ellis made a *tierce-opposition* to the judgment in Chambers, granting said petition:—Held, that the curator is the officer of the Court chosen by the creditors for the purpose of the liquidation of the estate of their debtor; the inspectors are appointed for the purpose of advising him in matters connected with such liquidation.—When a creditor attacks the validity of a resolution of the inspectors and of an act of the curator, the curator and the inspectors contesting such action in nullity are not deemed to represent said creditor, but act as his opposants and adversaries.—Therefore, if they obtain a judgment without his participation or consent which thwarts and defeats proceedings in nullity begun in his own name, he must be considered a third party having recourse by way of a *tierce-opposition* against said judgment.—The powers of the curator and inspectors are those, and none other than those, given them by the Code of Procedure. They have no power to engage in litigation even to collect debts due to the estate or to recover property belonging to it, except by permission of the judge first duly obtained. In *re Plamondon* Q.R. 13 S.C. 377.

II. Advances by Bank.

—Pledge of goods as security—Invalidity of—Banking Act—Creditors' claims—58 V., c. 23, s. 1 (O.)—Warehouse receipts—Securities—53 V., c. 31, s. 75, s-s. 2 (D.) — Mortgage — Declaration—Parties.]—The plaintiff, a creditor of an insolvent, alleged that in regard to certain pledges made by the latter to a bank there had been no contemporaneous advances, and that the pledges were invalid under sec. 75 of the Banking Act, 53 Vict., ch. 31 (D.), and claimed to be entitled to obtain monies received through disposal of the pledges and to apply them in payment of creditors' claims, by virtue of the provisions of sec. 1 of 58 Vict., ch. 23 (O.):—Held, that the words "invalid against creditors" should be treated as limited to transactions against creditors, *qua* creditors, and not as extending to transactions declared invalid for reasons other than those designed to protect creditors:—Held, also, that the last named Act did not apply because the money had been received by the bank before it was passed, and it was not retrospective.—The insolvent had been in the habit of buying hops from time to time, and giving the bank his own warehouse receipts or direct pledges for the purpose of raising money to pay for them. Then, at the request of the bank, he constituted his bookkeeper his warehouseman, and the latter issued warehouse receipts to the bank in substitution for the securities or receipts theretofore held, there being no further advance made when the new securities were given:—Held, that this exchange of securities should be treated as authorized under sub-sec. 2 of sec. 75 of the Banking Act.—The plaintiff asked for a declaration that advances made by the bank upon a mortgage by the insolvent to a third person, and by him assigned to the bank, were contrary to the Banking Act, and that the property was free from the mortgage:—Held, that no such declaration should be made in the absence of the mortgagee, who was liable to the bank as indorser of a promissory note of the insolvent, collateral to the mortgage. *Conn* v. *Smith*, 28 Ont. R. 629.

III. Assignee.

— Division Court — Jurisdiction — Transfer of goods in trust—Distribution amongst creditors—Action by assignee.]—Within sixty days of the making of an assignment for the benefit of creditors, the insolvent transferred to a person in trust for certain of his creditors a quantity of butter, which was sold, realizing $1,800, and the proceeds were distributed amongst such creditors in proportion to their claims, whereby they acquired a preference. The assignee then sued one of the creditors to recover back the monies paid him as his share, the amount so sought to be recovered being within the jurisdiction of the Division Court:—Held, that the transfer was divisible into as many parts as there were shares and the Division Court had jurisdiction to entertain the action. *Beattie* v. *Holmes*, 29 Ont. R. 264.

—Settlement of action—Validity of—Trial—Issue—Action—Pleading.]—An assignee for the benefit of creditors under a statutory assignment, having brought an action for damages for breach of a contract made by his assignor with the defendants, made a compromise settlement with the defendants, before the delivery of pleadings, while he was in gaol, and without reference to the inspectors or creditors. A new assignee appointed in his stead applied for an order directing the trial of an issue to determine whether the settlement was valid:—Held, that it was not necessary to bring another action to vacate the settlement, and it was more convenient to revive the action in the name of the new assignee as plaintiff and let him continue it, leaving the defendants to move summarily to stay it, or to plead the settlement in bar, than to direct the trial of an issue: *Rees* v. *Carruthers*, 17 Ont. P.R. 51, distinguished; *Johnson* v. *Grand Trunk R. W. Co.*, 25 Ont. R. 64, and *Haist* v. *Grand Trunk R. W. Co.*, 22 Ont. A.R. 504, followed. *Davidson* v. *Merritton Wood and Pulp Company*, 18 Ont. P.R. 139.

IV. Assignment.

—Preference—Breach of Trust—Revocation of Transfer—Post Office Act—R.S.C. c. 35, s. 43.]—The transfer by the defaulting treasurer of a municipality to the bankers of the municipality of the accepted cheque of a third person for the amount due by him to the municipality cannot be impeached under the Assignments and Preferences Act, the duty to make good his wrong being sufficient to protect the transaction. The cheque was sent by the treasurer by post in a letter to the bankers, and this letter was received by the bankers in the afternoon, but the amount was not credited in the bank books to the municipality till next morning, and before this was done an assignment for the benefit of creditors had been made by the treasurer:—Held, that the property passed as soon as the cheque reached the bankers, and that the assignment was not a revocation of the transfer.—Per Ferguson, J.:—The property in the cheque passed irrevocably by virtue of the provisions of the Post Office Act, R.S.C. c. 35, s. 43, as soon as the letter was posted. *Halwell* v. *Township of Wilmot*, 24 Ont. A.R. 628.

—Chose in action—Assignment—Notice—Life insurance.]—A debtor, or trustee of a fund, is not responsible to an assignee of the creditor, or payee of the fund, for dealing with the latter persons without reference to the assignment unless it is found either that at the time of so dealing he actually knew of the assignee's title, or that he had previously received a notice sufficiently distinct to give him an intelligent apprehension of the fact that the assignee had acquired an interest in the claim or fund.—A life insurance company issued two policies upon a man's life, one

policy being payable generally and the other to his wife. The assured made an assignment for the benefit of his creditors, and the assignee, who at the time knew only of the policy payable generally, wrote to the company referring to this policy by number and informing them of the assignment. The assured's wife had died before the assignment was made and the policy in her favour had become part of the assured's estate and had passed to the assignee. A few weeks after notice of assignment had been given to the company the assured informed them of his wife's death, and obtained from them the surrender value of the policy in which she was named as beneficiary. There was no imputation of bad faith, and the officers of the company swore that they had, at that time, no recollection of notice of the assignment for the benefit of creditors having been given:—Held, that under the circumstances the company were not responsible for paying the surrender value of the policy to the husband. *Crawford* v. *Canada Life Assurance Company*, 24 Ont. A.R. 643.

—Assignee of separate estate of partner—Right to examine former employee of firm—R.S.O., c. 147, s. 34.]—When a partnership has been dissolved, a former employee or servant of the firm may be examined, under the Assignments and Preferences Act, R.S.O., ch. 147, sec. 34, by the assignee of the separate estate of one of the partners, as to the affairs of such estate. Re *Guinane*, 18 Ont. P.R. 208.

—Assignment and preferences—Action by creditors—Right of attacked creditor to share in proceeds.]—When proceedings are taken under sec. 7, sub-sec. (2) of R.S.O., ch. 124, by a creditor, on behalf of himself and all those who, within a limited time, should come in and contribute to the risk and expense of an action to set aside a security held by another creditor, the latter may, while defending his security, join with the attacking creditor in indemnifying the assignee, so that, in the event of his failing to retain his security, he may participate in the fruits of the litigation. *Barber* v. *Crathern*, 28 Ont. R. 615.

—Execution—Costs—Lien—Preference—Loss of Lien—Ranking on Estate.]—The lien of a plaintiff for costs by virtue of sec. 9 R.S.O. c. 124, under an execution in the sheriff's hands, against an insolvent, at the time of an assignment by him for the benefit of creditors under that statute, is not superseded by such an assignment, and the sheriff is entitled to proceed and sell for the amount of such costs. If he does not do so, and the plaintiff loses his lien.—Per Armour, C.J.:—He is not entitled to rank on the insolvent's estate as a preferential creditor.—Per Street, J.:—Even if entitled it could only be on the net funds available after payment of the proper charges incurred in the management of the estate. *Gillard* v. *Milligan*, 28 Ont. R. 645.

—Action brought in name of assignee—Statute of frauds.]—Plaintiff as assignee of F. and M., under the New Brunswick Act respecting Assignments and Preferences of Insolvent Persons (58 Viet., c. 6), sued in his own name for the value of certain goods sold:—Held, that the action was properly brought; but as the amount sued for was more than $40, the plaintiff must be non-suited, it appearing that sec. 4 of the Statute of Frauds, C.S.N.B. c. 97, had not been complied with. *Clarke* v. *Webber*, 18 C.L.T. Occ. N. 314.

—Cessation of payments—Presumption—Demand of cession de biens—Number of creditors—Amount of debt—Costs—Demand on one partner—Second demand.]

See DEBTOR AND CREDITOR, V.

—Demand of cession de biens—Form—Art. 853 C.C.P.]—See DEBTOR AND CREDITOR, V.

V. CLAIMS AGAINST ESTATE.

—Unliquidated claim—Double value—Overholding tenant—4 Geo. II., c. 28, s. 1—Preferential claim—Rent—R.S.O. 1897, c. 147.]—A claim for damages against an overholding tenant for double the yearly value of the land under 4 Geo. II., ch. 28, sec. 1, is an unliquidated claim, and therefore is not proveable against an estate in the hands of an assignee for creditors under R.S.O. 1897, ch. 147.—A landlord has no preferential claim for rent against such an estate, if there were no distrainable goods on the premises at the time of the assignment. *Magann* v. *Ferguson*, 29 Ont. R. 235.

—Assignments Act—Valuing security—Party primarily liable—R.S.O. c. 147, s. 20.]—The provision of sec. 20 of the Assignments Act, R.S.O. c. 147, that "every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon," means that if, as between the debtor and the third party, the latter is primarily liable, and the debtor only secondarily liable, the creditor must put a specified value upon his security.—The substance, not the form, of the transaction is to be looked at, to ascertain whether the third party is primarily liable; and if it be found that he is, the debtor is then only secondarily liable. *Glanville* v. *Strachan*, 29 Ont. R. 373.

—Receiver—Power to preserve rights of creditors as against creditor seeking to charge funds.]—On the 10th July, 1896, an order was made appointing H. B. S., receiver of the firm of C. & O'B., of which plaintiff and defendant were members, for the purpose of having the affairs of the firm wound up. On the 19th February, 1897, application was made to a judge at chambers, on behalf of the S. Manufacturing Co., a creditor of the

firm, for an order for payment of the amount of a judgment recovered by the company against the firm, out of the funds in the hands of the receiver, or, in the alternative, that the funds should stand charged with the amount of the judgment and costs of the application. The application was resisted by the receiver, and by plaintiff, on the ground that the firm was hopelessly insolvent, and the granting of the application would prejudice other creditors, one of whom had recovered judgment for a larger amount than was due the S. Company. The order applied for having been made, the receiver appealed: —Held, allowing the appeal with costs, the costs below to be costs in that proceeding: (*a*) that the appeal was a proper one. (*b*) that the rights of creditors should be preserved by subtituting an order allowing the charge, but requiring an undertaking to deal with the funds according to the order of the Court, the intention being to preserve to the company such legal rights as they would have had in case the sheriff had levied and sold under execution: *Kewney* v. *Attrill*, 34 Ch. (D.), 345, followed. *O'Brien* v. *Christie*, 30 N. S.R. 145.

VI. Curator.

—Insurance—Policy payable "as interest may appear"—Insolvency of payee—Recovery on policy.]—Insurance made payable to A., "as his interest may appear," can, in the event of A. becoming insolvent, be recovered at law by the curator to his estate, who then becomes assignee (*cessionnaire*) or trustee (*fidei commissionaire*) of A. *Liverpool, London and Globe Ins. Co.* v. *Valentine*, Q.R. 7 Q.B. 400.

—Contract—Conditions—Sale of wood to be manufactured—Advances—Insolvency of seller—Execution of contract.]—See Contract.

VII. Judicial Abandonment.

—Recourse of debtor where no proceedings are taken after the abandonment for the appointment of a curator—Art. 886 C.C.P.]—Under the new Code of Procedure, where a debtor has made a judicial abandonment and given notice thereof to his creditors, and no proceedings have been taken for the appointment of a provisional guardian, or of a curator, the delay for contestation of the abandonment runs from the date of such abandonment; and after the expiration of four months, without any contestation, a debtor who has been imprisoned under a judgment against him for damages, is entitled to his liberation. *Burrows* v. *Keating*, Q.R. 13 S.C. 535.

VIII. Receiver.

—Foreign bankruptcy—Law of Vermont—Right of foreign receiver against execution creditor—Lex loci contractus.]—See Contract, V.

BANKS AND BANKING.

Winding-up Act—Monies paid out of Court—Order made by inadvertence—Jurisdiction to compel repayment—R.S.C. c. 129, ss. 40, 41, 94—Locus standi of Receiver-General.]—The liquidators of an insolvent bank passed their final accounts and paid a balance, remaining in their hands, into court. It appeared that by orders issued either through error or by inadvertence the balance so deposited had been paid out to a person who was not entitled to receive the money, and the Receiver-General for Canada, as trustee of the residue, intervened and applied for an order to have the money repaid in order to be disposed of under the provisions of the Winding-up Act: —Held, affirming the decision of the Court of Appeal for Ontario, that the Receiver-General was entitled so to intervene, although the three years from the date of the deposit mentioned in the Winding-up Act had not expired:—Held, also, that even if he was not so entitled to intervene, the Provincial Courts had jurisdiction to compel repayment into Court of the monies improperly paid out. *Hogaboom* v. *The Receiver-General of Canada*. In *re the Central Bank of Canada*, 28 S.C.R. 192.

—Collateral security—R.S.C. c. 120, schedule "C."—53 V. c. 31, ss. 74, 75—Renewals—Assignments.]—An assignment made in the form "C" to the "Bank Act as security for a bill or note given in renewal of a past due bill or note is not valid as a security under the seventy-fourth section of the "Bank Act." *Bank of Hamilton* v. *Halstead*, 28 S.C.R. 235, affirming 24 Ont. A.R. 152.

—Bank—Note lost in mails—Responsibility.]—Where a bank receives a note for collection, and in the regular course of business places the same in the hands of a responsible and perfectly solvent agent, it is not liable for the loss of the note in the mails. In any case, the defendant's offer to give security to the makers and indorser that they would never be troubled if they paid the note, was sufficient. *Litman* v. *Montreal City & District Savings Bank*, Q.R. 13 S.C. 262.

And see Bankruptcy and Insolvency II.

BARRISTER.

See Attorney.
" Counsel.
" Solicitor.

BASTARDY.

—Settlement of mother—Liability of overseers—Absence of express agreement—Amendment—Costs—Notice—Implied contract.]—In an action by plaintiff against the defendant overseers

for compensation for the support of a bastard child, plaintiff rested his right to recover entirely upon an express promise alleged to have been made by one of the defendants on behalf of himself and the others, to pay for the support of the child. The jury found that no such promise was made, and judgment was given accordingly. On the trial evidence was given, and was received without objection, showing that the mother of the child had a settlement in defendants' district:—Held, that under these circumstances defendants were legally liable for the support of the child, and that, the only defence being the absence of an express agreement, plaintiff should be permitted to amend on payment of costs:—Held, also, that defendants' liability was wholly statutory, and that, in the absence of notice, no contract could be implied. *Carter* v. *Overseers of the Poor, Brookfield*, 30 N.S.R. 225.

—Trial—C.S.N.B. c. 103, s. 7—Limitation—Prohibition.]—R. having been arrested by warrant on an information charging him with being the father of a bastard child likely to become a charge on the parish, denied his guilt and entered into the recognizance required by Con. Stat. c. 103, s. 7. The cause was not entered for trial at the term of the County Court next ensuing the birth of the child, but was entered at the next following term. On an application for a writ of prohibition to restrain the Judge of the County Court from trying the information:—Held, per Tuck C. J., Hanington and McLeod J.J., that the defendant could be properly tried at the last mentioned Court and the writ of prohibition should be refused. Per Barker, Landry and VanWart J.J., that the provisions of Con. Stat. c. 103, s. 7, limited the time within which the defendant could be legally tried and the writ of prohibition should issue. The Court being evenly divided the matter dropped: *Ex parte Currie*, 26 N.B.R. 576, discussed. *Ex parte Reid*, 34 N.B.R. 133.

BENEFICIARY.

See INSURANCE (*Life.*)

BENEFIT CERTIFICATE.

See INSURANCE (*Life.*)

BENEFIT SOCIETY.

Rules—Construction—Suspension of payment—53 V., c. 39 (Ont.)]—In 1889 the police force of Hamilton established a benefit fund to provide for a gratuity to any member resigning or being incapacitated from length of service or injury, and to the family of any member dying in the service. Each member of the force contributed a percentage of his pay for the purposes of the fund, and one of the rules provided as follows: "No money to be drawn from the fund for any purpose whatever until it reach the sum of eight thousand ($8,000) dollars. * * * ":—Held, that in case of a member of the force dying before the fund reached the said sum the gratuity to his family was merely suspended, and was payable as soon as that amount was realized. *Miller* v. *Hamilton Police Benefit Fund*, 28 S.C.R. 475.

—Mutual benefit association—Exclusion from membership — Reinstatement — Special regulations—Waiver.]—The acceptance by a mutual benefit association of assessments after knowledge of a forfeiture by reason of non-payment thereof within the required time operates as a waiver of the forfeiture, in the absence of convention of the parties to the contrary, but the rights of the parties must be governed by the constitution and by-laws of the association. If these documents impose other conditions of reinstatement after forfeiture or suspension for non-payment of sums due besides the payment thereof, such conditions must be complied with. *Société Bienveillante St. Roch* v. *Moisan*, Q.R. 7 Q.B. 128, reversing 12 S.C. 189.

—Benefits—Suspension of member.]—A benefit society granted its members certain benefits, among others, $100 to the member whose wife had died, and $200 to the heirs upon the death of an associate. By the by-laws a member failing to pay his monthly contribution was liable to punishment; every member falling ill while in arrears was suspended until the arrears were paid, without right to benefits; a member in arrears at his death was deprived of benefits; finally, by art. 22, every suspension should remain in force as long as the member suspended was behind in his payments. The heir of a deceased member claimed $100 for benefits accrued on the death of the deceased member's wife and $200 for benefits pertaining to the heir. It appeared that at the death of the wife and of the member himself the latter was suspended by operation of art. 22, although he had then made all his payments:—Held, that the deprivation from benefits of a benefit society is a punishment that should be rigorously limited to the cases provided for, and not be established by inference, and in this case the suspension did not deprive the heirs of the member of the benefits accrued on his death, or the member of benefits which would have been due to him on the decease of his wife, but could do nothing more than postpone the payment. *Maillé* v. *L'Union des Ouvriers Boulangers*, Q.R. 12 S.C. 526.

—By-laws—Remedy for greivance — Suspension of civil action.]—When, by the constitution and by-laws of a benefit society a remedy or appeal is provided, a member aggrieved by the decision of the society must exhaust such remedy before taking action before the Civil Courts.—Such a by-law is not *ultra vires*. *Godin* v. *Supreme Court I.O.O.F.*, 4 Rev. de Jur. 236.

—Certificate of insurance—Action on—Amount in dispute—Appeal—Special leave—60 & 61 V., c. 34 (D.)]—See APPEAL VIII.

BENEVOLENT SOCIETY.

Life insurance—Mistake as to age—52 V., c. 32, s. 6 (O.)]—Section 6 of the Ontario Insurance Amendment Act, 1889, 52 Vict., ch. 32, does not apply to benevolent societies having an age limit for admission to membership, and where a man who was older than the age limited, was, owing to his innocent misrepresentation as to his age, admitted as a member and given an endowment certificate, it was held that the beneficiary named therein could not recover. *Cerri* v. *Ancient Order of Foresters*, 25 Ont. A.R. 22, reversing 28 Ont. R. 111.

—Certificate—Change in rules.]—A certificate issued by a benevolent society providing for payment of the endowment to the member's "next of kin," and expressed to be subject to the constitution and by-laws of the society then in force and also to such amendments and alterations as might thereafter be regularly adopted, is not affected by a subsequent change of the rules of the society omitting "next of kin" by that name from the classes of persons to whom certificates may be made payable. *Yelland* v. *Yelland*, 25 Ont. A.R. 91.

—Certificate—Designation of beneficiary—Insurance for benefit of wife—R.S.O. (1887), c. 136.]—An application for a benevolent society's certificate stated that the insurance money was to be paid to the applicant's wife, and the certificate as issued and accepted provided that the money should, upon the death of the member, be paid to his wife, or such other beneficiary or beneficiaries as he might in his lifetime have designated in writing indorsed on the certificate, and in default of any such designation to his legal personal representatives:—Held, that the certificate came within the Act to secure to wives and children the benefit of life assurance, R.S.O. (1887), ch. 136, and that the wife's interest was not affected by an absolute assignment, indorsed upon it, by the assured to a creditor. *Fisher* v. *Fisher*, 25 Ont. A.R. 108, reversing 28 Ont. R. 459 and C. A. Dig. (1897), col. 168.

—Life insurance—Benevolent society—"Renewed Contract"—55 V. c. 39, s. 33 (O.).]—It is not a renewal of a contract of insurance within the meaning of sec. 33 of the Insurance Corporations Act, 1892, [55 Vict. ch. 39 (O.)] but a continuance of the original contract, when after default in payment of assessments and consequent suspension of rights, a member of a benevolent society pursuant to the rules of the society, pays the assessments as of right and becomes thereby *ipso facto* reinstated. *Long* v. *Ancient Order of United Workmen*, 25 Ont. A.R. 147.

—Alteration of rules—Reduction in amount of sick benefit.]—*Baker* v. *Forest City Lodge*, 24 Ont. A.R. 585 affirming 28 Ont. R. 238 and C.A. Dig. (1897) col. 35.

—Subordinate councils—Power to waive initiation—Relief fund—R.S.O. (1877), c. 167.]—A subordinate council of a friendly society, incorporated under R.S.O. (1877), c. 167, has no authority to waive the requirements for initiation of members prescribed by the rules, where such initiation is a condition precedent to a claim on the relief fund of the society. *Hoefner* v. *Canadian Order of Chosen Friends*, 29 Ont. R. 125.

And see INSURANCE, (*Life.*)

BILL.

Bill in equity—Leave to fyle.]

See PRACTICE AND PROCEDURE, (*Equity Practice.*)

BILLS OF EXCHANGE AND PROMISSORY NOTES.

I. ACCOMMODATION, 52.
II. ACTION ON NOTE, 53.
III. CONSIDERATION, 53.
IV. DEFENCES TO ACTIONS, 54.
V. FORM, 56.
VI. JOINT AND SEVERAL LIABILITY, 56.
VII. JOINT INDORSEMENT, 56.
VIII. LOST NOTE, 56.
IX. NOTES PAYABLE ON DEMAND, 57.
X. PROTEST, 57.
XI. RENEWAL, 57.

I. ACCOMMODATION.

—Joint accommodation indorsers—Failure of one—Recourse of other—Suretyship.—C. signed some promissory notes as maker, and B. indorsed them. Both affixed their signatures to accommodate M. B. failed after M. had failed. C. fyled a claim as B.'s creditor for half the amount which he had paid on said notes:—Held, as both maker and indorser had signed for accommodation they were both sureties for M. and had a recourse one against the other for half the amount they paid for M. Consequently, C.'s claim against B. was well founded.—It could be established by parol evidence that B. knew that the notes were for accommodation, though this led to establish an obligation on his part to pay another's debt. In *re Boutin*, Q.R. 12 S.C. 186.

—Accommodation note—Maker surety for others—Time given to one party.]—When the holder of a promissory note, at the time he became such knew that the maker had signed it only for the accommodation of other parties or as their surety, he cannot recover against the

maker if he has given time to the other parties so secured. *Leet* v. *Blumenthal*, Q.R. 13 S.C. 250.

II. Action on Note.

—Promissory note—Proof of date of indorsement and transfer—Holder for collection only—Compensation.]—Parol evidence of the date when a promissory note was indorsed in blank and transferred by the payee is admissible.—Compensation does not take place between a debt which is clear and liquidated and a promissory note of which the person offering it in compensation is not the owner, but is the holder for collection only, with obligation to account to the owner. *Inkiel* v. *Laforest*, Q. R. 7 Q. B. 456, affirming 11 S.C. 534.

III. Consideration.

—Husband and wife—Note signed by husband with firm name of wife separate as to property—Rights of third person holder in good faith and for valuable consideration—Art. 1301, C.C.]—The husband of defendant had been carrying on business under the name of the Hearle Manufacturing Company. Subsequently the business was carried on by the wife under the same name. The note sued on was made by the husband, purporting to act for his wife, under the name of the Hearle Manufacturing Company, and it was proved that the note was given in part payment of a debt due by the original firm consisting of the husband:—Held, (following *Ricard* v. *La Banque Nationale*, Q.R. 3 Q.B. 161), that the note was null *ab initio*, and this nullity being of public order, and absolute, might be invoked against a third person, holder in good faith and for valuable consideration. *Maclean* v. *O'Brien*, Q.R. 12 S.C. 110.

—Insurance in assessment company—Note for assessments—Nullity of policy.]—L. insured for five years a property, believing in good faith that he was owner of the whole. He gave the company his note for $500 to meet the assessments as they fell due. He afterwards discovered that half the insured property belonged to his deceased wife's heirs. In an action on the note by the company for $100 for overdue assessments:—Held, that by the mistake as to the ownership of the property the policy became void and would not bind the company in case of loss; the note, therefore, was given without legal consideration and the company could not recover. *Mutual Assurance Co.* v. *Le May*, Q.R. 12 S.C. 232.

—Compromise with creditors—Inducement.]—A promissory note given to a creditor by a person who has made a compromise, in order to induce him to consent thereto, is fraudulent and without consideration. If the composition becomes of no effect from default of payment according to its terms the entire debt is revived and the note given before it became void, to induce the creditor to sign, is null. It would be otherwise if the creditor had agreed after the compromise was void. *Budden* v. *Rochon*, Q.R. 13 S.C. 322.

—Forbearance to sue—Evidence.]—Defendant gave a promissory note to plaintiff in renewal of a previous note given by him on account of an amount due by defendant's father to J. M., of whom plaintiff was executor. The consideration relied upon, in an action brought by plaintiff on the renewal note, was forbearance to sue:—Held, that the forbearance need not be expressly proved:—Held, also, that the circumstances were sufficient to warrant a conclusion in plaintiff's favour.—There was no evidence in regard to the giving of the first note or its terms, but it appeared that defendant's father was an invalid and confined to his house, that the indebtedness was incurred for goods supplied on the father's account, that the property of the father was bequeathed to defendant, that plaintiff did not sue on the original note, and that defendant renewed the note for a smaller amount, and was allowed six months time for payment:—Held, that the facts taken in connection with the giving of the first note, the actual forbearance to sue, and the giving of the six months time for payment of the renewal note constituted a sufficient consideration to enable plaintiff, as executor, to recover. *McGregor* v. *McKenzie*, 30 N.S.R. 214.

—Death of maker—Administration.]—Action on promissory note. Defence that the note was given for a debt due by defendant's father, who had died intestate, and to whose estate no administration was taken. There was no person who could be sued for the original debt, and defendant was in no sense liable for it, and the note was, therefore, without consideration. Judgment for defendant with costs. *Clark* v. *Paynter*, 34 C.L.J. 639.

IV. Defences to Actions.

—Demand note—Alteration of date—Limitation—Absence beyond seas—Return.]—The changing by the payee of the date of a demand note, payable with interest, to a later date, is a material alteration and makes it void, though the effect of the alteration may be to benefit the maker by reducing the amount of interest chargeable against him. The expression "beyond the seas" in 4 & 5 Anne c. 3, sec. 19, is not to be construed literally, but means, when applied to a defendant sued in this Province, "out of the Province of Ontario." To make the statute run in the defendant's favour, his return from beyond the seas must be open and of sufficiently long duration to have enabled the creditor, if he had known of it, to bring an action, though the creditor's knowledge is not essential. *Boulton* v. *Langmuir*, 24 Ont. A.R. 618.

—Maker's name—Non-apparent Alteration—Holder in due course—58 V. c. 33, s. 63 (D.)]—In an action on a promissory note against

several parties as makers it appeared that the name of one of the alleged makers was not signed by him or with his authority but was added to the note after some and before others of the makers had signed it before the note came to the hands of the plaintiff, a holder for value:—Held, that the plaintiff being the holder of the note in due course and the alteration not being apparent he could avail himself of it as if it had not been altered under the proviso to sec. 63 of the Bills of Exchange Act, 1890, 58 Vict. ch. 33 (D.): *Reid* v. *Humphrey*, 6 Ont. A.R. 403, distinguished. *Cunnington* v. *Peterson*, 29 Ont. R. 346.

—Promissory note—Action against maker—Effect of judgment—Prescription—Arts. 2224, 2228, 2231, 2264, 2265 C.C.]—The institution of proceedings against one of several joint debtors *(un debiteur solidaire)* interrupts the prescription as against his co-debtors, and after judgment the interrupted prescription recommences to run by the same period as before. Thus, where the holder of a note obtained judgment against the maker, and allowed more than five years to elapse after such judgment before proceeding against the indorser, his recourse against the latter was prescribed. *Campbell* v. *Baxter*, Q.R. 7 Q.B. 134.

—Prescription—Commencement—Days of grace.]—The prescription of a promissory note commences to run only from the expiration of the three days of grace. *Dupuis* v. *Hudon*, Q.R. 12 S.C. 227.

—Note payable to firm—Defence against one partner.]—When a note is made payable to the order of a firm, and is thereafter indorsed and transferred to one of the partners personally, any defence which would have been good as against the firm by reason of its actions must be equally available as against the indorsee. *Vézina* v. *Piché*, Q.R. 13 S.C. 213.

—Summary judgment—Leave to defend—Promissory note—Delivery in fraud of maker—Holder in due course.]—On application to sign final judgment in an action on a promissory note by the indorsee against the maker, defendant fyled an affidavit stating that the note had been handed by him to one L. to hold in escrow until the settlement of certain accounts between him and the payee, and that it had been delivered over to the payee without his consent:—Held, that under The Bills of Exchange Act, 1890, s. 30, s.s. 2, defendant was entitled to defend without shewing that plaintiff was not a holder in due course: *Fuller* v. *Alexander*, 52 L.J.Q.B. 103, and *Millard* v. *Baddeley*, W.N. (1884), 96 followed. *Flour City Bank* v. *Connery*, 12 Man. R. 305.

—Promissory note—Non-commercial persons—Prescription.]—See LIMITATION OF ACTIONS.

V. FORM.

—Negotiable instrument—Bon—Bills of Exchange Act, sec. 8, sub-sec. 4.]—A *bon*, though not payable to order, is a negotiable instrument and transferable by indorsement, unless the contrary be expressed in the instrument. *Désy* v. *Daly*, Q.R. 12 S.C. 183.

—Promissory note—Consideration—Goods sold—Condition.]—Where a promissory note given for the price of goods sold stated that the purchaser would not be obliged to pay it if the goods had not been paid for by the seller and if any party other than the latter had rights in them:—Held, that this was not a condition but merely an explanation of the consideration for the note, and did not prevent it being a negotiable instrument. *Anderson* v. *Poirier*, Q.R. 13 S.C. 283.

—Bill of Exchange—Blank spaces on bill—Alteration after indorsement—Estoppel—Waiver of demand—Bills of Exchange Act, 1890, s. 20.]—A promissory note, containing blank spaces for the names of the payee and the rate of interest, was indorsed for the accommodation of the maker and handed to him in that condition. The maker inserted the name of the payee and 12 per cent. as the rate of interest:—Held, that the indorsers were estopped from denying that they had given the maker authority to fill in the blanks and that the insertions by the maker were not alterations avoiding the note.—The object of presentment being to demand payment, waiver of demand is also waiver of presentment. *Burton* v. *Goffin*, 5 B.C.R. 454.

VI. JOINT AND SEVERAL LIABILITY.

—Husband and wife—Joint and several promissory note—Art. 1301 C.C.]—Where husband and wife make their promissory note, binding themselves jointly and severally to pay the amount thereof, the wife, though separated as to property from her husband, is liable on the note where it is alleged and proved that it was made for her personal debt, the mere fact that her husband became jointly and severally liable with her not having the effect of making the note void as against her. *Poitras* v. *Brown*, Q.R. 12 S.C. 497.

VII. JOINT INDORSEMENT.

—Suretyship—Letter of guarantee—Indorsement of note—Joint and several obligation—Art. 1951 C.C.]

See PRINCIPAL AND SURETY.

VIII. LOST NOTE.

—Action on lost note—Security.]—The person liable on a note lost, but not prescribed, can only demand security where the holder has recovered in an action on it.—The demand for security should be made by way of *exception dilatoire*, pursuant to Art. 177 C.C.P. *Brown* v. *Barden*, Q.R. 13 S.C. 151.

—Bank—Note lost in mails—Responsibility.]—Where a bank receives a note for collection, and in the regular course of business places the same in the hands of a responsible and perfectly solvent agent, it is not liable for the loss of the note in the mails. In any case, the defendant's offer to give security to the makers and indorser that they would never be troubled if they paid the note, was sufficient. *Litman* v. *Montreal City and District Savings Bank*, Q.R. 13 S.C. 262.

IX. Notes Payable on Demand.

—Prescription—Period of limitation—Commencement of period.]—A note payable on demand is prescribed by five years, beginning to run from its date and not from the day on which it was presented for payment. *Brown* v. *Barden*, Q.R. 13 S.C. 151.

X. Protest.

—Promissory note—Indorser—Waiver of protest.]—Where the indorser, on the day following that on which a promissory note became due, agreed in writing that he would be responsible for the amount of the note, with interest, this is a sufficient waiver of protest. *McLaurin* v. *Seguin*, Q.R. 12 S.C. 63.

—Accommodation indorsement—Insolvency—Creditor's Claim—Waiver of protest.]—The curator to an insolvent has the right to waive protest on a note upon which the latter was indorser.—The non-protest defence can be set up by an indorser against a regular holder, but not by one surety against another subject to the same obligations. *In re Boutin*, Q.R. 12 S.C. 186.

XI. Renewal.

—Promissory note—Privilege of renewing at maturity—Obligation of debtor—Tender.]—Where the maker of a promissory note has the privilege of renewing the same at its maturity, he is obliged, if he wishes to avail himself of the privilege of renewal, to tender a renewal note at the date of maturity. A tender of a renewal note by the debtor, three weeks after the maturity of the previous note, is made too late to entitle him to avail himself of the right of renewal. *White* v. *Sabiston*, Q.R. 12 S.C. 345.

BILL OF LADING.

Contract—Negligence—Stowage—Fragile goods—Notice—Fault of servants—Arts. 1674-1676 C.C.—Conditions of carriage.]

See Shipping.

BILLS OF SALE AND CHATTEL MORTGAGES.

I. Change of Possession, 58.
II. Fixtures, 58.
III. Impeachment, 59.
IV. Recital, 59.
V. Renewal, 59.
VI. Security for Money, 60.

---

1. Change of Possession.

Description—Actual ownership.]—A bill of sale given by M., to plaintiff, described the property conveyed as follows: "One horse or mare, three cows, two heifers, sheep, cart, all my farming implements." The evidence showed that M., being about to leave the province, sold his farm, stock, etc., to plaintiff, but returned in a short time, and occupied the farm under an agreement to redeem it, and treated the stock as his own, selling and otherwise disposing of it as he saw fit:—Held, in an action brought by plaintiff, against the defendant sheriff, who levied upon the stock, in satisfaction of a judgment, recovered against M., that the trial judge was right in finding the property levied upon to be that of M. *McAskill* v. *Power*, 30 N.S.R. 189.

—Bills of Sale Act, R.S.N.S. (5th ser.), c. 92, s. 3—Hire agreement.]—S. obtained a piano from M., under an agreement in writing, that S. should pay rental therefor, for the period of 30 months, at the rate of $10 per month, and that, on the completion of the payments agreed to be made, S. should be entitled to receive from M. "one piano, equal in value to the above named piano, with a receipted bill of sale thereof." The piano was seized by the sheriff, under a writ of attachment against S., as an absent or absconding debtor, and M., having resumed possession of the piano, under provisions in the agreement, enabling him to do so in such case:—Held, that the Bills of Sale Act, R.S.N.S., (5th series), c. 92, s. 3, was not applicable, there being nothing in the agreement entitling S., at the termination of the period of hiring, to the possession of the particular piano referred to in the agreement, M., being entitled to deliver, in place thereof, another piano of equal value. *Guest* v. *Diack*, 29 N.S.R. 504, affirmed on appeal to Supreme Court of Canada, June 14th, 1898.

II. Fixtures.

—Chattels—Mortgage of realty—Conversion of express agreement—Subsequent chattel mortgage—Notice—Priority.]—Chattels of the nature of plant or machinery not structurally affixed to the freehold, as well as those of a like nature afterwards placed on the mortgaged premises, may, by the express terms of a mortgage of the realty, become fixtures for the purposes of the mortgage, and the mortgagee is entitled to them as against a subsequent chattel

mortgagee whose security on such chattels is taken with notice of the prior incumbrance. *Canada Permanent Loan & Savings Co.* v. *Traders' Bank*, 29 Ont. R. 479.

III. Impeachment.

—Bills of Sales Act—Affidavit sworn before mortgagee as commissioner.—Under the Bills of Sale Act, R.S.Man., c. 10, a mortgage is not rendered invalid or void by reason of the affidavit of execution being sworn before the mortgagee himself, he being a Commissioner for taking affidavits in the Queen's Bench: *Seal* v. *Claridge*, 7 Q.B.D. 516, distinguished. *Inch* v. *Simon*, 12 Man. R. 1.

IV. Recital.

—Bill of sale—Recital—Estoppel—Covenant.] —A bill of sale contained a recital that a certain sum was due from the mortgagor to the mortgagee, and a covenant by the mortgagor to pay that sum and also any other sum which on taking an account might appear to be due thereon:—Held, that the mortgagor was not estopped by the recital from claiming that the debt due at the date of the bill of sale was larger than the sum therein named.—An express covenant overrides and excludes an implied covenant. *Rithet* v. *Beaven*, 5 B.C.R. 457.

V. Renewal.

—Omission to renew—Mortgagee taking possession—Seizure by execution creditor—57 V., c. 37, ss. 38-40 (O.).] —A mortgagee having omitted to renew a chattel mortgage, delivered to his bailiff, after the time limited for such renewal, a warrant directing the seizure of the goods, which the bailiff accordingly seized, but left them in the possession of the mortgagor's son, who resided with his father on the premises, and his son-in-law, who resided on the adjoining premises, taking from them an instrument under seal whereby they acknowledged that they had received the goods under and by virtue of the warrant from him, and undertook to deliver them to him on demand. Subsequently the sheriff, at the suit of a creditor who had obtained execution against the mortgagor's goods, seized the goods in question:—Held, that what had taken place did not constitute such a taking of possession as is required by the statute.—In any event, the act of taking possession after the time for renewal has expired must amount to a new delivery or new transfer by the mortgagor.—A creditor, prior to the placing of his execution in the sheriff's hands, has no *locus standi* to attack a mortgage invalid for want of renewal: *Clarkson* v. *McMaster*, 25 S.C.R. 96, commented on.—Sections 38 and 40 of 57 Vict. ch. 37 (O.), do not apply to a mortgage which has ceased to be valid for want of renewal. *Heaton* v. *Flood*, 29 Ont. R. 87.

—Renewal statement—Assignment between making and fyling—R.S.O. c. 148, s. 18.]—A chattel mortgage does not cease to be valid as against creditors, etc., if otherwise regularly renewed, because a renewal statement, made and verified by the mortgagee before an assignment by him of the mortgage, is not fyled until after such assignment. Construction of sec. 18 of R.S.O. c. 148. *Daniel* v. *Daniel*, 29 Ont. R. 493.

—Power of sale—Time of payment beyond date for renewal.]—A power given to a chattel mortgagor to sell certain chattels does not, where there is no evidence of fraudulent intention, raise any presumption of fraud.—The fact that the time for payment extends beyond the time within which a renewal should be filed under the N.W. Territories' Bills of Sale Ordinance does not render the mortgage void. *Spenger* v. *Graveley*, 34 C. L.J. 135.

VI. Security for Money.

—Validity—Security taken in name of trustee—Affidavit of bona fides—Conversion of goods—Amendment—Adding claim—Pleading.] —A chattel mortgage to secure a debt was made to a nominee of the creditor, as trustee for him. In an action by an assignee of the mortgage against the assignee for the general benefit of creditors of the mortgagor, for conversion of the mortgaged chattels, it was contended that the mortgage was invalid because the mortgagee could not properly make the usual affidavit of *bona fides*, as there was no debt due to him:—Held, notwithstanding there was nothing on the face of the mortgage to shew the fiduciary position of the mortgagee, that the mortgage was valid: *Brodie* v. *Ruttan* 16 U.C.Q.B. 209, applied and followed. —At the time the goods were taken by the defendant out of the plaintiff's possession, they were in the hands of the bailiff of the latter for sale under the power contained in the mortgage, and when the defendant intervened and sold as assignee, the same bailiff conducted the sale, and the amount realized was the same as would have resulted from a sale under the power:—Held, that the plaintiff was entitled to recover as damages for the conversion no more and no less than was realized by the sale.—A part only of the goods which the defendant took out of the possession of the plaintiff's bailiff was sold; from the remainder of them the defendant realized nothing, claims having been made to them by other persons, which the defendant did not contest, though he did not actively take part in handing them over to the claimants. The plaintiff, having in his pleading limited his claim to the goods actually sold, was at the trial refused leave to amend by adding a claim for the other goods. *Light* v. *Hawley*, 29 Ont. R. 25.

BOARDING HOUSE.

Removal of effects by boarder.]—A boarder who has discharged his indebtedness to his landlady, who, nevertheless, opposes the removal of his effects from the premises, is justified in using the force necessary to enable him to do so. *Bourdais* v. *Robinson*, Q.R. 12 S.C. 201.

—Boarding-house keeper—Trader.]—The keeper of a boarding house is a trader. *Renaud* v. *Brown*, Q.R. 12 S.C. 237.

BON.

Not payable to order—Negotiable instrument—Bills of Exchange Act, s. 8, s.s. 4.]

See BILLS OF EXCHANGE AND PROMISSORY NOTES, V.

BOND.

Bonds of company—Amalgamation of companies—Ranking of bonds—Payment.]

See COMPANY, II.

—Action on bond—Penalty—Judgment—Assessment of damages.]

See PRACTICE AND PROCEDURE.

BORNAGE.

Encroachment—Mistake of title—Good faith—Common error—Res judicata—Arts. 412, 413, 429 et seq., 1047, 1241 C. C.—Indemnity—Demolition of works.]—Where, as the result of a mutual error respecting the division line, a proprietor had in good faith and with the knowledge and consent of the owner of the adjoining lot, erected valuable buildings upon his own property and it afterwards appeared that his walls encroached slightly upon his neighbor's land, he cannot be compelled to demolish the walls which extend beyond the true boundary or be evicted from the strip of land they occupy, but should be allowed to retain it upon payment of a reasonable indemnity.—In action for revendication under such circumstances the judgment previously rendered in an action *en bornage* between the same parties cannot be set up as *res judicata* against the defendant's claim to be allowed to retain the ground encroached upon by paying reasonable indemnity, as the objects and causes of the two actions were different. —An owner of land need not have the division lines between his property and contiguous lots of land established by regular *bornage* before commencing to build thereon when there is an existing line of separation which has been recognized as the boundary. *Delorme* v. *Cusson*, 28 S.C.R. 66.

—Action en bornage—Confession of judgment—Condition—Common costs.]—See COSTS, XII.

BREACH OF PROMISE.

See MARRIAGE.

BROKER.

Gaming contract—Stock transactions—Broker doing business on a commission—Art. 1927 C.C.]—Where a broker buys or sells stocks for a customer on commission, and has no interest in the contracts, being entitled to the same commission whether the market rises or falls, the fact that the customer merely buys on margin for purposes of speculation does not bring the transaction between the broker and the customer within the prohibition of the law as to gaming contracts: *Forget* v. *Ostigny* [1895], A.C. 318, followed. *Stevenson* v. *Brais*, Q.R. 7 Q.B. 77.

—Contract—Transactions in stocks—Secondary evidence—Commencement of proof.]—Where it is not proved that the shares, in respect of which brokers claim a balance due for commission, advances and interest, were ever purchased by the plaintiffs for the defendant or were ever offered to him, but on the contrary it appears that the shares always remained in the possession of plaintiffs' New York agent, and were sold without any authority from defendant, the action will not be maintained. The production by plaintiff's bookkeeper of entries in a press letter copy book, said to be copies of the bought and sold contract notes, relating to the purchase and sale of shares, the originals of which were sent to the defendant, does not make proof of such purchase where the defendant has not been asked to produce the originals of the contract notes, or whether he had ever received the originals, and there is no evidence that he ever did receive them. The admission of defendant that he had for several years employed the plaintiffs as his stock brokers, to buy and sell stocks for him, does not constitute a commencement of proof in writing that plaintiffs bought and sold the particular shares, mentioned in their action, for and on account of defendant. *Forget* v. *Baxter*, Q.R. 13 S.C. 104.

BY-LAW.

Benefit society—Validity of by-law—Remedy for grievance—Suspension of civil action.]

See BENEFIT SOCIETY.

CANADA TEMPERANCE ACT.

I. Capacity of Magistrate, 63.
II. Certiorari, 63.
III. Conviction, 63.
IV. Election, 64.
V. Hearing, 64.
VI. Informations, 64.
VII. Sale of Liquors, 64.

I. Capacity of Magistrate.

—Canada Temperance Act—Magistrate—Qualification—Pecuniary interest.]—The vote of a sum of money to a magistrate for his services in enforcing the Canada Temperance Act is not a ground for quashing a conviction by such magistrate under the Act on the ground that he is disqualified by interest. *Ex parte McCoy*, 33 N.B.R. 605.

II. Certiorari.

— Certiorari — Town Council — "Judicial tribunal"—Resolution to pay informer—"Judicial matter."] — Application was made on behalf of a ratepayer of the Town of New Glasgow for a writ of *certiorari*, to bring up an order or resolution of the Town Council, that where in any case an information had been laid by any person other than the inspector of licenses, for a violation of the Canada Temperance Act, such person, in case of a conviction, should be entitled to the costs, and one-half of the fine collected, &c.:—Held, dismissing the application with costs, that the Municipal Council of the town was not, under the legislation from which it derived its authority, "a judicial tribunal," to which *certiorari* would lie:—Held, also, that the resolution complained of was not a "judicial matter," but was clearly a ministerial or legislative exercise of the authority and functions of the council which the Court had no authority to review. *In re Town Council of New Glasgow*, 30 N.S.R. 107.

III. Conviction.

—Keeping for sale—Selling—Order for destruction of liquor.]—An apparent variance between the information, summons and adjudication, satisfactorily explained, will not authorize setting aside conviction. While the information attached to the magistrate's return has a date different from date of the sale, where it is manifestly a clerical or other error, the Court will not interfere.—An order for the destruction of liquor, without an information upon which to base a search warrant, is bad: *The Queen* v. *Dibblee; Ex parte Kavanagh*, 34 N.B.R. 1.

—Excess in costs—Jurisdiction.]—An allowance of costs, under a conviction for a violation of the Canada Temperance Act beyond what is allowed by the tariff of fees under s. 871 of the Criminal Code, 1892, is not such an excess of jurisdiction on the part of the magistrate as to justify quashing the conviction. *Ex parte Raysworth*, 34 N.B.R. 74.

— Conviction — "Penalty" — Meaning of — Amendment—Crim. Code s. 872.]—1. The word "penalty," although generally applied to pecuniary punishment, as by fine, includes also punishment by imprisonment. 2. A conviction awarding ninety days' imprisonment as an alternative punishment on non-payment of a fine where the statute authorized three months' imprisonment is bad, as ninety days may possibly be more than three months. 3. Such a conviction under the Canada Temperance Act cannot be amended under s. 117, because it imposes a "greater penalty than is authorized." *The Queen* v. *Gavin*, 1 Can. C.C. 59.

IV.—Election.

—Ballot—Scrutiny—R.S.C. c. 106, s. 62.]—On an application to a County Court Judge for a scrutiny of ballots in an election for the repeal of the Canada Temperance Act:—Held, that secondary evidence of the ballots contained in lost or stolen ballot boxes was properly receivable. *Ex parte LeBlanc*, 34 N.B.R. 88.

V. Hearing.

—Magistrate—Adjournment of hearing.

See Justice of the Peace, (*Adjournment.*)

VI. Information.

—Information—Defect of—Jurisdiction.] — The information for a violation of the Canada Temperance Act was defective in that it was not sworn to by the prosecutor at the place and time stated therein. The defendant, however, appeared and pleaded not guilty:—Held, that as the magistrate had jurisdiction of the offence and the defendant had appeared, the conviction must stand. *Ex parte Sonier*, 34 N.B.R. 84.

VII. Sale of Liquors.

—"Sale" of liquors while in customs warehouse —Infraction of Act.]—Defendant imported a quantity of spirituous liquors which he duly entered at customs, and which, at his instance, were placed in the customs warehouse in C. While the goods were in the warehouse, the defendant by a writing signed by him, transferred the liquors to one B.C. who paid the duty, obtained possession of the liquors, had them removed to his own premises and gave the defendant his promissory note in payment of the price:—Held that there was a "sale" of the liquors within the meaning of the Act. *The Queen* v. *Morris*, 18 C.L.T. Occ. N. 41.

CANAL.

Accident to vessel using Government canal—Liability of Crown.]—See CROWN.

CAPIAS.

Debt contracted in a foreign country.]—A writ of *capias* will be quashed where it appears, by the affidavit on which the *capias* issued, that the greater part of the indebtedness alleged was contracted in a foreign country, and that the portion of the debt contracted in this province is less than the sum necessary to obtain a *capias: Haupter* v. *Fallenbaum*, Q.R. 12 S.C. 538.

—**Intent to defraud—Departure to the United States—Costs.**]—Where a debtor is going to the United States merely because he is unable to obtain in this province employment sufficient for the support of his family, and he has secured a better situation in the United States, the circumstances do not disclose intent to defraud his creditors, and he is entitled to have the writ of *capias* quashed. But no costs will be allowed the debtor on the quashing of the writ where he denied to plaintiff's agent the fact of his intended departure, and thereby created a reasonable suspicion against him. *Seguin* v. *Cartier*, Q.R. 13 S.C. 346.

—**Partnership—Dissolution—Judgment against debtor—Execution.**]—When a partnership on dissolution has a judgment against a debtor one member cannot sue for his share of the same debt but may execute such judgment therefor. If he does sue by *capias* and demands a new condemnation, and also that the *capias* be maintained, the Court can only grant the latter and join the *capias*, for the plaintiff's share, to the judgment of the former partnership. *Crepeau* v. *Boisvert*, Q.R. 13 S.C. 405.

—**Bail—Notice—Acts 910, 913, 915 C.C.P.**]—C. was arrested on a *capias ad respondendum* and on Oct. 12th, 1897, he was discharged on furnishing bail, pursuant to Act. 910 of the Code of Civil Procedure, conditioned to pay the amount of the judgment unless he should furnish further bail, according to the terms of Act 913 of the Code within ten days after the day on which he was bound to appear or be surrendered within such delay to the custody of the sheriff. On Oct. 18th C. gave fresh bail, under Art. 913, to the satisfaction of the prothonotary. Proceedings were taken against him and his sureties, jointly and severally, to recover the amount of the capital, debt, interest and costs under the bail bond of the 12th Oct. As for the further bail the notice required by Art. 915 had not been given:—Held, that the notice mentioned in Art. 915 of the Code is not imperative; it is only required to enable the party for whose benefit the bail is given to satisfy himself as to the solvency of the sureties. If it is established that the bail given without this notice was sufficient to guarantee the debt, interest and costs, which it was intended to cover, the plaintiff not having alleged nor proved other prejudice, it will be declared valid according to the maxim "*pas de nullitté*" *sans griefs*. *Dumont* v. *Carbonneau*, Q.R. 13 S.C. 416.

—**Fraudulent preference—Secretion.**]—Where an asset which should be available for the payment of the creditors generally is given to one of them, by a trader, at a time when he was insolvent, and was aware of his insolvency, a fraudulent preference is thereby conferred, which constitutes secretion, and renders him liable to arrest under writ of *capias ad respondendum*: *Gault* v. *Dussault*, 4 L.N. 321, and other cases decided in the same sense, followed. *Cooke* v. *Jacobi* Q.R. 13 S.C. 433.

—**Capias ad respondendum—Intent to defraud.**]—The mere intention to leave the country without intention to defraud is no ground for issuing proceedings by way of *capias ad respondendum* or seizure before judgment. *Kellert* v. *Carranza*, 4 Rev. de Jur. 318.

—**Arrest—Ca. re.—Affidavit—Statement of cause of action—Alien temporarily resident.**]—Upon motion to set aside a writ of *ca. re.*, and the arrest of defendant thereunder, for irregularity:—Held: that a statement of the plaintiff's cause of action, in his affidavit to hold the defendant to bail, that the defendant "is justly and truly indebted to me in the sum of $1,323.80, as follows, namely: $2,000.00 for money received by him to my use, being the price of eight kegs of whiskey, of my property, which he sold for $2,000.00, and received the said sum, less the amount of $676.20 due by me to the said T. O'B," was sufficient, as the defendant was liable whether the plaintiff authorized or requested the sale or not, as, if the defendant converted the whiskey, it was open to the plaintiff to waive the *tort* and sue for the proceeds. The amount due was not uncertain by reason of the credit of $676.20, without saying "and no more."—It is not necessary to serve on the defendant a copy of an order for a *ca. re.* Rule 979 requiring service of affidavits on which an *ex parte* order is obtained, only applies when the *ex parte* order itself has to be served.—The non-cancellation of the law stamps on the process by the officers of the Court, is not fatal to the process: *Smith* v. *Logan*, 17 Ont. P.R. 219 distinguished.—A variation in the statement of defendant's address, viz.: as "Yukon" in the writ and "Victoria" in the affidavit to hold to bail, is immaterial.—An alien passing through the jurisdiction may be arrested on a *ca. re.* upon a cause of action arising in foreign country.—In the absence of proof it will be assumed that the law of the foreign country is the same as that here.—It is not necessary in an affidavit for *ca. re.* to shew that the defendant is leaving the country with intent to defraud creditors. *Macaulay* v. *O'Brien*, 5 B.C.R. 510.

—Ca. Sa.—Irregularity.] — Plaintiff having recovered judgment issued a writ of fi. fa. to the Sheriff of Queen's County under which defendant's goods were sold. The sheriff made return that he had seized and sold certain goods of defendant, but did not state that the defendant had no other goods to levy on. Plaintiff then issued a ca. sa. for the whole amount of the judgment without reference to the previous fi. fa., but in indorsing the amount due on the back of the ca. sa. credit was given for the sum realized under the fi. fa. Defendant was committed to gaol and an application was made to discharge him and set aside the ca. sa. for irregularity, inasmuch as it was issued without any entry on the record of the previous fi. fa. and return and award of the ca. sa., and because it did not recite the first writ and the amount levied under it:—Held that the writ of ca. sa. was irregular. *McPherson* v. *McDonald*, 34 C.L.J. 663.

— Capias ad respondendum — Discharge — Restraint from action — Benefit under order — Appeal—Waiver.]—See APPEAL X.

And See ARREST.

DEBTOR and CREDITOR I.

CARRIERS.

Bill of lading — Ownership of thing received for transport — Arts. 1745 and 1808 C.C.]—A carrier, by his plea to an action founded on a bill of lading of goods received for transport, cannot put in issue the plaintiff's ownership of the goods. *Aubry-LeRevers* v. *Canadian Pacific Ry. Co.*, Q.R. 12 S.C. 128.

—Transportation of luggage—Delivery—Loss—Responsibility.] — Where a local carrier or carter undertakes to transport luggage from one point to another within a city, *e.g.*, from one railway station to another, his responsibility is at an end when he has fulfilled the contract by delivering the luggage at its destination. If it be subsequently lost in consequence of the owner not being at the appointed place to receive it, he has no recourse against the carrier. *Benoliel* v. *Durocher*, Q.R. 13 S.C. 260.

—Charter party—Priority of contract—Storage—Fragile goods—Bill of lading.]

See SHIPPING.

CAVEAT.

See MANITOBA REAL PROPERTY ACT.

CERTIFICATE.

Contract for public work—Certificate of engineer—Approval—Condition precedent.]

See CONTRACT X.

CERTIORARI.

Appeal — Incomplete record.] — In view of Art. 1236 C.C.P. the proper way to obtain the completion of an incomplete record in appeal is by means of a writ of *certiorari* to the Court below and not by way of motion. *Whelan* v. *Charette*, 4 Rev. de Jur. 399 (Court Q.B.)

—N.S. Liquor License Act—Conviction—Erroneous finding.]—Held, that the Court could not entertain an objection that the magistrate erroneously found a fact which, though essential to the validity of his order, he was competent to try: *The Queen* v. *E. McDonald*, 19 N.S.R. 336 reversed; *The Queen* v. *Walsh*, 29 N.S.R. 521.

—Practice—Certiorari—Rule of Court, Hilary Term, 1894.]—A rule *nisi* for *certiorari* will be discharged if the affidavits upon which it was granted have not been served as required by Rule of Court, Hilary Term, 1894. *Ex parte Leighton*, 33 N.B.R. 606.

— Canada Temperance Act — Certiorari — Town Council—Judicial tribunal.]

See CANADA TEMPERANCE ACT II.

— Indian Act — Certiorari — Liquor—Res Judicata.]—See INDIAN.

—Probate Court—Appointment of surrogate to act in absence of judge—Jurisdiction as to matters heard during absence of judge—Certiorari.]

See PROBATE COURT.

And see PRACTICE AND PROCEDURE.

CESSION DE BIENS.

Demand—Form—Art. 853 C.C.P.]—A demand of assignment (*cession de biens*) made since the new Code of Civil Procedure came into force, by which the creditor demands that the debtor make an assignment under the authority of Article 763a of the Code of Civil Procedure (this was the article of the former Code authorizing such a demand), and following a form appropriate to that article, is a nullity. *Galameau* v. *Boucher*, Q.R. 13 S.C. 470.

See DEBTOR AND CREDITOR V.

" CONTRACT VIII (b).

—Creditor proceeding after—Seizure and sale—Curator—Authority to take proceedings.]

See DEBTOR AND CREDITOR V.

—Debt—Prescription—Interruption.]

See LIMITATION OF ACTIONS III.

—Demande de cession — Quand est-ou reputé commerçant?]—See TRADE.

CHALLENGE.

Criminal trial—Peremptory challenge—Withdrawal.]—See CRIMINAL LAW, XIV.

—Criminal trial—Joint indictment—Number of peremptory challenges.]—See CRIMINAL LAW, XIV.

CHAMPERTY.

Solicitor—Agreement with client.]
See SOLICITOR.

CHARITABLE USE.

See WILL.

CHARTER PARTY.

Contract—Negligence—Stowage—Bill of lading—Notice—Arts. 1674, 1675, 1676, 2383, 2390, 2409, 2413, 2424, 2427 C.C.—Liability of owners.]
See SHIPPING.

CHATTEL MORTGAGES.

See BILLS OF SALE AND CHATTEL MORTGAGES.

CHEQUE.

—Defaulting Municipal treasurer—Transfer by mail of accepted cheque to corporation's bank—Revocation.]
See BANKRUPTCY AND INSOLVENCY, IV.

—Presentment for payment—Pleading.]
See PLEADING.

CHOSE IN ACTION.

Conveyance subject to mortgage—Obligation to indemnify—Assignment of obligation—Right of action against assignee.]
See ACTION, XVII.
" BANKRUPTCY AND INSOLVENCY, IV.

—Assignment of debt—Action by assignee—Allegation in pleading.]
See DEBTOR AND CREDITOR, III.

—Wife's choses in action—Reduction into possession by husband.]—See HUSBAND AND WIFE, V.

—Examination of officers of company—Assignors of chose in action—Discovery.]
See PRACTICE AND PROCEDURE.

CHOSE JUGÉE.

See RES JUDICATA.

CHURCH.

Incumbent's salary — Liability of churchwardens.]—The churchwardens of an Anglican congregation which has adopted the free seat system, and in which the only revenue is derived from the voluntary contributions of the members, are not liable to the incumbent for the payment of his salary except to the extent of contributions received by them for that purpose. *Daw* v. *Ackerill*, 25 Ont. A.R. 37; affirming 28 Ont. R. 452.

— Nuisance — Church — Week-day Services — Skating rink—Band of music.]—In an action by the churchwardens and trustees of a church, wherein week-day services were held, to restrain the playing of a band in an adjoining skating rink, which had the effect of disturbing the services:—Held, that the use by the plaintiffs of the church in the way mentioned was an ordinary, reasonable and lawful use of their property, and the inconvenience to them and the congregation by the defendant's mode of using their property was such as to materially interfere with the use and enjoyment of the plaintiff's property, and to constitute a nuisance. *Church of St. Margaret* v. *Stephens*, 29 Ont. R. 185.

CHURCH PROPERTY.

Assessment of parsonage.]
See ASSESSMENT AND TAXES.

CIRCUIT COURT.

Jurisdiction—Hypothecary action—Pecuniary amount.]—An hypothecary action (*action en déclaration d'hypothèque*) for a less sum than $100 is within the exclusive jurisdiction of the Circuit Court. *Laverdure* v. *Coté*, Q.R. 13 S.C. 254.

—Ultimate jurisdiction—Chef-lieu—Appeal from judgments.]—See APPEAL, IV.

—Appeal from judgment—Municipal by-law—Petition to quash—Future rights.]
See APPEAL, IV.

—Jurisdiction—Non-appealable case—Opposition—Setting aside sale.]—See JURISDICTION.

CIVIL SERVICE.

Statute, construction of—R.S.C. c. 18—Abolition of office—Discretionary power—Jurisdiction.]—Employees in the Civil Service of Canada

who may be retired or removed from office under the provisions of the eleventh section of the Civil Service Superannuation Act (R.S.C. c. 18), have no absolute right to any superannuation allowance under that section, such allowance being by the terms of the Act entirely in the discretion of the executive authority. *Balderson* v. *The Queen*, 28 S.C.R. 261.

CLUB.

Liquors sold without license—R.S.O. c. 194, s. 50.]—See LIQUOR LICENSE.

CODE.

See STATUTE.

COMMERÇANT.

Un restaurateur est un commerçant.]—*Carter* v. *McCarthy*, Q.R. 6 Q.B. 499.

—Quand est-on reputé?—Demande de cession.

See TRADE.

COMMERCE, ACTE DE.

Quand est-on reputé commerçant—Demande de cession — Endorsements de billets — Avances au commerçant.]—See TRADE.

COMMERCIAL MATTER.

Negotiating sale of immovable property—Evidence.]—An action brought by a real estate agent, to recover a commission on negotiating a sale of immovable property for the defendant, is not of a commercial nature, and the evidence of the parties thereto in their own behalf is not admissible. *Baillie* v. *Molton*, Q.R. 12 S.C. 534.

—Contract of hiring—Action for salary—Evidence of party.]—See EVIDENCE, VI.

—Contract to supply workmen—Oral proof—Art. 1235, par. 4 C.C.]—See EVIDENCE, VI.

—Promissory note—Non-commercial persons—Prescription.]

See LIMITATION OF ACTIONS, IV.

COMMON SCHOOL FUND.

See CONSTITUTIONAL LAW, I.

COMMUNITY.

Action for debt of community—Joint action against husband and wife—Separate plea by wife.]—See ACTION, III.

—Donations overenses — Couquêts de communanté.]—See DONATION.

—Husband and wife—Trader—Boarding-house keeper—Marchande publique.]

See HUSBAND AND WIFE, VII.

—Pastage—Separation de corps—Recovery of wife's money—Compensation.]

See HUSBAND AND WIFE, VIII.

—Contract by wife—Action on contract—Necessary parties.]—See PARTIES.

COMPANY.

I. ACTION BY AND AGAINST, 72.
II. BONDS, 74.
III. DIRECTORS AND OFFICERS, 75.
IV. POWERS OF COMPANY, 77.
V. STOCK, 78.
VI. WINDING-UP, 79.
(*a*) *Discontinuance*, 79.
(*b*) *Liquidator*, 79.
(*c*) *Petition for Order*, 79.
(*d*) *Proof of Assets*, 80.
(*e*) *Sale of Assets*, 80.
(*f*) *Winding-up Order*, 81.

I. ACTIONS BY AND AGAINST.

—Statutory duties of a corporation—Breach—Cause of action.]—Where by an Act extending the powers of the respondent company certain duties and obligations were imposed on it for the benefit of its customers with a view to the reduction of the price of gas contingent on the amount of surplus net profit, but no pecuniary penalty was imposed for default and no right of action given to persons aggrieved, provision, however, being made for its accounts being audited by direction of the mayor of the corporation with whose assent the company was originally established :—Held, that no individual customer had a right of action against the company for non-compliance with the provisions of the Act. Such a right only arises where given by the Act, and especially so where the Act, as in this case, is in the nature of a private legislative bargain, and not one of public and general policy. *Johnston and Toronto Foundry Co.* v. *Consumers' Gas Co.* [1898] A.C. 447.

—Action for wrongful dismissal of employee—Construction of contract—Power of provisional directors — Ratification.] — Plaintiff claimed damages from the defendant company for wrongful dismissal, on the ground that he was employed under a special agreement,

which had not terminated when his services were dispensed with. The agreement was in these words: "We, the undersigned, jointly and severally promise, and agree to engage, and hire C. M. O., engineer, for the period of one year, from this date, at a salary of $250, per month, the services to be performed by the said C. M. O., to be in connection with railway and other surveys." The agreement was dated May 8th, 1893, and was signed by three of the corporators, and provisional directors of the defendant company, which was incorporated by an Act of the legislature of Nova Scotia, passed the 28th April, 1893. The company was not organized until August, 1893, when the provisional directors, of whom, there were five named in the Act, in addition to those who signed the agreement, met for the first time. The directors, who signed the agreement with plaintiff, set him to work locating the line of the railway in May, 1893. Up to October of that year he was paid by R., one of such directors, but, after that date, the company assumed control of the work, and plaintiff was paid out of the treasury of the company. His employment continued up to the end of June, 1894, when he was notified by the treasurer that his services would be dispensed with, and he was paid in full up to that date. There was no resolution of the Board, either in regard to his appointment or dismissal:—Held, that the contract of May 8th, 1893, was merely a joint and several contract of the directors who signed it, and not a contract binding upon the company, and that the directors who signed that contract had no power to bind the company, even if they so intended:—Held, also, that the payments made to plaintiff by the treasurer of the company, were not evidence of ratification of the contract of May 8th, and would not be evidence of an implied contract of general hiring:—Held, also, that plaintiff could not recover on a general contract, even if such a contract could be implied, his claim being based entirely upon the contract of May 8th, 1893. *O'Dell* v. *Boston and Nova Scotia Coal Company*, 29 N.S.R. 385.

—Fraudulent representations to induce purchase of shares—Individual shareholder suing on behalf of himself and others—Special circumstances—Damages—Pleading—Costs.]—Plaintiff brought an action against the defendant W., alleging that he was induced to become a bondholder and shareholder of the Dominion Coal Co., Limited, by the false and fraudulent representations of the defendant, giving particulars of the alleged false and fraudulent representations, and claiming certain relief. By amended paragraphs of his statement of claim, plaintiff alleged that, in respect of the matters stated, he sued on behalf of himself and all the other shareholders and bondholders of the company who joined and contributed to the cost of the action:—Held, that the action being in reality one on behalf of all the stockholders of the company, it should, in the ordinary course, have been brought in the name of the company, and that, in order to enable plaintiff to sustain such an action in his own name, on behalf of himself and other shareholders, special circumstances must be shewn. That it was not sufficient, for this purpose, to shew that the company was under the absolute control of the defendant, unless it was clearly and distinctly indicated that such control existed at the time the action was commenced. That the joinder of other shareholders of the company as plaintiffs, in connection with one of the paragraphs of the statement of claim under which plaintiff alone could recover, would not prevent plaintiff from recovering all the damages to which he could shew himself to be entitled. Plaintiff, without asking to have the sale to him rescinded, or offering to return the stock or bonds, claimed to recover the damages he had sustained by reason of defendant's alleged fraud and misrepresentation, being the difference between the amount paid for the stock and the real value of the stock at the time the purchase was made:—Held, that it was no answer to offer to take the stock and bonds and pay the purchase price with interest and expenses, less all sums paid for interest or dividends; for, if there had been fraud and misrepresentation, plaintiff must recover at least nominal damages. Neither party having entirely succeeded, there should be no costs. *Weatherbe* v. *Whitney*, 30 N.S.R. 49.

—Practice — Evidence — Discovery— Company—Estoppel.]—The registered agent in B.C. of the defendant foreign corporation, advertised his clerk B., and B. also advertised himself, as local manager of the company. The plaintiff made an application for an affidavit of documents by B., which the company resisted upon the grounds that it had never authorised B. to act as its local manager, and that, in fact, his duties were merely those of clerk to the local manager:—Held, by Davie, C.J., granting the order, that for the purposes of the application B. must be treated as local manager of the company. *Richards* v. *British Columbia Goldfields Co.*, 5 B.C.R. 483.

II. Bonds.

—Special case—Bonds—Ranking of—How paid.]—The defendant electric company, by agreement, took over the property of three other companies, subject to certain outstanding bonds. The bonds of the defendant company were issued to retire the bonds of the other companies, and by this means all the outstanding bonds were retired except $26,000 and $6,000 of two of the companies respectively. The holders of these bonds contended that the bonds retired by the defendant company had been paid and cancelled by such retirement, and that these bonds should be paid in full out of the fund in Court:—Held, that the redemption of the bonds by the Consolidated Electric Company, by the issue and substitution therefor of bonds of its own, did not operate as a payment of the

bonds so redeemed, but that the bonds so redeemed continued to be subsisting securities and entitled to share in the fund in Court proportionately with the bonds not so redeemed, namely, the $26,000 and $6,000 of the Saint John City Railway Company and of the New Brunswick Electric Company respectively. *Pratt* v. *Consolidated Electric Co.*, 34 N.B.R. 23.

III. Directors and Officers.

—Company—Contract—Seal—Manager's authority—Ordinary course of business.]—The defendants, by resolution of the board of directors, authorized their manager to purchase from the plaintiff, on certain terms of credit, a machine necessary for the carrying on of the defendants' business. The defendants' manager bought the machine, but on different terms, the plaintiff having no knowledge of the board's resolution; and the defendants received and used the machine:—Held, that the purchase was within the scope of the manager's authority, and that the defendants were liable for the price of the machine. *Thompson* v. *Brantford Electric and Operating Co.*, 25 Ont. A.R. 340.

—Contract by director—Authorization—Informality—Sale of undertaking—Purchase money—Equitable charge upon.]—The plaintiff was employed by one of the provisional directors of the defendant railway company to do certain work on behalf of the company in advertising and promoting its undertaking. The evidence established that this director was intrusted by the company with the performance of the various duties necessary for the purpose of promoting and furthering the undertaking, and that he did this, from time to time, without any specific instructions from his co-directors at formal meetings of the board, everything being done in the most informal manner; but that they were fully cognizant of what he did and of his manner of doing it, and vested in him, either tacitly or by direct authorization, the right and authority to transact the business of the company:—Held, that the plaintiff was entitled to recover from the company the value of his work: *Mahony* v. *East Holyford Mining Co.*, L.R. 7 H.L. 869, followed; *Wood* v. *Ontario and Quebec R. W. Co.*, 24 U.C.C.P. 334, commented on.—The undertaking having been sold by the provisional directors, free of all liens and incumbrances, for a certain sum of money, which was paid to them, and a portion of which was paid into Court under an order in another action, all the provisional directors being parties to this action, and two of them submitting to the order of the Court and being willing that the judgment debt should be paid out of the fund in Court; an order was made, notwithstanding that the purchasers were not parties, directing payment of the plaintiff's debts and costs and of the costs of the two directors out of such fund. *Allen* v. *Ontario and Rainy River Railway Co.*, 29 Ont. R. 510.

—Insurance company—Action against secretary-treasurer — Disbursements — Indemnity — Art. 1275 C.C.]—By virtue of Art. 1275 of the Civil Code of Quebec an Insurance Company is obliged to reinburse its agent his costs of resisting an action for damages against him by a person whom he had charged with falsely representing himself to be a sub-agent of the company, if such costs cannot be recovered from the said person, but it is necessary that what he did was in his capacity of secretary-treasurer of the company. *Talbot* v. *Montmagny Assurance Co.* Q.R. 12 S.C. 64.

—Quebec harbour commissioners—Liability for acts of secretary.]—The Quebec Harbour Commissioners constitute a corporation, and acts done by their officers, as the secretary for example, bind them.—The refusal of the secretary, in his capacity of secretary-treasurer of the Commissioners, to receive a complaint by the Pilots' Corporation, is equivalent to a refusal by the Commissioners themselves and they are responsible for it.] *Lamaire* v. *Woods*, Q.R. 13 S.C. 466.

—Examination of director or officer as to means to satisfy judgment—Ord. 40, R. 44—Words "any officer thereof"—Service—Solicitor and client—Order ex parte—Rescinding—Notice.]—Plaintiffs having recovered judgment for a large sum of money against the defendant company obtained a summons for an order for the attendance of the respondent D., before a master of the Court, for examination as to debts owing to the company, and whether the company had property or other means of satisfsying the judgment. D. was described in the summons as "formerly a director and vice-president of the company." There was no personal service upon D., and no actual notice to him of the application, but, at the hearing of the application for the order, C., the solicitor for the company, was present, and stated that the summons was served upon him as such solicitor:—Held, that as D. was not at the time a director or officer of the company, neither the solicitor of the company, nor the company represented him in relation to any proceedings taken against the company; and that the service upon the solicitor of the company was, therefore, insufficient.—As to the authority of the solicitor to accept service, that the continuance of the relation of solicitor and client was not to be presumed after judgment.—That D. was not an "officer of the company" within the meaning of Order 40, Rule 44, and, as such, liable to examination under the provisions of the order, the words "officer thereof," meaning an existing officer. That the order for the examination of D. was one that could not legally be made *ex parte*.—That the judge, by whom the order was made, had power to rescind it, on application made to him for that purpose, and that such application, in the first instance, should be made to him. *Hamilton* v. *Stewiacke, &c., Company*, 30 N.S.R. 92.

—Trading company—False statement of affairs by director—Locality of crime—Letter—Continuing offence—Jurisdiction—Canada Evidence Act, s. 7—Judicial notice—Habeas corpus—Cr. Code 365, 553 (b), 554 (b).]—A charge against the president of an incorporated trading company of having made and published a statement of its affairs knowing the same to be false and with intent to defraud, may be tried either in the province in which the statement was despatched by mail to the party defrauded, or in the province in which it is received by mail at the address to which the defendant directed it. The offence is in such case commenced in the province where the letter containing the statement was mailed, and is continued and completed in the province to which it is sent, and under Cr. Code sec. 553 *(b)* is to be considered as completed in either jurisdiction.—A magistrate of the district to which the letter is addressed, and in which it is received by the defrauded party, may take the information in such a case under Cr. Code sec. 554 *(b)*, and compel the attendance of the accused by a warrant executed in the province from which the letter was despatched.—In considering a charge against the "president" of an incorporated company for publishing a false statement under Cr. Code sec. 365, which in terms applies to directors or managers of companies, judicial notice will be taken of the statutes of another province under which the company was incorporated, requiring the president to be chosen from the directors; and a warrant of commitment against the president, as such, after proof of the manner of incorporation, need not allege that he was a director.—The duty of a judge under a writ of habeas corpus is to examine whether the committing magistrate has jurisdiction, whether the committal is legal, and whether any crime known to the law is alleged to have been committed, but not to enquire into or revise the magistrate's decision as regards its propriety or impropriety on the merits. *The Queen* v. *Gillespie*, 1 Can. C.C. 551.

—Practice—Examination—Service of Order.]

See Practice and Procedure.

IV. Powers of Company.

— Expropriation — Procedure — Other remedy — Injunction — Waterworks — Reservoir.]— When a company does an act or adopts proceedings beyond its powers, article 1033a of the old Code of Civil Procedure authorizes a writ of injunction, even where the law provides another remedy.—It is not necessary that this corporation should have commenced taking possession of the land to be expropriated, to enable the proprietor thereof to have recourse to an injunction. This recourse exists as soon as proceedings to obtain its expropriation have been taken, if such proceedings exceed the powers conferred by law to that company.—When the charter of a company grants that company the right to make works on private properties without the proprietor's consent in conformity with the laws of this province, the company is bound to act and proceed in accordance with the dispositions of the Municipal Code concerning expropriation.—When a company wishes to expropriate lands, it must give to the proprietor thereof a notice specifying the extent and localization of the lands to be required for its works, so as to enable the proprietor of the property to be expropriated to be exactly informed of the desire of the company and the indemnity which he should demand as a compensation.—It is not certain that a municipal corporation has the right under the Municipal Code to transfer its powers of expropriation to a company. *Atkinson* v. *Stadacona Water, Light and Power Co.* Q.R. 12 S.C. 289.

—Power to borrow money and to mortgage—Bonus — Quantum — Speculative character of property.]—At a meeting of the defendant company a report was received and adopted authorizing the directors to execute a mortgage to parties who had agreed to advance the sum of $30,000 to enable the company to acquire certain mining property which they desired to purchase, and to include in such mortgage bonuses amounting in all to $10,000:—Held, dismissing with costs the appeal of plaintiff, one of the shareholders, who objected to the transaction, that the company was a trading corporation, and, as such, had power to borrow money and to mortgage, and that, as long as the terms upon which the money was borrowed and the mortgage given were not illegal, there could be no objection to paying a bonus for the accommodation obtained:—Held, also, that, considering the speculative character of the property and the sum advanced, the amount of the bonus was not exorbitant. *Farrell* v. *Caribou Gold Mining Company*, 30 N.S.R. 199.

V. Stock.

—Joint stock company—Action for calls—Conditions of subscription — Conflicting evidence — "Commence operations"—Condition precedent.] —The defendant was sued for a call upon stock of which he was alleged to be holder in the plaintiff company. The main defence was that defendant's subscription was not an absolute one, but was made on the faith of an agreement between defendant and M., one of the incorporators of the company under the terms of which defendant was to receive a certain number of shares, non-assessable and fully paid up, as security for the performance of an agreement made between M. and defendant in respect to certain coal areas, which were to be acquired by M. from defendant, and subsequently transferred by M. to the company. The trial judge having found against defendant:—Held, that as the evidence was conflicting, and there was no preponderance in defendant's favor, the finding could not be set aside.—Sec. 18, of the company's charter read,—"This company shall not commence operations until 50

per cent. of its capital stock is subscribed, and 25 per cent. of such subscription paid up:"—Held, that the words "commence operations" were not intended to prevent calls being made on stock subscribed for, nor to prevent the board of provisional directors created by the Act from doing any acts for and in the name of the company within their power so long as such acts fell short of what might properly be termed "commencing operations:"—Held, also, that the subscription and payment called for by the section were not made a condition precedent to the creation of a body corporate, but were intended as a limitation upon the power of the company to commence operations until the pre-requisite was complied with. *North Sydney Mining and Transportation Company* v. *Greener*, 31 N.S.R. 41.

VI. Winding-Up.

(a) *Discontinuance.*

—Winding-up Act — Creditors discontinuing — Whether other creditors entitled to be substituted.]—In an application for a winding-up order petitioners may discontinue proceedings on settlement of their claims; and creditors other than the petitioners, who have not themselves petitioned, are not entitled to be substituted for such petitioners for the purpose of continuing the proceedings. *Doyle* v. *Atlas Canning Co.* 5 B.C.R. 279.

(b) *Liquidator.*

—Authority to sue—When to be obtained.]—The judicial authority required to enable the liquidator of a company in liquidation to sue a debtor of the company must be obtained before the issue of the writ of summons and must cover the full amount claimed; if given after the issue of the writ, and for a less amount than that demanded it is insufficient and will result in the action being dismissed. *Common* v. *McCaskill*, Q.R. 13 S.C. 282.

—Company—Appointment of liquidator.]—All the creditors of an insolvent company having agreed upon and recommended the appointment of E. as liquidator of the company:—Held, that the fact that E. was a shareholder of the company was not a valid objection to his appointment. *Re The New Westminster Gas Company*, 5 B.C.R. 618.

(c) *Petition for Order.*

—Winding-up Act—Petition—Affidavit verifying —Necessity for—Creditor—Debt not payable—Estoppel.]—Upon the petition for a winding-up order it appeared that the application was made by a creditor who had given the company an extension of time, not yet expired, for payment of the debt. The affidavit in support of the petition was made by a person who deposed upon information and belief, and upon cross-examination thereon it appeared that he had no personal knowledge of the matters deposed to:—Held, per Davie, C.J.: That the affidavit must be treated as a nullity; that all the Winding-up Act requires, as essential to a winding-up order, is a petition setting forth sufficient facts, and that, although the rules require a verifying affidavit, the rules are not to be treated as imperative, but directory only; that declarations of insolvency made by the officers of a company do not operate as an acknowledgement of insolvency by the company sufficient to satisfy sec. 5 of the Act, but that such acknowledgement must be a corporate one; that the debt, though not yet payable, was sufficient to support the petition. Upon appeal to the Full Court:—Held, that there must be evidence to enable the Court to act, and, as the affidavit was insufficient, there was no support for the order.—The distinction between the language of sec. 6 of the Act, which refers to a creditor whose debt is "then due," and that of sec. 8, in which the term is "creditor," is not unmeaning, and a creditor whose debt is not yet due, is a good petitioning creditor for winding-up under sec. 8.—The company had called its creditors together, and a deed was executed whereby the company assigned certain property to trustees to answer the creditor's claims, and the creditors agreed to extend the time for payment:—Held, that the creditors who had executed the deed, of whom the petitioner was one, were estopped from presenting a winding-up petition until the period of extension had expired. *In re Atlas Canning Co.*, 5 B.C.R. 661.

(d) *Proof of Assets.*

—Proof of assets—Unpaid stock—Stock issued as paid up—Bonds.]—A winding-up order will not be granted where there are no assets, and the petitioning creditor would therefore get nothing by the order. Where, however, on a petition for such an order, which was contested on the ground of the alleged non-existence of assets, it appeared that there was an amount of subscribed stock only partially paid up, an amount of stock issued as paid up, the consideration for which did not satisfactorily appear, and also a large issue of bonds which appeared to have been of very little benefit to the company, and it was impossible to say whether they were held for value or not, an order was granted winding up the company: *In re Chapel House Colliery Co.* 24 Ch. D. 259, distinguished; *In re Georgian Bay Ship Canal and Power Aqueduct Co.*, 29 Ont. R. 358.

(e) *Sale of Assets.*

—Incorporated company—Liquidation—Sale of good will of company by liquidator.]—Held, the sale by the liquidator of the good will and assets of a company incorporated under letters-patent from the Crown does not transfer to the purchaser the right to use the name of the company after its dissolution—this being a right which can only be granted by the Crown—and he is not entitled to an injunction to restrain a person who, since

the dissolution, has registered a new firm under a similar name, from doing business under such name, there being no evidence that its members or the person sought to be restrained agreed or undertook not to do it. *Sabiston* v. *Montreal Lithographing Co.*, Q.R. 6 Q.B. 510, reversing Superior Court judgment, 3 Rev. de Jur. 403.

(f) Winding-up Order.

—Procedure—Peremption of suit — Change of status—Art. 280 C.C.P.]—Where the party plaintiff has been put into liquidation by a winding-up order, within three years previous to the presentation of a motion for peremption of suit, the liquidation has the effect of changing the status of the plaintiff, and therefore under art. 280 C.C.P. (art. 455 of old text), peremption does not take place. *Queen's Hotel Co.* v. *McLaren*, Q.R. 12 S.C. 171.

—Execution—Order of Court of another Province — Winding-up Act, R.S.C. c. 129 s. 85 — Certified copy—Entry.]

See PRACTICE AND PROCEDURE.

And see MINES AND MINERALS, RAILWAYS AND RAILWAY COMPANIES.

CONFLICT OF LAWS.

Appropriation of payments—Conflict of laws between Ontario and Quebec.]

See APPROPRIATION.

Foreign Bankruptcy—Lex loci contractus.]

See CONTRACT VI.

Foreign firm—Rights to sue.]

See PARTNERSHIP.

CONSTABLE.

Arrest — Commitment — Execution outside of magistrate's territorial jurisdiction—Absence of backing—Notice of action—R.S.O. (1887), c. 73 —24 Geo. II., c. 44, s. 6.]—It is not necessary to the execution of a warrant of commitment by a constable that he should actually lay hands on or physically interfere with the person to be arrested. It is an arrest if the person to be arrested asks for and peruses the warrant and agrees to accompany the constable: and, *semble*, it is sufficient if he agrees to accompany the constable on his statement that he has the warrant in his possession.—A constable executing a warrant in good faith outside of the territorial jurisdiction of the magistrate issuing the same, without procuring the indorsement of a magistrate of the county where the arrest is made, is entitled to notice of action and to the protection of R.S.O. (1887), ch. 73.—A notice of action which wrongly states the name of the township in the county in which the arrest took place is insufficient.—A constable in an action against him for wrongfully arresting the plaintiff without a proper indorsement of the warrant by a magistrate of the county in which the arrest is made is entitled to plead "not guilty by statute."—A constable is not entitled to the protection of 24 Geo. II., ch. 44, sec. 6, unless there is want of jurisdiction in the magistrate issuing the warrant. *Alderich* v. *Humphrey*, 29 Ont. R. 427.

—False arrest — Larceny — Detention without warrant—Damages.]—See CRIMINAL LAW, I.

—Defective warrant — Action for malicious arrest.]

See MALICIOUS ARREST.

And see ARREST.

CONSTITUTIONAL LAW.

I. ASSETS OF ONTARIO AND QUEBEC, 82.
II. DISTRIBUTION OF FEDERAL AND PROVINCIAL POWERS, 83.
III. EXECUTIVE POWERS, 84.
IV. LEGISLATIVE POWERS, 85.
(*a*) *Dominion*, 85.
(*b*) *Provincial*, 85.
V. PREROGATIVE OF CROWN, 86.

I. ASSETS OF ONTARIO AND QUEBEC.

—B.N.A. Act, s. 142 — Award of 1870, validity of—Upper Canada improvement fund — School fund—B.N.A. Act, s. 109—Trust created by—Effect of Confederation on trust.]—The arbitrators appointed in 1879, under sec. 142 of the B.N.A. Act, were authorized to "divide" and "adjust" the accounts in dispute between the Dominion of Canada and the Province of Ontario, respecting the former Province of Canada. In dealing with the Common School Fund established under 12 Vict., ch. 200 (Can.), they directed the principal of the fund to be retained by the Dominion and the income therefrom paid to the provinces:—Held, that even if there was no ultimate "division and adjustment," such as the statute required, yet the ascertainment of the amount was a necessary preliminary to such "division and adjustment," and therefore *intra vires* of the arbitrators; that there was a division of the beneficial interest in the fund and a fair adjustment of the rights of the provinces in it which was a proper exercise of the authority of the arbitrators under the statute.—By 12 Vict., ch. 200, sec. 3 (Can.), one million acres of the public lands of the Province of Canada were to be set apart to be sold and the proceeds applied to the creation of the "Common School Fund" provided for in sec. 1. The lands so set apart were all in the present Province of Ontario:—Held, that the trust in these lands

created by the Act for the Common Schools of Canada did not cease to exist at Confederation, so that the unsold lands and proceeds of sales should revert to Ontario, but such trust continued in favour of the Common Schools of the new Provinces of Ontario and Quebec.—In the agreement of reference to the arbitrators appointed under Acts passed in 1891 to adjust the said accounts questions respecting the Upper Canada Improvement Fund were excluded, but the arbitrafors had to determine and award upon the accounts as rendered by the Dominion to the two provinces up to January, 1889:—Held, that the arbitrators could pass upon the right of Ontario to deduct a proportion of the school lands the amount of which was one of the items in the accounts so rendered: *Province of Ontario and Province of Quebec* v. *Dominion of Canada*. *In re Common School Fund and Lands*, 28 S.C.R. 609.

II. Distribution of Federal and Provincial Powers.

—B.N.A. Act, 1867, ss. 91, 92, 108—Rivers and lake improvements—"Public harbours"—Fisheries and fishing rights — R.S.C. c. 92; c. 95, s. 4 — R.S.O. c. 24, s. 47 — Ontario Act of 1892 (55 V., c. 10).]—Whatever proprietary rights vested in the provinces at the date of the British North America Act, 1867, remained so unless by its express enactments transferred to the Dominion. Such transfer is not to be presumed from the grant of legislative jurisdiction to the Dominion in respect of the subject-matter of those proprietary rights.—The transfer by section 108 and the 5th clause of its schedule, to the Dominion, of "rivers and lake improvements" operates on its true construction in regard to the improvements only both of rivers and lakes, and not in regard to the entire rivers. Such construction does no violence to the language employed, and is reasonably and probably in accordance with the intention of the legislature. — The transfer of "public harbours" operates on whatever is properly comprised in that term having regard to the circumstances of each case, and is not limited merely to those portions on which public works have been executed.—With regard to fisheries and fishing rights, Held, that sec. 91 did not convey to the Dominion any proprietary rights therein, although the legislative jurisdiction conferred by the section enable it to affect those rights to an unlimited extent, short of transferring them to others.—A tax by way of license as a condition of the right to fish is within the powers conferred by sub-secs. 4 and 12.—The same power is conferred on the Provincial Parliament by sec. 92.—Revised Statutes of Canada, ch. 95, s. 4, so far as it empowers the grant of exclusive fishing rights over provincial property, is *ultra vires* the Dominion.—Revised Statutes of Ontario, ch. 24, s. 47, is, with a specific exception, *intra vires* the province.—As regards the Ontario Act, 1892, the regulations therein which control the manner of fishing are *ultra vires*.—Fishing regulations and restrictions are within the exclusive competence of the Dominion: See sec. 91, sub-sec. 12. *Secus*, with regard to any provisions relating thereto which would properly fall under the headings "Property and Civil Rights," or "The Management and Sale of Public Lands":—Held, further, that the Dominion Legislature had power to pass Revised Statutes of Canada, ch. 92, intituled "An Act respecting certain Works constructed in or over Navigable Waters." *Attorney-General for Dominion of Canada* v. *Attorneys-General for Ontario, Quebec and Nova Scotia* [1898] A.C. 700.

III. Executive Powers.

— Contract — Submission to legislature — Non-execution — Executive — Effect of change in — Indemnity.]—On March 18th, 1897, the Provincial Secretary of Quebec, acting under the authority of an Order-in-Council passed on the preceding 27th of January, signed a contract by which one D. undertook at certain fixed rates, during eight years, the printing of the Official Gazette, Provincial Statutes, and sessional and other papers necessary for carrying on the public business. The Flynn Government, then in power, afterwards gave way to the Marchand Government, which refused to execute the contract and put an end to it, whereupon D. fyled a petition of right. In contesting the petition, the Crown did not attack the contract as being tainted with fraud or corruption, nor as prejudicial to the public interests, but claimed that it was *ultra vires* of the executive because it had not been authorized by the Legislature, because a Government has no right to bind its successor in office for so long a term, and for other like reasons:—Held, that the contract in question was, by its nature, a simple act of administration of which the wisdom and good faith were not brought in question. Moreover, the expense occasioned by it was neither new nor unforeseen, but was customary and necessary to the public administration.—That the responsibility and power of executing such a contract falls upon and appertains to the Crown; that is to say, to the executive.—That in respect to contracts, or quasi-contracts, the Crown in regard to its subjects is in the same position as the latter *inter se;* consequently, the contracts are binding in the same manner and to the same effect as those between private persons. —That the Crown has an existence continuous and perpetual, and the obligations which it assumes continue to exist and to have effect through their lawful duration, producing the same legal effects though the sovereign or his advisers may have changed. Consequently if, its advisers having changed, the Crown repudiates such a contract, even in the public interest, it becomes exposed to the same consequences as would fall upon private persons from the non-execution of an obligation properly entered into.—That,

in refusing to execute the contract with D., the Crown was bound to indemnify him for all the damages which he sustained from the non-execution, and this obligation would continue through the whole duration of the repudiated contract. *Demers* v. *The Queen*, *The Queen* v. *Demers*, Q.R. 7 Q.B. 433.

IV. Legislative Powers

(a) Dominion.

—Railways — Crossings — Railway Committee—Constitutional law—Intra vires—Dominion Parliament—51 V. c. 29 (D.), ss. 4, 306, 307—56 V. c. 27 (D.).]—Secs. 4, 306, and 307, of the Railway Act, 51 Vict. ch. 29 (D.), enacting that the plaintiffs and other railways, and any railways whatever crossing them, are works for the general advantage of Canada, and are to be subject thereafter to the legislative authority of Parliament, and 56 Vict. ch. 27 (D.), sec. 1, enacting that no railway shall be crossed by any electric railway whatever unless with the approval of the Railway Committee are *intra vires*, and therefore the Committee could empower the defendants' railway, contrary to the provisions of its Provincial Act of incorporation, to cross the plaintiff's railway at grade, against the will of the latter. *Grand Trunk Ry. Co.* v. *Hamilton Electric Ry. Co.*, 29 Ont. R. 143.

—Criminal law—Crim. Code sec. 534.]—*Quære*: Is sec. 534 of the Criminal Code providing that civil remedy for any act shall not be suspended nor affected because it amounts to a criminal offence, *intra vires* as respects proceedings in Quebec? *Paquet* v. *Lavoie*, Q.R. 7 Q.B. 277 (per Blanchet J.)

—Crim. Code s. 540 — Jurisdiction of County Courts.]—*Quære*: Is the Criminal Code, 1892, s. 540 relating to the jurisdiction of County Courts in criminal matters, *ultra vires*? *Ex parte Might*, 34 N.B.R. 127.

(b) Provincial.

—British North America Act, 1867, s. 92, sub. s. 1, 4, 14—Powers of Provincial Legislature—Revised Statutes of Ontario, 1877, c. 139—Provincial bar—Power to issue patents of precedence.]—Held, that according to the true construction of the British North America Act, 1867, s. 92, sub-secs. 1, 4 and 14 Revised Statutes of Ontario, 1877, c. 139, which empowers the Lieutenant-Governor of the province to confer precedence by patents upon such members of the bar of the province as he may think fit to select, is *intra vires* of the Provincial Legislature. *Attorney-General for the Dominion of Canada* v. *Attorney-General for the Province of Ontario*. [1898] A.C. 247.

—Jurisdiction of magistrates—Recovery of debts.]—A Provincial statute providing that Stipendiary Magistrates and Police Magistrates shall have jurisdiction to hear and determine actions of any kind of debt where the sum demanded does not exceed $100.00, is *intra vires*. *In re Small Debts Act*, 5 B.C.R. 246.

—Rights of aliens—Interference with trade and commerce—B.N.A. Act, s. 91.]—The provision in sec. 4 of the Coal Mines Regulation Act, 1890, sec. 1, that "No Chinaman shall be employed in, or allowed to be for the purpose of employment in, any mine to which this Act applies, below ground," is within the constitutional power of the Provincial Legislature as being a Regulation of Coal Mines, and is not *ultra vires*, as an interference with the subject of aliens. *Re Coal Mines Regulation Amendment Act*, 1890, 5 B.C.R. 306.

—Constitutional law—Provincial Fence Act, 1888—Cattle Protection Act, 1891.]—A Provincial Statute (54 Vict. (B.C.) cap. 1), provided that every railway company operating a railway in the Province under the authority of the Parliament of Canada should be liable in damages to the owner of any cattle injured or killed on their railway by their engines or trains, unless there be a fence on each side of the railway similar to some one of the fences mentioned in sec. 3 of the (Provincial) Fence Act, 1888:—Held, *ultra vires*. *Madden* v. *Nelson and Fort Sheppard Railway Co.*, 5 B.C.R. 541.

—Lord's Day observance—Provincial criminal law before Confederation—Ultra vires.]— A provincial statute relating to criminal law passed before Confederation becomes as to that province a part of the criminal law of Canada, and is subject to repeal or amendment by a Dominion statute only. —If it appears that provincial legislation deals with public wrongs and imposes penalties in respect thereof for the enforcement of which all citizens should have an equal interest as distinguished from enactments passed for the protection of a particular class or the regulation of the dealings or business of a certain class, as, for example, between master and servant, such legislation as to public wrongs is within the exclusive jurisdiction of the Dominion Parliament, although similar legislation as applied to various classes only and not to the public generally would be within provincial jurisdiction as dealing with "civil rights." — A Sunday observance law of Nova Scotia passed before Confederation which applied to individuals only cannot be amended by the Legislature of that province so as to apply to corporations, and a provincial Act purporting to so amend was held to be *ultra vires*. *The Queen* v. *Halifax Electric Tramway Co.*, 1 Can. C.C. 424.

And see Sunday.

V. Prerogative of Crown.

—Recovery of Crown debt.]—Whenever a demand may be properly sued for in the name of the Queen the prerogative right of the Crown attaches in all portions of the British Empire subject to English law, irrespective of the locality in which the debt

arose and of the Government in right of which it accrued. *The Queen* v. *Sinewright*, 34 N.B.R. 144.

And see CROWN.

CONTEMPT OF COURT.

—Local manager of bank—Production of books—Disclosure of accounts—Inconvenience—Privilege—Motion to commit—Service of papers.]—The local manager of a branch, in Ontario, of a chartered bank, when served with a subpœna *duces tecum* to attend as a witness before the Court, or a Master upon a reference in an action, is bound, whether the bank is a party or not, to produce the bank books specified in the subpœna which are in his custody or control, containing any entry relevant to the matters in question in the action, and to give evidence as to such entries; and inconvenience to the bank is no ground for refusing to produce the books, which *primâ facie* are to be deemed in his custody and control and their production within the scope of his authority: *Re Dwight and Macklam* 15 Ont. R. 148, approved and followed.—Evidence as to a customer's account is not privileged at common law, and sec. 46 of The Bank Act is no more than a prohibition against a bank voluntarily permitting any examination of customers' accounts save by a director. [Discussion of the English Bankers' Books Evidence Act, 1879.]—Where a motion to commit is made, it is not necessary to serve with the notice of motion copies of the affidavits on which it is based. *Hannum* v. *McRae*, 18 Ont. P.R. 185; affirming 17 Ont. P.R. 567,

—Publication tending to influence litigation—Evidence.]—Contempt of court being a criminal offence, on the hearing of an application to commit nothing will be inferred, and it is necessary to prove the charge with particularity. *In re Scaife*, 5 B.C.R. 153.

CONTRACT.

I. BREACH OF CONTRACT, 88.
II. CANCELLATION, 89.
III. COMMERCIAL CONTRACT, 89.
IV. COMPLETION OF CONTRACT, 89.
V. CONSTRUCTION, 90.
(a) *Conditions*, 90.
(b) *Implying Terms*, 90.
(c) *Nature of Contract*, 91.
VI. ENFORCEMENT, 92.
VII. FORMATION, 93.
VIII. PERFORMANCE, 94.
(a) *Excuse for Non-performance*, 94.
(b) *Specific Performance*, 94.
IX. PUBLIC CONTRACTS, 95.
X. PUBLIC WORK, 95.
XI. RESCISSION, 97.
XII. RESTRAINT OF TRADE, 97.
XIII. VALIDITY, 98.
XIV. WARRANTY, 101.

I. BREACH OF CONTRACT.

—Mutual and independent promises—Non-performance—Damages.]—Plaintiff and defendant entered into a contract in writing under which plaintiff undertook to excavate a cellar on land owned by defendant, and to do certain other work in connection therewith, at prices named in the contract; and defendant, on his part, undertook to pay plaintiff for the work by crediting a small sum of money due him by the plaintiff, by delivering to plaintiff two waggons, subject to certain alterations to be made in them, by doing the wood work of a light truck waggon for plaintiff, amounting in all to $188.75, and by paying the balance, if any, in cash. It was stipulated that the work to be done by plaintiff was to be finished by November 1st, 1896. Plaintiff brought an action for the amount due him according to the prices fixed, alleging that defendant refused to deliver the waggons, or to do the work on his part agreed to be done. The defence was that plaintiff had neglected to complete the work referred to in the contract, and on his part agreed to be done. The evidence showed that the sum of $15 would remove the defects complained of by the defendant, and that, in other respects, plaintiff had substantially fulfilled his contract:—Held, that the promises made by the parties to the contract were mutual and independent; that it was no defence for defendant to set up non-performance on the part of plaintiff; and that both parties must be taken to have relied upon his remedy in damages:—Held, also, that as defendant had counterclaimed damages, and could be fully compensated in that way, and as he admitted that the sum of $15 would cover the defects alleged, plaintiff was entitled to have judgment entered in his favour for the amount of his claim, subject to that reduction, and to have his appeal allowed with costs. *Wright* v. *Polson*, 30 N.S.R. 437.

—Sale of coal mining areas—Breach—Damages—Equitable title—Affidavit to support.]—Plaintiff brought an action against defendant for the breach of a contract for the sale of a certain coal mining property, claiming, among other things, the specific performance of the alleged agreement, or, in the alternative, damages for the non-performance thereof. Subsequently to the bringing of the action, plaintiff procured an order for the defendant's arrest, on the ground that he was about to leave the province, and that, unless he was forthwith arrested, the debt would be lost:—Held (affirming on this point the judgment of Ritchie, J., setting aside the order), that the breach of an agreement for the sale of a mining right does not entitle the vendor to recover the purchase money, but only to damages occasioned by

the breach. It was contended on the part of plaintiff that the equitable title to the areas passed by the agreement, and that this was sufficient to entitle plaintiff to sue for the price of the areas:—Held, that, even if this were true, as the only allegation in plaintiff's affidavit was that defendant signed by his agent, and not that he himself signed, a note or memorandum of the agreement—this not being an equitable action for specific performance, but a common law action to recover a certain sum of money, the alleged price of the areas—plaintiff could not succeed on that ground in upholding his proceedings:—Held, further, on the authority of *Hargreaves* v. *Hayes*, 5 E. & B. 272 (reversing on this point the decision appealed from), that it was not necessary for plaintiff, in his affidavit, in addition to alleging a perfected and completed sale of the coal mining areas to defendant, to allege that the title passed. *Weatherbe* v. *Whitney*, 30 N.S.R. 447.

—Supplying water to citizens—Municipal corporations—Statutory obligation—Breach.]

See MUNICIPAL CORPORATIONS.

II. CANCELLATION.

—Construction—Notice to cancel—Gas supply shut off for non-payment of gas bill on other premises.]—An agreement to furnish gas contained an express provision that either of the contracting parties should have the right to cancel the contract by giving twenty-four hours notice in writing. Notices were sent in writing to the consumer that his gas would be shut off at a certain number on a street named unless he paid arrears of gas bills due upon another property:—Held, that such notices could not be considered as notices given under the contract for the purpose of cancelling it. *Cadieux* v. *Montreal Gas Co.*, 28 S.C.R. 382. (Leave to appeal to the Privy Council has been granted.)

III. COMMERCIAL CONTRACT.

—Supplying workmen—Oral proof—Art. 1235, par. 4 C.C.]—Plaintiffs contracted to supply workmen for certain works of the defendant at a price higher than that which they themselves paid their workmen. *Held*, if this, in principle, can be considered as constituting a commercial contract it must be in writing and is not susceptible of oral proof in the absence of part payment or part performance. *Métivier* v. *Livinson*, Q.R. 13 S. C. 39.

IV. COMPLETION OF CONTRACT.

—Conditional sale of goods—Lien note—Property passing—Recovery of judgment.]—A. purchased goods from B. and gave an acceptance for the price. Across the end of the acceptance was printed the usual lien clause reserving property in the vendor till payment. The acceptance was not paid at maturity, and subsequent to maturity, A. sold the goods to C., who purchased for value without notice. After the sale to C., B. sued A. on his acceptance, recovered judgment and placed a *fi. fa.* in the sheriff's hands, but nothing was realized on the execution. In an action by B. against C. for conversion:—Held, that the recovery of judgment by B. against A. on the acceptance was an election to treat the contract completed, and passed the property, and that B. could not recover against C. *Purtle* v. *Heney*, 33 N.B.R. 607.

V. CONSTRUCTION.

(a) *Conditions.*

—Mineral law—Contract—Consideration—Accord and satisfaction.]—An agreement for the sale of mineral claims provided for payment by instalments and contained a proviso that "failure to make any of the above payments to render this agreement void as to all parties thereto, and the said (vendees) can quit at any time without being liable for any further payments thereunder from such time on." At the request of the vendees the vendors, without consideration, extended the time for payment of one of the instalments. After the original, but before the extended period for making the payment, the vendees notified the vendors that they had quit. In an action to recover the amount of the instalment:—Held, that the liability of the defendants, the vendees, to pay the instalment in question was absolute upon the day named in the original agreement, and remained unaffected by the voluntary concession of further time to pay. *Webb* v. *Montgomery*, 5 B.C.R. 323.

—Contract of insurance—Conditions and warranties—Indorsement on policy—Ontario Insurance Act.]—See INSURANCE, I.

(b) *Implying Terms.*

—Contract of hiring—Annual salary—Termination—Notice.]—In December, 1886, the engineer in charge of the works of the Quebec Harbour Commissioners having died, changes were made in the staff. The engineer-in-chief recommended the nomination of M. as assistant engineer for the works on the cross-wall, and those pertaining to it, and his recommendation was accepted by the Commissioners by a resolution passed on March 26th, 1887, appointing M. assistant engineer, with a salary of $1,800 per annum, to commence from May 1st then next. In the spring of 1890, the works of the Commissioners being nearly finished, M. received on April 30th a notice that after the 1st of August following his services would not be required, and that he would be entitled until then to draw his salary and leave when he wished. On July 12th M. sent a letter to the Board asking to be retained in their employ until Nov. 1st:—Held, that the hiring of M. was a yearly hiring, and that he was entitled to a notice of three months in case the Board deemed it advisable to reduce the staff of their engineers, which they had not done, and consequently had a right to his salary for the portion of

the year which remained up to May 1st, 1891:—Held, further, that M.'s letter of July 12th, 1890, asking the board to employ him up to November 1st, was not a renunciation of the rights conferred on him by the conditions of his engagement, but only an offer of compromise. *McGreevy* v. *Quebec Harbour Commissioners*, Q.R. 7 Q.B. 17, reversing 11 S.C. 455.

(c) *Nature of Contract.*

—Construction of—Agreement to secure advances—Sale—Pledge—Delivery of possession—Arts. 434, 1025, 1026, 1027, 1472, 1474, 1492, 1994 c., C.C.—Bailment to manufacturer.]—K. B. made an agreement with T. for the purchase of the output of his sawmill during the season of 1896, a memorandum being executed between them to the effect that T. sold and K. B. purchased all the lumber that he should saw at his mill during the season, delivered at Hadlow Wharf, at Levis; that the purchasers should have the right to refuse all lumber rejected by their culler; that the lumber delivered, culled and piled on the wharf should be paid for at prices stated; that the seller should pay the purchasers $1.50 per hundred deals, Quebec standard, to meet the cost of unloading cars, classification and piling on the wharf: that the seller should manufacture the lumber according to specifications furnished by the purchasers; that the purchasers should make payments in cash once a month for the lumber delivered, less two and a-half per cent.; that the purchasers should advance money upon the sale of the lumber, on condition that the seller should, at the option of the purchasers, furnish collateral security on his property, including the mill and machinery belonging to him, and obtain a promissory note from his wife for the amount of each cullage, the advances being made on the culler's certificates shewing receipts of logs not exceeding $25 per hundred logs of fourteen inches standard; that all logs paid for by the purchasers should be stamped with their name, and that all advances should bear interest at the rate of seven per cent. Before the river-drive commenced, the logs were culled and received on behalf of the purchasers, and stamped with their usual mark, and they paid for them a total sum averaging $32.33 per hundred. Some of the logs also bore the seller's mark, and a small quantity, which were buried in snow and ice, were not stamped, but were received on behalf of the purchasers along with the others. The logs were then allowed to remain in the actual possession of the seller. During the season a writ of execution issued against the seller under which all movable property in his possession was seized, including a quantity of the logs in question, lying along the river-drive and at the mill, and also a quantity of lumber into which part of the logs in question had been manufactured, at the seller's mill:—Held (Taschereau, J., taking no part in the judgment upon the merits), that the contract so made between the parties constituted a sale of the logs, and, as a necessary consequence, of the deals and boards into which part of them had been manufactured. *King* v. *Dupuis dit Gilbert*, 28 S.C.R. 388.

—Master and servant—Contract of hiring—Dismissal.]—See MASTER AND SERVANT.

VI. ENFORCEMENT.

—Municipal corporation—Contract to open up streets—Mandamus—Resolution—By-law.]—P. and other proprietors conveyed lands to the Town of L. on condition that they should be maintained as public streets and open and extend such streets to a point named as they were built upon. The last condition not having been observed the said proprietors put the town *en demeure* to perform it and, upon its refusal to comply with the notice, attempted to enforce compliance by writ of mandamus:—Held, that the obligation of the town to open and extend the streets, being a simple contractual obligation, of a private nature, a mandamus to compel the town to carry it out was not a proper remedy, the more so as the parties had an effectual remedy at common law, and by the charter of the town the opening of new streets was left entirely to its discretion. *Page* v. *Town of Longueuil*, Q.R. 7 Q.B. 264.

—Foreign bankruptcy—Receivers—Law of Vermont—Right of foreign receiver against execution creditor—Lex loci contractus—Right of execution.]—A railway company, incorporated under the laws of Vermont, having become insolvent, was placed in the hands of receivers by judgment of the Circuit Court of Vermont, which vested them with all the assets of the railway and authorized them to operate it. The receivers took possession of the assets under this judgment, and by the laws of Vermont, the creditors of the company could not after that date execute any judgment against the railway. Some of the cars and locomotives of the company, of which the receivers had previously taken possession, and which were on the tracks of the Grand Trunk Railway in Montreal in the course of the operation of the railway by the receivers, were seized by a creditor in execution of a judgment obtained in this province. The judgment creditor was a mere *prétenom* for an American creditor, and the promissory note upon which the judgment was obtained was signed and made payable in Vermont, where the maker (the railway company) and the payee were both domiciled. The receivers opposed the execution of the judgment here on the ground that the seizing plaintiff in the cause was bound by the law of Vermont, which prevented him from executing the judgment against property of which the receivers had taken possession under the judgment of the Circuit Court of Vermont, and which vested them with the assets of the company against the creditors:—Held, as the contract was made in Vermont

between persons domiciled in that State, the consequences attached to the contract by the laws of Vermont must be applied by our courts:—Held, also, that inasmuch as one of the conditions and consequences of the contract with the railway company, made applicable to it by the laws of Vermont, was that the right of execution and sale of the property of the railway should cease on the appointment of receivers, this judgment creditor could not be allowed to proceed to execute his judgment against such property merely because it had passed from the territorial jurisdiction of the court of Vermont into that of the courts of this province. *Barker* v. *Central Vermont Ry. Co.*, Q.R. 13 S.C. 2.

VII. Formation.

—Vendor and purchaser—Principal and agent—Mistake—Contract—Agreement for sale of land—Agent exceeding authority—Specific performance—Findings of fact.]—Where the owner of lands was induced to authorize the acceptance of an offer made by a proposed purchaser of certain land through an incorrect representation made to her under the mistaken impression that the offer was for the purchase of certain swamp lots only, whilst it actually included sixteen adjoining lots in addition thereto, a contract for the sale of the whole property made in consequence by her agent was held not binding upon her and was set aside by the Court on the ground of error, as the parties were not *ad idem* as to the subject matter of the contract and there was no actual consent by the owner to the agreement so made for the sale of her lands. *Murray* v. *Jenkins*, 28 Can. S.C.R. 565.

—Municipal corporation—Contract to open and extend streets—Resolution—By-law.]—Lands were conveyed to the Town of L. on condition that they should be maintained as public streets, which streets should be opened and extended to a defined point as they were built upon;—Held, that the corporation by its charter, 44 & 45 Vict., ch. 75 Art. 218 (P.Q.), was authorized to enter into this contract, it being of a private nature, by resolution of the council and without a by-law; but the resolution could not bind the corporation to the public to open these new streets, which, could only be authorized by by-law. *Page* v. *Town of Longueuil*, Q.R. 7 Q.B. 262.

—Contract by Crown—Powers of executive.]—A contract for public printing is, by its nature, a simple act of administration of which the responsibility and power of execution is in the executive, and need not be authorized by the legislature. *Demers* v. *The Queen*, Q.R. 7 Q.B. 433.

—Promissory note—Non-commercial matter—Prescription.]—A promissory note, given by way of exchange or in consideration of a sum of money even between non-commercial persons, constitutes, in the absence of proof to the contrary, the contract between the parties, which contract is subject to the prescription of five years. *Vachon* v. *Poulin*, Q.R. 7 Q.B. 60, affirming 12 S.C. 323.

—Terms fixed by letter—Reference to a formal contract.]—Negotiations were carried on by letter between the parties, whereby all the terms and conditions of a building contract between them were settled and assented to; and one of the letters to the plaintiff contained the following words: "An agreement and bond in the terms of your offer will be prepared and submitted to you for execution as soon as the contract for the erection of the buildings has been awarded." The contract was awarded, and the bond (viz., as a guarantee for the performance of the agreement) was executed, but no formal agreement was ever executed:—Held, that there was a binding agreement between the parties. *Koksilah Quarry Co.* v. *The Queen*, 5 B.C.R. 525.

—Sale of land—Sale by agent—Instruction—Mistake.]—See Sale of Land.

VIII. Performance.

(a) *Excuse for Non-Performance.*

—Parent and child—Agreement for maintenance of parent—Definite contract—Evidence—Intention—Improvements.]—When a child seeks to enforce an agreement that, if he remains with a parent and works his farm and provides for his declining years the parent will bestow the farm on him, the agreement must be established by the clearest evidence and a certain and definite contract for a valuable consideration proved. In the absence of such evidence, the parent will be entitled to change his views and the disposition of the property. In this case the son, who had made certain improvements on the property, was held not to be entitled to a lien for them. *Smith* v. *Smith*, 29 Ont. R. 309.

(b) *Specific Performance.*

—Agreement to bequeath estate—Remuneration for maintenance—Implied promise—Annual payments—Arrears—Statute of Limitations.]—The plaintiff sought to recover from the executors of the will of a deceased person the whole of his estate, upon the strength of a verbal agreement which she alleged was made between her and the deceased. Her evidence was that he said: "You give me a home as long as I live, and when I die you have what is left;" to which she answered "all right;" and he then said, "That is an agreement." The same story was repeated by the daughter and son-in-law of the plaintiff, who said they were present when the agreement was made. Two other witnesses swore that the deceased told them that he had agreed to leave the plaintiff his property when he died. He was maintained by her for eight years after the alleged agreement was made, but made his will in favour of other persons:—Held, that apart

from the Statute of Frauds, the evidence was not such as the Court could act upon by decreeing specific performance of the alleged agreement in substitution for the actual will of the deceased, duly executed, and admitted to probate without objection from the plaintiff or any one else. Such an agreement must be supported by evidence leaving upon the mind of the Court as little doubt as if a properly executed will had been produced and proved before it. Held, however, that the plaintiff was entitled, under the circumstances, to remuneration for the board, lodging and care of the deceased for six years, as upon an implied promise to pay a reasonable sum per annum. Such a promise was not a special promise to pay at death, and did not give the plaintiff a right to recover more than six years' arrears. *Cross* v. *Cleary*, 29 Ont. R. 542.

—Sale of wood to be manufactured—Conditions—Advances—Cession de biens—Execution of contract.]—One K. contracted to manufacture for C. 2,500 cords of pulp wood, the contract, after describing the quality of the wood, stipulating that it should be measured on the cars in Canada and measured again on arrival at its destination in New York. An advance of $1.50 per cord was to be made on presentation of estimates of quantities by the agents of C., the wood before then to be at the risk of K. until loaded on the cars, the balance of the price to be paid when the wood was received at its destination. K. having need of money in the course of the execution of the contract obtained an advance of $1,000 from C. on a certificate of measurement of the quantity of wood manufactured. Afterwards another measurement was made in the woods, in the interest of sub-contractors of K. The piles of wood were marked with the letter C., but the wood was never loaded on the cars, nor measured as stipulated in the contract. Pending these proceedings K. was obliged to make an assignment of his property and C. demanded, by suit, delivery of the goods or repayment of his advances:—Held, that the wood never having been inspected and measured as provided in the contract, C. had never become its owner; that the curator of K.'s estate could not be compelled to proceed with the execution of the contract; and that the recourse of C. for non-execution was an action for damages. *Curtis* v. *Millier*, Q.R. 7 Q.B. 415.

IX. Public Contracts.

—Contract for public printing—Powers of executive—Change of Ministers—Non-execution.]—In matters of contracts, or quasi-contract, the Crown is in the same position in respect to its subjects as the latter are among themselves, and the contracts are binding in the same manner and to the same effect as those between private persons. The Crown has a continuous and perpetual existence, and the obligations it assumes continue to exist and have effect throughout their lawful duration, producing the same legal effects though the Sovereign or his advisers may have changed. Hence, if the advisers having changed, the Crown repudiates a binding contract, even in the public interest, it becomes liable to the same consequences as those which fall upon private persons from the non-execution of an obligation legally entered into. *Demers* v. *The Queen*, Q.R. 7 Q.B. 433.

And see Constitutional Law III.

X. Public Work.

—Arbitration—Progress estimates—Engineer's certificate—Approved by head of department—Condition precedent.]—The eighth and twenty-fifth clauses of the appellant's contract for the construction of certain public works were as follows: "8. That the engineer shall be the sole judge of work and material in respect of both quantity and quality, and his decision on all questions in dispute with regard to work or material, or as to the meaning or intention of this contract, and the plans, specifications and drawings shall be final, and no works or extra or additional works or charges shall be deemed to have been executed, nor shall the contractor be entitled to payment for the same, unless the same shall have been executed to the satisfaction of the engineer, as evidenced by his certificate in writing, which certificate shall be a condition precedent to the right of the contractor to be paid therefor;" but before the contract was signed by the parties the words "as to the meaning or intention of this contract, and the plan, specifications and drawings" were struck out. "25. Cash payments to about ninety per cent. of the value of the work done, approximately made up from returns of progress measurements and computed at the prices agreed upon or determined under the provisions of the contract, will be made to the contractor monthly on the written certificate of the engineer that the work for or on account of which the certificate is granted has been duly executed to his satisfaction, and stating the value of such work computed as above mentioned and upon approval of such certificate by the Minister for the time being, and the said certificate and such approval thereof shall be a condition precedent to the right of the contractor to be paid the said ninety per cent. or any part thereof." . . . A difference of opinion arose between the contractor and the engineers as to the quantity of earth in certain embankments which should be paid for at an increased rate as "water-tight" embankment under the provisions of the contract and specifications relating to the works and the claim of the contractor was rejected by the engineer, who afterwards, however, after the matter had been referred to the Minister of Justice by the Minister of Railways and Canals, and an opinion favourable to the contention of the contractor given by the Minister of Justice, made a certificate upon a progressive estimate for the amount thus in dispute in

the usual form, but added after his signature the following words: "Certified as regards item 5 (the item in dispute), in accordance with the letter of Deputy Minister of Justice, dated 15th January, 1896." The estimate thus certified was forwarded for payment, but the Auditor-General refused to issue a cheque therefor:—Held, that under the circumstances of the case the certificate sufficiently complied with the requirements of the twenty-fifth section of the contract; that the decision by the engineer rejecting the contractor's claim was not a final decision under the eighth clause of the contract adjudicating upon a dispute under said eighth section and did not preclude him from subsequently granting a valid certificate to entitle the contractor to receive payment of his claim, and that the certificate given in this case whereby the engineer adopted the construction placed upon the contract in the legal opinion given by the Minister of Justice, was properly granted within the meaning of the twenty-fifth clause of the contract: *Murray* v. *The Queen* (26 S.C.R. 203), discussed and distinguished; *Goodwin* v. *The Queen*, 28 S.C.R. 273.

—Railway Act—R.S.C. c. 27, s. 23—Form of contract under.]— The provisions of R.S.C. ch. 37, sec. 23, requiring all contracts affecting the Department of Railways and Canals to be signed by the Minister, his deputy, or some person specially authorized, and countersigned by the Secretary, applies only to cases in which there are contracts in writing. — Where goods have been bought by and delivered to officers of the Crown for public works, under verbal orders given by them in performance of their duties, payment therefor may be recovered from the Crown, there being no statute requiring all contracts of the Crown to be in writing. *The Queen* v. *Henderson*, 28 S.C.R. 425.

XI. Rescission.

Mistake—Rescission—Rectification.]—An instrument cannot be rectified on account of mistakes unless it is clearly shewn that the mistake is a mutual one. Where the mistake is unilateral, the instrument may be rescinded, but cannot be rectified. *Whitla* v. *Phair*, 12 Man. R. 122.

[*Editors' Note:* This case applies the above doctrine to a contract for the transfer of certain gold mining rights in Ontario, but a statement of the facts would require more space than could be allotted to it in this work.]

XII. Restraint of Trade.

—Physician—Sale of Practice—Covenant—Restraint of trade—Condition precedent—Waiver—New Brunswick Medical Act, 44 V., c. 19—Vendor not registered — Injunction.] — The plaintiff was a physician practising at Sussex, and in receipt of a large income. Having occasion to remove from the Province, he entered into an agreement with the defendant, a physician, to lease to him a part of his (the plaintiff's) house, including offices, for two years from July 1, 1894. An annual rental was reserved. The defendant covenanted that at the end of the lease he would either purchase the house at a named sum, or would forthwith leave and depart from the parish of Sussex, and would not for a period of at least three years next thereafter reside in said parish, or practice thereat, either as physician or surgeon, or act directly or indirectly as partner or assistant to or with any other physician or surgeon practising in said parish, or elsewhere within ten miles thereof, and that he would, at least three months before the end of the said term, give the plaintiff notice in writing whether he would so purchase or would depart from Sussex. It was provided that if at the end of the term the plaintiff did not wish to sell he could return to Sussex and resume practising, in which case the defendant might remain and practise in Sussex. The plaintiff covenanted that he would on or before July 1, 1894, repair the roof of the house, and that from that date he would cease to practise in the parish of Sussex for two years, and that if the defendant purchased the house and lot as aforesaid he would not practise in Sussex for three years from said date. Repairs to the roof were not made until January, 1895, and were found to be insufficient, and it was not until the fall of 1895 that the matter was attended to, when a new roof was put on. At the time the defendant went into possession, July 1, 1894, he was aware that the repairs had not been made, and he raised no objection to the plaintiff's default. At the time of the agreement the plaintiff was not a registered physician, though he had been registered the year before, and was entitled to be registered on payment of the annual fee. At the end of the lease the defendant declined to purchase the property, or discontinue to practise at Sussex. In a suit for an injunction to restrain the defendant from practising and residing at Sussex, in the terms of his covenant:—Held, (1) that the agreement was not invalid as being in restraint of trade and contrary to public policy. (2) that there had been a waiver by the defendant with respect to the time of performance of plaintiff's covenant to make repairs; and that its performance was not a condition precedent to the performance by the defendant of his covenant. (3) that it was immaterial that the plaintiff was not a registered physician at the time of the agreement. (4) that defendant's covenant was supported by consideration. (5) that the defendant should be enjoined from residing at Sussex as well as from practising there. *Ryan* v. *McNichol*, 1 N.B. Eq. 487.

XIII. Validity.

—Contract — Consideration—Illegality— Stifling Prosecution.]—The manager of the business of an insolvent firm was arrested and imprisoned

on a charge of having procured the firm, while in insolvent circumstances, to transfer certain of its property to another person with intent to defraud the creditors of the firm. After he had been released on bail an offer was made in writing by his wife and her son to the creditors of the firm to pay a certain percentage of their claims, in addition to the dividend to be paid by the estate of the firm, and to withdraw certain actions and procure the abandonment of certain claims, upon conditions set out in the offer, one of which was that any creditor accepting the offer should not thereafter, directly or indirectly, institute or be a party to any action or proceeding against the husband in respect of any matter or thing in any wise connected with the affairs or business of the firm. This offer was accepted by the plaintiff and a number of the other creditors. After it was made, the husband was discharged from custody, the informant, one of the creditors, not appearing, and no evidence being offered in support of the charge. Promissory notes were afterwards made by the wife and her son in favour of the creditors for the stipulated percentage. In an action by one of the creditors upon some of the notes:—Held, that, although not stated in express terms, one object of the defendants in making their offer was to procure the stifling of the prosecution of the charge made against the husband; that it was in accordance with the concluded agreement made by the defendants with the plaintiff and the other creditors that no evidence was offered on the pending charge, which was consequently dismissed; and that the notes sued upon, having been given on the illegal agreement thus entered into, could not be enforced: *Rawlings* v. *Coal Consumers' Association*, 43 L.J.M.C. 111; *Windhill Local Board of Health* v. *Vint*, 45 Ch. D. 351; and *Jones* v. *Merionethshire Permanent Benefit Building Society*, (1891) 2 Ch. 587, followed:—Held, also, that as part of the consideration for the agreement was illegal, the whole was bad: *Lound* v. *Grimwade*, 39 Ch. D. at p. 613, followed. *Legatt* v. *Brown*, 29 Ont. R. 530.

—Contract with reference to future succession—Nullity—Accessory contract of warranty—Arts. 658, 773 & 1061 C.C.]—A covenant or pact respecting property which may devolve by a future succession is prohibited by Arts. 658 & 1061 of the Civil Code, and such prohibition is a matter of public policy.—Every such covenant or pact is radically null and void and inexistent, and, the principal contract being without legal existence, an accessory contract of warranty is also null and void and without any legal effect.—The provision contained in Art. 773 of the Civil Code, by which the conveyance of the property of another becomes valid, if the conveyor subsequently acquires it, is subordinate to the law of public policy contained in Arts. 658 and 1061.—A contract which contains both a pact with reference to a future succession, and an agreement respecting property belonging at the date of the deed to the conveyor, and which is susceptible of being divided, is good and valid for the part which relates to the conveyor's property, and null and void only for the part which relates to the future succession. *Desjardins* v. *Roy*, Q.R. 7 Q.B. 325.

—Sale of steamboat—Agreement not to carry on business in opposition—Public policy.]—A contract by which the seller of a steamboat covenants with the purchaser, a navigation company, that he will not acquire any pecuniary interest in, nor enter into the service of, any company or individual in opposition to the purchaser within a defined territory, is not contrary to public policy, but, on the contrary, it is lawful for an individual, for lawful considerations, to abandon a business in opposition to that of the person in whose favour the abandonment is made. *Richelieu and Ontario Navigation Co.* v. *Paul*, Q.R. 12 S.C. 206.

—Vente à réméré—Guarantee of loan—Contract by way of pledge—Concealed contract—Interest.]—A sale with redemption (*vente à réméré*), though given to guarantee repayment of a loan, is none the less valid, and that independently of the rate of interest agreed upon between the parties.—As the legislation in Quebec permits parties to stipulate for interest as they please, contracts by way of mortgage or pledge which conceal usurious agreements cannot be attacked on that ground; and in the case of a sale, with right of redemption given to guarantee a loan, there can arise no question of a secret contract, since there is no prohibition to be evaded, and the parties may give to their contract not only the form agreed upon, but even all the consequences resulting from the special contract by which they bind themselves. *Laurin* v. *Lafleur*, Q.R. 12 S.C. 381.

—Statute of frauds—Verbal contract of hiring—Substituted contract—Statement of claim—Parol evidence—Statement of claim—Sufficiency of—New trial.]—In the month of September, 1896, plaintiff and defendant entered into a verbal agreement for the hiring of plaintiff by defendant for a year, the period of hiring to commence at a future date, not then determined. Plaintiff commenced working for defendant on the 2nd or 3rd November following, and was dismissed in the month of May, 1897, on the ground that he had done business in other goods, and for other firms, contrary to his agreement with defendant. On the trial, evidence was given to shew that after the hiring in November, a reorganization of the defendant firm took place, and that a new agreement was made under which plaintiff performed services for defendant, for which he was entitled to recover:—Held, that plaintiff could not recover either on the original contract, for non-compliance with the statute of frauds, it not being a contract to be performed within a year; or upon the substituted contract of which evidence was given, as he had not declared upon such

a contract in his statement of claim or given defendant notice that he intended to set up such a claim:—Held, also, that a letter from defendant which was relied upon as taking the case out of the statute, could not be supplemented by parol evidence. Per Meagher, J.:—Held, that the statement of claim was sufficient to cover a claim for a yearly hiring under the alleged substituted agreement, and that the case should be sent back for a new trial, on this point, to determine whether, in point of fact, such agreement had been made. *Strong* v. *Bent*, 31 N.S.R. 1.

— Solicitor and client — Contract between — Fraud.] — Plaintiff being unable to raise money to pay off a mortgage upon his lands, applied to a solicitor, who, in consideration of certain interest and commissions, agreed to advance the necessary amount, and also to obtain time from defendant's unsecured creditors, and took as security a conveyance of plaintiff's equity of redemption in the property, with a short period for payment and redemption. Upon the evidence it appeared that there was no fraud or improper dealing on the defendant's part:—Held, that there is no principle upon which any agreement a solicitor and client choose to make in the circumstances of a particular case, is to be invalidated, if no deception is practiced and no advantage taken, merely because of the existence of the relationship. *Bell* v. *Cochrane*, 5 B.C.R. 211.

—Contract—Public policy—Evading secrecy of tenders for municipal work.]—Tenders were invited for certain municipal public works. Defendant, having already put in a tender, met the plaintiff, who also proposed to tender for the work. It was agreed between them that the defendant should withdraw his tender and put in another at a higher figure, and that the plaintiff should tender at a still higher price; that, in the event of the defendant's tender being accepted, the profits of the contract could be equally divided between them. The defendant's tender was accepted. In an action to declare a partnership:—Held, that the agreement constituted a partnership, and was not void as against public policy. *Stevenson* v. *Boyd*, 5 B.C.R. 626.

—Gaming contract—Stock transaction—Broker—Commission—Art. 1927 C.C.]—See GAMING.

—Married woman—Separate property—Conveyance—Contracts—C.S.N.B., c. 72.]

See HUSBAND AND WIFE, IV.

XIV. WARRANTY.

—Contract referring to future succession—Nullity—Accessory contract of warranty.]—A contract respecting property, which may devolve by a future succession, is prohibited by Arts. 658 and 1061 of the Civil Code, and such prohibition is a matter of public policy. —Every such contract is radically null and void, and the principal contract being without legal existence an accessory contract of warranty is also null and void and without legal effect. *Desjardins* v. *Roy*, Q.R. 7 Q.B. 325.

—Liability of Crown in contract.]

See CROWN.

And see COVENANT.

" " DEED.

" " SALE OF GOODS.

" " SALE OF LAND.

CONTRAINTE PAR CORPS.

Amount of judgment—Adding interest and costs.]—Interest and costs cannot be added to the amount of damages for personal injuries awarded by a judgment to bring it to a sum sufficient for the exercise of *contraint par corps* upon the defendant. *Belleſleur* v. *Martel*, Q.R. 12 S.C. 3.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

CONTROVERTED ELECTIONS ACT.

See PARLIMENTARY ELECTIONS.

CONVERSION.

Action for conversion — Question for trial judge.] — In an action brought by plaintiff against defendant to recover damages for the conversion of a quantity of hay, plaintiff's right to recover depended upon whether the hay in question was "upland" or "intervale":—Held, that the question was peculiarly one for the trial judge, the evidence being contradictory, and the question being one that the judge had exceptional advantages for determining. *Guild* v. *Dodd*, 31 N.S.R. 193.

CONVICTION.

Criminal Code, ss. 501, 872 (b)—Wilfully killing a dog—Money penalty, and, in default, imprisonment with hard labour—Illegality.

See CRIMINAL LAW, XV.

CORONER.

Character of Court.]—The Coroner's Court is a Criminal Court. *The Queen* v. *Hammond*, 29 Ont. R. 211.

Inquest—Declaration of accused.—A coroner who proceeds to an *enquête* has no right, before the verdict, to demand a declaration

from a person whom he may have accused or suspected of a crime, and whom he has caused to be arrested in his capacity of justice of the peace. *The Queen* v. *Lalonde*, Q.R. 7 Q.B. 204.

—Doctor who attended deceased not competent to hold inquest.]—This was an application of M. J. Haney, manager of construction of Crow's Nest Railway, for a writ of prohibition to prohibit Dr. H. R. Mead, of Pincher Creek, from further proceeding with an inquest in connection with the deaths of two men from diphtheria, employed by a contractor on the said railway. The grounds upon which the application was made were: 1. That the coroner had no jurisdiction to hold such inquest. 2. That he was a necessary and material witness upon said investigation and inquest. 3. That he was directly and personally interested in said inquest and investigation. The facts as set out in the affidavits read on the application were that the two men in question were brought in the company's ambulance to the end of the track, and Dr. Mead, the said coroner, was immediately called in to attend them. Both men died the night after their arrival, while under Mead's care. Mead then proceeded to hold an inquest upon the said deaths, although it had been pointed out to him by counsel (C. E. D. Wood) for applicant, that having been in professional attendance upon the men at the time of their death, he would be a necessary witness, and it was not proper for him to act in the dual capacity of judge and witness:—Held, that a coroner is a judge of a court of record, and that the same person cannot be both a witness and a judge in a cause which is on trial before him; and that in this case the coroner was a necessary witness. In delivering judgment the judge said: "In this case there is a dangerous precedent to be avoided. A physician, who is at the same time a coroner, in order to avoid prosecution for malpractice, would only have to call a jury and hold an inquest on the body of his victim and the law would be powerless to prevent him." Order granted for writ of prohibition. *In re Haney* v. *Mead*, 34 C.L.J. 330.

And see CRIMINAL LAW, V.

CORPORATION.

See COMPANY.
" COVENANT.
" MUNICIPAL CORPORATIONS.
" RAILWAYS AND RAILWAY COMPANIES.

COSTS.

I. ABANDONMENT OF ACTION, 104.
II. APPEAL AS TO COSTS, 104.
III. ATTACHMENT FOR NON-PAYMENT, 105
IV. ATTORNEY IN PERSON, 105.
V. COSTS AGAINST SUCCESSFUL PARTY, 105.
VI. COSTS EN BLOC, 105.
VII. COSTS IN ANY EVENT, 105.
VIII. COSTS OF NEW TRIAL, 105.
IX. DISCRETION AS TO COSTS, 106.
X. DISTRACTION, 106.
XI. GIVING AND WITHHOLDING, 106.
(a) *Conduct of Parties*, 106.
(b) *Delay in Procedure*, 107.
(c) *Omission in Procedure*, 107.
(d) *Unnecessary Proceedings*, 108.
XII. IN PARTICULAR MATTERS OR BY AND AGAINST PARTICULAR PERSONS, 108.
XIII. JOINT AND SEVERAL LIABILITY, 110.
XIV. JUDGMENT FOR COSTS, 110.
XV. PROCEEDING FOR COSTS ONLY, 110.
XVI. SECURITY FOR COSTS, 111.
XVII. SOLICITOR AND CLIENT, 114.
XVIII. STAYING PROCEEDINGS FOR, 115.
XIX. TAXATION AND RECOVERY OF, 115.
(a) *Appeals from Taxation*, 115.
(b) *Confession of Judgment*, 116.
(c) *Disallowance*, 116.
(d) *In Particular Matters*, 117.
(e) *Scale*, 118.
(f) *Set-off*, 119.

I. ABANDONMENT OF ACTION.

—Partial abandonment—Payment of costs—Condition.]—A party to an action cannot abandon part of his judgment without offering, in his abandonment, to submit to payment of costs. *Latour* v. *Desmarteau*, Q.R. 12 S.C. 456.

II. APPEAL AS TO COSTS.

—Discretion of court appealed from—Costs.]—It is only when some fundamental principle of justice has been ignored or some other gross error appears that the Supreme Court will interfere with the discretion of provincial courts in awarding or withholding costs: *Smith* v. *Saint John City Railway Co.*; *Consolidated Electric Co.* v. *Atlantic Trust Co.*; *Consolidated Electric Co.* v. *Pratt*, 28 S.C.R. 603.

—Where costs not wholly discretionary—Other grounds of appeal.]—*Semble*:—That an appeal as to costs may sometimes be entertained though there be no other question raised on the appeal, as where the giving or withholding of costs is not wholly discretionary, as in the case of a trustee guilty of no misconduct: *Taylor* v. *Dowlen*, L.R. 4 Ch. 697; *Re Hoskins*, 6 Ch. D. 281; *Farrow* v. *Austin*, 18 Ch. D. 58; *Re Knight's Will*, 26 Ch. D. 82; or when the appellant raises some other ground of appeal not merely colourable although he does not succeed in it: *Atty.-Gen.* v. *Butcher*, 4 Russ. 180; *Fitzgibbon* v. *Scanlan* 1 Dow, 261; *Scarry* v. *Wilson*, 12 Man. R. 216.

III. Attachment for Non-Payment.

—Attachment for costs—Supreme Court of Canada—Rule for attachment.]—A rule *nisi* for an attachment for the non-payment of costs taxed to the plaintiff on appeal to the Supreme Court of Canada, was made absolute. *Bank of Nova Scotia* v. *Fish*, 33 N.B.R. 604.

IV. Attorney in Person.

—Attorney conducting his own case—Right to fees.]—Where an advocate appears personally in his own case and conducts it as attorney of record, he is entitled to the usual attorney's fees as well as the disbursements. *Banks* v. *Burroughs*, Q.R. 12 S.C. 184.

V. Costs against Successful Party.

—Appeal—Jurisdiction—Amount in controversy—Affidavits—Conflicting as to amount—The Exchequer Court Acts—50 and 51 V., c. 16, ss. 51-53 (D)—54 and 55 V., c. 26, s. 8 (D).]—On a motion to quash an appeal where the respondents fyled affidavits stating that the amount in controversy was less than the amount fixed by the statute as necessary to give jurisdiction to the Appellate Court, and affidavits were also fyled by the appellants, showing that the amount in controversy was sufficient to give jurisdiction under the statute, the motion to quash was dismissed, but the appellants were ordered to pay the costs, as the jurisdiction of the Court to hear the appeal did not appear until the fyling of the appellants' affidavits in answer to the motion. *Dreschel* v. *Auer Incandescent Light Manufacturing Co.*, 28 S.C.R. 268.

VI. Costs En Bloc.

—Equity appeal—Costs—Order of Court fixing amount en bloc—Taxation by clerk.]—A judge sitting in Equity is not authorized to fix and determine *en bloc* the amount of costs to be paid the respective solicitors in a suit; such costs must be ascertained by the proper taxing officer by taxation in the usual way. *Consolidated Electric Company Cases*, 34 N.B.R. 36.

VII. Costs in any Event.

—Special leave to appeal—Condition as to costs.]—Special leave to appeal may be given on terms that the appellants should be liable to pay the respondent's costs in any event. *Montreal Gas Co.* v. *Cadieux* (1898), A.C. 718.

VIII. Costs of New Trial.

—Verdict against weight of evidence—New trial.]—Where the court was of the opinion that the preponderance of evidence was greatly in favour of the defendant, against whom a verdict had been rendered by the jury, and the trial judge was not satisfied with the verdict, a new trial was ordered:—Held, per Tuck, Landry and VanWart, J.J. that the plaintiff's costs to be costs in the cause to the plaintiff in any event. Per Barker and Hanington, J.J. The rule should be made absolute on the payment of costs. *Maxwell* v. *Malcolm*, 33 N.B.R. 595.

And see Practice and Procedure, (*New Trial.*)

IX. Discretion as to Costs.

—Trial with jury—Costs following the event—Rule 751 "Court."—Under Rule 751, the discretion as to costs in an action tried with a jury is exercisable by the judge or Court of the first instance only; the Full Court has no power to make any order thereon, except on appeal upon the question, whether or not "good cause" has been shewn for depriving the successful party of his costs. *Gibson* v. *Cook*, 5 B.C.R. 534.

X. Distraction.

—Insolvent judgment debtor—Attempt to deprive attorney of costs—Fraudulent judgment—Collusion.]—An insolvent defendant, against whom a creditor has obtained judgment, for the costs of which his attorney *distrayant* will be privileged by seizure and sale, cannot—with intent to make the judgment worthless and deprive the attorney of the privilege, for payment of his costs, which the seizure and sale of the defendant's property would afford him—waive in favour of another creditor the delays of procedure in an action in order that judgment may be obtained and a writ of execution issued; and when the effect of such waiver is to deprive the attorney of the creditor holding the first judgment of his recourse against the defendant for payment of his costs such attorney may, in his own name, demand the nullity of the seizure made under the second judgment. *McBean* v. *Tessier*, Q.R. 13 S.C. 242.

XI. Giving and Withholding.

(*a*) *Conduct of Parties.*

—Defamation—Defiance to sue—Offer to guarantee costs.]—Where in an election contest one party made a defamatory accusation against his opponent and defied him to take proceedings for libel offering to guarantee the costs, and proceedings were taken in which the defendant was successful:—Held, that having induced the plaintiff to bring the action by his solicitation, and offer to guarantee the costs, with the sole object, apparently of justifying his accusation, and having thus strongly encouraged the litigation in the expectation that the Court would not approve of it, the defendant should not be allowed his costs. *Jeannotte* v. *Gauthier*, Q.R. 6 Q.B. 520.

—Petitory action—Plea of change upon property—Compensation—Delivery—Demeure.]—M. in a petitiory action by F. for revendication of an immovable, pleaded that he was in possession in good faith and had a right to retain the property for payment of disbursements which he had made and that he was

ready to deliver it up on such payment. F. in reply admitted the right to payment but set up in compensation a debt due him by M. on a note. M. rejoined that he had no objection to compensation being granted but that F. should be condemned to pay the costs of the action as he had not before the action put M. *en demuere* to deliver the property by offering such compensation then in payment of the disbursements:—Held, that M., in admitting the compensation which extinguished his claim, should have, by his rejoinder to the reply of F., delivered the immovable, the reply not legally putting him *en demeure* to deliver. Therefore, F. was condemned to pay the costs of the action up to the production of his reply and the subsequent costs were imposed on M. *Fontaine* v. *Mongrau*, Q.R. 12 S.C. 20.

—Capias—Intent to defraud—Departure to the United States—Costs.]—Where a debtor is going to the United States merely because he is unable to obtain in this province employment sufficient for the support of his family, and he has secured a better situation in the United States, the circumstances do not disclose intent to defraud his creditors, and he is entitled to have the writ of *capias* quashed. But no costs will be allowed the debtor on the quashing of the writ where he denied to plaintiff's agent the fact of his intended departure, and thereby created a reasonable suspicion against him. *Seguin* v. *Cartier*, Q.R. 13 S.C. 346.

—Seizure — Opposition — Notice — Property of third party.]—The plaintiffs in an action had caused a desk belonging to the *opposant* to be seized. Before the seizure they had been warned by a sworn notice that it was the property of the *opposant*, having been given to him by his relatives and friends. At the time of the seizure the *opposant* had exhibited to the bailiff the address which accompanied the presentation of the desk, but the bailiff had, notwithstanding, persisted in making it:—Held, that the plaintiffs, who had contested the opposition, should be condemned to pay the costs of it: *Bellingham* v. *Robb*, Q.R. 13 S.C. 248 referred to; *Kyle* v. *Gagnon*, Q.R. 13 S.C. 468.

—Life insurance—Assignment—Wager policy—Fraud—Bill in equity—Costs on failure to prove allegations.]—See INSURANCE, II.

(*b*) *Delay in Procedure.*

—Motion for judgment in default of statement of defence—Costs.]—A plaintiff is entitled to costs of a motion for judgment in default of defence when the defence is fyled after service of the notice of motion. *San Francisco* v. *Martin*, 5 B.C.R. 538.

(*c*) *Omission in Procedure.*

Omitting to give notice of a preliminary objection to an appeal is not sufficient ground for depriving a respondent who succeeds in dismissing the appeal thereon, of his costs. *Tollemache* v. *Hobson*, 5 B.C.R. 223.

(*d*) *Unnecessary Proceedings.*

—Authority of attorney — Review — Abandonment.]—The attorney of one party at the trial of a cause who has been served with notice of inscription in review continues to represent his client before the Court of Review, and has a right, even without appearance, to the fees fixed by the tariff when the cause is settled before hearing, but he cannot claim the costs of an appearance fyled after the opposite party has abandoned his inscription in review. *Durnford* v. *Hannah*, Q.R. 12 S.C. 431.

XII. IN PARTICULAR MATTERS, OR TO AND AGAINST PARTICULAR PERSONS.

—Criminal matters — Code, s. 880 — Costs—Review.]—Under the Criminal Code, sec. 880, the Court may on appeal award such costs including solicitor's fee, as it may deem proper, and there is no power in the High Court to review such discretion. *The Queen* v. *McIntosh*, 28 Ont. R. 603.

—Costs—Unsuccessful application to take an affidavit fyle—Crim. Code, ss. 897, 898.]—The costs referred to in secs. 897 and 898 of the Criminal Code are those dealt with by the General Sessions of the Peace, when a conviction or order is affirmed or quashed on appeal to it; but the above sections are not applicable to the costs of an unsuccessful application to a Judge of the High Court to take an affidavit off the fyles, after a conviction has been moved by *certiorari* into that Court. *The Queen* v. *Graham*, 29 Ont. R. 193.

—Scale of—Cause removed from Surrogate Court—Order of transfer—Terms—Consent judgment—Costs out of estate.]—An order transferring a cause or proceeding from a Surrogate Court into the High Court contained a clause providing that in the event of the defendant, the applicant for the order, failing to establish his defence, his costs, if any were allowed him, should be on the Surrogate Court scale. By a consent judgment, which recited the pleadings and proceedings, and adjudged that the will which was disputed by the defendant was the last will of the testatrix, and should be admitted to probate, it was also adjudged that the costs of all parties should be paid out of the estate:—Held, upon appeal from taxation, that the defendant was bound by the order of the transfer, and his costs should be taxed on the scale of the Surrogate Court. *Re Forster*, *Battisby* v. *Witherspoon*, 18 Ont. P.R. 65.

—Summary disposal of, in Chambers—Jurisdiction—Absence of consent—Object of action not attained.]—The plaintiff claimed in this action damages for injury to his person and property by the alleged negligence of the defendants in having a foul drain in front of

his property, and an injunction. The defendants denied the plaintiff's allegations, and alleged that if the plaintiff had suffered any injury it was by his own negligence. Before trial of the action, the defendants opened and inspected the drain and did some work upon it. The plaintiff, professing to regard this as a compliance with his demand, asked the defendants to consent to the costs being disposed of by order in Chambers, to which the defendants answered that the work was being done in the ordinary course of municipal work, without the intention of admitting any liability, and refused to consent. The plaintiff moved in Chambers, without consent and against the objection of the defendants, and obtained an order for payment by the defendants of the costs of the action:—Held, that, under the circumstances, there was no jurisdiction to summarily dispose of the costs in Chambers, the object of the action not having been substantially attained: *Knickerbocker* v. *Ratz*, 16 Ont. P.R. 191, distinguished. *Hunter* v. *Town of Strathroy*, 18 Ont. P.R. 127.

—Third party—Dismissal of action—Discretion of trial judge—Appeal.]—Where a third party has been brought into an action by the defendant, and an order obtained by the latter directing that the question of indemnity as between the third party and himself be tried after the trial of the action, and that the third party be at liberty to appear at the trial of the action and oppose the plaintiff's claim, so far as the third party is affected thereby, and at the trial the action is dismissed:—*Semble*, that the third party is entitled against the defendant to costs up to and inclusive of the trial:—Held, however, that the disposition of such costs is in the discretion of the trial judge, whose order, by R.S.O. ch. 51, sec. 72, is not subject to appeal without leave:—Held, also, that the third party cannot be heard in a Divisional Court upon an appeal by the plaintiff from the judgment at the trial, and is entitled to no costs of such appeal. *Ewing* v. *City of Toronto*, 18 Ont. P.R. 137.

—Security for costs—Costs of motion.]—The costs of a motion for security for costs should follow the event of the proceedings. *Lee* v. *Ewan*, Q.R. 12 S.C. 215.

—Conviction—Canada Temperance Act—Excess in costs—Jurisdiction.]—An allowance of costs, under a conviction for a violation of the Canada Temperance Act beyond what is allowed by the tariff of fees under sec. 871 of the Criminal Code, 1892, is not such an excess of jurisdiction on the part of the magistrate as to justify quashing the conviction. *Ex parte Raysworth*, 34 N.B.R. 74.

—Garnishee order—Costs of—Taxation.—It is no ground for certiorari that the County Court judge ordered the costs of a garnishee order and application to be taxed by the clerk of the Supreme Court, instead of taxing them himself. *Ex parte Bowes*, 34 N.B.R. 76.

—Practice—Trustees—Petition for removal.]—Trustees applying to be removed on a ground satisfactory to the Court, and not from mere desire or caprice, will be allowed the costs of their application out of the trust estate. *In re Charles Merritt's Trusts*, 1 N.B. Eq. 425.

—Special case—Rules governing costs.]—The Court has the same power to deal with the costs of a special case as in the case of a suit instituted by bill, and in awarding them will be governed by the same rules. *Mitchell* v. *Kinnear*, 1 N.B. Eq. 427.

—Award—Costs of, when set aside—Discretion of Court.]—See ARBITRATION AND AWARD, II.

—County Court—Ex parte judgment—Setting aside—Costs.]—See COUNTY COURT.

—Costs of interlocutory order—Costs in the cause.]—See DEED.

—Intrusion actions.]

See PRACTICE AND PROCEDURE.

—Railways—Passenger—Continuous journey—Break in railway—Transfer—Demand of fare—Refusal to carry—Damages—Costs—Testing right.]

See RAILWAYS AND RAILWAY COMPANIES.

XIII. JOINT AND SEVERAL LIABILITY.

—Registry—Action for radiation—Indivisibility—The defendants had caused to be registered, against an immovable of the plaintiff, an hypothecary claim they held against a third party. By the plaintiff's action the registry was annulled (*radié*), and defendants were condemned for the costs without mention of *solidarité*. In execution of this judgment the attorneys *distrayants* of the plaintiff seized the property of the *opposant* for the whole amount of their costs:—Held, that the radiation of the registry not being susceptible of division, the obligation of each of the defendants was indivisible, and they were, therefore, bound jointly and severally (*solidairement*) for the costs of the action in radiation. *Filiatrault* v. *Belair*, Q.R. 12 S.C. 449.

XIV. JUDGMENT FOR COSTS.

—Action for damages—Personal wrongs—Art. 550 C.C.P.]—In an action of damages for personal wrongs, where judgment is given in favour of the plaintiff for costs only, in consideration of defendant's apology and confession of judgment for costs, Art. 550 C.C.P. does not apply to prevent the costs of the cause being taxed against the defendant. *Cooke* v. *Hart*, Q.R. 12 S.C. 348.

XV. PROCEEDING FOR COSTS ONLY.

—Settlement by parties—Right of attorneys to proceed.]—The settlement of a cause by the parties before judgment, even without the consent of the attorneys, is valid, and the attorneys cannot continue the proceedings for their costs only. *Garou* v. *Noel*, 4 Rev. de Jur. 232.

XVI. Security for Costs.

—Order for—Application to set aside—Terms—Payment—Form of order—Dismissal of action.] —An appeal by the plaintiff from an order requiring him to give security for costs upon the ground that the costs of a former action, brought by plaintiff against defendant for the same cause, were unpaid, was dismissed by a Judge in Chambers, and a further appeal by a Divisional Court, which held (17 Ont. P.R. 203) that the plaintiff could not answer the application for security by shewing that the former action was brought without his authority. The costs of the appeals were made payable to the defendant in any event. The plaintiff, upon application in the former action, then had the judgment for costs against him therein set aside, upon the ground that the action was brought without his authority; and afterwards applied to set aside the order for security for costs:—Held, that the Master in Chambers, in setting aside the order for security for costs, had discretion to impose terms, and the terms imposed, viz., payment by the plaintiff of the costs of obtaining the order for security, of the appeals therefrom, and of the application itself, were competent and proper. As to the form of the order, a dismissal of the action, in the event of security not being given within a limited time, was authorized by Con. Rules (1888) 1243 and 1246. *Lea* v. *Lang*, 18 Ont. P.R. 1.

—Libel—Newspaper—R.S.O. c. 57, s. 9—Contentious affidavit in answer.]—Upon an application for security for costs made under R.S.O. ch. 57, sec. 9, by the defendant in an action for an alleged libel contained in a public newspaper, the plaintiff desired to read and have the benefit of an affidavit made by himself contradicting the statements in the affidavit of the agent of the defendants on which the motion was based, and contended that the object was not to try the facts on affidavits, but to shew that the agent had not knowledge of the facts, that many statements made by him were not true, and therefore that his affidavit was not such as required by sec. 9:—Held, that the plaintiff's affidavit could not be read or used upon the application. *Bartram* v. *London Free Press Printing Co.*, 18 Ont. P.R. 11.

—Infant plaintiff out of jurisdiction—Next friend.]—An infant residing out of the jurisdiction, brought an action for administration, by her mother, who resided in the jurisdiction, but was without substance, as next friend:—Held, that the plaintiff could not be required to furnish security for costs. *Roberts* v. *Coughlin*, 18 Ont. P.R. 94.

—Libel—Newspaper—Mercantile agency—R.S.O., c. 68, s. 1.]—A printed paper issued daily by the conductors of a mercantile agency to persons who are subscribers to the agency, for the purpose of giving the information required by such subscribers, is a "newspaper," and "printed for sale," within the meaning of sec. 1 of R.S.O., ch. 68; and the publishers are, therefore, in an action for libel brought against them, entitled to the benefit of the provisions as to security for costs contained in sec. 10. *Slattery* v. *R. G. Dun & Co.*, 18 Ont. R. 168.

—Sheriff—Public duty—R.S.O., c. 89, s. 1.]—A sheriff executing a writ of *fi. fa.* is not an officer or person fulfilling a public duty within the meaning of R.S.O., ch. 89, sec. 1, and is not, therefore, entitled to security for costs of an action brought against him for negligence in not making a seizure under the writ: *McWhirter* v. *Corbett* 4 U.C. C.P. 203, followed; *Creighton* v. *Sweetland*, 18 Ont. P.R. 180.

—Plaintiff out of jurisdiction—Property within jurisdiction—Administration order—Consent to charge share with costs—Place of reference.]—A plaintiff residing out of the jurisdiction, but owning a substantial amount of property within it, should not be ordered to give security for costs. And where a plaintiff was applying summarily for an administration order, and it appeared that he had an interest worth $273 in the estate in respect of which he applied, he was absolved from giving security for costs, although his residence was out of the jurisdiction, upon his consenting that his whole interest in the estate should be subject to a first charge in respect of any costs which he might be lawfully ordered to pay in the course of the administration proceedings. The testator lived and died in the county of S.; the defendant executor lived there; and one of the two parcels of land which made up the real estate of the testator was in that county. The other and smaller parcel of land was in the county of Y., and the plaintiff's solicitors practised there:—Held, that the reference should be to the Master at the county town of S. *Re Armstrong*, *Armstrong* v. *Armstrong*, 18 Ont. P.R. 55.

—Intervenant—Judicial Proceeding.]—One who intervenes in an action to revendicate, as belonging to himself, movables seized by the plaintiff as being the defendant's property, institutes a judicial proceeding and should, therefore, furnish to the plaintiff, his opponent, security for the payment of costs which may result from his proceedings. *Diamond Glass Co.* v. *Bolton Hop Bitters Co.* Q.R. 12 S.C. 221.

—Costs of appeal—Form of security—Amount of judgment appealed from—Particularity.]—On June 23rd, 1896, a judgment was obtained by F. against the curator of an interdict for $600 a year alimentary allowance, to be paid at the rate of $50 a month, from July 1st. The curator having died, his successor appealed from this judgment to the Court of Queen's Bench, and his bond for security, after reciting the condemnation and appeal therefrom, added—"in case the said appellant will not effectually prosecute the said

appeal, and will not satisfy the condemnation in capital, interest and costs which might hereafter be adjudged in case the judgment appealed from is confirmed, then the said sureties will satisfy the said condemnation in capital, interest and costs and pay all costs and damages which might hereafter be adjudged in case the judgment appealed from is confirmed.'' The sureties, moreover, declared that each of them was the owner of immovables, not described, of the value of $5,000. The record was transmitted to the Clerk of Appeals, and on Sept. 22nd, F. had the appeal dismissed for irregularity in inscription (Q.R. 5 Q.B. 417) and afterwards registered the judgment of the Superior Court, the security and the judgment dismissing the appeal in order to obtain a judicial hypothec against O., one of the sureties. In an action by O. to have the registration annulled :—Held, that the judicial hypothec claimed by F. was null for want of particularity, there being nothing in the judgment of June 23rd, or in the security to show for what fixed sum the immovable of O. was to be hypothecated, and the declaration of the sureties that they owned immovables, not described, worth $5,000 had not the effect of fixing the security at a definite sum.—The condemnation which should be secured on an appeal is that which is actually due, exigible and susceptible of execution. Hence, in this case, the terms of the allowances which expired after the dismissal of the appeal (the others had been paid) were not covered by the security service, if there had been no appeal, the condemnation for these payments would not have been exigible or liable to execution. *O'Leary* v. *Francis*, Q.R. 12 S.C. 243. In an action against one of the sureties for one of the monthly payments due under the judgment of June 23rd :—Held, that the security only constituted an obligation to pay the condemnation in case the judgment appealed from was confirmed, that the appeal having been dismissed on a preliminary exception by the plaintiff for irregularity in the inscription, it had never been heard on the merits ; therefore the judgment of the Superior Court had not been confirmed and the condition of the security had never been accomplished. *Francis* v. *O'Leary*, Q.R. 12 S.C. 254.

—Non-resident—Saisie-arrêt.]—If a non-resident of the Province issues a saisie-arrêt after judgment he must give security for costs. *Denton* v. *Arpin*, Q.R. 12 S.C. 509.

—Penal action—Maintenance of road—Art. 180 C.C.P.]—An action against a municipal corporation for not maintaining a road in repair, though not a *qui tam* is a popular action; and upon motion, pursuant to Art. 180 C.C.P., the plaintiff will be ordered to furnish security for the costs. *Moupas* v. *Corporation de St. Pierre les Becquets*, 4 Rev. de Jur. 141.

—Plaintiff resident out of jurisdiction—Judgment creditor.]—Where a person resident out of the jurisdiction, having obtained a judgment in the Supreme Court for a large amount, which was defeated by a bill of sale given by the judgment debtor, brought a suit to have the bill of sale set aside as a fraudulent preference, he was required to give security for the costs of the judgment debtor made a party to the suit. *Thibaudeau* v. *Scott*, 1 N.B. Eq. 505.

—Appeal — Foreign corporation — Security for costs.]—A foreign corporation, appealing to the Full Court from a judgment against it at the trial, cannot be ordered to give security for payment of the costs of the action found against it by the judgment appealed from, as well as security for the costs of the appeal. *Nelson and Fort Sheppard Railway Co.* v. *Jerry*, 5 B.C.R. 166.

—Appeal—Security ordered—Non-compliance—Dismissal of appeal—"Forthwith."] — The term ''forthwith'' in matters of procedure means within twenty-four hours. Where an order allowing an appeal directed that a certain sum as security for the costs of such appeal should be paid ''forthwith'' was not complied with in this respect for more than five months after the date thereof, the appeal was dismissed with costs. *Morton* v. *Bank of Montreal*, 18 C.L.T. Occ. N. 157.

—Appeal — Leave — Will — Construction — Security for costs—Reimbursement of executor for costs.]—See APPEAL, VIII.

— Appeal — Security for costs—Application to dismiss.]—See APPEAL, IX.

XVII. SOLICITOR AND CLIENT.

—Services in Exchequer Court — Agreement—Compensation en bloc—Champerty—Account—Bill of costs—Solicitors' Act, R.S.O. 1887 c. 147 —Evidence.]—The plaintiff, a suppliant in an action brought against the Crown, by its permission, in the Exchequer Court of Canada, made an agreement with the defendants, a firm of solicitors, that they should conduct her case to judgment, and, in consideration of their doing so at their own expense, that they should be entitled to retain to their own use one-fourth of the sum which should be recovered, and she assigned her claim to them as security for the performance of the agreement: — Held, a champertous agreement, and not binding on the plaintiff: *Ball* v. *Warwick*, 50 L. J. N. S. C. L. 328, and *In re Attorneys and Solicitors Acts* 1 Ch. D. 573, followed. — Although the services of the defendants under the agreement were performed in a Dominion Court, a Provincial Court had jurisdiction to entertain an action for an account against the solicitors in respect of monies received by them from the Crown in satisfaction of the claim. —The services performed by the defendants in the Exchequer Court were not performed as officers of the Courts of Ontario, and, with respect to such services and the remuneration therefor, the defendants were not subject to the Solicitors Act, R.S.O. 1887, ch. 147, and could not be compelled to deliver a bill

of costs.—In the absence of a tariff of costs between solicitor and client in the Exchequer Court, the defendants were entitled to remuneration upon a *quantum meruit*, to be established by such evidence as would be appropriate in the forum of litigation: *Paradis* v. *Bossé*, 21 S.C.R. 419, and *Armour* v. *Kilmer*, 28 Ont. R. 618, followed; *O'Connor* v. *Gemmill*, 29 Ont. R. 47.

—Attorney and client—Action in formâ pauperis.]—In an action *in formâ pauperis* for an alimentary allowance and subsequent proceedings connected therewith, the plaintiff's attorneys are entitled to recover from their client the full amount of their costs on proceedings taken to protect and secure his or her rights in respect of the alimentary allowance, and also any costs beyond what they have recovered from the defendant in the suit for *aliments* on their taxed bill. *Bastien* v. *Forget*, Q.R. 12 S.C. 425.

—Withdrawal of attorney—Substitution—Liability of client for costs.]—An attorney who has acted for the defendant in a cause may give notice to his client and to the plaintiff's attorney that he will no longer so act, and in such case, although the cause may not be ended, he will be entitled to payment from his client of his costs and fees if the latter has appointed another attorney in his place. *De Bellefeuille* v. *Beaudry*, 4 Rev. de Jur. 173.

—Solicitor's lien for costs on judgment monies.]

See SOLICITOR.

XVIII. STAYING PROCEEDINGS FOR.

—Action in formâ pauperis—Second action—Payment of costs of first.]—Where an action *in formâ pauperis* for *aliments* was dismissed on exception to the form reserving the right to proceed anew the Court, in a second action for the same cause, likewise *in formâ pauperis*, refused to stay the proceedings until the costs of the first were paid, as the authority to proceed *in formâ pauperis* would thereby be rendered useless. *Werton* v. *Vézina*, Q.R. 12 S.C. 172.

XIX. TAXATION ON RECOVERY OF COSTS.

(*a*) *Appeal from Taxation.*

—Forum—High Court appeal—Amount involved—Scale of costs.]—The appeal from the taxing officer's taxation of costs in the Court of Appeal is to a judge of the High Court, not of the Court of Appeal: *Petrie* v. *Guelph Lumber Co.*, 10 Ont. P.R. 600, applied and followed.—Where plaintiff recovered judgment in the High Court for a sum within the jurisdiction of the County Court, and was allowed costs on the County Court scale only, with the usual set-off to the defendant, and the defendant's appeal from the judgment to the Court of Appeal was dismissed with costs:—Held, that the Court of Appeal having ordered the defendant to pay the costs of the appeal generally, without any limitation as to scale or amount, and there being only one tariff of fees payable upon appeals from the High Court, that tariff must govern the allowance of costs under the judgment of the Court of Appeal. *Holmes* v. *Bready*, 18 Ont. P.R. 79.

—Taxation—Experts, services of.]—The plaintiff, in an action of damages against the City of Montreal for the flooding of his premises, had, before action brought, caused the premises to be examined by experts, who gave evidence in the cause, and were taxed as witnesses. He now moved, before a Judge in Chambers, for the revision of the bill of costs, so as to include therein the value of the services of the experts in making their examination of the premises:—Held, that there being no basis upon which a Judge in Chambers could estimate such services without another *enquête*, and there being no provision of law authorizing such *enquête*, the motion for revision of the bill of costs could not be entertained. Such services should be included in the statement of claim, and proved like any other fact in the case.—*Hickey* v. *City of Montreal*, Q.R. 12 S.C. 195.

—Retaxation before judge—Appeal—Discretion—Wrong principle—Ord. 63., R. 23—Acts of 1885, c. 36.]—Costs taxed before the Taxing Master were retaxed before a judge of the Court, after notice in writing pursuant to the provisions of O. 63, R. 23 (Acts of 1893, Appendix):—Held, that the right of appeal was retained by the Act creating the office of Taxing Master, Acts of 1885, ch. 36:—Held, that the Court would not interfere with the retaxation unless some very gross error had been committed, violating well-settled principles of taxation of costs:—Held, that, on retaxation, the judge, under the provisions of the rule, has the fullest discretion as to items, or parts of items, and having acted within his powers, and it not being shewn that the retaxation proceeded upon any wrong principle, that the appeal must be dismissed with costs. It was brought to the notice of the Court that the Taxing Master limited the costs of retaxation to his own fees, and refused the costs of the application before the judge:—Held, that he erred in doing so, the party succeeding being entitled to all necessary costs incurred in obtaining the result arrived at. *Palgrave Gold Mining Company* v *McMillan*, 31 N.S.R. 198.

(*b*) *Confession of Judgment.*

—Action en bornage—Confession of judgment—Common costs.]—In an action *en bornage* the defendant may confess judgment consenting to the *bornage* on condition that the costs be common, and if the plaintiff accepts, the costs of the defendant's attorney, as well as those of the plaintiff's attorney, will be considered as forming part of the common costs in the cause. *Lacas* v. *Croteau*, 4 Rev. de Jur. 210.

(*c*) *Disallowances.*

—Procedure—Execution—Notice of sale—Costs.]—Where the sheriff causes the notice of sale

of immovables under execution to be inserted in several newspapers in excess of the number of announcements prescribed by law, the amount paid for such unauthorized advertisements will be struck from his bill of charges. *Virtue* v. *Reburn*, Q.R. 12 S.C. 343.

(*d*) *In Particular Matters.*

—Costs of award—Untaxed—Suit for—Specially indorsed suit.]—Costs of an arbitration incurred by a party thereto, if untaxed, do not form a liquidated amount, and cannot be the subject of a special indorsement upon a writ of summons. *Huyck* v. *Wilson*, 18 Ont. P.R. 44.

—Commission—Depositions not used at trial—Counsel fee—Quantum—Review.]—In an action for libel the defendants, in support of their defence of justification, obtained a commission and had the evidence of certain witnesses out of the jurisdiction taken thereunder for use at the trial. The evidence, however, was not used, owing to the plaintiff being called as a witness by the defendants and admitting substantially what was stated by the witnesses in their depositions before the commissioner:—Held, that the defendants, having obtained judgment in their favor with costs, were entitled to tax against the plaintiff the costs of executing the commission, the taking of the evidence having been, under the circumstances, not unreasonable, and the fact that it was not used not being sufficient to deprive the defendants of the costs of it. The practice is not to interfere upon appeal with the discretion of a taxing officer as to the quantum of a counsel fee. *Rondot* v. *Monetary Times Printing Co. of Canada*, 18 Ont. P.R. 141.

—Taxation of costs accruing in Halifax—Notice—Time for—Ord. 63, R. 13.]—Under O. 63, R. 13, before taxing costs, the party taxing is required to give one day's notice to the opposite party. Under O. 63, R. 13, before taxing costs accruing in Halifax, "one day's notice . . . . . shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, &c." —Held that the words "one day" are not to be read as meaning "one clear day," and *Semble* that notice given at any time up to seven o'clock of the evening of the day before the day for which the notice is given would be sufficient. *Barrowman* v. *Fader*, 31 N.S.R. 29.

—Costs—Taxation of Counsel fees—Practice in N.W.T. as to setting cause down for trial—English practice.]—The practice in the N.W. Territories in regard to setting a cause down for trial differs from that prevailing in England, inasmuch as the order setting down takes the place of the English action of trial and order entering. No importance is to be attached to the fact, that in the order setting down, provision is frequently made for notice of trial before hearing. This notice is a mere matter of courtesy, and the order is not impaired if no clause with regard to it be inserted. The date of the opening of court is fixed, and litigants must be ready for trial on that day. Upon an order for discontinuance issuing after setting down, defendant is entitled to all counsel fees except fee with brief at trial. *Mongenais* v. *Henderson*, 34 C.L.J. 54.

—Appeal from assessment board—What costs taxable.]—Held, that on an appeal from a Court of Revision to a Board of three County Judges, the only costs that can be ordered to be paid to a successful appellant are witness fees on the Division Court scale, and the per diem allowance to the two outside judges. *In re Toronto Electric Light Company and Canadian Pacific Railway Company*, 34 C.L.J. 791.

—Solicitor and client—Counsel fees—Right of action for.]—See COUNSEL.

—Partnership—Costs of appeal taken by co-partners—Liability.]—See PARTNERSHIP, V.

(*e*) *Scale.*

—Action to set aside fraudulent conveyance—Amount of subject-matter.]—An action by simple contract creditors, the amount of whose claim was less than $200, suing on behalf of themselves and all other creditors, to obtain judgment and equitable execution against the lands of the debtor conveyed to a third person in alleged fraud of creditors. It appeared that the land was worth more than $200, and that the claims of execution creditors exceeded $600 in the aggregate:—Held, that the amount of the subject-matter involved exceeded $200, and the costs should be taxed on the higher scale: *Hall* v. *Pilz*, 11 Ont. P.R. 449; *Dominion Bank* v. *Heffernan*, 11 Ont. P.R. 504; and *Forrest* v. *Laycock*, 18 Gr. 611, followed. *Morphy* v. *Fawkes*, 18 Ont. P.R. 24.

—County Court action—Motion to change venue—Appeal.]—The costs of an application to the Master in Chambers, under Rule 1219, to change the place of trial in a County Court action, should be taxed on the County Court scale, but the costs of an appeal in the same matter from the Master's order to a Judge in Chambers and of a further appeal to a Divisional Court, should be taxed on the High Court scale. *Re Hicks* v. *Mills*, 18 Ont. P.R. 123.

—Scale of—Jurisdiction of County Court—Trespass to land—Injunction—Counterclaim—Declaratory judgment.]—Under sec. 23, sub-sec. 8, of R.S.O. ch. 55, a County Court can give a judgment for nominal damages and grant an injunction in an action for trespass to land, where the value of the land does not exceed $200. A counterclaim upon which no relief is given can make no difference as to the jurisdiction of a Court; and *semble*, also, that a judgment declaring a right can be given in a County Court by virtue of sub-sec.

13 of sec. 23, R.S.O. ch. 55. Where an action within the competency of a County Court was brought in the High Court, the successful plaintiff was allowed costs on the County Court scale, with a set-off to the defendants of the excess of their costs over County Court costs. *Fitchett* v. *Mellow*, 18 Ont. P.R. 161.

—Intervention—Saisie-arrêt—Amount governing taxation.]—The intervenant in an action *en séparation de biens* had been condemned to pay $7.50 for costs of an interlocutory proceeding. The attorney *distrayant* issued a *saisie-arrêt* for this amount and the prothonotary taxed the costs of this *saisie-arrêt* as in an action of the second class in the Superior Court. On demand for review of the taxation:—Held, that the costs of the *saisie-arrêt* should be taxed as in a cause in the Circuit Court for $7.50. *Barrette* v. *Beaudry*, Q.R. 12 S.C. 209.

—Penal action—Pleadings—Tariff.]—A penal action to the amount of $200, concluding for imprisonment, should be considered as of the second class of actions in the Superior Court.—In this case the defendant, having pleaded to the form, pleaded to the merits on a request to that effect, producing a defence *en droit* and a defence *en fait;* the cause having been inscribed on the same day on the exception to the form and the defence *en droit*, it was dismissed for defect in form, without adjudication upon the other pleas. In such case it was item 10, and not item 8, of the tariff that was to be applied in taxation of the costs. The fee for the hearing on the merits provided for by item 36 of the tariff should be taxed because the cause had also been pleaded on the defence *en droit*.—In this case the prothonotary had a right to charge the fee allowed him for each copy of a document upon the production on the record of a copy of the security furnished by the plaintiff to go to appeal. *Bernatchez* v. *Vézina*, Q.R. 12 S.C. 495.

—Seizure of Immovable — Opposition.] — The costs on a contestation of an opposition to a seizure of immovables under a judgment of a Justice's Court, are those of a cause of the fourth class in the Superior Court. *Cassivi* v. *Kirouack*, 4 Rev. de Jur. 352.

—County Court—Amount recoverable in Justice's Court.]—Plaintiffs, doing business in St. John County, recovered judgment for $16 in an action in St. John County Court against defendant residing at H., Sunbury County, 40 miles from St. John City, and on a line of railroad. Plaintiffs to prove their case required the attendance of four witnesses, all of whom resided in St. John:—Held, that the plaintiffs were entitled to County Court costs under 60 Vict. N.B., ch. 28 sec. 69. *Kerr* v. *Murphy*, 34 C.L.J. 427.

(f) Set-off.

—Set-off—Solicitor's lien.]—Plaintiffs recovered a judgment in debt in the Supreme Court against R. Two days previously R. executed a bill of sale of all his property to B., and the plaintiffs brought suit to have the bill of sale set aside as a fraudulent preference. A settlement was made by B.; R. being in insolvent circumstances, and leaving the province after the commencement of the suit, no further step after the fyling of the bill was taken by the plaintiffs against him. An application by R.'s solicitor to dismiss the suit for want of prosecution was granted with costs. The plaintiffs now applied to set off their judgment against such costs:—Held, that the lien of R.'s solicitor for his costs was paramount to the equities between the parties, but under the circumstances the application should be refused without costs. *Worden* v. *Rawlins*, 1 N.B. Eq. 450.

COUNSEL.

Solicitor and client—Counsel fees—Right of action for.]—In Ontario a counsel's right of action for his fees for services in the nature of advocacy, is against the client of the solicitor retaining him, and not against the solicitor, unless by special agreement, or when there is evidence of credit having been given to the solicitor alone, or of money in the solicitor's hands to answer the claim; and a solicitor so employing counsel has implied authority to pledge his client's credit for the payment of counsel fees. *Armour* v. *Kilmer*, 28 Ont. R. 618.

—Examination of judgment debtor—Right of, to counsel.]—The examination of a judgment debtor is a personal examination, and he is not entitled to the assistance of counsel to take part in such examination, but he can have counsel to privately advise him. *Bank of Montreal* v. *Major*, 5 B.C.R. 156.

—Retainer by attorney—Authority—Liability of client.]—See ATTORNEY.

—Taxation of counsel fees where notice of trial not given—N.W.T. practice.]—See COSTS, XIX (d).

—Counsel fee—Quantum—Review on appeal.]

See COSTS, XIX (d).

—Criminal law—Improper comment by prosecuting counsel.]—See CRIMINAL LAW, XV.

—Malicious prosecution—Reasonable and probable cause—Advice of counsel.]

See MALICIOUS PROSECUTION.

COUNTER-CLAIM.

See PLEADING, IV.

COUNTY COURTS.

Municipal elections—Quo Warranto—Concurrent motions in High and County Court—Prohibition—Injunction—Collusion.]—By section 219 of the Municipal Act. R.S.O. ch. 223, jurisdiction is given respectively to a Judge of the High Court, the senior or officiating Judge of the County Court, and the Master in Chambers to try the validity of a municipal election, and by sec. 227 when there are more motions than one all the motions shall be made returnable before the judge who is to try the first of them. Two motions by different relators to try the validity of the same election were made returnable, the first of them before the Master in Chambers and the other before the County Judge who, notwithstanding objections, proceeded with the motion before him and decided that the proceedings before the Master in Chambers were collusive, when the County Judge was prohibited from further proceeding by an order made by a judge of the High Court sitting in Chambers:—Held, that the County Court Judge having equal and concurrent jurisdiction in respect of the matter with the other named officials. a Judge of the High Court sitting in Chambers could not under the circumstances prohibit him from proceeding with the trial. Street, J., dissenting. *Semble*, the County Court Judge who, without knowledge of the prior proceedings had granted a fiat for like proceedings, had jurisdiction on the return thereof to inquire whether such prior proceedings were collusive, and if so to disregard them. *In re The Queen ex rel. Hall* v. *Gowanlock*, 29 Ont. R. 435.

—County Court—Order in term—Reversal of verdict—Jurisdiction—Rule 615—Appeal to High Court—R.S.O. c. 55, s. 51.]—In a County Court action tried with a jury, a verdict was found for the defendant and judgment in his favour ordered by the Trial Judge. Upon motion by the plaintiff to set aside the verdict and judgment, and to enter judgment for the plaintiff or for a new trial, the County Court, in Term, made an order setting aside the verdict and judgment, and ordering judgment to be entered for the plaintiff:—Held, that, under the provisions of sec. 51 of the County Courts Act, R.S.O. ch. 55, an appeal by the defendant from the order of the County Court, in Term, lay to a Divisional Court of the High Court. The County Court Judge, in Term, had jurisdiction, under Rule 615, to direct the proper judgment upon the evidence to be entered, for he had before him all the materials necessary to finally determine the questions in dispute. *Donaldson* v. *Wherry*, 29 Ont. R. 552.

—Jurisdiction of County Court—Trespass to land—Injunction—Counterclaim—Declaratory judgment.]—Under sec. 23, sub-sec. 8, of R.S.O. ch. 55, a County Court can give a judgment for nominal damages and grant an injunction in an action for trespass to land, where the value of the land does not exceed $200. A counterclaim upon which no relief is given can make no difference as to the jurisdiction of a court; and *semble*, also, that a judgment declaring a right can be given in a County Court by virtue of sub-sec. 13 of sec. 23, R.S.O. ch. 55.—Where an action of the proper competency of a County Court was brought in the High Court, the successful plaintiff was allowed costs on the County Court scale, with a set-off to the defendants of the excess of their costs over County Court costs. *Fitchett* v. *Mellow*, 18 Ont. P.R. 161.

—Judgment—Application for leave to issue execution on—County Court—Stay of proceedings—Supreme Court.]—Plaintiff conveyed a piece of land to the defendant M. (*a*) in trust to secure payment of a debt, (*b*) on certain trusts for plaintiff's children. The debt having been paid, and the trusts in favour of the children revoked, plaintiff requested reconveyance of the land, and, on defendant's refusal, obtained a decree for that purpose. After the making of the decree, L. M., a brother of the defendant M., in consideration of $25, obtained an assignment from R. of a judgment recorded in the County Court against plaintiff for the sum of $222.38, and made application to the judge of the Court for leave to issue execution. The judge of the County Court, having directed issues to be tried before him, plaintiff applied for a declaration that the purchase of the judgment by L. M. was made for and in collusion with M., a decree entitling plaintiff to have said judgment discharged, on payment of the sum of $25 and interest, and a decree restraining L. M. from proceeding further with the application before the judge of the County Court. It appearing that this Court had power and jurisdiction to deal finally with the questions involved, while only two of the parties were parties to the proceedings before the County Court, and there was some doubt as to the power of that Court to give full and complete relief, and it appearing further that both time and expense would be saved by having the matter dealt with in this Court:—Held, that plaintiff was entitled to an order staying proceedings in the County Court. *Clattenburg* v. *Morine*, 30 N.S.R. 221.

County Court—Practice and procedure—Ex parte judgment set aside—Costs—Acts 1889, c. 9. ss. 26-54.]—Sec. 26, ch. 9, Acts of 1889, enacts that, "The pleadings, practice, process, forms and procedure of the Supreme Court, for the time being, as embodied in the Judicature Act, and amendments thereof, and the orders and rules therein now in force . . . . . shall apply to and extend to the County Court . . . . except as the same may be modified and limited by this Act. Sec. 54 provides that ". . if any cause when called is not tried, either party shall be at liberty to move the Court on the last day of said term . . . . that the judgment below be affirmed or reversed, as the case may be,

with costs . . . . " On appeal from the decision of the Stipendiary Magistrate in favour of defendant, defendant was not present when the case was called for trial in the County Court, and plaintiff called witnesses and took judgment *ex parte:*—Held, that the practice of the Supreme Court, which otherwise would have been applicable, was modified in this case by the provision contained in sec. 54, and that, under that section, it was the duty of plaintiff to have moved on the last day of term. The County Court Judge having refused to set aside the judgment for plaintiff:—Held, that he was wrong in doing so, and that the judgment must be set aside, but, as plaintiff undertook to try the case on the merits, that no costs of the appeal should be allowed, except the cost of printing; defendant's costs on the summons to be costs in the cause. *Fillis* v. *Conrod*, 30 N.S.R. 441.

—Jurisdiction of—Equitable relief in County Courts, extent of.]—County Courts in Manitoba have no jurisdiction to rectify written instruments for fraud or mistake, or to entertain an action for the recovery of money paid under the strict terms of such an instrument. The provision in sec. 70 of the County Courts Act, that the judge "may make such orders, judgments or decrees thereupon as appear to him just and agreeable to equity and good conscience," applies only to orders and decrees in actions within the jurisdiction of the Court as defined by section 60, and deals only with the practice and procedure in such actions at the trial, and section 60 only gives jurisdiction in personal actions, which constitute one of the three divisions into which civil actions maintainable in the old common law Courts were divided, and the expression cannot be construed to include a claim to reform or cancel a deed for fraud or mistake. The plaintiff had, by mistake, given the defendants a chattel mortgage for an amount larger than he really owed them. Under threat of seizure he afterwards paid the full amount mentioned in the mortgage, and then brought this action to recover the excess:—Held, that the County Court has no jurisdiction to entertain such an action, and a non-suit should be entered: *Foster* v. *Reeves*, [1892], 2 Q.B. 255; *Ahrens* v. *McGilligat*, 23 U.C.C.P. 171, followed, *Crayston* v. *Massey-Harris Co.*, 12 Man. R. 95.

—Appeal—County Courts Act, s. 315—59 V., c. 3, s. 2—Amount in question.]—Held, that on an appeal from a judgment of a County Court the judge appealed to might review the evidence with the view of determining the value of the property in question; that such value in the present case was less than $20; and that under sec. 315 of the County Courts Act, as amended by 59 Vict., ch. 3, s. 2, the plaintiff was not entitled to appeal, and that the appeal should be dismissed with costs: *Aitken* v. *Doherty*, 11 Man. R. 624, followed. *Douglas* v. *Parker*, 12 Man. R. 152.

—County Courts Act, R.S.M., c. 33, s. 67—Counter claim—Jurisdiction—Transfer to Queen's Bench.]—A defendant in an action in the County Court who enters a defence by way of counter claim for an amount beyond the jurisdiction of the Court without abandoning the excess is not entitled as of right to have the action transferred to the Queen's Bench, where there is nothing in the nature of the counter claim which puts it outside the jurisdiction of the County Court except the amount. Under section 67 of The County Courts Act, R.S. Man., ch. 33, the excess in amount must either be deemed to be abandoned or the counter claim as improperly put in for the larger amount, and in neither case can the defendant be entitled to the transfer. *McIlroy* v. *McEwan*, 12 Man. R. 164.

—Appeal from County Court—Abandonment of right to appeal—Amount in question—R.S.M., c. 33, s. 315, and 59 V., c. 3. s. 2.]—A defendant in a County Court suit against whom a writ of attachment has been issued does not lose his right to appeal from the County Court Judge's order refusing to set it aside by proceeding to the trial of the action in the County Court, by applying for a new trial after a verdict against him, by proceeding with such new trial and calling and examining witnesses, by taking out and serving the order against which he wishes to appeal, or by delay in taking out and serving the order when no objection that the appeal proceedings had been begun too late is taken by the notice of motion. The plaintiff's claim was for $70.70, but he only recovered judgment at the first trial for $47.70 and costs. This was set aside and a new trial granted when defendant commenced the appeal proceedings. At the second trial the plaintiff had a verdict for $67.50:—Held, that the appeal was rightly brought to the Full Court under R.S.M., ch. 32, sec. 315 as re-enacted by 59 Vict., ch. 3, sec. 2. *Hutchinson* v. *Colby*, 12 Man. R. 307.

—Local Judge of Supreme Court—Jurisdiction in action—Domiciled outside his County Court district.]—A County Court Judge sitting as Local Judge of the Supreme Court, has under the statutes and rules, jurisdiction to make orders in actions in the Supreme Court, pending outside the territorial limits of his jurisdiction as a County Court Judge.—*Postill* v. *Traves*, 5 B.C.R. 374.

—Leave to appeal to Manitoba Queen's Bench—Security for costs—Evidence of same being permitted.] See APPEAL, XIII (g).

—Costs—Scale of in County Court—Motion to change venue—Appeal.]—See COSTS, XIX (e).

COURT HOUSE AND GAOL.

Municipal corporation—Statute, construction of—55 V., c. 42, ss. 397, 404, 469, 473 (Ont.)—City separated from county—Maintenance of court house and gaol—Care and maintenance of prisoners.]—*County of Carleton* v. *City of Ottawa*, 28 S.C.R. 606.

COVENANT.

Restraint of trade—Breach—Assignment of interest pendente lite—Right to continue action.]—Upon the plaintiffs becoming the holders of shares in an incorporated trading company, they made an agreement with the defendant, who had formerly been the owner of these shares, by which he was employed as manager of the business and given a right to repurchase the shares, and by which he covenanted, among other things, that, if the agreement should be terminated, he would not "become connected in any way in any similar business carried on by any person or persons, corporation or corporations," in the same municipality. The agreement was terminated about six months later, and about a year after its termination the defendant's son began to carry on a similar business in the same municipality. The defendant, without having any pecuniary interest in this business, and not being employed or paid by his son, but apparently moved solely by a desire to help his son's business, introduced him to customers of the company, and solicited orders for him from them:—Held, that in order to establish a breach of the covenant, a legal contract of some sort between the defendant and his son must be shewn, and, failing such a contract, it could not be said that the defendant was "connected in any way" with his son's business within the meaning of the covenant.—Pending this action, which was brought to restrain the defendant from committing breaches of his agreement, the plaintiffs sold their shares in the company and ceased to have any interest in its affairs, but verbally agreed with the vendees to continue the action, and accordingly brought it to trial:—Held, that from the time the plaintiffs sold their shares they ceased to have any right to relief under the covenant. *Semble*, that the benefit of the covenant would be assignable along with the shares. *Roper* v. *Hopkins*, 29 Ont. R. 580.

—Breach of covenant for quiet possession—Rectification of deed—Express warranty—Evidence.]—Plaintiff claimed damages for breach of covenant for quiet possession and warranty in relation to several lots of land alleged to be contained in a deed from defendant to plaintiff. Defendant counterclaimed to have the deed rectified on the ground that the intention of the parties was to convey the interest of defendant alone in the land in question. The evidence shewed that, at the time the deed was given, defendant was the owner of four undivided sixths of the land, the remaining two-sixths being owned by E. S. and L. S., respectively. Also that, after the making of the deed by defendant, plaintiff purchased from E. S. her one-sixth interest and endeavoured to purchase the one-sixth interest owned by L. S. The interest of L. S. was conveyed to A., who commenced an action for partition, which was the breach of warranty relied on:—Held, that as the deed did not carry out the real intention of the parties, the trial judge was right in directing it to be rectified so as to convey the interest of defendant alone in the lots described. That as the deed contained an express warranty, no other covenant on the same subject could be implied. Quære, whether an action for breach of covenant would lie on a warranty in a freehold conveyance, the warranty being a general one:—Held, also, that assuming an action would lie in this case for breach of covenant for quiet possession or warranty, no sufficient breach had been proved, the alleged disturbance of possession not having been made by defendant, or any one claiming under him. *Schnare* v. *Zwicker*, 31 N.S.R. 177.

—Express and implied covenants.]—An express covenant overrides and excludes an implied covenant. *Rithet* v. *Beaven*, 5 B.C.R. 457.

—Corporation sole—Covenant for self and heirs—Whether successors bound by mortgage.]—A covenant by a corporation sole, described in his corporate capacity, expressed to be on behalf of himself, his heirs, executors and administrators, will not bind his successors in office. *Paris* v. *Bishop of New Westminster*, 5 B.C.R. 450.

—Physician—Sale of practice—Restraint of trade—Condition precedent—Waiver—Registration under N.B. Medical Act.]

See CONTRACT, XII.

CRIMINAL LAW.

I. ARREST, 127.
II. ASSAULT, 127.
III. CAPACITY TO COMMIT CRIME, 128.
IV. COMMITMENT, 128.
V. CORONER'S INQUEST, 129.
VI. COURT OF APPEAL, 129.
VII. EVIDENCE, 129.
(*a*) *Admissibility*, 129.
(*b*) *Intent*, 131.
(*c*) *Res Gestae*, 132.
(*d*) *Specific Offences*, 132.
VIII. EXTRADITION, 132.
IX. GAMING, 133.
X. LIBEL, 133.
XI. MAGISTRATES, 133.
XII. MENACES AND THREATS, 133.
XIII. NON-SUPPORT OF WIFE, 135.
XIV. PEREMPTORY CHALLENGES, 136.
XV. PRACTICE AND PROCEDURE, 136.
XVI. RESERVED CASE, 140.
XVII. SPEEDY TRIAL, 141.
XVIII. SUMMARY TRIAL, 141.
XIX. SUNDAY OBSERVANCE, 142.
XX. SUSPENSION OF CIVIL REMEDY, 142.
XXI. TRIAL, 142.
XXII. VAGRANCY, 142.

I. Arrest.

—False arrest—Detention of person without warrant on charge of larceny—Damages.]—A constable in the service of a municipality is not justified in taking a person into custody and depriving him of his liberty, on a criminal charge, without any sworn complaint having been made, and without a warrant issued by competent authority—more especially where there was no reason to suspect that he would attempt to evade arrest. Unsworn statements made to the officer, to the effect that the person had committed a larceny on the previous day, are insufficient. But where the officer has acted in good faith, and on information which excuses him to some extent, these facts should be taken into consideration in the award of damages. *Mousseau* v. *City of Montreal*, Q.R. 12 S.C. 61.

II. Assault.

—Indecent assault—Evidence—Specific acts of impropriety.]—In an action for damages for indecent assault evidence of the general reputation for unchastity of the plaintiff is admissible, but evidence of specific acts of impropriety is not. *Gross* v. *Brodrecht*, 24 Ont. A.R. 687.

—Aggravated assault—Civil action barred by conviction—Crim. C. 262, 783 (c), 864, 866.]—A conviction upon a charge of aggravated assault tried by a magistrate under sec. 783 (*c*) of the Criminal Code, with the consent of the accused, and the payment of the fine thereby imposed, will constitute a bar to a civil action for damages for such assault. The word "assaults" in sec. 864, Criminal Code, which authorizes a summary trial, unless the person aggrieved or the person accused objects, must be taken to include aggravated as well as common assaults. The injury to clothing or loss of property from the person by reason of the assault does not constitute a cause of action distinguishable from the civil action for assault, and any claim in respect of such injury or loss will likewise be barred where sec. 866 Criminal Code applies. *Hardigan* v. *Graham*, 1 Can. C.C. 437.

—Bodily harm—Civil action not barred by conviction—Crim.C. 262, 864,866.]—1. A conviction upon a charge of assault occasioning bodily harm tried summarily by a magistrate with the consent of the accused and the undergoing of the punishment imposed do not constitute a bar to a civil action for damages for the assault. Sec. 866, Crim. Code, applies to bar the civil action, only where the charge is triable summarily under sec. 864 without regard to the consent of the accused, and does not have that effect where the charge is under sec. 262 for the indictable offence of assault causing actual bodily harm. *Nevills* v. *Ballard*, 1 Can. C.C. 434.

—Consent to fight—Effect of, on offence of assault.] The crime of assault may be committed though the party assaulted may have consented to fight: *The Queen* v. *Coney*, 8 Q.B.D. 534 followed. *The Queen* v. *Buchanan*, 12 Man. R. 190.

III. Capacity to Commit Crime.

—Unnatural offence—Boy under 14 years of age held incapable of committing—Assault—Code s. 260.]—Defendant, a boy under the age of fourteen years, was tried before the Judge of the County Court for the County of Halifax and convicted of the crime of committing an unnatural offence upon the person of a younger boy:—Held, that at common law (which in this particular was unchanged by anything in the Criminal Code), defendant was incapable of committing the offence charged, and that the conviction must, therefore be set aside. (*Per* Ritchie, J.):—Held, that, if the act was committed against the will of the other party, defendant then could be punished for an assault under sec. 260 of the code. *The Queen* v. *Hartlen*, 30 N.S.R. 317.

IV. Commitment.

—Warrant of commitment—False statement—Crim. C., s. 365.]—A warrant of commitment for making a false statement under sec. 365 of the Criminal Code, which states that the prisoner made, circulated and published the statement in question while he was the president and manager of the company, without alleging that he was a director, is legal and sufficient. *Ex parte Gillespie*, Q.R. 7 Q.B. 422.

—Form of Commitment—Description of justices—Habeas corpus.]—A commitment for trial must contain a sufficient description of an indictable offence. Thus, a commitment charging the offender with having verbally threatened to burn the complainants' haystack and buildings will be quashed.—A commitment signed by justices of the peace purporting to act as justices of the peace in and for the County of Labelle will be quashed, as no justices are appointed with such a designation, and as they should have acted as justices of the peace in and for the District of Ottawa.—On a writ of *habeas corpus* based upon the insufficiency of the commitment, the committing justices may furnish the gaoler with a legal warrant and so defeat the writ. *Ex parte Welsh*, 4 Rev. de Jur. 437.

—C.C., ss. 270, 540—Rape—Girl under fourteen—General Gaol delivery.]—The County Courts of New Brunswick are not Courts of Oyer and Terminer and general gaol delivery; therefore the Court refused to discharge, on *habeas corpus*, a prisoner who had been committed for trial for an offence against the provisions of the Criminal Code, 1892, sec. 270.—Quære: Whether the Criminal Code, 1892, sec. 540, relating to the jurisdiction of County Courts in criminal matters, is not *ultra vires;* also: whether rape can be committed on a girl under fourteen years of age. *Ex parte Wright*, 34 N.B.R. 127.

—Contempt of Court—Publication tending to influence litigation—Evidence.]—Contempt of Court being a criminal offence, on the hearing of an application to commit nothing will be inferred, and it is necessary to prove the charge with particularity. *In re Scaife*, 5 B.C.R. 153.

V. CORONER'S INQUEST.

—Evidence of accused at inquest—Subsequent proceedings—Deposition in.]—A coroner has no right in proceeding to an *enquête*, to demand before the verdict a declaration from a person whom he may accuse or suspect of a crime, and whom he has caused to be arrested in his capacity of justice of the peace.—A deposition taken in a Coroner's Court is not admissible in evidence against the deponent in criminal proceedings subsequently taken against him. *The Queen* v. *Lalonde*, Q.R. 7 Q.B. 204.

And see CORONER.
" " hereunder, VII.

VI. COURT OF APPEAL.

—Ont. Court of Appeal for criminal cases—Comity—Stare decisis.]—As the Court of Appeal for criminal cases is now constituted, the decision of the judges of one Court is not binding on judges sitting as another Court of co-ordinate jurisdiction. *The Queen* v. *Hammond*, 29 Ont. R. 211.

VII. EVIDENCE.

(*a*) *Admissibility.*

—Coroner's inquest—Evidence voluntarily given—Admissibility at subsequent criminal trial—56 V., c. 31, s. 5 (D.)]—The depositions of a witness taken at a coroner's inquest without objection by him that his answers may tend to criminate him, and who is subsequently charged with an offence are receivable in evidence against him at the trial. *Regina* v. *Hendershott and Welter*, 26 O.R. 678, overruled. *The Queen* v. *Williams*, 28 Ont. R. 583.

—Murder—Poisoning—Design—Evidence—Admissibility—Death of former husband of prisoner.]—Upon the trial of the prisoner for the murder of her husband, who was living with and attended by her in his last illness, it was proved that his death was due to arsenical poisoning. In order to shew that the poisoning was designed and not accidental, the Crown offered evidence to prove that a former husband of the prisoner had been taken suddenly ill after eating food prepared by her, and that the circumstances and symptoms attending his illness and death were similar to those attending the illness and death of the second husband, and that such symptoms were those of arsenical poisoning:—Held, that the evidence was admissible. *The Queen* v. *Sternaman*, 29 Ont. R. 33.

—Evidence—Criminating questions—Privilege—Canada Evidence Act, 1893—Res gestæ—Rejected applications for insurance—Coroner's Court—Court of Appeal in Criminal Cases—Res judicata—56 V., c. 31 (D.).]—Sec. 5 of the Canada Evidence Act, 1893,, 56 Vict., ch. 31 (D.), which abolishes the privilege of not answering criminating questions, and provides that no evidence so given shall be receivable in evidence in subsequent criminal proceedings against the witness, other than for perjury in respect thereof, applies to any evidence given by a person under oath, though he may not have claimed privilege. *Regina* v. *Williams* (1897), 28 O.R. 583, not followed. On a charge of wife murder, the Crown sought to prove that the prisoner had been with evil design accumulating insurance on his wife's life:—Held, that evidence of various applications for insurance, though in some cases resulting in rejection of the risk, was admissible, all being made practically at the same time and forming part of one transaction which could be properly given in evidence as a whole.—The Coroner's Court is a criminal Court.—As the Court of Appeal for criminal cases is now constituted, the decision of the judges of one Court is not binding on judges sitting as another Court of co-ordinate jurisdiction. *The Queen* v. *Hammond*, 29 Ont. R. 211.

—Admissions of prisoner—Inducement—Deposition at coroner's inquest—Evidence of person accused but not indicted or tried jointly with prisoner—Secondary evidence.]—Admissions obtained from the accused, after representations made to her by persons in authority, to the effect that the evidence was very strong against her, that another person, who was her lover, was suspected, and that she knew something about the murder and would do well to speak, are not inadmissible as not being made voluntarily, or as being procured by threat or inducement.—Under the Canada Evidence Act (1893), a deposition given at a coroner's inquest is inadmissible in evidence against the deponent in a criminal proceeding subsequently instituted against him. *The Queen* v. *Lalonde*, Q.R. 7 Q.B. 204 referred to. Where a witness, although accused of having been a party to the crime, has not been indicted jointly with the prisoner at the bar, and is not being tried jointly with the latter, his evidence is admissible for the prosecution.—Secondary evidence of the contents of letters, of which one of the witnesses for the Crown had taken cognizance, is inadmissible, where it is not proved that it was impossible to produce the letters themselves, or even that such letters ever existed. *The Queen* v. *Viau*, Q.R. 7 Q.B. 362.

—Criminal law—Evidence—Improper admission of—Whether miscarriage thereby—Code, s. 746.]—Under section 746 of the Code, the improper admission of evidence at a criminal trial cannot be said in itself necessarily to

constitute a wrong or miscarriage, but it is a question for the Court upon the hearing of any appeal, whether in the particular case it did so or not: *Makin* v. *A.G. for N.S.W.* [1894], A.C. 57, distinguished; *The Queen* v. *James Woods*, 5 B.C.R. 585.

—Dying declaration—Belief of impending death—Subsequent hope of recovery—Irrelevancy of.] —On an indictment for murder, a dying declaration of the deceased that he was shot in the body and was "going fast," indicates a settled and hopeless consciousness that he was in a dying state and his declaration is admissible in evidence.—In deciding the preliminary question as to whether the deceased was under a sense of impending death, so as to allow evidence of his dying declaration to be admitted, the trial judge must have regard to the whole of the surrounding circumstances, including the nature and extent of the gun charge and the immediate result of the wound.—Per Weatherbe, J. A dying declaration is not admissible if there existed in the mind of the party making it a hope of recovery or a hope of escape from almost immediate death; but if there is a firm, settled expectation by deceased of impending death and no hope of recovery remaining in his mind, the declaration is admissible, although such belief was the result of panic and not well founded.—Per Henry, J.—The fact, that the person making a dying declaration subsequently entertains a hope of recovery, is irrelevant, except in so far as it may be evidence of his state of mind at the time of the declaration. *The Queen* v. *Davidson*, 1 Can. C.C. 351.

(b) Intent.

—Demanding property with menaces—Criminal Code, 1892, s. 404—Intent to steal—Evidence.] —By sec. 404, Criminal Code, 1892, "Every one is guilty of an indictable offence and liable to two years' imprisonment who, with menaces, demands from any person, either for himself or for any other person, anything capable of being stolen with intent to steal it." The defendant was convicted by a magistrate of an offence against this enactment. The evidence was that the defendant went, as agent for others, to the complainant's abode to collect a debt from him; that the defendant threatened the complainant that if the latter did not pay the debt, he would have him arrested; that the defendant demanded certain goods, part of which had been sold to the complainant by the defendant's principals, and on account of which the debt accrued, but upon which they had no lien or charge; and the complainant, as he swore, being frightened by the threats and conduct of the defendant, acquiesced in the demand for the goods, part of which the defendant took away and delivered to his principals, who themselves took the remainder. The defendant swore that he demanded and took the goods as security for the debt which he was seeking to collect; but the complainant said nothing as to this: —Held, that there was no evidence of intent to steal. *The Queen* v. *Lyon*, 29 Ont. R. 497.

(c) Res Gestæ.

—Bodily harm—Lost depositions—Evidence as to statements made—Res gestæ—New trial.]—Defendant was indicted, tried and convicted for an assault committed upon S., causing actual bodily harm. At the trial, counsel for defendant, who gave evidence on his own behalf, proposed to ask certain questions with the view of shewing that E. W. T., one of the principal witnesses for the prosecution, when examined before the committing magistrate, had made statements at variance with her testimony as given upon the trial of the indictment. The depositions taken before the magistrate, including that of E. W. T., were admitted to have been lost. The trial judge having rejected the evidence:—Held, that he erred in doing so, and that there should be a new trial. The statement proposed to be given in evidence was one made by the witness as to what she and the accused said at the time the assault was alleged to have been committed:—Held, that this was material to the matter in issue, and part of the *res gestæ*, and could be contradicted under the statute. Code, ss. 700-701. *The Queen* v. *Troop*, 30 N.S.R. 339.

(d) Specific Offences.

—Seduction—Corroboration—Cr. Code 684.] —1. The corroborative evidence "implicating" the accused which is made necessary by Criminal Code, sec. 684, to sustain a charge of seduction of a girl under sixteen may consist of the prisoner's admission made after she attained sixteen that he had had connection with her.—A statement made by the accused before he was charged with the offence that he had been advised that if he could get the girl to marry him he would escape "punishment," is corroborative evidence "implicating" the accused and proper to be considered by a jury or by a judge exercising the functions of a jury. *The Queen* v. *Wyse*, 1 Can. C.C. 6.

—Trade mark—Falsely applying—Proprietor's assent—Onus of proof—Cr. Code 446, 447, 710.] —On a charge of falsely applying a trade mark the onus of proving that the assent of the proprietor of the trade mark has not been given is upon the prosecution.—Criminal Code, sec. 710, applies only to cases of forgery of a trade mark and not to cases of "falsely applying," to shift the onus to the defendant of proving such assent. *The Queen* v. *Howarth*, 1 Can. C.C. 243.

VIII. EXTRADITION.

—Offence referred to by wrong name—Theft—Larceny.]—Where there is evidence of the commission of an act which is recognized as a crime by the law of Canada and the law of the country demanding the extradition of the accused person, extradition will lie,

though in the proceedings therefor the offence is referred to by a wrong name.—Larceny is, by the Ashburton Treaty, the Convention of 1889, and the Extradition Act, specified as a crime for which extradition to the United States will lie, but larceny is not, by that name, recognized as a crime by the Criminal Code, 1892, the terms there used to describe the same offence being "theft" or "stealing":—Held, that where there was evidence of the commission of the crime of theft the prisoner should be held for extradition, although in the proceedings for extradition the offence was described as larceny. *In re Gross*, 25 Ont. A.R. 83.

—Embezzlement—Proof of offence—Depositions—Hearsay—Admissions of accused—Foundation for.]—*In re Ockerman*, 18 C.L.T. Occ. N. 163.

IX. Gaming.

—Sale of betting privileges on race course—Illegality—Crim. Code, s. 204—Incorporated Association.]—The object of the Legislature in enacting the latter part of sub-sec. 2 of sec. 204 of the Criminal Code apparently was to reserve the race courses of incorporated associations to places where bets might be made during the actual progress of race meetings, without the bettors being subject to the penalties of that section. An agreement for the sale of betting and gaming privileges at a race meeting by an incorporated association, who are the lessees of an incorporated association, the owners of the race course, is not illegal. *Stratford Turf Association* v. *Fitch*, 28 Ont. R. 579.

X. Libel.

—Defamatory publication—Malice—Justification—Truth of imputations—Public interest—Several libels in one article.]

See Libel and Slander, V.

XI. Magistrate.

—Excess of jurisdiction—Adjournment of hearing—Crim. Code, s. 857—Prohibition—License Law, Art. 1074.]—Notwithstanding the provisions of Art. 1074 of the Quebec License Law, a writ of prohibition may be granted if a magistrate exceeds his jurisdiction in a criminal case.—His jurisdiction is exceeded if the magistrate hears one of the parties and pronounces sentence on a day to which the hearing had not been adjourned pursuant to section 857 of the Criminal Code. *Therrien* v. *McEachern*, 4 Rev. de Jur. 87.

And see Justices of the Peace.

XII. Menaces and Threats.

—Demanding money with intent to steal—Menaces.]—The prisoner was convicted under sec. 404 of the Criminal Code, 1892, of having demanded money of the prosecutor with menaces with intent to steal the same, and a case was reserved for the opinion of the court on the question, whether the evidence was sufficient to prove the crime charged. The prisoner had demanded $75 from the prosecutor under threat of having him prosecuted for an infraction of the Liquor License Act:—Held, that any menace or threat that comes within the sense of the word menace in its ordinary meaning, proved to have been made with the intent to steal the thing demanded, would bring the case within sec. 404, and that it need not be one necessarily of a character to excite alarm, but it would be sufficient if it were such as would be likely to affect any man in a sound and healthy state of mind; and the question, whether there was the intention to steal the money demanded, is one of fact and not of law: *Reg.* v. *Smith*, 4 Cox C.C. 42; *Reg.* v. *Robertson*, L. & C. 483; *Reg.* v. *Tomlinson*, 18 Cox C.C. 75, followed. *Reg.* v. *McDonald*, 8 Man. R. 491; and *Rex* v. *Southerton*, 6 East, 126, doubted. *The Queen* v. *Gibbons*, 12 Man. R. 154.

—Threatening letter—Prima facie case—Comparison of handwriting—Evidence enabling jury to convict.]—Defendant was tried on a charge of sending a threatening letter to McD. The letter, which purported to be signed by defendant, was to the effect that defendant was in possession of evidence upon which he could have McD. fined for selling liquor after hours, and concluded with the words "now if you like to settle the account between us it will be all right, send me a receipt for the amount by the morning and all is well, otherwise you know what to expect." The evidence for the prosecution consisted of a letter, admitted to have been written by defendant, in which B., the inspector of licenses, was informed of the sale of liquor after hours by McD., a statement of the clerk who took the evidence on the trial of the charge that, on that occasion, defendant was shown the letter upon which the present prosecution was based, and was examined in reference to it; and a statement by B. that, after his arrest, he had a conversation with defendant, in which the latter said he had written McD. a letter "that if he would square up some matter between them all would be well; otherwise he would inform against him." On this evidence the learned trial judge received the letter tendered by the prosecution, being of the opinion that a *prima facie* case had been made out. Subsequently, evidence was given by one of the witnesses called for the defence, showing that the letter defendant was accused of sending to McD. was the letter which the latter's counsel produced on the occasion of the former trial, and in reference to which defendant was then examined. The trial judge, in charging the jury, after all the evidence was in, allowed them to compare the letter admitted to have been written by defendant with the letter in dispute, and to draw their own conclusion from the comparison of the two:—Held, that he was justified in doing so. That the prisoner's admission that he had written a threatening letter to the prosecutor, the identi-

fication of the particular letter in the conversation with the license inspector, the examination of defendant in reference to the letter on the former prosecution, and the fact that the threat made had been actually carried out, furnished sufficient evidence to enable the jury to convict. That all that is necessary to entitle a jury to compare a doubtful or disputed writing with one admitted to be genuine, is that the two writings should be in evidence for some purpose in the cause. Assuming that the trial judge erred in receiving the disputed writing at the close of the case for the prosecution, that the evidence given subsequently clearly identified it, and connected defendant with it, and justified its submission to the jury. That a document once having been received, is before the court at every subsequent stage of the cause, and there is no necessity for tendering it a second time. That the reception of the letter by the judge did not necessarily imply that the defendant had written it, or that it contained the elements necessary to show defendant's guilt. These were questions exclusively for the jury. That defendant's guilt being evident, there was no substantial wrong or miscarriage of justice, and no reason for quashing the conviction or awarding a new trial. That, if the letter had been tendered a second time, in view of the evidence given subsequently, the trial judge would have been bound to receive it, and the question therefore resolved itself into a mere matter of form, not involving any question of substance.—Per Weatherbe, and Henry, J.J.:—Held, that the trial judge erred in receiving the letter when he did, in the absence of proof of handwriting, and that it was improperly submitted to the jury. Per Weatherbe, J.:—Held, that no handwriting can be compared by the jury unless it has first been received in evidence, on *prima facie* evidence of admission of handwriting:—Held, also, that where a conviction depends upon proof of handwriting by comparison, the comparison must be made in open court. Per Henry, J.:—Held, that, assuming that the letter was improperly admitted in the first instance, evidence received subsequently could not justify its being submitted to the jury, unless, after the giving of the additional evidence, it was tendered or received a second time. Assuming that there was no ground for receiving the letter at the time it was received, and that the adjudication made by the trial judge at that time was wrong, the fact that other evidence was given later, upon which he might have made a good adjudication, was immaterial. That whether the accused should have been convicted on other evidence, independently of the letter, was a question for the jury, and should not have been submitted for the opinion of the court. *The Queen* v. *Dixon*, 29 N.S.R. 462.

XIII. Non-Support of Wife.

—Crim. Code, s. 210—Neglect to support wife—Former marriage—Proof of death of first husband.] —The defendant, on the complaint of his wife, was convicted under sub-sec. 2 of sec. 210 of the Code, of refusing to provide necessaries for her. The evidence shewed the parties were married in 1890, but that the complainant had been married to another person in 1886, though she had never lived with him; that in 1888 she had received a letter stating he was dying in the United States, and that that was the last she heard of him, save that about a year after her marriage to the defendant she again heard that he was dead. No further proof of the death of the first husband was given:—Held, that there was evidence to go to the jury of the death of the first husband and that the defendant was properly convicted. *The Queen* v. *Holmes*, 29 Ont. R. 362.

XIV. Peremptory Challenges.

—Criminal procedure—Trial—Peremptory challenge—Withdrawal of.]—A peremptory challenge once taken, is counted against the party making it and cannot afterwards be withdrawn. *The Queen* v. *Lalonde*, Q.R. 7 Q.B. 201.

—Criminal procedure—Trial—Peremptory challenges—Joint indictments.] — Where several persons are jointly indicted and jointly tried, the Crown is restricted to the number of peremptory challenges allowed in the case of a trial of a single person. *The Queen* v. *Lalonde*, Q.R. 7 Q.B. 260.

XV. Practice and Procedure.

—Summary conviction—Appeal—County Judge—Costs Sessions—52 V., c. 43 (D.)—Cr. Code, ss. 879, 880—High Court—Prohibition.] — On an appeal to a County Judge from a summary conviction under the Act to provide against frauds in the supplying of milk to cheese, butter and condensed milk factories (52 Vict., ch. 43, sec. 9), the judge has the same powers to award costs as the Sessions of the Peace under secs. 879-880 of the Criminal Code (55-56 Vict., ch. 29 (D.).—Under the Criminal Code, sec. 880, the Court may, on appeal, award such costs, including solicitor's fee, as it may deem proper and there is no power in the High Court to review such discretion. *The Queen* v. *McIntosh*, 28 Ont. R. 603.

—Larceny from person—Sentence—Police magistrate—Jurisdiction—Consent—Cr. Code ss. 344, 783, 785, 787.]—The prisoner consented to be tried, and was tried and convicted, by the police magistrate for a city, for stealing a purse containing $3.48 from the person, and was sentenced to three years' imprisonment:—Held, upon the return of a *habeas corpus*, that the offence was an indictable one under sec. 344 of the Criminal Code, whether or not it fell also under the provisions of secs. 783 and 787, and was punishable by imprisonment for any period up to fourteen years, and the magistrate had jurisdiction by virtue of sec. 785. *The Queen* v. *Conlin*, 29 Ont. R. 28.

—**Conviction—Order Nisi to quash—Death of prosecutor after—Effect of.**]—The death of the prosecutor, who is also informant, after a summary conviction, before the service on him of an order *nisi* to quash, does not prevent the Court from dealing with the matter and from quashing the conviction. *The Queen* v. *Fitzgerald*, 29 Ont. R. 203.

—**Indictment for rape—Conviction of common assault—Time within which complaint laid—Code, sec. 841.**]—A person indicted for rape may be found guilty of common assault, notwithstanding the complaint or information is not laid within six months under section 841 of the Criminal Code. *The Queen* v. *Edwards*, 29 Ont. R. 451.

—**Crim. Code section 448—Prosecution for False Trade Description—Procedure.**]—A prosecution under section 448 of the Criminal Code for selling goods to which a false trade description is applied must be by indictment. Prohibition granted to restrain summary proceedings before a magistrate. *The Queen* v. *The T. Eaton Co., Ltd.*, 29 Ont. R. 591.

—**Procuring female for prostitution—Commitment—Recital of invalid conviction—Duplicity—Crim. Code, ss. 185, 800—Habeas corpus—Court of Record—R.S.O. c. 83, s. 1.**]—A commitment of the defendant to gaol recited a conviction for "unlawfully procuring or attempting to procure a girl of seventeen years to become, without Canada, a common prostitute, or with intent that she might become an inmate of a brothel elsewhere":—Held, that the commitment was bad on its face, as it recited a conviction which was invalid for duplicity and uncertainty. The commitment, although it alleged a conviction, could not be supported under sec. 800 of the Criminal Code, because there was not a good and valid conviction to sustain it; the conviction returned being that the prisoner, at H., etc., did unlawfully procure a girl of seventeen years, I.D., to become, without Canada, an inmate of a brothel, to wit, a brothel kept by the prisoner at L., in the State of New York, one of the United States of America; which did not come within any of the provisions of sec. 185 of the Code.—The words "a Court of Record" in the exception in sec. 1 of the Habeas Corpus Act, R.S.O. ch. 83, include only Superior Courts of Record, and do not include a Magistrate's Court exercising the power conferred by sec. 785 of the Criminal Code. *The Queen* v. *Gibson*, 29 Ont. R. 660.

—**Criminal procedure—Information—Common gaming house.**]—An information charging the defendant with having "unlawfully kept a disorderly house, that is to say, a common gaming house," is sufficient in law. *The Queen* v. *France*, Q.R. 7 Q.B. 83.

—**Libel—Indictment—Sufficiency of.**]—An indictment which does not set up in the statement of the charge all the essential ingredients is defective and cannot be sustained. —An indictment charging the publication of a defamatory libel, which does not state that the accused intended to injure the reputation of the libelled person, and to bring him into public contempt or ridicule, or to expose him to public hatred, or to insult him, is bad by reason of the omission of an essential ingredient of the offence; and it cannot be amended, and must be set aside and quashed. *The Queen* v. *Cameron*, Q.R. 7 Q.B. 162.

—**Suspension of civil remedy—Crim. code, s. 534—Validity in Quebec.**]—*Quære*: Is sec. 534 of the Criminal Code, which provides that no civil remedy for an act shall be suspended because it amounts to a criminal offence, *intra vires* as to criminal proceedings in Quebec? *Paquet* v. *Lavoie*, Q.R. 7 Q.B. 277, (per Blanchet, J.)

—**Cr. Code s. 641—Indictment—Nova Scotia.**] **Authority to prefer — Provincial appointment of prosecuting officer.**]—Defendant was committed for trial on a charge of assaulting, wounding and doing grievous bodily harm to W., who was bound over in regular form to prosecute. At the next term of the Supreme Court the grand jury found an indictment against the defendant. W. was not present, and was not examined as a witness. The Attorney-General was not present, and no one had any special directions from him to prefer an indictment. No one had the written consent of a judge, and no order of Court was made to prefer an indictment. The point was reserved whether the indictment should not be quashed, because it was not preferred by any of the persons authorized by sec. 641 of the Criminal Code. Under the Act of the Provincial Legislature, Acts of 1887, ch. 6, crimes such as that for which defendant was indicted, are prosecuted by an officer appointed by the Attorney-General at each term of the Court, or, in default of such appointment, by the Court:—Held, that, under these circumstances, the presence of the prosecutor was not necessary, and no special direction from the Attorney-General, or written consent of a judge, or order of the Court, was necessary to make the indictment valid. *Quære:* whether sec. 641 of the Code is applicable to the procedure before the grand jury in any county of Nova Scotia, except Halifax?—Held, that the indictment not having been preferred in accordance with the provisions of the Code, sec. 641, the conviction was bad and should be quashed. *The Queen* v. *Hamilton*, 30 N.S.R. 322.

—**Theft — Improper comment by prosecuting counsel—New trial—Stats. of Canada, 1893, c. 31, sec. 4, s.s. 2.**]—Defendant was indicted for stealing a quantity of pine oil. He pleaded not guilty; and on the trial gave evidence on his own behalf. The prosecuting counsel, in addressing the jury, commented unfavorably on the failure of the defendant's wife to testify:—Held, that the comment was a violation of the provisions of the Act, (Stats. of

Canada, 1893, c. 31, s. 4, s.s. 2), and that defendant was entitled to a new trial. *The Queen* v. *Corby*, 30 N.S.R. 330.

—Criminal Code, secs. 501, 872 (b)—Wilfully killing a dog—Conviction—Money penalty, and, in default, imprisonment with hard labor—Habeas Corpus—Condition not to prosecute.]—The defendant, H., was found guilty, under s. 501 of the Criminal Code, of the offence of wilfully killing a dog, and was adjudged to pay a penalty of $10, and $30 compensation, and costs, and, in default of payment, forthwith, to be imprisoned for the period of three months with hard labor. Under the provisions of s. 501, a person found guilty under it is liable (1). to a penalty not exceeding $100, over and above the injury done, or (2) to three months' imprisonment, absolute, with or without hard labor:—Held that the conviction was bad for imposing imprisonment with hard labor in default of payment of the fine, and that defendant was entitled to a writ of *habeas corpus* for his discharge on giving an undertaking that no action should be brought against anyone on account of the proceedings taken.: *R.* v. *Turnbull*, 16 Cox, C.C., 110, referred to. Held, that when the justice came to make the conviction and to provide for the enforcement of the money penalty, he should have had recourse to s. 872, sub-sec. *(b)* which deals with this matter, and supplies the limits and manner of imprisonment, which may be imposed in default of payment of a money penalty, and could not award hard labour. *The Queen* v. *Horton*, 31 N.S.R. 217.

—Crim. Code, ss. 22, 552, s.s. 2 and 7—Arrest without warrant—Detention.]—A peace officer who arrests a person charged with obtaining goods by false pretences with intent to defraud, on request by telegram from another province of Canada, where the offence is alleged to have been committed, may justify the arrest and detention of his prisoner under either sec. 22 or sec. 552, sub-sec. 2, of the Criminal Code, by alleging (*a*) that the prisoner has actually committed such offence, or (*b*) that he, the peace officer, on reasonable and probable grounds, believes that the prisoner committed the offence charged. Sec. 22 of the Code operates, not merely to protect the officer from civil or criminal proceedings, but also to authorize the arrest and make it lawful; and it applies, not only when the arrest could be made by any person without a warrant, but also to cases in which a peace officer only may so arrest. Paragraph (*a*) at the end of sub-sec. 7, sec. 552, of the Code, applies only to cases coming solely within sub-sec. 7, and it is not necessary in other cases to bring the person arrested before a justice of the peace before noon of the day following the arrest. *The Queen* v. *Clouthier*, 12 Man. R. 183.

—Crim. Code, s. 645—Interpretation Act, R.S.C. c. 1, s. 7 (4)—"Shall"—Initialling names of witnesses on indictment.]—1. Notwithstanding the language of the Interpretation Act, R.S.C. ch. 1, sec. 7 (4), the word "shall" in sec. 645 of the Criminal Code, which requires the foreman of the grand jury to put his initials opposite the names of the Crown witnesses on the back of the bill of indictment, is not imperative in the sense that the foreman's omission to do so will nullify the proceedings: *O'Connell* v. *The Queen*, 11 C. & F. 155; *Queen* v. *Townsend*, 28 N.S.R. 468, followed. *The Queen* v. *Buchanan*, 12 Man. R. 190.

—Municipal law—By-law—Unreasonableness—Conviction—Distress before commitment—Sunday observance.]—1. A municipal by-law as to Sunday observance which exceeds in its prohibition the terms of the provincial law by including classes of persons not included by the latter is too wide in its scope, and is void for unreasonableness.—Under the Municipal Clauses Act (B.C.), 1896, s. 81, it is not necessary to issue the distress authorized thereby before issuing a commitment, but the latter course may be taken as an alternative procedure. *The Queen* v. *Petersky*, 1 Can. C.C. 91.

—Bawdy house—Offence of keeping—Imprisonment for non-payment of fine—Limit of—Crim. Code 208, 788, 872 (b).]—Upon conviction and fine for keeping a bawdy house the powers of a magistrate for enforcing payment of the fine are limited to directing imprisonment for a period not exceeding three months under Criminal Code, sec. 872 (b), although he might impose imprisonment for six months in the first instance instead of a fine.—*Semble*, sec. 788 Criminal Code, only applies to authorize six months' imprisonment in default of payment of a fine when fine and imprisonment are conjointly imposed in the first instance.—Criminal Code sec. 208 only applies to authorize six months' imprisonment when imposed as the substantive punishment for the offence and not as a means of enforcing payment of a fine. *The Queen* v. *Stafford*, 1 Can. C.C. 239.

—Giving and selling liquor to Indian—Two offences—Stated case—Judgment on—Quashing conviction—Res judicata—Certiorari.]—*The Queen* v. *Monaghan*, 18 C.L.T. Occ. N. 45.

—Perjury—Statutory declaration—Indictment—Defect in—Amendment—Preliminary enquiry—Evidence against three defendants—Privilege of Crown prosecutor—Election as to trial.]—*The Queen* v. *Skelton*, 18 C.L.T. Occ. N. 205.

—De facto judge—Oath of office—Failure to take—Jurisdiction.]—See JUDICIAL OFFICERS.

—Venue—Change of—Fair trial.]—

See PRACTICE AND PROCEDURE, XXXVII.

XVI. RESERVED CASE.

—Application for reserved case—Jurisdiction of—Judge or magistrate.]—A reserved case may be applied for and may be stated after

a trial for the opinion of the Court of Appeal on a question of law arising on the trial or on any of the proceedings incidental thereto. —Whether the judge or magistrate has jurisdiction in the case is a question of law. *The Queen* v. *Paquin*, Q.R. 7 Q.B. 319.

—Error—Matter of form—Improper reception of material evidence.]—That, in the absence of a direct and unmistakable enactment, the court should not, upon a case reserved, affirm a conviction, where material evidence has been improperly received, because, in the opinion of the court, there is sufficient good evidence to support a verdict. *The Queen* v. *Dixon*, 29 N.S.R. 462.

XVII. Speedy Trials.

—Sheriff—Jurisdiction—Crim. Code, Part LIV.] The sheriff of a district for which there is a district magistrate has no jurisdiction to try a prisoner under the provisions of Part LIV. of the Criminal Code relating to speedy trials of indictable offences. *The Queen* v. *Paquin*, Q.R. 7 Q.B. 319.

—Election—Accused admitted to bail—Crim. Code s. 610.]—A person accused of an indictable offence who has been admitted to bail under Code, sec. 601, by the magistrate before whom he is brought for preliminary examination upon the charge, has a right to a speedy trial under Code sec. 765, to the same extent as if the magistrate had committed him for trial under sec. 596. *The Queen* v. *Lawrence*, 5 B.C.R. 160.

XVIII. Summary Trial.

—Common gaming house—Crim. Code s. 196, 198, s. 783, par. (f)—Disorderly house—Associated words—Rule of interpretation.]—The judge of the Sessions of the Peace has no jurisdiction to try summarily a charge of keeping a common gaming house, laid under articles 196 and 198 of the Criminal Code—either with or without the consent of the accused. Such case, under Part 54 of the Criminal Code, may be tried summarily before a judge of the Sessions of the Peace by consent of the accused, instead of by a jury before the Court of Queen's Bench, but such option can only be exercised by the accused after a preliminary inquiry and committal for trial. S. 783 of the Criminal Code, which says that whenever any person is charged before a magistrate "(*f*) with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy house," the magistrate may hear and determine the charge in a summary way, does not apply to the offence of keeping a common gaming house—the meaning of the words "disorderly house" in said par. and in s. 784, being governed by the rule "*noscitur a sociis*," and being therefore restricted to houses of the nature and kind of a house of ill-fame or bawdy house, associated therewith. It is immaterial whether the generic term precedes or follows the specific terms which are used; in either case the general word must take its meaning and be presumed to embrace only things or persons of the kind designated in the specific words. *The Queen* v. *France*, Q.R. 7 Q.B. 83.

XIX. Sunday Observance.

—Provincial law before Confederation—B.N.A. Act—Ultra vires.]—See Constitutional Law, IV(*b*).

XX. Suspension of Civil Remedy.

—Assault—Civil action barred by conviction and payment of fine—Arts. 864 and 866, Criminal Code of Canada.]—Where a person, at the instance of the party aggrieved, has been arrested on a charge of assault, and being summarily convicted by a justice, has paid the whole amount of the fine imposed on him, he is not liable to a civil action of damages for the same assault. Arts. 864 and 866, Criminal Code of Canada. *Hardigan* v. *Graham*, Q.R. 12 S.C. 177.

XXI. Trial.

—Offence commenced in one province and completed in another.]—An offence which was commenced in one province and completed in another, is triable in either province. *Ex parte Gillespie*, Q.R. 7 Q.B. 422.

XXII. Vagrancy.

—Son living with parents—Crim. Code s. 207 (a).]—When a son lives at home and is supported by his parents, the fact of living without employment does not constitute an offence under paragraph (a) of article 207 of the Criminal Code respecting vagrancy. *The Queen* v. *Riley*, Q.R. 7 Q.B. 198.

—Refusal to maintain—Wife refusing to live with husband—Criminal Code, s. 207 (b).]—A person who is able to work and thereby, or by other means, to maintain his wife, and who is charged with vagrancy for refusing or neglecting to do so when his wife had left the matrimonial abode without his consent and without judicial authorization or other valid reason, cannot be convicted, if he was willing and offered to receive her, while she on her part refused to return and live with him. *The Queen* v. *Leclair*, Q.R. 7 Q.B. 287.

And see Justices of the Peace.

CROWN.

I. Eminent Domain, 142.
II. Liability in Contract, 143.
III. Liability in Tort, 144.

I. Eminent Domain.

Highways—Old trails in Rupert's Land—Substituted roadways—Necessary way—R.S.C., c. 50, s. 108—Reservation in Crown grant—Dedication—User—Estoppel.]—The user of old travelled roads or trails over the waste lands of the

Crown in the North-West Territories of Canada, prior to the Dominion Government survey thereof, does not give rise to a presumption that the lands over which they passed were dedicated as public highways.—The land over which an old travelled trail had formerly passed, leading to the Hudson Bay Trading Post at Edmonton, N.W.T., had been enclosed by the owner, divided into town lots and assessed and taxed as private property by the municipality, and a new street substituted therefor, as shewn upon registered plans of subdivision and laid out upon the ground that had been adopted as a boundary in the descriptions of lands abutting thereon in the grants thereof by letters patent from the Crown:—Held, that under the circumstances there could be no presumption of dedication of the lands over which the old trail passed as a public highway, either by the Crown or by the private owner, notwithstanding long user of the same by settlers in that district prior to the Dominion Government survey of the Edmonton settlement. *Heiminick* v. *Town of Edmonton*, 28 S.C.R. 501.

II. Liability in Contract.

—Public works—Damages—Negligence—Sufficiency of proof.]—In an action by the Crown for damages arising out of an accident alleged to be due to the negligence of a contractor in the performance of his contract for the construction of a public work, before the contractor can be held liable the evidence must shew beyond reasonable doubt that the accident was the result of his negligence. *The Queen* v. *Poupore*, 6 Ex. C.R. 4.

—Petition of right—Contract—Statutory requirements—Informality—Ratification by Crown.]—A contract entered into by an officer of the Crown empowered by statute to make the contract in a prescribed way, although defective in not conforming to such statutory requirements, may be ratified by the Crown. *Woodburn* v. *The Queen*, 6 Ex. C.R, 12.

—Executory contract—Liability—Goods sold and delivered—Acceptance—R.S.C. c. 37. s. 23—Interest.]—Notwithstanding the provisions of the 23rd section of the Railways and Canals Act, R.S.C. c. 37, where goods have been purchased on behalf of the Crown by its responsible officers or agents without a formal contract therefor, and such goods have been delivered and accepted by them, and the Crown has paid for part of them, a ratification of the informal contract so entered into will be implied on the part of the Crown, and, under such circumstances, the plaintiffs are entitled to recover so much of the value of the said goods as remains unpaid:—Held, also, following *St. Louis* v. *The Queen*, 26 Can. S.C.R. 649, that interest was payable by the Crown on the balance due to the plaintiffs in respect of such contract from the date of the fyling of the reference of the claim in the Exchequer Court. *Henderson* v. *The Queen*, 6 Ex. C.R. 39.

—Extent, writ of—Bond to Queen—Real estate—Personal property.]—A bond given by a County Secretary-Treasurer to the Queen for the due performance of his duties as such officer, is a first lien on all the real estate of the obligor from the date of the execution of the bond, and takes precedence of executions and mortgages issued or executed respectively at a date or dates subsequent to that of the bond.—The writ of extent is a proper and effectual proceeding for enforcing the rights of the Crown on such a bond.—Whenever a demand may be properly sued for in the name of the Queen, the prerogative right of the Crown attaches in all portions of the British Empire subject to English law, irrespective of the locality in which the debt arose and of the Government in right of which it accrued. *The Queen* v. *Sivewright*, 34 N.B.R. 144.

—Contract of—Public printing—Powers of executive—Submission to legislature—Change of advisers.]—See Constitutional Law, III.

—Contracts binding on the Crown—Goods sold and delivered on verbal orders by Crown officials—Interest against the Crown.]

See Contract, X.

III. Liability in Tort.

—Government canal—Accident to vessel using same—Negligence of Crown servant—Petition of right.]—Under the provisions of The Exchequer Court Act, sec. 16 (*c*), the Crown is liable in damages for an accident to a steamer and cargo while in a Government canal, where such accident results from the negligence of the persons in charge of the said canal. *McKay's Sons* v. *The Queen; St. Lawrence Sugar Refining Co.* v. *The Queen*, 6 Ex. C.R. 1.

—Negligence of Crown servant—The Exchequer Court Act, s. 16 (d)—Accident occurring on a public work.]—A suppliant seeking relief under clause (*c*) of sec. 16 of the Exchequer Court Act must establish that the injury complained of resulted from something negligently done, or negligently omitted to be done, on a public work by an officer or servant of the Crown while acting within the scope of his duties or employment. *Quære*, whether the words "on any public work" as used in clause (*d*) of sec. 16 of the Exchequer Court Act may be taken to indicate the place where the act or omission that occasioned the injury occurred, and not in every case the place where the injury was actually sustained? *The City of Quebec* v. *The Queen*, 24 Can. S.C.R. 420, referred to. *Alliance Assurance Co.* v. *The Queen*, 6 Ex. C.R. 76.

And see Public Work.

CROWN CASES RESERVED.

See Criminal Law, XVI.

CROWN LANDS.

Free Grant and Homestead Act—Sale of trees by locatee—Validity of—Subsequent issue of patent to vendor—Estoppel.]—A locatee of free grant lands under 38 Vict., ch. 8 (Ont.), (R.S.O. (1877), ch. 24), who has, contrary to the provisions of section 10 of the Act, sold the pine trees on the land before the issue of the patent, is not, nor is anyone claiming under him, after its issue, estopped from denying the validity of the sale. *Chapiewski* v. *Campbell*, 29 Ont. R. 343.

—Timber license — Regulations — Agreement to assign—Innocent purchaser—Priority—Interest in land—Agreement not to bid at public sale—Legality.]—In 1893 one M. purchased at a public Crown land sale a license to cut lumber on a block of land, and a license was issued to him dated September 1st, 1893, to remain in force until August 1st, 1894. By the Crown land regulations incorporated in the lisense, the license might be assigned by writing, the assignor to give notice thereof to the Surveyor-General, and the assignment to take effect from the date at which such notice should be received at the Crown Land Office. Licensees who paid their stumpage dues by August 1st in each year were entitled to annual renewals for such parts of the ground held by them as might at the first day of July in each year be vacant and unapplied for, on payment of the mileage thereon on or before the first day of August; and such renewals could be for 24 years from August 1st, 1894. Previous to the above sale, one L., being desirous of securing certain lumber privileges in a part of the area included in the license to M., entered into an agreement with him that he (M.) should buy in the block, and afterwards secure these privileges to L. Accordingly, after the sale, they entered into a written agreement, dated August 31st, 1893, prepared by the Surveyor-General, reciting that M. had agreed to sell to L. for the term for which a license should issue, and renewals, the right to cut, carry away and appropriate to his own use cedar lumber in a certain area, and lumber of all kinds in another area, in consideration of $40; and witnessing that L. agreed to pay M. the renewal mileage each year on a certain number of miles during the continuance of the privilege at the rate fixed from year to year by the Government; and M. agreed to renew the license. The agreement immediately after its execution was fyled in the Crown Land Office. Subsequently L. assigned his rights under the agreement to the plaintiffs. This assignment was never fyled in the Crown Land Office. On November 16th, 1894, M. assigned the same license, among others, to the defendants, who were purchasers for value, and without notice of M.'s agreement with L., and, on the assignment being produced to the Crown Land Office, a renewal for the year beginning August 1st, 1894, was issued to them. In August, 1895, a tender to M. and the defendants of L.'s share of the renewal mileage was refused. In a suit for a declaration of the rights of the parties:—Held, (1) that the agreement between M. and L., entered into before the sale, was not illegal as being an agreement to stifle competition at a public sale; (2) that the license purchased by M. did not convey an interest in land, and therefore that it could be assigned without an instrument under seal registered in the county where the land was situate; (3) that the defendants were under no duty to search at the Crown Land Office as to the title of M. to assign the license; (4) that the agreement of M. and L. was not an assignment of the license, but at most a mere sub-license, conferring no right of renewal against the Crown, and amounting only to a sale of, or an agreement to sell, rights under the license, enforceable by specific performance against M. upon the license being renewed to him, or, if not renewed, giving rise to an action at law for breach of agreement, and giving to L. or his assigns no rights against the defendants. *Laughlan* v. *Prescott*, 1 N.B.Eq. 406.

CURATOR.

Curator ad hoc—Action en reddition de compte against representatives of deceased curator.]—A curator *ad hoc* to an interdict cannot bring an action *en reddition de compte* against the representatives of the deceased curator, such action can only be brought by the new curator. *Wilson* v. *Blanchard*, Q.R. 12 S.C. 132.

— Insolvency — Powers of curator — Protest of note—Waiver.]—The curator to an insolvent has a right to waive protest on a note upon which the insolvent was indorser. *In re Boutin*, Q.R., 12 S.C. 186.

—Curator to interdict — Powers of.] — The powers of the curator to an interdict for habitual idleness as those of the curator to an interdict for prodigality, extending only to the property of the interdict, such curator cannot represent the interdict in judicial proceedings, but the latter should himself appear in the proceedings with his curator's aid. *Shepperd* v. *Hoffman*, Q.R. 12 S.C. 228.

—Vacant succession—Inventory.]—The curator to a vacant succession cannot be relieved from the duty of making an inventory, before a notary, of the property of the succession, and an inventory *sous seingprivé* made by a temporary guardian cannot take the place of the inventory required by law. *Murphy* v. *Gauthier*, Q.R. 12 S.C. 407.

—Substitution—Action by curator.]—An action brought by a person as curator *ad hoc* to a substitution must be dismissed, there being no such quality in law. *Langan* v. *Smith*, Q.R. 12 S.C. 529.

—Cession de biens—Resolution of inspectors—Powers of curator—Tierce-opposition by creditor of estate to judgment obtained by curator.]—In virtue of a resolution of the inspectors, the curator had paid Roy $150 for costs incurred by the latter in legal proceedings which they thought were in the interest of the estate. Ellis instituted an action against Roy to compel him to return this money into the hands of the curator, and another action to annul the said payment of money to Roy, and Ellis made a *tierce-opposition* to this judgment in Chambers:—Held, that the curator is the officer of the Court, chosen by the creditors for the purpose of the liquidation of the estate of their debtor; the inspectors are appointed for the purpose of advising him in matters connected with such liquidation.—When a creditor attacks the validity of a resolution of the inspectors and of an act of the curator, the curator and the inspectors contesting such action in nullity are not deemed to represent said creditor, but act as his opposants and adversaries. Therefore, if they obtain a judgment without his participation or consent which thwarts and defeats proceedings in nullity begun in his own name, he must be considered a third party having recourse by way of a *tierce-opposition* against said judgment.—The powers of the curator and inspectors are those, and none other than those, given them by the Code of Procedure. They have no power to engage in litigation, even to collect debts due to the estate or to recover property belonging to it, except by permission of the judge first duly obtained. *In re Plamondon*, Q.R. 13 S.C. 377.

—Cession de biens—Proceedings by curator—Authority.]—Proceedings by a curator to an abandonment *(cession de biens)* are regulated by law and by the will of the creditors expressed through the inspectors. Hence, the curator cannot become *tiers-opposant* to a judgment without being authorized by a judge on motion by the inspectors, and he should allege that these essential formalities have been observed; otherwise the *tierce-opposition* will be dismissed *sur inscription en droit*. *Gagnon* v. *Proulx*, Q.R. 13 S.C. 189.

—Curator to interdict—Remploi—Authority.]—A curator to an interdict, instituted under a substitution, has a right to make a *remploi* of monies arising from the sale of the institute's property, without the advice of a family council. *Daly* v. *Amherst Land Park Co.*, Q.R. 13 S.C. 516.

—Insurance—Payee—"As interest may appear"—Insolvency of payee—Recovery of insurance by curator.]—See INSURANCE, I.

—Contract—Sale of wood to be manufactured—Conditions—Advances—Insolvency of contractor—Execution of contract.]—See CONTRACT, VIII.

—Curator to insolvent—Sale of book debts—Guarantee.]—See DEBTOR AND CREDITOR, VI.

CUSTOMS DUTIES.

See REVENUE.

CY PRES.

See WILL, (*Construction*).

DAIRY INSPECTION.

See MUNICIPAL CORPORATIONS.

DAMAGES.

Railways—Passenger—Contract—Continuous journey—Break—Transfer—Demand of fare—Refusal to carry—Damages—Costs.]—The plaintiff was a passenger by the defendants' railway uuder a contract by which the defendants were to carry him by continuous journey from Harrisburg to Stratford via Galt and Berlin. There was a break in the line of the defendants at Galt, the distance between the stations being three-fourths of a mile; an omnibus was provided, as advertised by the defendants, but the plaintiff was asked to pay a fare of ten cents for transfer in it, and, refusing to do so, was not permitted to be transported free. He failed to make his connection, and brought this action for damages:—Held, that he was entitled to be conveyed from station to station free of expense; but it would have been reasonable for him to have paid the ten cents and made his connection, and the damages should be restricted to that sum.—Costs on the scale of the County Court, in which the action was brought, were allowed, as it was to test a right. *Clarry* v. *Grand Trunk Railway Co.*, 29 Ont. R. 18.

—Municipal corporation—Enlargement of street—Expropriation—Delay—Loss of rent—Measure of damages.]—In an action against a municipal corporation for loss of rent of an immovable caused by delay in executing the work of enlarging and extending a public street in connection with which a part of the immovable was to be expropriated:—Held, that the corporation was liable notwithstanding the issue of a peremptory writ of mandamus ordering it to fulfil its obligation and the payment of the penalty incurred by failure to comply with such writ.—The amount of damages in such case should not be arrived at by taking the revenue that the immovable, according to its value should have produced and deducting therefrom the rents received during the period of reduction, but by comparing the rents so received with those produced before the works were ordered. The loss of rent being mainly attributable to the refusal of the corporation to execute the works within the prescribed delays, though want of repairs to the immovable and the erection of more modern edifices in the

neighborhood contributed to it in some measure, the court in the absence of proof by the city of the extent to which these secondary causes influenced the reduction, should award the entire amount caused by the primary and principal cause, namely, the contemplated expropriation and refusal of the corporation to proceed. *City of Montreal* v. *Gauthier*, Q.R. 7 Q.B. 100.

—Husband and wife—Alienation of affections of wife.]—In an action by a husband for alienation of the affections of his wife, even where no precise amount of specific damages is proved, by the jurisprudence of Quebec province, the Court is justified in awarding substantial damages for the disgrace and humiliation brought upon the plaintiff, and for deprivation of his wife's society. *Hart* v. *Shorey*, Q.R. 12 S.C. 84.

—Joint tort-feasors—Warranty—Demurrer.]—In a suit for damages where two tort-feasors are jointly and severally impleaded, the one may call upon the other to warrant him against the action of the plaintiff in chief.—The mere fact that the principal action is directed against both plaintiff and defendant in warranty, and asks their joint and several condemnation in favour of the plaintiff in chief for the whole amount of damages suffered, is no good ground of demurrer to the action in warranty, provided it be made to appear that, although the liability of both to the principal plaintiff be joint and several, yet, as between themselves, the one is liable over to the other for the whole sum for which a condemnation may go in favour of the principal plaintiff. *O'Connor* v. *Flynn*, Q.R. 13 S.C. 435.

Ice-house—Injury to adjoining owner—Defective drainage.]—Defendant was owner of an ice-house, worked by a tenant and adjoining the plaintiff's property, and by reason of the inadequacy of the drainage from this ice-house the water produced by the melting of the ice spread over plaintiff's land, flooding his cellar and damaging his house. It was proved that plaintiff's house had equally suffered on account of faulty construction:—Held, that defendant, not having taken measures to diminish or prevent the inconvenience to the plaintiff from the use of the ice-house by constructing drains sufficient to carry off the water, could not escape responsibility for the injury suffered by the plaintiff by pleading that he had only exercised a right of vicinage, but that in estimating the damages the Court should take into consideration the defects in construction of the plaintiff's house; that difficulty in exactly fixing the extent of prejudice suffered by an injurious act is no reason for refusing damages where the right to them is recognized, but the judge should then appreciate them according to the rules of equity; that the defendant could not resist the action by pleading that the ice-house was worked by a tenant against whom plaintiff might recover, especially as he gave in his defence neither the name nor description of such tenant. *Marcotte* v. *Hénault*, Q.R. 13 S.C. 453.

—Quasi-delits—Estimation of damages.]—In matters of quasi-delits, to arrive at the amount of damages the sufferings endured by the plaintiff may be taken into account, and the difficulty presented in the estimation of these damages, when the injury is established, is not a sufficient reason for refusing compensation. *Mallet* v. *Martineau*, Q.R. 13 S.C. 510.

—Lessor and lessee—Agreement for lease—Uncertainty—Statute of frauds—Damages.]—In an action for damages for not delivering possession of premises, the document set up as a lease was: "Received from J. C. McLennan the sum of $15.00, being part payment on premises now occupied as a barber shop on west side of Fourth Street, between A Avenue and Front Street, said sum to apply on rent for premises aforesaid from November 1st, 1896. Rent to be paid in advance. 'S. Millington.'" The only evidence of damages was that the plaintiff had purchased a tobacconist's stock in view of occupying the premises at the date mentioned, and being unable to get other suitable premises had made a loss on the goods. The trial judge entered judgment for the plaintiff for $100.00, the amount of the full loss. Upon appeal to the Full Court:—Held, that there was no evidence of legal damage. —*Quaere:* Whether the agreement was not void under the Statute of Frauds as not stating the term? *McLennan* v. *Millington*, 5 B.C.R. 345.

—Company—Fraudulent representations as to stock—Nominal damages.]—See COMPANY, I.

—Execution—Judgment entered prematurely—Action—Excessive damages—Verdict—Costs.]

See EXECUTION, I.

—False arrest—Charge of larceny—Detention without warrant—Justification.]

See MALICIOUS PROSECUTION.

—From public work—Assessment of, once for all.]

See PUBLIC WORK.

DEBTOR AND CREDITOR.

I. ARREST OF DEBTOR, 151.
II. ASSIGNMENT, 152.
(a) *For benefit of Creditors*, 152.
(b) *Preferences*, 154.
III. ASSIGNMENT OF DEBT, 159.
IV. ATTACHMENT OF DEBT, 159.
V. CESSION DE BIENS, 160.
VI. COLLECTION OF DEBTS, 162.
VII. COMPROMISE, 162.
VIII. EXAMINATION OF JUDGMENT DEBTOR, 163.
IX. NOVATION, 163.
X. RECOVERY OF DEBT, 164.
XI. SET-OFF, 164.

I. Arrest of Debtor.

—Capias—Debt contracted in a foreign country.]—A writ of *capias* will be quashed where it appears, by the affidavit on which the *capias* issued, that the greater part of the indebtedness alleged was contracted in a foreign country, and that the portion of the debt contracted in this province is less than the sum necessary to obtain a *capias*. *Haupter* v. *Fallenbaum*, Q.R. 12 S.C. 538.

— Capias ad respondendum — Intent to leave country.]—The mere intention to leave the country, without intent to defraud, is no ground for issuing proceedings by way of *capias ad respondendum* or seizure before judgment. *Kellert* v. *Carranza*, 4 Rev. de Jur. 318.

—N.S. Collection Act, 1894—Order for payment of money—Setting aside—Attachment—Laches—Costs.]—The Nova Scotia Collection Act, Acts of 1894, c. 4, s. 1, provides that "no person shall be arrested or imprisoned upon, or in respect of, any judgment of the Supreme Court . . . ordering, or adjudging the payment of any money, unless as in this Act hereinafter provided." And sec. 2 of the Act reads: "For the purposes of this Act, the word 'judgment' shall include any order directing payment of money, costs, charges or expenses." An order having been made by a judge at Chambers directing defendant to pay over money in his hands to the receiver:—Held, that the order was one which could not be made, and was, therefore, one which could not be enforced by attachment, or imprisonment for disobedience thereto.—Plaintiff's counsel drew a distinction between an order made as the result of an action between the parties where it is adjudged or ordered that the defendant pay a certain amount of money, and the case of an order for payment of a particular sum of money found or admitted to be in the hands of the party against whom the order is made in the course of the litigation. Held, that the distinction was well founded, and that the Collection Act did not cover such a case as the latter, but was intended to apply only to the case of a judgment debtor ordered to pay money in satisfaction of the judgment against him. Held, further, that, inasmuch as defendant did not appear to shew cause against the original order, before the judge at Chambers, but laid by until the attachment proceedings were taken, he was not entitled to costs. *Commercial Bank of Windsor* v. *Scott*, 30 N.S.R. 401.

—Mining lease—Contract for sale of—Order for arrest of vendee — Affidavit — Special circumstances—Order under seal—Substantial defect—When to be raised.]—Plaintiff obtained an order for defendant's arrest on an affidavit, the second paragraph of which stated that the defendant was justly and truly indebted to the plaintiff for the price of a certain coal mining property, or areas, and the lease thereof, bargained and sold by him to the defendant, and by the defendant purchased from him for $50,000:—Held, that this was not the statement of an agreement for a sale, but of a perfected and completed sale, and that plaintiff, in order to recover under such a statement, would have to prove that the title to the property had passed to defendant:—Held, also, that, on the breach of an agreement for the sale of mining rights, the vendor cannot recover the purchase money, but only damages sustained in consequence of the breach:—Held, also, that defendant could not be arrested in an action for goods bargained and sold without shewing that the goods were delivered, or some special circumstances that would warrant the making of the order. Here there was nothing to shew either that the title had passed, or any special circumstances in relation to the sale, and, for all that appeared, plaintiff might have the sole control of the property:—Held, that under these circumstances, defendant could not be arrested for the price.—The third paragraph of the statement of claim alleged that defendant was justly and truly indebted to plaintiff in the sum of $50,000, for the price of a certain coal mining property, or areas, which the plaintiff agreed to sell to the defendant and the defendant agreed to purchase, etc.:—Held, that this was not a statement on which defendant could be arrested for the price of the property; that an order for arrest under the seal of the Supreme Court, does not require to shew jurisdiction on its face:—Held, also, that a substantial defect in an affidavit for an order for arrest may be taken advantage of at any time. *Weatherbe* v. *Whitney and Dominion Coal Company*, 30 N.S.R. 104.

—C.S.N.B. c. 38—Arrest, discharge from—Signing as to truth of answers.]—To give the magistrate jurisdiction to grant an order for discharge from arrest, under Con. Stat., ch. 38, it must appear that the defendant is in custody. It is also imperative that he should sign as to the truth of all his answers. *Ex parte Heywood*. *In re Heywood* v. *Perry*, 34 N.B.R. 8.

—Arrest—Ca. re.—Affidavit—Statement of cause of action—Alien temporarily resident.]—Upon motion to set aside a writ of *ca. re.* and the arrest of defendant thereunder for irregularity:—Held, that a statement of the plaintiff's cause of action, in his affidavit to hold the defendant to bail, that the defendant "is justly and truly indebted to me in the sum of $1,323.80, as follows, namely: $2,000.00 for money received by him to my use, being the price of eight kegs of whiskey, of my property, which he sold for $2,000.00, and received the said sum, less the amount of $676.20 due by me to the said T. O'B.," was sufficient, as the defendant was liable whether the plaintiff authorized or requested the sale or not, as, if the defendant converted the whiskey, it was open to the plaintiff to waive the *tort* and sue for the proceeds. The amount due was not uncertain

by reason of the credit of $676.20, without saying "and no more."—It is not necessary to serve on the defendant a copy of an order for a *ca. re.*—Rule 979 requiring service of affidavits on which an *ex parte* order is obtained, only applies when the *ex parte* order itself has to be served.—The non-cancellation of the law stamps on the process by the officers of the Court is not fatal to the process: *Smith* v. *Logan*, 17 Ont. P.R. 219 distinguished.—A variation in the statement of defendant's address, viz., as "Yukon" in the writ and "Victoria" in the affidavit to hold to bail, is immaterial.—An alien passing through the jurisdiction may be arrested on a *ca. re.* upon a cause of action arising in a foreign country.—In the absence of proof it will be assumed that the law of the foreign country is the same as that here.—It is not necessary in an affidavit for *ca. re.* to shew that the defendant is leaving the country with intent to defraud creditors. *Macaulay* v. *O'Brien*, 5 B.C.R. 510.

—Discharge — Restraint from action — Benefit under order—Appeal—Waiver.]

See APPEAL, X.

—Warrant for arrest on judgment confessed under duress—Assignment.]—See ASSIGNMENT.

II. ASSIGNMENT.

(*a*) *For Benefit of Creditors.*

—Preferred creditors—Money paid under voidable assignment—Levy and sale under execution—Statute of Elizabeth.]—Where an assignment has been held void as against the statute, 13 Eliz. ch. 5, and the result of such decision is that a creditor who had subsequently obtained judgment against the assignor, and, notwithstanding the assignment, sold all the debtor's personal property so transferred, becomes entitled to all the personal property of the assignor levied upon by him under his execution, such creditor has no legal right and no equity to an account or to follow monies received by the assignee or paid by him under such assignment in respect to which he has not secured a prior claim by taking the necessary proceedings to make them exigible. *Cummings & Son* v. *Taylor*, 28 S.C.R. 337.

—Affidavit of bona fides—Preferences—Distribution of assets—Arbitration—Conditions of deed—Statute of Elizabeth—13 Eliz. c. 5.]—*Maguire* v. *Hart*, 28 S.C.R. 272.

—Contingent claim—Advertising contract—R.S.O. ch. 124 sec. 20, sub-sec. 4.—Where an estate is being administered under the Assignments and Preferences Act, R.S.O. ch. 124, claims depending upon a contingency cannot rank, but only debts strictly so called. An advertising contract gave the advertiser in consideration of the sum of $1,000 the right to use certain advertising space in a newspaper at any time within twelve months, the advertiser agreeing to pay at the end of each month for the space used in that month, and at the expiration of twelve months, whether the space had been used or not, to pay $1,000 less such sums as might have in the meantime been paid. The advertiser before using any space, and before the expiration of twelve months, made an assignment for the benefit of creditors pursuant to R.S.O. ch. 124:—Held, reversing the judgment of Boyd, C., 28 Ont. R. 326, that the $1,000 would not necessarily become due by effluxion of time, and that the newspaper company could not rank: *Grant* v. *West*, 23 Ont. A. R. 533, applied; *Mail Printing Company* v. *Clarkson*, 25 Ont. A.R. 1.

—Badges of fraud—Incompetent assignee—Small value of goods assigned—Control retained by Assignors—Levy.]—Defendant as sheriff of the County of Pictou, levied upon certain goods, included in an assignment made by M. and E. to plaintiff for the benefit of creditors, with certain preferences:—Held, in an action of replevin brought by plaintiff, the assignee, against the sheriff, affirming the judgment of the trial judge, and dismissing plaintiff's appeal with costs, that the assignment was fraudulent and void as against creditors for the following reasons:—(*a*) The assignee was a person totally ignorant of the business and incapable of properly performing the duties of winding it up. (*b*) Discretion was given to the assignee to expend money in connection with the sale of the goods in the purchase of additional stock. (*c*) The assignee was a brother-in-law of one of the assignors, and lived in the same house with him, and was given power to employ the assignors in carrying out the alleged objects of the instrument, in such a way as would give the actual control of the whole concern to the assignors, or one of them. (*d*) Notwithstanding formal possession taken by the assignee, the business was continued under the same management as before, the assignors having been employed by the assignee for that purpose. (*e*) The control exercised by the assignee over the business was of a purely nominal character. —Held, further, that the provisions of the deed were especially objectionable on account of the small value of the goods assigned, and the extent to which they were incumbered by a bill of sale held by one of the creditors. *Culton* v. *Harris*, 30 N.S.R. 112.

(*b*) *Preferences.*

—Insolvency—Fraudulent preferences—Chattel mortgage—Advances of money—Solicitor's knowledge of circumstances—R.S.O. (1887), c. 124—54 V., c. 20 (Ont.)—58 V., c. 23 (Ont.).]—In order to give a preference to a particular creditor, a debtor, who was in insolvent circumstances, executed a chattel mortgage upon his stock-in-trade in favour of a money-lender by whom a loan was advanced. The money, which was in the hands of the mortgagee's solicitor, who also acted for the preferred creditor throughout the transaction, was at one time paid over to the creditor, who at the same time delivered to the

solicitor, to be held by him as an escrow and dealt with as circumstances might require, a bond indemnifying the mortgagee against any loss under the chattel mortgage. The mortgagee had previously been consulted by the solicitor as to the loan, but was not informed that the transaction was being made in this manner to avoid the appearance of violating the acts respecting assignments and preferences, and to bring the case within the rule in *Gibbons* v. *Wilson* (17 Ont. A.R. 1):—Held, that all the circumstances, necessarily known to his solicitor in the transaction of the business, must be assumed to have been known to the mortgagee, and the whole affair considered as one transaction contrived to evade the consequences of illegally preferring a particular creditor over others, and that, under the circumstances, the advance made was not a *bona fide* payment of money within the meaning of the statutory exceptions. *Burns & Lewis* v. *Wilson*, 28 S.C.R. 207.

—Debtor and creditor—Transfer of property—Delaying or defeating creditors—13 Eliz. c. 5.]—A transfer of property to a creditor for valuable consideration, even with intent to prevent its being seized under execution at the suit of another creditor, and to delay the latter in his remedies, or defeat them altogether, is not void under 13 Eliz. ch. 5, if the transfer is made to secure an existing debt and the transferee does not, either directly or indirectly, make himself an instrument for the purpose of subsequently benefiting the transferor. *Mulcahey* v. *Archibald*, 28 S.C.R. 523.

— Assignments and preferences — Pressure — Agreement to give security.]—Where a preferential security, given while R.S.O. (1887) ch. 124, as amended by 54 Vict. ch. 20 was in force, is attacked within sixty days, evidence of pressure is not admissible to rebut the presumption of intent to give a preference. An agreement to give security, made in good faith, may, even though it is indefinite in its terms, avail to rebut the presumption of intent to prefer, but where the giving of security is deliberately postponed in order to avoid injury to the debtor's credit, or to avoid the statutory presumption, the agreement to give the security is of no avail. *Webster* v. *Crickmore*, 25 Ont. A.R. 97.

—Preference—Impeaching—Time—Pressure—Voluntary conveyance—Consideration—Untrue Statement—Proof of true consideration—Onus—Statute of Elizabeth.]—Where there was evidence of a request made to a person in embarrassed circumstances by one who had indorsed notes for him, for a conveyance of an equity of redemption in land, to secure the indorser against his liability, and the first proceeding taken to impeach the conveyance was a seizure of crops upon the land under an execution against the grantor, more than sixty days after the transfer was made:—Held, that, there having been pressure, the conveyance could not be impeached as a preference. But, the statement of the consideration in the conveyance being untrue, the onus was upon the grantee to prove beyond reasonable doubt that there was some other good consideration, and his own unsupported statement that such existed was insufficient, and the conveyance must be treated as voluntary, and therefore void under the Statute of Elizabeth. *Gignac* v. *Iler*, 29 Ont. R. 147.

—Capias—Fraudulent preference—Secretion.]—Where an asset which should be available for the payment of the creditors generally is given to one of them, by a trader, at a time when he was insolvent, and was aware of his insolvency, a fraudulent preference is thereby conferred, which constitutes secretion, and renders him liable to arrest under writ of *capias ad respondendum*. *Gault* v. *Dussault*, 4 L.N. 321, and other cases decided in the same sense, followed. *Cooke* v. *Jacobi*, Q.R. 13 S.C. 433.

—Assignment defeating and delaying creditors—Fraud—Proof of.]—In an action brought at the suit of plaintiffs for that purpose, the trial judge set aside as fraudulent, and made for the purpose of defeating, hindering and delaying creditors, a deed of real estate and an assignment of personal property, &c., made by the defendant, M.G. to her son H., who was preferred in the assignment for a large amount alleged to be due to him. The evidence given by M.G. and H., in relation to the business and the connection of H. therewith, did not agree, and the evidence as a whole went to shew that after the death of the father, by whom the business was originally carried on, it was continued by M.G., his widow, and H., his son, for the mutual benefit of M.G. and H., under the management of H., and without any definite understanding or agreement as to the rate of wages to be paid to him. The assignment to H. was made after plaintiffs commenced their action to recover the amount due them; and, in respect to a quantity of hay alleged to have been sold by H. to M.G., it was admitted that the items, which extended over a number of years, were inserted in the account just before the assignment, and that the quantities of hay alleged to have been supplied were estimated. An unsatisfactory account was given of other charges that were consistent only with the theory that the business was one in which M.G. and H. were mutually interested. It was also admitted that a number of the larger items on both sides of the account between M.G. and H., including wages, were not entered until immediately before the assignment, and the original account shewed evidence on its face of interlineations and erasures in many places. The trial judge set aside the assignment and the deed of real estate which immediately preceded it as fraudulent, and made for the purpose of hindering, defeating and delaying plaintiffs and other creditors:—Held, that in cases of this character, where

the facts which must govern the Court in coming to a conclusion are different in each case, while an isolated fact may not be sufficient to induce the Court to set aside the transaction as fraudulent, a combination of facts may irresistibly lead to that conclusion. *Delong* v. *Gillis*, 31 N.S.R. 61.

—Statute of frauds, 13th Eliz. c. 5—Deed—Defeating and delaying creditors—Knowledge on the part of grantee of grantor's indebtedness—Absence of valuable consideration—Fraud.]—On the 23rd March, 1891, plaintiff commenced proceedings against the defendant, M. M., to recover the amount of a debt due by M. M,, and, on the 29th January of the following year, judgment was entered by consent in plaintiff's favour for a smaller amount, which he agreed to accept, with costs. On the 24th of June, 1891, M. M. executed and delivered to his son and co-defendant, A. M., a deed of his farm, upon which he resided. In an action brought by plaintiff to set aside the deed as made fraudulently and in violation of the provisions of the statute 13th Eliz. ch. 5, the defence was that some four years before the recovery of the judgment, A. M. being about to leave home, his father, M. M., promised that if he would remain at home and work, and contribute to the support of the family as he had been doing before, he would give him a deed of the farm, and that A. M. did remain at home and contribute to the support of the family, and that the deed was given in consideration of and in fulfilment of the promise so made. The evidence shewed that, both when the alleged bargain was made, and at the time when he took the deed, A. M. knew of his father's indebtedness to plaintiff, and that he had no other means of paying his indebtedness than the property in question, and that the effect of the giving of the conveyance would be to defeat and delay the plaintiff in the recovery of his debt:—Held, that the deed made under these circumstances was fraudulent within the meaning of the statute, and that A.M., in view of his knowledge of plaintiff's claim and the inability of the grantor to pay, stood in no better position than his father:—Held, also, that the consideration for the deed was, at most, meritorious, and that, in the absence of valuable consideration, the rule requiring the party attacking the deed to prove fraud did not apply: *Montgomery* v. *Corbitt*, 24 Ont. A.R. 311, and *Ex parte Mercer*, 17 Q.B.D. 290, distinguished. *McNeil* v. *McPhee*, 31 N.S.R. 140.

— Fraudulent preference — Insolvent circumstances — Intent to prefer.] — The plaintiff, being the assignee of one Lamonte under an assignment for the benefit of his creditors, brought this action to set aside a chattel mortgage on Lamonte's stock-in-trade made in favour of the defendants, on the ground that Lamonte was at the time in insolvent circumstances and unable to pay his debts in full, and gave the defendants the mortgage as a preference over his other creditors. At the date of the mortgage, Lamonte, who was a retail merchant, had a surplus upon his valuation of his stock of about $1,000, besides a piece of land valued by him at $750. He was carrying a stock of $900 or $1,000, and had a profitable and increasing business. Another creditor, as his claim was about maturing, notified Lamonte that he insisted upon payment. Other considerable sums were already overdue or about maturing, which it was impossible for him to meet at once; and taking all the circumstances into consideration the proper inference was that, even upon the terms of credit on which the sale was eventually made, Lamonte could not at the time of making the mortgage dispose of his assets for sufficient to meet his liabilities:—Held, that he must be deemed to have been then in insolvent circumstances, and as the giving of the mortgage was entirely at his suggestion, and there was no pressure on the part of the mortgagees, it must be declared that the mortgage was void as against the plaintiff. *Davidson* v. *Douglas*, 15 Gr. 347, and *Warnock* v. *Kloepfer*, 14 Ont. R. 288, followed; the latter qualified to meet the case of a man whose liabilities are not wholly matured and who could sell his property on terms which will enable him to pay those which have matured and the others as they mature. Such a person should not be deemed to be in insolvent circumstances within the meaning of the statute. *Bertrand* v. *Canadian Rubber Company*, 12 Man. R. 27.

—Fraudulent conveyance—Bona fide purchases—Attachment of debts.]:—Held, that the right of a plaintiff to attack a transaction by which property is conveyed by the judgment debtor to a fraudulent grantee is derived from the statute, and goes no further than the setting aside of the fraudulent conveyance, and that a creditor cannot take proceedings for that purpose after the property has passed from the hands of the fraudulent grantee into those of a purchaser for value. Neither has he any right to call upon such purchaser to account for any money still remaining due by him to the fraudulent grantee: *Stuart* v. *Freeman*, 3 Ont. R. 190; *Ross* v. *Dunn*, 16 Ont. A.R. 552; and *Tennant* v. *Gallow*, 25 Ont. R. 56, followed. *Mausuret* v. *Stewart*, 22 Ont. R. 290, dissented from. *Union Bank* v. *Barbour*, 12 Man. R. 166.

—Interpretation of deeds—Voluntary conveyance—Trust deed for benefit of creditors—Fraudulent preference.]—Under a trust deed assigning the assets of a partnership business upon trust to sell the same and divide the proceeds "into and among all the creditors of the parties of the first part" (viz., the assignors), without any words of distribution, such as "or either of them" being added:—Held, that the deed provided only for the payment of the joint creditors, and not the separate creditors of the partners, and in the absence of any satisfactory arrangement

being agreed upon, the deed must be set aside on the ground that it constituted a preference.—When a voluntary conveyance has the effect of defeating creditors it will be set aside, and it is not necessary to adduce evidence of fraud; the burden lies on the person executing the deed to shew cause why it should not be set aside. *Cunningham* v. *Curtis*, 5 B.C.R. 472.

— Insolvency — Assignment — Preference — Payment in money—Cheque of third party.]—*Fraser* v. *Donaldson & Hay*, 28 S.C.R. 272.

And see BANKRUPTCY AND INSOLVENCY, IV.

III. ASSIGNMENT OF DEBT.

—Action by assignee — Allegation that assignment made in writing—Amendment — Costs.]—In an action brought by plaintiff, as assignee of W. H. H., against defendant, the statement of claim read as follows:—"That the said W. H. H. duly assigned the said debt to the plaintiff." The trial judge was of the opinion that, on the merits, as disclosed by the evidence, plaintiff was entitled to recover, but he sustained an objection made to the statement of claim under O. 61, viz., that it was not alleged that the assignment was made in writing, which was necessary to entitle plaintiff to sue in his own name, and gave judgment accordingly:—Held, that it was the duty of the trial judge, on the facts as found by him, to have made the amendment necessary to enable plaintiff to recover, and that, as he had failed to do so, the case was clearly one for the interference of the Court. Amendment ordered, and judgment directed to be entered for plaintiff with costs of trial, but no order made as to costs of appeal. *Dempster* v. *Fairbanks*, 29 N.S.R. 456.

IV. ATTACHMENT OF DEBT.

—Division Courts—Wrong primary debtor—Similarity in name—Recovery by rightful owner—R.S.O. 1887 c. 51, s. 195.]—In an action to recover a deposit of money to the credit of the plaintiff with the defendants, it appeared that the whole amount had been innocently but wrongfully paid by the defendants into Court and also directly to the creditors of another person of the same name as the plaintiff, under garnishee proceedings in a Division Court:—Held, that there was nothing in such proceedings to bar the plaintiff of his right to recover, or to protect the defendants against his claim, and that the judgments in the proceedings did not apply to money in their hands belonging to the plaintiff:—Held, also, that s. 195 of R.S.O. 1887 ch. 51, only protects a garnishee against being called upon by a primary debtor to pay over again and does not protect him against any third person. *Andrew* v. *Canadian Mutual Loan and Investment Co.*, 29 Ont. R. 365.

—Attachment of wages — Workman — Garde-magasin — Art. 628 C.C.P. (old text).]—The caretaker of a shop *(garde-magasin)* is not an *operarius* whose wages can be seized in advance under art. 628 of the old Code of Civil Procedure. *Eckersley* v. *Brunelle*, Q.R. 12 S.C. 181.

—Garnishment — Election deposit — Money in hands of public officer.]—A. loaned B., a candidate for election to the Commons of Canada, the sum of $200 to deposit with the returning officer, as required by R.S.C. cap. 8, sec. 22. B. was not elected, but received a sufficient number of votes to entitle him to a return of the money so deposited. Before the money was paid over C., a judgment creditor of B., garnished the money in the hands of the returning officer—Held, that the money deposited belonged to A., not B., and the attaching order was properly set aside. *Ex parte Peck*, 33 N.B.R. 628.

—Garnishee order — Certiorari — Exemption of wages—Estoppel — 45 V., c. 17, s. 33, (N.B.) — Costs, by whom taxed.]—The salary for services for deputy sheriff and gaoler cannot be termed "wages," so as to entitle to exemption of twenty dollars under 45 Vict., c. 17, s. 33.—The judgment debtor, in an application to set aside garnishee proceedings, having denied any wages were due him from the garnishee, would be thereafter estopped to claim any exemption for wages due.—It is no ground for *certiorari* that the County Court Judge ordered the costs of the garnishee order and application to be taxed by the clerk of the Supreme Court instead of taxing them himself. *Ex parte Bowes*, 34 N.B.R. 76.

—Money in the hands of a receiver—Garnishee.]—Money in the hands of a receiver is not a debt due from him to the persons interested in the estate, and cannot be attached by garnishing process. *Gray* v. *Purdy*, 5 B.C.R. 241.

—Garnishee—Defence by debtor—Hearing—45 V., c. 17.]—An order under sec. 7 of 45 Vict., ch. 17, was served upon the judgment debtor in addition to the garnishee, and, at the return, the judgment debtor gave evidence in disproof of the existence of the debt sought to be garnisheed. The judge having pronounced in favour of the validity of the debt, the judgment debtor now applied under sec. 16 of the Act to discharge the debt from attachment on the ground that the proceedings under sec. 7 only affected the garnishee and could not bind the judgment debtor. Application granted. *Stockton* v. *Mallory*, 34 C.L.J. 579.

—Division Courts—Garnishee process — Committal—Judgment summons—Affidavit.]

See DIVISION COURTS.

And see GARNISHEE.

V. CESSION DE BIENS.

—Absence of debtor's goods — Presumption — Demand of assignment — Number of creditors — Requisite amount of debt.]—A restaurant keeper

is a trader. — The absence of goods at the debtor's place of business, coupled with a refusal by the debtor to pay a judgment against him, constitutes a presumption of cessation of payments. — The right of a creditor to demand an assignment (*cession de biens*) by his debtor does not depend upon the number of creditors; if there is only one the debtor is none the less bound to assign. —To make up the requisite sum ($200) to authorize a demand of assignment the costs of the action may be added to the judgment, when the creditor in consequence of this judgment—which demands the assignment—has probably paid the costs of his attorney to whom there had been distraction, such payment having the effect, without express subrogation, of making the plaintiff sole creditor for these costs.—The fact that the creditor has already made a demand of assignment upon one member of a firm, believing him to be the sole debtor, does not prevent him, when he is aware of the existence of the partnership, from making the same demand upon the other partner. *Carter* v. *McCarthy*, Q.R. 6 Q.B. 499.

—Invalid abandonment—Effect on seizure—Modes of execution.]—An invalid abandonment (*cession de biens*), one not containing a sworn list of the debtor's creditors and not following the prescribed form, cannot be set up against a seizure of the debtor's property.—The modes of execution prescribed by the Code of Procedure as to immovables transferred by way of *cession de biens* do not exclude the usual right that a creditor has, by virtue of his judgment, to proceed by writ *de terris* to the seizure and sale of the immovables of his debtor. *Lewis* v. *Walker*, Q.R. 13 S.C. 125.

—Effect of cession—Subsequent judicial proceedings—Notice to inspectors—Costs.]—The new Code of Civil Procedure does not prevent a creditor establishing his debt by a judgment against the debtor even after the latter has made an abandonment (*cession de biens*). He may even proceed to seizure, but at his own expense, and to judicial sale the proceeds of which are to be distributed in consequence of the abandonment — Proceedings by a curator to an abandonment are regulated by law, and by the will of the creditors expressed through the inspectors. Therefore, the curator cannot become *tiers opposant* to a judgment without being authorized by a judge on motion by the inspectors, and he should allege the observance of these essential formalities; otherwise the *tierce opposition* will be dismissed *sur inscription en droit*. *Gagnon* v. *Proulx*, Q.R. 13 S.C. 189.

— Cession de biens — Resolution of inspectors — Powers of curator—Tierce-opposition by creditor of estate to judgment obtained by curator.]—In virtue of a resolution of the inspectors, the curator had paid Roy $150 for costs incurred by the latter in legal proceedings which they thought were in the interest of the estate. Ellis instituted an action against Roy to compel him to return this money into the hands of the curator, and another action to annul the said resolution as *ultra vires* and illegal. After service of this action, the curator presented to Hon. Mr. Justice Caron, in Chambers, a petition to approve of the said resolution authorizing the said payment of money to Roy, and Ellis made a *tierce-opposition* to this judgment in Chambers, granting said petition: — Held, that the curator is the officer of the Court chosen by the creditors for the purpose of the liquidation of the estate of their debtor; the inspectors are appointed for the purpose of advising him in matters connected with such liquidation.—When a creditor attacks the validity of a resolution of the inspectors and of an act of the curator, the curator and the inspectors contesting such action in nullity are not deemed to represent said creditor, but act as his opposants and adversaries. Therefore, if they obtain a judgment without his participation or consent which thwarts and defeats his proceedings in nullity begun in his own name, he must be considered a third party having recourse by way of a *tierce-opposition* against said judgment.—The powers of the curator and inspectors are those, and none other than those, given them by the Code of Procedure. They have no power to engage in litigation even to collect debts due to the estate or to recover property belonging to it, except by permission of the judge first duly obtained. *In re Plamondon*, Q.R. 13 S.C. 377.

—Demand of assignment—Form—Art. 853 C.C.P.]—A demand of assignment (*cession de biens*) made since the bringing into force of the new Code of Civil Procedure in Quebec by which the creditor demands that the debtor make an assignment of his property under the authority of Article 763a (which was the article of the former code authorizing the demand) and following a form appropriate to that article, is a nullity. *Galarneau* v. *Boucher*, Q.R. 13 S.C. 470.

VI. Collection of Debts.

—Action to account—Agent for collection.]—Where the plaintiff alleges that he was employed by the defendant to assist in the collection of certain monies due to the defendant, and that he was to have a percentage of all such monies as the defendant, through his assistance, should collect, the plaintiff was entitled to bring an action to account: *Michaud* v. *Vezina*, 6 Q.L.R. 353, distinguished; *Brunet* v. *Banque Nationale*, Q.R. 12 S.C. 287.

VII. Compromise.

Default in payment—Revival of debt—Promissory note—Inducement to sign composition.]—If a compromise with creditors becomes void from default in payment according to its terms the entire debt is revived and a note given before it so became void, to induce a creditor to sign it, is null. It would be

otherwise if the creditor had consented after the compromise was avoided. *Budden* v. *Rochon*, Q.R. 13 S.C. 322.

—Illegal compromise.]—B. had made with his creditors, among whom was A., a compromise by which his wife had agreed to assign to the creditors, as collateral security, an endowment certificate in "*L'Alliance Nationale*," of which she was the beneficiary, and which, by law, was non-seizable and non-negotiable:—Held, that the condition of the compromise, namely, the obligation of the wife, being illegal, such compromise could not be invoked in answer to an action by A. for the amount of his debt. *Allard* v. *Boyer*, Q.R. 12 S.C. 330.

VIII. Examination of Judgment Debtor.

—Queen's Bench Act, 1895, Rule 732-3—Non-resident.]—No order can be made under Rule 733 of the Queen's Bench Act, 1895, for the examination out of the jurisdiction of an officer of a judgment debtor corporation for discovery of assets, etc., and it is doubtful whether, under Rule 732, an individual judgment debtor who is resident abroad can be so examined unless he comes within the jurisdiction. *Grey* v. *Manitoba and North Western Railway Co.*, 12 Man. R. 32.

—Practice—Examination of judgment debtor—Right to counsel.]—The examination of a judgment debtor is a personal examination and he is not entitled to the assistance of counsel to take part in such examination, but he can have counsel to privately advise him. *Bank of Montreal* v. *Major*, 5 B.C.R. 156.

IX. Novation.

—Delegation of payment—Acceptance.]—The institution of an action, by the creditor of an obligation, against a person who has agreed with the debtor to pay such obligation, and the signification of such action, constitutes on the part of the creditor a sufficient acceptance of the stipulation so made in his favour, and he can proceed with the action although he had not previously signified his willingness to accept the delegation of payment. *Fry* v. *O'Dell*, Q.R. 12 S.C. 263.

—Novation — Facts establishing — Defendants held relieved from further liability.]—In an action by plaintiff against defendants the latter relied upon an alleged agreement by which plaintiff was to accept C. as his debtor in substitution for defendants. Plaintiff denied the agreement set up, but admitted that C. told him he would pay him $365 for defendants, and that, on the day on which the money was to be paid, he went to C.'s shop, and received from him goods to the amount of $325.30. The evidence shewed further that C., who was indebted to the defendants, settled his account with them by undertaking to pay plaintiff the sum of $365, and giving his promissory note for the balance. Also that plaintiff, in his account with the defendants, charged them with the sum of $373.61, and credited them with "Amount to be paid by L. J. C., $365"; and with the balance of $8.51 cash."—Held, that there was complete evidence of a novation, by which C. was substituted for defendants, and the latter were relieved of all further liability to plaintiffs. *Lewis* v. *D'Entremont*, 29 N.S.R. 546.

—Verbal novation.]—There may be a complete verbal novation; neither the discharge of the original debtor, on one side, nor the assumption of the new debt on the other, need be evidenced in writing. *Strong* v. *Hesson*, 5 B.C.R. 217.

X. Recovery of Debt.

— Magistrate's Court — Act for recovery of debt in—Validity.]

See Constitutional Law, IV (*b*.)

—Married woman—Separate property—Conveyance—Contracts—C.S.N.B. c. 72.]

See Husband and Wife, VII.

XI. Set-Off.

—Promissory note—Holder for collection only—Compensation.]—Compensation does not take place between a debt, which is clear and liquidated, and a promissory note, of which the person offering it in compensation is not the owner, but is the holder for collection only, with obligation to account to the owner. *Inkiel* v. *Laforest*, Q.R. 7 Q.B. 456, affirming 11 C.S. 534.

—Insolvency—Compensation.] - At common law insolvency will not prevent the compensation of two liquidated and exigible debts.—When a claim against a formal guarantee is reduced to the payment of a sum of money, this claim can be extinguished by compensation. *Desmarteau* v. *Darling*, Q.R. 12 S.C. 212.

—Plea—Set-off—Demurrer.]—A plea of set-off which did not conclude with an offer to set-off defendant's claim against plaintiff's claim, was held bad on demurrer. *Fillmore* v. *Cartwright*, 33 N.B.R. 621.

And see Costs XIX (*f*).

DEDICATION.

Street—Dedication—Plan made by owners of lots—Subsequent expropriation.]—Where persons owned certain lots of land, in common (of which they subsequently made a partition), the designation of one of the lots as a street upon the plan made by them—which street, however, was not actually opened—did not effect such a dedication of it as to give the public any rights therein, or to relieve the municipality from the obligation of making compensation for it when required as a public street, and such compensation was due to the person who was owner at the date of the expropriation. *Warminton* v. *Heaton*, Q.R. 7 Q.B. 234.

—**Old trails in Rupert's Land—Substitution of new way — Highway.**]— *Brown* v. *Town of Edmonton*, 28 S.C.R. 510.

And see WAY.

DEED.

Form of title to lands—Signature by a cross—19 V., c. 15, s. 4 (Can.)—Registry laws — Evidence — Commencement of proof.]—Where the registered owner of lands was present but took no part in a deed subsequently executed by the representative of his vendor granting the same lands to a third person, the mere fact of his having been present raises no presumption of acquiescence or ratification thereof.—The conveyance by an heir at law of real estate which had been already granted by his father during his lifetime is an absolute nullity and cannot avail for any purposes whatever against the father's grantee who is in possession of the lands and whose title is registered.—Writings under private seal which have been signed by the parties but are ineffective on account of defects in form, may nevertheless avail as a commencement of proof in writing to be supplemented by secondary evidence. *Powell* v. *Watters*, 28 S.C.R. 133.

—**Mortgage—Married woman—Implied covenant—Disclaimer.**]—Where a deed of lands to a married woman, but which she did not sign, contained a recital that as part of the consideration the grantee should assume and pay off a mortgage debt thereon and a covenant to the same effect with the vendor his executors, administrators and assigns, and she took possession of the lands and enjoyed the same and the benefits thereunder without disclaiming or taking steps to free herself from the burthen of the title, it must be considered that in assenting to take under the deed she bound herself to the performance of the obligations therein stated to have been undertaken upon her behalf and an assignee of the covenant could enforce it against her separate estate. *Small* v. *Thompson*, 28 S.C.R. 219.

—**Description — Appurtenances — R.S.O. (877), c. 102, s. 4.**]—Where in a conveyance made in pursuance of the Short Forms of Conveyance Act, R.S.O. (1877) ch. 102, a parcel of land is accurately described by metes and bounds, the general words of sec. 4 will not pass lands with buildings thereon not embraced in the specific description, merely because the buildings were previously used, occupied and enjoyed with the property specifically described by metes and bounds: *Willis* v. *Watney*, 51 L. J. Ch. 181, 30 W. R. 424, 45 L.T.N.S. 739, distinguished; *Hill* v. *Broadbent*, 25 Ont. A.R. 159.

—**Trusts and trustees — Estate — Temperance society—Locality—New societies.**]—A grantor, by deed, conveyed certain land to three trustees in trust for certain societies at a named place and their successors, representatives of the aforesaid societies, or the representatives of the said societies (*sic*) of any temperance society by whatever name it or they might be known or designated. Together with all * * the estate, right, title * * of the grantor, his heirs or assigns, *habendum*, unto the said trustees and their successors in trust for said societies, or such of them as may continue to exist. * * The three temperance societies mentioned in the deed had all ceased to exist for many years:—Held, that the trustees took only a life estate for their joint lives and the life of the survivor of them, leaving the reversion in fee in the grantor:—Held, also looking at the situation of the premises and the uses for which they were intended, and that the temperance societies originally named were all formed in a certain place, that although the trust was intended to be confined to temperance societies having the same local habitation, the words in the *habendum* were large enough to include any temperance society founded at that place while any of the original grantees were living:—Held, also, that the plaintiff having been appointed a trustee for such a society, although no such appointment could extend or prolong the life estate granted, was entitled to restrain the defendant, his co-trustee and the sole surviving trustee under the deed, from pulling down a building on the premises, which he had commenced to do. *Armstrong* v. *Harrison*, 29 Ont. R. 174.

—**Action for trespass to land—Fraud—Burden—Rectification of deed—Costs—Discretion.**]—In an action for trespass to lands, the defence was that the lands in question were included in an agreement for the sale by F. & Co. to M. & Co. of the lands connected with the business of F. & Co. on Port Medway River, but were fraudulently omitted from the deed made by F. & Co., purporting to convey such lands. Defendants counter-claimed a rectification of the deed and also a reduction in the purchase price on account of a deficiency in the quantity of land conveyed. The jury found, among other things, that the land in question was a portion of the lands of F. & Co. connected with their business on Port Medway River, and a rectification of the deed, as claimed, was ordered on that ground:—Held, per Graham, E. J., McDonald, C.J., concurring, that the burden was upon defendants to establish by clear evidence the fraud relied upon, and that, in the absence of such evidence, the findings of fraud, so far as they were appealed against, must be set aside. Held, nevertheless, that as defendants were entitled to the rectification claimed, on the other ground there was no occasion for ordering a new trial. Held, also, that the allowance to plaintiffs of the costs of certain issues, as to which defendants had failed, and the withholding of costs in respect of a portion of the counter-claim, that was dismissed without costs, were matters that were within

the discretion of the trial judge. Held, also, that there was no appeal from an order made at Chambers making costs in the cause, the costs of an interlocutory matter in respect of which plaintiffs eventually succeeded (See 33 N.S.R. 30.)—Per Meagher, J.:—Held, that there was sufficient evidence to support the findings of fraud alleged by defendants, and that the motion to set aside such findings should be dismissed with costs. *Freeman* v. *Mitchell*, 30 N.S.R. 513.

—Deed of land—Description—"In front of"—Evidence.]—In an action for trespass to land defendants relied upon a deed from L. of a lot of land approximately triangular in shape, being parcel of a larger lot of land conveyed to L. by V. J. S., and wife, and described as being "on the south shore of Gabarus Bay, in the County of Cape Breton and bounded as follows: that is to say, by a line beginning at the shore at a stake . . . . . and thence running south . . . . . to a general rear line, &c." The front line of the triangular lot was a road running across L.'s land, near the shore. One of the side lines was uniform with one of the side lines of the land conveyed to L., while the third or remaining line ran obliquely across it. The deed relied upon by defendants, in addition to the land included within the three sides of the triangle and conveyed by the deed, contained the words "together with the land in front of the said lot to high water mark:"—Held, that the words "in front of" were to be read in their ordinary sense, and the front line of the triangle being of the length of 176 feet, the land "in front," and intended to be conveyed, would necessarily be of the same width, and not of the width that would result from extending the oblique line of the triangle to high water mark. The trial judge admitted in evidence an agreement made between the defendant M. and one S., and also evidence of acts done upon the ground by M. and S. in pursuance of the agreement, which evidence was introduced for the purpose of controlling, in favour of M., the description of the deed from L.:—Held, that none of the evidence so received was admissible, the transactions relied upon having taken place about two years prior to the date of the deed from V. J. S. to L. *McIntyre* v. *McKinnon*, 31 N.S.R. 54.

—Trespass—Counterclaim for rectification of deed—False and fraudulent representations as to boundary of land bargained for—Remedy against vendor.]—Plaintiff agreed to sell to defendant a lot of land extending up the river as far as the line of property of G., which line was represented as being marked by a pine tree. In an action of trespass brought by plaintiff against defendant for piling logs on a portion of the land bargained for, it appeared that the boundary of G.'s property was not marked by the pine tree, but that the tree fell several rods short of it, and that the title to the land between the tree and the line of G.'s property, in respect of which the action was brought, remained in plaintiff. The evidence showed that defendant was induced to complete the purchase by the false and fraudulent representations of plaintiff that the whole lot was being conveyed up to G.'s line, plaintiff intending, at the time, to reserve for his own use the portion of the lot intervening between the tree and G.'s line:—Held, that defendant was not entitled, under these circumstances, to have his deed rectified on the ground of mutual mistake, but that his only remedy was against plaintiff for the fraud. *Feindel* v. *Zwicker*, 31 N.S.R. 232.

—Transfer of pre-emption claim—Land Act, 1888, s. 26—"Transfer."]—Defendant having a pre-emption claim to certain land signed an undated deed conveying the same to plaintiff; but it was agreed, in view of sec. 26 of the Land Act prohibiting the transfer of pre-emption claims, that the deed should remain in escrow until after the issue of the Crown grant, and that the date should then be inserted and delivery made. The transaction was completed accordingly:—Held, per Drake, J., at the trial, that the word "transfer" in sec. 26 means the parting with the title, and, as the deed did not operate until after the issue of the Crown grant, it did not constitute a transfer before Crown grant within the meaning of the Act:—Held, by the Full Court, that the parties had avoided doing that which the Act prohibited, and the conveyance was valid and effectual. *Hjorth* v. *Smith*, 5 B.C.R. 369.

—Covenant for quiet possession—Mistake—Rectification.]—See COVENANT.

—Trust deed—Assignment for benefit of creditors—Fraudulent preference—Interpretation.]

See DEBTOR AND CREDITOR, II (*b.*)

—Obtained by threat—Invalidity—Setting aside.]

See DURESS.

—Vendor and purchaser—Fraudulent representations as to boundary of land sold—Rectification of deed.]—See SALE OF LAND.

DELAYS.

See PRACTICE AND PROCEDURE, V.

DEMURRER.

Demurrer incorporated with statement of claim—Practice.]—See PLEADING, VI.

DETINUE.

Loss of use of personal property—Special damage.]—Held (per Meagher and Henry, JJ.), that in detinue damages for the loss of the use of any species of personal prop-

erty may be recovered without an allegation of special damage. *Garden* v. *Neily*, 31 N.S.R. 89.

DEVOLUTION OF ESTATES ACT.

58 Vict. c. 21 (O.)—R.S.O. c. 127, s. 12—Construction of — Widow's charge — Quantum of—Foreign estate.]—Under 58 Vict. ch. 21 (Ont.), now sec. 12 of R.S.O. ch. 127, the widow of an intestate who has left no issue is entitled to $1,000 out of his real estate in Ontario, notwithstanding that she may have received other benefits under the laws of another country out of his estate in that country. *Sinclair* v. *Brown*, 29 Ont. R. 370.

—Widow's election—Election after a year—Administration by the Court—R.S.O., c. 127, s. 4.]—When on administration by the Court of the estate of an intestate lands have been sold, the widow, although declared entitled to dower by the judgment, may, though more than a year has elapsed from the death of her husband, elect to take her distributive share in lieu of dower, provided the estate be not yet distributed on the footing of her having retained her dower right. *Baker* v. *Stuart* (No. 2), 29 Ont. R. 388.

—Intestacy—Advancement.]

See ADVANCEMENT.

DISBURSEMENTS.

Ship's disbursements—Insurance of.]

See INSURANCE, III.

DISCONTINUANCE.

Of Action — Plaintiff in person — Suit by attorney.]—See ACTION, VI.

DISORDERLY HOUSE.

Criminal procedure — Information common gaming house—Summary trial—Crim. Code, ss. 196, 198, 783 (f)—Rule of interpretation—Noscitur a sociis.]—See CRIMINAL LAW, XVIII.

DIVISION COURTS.

Jury trial — Submitting Questions — Acquiescence—Prohibition.]—In a Division Court action for the price of goods sold, the judge without objection taken submitted questions to the jury and on their answers entered a verdict and judgment for the plaintiff after the defendant had, however, put in a written argument in his own favour:—Held, on motion for prohibition, on the ground that the defendant was entitled to a general verdict of the jury, and that the judge had no right to submit questions and enter a verdict on them, that however this might be, the defendant had so acquiesced in the course taken as to debar him from obtaining prohibition. *In Re Jones* v. *Julian*, 28 Ont. R. 601.

—Jurisdiction — Commission on sale.] — The defendant, by an instrument signed by him, authorized the plaintiff to dispose of the goods mentioned therein for the sum of $1,000 not to defendant, the latter reserving to himself the right to dispose of the goods without plaintiff's assistance, and agreeing in such case to pay the plaintiff a commission of ten per cent. on the above-mentioned sum. The defendant, unassisted by plaintiff, afterwards disposed of the goods for $350, and the plaintiff then claimed ten per cent. commission on $1,000, and interest:—Held, that he was entitled to recover the amount, and that the claim was within the jurisdiction of the Division Court, the original amount thereof being ascertained by the signature of defendant. *Petrie* v. *Machan*, 28 Ont. R. 642.

—Jurisdiction—Agreement for sale of machine—Ascertainment of amount claimed.]—Under the written agreement for the sale of a machine signed by the defendant, he was to send to the plaintiffs, within ten days after the machine was started, a promissory note, with approved security, for $125, the price thereof; and in default the price was to become forthwith due and payable. The machine, which was by the agreement to be delivered by plaintiffs f.o.b. cars, addressed to defendant to an outside railway station, was received and used by him, and shortly after was returned to plaintiffs. In an action on the judgment:—Held (per Robertson, J.), that there was no jurisdiction in the Division Court to entertain an action for the price of the machine, as the amount was not "ascertained by the signature of the defendant," under sec. 70, sub-sec. (Ont.) of R.S.O. (1887) ch. 51, for in addition to proof of the signature, evidence was necessary to shew that the terms of the agreement had been performed by the plaintiffs. On appeal to the Divisional Court the decision of Robertson, J., was reversed, and a mandamus ordered to issue: *Petrie* v. *Machan*, 28 Ont. R. 642, followed. *Re Sawyer Massey Co. and Parkin*, 28 Ont. R. 662.

—Garnishee—Judgment summons—Committal—Examination—Affidavit—R.S.O., c. 51, s. 235—57 V., c. 23, s. 18—Prohibition.]—The County Court Judge, presiding in a Division Court, has no power to commit a garnishee for default in making payments pursuant to an order after judgment; and sec. 18 of 57 Vict., ch. 23 (O), has not extended his powers in that behalf. Before a garnishee can be examined under ss. 235 to 248 of R.S.O. 1887, ch. 51, as now permitted by sec. 18 above, it is necessary that the creditor, his solicitor or agent, should make and

fyle the affidavit required by sec. 235. Prohibition against enforcement of committal order. *Re Dowler* v. *Duffy; Inglesby, Garnishee*, 29 Ont. R. 40.

—Prohibition—Amount in dispute—Unsettled account—Jurisdiction—Interest—Part prohibition.]—The summons in a Division Court plaint stated the plaintiff's claim to be $109.73, the amount of an account with interest. The account, as shewn by the particulars annexed, was a debit and credit one, consisting on the debit side of a number of items, aggregating $456.50, and on the credit side of items of cash payments, amounting to $361.50, leaving a balance of $95, which, with $14.73 claimed for interest, made the $109.73. Judgment for the plaintiffs was signed for that amount for default of a dispute note:—Held, that it did not appear on the face of the proceedings that the account was an unsettled one; for all that appeared, the account, though exceeding $400, might have been a settled account, and the balance of $95 an admitted balance; and therefore the jurisdiction of the Division Court was not excluded by sec. 77 of the Division Courts Act, R.S.O. 1887 ch. 51. But the amount claimed was beyond the jurisdiction of the Division Court, as defined by sec. 70, sub-sec. (1), clause (*b*). As, however, the claim for interest was severable, the prohibition should be limited to the excess over $100: *Trimble* v. *Miller*, 22 Ont. R. 500 followed; *Re Lott* v. *Cameron*, 29 Ont. R. 70.

—Jurisdiction—Insolvent—Transfer of goods in trust—Distribution amongst creditors—Action by assignee to recover creditor's share.]—Within sixty days of the making of an assignment for the benefit of creditors, the insolvent transferred to a person in trust for certain of his creditors a quantity of butter, which was sold, realizing $1,800, and the proceeds were distributed among such creditors in proportion to their claims, whereby they acquired a preference. The assignee then sued one of the creditors to recover back the moneys paid him as his share, the amount so sought to be recovered being within the jurisdiction of the Division Court:—Held, that the transfer was divisible into as many parts as there were shares and the Division Court had jurisdiction to entertain the action. *Beattie* v. *Holmes*, 29 Ont. R. 264.

—Tort—Payment into Court—Continuance—Right to money in Court—Prohibition.]—In a Division Court action for a tort, money paid into Court by the defendant in alleged satisfaction of the plaintiff's claim at once becomes the plaintiff's; but if he proceeds with the action it must, under Rule 170, remain in Court until after judgment is given in the action, when any costs awarded the defendant, after the payment in, must be deducted therefrom. Where, therefore, after payment into Court by a defendant of a sum of money in alleged satisfaction of the plaintiff's claim and costs, the plaintiff proceeded with the action, and judgment was given in the defendant's favour, an order made by the Division Court Judge directing the sum so paid in to be paid out to the defendant was set aside, and the amount directed to be paid out to the plaintiff, after deducting the costs awarded to the defendant. *O'Neil* v. *Hobbs*, 29 Ont. R. 487.

—Jurisdiction—Splitting cause of action—Mortgage—Instalments of interest—Assignee of Covenant—Indemnity.]—A mortgagee cannot sue in the Division Court for the amount of an instalment of interest within the jurisdiction of that Court when other instalments of interest are due which bring the whole amount beyond the jurisdiction.—Sub-sec. 2 of sec. 79, R.S.O. ch. 60, permitting separate actions for principal and interest on a mortgage applies only to an action brought upon the mortgage by a person to whom the money is payable thereon, and does not apply to an action brought by the assignee of the mortgagor upon a covenant entered into by his vendee with him to pay off the mortgage and indemnify him against it. *Re Real Estate Loan Company* v. *Guardhouse, Newlove, Garnishee*, 29 Ont. R. 602.

—Claim in excess of jurisdiction.]—A Division Court Judge trying a claim for an amount within the jurisdiction, is not ousted of jurisdiction because in arriving at his decision thereon, he has incidentally to consider and adjudicate upon a claim, the amount of which exceeds the jurisdiction. *Beattie* v. *McDonald*, 34 C.L.J. 198.

—Payment of money into court—Garnishee proceedings—Wrong primary debtor.]

See DEBTOR AND CREDITOR, IV.

DIVISIONAL COURT.

See APPEAL, XIII (*c*).

DOMICILE.

Change of residence—Possession—Signification of action.]—A. had sold his property at St. Paul du Chester and bought another at Kingsey whither he had transported a part of his household effects. On Dec. 28th, 1897, he set out with his wife and children and a part of his effects to proceed to Kingsey where he arrived the next day. At this time a part of his household goods was still at his former residence under the care of his nephew, who, for some months had been a member of his family, which were to remain there until A. should come for the remainder of his effects, two days later. B. made signification of an action against A. at St. Paul du Chester upon a reasonable member of A.'s family:—Held, that the signification upon A. at his domicile at Chester was legal, that domicile is not acquired merely by

intention, but the actual possession of a new domicile, giving evidence of habitation or occupation, is necessary. *Brochu* v. *Bissonnette*, Q.R. 13 S.C. 271.

See CONFLICT OF LAWS.
" PRACTICE AND PROCEDURE, XXXVII.

DONATION.

Deed of donation—Interpretation—Oral proof—Circumstances accompanying, and usage of place.]—When a clause of a deed of donation is susceptible of two interpretations, it is necessary to examine into the circumstances which preceded, accompanied and followed it, and even the usage of the place, to arrive at the intention of the parties; this may be done by oral proof.—A deed of donation having obliged the donee to maintain (*de garder avec hic*) his sisters and his aunt, it can be shewn, by oral evidence, that in the place where the deed was made and where the parties are domiciled the words are understood to mean lodging only to the exclusion of board, and the notarial instrument to the deed comprised also these words in the restricted sense.—Under the circumstances the obligation imposed on the donee "to maintain" (*garder avec hic*) his sisters and aunt, was carried out by giving them lodging only without board. *Garon* v. *Lévesque*, Q.R. 7 Q.B. 284, reversing 10 S.C. 514.

—Registry—Contract of marriage—Husband and wife—Régime—Don mutuel d'usufruit.]—The heirs of a donor who is bound, by law, to register the donation made by him, cannot set up want of registration against the donee. Thus where the donor (the husband) was bound to register the marriage contract which effected a donation to his wife, his heirs cannot take advantage of the non-registration of the contract, because, as heirs of the husband, they are warrantors (*garants*) of the wife against the consequences of such non-registration.—The reciprocal donation of usufruct (*don mutuel d'usufruct*) between consorts by marriage contract should be registered: *Marchessault* v. *Durand*, M.L.R. 5 Q.B. 364, followed.—The husband of full age (*majeur*), whatever may be the *régime* between him and his wife, community or separation as to property (*séparation de biens*), is bound to register the hypothecs and charges with which his immovables are burdened in favour of his wife. *Pelletier* v. *Lapalme*, Q.R. 12 S.C. 97.

—Clause of non-seizability—Art. 581, 632, C.C.P.]—Where a condition of non-seizability accompanies the donation of an immovable, a judgment creditor of the donee, seeking to execute upon the land, cannot set up the pretention that the charges imposed on donee exceeded the whole value of the property, and that his title was therefore in reality a sale and not a donation. *Soucy* v. *Lebel*, Q.R. 12 S.C. 203.

—Donation by deed—Onerous title—Alienation.]—The prohibition to alienate things conveyed or ceded by onerous title is null.—A deed wherein a donation is made by a party, and a discharge given by the donee to the donor of a pre-existing obligation, is an onerous title, and therefore the prohibition to alienate, contained in such deed, does not operate. *Boucher* v. *Globensky*, Q.R. 13 S.C. 129.

—Gift of a sum of money to be taken from estate before partition—Art. 758 C.C.—Nullity—Acquiescence—Judgment ultra petita.]—Held, a gift of a sum of money to be taken from the estate of the donor immediately after his death, before partition of the estate, is a gift made so as to take effect only after death, within the meaning of Art. 758 C.C., and is therefore void. Such gift being an absolute nullity, the acceptance by the heirs of the executor's account, in which it appeared that the amount of the donation had been paid, does not give it validity or establish acquiescence therein. *Boucher* v. *Morrison*, Q.R. 13 S.C. 205, affirming 12 S.C. 162.

—Deed of gift—Seizability.]—In a deed of gift it was said "*que le donataire ne pourrait vendre, affecter, hypothéquer ni aliéner les terres données, sans le consentement des donateurs:*"—Held, that if this clause made the immovables exempt from seizure the donee could make an opposition thereon "*sans exciper du droit d'autrui.*"—The rule of law to determine whether the terms of a deed of gift make the property given unseizable, is: "What is transferable is seizable."—Under the clause above cited, the lands given are transferable and consequently seizable, with a condition, the consent of the donors. The latter alone can invoke this condition, which is a stipulation in their favour. *Durand* v. *City of Quebec*, Q.R. 13 S.C. 308.

—Onerous donation—Life rent—Benefit of community.]—Under the Civil Code of Quebec, as under the former law, donations of immovables by ancestors by one of the consorts, their heir, which only imposes upon the latter the obligations which would have accompanied the immovables if they had come by succession, are acknowledged deeds in advance of inheritance and the immovables remain the property of the consort.—The donation by an ancestor with a charge of a life rent payable to the donor makes no exception to this rule if the rent does not exceed the value of the revenues of the immovable, because in such case the rent is equivalent to a retention of the usufruct and it is none the less a real donation as to the estate (*fonds*).—But the stipulation, in a donation with retention of usufruct, of payment by the donee to the donor of an annual sum equal to or exceeding the value of the property, is in reality a sale and a donation only in name. The property thus given to one consort is an acquisition to the community and the husband may hypothecate it. *Boucher* v. *Thibaudeau*, Q.R. 13 S.C. 394.

DOWER.

Election after a year—Administration by the Court—R.S.O. c. 127, s. 4.]—When on administration by the Court of the estate of an intestate lands have been sold, the widow, although declared entitled to dower by the judgment, may, though more than a year has elapsed from the death of her husband, elect to take her distributive share in lieu of dower, provided the estate be not yet distributed on the footing of her having retained her dower right. *Baker* v. *Stuart* (No. 2), 29 Ont. R. 388.

—Dower—Mortgaged lands—Equity of Redemption — New mortgage—Registration—42 Vict. ch. 22 (O.)—Legal Estate—Momentary seizin.]—Although since the passing of the Act 42 Vict. ch. 22 (Ont.), an Act to amend the law of dower, a married woman is entitled to dower out of an equity of redemption in land, whether her husband dies seized of it or not, where such equity has arisen by his having executed a mortgage of the legal estate in which she has joined to bar her dower, she is not entitled to dower out of an equity of redemption purchased and sold by him in his lifetime, the legal estate never having vested in him: *Martindale* v. *Clarkson*, 6 Ont. A.R. 1, distinguished. And where a purchaser of land subject to a mortgage paid off and procured a discharge in favour of the mortgagor, and on the same day obtained his conveyance from him, giving back a mortgage, with bar of dower, for the balance of the purchase money, all of which instruments were registered in the above order, it was held, Robertson J., dissenting, that the wife of such purchaser was not entitled to dower out of a surplus arising on a sale under a subsequent incumbrance, her husband never having been even momentarily seized of the legal estate in the land. *Re Luckhart*, 29 Ont. R. 111.

DRAIN.

Government drain—Public works—Damages from—Liability of Crown for.]

See PUBLIC WORKS.

DRAINAGE.

See MUNICIPAL CORPORATIONS, V.
" WATERS AND WATERCOURSES.

DURESS.

Threat of criminal proceedings—Communication by agent—Deed set aside.]—The defendant W.R., conveyed his farm to his sister C., as security for the sum of $450, advanced by her, from time to time, to assist him in paying off his obligations. The offer of the security was made in connection with a request for a further advance, which was given. Plaintiff, to whom W.R. was indebted, on learning of the conveyance of the land, saw W.R., and told him that the transaction was a fraudulent one, and that he had been guilty of a criminal offence, the punishment for which was the penitentiary, and threatened to take proceeding against him, unless he at once took steps to procure a reconveyance of the land. This conversation and the threats made were communicated to C., who was asked to sign, and return a deed, sent her, reconveying the land to W.R. The deed was signed and returned in accordance with the request, and plaintiff, thereupon, obtained from W.R., a mortgage of the land to secure the debt due to him. Registration of the deed made by C., having been refused, in consequence of an informality in the execution, it was returned to her to be properly executed, but C., having obtained advice in the meantime, declined to re-execute the deed or to return it. In an action by plaintiff to recover possession of the deed, or for a declaration that the land was the property of W.R., at the time he gave the mortgage, the trial judge found, among other things (*a*), that W. R. requested C. to reconvey the property to him from fear of criminal consequences, which fears were the result of conversation with plaintiff and one with C., a solicitor, and that W.R., when he wrote for the deed, informed C. of his fear that he had made himself criminally responsible; (*b*), that C., acting on the information conveyed to her by W.R., and under the belief that he had made himself criminally responsible, executed the deed; (*c*), that C. had no knowledge at the time that plaintiff intended to take the mortgage:—Held, that the case came within the class of cases where the Court will set aside the transaction for pressure and undue influence:—Held, that plaintiff having requested W.R. to procure the reconveyance made W.R., his agent for that purpose, and that he could not repudiate such agency, while seeking, at the same time, to have the advantage of the reconveyance procured by W.R. from C., and that C. was entitled to have such reconveyance set aside with costs. *Burris* v. *Rhind*, 30 N.S.R. 405.

—Municipal corporation—Payment of claim enforced by threat to turn off water—Action to recover amount paid—Party entitled to bring—Voluntary payment—Quasi contract—Ratification—Duress—Application to add or substitute plaintiff—Conditions.]—Plaintiff was the owner of a brewery in the city of Halifax, which he commenced to operate in the year 1891. In that year a two-inch water service pipe was supplied by the city at the request of S., who, in the absence of L., was acting as superintendent in the construction of the brewery. A dispute subsequently arose between the city and L. as to whether the latter was liable to pay for the pipe so supplied and for the cost of connecting it with the main water

pipe and the wall of the building. While this dispute was still outstanding and unsettled, L. sold the property to the Halifax Breweries Co., Ltd., in which he held a large interest as shareholder, by which company the business was afterwards carried on. On the 30th July, 1896, the amount claimed as due to the city not having been paid, an official in the employ of the city was sent to the brewery for the purpose of turning off the water as a means of enforcing payment. The manager of the company, thereupon, under protest, and in order to avert serious loss, which would have been caused by turning off the water, paid the amount in dispute, and made a demand upon L. for reimbursement, who, notwithstanding his claim that the amount was not due, and should not have been paid, repaid the company the amount advanced, and brought his action against the city to recover it. The judge of the County Court for the county of Halifax, before whom the case was tried, found that L. was not liable for the amount in dispute, or any part of it:—Held, that this being so, that the demand made upon L. by the company for indemnity was unwarranted, and that the payment by L. having been voluntary, he was not entitled to recover. That the money having been obtained from the company by means of unlawful pressure, exerted by city officials upon the company, the latter, and not L., acquired the right of action against the city. That the trial judge was wrong in the theory upon which he proceeded, that the circumstances warranted the view that the company acted as agent of L. in respect to the payment of the money, and that L., by reimbursing the company, ratified the payment so as to acquire a right to sue the city to recover back the sum paid: (*a*) Because the money was paid by the manager of the company for the protection of the company, and not as agent of L.; (*b*) because the company, under compulsion, and against its own will, paid money, as to which it knew that L. repudiated liability, and the idea that the payment was made as agent of L., was, therefore, excluded; (*c*) because the sole liability of the city being based upon a fictitious or *quasi* contract, to which L. was not a party, the payment made by him to the company could not entitle him to sue upon it; (*d*) because the wrong done by the city being a wrong done to the company, and the only cause of action therefor being that of the company, the transaction between the company and the city was not one that could be ratified by L. After argument of the appeal, application was made for leave to add or substitute the company as plaintiff:—Held, that this could only be done on payment of costs, and with leave to the city to raise any defence which it might be advised to raise to meet the claim made by the company. *Lindberg* v. *City of Halifax*, 31 N.S.R. 154.

—Assignment executed under threat—Threat to do what may be lawfully done.]—See ASSIGNMENT.

—Payment colore officii.]

See MUNICIPAL CORPORATIONS, X.

EASEMENT.

Easement — Eaves of building overhanging land—Title to surface—Injunction.]—The trial judge found that defendant, by a user of more than twenty years, had acquired the right to have the eaves of his barn project over the line of plaintiff's land:—Held, that this gave defendant nothing more than an easement, the evidence shewing that the land, so far as the surface was concerned, had been throughout in plaintiff's possession and used by him. Defendant assented to plaintiff erecting a building, the eaves of which projected over the eaves of defendant's barn, on conditions agreed to be performed by plaintiff, and which were shewn to have been performed:—Held, that this clearly disentitled defendant to an injunction. *Wood* v. *Gibson*, 30 N.S.R. 15.

—Way—Reservation of—Terminus ad quem—Grant—Continuous user.]—See WAY.

And see SERVITUDE.

EDUCATIONAL INSTITUTION.

Property of—Exemption from taxation—Use of property—Art. 712 par. 3 M.C.]

See ASSESSMENT AND TAXES.

EJECTMENT.

Vendee—Estoppel—Foreclosure proceedings—Irregularities in—Effect of statute as to—Acts of 1890, c. 14 — Tenancy — Notice of — Notice of extent and terms—Trial judge—Power to order reference—Ord. 32, R. 2; Ord. 13, R. 9.]—Plaintiff H., and defendant W., entered into an agreement in writing for the sale, by the former to the latter, of a lot of land, including a water lot in front, if, also, owned by H., the sale to be completed by payment of the consideration money, and delivery of the deed, within the period of three months. W. went into immediate possession, with the consent of H., but neglected to pay the consideration money within the time agreed, and refused to surrender possession, on the ground of certain alleged irregularities in foreclosure proceedings, under which plaintiff claimed title:—Held that W. could not avail himself of the objections relied upon, being concluded by the provisions of Acts of 1890, c. 14, relating to the sale of land by the Supreme Court:—Held, also, irrespective of the statute, that W. as the vendee in ejectment, was estopped from setting up title in himself or another, adverse to his vendor:—Held, also, that notice to W. of the tenancy of G., plaintiff's tenant, was

notice of the extent and terms of the tenancy:—Held, also, that the trial judge had power, (Ord. 32, R. 2; Ord. 13, R. 9.) having given final judgment for the possession of the land, to direct a reference as to *mesne* profits or damages. *Hesslein* v. *Wallace*, 29 N.S.R. 424.

See LIMITATION OF ACTIONS, I.

ELECTION LAWS.

See MUNICIPAL CORPORATIONS, IX.

" PARLIAMENTARY ELECTIONS.

ELECTRIC RAILWAY COMPANY.

Injury to passenger—Fall of trolley bar.]

See NEGLIGENCE, VIII.

—Negligence—Accident—Conduct of employees.]

See NEGLIGENCE, VIII.

And see STREET RAILWAY.

EMINENT DOMAIN.

Highways—Old trails in Rupert's Land—Substitution of new way—Dedication of highway.] —*Brown* v. *Town of Edmonton*, 28 S.C.R. 510.

EMPLOYER AND EMPLOYEE.

See MASTER AND SERVANT.

ENCLAVE.

Enclave from sale—Apparent servitudes—Non-registration of titles.]—See SERVITUDE.

—Right of way—Legal servitude—Art. 543 C.C.]

See SERVITUDE.

EQUITY OF REDEMPTION.

See MORTGAGE, VI.

ESTOPPEL.

Bona fides—Conveyance by married woman—Agreement—Recital.]—B., a married woman, in order to carry out an agreement between her husband and his creditors, consented to convey to the creditor a farm, her separate property, in consideration of the transfer by her husband to her of the stock and other personal property on, and of indemnity against her personal liability on a mortgage against said farm. The conveyance, agreement and bill of sale of the chattels were all executed on the same day the agreement, to which B. was not a party, containing a recital that the husband was owner of the said chattels, but giving the creditor no security upon them. The chattels having subsequently been seized under execution against the husband, it was claimed, on interpleader proceedings, that the bill of sale was in fraud of the creditor:—Held, that the recital in the agreement worked no estoppel as against B.; that as it appeared that the husband expressly refused to assign the chattels to his creditor, there was nothing to prevent him from transferring them to his wife, and that the Court of Appeal rightly held the transaction an honest one, and B. entitled to the goods and to indemnity against the mortgage. *Boulton* v. *Boulton*, 28 S.C.R. 592.

—Registry law—Priorities—Mortgage—Estoppel.]—The plaintiff agreed to sell a parcel of land, one-half of the purchase money to be paid in cash and the other half to be secured by a mortgage thereon. A deed and mortgage were prepared and executed, the cash payment made, and the deed delivered to the purchaser, the mortgage being delivered to the vendor's agent to be registered. The purchaser had obtained a loan of the cash payment from the defendant upon the security of a first mortgage to be given upon the land in question, and this mortgage was prepared, executed and delivered before the execution and delivery of the deed, and was registered before the deed to the purchaser and before the mortgage to the plaintiff. Upon receiving the deed the purchaser handed it to the defendant's agent, who then registered it, the plaintiff's mortgage having in the meantime been also registered. The plaintiff and the defendant acted in good faith, and each without knowledge or notice of the other's mortgage:—Held, that the Registry Act did not apply; that the defendant's mortgage was valid only by estoppel and was fed by estoppel to the extent only of the interest taken by the purchaser under the deed; that that interest was subject to the right of the plaintiff to have a legal mortgage for the balance of purchase money, and that the plaintiff's mortgage was therefore entitled to priority: *Nevitt* v. *McMurray*, 14 Ont. A.R. 126, applied; *McMillan* v. *Munro*, 25 Ont. A.R. 288.

—Ont. Free Grant and Homestead Act—Sale of trees by locatee before patent issued—Validity.]—A locatee of free grant lands under 38 Vict., ch. 8 (R.S.O. 1877, ch. 24), who has, contrary to the provisions of sec. 10 of the Act, sold the pine trees on the land before the issue of the patent, is not, nor is anyone claiming under him, after its issue, estopped from denying the validity of the sale. *Chapiewski* v. *Campbell*, 29 Ont. R. 343.

—Bill of exchange—Blank spaces on bill—Alteration after indorsement—Waiver of demand—Bills of Exchange Act, 1890, s. 20.]—A promissory note, containing blank spaces for the

names of the payee and the rate of interest, was indorsed for the accommodation of the maker and handed to him in that condition. The maker inserted the name of the payee and 12 per cent. as the rate of interest:—Held, that the indorsers were estopped from denying that they had given the maker authority to fill in the blanks and that the insertions by the maker were not alterations avoiding the note. *Burton* v. *Goffin*, 5 B.C.R. 454.

—Trustees—Misappropriation — Surety—Knowledge by cestui que trust—Parties.]—*Bayne* v. *Eastern Trust Co.*, 28 S.C.R. 606, affirming 30 N.S.R. 173 sub-nom. *Eastern Trust Co.* v. *Forest*.

— Vendor and vendee — Adverse title.]—See EJECTMENT.

—Garnishee—Wages—Denial by debtor that wages are due—Exemption.]—See GARNISHEE.

—Married woman—Separate estate—Contract of married woman—Estoppel.]

See HUSBAND AND WIFE, VII.

—Limitation of actions—Adverse possession of lands—Estoppel.]

See LIMITATION OF ACTIONS, I.

—Contract for sale of land—Agreement under seal to convey—Relinquishment of rights under—Estoppel.]—See SALE OF LAND.

EVIDENCE.

I. ADMISSIBILITY, 181.
II. ADMISSIONS, 183.
III. APPELLATE COURT, 183.
IV. CIRCUMSTANTIAL EVIDENCE, 184.
V. COMMENCEMENT OF PROOF IN WRITING, 184.
VI. COMMERCIAL MATTER, 185.
VII. CORROBORATION, 185.
VIII. EXPERT EVIDENCE, 185.
IX. FOREIGN COMMISSION, 185.
X. FOREIGN JUDGMENT, 185.
XI. NECESSARY EVIDENCE, 185.
XII. PRESUMPTIONS AND ONUS OF PROOF, 186.
XIII. PRIVILEGED COMMUNICATION, 186.
XIV. RIGHT TO BEGIN AND REPLY, 186.
XV. SECONDARY EVIDENCE, 187.
XVI. SUFFICIENCY, 187.
XVII. VARYING AND EXPLAINING WRITTEN DOCUMENTS, 188.
XVIII. WEIGHT OF EVIDENCE, 188.

I. ADMISSIBILITY.

Indecent assault—Evidence of reputation—Specific acts of impropriety.]—In an action for damages for indecent assault, evidence of the general reputation for unchastity of the plaintiff is admissible, but evidence of specific acts of impropriety is not. *Gross* v. *Brodrecht*, 24 Ont. A.R. 687.

—Privilege—Solicitor's letter.]—*Semble*, that a letter written before action by the solicitor of the defendants to the solicitor for the plaintiff is not receivable in evidence to prove a fact in issue: *Wagstaff* v. *Wilson* 4 B. & Ad. 339, referred to. *McBride* v. *Hamilton Provident and Loan Society*, 29 Ont. R. 161.

—Coroner's inquest—Deposition of accused—Admissibility at subseqent criminal proceedings.]—A coroner, in proceeding to an *enquête* has no right, before the verdict, to demand a declaration from a person he may accuse or suspect of a crime and whom he has caused to be arrested in his capacity of justice of the peace, and a deposition so taken is not admissible against the deponent in criminal proceedings subseqently taken against him. *The Queen* v. *Lalonde*, Q.R. 7 Q.B. 204.

— Criminal law — Admissions of prisoner — Inducement—Deposition at coroner's inquest—Evidence of person accused, but not indicted or tried jointly with prisoner — Secondary evidence.]—Admissions obtained from the accused, after representations made to her by persons in authority to the effect that the evidence was very strong against her, that another person, who was her lover, was suspected, and that she knew something about the murder and would do well to speak, are not inadmissible as not being made voluntarily, or as being procured by threat or inducement.—Under the Canada Evidence Act 1893, a deposition given at a coroner's inquest is inadmissible in evidence against the deponent in a criminal proceeding subsequently instituted against him: *The Queen* v. *Lalonde*, Q.R. 7 Q.B. 204 referred to.—Where a witness, although accused of having been a party to the crime, has not been indicted jointly with the prisoner at the bar, and is not being tried jointly with the latter, his evidence is admissible for the prosecution.—Secondary evidence of the contents of letters, of which one of the witnesses for the Crown had taken cognizance, is inadmissible, where it is not proved that it was impossible to produce the letters themselves, or even that such letters ever existed. *The Queen* v. *Viau*, Q.R. 7 Q.B 362.

—Promissory note—Indorsement and transfer—Proof of date.]—Parol evidence of the date when a promissory note was indorsed in blank and transferred by the payee is admissible. *Inkiel* v. *Laforest*, Q.R. 7 Q.B. 456.

—Commercial matter—Negotiating sale of immovable property.]—An action brought by a real estate agent to recover a commission on negotiating a sale of immovable property for the defendant is not of a commercial nature, and the evidence of the parties thereto in their own behalf is not admissible. *Baillie* v. *Nolton*, Q.R. 12 S.C. 534.

—**Evidence—Fraudulent intent—Proof of other fraudulent transactions.**]—In an action by an insurance company to set aside a policy of life insurance issued by it, on the ground that the policy was procured by fraud of the assured and the assignee of the policy, evidence is admissible as bearing upon the fraudulent intent of the assignee that in other cases, before as well as after, he had engaged in other transactions of a like character with the same fraudulent intent. *Mutual Life Assurance Co. of New York* v. *Jonah*, 1 N.B. Eq. 482.

— **Practice — Evidence — Examination for discovery — Use of at trial — B.C. Rule 725.**]—A party cannot use his own examination for discovery as evidence for himself at the trial. Defendant being absent at the time of trial, and counsel having put in evidence for plaintiff parts of the defendant's examination for discovery, defendant's counsel desired the trial judge to look at and direct certain other parts of the examination to be put in evidence under Rule 725, which the judge refused. *Lyon* v. *Marriott*, 5 B.C.R. 157.

—**Coroner's inquest—Evidence voluntarily given —Admissibility at trial.**]

See Criminal Law, VII (*a*.)

— **Hostile witness — Evidence — Admissibility where previous statement inconsistent.**]

See Libel and Slander, III.

—**Master and servant—Negligence — Action by tutor—Evidence of minor.**]

See Master and Servant, IV (*a*.)

— **Action against surgeon — Negligence — Improper admission of evidence.**]

See Medical Practitioner.

—**Contract—Admissibility of certificates of grain inspector—Right to reply—New trial.**]

See Practice and Procedure, XXX.

And see Criminal Law, VII, XII and XV.

II. Admissions.

—**Partnership—Admission of partner after dissolution of firm.**]—In an action against heretofore co-partners, the admission of one of the defendants will not bind his co-partners. This rule does not suffer exception where the defendants are sued as co-partners and they do not in their plea allege the dissolution of the firm. *Dansereau* v. *Gervais*, Q.R. 12 S.C. 86.

III. Appellate Court.

—**Affidavit—Judgment—Sale of land—Queen's Bench Act, 1895, Rule 803—Parties—Further evidence.**]—A judgment debtor served, under Rule 803 of The Queen's Bench Act, 1895, with a notice of motion calling upon him to shew cause why the land alleged to be bound by the registration of a certificate of judgment against him should not be sold to satisfy the judgment, has a right to be heard on the motion and to object to the sufficiency of the materials fyled in support of it, although he may have transferred all his interest in the land to a third party for the purpose of defeating creditors, or otherwise. The Full Court will not grant a postponement for the purpose of enabling the applicant to procure further evidence which he might have got at an earlier stage of the proceedings. The evidence fyled in support of the motion for the sale of the land in question consisted of an affidavit made by a clerk in the plaintiffs' employment that they had recovered a judgment against the defendant in a County Court, and caused a certificate of said judgment in the proper form required by the statute to be issued, and that the same was duly registered in the Land Titles Office for the district in which the land was situated, but not showing his means of knowledge of such facts; and of a post card, dated at "L. T. O., Morden," containing a memorandum to the effect that a certificate of judgment for $110.20 against Robert Warener, in Belmont County Court, was received and registered the 24th of July, 1896, in suit of *Massey-Harris Co.* v. *Robert Warener*, but not stating where the same was registered. The memorandum had the words "District Registrar" at the foot, without any signature or name:—Held, that such evidence was not sufficient to warrant the making of an order for sale on such a motion. *Massey-Harris Co.* v. *Warener*, 12 Man. R. 48.

And see Appeal, XI.

IV. Circumstantial Evidence.

—**Railways—Negligence—Fire caused by sparks from engine—Circumstantial evidence.**]—In an action against a railway company for negligently causing fire by sparks from their engine, the cause of the fire may be proved by circumstantial evidence. *Rainville* v. *Grand Trunk Railway Co.*, 28 Ont. R. 625.

V. Commencement of Proof in Writing.

—**Action en déclaration de paternité—Admissions —Art. 232 C.C.**]—The admissions which may constitute a commencement of proof in writing required by Art. 232 C.C., for the admissibility of oral testimony, in an action *en déclaration de paternité*, can under the procedure at *enquête* followed in this country, be set up before the judge seized of the cause as they can before the cause has been inscribed for *enquête* and hearing. *Valiquette* v. *Savage*, Q.R. 12 S.C. 421.

— **Stock transaction—Admission.**]—The admission of defendant that he had for several years employed the plaintiffs as his stock brokers, to buy and sell stocks for him, does not constitute a commencement of proof in writing that plaintiffs bought and sold the particular shares mentioned in their action, for and on account of defendant. *Forget* v. *Baxter*, Q.R. 13 S.C. 104.

VI. Commercial Matter.

—Contract of hiring—Termination of—Action for salary—Evidence of party.]—A contract by which the Quebec Harbour Commissioners engages the services of an engineer at a yearly salary is not one of a commercial nature, and in an action by the engineer for his salary he cannot be heard as a witness. *McGreevy* v. *The Quebec Harbour Commissioners*, Q.R. 7 Q.B. 17.

VII. Corroboration.

—Life insurance—Procured by fraud—Evidence—Proof of other fraudulent transactions.]

See Insurance, II.

VIII. Expert Evidence.

—Services of experts—Costs for—Taxation.]

See Costs, XIX (*a*.)

IX. Foreign Commission.

—Practice—Commission—Affidavit for.]—A party desiring a commission for his own examination outside the jurisdiction should himself make an affidavit of the facts relied on. *Tollemache* v. *Hobson*, 5 B.C.R. 216.

—Depositions not used at trial—Costs of.]

See Costs, XIX (*c*.)

X. Foreign Judgment.

—Judgment in foreign court—Evidence—Art. 1220 C.C.]—A copy of a judgment rendered by a Court of a foreign country, duly authenticated in accordance with the requirements of article 1220 of the Civil Code, makes *primâ facie* proof of the facts therein set forth, and that the law therein applied is the law in force in the country in which such judgment was rendered. *Bauron* v. *Davies*, Q.R. 6 Q.B. 547, reversing 11 S.C. 123.

XI. Necessary Evidence.

—Commercial contract—Oral testimony—Part payment—Art. 1235 par. 4.]—The provisions of par. 4 of Article 1235 of the Civil Code are not restrictive, and the mention there made of the sale as to which oral proof is not permitted, is only indicative, sale being given as a type of the commercial contract, and the provisions of said paragraph should be applied to every contract of the same nature where there has been neither payment on account nor part performance. Therefore, where the plaintiffs engaged to furnish workmen for certain works of the defendant at a price higher than that which the plaintiffs themselves paid to these workmen, if this, in principle, can be considered as constituting a commercial contract it is not susceptible of oral proof in the absence of part payment or part performance. *Métivier* v. *Livinson*, Q.R. 13 S.C. 39.

—Promissory note—Consideration—Forbearance to sue—Express proof.]

See Bills of Exchange and Promissory Notes, III.

XII. Presumption and Onus of Proof.

—Hiring contract—Burden of proof—Weight of evidence.]—Held, that in the absence of some substantive ground, some fact overlooked by the trial judge, or something to shew that the finding as to the terms of hiring was against the weight of evidence, the Court would not be justified in setting it aside:—Held, also, that where the contending parties are in direct contradiction, and there is no circumstance to turn the balance in the evidence, the burden is on the plaintiff. *Holloway* v. *Lindberg*, 29 N.S.R. 460.

—Liquor license—Cancellation of—County Court Act, s. 30.]—Application to County Court Judge for the cancellation of a liquor license issued to Mary Lee by the Steveston Licensing Board. The main objection urged related to the mode and manner of procedure before the Board:—Held, that the judge's jurisdiction was strictly confined to the question of legality or illegality, and the onus of clearly proving that the license was unlawfully issued lay on the complainant, and that on the facts no such case was made out. *Re Mary Lee's License*, 34 C.L.J. 642.

—Seduction—Evidence—Presumption of service—R.S.O., c. 58.]—See Seduction.

XIII. Privileged Communication.

—Local manager of bank—Production of books—Disclosure of bank accounts—Privilege.]

See Contempt of Court.

XIV. Right to Begin and Reply.

—Practice—Right to reply—New trial.]—This was an action before a judge and jury in which the plaintiff claimed damages on a sale of a number of car-loads of oats by sample on the ground that the goods delivered were not equal to the sample. The plaintiff appealed from the verdict, which was in favour of defendants, and asked for a new trial on several grounds. The judgment of the Court, which was delivered by Killam, J., dwells mainly on a discussion of the evidence, but the case should be noticed here as to the effect on the trial of the judge's refusal to allow the plaintiff's counsel to reply, the defendants having adduced evidence, although only by way of putting in certain documents on the cross-examination of one of the plaintiff's witnesses:—Held, following *Rymer* v. *Cook*, Moo. & M. 86n, that plaintiff's counsel has the right to reply if defendant adduces any kind of evidence, whether verbal or written, or ever so trifling or insignificant. The error of the judge in refusing to allow the reply should only entitle the party to a new trial if it appeared that the course of justice had been thereby interfered with and some substantial injury done to the party complaining: Doe d. *Bather* v. *Brayne*, 5 C.B. 665; *Geach* v. *Ingall*, 14 M. & W. 95. In the present case the plaintiff could suffer nothing from the order in which the jury were addressed, as his evidence was weak

and the defendants were entitled to the verdict, and that a new trial should not be granted. Application dismissed with costs. *Quintal* v. *Chalmers*, 34 C.L.J. 640; and 12 Man. R. 231.

And see PRACTICE AND PROCEDURE, XXX.

XV. SECONDARY EVIDENCE.

—Election—Canada Temperance Act—Ballot—Scrutiny—R.S.C. c. 106, s. 62.]—On an application to a County Court Judge for a scrutiny of ballots in an election for the repeal of the Canada Temperance Act:—Held, that secondary evidence of the ballots contained in lost or stolen ballot boxes was properly receivable. *Ex parte Leblanc*, 34 N.B.R. 88.

—Sheriff's deed—Execution—Omnia rite esse acta.]—The testimony of a sheriff, who had executed under a writ of execution, that he had searched for it in his office, but could not find it; that he believed that it was not in his office or in his possession; that he thought that he had returned it to the attorney who had issued it; also, the testimony of the clerk of the Court, out of which the execution had issued, that he had made search for it, but could not find it, and his belief was that it had never been fyled in his office, was held a sufficient foundation upon which to admit secondary evidence of the contents of the execution: Per Van Wart, J. —Evidence that would be good against a predecessor in title is also good against his successor claiming through him.—*Quære:* Is it necessary for a person claiming title under a sheriff's deed to give any evidence of the execution under which levy and sale took place? *Ross* v. *Adams*, 34 N.B.R. 158.

XVI. SUFFICIENCY.

—Master and servant—Negligence—Probable cause of accident.]—Evidence which merely supports a theory propounded as to the probable cause of injuries received through an unexplained accident is insufficient to support a verdict for damages where there is no direct fault or negligence proved against the defendant and the actual cause of the accident is purely a matter of speculation or conjecture. *Canada Paint Co.* v. *Trainor*, 28 S.C.R. 352.

—Transactions in stocks—Secondary evidence.]—Where it is not proved that the shares, in respect of which brokers claim a balance due for commission, advances and interest, were ever purchased by the plaintiffs for the defendant or were ever offered to him, but on the contrary it appears that the shares always remained in the possession of plaintiff's New York agent, and were sold without any authority from defendant, the action will not be maintained.—The production by plaintiff's bookkeeper of entries in a press letter copy book, said to be copies of the bought and sold contract notes, relating to the purchase and sale of shares, the originals of which were sent to the defendant, does not make proof of such purchase where the defendant has not been asked to produce the originals of the contract notes, or whether he had ever received the originals, and there is no evidence that he ever did receive them. *Forget* v. *Baxter*, Q.R. 13 S.C. 104.

—Parent and child—Gift to daughter living at home—Evidence—Transmutation of possession.]

See PARENT AND CHILD.

—Fraud—Evidence of accomplice—Necessity of corroboration.]—See PRINCIPAL AND AGENT, III.

XVII. VARYING AND EXPLAINING WRITTEN DOCUMENTS.

—Husband and wife—Ante-nuptial written renunciation of claim to wife's property—Construction.]—See HUSBAND AND WIFE, VII.

XVIII. WEIGHT OF EVIDENCE.

—Affirmative testimony—Interested witnesses Art. 1232 C.C.—Arts. 251, 252 C.C.P.—Mala fides—Common rumour.]—In the estimation of the value of the evidence in ordinary cases, the testimony of a creditable witness who swears positively to a fact should receive credit in preference to that of one who testifies to a negative. The evidence of witnesses who are near relatives or whose interests are closely identified with those of one of the parties, ought not to prevail in favour of such party against the testimony of strangers who are disinterested witnesses. Evidence of common rumour is unsatisfactory and should not generally be admitted. *Lefountem* v. *Beaudoin*, 28 S.C.R. 89.

EVOCATION.

Jurisdiction—Future rights—Art. 49, 1130 C.C.P.]—An action which sets up a right to claim damages from the defendant, in consequence of alleged temporary acts of negligence by defendant, in the carrying out of a contract to furnish water to plaintiff's factory, is not susceptible of evocation to the Superior Court. *Cossett* v. *Desjardins*, 12 S.C. 539.

EXECUTIONS.

I. ACTION FOR ILLEGAL LEVY, 189.
II. CHARGE ON LANDS, 189.
III. CONTENTS OF WRIT, 189.
IV. EXEMPTIONS, 189.
V. ISSUING EXECUTION, 190.
VI. MODES OF EXECUTION, 190.
VII. PRIORITY OVER OTHER CREDITORS, 190.
VIII. PROCEEDINGS UNDER, 191.
IX. SEIZURE UNDER, 191.
X. STAYING PROCEEDINGS, 192.
XI. VALIDITY, 192.
XII. WRIT OF EXECUTION, 192.

I. Action for Illegal Levy.

Levy—Judgment entered prematurely—Action—Excessive damages — Verdict — Costs.]—The plaintiff, J., was sued by the defendant, M., and judgment for default of appearance was obtained on the 30th June, 1896. Plaintiff paid $100 on account of the judgment, and agreed to pay the balance in instalments. Subsequently it was discovered that the judgment had been entered prematurely, and proceedings were taken which resulted in its being set aside on that ground. Defendant thereupon brought a second action and obtained judgment for the balance due him, giving credit for the $100 paid on account of the previous judgment. In the present action plaintiff claimed damages for the levy under the judgment irregularly entered, and the return of the amount paid, and the jury awarded him $1,100 damages. There being no evidence of specific damage, and it appearing that the levy complained of was of a merely formal character, none of the goods having been removed, and no one placed in charge:—Held, that the verdict must be set aside unless the plaintiff consented to reduce the verdict to $50, which amount the Court considered sufficient. *Johnston* v. *Miller*, 31 N.S.R. 83.

II. Charge on Lands.

—Execution—Fi. fa. on lands—Limitation of actions—Renewal of fi. fa.—"Lien"—"Proceeding"—"Money charged upon land"—R.S.O. c. 111, s. 23.]—The right of an execution creditor under a *fi. fa.* on lands in the hands of the sheriff of the county in which the lands of the debtor are situate is a "lien," and the money mentioned in the writ is "money charged upon land." Taking steps to sell under such a writ is a "proceeding," and although duly renewed if the writ has been more than ten years in the sheriff's hands, and no payment or acknowledgment has in the meantime been made or given as required by sec. 23 of R.S.O. ch. 111, the lien is gone, and proceedings on the writ will be restrained. *Neil* v. *Almond*, 29 Ont. R. 63.

—Judgment against mortgagee—Sale of his interest under execution.]—See Receiver.

III. Contents of Writ.

—Partnership—Dissolution—Execution of judgment—Share of one member.]—Where the title of a debt of a dissolved partnership is a judgment, it should be executed in the name of the partnership, but only for the interest of the former member who executes it, and the writ of execution should so state. *Crépeau* v. *Boisvert*, Q.R. 13 S.C. 405.

IV. Exemptions.

—Deed of gift—Seizability.]—In a deed of gift, it was said "*que le donataire ne pourrait vendre, affecter, hypothéquer ni aliéner les terres données, sans le consentement des donateurs*":—Held, that if this clause made the immovables exempt from seizure the donee could make an opposition thereon "*sans exciper du droit d'autrui.*"—The rule of law to determine whether the terms of a deed of gift make the property given unseizable is: "What is transferable is seizable." Under the clause above cited, the lands given are transferable, and consequently seizable, with a condition, the consent of the donors. They alone can invoke this condition, which is a stipulation in their favour. *Durand* v. *City of Quebec*, Q.R. 13 S.C. 308.

—Execution — Exemption — Homestead Act—Small Debts Court — Jurisdiction.]—A magistrate sitting as Judge of the Small Debts Court, has no jurisdiction to decide the validity of a claim of exemption under the Homestead Act, of goods seized under process of execution issued from that Court: *Augberg* v. *Anderson; Stewart* v. *Anderson*, 5 B.C.R. 622.

V. Issuing Execution.

—Judgment — Amount — Addition of costs.]—Where the condemnation under a judgment carries costs, and the debt, with costs added, exceeds $40, execution may be issued against the immovable property of the debtor: *Tapp* v. *Turner*, Q.R. 5 Q.B. 538, followed; *Sharpe* v. *Robert*, Q.R. 13 S.C. 277.

—Execution issued upon order of foreign court.]
See Practice and Procedure, XXIV.

VI. Modes of Execution.

—Cession de biens—Immovables conveyed by.]—The modes of execution prescribed by the Code of Procedure as to the immovables transferred by way of abandonment (*cession de biens*) do not exclude the usual right of a creditor; by virtue of his judgment, to proceed by writ of *de terris* to the seizure and sale of the immovables of his debtor. *Lewis* v. *Walker*, Q.R. 13 S.C. 125.

VII. Priority over Other Creditors.

—Bankruptcy and insolvency—Execution—Costs—Lien—Assignments and preferences—Loss of lien—Ranking on estate.]—The lien of a plaintiff for costs by virtue of sec. 9 R.S.O. ch. 124, under an execution in the sheriff's hands, against an insolvent, at the time of an assignment by him for the benefit of creditors under that statute, is not superseded by such an assignment, and the sheriff is entitled to proceed and sell for the amount of such costs. If he does not do so, and the plaintiff loses his lien: (Per Armour, C.J.,) he is not entitled to rank on the insolvent's estate as a preferential creditor.—Per Street, J.—Even if not entitled it could only be on the net funds available after payment of the proper charges incurred in the management of the estate. *Gillard* v. *Milligan*, 28 Ont. R. 645.

VIII. Proceedings Under.

—Procedure—Execution—Art. 566 C.C.P. (old text).]—The service of an uncertified copy of the writ of execution is not a compliance with the requirements of Art. 566 C.C.P. (old text), which provides for the seizure of shares in companies, even though the copy served be in fact a true copy of a writ of execution duly issued. Further, such notice should be given by the officer charged with the execution and competent to make such seizure. A notice by the attorneys of the parties seizing is not a compliance with the requirements of article 566. *Lewis* v. *Corriveau*, Q.R. 12 S.C. 93.

—Donation—Clause of non-seizability—Arts. 581, 632 C.C.P.]—Where a condition of non-seizability accompanies the donation of an immovable, a judgment creditor of the donee, seeking to execute upon the land, cannot set up the pretention that the charges imposed on donee exceeded the whole value of the property, and that his title was therefore in reality a sale and not a donation. *Soucy* v. *Lebel*, Q.R. 12 S.C. 203.

—Personal property—Equitable interest—Discharge under C.S.N.B. c. 38.]—An equitable interest in personal property cannot be sold under an execution.—A defendant at the time of his arrest and examination had personal property subject to a chattel mortgage:—Held, that such property was not liable to be taken under an execution, and the defendant was not entitled to his discharge.—*Semble*, that the judge had no right to make a conditional order for discharge. *Ex parte Miller; In re Miller* v. *Smith*, 34 N.B.R. 5.

—Notice of sale—Unnecessary advertising—Sheriff—Charges.]—See Sheriff.

IX. Seizure Under.

—Revenues of immovable—Revenues declared insaisissables—Judgment for improvements.]—The revenues of an immovable declared non-seizable (*insaisissables*) may be seized on execution of a judgment for necessary repairs and improvements to the immovable, such as heating apparatus, made in order to preserve and increase its value for renting purposes. *Ouimet* v. *Prévost*, Q.R. 12 S.C. 135.

—Notice to creditor—Ownership of goods—Opposition—Costs.]—A notice given by a defendant to the creditor who has obtained judgment against him that the movable property in his dwelling house belongs to a third party, will not affect the creditor, in a manner certain, with knowledge of the facts stated therein, and notwithstanding such notice the creditor may cause the movables in the debtor's house to be seized without becoming responsible to the latter or to the *opposant* for the costs of an opposition by such third party to the seizure. *Bellingham* v. *Robb*, Q.R. 13 S.C. 248.

X. Staying Proceedings.

—Opposition for execution on judgment in County Court—Stay of proceedings—Supreme Court's jurisdiction.]—See County Court.

XI. Validity.

—Not entitled in cause—Effect of.]—An execution not entitled in the cause, but giving the names of the parties to the cause in which the judgment was recovered, and the date and the amount, is valid and sufficient to protect the sheriff levying thereunder. *McAskill* v. *Power*, 30 N.S.R. 189.

XII. Writ of Execution.

—Signature of prothonotary—Nullity.]—A writ of execution not signed by the prothonotary is absolutely and radically null, a nullity of which the Court must take cognizance, and the party proceeding upon such a writ will not be allowed to procure the signature of the prothonotary to it after a seizure. *Brisson* v. *Lefebvre*, Q.R. 12 S.C. 1.

EXECUTORS AND ADMINISTRATORS.

I. Administration, 192.
II. Judicial Proceedings, 192.
III. Remuneration, 192.

I. Administration.

Application by creditor—Delay of next of kin—Grant to next of kin—Costs.]—Where the creditor of an intestate applied three months after the death of the intestate for grant of administration of the estate, and at the return of the citation letters were granted to the next of kin, the creditor was allowed his costs: *Cole* v. *Rea*, I Phill. 428, followed. *In re Colwell's Estate*, 34 C.L.J. 578.

II. Judicial Proceedings.

—Testamentary executor—Capacity—Validity of will—Procedure.]—A testamentary executor is only the administrator of the movable goods of the succession, and has no right to join in legal proceedings upon the legality of the will, which can only be tried out with the heirs or legatees of the testator. *Poitras* v. *Drolet*, Q.R. 12 S.C. 461.

III. Remuneration.

—Will—Codicil—Substituted legacy.]—The will bequeathed $1,000 to each of the executors "for the trouble they will have in carrying out the trusts of this my will." By a codicil, reciting that the original executors had died, new executors were appointed and a provision made authorizing the executors for the time being to retain, as remuneration for their services, a commission of five per cent. on all moneys collected under the will. The codicil further provided that the will

should be construed as if the names of the new executors were inserted throughout in place of the names of the original executors:—Held, that the existing executors were entitled only to the commission mentioned in the codicil. *Re Bossi*, 5 B.C.R. 446.

And see PROBATE COURT.

EXEMPTIONS.

See ASSESSMENT AND TAXES.
" EXECUTIONS, IV.
" GARNISHEE.
" MUNICIPAL CORPORATIONS, X.

FELLOW-SERVANT.

Negligence of fellow-servant — Contributory Negligence.]

See MASTER AND SERVANT, IV (*b*.)

FISHERIES.

B.N.A. Act, ss. 91, 92, 108—Fisheries and fishing rights—R.S.C. c. 92; c. 95, s. 4—R.S.O. c. 24, s. 47—Ontario Act of 1892 (55 V., c. 10).]—Whatever proprietary rights vested in the provinces at the date of the British North America Act remained so unless by its express enactments transferred to the Dominion. Such transfer is not to be presumed from the grant of legislative jurisdiction to the Dominion in respect of the subject-matter of these proprietary rights.—With regard to fisheries and fishing rights:—Held, that sec. 91 did not convey to the Dominion any proprietary rights therein, although the legislative jurisdiction conferred by the section enables it to affect those rights to an unlimited extent, short of transferring them to others. A tax by way of license as a condition of the right to fish is within the powers conferred by sub-secs. 4 and 12. The same power is conferred on the Provincial Parliament by sec. 92.—Revised Statutes of Canada, ch. 95, sec. 4, so far as it empowers the grant of exclusive fishing rights over property, is *ultra vires* the Dominion. Revised Statutes of Ontario, ch. 24, s. 47, is, with a specific exception, *intra vires* the province. As regards Ontario Act, 1892, the regulations therein which control the manner of fishing are *ultra vires*.—Fishing regulations and restrictions are within the exclusive competence of the Dominion: See sec. 91, sub-sec. 12. *Secus*, with regard to any provisions relating thereto which would properly fall under the headings "Property and Civil Rights," or "The Management and Sale of Public Lands":—Held, further, that the Dominion Legislature had power to pass Revised Statutes of Canada, ch. 92, intituled "An Act respecting certain Works constructed in or over Navigable Waters." *Attorney-General for Dominion of Canada* v. *Attorneys-General for Ontario, Quebec and Nova Scotia* [1898], A.C. 700.

—Dominion Fisheries Act — Offence — Illegal warrant of commitment.]—Application for a writ of *habeas corpus*. Applicant had been convicted of an infraction of the Fisheries Act before the agent of the Marine and Fisheries Department. Applicant paid the costs of prosecution, and was allowed to go at large until a few days before his application, when he was arrested on a warrant issued in pursuance of the above conviction. The warrant recited the fact that the applicant had been convicted of an infraction of the Act, but did not state that the fishery agent had adjudicated in the matter of imprisonment:—Held, that as the warrant did not set out an adjudication it did not shew jurisdiction and was void. *Ex parte Taylor*, 34 C.L.J. 176.

FIXTURES.

Wooden building — Removability — Mode of use—Constructive attachment to soil—Mortgagor and mortgagee.]—In an action upon a mortgage, the plaintiff claimed, as part of the freehold, a certain erection placed upon the mortgaged premises by the husband of the owner of the equity. The building was a small wooden structure of thin clap-board, lathed and plastered, and divided into three rooms, placed on loose bricks laid on the soil. It was first used as a shop, and then turned into a dwelling-house, and this was rented for a while by the husband and wife. The building could easily be moved with little or no injury to the soil:—Held, that it was not in fact affixed or annexed to the soil, but was merely a chattel which might be moved at any time. The onus was on the plaintiff to shew that it could not or ought not to be removed as against him, but the evidence of intention with which it was placed on the ground by the husband, and the other circumstances of its temporary and unsightly character, repelled the conclusion that it was to be deemed constructively attached to the freehold. *Miles* v. *Ankatell*, 29 Ont. R. 21.

—Fixtures—Negotiations for sale—Intention to sever—Subsequent purchaser of freehold—Rights of.]—The mere expression by the owner of an intention to sever a fixture from the freehold and sell it to another, even if communicated to one who becomes a subsequent purchaser of the freehold, will not operate to convert the fixture into a chattel or to alter its character in any way; and in the absence of any reservation in the conveyance everything attached to the freehold passes to the purchaser. *Minhinnick* v. *Jolly*, 29 Ont. R. 238.

—Chattels—Mortgage of realty—Conversion by express agreement—Subsequent chattel mortgage —Notice—Priority.]—Chattels of the nature of plant or machinery not structurally affixed to the freehold, as well as those of a like nature afterwards placed on the mortgaged premises, may, by the express terms of a mortgage of the realty, become fixtures for the purposes of the mortgage, and the mortgagee is entitled to them as against a subsequent chattel mortgagee whose security on such chattels is taken with notice of the prior incumbrance. *Canada Permanent Loan and Savings Company* v. *Traders Bank*, 29 Ont. R. 479.

—Immovable by destination—Incorporation with realty—Presumption.]—See IMMOVABLES.

FOREIGN PATENT.

See PATENT OF INVENTION, II.

FORUM.

See JURISDICTION.

FRAUD.

Life insurance—Procured by fraud—Evidence —Proof of other fraudulent transactions.]

See INSURANCE, II.

FRAUDULENT CONVEYANCES.

See BANKRUPTCY AND INSOLVENCY.
" DEBTOR AND CREDITOR.

FRAUDULENT PREFERENCES.

See BANKRUPTCY AND INSOLVENCY.
" DEBTOR AND CREDITOR.

FRAUDULENT REPRESENTATIONS.

As to land sold.]—See DEED.

FRIENDLY SOCIETIES.

See BENEVOLENT SOCIETY.

FUTURE RIGHTS.

See APPEAL, XIII (*a.*)

GAME PROTECTION.

Statute creating offence—Exemption from—Proviso or exception—Negativing—Game Protection Act (B.C.) 1895.]—The existence of an exception nominated in the description of an offence created by statute must be negatived in order to maintain the charge. If a statute creates an offence in general terms with an exception by way of proviso in favour of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso.—The generality of the prohibition contained in the statute (sec. 7) against purchasers having in possession with intent to export, causing to be exported, etc., game, etc., is not to be limited by inference to game killed within the province. *The Queen* v. *Strauss*, 1 Can. C.C. 103.

GAMING.

Gaming contract—Stock transactions—Broker doing business on a commission—Art. 1927 C.C.] —Where a broker buys or sells stocks for a customer, on commission, and has no interest in the contracts, being entitled to the same commission whether the market rises or falls, the fact that the customer merely buys on margin for purposes of speculation does not bring the transaction between the broker and the customer within the prohibition of the law as to gaming contracts: *Forget* v. *Ostigny*, [1895], A.C. 318, followed. *Stevenson* v. *Brais*, Q.R. 7 Q.B. 77.

—Common gaming house—Information—Summary trial—Criminal Code secs. 196, 198, 783 (f)—Rule of interpretation.]

See CRIMINAL LAW, XVIII.

—Sale of betting privileges on race course.]

See CRIMINAL LAW, IX.

GARDE-MAGASIN.

Operarius—Attachment of wages—Art. 628 C.C.P. (old text).]

See DEBTOR AND CREDITOR, IV.

GARNISHEE.

Protection against primary debtor.]—Held, that sec. 195 of R.S.O., 1887, ch. 51, only protects a garnishee against being called upon by a primary debtor to pay over again, and does not protect him against any third person. *Andrew* v. *Canadian Mutual Loan and Investment Co.*, 29 Ont. R. 365.

—Damages awarded for libel—Seizure by garnishment.]—Held a sum of money awarded as damages for libel is not exempt from

seizure by garnishment: *Archambault* v. *Lalonde*, M.L.R. 3 Q.B. 486, followed. *Merchants Bank of Canada* v. *Sauvalle*, Q.R. 12 S.C. 200.

—Declaration of garnishee—Contestation thereof —Deposit of wages seized.]—The true basis for the condemnation of the garnishee to deposit in Court the seizable portion of the defendant's wages is not that he owes the defendant, but that the law having made a debtor's unearned wages a part of the seizable assets of such debtor, and consequently the *gage of all his creditors*, his employer, though not his debtor, but really his creditor, by reason of the overdrawing of his salary or otherwise, is debarred from attributing that *gage*, in its entirety, to the liquidation of what his employee so owes him, and finds himself obliged to rank proportionately thereon with the rest of such employee's creditors.—What the garnishee employer is bound to do is not to admit a debt to his employee, who is really his debtor, but to disclose to the Court the true facts as to the nature and duration of the employment and the rate of the remuneration which has been agreed upon.—A contestation of a declaration has for its object a different basis of facts whereon to determine the garnishee's liability from that furnished by his own declaration. —If it be not necessary to establish such new basis of facts, a motion or inscription for judgment on the facts disclosed by the declaration is the proper course. *Banque Jacques Cartier* v. *Morin*, Q.R. 13 S.C. 331.

—Election deposit—Money in hands of public officer—Assignment of debt.]—A. loaned B., a candidate for election to the Commons of Canada, the sum of $200 to deposit with the returning officer as required by R.S.C. c. 8, s. 22. B. was not elected, but received a sufficient number of votes to entitle him to a return of the money so deposited. Before the money was paid over, C., a judgment creditor of B., garnished the money in the hands of the returning officer:—Held, that the money deposited belonged to A. not B., and the attaching order was properly set aside. *Ex parte Peck*, 33 N.B.R. 623.

—Garnishee order—Certiorari—Exemption of wages—Estoppel—45 V., c. 17, s. 33 (N.B.)—Costs, by whom taxed.]—The salary for services for deputy sheriff and gaoler cannot be termed "wages" so as to entitle to exemption of twenty dollars under 45 Vict., ch. 17, sec. 33.—The judgment debtor in an application to set aside garnishee proceedings having denied any wages were due him from the garnishee, would be thereafter estopped to claim any exemption for wages due.—It is no ground for *certiorari* that the County Court Judge ordered the costs of the garnishee order and application to be taxed by the clerk of the Supreme Court instead of taxing them himself. *Ex parte Bowes*, 34 N.B.R. 76.

—Defence by debtor—Hearing—45 V., c. 17.]—An order under sec. 7 of 45 Vict., ch. 17, was served upon the judgment debtor in addition to the garnishee, and at the return the judgment debtor gave evidence in disproof of the existence of the debt sought to be garnisheed. The judge having pronounced in favour of the validity of the debt the judgment debtor now applied under sec. 16 of the Act to discharge the debt from attachment on the ground that the proceedings under sec. 7 only affected the garnishee and could not bind the judgment debtor. Application granted. *Stockton* v. *Mallory*, 34 C.L.J. 579.

—Division Courts—Garnishee process—Committal —Judgment summons—Affidavit.]

See DIVISION COURTS.

—Receiver—Garnishee of money in hands of—Debt.]—See RECEIVER.

And see DEBTOR AND CREDITOR, IV.
" PRACTICE AND PROCEDURE, X.

GIFT.

Of chattel inter vivos.]

See PARENT AND CHILD.
And see DONATION.

GOOD-WILL.

—Incorporated company—Liquidation—Sale of good-will of company by liquidator.]—The sale by the liquidator of the good-will and assets of a company incorporated under letters-patent from the Crown does not transfer to the purchaser the right to use the name of the company after its dissolution—this being a right which can only be granted by the Crown—and he is not entitled to an injunction to restrain a person who, since the dissolution, has registered a new firm under a similar name, from doing business under such name, there being no evidence that its members or the person sought to be restrained agreed or undertook not to do it. *Sabiston* v. *Montreal Lithographing Co.*, Q.R. 6 Q.B. 510, reversing judgment of Superior Court, 3 Rev. de Jur. 403.

GUARANTEE.

—Suretyship—Letter of guarantee—Promissory note—Indorsement—Joint and several obligation —Art. 1951, C.C.]—The directors of a company, in order to provide funds for carrying on the business, indorsed a promissory note, which was discounted by a bank. The president of the company had refused to indorse the note until he received from the other directors a letter in the following terms:—"We, the undersigned, do hereby agree and undertake to hold you harmless of all liability in respect to your indorsement of a certain promissory

note, etc." The plaintiff indorsed the note last, though his name appeared first thereon. Judgment being obtained by the bank for the amount of the note, the plaintiff satisfied the judgment, and the question now was whether the other indorsers, signers of the letter of guarantee, were jointly and severally indebted to the plaintiff, in the amount paid by him to the bank, or whether they were only jointly indebted:—Held, that under the terms of the letter of guarantee, the signers thereof became jointly and severally liable to the plaintiff for whatever amount he might be obliged to pay in respect of his indorsement, and the letter of guarantee must be referred to as regulating the obligations of the parties *inter se*, and not the resolution previously passed by the directors, by the terms of which the directors apparently agreed to be co-sureties towards the bank for the amount of the note discounted. *Thomas* v. *Nunns*, Q.R. 12 S.C. 52.

—Garantie formelle—Compensation.]

See DEBTOR AND CREDITOR, XI.

GUARDIAN AND WARD.

Mother and child — Want of business knowledge —Removal of guardian.]—General proof of want of business knowledge, without evidence of acts of mal-administration, will not justify the removal of a mother from her position of tutrix to her children. *Tessier* v. *Pinsonnault*, Q.R. 13 S.C. 382.

HABEAS CORPUS.

Committal—Inquiry into—Exercise of power or jurisdiction.]—On a writ of *habeas corpus*, the judge merely examines whether the committing magistrate had jurisdiction, whether the committal is legal and whether any crime known to the law has been committed. If the committing magistrate had the necessary power or jurisdiction, the manner of his exercise of such power or jurisdiction will not be inquired into. *Ex parte Gillespie*, Q.R. 7 Q.B. 422.

—Writ of habeas corpus ad subjiciendum—Object of writ—Custody of child—Procedure.]—The object of the writ of *habeas corpus* is to release from custody a person unlawfully imprisoned against his will; therefore, the first step to be taken is to establish that such person is deprived of his liberty, and to that end the applicant for the writ should shew the cause of detention before he proceeds to the question of whether or not it was justified. (Art. 1040 C.C.P.)—In this case the respondent in his report said that his daughter —separated voluntarily from her husband— had of her own will, with her child, come to live with him, and that he exercised control neither over the mother nor the child:—Held, that it was the duty of the judge to satisfy himself of the truth of this report, and the mother having declared that both she and the child had full liberty, her father, the respondent, exercising no control over them, the writ of *habeas corpus* should be dismissed.—Although a wife is bound to live with her husband, such principle cannot be applied on an application for a writ of *habeas corpus;* in such case neither the Court nor a judge can determine upon the respective rights as to their future residence.—The writ not being directed against the mother of the child, and the respondent not having detained the child he could not be ordered to surrender it.—The custody of an infant cannot be definitely determined in a proceeding so special as that of *habeas corpus*.—Any judge may issue the writ but it should be taken to the Court of Queen's Bench or the Superior Court. If to the Court of Queen's Bench it should be taken to the place where the appeals of the district are carried; if, on the contrary, it is taken to the Superior Court the Code of Civil Procedure, in the chapter on *habeas corpus ad subjiciendum* containing no special provisions, the rule given by Art. 34 will prevail, namely, that the defendant must be brought before the tribunal of his domicile, or that of the place where the demand has been personally signified to him, or before that where the right of action arose. *Morency* v. *Fortier*, Q.R. 12 S.C. 68.

—Defective commitment—Issue of proper warrant.]—When a writ of *habeas corpus* is granted based upon the insufficiency of a commitment, the committing justices may furnish the gaoler with a legal warrant and so defeat the writ. *Ex parte Welsh*, 4 Rev. de Jur. 437.

—Crim. Code, ss. 268, 270, 538, 539, 540—General gaol delivery.]—The County Courts of New Brunswick are not Courts of Oyer and Terminer and general gaol delivery; therefore the Court refused to discharge, on *habeas corpus*, a prisoner who had been committed for trial for an offence against the provisions of the Criminal Code, 1892, s. 270. *Ex parte Wright*, 34 N.B.R. 127.

And see CRIMINAL LAW, XV.
" " JUSTICE OF THE PEACE.

HARBOURS.

B.N.A. Act, ss. 91, 92, 108—Distribution of legislative powers—Public harbours.]—Whatever proprietary rights vested in the Provinces at the date of the British North America Act remained so, unless by its express enactments transferred to the Dominion. Such transfer is not to be presumed from the grant of legislative jurisdiction to the Dominion in respect of the subject matter of these proprietary rights:—The transfer of "public harbours" operates on whatever is properly comprised in that term, having regard to the circumstances of each case, and is not limited merely to those portions on which public works had been executed.

Attorney-General for Canada v. *Attorneys-General of Ontario, Quebec and Nova Scotia* [1898], A.C. 700.

HARBOUR COMMISSIONERS.

Pilot—Refusal to take charge of ship—Written complaint—Summons.]—The provisions of sec. 44 of 57 & 58 Vict., ch. 48 (D), which oblige the Montreal Harbour Commissioners, in the exercise of their judicial functions, to follow the procedure contained in Part 58 of the Criminal Code, do not apply to matters of mere administration and discipline, such as the punishment of a pilot for refusing to take charge of a ship when he has been duly notified of its approach (*mise en demeure*).—The withdrawal of a pilot's license for refusing to take charge of a vessel within his district is a matter for the civil jurisdiction of the commissioners, cognizance of which may be brought before their tribunal without the necessity of a sworn complaint in writing as in a criminal matter. *Dussault* v. *Montreal Harbour Commissioners*, Q.R. 12 S.C. 417.

And see PRACTICE AND PROCEDURE, XXXII.

—Liability for acts of officers.]—The Quebec Harbour Commissioners constitute a corporation, and acts done by their officers as the secretary for example, bind them.—The refusal of the secretary, in his capacity of secretary-treasurer of the Board, to receive a complaint by the Pilot's Company, is equivalent to a refusal by the commissioners themselves, and they are responsible for it. *Lamarre* v. *Woods*, Q.R. 13 S.C. 466.

HOMESTEADS.

Execution — Exemption — Homestead Act — Small Debts Court—Jurisdiction.]—A magistrate sitting as judge of the Small Debts Court has no jurisdiction to decide the validity of a claim for exemption, under the Homestead Act, of goods seized under process of execution issued from that Court. *Augberg* v. *Anderson, Stewart* v. *Anderson*, 5 B.C.R. 622.

HUSBAND AND WIFE.

I. ADVANTAGE TO HUSBAND OR WIFE, 202.
II. ALIENATION OF AFFECTIONS, 202.
III. ANTE-NUPTIAL CONTRACT, 202.
IV. CONTRACTS OF MARRIED WOMEN, 203.
V. DEALINGS BETWEEN HUSBAND AND WIFE, 203.
VI. PROCEEDINGS BY AND AGAINST MARRIED WOMEN, 203.
VII. SEPARATE ESTATE AND BUSINESS, 204.
VIII. SEPARATION DE CORPS, 209.
IX. SUPPORT OF WIFE, 209.

I. ADVANTAGE TO HUSBAND OR WIFE.

—Gifts to wife—Revendication from heirs.]—Where a husband has given his wife jewels and ornaments of small value as compared with his fortune (the husband was worth $500,000, and the gifts and presents to his wife during the whole coverture amounted to $5,702 only), he cannot revendicate these gifts from the heirs of his wife as constituting advantages prohibited between consorts. *Eddy* v. *Eddy*, Q.R. 7 Q.B. 300.

—Advantage between consorts—Art. 1265 C.C.—Per Casault, C.J.—The prohibition contained in Art. 1265 C.C. against consorts conferring benefits *niter vivos* upon each other, does not prevent a husband from furnishing his wife, separated as to property, the clothing which she requires. *Fry* v. *O'Dell*, Q.R. 12 S.C. 263.

II. ALIENATION OF AFFECTIONS.

—Alienation of husband's affections—Adultery of husband—Damages—Married Women's Property Act—R.S.O. c. 132.]—Neither at common law nor under the Married Women's Property Act, R.S.O. ch. 132, will an action lie by a married woman against another woman to recover damages for alienation of her husband's affections, and for living in adultery with him: *Quick* v. *Church*, 23 Ont. R. 262, overruled. *Lellis* v. *Lambert*, 24 Ont. A.R. 653.

—Alienation of affections of wife—Damages.]—In an action by a husband for alienation of the affections of his wife, even where no precise amount of specific damages is proved, by the jurisprudence of the Province of Quebec the Court is justified in awarding substantial damages for the disgrace and humiliation brought upon the plaintiff, and for deprivation of his wife's society. *Hart* v. *Shorey*, Q.R. 12 S.C. 84.

III. ANTE-NUPTIAL CONTRACT.

—Gift of future property to wife by marriage contract.]—The gift of future property made by husband to wife in their contract of marriage is a gift in contemplation of death, which can take effect only upon the death of the husband. The wife to whom such gift has been made, is not the owner of effects which are not proved to have belonged to her husband at the time of her marriage, and she cannot prevent their seizure and sale by a creditor of her husband. *Demers* v. *Blacklock*, Q.R. 12 S.C. 43.

—Donation—Registry of contract—Don mutual d'usufruit—Régime.]—A husband, donor, is bound to register the contract of marriage effecting a donation to his wife, and his heirs cannot take advantage of the non-registration, because, as heirs of the husband, they are warrantors (*garants*) for the wife against the consequences of failure to register.—The reciprocal donation of usufruct (*don mutuel d'usufruit*) between consorts by contract of marriage should be registered:

Marchessault v. *Durand*, M.L.R. 5 Q.B. 364, followed.—It is the duty of a husband of full age, whatever may be the *régime* between him and his wife, community or separation as to property, to register the hypothecs and charges with which his immovables are affected in favour of his wife. *Pelletier* v. *Lapalme*, Q.R. 12 S.C. 97.

IV. Contracts of Married Woman.

—Mortgage—Implied covenant—Disclaimer.]—Where a deed of lands to a married woman, but which she did not sign, contained a recital that as part of the consideration the grantee should assume and pay off a mortgage debt thereon and a covenant to the same effect with the vendor, his executors, administrators and assigns, and she took possession of the lands and enjoyed the same and the benefits thereunder without disclaiming or taking steps to free herself from the burthen of the title, it must be considered that in assenting to take under the deed she bound herself to the performance of the obligations therein stated to have been undertaken upon her behalf, and an assignee of the covenant could enforce it against her separate estate. *Small* v. *Thompson*, 28 S.C.R. 219.

V. Dealings Between Husband and Wife.

— Injunction — Steam-driving — Riparian rights — Driving-dam — Leave and license — Wife's inheritance.]—The plaintiff, in the Court below, a married woman, was the owner in fee of a lot of land through which flowed a stream, too small, however, in the natural state for steam-driving purposes. The land had previously been owned by the plaintiff's husband, who, both while such owner and afterwards, had assisted as a labourer in constructing a driving-dam above the plaintiff's lot. The defendants' logs were driven by means of the driving-dam which was owned by them, and such user flooded the plaintiff's intervale and injured the banks of the stream:—Held, that the plaintiff was not estopped from taking proceedings to restrain further injury to the property and from claiming damages for the injury done; that the acquiescence or leave and license by which a person can be deprived of his legal rights, must be of such a nature and given under such circumstances as will make it fraudulent in him to set up these rights against another prejudiced by his acts.—*Quære:*—Whether the plaintiff's husband could give leave and license to the injury of her inheritence. *Wright* v. *Mitten*, 34 N.B. R. 14.

VI. Proceedings by and against Married Women.

—Action by wife—Authority—Foreign domicile.]—A married woman domiciled in France, common as to property with her husband, who has been authorized by the Court of her domicile to collect a legacy of movables, and to *ester en justice* for this purpose, may without other authorization, bring suit before the Courts of this province, against a debtor domiciled herein, for the recovery of a sum of money forming part of such legacy. *Bauron* v. *Davies*, Q.R. 6 Q.B. 547 reversing 11 S.C. 123.

—Trader—Boarding-house keeper—Marchande publique.]—The keeper of a boarding-house is a trader.—A married woman who is a *marchande publique*, even though she be common as to property, is liable to be sued for the enforcement of obligations incurred by her for the purposes of her business as such *marchande publique;* and the fact that she is misdescribed in the writ as being separate as to property whereas she is in community with her husband, is not a ground for dismissing the action against her. *Renaud* v. *Brown*, Q.R. 12 S.C. 237.

—Husband and wife—Joint and several promissory note—Art. 1301 C.C.]—Where husband and wife make their promissory note, binding themselves jointly and severally to pay the amount thereof, the wife, though separated as to property from her husband, is liable on the note where it is alleged and proved that it was made for her personal debt, the mere fact that her husband became jointly and severally liable with her not having the effect of making the note void as against her. *Poitras* v. *Brown*, Q.R. 12 S.C. 497.

—Husband and wife common as to property—Action for alleged debt of community—Right of wife to plead separately.]—Where husband and wife, common as to property, are sued conjointly for a debt for which plaintiff alleges that the community is liable, the female defendant has a right to appear and plead her own rights, and is entitled to demur to the action on the ground that it should have been brought against the husband alone as head of the community. *Caron* v. *Kavanagh*, Q.R. 13 S.C. 296.

— Marital authority — Opposition afin de distraire.]—A wife separated as to property (*séparée de biens*) does not require authorization from her husband to enable her to make an opposition *afin de distraire*. *Grothé* v. *Maisonneuve*, Q.R. 13 S.C. 345.

—Action against married woman—Ante-nuptial debt—Form of judgment—Summons—Contempt.]

See Practice and Procedure.

VII. Separate Estate and Business.

—Separate property—Conveyance—Contracts—C.S.N.B. c. 72.]—Sec. 1 of C.S.N.B., ch. 72, which provides that the property of a married woman shall vest in her as her separate property, free from the control of her husband, and not liable for payment of his debts, does not, except in the case specially provided for, enlarge her power for disposing of such property or allow her to enter into contracts which at common law would be void: *Moore* v. *Jackson*, 22 S.C.R. 210, re-

ferred to. *Wallace* v. *Lea*, 28 S.C.R. 595, reversing 33 N.B.R. 492.

—Husband's interest—Renunciation—Rights of administrator of wife's estate—Construction of document.]—A husband is beneficially entitled to a share in the personal property of his wife, on her decease, because of his marital relationship and right; and in the same way to a share in her land, by virtue of R.S.O., ch. 127, sec. 5. If he renounces this marital right before marriage, and to promote it, the law cannot replace him in the benefit out of which he has contracted himself. And where the husband has so renounced, he is not entitled to administration of his wife's estate, for administration follows interest.—The administrator of the wife's estate has a status to set up the husband's renunciation in answer to a claim made by him to a share in the estate.—The husband, before marriage, signed a writing as follows: "This is to certify that I, H. D., through marriage to A. E. T., will not assert any right or claim to the property of the said A. E. T., either real estate, cash in bank, household or personal effects:"—Held, that this was to be read as an abandonment of any right or claim in the property which might accrue to him through his intended marriage, and was sufficient to protect her estate from any claim of his, after the separate use of the property to which she was entitled under the Married Women's Act in force at the date of the marriage, 1894, ceased by her death in 1896. *Dorsey* v. *Dorsey*, 29 Ont. R. 475.

—Note signed by husband with firm name of wife separate as to property—Rights of third person, holder in good faith and for valuable consideration—Art. 1301 C.C.]—The husband of defendant had been carrying on business under the name of the Hearle Manufacturing Company. Subsequently the business was carried on by the wife under the same name. The note sued on was made by the husband, purporting to act for his wife, under the name of the Hearle Manufacturing Company, and it was proved that the note was given in part payment of a debt due by the original firm consisting of the husband:—Held, (following *Ricard* v. *La Banque Nationale*, Q.R. 3 Q.B. 161,) that the note was null *ab initio*, and this nullity being of public order, and absolute, might be invoked against a third person, holder in good faith and for valuable consideration. *Maclean* v. *O'Brien*, Q.R. 12 S.C. 110.

—Goods sold to wife separated as to property—Responsibility of husband—Necessaries.]—Where husband and wife are separated as to property and do not live together, and goods are sold and delivered to the wife, after notice from the husband to the vendor to charge him with goods only on his express verbal or written order, to hold the husband responsible, under these circumstances, for goods sold to the wife, and which were charged to her in the books, the vendor must establish that the goods sold were, at the time they were sold, actually necessary to the wife or children. Such proof does not result from the mere fact that the goods were of a kind which might be required for the wife or family. *Morgan* v. *Bartels*, Q.R. 12 S.C. 125.

—Wife separate as to property—Surety for third party—Joint security.]—A wife separated as to property cannot legally become security, with her husband, for the debt of a third party, but the husband can bind himself, jointly with his wife, to pay the debt of a third party for which the wife alone had already become surety, and this obligation will bind the wife as well as her husband. *Mullin* v. *Carey*, Q.R. 13 S.C. 115.

—Obligations of wife separated as to property—Fraud of wife and husband—Art. 1301 C.C.—Exhibits—Prohibition to alienate—Onerous titles.]—What Art. 1301 C.C. prohibits is the binding of the wife for a debt or consideration *not her own*, and by reason of which she has not personally benefited.—If the wife goes to the lender and tells him that she needs money on her own account, and the lender, without any reason to suspect anything wrong, consents to lend it, and at the execution of the deed puts the money into the wife's own hands, the wife's obligation will be valid.—If the wife, after she is possessed of the money, changes her mind, and, being prevailed on by her husband, pays his debts with it, the deed of obligation will not be invalidated.—The validity of the obligation must be determined by the facts as they stood when it was executed. The subsequent act of the wife, to which the lender has been neither party nor accessory, shall not invalidate the deed.—The rule laid down in Art. 1301 C.C. is absolute, but in case of fraud or culpable conduct on the part of the wife, without the lender's knowledge, her liability is based on and originates in that fraud or fault, and on the fact that thereby she illegally deprived the lender of his money, wherefrom follows her obligation to return it. The penalty of her fraud cannot be inflicted upon an innocent person. *Ricard* v. *La Banque Nationale*, Q.R. 3 Q.B. 161, distinguished.—The prohibition to alienate things conveyed or ceded by onerous title is null.—A deed wherein a donation is made by a party, and a discharge given by the donee to the donor of a pre-existing obligation, is an onerous title, and therefore the prohibition to alienate, contained in such deed, does not operate. *Boucher* v. *Globensky*, Q.R. 13 S.C. 129.

—Husband and wife—Choses in action of wife—Reduction into possession by husband—Title to land purchased with wife's money taken in name of husband—Mortgage and release—Disclaimer of interest by husband—Trust deed not delivered admitted as evidence of intention—Distinction between children and creditors.]—Plaintiff was a married woman owning separate property,

and having an income which was retained entirely under her own control, without any interference or attempt at control on the part of her husband. The title to a farm purchased for plaintiff was taken, and a mortgage for a part of the purchase money was given in the name of the husband, but the evidence shewed that the payment made on account of the purchase in the first instance, and the subsequent payment of the balance, for the purpose of obtaining a release of the mortgage, were made by plaintiff out of her own monies. It also appeared that the husband, when under examination in legal proceedings, and by a trust deed executed by him and deposited with his solicitor, but never delivered, and in other ways, disclaimed any interest in the property, and recognized it as belonging wholly to plaintiff:—Held, that there was no reduction into possession by the husband, and no gift to him, and that plaintiff, as against children of her husband by a previous marriage, was entited to a declaration that she was entitled to the property in her own right:—Held, further, that the deed found in the possession of the solicitor after the husband's death, while not effective to pass the property, was admissible as evidence of intention:—Held, also, that defendants, the children of the deceased husband, stood in a different position from creditors. *Routledge* v. *Routledge*, 30 N.S.R. 151.

— Wife — Liability on contract — Interest.]—The plaintiff was employed as the servant of the defendant in managing a farm owned by her, and it was understood between them and defendant's husband that the farming operations, as also a banking business carried on at the same time, were hers. The negotiations for the employment of the plaintiff were conducted by the husband, though partly in the defendant's presence, and it was the husband who was consulted by the plaintiff in all matters of importance relating to the farm as well as to the bank, though at times the defendant was present. The husband gave defendant the benefit of his advice and assistance and also acted as bookkeeper for her in the banking business, but it did not appear that he had any fixed salary or what was the arrangement, if any, between him and defendant:—Held, that such participation by the husband would not, in the case of an outsider contracting with his wife, absolutely prevent the finding that the business was carried on by the wife separately from her husband, and that on the evidence such finding was the proper one in this case. If, however, the defendant, on the same state of facts, were claiming the profits or proceeds of the farming operations as against her husband's creditors, it would be impossible to hold it sufficiently proved that the business was *bona fide* intended to be that of the wife alone. It depends on the circumstances of each particular case what is the degree or nature of the participation by the husband which prevents the finding of a separate business: *Merchants' Bank* v. *Carley*, 8 Man. R. 258, and *Goggin* v. *Kidd*, 10 Man. R. 448, distinguished.—To be entitled to interest before action a plaintiff must shew (1) an express contract for interest, or (2) that the nature of the claim is such that the contract can be implied, or (3) that the debt is payable by virtue of a written instrument, or (4) that there was a demand with notice that interest would be claimed under 3 and 4 Wm. 4, c. 42, s. 28. *Nichol* v. *Gocher*, 12 Man. R. 177.

—Married woman—Separate estate—Contract of married woman—Separate estate exigible—Estoppel—N.W.T. Act s. 40.]—Plaintiff sued husband and wife claiming $7,000 on a promissory note signed by both defendants in favour of L.S. & Co., and endorsed to plaintiff. The principal defence was that the wife was, at the time of the making of the note, a married woman residing with her husband, and was not possessed of any separate property. The evidence shewed that the wife previous to the signing of the note had assigned to L.S. & Co. her interest in an agreement for sale by the C.P.R. to her of 640 acres of land; that although the assignment was absolute in terms it was given as collateral security for the debt, which latter was represented by the note in question. The agreement with the C.P.R. for the purchase of the land was made in the wife's name, although the husband swore he himself paid the instalments of the purchase money. The husband had himself prepared and delivered the assignment to L.S. & Co., assigned the land and agreement to T. & Co., who, thereafter and before the commencement of the action, paid the balance due to the C.P.R. Co. and obtained a deed of the land. It was urged on behalf of the wife that admitting the wife had separate estate at the time of the contract, she had since ceased to be possessed of any, and that there could not now be a judgment against her on the contract. For the plaintiff it was contended a judgment would bind not only the property she was possessed of or entitled to at the date of the note sued on, but also all or any property thereafter acquired by her. Counsel also urged that the defendants having represented that the wife had an interest in the land and thereafter assigned that interest, they were estopped from setting up that it was not the wife's property:—Held, that there should be judgment against both defendants for full amount of claims and costs. That the interest of the wife in the land was separate estate; that the judgment as against her, following *Scott* v. *Morley*, 20 Q.B.D. 120 should be a proprietary one and be limited to her separate estate. That the defendants having represented the land as the wife's property were estopped from now claiming it was not then her separate estate. *Bank of Montreal* v. *Richardson*, 34 C.L.J. 329.

—Donations to one consort—Life rent—Value of rent—Acquisition to community.]

See DONATION.

—Estoppel—Conveyance by married woman—Agreement—Recital—Bona fides.]

See ESTOPPEL.

VIII. SEPARATION DE CORPS.

— Hypothec — Art. 2034 C.C. — Judgment for specific sum of money—Alimentary allowance—Judicial hypothec.]—A judgment, in an action by a wife for separation from bed and board, ordering the payment by the defendant to the plaintiff of a fixed sum per month as an alimentary allowance, is a judgment ordering the payment of "a specific sum of money," within the meaning of Art. 2034 of the Civil Code, and a judicial hypothec results therefrom, and the registration of such judgment against immovable property belonging to the husband establishes a valid hypothec thereon. *Tabb* v. *Beckett*, Q.R. 7 Q.B. 28.

—Decree for separation—Acts of violence—Maintenance—To justify the Court in decreeing *séparation de corps* it is necessary that the acts charged against the defendant are of more than ordinary gravity and have been continuous.—In adjudicating upon the ill-usage imputed to the defendant the Court should take into consideration the condition, education and social position of the consorts. Acts of violenceand ill-usage charged against defendant should be dealt with in connection with the circumstances, places and times of their commission; if they took place several years previously, if they were isolated acts, or if the consorts have always lived together since they were committed, they will not be sufficient to obtain a *séparation de corps*.—Nor should the Court decree separation if the injuries complained of by the husband are more serious than those urged by the wife. See *Bouneau* v. *Circé*, 19 R.L. 437.—The husband will have sufficiently fulfilled his obligation to support his wife if he supplies her with board and furnishes her with the same maintenance (*aliments*) and clothing that he supplies to his own family.—To justify the Court in granting separation, there must be convincing proof of the ill-usage or injurious acts alleged in the action. *Raymond* v. *Bossé*, Q.R. 12 S.C. 173.

—Partage of community—Recovery of money due wife—Compensation.]—In an action against a husband to compel him to return money drawn from a bank after it had been allotted to his wife, in the *partage* of the community pursuant to a judgment for *séparation de corps*, the defendant cannot, *par exception*, demand that the entire *partage* be annulled, nor can he set off (*opposer en compensation*) his share of a sum of money belonging to the community which his wife may have secreted before the *partage*, such a claim being contestable. *Arcand* v. *Lamy*, Q.R. 13 S.C. 488.

IX. SUPPORT.

—Criminal law—Vagrancy—Refusal to maintain—Wife refusing to live with husband—Crim. Code, s. 207 (b).]—A person who is able to work, and thereby, or by other means, to maintain his wife, and who is charged with vagrancy for refusing or neglecting to do so when his wife had left the matrimonial abode, without his consent and without judicial authorization or other valid reason, cannot be convicted, if he was willing and offered to receive her, while she on her part refused to return and live with him. *The Queen* v. *Leclair*, Q.R. 7 Q.B. 287.

—Advantage between consorts—Art. 1265 C.C.]—Per Casault, C.J. The prohibition contained in Art. 1265 C.C. against consorts conferring benefits *inter vivos* upon each other, does not prevent a husband from furnishing his wife separated as to property the clothing which she requires. *Fry* v. *O'Dell*, Q.R. 12 S.C. 263.

And see INFANT.

" " PARENT AND CHILD.

HYPOTHEC.

Husband and wife—Action by wife for separation—Monthly allowance—Judgment for specific sum—Judical hypothec—Art. 2034 C.C.]

See HUSBAND AND WIFE, VIII.

—Licitation—Opposition of in de conserver—Subrogation—Priority—Arts. 2065, 2073 C.C.]

See OPPOSITION.

IMMOVABLE PROPERTY.

Mortgage — Trade fixtures— Chattels — Tools and machinery of a "going concern"—Constructive annexation—Mortgagor and mortgagee.]—The purposes to which premises have been applied should be regarded in deciding what may have been the object of the annexation of movable articles in permanent structures with a view to ascertaining whether or not they thereby became fixtures incorporated with the freehold, and where articles have been only slightly affixed but in a manner appropriate to their use and shewing an intention of permanently affixing them with the object of enhancing the value of mortgaged premises or of improving their usefulness for the purposes to which they have been applied, there would be sufficient ground, in a dispute between a mortgagor and his mortgagee, for concluding that both as to the degree and object of the annexation, they became part of the realty. *Haggert* v. *Town of Brampton*, 28 S.C.R. 174.

—Elevating road—Rise of water—Damages—Future rights.]—A pulp company, in elevating a roadway, had caused the waters of the Chaudière River and Lake Mégantic to rise five or six feet and fall back so as to damage certain bridges and other works upon the municipal roads. In an action against the company for damages:—Held, that there was

in question only a matter of damages, and not one affecting future rights as to immovables. *Cie de Pulpe de Megantic* v. *Corporation du Village d'Agnès*, Q.R. 7 Q.B. 349.

— Immovables — Seizure — Description — Procès verbal.]—A sheriff's sale of an immovable is a judicial contract by which a determinate thing is sold for a certain price; consequently, the immovable to be sold must be exactly described according to law; and if some parcels of land must be excepted therefrom, their description must be carefully given, in order to shew precisely what is left to be sold.—If their description is not so given, the party whose property is advertised for sale has a legal interest to ask, by an opposition to annul, that the seizure be quashed. *City of Quebec* v. *Quebec, Montmorency and Charlevoix Railway Co.*, Q.R. 12 S.C. 276.

—Licitation — Undivided share in land and improvements—Compensation of share by improvements, etc.—Opposition afin de conserver—Art. 1539 C.C.]—After a licitation has been made, the price represents the immovable and takes its place, and the owners of the immovable become the owners of such price in the same proportion.—Some of the owners cannot prevent the others from taking their portion of the price, because the latter may be their debtors. There can be no compensation in such a case, each party asking not what is due to him by the others, but his own property. —If some are judgment creditors of the others, they can seize their share by means of an opposition *en sous ordre*, but if they have no judgment they cannot arrest payment to their debtors of that share of the price which is their own.—The above rules are to be applied even where the claim is for necessary repairs and improvements made to the immovable sold, the land and buildings being only one and the same property.—When a seller wants to get possession of the thing sold, upon dissolution of the sale by reason of the non-payment of the price, the buyer must demand, by a dilatory plea, that he be refunded the cost of all necessary repairs and the portion paid on the selling price of the said property. *Crédit Foncier* v. *Loranger*, Q.R. 13 S.C. 353.

— Immovable by destination — Incorporation with realty.]—In order that a movable may become immovable by destination the owner must have placed it upon his real estate in permanency or incorporated it therewith, and it only remains immovable so long as it rests upon the real estate with which it is incorporated. The mere fact that it is found upon an immovable does not create a presumption that the owner has placed it there in permanency. *Anderson* v. *Poirier*, Q.R. 13 S.C. 283.

—Revenues declared insaisissiables—Judgment for improvements—Rental value.]

See EXECUTIONS, IX.

IMPUTATION OF PAYMENTS.

See APPROPRIATION.

INDECENT ASSAULT.

Evidence — Indecent assault — Evidence of reputation—Specific acts of impropriety.]—In an action for damages for indecent assault evidence of the general reputation for unchastity of the plaintiff is admissible, but evidence of specific acts of impropriety is not. *Gross v. Brodrecht*, 24 Ont. A.R. 687.

And see CRIMINAL LAW, II.
" ASSAULT.

INDIAN.

— Indian Act — Certiorari — Stated case — Res judicata.]—The defendant had been charged on an information and convicted under R.S.C., c. 43, s. 94, "for that he did sell to an Indian intoxicating liquor," etc. At the close of the evidence, defendant's counsel objected that two offences were charged. After consideration, the magistrate drew up the conviction as above. The defendant thereupon applied for and obtained a stated case, under sec. 900 of the Criminal Code, which was heard before Mr. Justice Scott, who held that to give and sell were not two offences, and affirmed the conviction. The magistrates having transmitted the conviction and proceedings to the Clerk of the Court at Macleod, under sec. 801 of the Crim. Code, the defendant applied for and obtained from a single judge a rule *nisi* returnable before the full Court, sitting *en banc* at Regina, asking that the conviction be quashed on the same grounds as were taken on the stated case, and a direction was given to the clerk at Macleod to transmit the conviction, etc., to the Registrar of the Court at Regina, which he did. On the return of the rule *nisi* at the sittings of the full Court at Regina on Dec. 6, 1897, counsel for the private prosecutor and for the magistrates took the preliminary objection: 1. That the conviction, etc., were not regularly before the Court, not having been brought there by a writ of *certiorari*, and the same could not be examined into or dealt with. 2. That a single judge under sec. 900, sub-sec. 9, being vested with all the authority and jurisdiction of the Court, and having sustained the conviction, from which decision there was no appeal, the question was *res judicata*, and the conviction could not now be quashed on the same grounds as were taken on the stated case:—Held, 1. By Scott and Rouleau, JJ., that the conviction, etc., were regularly before the Court, and could not be dealt with, and that a writ of *certiorari* was not necessary, following *Reg.* v. *Wehlan*, 45 U.C.Q.B. 396. 2. By Richardson and Wetmore, JJ., that the conviction, etc., were not regularly

before the Court, and that a writ of *certiorari* to bring them before the Court was necessary, following *Reg.* v. *McAllan*, 45 U.C.Q.B. 402, and distinguishing *Reg.* v. *Wehlan*, 28 U.C. Q.B. 2. 3. By the full Court, that the grounds now taken on which to quash being the same as those taken and disposed of by a single judge onthe stated case, the matter was *res judicata*. Rule *nisi* dismissed with costs. *The Queen* v. *Monaghan*, 34 C.L.J. 55.

—Selling and giving liquor to Indians.]

See CRIMINAL LAW, XV.

INDICTMENT.

See CRIMINAL LAW, XV.

INFANT.

I. ALIMENTARY ALLOWANCE, 213.
II. CUSTODY, 213.
III. ESTATE, 214.
IV. INJURY TO INFANT, 214.

I. ALIMENTARY ALLOWANCE.

—Illegitimate child—Action by mother for alimentary pension.] See ACTION, XVIII.

And see ALIMENTS.

II. CUSTODY.

—Paternal right—Maternal right—Separation of family.]—The provision of R.S.O. ch. 168, sec. 1, with regard to the custody of infants, recognizes the maternal as well as the paternal right, and requires equal regard to be paid to the wishes of the mother as to those of the father; and thus, where the wishes of the mother are opposed to those of the father, the principal matter to be considered is the welfare of the children.—And where the father was guilty of adultery with a servant in his house, and of making unfounded insinuations against his wife's chastity, and of using foul and indecent language to her and their children, and of being harsh and at times cruel to her and them:—Held, upon *habeas corpus* proceedings taken by the father and a petition for custody by the mother, that it was for the welfare, at least of the children under five years, that they should remain in their mother's custody, and, as it would be wrong to divide the custody, all the children, the eldest being fifteen, should remain in the custody of the mother. The difference between the law of England and that of this Province specially referred to. *Re Young*, 29 Ont. R. 665.

—Habeas corpus.]—The right to custody of an infant cannot be definitely decided on a proceeding so special as an application for a writ of *habeas corpus*. *Morency* v. *Fortier*, Q.R. 12 S.C. 68.

And see HABEAS CORPUS.

—Testamentary guardian—Trustees—Construction of will—Education of infant.]—A testator bequeathed his estate to trustees, and directed them out of their investments of the same to set apart £1,000 "to be used by them for the purpose of educating and giving a profession to my son, providing he has not already been educated and received a profession." He then directed the trustees to use and apply one-half of the income of the residue of the estate, as far as deemed necessary, for the maintenance and support of the said son, and that upon his arriving at the age of 25 years one-half of the estate with all accumulations thereon should be given to him absolutely. The testator left him surviving his wife, the mother of the son mentioned in the will, and the said son, an infant of about nine years of age. On an application by the mother of the infant to be appointed guardian of his person:—Held, that the trustees were not appointed by the will guardians of the person of the infant; that the application should be granted, and that the mother as such guardian had the power, subject to the order of the Court, of selecting the school at which the infant should be educated. *In re Taylor, an Infant*, 1 N.B. Eq. 461.

—Minor—Case and maintenance—Will of father—Right of tutor to custody.] See TUTOR.

III. ESTATE.

—Trust fund—Payment to guardian—Trustees under will—Application for advice—Payment into Court.]—Where an infant had become entitled to a fund, the subject of an express trust in her favour under a will, and the fund was claimed in the infant's name by her guardian appointed by a Surrogate Court, but the infant, represented by the official guardian, opposed the claim:—Held, that it was not a case in which an order should be made under R.S.O. ch. 110, sec. 37, upon the application of the trustees of the will, determining the claim of the guardian; but that the trustees should be allowed to transfer the fund into Court: *Huggins* v. *Law*, 14 Ont. A.R. 383, distinguished. *Re Mathers*, 18 Ont. P.R. 13.

—Practice—Settled Estates Act, 1877—Sale of infants' estate under—Guardian.]—Where a guardian to an infant has already been appointed by the Court, it is not necessary to appoint a guardian for the special purpose of presenting a petition for sale of the infants' estate under Settled Estates Act, 1877, s. 49 (a). In *re Ash Estate*, 5 B.C.R. 672.

IV. INJURY TO INFANT.

—Negligence—Machine—Proximity to highway—Infant of tender years—Allurement—Knowledge of defendant—Trespasser—R.S.O. (1887) c. 211.]—Plaintiff, a child of five years of age, was injured by a horse-power used by the defendant to hoist grain into his warehouse. The machine was on a lot unfenced on one side,

leased by defendant, adjoining his warehouse, about thirty feet from the highway, and was in charge of a man who was temporarily absent for a few minutes at the time of the accident. There was no evidence that the machine was being worked in such proximity to the highway as to endanger the safety of persons using the highway, or that it was so situated as to attract or allure children, nor was there any evidence of any knowledge in the defendant that children were in the habit of frequenting the place or of any intention on his part to injure:—Held, that as the plaintiff had no right to be where he received the injury he could not recover:—Held, also, that the omission of the defendant to comply with the provisions of the Act requiring threshing and certain other machines to be guarded (R.S.O. 1887 ch. 211) did not give a cause of action to the plaintiff: *Finlay* v. *Miscampbell*, 20 Ont. R. 29, followed. *Smith* v. *Hayes*, 29 Ont. R. 283.

—Infant plaintiff—Judgment for damages—Costs—Solicitor's lien on monies recovered.]

See SOLICITOR.

And see PARENT AND CHILD.

INJUNCTION.

Practice—Action for injunction—Right to jury.]—An action for an injunction is proper for a trial by a jury. *Canadian Pacific Railway Co. v. Parke*, 5 B.C.R. 507.

—Company—Liquidation—Sale of good will—Use of name.]—See COMPANY, VI (*e.*)

—Company for paving road—Erection of toll-gates—Consent of municipality—Collection of tolls.] See MUNICIPAL CORPORATIONS, VII.

And see PRACTICE AND PROCEDURE, XII.

INNUENDO.

Words imputing commission of unnatural offence.] See LIBEL AND SLANDER, III.

INQUEST.

Coroner—Doctor who attended deceased not competent to hold inquest.]—This was an application of M. J. Haney, manager of construction of Crows Nest Railway, for a writ of prohibition to prohibit Dr. H. R. Mead, of Pincher Creek, from further proceeding with an inquest in connection with the deaths of two men from diphtheria, employed by a contractor on the said railway. The grounds upon which the application was made were:—1. That the coroner had no jurisdiction to hold such inquest. 2. That he was a necessary and material witness upon said investigation and inquest. 3. That he was directly and personally interested in said inquest and investigation. The facts as set out in the affidavits read on the application were that the two men in question were brought in the company's ambulance to the end of the track, and Dr. Mead, the said coroner, was immediately called in to attend them. Both men died the night after their arrival while under Mead's care. Mead then proceeded to hold an inquest upon the said deaths, although it had been pointed out to him by counsel (C. E. D. Wood) for applicant that having been in professional attendance upon the men at the time of their death, he would be a necessary witness, and it was not proper for him to act in the dual capacity of judge and witness:—Held, that a coroner is a judge of a Court of Record, and that the same person cannot be both a witness and a judge in a cause which is on trial before him, and that in this case the coroner was a necessary witness. In delivering judgment the judge said:—"In this case there is a dangerous precedent to be avoided. A physician, who is at the same time a coroner, in order to avoid prosecution for malpractice, would have only to call a jury and hold an inquest on the body of his victim and the law would be powerless to prevent him." Order granted for writ of prohibition. *In re Haney* v. *Mead*, 34 C.L.J. 330.

INSAISISSABILITÉ.

Substitution—Grevé—Seizure of usufruct.]

See SUBSTITUTION.

And see EXECUTIONS, IX.

INSCRIPTION.

Inscription in appeal—Time of fyling—Service of notice.]—See APPEAL, V.

—Authority of attorney—Service of Inscription in review—Abandonment—Costs.]

See ATTORNEY.

INSCRIPTION EN FAUX.

Procès-verbal de saisie—Contestation—Arts. 79, 159 C.C.P. (old text.)]

See PRACTICE AND PROCEDURE, XXVII.

INSTITUTE.

—Interdict—Institute under substitution—Curator—Remploi—Authority.]—A curator to an interdict, institute under a substitution, has the right to make a *remploi* of monies arising from the sale of the institute's property without the advice of a family council. *Daly* v. *Amherst Land Park Co.*, Q. R. 13 S. C. 516.

INSTRUCTION PUBLIQUE.

See SCHOOLS.

INSURANCE.

I. FIRE INSURANCE, 217.
II. LIFE INSURANCE, 219.
III. MARINE INSURANCE, 222.

I. FIRE INSURANCE.

Mortgage—Cancellation of mortgagor's insurance—Double insurance—Proofs of loss—R.S.O. c. 203, s. 168, s.s. 8; s. 169, s.s. 19.]—The plaintiff insured his barn in the defendant company for $2,100, and afterwards mortgaged his farm, including the barn, to a loan company for $1,500, assigning the policy to the company as collateral security. The mortgage purporting to be under the Short Form Act contained a covenant that the mortgagor would insure the buildings, unless already insured, for not less than $1,000, provided that the mortgagees might themselves effect such insurance without any further consent of the mortgagor. Subsequently, without the knowledge or consent of the plaintiff, the policy was cancelled, and the mortgagees effected a new insurance in another company for the sum of $600. The property having been destroyed by fire the plaintiff notified the company, when they denied liability on the ground that the policy had been cancelled, and on the plaintiff afterwards offering to supply proofs of loss, if required, the company again denied any liability on the ground of cancellation, saying nothing as to furnishing proofs of loss:—Held, that the plaintiff did not cease to be the person assured within the meaning of the Insurance Act, R.S.O. c. 203, and that the policy could not be cancelled by the company unless they strictly followed the provisions of the Act in that behalf:—Held, further, that the insurance effected by the mortgagees could not be deemed to be a subsequent insurance within the meaning of s.s. 8, s. 168, of R.S.O. ch. 203; nor could it be deemed a "double insurance":—Held, also, there was such a repudiation of liability by the company as relieved the plaintiff from making formal proofs of loss. *Morrow* v. *Lancashire Insurance Co.*, 29 Ont. R. 377.

—Vendor and purchaser—Fire after sale—Right of insured to recover—Parol contract—Admissibility of evidence.]—House property was sold by written contract for $2,000, the parties to the contract at the same time verbally agreeing that until payment of the purchase money the vendor would insure the property for that sum, which he did with the defendants by policy insuring himself, his heirs and assigns, against damage by fire not exceeding the above amount nor his interest in the property, without saying anything about the sale. A fire occurred with a total loss of $1,740, before which, however, the purchaser had paid $1,300 of the purchase money:—Held, that evidence of the parol contract was admissible: *Parcell* v. *Grosser*, 1 Atl. R. 909, followed. Held, also, that "heirs and assigns" in the policy meant heirs and assigns of the property, and the purchaser was an assign; and the vendor could recover the amount of his own loss, $700, and also the residue of the loss as trustee for the purchaser. *Keefer* v. *Phœnix Insurance Company of Hartford*, 29 Ont. R. 394.

—Conditions in policy—Delays—Verbal notice to agent—Valuation—Action—Insolvency of insured.]—The assured must conform to the conditions and delays prescribed in the policy, at all events unless conformity is impossible or has been dispensed with by the insurer formally or unequivocally.—Verbal notice given by the assured to the local agent is sufficient, and will be considered as received by the insurer if the latter immediately sends an expert with instructions to prepare a statement of the claim.—The assured is only bound to furnish the insurer with the documents in his possession, and the insurer will be considered to have waived the usual delay of five days, within which the claim should be produced, if he demands from the assured, in case of the destruction of the invoices, a new inventory in detail of the stock, with copies of the invoices from the houses with which he transacts business.—The valuation of the stock destroyed should be made upon the basis of the real value, that is to say, of the selling value on the day, and at the place, of the loss.—The assured may bring an action within the delay of 60 days if the insurer has absolutely refused to pay the amount of the loss.—Insurance effected in favour of a person in case of loss "as his interest may appear," may, in case of the latter's insolvency, be recovered in law by the curator to such insolvent estate, who then becomes assignee (*cessionnaire*) or trustee (*fidéi-commissaire*) of the interested principal. *Liverpool, London & Globe Ins. Co.* v. *Valentine*, Q.R. 7 Q.B. 400.

—Mistake—Ownership of property insured.]—A property was insured for five years, the assured believing himself to be the sole owner. He afterwards discovered that half of it belonged to the heirs of his deceased wife:—Held, that this mistake as to the ownership made the policy void, and it would not bind the company in case of loss. *Mutual Assurance Co.* v. *LeMay*, Q.R. 12 S.C. 232.

—Application for policy—Misrepresentation—Fraud—Warranty—Statute subject to proclamation—Lieutenant-Governor functus officio when Act proclaimed.]—The Fire Insurance Policy Act (B.C.) 1893, providing statutory conditions, was passed subject to a provision that "This Act shall not come into force until a day to be named by the Lieutenant-Governor-

in-Council." The Lieutenant-Governor-in-Council named 1st November, 1893, and advertised the same in *The Gazette*, but before that date published a further notice, and afterwards other notices, postponing the day for the Act to come in force until a date after that of the making of the policy in question:—Held, (1.) That the Lieutenant-Governor was the delegate of the Legislature for the purpose only of proclaiming the Act in force, and upon his doing so the Act came into operation and he was *functus officio* and could not afterwards postpone the date. (2.) Following *Citizen's Insurance Co.* v. *Parsons*, 7 App. Cas. 119, that the statutory conditions superseded the conditions in the policy, the latter not being indicated as variations therefrom in manner required by sections 4 and 5 of the Act. (3.) That the statement of the insured in the application as to the value of the goods which was found by the jury to be incorrect, taken in connection with the statutory condition, No. (1), viz: "Not to describe the goods insured otherwise than as they really are to the prejudice of the company, or misrepresent any material circumstances," did not amount to a warranty. Per Drake, J.—That statements as to value being matters of opinion do not constitute a warranty. *Cope & Taylor* v. *Scottish Union Co.*, 5 B.C.R. 329.

—Condition of policy—Suit instituted prematurely.]—By one of the conditions of a policy of fire insurance, payment of claims for loss thereunder was to be made within sixty days after production of the oath or affirmation of the claimant, along with such accounts and evidence as might be required by the directors. The insured never produced any such statement, or oath or affirmation, in respect of his alleged loss. The only waiver by the company was of the right to exact production of a statement within the fixed delay of fifteen days from the date of the fire:—Held, that the action for the above reasons, and also because it was instituted before the expiration of sixty days after the loss, was premature. *Dupuis* v. *North British and Mercantile Ins. Co.*, Q.R. 13 S.C. 443.

II. Life Insurance.

—Conditions and warranties—Indorsements on policy — Misrepresentations — Latent disease—Cancellation of policy — Return of premium—Statute, construction of — 55 V. c. 39, s. 33 (Ont.)]—The provisions of the second sub-section of section 33 of "The Insurance Corporations Act, 1892" (Ont.), limiting conditions and warranties, indorsed on policies, providing for the avoidance of the contract by reason of untrue statements in the applications to cases where such statements are material to the contract, do not require the materiality of the statements to appear by the indorsements, but the contract will be avoided only when such statements may subsequently be judicially found to be material as provided by the third sub-section. Misrepresentations upon an application for life insurance so found to be material will avoid the policy notwithstanding that they may have been made in good faith and in the conscientious belief that they were true: *Vennor* v. *The Sun Life Insurance Co.*, 17 S.C.R. 394, followed; *Jordan* v. *Provincial Provident Institution*, 28 S.C.R. 554.

—Wagering policy—Nullity—Waiver of illegality—Insurable interest — Estoppel — 14 Geo. III., c. 48 (Imp.)—Arts. 2474, 2480, 2590 C.C.]—A condition in a policy of life insurance by which the policy is declared to become incontestable upon any ground whatever after the lapse of a limited period, does not make the contract binding upon the insurer in the case of a wagering policy. *Manufacturers Life Ins. Co.* v. *Anctil*, 28 S.C.R. 103.

—Benefit certificate—"Ordinary beneficiary"—Reapportionment by will — Validity — 60 V., c. 36, ss. 151, 159, 160 (Ont.)—Retroactivity—Appeal—Waiver.]—A life insurance certificate on its face made the sum of $500 payable to the daughter-in-law of the assured, but the latter subsequently, by his will, professed to make a change in the beneficiaries, leaving her out altogether. The certificate was issued, the will made, and the death of the assured occurred, before the passing of 60 Vict., ch. 36 (Ont.):—Held, that secs. 151, 159 and 160 of that Act applied to the certificate and declaration made by the will, and by those sections the assured had power to do as he professed to do by the will, the daughter-in-law being an "ordinary beneficiary" and the reapportionment made by the will was valid. Right of appeal waived by acting on judgment. *Videan* v. *Westover*, 29 Ont. R. 1.

— Action — Time — Ontario Insurance Act, 60 V. c. 36, s. 148 (2) — Enabling statute.]—The words of s. 148 (2) of the Ontario Insurance Act, 60 Vict. c. 36, "notwithstanding any stipulation or agreement to the contrary, any action or proceeding against the insurer for the recovery of any claim under or by virtue of a contract of insurance of the person may be commenced at any time within the term of one year," have reference to a stipulation or agreement giving less time than one year for bringing the action. It is an enabling, not a disabling, enactment. *Styles* v. *The Supreme Council of the Royal Arcanum*, 29 Ont. R. 38.

—Death of children—R.S.O. (1887) c. 136—Reapportionment—Will—Grandchildren—Cancellation and re-issue of policies—60 V., c. 36 (Ont.)—Creditors.]—A person insured his life for the benefit equally of six of his children, three of whom died without issue in his lifetime. By his will he altered the shares of the three survivors giving a portion to another child and portions to four grandchildren and caused the policies to be cancelled and re-issued payable to "his executors in trust," and died in 1894 while R.S.O. (1887) ch. 136 was

in force:—Held, that the apportionments to the four children were valid, but those to the grandchildren while valid as legacies were invalid as against creditors:—Held, further, that the provision in 60 Vict., ch. 36, sec. 159 (Ont.), permitting an apportionment in favour of grandchildren "to any contract of insurance heretofore issued and declaration heretofore made," did not apply to a policy which had become a claim by the death of the insured, but was limited to policies current at the time of the passing of the said Act:—Held, also, that the issue of the new policies did not affect the rights of the parties as the executors would take in trust for those who were beneficially entitled: *Videan* v. *Westover*, 29 Ont. R. 1, distinguished; *McIntyre* v. *Silcox*, 29 Ont. R. 593.

—Mutual benefit association—Exclusion from membership—Reinstatement—Special regulations—Waiver.]—The acceptance by a mutual benefit association of assessments after knowledge of a forfeiture by reason of non-payment thereof within the required time operates as a waiver of the forfeiture, in the absence of convention of the parties to the contrary, but the rights of the parties must be governed by the constitution and by-laws of the association. If these documents impose other conditions of reinstatement after forfeiture or suspension for non-payment of sums due beside the payment thereof, such conditions must be complied with. *Société Bienveillante St. Roch* v. *Moisan*, Q.R. 7 Q.B. 128, reversing 12 S.C. 189.

—Policy—Assignment—Consent of beneficiary.]—The plaintiff was named as the beneficiary in a policy of insurance on the life of her husband. The policy was taken out by the husband, and the premiums were paid by him. By an assignment, to which the plaintiff was a party, the loss was made payable to the defendants, for valuable consideration moving to the husband. Upon the death of the husband, the plaintiff claimed the benefit of the policy, setting up that her consent to the assignment was procured by her husband's fraud:—Held, that the assignment was valid without the consent of the plaintiff. *Gunter* v. *Williams*, 1 N.B. Eq. 401.

—Assignment—Wager policy—Fraud—Pleading—Failure to prove fraud—Costs—Suit made necessary by defendant's conduct—Terms of relief with respect to assignee of life insurance policy on the same being set aside.]—A policy of life insurance in the plaintiffs' company was taken out by the assured after it had been represented to him by the plaintiffs' agent that he could raise money upon it from the defendant by selling the policy to him, and the policy was taken out by the assured for that purpose. At the time the assured was too poor to pay the premium and was unable to carry the policy. Immediately upon the policy being issued, it was assigned to the defendant for a small sum, and the defendant paid the original and subsequent premiums. In a suit to set aside the policy as a wager policy, and void as against the plaintiffs, the assured in his evidence stated that when he assigned the policy he expected to redeem it, and carry it for his own benefit:—Held, that the policy was not a wagering policy.—A policy of life insurance in the plaintiffs' company, obtained by the fraudulent misrepresentation of the assured, was assigned by him to the defendant. Learning of the fraud, the plaintiffs' agent charged the defendant with being a party to it, but, upon the defendant denying it, withdrew the charge, and asked that the policy be surrendered, offering to pay the defendant whatever money he had laid out in connection with it. This offer the defendant refused, as also a similar offer subsequently made in a more formal manner. In a suit to set the policy aside, the assured and the defendant were charged with having procured it by fraud, but the evidence at the hearing failed to establish the charge with respect to the defendant:—Held, that the bill should be dismissed as against the defendant with respect to the charge of fraud, but without costs, as the suit had been made necessary by the refusal of the plaintiffs' offer.—If a charge of fraud as a ground of relief is made by a bill, and is not established by the evidence, and another case for relief is also made by the bill which is established, so much only of the bill as relates to the charge of fraud is to be dismissed, and relief may be given upon the other part of the case.—While a general allegation of fraud, without stating the acts which constitute it, is bad pleading, it was held that fraud was sufficiently pleaded in a bill to set aside a policy of life insurance which set forth representations made by the assured as to his health, and alleged that they were false and fraudulent to the knowledge of the assignee of the policy.—Terms of relief considered with respect to an assignee of a policy of life insurance, in a successful suit by the insurers to set the same aside on the ground of fraud by the assured in procuring the policy. *Mutual Life Assurance Co. of New York* v. *Anderson*, 1 N.B. Eq. 466.

—Assessment of income and profits of life company.] See ASSESSMENT AND TAXES.

—Policy—Setting Aside—Evidence—Fraudulent intent.] See EVIDENCE, I.

And see BENEVOLENT SOCIETY.

III. MARINE INSURANCE.

— Person for whom effected — Application — Waiver of answer to question in—Disbursements—Subject matter of insurance—Reasonable certainty in designation of.]—Plaintiffs effected a policy of insurance on the SS. "Oakdene," with the defendant company. On the trial, the question arose whether plaintiffs applied for the insurance for themselves, or for the managing owners of the ship. The trial judge having found that the application was

effective on behalf of the owners:—Held, that his finding should not be disturbed.—Among the questions in the application was, "On account of?" followed by a blank, the meaning being, "On whose account is the insurance to be made?"—Held, that an answer to the question was waived by the acceptance of the risk without the blank having been filled up.—The insurance effected by plaintiffs was $3,200 on disbursements of SS. "Oakdene," at and from Halifax, the amount being intended to cover expenditures made in repairing the ship, which had come into Halifax in distress:—Held, that after the repairs were effected, and the expenditures made, there could be no legitimate objection to effecting additional insurance on the ship to the extent of the expenditure:—Held, following *British America Ass. Co.* v. *Laud*, 21 S.C.R. 325, that plaintiffs were entitled to recover:—Held, also, following *Wilson* v. *Jones*, L.R., 2 Ex. 146, that reasonable certainty was all that was required in the designation of the subject matter of the insurance in the application. *Cunard* v. *Nova Scotia Marine Insurance Co.*, 29 N.S.R. 409.

—Partial loss on cargo—Circumstances supporting finding that vessel was stranded—Refusal to withdraw case from jury.] — The schooner "Donzella," on a voyage from Porto Rico to Halifax with a cargo of sugar, put into Barrington for shelter, on the evening of February 11th, 1896. The wind, at the time was south-east, with a heavy snow storm prevailing. The vessel was anchored near the light ship with one anchor out, but as the wind increased, a second anchor was put out. Subsequently, during a heavy gale that sprang up from the north-west, with thick snow, both chains parted. The vessel was then on a lee shore studded with reefs and shoals, and the tide low. She was abandoned by the master and crew, and the following morning was not visible from the shore. Some time afterwards she was picked up at sea by salvors, and was brought into port, and put upon the slip and repaired. When brought in she had four feet of water in her hold, and the cargo was considerably damaged. On being put upon the slip it appeared that 12 feet of the shoe were off abaft the main chains and another 12 feet about off, forward, under the main chains. The butts on the bottom were open. The keel was more or less chafed and broken. The rudder was damaged and the rudder braces started off. There was a scar on the bilge on the port side which looked as if the vessel had dragged or pounded on something. The sides of the keel were bruised more or less and pieces off of it. The main keel was broomed up. The flying jib-boom and main boom were broken, and the fore boom was split: — Held, dismissing with costs the motion for a new trial, that there was sufficient evidence to warrant the jury in coming to the conclusion that the vessel had been on shore, and beating on the rocks for some time, and on which they could properly find a verdict for plaintiff; and that the trial judge was right, under the circumstances, in not withdrawing the case from the jury. *Rudolf* v. *British and Foreign Marine Insurance Co.*, 30 N.S.R. 380. Affirmed on appeal, 28 S.C.R. 607.

— Abandonment — Repair — "Boston clause" — Owner prejudiced — Jury — Authority of master and consignee — Special agent — Right of owner to inspect — Proofs of loss — Right to recover — Right of court to supply finding — Question to jury — Formal offer of required — Substantial wrong or miscarriage — Setting aside verdict — O. 37, R. 6.]—The brigantine "Hattie Louise," owned by plaintiff and insured by the defendant companies, under policies on the hull and freight, left Trinidad for Vineyard Haven, with a cargo of molasses. Shortly after leaving port, she encountered heavy weather and put into the port of St. Thomas, W.I., in a leaky condition. A survey was called which resulted in an order to discharge and store the cargo, and put the vessel upon the slip for repairs, but, before anything was done, under the surveyor's report, J.B., an agent of the defendant companies, and W. H. B., the plaintiff's agent, arrived at St. Thomas, by the same vessel, and several interviews took place, with a view to determining what course should be pursued. This resulted in a disagreement, the plaintiff's agent insisting that the cargo should be trans-shipped, and the vessel taken to a northern port, after making temporary repairs, while the agent for the insurers insisted upon the vessel being permanently repaired at St. Thomas, and carrying her own cargo forward. Notice of abandonment was given on December 28th, by a letter addressed to the defendant companies. In consequence of the failure, on the part of the agents, to come to an agreement, the plaintiff's agent withdrew from the project of repairing the vessel, and the work of effecting repairs was proceeded with by the defendants' agent. After the vessel was taken off the slip, and the cargo re-loaded, it was found that the vessel was still leaking badly, and was unseaworthy, and that it would be necessary to again discharge the cargo. At this time, the disbursement account had run up to $4014.48 and the vessel, which was valued in the first instance at $6,000, had not been re-metalled or re-classed. An attempt was made to raise money on bottomry, but failed, on account of the leaky condition of the vessel, and, as the consignees refused to allow the cargo to be discharged a second time, until the claims were paid, she was finally sold under process to recover the claims. The policies contained what is known as the "Boston clause," under which it is stipulated that "the acts of the assured, or insurers, in recovering, saving, and preserving the property insured, in case of disaster, shall not be considered a waiver or acceptance of the abandonment." The jury found, among other things, that there was an ac-

ceptance of the abandonment:—Held, that the underwriters having intervened for the purpose of making permanent repairs, the repairs must be thorough, and be made within a reasonable time, otherwise they must be held to have accepted the abandonment; that the clause in the policy was applicable rather to cases where the owner neglects or refuses to save the ship, than to cases where he is going on with the project of saving her; that the owner was clearly prejudiced by the interference of the defendant's agent, as the expenses of repairing at St. Thomas were excessive, and the vessel could not be re-metalled or re-classed there, whereas, if she had been taken to a northern port, as proposed by plaintiff's agent, the repairs could have been better effected, and at half the cost; that the case, being one in which there was obscurity and evidence of a contradictory character, was peculiarly one for the consideration of the jury, and upon which they were especially competent to pass; that their findings were such as reasonable men might have found; that the authority of the master and consignees to bind the owner was superseded by the arrival of plaintiff's agent at St. Thomas, and that if the consignees, after the agent's arrival, accepted the tender for repairs, express authority to do so must be shown; that where repairs are made by the underwriter, the owner has the same right to have some one superintend the work that the underwriter has where the repairs are made by the owner; that the Court will not set aside a verdict for misdirection, unless there has been some substantial wrong or miscarriage; that proofs of loss are not necessary when the loss need not amount to anything to entitle the plaintiff to recover; that acceptance of the abandonment is an admission of the plaintiff's right to recover; that when the party with whom the contract is made is identified as the party insured, there is not the same reason for requiring proof of interest as where the insurance is effected, "for whom it may concern."—The jury having found, in answer to questions, that each company, by its conduct, reasonably led plaintiff to believe that formal proofs of interest and loss and adjustment were not required, and the evidence showing that defendant's agent, who was present at St. Thomas, knew more about the loss than the owner did:—Held, that the finding was a reasonable one.—On the authority of *The Manufacturers Ins. Co.* v. *Pudsey*, 29 N.S.R. 124; 27 S.C.R. 374, if the answer as to waiver was defective, because the authority of J.B., who purported to act as agent for defendants was assumed, the Court could deal with the matter and supply a finding as to waiver.—There having been an agreement that the trial judge should submit to the jury "such questions as he decided were proper to be left to the jury":—Held, with respect to a question which it was contended the judge should have submitted, that the question should have been formally offered, and a ruling had upon it, and a note made of the fact.—*McLeod* v. *The Insurance Co. of North America*, 30 N.S.R. 480.—On appeal the Supreme Court of Canada ordered a new trial, holding that the evidence of insurers having taken possession of the vessel was not satisfactory. Nov. 21st, 1897.

INTERDICT.

Institute under substitution—Curator—Remploi—Authority.]—See CURATOR.

INTEREST.

Statute, construction of—Public works—Contracts binding on the Crown.]—Where a claim against the Crown arises in the Province of Quebec and there is no contract in writing, the thirty-third section of "The Exchequer Court Act" does not apply, and interest may be recovered against the Crown, according to the practice prevailing in that province. *The Queen* v. *Henderson*, 28 S.C.R. 425.

—Mortgage—Interest—Redemption.]—In an action of redemption by a second mortgagee against a first mortgagee the latter is entitled to only six years' arrears of interest: *Delaney* v. *Canadian Pacific Railway Co.*, 21 Ont. R. 11 overruled on this point. *McMicking* v. *Gibbons*, 24 Ont. A.R. 586.

—Railway Co.—Expropriation of land—Deposit in court.]—To enable a railway company to take possession of land expropriated the amount of the award, with interest for six months to come, should be deposited in Court. Without such interest the deposit is insufficient. *Drummond Railway Co.* v. *Ollivier*, Q.R. 7 Q. B. 41.

—Interest upon an award—When it begins to run.]—See ARBITRATION AND AWARD, II.

—Usury—Secret Contracts by way of mortgage or pledge.]—See CONTRACT, XIII.

—Interest on judgment—Personal injuries—Contrainte par corps—Amount required.]

See CONTRAINTE PAR CORPS.

INTERVENTION.

Intervenant—Security for costs by.]

See COSTS, XVI.

" PRACTICE AND PROCEDURE, XIV.

INTESTACY.

See ADVANCEMENT.

JUDGE.

Single judge—Power to dispose of points of law raised before trial—R.S. (5th series), c. 104, s. 18.]—A single judge has the same power to dispose of points of law when raised before the trial, that he would have under R.S. N.S. (5th ser.), c. 104, s. 18, to dispose of such points, if raised at the trial. *Knauth Nachod* v. *Sterne*, 30 N.S.R. 251.

—Conversion—Question for trial judge.]

See CONVERSION.

—Power of judge to rescind his own order.]

See RAILWAYS AND RAILWAY COMPANIES, XI.

And see PRACTICE AND PROCEDURE. XVII, XXIV.

And see JUDICIAL OFFICER.

JUDGMENT.

I. ABANDONMENT, 227.
II. APPEAL FROM, 227.
III. CHOSE JUGÉE, 227.
IV. CONFESSION OF JUDGMENT, 228.
V. DISCHARGE OF JUDGMENT, 228.
VI. ENFORCING JUDGMENT, 228.
VII. FINAL JUDGMENT, 229.
VIII. FOREIGN JUDGMENT, 229.
IX. INTERLOCUTORY JUDGMENT, 229.
X. JUDGMENT FOR COSTS, 230.
XI. JUDGMENT IN SPECIAL PROCEEDING, 230.
XII. NULLITY, 230.
XIII. PRIORITY, 231.
XIV. PROOF OF JUDGMENT, 231.
XV. REQUÊTE CIVILE, 231.

I. ABANDONMENT.

Abandonment of part—Payment of costs.]—A party cannot abandon part of a judgment without thereby offering to submit to payment of costs. *Latour* v. *Desmarteau*, Q.R. 12 S.C. 456.

II. APPEAL FROM.

—Action en declaration de paternité—Appeal from—Alimentary allowance—Payment pending appeal—Final judgment.]—See APPEAL, IV.

III. CHOSE JUGÉE.

—School tax—Special assessment—Judgment against ratepayer—Subsequent action to annul roll—R.S.Q. Arts. 2142, 2146, 2147.]—A ratepayer, being proceeded against for payment of a school tax imposed on his property by a special assessment authorized by the Superintendent of Public Instruction according to Arts. 2124, 2146, 2147 R.S.Q., pleaded that the order of the superintendent and the roll were null, but was notwithstanding condemned to pay the amount of the tax. He afterwards brought an action to annul the said assessment roll, invoking the same grounds that he had urged against the former proceeding. To this action the defendants pleaded chose jugée and want of interest in the ratepayer:—Held, that the action could not be maintained; that the judgment rendered against him for the tax was non-appealable and disposed finally of the rights and obligations of the parties resulting from the special assessment roll which was attacked. *Commissaires d'Ecoles de St. Raphael* v. *Toussignant*, Q.R. 7 Q.B. 270, reversing 12 S.C. 457.

And see RES JUDICATA.

IV. CONFESSION OF JUDGMENT.

—Action en bornage—Confession of judgment—Common costs.]—In an action *en bornage* the defendant may confess judgment consenting to the *bornage* on condition that the costs shall be common, and if the plaintiff accepts the costs of the defendant's attorney, as well as those of the plaintiff's attorney, will be considered as forming part of the common costs in the cause. *Lacas* v. *Croteau*, 4 Rev. de Jur. 210.

V. DISCHARGE OF JUDGMENT.

—Attorney ad litem—Authority.]—An attorney *ad litem* cannot discharge, in whole or in part, a judgment rendered in favour of his client without special authority from the latter. *Latour* v. *Desmarteau*, Q.R. 12 S.C. 11.

VI. ENFORCING JUDGMENT.

—Foreign bankruptcy—Receivers—Law of Vermont—Right of foreign receiver against execution creditor—Lex loci contractus—Right of execution.]—A railway company incorporated under the laws of Vermont, having become insolvent, was placed in the hands of receivers by judgment of the Circuit Court of Vermont, which vested them with all the assets of the railway and authorized them to operate it. The receivers took possession of the assets under this judgment, and by the laws of Vermont, the creditors of the company could not after that date execute any judgment against the railway. Some of the cars and locomotives of the company, of which the receivers had previously taken possession, and which were on the tracks of the Grand Trunk Railway in Montreal, in the course of the operation of the railway by the receivers, were seized by a creditor in execution of a judgment obtained in this province. The judgment creditor was a mere *prêtenom* for an American creditor, and the promissory note upon which the judgment was obtained was signed and made payable in Vermont, where the maker (the railway company) and the payee were both domiciled. The receivers opposed the execution of the judgment here on the ground that the seizing plaintiff in the cause was bound by the law of Vermont, which prevented him from executing the judgment against property of which the receivers had taken possession under the

judgment of the Circuit Court of Vermont, and which vested them with the assets of the company against the creditors:—Held, as the contract was made in Vermont between persons domiciled in that State, the consequences attached to the contract by the laws of Vermont must be applied by our Courts:—Held, also, that inasmuch as one of the conditions and consequences of the contract with the railway company, made applicable to it by the laws of Vermont, was that the right of execution and sale of the property of the railway should cease on the appointment of receivers, this judgment creditor could not be allowed to proceed to execute his judgment against such property merely because it had passed from the territorial jurisdiction of the Court of Vermont into that of the Courts of this province. *Barker* v. *Central Vermont Ry. Co.*, Q.R. 13 S.C. 2.

—Partnership—Dissolution—Debts—Recovery of member's share.]—When the title of a debt of a dissolved partnership is a judgment it should be executed in the name of the partnership, but only for the share of the former member who executes it, and the writ of execution should so state.—If the judgment is for the entire debt a member of the partnership cannot sue for his share of the same debt, but may execute the judgment therefor. *Crépeau* v. *Boisvert*, Q.R. 13 S.C. 405.

—Principal and surety—Liability of surety—Default by debtor—Proceedings by creditor—Execution of judgment against surety.]

See PRINCIPAL AND SURETY, I and III.

—Notice to judgment creditor—Ownership of goods in debtor's house—Seizure—Opposition—Costs.]—See EXECUTIONS, IX.

And see RECEIVER.

VII. FINAL JUDGMENT.

—Appeal to Supreme Court—Order extending time for deposit of factum—Dismissal for non-compliance—Date of judgment.]

See APPEAL, VIII.

VIII. FOREIGN JUDGMENT.

—Procedure—Action on foreign judgment—Art. 42 (b) C.C.P. (old text).]—A defendant who is sued in this province on a judgment rendered by a provincial Court in any other province of the Dominion, is not estopped from pleading any defence that might have been set up to the original suit unless he has been personally served *within such other province*, or, in the absence of such personal service, has appeared. *Cole* v. *Duncan*, Q.R. 12 S.C. 152.

IX. INTERLOCUTORY JUDGMENT.

—Review—Adjournment of hearing.]—An interlocutory judgment may be revised on the merits by the judge who presided at the trial if he considers it ill-founded; and in such case the hearing may be postponed to a future day if the party affected by the revision is not prepared to proceed. *Budden* v. *Rochon*, Q.R. 13 S.C. 322.

—Appeal from final judgment—Consideration of interlocutory judgment not appealed from—Discretion.]—See APPEAL, VII.

X. JUDGMENT FOR COSTS.

—Art. 550, C.C.P.—Personal wrongs—Action for damages.]—In an action of damages for personal wrongs, where judgment is given in favour of the plaintiff for costs only, in consideration of defendant's apology and confession of judgment for costs, article 550, C.C.P., does not apply, to prevent the costs of the cause being taxed against the defendant. *Cooke* v. *Hart*, Q.R. 12 S.C. 348.

XI. JUDGMENT IN SPECIAL PROCEEDING.

—Hypothec—Art. 2034 C.C.—Judgment for specific sum of money—Alimentary allowance—Judicial hypothec.]—A judgment, in an action, by a wife for separation from bed and board, ordering the payment by the defendant to the plaintiff of a fixed sum per month, as an alimentary allowance, is a judgment ordering the payment of "a specific sum of money," within the meaning of Art. 2034 of the Civil Code, and a judicial hypothec results therefrom, and the registration of such judgment against immovable property belonging to the husband establishes a valid hypothec thereon. *Tabb* v. *Beckett*, Q.R. 7 Q.B. 28.

—Warranty—Judgment on obligation in warranty pending principal action—Extent of relief to plaintiff in warranty.]—See WARRANTY.

—Trespass to land—Declaratory judgment—County Court.]—See COUNTY COURTS.

—Judgment on bond—Motion for—Penalty—Assessment of damages.]

See PRACTICE AND PROCEDURE, XV.

XII. NULLITY.

—Acquiescence—Judgment ultra petita.]—Where the conclusions of the action asked that the defendant be condemned to render an account unless he preferred to pay a certain sum, the judgment should be in accordance with such conclusions, and a condemnation pure and simple to pay the money will be set aside. *Boucher* v. *Morrison*, Q.R. 13 S.C. 205, affirming 12 S.C. 162.

—Insolvent debtor—Fraud—Collusion—Waiving delays—Distraction of costs.]—An insolvent defendant against whom a creditor has obtained judgment for the costs of which his attorney *distrayant* will be privileged for seizure and sale, cannot—in order to make the judgment illusory and deprive the attorney of the privilege, for payment of his costs, that the seizure and sale would produce—waive, in favour of another creditor, the delays prescribed for return of an action so as to obtain a judgment and issue execution; and when the effect of this waiver is to de-

prive the attorney of the creditor, holder of the first judgment, of his recourse against the defendant for payment of his costs, such attorney can, in his own name, demand the nullity of the seizure made by the second creditor. *McBean* v. *Tessier*, Q.R. 13 S.C. 242.

XIII. Priority.

—**Registered judgments—Priority over non-registered antecedent charge on land.**]

See Registry Laws.

XIV. Proof of Judgment.

—**Judgment of foreign court—Evidence—Art. 1220 C.C.**]—A copy of a judgment rendered by a Court of a foreign country, duly authenticated in accordance with the requirements of Article 1220 of the Civil Code, makes *primâ facie* proof of the facts therein set forth, and that the law therein applied is the law in force in the country in which such judgment was rendered. *Bauron* v. *Davies*, Q.R. 6 Q.B. 547, reversing 11 S.C. 123.

XV. Requête Civile.

—**Petition in revocation of judgment—Pleading—Prescription.**]—The defence of prescription, under Articles 1178 and 1179 C.C.P., to a petition in revocation of judgment, should be invoked by a plea to the merits, and not by an exception to the form. *Durocher* v. *Durocher*, Q.R. 12 S.C. 282.

—**Procedure—Requête civile—Grounds for.**]—The cases in which recourse may be had to a *requête civile*, enumerated in the Code of Civil Procedure, are not exclusive; and where it appears to the Court that the allegations of the petition, if true, are sufficient to justify a *requête*, and the allegations are supported by affidavit, the Court will order the petition to be received. *Durocher* v. *Durocher*, Q.R. 12 S.C. 373.

And see Practice and Procedure, XV and XVI.

JUDICIAL ABANDONMENT.

See Bankruptcy and Insolvency.

JUDICIAL OFFICER.

—**De facto judge—Jurisdiction—Failure to take oath of allegiance and oath of office—Objection by accused.**]—All persons appointed to judicial offices in Canada are required to take the oaths of allegiance and of office before acting in their judicial capacity; and a person temporarily appointed to be Deputy Recorder of Montreal is under the same obligation. If the accused takes objection at the trial to the qualification of the magistrate to act in the case because of his failure to take such oaths, public acquiescence in his exercise of judicial functions will not avail to make his adjudication binding, and he cannot claim to be in the position of a judge *de facto*.—The accused convicted under Crim. Code sec. 783 under such circumstances is entitled to be released from custody upon *habeas corpus*. *Ex parte Eliza Mainville*, 1 Can. C.C. 528.

De facto judge—Failure to take oath—Objection by prisoner—Validity of adjudication.]—The failure of a judicial officer to take the oath of allegiance and the oath of office where he has acted as the holder of the office and has been acknowledged and accepted as the duly qualified incumbent thereof by the public does not invalidate his judgments in criminal cases where his qualification has not been contested at the time of the trial, and such judgments are valid and binding as having been rendered by a judge *de facto*. *Ex parte Thomas Curry*, 1 Can. C.C. 532.

And see Coroner.
" " Justice of the Peace.
" " Police Magistrate.

JUDICIAL PROCEEDING.

Appeal—Jurisdiction—Amount in controversy—Opposition afin de distraire—Demand in original action—R.S.C. c. 135, s. 29.]

See Appeal, XIII (*a.*)

JUDGMENT DEBTOR.

Examination of.]

See Debtor and Creditor, VIII.

JURISDICTION.

Appeal—Courts in Quebec—Security—Dismissal for want of—Art. 1213, C.C.P.]—Under the new Code of Procedure in Quebec by which the Court of first instance remains seized of an appeal until security is given the Court of Appeal cannot dismiss for default of security. *Marsan* v. *La Banque d'Hochelaga*, Q.R. 7 Q.B. 40.

—**Saisie-arrêt—Motion—Before whom made.**]—A motion asking that *saisie-arrêt* be declared binding should be presented to the Court and not to a judge in Chambers. *Smith* v. *Griffin*, Q.R. 13 S.C. 221.

—**Hypothecary action—Amount.**]—An action *en déclaration d'hypothèque* for a sum less than $100 is within the exclusive jurisdiction of the Circuit Court. *Laverdure* v. *Coté*, Q.R. 13 S.C. 254.

—**Appeal from interlocutory judgment—Jurisdiction of original Court.**]—A company was sued in order, because of the non-execution of certain obligations, to get rid of certain privileges granted by the plaintiff to the *auteur* of the company, and the Superior Court, before dealing with the merits of the case, granted the defendant a delay of two months to enable it to execute the obliga-

tions. The defendant appealed from this interlocutory order, by special permission, and on giving the usual security, and pending such appeal demanded from the Superior Court a declaration that the delay granted thereby should only begin to run from the final judgment on the appeal:—Held, that the interlocutory judgment deprived the Superior Court of all jurisdiction in the cause, and the demand could not be granted. *Ville de St. Louis* v. *Montreal Park and Island Railway Co.*, Q.R. 13 S.C. 280.

—Local judge of Supreme Court—Jurisdiction in action—Domicile outside his County Court district.]—A County Court judge sitting as local judge of the Supreme Court, has, under the statutes and rules, jurisdiction to make orders in actions in the Supreme Court which are pending outside the territorial limits of his jurisdiction as a County Court judge. *Posthill* v. *Traves*, 5 B.C.R. 374.

—Action for constituted rents—Jurisdiction of Superior Court—Mixed action.]—See ACTION, XI.

—Action—Jurisdiction of Ontario Courts—Injury to land in another province—Local or transitory action.]—See ACTION, XI.

—Plaintiff resident out of jurisdiction—Security for costs.]—See COSTS, XVI.

—Appeal—Dismissal—Assuming jurisdiction.]
See APPEAL, XIII.

—Criminal law—Speedy trials—Sheriff.]
See CRIMINAL LAW, XVII.

See also ACTION.
" " APPEAL.
" " COUNTY COURTS.
" " DIVISION COURTS.

JUSTICE OF THE PEACE.

I. ACTIONS AGAINST, 233.
II. ADJOURNMENT OF HEARING, 234.
III. COMMITMENT, 234.
IV. CONVICTION, 234.
V. DISQUALIFICATION, 235.
VI. JURISDICTION, 236.

I. ACTIONS AGAINST.

—Directions to constable—Advice.]—The defendant, J., as a justice of the peace, issued execution on a judgment recovered by A. against A. O'H. The execution was placed in the hands of the defendant D., a constable, who levied under it, upon a waggon upon the premises of the judgment debtor. Shortly afterwards A. wanted the waggon removed from the premises of A. O'H., where it had been left, and the constable consulted the justice, who said to him, "Well, if he wants it removed, go and bring it in." There was a dispute as to the ownership of the waggon at the time, plaintiff claiming that it was his property, but it did not appear that the magistrate, when he told the constable to bring it in, was aware of this. In an action by plaintiff to recover possession of the waggon, which appeared to have belonged to him, it was sought to make the justice liable on account of the direction given to the constable:—Held, that in the absence of evidence that the magistrate, at the time he gave the direction to the constable, knew of the claim made by plaintiff, his reply to the constable must be regarded as having been made merely as advice, and that, in any case, the question was one for the trial judge, and a question of evidence merely, and he having determined the question in favour of the magistrate, plaintiff's appeal must be dismissed with costs. *O'Handley* v. *Dooley*, 31 N.S.R. 121.

II. ADJOURNMENT OF HEARING.

—Canada Temperance Act—Hearing, adjournment of.]—When the hearing of a case before a justice is adjourned, the justice is not bound to commence the trial at the hour of adjournment, but may postpone the hearing until a later hour in the day; nor is the justice bound to be at the place of hearing continuously from the hour of adjournment until the commencement of the hearing. *Ex parte Card*, 34 N.B.R. 11.

III. COMMITMENT.

—Description of offence—Designation of justices—Habeas corpus.]—A commitment charging the offender with having verbally threatened to burn the complainant's property is bad as disclosing no indictable offence.—And so is a commitment purporting to be issued by justices of the peace in and for the County of Labelle, as none are appointed with such designation; they should have acted as justices in and for the District of Ottawa.—On a writ of *habeas corpus* granted for a defective commitment, the committing justices may issue a proper warrant and so defeat the writ. *Ex parte Welsh*, 4 Rev. de Jur. 437.

IV. CONVICTION.

—Abusive language—Jurisdiction—Single magistrate—Conviction—R.S.N.S. (5th ser.), c. 162, s. 12—Acts 1889, c. 36—Costs of motion unopposed—Terms.]—Defendant was convicted before a justice of the peace for the County of Pictou, for using abusive language toward H. on a public thoroughfare, contrary to the provisions of R.S. (5th series), c. 162, s. 12:—Held, that the conviction was bad and must be quashed, there being no jurisdiction under the Summary Convictions Act, R.S. (5th series), c. 103, as amended by the Acts of 1889, c. 36, in one magistrate to try and convict for such an offence. The motion being unopposed, no costs were allowed. Terms were imposed that no action should be brought by defendant. *The Queen* v. *McLeod*, 30 N.S.R. 191.

—Canada Temperance Act—Keeping for sale—Selling—Order for destruction of liquor.]—An apparent variance between the information, summons and adjudication, satisfactorily explained, will not authorize setting aside a conviction.—While the information attached to the magistrate's return has a date different from the date of sale, where it is manifestly a clerical or other error, the Court will not interfere.—An order for the destruction of liquor, without an information upon which to base a search warrant, is bad. *The Queen* v. *Diblee; Ex parte Kavanagh*, 34 N.B.R. 1.

—Canada Temperance Act—Information—Defect of—Jurisdiction.]—The information for a violation of the Canada Temperance Act was defective in that it was not sworn to by the prosecutor at the place and time stated therein. The defendant, however, appeared and pleaded not guilty:—Held, that as the magistrate had jurisdiction of the offence and the defendant had appeared, the conviction must stand. *Ex parte Sonier*, 34 N.B.R. 84.

—Criminal Code ss. 501, 872 (b)—Conviction—Money penalty and, in default, imprisonment with hard labour—Illegality.]—See CRIMINAL LAW, XV.

V. DISQUALIFICATION.

—Action against Municipal officer—Justice a member of council—Hearing.]—A justice of the peace, who is at the same time a member of a municipal council, is not competent to preside on a proceeding against an officer of the municipality, under instructions from the council, for infraction of a municipal by-law passed by the council with the concurrence of the justice, one of its members.—In this case, the municipality in question being contiguous to the City of Montreal, and the disqualified justice being the only one residing in that municipality, the proceeding could be taken before any police magistrate of the city. *Tessier* v. *Desnoyers*, Q.R. 12 S.C. 35.

—Canada Temperance Act—Magistrate—Pecuniary interest.]—A vote by the City Council of a sum of money to a magistrate for his services in enforcing the Canada Temperance Act will not disqualify him from hearing an information for an offence against the Act. *Ex parte McCoy*, 33 N.B.R. 605.

—Liquor License Act, 1896, 59 V. c. 5, (N.B.)—Inspector—Bias—Interest.]—The fact that B., a convicting justice for an offence against the provisions of The Liquor License Act, 1896 (Acts of Assembly, 59 Vict. ch. 5), is an inspector under the Act, but not for the district where the offence is alleged to have been committed, is not such an interest as to disqualify him or cause bias. *Ex parte Michaud*, 34 N.B.R. 123.

—Bias—Pecuniary interest—Salary of magistrate—Fines.]—See CANADA TEMPERANCE ACT, I.

VI. JURISDICTION.

Magistrate—Jurisdiction—Crim. Code s. 857.]—A magistrate exceeds his jurisdiction who hears one of the parties and then pronounces sentence on a day to which the hearing was not adjourned as provided by sec. 857 of the Criminal Code. *Therrien* v. *McEachern*, 4 Rev. de Jur. 87.

—Habeas Corpus Act—Magistrate—Jurisdiction.]—The words "Court of Record" in the exception in sec. 1 of the Ont. Habeas Corpus Act (R.S.O. c. 83) include only Superior Courts of Record, and do not include a magistrate's Court exercising the power conferred by sec. 785 of the Criminal Code. *The Queen* v. *Gibson*, 29 Ont. R. 660.

—Summary conviction—Municipal Clauses Act, 1896, ss. 81, 204, 212—Jurisdiction—Police Magistrate.]—An information was laid before a justice of the peace against the police magistrate for the City of Kaslo for a breach by him of one of the city by-laws, and the justice of the peace granted a summons thereon returnable at Nelson. By s. 212 of the Municipal Clauses Act "No justice of the peace shall adjudicate upon or otherwise act in any case for a city where there is a police magistrate, except in the case of illness, or absence, or at the request of the police magistrate." S. 213 saves the jurisdiction of justices of the peace for the several districts, in regard to offenses committed in any city situated within their respective districts in which there may be no police magistrate. The police magistrate was not ill or absent and did not request the justice of the peace to act. Upon motion for a prohibition against further proceedings upon the information:—Held, per Drake J., dismissing the motion, that, in the particular circumstances, there was, for the purposes of the case in question, no police magistrate in Kaslo, and that s. 212, *supra*, did not apply, and that the ordinary jurisdiction of justices of the peace of the district, exercisable over its whole area, applied. The making of the summons returnble at Nelson was improper on the ground of inconvenience, but was within the jurisdiction of the justice of the peace.—Any person may properly lay an information for the infraction of a city by-law, though the fine goes to the city. *The Queen* v. *Chipman*, 5 B.C.R. 349.

—Canada Temperance Act—Conviction—Excessive costs—Jurisdiction.]

See CANADA TEMPERANCE ACT, III.

—Costs—Amount recoverable in Justice's Court.]

See COSTS, XIX (*e*).

See also JUDICIAL OFFICER.

" POLICE MAGISTRATE.

JURY.

Findings—New trial—Verdict—Judgment.]—Where a jury found (1.) that the death of the

plaintiff's wife had been accelerated but not to any appreciable extent, by taking a dose of tartar emetic negligently supplied by the defendants; (2.) that the plaintiff had suffered no damage thereby, but that his minor child had incurred damage to the extent of $1,000: —Held, that the action must be dismissed, because the damages attributable to the defendants were on those findings (which could not properly be disturbed) inappreciable and irrecoverable. The Court of Queen's Bench was in error in directing a new trial on the assumption that the findings as to damages were contradictory and illogical. *Kerry* v. *England*, [1898], A.C. 743.

—Election for trial by jury—Abandonment of election—Arts. 275, 423 C.C.P.]—A plaintiff who has elected by his declaration to have the trial by a jury cannot abandon such election, without the consent of his opponent, by his replies to the latter's pleas. *Mendel* v. *Berthiaume*, Q.R. 13 S.C. 256.

—Criminal trial—Peremptory challenge—Withdrawal.]—See CRIMINAL LAW, XIV.

—Criminal trial—Joint indictment—Peremptory Challenges—Number.]—See CRIMINAL LAW, XIV.

And see PRACTICE AND PROCEDURE, XVII.

LANDLORD AND TENANT.

I. CONDITIONS AND COVENANTS, 237.
II. CREATION OF TENANCY, 240.
III. DEFECTIVE PREMISES, 240.
IV. DISTRESS, 240.
V. LEASE, 241.
VI. LIABILITY OF LESSOR, 242.
VII. OVERHOLDING TENANT, 242.
VIII. PRIVILEGE OF LESSOR, 242.
IX. RENT, 243.
X. RESILIATION OF LEASE, 243.
XI. RIGHTS OF LESSEE, 245.
XII. SALE OF LEASED PREMISES, 245.
XIII. SUB-LETTING, 245.
XIV. TERMINATION OF TENANCY, 245.
XV. VALIDITY OF LEASE, 246.

I. CONDITIONS AND COVENANTS.

—Provision as to vacancy—Breach of condition — Avoidance of lease.] — The defendants leased to the plaintiff certain premises, the lease containing the following clause: "In case the said premises . . . become and remain vacant and unoccupied for the period of ten days . . . without a written consent of the lessors, this lease shall cease and be void, and the term hereby created expire and be at an end . . . and the lessor may re-enter and take possession of the premises," as in the case of a holding over. The plaintiff entered and occupied for about two years, when he moved out and left the premises vacant for over ten days and claimed that the lease was at an end:—Held, that the agreement embodied in the lease was a subsequent condition, a breach of which could only avoid the lease at the instance of the lessors, and that the vacancy created by the lessee did not put an end to the term. *Palmer* v. *The Mail Printing Company*, 28 Ont. R. 656.

—Termination of tenancy—Agreement—"Disposing" of premises—Notice to quit—False representations—Covenant for quiet enjoyment—Disturbance—Breach—Acquiescence—Damages.] —A lease of part of a building contained a proviso that, in the event of the lessor disposing of the building, the lessees should go out on notice, and shortly after the lease was made he notified them to vacate, as he had disposed of his interest in the building, which they did, under protest. The alleged disposal was by an agreement in writing between the lessor and another, whereby the latter was to have superintendence of the building, to obtain tenants at higher rents, and to collect the rents, the leases to be in the name of the former, the latter to have a sub-lease on the happening of certain events and an option to purchase at any time before its expiration:—Held, not a disposal of the building within the meaning of the proviso; but as the lessor had not intentionally, wilfully or maliciously misled the lessees, and was acting in good faith upon what he believed to be his rights, there was no actionable false representation: *Derry* v. *Peek*, 14 App. Cas. 337, followed.—But the lessees were entitled to damages for breach of the short form covenant, contained in the lease, for quiet enjoyment "without interruption or *disturbance* from the lessor;" the covenant being against the lessor's own acts, it was not material whether the act assigned as a breach was lawful or not; and the acts here done were in breach of the covenant, for there was no right to give the notice to quit nor to complain that the lessees acted upon it without waiting for an action to be brought: *Edge* v. *Boileau*, 16 Q.B.D. 117, followed; *Cowling* v. *Dickson*, 45 U.C.Q.B. 94; 5 Ont. A.R. 549, discussed.—An agreement made after the notice, under which the lessees went out before the day named, was not an acquiescence in the lessor's demand, for they complied under protest, and leaving earlier merely lessened the damages. Assessment of damages as in a case of eviction. *Gold Medal Furniture Co.* v. *Lumbers*, 29 Ont. R. 75.

—Loss by fire — Negligence — Presumption — Rebuttal — Onus of proof — Agreement, construction of—Covenant to return premises in good order—Art. 1629 C.C.]—A steam sawmill was totally destroyed by fire, during the term of the lease, whilst in the possession and being occupied by the lessees. The lease contained a covenant by the lessees "to return the mill to the lessor at the close

of the season in as good order as could be expected considering wear and tear of the mill and machinery." The lessees, in defence to the lessor's action for damages, adduced evidence to shew that necessary and usual precautious had been taken for the safety of the premises, a night-watchman kept there making regular rounds, and that buckets filled with water were kept ready and force-pumps provided for use in the event of fire, and they submitted that as the origin of the fire was mysterious and unknown it should be assumed to have occurred through natural and fortuitous causes for which they were not responsible. It appeared, however, that the night-watchman had been absent from the part of the mill where the fire was discovered for a much longer time than was necessary or usual for the making of his rounds; that during his absence the furnaces were left burning without superintendence; that sawdust had been allowed to accumulate for some time in a heated spot close to the furnace where the fire was actually discovered; that on discovering the fire the watchman failed to make use of the water buckets to quench the incipient flames but lost time in an attempt to raise additional steam pressure to start the force-pumps before giving the alarm:—Held, that the lessees had not shewn any lawful justification for their failure to return the mill according to the terms of the covenant; that the presumption established by article 1629 of the Criminal Code against the lessees has not been rebutted; and that the evidence shewed culpable negligence on the part of the lessees which rendered them civilly responsible for the loss by fire of the leased premises: *Murphy* v. *Labbé*, 27 S.C.R. 126 approved and followed. *Klock v. Lindsay*, 28 S.C.R. 453.

—Lessor and lessee—Removal of snow from roof —Responsibility.]—The lessor, defendant, in removing snow from the roof of a building, broke in the roof of a shed leased to the plaintiff, and his goods therein were damaged. The plaintiff was also lessee from defendant of a store in the lower part of the building from which the snow was cleared. In an action by the lessee for damage to goods in the shed:—Held, that a printed clause in plaintiff's lease, binding him to remove snow and ice from the roof of the leased premises, could not be interpreted as requiring him to remove snow from the roof of the building of which he occupied only the lower storey, and defendant had so construed the lease by undertaking the removal of the snow from the roof of said building. *Gagné* v. *Vallée*, Q.R. 13 S.C. 112.

—Lease with resolutory clause—Result of resolution of contract.]—When a contract of lease, with promise of sale, is dissolved by reason of a resolutory clause, the parties are in such event to be replaced in the same position in which they were before the contract was formed, saving the rights for damages against the party in default in favour of the one not in fault.—If the lessors wish to avail themselves of the resolutory clause and put an end to the contract, they must be content to accept the result stipulated in said contract, and can ask no more. *Vezina* v. *Piché*, Q.R. 13 S.C. 213.

II. Creation of Tenancy.

—Lessor and lessee—Agreement for lease—Uncertainty — Statute of Frauds — Damages.]—In an action for damages for not delivering possession of premises the document set up as a lease was: "Received from J. C. McLennan the sum of $15.00, being part payment on premises now occupied as a barber shop on west side of Fourth Street, between A Avenue and Front Street, said sum to apply on rent for premises aforesaid from November 1st, 1896. Rent to be paid in advance. S. Millington." The only evidence of damages was that the plaintiff had purchased a tobacconist's shop in view of occupying the premises at the date mentioned, and being unable to get other suitable premises, had made a loss on the goods. The trial judge entered judgment for the plaintiff for $100.00, the amount of the full loss. Upon appeal to the Full Court:—Held, that there was no evidence of legal damage.—*Quære:* Whether the agreement was not void, under the Statute of Frauds, as not stating the term. *McLennan* v. *Millington*, 5 B.C.R. 345.

III. Defective Premises.

—Lessor and lessee—Defects in leased premises—Agreement as to repairs.]—Where the walls of the leased premises, in consequence of some unascertained defect of construction, are subject to sweating and dampness, the lessee is entitled to obtain the resiliation of the lease. But where the defect was unknown to the lessor and he is not by law presumed to have known of it, the lessee is not entitled to claim damages suffered by reason thereof. Where the lease expressly exempts the lessor from the obligation of making any repairs not specified therein, he is not responsible in damages for failure to make any repairs other than those mentioned in the lease. *Maillet* v. *Roy*, Q.R. 12 S.C. 375.

IV. Distress.

—Mortgagor and Mortgagee—Death of Mortgagor—Seizure of stranger's goods on mortgaged land — Authority of Bailiff — Principal and agent — Interference of agent in distress.]—Mortgagees, by their warrant, authorized their bailiff to distrain the goods of the mortgagor upon the mortgaged premises for arrears due under the mortgage. The mortgagor being dead, the bailiff seized the goods of a stranger upon the premises:—Held, that he was acting within the scope of his authority, as agent for a principal, in making the seizure upon the premises, and the mortgagees were liable for his act: *Lewis* v. *Read*, 13 M. & W. 834, and *Haseler* v.

Lemoyne, 5 C.B.N.S. 530, followed. Held, also, that there was evidence upon which the jury might properly find that a local appraiser of the mortgagees was their agent for the purpose and interfered in and directed the seizure, after being informed that the goods were not those of the deceased mortgagor. *McBride* v. *Hamilton Provident and Loan Society*, 29 Ont. R. 161.

—Privilege of landlord — Goods of third party left with tenant—Art. 1622 C.C.]—The *opposant* had lent to defendant who had possession of, for two months past, a piano, its cover and stool, which effects he had left at defendant's house in the hope of selling them to him:—Held, that the things not being found at defendant's house transiently or accidentally were subject to the lien of defendant's landlord. *McKercher* v. *Gervais*, Q.R. 12 S.C. 336.

—Landlord and tenant — Distress — Impounding of goods — Placing in custody of tenant's wife held sufficient.]—A piano, hired by the defendant M. to A., was seized by A.'s landlord for rent due him, and was placed in the custody of A.'s wife, with instructions not to allow it to be removed:—Held, that this was a sufficient compliance with the requirements of the law.—There was evidence that, after the seizure and impounding, and while the piano was in the custody of A.'s wife, A.'s family continued the use of it as before:—Held, that this was not such a misuse of the property seized as to avoid the distress, or to entitle M. to resume possession:—Held (per Townshend, J.), that the piano having been hired to A. for the very purpose of using it as he did, such user could not be set up by defendant against the validity of the distress. *Dimock* v. *Miller*, 30 N.S.R. 74.

—Tenants in common—Use and occupation.]—Defendant and one F. became on January 2nd, 1896, tenants in common of a certain lot. On May 1, 1896, F. leased the premises to the plaintiff in his own name, without the knowledge or consent of defendant, and collected and retained the whole of the rents. In November of the same year defendant notified the plaintiff of his half-interest in the premises demised, and demanded payment for the future of half of the rents to him, and at the same time notified his cotenant of his demand. The plaintiff continued to pay the whole rent to F., and on July 22nd, 1897, defendant caused a distress to be made on the plaintiff's goods, whereupon plaintiff brought action for damages:—Held, that the distress was illegal, as there was no demise from defendant to plaintiff. The defendant's remedy was by action for use and occupation: *Harrison* v. *Barnly*, 5 T.R. 246, distinguished. *Lowther* v. *Johnson*, 34 C.L.J. 430.

V. Lease.

—Lease — Habendum — Repugnant subsequent clause.]—A lease with habendum for a year contained a subsequent clause that either party might terminate the lease at the end of the year on giving three months' written notice prior thereto:—Held, that the clause was repugnant to the habendum, and must be rejected, and that the lease terminated at the end of the year without any notice. *Weller* v. *Carnew*, 29 Ont. R. 400.

VI. Liability of Lessor.

—Defective premises — Accident to Lessee—Demeure—Acts 1070, 1614, 1641 C.C.]—The lessor is not responsible for an accident to the lessee occuring in consequnce of defects in the premises leased, which are not defects in construction and which arose after the lessee was put in possession, unless the lessor was aware of them and had been put *en demeure* to remedy them. *Schimanski* v. *Higgins*, Q.R. 13 S.C. 348.

VII. Over-holding Tenant.

—Double value—Over-holding Tenant—4 Geo. II. c. 28, s. 1—Preferential Claim—Rent—R.S.O. 1897, c. 147.]—A claim for damages against an over-holding tenant for double the yearly value of the land under 4 Geo. II. ch. 28, sec. 1, is an unliquidated claim, and therefore is not provable against an estate in the hands of an assignee for creditors under R. S.O. 1897, ch. 147.—A landlord has no preferential claim for rent against such an estate, if there were no distrainable goods on the premises at the time of the assignment. *Magann* v. *Ferguson* 29 Ont. R. 235.

VIII. Privilege of Lessor.

—Lessor and Lessee—Lien on piano leased by lessee.]—The lessor does not lose his privilege on a piano in the leased premises, because of his knowledge that the article is not the property of the lessee, but is merely leased by him. *Willis* v. *Navert*, Q.R. 12 S.C. 280.

—Substitution of tenant—Purchase of goods of original lessee.]—When, with the consent of the lessor a new tenant is substituted for the original lessee, and the new tenant, to the knowledge and with the acquiescence of the lessor, purchased the effects of the former tenant with which the premises leased were furnished, the lessor, after the expiration of eight days from the time of the new tenant's taking possession, loses all lien upon these effects for arrears of rent due by the former tenant, and this, notwithstanding the effects have never been disturbed, the new tenant being in the position of a third party acting in good faith. *Banque du Peuple* v. *Marquis*, Q.R. 12 S.C. 378.

—Fraudulent removal of goods—Saisie-gagerie—Delay of eight days.]—The fraudulent removal of goods subjected to the landlord's lien does not deprive the latter of his right, by way of *saisie-gagerie* to follow them (*par droit de suite*) subject to the rights that new tenants or third parties may have acquired if the seizure is made more than eight days after the

removal.—The party fraudulently removing the goods cannot claim the benefit of the eight days' delay and allege that the *saisie-gagerie* was made too late.—The *saisie-gagerie* in following the goods may be made of goods in possession of the tenant of an establishment (in this case a store for merchandize) when such tenant enjoys, as to third parties, some of the privileges of the owner. *Hart* v. *Lachapelle*, Q.R. 12 S.C. 428.

—**Lease—Piano belonging to person boarding with lessee—Art. 1622 C.C.—Saisie-gagerie.**]—The privileged right of the lessor upon the movable effects in the premises leased, does not extend to an article (e.g. a piano) brought there by a person boarding with the tenant, and who owes nothing to the tenant for board, where the lessor had notice before the piano was placed on the premises that it was not the property of the lessee but that of the boarder.—The removal of an article belonging to a third person, but which, under the above mentioned circumstances, was not subject to the lessor's privilege, will not serve as justification for a seizure of the lessee's effects—more especially where sufficient effects are left to secure the rent due and for the current term. *Foisy* v. *Houghton*, Q.R. 12 S.C. 521.

—**Landlord and tenant—Way—Mode of user.**]

See WAY.

IX. RENT.

—**Co-tenants—Release—Agreement—Consideration.**]—In order to put an end to a sealed contract for a tenancy and to discharge one of two tenants from his obligation to pay past or future rent thereunder, there must be something more than an agreement between the tenants, though made in the presence of the landlord, that one of them is to pay the amounts overdue and accruing; there must be a consideration and an agreement to discharge. *Donaldson* v. *Wherry*, 29 Ont. R. 552.

X. RESILIATION OF LEASE.

—**Co-owners—Par invidis—Rights of lessee to demand performance of lease—Resiliation—Subletting—Art. 1100 C.C.**]—When joint owners *par invidis* have given a lease constituting themselves creditors jointly and severally of the lease, one of these lessors has a right to demand, in his own name, the performance of the terms of the lease.—The owner *par invidis* can demand in his own name the resiliation of the lease which he has agreed to jointly with his co-owners, where there has been a sub-letting by the tenant in contravention of a prohibition thereof without the consent in writing of the lessors. *Bagg* v. *Wiseman*, Q.R. 12 S.C. 12.

—**Lease for special business—Unsuitable premises—Concealed defect—Resiliation—Guarantee—Art. 1614 C.C.**]—S. leased a store from D. for carrying on the business of lithographing, having first caused the premises to be examined to satisfy himself that they would bear the weight of a lithographing machine that he proposed to place in them to the knowledge of D. The floor of the store was, however, not strong enough to support the weight of this machine, and, moreover, one of the beams which sustained it having given way in consequence of a latent defect unknown to the parties, S. was obliged to take the machine out:—Held, that the warranty in law which Art. 1614 of the Civil Code imposes on a lessor gave a right to S. to obtain the resiliation of the lease; but D. having been ignorant of the defect with which the premises were affected, and not having warranted them sufficient for the carrying on of the lithographing trade, S. was not well founded in his conclusions for damages. *Stanton* v. *Donnelly*, Q.R. 13 S.C. 306.

—**Latent defect—Flooding of cellar—Defective drainage—Act of third party—Damages—Demeure.**]—Defendants had leased to plaintiff, by lease in authentic form, a store and dwelling on St. James Street, Montreal. The house had just been built, part of the defendants' property having been expropriated for enlargement of the street. During the summer and autumn the cellar of the house was flooded several times, and plaintiff's wife who kept the store (for sale of cigars, fruit, &c.,) took typhoid fever and died. On November 7th, 1895, plaintiff served a protest on defendants, alleging that the premises were unhealthy, and notified them that he was going to quit them and demand the resiliation of the lease and damages, which he did on the same day. The cause of the flooding, unknown then to the lessor and lessees, was that before the lease was given the city had laid new drain pipes between the new line of the street and the main drain, but had neglected to disconnect the old pipes whereby the water, being diverted from the main drain on occasion of heavy rains, percolated through the earth into the plaintiff's cellar. Defendants neglected to remedy this latent defect on receipt of the protest, and the old pipes were not disconnected until nearly a year later after the discovery of the cause of the flooding. Plaintiff took proceedings for resiliation of the lease and for damages, and defendants pleaded that his only recourse was against the city:—Held, that under the circumstances the plaintiff could proceed against the defendants for resiliation of the lease, the latent defect having existed prior to the lease and not constituting, for that reason, a disturbance in the tenant's enjoyment of the premises by the act of a third party (Art. 1616 C.C.), but he could not claim damages from the defendants, not having regularly put them *en demeure* to repair the leased premises, which were not uninhabitable before he quitted them:—Held, also, that complaints made by the tenant to the landlord, in verbal conversations, are not sufficient to put the latter

en demeure to make repairs when the lease is in writing. *Rae* v. *Phelan*, Q.R. 13 S.C. 491.

XI. Rights of Lessee.

—Expropriation — Damages to lessee — Recourse of lessee for indemnity — Art. 2128 C.C. — Trespass.]—In an action of damages by a lessee against an alleged trespasser on his property, the question of the validity or regularity of the plaintiff's lease cannot be raised by the defendants. — The lessee of land expropriated for public purposes has a recourse for indemnity against the expropriating party, independently of the proprietor.—Such recourse may be exercised by a common law action independently of the expropriation proceedings—the common law remedy always existing unless specially excluded. Art. 2128 C.C. does not deprive a tenant under an unregistered lease of such recourse against a subsequent acquirer of the property, in a case where there is no question of possession in issue. *Corporation of Verdun* v. *Grand Trunk Boating Club*, Q.R. 7 Q.B. 185.

XII. Sale of Leased Premises.

—Vendor and purchaser—Sale of leased premises —Lease, termination of—Art. 1663 C.C.]—*Alley* v. *The Canada Life Insurance Co.*, 28 S.C.R. 608, affirming Q.R. 7 Q.B. 293.

—Liability of lessee to new lessor—Payment of rent by third party—Acquiescence—Resiliation.] —Where the lessor, to the knowledge of his lessee, sold the property leased to the latter, and a third party, whom the lessee had appointed administrator of his affairs, especially of those concerning the carrying out of the lease, paid certain gales of rent to the new proprietor, the lessee could not, against an action by the new proprietor for resiliation of the lease for default in payment, plead want of signification of the deed of sale and acceptance of the transfer of liability for the rent, especially when he alleged that plaintiff had accorded a delay for payment, an agreement denied by plaintiff and not proved, this allegation constituting an acknowledgement that plaintiff was the creditor for the rent due in virtue of the lease. *Fortin* v. *Voisard*, Q.R. 13 S.C. 257.

—Immediate delivery—Continuance of lease.]—

See Sale of Land, III.

XIII. Sub-letting.

—Prohibition against sub-letting — Art. 1621 C.C.]—Where there is a clause in the lease prohibiting sub-letting, a sub-tenant, in order to be entitled to the exemption of his effects from the lessor's privilege, must establish not only that he is not indebted to the principal tenant but also that the lessor assented to the sub-lease. *Archibald* v. *Archambault*, Q.R. 13 S.C. 342.

XIV. Termination of Tenancy.

—Lessor and lessee—Rights of outgoing tenant.] —The outgoing tenant of a house is entitled to three days, after the expiry of his lease, to remove his effects from the premises, during which time the incoming tenant has no right to take possession by force of any part of the premises, or to move or interfere with any of the effects of the outgoing tenant. *Béliveau* v. *Burel*, Q.R. 12 S.C. 368.

XV. Validity of Lease.

—Illegal contract—Lease — Canada Temperance Act.]—V. leased hotel premises to M. in his lifetime, in which, to the knowledge of all parties, liquor was sold contrary to the provisions of the Canada Temperance Act:—Held, that as the lease was for an unlawful purpose it was void, and plaintiff could not recover rent due. *Vanbuskirk* v. *McNaughton*, 34 N.B.R. 125.

And see Ejectment.

LEGACY DUTY.

See Revenue.
" Wills, IV.

LEGAL MAXIMS.

"Le mort saisit le vif." See *Thivierge* v. *Cinqmars*, Q.R. 13 S.C. 398.

"Noscitur a sociis." See *Dickey* v. *Thibault*, Q.R. 13 S.C. 58, and *The Queen* v. *France*, Q.R. 7 Q.B. 83.

"Omnia praesum-untur rite esse acta." See *Ross* v. *Adams*, 34 N.B.R. 158.

"Pas de nullité sans griefs." See *Dumont* v. *Carbonneau*, Q.R. 13 S.C. 416.

LEGAL PROFESSIONS ACT.

Legal Professions Act, 1895, ss. 68, 72—Practising without qualification—Evidence—Contempt of Court.]—Upon motion by the Law Society of British Columbia to commit the defendant, it appeared that the offence charged was that he had written two letters on behalf of clients, the first threatening that proceedings would be instituted for slander unless retraction was made, and the other stating that he had instructions to proceed against R. for taking certain goods without authority and for trespassing and forcibly removing goods, subject to a lien. The defendant adduced evidence that he was a solicitor of Manitoba, carrying on business in British Columbia as a debt collector, and had made application to be admitted in British Columbia, that no fees had been charged against or paid by the person to whom the letter was written, and that he had disclaimed being a solicitor entitled to practise in British Columbia, and had refused to accept legal business offered to him:—Held, that the first letter did not constitute an offence, and that any presumption of practising which may have been raised by the second letter

was rebutted by the evidence adduced by the defendant. Motion dismissed without costs. *Re C——*, 5 B.C.R. 530.

And see ATTORNEY.
" COUNSEL.
" SOLICTOR.

LETTERS PATENT.

See PATENTS OF INVENTION.
" SCIRE FACIAS.

LIBEL AND SLANDER.

I. CRIMINAL LIBEL, 247.
II. DEFENCE, 247.
III. EVIDENCE, 247.
IV. FAIR COMMENT, 248.
V. JUSTIFICATION, 248.
VI. NEWSPAPER LIBEL, 249.
VII. PRIVILEGE, 249.
VIII. PROCEDURE, 250.
IX. SLANDER OF CHILD, 251.

I. CRIMINAL LIBEL.

—Indictment — Sufficiency of.]—An indictment charging the publication of a defamatory libel, which does not state that the accused intended to injure the reputation of the libelled person and to bring him into public contempt or ridicule or to expose him to public hatred, or to insult him, is bad by reason of the omission of an essential ingredient of the offence; and it cannot be amended and must be set aside and quashed. *The Queen* v. *Cameron*, Q.R. 7 Q.B. 162.

II. DEFENCE.

—Libel—Pleading.]—A plea to an action of damages for slander or libel, alleging that the defendant had good reasons and probable cause to say or write what he did say or write, and specifying the reason, is a good plea in law. *Smith* v. *Hood*, Q.R. 13 S.C. 341.

III. EVIDENCE.

— Slander — Words imputing commission of unnatural offence — innuendo.] — In an action of slander, the words complained of, accused plaintiff of the commission of an unnatural offence:—Held, that it was not necessery to give evidence to prove the *innuendo* the meaning of the words being perfectly obvious and unmistakeable. That words, which, without knowledge, on the part of those who heard them, of the matter to which they referred, could convey no defamatory meaning, were not actionable *per se*. That evidence was properly received to shew such knowledge. That there was no authority for excluding, as discredited, the whole of the evidence of a witness who was ruled to be hostile on the ground that the evidence shewed that she had previously made a statement inconsistent with part of her testimony on the trial. *Gates* v. *Lohnes*, 31 N.S.R. 221.

IV. FAIR COMMENT.

—Libel—Public official—Fair comment or criticism of conduct—Charge of corrupt motives.—Defendant, one of the councillors of the town of Westville, published a letter commenting upon the conduct of plaintiff, the Mayor of the town, alleging that plaintiff took advantage of some of the employees of the town, by withholding the money due them for their labour, and insisted upon their taking goods out of his shop for the amount. The jury having found in favour of defendant; in the absence of evidence to support the charge:—Held, setting aside the verdict with costs, and ordering a new trial,—(*a*), that the jury should have found for plaintiff; (*b*), that the trial judge would have been justified in withdrawing the case from the jury; (*c*), that the principle of fair comment or criticism should not be extended to cover or justify a charge of sordid, or corrupt motives, or disgraceful conduct. *Munro* v. *Quigley*, 30 N. S.R. 360.

V. JUSTIFICATION.

—Defamation — Justification — Public interest — Costs.]—J. and G. were candidates at the federal elections in June, 1896, for the County L'Assomption. On the day of nomination J. declared that he had purchased G. at the election of 1892, where the same parties were candidates, and that he had procured his retirement for the sum of $750. G. having denied this allegation J. repeated it in letters to the newspapers, and in circulars distributed throughout the county. He even went further, and defied G. to proceed against him for libel, offering to guarantee the expenses by a deposit. Held, that the evidence having proved the truth of the accusation, J. was justified, in the public interest, in unveiling the reprehensible act of G. and in reiterating his accusation in consequence of the denial. But J. having induced G. to proceed against him by his solicitations, and his offer to guarantee the costs, with the sole object, apparently, of justifying his accusation, and having thus strongly encouraged the litigation in the belief that the Court would not give effect to it, he should not be allowed his costs. *Jeannotte* v. *Gauthier*, Q.R. 6 Q.B. 520. Affirmed on Appeal, 28 S.C.R. 590.

— Defamatory publication — Malice — Defence — Justification.] — When a newspaper article contains defamatory matter published in malice and with an evil intent against the person libelled the author cannot justify the publication by pleading that the imputations contained in the article were true, and that it was in the interest of the public to publish the article. When an article contains a number of separate defamatory imputations there are as many distinct libels as there are imputations,

and a verdict of guilty should be rendered when the defendant does not justify them all and prove that they were published in good faith in the public interest. *The Queen* v. *Grenier*, Q.R. 6. Q.B. 563.

VI. Newspaper Libel.

—Defamation—Public official—Newspaper—Belief in truth of statements published—Erroneous charge—New trial.]—The discussion of the conduct of a solicitor of a municipal corporation in that capacity, is a matter of public interest, and a newspaper is entitled to criticise or make fair comments thereon; but the statements on which the criticism or comments are based must be true and not merely believed to be true on reasonable grounds. Where, therefore, in an action for libel for statements published in a newspaper on which comments were made criticising the plaintiff's conduct as such solicitor, the jury, although they were told by the trial judge in his charge that any criticism on the plaintiff's conduct must be based on the truth, were at the same time told that it was sufficient if the statements, on which the criticism was founded, were believed to be true, on which there was a finding for the defendant, such finding was set aside and a new trial directed, McMahon, J., dissenting upon the ground that there was evidence of the truth of the matters commented on, and that the charge, which was not objected to, must be taken in its entirety. *Douglas* v. *Stephenson*, 29 Ont. R. 616.

—Libel—Newspaper—R.S.O., c. 57, s. 9—Contentious affidavit in answer.]—Upon an application for security for costs made under R.S.O., ch. 57, sec. 9, by the defendant in an action for an alleged libel contained in a public newspaper, the plaintiff desired to read and have the benefit of an affidavit made by himself contradicting the statements in the affidavit of the agent of the defendants on which the motion was based, and contended that the object was not to try the facts on affidavits, but to shew that the agent had not knowledge of the facts, that many statements made by him were not true, and therefore that his affidavit was not such as required by sec. 9:—Held, that the plaintiff's affidavit could not be read or used upon the application. *Bartram* v. *London Free Press Printing Co.*, 18 Ont. P.R. 11.

VII. Privilege.

—Libel—Newspaper—Mercantile agency—R.S.O. c. 68, s. 1.]—A printed paper issued daily by the conductors of a mercantile agency to persons who are subscribers to the agency for the purpose of giving the information required by such subscribers, is a "newspaper," and "printed for sale," within the meaning of s. 1 of R.S.O. ch. 68; and the publishers are, therefore, in an action for libel brought against them, entitled to the benefit of the provisions as to security for costs contained in s. 10. *Slattery* v. *R. G. Dun & Co.*, 18 Ont. P.R. 168.

—Privileged statements—Public interest—Charging corruption against political candidate—Justification—Challenging suit—Costs.]—*Gauthier* v. *Jeannotte*, 28 S.C.R. 590, affirming Q. R. 6 Q.B. 520.

—Criticism of conduct of public employee—Privileged communication—Absence of malice.]—A letter written by a citizen of a municipality criticising the conduct of a public officer (in this case, the Chief of Police), and addressed to the superior officer of such official (the chairman of the Police Committee) is privileged, provided such letter contain no false statement in fact, and be written without malice. *Hébert* v. *Lapointe* Q.R. 12 S.C. 123.

—Report of judicial proceedings—Fair comment.]—Though the report of, and even the comment on, judicial proceedings are privileged, and do not afford ground for recourse in damages, the immunity, nevertheless, exists subject to the condition that the facts must be reported honestly, fairly and impartially, and the comment is subjected to the same rule but in a more vigorous manner. Therefore, a comment on judicial proceedings which is not strictly accurate, and which gives to the facts discussed and commented on a colouring less favourable to one of the parties than the truth would warrant, permits of proceedings for compensation (*en responsabilité*) against its author. *Dingwall* v. *Mason*, Q.R. 12 S.C. 333.

—Libel of member of trade union—Privilege.]
See Trade Unions.

VIII. Procedure.

—Pleading—Slander—Particulars—Names of persons—Times and places—Striking out—Amendment.]—In an action of slander the statement of claim, after alleging that the slanders had been spoken and published to certain named persons, added "and to others at present unknown to the plaintiff:"—Held, sufficient.—It is also alleged that during a period of five months the defendant spoke and published various slanders to certain named persons and to others not known to the plaintiff:—Held, bad, for it did not shew which of the persons mentioned were present when the different statements were made, nor at what times and places they were made. Leave to the plaintiff to amend by adding further charges within reasonable limits. *Townsend* v. *O'Keefe*, 18 Ont. P.R. 147.

—Damages—Slander—Illegal plea.]—In an action for damages for alleged slander, when a plea of compensation of injury and provocation was put in, the defendant could not plead that plaintiff was generally bad tempered and of quarrelsome habits. *Langlois* v. *Drapeau*, Q.R. 12 S.C. 92.

—Action for libel—Allegations.]—The omission of the plaintiff, in an action of damages for libel, to set forth the names of the persons who were present when the libels alleged to

have been uttered by the defendant were so uttered, is not ground for a motion in the nature of an exception to the form. *Lussier* v. *Martineau*, Q.R. 12 S.C. 437.

— Procedure — Slander — Particulars.] — The plaintiff, in an action for defamation, may be ordered to give particulars of the alleged slanders, shewing in what places they were spoken, and to whom, and the dates and circumstances. *Irvine* v. *McCrimmon*, Q.R. 13 S.C. 71.

—Evidence of witnesses as to party to whom they thought the libel applied—Solicitor—Neglect to attend trial—New trial—Terms—Consent to reduction of verdict.]—On the trial of an action for libel witnesses who had read the paper containing the libel were allowed to state to whom they thought the libel referred:—Held, that the evidence was admissible.—At the opening of the term at which the case was set down for trial, the jury cases were the first for trial, and, after the Court met cases were set down for special days. Defendant's attorney was not present at the time this was being done, nor was he represented by counsel. In consequence, the cause was tried in defendant's absence, and judgment was given against him:—Held, that, under these circumstances, defendant was entitled to a new trial, if he desired, but only upon payment of costs of the former trial and of the argument.—The facts, as shewn by the affidavits, went to shew that defendant admitted publication of the libel, and expressed his willingness to apologize therefor, in terms proposed by plaintiff's solicitors:—Held, that defendant was entitled to a new trial, but as plaintiff on the facts shewn would be entitled to a verdict, and, as he had agreed to reduce the damages to a nominal amount, the verdict should be allowed to stand subject to such reduction. *Kirkpatrick* v. *Mills*, 30 N.S.R. 426.

— Defamation — Action for — Declaration — Particularity.]—See PLEADING, V.

—Dismissal of action for want of prosecution.]

See PRACTICE AND PROCEDURE, I (*b*).

IX. SLANDER OF CHILD.

—Father and child—Action by father for slander of minor daughter.]—Although a father cannot, without being named tutor to his minor child, recover damages suffered by her in consequence of slanderous expressions used with regard to her, he has nevertheless an action for injury to himself caused by such slander of his minor child. *Barrette* v. *Bourbonnière*, Q.R. 12 S.C. 271.

LICITATION.

See SALE OF LAND, IV.

LIEN.

I. BAILEE'S LIEN, 252.
II. CROWN DEBT, 252.
III. INNKEEPER'S LIEN, 252.
IV. LIEN ON SHIP, 252.
V. MANDATAIRE'S LIEN, 252.
VI. MORTGAGEE'S LIEN, 253.
VII. VENDOR'S LIEN, 253.
VIII. WOODMAN'S LIEN, 253.
IX. WORKMAN'S LIEN, 254.

I. BAILEE'S LIEN.

—Trainer of animal — Continuing possession — Discontinuance of possession — Resumption.]—A continuing right of possession of the animal must accompany the services rendered by a trainer for which he claims a lien on a horse which he has trained in order to render such lien valid.—A trainer who had delivered up possession of a horse which he had been training to the administratrix of the owner from whom he had received it, and who afterwards resumed possession under a new agreement with the administratrix to take care of the horse, was held to have lost any lien he might have had. *Rielly* v. *McIllmurray*, 29 Ont. R. 167.

II. CROWN DEBT.

— Bond to Queen — Real estate — Priority.]—A bond given by a county secretary-treasurer to the Queen for the due performance of his duties as such officer, is a first lien on all the real estate of the obligor from the date of the execution of the bond, and takes precedence of executions and mortgages issued or executed respectively at a date or dates subsequent to that of the bond. *The Queen* v. *Sivewright*, 34 N.B.R. 144.

And see Crown, II.
" " WRIT OF EXTENT.

III. INNKEEPER'S LIEN.

—Boarding house—Removal of effects by boarder.]—A boarder, who has discharged his indebtedness to his landlady who, nevertheless, opposes the removal of his effects from the premises, is justified in using the force necessary to enable him to remove them. *Bourdais* v. *Robinson*, Q.R. 12 S.C. 201.

IV. LIEN ON SHIP.

— Inland waters — Navigation on — Lien for wages.]—The master, as well as every hand and employee, upon a ship navigating inland waters, has a lien on the ship for payment of his wages which covers a season not exceeding six months. *Goulet* v. *Whitehead*, Q.R. 12 S.C. 15.—And see SHIPPING.

V. MANDATAIRE'S LIEN.

—Mandataire—Receipt of revenues—Repayment of disbursements — Account — Registration.]—A mandataire, even when a debt resulting from his disbursements is contested, has a

right to retain property that has come into his hands for payment of such debt.—But such right of detention will not authorize him to register as against the immovable which he retains, a notice to the public of this privilege, which is not the subject of registration and the amount of which has not been established after contest (*contradictoirement*). *Eddy* v. *Eddy*, Q.R. 7 Q.B. 300.

VI. Mortgagee's Lien.

—Mortgaged lands—Fraud on Mortgagees—Payment of taxes by them—.]—The defendants had paid taxes on mortgaged properties for a number of years, and had redeemed them from a sale for taxes:—Held, that they had no right to a lien on the lands for the amount: *Falcke* v. *Scottish Imperial Insurance Co.*, 34 Ch. D. 234, and *Leslie* v. *French*, 23 Ch. D. 552, followed. *Graham* v. *British Canadian Loan and Investment Co.*, 12 Man. R. 244.

VII. Vendor's Lien.

—Performance of Agreement.]—In the absence of agreement or circumstances operating to the contrary a vendor's lien arises whenever land is conveyed in consideration of acts to be done by the grantee; the right is not limited to cases of conveyance for a money consideration. Where, therefore, upon the partition of a piece of land held by tenants in common, one grantee, as part of the consideration for his grant, covenanted to obtain for the other tenants in common a release of the contingent interest of two persons in the land conveyed to them, it was held that a lien attached upon the portion conveyed to him for the due performance of this covenant. *Ward* v. *Wilbur* 25 Ont. A.R. 262.

—Privilege for materials furnished—Registration—Possession under conditional promise of sale—Failure of condition.]—A valid privilege may be obtained by registration of a claim for building materials furnished, although the person to whom they were furnished be in possession of the land only under an unregistered conditional promise of sale, and the registration of the privilege was made only with such formalities as would be sufficient if he had been the absolute owner; but upon violation of the conditions and the determination of the right of the conditional purchaser to obtain a title, the privilege in question, as well as all acts depending upon a right of property in the conditional purchaser, becomes null and void; and therefore the property cannot be seized and brought to sale under a judgment against the latter, to which the conditional vendor was not a party. *Metivier* v. *Wand*, Q.R. 13 S.C. 445.

—Conditional sale of goods—Lien—Note—Recovery of judgment—Property passing.]

See Sale of Goods, I.

VIII. Woodman's Lien.

—Woodmen's Lien Act, 1894—57 V. c. 24 (N.B.)—Time for filing claim.]—B. and others were employed by the month to work in the woods. They began operations in November 1894, and voluntarily quitted on January 25th, 1895. On March 14th, of the same year, though not requested to do so, they returned, and after working two days, again stopped. They then filed a claim under the provisions of the Act of Assembly, 57 Vict. ch. 24, s. 6. The Woodmen's Lien Act, 1894:—Held, that the returning to work on March 14, was not a *bonâ fide* continuation of the work, and the right to enforce a lien was gone by reason of lapse of time. *Guimond* v. *Belanger*, 33 N.B.R. 589.

IX. Workman's Lien.

—Notice—Knowledge of employment—Art. 2013 c. C.C.]—The right of privilege is a strict right resulting from the law, and whoever claims a privilege should scrupulously observe the formalities prescribed by the law creating it. —The workman who claims a lien for his wages should, according to the terms of Art. 2013 c. C.C., inform the owner of the estate that he has not been paid for his work "to and for each term of payment which is due him," and should give such notice at once on the expiration of the term; notice given six days after the expiration of the term, and when the owner had settled with his contractor, is insufficient to preserve the lien of the workman.—The knowledge the owner should have of the workman having been employed by his contractor cannot take the place of the notice required by law. *Wells* v. *Newman*, Q.R. 12 S.C. 216.

LIEN NOTE.

Sale of goods—Lien note signed after sale and delivery—Validity.]—A chattel was sold and delivered between the parties, and some seven months after such delivery a lien note was signed by vendee for a balance due vendor on the transaction:—Held, that the lien note was invalid. *Gallant* v. *Mellett*, 18 C.L.T. Occ. N. 199. And see Contract, IV.

LIFE INSURANCE.

See Insurance, II.

LIFE TENANT.

See Tenant for Life.

LIMITATION OF ACTIONS.

I. Adverse Possession, 255.
II. Commencement of Prescription, 256.
III. Interruption of Prescription, 256.
IV. Period of Limitation, 257.

I. Adverse Possessions.

—Infant heir-at-law—Entry—Evidence of lease —Adverse title—Overholding lessees—Tenants in common.]—In an action of ejectment, it appeared that the father of the defendant died intestate in 1849, the owner of the fee and in possession of the lands in question. He had been twice married, but none of the children of his first marriage had been heard of since 1853. His widow continued in possession after his death with her children; she married again in 1852, and her husband lived with her upon the land until her death, intestate, in 1871. At this time her husband and the youngest daughter of her first marriage, the defendant, were the only members of the family upon the land. Soon after her death, her eldest son made a lease of the land to his stepfather and his sister, the defendant, for five years from the 1st of November, 1871, at the yearly rent of one dollar. In this lease, which was executed by the lessees, the lessor was described as the eldest son and heir-at-law of his father, the original owner. This lease was never renewed, and no evidence was given of the payment of any rent under it, but the lessees remained together in possession of the property, without acknowledgment or interruption until 1892, when the stepfather died intestate, leaving a son, one of the plaintiffs, surviving him, and since that time the defendant had been in possession, also without acknowledgment or interruption, until this action was brought in 1897, by the surviving brother and sister of the defendant and her half-brother. The lessor had died in 1878; it was said that he left one son, who when very young, in 1880, was taken by his aunt, one of the plaintiffs, to the house upon the land, where he stayed one night; and the aunt said that she told her sister, the defendant, that he was the heir to the property:—Held, that even if the boy were the true owner, this was not an entry upon the land, as owner, sufficient to stop the running of the statute. 2. The defendant and her stepfather, being in possession without any title, and accepting a lease from the eldest son of the second marriage, as the heir-at-law, were estopped from setting up the adverse title of the real heir-at-law, the eldest son of the first marriage, as against the lessor or persons claiming under him. 3. The plaintiff's claim to possession under a conveyance from the alleged heir-at-law of the lessor could not be allowed, because there was no evidence that he was the heir-at-law, and because his title, if he had any, had been barred by the possession of the defendant and her stepfather since 1876, when the lease expired. 4. The title acquired by the defendant and her stepfather by length of possession was acquired by them as tenants in common, and not as joint tenants, and therefore, upon the death of the latter his undivided half descended to his son: *Ward* v. *Ward*, 6 Ch. App. 789, distinguished. *Brock* v. *Benness*, 29 Ont. R. 468.

—Exclusive possession of land—Receipt of profits —Pasture for cattle.] — While the defendant was in possession of land as caretaker or tenant at will, the owner put his cattle thereon to be fed and cared for by the defendant. Held, that the produce of the land which the cattle ate was "profits" which the owner, by means of his cattle, took to himself for his own use and benefit, and as long as the cattle were upon the land the defendant was not in exclusive possession, and the Statute of Limitations did not begin to run in his favour. *Rennie* v. *Frame*, 29 Ont. R. 586.

— Trespass to land — Adverse possession — Necessity to plead Statute of Limitations in such cases.]—See Trespass.

II. Commencement of Prescription.

—Promissory note—Days of grace.—The commencement of prescription of a promissory note is only from the expiration of the three days of grace. *Dupuis* v. *Hudon*, Q.R. 12 S.C. 227.

III. Interruption of Prescription.

— Way — Right of — Prescription — Termini — Slight deviations — Interruptions.] — The *termini a quo* and *ad quem* of a way over the defendant's land used and enjoyed as of right by the plaintiff and his predecessors in title for upwards of twenty years before the commencement of the action had not varied during that period, except at two points, where, about fourteen years before action, one of the plaintiff's predecessors slightly altered the line of the way for the purpose of going round muddy spots, and the user of the original line at these two points was abandoned for the substituted one. These deviations were short as compared with the length of the way:—Held, that they did not operate to do away with the plaintiff's right to claim the way between the termini, that way having been substantially used during the whole period; but the plaintiff should be confined either to the original or substituted line. Slight temporary interruptions by the defendant were insufficient to prevent the statute from running. *Warren* v. *Van Norman*, 29 Ont. R. 84.

—Joint debtors— Suit against one — Effect of judgment—Action against maker of note—Prescription as against indorser—Arts. 2224, 2228, 2231, 2264, 2265 C.C.] — The institution of proceedings against one of a number of joint and several debtors (*un debitem solidaire*) interrupts the prescription as against his co-debtors (Arts. 2224, 2228, 2231 C.C.) and after judgment has been obtained against such debtor the interrupted prescription recommences to run against the others by the same time as before (Art. 2264 C.C.), although the judgment debtor could only be prescribed, as against the creditor by the period of thirty years (Art. 2265 C.C.) Thus, the holder of a note having obtained judgment against the maker, and permitted more than five years to elapse after such judgment before taking

such proceedings against the indorser, his recourse as against the latter was prescribed. *Campbell* v. *Baxter*, Q.R. 7 Q.B. 134..

—Bodily injuries—Interruption of prescription by judicial demand—Arts. 2262, 2224, 2267 C.C.]—In order to interrupt prescription under Art. 2262 C.C., which provides that the action for bodily injuries is prescribed by one year, it is necessary that the action be actually assigned within one year from the date of the injury complained of. The issue of the writ within the year is not sufficient. —The service upon defendant of a petition for leave to proceed *in forma pauperis* does not constitute service of a judicial demand within the meaning of Art. 2224 C.C.—Even where prescription has not been pleaded, the Court is bound, under Art. 2267 C.C. to dismiss an action which has not been served within the year.—*Dupuis* v. *Canadian Pacific Railway Co.*, Q.R. 12 S.C. 193.

—Cession de biens—Payment of dividend.]—An abandonment of property (*cession de biens*) and payment of dividend upon a debt interrupts the prescription on such debt. *Desmarteau* v. *Darling*, Q.R. 12 S.C. 212.

—Pledge in possession of creditor—Art. 2227 C.C.] —The fact that a debtor, who has given a pledge (*gage*) to his creditor to secure payment of his debt, leaves such pledge in possession of the creditor, constitutes a continuing acknowledgment of his obligation, which interrupts the prescription so long as the creditor retains possession of the pledge. *Banque du Peuple* v. *Huot*, Q.R. 12 S.C. 370.

IV. Period of Limitation.

—Promissory note—Non-commercial matter—Prescription.]—A promissory note, given by way of exchange or in consideration of a sum of money, even between non-commercial persons, constitutes, when everything is done at the one time and in the absence of proof to the contrary, the contract between the parties. Such contract is subject to the prescription of five years. *Vachon* v. *Poulin*, Q.R. 7 Q.B. 60 affirming 12 S.C. 323.

—Bank—Action against directors—Maladministration—Arts. 192, 195 C.C.P.]—The remedy of a shareholder or depositor of a bank against the directors to recover damages suffered by reason of their maladministration, being founded upon the responsibility of the directors as mandataries and not upon a *délit*, is prescribed by thirty years. *Macdonald* v. *Bulmer*, Q.R. 12 S.C. 424.

—Promissory note—Note payable on demand.]—A note payable on demand is prescribed by five years, beginning to run from the date of the note and not from the time of its presentation for payment. *Brown* v. *Barden*, Q.R. 13 S.C. 151.

—Prescription—Art. 4555 R.S.Q.—Special assessment for drain.]—Art. 4555 R.S.Q., which provides that arrears of municipal taxes are prescribed by three years, does not include a special assessment for the construction of a drain, such assessment, levied and payable in a single amount, although overdue, not being an arrear of municipal taxes within the meaning of the article. *Cité de St. Henri* v. *Coursol*, Q.R. 13 S.C. 222.

—Construction of dam—Action for damages from overflow—Art. 2261 C.C.]—The right of action for damages caused to plaintiff's land by the overflowing of the water of a river on which defendant had constructed a dam, was not in this cause prescribed by the lapse of two years under Art. 2261, C.C., the right to build the dam being given by statute. *Brissette* v. *Pillsbury*, 4 Rev. de Jur. 243.

LIQUOR LICENSE.

Intoxicating liquors—Liquor License Act—Treating on Sunday—"Other Disposal"—R.S.O. c. 194, sec. 34.]—Treating or giving liquor to friends by a landlord in a private room in his licensed premises on a Sunday is an offence under sec. 54 of R.S.O. ch. 194, and is covered by the words "other disposal" in that section. *The Queen* v. *Walsh*, 29 Ont. R. 36.

—Intoxicating liquors—Selling without license—Steward of club—Certiorari—Evidence—R.S.O. c. 194, s. 50.]—The steward of a club, incorporated under R.S.O. (1887), ch. 157, though having no license, supplied, at his own discretion, intoxicating liquors to members and others in exchange for tickets purchasable by members from the club secretary, in a part of the building of which the club were lessees. The liquors originally purchased belonged to the club, which, by its charter was expressly forbidden to traffic in, sell or dispose of such liquors, or allow others to do so in the club building:—Held, that the steward was rightly convicted of keeping or having liquors for sale without license under R.S.O. (1887), ch. 194, s. 50: *Graff* v. *Evans*, 8 Q.B.D. 373 distinguished. *Semble.*—Though a conviction be good on its face, yet where there is no appeal to the General Sessions the Court will not refuse to go into the evidence on motion to quash. *The Queen* v. *Hughes*, 29 Ont. R. 179.

—N.S. Liquor License Act of 1895, c. 2, s. 56—Conviction by stipendiary magistrate—Objection on certiorari as to fact though erroneously found, which the magistrate was competent to try.]—Defendant was convicted by the stipendiary magistrate for the town of Dartmouth for unlawfully selling liquor by retail, without license, contrary to the provisions of the Liquor License Act of 1895, ch. 2, sec. 56, and an order was obtained from a Judge at Chambers removing the conviction into this Court. The magistrate having jurisdiction to try and decide the question whether the defendant sold liquor in the town without license, and there being no

objection to his competency, or to his jurisdiction over the subject matter, and no objection that there was any want of any essential preliminary to jurisdiction: — Held, that the Court could not entertain an objection that the magistrate erroneously found a fact, which, though essential to the validity of his order, he was competent to try: *The Queen* v. *E. McDonald*, 19 N.S.R. 336, reversed; *The Queen* v. *Walsh*, 29 N.S.R. 521.

—Nova Scotia Liquor License Act of 1895—Conviction — Third offence—Form of conviction—Amendment of summons.] — Defendant was convicted by the stipendiary magistrate of the town of Antigonish, on the information of L., of a third offence against the provisions of the Nova Scotia Liquor License Act of 1895, and amending Acts, and was adjudged to pay a fine and costs, and, in default of payment, to be imprisoned for a period of 90 days, and, in addition to the term of imprisonment imposed, in default of payment of the amount of the fine and costs, to be imprisoned for the period of 30 days. A difficulty arose in connection with the carrying out of the punishment imposed, owing to the fact that neither of the forms of conviction prescribed for use contained words authorizing an absolute term of imprisonment, in addition to that provided for in case of default of payment of the amount of fine and costs. The penalties being clearly defined, and the jurisdiction complete, and the object of the act certain: —Held, that there was no excess or want of authority on the part of the magistrate in adopting a form of conviction which exactly carried out the sentence he had the right to impose.—After hearing the evidence and the arguments of counsel, the stipendiary magistrate adjourned the case to a future day, for the sole purpose of deciding as to the sufficiency of the evidence, and giving judgment in the case. On the day fixed, in the absence of the defendant or his solicitor, and without notice to them, he heard a motion to amend the summons, by changing the date of the previous conviction, and, after making the amendment asked for, convicted the defendant:—Held, following *The Queen* v. *Gough*, 22 N.S.R. 516, that the stipendiary magistrate could not make this amendment in the absence of defendant, and without notice, and that the appeal should be allowed, and the conviction quashed with costs, on that ground. *The Queen* v. *Grant*, 30 N.S.R. 368.

—Nova Scotia Liquor License Act, 1886 — Conviction—Improper reception of evidence—Certiorari—Appeal.]—Application was made for a writ of *certiorari* to remove into this Court a conviction for a violation of the Nova Scotia Liquor License Act of 1886, and amending Acts. The application was based on the ground that the only evidence offered before the magistrate, in support of the charge, was that of the informant, a private individual, and that, under R.S.N.S. (5th series), ch. 103, such evidence was not receivable, unless the informant in open Court, before proceeding to give evidence, renounced the proportion of the penalty (one-half), to which he was entitled. It appearing that the matter was in all respects within the jurisdiction of the magistrate:—Held, that *certiorari* would not lie, but that the only remedy was by appeal: *The Queen* v. *Walsh*, 29 N.S.R. 521, followed; *The Queen* v. *Stevens*, 31 N.S.R. 124.

—Liquor License Act, 1896—59 V. c. 5 (N.B.)—Disqualification of Justice — Inspector — Bias — Interest.] — The fact that B., a convicting justice for an offence against the provisions of The Liquor License Act, 1896 (Acts of Assembly, 59 Vict. ch. 5), is an inspector under the Act, but not for the district where the offence is alleged to have been committed, is not such an interest as to disqualify him or cause bias. *Ex parte Michaud*, 34 N.B.R. 123.

—Liquor License Act, 1887—Appeal—Evidence—Trial de novo—50 V. c. 4 (N.B.).]—On an appeal to a judge of the County Court from a conviction for selling liquor contrary to the provisions of the Liquor License Act, 1887 (Acts of Assembly, 50 Vict. ch. 4), the appellate judge has power to adjudicate on the evidence taken before the convicting magistrate; or, he may hear the evidence of witnesses other than those examined below, or the further evidence of the witnesses already examined. *Ex parte Abel*, 34 N.B.R. 121.

—Liquor License Act, Man., ss. 151, 180, 182, 200, 209, 210 — Former conviction — Amending — Disqualification — Certificate.]—Where there is any evidence in support of a conviction, the finding of the magistrate will not be interfered with although the evidence may not be satisfactory in the opinion of the Court: *Regina* v. *Grannis*, 5 Man. R. 153, followed. Before a conviction for a second offence under The Liquor License Act, it is necessary to prove the identity of the defendant with the person named in the certificate of the former conviction, and neither the similarity of names nor the personal knowledge of the magistrate will be sufficient for that purpose: *The Queen* v. *Lloyd*, 1 Cox C.C. 51, followed. *Regina* v. *Brown*, 16 Ont. R. 41, distinguished. Where the conviction is bad because it was for a second offence and the proof of the former conviction was insufficient, the Court will not amend the conviction under sections 209 and 210 of the Act, so as to make it a conviction for a first offence, when the evidence of the commission of that offence is not in itself satisfactory, as the powers of amendment given by sections 883 and 889 of The Criminal Code, made applicable by section 180 of The Liquor License Act and 56 Vict., ch. 32, should be exercised only if the Court or judge is satisfied upon perusal of the depositions that an offence of the nature described in the conviction has been committed.—A magistrate is

not disqualified to sit upon a case under The Liquor Licence Act by reason of being an honourary member of a temperance union which has taken active steps towards enforcing the Act before him and provided funds for that purpose; especially where the prosecution is not conducted by the union, and the magistrate's connection with it has been merely nominal: *Regina* v. *Deal*, 45 L.T.N.S. 439, and *Leeson* v. *Gen. Council, etc.*, 43 Ch. D. 366 followed.—Per Bain, J. The certificate of the former conviction put in was insufficient because it nowhere stated that the conviction had been made under the provisions of The Liquor License Act.—Per Killam, J.: Although the certificate of the former conviction omitted the word "intoxicating" before the word "liquor" in describing the offence, yet it was not defective on that account in view of sections 151 and 182 of the Act and the wording of the form in Schedule K (par. 2). *The Queen* v. *Herrell*, 12 Man. R. 198.

—Sale to interdicted person after notice—Knowledge of identity unnecessary.]—A printed notice by a license inspector in his own name prohibiting the sale of liquor to a particular person under the Liquor License Act, 1896 (N.B.), sec. 110, is sufficient, and it is not necessary that he should serve the identical notice received from the relative of the party to be interdicted, nor that the notice should set forth all that is essential to be proved for the purpose of sustaining a conviction. Knowledge by the liquor dealer of the identity of the person supplied with liquor with the person named in the notice is not necessary in order to constitute the offence specified in said section. *The Queen* v. *Dyas*, 1 Can. C.C. 534.

—Cancellation of—County Court Act, s. 30.]—Application to County Court judge for the cancellation of a liquor license issued to Mary Lee by the Steveston Licensing Board. The main objections urged related to the mode and manner of procedure before the board:—Held, that the judge's jurisdiction was strictly confined to the question of legality or illegality, and the onus of clearly proving that the license was unlawfully issued lay on the complainant, and that on the facts no such case was made out. *Re Mary Lee's License*, 34 C.L.J. 642.

—R.S.O.—Temperance beverage—Light beer—Percentage of alcohol.]—Held, that it is illegal, without a license, under the guise of its being a temperance beverage, to sell a liquor which is capable, if freely drunk, of producing even the incipient stages of intoxication, even though it only contains from two to three per cent. of alcohol. *The Queen* v. *Wotton*, 34 C.L.J. 746.

And see CANADA TEMPERANCE ACT.
" " INDIAN.

LITIGIOUS RIGHTS.

Title to lands—Usurper in possession—Pleadings—Art. 1582 C.C.]—Where there is no litigation pending or dispute of title to lands raised except by a defendant who has usurped possession and holds by force, he cannot when sued set up against the plaintiff a defence based upon a purchase of litigious rights. *Powell* v. *Watters*, 28 S.C.R. 133.

LOAN.

Commission on mortgage loan.]
See MORTGAGE, IV.

LOCATEE.

Free Grant and Homestead Act—Sale of trees by locatee—Validity of—Patent—Estoppel.]
See CROWN LANDS.

LORD CAMPBELL'S ACT.

See MASTER AND SERVANT, IV (*b*).

LUMBER.

Sale — Contract — Construction — Delivery — Deals and boards.]—See CONTRACT, V (*c*).

MAGISTRATE.

See JUDICIAL OFFICER.
" JUSTICE OF THE PEACE.
" POLICE MAGISTRATE.

MALICIOUS ARREST.

Criminal Code, ss. 25, 242, 552—Unlawfully wounding, causing actual bodily harm—Arrest by constable holding warrant not indorsed for service out of jurisdiction—Arrest made independently of warrant—Vindictive damages—Notice—Evidence improperly rejected—Verdict—New trial.]—The Criminal Code, sec. 25, enacts that if any offence for which the offender may be arrested without warrant has been committed, any one, who, on reasonable and probable grounds, believes that any person is guilty of that offence, is justified in arresting him without warrant:—Held, that the words "may be," in s. 25, refer to those provisions of the code which authorize arrest without warrant, and include the offence of unlawfully wounding, under s. 242, that being one of the "following sections" referred to in s. 552, which provides for arrest without warrant in certain cases.—Defendant, a police

officer in and for the Town of Windsor, in the County of Hants, arrested plaintiff at Halifax, in the County of Halifax, on the charge of having unlawfully assaulted, beaten, wounded, and ill-treated P., a police officer, while in the discharge of his duty, occasioning actual bodily harm. Defendant, at the time, held a warrant for the plaintiff's arrest, but it had not been indorsed for service out of the jurisdiction. Apart from the warrant defendant had actual knowledge of the commission of the offence for which the arrest was made. In an action by plaintiff claiming damages for unlawful arrest and imprisonment:—Held, setting aside the verdict for plaintiff with costs, and ordering a new trial, that it was competent for defendant to contend that the arrest was made independently of the warrant, and to justify such arrest by shewing that, at the time the arrest was made, he was aware that plaintiff had committed the offence of unlawfully wounding.—That the question whether the arrest was, in fact, made under the warrant, or for the offence apart from the warrant, was one that should have been submitted to the jury, and that the trial judge acted improperly in excluding it from their consideration.—That there was no distinction in principle between the position of the defendant in this case, and the position of a constable who holds two warrants, one of which is defective.—That the trial judge erred in leaving it open to the jury to understand that they were at liberty to give vindictive damages in the absence of evidence of malice, oppression, or misconduct on defendant's part.—That the trial judge erred in rejecting evidence offered to shew that plaintiff had wounded P. in the assault for the commission of which the warrant was issued. *Jordan* v. *McDonald*, 31 N.S.R. 129.

—Trespass to person—Arrest under capias—Malice negatived—Affidavit—Sufficiency—Matter for Magistrate—Evidence—Form of writ—Effect of adjudication by magistrate—Directions to jury.] — The plaintiff, H.O., was arrested under a capias issued in a suit brought against him by defendant, under the name of C.O., for goods sold and delivered. After his arrest, plaintiff took the objection that the capias being against C.O., he could not be dealt with under it, and the magistrate before whom he was brought thereupon dismissed the proceeding. In an action by plaintiff, for false arrest, the evidence shewed that defendant rendered his account to plaintiff, under the name of C.O., and that while plaintiff objected to certain charges, and requested time for payment, he made no objection to the manner in which the account was made out:—Held, that the jury were justified under the circumstances in negativing malice on the part of defendant.—The affidavit upon which the capias issued shewed that plaintiff had been absent from his place of business for some weeks, and was said to have been in the United States, and that the person from whom he purchased his stock was in possession during his absence, and was still, apparently, in possession at the time the affidavit was made:—Held, that these facts would indicate to the magistrate that the business of plaintiff was at an end, and that there was nothing to detain him in the county; that much less evidence would be required to authorize the issue of a capias by a justice of the peace, than would be required to authorize the issue of such a writ in this Court; that the sufficiency of the grounds set forth in the affidavit was a matter for the magistrate. The capias being correct in point of form, and the magistrate having jurisdiction over the subject matter, and the defect, if any, being, at most, one which would render the writ voidable:—Held that it was competent to defendant to rely upon the adjudication of the magistrate as an answer to the plaintiff's claim of trespass, and that if the capias were issued through an error of the magistrate, the person who directed its issue would not be liable, even though the capias were set aside.—The facts as to malice were left to the jury, who were told that absence of reasonable and probable cause was evidence of malice, but they were not directed as to whether, in the opinion of the trial judge, there was, or was not, reasonable and probable cause. The judge having submitted to the jury, with proper directions, all the facts upon which the question of reasonable and probable cause depended, and having determined upon the findings that there was no reasonable and probable cause:—Held, that it was in the discretion of the judge to determine the best method of dealing with that aspect of the case, and that plaintiff had suffered no prejudice from the course pursued. *Orwitz* v. *McKay* 31 N.S.R. 243.

And see ARREST.
" " CAPIAS.
" " CONSTABLE.

MALICIOUS PROSECUTION.

Reasonable and probable cause—Advice of counsel.]—That the prosecution in question was instituted on the advice of counsel is not sufficient to protect the prosecutor if he does not exercise reasonable care to ascertain and lay before counsel the facts in reference to the alleged offence.—Absence of reasonable and probable cause for the prosecution is not by itself sufficient to impose liability; malice must exist, and the question of malice must be left to the jury. *St. Denis* v. *Shoultz*, 25 Ont. A. R. 131.

—Reasonable and probable cause—Honest belief—facts—Bona fides—Malice.]—In an action for malicious prosecution brought against an insurance company by reason of an information charging the plaintiff with arson, and causing his arrest thereon, the jury found that the company's officers, who laid the charge, believed it to be true, but that such

belief was not under the circumstances reasonable, and that they did not act on it in laying the charge and causing the arrest, but were actuated by other and improper motives:—Held, that the first finding, being a finding that the defendants acted on their honest belief, and the evidence warranting that finding, absence of reasonable and probable cause could not be held to have been shewn simply because further inquiries might have been made or further facts shewn: that the question of malice was of no importance, and that the defendants were entitled to judgment. *Malcolm* v. *Perth Mutual Fire Insurance Co.*, 29 Ont. R. 406.

—False arrest—Detention of person without warrant on charge of larceny—Damages.]—A constable in the service of a municipality is not justified in taking a person into custody and depriving him of his liberty, on a criminal charge, without any sworn complaint having been made, and without a warrant issued by competent authority, more especially where there was no reason to suspect that he would attempt to evade arrest. Unsworn statements made to the officer, to the effect that the person had committed a larceny on the previous day, are insufficient.—But where the officer has acted in good faith, and on information which excuses him to some extent, these facts should be taken into consideration in the award of damages. *Musseau* v. *City of Montreal*, Q.R. 12 S.C. 61.

—Malice—Probable cause.]—Malice alone will not justify the granting of damages in an action for malicious prosecution; there must also be a want of probable cause.—Probable cause consists of a number of facts and circumstances, known to the informant, which would lead a reasonable person to believe in the truth of the information. *Lemire* v. *Duclos*, Q.R. 13 S.C. 82.

—Resentment—Malice—Honest belief in the truth of charge—Mis-statement made by judge in charging jury.]—Plaintiff, one of the coroners for the county of Halifax, went to the premises of defendant, an undertaker, and demanded possession of a body that was lying there, for the purpose of holding an inquest. Defendant having refused to comply with plaintiff's request, plaintiff returned subsequently, in defendant's absence, and made a second demand, and, having been again refused, he entered the building by force, and removed the body in the casket in which it had been placed, and proceeded to hold the inquest. Defendant thereupon caused plaintiff to be arrested, charged with feloniously entering defendant's premises and stealing the casket. In an action brought by plaintiff against defendant, for malicious prosecution, the trial judge instructed the jury, in effect, that if the motive of defendant was resentment, that would amount to malice:—Held, that he was right in doing so.—At the argument it was contended, on behalf of defendant, that the presiding judge should have directed the jury that, if defendant honestly believed in the truth of the charge he laid before the magistrate, that would negative the existence of any indirect or improper motive on his part:—Held, that this contention was clearly wrong, as defendant might believe in the truth of the charge, and, at the same time, be actuated by vindictiveness or spite, or by some other improper motive which would constitute malice in law; that it was not sufficient ground for setting aside the verdict, that the presiding judge, in addressing the jury, expressed himself strongly in favour of a verdict for plaintiff, where he, at the same time, instructed the jury that they were not bound to follow his opinion, and that the responsibility of finding the facts was theirs; that it was not sufficient ground for setting aside the verdict that the presiding judge, in addressing the jury, described as an admission made by the defendant, an answer made by defendant which, without being a specific admission, indicated a belief on his part that plaintiff merely took the casket as a convenient way of taking the body, the verdict appearing, in other respects, to be entirely justified by the evidence.—Per McDonald, C.J., dissenting, that while a judge, presiding at the trial of a case, has a right to state to the jury his own view of the evidence, he has no right to impress his views upon them in such a way as to prejudice the free exercise of their own individual opinions. *Hawkins* v. *Snow*, 29 N.S.R. 444.

MANDAMUS.

Enforcement of Contract by—Issue of writ—Appeal.]—A writ of mandamus will not lie to compel the performance of a condition in a private contract, especially where there is a common law remedy.—The order of a judge granting the writ is no obstacle to its rejection by a Court of Appeal where there was no jurisdiction to issue it and the order is therefore null: *Elliott* v. *Les Syndics des chemin à barrière de la rive sud*, Q.R. 3 Q.B. 535 distinguished. *Page* v. *Town of Longueuil*, Q.R. 7 Q.B. 262.

—School commissioners—Erection of school house—Securing site.]—See SCHOOLS.

—Contract, construction of—Statute, construction of—12 V. c. 183, s. 20—Contract, notice to cancel—Gas supply shut off for non-payment of gas bill on other premises.]—See STATUTE, II.

MANDATAIRE.

See PRINCIPAL AND AGENT, V.

MANITOBA REAL PROPERTY ACT.

Caveat—Description—Statement of interest claimed—Address of caveator—New evidence on appeal—Rule 476, Q.B. Act, 1895.]—In the

caveator's petition his name was given without any address or description, and a statement of facts on which he relied was given, from which it might be inferred what interest or title he claimed in the lands, but the petition did not state specifically what estate, interest or charge he claimed, as required by Rule 1 of Schedule R. The land was described in the caveat and petition as "Lot 32 in block 15, as shewn upon a plan of Oak Lake, being a sub-division of the north half of section 23, in township 9, range 24 west of the principal meridian of Manitoba:"—Held, 1. That the description of the land was not necessarily indefinite and uncertain, unless it was shewn that there was more than one plan of Oak Lake; and that, if it followed the description given in the application of the caveatee, it would, according to the form in schedule O of The Real Property Act, be sufficient. 2. That both the caveat and petition shewed sufficiently what estate, interest or charge the caveator claimed. 3. That there was no rule of Court requiring the address or description of the caveator to be stated in his petition.—This being an appeal to the Full Court from the decision of Taylor, C.J., allowing an appeal from the referee, the respondent applied under Rule 476 of The Queen's Bench Act, 1895, for permission to put in evidence to shew that the description in the caveat differed materially from that in the application. Ordered, that, upon payment of the costs of the appeals within five days after taxation, such evidence should be received, and the matter referred back to the referee with leave to adduce it, but that, if the costs should not be so paid, the order for an issue should stand confirmed with costs. *Adams* v. *Hockin*, 12 Man. R. 11.

MARCHANDE PUBLIQUE.

See HUSBAND AND WIFE, VI.

MARRIAGE.

Action for breach of promise of marriage—Order for arrest of defendant under O. 44, R. 1.—Affidavit for.]—In an action for breach of promise of marriage, an order for the arrest of defendant was obtained from a commissioner under O. 44, R. 1, which authorizes the making of such an order upon proof to the satisfaction of the commissioner that the plaintiff has a good cause of action. The order was obtained on an affidavit of plaintiff's father, stating that plaintiff had a good cause of action, but not giving the date of the contract, or shewing that a time was fixed when the marriage was to take place, and that such time had elapsed; or that it was to take place within a reasonable time, and that such time had expired. No material was placed before the commissioner upon which he could exercise his judgment in determining for himself that there was a contract and a breach:—Held, discharging the order for arrest, that the affidavit was insufficient, and not in conformity with the requirements of the order regulating the practice: *DeWolf* v. *Vineo*, 1 N.S.D. 26 questioned. *Craven* v. *Williamson*, 31 N.S.R. 256.

MARRIED WOMAN.

See HUSBAND AND WIFE.

MASTER AND SERVANT.

I. ACTION FOR WAGES, 268.
II. CONTRACT OF SERVICE, 268.
III. DISMISSAL OF SERVANT, 269.
IV. INJURY TO SERVANT, 270.
(*a*) *Liability of Master under Civil Code*, 270.
(*b*) *Workmen's Compensation Acts*, 271.
V. LIABILITY OF MASTER FOR ACT OF SERVANT, 272.
VI. TERMINATION OF SERVICE, 272.

I. ACTION FOR WAGES.

—Ont. Master and Servant Act—Set-off—Jurisdiction of police magistrate.]

See POLICE MAGISTRATE.

II. CONTRACT OF SERVICE.

—Contract of hiring—Duration of service—Evidence—Dismissal—Notice.]—Where no time is limited for the duration of a contract of hiring and service, whether or not the hiring is to be considered as one for a year is a question of fact to be decided upon the circumstances of the case.—A business having been sold, the foreman, who was engaged for a year, was retained in his position by the purchaser. On the expiration of his term of service no change was made, and he continued for a month longer at the same salary, but was then informed that if he desired to remain his salary would be considerably reduced. Having refused to accept the reduced salary he was dismissed, and brought an action for damages, claiming that his retention for the month was a "re-engagement for another year on the same terms:—Held, that as it appeared that the foreman knew that the business before the sale had been losing money and could not be kept going without reductions of expenses and salaries, as he had been informed that the contracts with the employees had not been assumed by the purchaser, and as upon his own evidence there was no hiring for any definite period but merely a temporary arrangement until the purchaser should have time to consider the changes to be made, the foreman had no claim for damages, and his action was rightly dismissed. *Bain* v. *Anderson & Co.*, 28 S.C.R. 481, affirming 24 Ont. A.R. 296.

—Contract of hiring—Annual salary—Termination — Notice.] — In December, 1886, the engineer in charge of the works of the Quebec Harbour Commissioners having died, changes were made in the staff. The engineer in chief recommended the nomination of M. as assistant engineer for the works on the cross-wall, and those pertaining to it, and his recommendation was accepted by the Commissioners by a resolution passed on March 26th, 1887, appointing M. assistant engineer, with a salary of $1,800 per annum, to commence from May 1st then next. In the spring of 1890, the works of the Commissioners being nearly finished M. received, on April 30th, a notice that after the 1st of August following his services would not be required and that he would be entitled until then to draw his salary and leave when he wished. On July 12th M. sent a letter to the Board asking to be retained in their employ until November 1st:—Held, that the hiring of M, was a yearly hiring, and that he was entitled to a notice of three months in case the Board deemed it advisable to reduce the staff of their engineers, which they had not done, and consequently had a right to his salary for the portion of the year which remained up to May 1st, 1891:—Held further, that M.'s letter of July 12th, 1890, asking the Board to employ him up to November 1st, was not a renunciation of the rights conferred on him by the conditions of his engagement, but only an offer of compromise. *McGreevy* v. *Quebec Harbour Commissioners*, Q.R. 7 Q.B. 17, varying 11 S.C. 455.

— Responsibility — Intermeddling — Accident — Damages.] — A person who, without being engaged to do certain work, intermeddles with others who are employed to do it, does not occupy the position of an employee, and is not entitled to compensation for injuries sustained while so intermeddling without right, particularly where the procuring cause of the accident was the plaintiff's meddling with work to which he was not accustomed. *Chartier* v. *Quebec Steamship Co.*, Q.R. 12 S.C. 261.

III. Dismissal of Servant.

—Responsibility of servant as to goods under his charge—Negligence.]—In the absence of express provisions in the contract of hiring, servants are only responsible for reasonable care in the safe-keeping of property intrusted to them, and are not responsible for the value of effects lost or stolen without their fault; nor is a servant liable in such case to dismissal without notice. *Jarvis* v. *Canadian Pacific Railway Co.*, Q.R. 13 S.C. 17.

—Contract of hiring — Notice — Wrongful dismissal.] — In an action brought by plaintiff against defendant, for wrongful dismissal, the trial judge found that the hiring was a weekly hiring, and not a yearly hiring, as contended by plaintiff:— Held, that under this finding, plaintiff was only entitled to a week's notice, and that the judge erred in holding that he was entitled to more and awarding damages accordingly, and that the judgment for plaintiff must be set aside on this ground. *Holloway* v. *Lindeberg*, 29 N.S. R. 460.

— Term of hiring — Dismissal without notice — Acceptance of employment with person to whom business is transferred—Effect of.]—In an action by plaintiff against defendant for wrongful dismissal without due notice, the trial judge found in defendant's favour on the ground that a weekly had been substituted for a yearly hiring. There being a direct conflict of evidence between the parties on this point:—Held, that the Court should not interfere with the conclusion of the trial judge, although members of the Court were disposed to think that, had the matter come before them, they would have found differently.—Assuming that plaintiff was working for defendant under a weekly hiring, when the business of defendant was taken over by the H. B. Co., with whom plaintiff continued;—Held, that the trial judge was right in his conclusion that the relationship between plaintiff and defendant came to an end, and that plaintiff then entered into the employment of the company.—Per Townshend, J.:—Held, that the case was not that of a servant unjustly dismissed, but of a servant accepting employment in the same business, upon its transfer to other persons, with full knowledge and acquiescence, and without objection to the new arrangement. *Holloway* v. *Lindberg*, 30 N.S.R. 421.

—Contract — Corporate Act — School trustees — Teacher—C.S.N.B. c. 65.]—School trustees appointed under the provisions of Con. Stat., c. 65, must act together and as a board; therefore, a notice of dismissal signed by two out of three of them, of a teacher engaged under a written contract, which notice was not the result of deliberation in their corporate capacity, was held insufficient. *Robertson* v. *Trustees of School District No. 2, Durham*, 34 N.B.R. 103.

—Action for wrongful dismissal of employee of company—Power of directors to contract—Ratification.]—See Company.

—Corporation contractors — Employees—By-law —Wages.]

See Municipal Corporations, II. (*e.*)

IV. Injury to Servant.

(*a*) *Liability of Master under Civil Code.*

—Negligence—Accident, cause of—Contributory negligence—Evidence.]—In an action for damages by an employee for injuries sustained while operating an embossing and stamping press, it appeared that when the accident causing the injury occurred, the whole of employee's hand was under the press, which was unnecessary, as only the hand as far as the second knuckle needed to be inserted for the purpose of the operation in which he was engaged. It was alleged that the press was working at undue speed, but it was proved

that the speed had been increased to such extent at the instance of the employee himself, who was a skilled workman:—Held, that the injury occurred by a mere accident, not due to any negligence of the employer, but solely to the heedlessness and thoughtlessness of the injured man himself, and the employer was not liable. *Burland* v. *Lee*, 28 S.C.R. 348.

—Negligence—Deception of the part of employee as to age—Damages—Evidence.]—It is negligence for an employer to put a young employee, about 15 years of age, to work at a machine for cutting boards, which machine was not provided with a guard to protect the hand of the operator. But where it is established that the employee retained his position in the factory by making a false representation as to his age—his age being less than that stated by him—this fact will be taken into consideration by the Court in mitigation of damages:—*Quære*, as to admissibility of evidence of minor in the action brought by his tutor. *Légaré* v. *Esplin*, Q.R. 12 S.C. 113.

—Employer and workman—Duty of employer—Negligence — Responsibility.] — In a factory where steam is used, and more particularly where girls and young people are employed, it is the duty of the employer to make such regulations as will be effective for the protection of the operatives from danger, and to see that such regulations are not only understood by the employees, but are obeyed. The employer is responsible in damages if he neglects to make such regulations, or, if they are made, permits them to be habitually disregarded. *Parent* v. *Schloman*, Q.R. 12 S.C. 283.

—Damages — Responsibility — Negligence—Employer and employee—Soins d'un bon père de famille.]—If the accident is one which could have been prevented by due care on the part of the employer, he is liable. He must display the necessary care and prudence, and must exercise *les soins d'un bon père de famille* towards his employees. In this case the defendant did not exercise due care towards the plaintiff, when he put him to work on a barge, exposed to jets of scalding water and steam.—An employer is bound to know the danger in which he places his employees, when he sets them to work, and moreover is bound to protect them against such danger: *Ibbottson* v. *Trevethick*, Q.R. 4 S.C. 318, followed. *St. Arnaud* v. *Gibson*, Q.R. 13 S.C. 22.

And see TRADES-UNIONS.

(*b*) *Workmen's Compensation Acts.*

—Cause of accident — Evidence.] —*Kervin* v. *Canadian Cotton Mills Company*, 25 Ont. A.R. 36, affirming 28 Ont. R. 73 and C. A. Dig. (1897) 207.

—Lord Campbell's Act—Death by accident—Negligence—R.S.Man., c. 26.]—The Act respecting Compensation to Families of Persons Killed by Accident, R.S. Man., ch. 26, supersedes Lord Campbell's Act in this province, and must be read along with The Workmen's Compensation for Injuries Act, 1893, and any action under it must be brought by the executor or administrator of the deceased person.—The plaintiff's claim was for the recovery of damages for the death of her husband, alleged to have been caused by negligence of the defendants or their servants. Letters of administration had been taken out by a brother of the deceased, but he had refused to sue:—Held, that the defendants' demurrer to the statement of claim should be allowed. *Pearson* v. *Canadian Pacific Railway Co.*, 12 Man. R. 112.

— Negligence — Fellow servant — Questions excluded from jury—Proximate cause—New trial.]

See NEGLIGENCE, VIII.

V. LIABILITY OF MASTER FOR ACT OF SERVANT.

—Damages—Tort—Wrongful act of servant—Scope of employment.]—A master is not liable for the wrongful act of a servant, though intended to promote the master's interests, if it is an act outside the scope of the servant's employment and authority, and is one which the master himself could not legally do. The defendants were held not liable where the motorman of one of their electric cars, who had no control over nor authority to interfere with passengers or persons on the cars, pushed off the car, as the jury found, a newsboy who was getting on to sell a paper to a passenger. *Coll* v. *Toronto Railway Co.*, 25 Ont. A.R. 55.

—Municipal corporations—Carters employed to remove street sweepings—Negligence—Liability.]—The relationship of master and servant exists between a city corporation and a licensed carter owning his own horse and cart, who, paid by the hour by the city, is hired by and is under the direction of their street foreman for the purpose of removing street sweepings; and the city may be liable for an injury caused by the negligence of the carter while so occupied in their employment. *Saunders* v. *City of Toronto*, 29 Ont. R. 273.

VI. TERMINATION OF SERVICE.

—Employer and employee—Dissolution of firm of employers—New engagement.]—Where a clerk employed by a partnership firm, on the dissolution of the firm accepted service under a new firm formed by two of the original co-partners, and was informed that he would have to deal with them alone, he ceased to have any claim upon the retiring partner for his salary from and after the dissolution. *Houde* v. *Grenier*, Q.R. 12 S.C. 259.

MEDICAL PRACTITIONER.

Negligence—Action against surgeon—Pleading—Paragraphs read together—Degree of skill, etc., required—Evidence—Improper admission of —New trial.]—In an action brought against

defendant, a surgeon, for negligence in dressing a wound in defendant's leg, whereby he partially lost the use of the leg and was rendered lame for the remainder of his life, the fifth paragraph of the statement of claim read, "the defendant negligently, improperly, ignorantly and unskilfully dressed and treated the plaintiff's said wounds and injuries." The sixth paragraph read as follows, "The defendant, while dressing and treating the said wounds and injuries, cut off a portion of one of the nerves, etc.:" —Held, that the two paragraphs must be read together, as setting forth the facts upon which plaintiff intended to rely; that the fifth paragraph, standing alone, would have been bad for vagueness and uncertainty.—During the trial some evidence was given tending to shew that defendant had been guilty of negligence in failing to take up and suture the ends of the severed nerve, and the trial judge, with some hesitation, gave judgment against him on this ground:—Held, that defendant was not called upon to answer a case of which the pleadings gave him no notice, but that the interests of justice required a new trial. Held, per Townshend, J., McDonald, C.J., concurring, Graham, E.J., and Henry, J., dissenting, that defendant must be judged by his surroundings at the time, and that the skill of a surgeon attending a patient in a private house in the country is not to be measured by the same standard as that of a surgeon who has the advantages of assistants, an operating room and the aids of a modern hospital. *Zirkler* v. *Robertson*, 30 N.S.R. 61.

—Sale of practice.]—See CONTRACT XII.

And see CORONER.

" " INQUEST.

MINES AND MINERALS.

N.S. Mining law — Lease — Improvidence — Validity — How attacked — Forfeiture.—] —On the 15th of October, 1896, W. made application to the commissioner of mines for the Province of Nova Scotia, for a prospecting lease of certain gold mining areas. The application was refused by the commissioner, on the ground that the areas applied for were covered by a lease then outstanding. By the N.S. Acts of 1889, ch. 23, s. 7, all leases of mines of gold, &c., were required to contain the provisions respecting the payment of rental, and its refund under certain conditions, contained in the sub-sections of s. 6; but by s. 8, s. 7 was not to come into force until two months after the date of the passage of the Act, (April 17th, 1889. On appeal from the decision of the commissioner, it appeared that the lease outstanding at the time of the application made by W., was issued nearly a year after the passage of the Act of 1889, in the old form, and did not contain the provisions as to payment of rental, &c., required by that Act, but there was no evidence to shew the date of the application for the lease, or as to non-performance of work, &c. By the N.S. Acts of 1897, ch. 4, s. 4, it was enacted that no lease of gold, &c., then outstanding, should be attacked or called in question in any Court unless within a year from the date of the issue thereof, and that all leases, &c., should, after one year from the date thereof, be indefeasible and non-forfeitable, except for non-payment of rent or royalty, or, in cases of leases outstanding not under rental, for non-working. By ch. 5, s. 1, of the Acts of the same year, it was enacted that leases applied for within two months of the 17th of April, 1889, (the date of the passage of the Act of 1889), and which were issued under the provisions of s. 7, of ch. 23, without containing the provision in respect to payment of rent, &c., were to be read and construed as if said leases had been issued containing such clause, &c. Per Ritchie, J.—Assuming the application for the lease to have been made prior to the time at which s. 7, of the Act of 1889 came into operation, and that it was not affected by that Act, that it was in all respects in proper form, and that there was no ground for declaring it void; that the acts of 1897, chaps. 4 and 5 were inconsistent with the idea that, prior to the passage of those Acts, leases such as that in question were to be construed as if they contained the rental clause; that the effect of the legislation was to shew that the legislature did not regard leases issued without such clause as void, but that they were recognized as existing leases; that if the lease in question was to be regarded as outstanding in 1897, the effect of ch. 4, s. 4, of the Act of that year was to make it indefeasible, and forfeitable only for non-working; assuming that the lease had been improvidently issued, and might have been set aside, before the passage of the Act of 1897, after due investigation, that it was not competent to the commissioner of mines, of his own mere motion, and without investigation or notice to the lessee, to set aside the lease as not having been issued in accordance with the terms of the statute, or for alleged breach of conditions which the lease did not contain. Per Townshend, J.—Assuming that it was not competent to the commissioner to grant the lease in question at the time he did, it was not open to a person in the position of W. to question its validity in such a proceeding as the present, but that the commissioner alone could question it, in proper proceedings for that purpose; that the lease was, at most, voidable at the suit of the Crown, and not void, and that, therefore, the areas in question were not vacant at the time of the application by W; that the commissioner having decided that the lease was in force at the time of the application by W., it must be presumed that the work had been done in accordance with the terms of the Act, or, at any rate, it would not be presumed that it had not been done; that, in the absence of any exception, the Court must construe s. 4, of ch. 4, of the Acts of 1897, as covering the lease in question; that the Court could not assume in favour of a forfeiture facts which it was

incumbent upon the party attacking the lease to prove. [Meagher, J., concurring on this point]; Per Henry, J.—Assuming the application for the lease in question to have been made under the old Act, that the rights and liabilities of the lessee were those provided for by that Act, and that the lessee could not be injuriously affected by the fact that the lease to which he became entitled prior to the 17th of June, 1889, was not delivered until after that date; that s. 7, ch. 23, of the Acts of 1889, could not be regarded as affecting every lease issued after the coming into operation of the Act, but must be confined to leases applied for under the new law. *In re Wier*, 31 N.S.R. 97.

—Mining cases — Appeal — Time — Extending — C.S.B.C. 1888, c. 82, s. 29.]—Owing to the nature of the subject-matter the Court requires stronger grounds for extending the time for appealing from judgments in mining cases than in other matters. — The provisions in sec. 29 of ch. 82 C.S.B.C., 1888, that appeals from judgments of mining Courts "may be in the form of a case settled and signed by the parties" is not imperative, but such appeal may be brought in the same form as in ordinary cases. *Kinney* v. *Harris*, 5 B.C.R. 229.

— Practice — Time — Extending — Appeal — Adverse claim — Mineral Act, 1891, ss. 21, 126; Mineral Act Amendments Acts, 1892, s. 14; 1893, s. 9, s.s. (h), and s. 10; 1894, s. 6.]— The Mineral Act, 1891, secs. 21 and 126, provides that adverse claims should be fyled in the office of the mining recorder, while the Act of 1894, sec. 6, gives a form of notice of application for certificate of improvements which sets forth that adverse claims must be sent to the gold commissioner. The proposed defendants made an application for a certificate of improvement for the mining ground in question, and published the notice prescribed by sec. 6, *supra*, whereupon the proposed plaintiffs, in accordance with the terms of the notice, fyled their adverse claims with the gold commissioner. Within the prescribed time they gave instructions to their agent to commence action, but he by mistake omitted to do so, the omission not being discovered until some time afterwards, when negotiations for settlement were pending. Prior to and during these negotiations the proposed defendants knew that no action had been instituted. Finally, one of the proposed defendants refused his assent to a settlement which had been agreed to by all the other parties. The proposed plaintiffs moved to extend the time to commence action:—Held, that by the Mineral Amendment Act, 1892, sec. 14, the fyling of an adverse claim in the office of the mining recorder is a condition precedent to the right of action, and that there is no jurisdiction to extend the time.—*Quære:* Whether, if there were such a jurisdiction, the grounds shewn were sufficient?—Upon appeal to the Full Court:—Held, that the adverse claim was not properly fyled; that, owing to the nature of the subject-matter, the Court requires stronger ground for extending time in mining cases than in other matters. *Kilbourne* v. *McGuigan*, 5 B.C.R. 233.

— Practice—Mineral Act, 1896, 144 to 150.]—Held, that sections 144 to 150 of the Mineral Act, 1896, refer only to procedure in the County Courts. *Corbin* v. *Lookout Mining Co.*, 5 B.C.R. 281.

—Mineral law — Contract — Consideration — Accord and satisfaction.]—An agreement for the sale of mineral claims provided for payment by instalments and contained a proviso that "failure to make any of the above payments shall render this agreement void as to all parties thereto, and the said (vendees) can quit at any time without being liable for any further payments thereunder from such time on." At the request of the vendees the vendors, without consideration, extended the time for payment of one of the instalments. After the original, but before the extended period for making the payment, the vendees notified the vendors that they had quit. In an action to recover the amount of the instalment:—Held, that the liability of the defendants, the vendees, to pay the instalment in question was absolute upon the day named in the original agreement, and remained unaffected by the voluntary concession of further time to pay. *Webb* v. *Montgomery*, 5 B.C.R. 323.

—Mineral claim—Interest in land—Statute of frauds—Pleading—Partnership—Contract—"In on it."]—Plaintiff having discovered "mineral float," communicated its situation to the defendant upon a verbal agreement by the latter that in the event of his thereby discovering the ledge and locating a mineral claim, the plaintiff should be "in on it":—Held, at the trial, dismissing the action, that the transaction took place, but that the words "in on it" were too indefinite to found a contract:—Held, by the Full Court, that the words "in on it" imported an agreement to give the plaintiff an interest in the nature of a partnership or co-ownership; that, in the absence of anything in a partnership contract to the contrary, the presumption of law is that the partnership shares are equal, and that the contract was not void for uncertainty:—*Quære*, whether the right to a duly located and recorded mineral claim constitutes an interest in land within the meaning of the Statute of Frauds. Per Davie, C.J., that the defendant, upon finding the ledge and locating and recording the claim, became, under the verbal agreement, a trustee for the plaintiff of one-half share therein, and was incapacitated from setting up the Statute of Frauds as a defence. Per McCreight, J., that if the title to a mineral claim is an interest in land within the Statute of Frauds, it is so only by reason of the Mineral Act, and that in order to take advantage of the defence of the Statute of Frauds, the Mineral Act should also be pleaded. *Wells* v. *Petty*, 5 B.C.R. 353.

—Mineral Act, 1896, s. 16 (d)—"Discoverer"—Staking—Bona fide attempt to comply with Act.]—As to location, the Mineral Act, 1896, by sec. 15 provides: "Any free miner desiring to locate a mineral claim shall enter upon the same and locate a plot of ground measuring, when possible, but not exceeding, 1500 feet in length by 1500 in breadth, in as nearly as possible a rectangular form; all angles shall be right angles, except in cases where a boundary line of a previously surveyed claim is adopted as common to both claims, but the lines need not necessarily be meridional." As to staking, by sec. 16: "A mineral claim shall be marked by two legal posts, *et cetera*," with provisions as to notices upon and delimitation of the claim by reference thereto. By sub-section (*d*) of section 16, it is provided "that the failure on the part of a locator of a mineral claim to comply with any of the foregoing provisions of this section shall not be deemed to invalidate such location, if upon the facts it shall appear that such locator has actually discovered mineral in place on said location and that there has been on his part a *bona fide* attempt to comply with the provisions of the Act, and that the non-observance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity:"—Held, that a locator of mineral in place is within the sub-section though he may not have been the first discoverer; that the *bona fide* attempt to comply with the provisions of the Act does not merely mean an attempt to locate a claim of size and form as provided in section 15, but means an attempt to comply with the formalities provided by section 16 as to staking, and that a locator who had staked his location by four corner posts, without any legal first and second posts, *et cetera*, had not made such an attempt. *Richards* v. *Price*, 5 B.C.R. 362.

—Mining law—Statute of Frauds—Interest in land—Mineral Act, 1891, ss. 34-51.]—Per Drake, J.: Under sec. 34 of the Mineral Act, 1891, the interest of a free miner in his mineral claim is an interest in land within the Statute of Frauds. *Stussi* v. *Brown*, 5 B.C.R. 380.

—Mining law—Abandonment of claim—Status of landowner to attack claim—Certificate of improvements—"Rock in place"—Bond.]—Per Davie, C.J.:—Held, that a duly recorded mineral claim may be abandoned before the expiration of the year from the date of its location by absence or other conduct of the holder, evincing an election to surrender it, and, on the facts, that the "Zenith" mineral claim in question was so abandoned; that an exception, expressed in a Crown Grant to the railway company of subsidy lands, of all portions of such lands previously to a certain date, "held as mineral claims," imports only such claims as were then lawfully so held, and that it was open to the railway company to question the validity of mineral claims previously located thereon; that in the case of lands occupied for other than mineral purposes, the giving by the free miner of a bond, under sec. 10 of the Mineral Act, as security for any damage which may be caused to such lands by mining operations, is an imperative pre-requisite to his right to enter and locate a mineral claim thereon; that the finding upon the location of mineral bearing "rock in place," with a vein or ledge having defined walls, is essential to the validity of a mineral claim; that a certificate of improvements, under sec. 46 of the Mineral Act, 1891, is a bar only to adverse claims to the location advanced by other claimants under the Mineral Act, and is not a bar to the rights of claimants of the land as land, to whom the Mineral Act procedure does not apply.—Upon appeal to the Full Court:—Held, that the title to a duly located and recorded mineral claim is equivalent under sec. 34 of the Mineral Act, 1891, to a lease for a year, vested in its owner, and the doctrine of implied surrender by conduct does not apply to it; and the only abandonment by which the owner can be concluded is by notice of abandonment given by him to the Crown, as provided for by sec. 27 of the Act; that the exception from the railway company's Crown Grant of "land held as mineral claims" means *de facto* claims, and the word "lawfully" cannot be imported; that a claimant to the land as land has no *status* to question the due performance by the free miner of the conditions required by the Crown as pre-requisite to his right to a valid mineral claim thereon; that the requirement of a bond by sec. 10 of the Act of 1891 is a directory provision for the protection of the land owner, and is not a pre-requisite to the acquisition by the miner of the mineral rights from the Crown; that the discovery of a mineral vein or lode is not essential to a valid mineral claim; "rock in place" is sufficient; that the words "rock in place" are satisfied by rock *in situ*, bearing valuable deposits of mineral, although not lying between defined walls, or on a vein or ledge; that a certificate of improvements is, under sec. 10 of the Mineral Act, 1891, a bar to adverse claimants in any right and on all grounds except fraud; that holders of mineral claims are not entitled to deal with any portion of the surface, except in accordance with the mining laws, and are not entitled to sell or dispose of the same. *Nelson & Fort Sheppard Railway Co.* v. *Jerry*, 5 B.C.R. 396.

—Mineral law—Mineral Act, 1896, s. 37—Time—Extending after lapse.]—The boundaries of the "Countess" and "Golden Butterfly" mineral claims overlapped. The "Countess" having applied for a certificate of improvements was adversed on the ground of defective location by the "Golden Butterfly," with a view to secure the ground common to the two claims. The secretary of the "Golden Butterfly" had relocated the remainder of the "Countess" ground in his

own name as a fraction. He, upon the assumption that, if the adverse of the "Golden Butterfly" was sustained, the whole of the "Countess" location would be invalidated, did not bring an action attacking it on his own behalf until after the expiration of the statutory sixty days from the publication of the notice of application for the certificate of improvements to the "Countess." He then applied to the Court for leave to bring an action:—Held, that the circumstances were sufficient ground for an order extending the time. *In re Golden Butterfly Fraction Mineral Claim*, 5 B.C.R. 445.

—Mineral Act C.S.B.C., 1888, c. 82, ss. 114, 126 —Foreman—Estoppel—Partnership.]—M. was a member of and held a controlling interest in a mining partnership. He was not formally appointed foreman, but appeared to have been permitted to manage its affairs in the matters in question, and appointed one G. superintendent, who ordered certain goods from M. for the partnership; M. also supplied other goods, accounts for which were passed at a meeting of the partnership:—Held, per Drake J., affirming the Registrar's certificate made upon taking the accounts under the decree allowing the items to M., that sec. 126 of the Act does not preclude a mining partnership from contracting liabilities otherwise than upon the order of a duly appointed foreman; that as to the items passed at meetings of the partnership, it was estopped from disputing its liability. Upon appeal the Full Court affirmed Drake J. *Gray* v. *McCallum* 5 B.C.R. 462.

—Mining lease—Contract for sale of—Order for arrest of vendee—Practice.]

See Debtor and Creditor, I.

—Action to enforce adverse claim—Service of writ—Setting aside claim.]

See Practice and Procedure, XXXII.
And see Company, V.
" " Contract, I.

MISTAKE.

—Contract—Mistake—Rescission—Rectification.]

See Contract, XI.

MONEY.

Action for money had and received—Change of position—Appeal.]—See Appeal, IX.

MORTGAGE.

I. Account, 280.
II. Assignment, 280.
III. Charge on Lands, 280.
IV. Commission on Loan, 281.
V. Covenants and Obligations, 281.
VI. Equity of Redemption, 281.
VII. Fixtures, 281.
VIII. Foreclosure, 282.
IX. Interest, 283.
X. Landlord and Tenant, 283.
XI. Merger, 283.
XII. Mortgage of Lease, 283.
XIII. Power of Sale, 284.
XIV. Practice in Mortgage Actions, 284.

I. Account.

—Accounts in the Master's office—Subsequent incumbrancer—Bonus or special commission on mortgage loan, when allowed.]—On an appeal by a subsequent incumbrancer from the report of the Master on the taking of the account of the plaintiff's claim under a mortgage given by the defendant, the following points were decided:—1. Where the party brought in to the Master's office under notice provided for by Rule 117, Queen's Bench Act, 1895, takes no steps to have the decree varied or set aside, he cannot afterwards object to the plaintiff's right to a decree of foreclosure. 2. Where the plaintiff has served a party with such notice to come in and prove his claim as a subsequent incumbrancer, he cannot afterwards raise an objection that the party so served has no lien on the land. 3. A mortgagee in bringing his accounts into the Master's office should charge himself with the net proceeds only of any rents or profits received by him out of the mortgaged premises, leaving the incumbrancer to surcharge if he considers the mortgagor entitled. *Phillips* v. *Prout*, 12 Man. R. 143.

II. Assignment.

—Action, right of—Conveyance subject to mortgage—Obligation to indemnify—Assignment of —Principal and surety—Implied contract.]—The obligation of a purchaser of mortgaged lands to indemnify his grantor against the personal covenant for payment may be assigned even before the institution of an action for the recovery of the mortgage debt, and, if assigned to a person entitled to recover the debt, it gives the assignee a direct right of action against the person liable to pay the same. *Maloney* v. *Campbell*, 28 S.C.R. 228; affirming 24 Ont. A.R. 224.

III. Charge on Lands.

—Mortgage—Leasehold—Acquisition of reversion by mortgagor.]—Where the assignee of a term, subject to a mortgage of the term and of the rights of renewal and of purchase given by the lease, exercises the right of purchase, the mortgage becomes a charge upon the fee, and the purchaser has no lien upon the fee for the amount of the purchase money in priority to the mortgage. *Building and Loan Association* v. *McKenzie*, 24 Ont. A.R. 599, affirming 28 Ont. R. 316. See hereunder, XII.

—Fraudulent mortgage—Payment of taxes by mortgagees—Lien for same.]—See Lien, VI.

—Mortgagee—Recorded judgment against—Effect of an interest in mortgaged premises.]

See Receiver.

IV. Commission on Loan.

—Stipulation for bonus—Recovery of.]—Where in the negotiations for a loan to be secured by a mortgage, the mortgagee stipulates for a bonus or special commission, or other charge in consideration of advancing the money and in addition to the interest, he may retain it if he deducts the amount at the time from the loan and only advances the balance, or in case the amount is afterwards paid and settled, but otherwise such bonus or special advantage cannot be recovered or allowed in equity: *Potter* v. *Edwards*, 26 L.J. Ch. 468; *Mainland* v. *Upjohn*, 41 Ch. D. 126, followed. *James* v. *Kerr*, 40 Ch. D. 524; *Eyre* v. *Wynn-McKenzie* (1894), 1 Ch. 218, and *Field* v. *Hopkins*, 44 Ch. D. 524, distinguished. *Phillips* v. *Prout*, 12 Man. R. 143.

V. Covenants and Obligations.

—Recital—Covenant.]—An express covenant in a mortgage overrides and excludes an implied covenant. *Rithet* v. *Beaven*, 5 B.C.R. 457.

—Indemnity—Purchase subject to mortgage—Implied covenant—Assignment of right to payment.]—*Glenn* v. *Scott*, 18 C.L.T. Occ. N. 162.

VI. Equity of Redemption.

— New mortgage — Registration — Equitable dower—42 V., c. 22 (O.) — Legal estate — Momentary seizin.] — Although, since the passing of the Act 42 Vict., ch. 22 (O.), an Act to amend the law of dower, a married woman is entitled to dower out of an equity of redemption in land, whether her husband dies seized of it or not, where such equity has arisen by his having executed a mortgage of the legal estate in which she has joined to bar her dower, she is not entitled to dower out of an equity of redemption purchased and sold by him in his lifetime, the legal estate never having vested in him: *Martindale* v. *Clarkson*, 6 Ont. A.R.1. distinguished.—And where a purchaser of land subject to a mortgage paid off and procured a discharge in favour of the mortgagor, and on the same day obtained his conveyance from him, giving back a mortgage, with bar of dower, for the balance of the purchase money, all of which instruments were registered in the above order, it was held, that the wife of such purchaser was not entitled to dower out of a surplus arising on a sale under a subsequent incumbrance, her husband never having been even momentarily seized of the legal estate in the land. *Re Luckhardt*, 29 Ont. R. 111.

VII. Fixtures.

Mortgage, construction of—Trade fixtures—Chattels—Tools and machinery of a "going concern"—Constructive annexation—Mortgagor and mortgagee.]—The purposes to which premises have been applied should be regarded in deciding what may have been the object of the annexation of movable articles in permanent structures with a view to ascertaining whether or not they thereby became fixtures incorporated with the freehold, and where articles have been only slightly affixed but in a manner appropriate to their use and shewing an intention of permanently affixing them with the object of enhancing the value of mortgaged premises or of improving their usefulness for the purposes to which they have been applied, there would be sufficient ground, in a dispute between a mortgagor and his mortgagee, for concluding that both as to the degree and object of the annexation they became parts of the realty. *Haggert* v. *Town of Brampton*, 28 S.C.R. 174.

—Fixtures—Wooden building—Removability—Mode of use—Constructive attachment to soil.]

See Fixtures.

And see Bills of Sale and Chattel Mortgages, II.

VIII. Foreclosure.

—Agreement for compromise of claim—Discretion of Chambers Judge to order stay.]—Plaintiffs haying obtained orders for judgment in two foreclosure suits, an agreement was entered into in writing between the parties for a settlement of the suits, extending the time for payment, and providing for the payment of different sums at different dates, and also providing that when the defendant company paid the balance of the amount due upon the judgments, the plaintiff should at once pay to F. the difference between the sum of $15,000 and the amount of the judgments. The defendant company made one payment, but failed to make the other within the time agreed upon, and plaintiff thereupon proceeded to enforce the judgments, and advertised the properties for sale. Before the day of sale, defendant offered to pay the balance due, but in making such payment, claimed the right, under a verbal agreement, to pay the difference between the $15,000, and the balance due on the judgments, by a cheque of F., that sum being at once payable to him, by plaintiff, under the terms of the written agreement. Plaintiff having refused to accept payment in this way, an order was obtained from a Judge at Chambers, staying the sale for a period of 90 days to enable the rights of the parties to be ascertained:—Held, that the order for the stay was clearly within the discretion of the judge who granted it, and that such discretion was properly exercised. *Auchterlony* v. *Palgrave Gold Mining Co.*, 29 N.S.R. 414.

—Practice—Foreclosure—Affidavit of non-payment.]—The certificate of the registrar upon taking the accounts under the mortgage in a foreclosure action directed that the balance found due should be paid by the mortgagor at the office of the agent of the plaintiff (foreign) company in Victoria. Upon motion for final decree upon the affidavit of non-

payment as directed, made by the agent:—Held, that the affidavit of both principal and agent was necessary. *Canada Settlers' Loan Co.* v. *Renouf*, 5 B.C.R. 243.

—Foreclosure suit—Offer to suffer judgment by default—Practice.]

See PRACTICE AND PROCEDURE, XVI.

IX. INTEREST.

— Mortgage — Interest — Redemption — R. S. O. c. 111, s. 17.]—In an action of redemption by a second mortgagee against a first mortgagee the latter is entitled to only six years' arrears of interest: *Delaney* v. *Canadian Pacific R. W. Co.*, 21 Ont. R. 11, overruled on this point. *McMicking* v. *Gibbons*, 24 Ont. A.R. 586.

—Mortgage—Interest after maturity—Rate.]—A mortgage contained no proviso for payment of interest at the rate therein specified after maturity, but merely a covenant to pay same "at the day and time and in manner above mentioned:—Held, that the interest, after maturity, was outside the covenant, and was recoverable only as damages for detention of the principal, at the statutory rate of six per cent., following *People's Loan Co.* v. *Grant*, 18 S.C.R. 262. *Cunningham* v. *Hamilton*, 5 B.C.R. 539.

And see INTEREST.

X. LANDLORD AND TENANT.

—Mortgagee's warrant to distrain—Stranger's goods—Authority of bailiff.]

See LANDLORD AND TENANT, IV.

XI. MERGER.

—Conveyance of equity of redemption—Registry.]—A conveyance of the equity of redemption by a mortgagor to a mortgagee of lands does not constitute a discharge of the mortgage by merger, unless it is made to appear that such a result was intended by the parties; and when a mortgagee applies to register a conveyance of the equity of redemption the registrar should not mark the mortgage merged unless at the request of the mortgagee. *In re Major*, 5 B. C.R. 244.

XII. MORTGAGE OF LEASE.

—Leasehold estate—Assignment of equity of redemption—Aquisition of revision by assignee—Priority—Merger.]—The assignee of a term, who takes the assignment subject to a mortgage and afterwards acquires the reversion, cannot levy out of the mortgaged premises, to the prejudice of the mortgagees, the ground rent reserved by the lease which he was himself under an obligation to pay before becoming owner of the fee: *Emmett* v. *Quinn*, 7 Ont. A.R. 306, distinguished. *Mackenzie* v. *Building & Loan Association*, 28 S.C.R. 407, affirming 24 Ont. A.R. 599. Leave to appeal to Privy Council refused. See hereunder III.

XIII. POWER OF SALE.

—Power of sale—Sale by mortgagee to himself—Subsequent valid sale producing surplus over mortgage debt—Mortgagee in receipt of rents—Interest.]—A mortgagee, his power of sale on default having arisen, sold the mortgaged premises ostensibly to a third person, in reality to himself. Subsequently he sold a portion of the premises to a third person for an amount in excess of the mortgage debt. He continued in possession of the remaining part, and received rent:—Held, that the sale by the mortgagee to himself was abortive, and that he was a mortgagee in possession, and should account to the mortgagor for the surplus from the second sale, together with the rent, and interest on both sums and costs. *Mitchell* v. *Kinnear*, 1 N.B.Eq. 427.

—Negligence in exercising power of sale.]—The plaintiff claimed damages for the sale of his farm by defendants at auction under powers of sale contained in two mortgages, interest being in arrear. The property was near Portage la Prairie and in the centre of a district of good farming land. The evidence shewed, in the opinion of the Court, that the property was worth at least $3,500, and would have brought that amount at an auction sale if properly advertised. Defendants, however, sold it for $2,800 subject to unpaid taxes:—Held, that defendants were liable for the difference between the two amounts, because they had so negligently and carelessly conducted the sale proceeding that the property was sacrificed.—[The objections to the advertisement and sale were as follows: 1. There was no advertisement in any local newspaper; but only in a newspaper published in the town of Brandon, between seventy and eighty miles distant, and which was not shewn to have any circulation in the neighbourhood of Portage la Prairie; 2. the advertisement itself made no mention of any of the improvements on the farm, which had valuable buildings on it, and 100 acres ready for the next year's crop, but simply described the property as the N.E. ¼ section 22, township 12, range 7 west. It also contained a description of another property to be offered for sale at the same time, as to which it stated that "the vendors are informed that on parcel one (1) there is a two-story dwelling house," thus suggesting the inference that the plaintiff's land was unimproved; 3. the sale took place at Brandon instead of Portage la Prairie.]:—*Aldrich* v. *Canada Permanent*, 24 Ont. A.R. 193, and *National Bank of Australasia* v. *United Hand-in-Hand, etc. Co.*, 4 App. Cas. 391, followed. *Carruthers* v. *Hamilton Provident and Loan Society*, 12 Man. R. 60.

XIV. PRACTICE IN MORTGAGE ACTIONS.

—Arrears of interest—Causes of action—Splitting—Division Court—Jurisdiction.]

See DIVISION COURTS.

—Foreclosure suit—Offer to suffer judgment by default.]

See PRACTICE AND PROCEDURE, XVI.
And see SHIPPING, IV.

MOVABLES.

Immovable by destination—Incorporation with realty—Presumption.]—See IMMOVABLES.

MUNICIPAL CORPORATIONS.

I. BORROWING POWERS, 285.
II. BY-LAW, 285.
(*a*) *Construction*, 285.
(*b*) *Infraction*, 286.
(*c*) *Proceedings to quash*, 286.
(*d*) *Repeal*, 286.
(*e*) *Resolution of Council*, 286.
(*f*) *Submission to ratepayers*, 287.
(*g*) *Validity*, 288.
III. CONTRACTS, 290.
IV. DITCHES AND WATERCOURSES, 292.
V. DRAINAGE, 292.
VI. EXPROPRIATION OF LAND, 294.
VII. HIGHWAYS, 296.
VIII. MAINTENANCE OF COUNTY BUILDINGS, 302.
IX. MUNICIPAL ELECTIONS, 302.
X. MUNICIPAL TAXES, 303.
XI. NEGLIGENCE, 305.
XII. PUBLIC OFFICERS, 306.
XIII. PUBLIC WORKS, 306.
XIV. STATUTE LABOUR, 307.
XV. WATER WORKS, 307.

I. BORROWING POWERS.

—Current expenditure—Inquiry by lender—56 V., c. 35, s. 10 (O.)—Repayment of money lent.] —Under sec. 413 of the Municipal Act, 55 Viet., ch. 42 (Ont.), as amended by 56 Viet., ch. 35, sec. 10, a lender is bound to inquire into the amount of taxes authorized to be levied by a municipality to meet the then current expenditure, and cannot lawfully lend more than that sum, although not bound to inquire into the existence of an alleged necessity for borrowing. A municipal council may, however, with the consent of the ratepayers, raise money by debentures to repay money so unlawfully borrowed, when the expenditure, although not included in the estimates, was for purposes within the general powers of the corporation. *Fitzgerald* v. *Molsons Bank*, 29 Ont. R. 105.

II. BY-LAW.

(*a*) *Construction.*

—Exemption from taxes—Resolution and by-law —Action on.]—The council of a municipality adopted a resolution to the effect that the secretary be authorized to announce in the public newspapers that all manufacturers desirous of establishing themselves in the municipality should have exemption from taxes. Subsequently a formal by-law was adopted which provided that all new manufactures introduced and established in the municipality should be exempt from all real estate taxes for a period of ten years, and that all existing manufactures should have a right to the same exemption on proof that they were within the conditions imposed by the by-law. The appellants established a bakery in the municipality after the adoption of the resolution:—Held, that the effect of the resolution and by-law was not to establish an exemption *de plein droit*. The resolution was merely an invitation to establish manufactures with an assurance that exemption from taxation would be granted; but the council under the by-law had the right to pronounce upon each application upon its merits, and there being no such decision in favour of appellants prior to the amalgamation of the municipality with the city respondent, appellants could not claim exemption from taxes. *Stuart* v. *The City of Montreal*, Q.R. 6 Q.B. 555.

(*b*) *Infraction.*

—Information—Fine.]—Any person may properly lay an information for the infraction of a city by-law, though the fine goes to the city. *The Queen* v. *Chipman*, 5 B.C.R. 349.

(*c*) *Proceedings to Quash.*

—By-law for opening road—Petition to quash—Judgment of Circuit Court—Appeal to Court of Review—Future rights.]—See APPEAL, IV.

(*d*) *Repeal.*

—By-law — Erection of abattoirs—Privilege—Subsequent repeal — Vested rights — Art. 649 M.C.] — An abattoir was erected by the plaintiff within the municipality of defendant, under a by-law which permitted such erection, and granted a privilege for fifteen years from date of by-law. The defendant subsequently passed another by-law absolutely prohibiting abattoirs within the municipality:—Held, that although the defendant had authority to repeal the by-law, it was nevertheless bound to compensate the plaintiff for the loss of his vested right to the fifteen years' term under the original by-law. *Beaudoin* v. *Le Village DeLorimier*, Q.R. 13 S.C. 477.

(*e*) *Resolutions of Council.*

—Municipal Code — Special meeting — Illegal sitting.]—A special meeting of the municipal council of the defendant corporation had been called for the 25th April, 1896. The council met in the forenoon, and after a few minutes' deliberation, the meeting broke up without any adjournment being made. After an hour's interruption, some of the council-

lors agreed to continue the meeting which had been so interrupted, and there they adopted several resolutions: — Held, that these resolutions were illegal and void, having been adopted by a council sitting in an irregular manner and contrary to law. *Schambier* v. *Corporation of Halifax South*, Q.R. 12 S.C. 197.

—Ultra vires—Wages of workmen employed on work for corporations.]—It is not *ultra vires* or in itself unreasonable for the council of a municipal corporation to provide by resolution that contractors on corporation works should agree to pay their labourers or other workmen not less than a stated minimum rate of wages, and that such minimum rate should be paid to all labouring men to be employed on any contracts for corporation work, or on any new construction work undertaken by the corporation, although competent workmen might be hired at a lower rate of wages. In this case it was shewn that the defendants' council had acted on such a resolution for three years, and evidence was given to shew that the rate provided was not more than a fair living rate of wages in the city, and that the council was actuated by the belief that it was not in the interest of the city to have a number of its citizens employed at less than a fair living wage. No evidence was given to shew that defendants' council had so acted through any fraudulent or improper motive:—Held, that the matter in dispute appeared to be a question of policy in the government of the city as to the expediency of which the ratepayers and not the Court should pronounce, and that the plaintiff's motion for an injunction to restrain the defendants from continuing to act on the resolution complained of should be dismissed. *Kelly* v. *City of Winnipeg*, 12 Man. R. 87.

— Resolution reducing salary of officer — Vancouver Incorporation Act, 1886, s. 150, s.s. 13 and s. 154.]—Sub-sec. 13 of sec. 150 of the Act, requiring a two-thirds vote of the members present for rescinding previous actions of the council, does not apply to a resolution of the council altering the amount of salary payable to an officer whose engagement might, under sec. 154, have been terminated by one month's notice on either side. *Tetley* v. *City of Vancouver*, 5 B.C.R 276.

(f) Submission to Ratepayers.

—By-law authorizing loan—Vote on approbation of majority—Sufficiency of by-law — Details.]—The corporation of St. Paul prepared a by-law authorising it to borrow $100,000 for the construction of roads and drains, and having submitted it to the ratepayers it received the approval of a majority in number and value of those who voted. The by-law did not state in detail the nature and extent of the works, nor the division of the loan between the two classes of construction indicated, but some days after the corporation passed a general by-law for the construction of roads and drains with all necessary details and precision:—Held, that by the terms of Arts. 4529, 4530 and 4536 R.S.Q. the approval of an absolute majority of the municipal electors is not necessary, but it was sufficient that the by-law authorising the loan received the approval of a majority in number and value of the electors who took part in the vote:—Held, also, that the by-law authorising the loan formed one with the general by-law for the construction of roads and drains (which was only the execution of the former), and, therefore, could not be set aside for want of precision. *Hadley* v. *Town of St. Paul*, Q.R. 13 S.C. 88.

(g) Validity.

—Repeal—Public Schools Act, R.S.O. c. 292, ss. 38, 39—Alteration of school sections—Township Council—County Council—Appeal.]—It is *ultra vires* a township council which has regularly passed a by-law under the provisions of s. 38 of the Public Schools Act, creating a new rural school section from parts of existing school sections, to repeal or alter such by-law until the expiration of five years as provided in the Act, although the repealing by-law is passed before that creating the new section is to take effect. The only remedy is an appeal to the county council against the by-law, under s. 39 of the Act. *Re Powers and Township of Chatham*, 29 Ont. R. 571.

—By-Law—Registration—Plans—"Instrument" — Notice.]—A municipal by-law, passed in 1888, providing for the opening of a road, was received at the proper registry office and the fee for registry was paid, but the by-law was never entered or registered, because it did not conform and refer to the plans fyled with the registrar of the lands through which the road was opened, as required by R.S.O. 1887, ch. 114, s. 84, s.s. 2:—Held, that the by-law was an "instrument" within the meaning of that section, and as defined by s. 2, but was not an "instrument capable of registration" within the meaning of s. 96 of R.S.O. 1897, ch. 136, and the registrar was right in refusing to register it; and, never having been registered, it never became "effectual in law" for any purpose; and a subsequent by-law providing for the cost of opening the road was, therefore, invalid.—The requirement of the Municipal and Registry Acts (R.S.O. 1897, ch. 223, s. 633, and ch. 136, s. 86) that such a by-law shall be registered before it "becomes effectual in law," is not merely for the purpose of notice under the registry laws. *Re Henderson and City of Toronto*, 29 Ont. R. 669.

—Dairy inspection—Ultra vires—Municipal Act, s. 593, and 60 Vict., c. 20, s. 14.]—After the decision in *Re Taylor and City of Winnipeg*, 11 Man. R. 420, the legislature by 60 Vict., ch. 20, s. 14 amended s. 593 of the Municipal Act, R.S.M., ch. 100, by giving the munici-

palities additional powers in connection with the regulation and licensing of milk vendors and inspection of cows and stables, and the council of the city then passed a new by-law for the same purposes as the former by-law, which had been quashed. Application was then made to quash the new by-law. The following objections taken to it were not sustained, and it was held that the by-law was not unreasonable or *ultra vires* in respect of any of them: 1. That although the council has power to prevent and regulate the sale of milk in the city, clause 3 assumed to regulate the sale of milk outside of the city limits for use in the city, and to pass regulations which might prevent a citizen from going outside the city and purchasing some milk for his own use; 2. That the by-law would enable the veterinary surgeon to delay the second inspection of cows found, on a first inspection, to be affected by disease, and thereby to injure the dairymen; 3. That by clause 12 of the by-law, the issue of a license in a disputed case is left to the discretion of a committee of the council who might exercise in an arbitrary and unfair manner. But held, that the council has no authority to pass a by-law requiring a licensed vendor of milk, when asked by a health officer or veterinary inspector, to state where he obtained the milk he has sold or is about to sell, along with a cancellation of licenses and other penalties for an infraction of the by-law, because the effect would be that, under threat of liability to a penalty for not giving the information, a licensee might be compelled to make a discovery which would subject him to a penalty: —Held, also, that it is *ultra vires* of the council to pass a by-law requiring a vendor of milk to permit a sample or samples to be taken for examination without compensation under penalties in case of refusal: *Re Taylor and City of Winnipeg; Re Winnipeg Dairy By-law*, 12 Man. R. 18.

—Municipal Clauses Act 1896, s. 50, s.s. 90 and s. 81 — By-law — Unreasonableness — Commitment — Distress.]—The Municipal Clauses Act, 1896, s. 50, sub-sec. 90, gave to the council of every municipality the power to pass by-laws in relation to "Public morals, including the observance of the Lord's Day, commonly called Sunday." The Municipal Council of Richmond passed a by-law thereunder, "that no person shall do or exercise any worldly labour, business, or work of his ordinary calling upon the Lord's Day or any part thereof, works of necessity or charity only excepted," etc. Sec. 81 provides: "Every fine may be recovered and enforced with costs, by summary conviction, before any justice of the peace, etc; and in default of payment the offender may be committed to the common gaol," etc. Sec. 81, sub-sec. (2) provides: "The justice may by warrant cause any such pecuniary penalty, etc., if not forthwith paid, to be levied by distress, etc. In case of there being no distress found, etc., the justice may commit the offender to the common gaol." The defendant was, for an offence against the by-law, committed to gaol for non-payment of the fine, without previous issue of any distress warrant:—Held, upon motion for *certiorari* quashing the conviction, that the by-law was bad for unreasonableness. That the power of recovering the fine by imprisonment, given by s. 81, is not limited to the power of issuing distress warrant, etc., provided by s. 81, sub-sec. (2), and that the form of the commitment was regular. *The Queen* v. *Petersky*, 5 B.C.R. 549.

—License fee paid under illegal by-law—Mistake in law—Voluntary payment—Duress—Payment colore officii.]—Money voluntarily paid to a municipal corporation under a claim of right, without fraud or imposition, for an illegal tax, license or fine, cannot—there being no coercion, ignorance or mistake of fact, but only ignorance or mistake of law—be recovered back from the corporation, either at law or in equity, even though such tax, license fee or fine could not have been legally enforced.—Payments made *colore officii* rest upon the principle of that species of compulsion known as duress, which consists in general of some actual or threatened exercise of power possessed or believed to be possessed by the person exacting or receiving the payment over the person or property of another, from which the latter has no other means of immediate relief than by making payment. *Wheatley* v. *City of Charlottetown*, 18 C.L.T. Occ. N. 188.

—Sunday observance—Municipal by-law—Conviction under—Distress.]

See CRIMINAL LAW, XV.

III. CONTRACTS.

—Opening streets - Condition for in contract—Resolution—By-law—Enforcement of contract—Mandamus.]—P. and other proprietors conveyed lands to the town of L. on condition that the town should maintain them as public streets, and open and extend such streets to a point named as the same were built upon. The latter condition not being fulfilled the town was put *en demeure* to perform it, and eventually a writ of mandamus was issued to compel performance:—Held, that the obligation to open and extend the streets being a simple contractual obligation of a private nature, mandamus was not a proper remedy, more especially as there was an effectual remedy at law, and because the charter of the town made the opening of new streets entirely a matter of discretion:—Held, further, that even if by the charter of the town a resolution of the council was sufficient authority for the corporation to enter into the contract, such resolution would not suffice to bind the corporation towards the public to open the new streets, as such opening must be ordered by by-law. *Page* v. *Town of Longueuil*, Q.R. 7 Q.B. 262.

—Privileges and powers conferred—Building of aqueduct—Peformance of conditions—Revocation.]—By a by-law of 25th February, 1895, amended 16th April, 1895, the council of the

town of Fraserville transferred to plaintiffs its privileges and powers in connection with the building and working of an aqueduct, that is to say, "the exclusive privilege of providing, selling or giving, within the limits of this town, whether for purposes of supply, or of fire, or for any other purposes whatsoever, of good, drinkable water, and this for the period of 25 years," subject to the charge of making, within two months, "the drawings, plans, estimates and specifications," and have them accepted "from a sanitary standpoint" by the Board of Health; also that the quality and "method of supply (*provenance*)" of the water should be accepted by the town council; the plaintiffs to build the aqueduct at their own cost, and complete it in the greater part of the town by December 1st, 1895, the aqueduct to be sufficient to furnish water to a town with a population of not less than 10,000 people at a minimum of 10 gallons per head each day, and to place the town in the highest class for insurance against fire. The town was to have a right to receive the water "for fire purposes" at a rate of $30 for each hydrant, or $25 if it took more than fifty, said hydrants to be constructed by plaintiffs at their own cost as part of the aqueduct, the town having power to determine the number of hydrants to be made "at any time" at the places it would fix, "and to undertake to use said hydrants at the price agreed upon for at least a year." No one was bound to take the water, but every one who asked for it should take it for at least one month. Plaintiffs, before beginning the work, were to furnish security of $1,000 for a year. Plaintiffs asked the town council (*a*) to accept "Lake Hickson" as the source for the water, (*b*) to fix the number of hydrants they would take, and (*c*) to accept two sureties they offered for the $1,000. They alleged delay on the part of the council in replying to these demands, which prevented them from completing their contract, and claimed $30,000 damages:—Held, that plaintiffs had first, at their own cost and charges, to furnish to the town drawings, data and evidence sufficient to establish that "Lake Hickson" could furnish the quantity of water required, without which the town was not obliged to accept said lake; that the town was not bound at the time to fix the number of hydrants it might require; it was not even obliged to take any; it was only when they were wanted that the number was to be fixed; and that it was for plaintiffs to forsee, in the construction of their aqueduct, what would be necessary, when occasion should arise, to furnish the town with the hydrants they might then demand:—Held, also, that it was the duty of plaintiffs to furish sureties with sufficient property, their solvency to be determined by their real estate. They should shew, at the same time, that the sureties had alienable real estate, free of hypothecs and capable of being taken in execution, to the value of at least $1,000.—The Court, dismissing the action, granted the conclusion of the defendant (the town) demanding the revocation of the privileges and rights conferred by them upon the plaintiffs. *Mignault* v. *Town of Fraserville*, Q.R. 13 S.C. 421.

IV. Ditches and Watercourses.

—Municipal Code Arts. 21, 22, 875—Maintenance of watercourse—Railway companies—Application to federal companies.]—The provisions of the Municipal Code of Quebec relating to the maintenance of watercourses, and especially of Art. 875 which requires all the watercourses in a municipality to be kept in good condition; Art. 21 which imposes on every railway company the duty of maintaining the watercourses upon its road; and Art. 22 which imposes a penalty upon every railway company neglecting to keep them in good condition, applies to a company which falls under the exclusive jurisdiction of the Parliament of Canada: *Corporation of St. Joseph* v. *Quebec Central Railway Co.*, 11 Q.L.R. 193 followed; *Canadian Pacific Railway Co.* v. *Corporation of Notre Dame de Bonsecours*, Q.R. 7 Q.B. 121.

V. Drainage.

—Assessment—Drainage—R.S.O. (1887) c. 174—46 V., c. 18 (Ont.)—Misapplication of funds—Reassessment—Intermunicipal works.]—Where a sum amply sufficient to complete drainage works as designed and authorized by the by-law for the complete construction of the drain has been paid to the municipality which undertook the works, to be applied towards their construction, and was misapplied in a manner and for a purpose not authorized by their by-law, such municipality cannot afterwards, by another by-law, levy or cause to be levied from the contributors of the funds so paid any further sum to replace the amount so misapplied or wasted. *Township of Sombra* v. *Township of Chatham*, 28 S.C.R. 1.

—Adjoining proprietors of land—Different levels—Injury by surface water—Watercourse.]—O. and S. were adjoining proprietors of land in the village of Frankford, Ont., that of O. being situate on a higher level than the other. In 1875 improvements were made to a drain discharging upon the premises of S., and a culvert was made connecting with it. In 1887 S. erected a building on his land and cut off the wall of the culvert, which projected over the line of the street, which resulted in the flow of water through it being stopped and backed up on the land of O., who brought an action against S. for the damage caused thereby:—Held, that S. having a right to cut off the part of the culvert which projected over his land was not liable to O. for the damage so caused, the remedy of the latter, if he had any, being against the municipality for not properly maintaining the drain. *Ostrom* v. *Sills*, 28 S.C.R. 485, affirming 24 Ont. A.R. 526.

—Drainage—Work done beyond limits of initiating township—Error in mode of assessment—Assessment for future maintenance—Drainage Act, 1894—57 Vict. c. 56, s. 75 (O.).]—Under

s. 75 of the Drainage Act, 1893, 57 Vict. ch. 56 (Ont.), any municipality whose duty it is to maintain any part of a drainage work constructed under the provisions of any Act respecting drainage by local assessment may, without being set in motion by any complainant, initiate proceedings for its repair and improvement and for extending its outlet, although nearly the whole of the cost is assessable against adjoining townships. Where, however, the engineer of the initiating township assessed lands in the adjoining townships for improved outlet upon the principle that all lands within the drainage area were liable, no matter how remote from the improved outlet, though such outlet was unnecessary for their drainage or cultivation, the original outlet being in fact sufficient, his report was set aside, Burton, C.J.O. dissenting. Per Burton, C.J.O.—A question of this kind should be dealt with by the Court of Revision, and where the engineer acts in good faith his report cannot be set aside upon such a ground.—There is no power to assess for the estimated cost of future maintenance of a drainage work. Judgment of the drainage referee reversed. *In re Township of Caradoc and Township of Ekfrid*, 24 Ont. A.R. 576.

—Drainage—Repairs to drain—"Person injuriously affected"—Mandamus—Drainage Act, 1894—57 V. c. 56, s. 73 (Ont.).]—Under s. 73 of The Drainage Act, 1894, [57 Vict. ch. 56 (Ont.)] a ratepayer whose property has been assessed for the maintenance and repair of a drain, as deriving benefit from it, is a person injuriously affected by its want of repair, even though he has not suffered any pecuniary loss or damage by reason thereof, and he may be awarded a mandamus to compel the municipality, whose duty it is to keep the drain in repair, to do such work as may be necessary, unless the municipality can shew that, even if the drain were repaired, it would from changes in the surrounding conditions, be useless to the applicant's property. *Stephens* v. *Township of Moore*, 25 Ont. A.R. 42.

—Land injuriously affected—Appeal to Court of Revision—Claim for damages—Sufficiency of notice—Filing notice—Arbitration.]—Under the drainage clauses of the Municipal Act of 1892, a land owner who is injuriously affected by a drainage work and who is assessed for part of the cost is not bound to appeal to the Court of Revision for the allowance to him of damages to be set-off against his assessments he has his remedy by arbitration or action: *Ellice* v. *Hiles*, 23 S.C.R. 429, considered and distinguished.—Whether such a claim is made by application for arbitration or by action is immaterial; in either event the drainage referee has jurisdiction to deal with it.—The provision of sub-section 3 of section 93 of the Drainage Act, 1894, requiring a copy of the notice of claim to be fyled with the County Court clerk is directory and not imperative, and recovery is not barred where notice of the claim is duly given to the municipality and an action commenced within the time limited, but a copy of the notice is not fyled. A notice that the claim is for damages sustained "by reason of the enlargement and construction" of the drain in question is sufficient to support a claim for damages for interference, because of the drain, with access to part of the claimant's farm. *Thackery* v. *Township of Raleigh*, 25 Ont. A.R. 226.

—Negligence in exercising statutory powers—By-law—Action—Arbitration—Pleading—Municipal Act, ss. 665, 480, 597.]—The statement of claim alleged that the defendant, by constructing in a negligent and improper manner a ditch for drainage purposes, had caused the plaintiff's land to be overflowed with water whereby he had suffered damages, but did not allege that any by-law had been passed by the council of the municipality authorizing the construction of such drain. It was demurred to on the ground that the plaintiff's remedy was confined by sec. 665 of the Municipal Act to an arbitration:—Held, that it was unnecessary to decide whether that section prevents a party from resorting to an action in case of damage resulting in the manner where negligence is charged. But as, under the Municipal Act, secs. 480 and 597, a municipality has no power to construct drainage works except under a by-law duly passed, and the statement of claim did not shew that there had been any by-law to authorize the work in question, for all that appeared the work might have been done without statutory authority, and the demurrer should be overruled with costs. *Foster* v. *Municipality of Lansdowne*, 12 Man. R. 41.

VI. Expropriation of Land.

—Homologation of plan—Servitude—Right to evict.]—The right possessed by the City of Montreal, under its charter, 52 V. ch. 79 Art. 207, after the homologation and confirmation of a plan shewing the direction of a projected street, to expropriate the land for such street without paying for the improvements and erections put upon it since the confirmation of the plan, constitutes, not a right of servitude but an eventual right of eviction. *Desloges* v. *Desmarteau*, Q.R. 6 Q.B. 485.

—Expropriation of land under lease—Recourse of lessee for indemnity—Art. 2128 C.C.]—The lessee of land expropriated for public purposes has a recourse for indemnity against the expropriating party independently of the proprietor. *Corporation of Verdun* v. *Grand Trunk Boating Club*, Q.R. 7 Q.B. 185. As to nature of such recourse see Action, VII.

—Expropriation by commissioners—Excessive valuation—Assessment roll—52 V. c. 59, s. 258 (P.Q.).]—R. was owner of a piece of land in the City of Montreal forming part of lot No. 32, which piece had been expropriated for the enlargement of the street on which it fronted. The expropriation commissioners, believing

that the whole of lot 32 was to be assessed, placed in the assessment roll the amount to be charged upon it, and becoming aware of their error later, instead of making a new roll in order to divide the assessment equally among the property owners, they imposed upon the piece belonging to R. the whole sum which they had assessed upon lot 32, and in order to do so gave said piece an excessive valuation:—Held, that the commissioners had committed an illegal act, and were guilty of a grave injustice against R., and the assessment roll should be quashed. *Ramsay* v. *City of Montreal*, Q.R. 7 Q.B. 214.

—Street—Dedication—Plan made by owners of lots—Subsequent expropriation—Compensation.]—Where persons owned certain lots of land, in common (of which they subsequently made a partition), the designation of one of the lots as a street upon the plan made by them—which street, however, was not actually opened—did not effect such a dedication of it as to give the public any rights therein, or to relieve the municipality from the obligation of making compensation for it when required as a public street, and such compensation was due to the person who was owner at the date of the expropriation. —If the designation of the lot in question as a street upon the plan made by the parties created any servitude, it was only to the extent of a private right of way across the lot to and from the adjacent lots, and the existence of such right of way did not diminish the liability of the municipality to pay the full value of the lot when requiring it for public use, nor did it affect the liability of the original owner of some of the lots, and the representative of the original owner of the rest of the property, to contribute toward such compensation in proportion to their respective interests in the adjoining lots. *Warminton* v. *Heaton*, Q.R. 7 Q.B. 234.

—Land for public street—Right of corporation to take possession—Remedy of proprietor.]—A municipal corporation has no right to take possession of land for a public road without first expropriating the same in the manner provided by the Municipal Code. A proprietor who has been dispossessed without these formalities can, without having had the *procès verbal* establishing the road annulled within thirty days, maintain a possessory action against the corporation and recover damages. *Walsh* v. *Corporation of Cascapediac*, Q.R. 7 Q.B. 290.

—Capacity of commissioner—Recusation—Interest—52 V., c. 79, s. 213, s.s. 1 and 3 (P.Q.).]—In the case of commissioners appointed to value lands expropriated by the city of Montreal, and to apportion the cost of the expropriation, the relationship of a commissioner to the owner of an immovable which had to be taken for the purposes of the expropriation is not a ground for rejection *(recusation)* of such commissioner.—*Semble*, that interest is the only ground for rejection of a commissioner. 52 Vict., ch. 79, sec. 213, sub-secs. 1 and 3. *Ethier* v. *Ewing*, Q.R. 12 S.C. 134.

—Municipal Code—Delegation of powers.]—It is not certain that a municipal corporation has the right under the Municipal Code to transfer its powers of expropriation to a company. *Atkinson* v. *Stadacona Water, Light & Power Co.*, Q.R. 12 S.C. 289.

—City of Montreal—Effacement of line from homologated plan.]—The plaintiff, before commencing to build, obtained the street line from the city of Montreal and erected his house on that line. The defendant corporation subsequently effaced the line from the homologated plan of the city:—Held, that the plaintiff was entitled to recover compensation to the extent of the damage suffered by him: *Grenier* v. *City of Montreal*, 25 L.C.J. 138 followed. *Gibeau* v. *City of Montreal*, Q.R. 13 S.C. 473.

VII. Highways.

—Old trails in Rupert's Land—Substituted roadway—R.S.C. c. 50, s. 108—Reservation in Crown Grant—Dedication—User—Estoppel—Assessment of lands claimed as highway—Evidence.]—The user of old travelled roads or trails over the waste lands of the Crown in the North-West Territories of Canada, prior to the Dominion Government Survey thereof does not give rise to a presumption that the lands over which they passed were dedicated as public highways.—The land over which an old travelled trail had formerly passed, leading to the Hudson Bay Trading Post at Edmonton, N.W.T., had been enclosed by the owner, divided into town lots and assessed and taxed as private property by the municipality, and a new street substituted therefor as shewn upon registered plans of subdivision and laid out upon the ground, had been adopted as a boundary in the descriptions of lands abutting thereon in the grants thereof by Letters Patent from the Crown:—Held, that under the circumstances there could be no presumption of dedication of the lands over which the old trail passed as a public highway, either by the Crown or by the private owner, notwithstanding long user of the same by settlers in that district prior to the Dominion Government Survey of the Edmonton Settlement. *Heminick* v. *Town of Edmonton*, 28 S.C.R. 501.

—Highways—Obstruction—Notice.]—A house which was being moved from one part of a town to another was allowed to stand over night upon one of the streets without a watchman or warning light. The horses attached to a carriage in which the plaintiff was, while being driven past the house that night, took fright, and the plaintiff was injured. Some of the town councillors knew that the house was being moved, and two of them knew that it had been left standing on the street for the night:—Held, that, assuming that the house was an obstruction to the highway, there was not sufficient notice or sufficient lapse of time to impose liability upon the corporation: *Castor* v. *Uxbridge*, 39 U.C.Q.B. 113; *Toms* v. *Whitby*, 37 U.C.Q.B. 100; and *Maxwell* v.

Clarke, 4 Ont. A.R. 460, referred to. *Rice* v. *Town of Whitby*, 25 Ont. A.R.191, reversing 28 Ont. R. 598.

—Injury from non-repair of highway—Notice of accident—Consolidated Municipal Act, 1892, s. 531, s.s. 1—57 V. c. 50, s. 13 (O.)—59 V. c. 51, s. 20 (O.).]—The provisions of s. 531, s.s. 1, of the Consolidated Municipal Act, 1892, amended by 57 Vict. ch. 50, sec. 13, and re-amended by 59 Vict. ch. 51, s. 20, as to the notice requisite to be given to municipal corporations in order to hold them liable for accidents arising from non-repair of highways, are applicable only to actions brought against such corporations singly, and not to actions brought against two or more jointly, as in this case, against a township and an incorporated village, where the plaintiff might fail against one corporation by reason of want of notice to it, and yet be entitled to recover against the other, it having had due notice. *Leizert* v. *Township of Matilda*, 29 Ont. R. 98.

—Want of repair—Hinge on trap-door on sidewalk—Accident—Negligence.]—The existence of hinges on a trap-door a little more than an inch above the level of the sidewalk in a city, affixed by the owner of the abutting premises for convenience of access to his cellar, and against which the plaintiff, who was well aware of their existence, tripped and injured himself, does not constitute such a want of repair as to render the corporation liable for negligence. *Ewing* v. *City of Toronto*, 29 Ont. R. 197.

—Tiles placed on side of highway—Accident—Negligence.]—On the side of a township road where there was a fill of about fourteen feet, with railings on either side, a quantity of tiles, of a large size, and of a light grey color, were, shortly before the accident, piled by defendants on the side of the highway in a slight hollow behind the railing, for the purpose of repairing the culvert which ran through the fill. Some planks were thrown over them, and a board nailed between the two boards forming the railing, so as to further hide the tiles from view:—Held, that this did not constitute evidence of negligence on the defendants' part so as to render them liable for injuries sustained by the plaintiff by reason of the horse, which he was driving, becoming frightened at the tiles and running away. *McDonald* v. *Township of Yarmouth*, 29 Ont. R. 259.

—Obstruction—Telephone Pole—Non-repair—Runaway horses—Notice—Contributory negligence—Damages.]—A city highway, sixty-six feet wide, had upon it, near the angle formed by a sharp turn in the road, a telephone pole planted twelve feet from the centre line and so far from the sidewalk that there was a beaten track for carriages between the two. The horses attached to a sleigh, which was being driven up and down this highway for the pleasure of the occupants, in daylight, ran away, and their driver lost control of them when approaching the pole, but at some distance from it, and before reaching the angle. In making the turn the horses and sleigh described a curve and brought the sleigh against the pole, whereby the horses and sleigh were damaged, and bodily injury was caused to one of the occupants:—Held, that the pole was an obstruction upon the highway, which at this point, from this cause alone, was not in good or reasonable repair; and the city corporation, having notice and knowledge of the obstruction, and also of its dangerous character, and there being no contributory negligence, were liable in damages for the injuries sustained: *Sherwood* v. *City of Hamilton*, 37 U.C.Q.B. 410, followed; *Foley* v. *Township of East Flamborough*, 29 Ont. R. 139, distinguished.—Driving a horse that had before run away, as one of a pair of horses, was not, of itself, negligence contributing to the disaster:—Held, also, upon the evidence, that the pole was planted where it stood under the superintendence of the corporation and with their sanction, under an agreement entered into with them, and they could not recover indemnity from the telephone company by whom it was erected. Quantum of plaintiffs' damages considered. *Atkinson* v. *City of Chatham*, 29 Ont. R. 518.

—Obstructing street—markets—Access to adjoining premises.]—The city of Montreal is not responsible for injury to the owner of property in the vicinity of a public market by reason of the streets being encumbered on market days, provided reasonable efforts are made by the city officials to prevent the crowds from becoming stationary, so as not to permit free access to and from the property. *City of Montreal* v. *Davidson*, Q.R. 7 Q.B. 1, affirmed on appeal 28 S.C.R. 421.

—Maintenance of streets—Art. 535 C.M.]—Municipal corporations have, even without a by-law, the right and the duty, under Art. 535 of the Municipal Code, to keep in good condition the streets and other municipal works, and also to proceed against every person who, by his fault, has caused their deterioration. *Compagnie de Pulpe de Megantic* v. *La Corporation du Village d'Agnès*, Q.R. 7 Q.B. 339.

—Ballasting of road—Company—Toll-gate—Injunction—52 V., c. 43 (P.Q.)—54 V., c. 36 (P.Q.).]—Since the passing of the statute, 52 Vict., ch. 43 (P.Q.), as amended by 54 Vict., ch. 36, a company for the stoning of roads cannot place a toll-gate within the limits of a town or incorporated village without the consent of the corporation of such town or village, and this prohibition applies even to such a company formed before the Act was passed.—When such a company has placed a toll-gate within the limits of a town or incorporated village without the consent of the municipal corporation, every citizen or resident of such municipality, from whom the company demands, or proposes to demand, the payment of tolls, is entitled to a writ of

injunction to compel it to abandon this unlawful work. *Fitzgibbon* v. *Compagnie du Chemin de Péage de Dorval*, Q.R. 12 S.C. 409.

—Maintenance of road—Adjoining municipalities—Bureau des délégués—Notice—Arts. 759, 761, 794, 796-7 M.C.]—When the maintenance of a street in a local municipality in one county devolves upon the ratepayers of a local municipality in another county, a demand relating to a change in maintenance should be presented to the council of the county of which the municipality charged with it forms part, but this council should, without any prior proceeding, refer it to the *bureau des délégués*.—The bureau should summon the interested ratepayers of the two local municipalities by a public notice stating that the purpose of the meeting of the board is to impose upon one of them the maintenance formerly imposed upon the other. After hearing the parties, the board appoints a superintendent, if it is deemed necessary, to report to it or prepare *procès-verbal*; and in such case the superintendent should himself give notice to the interested parties of the day, hour and place on and at which he will visit them, and specifying in such notice that the object is as already stated.—The superintendent cannot be nominated by the council of the county which presented the petition.—The superintendent appointed by the *bureau des délégués* should forward his report to the secretary of the council which received the petition, and this report is submitted to the bureau. *Corporation de Ste. Agathe* v. *Bureau des Délégués des Comtes de Megantic et de Lotbinière*, Q.R. 12 S.C. 451.

—Accident caused by object lying on the road—Responsibility.]—While the plaintiff was driving with his wife on a road within the municipality defendant, his horse took fright at a small tree lying on one side of the road, and the occupants of the vehicle were both thrown out and injured. The tree had dropped from a waggon on the previous day. There was no evidence that the defendant had knowledge prior to the accident that the tree was on the road:—Held, that the defendant under the circumstances was not chargeable with fault or negligence, so as to make it responsible for the accident. *Legault* v. *Corporation de Côte St. Paul*, Q.R. 12 S.C. 479.

— Private lane — Responsibility — Art. 4616 R.S.Q.]—Art. 4616 of The Revised Statutes of Quebec does not apply to the city of Montreal, the charter of the city making special provision in regard to the matters referred to in that article.—The fact that the city has laid drains in a private lane within the city is not equivalent to an acceptance of such lane as a public street nor does the city thereby incur any responsibility for an accident caused by a person falling on the sidewalk of such lane. *Tougas* v. *City of Montreal*, Q.R. 12 S.C. 532.

—Building house—Collection of material—Right to use street.]—A man building a house obtained from the city of Montreal permission to occupy a third of the street on which to deposit his materials:—Held, that he must deposit the materials in one heap within the space given him, and that he was responsible for injury to a horse incurred in consequence of a stone being left detached from the pile though within said space. *Brousseau* v. *Bourdon*, Q.R. 13 S.C. 46.

—Want of repair—Liability.]—The responsibility of a municipal corporation by reason of an accident caused by the bad state of a sidewalk, is not subject to the condition that it should have been notified of the condition of such sidewalk, and it cannot escape this responsibility by pleading that it should not in law be called upon to answer for infractions by third parties of its by-laws or for its failure to carry such by-laws into operation. *Beech* v. *City of Montreal*, Q.R. 13 S.C. 187.

— Street — City of Montreal — Acceptance of street by city—Liability for bad condition of footpath.]—The plaintiff claimed damages for injuries suffered in consequence of a fall on the footpath of a lane in the city defendant, to which action defendant pleaded that the lane was not under its control:—Held, that inasmuch as the lane in question had been used by the public as a thoroughfare for more than twenty years, was inscribed on the homologated plan of the city, and defendant had numbered the houses therein with civic numbers, and had changed the name of the lane and inscribed it under its new name on the books of the city, the defendant was bound to keep the footpath in a condition to insure the safety of passengers. *Vaudry* v. *City of Montreal*, Q.R. 13 S.C. 531.

—Highways and bridges—Right of way over for tramcars—Right to enforce repair—Mandatory order.]—The company had a right under its statutory charter (sec. 12 of 57 Vict., ch. 63) to construct, maintain and operate a street railway along certain highways and bridges. One of the bridges over which the company had lawfully run its cars under the Act was destroyed, and the city commenced the construction of another in its place, which was of insufficient strength to carry the cars. Upon motion for a mandatory injunction to compel the city to construct the bridge of sufficient strength to maintain the car traffic of the company:—Held, per Drake J., that as the company had a right to run over any bridge at that point, they had a right to the injunction. Upon appeal to the Full Court it was objected that the appellants had obeyed the order complained of, and thereby waived their right of appeal:—Held, that a party obeying a mandatory injunction, for disobedience of which he is liable to attachment, cannot be said to have exercised any election, or to have waived any right. Upon the main question:—Held, that the company were merely grantees of the right of way, and as such had no right to compel their grantors to repair the bridge, and that in the

absence of a special agreement to do so the right did not exist. The city was not liable for non-repair even if it amounted to a nuisance. *Consolidated Railway Co.* v. *City of Victoria*, 5 B.C.R. 266.

—Municipal corporation—Negligent construction of sidewalk — Misfeasance.] — The defendant corporation constructed a sidewalk and street crossing in such a manner that the defendant, walking upon the sidewalk at night, with reasonable care, failed to step on to the crossing, which was of less width than the sidewalk, but stepped over its outer edge on to the ground, which at that point was at a considerably lower level, thereby sustaining injury:—Held, that the method of construction constituted a misfeasance by the corporation, and that it was liable in an action for damages. *Smith* v. *City of Vancouver*, 5 B.C.R. 491.

— Statutory duty or power — Negligence — Misfeasance or nonfeasance—Findings of jury.]—In an action against the city of Victoria for damages the jury found (*inter alia*) that the injury, which resulted from the collapse of a bridge built by the Provincial Government, but afterwards brought within the city limits, was caused by the breaking of a hanger supporting one of the floor beams. The city had substituted stirrup hangers with welds, made by their orders on some of the beams, in place of unwelded straight hangers. When asked whether it was one of the substituted hangers which broke, the jury said there was no evidence, but in their opinion a missing stirrup hanger must have broken at the welds, otherwise it would have been attached to the floor beam. To the question whether the corporation was blameable for the cause of the accident, and how, the jury answered: "A. Yes, because having been made aware of the bad condition of the bridge, through the report of the engineer and otherwise, they attempted repairs, but the work was not done sufficiently well to strengthen the structure. In our opinion it was their duty to first ascertain the carrying capacity of the bridge before allowing such heavy cars to pass over it." Upon motion for judgment:—Held, that there was no finding of actionable negligence "whereby" the disaster was caused, and that the acts of negligence to which the jury attributed the disaster, were mere nonfeasance. *Gordon* v. *City of Victoria*, 5 B.C.R. 553.

—Misfeasance — Findings of jury — Proximate cause—Negligence — Non-suit.]—Held, at the trial, on motion for judgment: If a Municipal Corporation knows, or ought to know, that a highway bridge within its limits is unsafe, yet throws it open to the use of the public, that act is a breach of a positive duty which it owes to the public, and is an act of negligent misfeasance which renders the corporation liable for injuries resulting from the subsequent collapse of the bridge, although the unsafe condition of the bridge was not occasioned by any act of the corporation. On appeal to the Full Court:—Held that a municipal corporation is liable for damages caused by a dangerous nuisance created by it on a highway within the limits of its control, and the misconduct will be treated as misfeasance, and not mere nonfeasance, if the injury arises from a combination of acts and omissions on the part of the corporation, here the boring of a beam rendering it more liable to rot, and its subsequent non-removal, though the acts without the omissions would not have caused the injury. Per Drake, J., dissenting:—That the corporation were the governing body selected to execute only such duties and powers as were created by their municipal charter; that they were not liable in damages for permitting the public works to fall into decay; that the boring of the floor beam in the bridge, complained of, and attributed as the cause of the disaster, was not negligent, and did not in itself affect the strength of the beam, and that the subsequent non-removal of the beam was mere non-feasance.—The doctrine that an action lies for the non-exercise of statutory powers, which, if reasonably exercised, would have avoided the injury complained of, has no application to municipal corporations. *Patterson* v. *City of Victoria*, 5 B.C.R. 628.

—Maintenance of road—Penal action—Security for costs—Art. 180 C.C.P.]—See COSTS, XVI.

VIII. MAINTENANCE OF COUNTY BUILDINGS.

—Statute, construction of—55 V., c. 42, ss. 397, 404, 469, 473 (Ont.)—City separated from county—Maintenance of court house and goal—Care and maintenance of prisoners.]—*County of Carleton* v. *City of Ottawa*, 28 S.C.R. 606, affirming 24 Ont. A.R. 409.

IX. MUNICIPAL ELECTIONS.

—Quo Warranto—Concurrent motions in High and County Court — Prohibition — Injunction — Collusion—R.S.O., c. 223, ss. 219, 227.]—By section 219 of The Municipal Act, R.S.O., ch. 223, jurisdiction is given respectively to a judge of the High Court, the senior or officiating judge of the County Court, and the Master in Chambers, to try the validity of a municipal election; and by section 227, when there are more motions than one, all the motions shall be made returnable before the judge who is to try the first of them. Two motions by different relators to try the validity of the same election were made returnable, the first of them before the Master in Chambers and the other before the County Judge, who, notwithstanding objections, proceeded with the motion before him and decided that the proceedings before the Master in Chambers were collusive, when the County Judge was prohibited from further proceeding by an order made by a judge of the High Court sitting in Chambers:—Held, that the County Court Judge having equal and concurrent jurisdiction in respect of the matter with the other named officials, a judge of the High Court sitting in Chambers

could not, under the circumstances, prohibit him from proceeding with the trial.—*Semble*, the County Court Judge who, without knowledge of the prior proceedings, had granted a fiat for like proceedings, had jurisdiction on the return thereof to inquire whether such prior proceedings were collusive, and, if so, to disregard them. *In re The Queen ex rel. Hall* v. *Gowanlock*, 29 Ont. R. 435.

—Town council—Insolvent member—Vacation of seat—Re-election—Contestation—Quo warranto.]—A member of the town council of Maisonneuve having made an abandonment of his property for the benefit of his creditors, his seat was declared vacant by the council, but at the election to fill such vacancy he was re-elected:—Held, that the right of the member elect to occupy the seat could be contested, on the ground of his insolvency, by way of *quo warranto* without recourse to a contestation of the election under Arts. 4275, *et seq.*, R.S.Q. *Riendeau* v. *Dudevoir*, Q.R. 12 S.C, 273.

—Right to vote—Payment of taxes—Right to contest election.]—By 59 Viet., ch. 49, sec. 15, (P.Q.) passed Dec. 21st, 1895, a new article, 260a, was added to the charter of the city of Montreal authorizing the city council to declare, by resolution or by-law, that the water rates should be payable by instalments, and sec. 2 of the same statute confirmed a resolution of the council, of July 9th, 1895, which allowed the ratepayers to pay the water rates for the year then current by instalments. By sec. 1 no tenant has a right to vote at an election for mayor or alderman, unless he has paid, before the first day of December preceding the holding of the election, the amount of all taxes and assessments, and of all instalments of water rates then due, in virtue of a by-law passed under Art. 260a. No by-law nor resolution to this effect was adopted, but the payment by instalments of water rates due on the 15th of August, October, January and March respectively, continued to be permitted:—Held, that the delay for the payment of water rates had been accorded without legal authority, and that a ratepayer who, on the first day of December preceding a municipal election, had only paid two instalments of water rates, was not entitled to vote, and, therefore, could not contest the election of the candidate declared elected. *Proulx* v. *Beausoliel*, Q.R. 13 S.C. 508.

X. Municipal Taxes.

—Assessment and taxes—Court of Revision—Petition—Remission of taxes—By-law—Mandamus.]—The Court of Revision of a municipality is obliged to receive and decide upon a petition for remission of taxes, presented under sec. 67 of 55 Viet., ch. 48 (O.), notwithstanding that the municipality has not passed any by-law on the subject. Mandamus granted. *Re Norris*, 28 Ont. R. 636.

—Assessment and taxes—Municipal corporations—Court of Revision—Appeal to county judge—Assessor—Right to appeal.]—The appeal from the Court of Revision to the County Judge in a case where such Court allows an appeal by the party assessed, against an assessment, cannot be made by the assessor as such, nor as a ratepayer, but must be by the corporation itself. *Re British Mortgage Loan Company of Ontario*, 29 Ont. R. 641.

—Exemption from taxation—Religious corporations—Property used for purposes of revenue.]—Religious corporations, established for purposes of education, are exempt from all municipal taxes on property occupied by them for the purposes for which they were established.—Paragraph 3 of Art. 712 M.C. should be taken as a whole, and the only properties appertaining to educational institutions which are exempt from taxation are those occupied by them for the purposes for which they were established, and not those possessed by them solely for purposes of revenue. *Corporation of Limoilou* v. *The Seminary of Quebec*, Q.R. 7 Q.B. 44.

—Payment for license—"Bon"—Conditional payment—Right to vote—Damages for refusal.]—Plaintiff, who had paid for a shop license to the defendant corporation, wishing to change it for a hotel license, was repaid the sum he had paid ($40) and discharged his obligation to the corporation for the tax demanded for a hotel license. At the same time he gave the secretary-treasurer a "*bon*" for $40, which was to be returned to him on remission to the secretary-treasurer of the certificate of the hotel license having been issued. The plaintiff could not get possession of this certificate, which was in the custody of the collector of revenue, and he forwarded to the secretary-treasurer a certificate of the collector's assistant to that effect. A municipal election having been subsequently held in the locality, presided over by the Mayor as election president, the secretary-treasurer made an entry on the voters' list, opposite plaintiff's name, that the latter owed the corporation $40 for taxes. Plaintiff having come to vote an objection was taken and the secretary-treasurer having been referred to in the matter stated that plaintiff was indebted to the corporation for taxes and the president refused his vote. On proceedings by plaintiff against the municipality and the president for damages by reason of his vote being rejected:—Held, that the "*bon*" in question did not constitute a municipal tax and was not a debt under the circumstances; that the municipality, therefore, should be condemned to pay damages to the plaintiff, but that the action should be dismissed as against the president, who had acted in good faith, though without costs, because, in his capacity of Mayor, he should have known the nature of the "*bon*." *Lapierre* v. *Village de St. Louis du Mile-End*, Q.R. 12 S.C. 129.

—School rates—Exemption—Educational establishment—Land for purposes of—Arts. 2038, 2044, 2144, R.S.Q.]—Defendants have an educational institution situated on about 175 *arpents* of land in three different municipalities. Part of the land, which is in the village of la Coté des Neiges contains about 72 *arpents*, 6 *arpents* frontage by 12 in depth. Upon it are some of the appendages of the institution, and an isolated building intended for a hospital in case of an epidemic. An *arpent* width upon the depth of the land is used for a kitchen garden (*jardin potager*) the produce from which is for the most part consumed in the *pensionnat*, and the rest sold on the market. The remainder of the land, where there is a pleasure ground and a small lake, is used as a promenade and a place of amusement for the scholars, and for pasturage:—Held, that this land, forming an integral part of property occupied by defendants for educational purposes, and being kept for the use of their institution, is exempt from the school taxes of the municipality. *Commissioners of Schools for the Village of la Coté des Neiges* v. *The Sisters of the Congregation of Notre Dame, of Montreal*, Q.R. 12 S.C. 444.

—Prescription—Art. 4555 R.S.Q.—Special assessment for drain.]—Art. 4555 R.S.Q., which provides that arrears of municipal taxes are prescribed by three years, does not include a special assessment for the construction of a drain, such assessment, levied and payable in a single amount, although overdue, not being an arrear of municipal taxes within the meaning of the article. *City of St. Henri* v. *Coursol*, Q.R. 13 S.C. 222.

—License—Illegal tax—Mistake—Payment Colore officii—Duress.]—See hereunder II. (*g*).

—By-law—Omission to pass—Remission of taxes.]—See ASSESSMENT AND TAXES.

XI. NEGLIGENCE.

—Accident—Liability—Contractors—Relief over.]—Before a building which was being erected by competent contractors for the municipal corporation of a city had been taken over, a trap-door in the roof, through the want of fastenings, was blown off, injuring a person on the street below. The trap-door was a necessary part of the contract, which required all work to be done in a good and workmanlike manner, and imposed responsibility on the contractors for all accidents which might have been prevented by them. Damages were recovered against the corporation on the findings of the jury that there was negligence on its part and that the specifications did not stipulate for fastenings; and the corporation, on the same evidence, sought to recover over from the contractors, brought in as third party defendants, on the terms that the findings in the action should be binding on them only as to the amount of damages, and that the question of their liability should be afterwards tried:—Held, that, under the circumstances, the corporation could not recover over against the contractors. *McCann* v. *City of Toronto*, 28 Ont. R. 650.

And see NEGLIGENCE, X.

XII. PUBLIC OFFICERS.

—Libel—Criticism of conduct of public employee—Privileged communication—Absence of malice.]—A letter written by a citizen of a municipality criticising the conduct of a public officer (in this case, the chief of police), and addressed to the superior officer of such official (the chairman of the police committee) is privileged, provided such letter contain no false statement in fact, and be written without malice. *Hèbert* v. *Lapointe*, Q.R. 12 S.C. 123.

XIII. PUBLIC WORKS.

—Highway—Encroachment upon street—Negligence—Municipal officers—Action for damages—Misfeasance during prior ownership—Non-feasance—Statutable duty.]—An action does not lie against a municipal corporation for damages in respect of mere non-feasance, unless there has been a breach of some duty imposed by law upon the corporation: *Municipality of Pictou* v. *Geldert* [1893] A.C. 524, and *Municipal Council of Sydney* v. *Bourke* [1895] A.C. 433 followed.—An action does not lie against a municipal corporation by the proprietor of lands for damages in respect thereof, through the mistake or misfeasance of the corporation or its officers, alleged to have occurred prior to the acquisition of his title thereto.—A municipal corporation is not civilly responsible for acts of its officers or servants other than those done within the scope of their authority as such. *City of Montreal* v. *Mulcair*, 28 S.C.R. 458.

—Extension of street—Expropriation—Delay—Liability for loss of rent—Amount of damages—Mandamus.]—The legislature having imposed upon the city of Montreal the duty of enlarging St. Lambert Street, and extending it to the River St. Lawrence, the city was responsible for loss of rent of an immovable, a part of which was to be expropriated, caused by delay and refusal to execute the work, and this notwithstanding it had been ordered, by peremptory writ of mandamus, to fulfil its obligation, and had paid the penalty incurred by failure to comply with the writ.—To arrive at the amount of damages in such case, the proper method is to compare the rents received after the reduction, with those produced by the immovable before the works were ordered, and not to take the revenue which the immovable, according to its value, should have produced and deduct therefrom the rents received from it during the period of the reduction.—It being established that the rents of the immovable had fallen during the period fixed for the expropriation, which was mainly attributable to the refusal of the city to execute the works within the prescribed delays, although want of repairs to the im-

movable and the erection in the neighbourhood of more modern buildings had contributed to it in a certain measure, the Court, in the absence of proof by the city of the extent to which these secondary causes had influenced the fall in the rents, should award the entire amount of the loss resulting from the primary and principal cause, namely, the contemplated expropriation and the refusal of the city to proceed. *City of Montreal* v. *Gauthier*, Q.R. 7 Q.B. 100.

—Damage caused in construction of public work—Liability.] —The defendant corporation constructed a pipe line through plaintiff's property, under an agreement which required the soil, removed for the purpose of laying the pipes, to be "well and sufficiently closed up," and the land and premises so broken up to be "made good." The evidence shewed that, in places, the soil covering in the pipes was from two to two and a half feet above the original level:—Held, that this was not a sufficient compliance with the terms of the agreement. But:—Held, also, that the use of stone for filling up the trench, which interfered to some extent with the plowing and cultivation of the surface, was a necessary incident of the construction of the line. *Chisholm* v. *City of Halifax*, 29 N.S.R. 402.

And see hereunder XV.

XIV. Statute Labour.

— Materials to be used—Fencings—Convenient material.] — Ratepayers of a municipality obliged to execute certain road works cannot be compelled to use materials other than those in use in the locality for work of a similar nature. Therefore, in this case, wood being very scarce in the municipality of St. Constant and its vicinity, and the custom being to substitute fences of barbed wire for rail or board fences, the ratepayers obliged to do work on a road crossing the plaintiff's land could replace by barbed wire the former rail fence which had fallen down from age. *Bruneau* v. *Corporation of St. Constant*, Q.R. 12 S.C. 519.

XV. Water Works.

— Arbitration to determine value — Notice to mortgagees—Value of works — Interest.]—The omission to serve notice on the mortgagees of a water works company of arbitration proceedings under R.S.O. (1887) ch. 164, to determine the amount to be paid by a municipality for such works and property, the mortgagees not being parties thereto, and in which the award made was less than the amount of their claim, does not entitle the company to have such award referred back, and the mortgagees made parties, as their rights could not be affected thereby.—In such an arbitration the arbitrators are simply to value the existing property of the company at the sum it would cost to erect the works and purchase the property, allowing for wear and tear, and perhaps for outlay of a necessary experimental character, but they are not to make any allowance for future profits or for the taking away from the company the right to supply water at a profit.—Interest is allowable on outlay during the construction of the works, but not on the cost of construction after completion and while the annual revenue of the company is less than the annual expenditure. *Re Town of Cornwall and Cornwall Water Works Co.*, 29 Ont. R. 350.

— Water works—Supply of water — Statutory obligation—Breach of contract.]—In actions by consumers of water against a municipal corporation for not providing a proper supply of pure water for the plaintiffs' elevators according to agreement, and for negligently and knowingly allowing the water supplied by them to become impregnated with sand, which greatly damaged the elevators:—Held, that there was no right of action in the plaintiffs by reason of any statutory obligation on the part of the defendants; that on the evidence there was no contract between the plaintiffs and the defendants by which the latter were bound to supply the former with water free from sand. The relation was rather that of licensor and licensee than one founded upon contract: *Scottish Ontario and Manitoba Land Company* v. *City of Toronto*; *Defoe* v. *City of Toronto*, 29 Ont. R. 459.

—R.S.O. C. 199—Award fixing amount to be paid for property—Passing of by-law to raise amount —Right of corporation to possession—Mortgagees.]—Upon the making of an award fixing the amount to be paid for water works in an arbitration under R.S.O., ch. 199, between a town corporation and a water works company, and the passing of a by-law for raising the amount of the award, the corporation are entitled, under s. 62, to the possession of the property; and, therefore, no action will lie against them to recover the possession so acquired, nor against their agent duly appointed to take possession.—The six months provided for by s. 64 within which the amount must be paid or the company be entitled to resume possession must have elapsed before action brought to recover possession by the company. It is is not sufficient that that period should have elapsed at the time the action is tried.—Mortgagees of a water works company, who are not parties to the arbitration, and who have taken no part in the taking of possession, are not necessary parties to an action by the water works company to recover possession. *Cornwall Water Works Co.* v. *Town of Cornwall*, 29 Ont. R. 605.

NAVIGATION.

—Stream — Interference with navigation — Private right of action.]—The plaintiff was a fisherman living on a small farm fronting on, and about three miles from the mouth of, a navigable stream flowing into Lake Superior.

He was in the habit of using a sail boat to go from his house to the lake and thence to Sault Ste. Marie and other points and was also sometimes employed by neighbours to bring them in this sail boat supplies and provisions. He also used other boats for fishing purposes. The defendants brought large quantities of timber down the stream and kept it in booms at the mouth so that for the whole summer access to the stream by the boat was cut off:—Held, that the plaintiff had sufficient special interest to enable him to maintain an action for damages. *Drake* v. *Sault Ste. Marie Pulp and Paper Co.*, 25 Ont. A.R. 251.

—Navigation—Carriage of ice—Right to cut passage through harbour.]—The cutting of a channel through ice formed on a water lot in a navigable harbour, to enable ice cut outside to be conveyed to the shore of the harbour, is a use of the water lot for the purposes of navigation; and the owner of the water lot, the grant of which was subject to the rights of navigation, cannot interfere with such user. *McDonald* v. *Lake Simcoe Ice and Cold Storage Co.*, 29 Ont. R. 247.

NECESSARIES.

Husband and wife—Goods sold to wife separated as to property—Responsibility of husband.]
See Husband and Wife, VII.

NEGLIGENCE.

I. Banker, 309.
II. Buildings and Premises, 309.
III. Carriage of Goods, 310.
IV. Contributory Negligence, 310.
V. Express Company, 311.
VI. Highways, 311.
VII. Injury to Workman, 312.
VIII. Master and Servant, 312.
IX. Medical Practitioner, 314.
X. Municipal Corporations, 314.
XI. Proof of Negligence, 316.
XII. Proximate Cause, 319.
XIII. Railways and Tramways, 319.

I. Banker.

—Deposit of note for collection—Loss in mails—Responsibility.]—See Banks and Banking.

II. Buildings and Premises.

—Responsibility—Contractors working on the same building—Accident.]—A person who is the contractor, in one line or trade, for the construction of a building, is not responsible for the safe condition of the premises while the building is in the hands and under the control of a contractor in another line or trade; nor is the former under any obligation to do work outside of his contract, to ensure the safety of employees working for another contractor who is in possession of the building. *St. Pierre* v. *Neville*, Q.R. 13 S.C. 54.

III. Carriage of Goods.

—S.S. Co.—Carriage of horses and vehicles.]—A steamship company, which undertakes to carry loaded vehicles and animals, should guard such vehicles and animals against ordinary accidents liable to occur when a number of vehicles are brought together on the boat.—Thus, the company was responsible for the loss of plaintiff's horses, which, having backed while the boat was unloading, and pushed the wagon against the rail which protected the passage of the float *(passerelle)*, fell into the water and were drowned, by reason of the rail not being sufficient to hold them back. *Tremblay* v. *Richelieu & Ontario Navigation Co.*, Q.R. 12 S.C. 210.

—Transportation of luggage—Delivery—Loss—Responsibility.]—Where a local carrier or carter undertakes to transport luggage from one point to another within a city, *e.g.*, from one railway station to another, his responsibility is at an end when he has fulfilled the contract by delivering the luggage at its destination. If it be subsequently lost in consequence of the owner not being at the appointed place to receive it, he has no recourse against the carrier. *Benoleil* v. *Durocher*, Q.R. 13 S.C. 260.

—Fragile goods—Stowage—Contract against fault of servants—Charter party—Affreightment.]—See Shipping, I.

IV. Contributory Negligence.

—Machine—Proximity of highway—Infant of tender years—Allurement—Knowledge of defendant—Trespasser—R.S.O. (1887) c. 211.]—Plaintiff, a child of five years of age, was injured by a horse-power used by the defendant to hoist grain into his warehouse. The machine was on a lot unfenced on one side, leased by him, adjoining his warehouse, about thirty feet from the highway, and was in charge of a man who was temporarily absent for a few minutes at the time of the accident. There was no evidence that the machine was being worked in such proximity to the highway as to endanger the safety of persons using the highway, or that it was so situated as to attract or allure children, nor was there any evidence of any knowledge in the defendant that children were in the habit of frequenting the place or of any intention on his part to injure:—Held, that as the plaintiff had no right to be where he received the injury he could not recover:—Held, also, that the omission of the defendant to comply with the provisions of the Act requiring threshing and certain other machines to be guarded (R.S.O. 1887, ch. 211) did not give a cause of action to the plain-

tiff: *Finlay* v. *Miscampbell*, 20 Ont. R. 29, followed. *Smith* v. *Hayes*, 29 Ont. R. 283.

V. Express Company.

—Payment—Remittance of money by express—Responsibility of sender.]—The defendant remitted the price of goods purchased from plaintiff, by the Dominion Express Company, as he had been instructed by the vendor to do on previous occasions. The vendor was notified that the money had been sent, but he did not call for it for two or three days, when it was found that the parcel had disappeared from the express office:—Held, that the purchaser under the circumstances could not be held responsible for the loss, the vendor having constituted the express company his agent to receive the money, and an action against the purchaser for unpaid price was dismissed. *Lepage* v. *Alexander*, Q.R. 12 S.C. 279.

VI. Highways.

—Responsibility—Driving on the wrong side of the road.]—Where a person is driving on the wrong side of the highway, and especially on a dark night, he is bound to exercise more than ordinary care in looking out for and avoiding vehicles which are proceeding in the opposite direction, and he will be held responsible for the consequences which may arise from his inability to get out of the way of a traveller approaching him, and who is in his proper position on the right side of the road. *White* v. *Gnaedinger*, Q.R. 7 Q.B. 156.

—Builder—Collection of materials—Right to use street.]—Defendant being about to build a house obtained from the city of Montreal permission to occupy a third of the street on which to place his materials. He had practically collected the materials in a heap but had left a stone detached in the street about a foot from the line of the mass of materials, but in the part of the street which he had permission to occupy. The horse of the plaintiff coming against this stone was knocked down, and the defendant was sued for damages in consequence:—Held, that defendant should have collected all his material in a single pile, so as to attract the attention of persons passing, and he was liable to the plaintiff for allowing the detached stone in the street. *Brousseau* v. *Bourdon*, Q.R. 13 S.C. 46.

—Builder—Digging cellar—Removal of footway—Temporary accommodation.]—A builder who, on digging a cellar at the side of a footway, makes a temporary footway of a mass of material and sand occupying a part of the way and of the street, but neglects to provide access to the part along the excavation not connected with the way, is responsible for the injury suffered by a passer-by who, at night, and when the unconnected passage between the mass of material and the excavation was insufficiently lighted, got into this passage, which was not protected by barriers at the sides, and fell into the cellar. *Mallet* v. *Martineau*, Q.R. 13 S.C. 510.

VII. Injury to Workmen.

— Hire of chattels — Contract — Sub-contract — Defect — Damages.]—A contractor who, pursuant to the terms of a sub-contract, supplies to a sub-contractor a machine for use in the work, is not liable in damages to one of the sub-contractor's workmen for injuries sustained by reason of a patent defect in the machine, which has been accepted and used by the sub-contractor without objection. *Smith* v. *Onderdonk*, 25 Ont. A.R. 171.

—Responsibility—Workmen injured while employed in common lane.]—A workman in the employment of one of two adjoining proprietors, who is working in a lane between their respective properties, cannot be regarded as a trespasser, even if the lane at the time had not yet been formally declared common, but was about to be so declared. He is, therefore, entitled to compensation for injuries sustained by him whilst so engaged, through the negligence of the employees of the adjoining proprietor. *Graham* v. *Smith*, Q.R. 12 S.C. 240.

VIII. Master and Servant.

—Deception by employee as to age—Damages—Evidence.]—It is negligence for an employer to put a young employee, about 15 years of age, to work at a machine for cutting boards, which machine was not provided with a guard to protect the hand of the operator. But where it is established that the employee retained his position in the factory by making a false representation as to his age—his age being less than that stated by him—this fact will be taken into consideration by the Court in mitigation of damages:—*Quære* as to admissibility of evidence of minor in the action brought by his tutor. *Légaré* v. *Esplin*, Q.R. 12 S.C. 113.

— Responsibility — Intermeddling — Accident—Damages.]—A person who, without being engaged to do certain work, intermeddles with others who are employed to do it, does not occupy the position of an employee, and is not entitled to compensation for injuries sustained while so intermeddling without right, particularly where the procuring cause of the accident was the plaintiff's meddling with work to which he was not accustomed. *Chartier* v. *Quebec Steamship Co.*, Q.R. 12 S. C. 261.

—Employer and workman—Duty of employer—Responsibility.]—In a factory where steam power is used, and more particularly where girls and young people are employed, it is the duty of the employer to make such regulations as will be effective for the protection of the operatives from danger, and to see that such regulations are not only understood by the employees but are obeyed. The employer is responsible in damages if he neglects to make such regulations, or, if they are made, permits them to be habitually disregarded. *Parent* v. *Schloman*, Q.R. 12 S.C. 283.

—Action for personal injuries—Medical examination of person injured.]—In an action by the tutor to a minor, for injuries sustained by the minor while in the employ of the defendants, where it is alleged that the brain of the minor has been affected by the accident, the Court may order the tutor and the minor to permit an examination to be made by physicians into the mental and physical condition of the minor, subject to such conditions as the Court deems proper. *Filion* v. *Dawes*, Q.R. 12 S.C. 494.

—Responsibility of servant as to goods under his charge—Dismissal.]—In the absence of express provisions in the contract of hiring, servants are only responsible for reasonable care in the safe-keeping of property intrusted to them, and are not responsible for the value of effects lost or stolen without their fault; nor is a servant liable in such case to dismissal without notice. *Jarvis* v. *Canadian Pacific Railway Co.*, Q.R. 13 S.C. 17.

—Damages — Responsibility — Employer and employee—Soins d'un bon père de famille.]—If the accident is one which could have been prevented by due care on the part of the employer, he is liable. He must display the necessary care and prudence, and must exercise *les soins d'un bon de père famille* towards his employees. In this case the defendant did not exercise due care toward the plaintiff, when he put him to work on a barge, exposed to jets of scalding water and steam.—An employer is bound to know the danger in which he places his employees, when he sets them to work, and moreover is bound to protect them against such danger: *Ibbotson* v. *Trevethick*, Q.R. 4 S.C. 318 followed. *St. Arnaud* v. *Gibson*, Q.R. 13 S.C. 22.

—Electric railway—Injury to passenger.]—An electric railway company is responsible for injury to a passenger from the fall of the iron pole connecting the car with the trolley, when the accident happens through the fault or by the negligence or want of skill of its employees. *Kelley* v. *Montreal Street Railway Co.*, Q.R. 13 S.C. 385.

—Questions improperly excluded from consideration of jury—New trial—Findings of jury on new trial—Workmen—Knowledge of ordinary dangers of employment—Duty to take precautions — Contributory negligence — Proximate cause—Fellow servant.]—Plaintiff, a ship carpenter, was engaged in making certain repairs on board of defendant's vessel, including the removal and repair of a band around one of the booms. For the purpose of removing and repairing the band, it was necessary to turn aside the crutch by which the boom was supported when in port, so as to expose the band and the defects that were to be repaired, but, before this could be done, it became necessary to rig a new topping lift, to support the boom when the crutch was moved. The work of rigging the topping lift was done by riggers who were employed on board of the vessel, by a contractor for that work, and was completed on the morning of the day on which plaintiff commenced the work of repairing the band. The evidence of the riggers shewed that when they completed their work in connection with the topping lift, the sheet was properly secured, but the sheet having subsequently become loose, in some way not explained, as soon as the crutch tackles were let go the boom at which plaintiff was engaged fell, and he was thrown to the deck and severely injured. The trial judge directed the jury, among other things, that some person on behalf of the defendants should have seen that the topping lift was secure before the crutch was removed; that even if it had been unfastened by some persons unconnected with the vessel, it was the duty of defendants' servant or servants on board of the vessel to see that it was secure before removing the crutch:—Held, that no such duty was imposed upon defendants, and that this amounted to misdirection:—Held, also, that it was a question for the jury whose negligence was the proximate cause of the injury, and that, in the absence of express evidence as to the actual cause, the possibility that a third agency might be responsible was improperly excluded from the consideration of the jury:—Held, further, that it was necessary to have submitted to the jury the question, whether the servant of the contractor for the rigging work, under the circumstances, might not also be the servant of defendants:—*Quære*, whether plaintiff, having full knowledge of the ordinary risks that he would run in such work should not himself have seen that the topping lift was securely fastened before he assented to the loosening of the crutch tackles.—A new trial having been ordered and had, the jury found on the same facts, that the injury was not occasioned by the negligent act or omission of the defendants or their servants:—Held, dismissing plaintiff's application for a new trial, that as plaintiff's knowledge was in all respects equal to that of the mate of the vessel, who was there to do plaintiff's bidding, the finding was supported by the evidence:—Held, also, that, the defendants' negligence not being made out, it was not necessary for the trial judge to tell the jury what the effect of the law was in regard to contributory negligence or what qualifications there were. *Williams* v. *Bartling*, 30 N.S.R. 548, affirmed by Supreme Court of Canada.

IX. Medical Practitioner.

—Action against surgeon—Negligence—Evidence.]—See Medical Practitioner.

X. Municipal Corporations.

—Accident — Liability — Contractors — Relief over.]—Before a building which was being erected by competent contractors for the municipal corporation of a city had been taken over, a trap door in the roof, through the want of fastenings, was blown off, injuring a person on the street below. The trap door was a necessary part of the contract, which required all work to be done in a good and workmanlike manner, and imposed re-

sponsibility on the contractors for all accidents which might have been prevented by them. Damages were recovered against the corporation on the findings of the jury that there was negligence on its part, and that the specifications did not stipulate for fastenings, and the corporation, on the same evidence, sought to recover over from the contractors, brought in as third party defendants, on the terms that the findings in the action should be binding on them only as to the amount of damages, and that the question of their liability should be afterwards tried:—Held, that, under the circumstances, the corporation could not recover over against the contractors. *McCann* v. *The Corporation of the City of Toronto*, 28 Ont. R. 650.

—Tiles placed on side of highway — Accident — Negligence.]—On the side of a township road where there was a fill of about fourteen feet, with railings on either side, a quantity of tiles, of a large size, and of a light grey colour, were, shortly before the accident, piled by defendants on the side of the highway in a slight hollow behind the railing, for the purpose of repairing the culvert which ran through the fill. Some planks were thrown over them, and a board nailed between the two boards forming the railing, so as to further hide the tiles from view:—Held, that this did not constitute evidence of negligence on the defendants' part so as to render them liable for injuries sustained by the plaintiff by reason of the horse, which he was driving, becoming frightened at the tiles and running away. *McDonald* v. *Township of Yarmouth*, 29 Ont. R. 259.

—Carters employed to remove street sweepings —Master and servant—Negligence—Liability.]—The relationship of master and servant exists between a city corporation and a licensed carter owning his own horse and cart, who, paid by the hour by the city, is hired by and is under the direction of their street foreman for the purpose of removing street sweepings; and the city may be liable for an injury caused by the negligence of the carter while so occupied in their employment. *Saunders* v. *City of Toronto*, 29 Ont. R. 273.

—Municipal corporation—Accident caused by object lying on the road — Responsibility.]—While the plaintiff was driving with his wife on a road within the municipality defendant, his horse took fright at a small tree lying on one side of the road, and the occupants of the vehicle were both thrown out and injured. The tree had dropped from a waggon on the previous day. There was no evidence that the defendant had knowledge prior to the accident that the tree was on the road:—Held, that the defendant under the circumstances was not chargeable with fault or negligence, so as to make it responsible for the accident. *Legault* v. *Corporation de Côte St. Paul*, Q.R. 12 S.C. 479.

— Private land — Responsibility — Art. 4616 R.S.O.]—Art. 4616 of the Revised Statutes of Quebec does not apply to the city of Montreal, the charter of the city making special provision in regard to the matters referred to in that article.—The fact that the city has laid drains in a private lane within the city is not equivalent to an acceptance of such lane as a public street, nor does the city thereby incur any responsibility for an accident caused by a person falling on the sidewalk of such land. *Tougas* v. *City of Montreal*, Q.R. 12 S.C. 532.

—Municipal corporation — Action for injury to land—Erroneous instruction to jury—New trial —Damages.]—In an action for damages for injury to plaintiff's cultivated land caused by water which was alleged to have been caused to overflow the land by reason of negligent and improper acts on the part of the defendant corporation, the trial judge directed the jury to assess damages, in the event of their finding for plaintiff, (1st), in view of the loss of profits for the year, during which plaintiff lost the use of the land, and (2nd), in relation to what it would cost plaintiff to restore his land to the same condition in which it was before the damage was done, as to both of which points the evidence was contradictory:—Held, that the instructions given to the jury were erroneous, and that there must be a new trial; that the plaintiff was entitled to recover the amount of the difference between the value of the property immediately before the injury, and the value as reduced by the injury. *Lloy* v. *Town of Dartmouth*, 30 N.S.R. 208.

XI. Proof of Negligence.

— Master and servant—Common fault — Jury trial — Assignment of facts — Acts 353 and 414 C.C.P.—Art. 427 C.P.Q.—Inconsistent findings— Misdirection — New trial — Pleading.]—In an action to recover damages for injuries alleged to have been caused by negligence, the plaintiff must allege and make affirmative proof of facts sufficient to shew the breach of a duty owed by him, and inconsistent with due negligence on the part of the defendant, and that the injuries were thereby occasioned; and where in such an action the jury have failed to find the defendants guilty of the particular act of negligence charged in the declaration as constituting the cause of the injuries, a verdict for the plaintiff cannot be sustained and a new trial should be granted. *Cowans* v. *Marshall*, 28 S.C.R. 161.

—Master and servant—Accident, cause of—Contributory negligence—Evidence.]—In an action for damages by an employee for injuries sustained while operating an embossing and stamping press, it appeared than when the accident causing the injury occurred, the whole of the employee's hand was under the press, which was unnecessary, as only the hand as far as the second knuckle needed to be inserted for the purpose of the operation in which he was engaged. It was alleged that the press was working at undue speed, but it was proved that the speed had been increased to such extent at the instance of

the employee himself, who was a skilled workman:—Held, that the injury occurred by a mere accident not due to any negligence of the employer, but solely to the heedlessness and thoughtlessness of the injured man himself, and the employer was not liable. *Burland* v. *Lee*, 28 S.C.R. 348.

Master and servant—Evidence—Probable cause of accident.]—Evidence which merely supports a theory propounded as to the probable cause of injuries received through an unexplained accident is insufficient to support a verdict for damages where there is no direct fault or negligence proved against the defendant, and the actual cause of the accident is purely a matter of speculation or conjecture. *Canada Paint Co.* v. *Trainor*, 28 S.C.R. 352.

—Fault of fellow servant—Master and servant—Employer's liability—Arts. 1053, 1056 C.C.]—The defendants carried on the manufacture of detonating cartridges or caps made by charging copper shells with a composition of fulminate of mercury and chlorate of potash, a highly explosive mixture, requiring great care in manipulation. It is, when dry, liable to explode easily by friction or contact with flame, but has the property of burning slowly without exploding when saturated with moisture. It was the duty of defendant's foreman, twice a day, to provide a sufficient quantity of the mixture for use in his special compartment during the morning and in the afternoon, and to keep it properly dampened with water, for which purpose he was furnished with a sprinkler. It was also the foreman's duty to fill the empty shells with the fulminating mixture as they were handed to him set on end in wooden plates, and then pass them on, properly moistened, through a slot in his compartment, to a shelf whence they were removed by another employee and the charges pressed down to the bottom of the shells by means of a pressing machine worked by C. at a table near by. An explosion took place which appeared from the evidence to have originated at the pressing machine, and might have occurred either through the fulminate in the shells having been allowed to become too dry from carelessness in sprinkling, or from an accumulation of the mixture adhering to and drying upon the metal portions of the pressing machine. It was the duty of C., the person operating the pressing machine to keep it clean and prevent the mixture from accumulating and drying there in dangerous quantities. When the explosion occurred, the foreman and C. and another employee were killed, but a fourth employee, who was blown outside the wreck of the building and survived, stated that the first flash appeared to come from the pressing machine, and the explosion followed immediately. The theory propounded by the plaintiff, the father of C., assumed that nothing was known of the actual cause of the explosion, nor where it in point of fact originated, but inferred from a supposed condition of things, that the fulminate had not been sufficiently dampened, and that this indicated carelessness on the part of the foreman and raised a presumption that the explosion originated through his fault. The evidence of the survivor led to the conclusion that the explosion originated through C's. neglect to clean the pressing machine. There was evidence to show that the defendants had taken all reasonable precautions to diminish risk of injury to their employees in the event of an explosion, and that conformity with rules prescribed and instructions given by them to their employees for the purpose of securing their safety would be sufficient to secure them from injury:—Held, that as it appeared under the circumstances of the case, that the cause of the accident was either unknown or else that it could fairly be presumed to have been caused by the negligence of the person injured, whose personal representative brought the action, that there could not be any such fault imputed to the defendants as would render them liable in damages. *Dominion Cartridge Co.* v. *Cairns*, 28 S.C.R. 361.

—Master and servant—Employer's liability—Concurrent findings of fact—Contributory negligence.]—In an action by an employee to recover damages for injuries sustained there was some evidence of neglect on the part of the employers which, in the opinion of both Courts below, might have been the cause of the accident through which the injuries were sustained, and both Courts found that the accident was due to the fault of the defendants either in neglecting to cover a dangerous part of a revolving shaft temporarily with boards or to disconnect the shaft or stop the whole machinery while the plaintiff was required to work over or near the shaft:—Held, that although the evidence on which the Courts below based their findings of fact might appear weak, and there might be room for the inference that the primary cause of the injuries might have been the plaintiff's own imprudence, the Supreme Court of Canada would not, on appeal, reverse such concurrent findings of fact. *George Matthews Co.* v. *Bouchard*, 28 S.C.R. 580.

—Responsibility—Accident caused by startled horse—Art. 1055 C.C.]—Article 1055 of the Civil Code enacts that "the owner of an animal is responsible for the damage caused by it, whether it be under his own care or under that of his servants:"—Held, that the owner of an animal which causes damage cannot relieve himself from the responsibility imposed upon him by the article above cited, unless it be proved that the damage was attributable either to the fault of the person suffering it, or to a fortuitous event or *force majeure;* or, at least, that he, the owner or his representative in charge of the animal, was absolutely without the slightest fault contributing to the accident. So where it appeared that the horse which caused the damage was being driven by the defendant's son on the wharf in the port of Montreal, and the horse was startled by the whistling of a steamer lying at the wharf, and it

appeared that the defendant's son was not on his guard against such an occurence which, in a place like a public wharf, should be foreseen, and he consequently lost control of the animal, it was held that defendant had not shown that his son, who was in charge of the animal, was absolutely without fault, and defendant was therefore responsible for the damage. *Langlois* v. *Drouin*, Q.R. 13 S.C. 49.

—Municipal Corporation—Statutory duty or power—Negligent act.]—In an action for negligence it is not sufficient to shew general negligence on the part of the defendant, but the plaintiff must shew a negligent act "whereby" the injury was caused.—There is, at law, no cause of action for damages for negligence in not performing a statutory duty, or for not exercising a statutory power, but only for negligent acts in the performance of the duty or in the exercise of the power. *Gordon* v. *City of Victoria*, 5 B.C.R. 553.

XII. Proximate Cause.

—Accident—Fault—Bicycler passing on wrong side—Responsibility.]—The plaintiff riding rapidly along the highway on his bicycle, having overtaken two waggons three or four feet apart, attempted to pass between them. There was at the time ample room for him to pass on the left. Defendant, seeing what plaintiff was about to do, pulled his horse to the left with the object of giving more room between the waggons, but the result was probably to diminish slightly for a moment the distance between the two waggons, and the bicycle collided with the hind wheel of defendant's waggon, and was damaged:—Held, that the immediate cause of the accident being the imprudence of plaintiff in attempting to pass between the waggons, instead of stopping, or of passing on the left, he had no right to recover damages. *Rolland* v. *Dawes*, Q.R. 13 S.C. 52.

—Accident—Imprudence of person injured.]—While the plaintiff, a passenger on a steamer of the company defendant, was waiting in the dining-room for some sandwiches to be prepared, her attention was attracted by the abrupt entrance and exit of a waiter from behind a curtain stretched across part of the room. The plaintiff sprang behind the curtain to see what was going on, and fell down a hatchway used for bringing up meats to the table. Passengers were not allowed in the dining-room except during meal hours. In an action by the passenger to recover for injuries sustained:—Held, that the immediate cause of the accident being the plaintiff's own imprudence in springing behind the curtain, where she had no right to go, the defendant was not responsible. *Wetzlar* v. *Richelieu & Ontario Navigation Co.*, Q.R. 13 S.C. 336.

XIII. Railways and Tramways.

—Street Railways—Accident—Infirm persons.]—It is the duty of a motorman in charge of an electric car on a street railway to take special care to have the car sufficiently under control to enable him to avoid collision with aged and infirm persons on foot whose infirmities are plainly evident, and who may be crossing the line of railway at a street crossing. *Haight* v. *Hamilton Street Railway Co.*, 29 Ont. R. 279.

—Injury to passengers—Liability of company—Art. 1053, 1675 C.C.]

See Railways and Railway Companies, VI.
" Street Railways.

NEGOTIABLE INSTRUMENT.

Bon—Bills of Exchange Act, s. 8, s.s. 4.]—A *bon*, though not payable to order, is a negotiable instrument and transferable by indorsement, unless the contrary be expressed in the instrument. *Désy* v. *Daly*, Q.R. 12 S.C. 183.

And see Bills of Exchange and Promissory Notes.

NEW TRIAL.

Verdict against weight of evidence—Costs.]

See Costs, VIII.
And see Practice and Procedure, XXII.

NOTARY.

Hypothec—Forged discharge by Notary—Agency of Notary—Payment at office.]

See Registry.

NOTICE.

Notice of bail—Art. 915 C.C.P.—Imperative or directory.]—See Capias.

—Notice to judgment creditor—Ownership of movables at debtor's house—Seizure—Opposition—Costs.]—See Executions, IX.

—Contract—Notice of cancellation—Construction of contract.]—See Contract, II.

—Execution—Seizure of shares—Service of writ—Notice by attorney—Art. 566 C.C.P. (old text.).]

See Practice and Procedure, XXXII.

NOVATION.

Contract—Partnership—Chose in action—Assignment of—Counterclaim—Novation.]—A firm which had contracted with respondents to supply them with a number of bicycles, was subsequently dissolved, one partner retiring, and a new partner taking his place. The notice of dissolution stated that the

business would be carried on by the new firm, who would pay the indebtedness of the old, and who were alone authorized to collect its debts, and by the agreement for dissolution, the partners released each other from all liability, and it was agreed that all the claims of the old firm belonged to and would be collected by the new. The respondents had a large claim for damages against the old firm for non-fulfilment of contract, and upon learning from appellants the facts as to the dissolution, made claim against the new firm:—Held, upon the correspondence set out in the judgment of Rose, J., that novation had taken place and that the respondents were entitled to claim against the appellants the damages which the former had sustained through breach of the contracts, but that such damages must be limited to those arising from breaches occurring prior to the dissolution. *Seyfang* v. *Mann*, 25 Ont. A.R. 179, varying 27 Ont. R. 631.

—Novation — Facts establishing — Further liability.]—In an action by plaintiff against defendants the latter relied upon an alleged agreement by which plaintiff was to accept C. as his debtor in substitution for defendants. Plaintiff denied the agreement set up, but admitted that C. told him he would pay him $365 for defendants, and that, on the day on which the money was to be paid, he went to C.'s shop, and received from him goods to the amount of $325.30. The evidence shewed further that C., who was indebted to defendants, settled his account with them by undertaking to pay plaintiff the sum of $365, and giving his promissory note for the balance. Also that plaintiff, in his account with defendants, charged them with the sum of $373.61, and credited them with "Amount to be paid by L. J. C. $365"; and with the balance of $8.51 cash:—Held, that there was complete evidence of a novation, by which C. was substituted for defendants, and the latter were relieved of all further liability to plaintiff. *Lewis* v. *D'Entremont*, 29 N.S.R. 546.

—Verbal Novation.]—There may be a complete verbal novation; neither the discharge of the original debtor, on one side, nor the assumption of the new debt on the other, need be evidenced in writing. *Strong* v. *Hesson*, 5 B.C.R. 217.

—Delegation of payment—Acceptance.]

See DEBTOR AND CREDITOR, IX.

NUISANCE.

Church—Week-day services — Skating rink — Band of music.]—In an action by the churchwardens and trustees of a church, wherein week-day services were held, to restrain the playing of a band in an adjoining skating rank, which had the effect of disturbing the services:—Held, that the use by the plaintiffs of the church in the way mentioned was an ordinary, reasonable and lawful use of their property, and the inconvenience to them and the congregation by the defendants' mode of using their property was such as to materially interfere with the use and enjoyment of the plaintiffs' property, and to constitute a nuisance. *Church of St. Margaret* v. *Stephens*, 29 Ont. R. 185.

— Sale of house — Adjacent stable — Inherent defects—Resiliation.]—See SALE OF LAND, VII.

— Municipal corporation — Public market — Licensing traders and hucksters — Obstructing streets and sidewalks—Loss of rents—Damages.]—*Davidson* v. *City of Montreal*, 28 S.C.R. 421, affirming Q.R. 6 Q.B. 1.

OPERARIUS.

Attachment of wages — Garde-magasin — Art. 628 C.C.P. (old text).]

See DEBTOR AND CREDITOR, IV.

OPPOSITION.

Appeal—Jurisdiction—Amount in controversy —Opposition afin de distraire—Judicial proceeding—Demand in original action—R.S.C., C. 135, s. 29.]—An opposition *afin de distraire*, for the withdrawal of goods for seizure, is a "judicial proceeding" within the meaning of the twenty-ninth section of "The Supreme and Exchequer Courts Act," and on an appeal to the Supreme Court of Canada, from a judgment dismissing such opposition, the amount in controversy is the value of the goods sought to be withdrawn from seizure and not the amount demanded by the plaintiff's action or that for which the execution issued: *Turcotte* v. *Dansereau*, 26 S.C.R. 578, and *McCorkill* v. *Knight*, Cass. Dig., 2 ed. 694, followed; *Champoux* v. *Lapierre*, Cas. Dig., 2 ed. 426, and *Gendron* v. *McDougall*, Cas. Dig., 2 ed. 429, discussed and distinguished. *King* v. *Dupuis, dit Gilbert*, 28 S.C.R. 388.

—Motion to dismiss—Art. 651, C.C.P.—Procedure.—A motion to dismiss an opposition under Art. 651 C.C.P. should allege that the opposition is taken for the purpose of unduly delaying the sale. *Matte* v. *Chenevert*, Q.R. 12 S.C. 141.

—Necessary allegations—Title to movables—Art. 651 C.C.P.]—In an opposition by which movables and effects are claimed, the allegations should be clear and precise, and indicate the title by which the *opposant* claims property in the effects.—If the *opposant* does not produce his title to said property, his opposition will be dismissed on motion therefor, as being made with the sole object of delaying the sale of the movables and effects seized; Art. 651 C.C.P. *Laberge* v. *Tranquille*, Q.R. 12 S.C. 510.

—Opposition afin de distraire—Election of domicile—Affidavit—Wrong date—Husband and wife —Authority of wife.]—The election of domi-

cile is not necessary in an opposition *afin de distraire*.—The fact that an affidavit in support of an opposition is by error dated in 1800 is not a cause of nullity.—A wife separated as to property (*séparée de biens*) does not require authorization from her husband to make an opposition *afin de distraire*. *Grothé* v. *Maisonneuve*, Q.R. 13 S.C. 345.

—Opposition afin de conserver—Hypothèque—Subrogation—Priority—Arts. 2065, 2073 C.C.] —The sale of one-fifth of an immovable had been made to Florent Guay for $2,000, to be paid with interest later on, which payment was guaranteed by a hypothec on said part of the immovable. After several subsequent transfers of said immovable, in all of which the acquirers covenanted to pay said price of $2,000, and interest, it became the property of Miss Malvina Guay, who transferred and sold it to the plaintiffs. In this transfer, the plaintiffs assumed and charged themselves with the settlement of the rights and pretensions of the opposants, legal representatives of the sellers to Florent Guay, to the same extent as Malvina Guay was herself bound. The immovable was sold by licitation at the suit of the plaintiffs, and said representatives made an opposition to be collocated for their said capital and interest. The plaintiffs represented that they loaned to Florent Guay $9,000 to pay an equal sum due by him to Mr. Parent, whose hypothec was of prior rank to that of the opposants, that they were subrogated to Parent's rights, and that, therefore, they should be collocated by preference for said sum and interest. The immovable having been sold for $5,000, this would totally defeat the payment of the opposant's claim:—Held, that under these circumstances the opposition to be collocated on the proceeds of the licitation is equivalent to an hypothecary action against the plaintiffs as *détenteurs* of the immovable itself, and therefore the same rules apply. Consequently the party at whose suit the property is sold cannot be collocated by preference to another if the first is charged with the hypothec in favour of the second and personally liable to him for his claim.—The plaintiffs having taken the legal position of Miss Malvina Guay in its entirety with regard to the opposants' claim, are personally liable as she would be towards the opposants, and therefore they cannot invoke against their hypothecary claim on the immovable the fact that they have paid hypothecs of prior rank thereon. *Crédit Foncier* v. *Loranger*, Q.R. 13 S.C. 360.

—Opposition afin de distraire—Execution—Seizure—Appeal—Judicial proceeding.]

See APPEAL, XIII (*a*).

—Seizure—Property of third person—Notice—Costs.]—See COSTS, XI (*a*).

—Seizure of immovables—Contestation of Opposition—Costs.]—See COSTS, XIX (*e*).

—Opposition to seizure—Notice to creditor—Ownership of goods—Costs.]

See EXECUTIONS, IX.

—Licitation—Undivided share in land and improvements—Compensation of share—Opposition afin de conserver—Art. 1539 C.C.]

See SALE OF LAND, IV.

PARENT AND CHILD.

—Specific performance—Agreement for maintenance of parent—Definite contract—Evidence—Change of parent's intention—Improvements.]—When a child seeks to enforce an agreement that if he remains with a parent and works his farm and provides for his declining years the parent will bestow the farm on him, the agreement must be established by the clearest evidence and a certain and definite contract for a valuable consideration proved. In the absence of such evidence the parent will be entitled to change his views and the disposition of the property. In this case the son who had made certain improvements on the property was held not to be entitled to a lien for them. *Smith* v. *Smith*, 29 Ont. R. 309.

—Custody of infant—Rights of father—Discretion of Court.]—Where a husband has done no wrong and is able and willing to support his wife and child, the Court will not take away from him the custody of his infant child merely because the wife prefers to live away from him, and because it thinks that living with the father apart from the mother would be less beneficial to the infant than living with the mother apart from the father. It must be the aim of the Court not to lay down a rule which will encourage the separation of parents who ought to live together and jointly take care of their children.—The discretion given to the Court over the custody of infants, by R.S.O. ch. 168, sec. 1, is to be exercised as a shield for the wife, where a shield is required against a husband with whom she cannot properly be required to live; it is not to be exercised as a weapon put into the hands of a wife with which she may compel an unoffending husband to live where she sees fit: *In re Agar-Ellis*, 10 Ch. D. 49, 71, and *In re Newton*, (1896) 1 Ch. 740, specially referred to.—And where a wife, without any other reason than that she was tired of living in the country to which her husband had taken her, left him and returned to her mother's house, taking with her their daughter, aged five years, the Court made an order giving the custody of the child to the father, and allowing the mother access at reasonable times. *Re Mathieu*, 29 Ont. R. 546.

—Action by father for slander of minor daughter.]—Although a father cannot without being named tutor to his minor child recover damages suffered by her in consequence of

slanderous expressions used with regard to her, he has nevertheless an action for injury to himself caused by such slander of his minor child. *Barrette* v. *Bourbonnière*, Q.R. 12 S.C. 271.

—Maintenance of children—Father and mother-in-law—Arts. 166-168 C.C.]—The obligation of the father and mother, father-in-law and mother-in-law, to maintain their needy children, sons and daughters-in-law, where the latter, with respect to their father and mother-in-law, have children of their marriage, constitutes, among the respective persons owing this duty, a concurrent obligation, imposed at the same time upon all in proportion to their means, and not a subsidiary obligation on the father and mother-in-law in default of the father and mother fulfilling it.—The mother can, without being appointed tutrix to her children under age, claim maintenance for herself and them, this right being personal to her and the existence, number and incapacity of the children being only the measure of the right. *Crépeau* v. *Julien*, Q.R. 12 S.C. 308.

—Maintenance of children—Art. 165 C.C.]—The obligation, resulting from Art. 165 of the Civil Code, on parents to maintain their needy children must be carried out in the paternal domicile. *Ouellet* v. *Gauvin*, Q.R. 13 S.C. 542. Circuit Court.

—Parent and child—Gift to daughter living at home—Evidence—Transmutation of possession.]—Held, that evidence that a cow was called plaintiff's daughter's, while the daughter was living at home, was not sufficient to support an alleged gift in the absence of evidence of any point of time when it could be said that there was a gift, or of any transmutation of possession. *Rhodenhizer* v. *Bolliver*, 31 N.S.R. 236.

—Tutrix — Want of business knowledge—Removal.]—See GUARDIAN AND WARD.

And see INFANT.

" " SEDUCTION.

PARLIAMENTARY ELECTIONS.

Election petition — Intervention — Appeal — Postponement of hearing.]—When the petitioner contesting a federal election, does not abandon the petition, but, after certain witnesses are heard, declares his enquête closed. another elector cannot, on alleging fraud and collusion between the petitioner and the defendant, and that proof could be easily made of the allegations of the petition and the corrupt acts set out in the bill of particulars, cause himself to be substituted as original petitioner in order to proceed to proof of the allegations.—After inscription for hearing of the election petition the said elector asked for a stay of proceedings pending an appeal which he had taken to the Supreme Court from the refusal of his application to be allowed to intervene:—Held, that no appeal would lie in such cause, and there was no ground for postponing the hearing. *Desparois* v. *Bergeron*. *Beauharnois Election Case*, Q.R. 12 S.C. 23.

— Election petition — Attack on petitioner — Protection of Court.]—The petitioner in the contestation of an election has a right to the protection of the Court when he is attacked by reason of being such petitioner.—If he is abused for such reason, that constitutes an aggravation of injury which entitles him to substantial damages. *Mercier* v. *Moisan*, Q.R. 12 S.C. 337.

—Election petition—Status of petitioner—Electoral lists.]—When an election petition is presented under Art. 478 R.S.Q. by one who claims to be an elector, the capacity of the petitioner is legally established by proof that his name is upon the original list, fyled in the Registrar's Office, in force at the time of the election, and it is not necessary to shew that his name is also found on the copy of such list forwarded to the deputy returning officer of the district in which the petitioner has voted. *Mercier* v. *Bouffard*, Q.R. 12 S.C. 385.

—Quebec Election Act of 1895—Appeal to a judge from the decision of the council—59 V., c. 9, s. 46 (P.Q.).]—Under section 46 of the Quebec Election Act of 1895, 59 Viet., c. 9, which provides that by means of a petition any elector of the electoral district may appeal from any decision of the council, confirming, etc., the list of electors "within fifteen days following such decision," the petition must be presented within the fifteen days. Service of a copy within fifteen days is insufficient to give the right to appeal. *Cholette* v. *Corporation de Ste. Justine*, Q.R. 12 S.C. 543.

—Election petition—Disqualified elector—Proof of list.]—An elector who, at an election, has performed an electoral manœuvre forbidden by law, being *ipso facto* deprived of his right to vote at said election, cannot present a petition in connection therewith.—It is by the original voters' list used at an election, and not by a copy of such list used for voting purposes, that one who presents an election petition can prove his capacity as an elector entitled to vote at the election to which the petition relates. *Denis* v. *Dufresne*. *Rouville Election Case*, Q.R. 13 S.C. 94.

—Quebec Election Act—Qualification of elector—59 V., c. 9, s. 9 s.s. 2—Tenants of the same real property — Valuation.] — Where several persons are entered on the list of electors as tenants of the same real property, and there is no separate valuation of the portion occupied by each, and the total valuation of the property is not sufficient under the provisions of the Quebec Election Act, 59 Viet. ch. 9, s. 9, s.s. 2, to qualify all the persons inscribed as voters in respect thereof, and the Court is unable to determine which, if

any, of such persons is or are entitled to vote, their names will all be struck from the list of electors, although they are entered on the valuation roll at an annual rental sufficient to qualify them as electors.—Where the total valuation of real property is sufficient to qualify all the persons inscribed as voters in respect thereof, their names will nevertheless be struck from the list in the absence of proof that the real value of the portions severally occupied by them is sufficient to give the right to vote. *Langevin dit Lacroix* v. *Corporation of St. Laurent*, Q.R. 13 S.C. 302.

—Quebec Election Act—Appeal from decision of municipal council—Service of petition.]—A petition in appeal from the decision of a municipal council, on a complaint concerning the electoral list, was presented to a judge of the Superior Court on the tenth day after it was rendered, and the judge having ordered that it be immediately served on the corporation respondent, service was made the same day:—Held, that service of the petition before presentation was not necessary to make the appeal effectual, and it was therefore duly taken within the delay of fifteen days allowed by law (59 Vict., ch. 9, sec. 46). *Richer* v. *Corporation of Ste. Geneviève*, Q.R. 13 S.C. 338.

—Election petition—Motion to set aside—Order for service—Carriage of proceedings where petitioner presents petition and abstains from serving it.]—Application was made to the Court, on behalf of B. and H., who claimed the right to be heard in a motion before the Court to set aside as void the service of the election petition against the respondent:—Held, that no one but the petitioner could apply for an order touching the mode or time of service, and, until the time prescribed by sec. 32 for intervention of third parties had expired, the petitioner had the entire control and carriage of proceedings upon the petition, subject to those applications which the statute enables any other party to the petition to make.—*Semble*, that if a petitioner should present a petition, and abstain from serving it, there is no machinery provided by either the Act or the rules to compel him to effect service, and none to enable any other person to assume or direct the matter of service. *McLean* v. *Mills* (*Annapolis Election Case*), 29 N.S.R. 452.

—Dominion Controverted Elections Act—Preliminary objections—Affidavit—R.S.C. cc. 8 and 9—Rule of Court, Easter Term, 1887, 12.]—In the matter of an election petition under the Dominion Controverted Elections Act:—Held, that the failure to fyle for the petitioner a copy of the preliminary objections to the petition (R.S.C. ch. 9, s. 12; N.B. General Rules of the Election Court, Easter Term, 1887, 12) was waived by the taking of subsequent proceedings before raising the question, but in any case it was only an irregularity that could be amended, and the respondent was allowed to fyle such copy *nunc pro tunc*; that the affidavit of the petitioner was sufficient notwithstanding that it did not set out the reasons for deponent's belief as to the facts sworn to therein; that the fact that the petitioner had himself been guilty of corrupt practices did not preclude him from being a petitioner; that the petitioner's affidavit not having been read over to him, and he not being acquainted with its contents, it was in fact no affidavit; and that as the affidavit was false and untrue, it was an abuse of the process of the Court, and the petition was dismissed. *Alexander* v. *McAllister*, 34 N.B.R. 163.

—Election deposit—Return—Garnishee—Ownership of money.]—See GARNISHEE.

PARTAGE.

Partage de la communauté—Plaidoyer—Compensation.]—See HUSBAND AND WIFE, VIII.

PARSONAGE.

See ASSESSMENT AND TAXES.

PARTIES.

I. JOINDER, 328.
II. MIS-JOINDER AND NON-JOINDER, 329.
III. NECESSARY PARTIES, 329.
IV. SUBSTITUTION OF PARTIES, 330.
V. THIRD PARTY PROCEDURE, 330.

I. JOINDER.

—Deed of donation—Obligation under—Proceedings to enforce.]—Where a deed of donation imposes upon the donee the obligation to maintain (*garder avec lui*) his sisters and his aunt, the latter may join in an action to compel the execution of this obligation towards each of them: *Boyd* v. *Dagenais*, Q.R. 11 S.C. 66, referred to. *Garon* v. *Lévesque*, Q.R. 7 Q.B. 284.

—Rule 94, B.C.—Joint tort-feasors.]—The statements of claim were so drawn as to charge the two different defendants with separate acts of negligence, causing damage to the plaintiff. It appeared, however, from the facts alleged, that if the actions lay at all the two defendants each contributed to the injury in such manner as to make them joint *tort-feasors*:—Held, that the plaintiffs were entitled so to join the defendants: *Sadler* v. *Great Western Railway Co.* [1895], 2 Q.B. 688; [1896], A.C. 450, distinguished. *Bowness* v. *City of Victoria*, 5 B.C.R. 505.

—Cestui que trust—Joinder in action against trustee for misappropriation of trust fund.]

See TRUSTS AND TRUSTEES, II.

—Suit by cestuis que trustent—Fraud—Joining accomplice in fraud.]

See PRINCIPAL AND AGENT, III.

II. MIS-JOINDER AND NON-JOINDER.

—Addition of parties—Rule 206 (2)—Amendment—Alternative claim—Rule 192—Company—President—Contract.]—The plaintiff, having a claim for arrears of salary and damages for wrongful dismissal, sued the defendant company therefor, alleging an agreement made with the president and certain directors before the company's incorporation, and a subsequent by-law and resolution of the company ratifying the agreement. In consequence of what was alleged in the statement of defence, and after discovery had, the plaintiff applied for leave to amend by adding another company and the president of the defendant company as defendants, fearing that he might not recover against the defendant company, because, although they got the benefit of his services, it might appear that his contract was not with them, but with the other company, or that, from want of authority of those who assumed to act on behalf of one or other of the companies, his contract was in law with the president personally, or the president was liable to him in damages as upon a warranty of authority:—Held, that the plaintiff was entitled, by virtue of Rule 192, to have the question as to which one of the three parties was responsible to him, decided in one action; and, although he had omitted to join two of them originally, an order should be made, under Rule 206 (2), adding these two as defendants at this stage of the proceedings: *Bennetts* v. *McIlwraith*, [1896] 2 Q.B. 464, followed. *Tate* v. *Natural Gas and Oil Company of Ontario*, 18 Ont. P.R. 82.

III. NECESSARY PARTIES.

—Community—Action by—Contract of wife.]—Where a contract is made by a wife common as to property, she does so only as agent of the community, and when action is brought in respect of such contract, the husband must be made a party. *Nordheimer* v. *Farrell*, Q.R. 12 S.C. 150.

—Receiver—Right of action.]—Trustees having refused to bring an action to recover funds of the estate, certain of the beneficiaries brought the action in their own names and obtained an order removing the trustees and appointing a receiver in their place, with leave to substitute the receiver as plaintiff. He was substituted accordingly by a subsequent order. Neither of the above orders was appealed from, but at the trial the defendants, while not objecting to the receiver as plaintiff, objected that there was no cause of action in him, whereupon one of the beneficiaries previously struck out asked to be joined as plaintiff:—Held, that there was no cause of action in the receiver and that the Full Court alone had power to restore a plaintiff struck out by order of a judge:—Held, by the Full Court, that the action should be carried on the names of the receiver and one of the beneficiaries with leave to any of the other beneficiaries to apply to be added as plaintiffs. *Shallcross* v. *Garesche*, 5 B.C.R. 320.

IV. SUBSTITUTION OF PARTIES.

—Substitution of plaintiff—Class suit—Dismissal—Appeal to Court of Appeal.]—Upon motion on behalf of a plaintiff to a judge of the Court of Appeal for an order substituting a new plaintiff for him, and extending the time for giving security for the costs of his appeal from a judgment dismissing the action and for delivering reasons of appeal:—Held, that although where a judgment has been pronounced in favour of the plaintiff in a class action that judgment enures to the benefit of the class, and he cannot deprive the others of that benefit, this is not so where the action has been dismissed; the reasons which apply in favour of depriving a plaintiff of the control of a favourable judgment do not exist in the case of an adverse decision; and in this case there was no ground upon which, unless by consent of the defendants, an order for substitution could be made. *Macdonald* v. *City of Toronto*, 18 Ont. P.R. 17.

V. THIRD PARTY PROCEDURE.

—Claim against partnership—Administratrix of deceased partner—Concurrent administration proceedings—Action against surviving partner—Indemnity—Relief over.]—At law, as well as in equity, before the Judicature Act, a partnership debt was, in strictness, joint and not several, and upon the death of one partner the only liability existing at law was that of the surviving partner, the estate of the deceased partner being only made available through the equities existing in favour of the surviving partner, which the partnership creditors were allowed to make use of; and the Act has not converted into a joint and several debt that which had theretofore been merely joint: *Kendall* v. *Hamilton*, 4 App. Cas. 504, and *In re Hodgson*, 31 Ch. D. 177, followed.—And in an action by creditors of a partnership against the surviving partner and the administratrix of the estate of the deceased partner, the name of the administratrix was struck out, leaving the creditors to pursue their remedy against the estate in a proceeding pending for its administration, and to proceed concurrently with the action against the surviving partner.—Held, also, that a claim of the surviving partner against the estate of the deceased for indemnity or relief over in respect of the plaintiffs' claim must be made in the administration proceedings, and not in the action under the third party procedure:—Held, further, that the right of the surviving partner against the ad-

ministratrix, in her personal capacity, to recover upon a mortgage given by her as a security to him against his liability to the plaintiffs, was neither a right to indemnity nor to relief over, because it was a right which might be enforced before he was damnified, there being no reference on the face of the instrument to the liability asserted by the plaintiffs; and, therefore, she could not be brought in as a third party. *Campbell* v. *Farley*, 18 Ont. P.R. 97.

— **Dismissal of action — Appeal.**] — Where a third party has been brought into an action by the defendant, and an order obtained by the latter directing that the question of indemnity as between the third party and himself be tried after the trial of the action, and that the third party be at liberty to appear at the trial of the action and oppose the plaintiff's claim, so far as the third party is affected thereby, and at the trial the action is dismissed:—Semble, that the third party is entitled against the defendant to costs up to and inclusive of the trial:—Held, however, that the disposition of such costs is in the discretion of the trial judge, whose order, by R.S.O. ch. 51, sec. 72, is not subject to appeal without leave:—Held, also, that the third party cannot be heard in a Divisional Court upon an appeal by the plaintiff from the judgment at the trial, and is entitled to no costs of such appeal. *Ewing* v. *City of Toronto*, 18 Ont. P.R. 137.

—**Mode of bringing in third party—Bref d'Assignation—Art. 117 C.C.P.**]—On contestation of the declaration of a *tiers-saisi* a third party can only be brought in by writ of summons (*assignation*). *Knuckle* v. *Charlebois*, Q.R. 12 S.C. 374.

PARTNERSHIP.

I. Actions by and Against, 331.
II. Dissolution, 332.
III. Foreign Partnership, 332.
IV. Formation, 332.
V. Liability of Partners to Third Persons, 334.
VI. Mining Partnership, 334.
VII. Rights and Liabilities of Partners Between Themselves, 335.

I. Actions By and Against.

—**Evidence—Admission of partner after dissolution of firm.**]—In an action against heretofore co-partners, the admission of one of the defendants will not bind his co-partners. This rule does not suffer exception where the defendants are sued as co-partners, and they do not in their plea allege the dissolution of the firm. *Dansereau* v. *Gervais*, Q.R. 12 S.C. 86.

II. Dissolution.

—**Debts of partnership—Execution of judgment—Capias.**]—A partnership is a moral entity having an existence distinct from the personality of its members, who, after dissolution, represent it. The debts of the partnership should then be divided among them as those of *de cujus* among the heirs.—When the title of a debt of a partnership is a judgment it should be executed in the name of the partnership, but only for the share of the former member who executes it, and the writ of execution should so state.—When the partnership has already obtained judgment against a debtor for the entire debt, one member cannot, after dissolution, obtain another judgment for his share of the same debt, but can execute for his share the judgment already obtained.—When, in his claim accompanying a *capias*, the member of a dissolved partnership demands a new combination, and, moreover, that the *capias* be maintained, the Court can only grant the latter, and join the *capias*, for the share of the plaintiff, to the judgment rendered in favour of the former partnership. *Crépeau* v. *Boisvert*, Q.R. 13 S.C. 405.

—**Employer and employee—Dissolution of firm of employers — New engagement.**] — Where a clerk employed by a partnership firm, on the dissolution of the firm accepted service under a new firm formed by two of the original co-partners, and was informed that he would have to deal with them alone, he ceased to have any claim upon the retiring partner for his salary from and after the dissolution. *Houde* v. *Grenier*, Q.R. 12 S.C. 259.

III. Foreign Partnership.

—**Right to sue.**]—A firm doing business in a foreign country has the same right to sue here, in the firm name, that a firm doing business here would have under Ord. 16 R. 14. *Knauth Nachod* v. *Sterne*, 30 N.S.R. 251.

IV. Formation.

—**Agreement—Construction—Whether persons partners inter se.**]—M. carried on business, and had in his employ his sons, J. R. and A. An agreement was entered into between them, by which the sons were to be associated with the father for a term of five years as co-partners in carrying on the business which was to be under the name and style of W. M. & Sons. The father was to furnish the capital and stock in trade, and the sons were to work in their several departments in carrying on the business. J. was to have charge of the books of the business, and power in the absence of the father to sign the firm's name, and also, in the absence of the father, was to have general charge of the business. R. and A. were to be under the direction of the father. The agreement witnessed that each of the sons should accept from the father "out of the proceeds of the business, as

their and each of their several interests in the business, on account of the services to be performed by each of them," a specified sum of money each year, and which the father covenanted to pay them "on account of their several interests in the business." Provision was made for the withdrawal of the sons or either of them "from the said firm," on giving notice to the father, upon which the account with the firm of the party giving such notice should be made up, and the balance due him paid when all his interest in the business should cease. It was further agreed that at the end of the term of five years the several accounts of the sons should be balanced, and the money found to be due to each paid, whereupon the agreement should terminate. The sons were prohibited from entering into any contract on behalf of the firm involving more than $10, or engaging in any transaction out of the usual course of the retail business, and the wish of the father in all matters respecting the general management of the business, was to be binding on the sons. In the books of the business kept by J., and accessible to the sons, an account was opened against each of the sons, in which they were charged the cash paid to them, and were credited as salaries the amounts which by the agreement they were to be paid each year. Stock was never taken, and no steps were taken to ascertain the profits or losses of the business:—Held, that the father and sons were not partners *inter se*. *Martin* v. *Martin*, 1 N.B. Eq. 515.

—Mineral claim—Interest in land—Contract.]—Plaintiff having discovered "mineral float," communicated its situation to the defendant upon a verbal agreement by the latter that in the event of his thereby discovering the ledge and locating a mineral claim, the plaintiff should be "in on it."—That the words "in on it" imported an agreement to give the plaintiff an interest in the nature of a partnership or co-ownership; that, in the absence of anything in a partnership contract to the contrary, the presumption of law is that the partnership shares are equal, and that the contract was not void for uncertainty. *Wells* v. *Petty*, 5 B.C.R. 353.

—Contract—Public policy—Evading secrecy of tenders for municipal work.]—Tenders were invited for certain municipal public works. Defendant, having already put in a tender, met the plaintiff, who also proposed to tender for the work. It was agreed between them that the defendant should withdraw his tender and put in another at a higher figure, and that the plaintiff should tender at a still higher price; that, in the event of the defendant's tender being accepted, the profits of the contract could be equally divided between them. The defendant's tender was accepted. In an action to declare a partnership:—Held, that the agreement constituted a partnership, and was not void as against public policy. *Stevenson* v. *Boyd*, 5 B.C.R. 626.

V. Liability of Partners to Third Persons.

—Contract—Chose in action—Assignment of—Counterclaim—Novation.]—A firm which had contracted with respondents to supply them with a number of bicycles, was subsequently dissolved, one partner retiring, and a new partner taking his place. The notice of dissolution stated that the business would be carried on by the new firm, who would pay the indebtedness of the old, and who were alone authorized to collect its debts, and by the agreement for dissolution, the partners released each other from all liability, and it was agreed that all the claims of the old firm belonged to and would be collected by the new. The respondents had a large claim for damages against the old firm for non-fulfilment of contract, and upon learning from appellants the facts as to the dissolution, made claim against the new firm:—Held, that novation had taken place and that the respondents were entitled to claim against the appellant the damages which the former had sustained through breach of the contracts, but that such damages must be limited to those arising from breaches occurring prior to the dissolution. *Seyfang* v. *Mann*, 25 Ont. A.R. 179; varying 27 Ont. R. 631.

—Costs of appeal taken by co-partners—Remedy—Ord. 40, R. 10—Application for execution under.]—The defendants B., C. and D., were doing business as co-partners, under the name and style of "The Maritime Railway News Co." In an action at the suit of plaintiff, C. and D. were served, and appeared and defended the action, but B., who was not known at the time to be a member of the firm, was not served, and swore that he did not know, until after the termination of the proceedings, of the nature of the action, or of the steps taken by his co-partners to defend it. Judgment having been given for plaintiff, C. and D. appealed. The appeal was dismissed with costs. After the costs connected with the trial and appeal had been incurred, plaintiff discovered that B. was a member of the firm and took steps under Ord. 40, R. 10, to have execution against him on the judgment recovered against the firm, and also the costs incurred in connection with the appeal, and not included in that judgment. The application was heard before Graham, E.J., who made the order applied for. From this, the defendant B. appealed:—Held, dismissing the appeal, that B. was liable, not only for the costs of the original action and judgment, but for the costs of the appeal taken by his co-partners, C. and D., and that his only remedy was against his co-partners in winding up the partnership. *Banque D'Hochelaga* v. *Maritime Railway News Co.*, 31 N.S.R. 9.

VI. Mining Partnership.

—Mineral Act C.S.B.C. 1888, c. 82, ss. 114, 126—Foreman—Estoppel—Partnership.]—M. was

a member of and held a controlling interest in a mining partnership. He was not formally appointed foreman, but appeared to have been permitted to manage its affairs in the matters in question, and appointed one G. superintendent, who ordered certain goods from M. for the partnership. He also supplied other goods to the partnership, accounts for which were passed at a meeting of the partnership:—Held, per Drake, J., affirming the registrar's certificate made upon taking the accounts under the decree allowing the items to M. that section 126 of the Act does not preclude a mining partnership from contracting liabilities otherwise than upon the order of a duly appointed foreman; that as to the items passed at meetings of the partnership, it was estopped from disputing its liability.—Upon appeal, the Full Court affirmed this judgment. *Gray* v. *McCallum*, 5 B.C.R. 462.

VII. Rights and Liabilities of Partners Between Themselves.

—Clause in deed for valuation of assets after dissolution — Valuators exceeding powers — Nullity of award.]—Where it was provided in a deed of partnership that at the expiration of the partnership the assets should be valued by valuators named by the parties, which valuators should fix and determine the cash value of the interest of one of the partners (now plaintiff) in the business; and the valuators who were appointed entered into questions of account between the partners, and decided a question of law, viz,, that the partners had the right to pretake their nominal capital before division of the assets; that the award was irregular and must be set aside, and especially as a subsequent clause of the deed of partnership provided for the appointment of arbitrators to settle any dispute which might arise between the partners. *Gerhardt* v. *Davis*, Q.R. 12 S.C. 137.

And see Company.

PARTITION.

Sale—Tenant for life—Locus standi—R.S.O. c. 104.]—A sole tenant for life of an estate has no locus standi under the Partition Act, R.S.O. ch. 104, to apply for sale of the estate. In the nature of things no partition is possible as regards the life tenancy. *Fiskin* v. *Ife*, 28 Ont. R. 595.

PATENTS OF INVENTION.

I. Contracts for Sale, 335.
II. Foreign Patent, 336.
III. Novelty, 336.

I. Contract for Sale.

—Sale of interest pending application for patent —"Mutual mistake"—Word "patent" as used in sales note.]—Defendant sold to plaintiff an interest in an improvement made by H., in window sashes, in connection with which an application for a patent was then under consideration in the patent office at Washington. A note or memorandum of the sale handed to plaintiff by defendant read as follows:—"Halifax, N.S., 3rd June, 1894. Mr. W. C.,—460/5000 shares in Horton Sash Patent, @ $2.00, $920; Less by cash, $62.20; settled by note, &c." The patent applied for was refused, on the ground that the improvement claimed was not new, and plaintiff thereupon brought action to recover back the money paid. Plaintiff's evidence was to the effect that defendant purported to sell him an interest in a patent already granted. Defendant's evidence was that he was interested with H. in an invention called "The Horton Sash Patent," for which they were endeavouring to secure a patent in the United States, with the view of putting the patent upon the market, and obtaining a profit therefrom, and that plaintiff purchased the shares knowing this, and agreeing to take his chances of the patent being granted and the invention proving profitable. Judgment was given in favour of plaintiff for a return of the money claimed, on the ground that there had been a mutual mistake:—Held, that this was wrong, and that the judgment must be set aside, the mistake, if any, having only been on the part of plaintiff and the cause sent back for a new trial, costs to abide the event:—Held, that the terms of the sales' note were in plaintiff's favour, but that it was still competent to defendant to shew that the term "Horton Sash Patent" did not imply that the patent had actually been granted, and that plaintiff in getting the interest in the invention got all that he bargained for. *Chisholm* v. *Peters*, 31 N.S.R. 16.

II. Foreign Patent.

—Patent of invention — Canadian patent — Foreign patent—Expiration of—Effect of.]—The expression "any foreign patent" occurring in the concluding clause of the 8th section of the Patent Act, viz.: "Under any circumstances if a foreign patent exists, the Canadian patent shall expire at the earliest date on which any foreign patent for the same invention expires" must be limited to foreign patents in existence when the Canadian patent was granted. *Auer Incandescent Light Mfg. Co.* v. *Dreschel*, 6 Ex. C.R. 55; affirmed on appeal, 28 S.C.R. 608.

III. Novelty.

—Infringement — Damages — New and useful combination of previously known processes.]—A patent may be sustained though each principle or process in it was previously well known, providing that the mode of combining them be new and produce a beneficial result, and that the specification claims not the old processes or any of them, but only such new combination.—The packing box patented by plaintiff was both novel and useful, as evidenced by the fact that, as soon as manu-

factured, it became in great demand and was copied; and the fact that such a package, though long a desideratum in the butter trade, had never before been produced, was strong presumptive evidence that to design it required inventive capacity and exceeded mere mechanical skill. *Dion* v. *Dupuis*, Q.R. 12 S.C. 465.

PAYMENT INTO COURT.

Division Courts—Tort—Continuance—Right to money in Court — Prohibition.] — In a Division Court action for a tort, money paid into Court by a defendant in alleged satisfaction of the plaintiff's claim, at once becomes the plaintiff's, but if he proceeds with the action it must under Rule 170, remain in Court until after judgment is given in the action, when any costs awarded the defendant, after the payment in, must be deducted therefrom. Where, therefore, after payment into Court by a defendant of a sum of money in alleged satisfaction of the plaintiff's claim and costs, the plaintiff proceeded with the action, and judgment was given in the defendant's favour, an order made by the Division Court Judge directing the sum so paid in to be paid out to the defendant, was set aside, and the amount directed to be paid out to the plaintiff after deducting the costs awarded to the defendant. *O'Neil* v. *Hobbs*, 29 Ont. R. 487.

—Money in Court—Payment in with defence—Election to take out—Time—Extension—Judgment—Rules 353, 419, 424.]—A defendant brought money into Court with his defence, under Rule 419, in full satisfaction of one of the alleged causes of action. The plaintiff did not elect to take the money out of Court within the time limited by Rule 424, and judgment was given in favour of the defendant upon the cause of action in respect of which the money was paid in. The judgment did not dispose of the money in Court:—Held, that it remained in Court subject to the final order of the Court after the determination of the action, and must be disposed of in accordance with such determination. The plaintiff, not having elected to take the money out within the proper time, was not entitled, after judgment, to have the time extended by an order *nunc pro tunc* under Rule 353. *Magann* v. *Ferguson*, 18 Ont. P.R. 201.

—Railway Co.—Expropriation of land—Possession—Deposit in Court—Interest.]

See RAILWAYS AND RAILWAY COMPANIES, IV.

PENALTY.

Meaning of terms—Pecuniary punishment—Imprisonment.]

See CANADA TEMPERANCE ACT, III.

PENSION.

Retiring allowance—Aliments—Compensation—Acquiescence.]—It is not necessary that the title constituting a pension or life-rent (*rente viagère*) should state the alimentary character of such pension if the circumstances shew that it was created *à titre d'aliments*. Thus, the defendant bank having, by resolution of its board of directors, undertaken, in consideration of the long service of its former cashier, who had retired in a state of poverty and insolvency, to give him a retiring allowance, this pension should be deemed alimentary and non-seizable, and therefore the bank could not set up in compensation, against the payments of the pension a debt due to it by the pensioner.—The ordinary alimentary pension may be assigned, and the assignment gives to the assignee all the rights of the assignor, and all the privileges attached to his claims.—The bank could not, after regularly paying the pension for several years to the knowledge and with the tacit approval of all its shareholders, claim that it had power to constitute it. *Trother* v. *La Banque du Peuple*, Q.R. 13 S.C. 460, affirmed by Court of Queen's Bench.

PEREMPTION.

Action by company—Liquidation—Change of status—Art. 280 C.C.P.]—See COMPANY, VI(*f*).

—Peremption d'instance — Change of status—Company in liquidation — Notice — Arts. 436, 455 C.C.P. (old text).]

See PRACTICE AND PROCEDURE, XXVI.

PETITION OF RIGHT.

See CROWN, II and III.

PHYSICIAN.

Sale of practice — Covenant — Restraint of trade—Condition Precedent—Waiver—Registration under N.B. Medical Act.]

See CONTRACT, XII.

PLEADING.

I. ACTION ON FOREIGN JUDGMENT, 339.
II. AMENDMENT, 339.
III. COMPENSATION, 340.
IV. COUNTER-CLAIM, 340.
V. DECLARATION, 341.
VI. DEMURRER, 341.
VII. FORM OF PLEA, 342.
VIII. ILLEGAL PLEA, 342.
IX. IRREGULARITY, 342

X. Necessary Averments, 342.
XI. Puis Darrein Continuance, 343.
XII. Separate Defence, 343.
XIII. Service of Pleadings, 344.
XIV. Statement of Claim, 344.
XV. Statement of Defence, 345.
XVI. Sufficiency of Pleading, 347.

I. Action on Foreign Judgment.

—Art. C.C.P. 42b (old text)—Estoppel.]—A defendant who is sued in this province on a judgment rendered by a provincial Court in any other province of the Dominion, is not estopped from pleading any defence that might have been set up to the original suit unless he has been personally served *within such other province*, or, in the absence of such personal service, has appeared. *Cole* v. *Duncan*, Q.R. 12 S.C. 152.

II. Amendment.

—Affidavit of bona fides—Conversion of goods—Damages—Measure of—Amendment—Adding claim—Pleading.]—At the time the goods were taken by the defendant out of the plaintiff's possession they were in the hands of the bailiff of the latter for sale under the power contained in the mortgage, and, when the defendant intervened and sold as assignee, the same bailiff conducted the sale, and the amount realized was the same as would have resulted from a sale under the power:—Held, that the plaintiff was entitled to recover as damages for the conversion no more and no less than was realized by the sale.—A part only of the goods which the defendant took out of the possession of the plaintiff's bailiff was sold; from the remainder of them the defendant realized nothing, claims having been made to them by other persons, which the defendant did not contest, though he did not actively take part in handing them over to the claimants. The plaintiff, having in his pleading limited his claim to the goods actually sold, was at the trial refused leave to amend by adding a claim for the other goods. *Light* v. *Hawley*, 29 Ont. R. 25.

—Pleadings—Trial—Partnership—Conspiracy—Accounts—Parties—Terms—Costs.]—The action as framed was to recover damages for an alleged conspiracy between the defendants, the plaintiff's partner in a mercantile business, and another, whereby they fraudulently and secretly withdrew money from the assets of the firm. The real grievance was the alleged misappropriation by the plaintiff's partner, with the assistance of the other defendant, of partnership funds, to the injury of the partnership and of the plaintiff. At the trial the plaintiff sought to amend by alleging that monies were received by the other defendant in trust for the firm, and by adding the firm's assignee for the benefit of creditors as a party, and by claiming an account:—Held, that the amendment, which had been refused, should have been granted upon proper terms as to costs. *Smith* v. *Boyd*, 18 Ont. P.R. 76.

—Admission in pleas—Amendment at trial.]—When an allegation in a plea contains a formal admission, it cannot be assimilated to a clerical error, or an accidental misstatement, unless a very satisfactory explanation to that effect is given. Therefore, the Court should not treat it as one of those errors which the Court allows to be rectified by motion at the trial. *Vézina* v. *Piché*, Q.R. 13 S.C. 213.

—Art. 199 C.C.P.—Amendment of declaration.]—Article 199 of the Code of Procedure cannot be extended so as to authorize the Court to permit an amendment of the declaration, where such amendment sets up an entirely new and distinct right of action founded on facts not existing at the date of the issue of the writ. *Brunet* v. *Venne*, Q.R. 12 S.C. 512.

—Reply—Amendment incorrectly made—Further amendment to correct record.]—In reply to an amended defence, setting up merger, the plaintiff inadvertently referred to "paragraph one of the defence" meaning paragraph nine of the original defence or paragraph one of the amended defence:—Held (per Ritchie, J.), that defendants had notice of the plea of merger, and went to trial on that plea, but if an amendment was necessary to make the record correct, it should be made. *McDonald* v. *McDougall*, 30 N.S.R. 298.

—Practice—Examination for discovery—Second order after material amendment of pleading.]—Where a party, after being examined for discovery, materially amends his pleading so as to raise a new issue, he may be ordered to be examined again. *Bank of Montreal* v. *Major*, 5 B.C.R. 181.

—Slander—Particulars—Further charges added.

See hereunder, XIV.

III. Compensation.

—Husband and wife—Action for money due wife—Contestable claim en compensation.]—In a suit against L. to compel him to return a sum of money which he had drawn from a bank after it had been allotted to his wife in the *partage* of the community made pursuant to a judgment *de séparation de corps* the defendant cannot *par exception*, demand the annulment of the entire *partage*, nor can he set off (*opposer en compensation*) his share of a sum of money belonging to the community which his wife may have concealed before the *partage*, such a claim being contestable. *Arcand* v. *Lamy*, Q.R. 13 S.C. 488.

IV. Counter-Claim.

—Evidence insufficient to support judgment for defendant—Costs.]—In an action by plaintiff against defendant on a promissory note, the latter counter-claimed for damages on account of the failure of plaintiff to deliver

goods according to contract, by which defendant was prevented from making sales, and lost commissions, etc. The evidence given in support of the claim went to shew that some parties refused to take goods on account of delay in the delivery of them, but it was not shewn how many persons so refused, or what quantity of goods they refused to take, or the dates or times at which the alleged refusals were made:—Held, that the evidence was insufficient to support the judgment in defendant's favour on the counter-claim, and that the appeal as to the counter-claim must be allowed with costs, but, as plaintiff appeared to have been somewhat in default, that the counter-claim should be dismissed without costs in the Court below. *Marshall* v. *Matheson*, 31 N.S.R. 238.

—County Courts — R.S.M., c. 33, s. 67— Counter-claim jurisdiction—Transfer to Queen's Bench.]

See COUNTY COURTS.

— Jurisdiction of County Court — Declaratory judgment—Trespass to land.]

See COUNTY COURTS.

—Goods sold—Counter-claim for non-delivery at time agreed—Damages—Onus.]

See SALE OF GOODS, III.

V. DECLARATION.

—Action for defamation—Particularity of facts.] —In an action for damages for defamation the plaintiff in his declaration, after stating the injury resulting from one particular circumstance, added, that defendant, before and since, had repeated the same and other injurious words, and especially that he had accused the plaintiff, a physician, of having, in collusion with their husbands, given false and erroneous certificates for the burial of certain women in the Church of St. Jean de Dieu, and had even mentioned the name of one woman so buried:—Held, that it was not necessary, in the declaration, to give the names of the persons before whom the injurious words had been spoken, nor to mention the name of the woman whom the defendant had indicated as having been buried on the false certificate of the plaintiff:—Held, also, reversing Q.R. 12 S.C. 437, that the allegation that defendant had pronounced the same injurious words and others, before and since, was too vague and should be expunged, as in a matter of libel or defamation the defendant has a right to demand that all the libellous and defamatory matters imputed should be particularised in the declaration. *Martineau* v. *Lussier*, Q.R. 7 Q.B. 473.

VI. DEMURRER.

—Queen's Bench Act, 1895, Rules 280, 426 and 440.]—The proper practice, under Rule 426 and 440 of the Queen's Bench Act, 1895, where a demurrer is incorporated in the statement of defence, is to apply for an order of a judge if it is desired to have the demurrer heard before the trial of the issues of fact. And without such orders the matters of law should be disposed of at the trial along with the issues of fact. In the present case the demurrer had been set down for hearing on a Wednesday, without a judge's order, but had been heard and overruled:—Held, on appeal from the overruling order, that, as the defendants could not argue the demurrer at the trial, the appeal must be proceeded with. *Foster* v. *Municipality of Lansdowne*, 12 Man. R. 41.

—Municipality—Drainage by-law—Allegation of —Demurrer.]

See MUNICIPAL CORPORATIONS, V.

VII. FORM OF PLEA.

—Exception à la forme—Conclusions for dismissal of action.]—In an exception to the form, conclusions for the dismissal pure and simple of the action are bad, and will involve the dismissal of the exception, the Court not being able to adjudicate therefrom on these conclusions, and reserve the recourse of the plaintiff. *Freeman* v. *Gray*, Q.R. 12 S.C. 10.

—Petition in revocation of judgment—Pleading —Prescription.]—The defence of prescription, under Arts. 1178 and 1179 C.C.P., to a petition in revocation of judgment, should be invoked by a plea to the merits, and not by an exception to the form. *Durocher* v. *Durocher*, Q.R. 12 S.C. 282.

—Procedure—Replication to answer—Art. 198 C.C.P.]—A pleading fyled by defendant, containing matter of an argumentative nature, in reply to plaintiff's answer, will be rejected on motion, more particularly where the answer did not set forth new facts and no replication was necessary to join issue. *Moranville* v. *Demers*, Q.R. 13 S.C. 1.

—Plea—Set-off—Demurrer.]—A plea of set-off, which did not conclude with an offer to set-off defendant's claim against plaintiff's claim, was held bad on demurrer. *Fillmore* v. *Cartwright*, 33 N.B.R. 621.

VIII. ILLEGAL PLEA.

— Damages — Slander.] — In an action for damages for alleged slander, when a plea of compensation of injury and provocation was put in, the defendant could not plead that plaintiff was generally bad tempered and of quarrelsome habits. *Langlois* v. *Drapeau*, Q.R. 12 S.C. 92.

IX. IRREGULARITY.

—Motion to reject allegations in pleas for irregularity—Procedure on motion—Deposit — Notice —Art. 165, C.C.P.]

See PRACTICE AND PROCEDURE, XXI.

X. NECESSARY AVERMENT.

—Opposition claiming goods—Allegations—Titles to property.]—In an opposition by which goods and effects are claimed the allegations should be clear and precise, and indicate the title under which the *opposant* claims property in the effects. *Laberge* v. *Tranquille*, Q.R. 12 S.C. 510.

—Sale with suspensive condition—Revendication —Tender—Off-set—Demurrer.]—Where an article is sold with the condition that it shall remain the property of the vendor until the price shall be fully paid, and the vendor subsequently revendicates the thing sold for non-compliance with the conditions of the contract, such action cannot be maintained unless the plaintiff tenders therewith the money received on account of the price. Even supposing that the plaintiff has a right to off-set against the amount received a claim for the use of the article, such claim should be set out in the declaration, and cannot be made by an answer to a demurrer. *Tufts* v. *Giroux*, Q.R. 12 S.C. 530.

—Sale to agent — Action against principal—Allegation of agency—Proof.]—In an action to recover the price of horses sold an alleged agent of defendant:—Held, that upon an allegation of the sale by plaintiff to defendant plaintiff could prove the agency even without an allegation thereof, especially when defendant had, in the *enquête*, all the benefit of the proof that he could have opposed to such an allegation. *Bisaillon* v. *Elliott*, Q.R. 13 S.C. 289.

—Notice of action—Want of, how pleaded.]—Want of notice of action, when it is required, should be pleaded by exception to the form within the delays fixed for the production of preliminary exceptions, and not by a defence to the merits (*au fond*). *Kelly* v. *Montreal Street Railway Co.*, Q.R. 13 S.C. 385.

—Sale of mineral claim—Statute of Frauds.]—To maintain the defence of the Statute of Frauds to an agreement for sale or transfer of a mineral claim, both that statute and section 34 of the Mineral Act, 1891, must be pleaded. *Stussi* v. *Brown*, 5 B.C.R. 380.

—Statute creating offence—Exemption—Proviso or exception—Negativing.]—The existence of an exception nominated in the description of an offence created by statute, must be negatived in order to maintain the charge, but if a statute creates an offence in general with an exception by way of proviso in favor of certain persons or circumstances, the onus is on the accused to plead and prove himself within the proviso. *The Queen* v. *Strauss*, 5 B.C.R. 486.

XI. Puis Darrein Continuance.

—Art. 199 C.C.P.—Allegation in pleading of facts which have occurred after institution of action.]—Where the plaintiff, in answer to plea, desires to set up facts which have occurred since the institution of the action, he must first obtain leave of the Court. *Schiller* v. *Daoust*, Q.R. 12 S.C. 185.

XII. Separate Defence.

—Husband and wife common as to property—Action for debt of community—Right of wife to plead separately.]—See Action, III.

XIII. Service of Pleadings.

—Defence sent by mail—Sufficiency of service under non-compliance rule—Judgment by default.]

See Practice and Procedure, XVI.

XIV. Statement of Claim.

—Arrest—Discharge—Failure to deliver statement of claim—Rule 1044—Extension of time—Rule 353—Terms.]—Under the present practice there is power, after the expiration of the time appointed by Rule 1044 for the delivery of the statement of claim, where a defendant is detained in custody under an order for arrest, to extend the time. The case is within Rule 353, and the wording of Rule 100 of the Rules of Trinity Term, 1856, has been altered from "shall have been given" to "is given" in Rule 1044.—Where the statement of claim was delivered two days after the month had expired, and the defendant moved for his discharge, an order was made validating it for all purposes, upon terms as to speedy trial and payment of costs. *Winch* v. *Traviss*, 18 Ont. P.R. 102.

—Slander — Particulars — Names of persons—Times and places—Striking out—Amendment.]—In an action of slander the statement of claim, after alleging that the slanders had been spoken and published to certain named persons, added "and to others at present unknown to the plaintiff:"—Held, sufficient. It was also alleged that during a period of five months the defendant spoke and published various slanders to certain named persons and to others not known to the plaintiff:—Held, bad, for it did not shew which of the persons mentioned were present when the different statements were made, nor at what times and places they were made. Leave to the plaintiff to amend by adding further charges within reasonable limits. *Townsend* v. *O'Keefe*, 18 Ont. P.R. 147.

—Discovery and production of documents—Application for, before statement of claim—False representations.]—In an action for damages for false representations made by the defendants whereby the plaintiffs were induced to supply them with goods and money, and to enter into agreements with them, to the plaintiffs' loss:—Held, that it was enough for the plaintiffs to aver in their statement of claim that the goods and money were supplied on the faith of statements, oral and written—specifying them—falsely and fraudulently made; and this they could do without the production of the defendants' balance sheets, books of account, etc. If particulars were afterwards claimed, it would then be time enough to apply for discovery. *Arthur & Co.* v. *Runians*, 18 Ont. P.R. 205.

—Action by assignee—Allegation that assignment made in writing—Amendment—Costs.]—In an action brought by plaintiff, as assignee of W.H.H., against defendant, the statement of claim read as follows:—"That the said W. H. H. duly assigned the said debt to the

plaintiff." The trial judge was of the opinion that, on the merits, as disclosed by the evidence, plaintiff was entitled to recover, but he sustained an objection made to the statement of claim under O. 61, viz., that it was not alleged that the assignment was made in writing, which was necessary to entitle plaintiff to sue in his own name, and gave judgment accordingly:—Held, that it was the duty of the trial judge, on the facts as found by him, to have made the amendment necessary to enable plaintiff to recover, and that, as he had failed to do so, the case was clearly one for the interference of the Court. Amendment ordered, and judgment directed to be entered for plaintiff with costs of trial, but no order made as to costs of appeal. *Dempster* v. *Fairbanks*, 29 N.S.R. 456.

—Cheque—Presentment for payment—Allegation of.]—An allegation in a statement of claim that a cheque "was duly presented for payment" is good, under R.S. N.S. (5th ser.), ch. 104 App. C., sec. 3, No. 6, provided there is nothing on the face of the cheque requiring presentation at a particular place. *Knauth Nachod* v. *Sterne*, 30 N.S.R. 251.

—Parol contract—Statute of Frauds—Sufficiency of statement of claim.]—See CONTRACT, XIII.

—Assignment of debt—Action by assignee—Allegation that assignment made in writing—Amendment—Costs.]

See DEBTOR AND CREDITOR, III.

—Detinue—Allegation of special damage.]

See DETINUE.

—Specially indorsed writ.]

See PRACTICE AND PROCEDURE, XXXVIII.

XV. STATEMENT OF DEFENCE.

—Statement of defence—Prolixity—Embarrassment.]—In an action by creditors of an insolvent partnership against the assignee for the benefit of creditors for an account and payment of dividends upon the estate, and interest, the defendant, *inter alia*, set out in his defence, at great length, certain correspondence between his solicitors and the plaintiffs', as to the terms upon which he should acknowledge the right of the plaintiffs to dividends, as to the securities held by the plaintiffs, the value placed thereon and the claim of the plaintiffs for interest, and alleged that, for the sake of peace and to avoid litigation, he paid into Court a sum of money, which he had tendered pursuant to the request of the plaintiffs, as shewn by the correspondence, upon conditions upon which the plaintiffs had stated they were willing to accept it, with the exception that he would not pay interest from the date fixed by them, there being, as he submitted, no right in them to receive interest, and he reserved the right to take proceedings to recover the amount overpaid in case the security of the plaintiffs should be upheld, and it should be held that they should have valued it:—Held, that these portions of the defence were properly stricken out as prolix and embarrassing. *Brock* v. *Tew*, 18 Ont. P.R. 30.

—Pleas—Setting aside—Question whether there is anything to be tried.]—On motion to set aside pleas as false, frivolous and vexatious, the ground relied upon by defendant, and sworn to in his affidavits, was that the plaintiff's claim had been extinguished by the giving of a chattel mortgage:—Held, allowing defendant's appeal from the order made in plaintiff's favour, that where there is any conflict in the affidavits produced, it is the duty of the judge to disregard the preponderance of testimony in favour of the application, and assuming that the statements in defendant's affidavits, touching the facts in issue are true, on that assumption, to determine whether there is anything to be tried:—Held, also, that as the judge to whom the application was made appeared to have some doubt as to whether there might not be a defence, the order appealed from should be discharged, costs to abide the event. *Banks* v. *Batton*, 30 N.S.R. 386.

—Defects in—Amendment—Ord. 19, R. 27—Reasonable ground of defence.]—Plaintiff made application under Ord. 19, R. 27, and Ord. 25, R. 4, to strike out paragaphs 4 and 5 of defendant's defence as embarrassing, evasive and disclosing no reasonable or legal answer to the action. The action was brought by plaintiff as a solicitor and stipendiary magistrate to recover a sum of money claimed to be due him for work and labour performed in connection with the collection of certain accounts. The defence set up an agreement that the costs and charges claimed were not to become payable until one E. paid the amount of a judgment recovered against him:—Held, that the paragraphs in question were defective in not setting out when the agreement relied upon was made, and whether it was made in writing or by parol, &c., but that where objections of this character are raised, especially in small matters, the proper course is not to strike out the paragraphs, but to direct them to be amended:—Held, further that the case was one in which the judge of the county court, to whom the application was made, should himself have amended the pleadings without waiting to be asked by counsel to do so; and should then have disposed of the case upon the merits; or should have given defendant the option of amending; and that he was wrong in refusing the application *in toto*:—Held, also, that the pleadings were not objectionable under Ord. 25, R. 4, because they disclosed a reasonable ground of defence, although it was not set up in accordance with the rules respecting pleadings:—Held, also, that the order below must be set aside, but, having regard to the application as a whole, the costs below, and the costs of the appeal should be made costs in the cause, and that defendant should have leave to amend. *Power* v. *Pringle*, 31 N.S.R. 78.

—Plea in bar—Settlement of action—Assignee.]

See ACTION, III.

—Paying money into Court with deference.]

See PAYMENT INTO COURT.

—Mercantile agreement—Principal and surety—Ratification—Allegation of, in statement of defence.]—See PRINCIPAL AND SURETY, III.

XVI. SUFFICIENCY OF PLEADING.

—Carrier—Bill of lading—Ownership of thing received for transport—Arts. 1745 and 1808 C.C.]—A carrier, by his plea to an action founded on a bill of lading of goods received for transport, cannot put in issue the plaintiff's ownership of the goods. *Aubry-LeRevers* v. *Canadian Pacific Ry. Co.*, Q.R. 12 S.C. 128.

—Special reply to defence—General denial—Art. 202 C.C.P.]—The following allegation as a special reply to the defence, namely, "that all the allegations of the said defence are false and ill-founded except those admitted" is irregular; the plaintiff who wishes to deny certain allegations in the defence, after having admitted others, should do so particularly and categorically. *Guimond* v. *Gosselin*, Q.R. 12 S.C. 178.

—Denial of signature—Absence of affidavit—Proof—Art. 1233 C.C.—Art. 145 C.C.P. (old text.).]—A defendant who denies his signature to a writing produced by his opponent, and does not accompany his plea with an affidavit attesting the truth of the facts alleged, cannot, by witnesses, disprove the writing which he must be deemed to have acknowledged. The deposition under oath of the defendant as a witness at the *enquête* cannot take the place of the affidavit required by law. *Péloquin* v. *Genser*, Q.R. 12 S.C. 229.

—Action for libel—Allegations.]—The omission of the plaintiff, in an action of damages for libel, to set forth the names of the persons who were present when the libels alleged to have been uttered by the defendant were so uttered, is not ground for a motion in the nature of an exception to the form. *Lussier* v. *Martineau*, Q.R. 12 S.C. 437.

—General denial—Art. 202 C.C.P.]—An allegation in reply to the contestation of an opposition, which denies all the allegations in such contestation except those admitting the truth of the allegations in the opposition, or which agree with them, does not constitute a general denial, and does not exclude other allegations of fact; no more does it constitute a special denial, and is, therefore, irregular when it is the only allegation in the reply. *Bellingham* v. *Robb*, Q.R. 12 S.C. 454.

—Libel—Pleading.]—A plea to an action of damages for slander or libel, alleging that the defendant had good reasons and probable cause to say or write what he did say or write, and specifying the reason, is a good plea in law. *Smith* v. *Hood*, Q.R. 13 S.C. 341.

—Sale of land—Action for passage of title—Price—Cash down—Offer to pay.]—In an action on an agreement for sale of land where part of the purchase money was to be cash down, the declaration asked that the vendor be compelled to pass the title, or, in default thereof, the judgment should do so:—Held, that there being no offer by the action to pay the portion of the price that was cash down, the conclusions of the action could not be granted. *Taché* v. *Stanton*, Q.R. 13 S.C. 505.

—Petitory action—Plea of charge for disbursements—Answer of compensation—Admission—Delivery—Demeure—Costs.]—See COSTS, XI (*a*).

PLEDGE.

Security for debt—Possession by creditor—Interruption of prescription.]

See LIMITATION OF ACTIONS, III.

—Sale of pledge—Arts. 1067, 1971 C.C.]—Plaintiff swapped horses with the defendant, giving him $5 to boot. Not having the money at the time, he sent to a third party his carriage rug undertaking to remit him the $5 within eight days, and, if not, he could give the rug to the defendant. At the end of three weeks, defendant demanded the $5 from said third party, who, not having received it, gave him the carriage rug, which he sold for $5. In an action by plaintiff to recover the value of the rug, namely, $10.25:—Held, that defendant, in virtue of the agreement that in default of payment within eight days he could sell the pledge, had a right to do so, and the action must be dismissed. *Charrier* v. *Boutin*, Q.R. 13 S.C. 384.

—Construction of contract—Agreement to secure advances—Sale—Delivery—Possession—Bailment to manufacturer.]—See CONTRACT, V. (*c*).

POLICE MAGISTRATE.

Ont. Master and Servant Act—Set-off—Jurisdiction of police magistrate.]—A police magistrate outside of cities has no jurisdiction under the Master and Servant Act to allow a counter-claim or set-off against the servant. *Masters* v. *Adams*, 34 C.L.J. 702.

And see JUDICIAL OFFICERS.
" " JUSTICE OF THE PEACE.

POOR OVERSEERS.

Bastard Child—N.S. Bastardy Act—Liability of overseers in mother's place of settlement.]

See BASTARDY.

POST OFFICE.

Effect of mailing accepted cheque as a transfer by payee—Subsequent assignment—Revocation—Post Office Act, R.S.C., c. 35, s. 43.]

See BANKRUPTCY AND INSOLVENCY, IV.

PRACTICE AND PROCEDURE.

I. ACTIONS, 349.
(a) *Generally*, 349.
(b) *Dismissal*, 350.
II. AFFIDAVIT, 351.
III. AMENDMENT, 353.
IV. APPELLATE COURT, 353.
V. DELAYS, 354.
VI. DISCOVERY AND PRODUCTION OF DOCUMENTS, 354.
VII. ELECTION OF DOMICILE, 358.
VIII. EQUITY PRACTICE, 358.
IX. EVOCATION, 358.
X. GARNISHEE, 358.
XI. INFORMATION, 359.
XII. INJUNCTION, 359.
XIII. INSCRIPTION, 360.
XIV. INTERVENTION, 360.
XV. JUDGMENT GENERALLY, 360.
XVI. JUDGMENT BY DEFAULT, 363.
XVII. JURY AND JURY NOTICE, 365.
XVIII. LIQUOR LICENSE CASES, 369.
XIX. MASTER'S OFFICE, 369.
XX. MORTGAGE ACTION, 369.
XXI. MOTIONS, 369.
XXII. NEW TRIAL, 369.
XXIII. NONSUIT, 371.
XXIV. ORDERS, 371.
XXV. PARTICULARS, 372.
XXVI. PEREMPTION, 372.
XXVII. PROCEDURE IN PARTICULAR MATTERS, 373.
XXVIII. REFEREE IN CHAMBERS, 376.
XXIX. REQUÊTE CIVILE, 376.
XXX. RIGHT TO REPLY, 376.
XXXI. RULES, 377.
XXXII. SERVICE OF PROCESS, 377.
XXXIII. STAY OF PROCEEDINGS, 379.
XXXIV. SUMMONS, 380.
XXXV. TRIAL, 380.
XXXVI. VACATION, 382.
XXXVII. VENUE, 383.
XXXVIII. WRITS, 384.

I. ACTIONS.

(a) *Generally.*

—Receivers—Ex parte application—Trustee and cestui que trust.]—Motion made by two holders of bonds issued by the defendant company and secured by a mortgage made to G. and H., the plaintiffs in the second suit, as trustees, for leave to bring an action to administer the trusts of the mortgage deed, for a declaration that the power of sale and other powers contained in that deed are valid, and for a declaration of the true construction of the mortgage as to certain matters. The mortgage covered a portion of the line of the defendant's railway, known as the first division, but as part of it was beyond the province, it had been decided that the Court had no jurisdiction to order a sale. Receivers of the profits, tolls and revenues of the railway had been appointed in the respective suits, but they were not in possession of any part of the company's property and had nothing to do with the management of the railway. The trustees, G. and H. had formerly applied to the Court and got leave to take certain proceedings which they had taken, but without any practical results to the bondholders, beyond the appointment of a separate receiver for the first division. It was deemed necessary to make the present application, because the railway company would have to be made a party to the action to be brought, and receivers had been appointed in the above actions:—Held, that leave should be granted as asked, and that the applicants were not precluded from bringing an action for the administration of the trusts on account of anything done by the trustees; also that no notice of the application need be given, as the receivers were not in any sense in possession of any part of the company's property: *Allan* v. *Manitoba and North Western Railway Company; Grey* v. *Manitoba and North Western Railway Company*, 12 Man. R. 57.

—Mortgage action—Tax sale—Purchaser—Joinder of causes of action—Leave to join.]

See TAX SALE.

(b) *Dismissal.*

—Husband and wife—Marchande publique—Misdescription.]—A married woman who is a *marchande publique*, even though she be common as to property, is liable to be sued for the enforcement of obligations incurred by her for the purposes of her business as such *marchande publique;* and the fact that she is misdescribed in the writ as being separate as to property, whereas she is in community with her husband, is not a ground for dismissing the action against her. *Renaud* v. *Brown*, Q.R. 12 S.C. 237.

—Action of slander—Want of prosecution—Postponement on account of absence of material witness—Refusal of.]—Plaintiff brought an action for slander December 13th, 1894. The defence was delivered July 4th, 1895. On October 19th, 1895, an order was made that unless the action was tried at the ensuing special sittings of the Court, it should be dismissed for want of prosecution. This order was not insisted upon, and the cause

came on for trial at the regular sittings in May, 1895. Plaintiff then moved for a postponement on the ground that the witness by whom he expected to prove the words complained of, and who had been subpœnaed, and had promised to attend, was not present. The presiding judge reserved judgment, and subsequently fyled his decision refusing the postponement asked for:—Held, dismissing plaintiff's appeal with costs, that while, in the ordinary course, good ground had been shewn for the postponement asked for, the circumstances were exceptional, and the judge having exercised his discretion there was no ground for disturbing his decision. *Duffy* v. *Adams*, 30 N.S.R., 197.

—Want of prosecution—Notice of intention to proceed under O. 60, R. 9—Time.]—The writ of summons herein was issued 19th July, 1895. Appearance was entered the 2nd September following, and a statement of claim was demanded, but none was ever delivered or fyled. Defendant moved to dismiss the action for want of prosecution, but failed to give a month's notice of intention to proceed in the action by motion to dismiss, under O. 60, R. 9:—Held, that it was inexpedient to alter the practice of the Court as settled by *McLachlan* v. *Morrison*, 12 N.S.R., 193, in which case it was held that the rule was applicable to such a case, and that a month's notice of intention to proceed was required. *McIsaac* v. *Broad Cove Coal Company*, 31 N.S.R. 108.

II. Affidavit.

—Conservatory seizure—Affidavit - Amendment.]—The affidavit required by Art. 955 C.P.C. is a condition precedent to the lawful issue of the conservatory seizure therein provided for.—If the affidavit on which the seizure is obtained does not shew the plaintiff to come within any of the cases mentioned in said article as giving a right to such process, a petition to set aside the seizure will be granted, and the plaintiff will not be allowed to amend his affidavit. *Corriveau* v. *Dugas*, Q.R. 12 S.C. 220.

—Wrong date—Opposition afin de distraire.]—The fact that an affidavit in support of an opposition by error bears date as of 1800 is not a cause of nullity. *Grothé* v. *Maisonneuve*, Q.R. 13 S.C. 345.

—Penal action—Non-repair of road.]—In a penal action taken against a municipal corporation for default in maintaining a road, the affidavit required by R.S.Q. Art. 5716 is obligatory. *Monpas* v. *Corporation de St. Pierre les Becquets*, 4 Rev. de Jur. 141.

—Arrest—Substantial defect in affidavit for.]—A substantial defect in an affidavit for an order for arrest may be taken advantage of at any time. *Weatherbe* v. *Whitney and Dominion Coal Co.*, 30 N.S.R. 104.

—Certiorari—Rule of Court, Hilary term, 1894.]—The affidavits upon which a rule *nisi* for certiorari is granted must be served as required by rule of Hilary term, 1894, or the rule *nisi* will be discharged. *Ex parte Leighton*, 33 N.B.R. 606.

—Mortgage—Foreclosure—Affidavit of non-payment.]—The certificate of the registrar upon taking the accounts under the mortgage in a foreclosure action directed that the balance found due should be paid by the mortgagor at the office of the agent of the plaintiff (foreign) company in Victoria. Upon motion for final decree upon the affidavit of non-payment as directed, made by the agent:—Held, that the affidavit of both principal and agent was necessary. *Canada Settlers' Loan Co.* v. *Renouf*, 5 B.C.R. 243.

—Disclosure—Affidavit—59 V., c. 28, s. 36.]—On an application for disclosure under 59 Vict., ch. 28, sec. 36, the plaintiff's affidavit set out that a judgment had been obtained, and that it was unsatisfied. It was moved that the application be dismissed on the ground that the affidavit should disclose that a writ of *fi. fa.* had issued, to which a return of *nulla bona* had been made, or that the sheriff should make affidavit that he had made search, and could discover no assets available to execution. Defendant's argument was that under a bill for discovery of property in aid of an execution it had to be alleged that a return of *nulla bona* had been made by the sheriff, or that the bill was demurrable, citing *Angell* v. *Draper*, 1 Vern. 399, and that the remedy given by the Act was merely substitutionary for the remedy in equity, and could not be had except under the like circumstances. *Ontario Bank* v. *Trowern*, 13 Ont. P.R. 422, was also referred to as an express decision upon the point. Application withdrawn, though not to be taken as assenting to the defendant's contention. *Barnes* v. *Webber*, 34 C.L.J. 392.

—Review—Affidavit—Compliance with statute—58 V. (N.B.), c. 21.]—An affidavit by plaintiffs in an application for review from a Justice's Court, that they "believed a substantial wrong and injury had been done to them," etc.:—Held, to be sufficient within 58 Vict., ch. 21. *Imperial Oil Co.* v. *Young*, 34 C.L.J. 579.

—Affidavit to hold to bail—Jurat.]—This was an application to set aside a bailable writ, and to discharge the defendant from custody on several grounds, *inter alia*, that the affidavit to hold to bail was not sufficient, because the jurat was irregular in that it did not disclose before whom the affidavit was sworn. In other words the word "me" was left out after the word "before." The jurat was as follows: "Sworn before at Charlottetown in Queen's County, etc.," concluding in the usual form, and signed by a commissioner. The plaintiff resisted the application on the authority of *Martin* v. *McCharles*, 25 U.C.Q.B. 279, in which a jurat identical with this was held to be good. The defendant cited *The Queen* v. *Bloxam*, 6 Q.B. 528, and *Archibald* v. *Hubley*, 18 S.C.R. 116:—Held, that the jurat was insufficient. *Hayden* v. *Goodstein*, 34 C.L.J. 639.

—Libel—Newspaper—R.S.O., c. 57, s. 9—Contentious affidavit in answer to application for security for costs.]

See COSTS, XVI.

" LIBEL AND SLANDER, VI.

—Breach of promise—Order for arrest—Irregular affidavit.]—See MARRIAGE.

—Default judgment—Setting aside—Affidavit—Sufficiency—Merits—Defence sent by mail.]

See hereunder, XVI.

III. AMENDMENT.

—Order of reference—Settlement—Amendment.]—See APPEAL, VIII.

IV. APPELLATE COURT.

— Appeal — Jurisdiction — Amount in controversy—Affidavits—Conflicting as to amount.]—On a motion to quash an appeal where the respondents fyled affidavits stating that the amount in controversy was less than the amount fixed by the statute as necessary to give jurisdiction to the Appellate Court, and affidavits were also fyled by the appellants, shewing that the amount in controversy was sufficient to give jurisdiction under the statute, the motion to quash was dismissed, but the appellants were ordered to pay the costs, as the jurisdiction of the Court to hear the appeal did not appear until the fyling of the appellant's affidavit in answer to the motion. *Dreschel* v. *The Auer Incandescent Light Manufacturing Co.*, 28 S.C.R. 268.

—Interlocutory judgment—Consideration of, on appeal from final judgment—Notice.]—Where there has been no application for leave to appeal from an interlocutory judgment of the Superior Court, the Court of Queen's Bench sitting in appeal, when the case comes before it on the final judgment, is not precluded from revising and reversing an interlocutory judgment which laid down a principle which the Court considers to be erroneous, and which was reaffirmed by the final judgment in the case.—But interlocutory judgments settling mere matters of procedure, representing as they usually do the exercise merely of a judge's discretion, and not affecting the principle upon which the final judgment is based, should not be subject, as a general rule, to reconsideration either upon the final hearing upon the merits in the first Court, nor, *a fortiori*, upon appeal to the Court of Queen's Bench from such final judgment.—Where such interlocutory judgments seriously affect the rights of the parties, application for leave to appeal should be made within the stipulated delay of thirty days, and if not so made, the party should be held to have acquiesced in them.—When an appellant from a final judgment is serious (even if mistaken) in considering that such final judgment has been controlled or modified by an erroneous principle laid down in an interlocutory judgment, it is his right to seek relief from it on the final appeal, and it is his duty to give his adversary notice of that intention, either in the inscription, as in this case, or by a notice accompanying an inscription in the ordinary form. *Bayard* v. *Dinelle*, Q.R. 7 Q.B. 480.

—Incomplete record—Certiorari.]—In view of Art, 1236 C.C.P. the proper way to obtain the completion of an incomplete record in appeal is by means of a writ of *certiorari* to the Court below, and not by way of motion. *Whelan* v. *Charette*, 4 Rev. de Jur. 399, Court Q.B.

—County Court—Leave to appeal to Queen's Bench—Manitoba County Courts Act—Security for costs of appeal—Evidence of.]

See APPEAL, XIII (*g*).

V. DELAYS.

—Hypothecary action—Delay to surrender land—Appeal—Date of judgment.]—Where a defendant is condemned in an hypothecary action to surrender certain lands within fifteen days from the date of service upon him of a copy of the judgment, and the judgment is appealed from, the delay runs only from the date of the final judgment in appeal.—Where the appellant was granted by the Supreme Court a specific delay to fyle factum, and, in default, the appeal was to stand dismissed without further order, and the appellant made default to fyle the factum, the date of the final judgment of the Supreme Court is not the date of the order fixing the delay, but the day on which the appeal stood dismissed by reason of appellant's default to fyle factum. *Corporation of Richmond* v. *Richmond Industrial Co.*, Q.R. 12 S.C. 81.

—Insolvency—Judicial abandonment—Recourse of debtor where no proceedings are taken after abandonment for appointment of a curator—Art. 886 C.C.P.]—Under the new Code of Procedure, where a debtor has made a judicial abandonment and given notice thereof to his creditors, and no proceedings have been taken for the appointment of a provincial guardian, or of a curator, the delay for contestation of the abandonment runs from the date of such abandonment, and after the expiration of four months, without any contestation, a debtor who has been imprisoned under a judgment against him for damages, is entitled to his liberation. *Burrows* v. *Keating*, Q.R. 13 S.C. 535.

—Parliamentary elections—Quebec Election Act—Appeal from decision of municipal council—Service of petition.]

See PARLIAMENTARY ELECTIONS.

VI. DISCOVERY AND PRODUCTION OF DOCUMENTS.

—Examination of officer of company—Production—Setting aside subpœna.]—In an action against an incorporated company to recqver a money demand, the defence was that the indebted-

ness, if any, was not that of the company, but of the president in his private capacity. Upon an application for a better affidavit on production of documents from the company, it had been determined that the company had no documents to be produced:—Held, that upon the examination for discovery of the president as an officer of the company, he could not be compelled to produce documents or books which had been determined not to be in possession of the company, nor his own books or documents; and a subpœna served upon the president was set aside *quoad* the production of documents which it called for. On appeal from such order:—Held, that the subpœna should not be set aside, for the affidavits shewed that the accounts of the defendant company were kept in the books of the president; and the practice of setting aside a subpœna, as laid down in *Steele* v. *Savory*, [1891] W.N. 195, was one to be followed only in exceptional cases, while in ordinary cases it would be better that the question of production of documents should be raised before the examiner. *Alexander* v. *Irondale, Bancroft, and Ottawa Railway Co.*, 18 Ont. P.R. 20.

—Examination of party—Residence out of jurisdiction—Subpœna—Special order—Rules 439, 443, 447.]—A party resident out of the jurisdiction cannot be examined for discovery in an action unless by means of a special order made under Rule 477 of the Rules of 1897; and, if served, pursuant to Rules 439 and 443, while temporarily in the jurisdiction, with an appointment and subpœna for his examination, cannot be compelled to attend thereon. *Comstock* v. *Harris*, 12 Ont. P.R. 17, is no longer applicable owing to changes in the Rules. *Connolly* v. *Dowd*, 18 Ont. P.R. 38.

—Examination of officer of company—Assignors of chose in action—Rules 439, 441.]—Rule 441 of the Rules of 1897 provides that where an action is brought by an assignee of a chose in action, the assignor may without order be examined for discovery:—Held, that this Rule can not be extended, by reference to Rule 439 or otherwise, to the examination of an officer of a corporation, the assignors of a chose in action. *Bank of Toronto* v. *Quebec Fire Insurance Co.; Bank of Toronto* v. *Keystone Fire Insurance Co. of St. John*, 18 Ont. P.R. 41.

—Production of documents—Contradicting affidavit—Admissions of deponent.]—Where, in an action upon a fire insurance policy, the plaintiff, in making discovery of documents, referred in his affidavit to the application for the insurance, which, when produced, shewed that at its date he had a set of books connected with the business in respect of which he was effecting the insurance, which books, however, he did not produce:—Held, that the books were material, and the reference to them in the document produced was sufficient ground for ordering a better affidavit on production. *Quære:* Whether the admissions of the plaintiff upon his examination for discovery as to the existence of documents other than those mentioned in his affidavit could be looked at to contradict the affidavit. *Smedley* v. *British America Assurance Co.*, 18 Ont. P.R. 92.

—Crim. con.—Examination of party—Alienation of affections—R.S.O. c. 73, ss. 7, 9.]—An action for criminal conversation and for alienating the affections of the plaintiff's wife is an action instituted in consequence of adultery within the meaning of s. 7 of the Evidence Act, R.S.O. ch. 73, and a defendant in such an action cannot be compelled to submit to examination for discovery: *Mulholland* v. *Misener*, 17 Ont. P.R. 132; *Taylor* v. *Neil*, 17 Ont. P.R. 134, and *Lellis* v. *Lambert*, 24 Ont. A.R. at p. 664, referred to.—Section 9 of the Act has no reference to such an action. *Fleury* v. *Campbell*, 18 Ont. P.R. 110.

—Application before statement of claim—Pleading.]—Production of documents should not be ordered to a plaintiff before he pleads, unless the judge is satisfied that the documents called for are essential to the statement of the plaintiff's claim. *Arthur & Co.* v. *Runians*, 18 Ont. P.R. 205.

—Examination of officers of street railway company—Conductor and motorman.]—In an action for damages for bodily injuries sustained by a pedestrian by reason of the negligent management and operation of a car of the defendants, an incorporated company:—Held, that the conductor and motorman of the car were officers of the company examinable for discovery, but, as the plaintiff had already examined the general manager, she must elect which of the above officers she would examine, under Rule 439 (2). *Dawson* v. *London Street Railway Co.*, 18 Ont. P.R. 223.

—Action for personal injuries—Medical examination of person injured.]—In an action by the tutor to a minor, for injuries sustained by the minor while in the employ of the defendants, where it is alleged that the brain of the minor has been affected by the accident, the Court may order the tutor and the minor to permit an examination to be made by physicians into the mental and physical condition of the minor, subject to such conditions as the Court deems proper. *Filion* v. *Dawes*, Q.R. 12 S.C. 494.

—Evidence—Examination for discovery—Use of at trial—Rule 725 B.C.]—A party cannot use his own examination for discovery as evidence for himself at the trial. Defendant being absent at the time of trial, and counsel having put in evidence for plaintiff parts of the defendant's examination for discovery, defendant's counsel desired the trial judge to look at and direct certain other parts of the examination to be put in evidence under Rule 725, which was refused. *Lyon* v. *Marriott*, 5 B.C.R. 157.

—Examination for discovery—Second order after material amendment of pleading.]—Where a party, after being examined for discovery,

materially amends his pleading so as to raise a new issue, he may be ordered to be examined again. *Bank of Montreal* v. *Major*, 5 B.C.R. 181.

—Rule 704 B.C.—Examination of persons for whose benefit the action is brought.]—The debt to recover which the action was brought had been assigned to the plaintiff by C. in part satisfaction of a judgment debt due by him to them":—Held, that C. was a person for whose immediate benefit the action was brought "within the meaning of Rule 704," and that the defendants were entitled to examine them for discovery. *Tollemache* v. *Hobson*, 5 B.C.R. 214.

—Examination for discovery of guardian ad litem, at same time party defendant.]—A party defendant is not absolved from examination for discovery by reason of being also guardian *ad litem* of infant defendants. *Beaven* v. *Fell*, 5 B.C.R. 453.

—Officer of corporation—Examination for discovery—Service.]—A summons, under Rule 703, for the examination for discovery of past and present officers of a body corporate, must be served personally on all past officers. Order made as to present officers, and application adjourned to enable the past officers to be served. *Hobbs* v. *Esquimault & Nanaimo Railway Co.*, 5 B.C.R. 461.

—Evidence—Discovery—Company—Estoppel.]—The registered agent in B.C. of the defendant foreign corporation advertised his clerk, B., and B. also advertised himself, as local manager of the company. The plaintiff made an application for an affidavit of documents by B., which the company resisted upon the grounds that it had never authorized B. to act as its local manager, and that, in fact, his duties were merely those of clerk to the local manager:—Held, by Davie, C.J., granting the order, that for the purposes of the application B. must be treated as local manager of the company. *Richards* v. *British Columbia Goldfields Co.*, 5 B.C.R. 483.

—Affidavit—59 Vict., c. 28, s. 36.]—On an application for disclosure under 59 Vict., c. 28, s. 36, the plaintiff's affidavit set out that a judgment had been obtained and that it was unsatisfied. It was moved that the application be dismissed on the ground that the affidavit should disclose that a writ of *fi. fa.* had issued, to which a return of *nulla bona* had been made, or that the sheriff should make affidavit that he had made search, and could discover no assets available to execution. Defendant's argument was that under a bill for discovery of property in aid of an execution it had to be alleged that a return of *nulla bona* had been made by the sheriff, or that the bill was demurrable, citing *Angell* v. *Draper*, 1 Vern. 399, and that the remedy given by the Act was merely substitutionary for the remedy in equity, and could not be had except under the like circumstances. *Ontario Bank* v. *Trowern*, 13 Ont. P.R. 422, was also referred to as an express decision upon the point. Application withdrawn, though not to be taken as assenting to the defendant's contention. *Barnes* v. *Webber*, 34 C.L.J. 392.

—Order for discovery—Default—Motion to dismiss action—Failure to indorse notice in order—N.W.T. Judicature Ordinance, s. 311.]—*Doidge* v. *Town of Regina*, 18 C.L.T. Occ. N. 163.

—Company—Examination of director or officer—Ex parte order—Invalidity of.]

See COMPANY, III.

VII. ELECTION OF DOMICILE.

—Opposition afin de distraire.]—Election of domicile is not necessary in an opposition *afin de distraire*. *Grothé* v. *Maisonneuve*, Q.R. 13 S.C. 345.

And see hereunder, XXXVII.

VIII. EQUITY PRACTICE.

—Bill—Leave to fyle.]—When the bill was not fyled within the time provided by 53 Vict. ch. 4, s. 22 and the defendants had not appeared, an order absolute was granted, giving leave to fyle bill, upon the terms of the order being served upon defendants. *Fleming* v. *Harding*, 1 N.B. Eq. 515.

—Life insurance—Wager policy—Fraud alleged in bill—Failure to prove—Costs—Relief.]

See INSURANCE, II.

IX. EVOCATION.

—Future rights—Articles 49, 1130 C.C.P.]—An action which sets up a right to claim damages from the defendant, in consequence of alleged temporary acts of negligence by defendant, in the carrying out of a contract to furnish water to plaintiff's factory, is not susceptible of evocation to the Superior Court. *Cossett* v. *Desjardins*, Q.R. 12 S.C. 539.

X. GARNISHEE.

—Division Courts—Garnishee—Judgment summons—Committal—Examination—Affidavit—R.S.O. c. 51, s. 235—57 V., c. 23, s. 18—Prohibition.]—The County Court judge, presiding in a Division Court, has no power to commit a garnishee for default in making payments pursuant to an order after judgment; and sec. 18 of 57 Vict. ch. 23 (Ont.) has not extended his powers in that behalf.—1. Before a garnishee can be examined under secs. 235 to 248 of R.S.O. 1887, ch. 51, as now permitted by sec. 18 above, it is necessary that the creditor, his solicitor or agent, should make and fyle the affidavit required by sec. 235. Prohibition against enforcement of committal order. *Re Dowler* v. *Duffy; Inglesby, Garnishee*, 29 Ont. R. 40.

And see DIVISION COURTS.
" " GARNISHEE.

XI. Information.

—Practice—Information of intrusion—Possession and mesne profits—Joinder of claims—Judgment—Costs.]—Rule 21 of the General Rules of Practice on the Revenue Side of the Court of Exchequer in England made on the 22nd June, 1860, providing that the mode of procedure to remove persons intruding upon the Queen's possession of lands or premises shall be separate and distinct from that to recover profits or damages for intrusion, governed the practice of the Exchequer Court of Canada in such matters until May 1st, 1895, when a general order was passed by that Court permitting the joinder of such claims. Rule 86 of the English Rules above mentioned providing that in cases of judgment by default either for non-appearance or for want of pleading to informations of intrusion no costs are to be allowed to the Crown, is still in force in the Exchequer Court of Canada. *The Queen* v. *Kilroe*, 6 Ex. C.R. 80.

XII. Injunction.

—Injunction—Interlocutory—Order—Balance of convenience—Municipal corporations—By-laws regulating procedure.]—A by-law of a municipal corporation, passed under section 283 of the Consolidated Municipal Act, for the purpose of regulating procedure, requiring work exceeding $200 in value to be done by contract after tenders had been called for, was, on the acceptance of duly advertised for tenders for the construction of a pavement on a particular street, disregarded by the council stipulating in accepting the tenders that the contract should be held to cover and include the construction during the year of any similar pavement on other streets at the same prices and terms. In pursuance of this stipulation, the contractors entered into other contracts with the corporation, and proceeded with the work by opening up other streets and otherwise, when they were enjoined from proceeding by an interlocutory order in an action by a ratepayer:—Held, that as the applicant's legal right was not clear, and as serious loss and public inconvenience would necessarily result from granting the order, while no irreparable loss would result from refusing it, the interlocutory injunction should not have been granted. Validity of proceedings not taken in accordance with the provisions of a by-law for regulating the proceedings of the council or committee thereof, considered: *Re Wilson and Ingersoll*, 25 Ont. R. 439, referred to. *Dwyre* v. *Ottawa*, 25 Ont. A.R. 121.

—Interim injunction—Equitable execution in England and in N.W.T.—Execution before judgment—Statutory remedies—Receiver—Discretion—New modes of enforcing payments.]—The assets of a ranch company were, in a suit of *Barter* v. *Swann*, placed in hands of a receiver for the purpose of winding up the company and dividing proceeds of assets between Barter and defendant herein. The receiver being about to sell the assets for the purpose, as alleged, of paying the defendant his share of the proceeds to enable him to defeat his creditors, including the plaintiff, an injunction was granted by Rouleau, J., restraining defendant from receiving any such proceeds until after the trial of this action:—Held, (1) That no injunction could be granted until after judgment obtained; (2) the right of a creditor to have a receiver is distinct from his right to attach debts due to the debtor, and is a means of enabling the judgment creditor to realize on the debtor's property unattainable by ordinary execution. The attachments of debts is an ordinary mode of execution, and the extension of that by giving the right to a creditor before judgment does not authorize an extension in such a case to other remedies; (3) that the fact of a judge granting an injunction when he has no jurisdiction to do so, does not prevent another judge from setting aside his order.—Order made dissolving the injunction. *Pacific Investment Co.* v. *Swann*, 34 C.L.J. 207.

And see Injunction.

XIII. Inscription.

—Procedure—Inscription in appeal—Art. 1121 C.C.P. (old text).]—The inscription of a case in appeal to the Court of Queen's Bench must be fyled in the office of the prothonotary of the Court which rendered the judgment, before service of notice on the adverse party or his attorney. *Inkiel* v. *Laforest*, Q.R. 7 Q.B. 454.

XIV. Intervention.

—Right to intervene—Court of Review—Tierce opposition.]—Any one who has an interest in a proceeding pending between other parties may intervene therein at any time before judgment as well in the Court of first instance as in appeal, and the tribunal seized of the cause is always competent to receive the demand for intervention.—Intervention is open to one who might have fyled a *tierce opposition* to the judgment which might put an end to the action, and the eventual right to fyle a *tierce opposition* to the judgment which may be given is at once, for him to whom the right pertains, a proper ground for intervention.—When a third party claims to intervene in a suit pending before the Court of Review, and shews on the face of his allegations sufficient interest, the Court of Review, which alone is seized of the proceedings, should receive the intervention in order that the intervenant, in causing it to be served and returned before the Court of first instance, there to be heard and determined, can be made a party to the action and establish there his rights. *Macdonald* v. *Boswell*, Q.R. 12 S.C. 148.

XV. Judgment Generally.

—Married woman—Action against—Debt contracted before marriage—Form of judgment—Division Court—After-judgment summons—Disobedience—Order to commit—Contempt—Punishment—Execution.]—A married woman was sued in a Division Court for a debt contracted

before marriage, and judgment was given against her personally for the amount of the debt:—Held, that the judgment was properly a personal and not a proprietary one, having regard to her capacity to contract at the time of incurring the liability; and an application, upon *habeas corpus*, to discharge her from custody under an order made in the Division Court for her committal for failure to attend upon an after-judgment summons, was refused: *Scott* v. *Morley*, 20 Q.B.D. 123, followed; *Re McLeod* v. *Emigh*, 12 Ont. P.R. 450, distinguished, and doubted in view of *Aylesford* v. *Great Western Railway Co.*, [1892] 2 Q.B. 626:—*Quære*, whether such an order to commit is by way of punishment or execution. *Re Teasdall* v. *Brady*, 18 Ont. P.R. 104.

—Solicitor—Charging order—Rule 1129—Discretion—Infant Plaintiff—Personal injuries—Lien—Taxed costs—Sale of judgment.]—The power given by Rule 1129 to make an order in favour of a solicitor for a charge upon a judgment recovered by his exertions, is a discretionary one; the right given by the Rule is ancillary to the solicitor's right to be paid on his retainer.—And where an infant recovered judgment for damages for personal injuries, the solicitor retained by his father was allowed a charge upon the judgment, but only to the extent of the costs taxed against the defendant; and the Court refused to direct a sale of the judgment to enforce the charge. *Nevills* v. *Ballard*, 18 Ont. P.R. 134.

—Action on bond—8 & 9 Wm. III. c. 11—Rule 580—Procedure—Penalty—Assessment of Damages—Rule 593.]—In an action upon a bond with a penalty conditioned for the payment of a sum of money by instalments, with interest in the meantime on the unpaid principal, by Rule 580, the provisions of 8 & 9 Wm. III. ch. 11 as to the assignment or suggestion of breaches, and as to judgment for the penalty standing as a security for damages in respect of future breaches, are in force in Ontario; but in all other respects the practice and proceedings are the same as in an ordinary action, and subject to the Rules.—The claim in such an action is not the subject of a special indorsement under Rules 138 and 603, but is in the nature of a claim for damages.—Upon the defendant in such an action making default in delivering a defence, judgment is to be obtained by the plaintiffs by motion under Rule 593, and should be for the penalty, and for assessment of damages for the breaches assigned, or to be suggested, in such a way as may be thought proper under Rules 578, 579.—Where the action comes for assessment of damages before a judge sitting for the trial of actions, he can do no more than assess the damages in respect of the breaches of the bond for which execution is to be issued. *Star Life Assurance Society* v. *Southgate*, 18 Ont. P.R. 151.

—Ord. 14, R. 1 and 2—Judgment—Irregularity—Application to set aside—O. 68—Technical slip—How amended.]—Defendants applied to the judge of the County Court to set aside a judgment entered for plaintiff in that Court under Ord. 14, Rules 1 and 2, in an action on a promissory note, for irregularity, on the ground that the application for leave to enter final judgment under the rule was made by notice and not by summons. The application having been refused defendants appealed:—Held, dismissing the appeal with costs, that the matter complained of was a technical slip or error, of no material importance:—Held, also, that defendants should have attended, on the day named in the notice, and pointed out the defect to the judge, who might have given effect to it, or have amended on such terms as he deemed right:—Held, further that the mistake was one to which Ord. 68 specially applied, and that the County Court judge was right in so holding. *Sands* v. *Fisher*, 30 N.S.R. 185.

—Motion to vary order for judgment—Laches.]—On motion to vary the order for judgment, made upon the trial of the cause, so as to award to plaintiffs the costs of certain issues raised upon the counter-claim, it appeared that there was an appeal which was disposed of some years previously, and that the decision now sought was not asked for upon the determination of the appeal, nor was the trial judge asked to make the order in the form desired, or to deal specially with the costs upon the issues, which appeared to have been considered unimportant. It could not be said that the omission to obtain the order in the form desired, either from the trial judge or upon the appeal, was a "mere slip":—Held, that even if the Court had the power to grant the relief sought, they should not exercise it under the circumstances, and after the long delay that had taken place. *Palgrave Gold Mining Co.* v. *McMillan*, 31 N.S.R. 196.

—Setting aside—Allegations in affidavit.]—The evidence contained in the affidavits as to the merits of the defence raised not being satisfactory or convincing:—Held, that the plaintiff's judgment should not be set aside in the meantime, and that he should be allowed to remain in possession of the property, which was the subject of the action: *O'Sullivan* v. *Morphy*, 78 L.T. 213, followed. *Ritz* v. *Schmidt*, 12 Man. R. 138.

—Rule 74 B.C.—Final judgment against one party—Afterwards proceeding against others.]—A plaintiff, who has obtained final judgment against one of two defendants sued upon a joint liability, may afterwards, under Rule 74, proceed to judgment against the other defendants. *Zweig* v. *Norrissey*, 5 B.C.R. 484.

—Leave to sign judgment for want of defence—Striking out appearance and plea.]—Held, that leave to sign judgment for want of a defence may be granted under 60 Viet. ch. 28, s. 48, without the appearance and plea being set

aside. *Bank of Montreal* v. *Crockett*, 34 C.L.J. 638.

—Summary judgment—Promissory note—Leave to defend—Allegation as to holder in due course.]

See BILLS OF EXCHANGE AND PROMISSORY NOTES, IV.

And see JUDGMENT.

XVI. JUDGMENT BY DEFAULT.

—Setting aside judgment for default of plea—Affidavit—O. 27, R. 14—Discretion of judge—Defence sent by mail—Sufficiency under non-compliance rule.]—By agreement between solicitors the defendant was allowed further time for putting in his defence. Before the expiration of the time, and by the same mail, copies of the defence were sent to the plaintiff's solicitor, and to the clerk of the Court. The copy sent to the latter was shewn to have been received in time, and was placed on fyle, and there was no explicit denial of the receipt of the copy sent to the former. Plaintiff's solicitor having entered judgment, for default of plea, the judge of the County Court, on application to him for that purpose, shewing the facts, and on the usual affidavit of "a good defence on the merits," set aside the judgment, with costs, and gave leave to defendant to fyle and deliver his defence:—Held, affirming the judgment with costs, that the practice requiring a party, seeking to set aside a judgment for default of plea, to disclose merits has been superseded by O. 37, R. 14, under which a judgment so entered may be set aside by the Court or a judge, upon such terms, as to costs or otherwise, as such Court or judge may think fit, and that, in view of the terms of the rule, and the repeal of the former practice, it is not now necessary for the defendant to disclose merits, unless the judge to whom the application is made requires it. Per Townshend, J.:—Held, that the case was eminently one in which the judge was justified in exercising his discretion by granting the application, and:—*Quære*, whether, although the service was not effected in the mode prescribed, it should not, under the non-compliance rule, be held to be sufficient. *Bigelow* v. *Doherty*, 30 N.S.R. 393.

—Default of plea—Sufficiency of affidavit—Disclosing merits—O. 27, R. 14—Discretion of judge—Defence sent by mail—Miscarriage of—O. 36, R. 4—Affidavit under.]—By agreement between solicitors, defendant was allowed further time, expiring July 6th, 1897, for putting in the defence. On July 2nd, 1897, the defence was mailed to the agent of the defendant company's solicitors at Bridgetown, and, in the ordinary course, should have reached them in time to fyle, and serve on the following day, but through a mis-carriage in the mails did not reach them until after judgment had been entered for default of plea. Application was made to the judge of the County Court to set aside the judgment so entered and for leave to come in and defend. The only affidavit read in support of the application was that of defendant company's solicitor, which contained the following paragraphs:—"The said defendant company have a good defence to this action, and unless the said judgment is opened up, great injustice will be done to the defendant company herein." "The said plaintiff has no cause of action herein, as I am advised and believe, and the said defendant company are not indebted to the said plaintiff, as in said statement of claim alleged." "As will appear by the defence herein, the defendant company deny that they are indebted as alleged, and claim that the plaintiff did not, on her part, fulfil the conditions of the contract alleged to have been made, and which forms the ground of action herein." The judge of the County Court having granted the application plaintiff appealed. Before the passage of the Judicature Act (R.S. 4th series, c. 94, s. 75), a defendant seeking to set aside a judgment entered for default of appearance and plea, was required by satisfactory affidavits to "account for his non-appearance, and disclose a defence upon the merits with the particulars thereof." Under the present practice, by O. 27, R. 14: "Any judgment by default, whether under this order or under any other of these rules, may be set aside by the Court or a judge, upon such terms as to costs or otherwise, as such Court or a judge may think fit.":—Held, that the affidavit made by defendant's solicitor, who did not profess to have any personal knowledge, except as he was advised and believed, and who while referring to the proposed defence, did not undertake to verify the particulars of it, was not sufficient to justify the County Court judge in setting aside the judgment.—That the affidavit was bad, under O. 36, R. 4, as containing matter that the solicitor making it, was not able of his own knowledge to prove, and as not giving the grounds of his belief.—Per Townshend, J., McDonald, C.J., concurring:—Held, following English decisions on a rule in the same terms as O. 27, R. 14, that nothing short of an affidavit shewing merits would entitle the defendants to come in and defend, or would justify the judge to whom the application was made in permitting them to do so. *Piper* v. *King's Dyspepsia Cure Co.*, 30 N.S.R. 429.

—Foreclosure suit—Offer to suffer judgment by default—Offer made by one of several defendants—Supreme Court in Equity Act, 1890 (53 V., c. 4), s. 130—C. 37, C.S.N.B., ss. 127, 128.]—An offer to suffer judgment by default, under 53 Vict., ch. 4, sec. 130, is not applicable to a suit for the foreclosure of a mortgage and sale of the mortgaged premises.—One of several defendants cannot offer to suffer judgment by default. *Jeffries* v. *Blair*, 1 N.B. Eq. 420.

—Setting aside—Leave to defend—Queen's Bench Act, 1895, Rules 339 (a), 655.]—Under Rules 339 (*a*) and 655 of The Queen's Bench Act, 1895, a defendant seeking to set aside a judgment entered by default is not obliged

to shew the existence of a defence on the merits as clearly as was required in order to set aside a judgment on default of appearance under The Common Law Procedure Act, but there is a discretion to let him in to defend if the judge thinks that under the circumstances he ought to be permitted to defend.—The plaintiff's claim was for damages for breach of a contract to deliver a quantity of wheat, and the defendant *bonâ fide* intended to contest the claim, but made a mistake as to the time of service and tried to put in the defence only one day too late. The judgment signed was interlocutory, and an assessment of damages was still required:—Held, that, although it was by no means clear on his own shewing that the defendant had a good defence on the merits, the order of the referee setting aside the judgment, and allowing defendant to fyle a statement of defence on payment of costs, should not be interfered with. *Moore* v. *Kennedy*, 12 Man. R. 173.

—Default judgment—Order dispensing with production of original writ—Indorsement of service of writ—Motion to set aside judgment—Irregularity.]—Judgment in default of appearance. Material: Affidavit of bailiff dated Feb. 4th, 1895, of service on defendant at his residence; of copy of writ and statement of claim annexed to affidavit. On an affidavit of sheriff that bailiff had informed him he served original instead of copy of writ, an order dispensing with production of original was made on April 6th, 1895, date of judgment, by judge in Chambers according to section 30, sub-section 11, of the Judicature Ordinance. Original writ was not annexed to affidavit of bailiff; but copy writ bearing no indorsement signed by him, but merely an unsigned indorsement in handwriting of sheriff. Affidavits fyled on behalf of defendant deposed that he never resided at alleged place of service, that he was never served with writ or copy, and that he first became aware of proceedings by seizure by sheriff Sept. 21st, 1897, under writs of execution issued April 6th, 1895:—Held, that the weight of evidence shewed non-service, that no affidavit of service had been fyled in compliance with sec. 80 of Jud. Ord., since the affidavit required was one of facts within deponent's own knowledge, and that affidavit of sheriff did not remedy defect in bailiff's affidavit, and that Rule 15 of Order 9 of Rules of Supreme Court, England, 1883, is applicable in N.W.T., and requires indorsement of service of writ, and that the application was made within a reasonable time. Further, that the order made under section 30, sub-section 11, did not dispense with proper proof of service of the original writ. Order setting aside judgment, costs to defendant, no action against sheriff. *Wolf* v. *Koch*, 34 C.L.J. 95.

XVII. Jury and Jury Notice.

—Striking out—Convenience—Judge in Chambers—Judge at trial.]—A jury notice should not be struck out by a judge in Chambers, upon a motion made before the trial, simply upon the ground that the action can be more conveniently tried without a jury; that is a matter which should be left for the consideration of the judge presiding when the action comes on for trial. *Hawke* v. *O'Neill*, 18 Ont. P.R. 164.

—Trial by jury—Election—Abandonment of election—Arts. 275, 423 C.C.P.]—A plaintiff who, by his declaration, has elected to have the trial by a jury cannot abandon such election by his replies to the defendant's pleas without the latter's consent. *Mendel* v. *Berthiaume*, Q.R. 13 S.C. 256.

—Jury—Inconsistent findings—Judgment set aside—New trial.]—In an action by plaintiff to recover compensation for his rights in certain quarries, and mining improvements, and for his services in organizing a company to operate the quarries and mines, the jury found that there was no agreement on the part of the defendant to give plaintiff the compensation claimed, but, in response to a question put to them, found that, assuming plaintiff to be entitled to recover, he was entitled to damages in the sum of $1,000 for the non-carrying out of the agreement. On the latter finding, judgment was entered for plaintiff for the amount claimed:—Held, that the jury having negatived plaintiff's right to recover at all, the judgment entered on the second finding was without foundation, and should be set aside. But, there being some evidence that plaintiff was to be compensated for his services in organizing the company:—Held, that there should be a new trial. *Snow* v. *Fraser*, 30 N.S.R. 80.

—Jury notice—Effect of giving where cause embraces both common law rights and claims to equitable relief—Acts 1889, c. 6—Costs where question raised for the first time.]—Under R.S. N.S. (5th ser.), c. 104, s. 20, the right of either party to a cause to a jury is subject to Rules of Court, and by Ord. 34, R. 2, it is provided that causes of an equitable nature are to be tried by a judge without a jury, unless it is otherwise ordered:—Held, in a case coming within the latter class, that the defendant was not entitled, by giving a jury notice, to prevent the trial of the cause before a judge at Chambers, or in term: Held, further, that defendant could not be deprived of his right to a jury where the cause was not exclusively one of an equitable nature, but embraced both common law rights and claims to equitable relief, but the judge at the trial could submit the equitable issues to the jury or reserve them for future consideration:—Held, further, that the amendment made by the Acts of 1889, ch. 6, allowing the jury notice to be given "at least twenty days before the first day of the term or sittings of the said Court, at which said issue is to be tried, &c.," was meant to enlarge the right, and not to restrict it to the first sittings of the Court at which it could be tried:—Held, further, that as the question was raised for

the first time, and as plaintiff had reasonable ground for insisting upon going to trial before a judge, there should be no costs. *Clairmonte* v. *Prince*, 30 N.S.R. 258.

—Agreement to submit questions to jury—Discretion of judge—Duty to offer question to judge.] —There having been an agreement that the trial judge should submit to the jury "such questions as he decided were proper to be left to the jury":—Held, with respect to a question which it was contended the judge should have submitted, that the question should have been formally offered, and a ruling had upon it, and a note made of the fact. *McLeod* v. *The Insurance Co. of North America.*, 30 N.S.R. 480.

— Negligence — Questions improperly excluded from consideration of jury—New trial—Findings of jury on new trial—Supported by evidence—Workman—Knowledge of ordinary dangers of employment — Duty to take precautions — Contributory negligence—Proximate cause—Fellow-servant.]—Plaintiff, a ship carpenter, was engaged in making repairs on board of defendants' vessel, including the removal and repair of a band around one of the booms. For the purpose of removing and repairing the band, it was necessary to turn aside the crutch by which the boom was supported when in port, so as to expose the band and the defects that were to be repaired, but before this could be done it became necessary to rig a new topping-lift, to support the boom when the crutch was moved. The work of rigging the topping-lift was done by riggers who were employed on board of the vessel, by a contractor for that work, and was completed on the morning of the day on which plaintiff commenced the work of repairing the band. The evidence of the riggers shewed that, when they completed their work in connection with the topping lift, the sheet was properly secured, but the sheet having subsequently become loose, in some way not explained, as soon as the crutch tackles were let go the boom at which plaintiff was engaged fell, and he was thrown to the deck and severely injured. The trial judge directed the jury, among other things, that some person, on behalf of defendants, should have seen that the topping-lift was secure before the crutch was removed; that, even if it had been unfastened by some persons unconnected with the vessel, it was the duty of defendants' servant or servants on board of the vessel to see that it was secure before removing the crutch:—Held, that no such duty was imposed upon defendants, and that this amounted to misdirection: Held, that it was a question for the jury as to whose negligence was the proximate cause of the injury, and that, in the absence of express evidence as to the actual cause, the possibility that a third agency might be responsible was improperly excluded from the consideration of the jury.—Held, also, that it was necessary to have submitted to the jury the question, whether the servant of the contractor for the rigging work, under the circumstances, might not also be the servant of defendants. *Quære:* Whether plaintiff, having full knowledge of the ordinary risks that he would run in such work, should not himself have seen that the topping-lift was securely fastened before he assented to the loosening of the crutch tackles. A new trial having been ordered and had, the jury found, on the same facts, that the injury was not occasioned by the negligent act or omission of the defendants or their servants:—Held, dismissing plaintiff's application for a new trial, that, as the plaintiff's knowledge was in all respects equal with that of the mate of the vessel, who was there to do plaintiff's bidding, the finding was supported by the evidence? Held, that, defendants' negligence not being made out, it was not necessary for the trial judge to tell the jury what the effect of the law was in regard to contributory negligence or what qualifications there were. *Williams* v. *Bartling*, 30 N.S.R. 548. Affirmed by Supreme Court of Canada.

— Time — Jury — Application for, before issue joined—Rule 333, B.C.]—An application to try a case before a jury made before joinder of issue or the time for the fyling of same is premature. *Bank of Montreal* v. *Major*, 5 B.C.R. 155.

— Special jury— Right to — Discretion.] — The granting of a special jury under C.S.B.C., ch. 31, sec. 44, as amended by 58 Viet. (B.C.), ch. 12, sec. 11, and C.S.B.C., ch. 64, sec. 71, as amended by 53 Viet., ch. 8, sec. 5, and Order XXXVI. is not as of right, but is a discretion to be invoked upon special circumstances. As no special grounds were shewn, the application was dismissed. *Cranstoun* v. *Bird*, 5 B.C.R. 210.

—Jury—Rules 331-81 B.C.—Mineral Act, 1896, ss. 144 to 150.]—Sections 144 to 150 of the Mineral Act, 1896, refer only to procedure in the County Courts. In an action to enforce an adverse claim and for a declaration that the plaintiff was entitled to the right of possession to that portion of the "Paul Boy" mineral claim in conflict with the "Lookout" mineral claim, and that the "Lookout" be declared invalid, the defendants asked for a jury:—Held, that as the relief prayed was such as could not have been obtained in a common law action prior to the Judicature Acts, the issues were not proper for trial by a jury.—That the character of the action will be determined from the issues raised on the pleadings. *Corbin* v. *Lookout Mining Co.* 5 B.C.R. 281.

—Action for injunction—Right to jury.] — An action for an injunction is proper for a trial by a jury. *Canadian Pacific Railway Co.* v. *Parke*, 5 B.C.R. 507.

—Contract of hiring—Terms found by jury—Conflicting evidence—Motion for new trial—Refusal to interfere.]—*Gillis* v. *Channe Mining Co.*, 18 C.L.T. Occ. N. 110.

—Marine Insurance—Proofs of loss—Right of Court to supply finding—Questions to jury.]

See INSURANCE, III.

—Marine insurance—Facts supporting claim for partial loss on cargo—Refusal by trial judge to withdraw case from jury.]—See INSURANCE, III.

—Jury—Malicious arrest—Vindictive damages—Evidence improperly rejected — Verdict set aside.]—See MALICIOUS ARREST.

—Slight misstatement by judge in addressing jury—Setting aside verdict.]

See MALICIOUS PROSECUTION.

—Negligence—Injury to land—Erroneous instructions to jury—New trial.]—See NEGLIGENCE, X.

—Trespass to land—Adverse possession—Disseisin a question for jury—New trial where material points left undetermined.]

See TRESPASS.

—Jury notice—Striking out—Duty of judge—Transfer to non-jury list.]

See hereunder, XXXV.

—Question for jury—Trial judge.]

See hereunder, XXXV.

XVIII. LIQUOR LICENSE CASES.

—Certiorari—Magistrate's jurisdiction—Conviction—Certificate—License.]

See LIQUOR LICENSE.

XIX. MASTER'S OFFICE.

— Account — Vouchers — Verification.]—Where accounts are brought into the Master's office by the accounting party, with the vouchers and the usual affidavit of verification, and no notice of objection is given, the accounts are taken to be sufficiently proved. *In re Curry, Curry* v. *Curry*, 25 Ont. A.R. 267, affirming 17 Ont. P.R. 379.

XX. MORTGAGE ACTIONS.

—Foreclosure suit—Agreement for compromise—Discretion of Chambers Judge to order stay.]

See MORTGAGE, VIII.

XXI. MOTIONS.

—Opposition—Motion to dismiss—Art. 651 C.C.P.]—A motion to dismiss an opposition, under Art. 651 C.C.P. should allege that the opposition is made for the purpose of wrongfully delaying the sale. *Matte* v. *Chenevert*, Q.R. 12 S.C. 141.

—Security for costs—Costs of motion.]—The costs of a motion for security for costs should follow the event of the proceedings. *Lee* v. *Ewan*, Q.R. 12 S.C. 215.

XXII. NEW TRIAL.

—Street railways — Foot-board — Invitation to ride on—Negligence—Excessive damages—New trial.]—On an electric car on defendants' railway, there was a step or foot-board running along the side of the car about a foot from the ground, leading to doors on each side of and at the centre and rear parts of the car, with a brass rail or rod, about chest high, running parallel with the foot-board for persons standing thereon to hold on by, and electric buttons on the side of the car to communicate with the conductor. The plaintiff seeing that the car was filling up rapidly, all the inside seats being occupied, and the rear platform crowded, jumped on the foot-board, the car then having started. A short distance from where the plaintiff got on was a bridge, which the car had to cross, the approach thereto being on a curve, by reason of which the plaintiff was swayed out from the car and as it entered on the bridge he was struck by one of the side posts of the bridge and thrown off and injured, the space between the post and the side of the car being only fourteen inches:—Held, that an invitation to the plaintiff to stand on the foot-board, must be implied, and while there he was entitled to be carried safely, which the improper construction of the bridge prevented defendants doing, which, therefore, constituted evidence of negligence. A verdict for the plaintiff was sustained, except as to the damages, $3,300, which were held to be excessive, and a new trial was directed unless the plaintiff consented to their being reduced to $2,000.—The elements in assessing damages in cases of this kind considered. *Fraser* v. *London Street Railway Co.*, 29 Ont. R. 411.

—Jury, trial without—Motion for new trial—Finding of trial judge—57 V., c. 8, s. 46 (N.B.).]—Where a cause is tried without a jury, it is the duty of the Court, on an application for a new trial, to disregard the trial judge's finding, if the Court is of the opinion that he was wrong in his conclusions. The onus of shewing that the judge below was wrong is on the party moving. *Boggs* v. *Scott*, 34 N.B.R. 110.

—Weight against evidence — Fraud—Criminal offence.]—The Court will not as a rule grant a new trial on the ground that the verdict is against the weight of evidence upon an issue of fraud, particularly where the charge involves a criminal offence, and the verdict is in favour of the party charged. *Cope & Taylor* v. *Scottish Union Co.* 5 B.C.R. 329.

—Right to reply—New trial.]—This was an action before a judge and jury in which the plaintiff claimed damages on a sale of a number of carloads of oats by sample on the ground that the goods delivered were not equal to sample. The plaintiff appealed from the verdict, which was in favour of defendants, and asked for a new trial on several grounds. The judgment of the Court, which was delivered by Killam, J., dwells mainly on a discussion of the evidence, but the case also deals with the effect on the trial of the judge's refusal to allow the plaintiff's counsel to reply, the defendants having adduced evidence, although

only by way of putting in certain documents on the cross-examination of one of the plaintiff's witnesses:—Held, following *Rymer* v. *Cook*, Moo. & M. 86n, that plaintiff's counsel has the right to reply if defendant adduces any kind of evidence, whether verbal or written, or ever so trifling or insignificant. The error of the judge in refusing to allow the reply should only entitle the party to a new trial if it appeared that the course of justice had been thereby interfered with and some substantial injury done to the party complaining: *Doe d. Bather* v. *Brayne*, 5 C.B. 655; *Geach* v. *Ingall*, 14 M. & W. 95. In the present case the plaintiff could suffer nothing from the order in which the jury were addressed, as his evidence was weak and the defendants were entitled to the verdict, and that a new trial should not be granted. Application dismissed with costs. *Quintal* v. *Chalmers*, 34 C.L.J. 640; and 12 Man. R. 231.

—Contract—Evidence—Practice—Right to reply —New trial.]—See hereunder, XXX.

—Jury—New trial where material points left undetermined.]—See TRESPASS.

XXIII. NONSUIT.

—Consent of plaintiff.] — Per McColl, J. (at the trial): There cannot be a nonsuit, nor can leave to enter a nonsuit be reserved, without the consent of the plaintiff. *Patterson* v. *City of Victoria*, 5 B.C.R. 628.

XXIV. ORDERS.

—Order of Court of another province—Winding-up Act, R.S.C. c. 129, s. 85 — Production of certified copy—Entry.] — Execution may be issued under sec. 85 of the Winding-up Act, R.S.C. ch. 129, upon the order of a Court of another province, without making such order a rule of Court, or obtaining the direction of a judge, upon the mere production to the officer of the High Court of a properly certified copy of such order? *Re Companies Act and Hercules Ins. Co.* 6 Ir. R. Eq. 207, followed; *Re Hollyford Copper Mining Co.* L.R. 5 Ch. 93, and *Re City of Glasgow Bank* 14 Ch. D. 628, not followed.—In such cases the settled practice of the High Court is to have the order entered in the proper book as a judgment or order. *Re Dominion Cold Storage Co.*, 18 Ont. P.R. 68.

—Consent order — Appeal from — R.S.O. c. 51, s. 72.]—There can be no appeal from an order appearing on its face to be made by consent, unless by leave of the Court or judge making it, even though the appeal is on the ground that no consent was given; R.S.O. ch. 51, sec. 72. *Re Justin, a Solicitor*, 18 Ont. P.R. 125.

—Abandonment — Art. 876 C.C.P. — Application for order.]—The application for an order under Art. 876 C.C.P. must be made to a judge of the district in which the abandonment was made. *Tremblay* v. *Lefaivre*, 4 Rev. de Jur. 275.

—Functions of prothonotary in recording and fyling.]—The functions of the prothonotary of the Supreme Court of Nova Scotia are purely ministerial in regard to recording and fyling the orders of the Court. *McDougall* v. *Mullins*, 30 N.S.R. 313.

—Arrest—Order for — Jurisdiction.]—Held, an order for arrest under the seal of the Supreme Court of Nova Scotia does not require to shew jurisdiction on its face. *Weatherbe* v. *Whitney and Dominion Coal Co.*, 30 N.S.R. 104.

— Form of order — Variance between order and summons—Application to rescind—Leave to sign judgment for want of a defence — Striking out appearance and plea.]—A summons was taken out in an action calling upon the defendant to shew cause why the appearance and plea should not be set aside, and leave granted to sign final judgment for want of a defence. At the return the defendant objected to the appearance and plea being set aside, but the Court empowered the plaintiff to take out the order. The order taken out was merely for leave to sign judgment. The defendant now applied to rescind the order, on the ground that there was a variance between it and the summons upon which it was granted:—Held, (1) The plaintiff was not obliged to follow the terms of his summons, but could take any part of the relief asked for if sufficient for his purposes. (2) Leave to sign judgment for want of a defence may be granted under Act 60 Vict., ch. 28, s. 48, without the appearance and plea being set aside. *Bank of Montreal* v. *Crockett*, 34 C.L.J. 638.

—Breach of promise—Order for arrest of defendant.]—See MARRIAGE.

XXV. PARTICULARS.

—Application for—Close of pleadings—Affidavit — Necessity — Trial.] — After issue joined upon the statement of defence, the plaintiff cannot obtain an order for particulars of the defence without an affidavit shewing the necessity therefor. They cannot be for the purpose of pleading, and there must be evidence that they are required for the purpose of trial: *Smith* v. *Boyd*, 17 Ont. P.R. 463, followed; *Bank of Toronto* v. *Insurance Co. of North America*, 18 Ont. P.R. 27.

—Procedure—Slander.] — The plaintiff, in an action for defamation, may be ordered to give particulars of the alleged slanders, shewing in what places they were spoken, and to whom, and the dates and circumstances. *Irvine* v. *McCrimmon*, Q.R. 13 S.C. 71.

—Replevin—Deed of Assignment—Fraud—Statute of Elizabeth—Particulars of fraud.]—Where the statute of Elizabeth is specifically set up in the statement of defence, particulars of the fraud relied on will not be ordered. (Townshend, J., in Chambers), *Pitfield* v. *Guest*, 18 C.L.T. Occ. N. 144.

XXVI. PEREMPTION.

—Peremption of suit — Change of status—Art. 280 C.C.P.] —Where the party plaintiff has

been put into liquidution by a winding-up order, within three years previous to the presentation of a motion for peremption of suit, the liquidation has the effect of changing the status of the plaintiff, and therefore, under Art. 280 C.C.P. (Art. 455 of old text), peremption does not take place. *Queen's Hotel Co.* v. *McLaren*, Q.R. 12 S.C. 171.

XXVII. PROCEDURE IN PARTICULAR MATTERS.

—Winding-up Act—Moneys paid out of Court—Order made by inadvertence—Jurisdiction to compel repayment—R.S.C. c. 129, ss. 40, 41, 94—Locus standi of Receiver-General—55 & 56 V., c. 28, s. 2.]—The liquidators of an insolvent bank passed their final accounts and paid a balance, remaining in their hands, into Court. It appeared that by orders issued either through error or by inadvertence the balance so deposited had been paid out to a person who was not entitled to receive the money, and the Receiver-General of Canada, as trustee of the residue, intervened and applied for an order to have the money repaid in order to be disposed of under the provisions of the Winding-up Act:—Held, that the Receiver-General was entitled so to intervene although the three years from the date of the deposit mentioned in the Winding-up Act had not expired:—Held, also, that even if he was not so entitled to intervene the provincial Courts had jurisdiction to compel repayment into court of the moneys improperly paid out. *Hogaboom* v. *The Receiver-General of Canada. In Re The Central Bank of Canada*, 28 S.C.R. 192.

—Improvement of watercourse—Damages therefrom—Mode of ascertaining—Art. 5536 R.S.Q.]—Art. 5536 of the Revised Statutes of Quebec, which provides a special mode, namely, by arbitration, for determining the damages therein mentioned, does not deprive the party injured of his recourse to the ordinary tribunals. *Compagnie de Pulpe de Megantic* v. *La Corporation du Village d'Agnès*, Q.R. 7 Q.B. 339.

—Peremption d'instance—Change of status—Insolvent company—Notice—Arts. 436, 455 C.C.P. (old text).]—Art. 455 C.C.P. (old text), which provides that the *peremption d'instance* is not permitted when the party is dead or has changed his *status*, applies in spite of Art. 436 of the same code, which obliges the attorney who is aware of the decease or change of *status* of his client to signify the same to his opponent, and which makes valid all proceedings up to the day of such signification. Therefore, in this case, signification of a notice that the defendant company had been placed in liquidation suffices to defeat the demand for peremption of the defendant, although this notice was given after signification of the motion for peremption. *Holmes Electric Protection Co.* v. *Electric Service Co.*, Q.R. 12 S.C. 9.

—Seizure—Procès-verbal—Inscription en faux—Arts. 79, 159 C.C.P. (old text).]—By the terms of Articles 79 and 159 C.C.P. (old text), which allow the contestation by summary demand, by permission of the Court, of a return of summons or service (*signification*), a *procès-verbal* of seizure, and especially the declaration of the bailiff that he has left to the defendant goods to the value of $50, assuming such declaration to be in authentic form and to bind all the interested parties, cannot be contested by way of *inscription en faux*. *Dupont* v. *Lacoste*, Q.R. 12 S.C. 13.

—Saisie-gagerie—Irregularities in procès-verbal—Alteration—Mode of objection.]—Objection to irregularities in the *procès-verbal* of seizure which accompanies a writ of *saisie-gagerie* may be taken by exception to the form.—The fact that the bailiff has altered one of the triplicate copies of the *procès-verbal de saisie-gagerie*, after it has been signed by defendant and without the latter's consent, constitutes an irregularity of which the defendant can complain by exception to the form. *Gray* v. *Butler*, Q.R. 12 S.C. 145.

—Third party—Mode of bringing into cause—Bref d'assignation.]—On contestation of the declaration of a *tiers-saisi*, a third party can only be brought into the cause by means of a writ of summons (*assignation*). *Knuckle* v. *Charlebois*, Q.R. 12 S.C. 374.

—Harbour commissioners—Punishment of pilot—Summons—Certiorari.]—Section 44 of 57 and 58 Vict., ch. 48 (D.), which obliges the Montreal Harbour Commissioners, in the exercise of their judicial functions, to conform to the procedure set out in Part 58 of the Criminal Code, does not apply to matters of simple administration and discipline. Therefore a pilot who has refused to take charge of a vessel within his district may be brought before the commissioners by summons served by a bailiff of the Superior Court, and it is sufficient to state the offence in the summons without indicating the punishment and penalties which it involves. A conviction on such summons may be reviewed on *certiorari:* — Where the return shewed that the summons had been served by the bailiff at the usual abode of the pilot (*l'Hotel du Pays*, in Montreal), by exhibiting the original to, and leaving a copy "*à une personne raisonnable*," without adding that this person was attached to the said hotel, the service was irregular and the pilot could have a conviction against him quashed on *certiorari*. *Dussault* v. *Montreal Harbour Commissioners*, Q.R. 12 S.C. 417.

—Action on will—Validity—Question how raised.]—The question of the validity of a will can only be raised by a principal action, and not by means of an exception or incidental proceeding. *Poitras* v. *Drolet*, Q.R. 12 S.C. 461.

—Saisie-arrêt—Motion—Jurisdiction.]—A motion asking that a *saisie-arrêt* be declared binding should be made before the Court and not before a judge in Chambers. *Smith* v. *Griffin*, Q.R. 13 S.C. 221.

—Garnishee—Contestation of declaration.]—A contestation of a declaration has for its object a different basis of facts, whereon to determine the garnishee's liability, from that furnished by his own declaration.—If it be not necessary to establish such new basis of facts, a motion or inscription for judgment on the facts disclosed by the declaration is the proper course. *Banque Jacques Cartier* v. *Morin*, Q.R. 13 S.C. 331.

—Notice to reject allegations in pleas—Deposit—Art. 165 C.C.P.]—A plaintiff who demands by motion the rejection of allegations in the defence as irregular should make the deposit required by the rules of practice upon a preliminary exception, and his motion should be accompanied by a certificate of the prothonotary that such deposit had been made, notice of which should be given to the defendant at the same time as notice of the motion. Art. 165 C.C.P. *Picotte* v. *Wand*, Q.R. 13 S.C. 343.

—Time—Extending—Appeal—Service of notice on agent of solicitor of party to proposed action—Mining Law.]—The Mineral Act, 1891, secs. 21 and 126, provides that adverse claims should be fyled in the office of the mining recorder, while the Act of 1894, sec. 6, gives a form of notice of application for certificate of improvements which sets forth that adverse claims must be sent to the gold commissioner. The proposed defendants made an application for a certificate of improvements for the mining ground in question, and published the notice prescribed by sec. 6, *supra*, whereupon the proposed plaintiffs, in accordance with the terms of the notice, fyled their adverse claims with the gold commissioner. Within the prescribed time they gave instructions to their agent to commence action, but he by mistake omitted to do so, the omission not being discovered until some time afterwards, when negotiations for settlement were pending. Prior to and during these negotiations the proposed defendants knew that no action had been instituted. Finally, one of the proposed defendants refused his assent to a settlement which had been agreed to by all the other parties. The proposed plaintiffs moved to extend the time to commence action:—Held, that by the Mineral Amendment Act, 1892, sec. 14, the fyling of an adverse claim in the office of the mining recorder is a condition precedent to the right of action, and that there is no jurisdiction to extend the time.—*Quære:* Whether, if there were such a jurisdiction, the grounds shewn were sufficient?—Upon appeal to the Full Court:—Held, that the adverse claim was not properly fyled; that, owing to the nature of the subject matter, the Court requires stronger ground for extending time in mining cases than in other matters.—The notice of appeal was served on the agent of the solicitor for the proposed defendants:—Held, sufficient. *Kilbourne* v. *McGuigan*, 5 B.C.R. 233.

—Quebec Election Act, 1895—Appeal to a judge from decision of council—Presentment of petition—Time—Service of copy—59 V., c. 9, s. 46 (P.Q.).]

See APPEAL, IV.

XXVIII. REFEREE IN CHAMBERS.

—Jurisdiction—Queen's Bench Act, 1895, Rules 26 and 804—Sale of land under registered certificate of judgment—"Now."]—Held, that Rule 26 of The Queen's Bench Act, 1895, which empowers the Referee in Chambers "to do such things . . . . . and exercise all such authority and jurisdiction as . . . . . , are *now* done . . . . . or exercised by him or by any judge of the Court sitting in Chambers," with certain specified exceptions, does not authorize the referee to make any order for the sale of land under Rule 804, and that it applies only to the powers, authority and jurisdiction which at the time of the coming into force of the Act and Rules, but independently thereof, a judge in Chambers had. *Watson* v. *Dandy*, 12 Man. R. 175.

XXIX. REQUÊTE CIVILE.

—Requête civile—Grounds for.]—The cases in which recourse may be had to a *requête civile* enumerated in the Code of Civil Procedure, are not exclusive; and where it appears to the Court that the allegations of the petition, if true, are sufficient to justify a *requête*, and the allegations are supported by affidavit, the Court will order the petition to be received. *Durocher* v. *Durocher*, Q.R. 12 S.C. 373.

XXX. RIGHT TO REPLY.

—Contract—Evidence—Practice—Right to reply—New trial.]—This was an action tried before a judge and jury in which the plaintiff claimed damages on a sale of a number of carloads of oats by sample on the ground that the oats delivered were not equal to sample. The contract having been simply that the oats should be equal to the sample produced:—Held, that the certificates of the grain inspector at Fort William were not evidence as to the quality of the oats delivered.—The defendant having adduced evidence, although only by way of putting in certain documents on the cross-examination of one of plaintiff's witnesses:—Held, following *Rymer* v. *Cook*, Moo. & M. 86n, that plaintiff's counsel had the right to reply. That the error of the judge in refusing to allow the reply could only entitle the party to a new trial if it appeared that the course of justice had been thereby interfered with and some substantial injury done to the party complaining. *Doe d. Bather* v. *Brayne*, 5 C.B. 655; *Geach* v. *Ingall*, 14 M. & W. 95, followed. That in the present case the plaintiff could suffer nothing from the order in which the jury were addressed, as his evidence was weak and the defendants were entitled to the verdict, and that a new trial should not be granted. *Quintal* v. *Chalmers*, 12 Man. R. 231; and 34 C.L.J. 640.

—Judgment under Order XIV.—Service of exhibit to affidavit.]—Supreme Court Rule 84, providing that the summons for leave to enter final judgment under Order XIV., R. 1, must be accompanied by a copy of the affidavit and exhibits referred to therein, is imperative. *Hughes* v. *Hume*, 5 B.C.R. 278.

—Summons under Order XIV.—Service of exhibit to affidavit—Rule 84 B.C.]—Supreme Court Rule 84, providing that the summons for leave to enter final judgment under Order XIV., R. 1, must be accompanied by a copy of the affidavit and exhibits referred to therein, is imperative. Adjournment, to enable the plaintiff to furnish a copy of exhibit, refused. *Barker* v. *Lawrence*, 5 B.C.R. 460.

XXXII. Service of Process.

—Return of bailiff—Service of true copy.]—The bailiff who signifies a process served by the attorney having conduct of the cause, is not obliged to establish its accuracy and assumes no responsibility in regard to it. Therefore, his report to the effect that he has signified a true copy of such process cannot be questioned, and the party, if he has ground of complaint, must proceed in some other manner. *Whitehead* v. *Newman*, Q.R. 12 S.C. 14.

—Execution—Art. 566 C.C.P. (old text).]—The service of an uncertified copy of the writ of execution is not a compliance with the requirements of Art. 566 C.C.P. (old text), which provides for the seizure of shares in companies—even though the copy served be in fact a true copy of a writ of execution duly issued. Further, such notice should be given by the officer charged with the execution and competent to make such seizure. A notice by the attorneys of the parties seizing is not a compliance with the requirements of Art. 566. *Lewis* v. *Corriveau*, Q.R. 12 S.C. 93.

—Saisie-revendication—Service—Arts. 909, 948 C.C.P.]—The provisions of law authorizing the plaintiff in certain cases to serve the defendant with the declaration by leaving a copy of the same for him in the prothonotary's office within three days from the seizure, withdraws these three days from the delay ordinarily required between service and return. Therefore, where the writ, in an action of revendication, was served upon the defendant with a delay of more than ten days, but a copy of the declaration was deposited in the prothonotary's office for defendant with a delay of only nine days, the service was held sufficient. *Nordheimer* v. *Farrell*, Q.R. 12 S.C. 150.

— Prescription — Bodily injuries — Interruption of prescription by judicial demand—Arts. 2262, 2224, 2267 C.C.]—In order to interrupt prescription under Art. 2262 C.C., which provides that the action for bodily injuries is prescribed by one year, it is necessary that the action be actually served within one year from the date of the injury complained of. The issue of the writ within the year is not sufficient.—The service upon defendant of a petition for leave to proceed *in forma pauperis* does not constitute service of a judicial demand within the meaning of Art. 2224 C.C. —Even where prescription has not been pleaded, the Court is bound, under Art. 2267 C.C., to dismiss an action which has not been served within the year. *Dupuis* v. *Canadian Pacific Railway*, Q.R. 12 S.C. 193.

—Irregularity in service of summons—Appearance under protest—Effect of—Waiver.]—Defendant company's steamer was attached, at the suit of plaintiff, to respond such judgment as plaintiff might obtain in an action against the defendant, for breach of the conditions of a charter-party. Defendant appeared under protest, without prejudice to the right to object to the jurisdiction of the Court, and subsequently moved, before Graham, E.J., to set aside the summons and attachment, on the ground that the service was irregular:—Held, affirming with costs, the judgment dismissing the application, that the defective service of a summons, regularly issued, and in proper form, is cured by the appearance of the defendant. Held, also, that such a thing as appearance "under protest" is unknown to the practice of the Court, but that, even if defendant's right to object to the legality of the service could be protected by protest, the protest, in this case, was limited in terms to the jurisdiction.—Per Graham, E.J. (in the judgment appealed from):—Held, that if defendant company, under protest, had put in special bail, under the statute, and moved to set aside the attachment, they could have done so, but when they obtained the release of the vessel by giving security, without notifying the other side that they reserved the right to move to set aside the process, they waived the right to do so. *Dominion Coal Co.* v. *Kingswell Steamship Co.*, 30 N.S.R. 397.

—Defective service—Leave to defend.]—In effecting personal service of process, which the party refuses to accept from the officer, he should explain the nature of it to the party, and then it will be sufficient to throw it down before him and leave it there: *Thomson* v. *Pheney*, 1 Dowl. 441. In this case the affidavit of service of the statement of claim shewed that the defendant had refused to accept the copy and that the officer left it at the defendant's house:—Held, that the service was not effectual, more especially as the defendant was a Mennonite and did not understand English, and that the defendant should be allowed to put in his defence to the action within fifteen days. *Ritz* v. *Schmidt*, 12 Man. R. 138.

—Prohibitory injunction—Disobeying—Remedy—Attachment or committal—Rule 451—Indorsement—Service.]—Upon motion for a writ of attachment against the manager of the de-

fendant company for disobeying an injunction restraining the company, its agents, servants, etc., from blasting or depositing rock upon plaintiff's mineral claim, it was objected: (1) Under Rule 451, that there was no memorandum of the consequence of his disobedience endorsed on the order. (2) That the notice of motion for attachment was not personally served on the manager, but only on the solicitor for the defendant company. Counsel had appeared for the manager, and obtained several adjournments of the motion to obtain affidavits on the merits, which, finally, were not forthcoming:—Held, overruling the objections: (1) That Rule 451 does not apply to prohibitory injunctions. (2) That the want of personal service of the notice of motion upon the manager was waived by the adjournments at his request.—Upon appeal to the Full Court:—Held, that committal and not attachment is the appropriate remedy for breach of a prohibitory injunction.—That personal service of a notice of motion is an essential pre-requisite to committal, and that the party applying in a case proper for committal is not absolved from the necessity for such personal service by moving for attachment instead of committal: *Browning* v. *Sabin*, 5 Ch. D. 511, distinguished.—That the objection of want of personal service of the notice was not waived by the adjournments. *Golden Gate Co.* v. *Granite Creek Co.*, 5 B.C.R. 145.

—Mineral law—Action to enforce adverse claim — Abandonment of — Setting aside adverse claim.] — Plaintiff having commenced an action to enforce an adverse claim, did not serve the writ within a year as provided by Rule 31. The defendant moved in the action to set aside the writ and to vacate the adverse claim:—Held, that the action was out of Court, and no order could be made therein. *Semble:* That an application to set aside an adverse claim is not properly made in an action brought to enforce it. *Troup* v. *Kilbourne*, 5 B.C.R. 547.

—Change of domicile—Possession—Signification of action.]—See DOMICILE.

—Harbour Commissioners—Punishment of pilot —Summons—Service at hotel where pilot lived Return.]—See hereunder, XXVIII.

XXXIII. STAY OF PROCEEDINGS.

—Sequestration—Review of judgment—Suspension of order—Art. 885 C.C.P. (old text.).]—The fact that a judgment ordering the sequestration of goods in litigation has been inscribed in review is not a ground for suspending such order for sequestration until the Court of Review has adjudicated upon the litigation between the parties. *Moreau* v. *Demers*, Q.R. 12 S.C. 464.

—Security—Art. 177 C.C.P.]—In an action on a note that has been lost, the defendant, if wishing to have the proceedings stayed until security is given, must demand such security by way of dilatory exception pursuant to Art. 177 C.C.P. *Brown* v. *Barden*, Q.R. 13 S.C. 151.

—Action in forma pauperis—Dismissal—Second action—Payment of costs.]—See COSTS, XVIII.

—Application for execution on judgment in County Court—Stay of proceedings—Supreme Court's jurisdiction.]—See COUNTY COURTS.

XXXIV. SUMMONS.

—Writ of Summons—Address of defendant—Amending writ.]—The omission to state upon the Writ of Summons any address does not invalidate the writ, but is an irregularity merely and amendable. *Matthews* v. *City of Victoria*, 5 B.C.R. 284.

—Arts. 127, 175 C.C.P. — indorsement—Date of service.]—The omission to indorse the copy of the writ of summons with the date of service, as required by Art. 127 of the Code of Procedure, is not a cause of nullity unless it be shewn that the defendant has suffered prejudice by such omission. *Mireau* v. *Gorm*, Q.R. 12 S.C. 286.

XXXV. TRIAL.

—Notice of trial—Irregularity—Close of pleadings—Service of papers — Waiver.] — On the last day for delivering the statement of defence, which was also the last day for serving notice of trial, the defendants fyled their defence a few minutes before 4 o'clock, and served it at the office of the plaintiff's solicitor about the same time. The plaintiff immediately fyled a rejoinder of issue, and then served it and also notice of trial, before 4 o'clock, on the clerk of the defendants' solicitor, in Osgoode Hall. On the same day, but before the defence was fyled, the plaintiff also served the joinder and notice of trial at the office of the defendants' solicitor:—Held, that the notice of trial was irregular, for it could not be properly served until after the close of the pleadings; and the service upon the clerk at Osgoode Hall was of no avail; it could only be effective, if at all, from the moment when it reached the solicitor himself: *McIlroy* v. *McIlroy*, 14 Ont. P.R. 264, followed in preference to *Broderick* v. *Broatch*, 12 Ont. P.R. 561:—Held, also, that the issuing by the defendants of an order to produce at the same time that they fyled their defence did not waive the irregularity of the notice of trial. *Hermann* v. *Mandarin Gold Mining Co. of Ontario*, 18 Ont. P.R. 34.

—Jury notice—Striking out—Duty of judge presiding at jury sittings—Transfer to non-jury lists.]—An appeal by the defendants from an order of Meredith, C.J., made when presiding at the Toronto jury sittings, striking out the jury notice served by the defendants, and transferring the action for trial to the Toronto non-jury sittings, was allowed, Street, J., dissenting, and the case was ordered to be reinstated on the list of actions for trial with a jury, and the jury notice restored, but this not to interfere with the right of the judge presiding at the trial to direct that the action should be tried without

a jury. Per Armour, C.J.—The Chief Justice of the Common Pleas was not the judge presiding at the trial of the action within the meaning of sec. 110 of the Judicature Act, for he declared as soon as it was called that he would not try it, and then ceased to have any power over it. Nor could the order be supported as one made in Chambers under sec. 44 of the Judicature Act, for the order did not profess to have been made in Chambers, nor did the Chief Justice in making it profess to make it as a judge sitting in Chambers, nor was any foundation laid for it as for an order in Chambers, but it was made by the Chief Justice *sua sponte*.—The duty of a judge presiding at the trial of a cause in which a jury notice has been given, when he directs that it be tried without a jury, is to proceed at once with the trial of it. Per Street, J.—The Chief Justice was not the judge presiding at the trial, but he had the power, sitting as a judge in Chambers, to strike out the jury notice and transfer the cause to the non-jury list upon good reason being shewn for not proceeding with the trial at once. The case was one in which it was proper to strike out the jury notice, but, when it was struck out, it did not follow that the case should be transferred to a non-jury list, but the contrary. The case, however, having been tranferred to the non-jury list, should remain there, and the appeal be dismissed. *Bank of Toronto* v. *Keystone Fire Insurance Co.*, 18 Ont. P.R. 113.

—Trial judge—Power to amend erroneous order—Costs—Appeal—Prothonotary—Functions held purely ministerial.]—At the conclusion of the evidence given on the trial, a verdict, by consent, was taken for plaintiff, for one dollar damages, and an order was prepared, sealed, and fyled. It subsequently came to the notice of the judge that the order had been taken with costs, and, stating that this was a mistake, and that he did not intend to allow costs, he directed the prothonotary to produce the order, and caused the portion of it relating to costs to be erased:—Held, that the judge had power to make the correction ordered:—Held, also, that counsel for plaintiff could not get rid of the order, as corrected, by refusing to accept it, but must appeal:—Held, further, that the functions of the prothonotary being purely ministerial, he was not justified in treating the corrected order as abortive, and in neglecting to fyle it. *McDougall* v. *Mullins*, 30 N.S.R. 313.

—Order setting cause down for trial before judge at Chambers—Jurisdiction of judge to make—Application to set aside—Costs—Merits.]—At the instance of plaintiff, and after due notice to defendants' solicitor, who was present when the application was made, and made no objection thereto, the cause was set down for trial before a judge at Chambers:—Held, that the order being clearly within the jurisdiction of the judge who made it, must prevail until set aside, and was not affected by the subsequent giving of a jury notice by defendant. Defendants' counsel appeared at the trial, and, while objecting that the trial could not be proceeded with, on account of the giving of the jury notice, went on with the trial, and cross-examined plaintiff's witnesses, and called witnesses on behalf of defendant:—Held, that, having taken chances on the trial, defendants had no merits upon which they could ask to have the judgment against them set aside; that the judgment of the chamber's judge must be affirmed and defendants' appeal dismissed with costs: *Sugg* v. *Silber*, 1 Q.B.D. 362, distinguished. *Alexander* v. *Baker*, 30 N.S.R. 443.

—Pleadings—Reference to.]—The documents referred to as forming part of the pleadings, complete the parts of the proceedings to which they relate, unless the adverse party has them struck out of the record, and the Court may refer them to find the existence of the right denied. *Budden* v. *Rochon*, Q.R 13 S.C. 322.

—Questions to jury—Findings—Entering judgment against—Appeal—Preliminary objection—Notice—Supreme Court Amendment Act, 1897, s. 12.]—The trial judge submitted certain questions to the jury with the following stated reservation: "Subject to the law governing the contract and its construction," but judgment was given, for reasons stated by the Court, at variance with the findings of the jury thereon:—Held, that the trial judge should have explained the law governing the contract and its construction to the jury and then taken their opinion on the questions submitted; and that so long as the findings of a jury stand unreversed, judgment must be entered in accordance therewith.—At the close of the appellant's argument, counsel for the respondents moved to quash the appeal on the ground that notice thereof was given before the signing or entry of the order for judgment. The order had been entered since giving of the notice of appeal:—Held, that this was a preliminary objection, and should have been taken before the appellant opened, and that notice thereof should have been given in pursuance of the Supreme Court Amendment Act, 1897, sec. 12. *Macdonald* v. *Methodist Church*, 5 B.C.R. 521.

—Practice in N.W. Territories as to setting cause down for trial—Comparison with English practice.]—See COSTS, XIX (*d*).

—Power of single judge to dispose of points of law raised before trial.]—See JUDGE.

XXXVI. VACATION.

—Rules applicable to High Court appeals—Christmas vacation.]—Rules applicable to appeals from the High Court to the Court of Appeal are to be applied, as far as possible, to appeals from reports of the Drainage Referee under the Drainage Act, 57 Vict. (Ont.), ch. 56; and the Christmas vacation is to be excluded in the computation of the month within which, by sec. 106 of that Act,

such an appeal is to be made. *Re Township of Raleigh and Township of Harwich*, 18 Ont. P.R. 73.

XXXVII. Venue.

—Venue—Change of—Criminal cause—Fair trial—Evidence as to.]—Upon a motion by the Crown under s. 651 of the Criminal Code to change the venue from the town of Napanee to some other place, for the trial of three persons charged with the offence of breaking a bank in the town of Napanee and stealing money therefrom, upon the ground that the sympathy felt for two of the accused in the town and in the County of Lennox and Addington, of which it is the county town, was such that a fair trial could not be had:—Held, that the rule that all causes should be tried in the county where the crime is supposed to have been committed ought never to be infringed unless it plainly appears that a fair and impartial trial cannot be had in that county; and mere apprehension, belief, and opinion are not to be relied on as evidence. Under the circumstances appearing upon affidavits fyled, the motion was refused. *The Queen* v. *Ponton*, 18 Ont. P.R. 210.

—Offence commenced in one province and completed in another—Habeas corpus—Crim. Code, s. 365.]—An offence which was commenced in one province and completed in another, is triable in either province. *Ex parte Gillespie*, Q.R. 7 Q.B. 422.

—Habeas corpus.]—Any judge may issue a writ of *habeas corpus*, but such writ should be taken to the Court of Queen's Bench or Superior Court. If taken to the Queen's Bench it should be to the place where appeals from the district are carried; but if to the Superior Court, as the Code of Civil Procedure, in the chapter on *habeas corpus ad subjiciendum*, contains no special directions, the rule in Art. 34 should govern, namely, that the defendant should be assigned before the tribunal of his domicile, or that of the place where the demand was personally served on him, or that where the cause of action arose. *Morency* v. *Fortier*, Q.R. 12 S.C. 68.

—Origin of cause of action.]—Defendant, by a letter sent from Quebec to Montreal, requested a correspondent residing in the latter city to engage the services of a detective to discover the perpetrators of a theft committed at Quebec, and the correspondent employed the plaintiffs for that purpose. In an action by the latter for the price of their services:—Held, that the cause of action arose in the district of Montreal and the action could be brought there. *Carpenter* v. *Pinault*, Q.R. 13 S.S. 352.

—Changing venue—Preponderance of convenience—Fair trial.]—Defendant moved to change the venue on the grounds of preponderance of convenience and residence of the majority of witnesses at the place of trial proposed. Plaintiff resisted the motion on the ground that a fair trial could not be had at the proposed place. The judge refused the application, leaving it to the trial judge to apportion the additional cost of trial in the venue as laid. *Lapointe* v. *Wilson*, 5 B.C.R. 150.

XXXVIII. Writs.

—Writ of execution—Signature of prothonotary—Nullity.]—A writ of execution not signed by the prothonotary is an absolute nullity, and the party proceeding upon it cannot obtain the signature of the prothonotary after seizure. *Brisson* v. *Lefebvre*, Q.R. 12 S.C. 1.

—Order dispensing with production of original writ—Indorsement of service of writ—Motion to set aside judgment—Irregularity.]—Judgment in default of appearance. Material: Affidavit of bailiff dated Feb. 4th, 1895, of service on defendant at his residence; of copy of writ and statement of claim annexed to affidavit. On an affidavit of sheriff that bailiff had informed him he served original instead of copy of writ, an order, dispensing with production of original, was made on April 6th, 1895, date of judgment, by judge in Chambers, according to sec. 30, sub-sec. 11, of the Judicature Ordinance. Original writ was not annexed to affidavit of bailiff; but copy writ bearing no indorsement signed by him, but merely an unsigned indorsement in handwriting of sheriff. Affidavits fyled on behalf of defendant deposed that he never resided at alleged place of service, that he was never served with writ or copy, and that he first became aware of proceedings by seizure by sheriff, Sept. 21st, 1897, under writs of execution issued April 6th, 1895:—Held, that the weight of evidence showed non-service; that no affidavit of service had been fyled in compliance with sec. 80 of Judicature Ordinance, since the affidavit required was one of facts within deponent's own knowledge, and that affidavit of sheriff did not remedy defect in bailiff's affidavit; that Rule 15 of Order 9 of Rules of Supreme Court, England, 1883, is applicable in N.W.T. and requires indorsement of service of writ, and that the application was made within a reasonable time. Further, that the order made under sec. 30, sub-sec. 11, did not dispense with proper proof of service of the original writ. Order setting aside judgment, costs to defendant, no action against sheriff. *Wolf* v. *Koch*, 34 C.L.J. 95.

—Specially indorsed writ—Acceptance of service by attorney—Appearance and plea—Summary judgment.—Acceptance of service and undertaking to appear were indorsed by defendant's attorney on a specially indorsed writ. On an application to set defendant's appearance and plea aside, and for leave to sign judgment for want of defence, defendant contended that it would leave the proceedings as though default had been made in the undertaking of defendant's attorney, giving rise to an attachment against him, but not entitling plaintiff to judgment, since there was no service upon the defendant. Application granted. *Bank of Montreal* v. *Crockett*, 34 C.L.J. 579.

—Extent—Writ of—Crown bond.]

See WRIT OF EXTENT.

—Restitution—Writ of.]—See RESTITUTION.

PRE-EMPTION.

Contract—Transfer of pre-emption claim—Land Act, 1888, s. 26—"Transfer."]—Defendant, having a pre-emption claim to certain land, signed an undated deed conveying the same to plaintiff; but it was agreed, in view of sec. 26 of the Land Act prohibiting the transfer of pre-emption claims, that the deed should remain in escrow until after the issue of the Crown grant, and that the date should then be inserted and delivery made. The transaction was completed accordingly:—Held, at the trial, that the word "transfer" in sec. 26 means the parting with the title, and, as the deed did not operate until after the issue of the Crown grant, it did not constitute a transfer before Crown grant within the meaning of the Act:—Held, by the Full Court, that the parties had avoided doing that which the Act prohibited, and the conveyance was valid and effectual. *Hjorth* v. *Smith*, 5 B.C.R. 369.

PRESCRIPTION.

See LIMITATION OF ACTIONS.

PRINCIPAL AND AGENT.

I. AGENT'S RECOURSE AGAINST PRINCIPAL, 385.
II. APPOINTMENT OF AGENT, 386.
III. LIABILITY OF PRINCIPAL FOR ACTS OF AGENT, 386.
IV. LIABILITY OF PRINCIPAL TO THIRD PERSONS, 386.
V. MANDATAIRE, 388.
VI. POWER AND AUTHORITY OF AGENT, 389.
VII. SALES' AGENT, 389.

I. AGENT'S RECOURSE AGAINST PRINCIPAL.

—Action against agent—Costs of defence—Recourse of agent.]—Under Art. 1725 C.C. an insurance company is obliged to reimburse its agent for judicial costs incurred by him in defending an action by a person whom he had accused of falsely representing himself to be a sub-agent of the company, in case the insolvent plaintiff has not been able to pay his costs of the defence, but it is necessary that these proceedings had been taken by him in his capacity of secretary-treasurer of the company. *Talbot* v. *Montmagny Assurance Co.*, Q.R. 12 S.C. 64.

II. APPOINTMENT OF AGENT.

—Hypothec—Radiation on forged discharge—Agency of notary.]—In an hypothecary action against the *tiers détenteur* of real estate it appeared that the plaintiff's registered hypothec had been radiated by the registrar on the production of a pretended notarial discharge. The plaintiff then inscribed *en faux* against the copy of the deed of discharge which had been lodged with the registrar, and an admission was fyled that the discharge was a forgery:—Held, that the notary who forged the discharge was not the agent of the hypothecary creditor, the mere selection of the office of the notary as the place of payment of the hypothecary claim and interest not constituting the notary the agent of the party making the selection. *Latulippe* v. *Grenier*, Q.R. 13. S.C. 157.

III. LIABILITY OF PRINCIPAL FOR ACTS OF AGENT.

—Vendor and purchaser—Mistake—Contract—Agreement for sale of land—Agent exceeding authority—Specific performance.]—Where the owner of lands was induced to authorize the acceptance of an offer made by a proposed purchaser of certain lots of land through an incorrect representation made to her and under the mistaken impression that the offer was for the purchase of certain swamp lots only, whilst it actually included sixteen adjoining lots in addition thereto, a contract for the sale of the whole property made in consequence by her agent was held not binding upon her and was set aside by the Court on the ground of error, as the parties were not *ad idem* as to the subject matter of the contract and there was no actual consent by the owner to the agreement so made for the sale of her lands. *Murray* v. *Jenkins*, 28 S.C.R. 565.

—Company—Harbour commissioners—Acts of officer.]—The Quebec Harbour Commissioners constitute a corporation, and acts done by their officers, the secretary for example, bind them. *Lamarre* v. *Woods*, Q.R. 13 S.C. 466.

IV. LIABILITY OF PRINCIPAL TO THIRD PERSONS.

—Carrier—Special agent—Transaction by on his own behalf.]—R., a commercial traveller for plaintiffs, took passage for Maria on the defendants' boat, He had no return ticket. At Maria a barge belonging to C. received the passengers and their baggage and took them ashore. For this service C. received from defendants an annual sum of $25 and collected besides 15 cents from each passenger. On his return R., having no return ticket, confided his case of samples to C., who placed it on board his barge awaiting the arrival of the boat. The water came through the bottom of the barge and the samples were damaged. R. had paid C. 50 cents to carry his luggage on board the barge:—Held, that in this matter C. acted for himself and not for the defendant company, who

were not responsible. *Garneau* v. *North American Transport Co.*, Q.R. 12 S.C. 77.

—Notice to public of agency—Sale to agent—Proof of agency.]—Defendants, agents of horse dealers in England, employed for the sale of his horses one O., to whom he made the necessary advances. O. was insolvent and could not procure the necessary funds himself and the defendant did not conceal from any one the fact that the advances were made by him which was generally known. Most of the payments were made at the office of the defendant who, in one transaction, gave his personal note to close a sale of horses, and the bills of lading for the carriage of the horses to England, though made out in the name of O. were to defendant's order. O. having bought horses in the defendant's name from the plaintiff, the latter brought an action against the defendant for the price:—Held, that defendant having given the public reason to believe that O. was his agent, was responsible for said purchase of horses from the plaintiff:—Held, also, that upon an allegation of the sale of the horses to defendant by the plaintiff, the latter could prove the agency of O. even without an allegation of agency, especially as the defendant had had, in the *enquête*, all the benefit of the proof that he could have opposed to such an allegation. *Bisaillon* v. *Elliott*, Q.R. 13 S.C. 289.

—Assignment for creditors—Sale of goods.]—The plaintiff's claim was for goods sold to one P. who had been carrying on business as a general trader, but shortly before the sale had made a transfer of his stock-in-trade and other property to the defendant in trust for certain creditors. The plaintiff was not aware of this transfer, but sold the goods as he had frequently done before the transfer, believing that P. was still the principal and not an agent, as defendant had left him in charge of the business and employed him to carry it on for him, and on his behalf, in accordance with instructions to be received. The goods purchased from the plaintiff were such as would be reasonably required in the business, and the plaintiff supposed that they had been ordered for it:—Held, following *Armstrong* v. *Stokes*, L.R. 7 Q.B. 598, and *Watteau* v. *Fenwick* [1893], 1 Q.B. 349, that defendant had constituted P. his general agent for taking charge of and carrying on the said business, and was liable to the plaintiff for the price of the goods furnished by him: *Hechler* v. *Forsyth*, 22 S.C.R. 489, distinguished. *Hutchings* v. *Adams*, 12 Man. R. 118.

—Constructive notice—Fraud—Evidence of accomplice in fraud—Corroboration—Parties.]—As executrix of the will of L., the plaintiffs' mother held certain lands then valued at over $7,000 in trust for the plaintiffs with power to sell but not to mortgage the same. Wishing to borrow money on the land a pretended sale was made for the expressed consideration of $5,000 to M., who then raised $2,000 for the executrix by mortgaging the land to the defendant company and immediately reconveyed the land to the executrix for the nominal consideration of $1,000. This scheme was carried out mainly by the plaintiffs' father, who swore at the trial that the agent of the company was aware of the plan adopted if he did not himself suggest it. The plaintiffs' father and mother then lived on the property and had lived there ever since:—Held, that the defendants were affected through their agent with notice of the fraud and breach of trust committed. and that the mortgage, together with two subsequent mortgages taken from the executrix on the same lands, should be declared to be fraudulent and void as against the plaintiffs:—*Quære:* Whether constructive notice should not also be imputed to the company through the solicitor, who would have detected the fraud if he had followed up the inquiries suggested by the amounts of the considerations expressed in the deeds and mortgage, and by the fact that M. did not take possession of the property: *Kennedy* v. *Green*, 3 Mylne & K. 699:—Held, also, that although the agent of the company was dead and the evidence of the plaintiffs' father, who was mainly concerned in the fraud and directly benefitted by it, was the only evidence to shew that the agent was aware of it, it was competent for the trial judge to believe him and no corroboration was necessary. The rule as to corroboration of the evidence of an accomplice is not one of strict law but only one of prudence, and does not apply to civil actions:—Held, further that under the circumstances, although the land was still vested in their mother the executrix, the plaintiffs could sue without joining her as plaintiff: *Travis* v. *Milne*, 9 Hare 150 followed; *Stainton* v. *Carron Co.*, 18 Beav. 146 and *Yeatman* v. *Yeatman*, 7 Ch.D. 210 distinguished. *Graham* v. *British Canadian Loan and Investment Co.*, 12 Man. R. 244.

V. Mandataire.

—Account by mandatary—Disbursements—Lien—Registry.] — A *mandataire* who has had the administration of property producing revenues (*fruits et revenus*) which he has received for several years must render an account before he can demand repayment of disbursements made in the course of his administration.—The *mandataire*, even when a debt resulting from his disbursements is contested, has a lien for such debt upon property which has come into his hands.—But he has no right to register, against the immovable which he retains for his debt, a notice to the public of the lien, which is not the subject of registration, and the amount of which has not been established after contest (*contradictoirement*). *Eddy* v. *Eddy*, Q.R. 7 Q.B. 300. (Two appeals from this judgment are pending, one by plaintiff to the Privy Council, the other by defendant to the Supreme Court of Canada).

VI. Power and Authority of Agent.

—Transfer of property by agent in excess of authority—Right of principal to recover—Costs — Discretion — Detinue — Special damage.]—Plaintiff placed a mare in the custody of B. for sale, with permission to make use of her, pending the finding of a purchaser:—Held, that B. was not justified in parting with the property otherwise than as authorized, and that plaintiff was entitled to recover against defendant, who, by pressure, induced B. to make use of the property so entrusted to him for the payment of his own debt. Held, also, that the trial judge was right in assessing damages for the detention of the mare as well as for the value; that the action on plaintiff's part being for the enforcement of a legal right, and there being no omission or neglect on his part that the trial judge was wrong in depriving him of costs; that the discretion of the Court in relation to costs must be exercised judicially, and that the fact that defendant and B. were principal and agent, and that B. acted in good faith, was not sufficient reason for depriving plaintiff of costs to which he was otherwise entitled. Per Meagher and Henry, JJ.—Held, that in detinue damages for the loss of the use of any species of personal property may be recovered without any allegation of special damage. *Garden* v. *Neily*, 31 N.S.R. 89.

VII. Sales' Agent.

—Jurisdiction—Commission on sale.]—The defendant, by an instrument signed by him, authorized the plaintiff to dispose of the goods mentioned therein for the sum of $1,000, net to defendant, the latter reserving to himself the right to dispose of the goods without plaintiff's assistance, and agreeing in such case to pay the plaintiff a commission of ten per cent. on the above mentioned sum. The defendant, unassisted by plaintiff, afterwards disposed of the goods for $350, and the plaintiff then claimed ten per cent. commission on $1,000, and interest:—Held, that he was entitled to recover the amount, and that the claim was within the jurisdiction of the Division Court, the original amount thereof being ascertained by the signature of defendant. *Petrie* v. *Machan*, 28 Ont. R. 642.

And see Sale of Land.

PRINCIPAL AND SURETY.

I. Disability of Surety, 389.
II. Discharge of Surety, 390.
III. Proceedings Against Surety, 390.
IV. Rights Against Co-surety, 391.

I. Disability of Surety.

—Husband and wife—Separate estate—Wife as surety with husband.]—A wife separated as to property cannot legally become security, with her husband, for the debt of a third party, but the husband may bind himself, together with his wife, to pay the debt of a third party for which the wife had already become security; and this obligation will bind the wife as well as her husband. *Mullin* v. *Carey*, Q.R. 13 S.C. 115.

II. Discharge of Surety.

—Promissory note—Accommodation—Time given to party accommodated.]—Where the holder of a promissory note knew, when he became such, that the maker had signed it only for the accommodation of other parties, and as their surety, he cannot recover against the maker if he has given time to the parties so secured. *Leet* v. *Blumenthal*, Q.R. 13 S.C. 250.

III. Proceedings Against Surety.

—Liability of surety only on default of debtor—Right of creditor to proceed—Execution of judgment.]—The clause by which sureties bound themselves jointly and severally to the principal debtors for payment of an obligation "but only in default of payment on the part of the principal debtors and after previous investigation and notice of such default in payment" does not prevent the creditor proceeding against the sureties at the same time as against the principal debtors, but the judgment can only be executed against the sureties after seizure and sale of the goods of the debtors upon the necessary monies being first advanced by the sureties and the goods to be seized designated. *Généreux* v. *Sapuyère*, Q.R. 13 S.C. 56.

—Surety — Goods supplied — Mercantile agreement — Pleading — Ratification by principal — Statement of defence.]—Plaintiffs, doing business under the name and style of "The Comet Cycle Co.," appointed the firm of Baneroft & Bailey agents for the sale of their bicycles within a described area, on terms expressed in a written agreement entered into between the parties, but which, in consequence of Bailey, one of the members of the firm, being an infant, and under disability, was not executed in the firm name, but was signed by Bancroft, the other member, in his own name, and by H. M. Bailey, the father of the infant partner, as follows: "I accept the terms of the above agreement, and hereby acknowledge the receipt of a copy of the same. Ernest M. Bancroft, H. M. Bailey.":—Held, that the defendant H. M. Bailey was liable as surety for the goods supplied the firm under the terms of the agreement; that the document, being a mercantile one, must be liberally construed for the purpose of giving effect to the intention of the parties. —The agreement on the part of the company was made and signed by their agent, and was expressed to be made subject to the approval of the company, and in the statement of claim such approval was alleged to have been given:—Held, that if defendant wished to

controvert the allegation he should have done so in his statement of defence. *Fane* v. *Bancroft*, 30 N.S.R. 33.

IV. Rights Against Co-surety.

—Counter-security—Right to enforce—Depreciation — Contribution.] — Where the principal debtor gives to his sureties counter-security by mortgage of real estate, any of the sureties is entitled, after the principal debtor's default, to enforce the security without the consent or concurrence of the others, and it is not an answer to a claim for contribution by one surety who has paid the whole debt that the security has depreciated in value and that the paying surety has refused to take any steps to enforce it: *Moorhouse* v. *Kidd*, 25 Ont. A.R. 221, affirming 28 Ont. R. 35 and C.A. Dig. (1897), col. 315.

—Suretyship—Letter of guarantee—Promissory note—Indorsement—Joint and several obligation—Art. 1951, C.C.]—The directors of a company, in order to provide funds for carrying on the business, indorsed a promissory note, which was discounted by a bank. The president of the company had refused to indorse the note until he received from the other directors a letter in the following terms:—"We, the undersigned, do hereby agree and undertake to hold you harmless of all liability in respect to your indorsement of a certain promissory note," etc. The plaintiff indorsed the note last, though his name appeared first thereon. Judgment being obtained by the bank for the amount of the note, the plaintiff satisfied the judgment, and the question now was whether the other indorsers, signers of the letter of guarantee, were jointly and severally indebted to the plaintiff, in the amount paid by him to the bank, or whether they were only jointly indebted:—Held, that, under the terms of the letter of guarantee, the signers thereof became jointly and severally liable to the plaintiff for whatever amount he might be obliged to pay in respect of his indorsement, and the letter of guarantee must be referred to as regulating the obligations of the parties *inter se*, and not the resolution previously passed by the directors, by the terms of which the directors apparently agreed to be co-sureties towards the bank for the amount of the note discounted. *Thomas* v. *Nunns*, Q.R. 12 S.C. 52.

—Insolvency—Creditor's claim—Indorsement for accommodation.]—C. signed some promissory notes as maker, and B. indorsed them. Both affixed their signatures to accommodate M. B. failed after M. had failed. C. fyled a claim as B.'s creditor for half the amount which he had paid on said notes:—Held, as both maker and indorser had signed for accommodation, they were both sureties for M. and had a recourse one against the other for half the amount they paid for M.; consequently, C.'s claim against B. was well founded.—It could be established by parol evidence that B. knew that the notes were for accommodation, though this led to establish an obligation on his part to pay another's debt. *In re Boutin*, Q.R. 12 S.C. 186.

PRIVILEGE.

Municipal corporation—Building of aqueduct—Privileges and powers conferred for building and working — Performance of conditions — Revocation.]

See Municipal Corporations, III.

And see Lien.

PRIVY COUNCIL.

Leave to appeal by Provincial Court.]—The Court of Queen's Bench for Lower Canada is bound by the Code of Procedure which only allows an appeal to the Privy Council in the cases specified, and cannot, as can the Privy Council, give special leave to appeal at its discretion. *Compagnie de Pulpe de Mégantic* v. *Corporation du Village d' Agnès*, Q.R. 7 Q.B. 349.

—Appeal to Privy Council—Leave by Court appealed from.]—Under the Privy Council Rules the leave to appeal from a judgment of the Supreme Court of British Columbia may be granted by any quorum of the Full Court, although not constituted of the same judges as those who delivered the judgment proposed to be appealed from. *The Queen* v. *Victoria Lumber Co.*, 5 B.C.R. 305.

PROBATE COURT.

Appointment of surrogate to act in absence of judge — Jurisdiction as to matters heard during absence of judge — Certiorari.] — The Probate Act, R.S., N.S. (5th series,) ch. 100, sec. 4, as amended by the Acts of 1891, ch. 17, provides for the appointment of a surrogate judge to act in the place and stead of the judge of probate, during his illness or temporary absence:—Held, that the jurisdiction of the surrogate judge, in all matters of which he becomes seized during the absence of the judge, continues undiminished until he shall be discharged thereof by the delivery of final judgment, and that as to all such matters as to which the surrogate judge shall become so seized during the absence of the judge, the authority or jurisdiction of the latter shall not revive on his return.—The judge of probate having, on his return, read over the evidence taken in a matter heard before the surrogate judge during his absence, heard counsel, and joined with the surrogate judge in a judgment which was said to represent the opinions of both, independently arrived at:—Held, that the judgment so given was a nullity, and, not being appealable, that it was properly brought before the

Court by *certiorari*. *The Queen* v. *Foster*, (*Estate of Esson*), 30 N.S.R. 1.

—Probate Act—R.S. N.S. 5th ser., c. 100—Words "last dwelt," "last resided"—Revocation of letters testamentary — Executor — Costs.]—The Probate Act, R.S. (5th series), ch. 100, sec. 2, provides that the judge of probate for the county or district where the deceased last dwelt shall have power to grant letters testamentary, &c.; — Held, that the words "last dwelt" are equivalent to "last resided" and mean the fixed abode of the deceased in contradistinction to a mere temporary locality of existence.—The judge of probate for the County of Halifax revoked letters testamentary granted by him on the ground that it had been made to appear that the deceased "last dwelt" in the County of Colchester and not in the County of Halifax: —Held, that he had power to do so:—Held, also, that the executor, who appealed, should be ordered to pay the costs of the appeal personally, it appearing that the grant of probate by the judge of the County of Colchester would be equally available to him, and that his appeal was unnecessary. *Re Estate of Caroline Fraser*, 30 N.S. 272.

PROHIBITION.

Jury trial—Submitting questions—Acquiescence—Prohibition.]—In a Division Court action for the price of goods sold, the judge without objection taken, submitted questions to the jury, and on their answers entered a verdict and judgment for the plaintiff after the defendant had, however, put in a written argument in his own favour:—Held, on motion for prohibition, on the ground that the defendant was entitled to a general verdict of the jury, and that the judge had no right to submit questions and enter a verdict thereon, that however this might be, the defendant had so acquiesced in the course taken as to debar him from obtaining prohibition. *In re Jones* v. *Julian*, 28 Ont. R. 601.

—Division Court—Amount in dispute—Unsettled account — Jurisdiction — Interest—Part Prohibition.]—The summons in a Division Court plaint stated the plaintiffs' claim to be $109.73, the amount of an account with interest. The account as shewn by the particulars annexed was a debit and credit one, consisting on the debit side of a number of items, aggregating $456.50, and on the credit side of items of cash payments, amounting to $361.50, leaving a balance of $95, which, with $14.73 claimed for interest, made the $109.73. Judgment for the plaintiffs was signed for that amount for default of a dispute note:—Held, that it did not appear on the face of the proceedings that the account was an unsettled one; for all that appeared, the account, though exceeding $400, might have been a settled account, and the balance of $95 an admitted balance; and therefore the jurisdiction of the Division Court was not excluded by sec. 77 of the Division Courts Act, R.S.O. 1887, ch. 51.—But the amount claimed was beyond the jurisdiction of the Division Court, as defined by s. 70, s.s. (1), clause (*b*). As, however, the claim for interest was severable, the prohibition should be limited to the excess over $100; *Trimble* v. *Miller*, 22 Ont. R. 500, followed. *Re Lott* v. *Cameron*, 29 Ont. R. 70.

—Writ of—Remedy.]—Prohibition will not lie when any other remedy exists. *Tessier* v. *Desnoyers*, Q.R. 12 S.C. 35.

—Issue of writ—Reasons for.]—The writ of prohibition is never granted as a means of appeal or review from judgments rendered by inferior tribunals, but is only to keep such tribunals within the limits of their jurisdiction from which they have departed or are about to depart. Therefore, the writ will not be granted to remedy an illegality in procedure committed by an inferior tribunal, if such illegality does not amount to an excess of jurisdiction.—The writ will not be granted on the ground that the action does not set forth a judicial claim in proper terms, or that an inferior Court has refused to allow a person to be a witness, or for other like reasons.—The writ is only granted when the law offers no other remedy to the party demanding it. Therefore, when *certiorari* can be adequately employed by such party, he is not entitled to prohibition, even in a case where the writ could otherwise issue.—The writ of prohibition should be addressed to the inferior tribunal itself, and not to the judges composing it, in their personal capacity. *Breton* v. *Landry*, Q.R. 13 S.C. 31.

—Magistrate — Excess of jurisdiction — License Law Art. 1074.]—Notwithstanding the provisions of Art. 1074 of the Quebec License Law, a writ of prohibition will be granted if a magistrate exceeds his jurisdiction in a criminal case. *Therrien* v. *McEachern*, 4 Rev. de Jur. 87.

—Bastardy—Trial—C. S. N.B. c. 103, s. 7—Limitation.]—R. having been arrested by warrant on an information charging him with being the father of a bastard child likely to become a charge on the parish, denied his guilt and entered into the recognizance required by Con. Stat. ch. 103, s. 7. The cause was not entered for trial at the term of the County Court next ensuing the birth of the child, but was entered at the next following term. On an application for a writ of prohibition to restrain the Judge of the County Court from trying the information:—Held, per Tuck, C.J., Hanington and McLeod, J.J., that the defendant could be properly tried at the last mentioned Court and the writ of prohibition should be refused. Per Barker, Landry and VanWart, J.J., that the provisions of Con. Stat. ch. 103, s. 7, limited the time within which the defendant could be legally tried and the writ of prohibition should issue. The

Court being evenly divided the matter dropped; *Ex parte Currie*, 26 N.B.R. 576 discussed. *Ex parte Reid*, 34 N.B.R. 133.

—Appeal to Supreme Court—Application to Quebec cases.]—See APPEAL, IV.

—Municipal elections—Concurrent motions in High and County Courts.]

See COUNTY COURTS.

PROSECUTOR.

Conviction—Order nisi to quash—Death of prosecutor after—Effect of.]—The death of the prosecutor, who is also informant, after a summary conviction, before the service on him of an order *nisi* to quash, does not prevent the Court from dealing with the matter, and from quashing the conviction. *The Queen* v. *Fitzgerald*, 29 Ont. R. 203.

—Indictment not prosecuted by persons authorized by s. 641 Crim. Code—Validity of proceeding.]—See CRIMINAL LAW, XV.

PROTHONOTARY.

Functions as Court officer.]—The functions of the prothonotary of the Supreme Court of Nova Scotia are purely ministerial in regard to recording and fyling the orders of the Court. *McDougall* v. *Mullins*, 30 N.S.R. 313.

PUBLIC INSTRUCTION.

See SCHOOLS.

PUBLIC POLICY.

Contract respecting future succession—Prohibition—Arts. 658, 1061 C.C.—Conveyance—Subsequent acquisition of property.]

See CONTRACT, XIII.

PUBLIC SCHOOLS.

See SCHOOLS.

PUBLIC WORKS.

Statute, construction of—Railways and canals—R.S.C., c. 37, s. 23—Contracts binding on the Crown—Goods sold and delivered—Verbal order of the Crown officials—Supplies in excess of tender—Interest.]—The provisions of the twenty-third section of the "Act respecting the Department of Railways and Canals" (R.S.C. ch. 37), which requires all contracts affecting the department to be signed by the Misister, the deputy of the Minister or some person especially authorized, and countersigned by the secretary, have reference only to contracts in writing made by the department—Where goods have been bought by and delivered to officers of the Crown for public works, under orders verbally given by them in the performance of their duties, payment for the same may be recovered from the Crown, there being no statute requiring that all contracts by the Crown should be in writing. —Where a claim against the Crown arises in the Province of Quebec and there is no contract in writing, the thirty-third section of "The Exchequer Court Act" does not apply, and interest may be recovered against the Crown, according to the practice prevailing in that province. *The Queen* v. *Henderson*, 28 S.C.R. 425.

—Liability of Crown—Government canal—Accident to vessel using same—Negligence of Crown servant—Petition of right.]—Under the provisions of the Exchequer Court Act, sec. 16 (*c*), the Crown is liable in damages for an accident to a steamer and cargo while in a Government canal, where such accident results from the negligence of the persons in charge of the said canal. *A. E. D. McKay's Sons* v. *The Queen*; *St. Lawrence Sugar Refining Co.* v. *The Queen*, 6 Ex. C.R. 1.

—Petition of right—Damages from public work—Drain—Liability of Crown—Assessment of damages once for all—50 & 51 V., c. 16. s. 16 (b).]—The Dominion Government constructed a collecting drain along a portion of the Lachine Canal. This drain discharged its contents into a stream and syphon-culvert near the suppliant's farm. Owing to the incapacity of the culvert to carry off the large quantity of water emptied into it by the collecting drain at certain times, the suppliant's farm was flooded and the crops thereby injured. The flooding was not regular and inevitable, but depended upon certain natural conditions which might or might not occur in any given time:—Held, that the Crown was liable in damages; that the case was one in which the Court had jurisdiction under clause (*b*) of sec. 16 of the Exchequer Court Act, and that in assessing the damages in such a case the proper mode was to assess them once for all. *Davidson* v. *The Queen*, 6 Ex. C.R. 51.

— Contract — Arbitration — Progress estimates —Engineer's certificate—Approval by head of department.]—See CONTRACT, X.

And see CROWN.

" " MUNICIPAL CORPORATIONS, XIII.

QUEEN'S COUNSEL.

B.N.A. Act, s. 92, s.s. 1, 4, 14—Powers of Provincial Legislature—R.S.O. [1877] c. 139—Provincial Bar—Patents of precedence.]—Held, that according to the true construction of the

British North America Act [1867], sec. 92, sub-secs. 1, 4 and 14, Revised Statutes of Ontario [1877], ch. 139, which empowers the Lieutenant-Governor of the province to confer precedence by patents upon such members of the Bar of the province as he may think fit to select, is *intra vires* of the Provincial Legislature. *Attorney-General for the Dominion of Canada* v. *Attorney-General for the Province of Ontario* [1898], A.C. 247.

QUO WARRANTO.

Municipal elections — Concurrent motions in High and County Courts.]

See COUNTY COURTS.

—Municipal council — Vacancy — Insolvency of member—Re-election—Mode of contesting election.]—See MUNICIPAL CORPORATION, IX.

RAILWAYS AND RAILWAY COMPANIES.

I. ASSESSMENT AND TAXATION, 397.
II. CARRIAGE OF PASSENGERS, 397.
III. CROSSINGS, 398.
IV. EXPROPRIATION OF LANDS, 399.
V. FIRE FROM ENGINES, 400.
VI. INJURY TO PERSONS, 400.
VII. INJURY TO PROPERTY, 401.
VIII. INSOLVENT COMPANY, 401.
IX. MORTGAGED ROAD, 401.
X. MUNICIPAL CONTROL, 401.
XI. OFFICERS AND SERVANTS, 401.
XII. ROADBED, 402.
XIII. STOCK, 402.
XIV. TRUSTEES OF ROAD, 403.

I. ASSESSMENT AND TAXATION.

—Tanks and platforms — Superstructure — Subtenant's assessment—Deduction of.]

See ASSESSMENT AND TAXES.

II. CARRIAGE OF PASSENGERS.

—Passenger—Continuous journey—Break in railway — Omnibus transfer — Demand of fare — Refusal to carry—Damages—Costs.]—The plaintiff was a passenger by the defendants' railway under a contract by which the defendants were to carry him by continuous journey from Harrisburg to Stratford, via Galt and Berlin. There was a break in the line of the defendants at Galt, the distance between the stations being three-fourths of a mile; an omnibus was provided, as advertised by the defendants, but the plaintiff was asked to pay a fare of ten cents for transfer in it, and, refusing to do so, was not permitted to be transported free. He failed to make his connection, and brought this action for damages:—Held, that he was entitled to be conveyed from station to station free of expense; but it would have been reasonable for him to have paid the ten cents and made his connection, and the damages should be restricted to that sum. Costs on the scale of the County Court, in which the action was brought, were allowed, as it was to test a right. *Clarry* v. *Grand Trunk Railway Co.*, 29 Ont. R. 18.

III. CROSSINGS.

—Railways — Highways — Crossings—Maintenance of gates—Apportionment of cost—Constitutional law—Railway Committee—Railway Act, 1888 — 51 V., c. 29, ss. 11, 187, 188.] — The Railway Committee of the Privy Council, on the application of the city of Toronto, ordered the Canadian Pacific Railway Company to put up gates and keep a watchman where the line of railway crossed a highway running from the city of Toronto into the township of York, the line of railway being at the place in question the boundary between the two municipalities, and ordered the cost of maintenance to be paid in equal proportions by the railway company and the city. On a subsequent application by the city representing that the township was equally interested and asking for contribution from the township, the township brought in the county, and an order was made by the Railway Committee that the county and township should contribute in certain proportions:—Held, per Burton, C.J.O., and Maclennan, J.A., that, assuming the validity of legislation conferring jurisdiction on the Railway Committee, their powers were limited to persons or municipalities invoking the exercise of their jurisdiction, and that their order was invalid so far as it imposed a burden upon the township and county. Per Osler, J.A., that the legislation was *intra vires*, and that the township and county were persons interested within the meaning of the Act, and subject to the jurisdiction of the Railway Committee. Per Meredith, J., that the legislation was *intra vires*, but that the county was not a person interested, not being under any responsibility for the maintenance of the highway in question. Per Curiam, that the decision of the Railway Committee upon a subject, and in respect of persons, within its jurisdiction, cannot be reviewed or interfered with by the Court. In the result the judgment of Rose, J., 27 Ont. R. 559, was allowed as to the county of York, and dismissed as to the township of York. *In re Canadian Pacific Railway Co. and County and Township of York*, 25 Ont. A.R. 65.

—Railway committee of P.C.—Jurisdiction—51 V., c. 29 (D.).]—Secs. 4, 306, and 307, of the Railway Act, 51 Vict., ch. 29 (D.), enacting that the plaintiffs and other railways, and any railways whatever crossing them, are works for the general advantage of Canada, and are to be subject thereafter to the

legislative authority of Parliament, and 56 Viet., ch. 27 (D.), s. 1, enacting that no railway shall be crossed by any electric railway whatever unless with the approval of the Railway Committee, are *intra vires*, and therefore the committee could empower the defendants' railway, contrary to the provisions of its Provincial Act of incorporation, to cross the plaintiffs' railway at grade, against the will of the latter. *Grand Trunk Ry. Co.* v. *Hamilton Electric Ry. Co.*, 29 Ont. R. 143.

IV. Expropriation of Lands.

—Arbitration—Evidence—Findings of fact—51 V., c. 29 (D.).]—On an arbitration in a matter of the expropriation of land under the provisions of the Railway Act the majority of the arbitrators appeared to have made their computation of the amount of the indemnity awarded to the owner of the land by taking an average of the different estimates made on behalf of both parties according to the evidence before them:—Held that the award was properly set aside on the appeal to the Superior Court, as the arbitrators appeared to have proceeded upon a wrong principle in the estimation of the indemnity thereby awarded. *Grand Trunk Ry. Co.* v. *Coupal*, 28 S.C.R. 531.

—Expropriation—Award—Appeal—51 V., c. 29, s. 161 (D.).]—Under s. 161 of the Dominion Railway Act, 51 Viet., ch. 29, an appeal lies in this province by either party from an award of compensation exceeding $400 either to the Court of Appeal or to the High Court of Justice, but if an appeal is taken to the latter tribunal, no further appeal lies by either party to the Court of Appeal. *Birely* v. *Toronto, Hamilton and Buffalo Railway Co.*, 25 Ont. A.R. 88.

— Appeal — Award — Railway Act — Forum — Transfer to proper Court — Rule 784.]—The proper forum for the hearing of an appeal from an award under the Dominion Railway Act is a judge in Court, and not a Divisional Court; the provision of Rule 117 respecting proceedings directed by any statute to be taken before the Court, and in which the decision of the Court is final, is not applicable to an appeal of this kind: *In re Potter and Central Counties Railway Co.* 16 Ont. P.R. 16, approved. *Re Montreal and Ottawa Railway Company and Ogilvie*, 18 Ont. P.R. 120.

— Possession of lands expropriated — Award — Deposit in Court — Interest.]—To enable a railway company to take possession of lands expropriated, the amount of the award, with interest for six months to come, should be deposited in Court. If the deposit does not include such interest, it is insufficient. *Drummond Railway Co.* v. *Ollivier*, Q.R. 7 Q.B. 41.

—Value of lands—Arbitration—Death of arbitrator—51 V., c. 29, ss. 156-7.]

See Arbitration and Award, I (*a*).

—Arbitration—Choice of arbitrators—Objections—Arts. 397, 412 C.C.P.]

See Arbitration and Award, I (*d*).

V. Fire from Engines.

—Negligence—Cutting down weeds.]—A railway company is responsible for damages caused by fire which is started by sparks from one of their engines, in dead grass and shrubs allowed by them to accumulate in the usual course of nature from year to year on their land adjoining the railway track. It is the company's duty in such a case to remove the dangerous accumulation. *Rainville* v. *Grand Trunk Railway Co.*, 25 Ont. A.R. 242, affirming 28 Ont. R. 625, and affirmed by Supreme Court of Canada 21st Nov., 1898.

VI. Injury to Persons.

— Regular depot — Traffic facilities — Railway crossings—Negligence—Walking on line of railway—Trespass—Invitation—License—51 V., c. 29, ss. 240, 256, 273 (D.).]—A passenger aboard a railway train, storm-bound at a place called Lucan Crossing, on the Grand Trunk Railway, left the train and attempted to walk through the storm to his home a few miles distant. Whilst proceeding along the line of the railway, in the direction of an adjacent public highway, he was struck by a locomotive engine and killed. There was no depot or agent maintained by the company at Lucan Crossing, but a room in a small building there was used as a waiting room, passenger tickets were sold and fares charged to and from this point, and for a number of years, travellers had been allowed to make use of the permanent way in order to reach the nearest highways, there being no other passage way provided. In an action by his administrators for damages:—Held, that notwithstanding the long user of the permanent way in passing to and from the highways by passengers taking and leaving the company's trains, the deceased could not, under the circumstances, be said to have been there by the invitation or license of the company at the time he was killed, and that the action would not lie. *Grand Trunk Railway Co.* v. *Anderson*, 28 S.C.R. 541, affirming 24 Ont. A.R. 672.

—Operation of the railway—Dominion Railway Act, 51 V., c. 29.]—Under the Dominion Railway Act, 51 Viet., ch. 29, compensation recoverable in respect of lands injuriously affected must be based on injury or damage to the land itself and not on personal inconvenience or discomfort to the owner or occupant:—It was held, therefore, that no compensation could be allowed to the owner of land fronting on a street along which a railway company lawfully constructed a line of railway, there being no interference with access to the land except so far as that resulted from the passing of trains: *Re Birely and Toronto, Hamilton and Buffalo Railway Co.*, 28 Ont. R. 468, considered. *Powell* v. *Toronto, Hamilton and Buffalo Railway Co.*, 25 Ont. A.R. 209.

—Carriage of passengers — Negligence — Arts. 1053, 1675 C.C.]—Art. 1675 of the Civil Code does not apply to the carriage of persons by railways, and railway companies can only be held responsible for accidents to passengers by virtue of Art. 1053 C.C., that is to say, when it is shewn that there has been fault or negligence on the part of the company or its employees. *Ranger* v. *Grand Trunk Railway Co.*, Q.R. 13 S.C. 471.

VII. Injury to Property.

—Constitutional law—Provincial Fence Act, 1888—Cattle Protection Act, 1891.]—A provincial statute (54 Vict. B.C., cap. 1) provided that every railway company operating a railway in the province under the authority of the Parliament of Canada should be liable in damages to the owner of any cattle injured or killed on their railway by their engines or trains, unless there be a fence on each side of the railway similar to someone of the fences mentioned in section 3 of the (Provincial) Fence Act, 1888:—Held, *ultra vires*. *Madden* v. *Nelson and Fort Sheppard Ry. Co.*, 5 B.C.R. 541.

VIII. Insolvent Company.

—Foreign bankruptcy—Receiver—Law of Vermont—Right of foreign receiver against execution creditor—Lex loci contractus.]

See Contract, VI.

IX. Mortgaged Road.

—Receivers of railway—Application by trustees to take proceedings—Bondholders.]

See Practice and Procedure, I (*a*).

X. Municipal Control.

—Municipal Code, Arts. 21, 22, 875—Maintenance of watercourse—Railway companies—Application to federal companies.]—The provisions of the Municipal Code of Quebec relating to the maintenance of watercourses, and especially of Art. 875, which requires all the watercourses in a municipality to be kept in good condition; Art. 21, which imposes upon every railway company the duty of maintaining the watercourse upon its road; and Art. 22, which imposes a penalty upon every railway company neglecting to keep them in good condition, applies to a company which falls under the exclusive jurisdiction of the Parliament of Canada: *Corporation of St. Joseph* v. *Quebec Central Railway Co.*, 11 Q.L.R. 193, followed; *Canadian Pacific Railway Co.* v. *Corporation of Notre Dame de Bonsecours*, Q.R. 7 Q.B. 121.

XI. Officers and Servants.

—Railway company—Proceedings against shareholders to enforce payment of judgment—Service upon company's solicitor—Order 40, Rule 44—"Officer"—Order for examination of former officer made ex parte—Power of judge to rescind order made by him.]—Plaintiff, having recovered judgment for a large sum of money against the defendant company, obtained a summons for an order for the attendance of the respondent D., a former officer of the company, before a master of the Court for examination as to debts owing to the company, and as to whether the company had property or other means of satisfying the judgment. D. was described in the summons as "formerly a director and vice-president of the company." There was no personal service upon D., and no actual notice to him of the application, but at the hearing of the application for the order C., the solicitor for the company, was present, and stated that the summons was served upon him:—Held, that, as D. was not at the time a director or officer of the company, neither the solicitor of the company, nor the company, represented him in relation to any proceedings taken against the company, and that the service upon the solicitor of the company was therefore insufficient. Held, further, that D. was not an "officer of the company" within the meaning of Order 40, Rule 44, and, as such, liable to examination under the provisions of the order, the words "officer thereof" meaning an existing officer. Held, further, that the order for the examination of D. was one that could not legally be made *ex parte*. Held, further, that the judge, by whom the order was made, had power to rescind it on application made to him for that purpose, and that such application, in the first instance, should be made to him. *Hamilton Stewiacke Valley, etc., Railway Co.*, 30 N.S.R. 10.

And see Practice and Procedure, VI.

XII. Roadbed.

—Statute, construction of—51 V., c. 29, s. 262 (D.)—Railway crossings — Packing railway frogs, wing-rails, etc.—Negligence.]—The proviso of the fourth sub-sec. of sec. 262 of "The Railway Act" (51 Vict., ch. 29 (D.), does not apply to the fillings referred to in the third sub-sec., and confers no power upon the Railway Committee of the Privy Council to dispense with the fillings in of the spaces behind and in front of the railway frogs or crossings and the fixed rails and switches during the winter months. *Washington* v. *Grand Trunk Railway Co.*, 28 S.C. R. 184, reversing 24 Ont. A.R. 183, and C.A. Dig. (1897) col. 207.

XIII. Stock.

—Application for lease to issue execution against shareholders—Questions of fact—Signature to stock list—Prima facie case—Limitation of payment of subscription—Validity of.]—Plaintiffs asked leave to issue execution, upon a judgment recovered by them against the defendant company, against F., in respect of a balance due upon certain shares alleged to be held by him in the company. In support of the application a stock list was produced,

with an affidavit of belief that the signature "F." thereto was that of the respondent F.:—Held, that it was only necessary for plaintiffs to show a *prima facie* case, and that this was sufficient:—Held, also, that plaintiffs were entitled to have an opportunity of trying the question of fact as to F.'s subscription, as well as the validity of the alleged contract. The respondent's subscription, if effective, limited the application of the subscription money, payable by him, to the special purpose of constructing what was known as the "Hants County Branch" of the company's line.—*Quære:* Whether a subscription which so limited the application of the payment was valid? *Hamilton* v. *Stewiacke, etc., Railway Co.*, 30 N.S.R. 166.

XIV. TRUSTEES OF ROAD.

—Protection of debenture holders—Conveyance of road to trustees—Obligations of company—Enforcement by trustees.]—See TRUSTEES.

RAPE.

Girl under fourteen.]—*Quære:* Can rape be committed on a girl under fourteen years of age? *Ex parte Wright*, 34 N.B.R. 127.

RATIFICATION.

Statutory requirements of contract—Informality—Ratification by the Crown.]

See CROWN, II.

REAL PROPERTY.

See MANITOBA REAL PROPERTY ACT.

RECEIVER.

Attachment of debts—Money in the hands of a Receiver.]—Money in the hands of a Receiver is not a debt due from him to the persons interested in the estate, and cannot be attached by garnishing process. *Gray* v. *Purdy*, 5 B.C.R. 241.

—Money in hands of—Payment into Court—Default—Attachment—Motion to rescind—Irregularities—Punishment—R.S.O. 1887, c. 67, ss. 6, 11—Solicitor—Claim of receiver upon money—Specific order for payment.]—An attachment lies against a receiver as an officer of the Court for default in compliance with an order to pay into Court money found to be in his hands as receiver. The powers of the Court are not invoked nor its process issued for the purpose of recovering or enforcing payment of a civil debt or claim *inter partes*, but for punishing its officer, who has disobeyed its order; and secs. 6 and 11 of R.S.O. 1887, ch. 67, are inapplicable.—An understanding between the receiver and the solicitor of one of the parties ought not to be accepted as an excuse for non-compliance with the order to pay in, more especially when the authority to waive the order is not admitted, but denied. Nor can the receiver be permitted to discharge himself by setting up claims upon the money which, had they been put forward in the first instance, would probably have prevented his appointment.—Where, upon an application in such a case to rescind an order for an attachment, no objections are taken to the regularity of the proceedings, the Court of Appeal should not be astute to discover them or permit them to be raised for the first time on the argument of the appeal.—In this case, a letter written by the receiver, before the order for his attachment was made, stating that he was ready to pay the money into Court as soon as a specific order for that purpose was made, was regarded as an answer to his subsequent application for relief against it, as shewing that the grounds urged upon appeal were a mere afterthought. *Semble*, that a specific order to pay over the balance is the proper course in the first instance. *Fawkes* v. *Griffin*, 18 Ont. P.R. 48.

—Receiver—Application for appointment—Sale of interest under execution—R.S.N.S. 5th ser., c. 84, s. 21, s. 7 (i); c. 124.] — The plaintiff company having recovered several judgments against defendant upon which executions had been issued, which remained unsatisfied, made application to a judge at Chambers for the appointment of a receiver to receive the rents, interest and profits to which defendant might become entitled by virtue of a mortgage upon the lands of L., the mortgage not being yet due:—Held, affirming the judgment of the Chambers judge refusing the application, and dismissing plaintiff's appeal with costs, that the Court should not appoint a receiver by way of equitable execution, merely because it would be a more convenient way of obtaining satisfaction of the judgment than the ordinary modes of execution; that the legal title to the land being in defendant, the judgments, when recorded, would clearly bind such interest (R.S.N.S., 5th ser., ch. 84, sec. 7 (*i*), and sec. 21); that there was nothing to prevent the sale of such interest under execution, in accordance with the provisions of R.S.N.S., 5th ser., ch. 124, in the same way as any other interest of a judgment debtor in real estate. *Nova Scotia Mining Co.* v. *Greener*, 31 N.S.R. 189.

—Equitable execution in England and in N.W.T. —Execution before judgment—Statutory remedies—Discretion.] — The assets of a ranch company were, in a suit of *Barter* v. *Swann*, placed in the hands of a receiver for the purpose of winding up the company and dividing proceeds of assets between Barter and defendant herein. The receiver, being about to sell the assets for the purpose, as alleged, of paying the defendant his share of the proceeds to enable him to defeat his

creditors, including the plaintiff, an injunction was granted by Rouleau, J., restraining defendant from receiving any such proceeds until after the trial of this action:—Held, 1. That no injunction could be granted until after judgment obtained. 2. The right of a creditor to have a receiver is distinct from his right to attach debts due to the debtor, and is a means of enabling the judgment creditor to realize on the debtor's property unattainable by ordinary execution. The attachment of debts is an ordinary mode of execution, and the extension of that by giving the right to a creditor before judgment does not authorize an extension in such a case to other remedies. 3. That the fact of a judge granting an injunction when he has no jurisdiction to do so does not prevent another judge from setting aside his order. Order made dissolving the injunction. *Pacific Investment Co.* v. *Swann*, 34 C.L.J. 207.

—Insolvent firm—Receiver—Creditor seeking to charge funds.]

See BANKRUPTCY AND INSOLVENCY, V.

—Receivers of railway company—Application by trustees to take proceedings—Bondholders.]

See PRACTICE AND PROCEDURE, I. (*a.*)

RECEIVER-GENERAL.

Insolvent bank—Unclaimed dividends—Improper payment—Intervention by Receiver-General.]—See BANKS AND BANKING.

REDDITION DE COMPTE.

Mandataire—Ses déboursés—Droit de pouvoir réclamer.]—See PRINCIPAL AND AGENT, V.

REFEREE.

Jurisdiction of referee in Chambers—Sale of land—Order for.]—

See PRACTICE AND PROCEDURE, XXVII.

REGISTRY.

Marriage contract — Donation by—Duty of Husband—Don mutuel d'usufruit Régime.]

See DONATION.

—Registry of hypothec—Action for radiation—Divisibility—Costs.]—See COSTS, XIII.

REGISTRY LAWS.

Hypothec—Radiation on forged discharge—Agency of notary.]—In a hypothecary action against the *tiers détenteur* of real estate, it appeared that the plaintiff's registered hypothec had been radiated by the registrar on the production of a pretended notarial discharge. The plaintiff then inscribed *en faux* against the copy of the deed of discharge which had been lodged with the registrar, and an admission was fyled that the discharge was a forgery:—Held, that the notary who forged the discharge was not the agent of the hypothecary creditor, the mere selection of the office of the notary as the place of payment of the hypothecary claim, and interest, not constituting the notary the agent of the party making the selection. The registration of a forged deed of discharge, deposited in the office of the registrar, did not operate as a radiation of plaintiff's hypothec, and had no legal effect upon his rights under such hypothec, and therefore the granting of a certificate by the registrar establishing the registration of a forged deed of discharge could not be invoked against plaintiff's right as hypothecary creditor. *Latulippe* v. *Grenier*, Q.R. 13 S.C. 157.

—Unrecorded deed—Return of and request to convey to third party—Good consideration—Registry Act—R.S.N.S. (5th ser.), c. 84, ss. 18 and 21.]—M. K. R. conveyed a tract of land, etc., to his son, M. D., under an agreement that upon the performance of certain conditions by his other son, P., one-half of the land conveyed to M. D. should be conveyed by him to P. P. performed the conditions named, and a deed of one-half the land was made and delivered to him in accordance with the terms of the agreement. P. never recorded the deed made to him, and subsequently, at the request of P., and on the return of the deed made to him, M. D. conveyed the land to C. W. R., who paid a portion of the consideration money in cash to M. D., and the balance by a promissory note to P. On March 8th, 1893, subsequent to the making and recording of the deed to C. W. R., plaintiffs recovered judgment against M. D., and registered it so as to bind lands on the same day. Under this judgment plaintiffs sought to bind the interest of P. in the land conveyed to M. D., on the ground that under the Registry Act, R.S., N.S. ch. 84, ss. 18 and 21, the deed from M. D. to P. was void against a judgment creditor subsequently registering his judgment, and that the title never having been re-vested in M. D. plaintiffs' judgment took priority over the deed to C. W. R.:—Held, that the deed to C. W. R. having been made *bond fide*, and for valuable consideration, there was no legal or equitable right in plaintiffs, as creditors of M. D., under which they could avoid it. Held, also, that plaintiffs did not come within the terms of the statute, which only gives precedence over an unrecorded deed, while here there was a recorded deed of the land they sought to bind, which, if in any way defective, the statute gave them no right to attack. Held, also, that knowledge on the part of C. W. R.

of the prior deed to P. was unimportant in an action by plaintiffs. *Bauld* v. *Ross*, 31 N.S.R. 33.

—R.S.Man. c. 125, ss. 68, 69, 72—Registered judgment—Priority—Unregistered prior charge—56 V. (Man.), c. 17—57 V. (Man.), c. 14.]—The master having allowed the plaintiffs' claim to priority for their charge on defendant's land for the price of certain machinery given by an instrument which, under 56 Vict., ch. 17, could not be registered, as against the subsequent registered judgments of the appellants:—Held, notwithstanding the statute, 57 Vict., ch. 14, and secs. 68, 69 and 72 of the Registry Act, that the registration of the judgments bound only the estate or interest the debtor then had in the lands which was subject to the charge then existing in the plaintiff's favour, and that the master was right in making the appellants subsequent incumbrancers: *Eyre* v. *McDowell*, 9 H.L.C. 619, followed; *Miller* v. *Duggan*, 21 S.C.R. 33, distinguished. *Case* v. *Bartlett*, 12 Man. R. 280.

—Priorities—Mortgage for balance of purchase money—Estoppel.]—The plaintiff agreed to sell a parcel of land, one-half of the purchase money to be paid in cash and the other half to be secured by a mortgage thereon. A deed and mortgage were prepared and executed, the cash payment made, and the deed delivered to the purchaser, the mortgage being delivered to the vendor's agent to be registered. The purchaser had obtained a loan of the cash payment from the defendant upon the security of a first mortgage to be given upon the land in question, and this mortgage was prepared, executed and delivered before the execution and delivery of the deed and was registered before the deed to the purchaser and before the mortgage to the plaintiff. Upon receiving the deed the purchaser handed it to the defendant's agent, who then registered it, the plaintiff's mortgage having in the meantime been also registered. The plaintiff and defendant acted in good faith and each without knowledge or notice of the other's mortgage:—Held, that the Registry Act did not apply; that the defendant's mortgage was valid only by estoppel and was fed by estoppel to the extent only of the interest taken by the purchaser under the deed; that that interest was subject to the right of the plaintiff to have a legal mortgage for the balance of the purchase money, and that the plaintiff's mortgage was therefore entitled to priority: *Nevitt* v. *McMurray*, 14 Ont. A.R. 126, applied; *McMillan* v. *Munro*, 25 Ont. A.R. 288.

—Sale of land—Vendor and purchaser—Failure to register—Delay allowed by subsequent statutes.]—See SALE OF LAND.

RENT.

Sale of land subject to rent—Delegation of payment—Acceptance of delegation—Judicial sale—Extinguishment of rent—Payments in error—Re-payment.]—See SALE OF LAND, IX.

And see LANDLORD AND TENANT, IX.

RENTE VIAGÈRE.

Alimentary character—Assignment—Rights of assignee—Compensation—Acquiescence—Art. 1190 C.C.]—See PENSION.

REPLEVIN.

Sheriff's levy on merchandise—Replevin.]—*Semble* (per Townshend, J.), that replevin will lie against a sheriff for goods taken under execution. *Mulcahy* v. *Archibald*, 30 N.S.R. 121.

—Sheriff—Duty to exhibit replevin bond.]

See SHERIFF.

REPLY.

Right to reply.]

See PRACTICE AND PROCEDURE, XXX.

RESILIATION.

Lease—Particular trade—Unfitness of premises—Warranty—Damages—Art. 1614 C.C.]

See LANDLORD AND TENANT, X.

—Resiliation of lease—Sale by landlord of premises—Payment of rent to new proprietor—Acquiescence.]—See LANDLORD AND TENANT, XII.

—Of sale of land—Garantie—Expropriation—Right of eviction.]—See SALE OF LAND, VI.

—Sale of land—Existence of leases—Immediate delivery—Expulsion of tenants—Damages.]

See SALE OF LAND, III.

RES JUDICATA.

Encroachment—Constructions under mistake of title—Good faith—Common error—Bornage—Arts. 412, 413, 429 et seq., 1047, 1241 C.C.]—Where, as the result of a mutual error respecting the division line, a proprietor had, in good faith and with the knowledge and consent of the owner of the adjoining lot, erected valuable buildings upon his own property and it afterwards appeared that his walls encroach slightly upon his neighbour's land, he cannot be compelled to demolish the walls which extend beyond the true boundary, or be evicted from the strip of land they occupy, but should be allowed to retain it upon payment of reasonable indemnity. In an action for revendication under the circumstances above mentioned, the

judgment previously rendered in an action *en bornage* between the same parties cannot be set up as *res judicata* against the defendant's claim to be allowed to retain the ground encroached upon by paying reasonable indemnity, as the objects and causes of the two actions were different. *Delorme* v. *Cusson*, 28 S.C.R. 66.

—Indian Act—Certiorari—Stated case—Res judicata.]—The defendant had been charged on an information and convicted under R.S.C., c. 43, s. 94, "for that he did sell to an Indian intoxicating liquor," etc. At the close of the evidence defendant's counsel objected that two offences were charged. After consideration the magistrate drew up the conviction as above. The defendant thereupon applied for and obtained a stated case, under s. 900 of the Criminal Code, which was heard before Mr. Justice Scott, who held that to give and sell were not two offences, and affirmed the conviction. The magistrates having transmitted the conviction and proceedings to the Clerk of the Court at Macleod, under s. 801 of the Criminal Code, the defendant applied for and obtained from a single judge a rule *nisi* returnable before the Full Court, sitting *en banc* at Regina, asking that the conviction be quashed on the same grounds as were taken on the stated case, and a direction was given to the clerk at Macleod to transmit the conviction, etc., to the registrar of the Court at Regina, which he did. On the return of the rule *nisi* at the sittings of the Full Court at Regina on Dec. 6th, 1897, counsel for the private prosecutor and for the magistrates took the preliminary objection: 1. That the conviction, etc., were not regularly before the Court, not having been brought there by a writ of certiorari, and the same could not be examined into or dealt with. 2. That a single judge, under s. 900, s.s. 9, being vested with all the authority and jurisdiction of the Court, and having sustained the conviction, from which decision there was no appeal, the question was *res judicata*, and the conviction could not now be quashed on the same grounds as were taken on the stated case:—Held, 1. By Scott and Rouleau, J.J.:—That the conviction, etc., were regularly before the Court, and could be dealt with, and that a writ of certiorari was not necessary, following *Reg.* v. *Wehlan*, 45 U.C. Q.B. 396. 2. By Richardson and Wetmore, J.J.:—That the conviction, etc., were not regularly before the Court, and that a writ of certiorari to bring them before the Court was necessary, following *Reg.* v. *McAllan*, 45 U.C. Q.B. p. 402, and distinguishing *Reg.* v. *Wehlan*. 3. By the full Court:—That the grounds now taken on which to quash being the same as those taken and disposed of by a single judge on the stated case, the matter was *res judicata*. Rule *nisi* dismissed with costs. *The Queen* v. *Monaghan*, 34 C.L.J. 55.

—Ontario Court of Appeal in criminal cases—Decision of — Effect of on judges sitting in another Court of Co-ordinate jurisdiction.]

See CRIMINAL LAW, VI.

—School rates—Special tax—Second action—Identity of parties—Conclusions.]

See SCHOOLS.

RESTITUTION.

Restitution—Order for writ.]—Certain goods of defendant were taken under execution issued on a judgment recovered by plaintiff against defendant, and were sold by the sheriff and bought in by plaintiff. The judgment having been set aside on appeal, and a new trial ordered, defendant applied for an order for restitution of the goods. There were several adjournments of the motion, and in the meantime the second trial took place and resulted in judgment for plaintiff, under which the goods were again taken in execution and sold, and bought in by plaintiff:—Held, that upon the facts as they existed when the application for the writ of restitution was made, defendant was entitled to succeed, and should, therefore, have an order for his costs, but that as plaintiff had since acquired a good title to the goods, under the second judgment and the sale thereunder, the order for restitution could not be made. *Whitford* v. *Zinc*, 30 N.S.R. 193.

REVENDICATION.

Intervention — Revendication—Contestation — Art. 1999 C.C.]—In an action to revendicate goods as having been sold for cash to the defendant, an insolvent trader, within thirty days prior to the seizure, a third party who establishes that he purchased the said goods from defendant and received a delivery order therefor, and settled for the same by note, is entitled to intervene and contest the demand in revendication, just as the defendant himself might have done, and to have it set aside on the ground that the sale from plaintiff to defendant was not for cash, but was made on credit. *Gillespie* v. *Doherty*, Q.R. 12 S.C. 536.

—Resolutory condition—Return of part price—Deterioration.]—The return of money received as part price of an article delivered under a contract of sale with a resolutory condition, is necessary prior to revendicating such article.—But if this article, through the fault of the purchaser, has been deteriorated for an amount equal or superior to that part of the price already paid, no return of such part price can be demanded or required before or when the revendication of such article is judicially made. *Waterous Engine Works Co.* v. *Cascapedia Pulp and Lumber Co.*, Q.R. 13 S.C. 315.

—Revendication of land—Encroachment—Demolition of works—Title to land—Appeal.]

See APPEAL, XIII (*a*).

—Husband and wife—Gifts to wife—Advantage between consorts—Revendication from heirs of wife.]—See HUSBAND AND WIFE, IX.

REVENUE.

Law of Canada—Customs Tariff Act, 1894, s. 4—R.S.C., c. 32, ss. 4, 150—Construction—Date of importation of goods.]—By the true construction of the Customs Tariff Act, 1894, sec. 4, as amended by the Tariff Act, 1895, which in effect directs that duty be paid upon raw sugar "when such goods are imported into Canada or taken out of warehouse for consumption therein," the date at which duty both attaches thereto and becomes payable is when the goods are landed and delivered to the importer or to his order, or, when they are taken out of warehouse, if instead of being delivered they have been placed in bond.—Sec. 150 of the Customs Act, 1886, which directs that the precise time of the importation of goods shall be deemed to be the time when "they came within the limits of the port at which they ought to be reported," refers on its true construction to the port at which the goods are to be landed—that is, where the effective report is to be made. Such construction is required in order to place a consistent, rational and probable meaning on the context and other clauses of the Act. *Canada Sugar Refining Co.* v. *The Queen* [1898], A.C. 735; affirming 27 S.C.R. 395 and C.A. Dig. (1897) col. 355.

—Revenue—Succession Duty—Property in another Province—Testator's domicil — Surrogate Courts—Jurisdiction.]—The judge of a Surrogate Court has jurisdiction to determine whether a particular estate of which probate or administration is sought, is liable or not to pay succession duty, and the amount of such duty; his decision being subject to appeal.—Where a deceased person had his domicil, prior to and at the time of his death, in another Province, and the value of his property in Ontario is under $100,000, although his whole estate, including property in the Province of his domicil, exceeds $100,000, and his whole estate in this province is by his will devised and bequeathed to his wife and children, the property in this Province is not liable to pay succession duty. *Re Renfrew*, 29 Ont. R. 565.

—Succession Duty Act—Acts of 1895, c. 8, ss. 5 and 7—Application—Retroactivity.]—By the Succession Duty Act, Acts of 1895, ch. 8, sec. 5 (N.S.), all property passing either by will or intestacy, &c., shall be subject to a succession duty, &c., and by sec. 7, the duties imposed, unless otherwise provided, shall be due and payable at the death of the deceased, or within ten months thereafter, &c. M.P.B., by his last will, directed his trustees to invest a portion of his estate and pay the income arising therefrom to his brother C., and, at their discretion, to pay C. a portion of the principal, and, after the death of C. to pay the principal remaining to such uses and purposes as C. should by deed or will appoint. M.P.B. died on the 19th April, 1891, some four years before the passage of the Succession Duty Act. C. died on the 30th December, 1897, after the passage of the Act, having exercised his power of appointment by will made the 3rd June, 1897:—Held, that the fund in question did not pass, within the meaning of the Act, sec. 5, by the exercise of the power of appointment by C., the appointees taking under the instrument creating the power, and not by virtue of the power itself:—Held, also, that the Act, sec. 7, must be construed as applying only to deaths occurring after the passage of the Act. *Attorney-General* v. *Parker*, 31 N.S.R. 202.

—Administration of property—Apportionment of revenues—Payment of debts before distribution.]

See SEQUESTRATION.

And see ASSESSMENT AND TAXES.

SAISIE.

Procès-verbal — Contestation — Inscription en faux—Arts. 79, 159 C.C.P. (old text.).]

See PRACTICE AND PROCEDURE, XXVII.

SAISIE-ARRÊT.

Motion to be declared valid—Forum.]

See JURISDICTION.

SAISIE-GAGERIE.

Landlord and tenant—Goods fraudulently removed—Right to follow—Delay of eight days.]

See LANDLORD AND TENANT, VIII.

—Procès-verbal—Irregularities—Alteration by bailiff—Exception à la forme.]

See PRACTICE AND PROCEDURE.

SAISISSABILITÉ.

See EXECUTIONS.

" GARNISHEE.

SALE OF GOODS.

I. CONDITIONAL SALE, 413.
II. CONTRACT OF SALE, 413.
III. DELIVERY, 415.
IV. NECESSARIES, 415.
V. PAYMENT, 416.
VI. PRICE, 416.
VII. SALES BY AGENT, 416.
VIII. WARRANTY, 417.

I. Conditional Sale.

—Sale with suspensive condition—Revendication—Tender.]—Where an article is sold with the condition that it shall remain the property of the vendor until the price shall be fully paid, and the vendor subsequently revendicates the thing sold for non-compliance with the conditions of the contract, such action cannot be maintained unless the plaintiff tenders therewith the money received on account of the price. Even supposing that the plaintiff has a right to offset against the amount received a claim for the use of the article, such claim should be set out in the declaration, and cannot be made by an answer to a demurrer. *Tufts* v. *Giroux*, Q.R. 12 S.C. 530.

—Conditional sale of goods—Lien note—Property passing—Recovery of judgment.]—A. purchased goods from B. and gave an acceptance for the price. Across the end of the acceptance was printed the usual lien clause, reserving property in the vendor till payment. The acceptance was not paid at maturity, and, subsequent to maturity, A. sold the goods to C., who purchased for value without notice. After the sale to C., B. sued A. on his acceptance, recovered judgment and placed a *fi-fa* in the sheriff's hands, but nothing was realized on the execution. In an action by B. against C. for conversion:—Held, that the recovery of judgment by B. against A. on the acceptance was an election to treat the contract completed, and passed the property, and that B. could not recover against C. *Purtle* v. *Heney*, 33 N.B.R. 607.

—Wood to be manufactured—Contract for—Conditions—Advances—Execution of contract.]

See Contract, VIII (*b*).

II. Contract of Sale.

—Agreement, to secure advances—Sale—Pledge—Delivery of possession—Arts. 434, 1025, 1026, 1027, 1472, 1474, 1492, 1994 c., C.C.—Bailment to manufacturer.]—K.B. made an agreement with T. for the purchase of the output of his sawmill during the season of 1896, a memorandum being executed between them to the effect that T. sold and K.B. purchased all the lumber that he should saw at his mill during the season, delivered at Hadlow wharf, at Levis; that the purchasers should have the right to refuse all lumber rejected by their culler; that the lumber delivered, culled and piled on the wharf should be paid for at prices stated; that the seller should pay the purchasers $1.50 per hundred deals, Quebec standard, to meet the cost of unloading cars, classification and piling on the wharf; that the seller should manufacture the lumber according to specifications furnished by the purchasers; that the purchasers should make payments in cash once a month for the lumber delivered, less two and a half per cent.; that the purchasers should advance money upon the sale of the lumber on condition that the seller should, at the option of the purchasers, furnish collateral security on his property, including the mill and machinery belonging to him, and obtain a promissory note from his wife for the amount of each cullage, the advances being made on the culler's certificates shewing receipts of logs not exceeding $25 per hundred logs of fourteen inches standard; that all logs paid for by the purchasers should be their property, and should be stamped with their name, and that all advances should bear interest at a rate of 7 per cent. Before the river drive commenced, the logs were culled and received on behalf of the purchasers, and stamped with their usual mark, and they paid for them a total sum averaging $32.33 per hundred. Some of the logs also bore the seller's mark, and a small quantity, which was buried in snow and ice, were not stamped, but were received on behalf of the purchasers along with the others. The logs were then allowed to remain in the actual possession of the seller. During the season a writ of execution issued against the seller under which all movable property in his possession was seized, including a quantity of the logs in question, lying along the river drive and at the mill, and also a quantity of lumber into which part of the logs in question had been manufactured, at the seller's mill:—Held, that the contract so made between the parties constituted a sale of the logs, and, as a necessary consequence, of the deals and boards into which part of them had been manufactured. *King* v. *Dupuis dit Gilbert*, 28 S.C.R. 388.

—Revendication—Resolutory condition—Return of part price—Deterioration.]—The return of money received as part price of an article delivered under a contract of sale with a resolutory condition, is necessary prior to revendicating such article.—But if this article, through the fault of the purchaser, has been deteriorated for an amount equal or superior to that part of the price already paid, no return of such part price can be demanded or required before or when the revendication of such article is judicially made.—The fact that the deterioration of the article reduces its value to a large extent, in this case to one-third of its selling price, there being no evidence as to how such article was cared for, raises a presumption of fault on the part of the purchaser, according to circumstances. *Waterous Engine Works Co.* v. *Cascapedia Pulp & Lumber Co.*, Q.R. 13 S.C. 315.

—Bailment of goods—Sale—Statute of Frauds.]—When wheat or other merchandise is received in a warehouse or elevator nominally on storage for the person delivering it but on such terms that the identical goods are so mixed up with others that they can not be returned, and the well understood course of the business is that, unless a price is agreed on, the party delivering the goods can only require an equivalent amount of the same kind and quality to be accounted for to him, the contract between the parties is really one of sale and not of bailment, whether the

vendor is to receive the price in money or an equal quantity of goods or has an option to do either, as the property in the goods has passed to the warehouseman. In such a case the Statute of Frauds offers no bar to the recovery of the price or value of the goods so stored, in case the warehouseman denies the receipt of the same: *South Australian Insurance Co.* v. *Randell*, 6 Moo. P.C.N.S. 341 followed. *Lawlor* v. *Nicol*, 12 Man. R. 224.

—Executory contract—Possession—Non-payment of price—Loss of goods.]—*Hesselbacher* v. *Ballantyne*, 25 Ont. A.R. 36, affirming 28 Ont. R. 182 and C.A.Dig. (1897), col. 335.

—Sale of interest in invention pending application for patent—Mistake—Mutuality.]

See PATENTS OF INVENTION, I.

III. DELIVERY.

—Action for goods sold — Counterclaim for non-delivery at time agreed—Onus to shew damage.]—To an action by the plaintiff company for the price of a smoke stack and boiler, constructed for the defendant's steamer, defendant counterclaimed for damages for the non-delivery of the goods at the time agreed, whereby the steamer was prevented from engaging in the business for which she was intended, and from earning profits:—Held, that, in order to entitle defendant to recover on his counterclaim, it must appear that the profits were reasonably certain to have been realized, and that the onus was upon him to shew this.—It appeared that during a portion of the time for which damages were claimed, owing to the failure of another contractor, the steamer was without an engine, and during such time would have been unable to earn profits, even if the plaintiff company had fulfilled its contract:—Held, that this fact was sufficient to disentitle defendant to recover. *Pictou Iron Foundry Co.* v. *Archibald*, 30 N.S.R. 262.

—Lien note signed after sale—Validity.]

See LIEN NOTE.

IV. NECESSARIES.

—Husband and wife—Goods sold to wife separated as to property—Responsibility of husband.]—Where husband and wife are separated as to property and do not live together, and goods are sold and delivered to the wife, after notice from the husband to the vendor to charge him with goods only on his express verbal or written order, to hold the husband responsible, under these circumstances, for goods sold to the wife, and which were charged to her in the books, the vendor must establish that the goods sold were, at the time they were sold, actually necessary to the wife or children. Such proof does not result from the mere fact that the goods were of a kind which might be required. *Morgan* v. *Bartels*, Q.R. 12 S.C. 125.

V. PAYMENT.

—Remittance of money by express—Responsibility of sender.]—The defendant remitted the price of goods purchased from plaintiff by the Dominion Express Co., as he had been instructed to do on previous occasions. The vendor was notified that the money had been sent, but he did not call for it for two or three days, when it was found that the parcel had disappeared from the express office:—Held, that the purchaser under the circumstances could not be held responsible for the loss, the vendor having constituted the express company his agent to receive the money, and an action against the purchaser for unpaid price was dismissed. *Lepage* v. *Alexander*, Q.R. 12 S.C. 279.

—Intervention—Revendication—Contestation—Art. 1999 C.C.]—In an action to revendicate goods as having been sold for cash to the defendant, an insolvent trader, within thirty days prior to the seizure, a third party who establishes that he purchased the said goods from defendant and received a delivery order therefor, and settled for the same by note, is entitled to intervene and contest the demand in revendication, just as the defendant himself might have done, and to have it set aside on the ground that the sale from plaintiff to defendant was not for cash, but was made on credit. *Gillespie* v. *Doherty*, Q.R. 12 S.C. 536.

VI. PRICE.

—Division Courts—Jurisdiction—Agreement for sale of machine — Ascertainment of amount claimed.]—Under the written agreement for the sale of a machine, signed by defendant, he was to send to the plaintiffs, within ten days after the machine was started, a promissory note, with approved security, for $125, the price thereof; and in default the price was to become forthwith due and payable. The machine, which was by the agreement to be delivered by plaintiffs f.o.b. cars addressed to defendant to an outside railway station, was received and used by him, and shortly after was returned to plaintiffs. In an action on the agreement: Held, per Robertson, J., that there was no jurisdiction in the Division Court to entertain an action for the price of the machine, as the amount was "not ascertained by the signature of the defendant" under sec. 70, s.s. (O.) of R.S.O. (1887), ch. 51, for in addition to proof of the signature, evidence was necessary to shew that the terms of the agreement had been performed by the plaintiffs. On appeal to the Divisional Court the decision of Robertson, J., was reversed, and a mandamus ordered to issue: *Petrie* v. *Machan*, 28 Ont. R. 642, followed. *Re Sawyer Massey Co. and Parkin*, 28 Ont. R. 662.

VII. SALES BY AGENT.

—Sales' Agent—Commission.]

See PRINCIPAL AND AGENT.

VIII. Warranty.

— Conditional sale — Pleading — Warranty — Breach.]—In an action between vendor and purchaser for the price of a machine sold under a conditional sale, the defendant may shew that the machine was not as warranted and so reduce the claim by the difference between the value of the machine as warranted and its actual value; *Tomlinson* v. *Morris*, 12 Ont. R. 311, specially referred to. *Cull* v. *Roberts*, 28 Ont. R. 591.

— Damages — Return of Article — Power to order.]—In an action (by counter claim) for damages for breach of warranty of an engine sold and delivered by plaintiffs to defendants, the warranty and its breach were proved at the trial. Walkem, J., delivered judgment, ordering the engine to be returned to the defendants and assessed the damages to be recovered on that basis. Upon appeal to the Full Court:—Held, that the order for re-delivery of the engine and directing a re-assessment of damages should be reversed. A completed sale of chattels cannot be rescinded for breach of warranty and there was no jurisdiction to order re-delivery of the engine. *Hamilton Mfg. Co.* v. *Knight Bros.*, 5 B.C.R. 391.

SALE OF LANDS.

I. Conditional Sale, 417.
II. Contract of Sale, 418.
III. Leased Land, 419.
IV. Licitation, 419.
V. Redemption, 420.
VI. Rescission, 421,
VII. Resiliation, 421.
VIII. Sale by Agent, 421.
IX. Sale Subject to Charge, 421.
X. Sheriffs' Sale, 423.
XI. Vendor and Purchaser, 423.

I. Conditional Sale.

—Privilege for materials furnished—Registration —Possession under conditional promise of sale—Failure of condition.]—A valid privilege may be obtained by registration of a claim for building materials furnished, although the person to whom they were furnished be in possession of the land only under an unregistered conditional promise of sale, and the registration of the privilege was made only with such formalities as would be sufficient if he had been the absolute owner; but, upon violation of the conditions and the determination of the right of the conditional purchaser to obtain a title, the privilege in question, as well as all acts depending upon a right of property in the conditional purchaser, becomes null and void; and therefore the property cannot be seized and brought to sale under a judgment against the latter, to which the conditional vendor was not a party. *Metivier* v. *Wand*, Q.R. 13 S.C. 445.

—Water power—Construction of mill—Overflow of water—Servitude—Condition in deed.]

See Servitude.

II. Contract of Sale.

—Agreement under seal to convey—Relinquishment of rights under—Estoppel—Right to make new agreement—Damages.]—Plaintiffs went into possession of land under a written agreement under seal to purchase from defendants. A portion of the purchase money was paid on the completion of the agreement, and the balance was to be paid on the delivery of the deed. An action of trespass was brought against plaintiffs by D., who was in possession of the land at the time, having gone into possession under a prior agreement of a somewhat similar character. On the trial of the latter action, an agreement was entered into in open Court under which plaintiffs agreed to relinquish their claim to the land on being repaid the amount of their deposit, with interest, and defendants agreed to convey the land to D.:—Held, that plaintiffs, having become parties to this agreement, were estopped from making any claim for damages against defendants, on account of the failure of the latter to carry out their agreement to convey to plaintiffs; that, if plaintiffs intended to reserve such a right, they were bound to say so, and could not, by their silence, mislead the parties into such a change of their position as would materially affect their rights and liabilities. Held, further, that the fact of the agreement between plaintiffs and defendants being under seal, did not prevent the parties from entering into a new and different agreement. Held, also, the contract being one relating to land, and defendants being unable to make title, that, in the absence of fraud, plaintiffs could not recover damages for the loss of their bargain, but only for the expenses incurred by them. *Wentzell* v. *Ross*, 30 N.S.R. 136.

—Covenant to pay taxes—Demand before action.]—Plaintiff and defendants entered into an agreement for the sale by plaintiff to defendants of a lot of land for a sum of money payable in instalments extending for a period of four years. The agreement contained a clause providing that until the completion of the purchase defendants should have the possession of the land, and should be entitled to receive all the rents and profits, and should pay all rates and taxes of every kind levied or assessed on the land. Ten days after the making of the agreement an assessment was made for taxes which became due and payable on the 1st May following, and for which plaintiff became liable to be sued by the city of Halifax, and to have his property levied upon by warrant for the recovery of the taxes at any time after the 31st May, prior to which time the taxes constituted a lien on

the property. In an action on the covenant, though the taxes had not been paid by the vendor:—Held, that the situation, so far as regarded plaintiff's rights and liabilities, was the same as if the covenant to be performed on the part of defendants had reference to a mortgage to mature on the 31st May, and that plaintiff was entitled to recover:—Held, further, that payment of the rates and taxes by defendants formed part of the consideration for the contract whereby they were permitted to enter into possession and to receive the rents and profits:—Held, also, that as there was an absolute covenant on the part of defendants to pay, plaintiff was not required to make a demand before bringing his action.—By the Acts of 1897, ch. 44, sec. 22, the city collector was authorized to allow a discount of two per cent. to all persons paying their taxes on or before the 31st day of July of the year in which such taxes fall due:—Held, that this did not affect the provisions of the city charter (Acts of 1891, ch. 58, sec. 362), under which all rates and taxes become due the 31st day of May in each year, or postpone the time of payment. *Barrowman* v. *Fader*, 31 N.S.R. 20.

—Covenant for quiet possession—Mistake—Rectification.]—See COVENANT.

III. LEASED LAND.

—Immediate delivery—Expulsion of lessees—Resiliation—Damages.]—The purchaser of property sold for immediate delivery cannot compel the vendor to remove the tenants upon it, as the existence of a lease will not prevent delivery, every sale being subject to the continuation of leases for the current year. If, because of the existence of such leases, the purchaser refuses to sign the deed of sale, he cannot demand the resiliation of the sale, with damages against the vendor. *Alley* v. *Canada Life Assurance Co.*, Q.R. 7 Q.B. 293, affirmed by 28 S.C.R. 608.

IV. LICITATION.

—Undivided share in land and improvements—Compensation of share by improvements, etc.—Opposition afin de conserver—Art. 1539, C.C.]—After a licitation has been made, the price represents the immovable and takes its place, and the owners of the immovable become the owners of such price in the same proportion.—Some of the owners cannot prevent the others from taking their portion of the price, because the latter may be their debtors. There can be no compensation in such a case, each party asking not what is due to him by the others, but his own property.—If some are judgment creditors of the others, they can seize their share by means of an opposition *en sous ordre*, but, if they have no judgment, they cannot arrest payment to their debtors of that share of the price which is their own.—The above rules are to be applied even where their claim is for necessary repairs and improvements made to the immovable sold, the land and buildings being only one and the same property.—When a seller wants to get possession of the thing sold, upon dissolution of the sale by reason of the non-payment of the price, the buyer must demand, by a dilatory plea, that he be refunded the cost of all necessary repairs and the portion paid on the selling price of the said property. *Crédit Foncier* v. *Loranger*, Q.R. 13 S.C. 353.

—Opposition afin de conserver—Hypothèque—Subrogation—Priority—Arts. 2065, 2073 C.C.]—The sale of one-fifth of an immovable had been made to Florent Guay for $2,000 to be paid with interest later on, which payment was guaranteed by a hypothec on said part of immovable. After several subsequent transfers of said immovable in all of which the acquirers covenanted to pay said price of $2,000, and interest, it became the property of Miss Malvina Guay, who transferred and sold it to the plaintiffs. In this transfer, the plaintiffs assumed and charged themselves with the settlement of the rights and pretensions of the opposants, legal representatives of the sellers to Florent Guay, to the same extent as Malvina Guay was herself bound. The immovable was sold by licitation at the suit of the plaintiffs, and said representatives made an opposition to be collocated for their said capital and interest. The plaintiffs represent that they loaned to Florent Guay $9,000 to pay an equal sum due by him to Mr. Parent, whose hypothec was of prior rank to that of the opposants, that they were subrogated to Parent's rights, and that, therefore, they should be collocated by preference for said sum and interest. The immovable having been sold for $5,000, this would totally defeat the payment of the opposant's claim:—Held, that under these circumstances the opposition to be collocated on the proceeds of the licitation is equivalent to an hypothecary action against the plaintiffs as *détenteurs* of the immovable itself, and therefore the same rules apply. Consequently the party at whose suit the property is sold cannot be collocated by preference to another if the first is charged with the hypothec in favor of the second and personally liable to him for his claim. The plaintiffs having taken the legal position of Miss Malvina Guay in its entirety with regard to the opposants' claim, are personally liable as she would be towards the opposants, and therefore they cannot invoke against their hypothecary claim on the immovable (as it were) the fact that they have paid hypothecs of prior rank thereon. *Crédit Foncier* v. *Loranger*, Q.R. 13 S.C. 360.

V. REDEMPTION.

—Vente à réméré—Guarantee of loan—Interest.]—A sale with right of redemption (*vente à réméré*) although given to guarantee repayment of a loan, is not the less valid and that independently of the rate of interest agreed upon between the parties. *Laurin* v. *Lafleur*, Q.R. 12 S.C. 381. And see CONTRACT, XIII.

VI. Rescission.

—Sale with warranty—Expropriation—Right of eviction—Resiliation.]—The right of the City of Montreal under its charter, after homologation and confirmation of a plan shewing the direction of a projected street, to expropriate the land for such street without paying for the improvements and erections put upon it since the confirmation of the plan, constitutes, not a right of servitude but an eventual right of eviction.—The existence of such a right upon land sold with warranty (*garantie*) to a purchaser who has paid the price does not give to such purchaser the right, from the fear of eviction only, and as to so much as he has not been evicted from, to demand the resiliation of the sale. *Desloges* v. *Desmarteau*, Q.R. 6 Q.B. 485.

VII. Resiliation of Sale.

—Inherent defect—Adjacent stable.]—F. sold to N. and others a house situated beside his own property. Upon the latter there was a stable which, owing to the peculiar conformation of the land, was underneath the purchasers' kitchen. The latter quitted the house they had bought, alleging that the odors from the stable rendered it uninhabitable: — Held, that the evil odors of which the purchasers complained did not proceed from the thing sold, and, therefore, did not constitute an inherent vice which would furnish a ground for resiliation of the sale. The only recourse of the purchasers was an action for damages against the adjoining owner if he kept his property in such a condition that the purchasers would be justified in demanding a change in the arrangement of the premises. *Fortier* v. *Nadeau*, Q.R. 13 S.C. 340.

VIII. Sale by Agent.

—Vendor and purchaser—Principal and agent—Mistake—Contract—Agreement for sale of land—Agent exceeding authority—Specific performance—Findings of fact.]—Where the owner of lands was induced to authorize the acceptance of an offer made by a proposed purchaser of certain land through an incorrect representation made to her under the mistaken impression that the offer was for the purchase of certain swamp lots only, whilst it actually included sixteen adjoining lots in addition thereto, a contract for the sale of the whole property made in consequence by her agent was held not binding upon her and was set aside by the Court on the ground of error, as the parties were not *ad idem* as to the subject matter of the contract and there was no actual consent by the owner to the agreement so made for the sale of her lands. *Murray* v. *Jenkins*, 28 Can. S.C.R. 565, reversing 31 N.S.R. 172.

IX. Sale Subject to Charge.

—Lease of immovable—Seizure of immovable—Opposition afin de charge—Art. 1663 C.C.]—The lease of an immovable constitutes, by the terms of Art. 1663 C.C., a charge upon such immovable. Therefore, the lessee can demand, when the immovable is seized in an action by a creditor of the lessor, that it should be sold, subject to the charge of his lease. *Lachine* v. *Desjardins*, Q.R. 12 S.C. 225.

—Sale subject to rent—Delegation of payment—Acceptance of delegation—Judicial sale—Extinguishment of rent—Payments in error.]—On April 16th, 1873, defendant sold an immovable to one J., subject to payment by the latter of a constituted rent of $4, payable on the fourth day of July in each year. On November 3rd, 1873, J. conveyed the immovable, subject to said rent, to A., who, three days later, sold it, still subject to the rent, to C., in an action against whom, in 1881, it was sold by judicial decree, the legatee of A. being adjudged the highest bidder (*adjudicataire*). No opposition *afin de charge* was made by defendant to protect the rent. In his turn the *adjudicataire* sold the immovable to the plaintiff, stipulating that he should pay the rent to the defendant, who had not accepted the delegation of payment stipulated for in the sale by J. to A.:—Held, that the decree, in the absence of opposition *afin de charge* by the defendant, and the insolvency of C. had extinguished the rent; that the obligation assumed by A. and by the plaintiff, subsequent to the decree, was *sans cause* and assumed in error; that defendant not having accepted the delegation of payment in the sale to A. the latter had never become personally liable for the rent, but was only a third party in possession of the immovable affected by it; that, therefore, the *adjudicataire* had never become liable in his capacity of legatee of A.; and that plaintiff, in undertaking to pay this debt and relieve A. from liability, had agreed to pay a debt which did not exist, and could recover back the payment that he had made in error. *Pinsonnault* v. *Grant*, Q.R. 12 S.C. 339.

—Judicial sale—Lien of third party—Opposition—Usufructuary—Art. 1030 C.C.]—The purchaser of an immovable, sold subject to the lien of a third party, cannot, when he has produced no opposition to such charge, and has not applied to have the decree set aside within the prescribed delays, oppose against a creditor of such third party—who has seized in his hands what he would owe to the third party by reason of the lien—alleging that it had been illegally obtained on the immovable and had not attached, reasons tending to shew that, at the time of the judicial sale, the third party had no right to set up this charge against him.—The creditor of the usufructuary—even when the latter has, without making any claim, allowed the bare proprietor to take possession of the immovable affected with his charge—can, under Art. 1030 C.C. seize in the hands of the bare owner whatever the latter would owe to the usufructuary by reason of this lien. *Greenshields* v. *Hope*, Q.R. 12 S.C. 513.

X. Sheriff's Sale.

— Immovables — Seizure — Description — Procès verbal.]—A sheriff's sale of an immovable is a judicial contract by which a determinate thing is sold for a certain price. Consequently, the immovable to be sold must be exactly described according to law, and if some parcels of land must be excepted therefrom, their description must be carefully given, in order to shew precisely what is left to be sold. If their description is not so given, the party whose property is advertised for sale has a legal interest to ask, by an opposition to annul, that the seizure be quashed. *City of Quebec* v. *Quebec, Montmorency & Charlevoix Railway Co.*, Q.R. 12 S.C. 276.

XI. Vendor and Purchaser.

—Judgment for balance of purchase money—Notice—Time—Right to rescind—Forfeiture of moneys paid.]—A vendor who has recovered judgment against the purchaser for the balance of purchase money due on a contract for the sale of land in which time is not of the essence of the contract is not estopped by such judgment from afterwards making time of the essence by notice terminating the contract within a reasonable time on non-payment of the balance due: *Cameron* v. *Bradbury*, 9 Gr. 67, followed.—Moneys paid on a contract under such circumstances are forfeited to the vendor, who, however, is not at liberty to proceed on the judgment for the balance: *Howe* v. *Smith*, 27 Ch. D. 89; *Fraser* v. *Ryan*, 24 Ont. A.R. 441 followed. *Gibbons* v. *Cozens*, 29 Ont. R. 356.

—Obligations of vendor and purchaser—Payment of price.]—The obligation of the vendor of real property to give the purchaser communication of the titles of the property sold is a collateral and distinct obligation from that assumed by the purchaser to pay the instalments of the price, and non-performance of the former obligation does not justify the purchaser in refusing to fulfil his obligation to pay the price as agreed.—A written demand is necessary in order to put the vendor in default to communicate titles.—The purchaser cannot avail himself of a pretended nullity of the deed arising from failure of registration, where the vendor registered the deed and paid the mutation tax within the delay allowed by subsequent statutes relating to said tax. *Cousineau* v. *Allard*, Q.R. 13 S.C. 388.

—Action for completion of title—Pleading—Offer of payment.]—T., alleging that he had purchased from S. certain property for $4,689, of which $500 was to be cash down, brought an action against S. to compel him to pass the title, concluding that in default of S. passing the title the judgment should do so. T. did not offer, by his action, to pay the said $500:—Held, that for want of such offer, T. could not obtain the conclusions of his action. *Taché* v. *Stanton*, Q.R. 13 S.C. 505.

—Sale under order of Court—Possession—Effect of taking—Ex parte order.]—Application for an order to issue execution against M., who had, in September, 1896, made a written offer for the purchase of the property in question in this action at $2,700 cash—after an abortive sale by auction. The offer contained a stipulation for a clear deed. M. went into possession pending the completion of the title and made some alterations in the buildings. Great delays occurred in completing the title, and the purchaser, after having several times requested the vendor to make the title good, finally, on 30th August, 1897, notified the vendor's solicitors that, unless the title was made to him within two weeks from that date, the offer should be considered as withdrawn, and that he would have nothing more to do in the matter. Two weeks afterwards the purchaser accordingly gave up possession of the property and returned the key. The vendor's solicitors, however, procured a report from the Master, dated 18th September, 1897, approving of the sale to M., and on 29th September an order *ex parte* from the Chief Justice dispensing with payment into Court of the purchase money, and that the payment be made to the Imperial Loan and Investment Co., mortgagees, within ten days after service of a copy of the order, and upon the purchaser receiving a conveyance of the property. No conveyance had been tendered to the purchaser before this application; but it appeared that, on being served with a copy of the order, he stated that he had withdrawn his offer and given up possession of the property, and would have nothing more to do with the matter:—Held, that while the order of the Chief Justice remained in force it must be obeyed, although, if all the circumstances had been made known to him, he might have refused it; and that the purchaser must pay the purchase money into Court within two weeks, and, in default, that the order for execution should go:—Held, also, that the purchaser had not lost his right to call for a good title by going into possession, and that there should be a reference to the Master as to the title. No costs of the application were allowed. *Currie* v. *Rapid City Farmers' Elevators Co.*, 12 Man. R. 105.

—Vendor's lien—Conveyance of land for consideration other than money.]—See Lien, VII.

SCHOOLS.

Public schools—Dissolution of union school section—Power of arbitrators—59 Vict., c. 70, ss. 43, 44, 53, 54 (Ont.).]—Arbitrators appointed by a county council under sec. 14 of the Public School Act, 1896, 59 Vict., ch. 70 (Ont.), awarded that a certain union school section, which comprised a rural section and an incorporated village, should be dissolved, and that all the lands included in the rural section "be attached to and form the same for school purposes," and that all the lands

included in the village, "shall remain attached to and form the urban section" of the said village for such purposes:—Held, that though the language was in part insensible, the effect of it was to dissolve the union, recognizing the village as a corporation subject to the provisions of secs. 53 and 54 of the Act, and the rural section as a non-union school section subject to the provisions of secs. 9 and 13 of the Act, and that the award was valid as an exercise of power under s.s. 5 or 6 of sec. 43:—*Semble*, the arbitrators would not have been justified in taking a portion of the territory outside the village and attaching it to the village. *In re Chesterville Public School Board*, 29 Ont. R. 321.

—School section—Appeal from township to county council—"Divide"—R.S.O., c. 292, s. 39.]—Under R.S.O., ch. 292, sec. 39, there is no longer any appeal to the county council from the refusal of a township council to "divide" a school section. *In re School Section No. 16, Township of Hamilton*, 29 Ont. R. 390.

—School house—Site—Mandamus—Attendance at school—Convenience.]—When the Superintendent of Public Instruction of the Province of Quebec, in virtue of the powers conferred on him by Arts. 2050, 2055 R.S.Q. has ordered an additional school house to be built in a school district, to provide for the needs of ratepayers who are prevented by distance from sending their children to the existing school, the School Commissioners cannot compel the ratepayers to furnish, at their own cost, a site for the new school house, but are bound to furnish it themselves, and may, if necessary, be compelled to do so by mandamus.—School Commissioners, being bound to provide for the instruction of the children of their respective municipalities, cannot escape from this obligation by the mere fact that these children reside in proximity to schools of other municipalities to which they could have easy access. *Roy* v. *School Commissioners of Longueuil*, Q.R. 12 S.C. 16.

—School taxes—Hypothecary action—Recovery of debt and costs—Arts. 2011, 2017 C.C.]—The hypothec for school taxes covers all the costs, even those incurred in a personal action against the debtor of the taxes, and the school corporation may claim, by an hypothecary action, from a third party owning the immovable charged with the payment of these taxes, the amount of such costs at the same time as that of the taxes. *School Trustees of St. Henry* v. *Solomon*, Q.R. 12 S.C. 179.

—School commissioners—Construction of school house—Borrowing powers—R.S.Q. Arts. 2035, 2053—Appeal to superintendent.]—The approval by the superintendent of public instruction of the plans and estimates for the erection of a school house is only required when the cost exceeds $1,600 (R.S.Q. Art. 2053).—School commissioners may borrow money provided they do not give in security or hypothecate the property of the school corporation, in which case it is necessary to conform to the provisions of R.S.Q. Art. 2035. If there is ground for objection to the collection role prepared for the building of a school house there is an appeal to the superintendent. *Savard* v. *School Commissioners of Cap Santé*, Q.R. 13 S.C. 276.

—Assessment for school purposes—Municipal Assessment Act of 1895—Mistrial—New trial.]—Defendant, C., as secretary of school trustees, made an affidavit under the Acts of 1895, c. 5, s. 54, before the defendant J., a justice of the peace, setting forth that plaintiff was indebted to the trustees in a sum of money, being the balance of a poll tax imposed for school purposes, and that a demand had been made for payment, but that the money had not been paid. Upon this affidavit J. issued a general warrant, under the Assessment Act of 1895, s. 55, which was delivered to the defendant H., a constable, to execute. H. returned that he was unable to find any goods of the plaintiff, and that the amount and costs were still due. The magistrate thereupon issued a warrant under which plaintiff was arrested, and, for this arrest, the action was brought. The Act in relation to public instruction, Acts of 1895, c. 1, s. 44, provided that, in default of payment, the amount assessed for school purposes should be collected under the "provisions of the Municipal Assessment Act of 1895." The Municipal Assessment Act (Acts of 1895, c. 5) contained no provision for imprisonment in default of payment, but by the Act to amend and consolidate the Acts relating to Municipal Assessment (Acts of 1896, c. 14), such a provision was added:—Held, that the incorporation in the Public Instruction Act of 1895, of the provisions of the Municipal Assessment Act of 1895, had not the effect of incorporating also the amendments made to the latter Act in the following year, there being nothing in the words used to justify the construction that the rates were to be collected under the Municipal Assessment Act as amended from time to time. Through some inadvertence, to which the conduct of plaintiff's solicitor contributed, the action, which was one for false imprisonment, was tried as if it were an action for malicious prosecution, and, on answers of the jury to questions submitted to them, judgment was entered for defendant:—Held, that there had been a mistrial, and that, except as to the defendant C., the judgment entered for defendants must be set aside with costs, and a new trial ordered. As to the defendant C., dismissing the action as against him with costs:—Held, that he was not liable in any way for the acts complained of, the presumption being that he was only seeking to have the law carried out, and that all he did was consistent with that view. *McKenzie* v. *Jackson*, 31 N.S.R. 70.

—Contract—Corporate Act—School trustees—Teacher—C.S.N.B., c. 65.]—School trustees appointed under the provisions of Con. Stat. ch. 65, must act together and as a Board;

therefore, a notice of dismissal signed by two out of three of them, of a teacher engaged under a written contract, which notice was not the result of deliberation in their corporate capacity, was held sufficient. *Robertson* v. *Trustees of School District No. 2, Durham*, 34 N.B.R. 103.

—School tax — Special assessment — Judgment against ratepayers—Subsequent action to annul roll—R.S.Q. Arts. 2142, 2146, 2147.]

See JUDGMENT, III.

—School taxes—Educational institution—Land for purposes of—Exemption.]

See MUNICIPAL CORPORATIONS, X.

—By-law creating new rural school section—Township and county councils—Appeal.]

See MUNICIPAL CORPORATIONS, II (*g*).

SCIRE FACIAS.

Primâ facie evidence before Attorney-General —Jurisdiction.]—It is not necessary that the Attorney-General should require preliminary proof of the allegations of a petition to obtain the permission to have a writ of *scire facias* issued. It is left to his discretion to require such *primâ facie* evidence. The writ of *scire facias* should be issued in the district where the lands and tenements are situate, and not where the letters-patent have been signed and executed. *The Queen* v. *Montminy*, Q.R. 12 S.C. 143.

SEDUCTION.

Daughter—Evidence—Presumption of service —Loss of service—R.S.O. c. 58.]—The plaintiff's unmarried daughter was seduced by the defendant while at service in his family. There was no pregnancy, and only very slight physical disturbance:—Held, per Osler, Maclennan and Moss, J.J.A.:—That under the Seduction Act, R.S.O. ch. 58, an action lies by the parent although the daughter may not have been living with him at the time of the seduction or subsequent illness. That while mere illicit intercourse affords no ground of action, proof of illness or physical disturbance sufficient to have caused loss of service to the parent, if the girl had been living with the parent, is all that is necessary.—Per Osler and Moss, J.J.A., Maclennan, J. A., dissenting, that the evidence fell short of that in this case.—Per Burton, C.J.O.—That while there is under the Act, in an action by the parent, an irrebuttable presumption of service, there is no presumption of loss of service to the parent, which must still be proved, and that the action failed: *Kimball* v. *Smith*, 5 U.C.Q.B. 32; *L'Esperance* v. *Duchene*, 7 U.C.Q.B. 146; *Westacott* v. *Powell*, 2 E. & A. 525; and *Cole* v. *Hubble*, 26 Ont. R. 279 considered. *Harrison* v. *Prentice*, 24 Ont. A.R. 677 affirming, 28 Ont. R. 140 and C.A. Dig. (1897), col. 345.

And see CRIMINAL LAW, VII (*d*).

SEQUESTRATION.

Administration of property—Apportionment of revenues—Payment of debts — Distribution among donees.]—The plaintiff, as well in her capacity of universal legatee in usufruct of her husband and heir *ab intestate* of one of her daughters, as having been in community of property with her husband, had donated to her four children all the goods she possessed in these capacities subject to a life rent (*rente viagère*). It was agreed that this property should be administered for six months by her two sons-in-law and for six months by her two sons and so to continue one after the other. A difference having arisen between the administrators—one of them wishing to apply all the revenue of the property, after payment of the rent to the plaintiff and the annual charges to the payment of the hypothecary debts due, and the other three wishing to distribute among the donees the surplus of the revenues after payment of the rent, the annual charges and the interest only on the hypothecary debts—three of the administrators refused to continue as such, and the plaintiff, alleging danger of the property deteriorating in value took judicial proceedings for the appointment of a sequestrator:—Held, that under the circumstances there were grounds for the appointment of a sequestrator to administer the property in question, and as every regular administration involves the necessity for payment and extinction of the debts due before any distribution of the revenues is made the sequestrator was ordered, after payment of the rent to the plaintiff and the regular charges, to reserve and apply the surplus of the revenues to the payment and extinction of the hypothecary debts due before making any distribution of these revenues among the donees. *Bussière* v. *Ledoux*, Q.R. 12 S.C. 438.

—Judgment ordering — Inscription in review—Suspension of order—Art. 885 C.C.P. (old text).]

See PRACTICE AND PROCEDURE, XXXIII.

SERVITUDE.

Deed—Construction of—Servitude — Roadway —User—Art. 549 C.C.]—In 1831 the owners of several contiguous farms purchased a roadway over adjacent lands to reach their cultivated fields beyond a steep mountain which crossed their properties, and by a clause inserted in the deed to which they all were parties they respectively agreed "to furnish roads upon their respective lands to go and come by the above purchased road for the cultivation of their lands, and that they would maintain these roads and make all necessary fences and gates at the common expense of themselves, their heirs and assigns." Prior to this deed and for some time afterwards the use of a road from the river front to a public highway at some distance farther back had been tolerated by the plain-

tiff and his *auteurs*, across a portion of his farm which did not lie between the road so purchased over the spur of the mountain and the nearest point on the boundary of the defendant's land, but the latter claimed the right to continue to use the way. In an action (*négatoire*) to prohibit further use of way:—Held, that there was no title in writing sufficient to establish a servitude across the plaintiff's land over the roadway so permitted by mere tolerance; that the effect of the agreement between the purchaser was merely to establish servitude across their respective lands so far as might be necessary to give each of the owners access to the road so purchased from the nearest practicable point of their respective lands across intervening properties of the others for the purpose of the cultivation of their lands beyond the mountain. *Riou* v *Riou*, 28 S.C.R. 53.

—Servitude of passage—Voluntary enclave—Convenient route—Arts. 541, 543 C.C.]—Plaintiff had the lot of land No. 249 which extended, in front, from the public road of the second concession back to that of the third concession. He had given this lot, by *donation entrevifs*, to Sophie Bouchard, receiving, however, the usufuct of an *arpent* in front, beginning from 50 feet of the public road of the second concession and going back to four *arpents* of the road on the third. The part reserved then, by this voluntary division, became *enclavée*. Sophie Bouchard afterwards sold to defendant what she had got from the plaintiff:—Held, that plaintiff had a right to use the part of the lot reserved in usufuct for a passageway without indemnity upon the remainder; that he had a right to the shortest route, defendant not being able to impose upon him the longest which was more difficult and the shortest not being more injurious. *Bouchard* v. *Beaulieu*, Q.R. 12 S.C. 499.

—Enclave—Droits de passage—Arts. 543 C.C.—Servitude légale.]—When a mere servitude passage is constituted, none others than those owning the servitude can lawfully use it. When a property is bounded on three sides by private properties, and on a fourth by a passageway, constituted solely in favour of other portions of land, the first property is a legal *enclave*. The rule of Art. 543 C.C. is one of general application and applies to all deeds where the *enclave* results from the division of one property. The servitude passage in all such cases is due on the adjoining part of the property which has formed the object of the contract or division, the right of passage being an accessory of the pary *enclavé* of the property divided. *Roberge* v. *Vachon*, Q.R. 13 S.C. 72.

—Watercourse—Mill—Dam—Force majeure—Arts. 503-517, par. 24, 1057 C.C.—R.S.Q. Arts. 5535, 5536.]—Defendant had built his mill and dam upon a site purchased from Dame E. A., universal legatee of her husband, subject to the following condition:—"The right to work the said mill and embankments and everything else he might place upon the said water-power, with no right to complain or claim any damages or indemnity if the works of the purchasers (F. T. and the defendant) should cause the waters of the River Royoiet to rise upon the land of the vendor described as follows," etc. The land so described was purchased by the plaintiff from the same owner as the site of defendant's mill, which site was only a piece cut off the said land:—Held, that said deed created a servitude on plaintiff's property in favour of the defendant:—Held, also, that under the circumstances the rising of the water which had caused the damage complained of by plaintiff was the result of *force majeure* which ordinary foresight and intelligence could not guard against, and that defendant, himself interested in contending against this *force*, appeared to have acted in good faith and taken all the usual precautions. *Brousseau* v. *Trottier*, Q.R. 13 S.C. 231.

—Apparent servitudes—Extinction by non-renewal of registration of titles—Enclave resulting from sale.]—The non-renewal after the *cadastre* of the registration of deeds creating a servitude causes the loss of the right to such servitude but only as regards the real, discontinuous and unapparent servitudes.—A servitude of passage, which is rendered obvious by gates or by vehicle tracks is an apparent servitude, and is not lost by such non-registration after the *cadastre*.—When by a sale of part of a property, the part sold becomes *enclavée*, a right of way over the other passes to the buyer as an accessory of his purchase, without which the land he so purchased could not be utilized or possessed by him. *Power* v. *Noonan*, Q.R. 13 S.C. 369.

—Plan of lots by owner—Designation of street—Creation of servitude.]

See MUNICIPAL CORPORATIONS, VI.

—Homologation of plan of street—Expropriation—Improvements and erections after homologation—Right of eviction.]—See SALE OF LANDS, VI.

SHERIFF.

Sheriff—Public duty—R.S.O., c. 89, s. 1.]—A sheriff executing a writ of *fi. fa.* is not an officer or person fulfilling a public duty within the meaning of R.S.O., c. 89, s. 1, and is not, therefore, entitled to security for costs of an action brought against him for negligence in not making a seizure under the writ: *McWhirter* v. *Corbett*, 4 U.C.C.P. 203, followed. *Creighton* v. *Sweetland*, 18 Ont. P.R. 180.

—Criminal law—Speedy trials—Jurisdiction—Criminal Code, Part LIV.—The sheriff of a district for which there is a district magistrate has no jurisdiction to try a prisoner under the provisions of Part LIV. of the Criminal Code relating to speedy trials of indictable offences. *The Queen* v. *Paquin*, Q.R. 7 Q.B. 319.

—Execution—Notice of sale—Costs.]—Where the sheriff causes the notice of sale of im-

movables under execution to be inserted in several newspapers in excess of the number of announcements prescribed by law, the amount paid for such unauthorized advertisements will be struck from his bill of charges. *Virtue* v. *Reburn*, Q.R. 12 S.C. 343.

— Sheriff's deed — Execution.] — *Quære:* Is it necessary for a person claiming title under a sheriff's deed to give any evidence of the execution under which levy and sale took place? *Ross* v. *Adams*, 34 N.B. R. 158.

—Replevin bond—Duty of sheriff to exhibit.]—A Sheriff before he executes a writ of replevin is in duty bound to take a bond according to the terms of 60 Viet. ch. 24, sec. 354; and the defendant on application to the Sheriff is entitled to see the bond before he takes any step in the cause. *Logue* v. *Prescott*, 18 C.L.T. Occ. N. 110.

And see SALE OF LANDS, X.

SHIPPING.

I. BILL OF LADING, 431.
II. DELIVERY OF CARGO, 432.
III. EQUITABLE INTEREST, 432.
IV. MORTGAGE, 432.
V. SEAMAN'S WAGES, 433.

I. BILL OF LADING.

—Affreightment—Charter party—Privity of contract — Negligence — Stowage—Fragile goods— — Condition — Notice — Arts. 1674, 1675, 1676, C.C.—Contract against liability for fault of servants—Arts. 2383 (8), 2390, 2409; 2413, 2424, 2427, C.C.]—The chartering of a ship with its company for a particular voyage by a transportation company does not relieve the owners and master from liability upon contracts of affreightment during such voyage where the exclusive control and navigation of the ship are left with the master, mariners and other servants of the owners and the contract had been made with them only. The shipper's knowledge of the manner in which his goods are being stowed under a contract of affreightment does not alone excuse shipowners from liability for damages caused through improper or insufficient stowage. A condition in a bill of lading, providing that the shipowners shall not be liable for negligence on the part of the master or mariners, or their other servants or agents is not contrary to public policy nor prohibited by law in the Province of Quebec. When a bill of lading provided that glass was carried only on condition that the ship and railway companies were not to be liable for any breakage that might occur, whether from negligence, rough handling or any other cause whatever, and that the owners were to be "exempt from the perils of the seas, and not answerable for damages and losses by collisions, stranding and all other accidents of navigation, even though the damage or loss from these may be attributable to some wrongful act, fault, neglect or error in judgment of the pilot, master, mariners or other servants of the shipowners; nor for breakage or any other damage arising from the nature of the goods shipped," such provisions applied only to loss or damage resulting from acts done during the carriage of the goods and did not cover damages caused by neglect or improper stowage prior to the commencement of the voyage: *Glengoil Steamship Co.* v. *Pilkington; Glengoil Steamship Co.* v. *Ferguson*, 28 S.C.R. 146.

—Consignee—Evidence.]—The bill of lading in the hands of the consignee is conclusive evidence against the party signing it. Art. 2422 C.C. *Hart* v. *Pearson*, Q.R. 12 S.C. 540.

II. DELIVERY OF CARGO.

—Bill of lading—Custom of trade—Loss of goods —Responsibility of shipowner.]—By a custom of the fruit trade at the port of Montreal, the cargo is discharged from the ship to the wharf, where it is sorted by persons employed by the shipowners, and it is only after the fruit has been sold by auction that it is delivered to the purchasers at the sale, upon the orders of the consignee. The defendants' agents followed this custom, assumed full charge and control of the cargo at Montreal after its discharge from the ship, and delivered it to the purchasers at the auction sale on the orders of the consignee (plaintiff):—Held, that the shipowner, having followed the custom of trade and retained the charge and control of the cargo of fruit until after the auction sale, without any offer to deliver, continued to be responsible for any loss which might occur prior to delivery. *Hart* v. *Pearson*, Q.R. 12 S.C. 540.

III. EQUITABLE INTEREST.

—Ship—Sale—Unregistered lien—Notice—Merchant Shipping Act, 1894—57 & 58 V., c. 60, ss. 56, 57 (Imp.).]—While under sec. 57 of the Merchant Shipping Act, 1894, 57-58 Viet., ch. 60 (Imp.), unregistered equitable interests can be enforced as between the parties immediately affected, the effect of sec. 56 is that a purchaser from the registered owner takes a title free from unregistered equitable interests even though he has notice of them. *Luffman* v. *Luffman*, 25 Ont. A.R. 48.

IV. MORTGAGE.

—Sale of mortgage—Invalid exercise of power of sale — Mortgagee in possession — Redemption suit—Valuation of vessel—Costs.]—The mortgagee of a vessel took possession of her and transferred her to a clerk in his employ, who immediately retransferred her to the mortgagee. The consideration expressed in both instances was $2,000. The mortgagee retained the management and possession of the vessel until her loss, without making an effort to sell her, though she was not paying

expenses, and was depreciating in value from age, and the market demand for vessels of her class was declining. In a suit to redeem a mortgage on land given as collateral security with the mortgage on the vessel;—Held, that there had not been a valid exercise of the power of sale vested in the mortgagee, and that he was chargeable with the value of the vessel at the time he took possession. In the above suit a balance was found due the mortgagor by the mortgagee:—Held, that the mortgagee should pay the costs of the suit. *Kennedy* v. *Nealis*, 1 N.B. Eq. 455.

V. SEAMAN'S WAGES.

—Navigation on inland waters—Lien for wages.]—The master, as well as every hand or employee, on a ship navigating inland waters, possesses, for payment of his wages, a lien on the ship which covers a season not exceeding six months. *Goulet* v. *Dansereau*, Q.R. 12 S.C. 15.

SINGLE JUDGE.

See JUDGE.

SLANDER.

See LIBEL AND SLANDER.

SOLICITOR.

Barrister—Solicitor and client—Counsel fees—Right of action for.]—In this province a counsel's right of action for his fees for services in the nature of advocacy, is against the client of the solicitor retaining him, and not against the solicitor, unless by special agreement, or when there is evidence of credit having been given to the solicitor alone, or of money in the solicitor's hands to answer the claim; and a solicitor so employing counsel has implied authority to pledge his client's credit for the payment of counsel fees. *Armour* v. *Kilmer*, 28 Ont. R. 618.

—Services in Exchequer Court of Canada—Agreement with client—Compensation en bloc—Champerty—Account—Jurisdiction of Provincial Court—Bill of costs—Solicitors Act, R.S.O. 1887, c. 147—Quantum meruit—Evidence.]—The plaintiff, the suppliant in an action brought against the Crown, by its permission, in the Exchequer Court of Canada, made an agreement with the defendants, a firm of solicitors, that they should conduct her case to judgment, and, in consideration of their doing so at their own expense, that they should be entitled to retain to their own use one-fourth of the sum which should be recovered, and she assigned her claim to them as security for the performance of the agreement:—Held, a champertous agreement, and not binding on the plaintiff: *Ball* v. *Warwick*, 50 L.J.N.S. (C.L.) 328, and *In re Attorneys and Solicitors Acts*, 1 Ch. D. 573, followed.—Although the services of the defendants under the agreement were performed in a Dominion Court, a Provincial Court had jurisdiction to entertain an action for an account against the solicitors in respect of monies received by them from the Crown in satisfaction of the claim.—The services performed by the defendants in the Exchequer Court were not performed as officers of the Courts of Ontario, and, with respect to such services and the remuneration therefor, the defendants were not subject to the Solicitors Act, R.S.O. 1887, ch. 147, and could not be compelled to deliver a bill of costs.—In the absence of a tariff of costs between solicitor and client in the Exchequer Court, the defendants were entitled to remuneration upon a *quantum meruit*, to be established by such evidence as would be appropriate in the forum of litigation: *Paradis* v. *Bossé*, 21 S.C. R. 419, and *Armour* v. *Kilmer*, 28 Ont.R. 618, followed. *O'Connor* v. *Gemmill*, 29 Ont. R. 47.

—Charging order—Rule 1129—Discretion—Infant plaintiff—Personal injuries—Lien for taxed costs—Sale of judgment.]—The power given by Rule 1129 to make an order in favour of a solicitor for a charge upon a judgment recovered by his exertions, is a discretionary one; the right given by the Rule is ancillary to the solicitor's right to be paid on his retainer.—And where an infant recovered judgment for damages for personal injuries, the solicitor retained by his father was allowed a charge upon the judgment, but only to the extent of the costs taxed against the defendant; and the Court refused to direct a sale of the judgment to enforce the charge. *Nevills* v. *Ballard*, 18 Ont. P.R. 134.

—Retainer—Joint or several—Severance of defence—Apportionment of costs.]—Notwithstanding that the retainer of a solicitor by two persons is in form a joint one, the Court will look into the facts of the case to discover the real nature of the transaction, and will determine the rights of the solicitor and clients accordingly; such a retainer does not necessarily make the persons signing it joint debtors to the solicitor to whom it was given, but it may be taken distributively. And, upon the facts of this case, the client whom the solicitor sought to charge with the whole costs of the defence to an action conducted up to a certain stage jointly on behalf of this client and another, two of the defendants in the action, and afterwards on behalf of this client alone, and by a new solicitor on behalf of the other, was held liable for only one-half of the joint costs during the time that the two clients were represented by the same solicitor, but thereafter for the whole of the costs reasonably and properly incurred by such solicitor. *Re Cameron and Lee*, solicitors, 18 Ont. P.R. 176.

—Costs—Taxation—Discretion of local officer—Increased counsel fee.]—*Re Macaulay*, a solicitor, 18 Ont. P.R. 184, affirming 17 Ont. P.R. 461 and C. A. Dig. (1897), col. 87.

—Specially indorsed writ—Acceptance of service by attorney—Appearance and plea—Summary judgment.]—Acceptance of service and undertaking to appear were indorsed by defendant's solicitor on a specially indorsed writ. On an application to set defendant's appearance and plea aside, and for leave to sign judgment for want of defence, defendant contended that it would leave the proceedings as though default had been made in the undertaking of defendant's solicitor, giving rise to an attachment against him, but not entitling plaintiff to judgment, since there was no service upon the defendant. Application granted. *Bank of Montreal* v. *Crockett*, 34 C.L.J. 579.

—Restoration to roll—Jurisdiction—Previous application—N.W.T. Ordinance No. 4, 1897—Discretion.]—Where an application to reinstate a practitioner on the roll of advocates for the North-West Territories was made under N.W.T. Ordinance No. 4 of 1897, the Court held that as he had been seriously punished by being deprived of following his profession for eighteen months, and had made pecuniary amends for his offence and had re-established his character, such application ought to be granted. *In re Forbes*, 18 C.L.T. Occ. N. 155.

—Motion to strike names off roll—Non-payment of monies collected—Grounds of application—N.W.T. Ordinances, No. 9 of 1895 and No. 5 of 1896—Employment of advocates as agents—Order for payment over—Locus penitentiae.]—*In re Advocates*, 18 C.L.T. Occ. N. 159.

—Legal Professions Act, 1895, ss. 68, 72—Practising without qualification—Evidence.]—Upon motion of the Law Society of British Columbia to commit the defendant, it appeared that the offence charged was that he had written two letters on behalf of clients, the first threatening that proceedings would be instituted for slander unless detraction was made, and the other stating that he had instructions to proceed against R. for taking certain goods without authority, and for trespassing and forcibly removing goods subject to a lien. The defendant adduced evidence that he was a solicitor of Manitoba carrying on business in British Columbia as a debt collector, and had made application to be admitted in British Columbia, that no fees had been charged against or paid by the person to whom the letter was written, and that he had disclaimed being a solicitor entitled to practice in British Columbia, and had refused to accept legal business offered to him:—Held, that the first letter did not constitute an offence, and that any presumption of practising which may have been raised by the second letter was rebutted by the evidence adduced by the defendant. Motion dismissed without costs. *Re C——*, 5 B.C.R. 530.

—Solicitor's lien for costs—Equities between the parties.]—See Costs, XIX (*f*).

—Solicitor of municipal corporation—Newspaper comments on conduct of.]

See Libel and Slander, VI.

And see Attorney.

" " Counsel.

SOLIDARITÉ.

Registry of hypothec—Action for radiation—Divisibility—Costs.]—See Costs, XIII.

STARE DECISIS.

Ontario Court of Appeal for criminal cases—Comity.]—See Criminal Law, VI.

STATUTE.

I. Application, 436.
II. Construction, 438.
III. Repeal, 442.
IV. Statutory Offence, 443.

I. Application.

—Railways—51 V., c. 29, s. 262 (D.)—Railway crossings—Packing railway frogs, wing-rails, etc.—Negligence.]—The proviso of the fourth sub-section of section 262 of "The Railway Act," 51 Vict. ch. 29 (D.), does not apply to the fillings referred to in the third sub-section and confers no power upon the Railway Committee of the Privy Council to dispense with the filling in of the spaces behind and in front of railway frogs or crossings and the fixed rails of switches during the winter months. *Washington* v. *Grand Trunk Railway Co.*, 28 S.C.R. 184, reversing 24 Ont. A.R. 183 and affirmed by the Privy Council.

—Public works—Railways and canals—R.S.C. c. 37, s. 28—Contracts binding on the Crown—Goods sold and delivered on verbal order of Crown officials.] — The provisions of the twenty-third section of the "Act respecting the Department of Railways and Canals" (R.S.C. ch. 37), which require all contracts affecting that department to be signed by the Minister, the Deputy Minister or some person specially authorized, and countersigned by the secretary, have reference only to contracts in writing made by that department.—Where goods have been bought by and delivered to officers of the Crown for public works, under orders verbally given by them in the performance of their duties, payment for the same may be recovered from the Crown, there being no statute requiring that all contracts by the Crown should be in writing. *The Queen* v. *Henderson*, 28 S.C.R. 425.

—Life insurance—Benefit certificate—"Ordinary Beneficiary"—Reapportionment by will—Validity—60 V., c. 36, ss. 151, 159, 160 (Ont.)—Retroactivity—Appeal—Waiver.]—A life insurance certificate on its face made the sum of $500 payable to the daughter-in-law of the assured, but the latter subsequently, by his will, professed to make a change in the beneficiaries, leaving her out altogether. The certificate was issued, the will made and the death of the assured occurred, before the passing of 60 Vict., ch. 36 (Ont.):—Held, that secs. 151, 159 and 160 of that Act applied to the certificate and declaration made by the will, and by those sections the assured had power to do as he professed to do by the will, the daughter-in-law being an "ordinary beneficiary" and the reapportionment made by the will, was valid. *Videan* v. *Westover*, 29 Ont. R.I.

—Criminal law—Evidence—Criminating questions—Privilege—Canada Evidence Act, 1893.]—Sec. 5 of the Canada Evidence Act, 1893, (56 Vict., ch. 31 [D.]), which abolishes the privilege of not answering criminating questions, and provides that no evidence so given shall be receivable in evidence in subsequent criminal proceedings against the witness, other than for perjury in respect thereof, applies to any evidence given by a person under oath, though he may not have claimed privilege. *The Queen* v. *Hammond*, 29 Ont. R. 211.

—Municipal Code, Arts. 21, 22, 875—Maintenance of watercourse—Railway companies—Application to federal companies.]—The provisions of the Municipal Code of Quebec relating to the maintenance of watercourses, and especially of art. 875, which requires all the watercourses in a municipality to be kept in good condition; art. 21, which imposes upon every railway company the duty of maintaining the watercourses upon its road; and art. 22, which imposes a penalty upon every railway company neglecting to keep them in good condition, apply to a company which falls under the exclusive jurisdiction of the Parliament of Canada: *Corporation of St. Joseph* v. *Quebec Central Railway Co.*, 11 Q.L.R. 193, followed. *Canadian Pacific Railway Co.* v. *Corporation of Notre Dame de Bonsecours*, Q.R. 7 Q.B. 121.

—Will—Declaration as to signature—Art. 847 C.C.]—Art. 847 of the Civil Code, which says that wills in authentic form cannot be dictated by signs, refers to the dictation of the will and not to the signature. The declaration that the testator is too weak to sign may be made by him to the notary by universally recognised signs. *Gordon* v. *Gordon*, Q.R. 12 S.C. 433.

—Art. 1675 C.C.—Railway companies.]—Art. 1675 of the Quebec Civil Code does not apply to the carriage of persons by railway. *Ranger* v. *Grand Trunk Railway Co.*, Q.R. 13 S.C. 471.

—Appeal—Time—Extending—Supreme Court Amendment Act, 1896, s. 16—S.C. Rule 684—County Court Amendment Act, 1896, s. 6.]—Sec. 16 of the Supreme Court Amendment Act, 1896 (made applicable to County Court appeals by the County Court Act Amendment Act, 1896, s. 6), supersedes Supreme Court Rule 684, and exclusively governs as to the time for bringing appeals from final judgments. The time for bringing such an appeal will not be extended unless strong circumstances in favour of such extension are shewn. *Reinhard* v. *McClusky*, 5 B.C.R. 226.

—Municipal law—Resolution reducing salary of officer—Vancouver Incorporation Act, 1886, s. 150, s.s. 13, and s. 154.]—Sub-sec. 13 of sec. 150 of the Vancouver Incorporation Act, 1886, requiring a two-thirds vote of the members present for rescinding previous actions of the council, does not apply to a resolution of the council altering the amount of salary payable to an officer whose engagement might, under sec. 154, have been terminated by one month's notice on either side. *Tetley* v. *City of Vancouver*, 5 B.C.R. 276.

—Game Protection Act, 1895—Operations as to imported skins.]—The generality of the prohibition contained in the Game Protection Act, 1895, s. 7, against purchasers having in possession with intent to export, causing to be exported, etc., game, etc., is not to be limited by inference to game killed within the province. *The Queen* v. *Strauss*, 5 B.C.R. 486.

—60 & 61 V., c. 34 (D.)—Appeal to Supreme Court of Canada.]—See APPEAL, VIII and XIII (*a*).

II. CONSTRUCTION.

—Customs Tariff Act, 1894, s. 4—R.S.C., c. 32, s. 150—Construction—Date of importation of goods.]—By the true construction of the Customs Tariff Act, 1894, s. 4, as amended by the Tariff Act, 1895, which in effect directs that duty be paid upon raw sugar "when such goods are imported into Canada or taken out of warehouses for consumption therein," the date at which duty both attaches thereto and becomes payable is when the goods are landed and delivered to the importer or to his order, or, when they are taken out of warehouse, if instead of being delivered they have been placed in bond.—Sec. 150 of the Customs Act, 1886, which directs that the precise time of the importation of goods shall be deemed to be the time when "they came within the limits of the port at which they ought to be reported," refers on its true construction to the port at which the goods are to be landed; that is, where the effective report is to be made. Such construction is required in order to place a consistent, rational and probable meaning on the context and other clauses of the Act. *Canada Sugar Refining Co.* v. *The Queen* [1898], A.C. 735, affirming 27 S.C.R. 395; C.A. Dig. (1897) col. 355.

—**12 V., c. 183, s. 20—Contract, notice to cancel—Gas supply shut off for non-payment of gas bill on other premises—Mandamus.**]—The Act to amend the Act incorporating the New City Gas Company of Montreal, and to extend its powers (12 Vict., ch. 183), provides:—"That if any person or persons, company or companies, or body corporate supplied with gas by the company, shall neglect to pay any rate, rent or charge due to the said New City Gas Company, at any of the times fixed for the payment thereof, it shall be lawful for the company or any person acting under their authority, on giving twenty-four hours previous notice, to stop the gas from entering the premises, service pipes, or lamps of any such person, company or body, by cutting off the service pipe or pipes, or by such other means as the company shall see fit, and to recover the said rent or charge due up to such time, together with the expenses of cutting off the gas, in any competent Court, notwithstanding any contract to furnish for a longer time, and in all cases where it shall be lawful for the said company to cut off and take away the supply of gas from any house, building or premises under the provisions of this Act, it shall be lawful for the company, their agents and workmen, upon giving twenty-four hours previous notice to the occupier or person in charge, to enter into any such house, building or premises, between the hours of nine o'clock in the forenoon and four in the afternoon, making as little disturbance and inconvenience as possible, and to remove, take and carry away any pipe, meter, cock, branch, lamp, fitting and apparatus, the property of and belonging to the said company.": —Held, that the powers given by the clause quoted are exorbitant and must be construed strictly; that the company has not been thereby vested with power to shut off gas from all the buildings and premises of the same proprietor or occupant, when he becomes in default for the payment of bills for gas consumed in one of them only; and that the provision that the notice to cut off must be given "to the occupier or person in charge," indicates that only premises so occupied and in default should suffer. *Gadieux* v. *The Montreal Gas Co.*, 28 S.C.R. 382. (Leave has been granted for an appeal from this judgment to the Privy Council.)

—**Married woman—Separate property—Conveyance—Contracts—C.S.N.B., c. 72.**]—Sec. 1 of C.S.N.B., ch. 72, which provides that the property of a married woman shall vest in her as her separate property, free from the control of her husband and not liable for payment of his debts, does not, except in the case specially provided for, enlarge her power of disposing of such property or allow her to enter into contracts which at common law would be void: *Moore* v. *Jackson* (22 S.C.R. 210), referred to. *Wallace* v. *Lea*, 28 S.C.R. 595, reversing 33 N.B.R. 492.

—**Amendment—Retroactive effect—Limitation of actions—54 V., c. 42, s. 16 (Ont.).**]—Unless there is a clear declaration in the Act itself to that effect, or unless the surrounding circumstances render that construction inevitable, an Act should not be so construed as to interfere with vested rights.—Sec. 16 of 54 Vict., ch. 42 (Ont.), limiting the time for the enforcement of claims for compensation by persons injuriously affected by the exercise of municipal powers of expropriation, does not apply to a claim existing at the time of the passage of the Act. *In re Roden and the City of Toronto*, 25 Ont. A.R. 12.

—**Life insurance—Action—Time—Ontario Insurance Act, 60 V., c. 36, s. 148 (2)—Enabling statute.**]—The words of sec. 148 (2) of the Ontario Insurance Act, 60 Vict., ch. 36, "notwithstanding any stipulation or agreement to the contrary, any action or proceeding against the insurer for the recovery of any claim under or by virtue of a contract of insurance of the person may be commenced at any time within the term of one year," have reference to a stipulation or agreement giving less time than one year for bringing the action. It is an enabling, not a disabling, enactment. *Styles* v. *The Supreme Council of the Royal Arcanum*, 29 Ont. R. 38.

—**Municipal corporations—Non-repair of highway—Notice of accident—Consolidated Municipal Act, 1892, s. 531, s.s. 1—57 V., c. 50, s. 13 (Ont.)—59 V., c. 51, s. 20 (Ont.).**]—The provisions of sec. 531, sub-sec. 1, of the Consolidated Municipal Act, 1892, amended by 57 Vict., ch. 50, sec. 13, and re-amended by 59 Vict., ch. 51, sec. 20, as to the notice requisite to be given to municipal corporations in order to hold them liable for accidents arising from non-repair of highways, are applicable only to actions brought against such corporations singly, and not to actions brought against two or more jointly, as in this case, against a township and an incorporated village, where the plaintiff might fail against one corporation by reason of want of notice to it, and yet be entitled to recover against the other, it having had due notice. *Leizert* v. *Township of Matilda*, 29 Ont. R. 98.

—**Waters and watercourses—Riparian owners—Soil of stream—Dams—R.S.O. (1887), c. 120, s. 1.—"Other obstruction."**]—The words "any other obstruction" in sec. 1 of R.S.O. (1887), ch. 120, mean obstruction of a like kind as "felling trees," etc., previously mentioned in the section, and do not comprehend the erection of a dam across a stream by the owner of the land on each side of the stream and of the river bed. *Farquharson* v. *Imperial Oil Co.*, 29 Ont. R. 206.

—**58 V., c. 21 (Ont.)—R.S.O., c. 127, s. 12—Construction of—Widow's charge—Quantum of—Foreign estate.**]—Under 58 Vict., ch. 21 (Ont.), now sec. 12 of R.S.O., ch. 127, the widow of an intestate who has left no issue is entitled to $1,000 out of his real estate in Ontario, notwithstanding that she may have received other benefits under the laws of another

country out of his estate in that country. *Sinclair* v. *Brown*, 29 Ont. R. 370.

—Public schools—School section—Appeal from township to County Council—"Divide"—R.S.O., c. 292, s. 39.]—Under R.S.O., ch. 292, sec. 39, there is no longer any appeal to the county council from the refusal of a township council to "divide" a school section. *In re School Section No. 16, Township of Hamilton, 29 Ont. R. 390.*

—Art. 712, par. 3, M.C.—Property of educational institutions—Exemption from taxation.]—Par. 3 of Art. 712 of the Municipal Code must be taken as a whole, and does not exempt from taxation the property of educational institutions possessed for the purposes of revenue only. *Corporation of Limoilou* v. *Seminary of Quebec*, Q.R. 7 Q.B. 44.

—Crim. Code, s. 783 (*f*)—Common gaming house—Summary trial—Rule of interpretation.]—Sec. 783 of the Criminal Code, which says that whenever any person is charged before a magistrate "(*f*) with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy house," the magistrate may hear and determine the charge in a summary way, does not apply to the offence of keeping a common gaming house, the meaning of the words "disorderly house" in said par. and in sec. 784 being governed by the rule *noscitur a sociis*, and being therefore restricted to houses of the nature and kind of a house of ill-fame or bawdy house associated therewith. It is immaterial whether the generic term precedes or follows the specific terms which are used; in either case the general word must take its meaning and be presumed to embrace only things or persons of the kind designated in the specific words. *The Queen* v. *France*, Q.R. 7 Q.B. 83.

—Art. 1235, par. 4, C.C.—Contract in writing—Restriction.]—The provisions of par. 4 of Art. 1235 of the Civil Code, requiring contracts for the sale of goods to the value of $50 to be in writing unless there has been a part payment or part performance, is not restrictive, and the mention there made of the sale, as to which oral proof is not permitted, is only indicative, the sale being mentioned only as the type of commercial contracts; the said provisions should be applied to every contract of the same nature when there has been neither part payment nor part performance. *Métivier* v. *Livinson*, Q.R. 13 S.C. 39.

—Creation of charge—French and English versions.]—When a statute creates a charge it should be interpreted in the most narrow sense, and if the French and English versions are contradictory, that of the two which makes the charge less onerous should prevail. *Thivierge* v. *Cinqmars*, Q.R. 13 S.C. 398.

—Art. 915 C.C.P.—Imperative or directory—Notice.]—The notice mentioned in Art. 915 of the Code of Civil Procedure of Quebec, of bail having been given by a debtor arrested on capias, is not imperative; it is only required to enable the party for whose benefit the bail is given to satisfy himself as to the solvency of the sureties. *Dumont* v. *Carbonneau*, Q.R. 13 S.C. 416.

—Right of appeal—Procedure—Retroactive statute.]—Per Drake, J.—Statutes affecting the right to appeal are not statutes relating to procedure, and are not retroactive. *Koksilah Quarry Co.* v. *The Queen*, 5 B.C.R. 600.

—Expropriation—Death of arbitrator—51 V., c. 29, ss. 156, 157—Lapse of time for making award—Art. 12 C.C.]

See ARBITRATION AND AWARD, I (*a*).

—Assignment Act—Ranking on estate—Valuing security—R.S.O., c. 147, s. 20.]

See BANKRUPTCY AND INSOLVENCY, V.

—R.S.O., c. 127, s. 12—Devolution of estates.]

See DEVOLUTION OF ESTATES ACT.

—Division Courts—Garnishee—Judgment summons—Committal—Examination—Affidavit—R.S.O., c. 51, s. 235—57 V., c 23, s. 18—Prohibition.]—See DIVISION COURTS.

—Insurance, life—Conditions and warranties—Indorsements on policy—55 V., c. 39, s. 33 (Ont.).]

See INSURANCE, II.

—Estate Tail—Dying without issue—R.S.O., c. 128, s. 32.]—See WILLS, III.

And see LIQUOR LICENSE.

III. REPEAL.

—Implied repeal.]—A statute can impliedly repeal another only by a condition, clear and precise. *Thivierge* v. *Cinqmars*, Q.R. 13 S.C. 398.

—Civil Code of Lower Canada—Substitution—Sale of immovables—Reinvestment of proceeds—Curator to institute—Family council—Repeal of pre-existing law.]—Under a will creating substitution, the institute had power to dispose of immovables belonging to the substitution, subject to the obligation of reinvesting the price of sale in other immovables. A curatrix was appointed to the institute, who was interdicted for habitual drunkenness. The question submitted to the Court was whether the curatrix required the authorization of a family council as to the reinvestment to be made of the price of an immovable belonging to the substitution, which had been sold: —Held, that when a statute, such as the Civil Code of Lower Canada, enacts general provisions covering a subject, the effect is that any previous legislation on the same subject is repealed, although no specific repeal be declared. Articles 981o, 981p and 981q of the Civil Code are inconsistent with any obligation on the part of the officers therein mentioned to summon family councils to advise as to the *emploi* of funds, and, therefore,

although by the law as it existed previous to the enactment of the Civil Code, a reinvestment of the proceeds of the real property sold under the circumstances stated could not be effected without the advice of a family council, the silence of the Code as to the necessity of an authorization by a family council must be considered as repealing the pre-existing law. Consequently it was not necessary, in the present case, that the curatrix to the institute should be authorized by a family council as to the reinvestment to be made of the price of the immovable sold. *Daly* v. *Amherst Park Land Co.*, Q.R. 13 S.C. 516.

IV. STATUTORY OFFENCE.

—Statutory offence—Exemption from—Negativing—Game Protection Act, (B.C.) 1 895.]

See GAME PROTECTION.

And see REGISTRY LAWS.

STATUTE OF ELIZABETH.

Preference — Impeaching — Time — Pressure—Voluntary conveyance — Consideration — Untrue statement — Proof of true consideration—Onus.] — Where there was evidence of a request made to a person in embarrassed circumstances by one who had indorsed notes for him, for a conveyance of an equity of redemption in land, to secure the indorser against his liability, and the first proceeding taken to impeach the conveyance was a seizure of crops upon the land under an execution against the grantor, more than sixty days after the transfer was made:—Held, that, there having been pressure, the conveyance could not be impeached as a preference; but, the statement of the consideration in the conveyance being untrue, the onus was upon the grantee to prove beyond reasonable doubt that there was some other good consideration, and his own unsupported statement that such existed was insufficient, and the conveyance must be treated as voluntary, and therefore void under the Statute of Elizabeth. *Gignac* v. *Iler*, 29 Ont. R. 147.

—Statute of frauds, 13th Eliz., c. 5—Deed — Defeating and delaying creditors — Knowledge on the part of grantee of grantor's indebtedness—Absence of valuable consideration—Fraud.]

See DEBTOR AND CREDITOR, II (*b*).

STATUTE OF FRAUDS.

Defence of — Mining law—Sale of mineral claim.]—See MINES AND MINERALS.

STOCK.

Buying and selling—Commission Gaming Contract—Art. 1927 C.C.]—See GAMING.

STREET.

Dedication—Plan—Expropriation.]

See MUNICIPAL CORPORATIONS, VI.

STREET RAILWAY.

Ejecting passenger—Placing feet on cushion—Assault.]—A passenger on a street railway having refused when requested by the conductor of the car to remove his feet from the cushion of the opposite seat, and used strong language to the conductor, was ejected from the car:—Held, that the conductor had no right to do so. *Davis* v. *The Ottawa Electric Railway Co.*, 28 Ont. R 654.

—Accident—Negligence—Infirm persons.]—It is the duty of a motorman in charge of an electric car on a street railway to take special care to have the car sufficiently under control to enable him to avoid collision with aged and infirm persons on foot whose infirmities are plainly evident and who may be crossing the line of railway at a street crossing. *Haight* v. *Hamilton Street Railway Co.*, 29 Ont. R. 279.

—Footboard—Invitation to ride on—Negligence—Excessive damages—New trial.] — On an electric car on defendants' railway, there was a step or foot-board running along the side of the car about a foot from the ground, leading to doors on each side of and at the centre and rear parts of the car, with a brass rail or rod about chest high running parallel with the footboard for persons standing thereon to hold on by, and electric buttons on the side of the car to communicate with the conductor. The plaintiff, seeing that the car was filling up rapidly, all the inside seats being occupied and the rear platform crowded, jumped on the footboard, the car then having started. A short distance from where the plaintiff got on was a bridge, which the car had to cross, the approach thereto being on a curve, by reason of which the plaintiff was swayed out from the car, and as it entered on the bridge he was struck by one of the side posts of the bridge and thrown off and injured, the space between the post and the side of the car being only fourteen inches:—Held, that an invitation to the plaintiff to stand on the footboard must be implied, and while there he was entitled to be carried safely, which the improper construction of the bridge prevented defendants doing, and which, therefore, constituted evidence of negligence. A verdict for the plaintiff was sustained, except as to the damages, $3,300, which were held to be excessive, and a new trial was directed unless the plaintiff consented to their being reduced to $2,000. The elements in assessing damages in cases of this kind considered. *Fraser* v. *London Street Railway Co.*, 29 Ont. R. 411.

—Examination of officers of street railway company—Conductor and motorman.]—In an action

for damages for bodily injuries sustained by a pedestrian by reason of the negligent management and operation of a car of the defendants, an incorporated company:—Held, that the conductor and motorman of the car were officers of the company examinable for discovery, but, as the plaintiff had already examined the general manager, she must elect which of the above officers she would examine, under Rule 439 (2). *Dawson* v. *London Street Railway Co.*, 18 Ont. P.R. 223.

And see NEGLIGENCE, XIII.
" " RAILWAYS AND RAILWAY COMPANIES.
" " SUNDAY.

—Right of way for tram-cars—Right to enforce repairs—Mandatory order.]

See MUNICIPAL CORPORATIONS, VI.

SUBSTITUTION.

Substitution — Grevé — Seizure of usufruct—Clause d'insaisissabilité.]—The *grevé de substitution* being owner of the immovable substituted, subject to the charge of returning it to the *appelé*, the usufruct of this immovable cannot be separately seized as against him. —Under the law before as since the code the clause of non-seizability (*insaisissabilité*) is valid. *David* v. *McDonald*, Q.R. 12 S.C. 4.

—Action by curator.]—An action brought by a person as curator *ad hoc* to a substitution must be dismissed, there being no such quality in law. *Langan* v. *Smith*, 12 S.C. 529.

—Institute under—Curator to interdict—Remploi—Authority.]—See CURATOR.

—Sale of immovables—Re-investment of proceeds—Curator to institute—Family council—Repeal of pre-existing law.]—See STATUTE, III.

—Representation—Division par têtes ou par souches—Creation in will of two substitutions—Interpretation—Art. 937 C.C.]—See WILLS, III.

SUCCESSION.

Contract with reference to future succession—Nullity—Arts. 658, 1061 C.C.]—A covenant or pact respecting property which may devolve by a future succession is prohibited by Arts. 658 and 1061 of the Civil Code, and such prohibition is a matter of public policy.—A contract which contains both a pact with reference to a future succession, and an agreement respecting property belonging at the date of the deed to the conveyor, and which is susceptible of being divided, is good and valid for the part which relates to the conveyor's property, and null and void only for the part which relates to the future succession. *Desjardins* v. *Roy*, Q.R. 7 Q.B. 325.

—Conveyance of goods — Government duties—Transmission to heirs or legatees.]—The law providing that "no conveyance of the property of a succession is valid, nor passes a title, unless the Government duties have been paid" does not apply to the mere transmission or devolution of the property of a deceased person to his heirs or legatees. Such heirs or legatees become owners of the property by mere legal seizin, notwithstanding that the duties which affect transfers of succession have not been acquitted, because such transmission is not a conveyance and a maxim "le mort saisit le vif" applies. *Thivierge* v. *Cinqmars*, Q.R. 13 S.C. 398.

—Vacant succession—Curator—Inventory.]
See CURATOR.

SUMMARY CONVICTION.

Order nisi to quash—Death of prosecutor—Effect of.]—See CRIMINAL LAW, XV.

And see JUSTICE OF THE PEACE.

SUNDAY.

Performance of servile labour on—Provincial Acts—R.S.N.S., 3rd ser., c. 159, s. 2—N.S. Acts, 1891, c. 32.]—Prior to 1867, ch. 159, of the Revised Statutes of Nova Scotia (3rd series), was part of the criminal law of the province. By the British North America Act, the criminal law was placed within the exclusive legislative authority of the parliament of Canada, which authority was exercised, in respect of ch. 159, by the repeal of two of its sections. Sec. 2, which was not repealed, was as follows:—"Any person who shall be convicted before a justice of the peace, etc., of servile labour, works of necessity and mercy excepted, on the Lord's Day, shall for every offence forfeit, etc." By the Provincial Acts of 1891, ch. 32, it was sought to amend this provision of ch. 159, by enacting that "a body corporate employing or directing any person to perform servile labour on Sunday, is guilty of performing servile labour on Sunday within the meaning of the second section of the principal Act, and is liable," etc.:—Held, (allowing a writ of prohibition to restrain the stipendiary magistrate of the City of Halifax from proceeding to try and convict the defendant company for a violation of the latter Act), that ch. 159 of the Revised Statutes (3rd series), being part of the Criminal Law of Canada, the Legislature of Nova Scotia had no power to alter or amend any of its provisions, and that any legislation, such as ch. 32 of the Acts of 1891, purporting to have that effect, was *ultra vires*. Nevertheless, the Provincial Legislature would have power to deal with the subject by legislation coming under the head of property and civil rights. *The Queen* v. *Halifax Electric Tramway Co.*, 30 N.S.R. 469.

—Observance of — By-law— Unreasonableness— Penalty for infraction—Commitment—Distress.]

See MUNICIPAL CORPORATIONS, II (*g*).
And see CRIMINAL LAW, XIX.

SURGEON.

See MEDICAL PRACTITIONER.

SURROGATE COURTS.

Removal of cause into High Court—Appeal from order made before removal.]

See APPEAL, XIII (*c*).
And see PROBATE COURT.
" REVENUE.

TAXES.

See ASSESSMENT AND TAXES.

TAX SALES.

Expropriation Act, R.S.M., c. 56—Assessment Act, R.S.M., c. 101, s. 168.]—Under sec. 168 of the Assessment Act, R.S.M., c. 101, a tax purchaser bidding more for the land than the amount due for taxes and costs, forfeits all claim to the land purchased and to the money paid at the time of sale, unless he pays the balance of his purchase money within two months after the expiration of the time allowed the owner for redemption; and it makes no difference if in the meantime the land is taken by the Provincial Government for a public work under the Expropriation Act, R.S.M., ch. 56, and the value thereof paid into Court. In such a case, notwithstanding the consent of the solicitor of the Public Works Department:—Held, that the tax purchaser had no right or claim upon the money paid into Court by the Government. *Re Dunn and the Expropriation Act*, 12 Man. R. 78.

—Mortgage—Purchase at tax sale by wife of mortgagor—Assignment of certificate—Notice—Pleading — Joinder — Onus — Assessment Act, R.S.M., c. 101, s. 186.]—The plaintiff's claim was for foreclosure of a mortgage made by the defendant R. and possession of the land. His wife, who had before the making of the mortgage purchased the land at a sale by the municipality for arrears of taxes, and one Lawlor, who, having purchased the tax sale certificate from one M., to whom it had been assigned by Mrs. R., had afterwards obtained a deed from the municipality for the land, were made parties defendant in the action. The statement of claim made certain allegations with a view to shew that the purchase at the tax sale was invalid as against the plaintiff or generally, and claimed that the tax deed to Lawlor was void, but did not formally ask to have it set aside, though it concluded with the general prayer for further relief:—Held, that an objection by Lawlor to the statement of claim for multifariousness on the ground that a separate action should be brought to set aside the tax deed to him could not succeed. The objection should have been to the joinder of other causes of action to an action for possession of land, without leave, as required by Rule 251 of The Queen's Bench Act, 1895, if in fact no such leave had been given.—The plaintiff was entitled to meet the defendant Lawlor's allegation of a title paramount under the tax deed and its statutory effect as evidence, by shewing omissions or informalities which would invalidate the proceedings, and to have an adjudication upon the question of title without any specific prayer for relief against the deed.—When the tax sale took place, the wife of the mortgagor was as free as any stranger to acquire for her own benefit any title to or interest in the land paramount to that of the mortgagee, either by using money of her own, if she had any, or by inducing a third party to advance it on her separate account, provided the transaction was not merely colourable and really carried out on behalf of the mortgagor.—There was not sufficient evidence of any trust as between the defendant L. and the R.'s, and it did not appear that there was not an actual sale of the tax sale certificate and the rights conferred by it to L. for valuable consideration, and the onus was not thrown upon him to prove that Mrs. R. acted on her own account and not as agent for her husband in making the tax purchase.—Although Mrs. R after she had purchased, in concealing the fact from the mortgagee at a time when in the opinion of the Court she ought to have disclosed it, had disentitled herself to proceed with her purchase and acquire a valid title as against the mortgagee, yet it did not follow that a person purchasing her apparent rights under the tax sale certificate for value, and without notice or knowledge of her special incapacity, might not have acquired a title under a tax deed which would have cut out the plaintiff's mortgage.—To entitle L. to claim protection as a purchaser for value without notice of Mrs. R.'s fraudulent conduct, he should have pleaded this as a defence and given evidence of it, although the plaintiff had not in his pleading alleged notice to L. of the concealment by Mrs. R.: *McAllister* v. *Forsyth*, 12 S.C.R. 1; *Attorney-General* v. *Wilkins*, 17 Beav. 285, followed.—As L. had neither pleaded nor proved such want of knowledge or notice, the plaintiff was entitled to judgment without being called upon to prove any notice to L., the Court not having been asked for relief on the ground that such defence had been omitted through any error or slip, and that it could be successfully raised, and there being nothing to suggest that the defendant had been taken by surprise or misled in any way. The case did not come within section

186 of The Assessment Act, and L. was not entitled to any lien on the land for the taxes paid as against the plaintiff's mortgage. Judgment for foreclosure in the usual form with a declaration that any title to the lands in question which L. took or held under the tax sale deed was held by him subject to the plaintiff's mortgage. *Day* v. *Rutledge*, 12 Man. R. 290.

—Fraudulent mortgage—Tax sale—Redemption by mortgagees—Lien.]—See LIEN, VI.

TECHNICAL SLIP.

See PRACTICE AND PROCEDURE, III.

TELEGRAPH COMPANY.

Telegraph instruments assessable as realty.]
See ASSESSMENT and TAXES.

TELEPHONE COMPANY.

Assessment of poles and wires.]
See ASSESSMENT AND TAXES.

—Municipal corporations—Obstruction to street—Telephone poles.]
See MUNICIPAL CORPORATIONS, VII.

TENANT FOR LIFE.

Partition sale—Tenant for life—Locus standi—R.S.O., ch. 104.]—A sole tenant for life of an estate has no locus standi under the Partition Act, R.S.O. ch. 104, to apply for sale of the estate. In the nature of things no partition is possible as regards the life tenancy. *Fisken* v. *Ife*, 28 Ont. R. 595.

—Permissive waste—Growth of weeds—Tenant for life—R.S.O., c. 202.]—An action for permissive waste will not lie against a tenant for life: *In re Cartwright*, 41 Ch. D. 532, followed.—The spread of noxious weeds from natural causes or by the action of cattle depasturing or eating hay or straw coming from the fields where the weeds were, and the failure to stop the growth thereof is no evidence of waste, but only of ill-husbandry; and the fact that there is a statute, R.S.O., ch. 202, for the prevention of the spread of noxious weeds does not make any difference. *Patterson* v. *Central Canada Loan and Savings Co.*, 29 Ont. R. 134.

TENANTS IN COMMON.

Improvements—Allowances—Interest—Practice—Master's office—Accounts.]—A tenant in common who holds possession, manages, and receives the rent of, the common property, which is subject to an encumbrance, is entitled when called on for an account by his co-tenant, to be allowed for advances properly and reasonably made by him, for repairs and improvements, and for principal and interest on the encumbrance, with interest from the time the advances are made. *In re Curry, Curry* v. *Curry*, 25 Ont. A.R. 267, affirming 17 Ont. P.R. 379 and C.A. Dig. (1897), col. 277.

TIERCE OPPOSITION.

Insolvent estate—Resolution of inspectors—Act of curator—Attack by creditor—Judgment by curator.]
See BANKRUPTCY AND INSOLVENCY, I.

—Curator—Cession de biens—Authority.]
See CURATOR.

TIERS-SAISI.

Contestation of declaration—Bringing in third party—Bref d'assignation—Art. 117, C.C.P.]
See PARTIES, V.
And see GARNISHEE.

TIMBER LICENSE.

Regulations—Agreement to assign license—Innocent purchaser.]
See CROWN LANDS.

TITLE TO LAND.

Appeal to Supreme Court of Canada—Mortgage—Interest of second mortgagee—Matter in dispute—60 & 61 V., c. 34 (D).]
See APPEAL.

—Appeal—Revendication—Encroachment—Demolition of works.]—See APPEAL, XIII (*a*).

TOLL-GATE.

Company for paving road—Election of toll-gate—Consent of municipality—Injunction.]
See MUNICIPAL CORPORATIONS, VII.

TOLL ROAD.

See WAY.

TORT.

Liability of the Crown in tort.]
See CROWN, III.

TRADE.

Trader—What constitutes—Demande de cession.]—Two conditions are necessary to constitute a trader—1. Acts of commerce. 2. Continued exercise of the profession.—The quality of a trader cannot be lost all at once (*brusquement*). There must be a suspension more or less long of the acts which constitute it.—E. was a member of a trading firm, which was dissolved on July 16th, 1897. During its existence P., a manufacturer, had failed, had compromised with his creditors and been discharged, E. having furnished the money for the composition and indorsed his notes, and prepared a deed of partnership with him, which, however, was not executed. On Sept. 2nd, 1897, P. made a *cession de biens* and on Oct. 22nd a *demande de cession* was made on E., and contested on the ground that he was not a trader:—Held, that E. had clearly signified his intention to abandon trade on the dissolution of partnership in July, and that what was done by his former partner, who was entrusted with the liquidation of the partnership affairs, could not be considered as acts of E.:—Held, further, that the acts of E. in regard to P.'s affairs, done to protect his own interests, and the indorsement of P.'s notes to assist him, did not constitute acts of trading. *Ray* v. *Ellis*, Q.R. 7 Q.B. 222.

—False trade description—Prosecution for.]

See CRIMINAL LAW, XV.

TRADE-MARK.

Resemblance between—Refusal to register both—Grounds of.]—The object of sec. 11 of the Act respecting Trade-marks and Industrial Designs (R.S.C., c. 63), as enacted in 54 & 55 Vict., c. 35, is to prevent the registration of a trade-mark bearing such a resemblance to one already registered as to mislead the public, and to render it possible that goods bearing the trade-mark proposed to be registered may be sold as the goods of the owner of the registered trade-mark. 2. The resemblance between the two trade-marks, justifying a refusal by the Minister of Agriculture in refusing to register the second trade-mark, or the Court in declining to make an order for its registration, need not be so close as would be necessary to entitle the owner of the registered trade-mark to obtain an injunction against the applicant in an action of infringement. 3. It is the duty of the Minister to refuse to register a trade-mark when it is not clear that deception may not result from such registration: *Eno* v. *Dunn*, 15 App. Cas. 252; and *In re Trade-mark of John Dewhurst & Son, Ltd.* [1896], 2 Ch. 137, referred to. *In re Melchers and De Kuyper*, 6 Ex. C.R. 82.

—Trade-mark—Trade name—"Fly poison pad."]—The plaintiffs sold sheets of paper, saturated with fly poison, under the name of "Wilson's Fly Poison Pad." These words were registered by them as a trade-mark and were printed on each sheet. The defendants also manufactured and sold fly paper poison in the form of pads, but printed upon them the words, "Lyman Bros. & Co. Lightning Fly Paper Poison," and upon the packages containing them the additional words, "6 pads in a package," or, "3 pads in a package." The evidence shewed that sheets of fly paper poison had become known to the trade as "pads," but failed to shew that these were so identified with the plaintiffs' goods as to deceive the public into the belief that in purchasing pads they were getting the plaintiffs' goods:—Held, that the word "pads" had become so far *publici juris* that the defendants, as manufacturers and vendors of fly poison, were entitled to describe as "pads" sheets of paper prepared by them, the general appearance of the sheets being different, and the defendants' name appearing prominently on them. *Wilson* v. *Lyman*, 25 Ont. A.R. 303.

—"Microbe Killer"—Validity of—Injunction.]—The words "Microbe Killer," regularly registered, constitute a valid trade mark. Injunction restraining its use granted. *Davis* v. *Kennedy*, 13 Gr. 523, followed: *Radam* v. *Shaw*, 28 Ont. R. 612.

TRADES-UNIONS.

—Combination in restraint of trade—Strikes—Social pressure.]—Workmen who, in carrying out the regulations of a trade union forbidding them to work at a trade in company with non-union workmen, without threats, violence, intimidation or other illegal means take such measures as result in preventing a non-union workman from obtaining employment at his trade in establishments where union workmen are engaged, do not thereby incur liability to an action for damages. *Perrault* v. *Gauthier*, 28 S.C.R. 241, affirming Q.R. 6 Q.B. 65.

—Expulsion—Fine — Deprivation of benefits—Action—Bar—R.S.C., c. 131, s. 4—Libel—Privilege.]—An action by a member of a trade union, having a monetary interest in its funds, against certain of his fellow-members for unlawfully imposing a fine upon him, and expelling him in default of payment, and depriving him of benefits, is within the prohibition of s. 4 of the Act respecting Trades Unions, R.S.C. ch. 131, providing that the Court is not to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for a breach of any agreement for the application of the funds of a trade union to prevent benefits to members: *Rigby* v. *Connol*, 14 Ch. D. 428, followed.—The alleged offence for which the fine was inflicted was the causing an extra apprentice to be brought into the yard in which the plaintiff and defendants were employed. The defendants, after being told by their employer that the plaintiff had nothing to do with bringing the

apprentice in, wrote and caused to be published in their trade journal a statement that the strike ordered by the union when the apprentice was brought in would not have occurred but for the treachery of the plaintiff, who richly deserved the fine imposed:—Held, that the publication was not privileged. *Beaulieu* v. *Cochrane*, 29 Ont. R. 151.

TRESPASS.

Responsibility—Workman injured while employed in common lane.]—A workman in the employment of one of two adjoining proprietors, who is working in a lane between their respective properties, cannot be regarded as a trespasser even if the lane at the time had not yet been formally declared common, but was about to be so declared. He is, therefore, entitled to compensation for injuries sustained by him while so engaged, through the negligence of the employees of the adjoining proprietor. *Graham* v. *Smith*, Q.R. 12 S.C. 240.

—Trespass to land—Statute of limitations—Defendant claiming title by adverse possession—Disseisin—New trial—Effect of entry in stopping operation of statute.]—To an action for trespass, defendant pleaded among other things: (1), denying the trespasses alleged, and (2), claiming to be the owner of the land described in the statement of claim. At the trial, defendant, who had originally entered as tenant to plaintiff, tendered evidence to shew that he had acquired title by possession, having been in adverse possession of the land for a period upwards of twenty years. The evidence was objected to on the ground that the Statute of Limitations had not been pleaded, and that in the absence of such plea, the evidence was inadmissible. The trial judge reserved the point, but afterwards sustained the objection, and ordered judgment to be entered in plaintiff's favour:—Held, that he was wrong in doing so, it being unnecessary, in such case, to plead the statute.—The jury found *inter alia* in answer to a question submitted. "4. That defendant continuously occupied the land in question, after plaintiff rented it to him in 1867," for a period, down to the commencement of the action, of about 28 years:—Held, that this was a sufficient basis for a determination that plaintiff, because he was disseised, could not maintain trespass:—Held, also, that defendant should have negatived the payment of rent during the period of twenty years preceding the alleged acts of trespass:—Held, further, that the question of disseisin was one for the jury, and, there being evidence on this point, and also of an entry by plaintiff sufficient to enable him to maintain trespass, that there should be a new trial. Per Meagher, J.:—Held, that plaintiff must have had either actual or constructive possession of the land at the time the trespasses alleged were committed, otherwise he could not recover. Also, that if, at the time of the commission of the alleged trespasses, plaintiff was out of possession, and defendant had a possession which if continued without interruption, would extinguish plaintiff's title at the end of the statutory period, the possession of defendant would be sufficient to defeat plaintiff's action. *Quære:*—Whether the alleged entry by plaintiff, under the circumstances shewn, would have the effect of stopping the running of the Statute of Limitations. *Miller* v. *Wolfe*, 30 N.S.R. 277.

—Trespass to land—Jurisdiction of County Court.]
See COUNTY COURT.

—Action for trespass to land—Fraud in conveyance—Rectification.]—See DEED.

—To the person.]—See MALICIOUS ARREST.

TRUSTS AND TRUSTEES.

I. CREATION OF TRUST, 454.
II. LIABILITY OF TRUSTEES, 454.
III. PARTICULAR TRUSTS, 455.
IV. POWERS OF TRUSTEES, 455.
V. REMOVAL OF TRUSTEES, 456.
VI. REMUNERATION OF TRUSTEES, 456.
VII. TRUST ESTATE AND FUNDS, 457.

I. CREATION OF TRUST.

Infant — Testamentary guardian — Trustees—Construction of will.]—See INFANT, II.

II. LIABILITY OF TRUSTEES.

—Power coupled with trust—Discretion—Breach.]—Where a power is coupled with a trust or duty, the Court will enforce the proper exercise of the power, although it will not interfere with the discretion of the trustees as to the particular time or manner of their *bonâ fidè* exercise of it. Lands were devised to trustees upon trust, in their discretion to sell, as soon as they might deem it proper to do so, for the most money that could reasonably be obtained therefor; and by a later clause it was declared that the trustees were not to be answerable for the exercise or non-exercise of the powers therein contained, or as to the manner or exercise thereof, but were to have an absolute discretion as to the same:—Held, that the power of sale was coupled with a trust to sell for the most money, and that the trustees were answerable for a proper exercise of the power, the powers of the Court being in no way affected by the clause exonerating the trustees, which related merely to the time and manner of exercising the trust. *Clark* v. *Keefer*, 29 Ont. R. 557.

— Trustee — Liability for misappropriation of funds by co-trustee.]—The defendant, C., allowed M. to have the entire management of

property, of which they were co-trustees, and apart from signing releases, when he was asked to do so by M., and from time to time asking what had been done with the money, did not interfere in any way. M. having misappropriated funds belonging to the estate:—Held, that C. was personally responsible. *Crowe* v. *Craig*, 29 N.S.R. 394.

III. Particular Trusts.

—Will—Advancement.]—A will gave the trustees a power of advancement in favour of the testator's sons:—Held, that the power was, by the necessity of the case, exercisable during the continuance of the widow's life estate, but that, in order to protect the life interest, any son in whose favour an advancement was made, was chargeable with interest thereon at the rate of five per cent. *In re Finlayson*, 5 B.C.R. 517.

—Precatory trust.]—See Will, III.

IV. Powers of Trustees.

—Railway Co.—Conveyance of road to trustees—Protection of debenture holders—Obligations of company—Enforcement by trustees.]—Defendant company, for the protection of debenture holders, conveyed its road to trustees, chosen by the company, who retained the administration of its business and the working of the road for its own profit so long as it should duly pay the interest on the debentures and fulfil all other obligations which it assumed in the deed of trust. The Government of Quebec paid this interest during the first ten years. Among the obligations of the company was that of paying to the trustees every year a certain proportion of the net profits, and of placing another portion in the names of persons and in the manner designated by the trustees, in order, in one case or the other, to form a fund to pay the interest after the ten years had elapsed. The company agreed to pay a certain sum annually to the trustees as remuneration for their services. The trustees were invested with certain titles, rights and privileges in favour of the debenture holders, and among others, if the company failed to carry out certain of its obligations they could take possession of the road and work it themselves, and also take proceedings against the company, and this either cumulatively with the former or otherwise. A fifth in value of the debenture holders, on advancing to them the costs, could compel the trustees to bring an action:—Held, that the trustees, in their own names, and in their capacity as such, could maintain a simple action, claiming from the company (*a*) their salaries, (*b*) their proportion of net annual profits, and (*c*) to compel the company to appropriate such other portion; that they could bring such action without the previous authority of the debenture holders; the company could not complain of such want of authority.—The company could not retain the net profits of one year to pay a deficit for the preceding year, even if such deficit was caused by necessary repairs to the road.—The company, in paying for these improvements, had paid its own debt and extinguished the lien which the person making the improvements would have had, and it could not be subrogated to such privilege as against the debenture holders. *Hatherton* v. *Temiscouata Railway Co.*, Q.R. 12 S.C. 481.

V. Removal of Trustees.

—Unanimity required by will—Right of Court to remove for want of.]—Differences of opinion among trustees under a will, even when the will requires them to be unanimous in all decisions concerning the goods of the succession, will not justify the Court in removing one of them *au hasard*; and the constant combination of two against the third, without proof that it causes injury to the succession, is not a sufficient reason for removing one of them. *Brunet* v. *Brazier*, Q.R. 7 Q.B. 166.

—Trustee applying to be removed—Grounds for—Costs of application.]—See Costs, XII.

VI. Remuneration of Trustees.

—Gratuitous trust—Expenses of trust—Right to payment.]—Although the charge of a trustee may be gratuitous, he may lawfully reimburse himself for the costs of his administration by means of a commission upon the receipts, when such commission is in keeping with the expenses he should incur in carefully looking after the said administration. *Brunet* v. *Brazier*, Q.R. 7 Q.B. 166.

—Remuneration — Income — Investments.]—Trustees under a will will be allowed five per cent. commission on income, and one per cent. commission on their investments. No commission will be allowed on investments made by the testator. *In re Aaron Eaton's Estate*, 1 N.B. Eq. 527.

—Trustee and cestui que trust—Costs.]—This was an action against defendant for a reconveyance to the plaintiff of certain lands which she had, for her own purposes and by the advice of her solicitor, conveyed to defendant to hold in trust for her, and asking an account of certain money which defendant had received by mortgaging the property. The statement of claim also charged misconduct in various ways, but none was proved. The statement of defence offered to reconvey the property and account for all monies received, but defendant claimed a sum of $100 which plaintiff had agreed to allow him for his services as trustee. In ordering the reconveyance and taking of accounts, the trial judge directed that no remuneration be allowed to the defendant, and declined to make any order for costs:—Held (1) That defendant should be allowed the $100 remuneration agreed on. (2) No misconduct having been proved, that defendant was entitled to his costs as between solicitor and client. (3) That an appeal as to costs may be heard and decided where, as here, the appellant succeeds on another substantial ground of appeal. *Scarry* v. *Wilson*, 12 Man. R. 216.

VII. Trust Estate and Funds.

—Misappropriation—Surety—Knowledge by cestui que trust—Estoppel—Parties.]—*Bayne* v. *Eastern Trust Co.*, 28 S.C. R. 606, affirming 30 N.S. R. 173, sub nom. *Eastern Trust Co.* v. *Forrest*.

—Estate—Temperance Society—Locality—New societies.]—A grantor, by deed, conveyed certain land to three trustees in trust for certain societies at a named place and their successors, representative of the aforesaid societies, or the representatives of the said societies (*sic*) of any temperance society by whatever name it or they might be known or designated, together with all * * the estate, right, title * * of the grantor, his heirs or assigns, *habendum*, unto the said trustees and their successors in trust for said societies, or such of them as may continue to exist. * * The three temperance societies mentioned in the deed had all ceased to exist for many years:—Held, that the trustees took only a life estate for their joint lives and the life of the survivor of them, leaving the reversion in fee in the grantor:—Held, also, looking at the situation of the premises and the uses for which they were intended, and that the temperance societies originally named were all formed in a certain place, that although the trust was intended to be confined to temperance societies having the same local habitation, the words in the *habendum* were large enough to include any temperance society founded at that place while any of the original grantees were living:—Held, also, that the plaintiff having been appointed a trustee for such a society, although no such appointment could extend or prolong the life estate granted, was entitled to restrain the defendant, his co-trustee and the sole surviving trustee under the deed, from pulling down a building on the premises, which he had commenced to do. *Armstrong* v. *Harrison*, 29 Ont. R. 174.

—Trustee—Misappropriation of funds by—Sureties—Knowledge on the part of the cestui que trust—Joinder of parties—Power of trial judge—Ord. 16, R. 8 (N.S.).]—Funds held by F. as trustee for C. were misappropriated by being deposited with the firm of F. F. & Co., of which F. was a member, and after being kept so on deposit for a period of upwards of six years, were lost in consequence of the failure of the firm. In an action against defendants, who were sureties for F., to compel them to make good the funds so misappropriated and lost, the defence relied upon was knowledge of the misappropriation on the part of C., which knowledge was sought to be shewn by the fact that payments of interest were made to C., from time to time, by cheque of the insolvent firm:—Held, that the manner in which these payments were made was not evidence of knowledge on the part of C. which she was bound to communicate to the sureties; that, at most, it shewed nothing more than assent by C. to the deposit of the income to which she was entitled with the firm of which her trustee was a member:—Held, also that the trial judge could have disposed of the contention raised on behalf of defendants without making C. a party to the suit. Order 16, R. 8: *Semble*, that knowledge on the part of C. that some part of the trust fund had been placed by the trustee temporarily with F. F. & Co., awaiting investment on good security, would not be held to be knowledge, assent or acquiescence by C. in the misconduct of the trustee which led to the loss of the funds. *Eastern Trust Co.* v. *Forrest*, 30 N.S.R. 173. Affirmed by 28 S.C.R. 606.

—Payment of fund into Court—Claim by infant's guardian—Trustees under will.]

See Infant, III.

TUTOR.

Care of minor—Will of minor's father.]—The late M. O., at his death, bequeathed to his wife, without obligation to make an inventory or give security, the use of his property until his daughter, born of a previous marriage, should reach the age of twenty-one years, the wife being under obligation to care for, board, clothe and maintain said daughter and give her a suitable education. After the testator's death his brother-in-law called a family council to choose a tutor for the daughter and was himself appointed tutor. Some days after his appointment, claiming that a tutor should have the custody of the minor's person (Art. 290 C.C.) he took the daughter from the widow's house, where she had been well treated, and caused her to live with him. The tutor then brought an action claiming from the widow, under the said will, a sum of $120 for board and maintenance of the minor:—Held, that under the circumstances, and in consideration of the formal will of the testator, the most convenient domicile for the minor was with the widow, and Art. 290 C.C. did not authorize the tutor to take her away, and as the widow had offered and was prepared to receive and care for the minor at her own house, and as her means, in view of the charges imposed upon her by the will, did not permit her to pay for the minor's board elsewhere, the action was dismissed. *Montpetit* v. *Morin*, Q.R. 13 S.C. 201.

—Mother and child—Removal of tutrix—Want of business knowledge.]—General proof of lack of business knowledge, without evidence of acts of mal-administration, will not justify the removal of a mother from her position of tutrix to her children. *Tessier* v. *Pinsonnault*, Q.R. 13 S.C. 382.

UNNATURAL OFFENCE.

See Criminal Law, III.

UPPER CANADA IMPROVEMENT FUND.

See Constitutional Law, I.

VACATION.

Christmas vacation — Exclusion from time limited—Practice.]—See APPEAL, XIII. (*b*)

VENDOR AND PURCHASER.

See SALE OF GOODS.
" SALE OF LAND.

WAIVER.

Promissory note — Indorser — Waiver of protest.]—Where the indorser, on the day following that on which a promissory note became due, agreed in writing that he would be responsible for the amount of the note, with interest, this was a sufficient waiver of protest. *McLaurin* v. *Seguin*, Q.R. 12 S.C. 63.

—Bill of exchange—Presentment—Demand.]—The object of presentment of a bill or note being to demand payment, waiver of demand is also waiver of presentment. *Burton* v. *Goffin*, 5 B.C.R. 454.

—Mutual benefit association—Non-payment of assessment—Forfeiture — Subsequent acceptance of payment.]—See BENEFIT SOCIETIES.

— Waiver of protest — Insolvent indorser — Waiver by curator.]—See CURATOR.

And see ESTOPPEL.

WARRANT.

False arrest—Charge of larceny—Detention without warrant—Damages.]

See MALICIOUS PROSECUTION.

WARRANTY.

Title to lands—Impeachment by warrantor.]—The grantee of the warrantors of a title cannot be permitted to plead technical objections thereto in a suit with the person to whom the warranty was given. *Powell* v. *Watters*, 28 S.C.R. 133.

—Proceedings in — Interlocutory judgment.]—The principal plaintiff, lessee of the principal defendant, took action against the latter for reduction of rent and damages, on account of certain repairs and improvements which had been made to the premises without his consent and without being required, which work had not been performed with proper expedition. The defendant brought in, in warranty, the contractors who had done the work, alleging that they had warranted him against all damages that the lessees might suffer in consequence of them. The defendants, in warranty, having denied their obligation to warrant the plaintiff in warranty, the latter, without waiting for the trial of the principal action, obtained judgment upon the demand in warranty, condemning the defendants in warranty to stand in the place of the plaintiff in warranty, and to warrant and indemnify him in principal, interest and costs, against all judgments which might be pronounced against him in regard to the claim of the principal plaintiff:—Held, that the principal defendant was well founded, in directing his claim in warranty against the defendants in warranty, to cause them to be condemned to indemnify him against any judgment based upon the facts for which the responsibility could be attributed to them:—Held, further, that the defendants in warranty having denied their obligation to warrant the principal defendant, the latter was entitled to an interlocutory judgment upon this obligation, and to condemn the defendants in warranty to stand in his place in the principal action, but that the judgment upon the demand in warranty thus instituted should not have condemned in advance the defendants in warranty to indemnify the plaintiff in warranty against every judgment that might be pronounced against him on the principal claim. *Pellerin* v. *Léveillé*, Q.R. 13 S.C. 311.

—Joint tort-feasors—Damages—Recourse over—Demurrer.]—See ACTION, XXII.

— Insurance — Conditions and warranties — Indorsement on policy—Ontario Insurance Act.]

See INSURANCE, II.

WASTE.

Permissive waste — Growth of weeds —Tenant for life—R.S.O., c. 202.]—An action for permissive waste will not lie against a tenant for life: *In re Cartwright*, 41 Ch. D. 532, followed.—The spread of noxious weeds from natural causes or by the action of cattle depasturing or eating hay or straw coming from the fields where the weeds were, and the failure to stop the growth thereof is no evidence of waste, but only of ill-husbandry; and the fact that there is a statute, R.S.O. ch. 202, for the prevention of the spread of noxious weeds does not make any difference. *Patterson* v. *Central Canada Loan & Savings Co.*, 29 Ont. R. 134.

WATERS, CANADIAN.

B.N.A. Act, ss. 91, 92, 108—Distribution of legislative power — Rivers and lake improvements.]—Whatever proprietary rights vested in the provinces at the date of the British North America Act, 1867, remained so unless by its express enactments transferred to the Dominion. Such transfer is not to be presumed from the grant of legislative jurisdiction to the Dominion in respect of the subject-matter of those proprietary rights:—

Held, that the transfer by sec. 108 and the fifth clause of its schedule to the Dominion of "rivers and lake improvements" operates on its true construction in regard to the improvements only both of rivers and lakes, and not in regard to the entire rivers. Such construction does no violence to the language employed, and is reasonably and probably in accordance with the intention of the Legislature. *Attorney-General for Canada* v. *Attorneys-General of Ontario, Quebec and Nova Scotia*, [1898] A.C. 700.

WATERS AND WATERCOURSES.

Interference with navigation—Private right of action.]—The plaintiff was a fisherman living on a small farm fronting on, and about three miles from the mouth of, a navigable stream flowing into Lake Superior. He was in the habit of using a sail boat to go from his house to the lake, and thence to Sault Ste. Marie and other points, and was also sometimes employed by neighbours to bring to them in this sail boat supplies and provisions. He also used other boats for fishing purposes. The defendants brought large quantities of timber down the stream and kept it in booms at the mouth, so that for the whole summer access to the stream by the boat was cut off:—Held, that the plaintiff had sufficient special interest to enable him to maintain an action for damages. *Drake* v. *Sault Ste. Marie Pulp and Paper Company*, 25 Ont. A.R. 251.

—Riparian owners—Soil of stream—Dams—R.S.O. (1887), c. 120, s. 1—"Other obstruction."]—The words "any other obstruction" in s. 1 of R.S.O. (1887), ch. 120, mean obstruction of a like kind as "felling trees," etc., previously mentioned in the section, and do not comprehend the erection of a dam across a stream by the owner of the land on each side of the stream and of the river bed. *Farquharson* v. *Imperial Oil Co.*, 29 Ont. R. 206.

—Navigation—Carriage of ice—Right to cut passage through harbour.]—The cutting of a channel through ice formed on a water lot in a navigable harbour, to enable ice cut outside to be conveyed to the shore of the harbour, is a use of the water lot for the purposes of navigation; and the owner of the water lot, the grant of which was subject to the rights of navigation, cannot interfere with such user. *McDonald* v. *Lake Simcoe Ice and Cold Storage Co.*, 29 Ont. R. 247.

—Damages by inundation—Bridge—Liability.]—Where, by the placing of the abuttments of a bridge in the channel of the River St. Charles, the defendants so narrowed said channel as to cause plaintiff's property to be inundated, they were liable for the damages thereby suffered by plaintiff. *Tremblay* v. *Quebec North Shore Turnpike Road Trustees*, Q.R. 13 S.C. 329.

—Injunction—Stream-driving, restraining—Driving-dam—Leave and license.]—The plaintiff in the Court below, a married woman, was the owner in fee of a lot of land through which flowed a stream, too small, however, in the natural state for stream-driving purposes. The land had previously been owned by the plaintiff's husband, who, both while such owner and afterwards, had assisted as a labourer in constructing a driving-dam above the plaintiff's lot. The defendants' logs were driven by means of the driving-dam which was owned by them, and such user flooded the plaintiff's intervale and injured the banks of the stream:—Held, that the plaintiff was not estopped from taking proceedings to restrain further injury to the property and from claiming damages for the injury done; that the acquiescence or leave and license by which a person can be deprived of his legal rights, must be of such a nature and given under such circumstances as will make it fraudulent in him to set up these rights against another prejudiced by his acts. *Quære:* Whether the plaintiff's husband could give leave and license to the injury of her inheritance. *Wright* v. *Mitten*, 34 N.B.R. 14.

—Drainage—Right to obstruct flow of water.]—A watercourse consists of bed, banks and water and, while the flow of the water need not be continuous or constant, the bed and banks must be defined and distinct enough to form a channel or course that can be seen as a permanent landmark on the ground. The plaintiff's claim was that a watercourse ran through her land into and across the defendant's land, and that for some years past the defendant had obstructed the flow of water in this watercourse by building a dyke or embankment across it on his own land, the effect of which had been to throw the water back upon and overflow the plaintiff's land. According to the evidence, what the plaintiff claimed to be a watercourse is merely a depression in the surface of the country extending through the plaintiff's land, crossing into the defendant's land and continuing through it until it reaches a slough or gully which finally empties into Long Lake. There is no continuous flow of water through this depression, but every spring the rain and melted snow from the lands south and west of the plaintiff's land and from the higher parts of her own land flow or drain into it and covering it to a depth of six inches or more according to the season, gradually pass off, in the absence of obstruction, across the defendant's land into the slough. In the high water there is a perceptible northerly current for a few days, and the height of the water on the slope of the depression and the general course of its flow are defined by the rubbish deposited along the edge of the current, but the position of this line of rubbish varies from year to year, according to the height of water. Apart from this, there was no evidence of the existence of any banks or edges of a channel through which the water flows, and in some years the plaintiff had cultivated portions of this depression right up to her western line:—Held, that there was no water-

course which plaintiff had any right to have kept free and clear of obstruction for the benefit of her land, and that her action must be dismissed with costs. An occupant or owner of land has no right to drain into his neighbour's land the surface water from his own land not flowing in a defined channel, and the rule of the Civil law, that the lower of two adjoining estates owes a servitude to the upper to receive the natural drainage, does not apply in this Province: *Williams* v. *Richards*, 23 Ont. R. 651, and *Ostrom* v. *Sills*, 24 Ont. A.R. 526, followed. *Wilton* v. *Murray*, 12 Man. R. 35.

—Construction of dam—Damages by overflow—Statutory remedy—Exclusion of action—Prescription.]

See ACTION, XVIII.
" LIMITATION OF ACTIONS, IV.

— Maintenance of watercourses—Mun. Code of Quebec—Obligation of railway company—Application to Federal company—Arts. 21, 22, 875 M.C.]

See RAILWAYS AND RAILWAY COMPANIES.

WATER-WORKS.

See MUNICIPAL CORPORATIONS, XV.

WAY.

Way—Toll road—Municipal corporation—Power to sell toll road to individual—Tolls—16 V., c. 190, s. 26.]—Under sec. 26 of 16 Viet., ch. 190, a municipal corporation to which, under 12 Viet., ch. 5, sec. 12, a toll road has been transferred by the Governor-in-Council, has power to sell the road to an individual, who may exact tolls for the use thereof. The right to purchase is not limited to toll road companies.—Where, pursuant to 12 Viet., ch. 5, sec. 12, the Governor-in-Council has transferred to a municipal corporation a toll road upon which certain rates of toll are in force, with the right to alter or vary the rates of toll, it can increase the rates of toll to any sum not exceeding the maximum mentioned in Schedule A to 12 Viet., ch. 4, and a subsequent transferree of the municipal corporation can exact payment of the increased rates and is not limited to a toll sufficient to keep the road in repair. *Payne* v. *Caughell*, 24 Ont. A.R. 556, reversing 28 Ont. R. 157.

—Landlord and tenant—Way—Mode of User.]—The defendant leased to the plaintiff a small knoll or island, standing in a shallow lake, which in the dry season became a muddy marsh. The land surrounding the knoll or island belonged to the defendant and the lease provided that the plaintiff should have a right of way across it, nothing being said as to the mode of exercising the right. The plaintiff built a trestle bridge from the knoll or island to the main land and this bridge the defendant pulled down:—Held, that the plaintiff's mode of user was reasonable and that the defendant was not justified in interfering with the bridge. *Butchart* v. *Doyle*, 24 Ont. A.R. 615.

—Way—Easement—Way of necessity—Physical inaccessibility—Convenience.]—A way of necessity is founded on necessity, not on convenience, and the foundation of the right is the fact that the lands conveyed are physically inaccessible except by passing over other land.—The defendants in an action for trespass to land set up that a portion of their land was disconnected and separated by water from the remainder of it, called the mainland, and they claimed that a way of necessity over the plaintiff's land was impliedly reserved by the Crown when these lots were respectively granted, and that such a way was to be deemed to have been reserved, although the land in respect of which it was claimed was not entirely surrounded by the lands of the grantor or other persons, and, although there were other means of access to it, those means not being capable of utilization without an unreasonable expenditure of money, and not sufficient for the reasonable purposes of the owner of the lands:—Held, that the defendants were not entitled to the right claimed by them. Dictum of Lord Mansfield in *Morris* v. *Edgington* 3 Taunt. at p. 31, and of Bowen, L. J., in *Bayley* v. *Great Western R. W. Co.* 26 Ch. D. at p. 453, referred to. *Fitchett* v. *Mellow*, 29 Ont. R. 6.

—Way—Right of—Prescription—Termini—Slight deviations—Interruptions.]—The *termini a quo* and *ad quem* of a way over the defendant's land used and enjoyed as of right by the plaintiff and his predecessors in title for upwards of twenty years before the commencement of the action had not varied during that period, except at two points, where, about fourteen years before action, one of the plaintiff's predecessors slightly altered the line of the way for the purpose of going round muddy spots, and the user of the original line at these two points was abandoned for the substituted one. These deviations were short as compared with the length of the way:—Held, that they did not operate to do away with the plaintiff's right to claim the way between the termini, that way having been substantially used during the whole period; but the plaintiff should be confined either to the original or substituted line. Slight temporary interruptions by the defendant were insufficient to prevent the statute from running. *Warren* v. *Van Norman*, 29 Ont. R. 84, affirmed 29 Ont. R. 508.

—Street—City of Montreal—Acceptance of street by city—Liability for bad condition of footpath.]—The plaintiff claimed damages for injuries suffered in consequence of a fall on the footpath of a lane in the city defendant, to which action defendant pleaded that the lane was not under its control:—Held, that inasmuch as the lane in question had been used

by the public as a thoroughfare for more than twenty years, was inscribed on the homologated plan of the city, and defendant had numbered the houses therein with civic numbers, and had changed the name of the lane and inscribed it under its new name on the books of the city, the defendant was bound to keep the footpath in a condition to insure the safety of passengers. *Vaudry* v. *City of Montreal*, Q.R. 13 S.C. 531.

—Easement—Reservation of way—Terminus ad quem—Unity of possession and title—Continuous user—Pleading—Amendment.]—On May 1st, 1873, T. conveyed a tract of land known as "the mill lot," to the firm of T., M. & Co., of which he and D. M. were members, "reserving a right of way at the nearest good crossing place below the mill dam from the said mill road for the use of D. M., aforesaid, his heirs and assigns forever. At that time T. owned land on the opposite side of the river and immediately north of the latter land and of the mill lot was land which had been previously sold by T. to D. M., who had possessed and used it for some years, but the only legal title, to which, so far as proved, was conveyed by two deeds from the heirs of T., made in 1880 and 1885 respectively. The way referred to was intended to be used in connection with this land, afterwards known as the McDougall land. In July, 1883, D. M. acquired full right, title and interest in the mill lot in fee simple, and from that time until October 17th, 1885, he was the owner of both the dominant and servient tenements. There was evidence to shew that D. M., prior to the conveyance to defendants, had used the way continuously for a period of twenty-nine years. In an action of trespass brought against defendants, who claimed under D. M., and sought to continue the use of the way, defendants pleaded a way by grant or prescription:—Held, affirming the judgment of the trial judge—(1.) Assuming it to have been legally possible for the deed from T. to have vested the right of way claimed across the mill lot in D. M., that the description was void for want of a *terminus ad quem*. (2.) That D. M. having become the sole and absolute owner in fee simple, of both tenements in 1883, the easement contended for, assuming it to have existed, was extinguished by the unity of ownership:—Held, also, that although it seemed probable that a grant of the way had been made, it could not be assumed in the absence of evidence. That the evidence of continuous user was not sufficient under the circumstances to establish the right as claimed. Per Townshend, J.:—Held, that the word "reservation" should be construed as meaning "grant." Per Meagher, J., (who concurred in dismissing the appeal, but with doubt.):—Held, that defendants, having pleaded a way by grant or prescription, in order to succeed must shew one or the other.—*McDonald* v. *McDougall*, 30 N.S.R. 298.

And see EASEMENT.
" " SERVITUDE.

WILLS.

I. ATTESTATION, 466.
II. CHARITABLE USE, 466.
III. CONSTRUCTION, 466.
IV. DEVISES AND LEGACIES, 469.
V. EXECUTION, 472.
VI. REVOCATION, 472.
VII. VALIDITY, 473.

I. ATTESTATION.

—Incomplete attestation—Proof by one witness.]—Held, on the evidence of one of the witnesses to the execution of the will (although he could not distinctly remember that he and the other subscribing witness signed their names as witnesses in presence of the testator), and on the presumption of law in such a case, the Court having power to draw inferences of facts, that the proof was sufficient although the attestation clause was incomplete.—Costs of all parties allowed out of the estate, except costs of contestant, in connection with the incapacity of the testator, which though set up, was not established. *Miller* v. *Miller*, 34 C.L.J. 743.

II. CHARITABLE USE.

—"The Mortmain and Charitable Uses Act, 1892", 55 V., c. 20 (Ont.).]—A devise of real estate to a bishop in trust for the use of his diocese is not a devise "to or for the benefit of any charitable use" within the meaning of secs. 4 and 5 of "The Mortmain and Charitable Uses Act, 1892," 55 Vict., ch. 20, (Ont.). *Re McCauley*, 28 Ont. R. 610.

III. CONSTRUCTION.

—Will—Construction—Change in law—"Heirs"—Primogeniture—14 & 15 V., c. 6—43 V., c. 14, s. 2 (Ont.).]—A testator, who died on the 8th of November, 1867, by his will, made on the 15th of October, 1867, devised lands in Ontario to his wife until her death or marriage, and upon her death or marriage, to his son, "should he be living at the happening of either of said contingencies," and, if not then living, "unto the heirs of the said (son)." The son died in July, 1885, intestate and unmarried, and the widow died in February, 1887:—Held, that the Act abolishing heirship by primogeniture, 14 & 15 Vict., ch. 6, applied, and that all the brothers and sisters of the son were his "heirs" and entitled to take under this devise: *Tylee* v. *Deal*, 19 Gr. 601, and *Baldwin* v. *Kingstone*, 18 Ont. A.R. 63, distinguished; *Sparks* v. *Wolff*, 25 Ont. A.R. 326.

—Will—Bequest of specific sum—Debt larger than amount named.]—A testatrix to whom a debt of £2,900 was owing by the E. estate, by her will bequeathed as follows: "The two hundred and ninety pounds due from the E. estate . . and monies in . . to

be used by my executors in payment of debts . . and the balance thereof to be equally divided among the daughters of . .": —Held, that only the sum of money mentioned in the will and not the whole amount due by the E. estate passed by the clause in question. *Re Sherlock*, 28 Ont. R. 638.

—Estate tail—Dying without issue—R.S.O., c. 128, s. 32—Construction of.]—Sec. 32 of the R.S.O., ch. 128, is to be construed strictly, and is confined to cases in which the word "issue," or some word of precisely the same legal import is used; and does not extend to cases in which the word "heirs" is used—Where a testator devised to his grandson, his heirs and his assigns forever, certain land with the qualification that in case of his "dying without leaving any lawful heirs by him begotten" the land was to go to other persons named, the section was held not to apply, and that the grandson took an estate tail. *Re Brown and Campbell*, 29 Ont. R. 402.

Interest of executor—Reimbursement of costs—Security—Status of legatees as appellants—Contending beneficiaries.]—Under Con. Rule 938 (*a*), an executor applied in Chambers, by way of originating notice, and obtained a determination of a question affecting the rights of legatees under the will, which involved the construction of the will; but upon appeal by residuary legatees, the order in Chambers was reversed by a Divisional Court, which put a different construction upon the will:—Held, that the judgment of the Divisional Court was a sufficient protection to and indemnity of the executor, and, if he sought to appeal to the Court of Appeal, he must do so at his own risk as to reimbursement of the costs, in the event of failure; and his application for leave to appeal could be granted only upon the usual terms as to giving security for costs. The legatees interested in the bequest then applied for leave to appeal from the decision of the Divisional Court, and to dispense with security. It was objected on behalf of the residuary legatees that the intervention of the applicants raised a question between contending beneficiaries, and that there was no jurisdiction to deal with such a question under Con. Rule 938:—Held, that the question was one which a Master, in taking the accounts and making the inquiries directed to be taken and made in an administration proceeding, would have jurisdiction to deal with; and if, for the purpose of ascertaining and determining the persons to whom legacies were payable, and the amount of the legacies, it should become necessarily incidental to place a construction on the will, the Master had jurisdiction to do so; and the test of jurisdiction under Con. Rule 938 was whether the question was one which, before the existence of the rule, could have been determined under a judgment for the administration of an estate or execution of a trust.—Leave to appeal granted and the security required reduced below the usual amount. *Re Sherlock*, 18 Ont. P.R. 6.

—Devise—Life estate—Reversion—Division par têtes ou par souches.]—Property was bequeathed by will to the four children of the testator, with a limited and precarious title (*à titre de constitut et précaire*), namely, life estates, with reversion to their children, "to be divided among them, in each respective family, in equal part and portion following the order of the successions; and if any of the said devisees should die leaving no issue (*sans enfants ni descendants d'eux*), the children of the other devisees would be substituted for them in the ownership of said property." By a codicil, after repeating almost verbatim this clause as to the substitution of children of the devisees, the testator added, "and if one of the said devisees should die without issue, then the children of his brother and those of his two sisters named in the said will should be substituted for them in the ownership of said property." One of the devisees having died without issue, an action was taken to determine whether the property devised should be divided among the children of the others *per capita* or *per stirpes* (*par têtes ou par souches*):—Held, that this was not a case for the application of Art. 937 of the Civil Code, which provides that representation shall not take place in substitutions (1) when the testator has directed that the property should be given according to the order of legitimate successions; (2) when his intention to that effect is sufficiently manifested—as the testator did not call to this substitution either his own proper heirs or those of the *grévés*, and his intention to permit the representation was not manifested. Therefore the division should be made *par têtes* and not *par souches*.—In this case two distinct substitutions were created, and the terms of the first, by which the property was bestowed following the order of the successions, could not be invoked in order to interpret the second, in which this expression is not found. *Armand* v. *Armand*, Q.R. 7 Q.B. 356.

—"Proceeds"—"Income"—Gift claimed as absolute—Life estate.]—Testator directed his estate to be converted into cash and divided into two equal parts, of which one was to be invested and the "proceeds" paid to his daughter, A. M., from time to time. On the death of A. M. the executors were directed to take such steps as were necessary to secure to her children, free from others' control, their mother's "interest" in the estate, and, for that purpose, to pay to them, share and share alike, the money invested, or to give them the proceeds, as might best serve the interests of said children. In the event of the death of A. M. before the trusts became dischargeable, the executors were to take steps to secure her interest to her children, in both instances, free from others' control:—Held, as against A. M., who claimed that, under the provisions of the will, she took an absolute estate, that the expression "proceeds" should be read as "income," the direction to invest and pay the proceeds as the same accrued conveying that idea.

Held, also, that words shewing that on the death of A. M. the children were to have the corpus secured to them were sufficient to cut down the gift to A. M. to a life estate. *Chubbock* v. *Murray*, 30 N.S.R. 23.

—Will—Construction—Words of request—Precatory trust.]—A testator, by his will, gave and bequeathed all his property, both real and personal, to his wife for her use and benefit, and then added: "I request my wife to pay to P.R. (an adopted son), at her death, or should she sell the farm on which I now live before her death, $400. I also give P.R. the sorrel horse now in my possession.":—Held, that the gift to the testator's wife was subject to a precatory trust in favour of P.R. *Renehan* v. *Malone*, 1 N.B. Eq. 506.

—Specific devise subject to a prior life estate—Period of vesting—Advancement.]—The testator, after leaving his property in trust for his widow for life with remainder to his children or their issue in certain shares made certain specific devises to his children, to vest in possession on the death of his widow; and the will directed that in the event of the death of any of the children without leaving lawful issue, his, her or their share should fall into residue and be divided among the survivors in the 'proportions named": — Held, that the word "share" applied as well to the specific devises, as to the remainder expectant on the widow's death; and, accordingly, until the specific bequests fell into possession, the children took no vested interest therein.—The will gave the trustees a power of advancement in favour of the testator's sons:—Held that the power was, by the necessity of the case exercisable during the continuance of the widow's life estate, but that, in order to protect the life interest, any son in whose favour an advancement was made, was chargeable with interest thereon at the rate of five per cent. *In re Finlayson*, 5 B.C.R. 517.

—Infant—Testamentary guardian—Trustees—Construction of will.]—See INFANT, II.

IV. Devises and Legacies.

—"Own right heirs"—Limited testamentary power of devisee—Conditional limitations—Vesting of estate.]—Under a devise to the testator's "own right heirs" the beneficiaries would be those who would have taken in the case of an intestacy unless a contrary intention appears, and where there was a devise to the only daughter of the testator conditionally upon events which did not occur, and, under the circumstances, could never happen, the fact of such a devise was not evidence of such contrary intention and the daughter inherited as the right heir of the testator. *In re Ferguson. Turner* v. *Bennett. Turner* v. *Carson*, 28 S.C.R. 38.

—Abatement.]—A testator by his will directed that a farm should be sold and that his executors should "first out of the said proceeds set apart the sum of $2,000, and invest the same in some safe security for the benefit of and for the maintenance and education of" the testator's grandson, subject to certain provisions as to payment of the income and corpus, and he then further directed that "out of the proceeds of the sale of the land there shall be paid the following legacies" to three daughters and a son of the testator:—Held, that the general rule of equality among legatees applied, and that, there not being sufficient to pay all the legacies in full, the grandson's legacy should abate proportionately. *Lindsay* v. *Waldbrook*, 24 Ont. A. R. 604.

—Charitable devise—Trust for benefit of citizens of the United States of African descent.]—A devise of land in Ontario, by a testator dying in 1891, in trust "to promote, aid and protect citizens of the United States of African descent in the enjoyment of their civil rights," is a charitable devise and void, and the fact that the trust is to be executed in a foreign country makes no difference. *Lewis* v. *Doerle*, 25 Ont. A.R. 206, affirming 28 Ont. R. 412, and C. A. Dig. (1897), col. 388.

—Will—Devise of real estate—Payment of legacy out of annual produce—Charge—Purchase money—Indemnity.]—A testator, after a bequest of a legacy to the plaintiff, amongst others, devised to a daughter "my two farms," describing them, and desired his executors to pay the said legacies out of "the annual produce of the farms, or as to them should seem best." The executors renounced, and no one administered. The daughter took possession of the whole estate, paid the debts and received the rents and profits of the farms which she subsequently mortgaged and they were sold by the first mortgagee, under his power of sale, and after satisfying his claim, the balance of the purchase money was paid into Court, and was claimed by a subsequent mortgagee:—Held, that the plaintiff's legacy was a charge upon and payable out of the annual produce of the farms, and that the charge was not affected by the subsequent words, "or" as to the executors "should seem best"; that the fact that sufficient annual produce of the farms had been received which if set apart would have paid off the legacy was no answer to plaintiff's claim, for it could not be set up by the daughter by virtue of her possession and receipt, and her grantees or mortgagees could be in no better position; that if necessary a receiver of such annual produce should be appointed until payment of the legacy with interest not exceeding six years' arrears, that the balance of purchase money should remain in Court as indemnity to the purchaser against the plaintiff's claim; and that subject thereto the subsequent mortgagee was entitled to it. *Callaghan* v. *Howell*, 29 Ont. R. 329.

—**Will—Devise to executors—Grant of probate to one of two executors—Right of executor to sell land.**]—A testatrix devised and bequeathed all her real and personal property to two executors in trust to carry out the provisions of her will, directing payment of her debts out of the estate, with full power in their discretion to sell all or any of her property, and to invest the proceeds, as they might deem best, and to pay the income thereof to the husband during his lifetime, and after his death to sell the property and divide the same equally between her children. One of the executors renounced probate which was granted to her husband, the other executor, who, some years after, without having registered a caution, contracted to sell certain of the lands to pay debts:—Held, that he had power to make a valid sale, and that the devise being to the executors, sec. 13 of the Devolution of Estates Act, which requires a caution to be registered, in no way interfered with such power: *Re Koch* v. *Wideman*, 25 Ont. R. 262, followed; *In re Hewett* v. *Jermyn*, 29 Ont. R. 383.

—**Construction—Gift to charities—Validity—Legacies—Deduction of legacy duty—"Protestant charitable institutions."**]—In an action for construction of a will:—Held, that the gift of the residue of a mixed fund to the executors to be distributed "among such Protestant charitable institutions as my said executors and trustees may deem proper and advisable, and in such proportions as they . . . may deem proper," was a valid gift, having regard especially to sec. 8 of 55 Vict., ch. 20, R.S.O., ch. 112, the provision in force at the time of the testator's death in 1895:—Held, also, that the legacy duty was to be deducted from the legacies, and the executors had no discretion to pay such duty out of the residue. *Kennedy* v. *Protestant Orphans' Home*, 25 Ont. R. 235, followed:—Held, also, that the House of Refuge for the poor of a county was not within the terms of the residuary gift. —The word "Protestant," as used in the will, was referable as well to the objects of the charitable institutions as to their government; and "Protestant charitable institutions" were such charitable institutions as were managed and controlled exclusively by Protestants and were designed for the bestowal of charity upon Protestants alone. *Manning* v. *Robinson*, 29 Ont. R. 483.

—**Onerous legacy—Acceptance—Clause d'insaisissabilité.**]—The *grevé de substitution* being owner of the substituted immovable, subject to the charge of restoring it to the *appelé*, the usufruct of such immovable cannot be separately seized as against him.—Under the law before the Code as well as since the clause of non-seizability (*insaisissabilité*) is valid.—The validity of the clause of non-seizability contained in a will is not affected by the fact that a legacy given under this condition would be an onerous legacy, because this legacy, being voluntarily accepted by the legatee, when he might refuse it, constitutes really a bestowal of bounty of which the legatee cannot repudiate the charges (nor can his creditors in his place) on the ground that they exceed the value of the property bestowed. *David* v. *McDonald*, Q.R. 12 S.C. 4.

—**Bequest to certain persons or their issue "share and share alike"—Per stirpes or per capita—Codicil—Substituted legacy.**]—Under a bequest in favour of certain persons, if living at testator's death, and the issue of such of them as should be then dead "to be equally divided between them, share and share alike," such issue take per capita and not per stirpes. *Re Bossi*, 5 B.C.R. 440.

—**Legacy—Charitable bequest—Cy Près—Inquiry.**]—Where there is nothing in the bequest to indicate a general charitable purpose, and the gift is designated for a particular specified body, the doctrine of *cy près* does not apply.—Where money is left by will for a specific purpose upon the consent of a third person who withholds such consent conditionally, and there is no sufficient evidence to shew that the specific purpose cannot be achieved, the Court may order an inquiry to ascertain whether the direction of the testator can be carried out. *Murphy* v. *Monastery of the Precious Blood*, 18 C.L.T. Occ. N. 225.

—**Life insurance—Will—Cancellation—Credits.**]
See INSURANCE, II.

V. EXECUTION.

—**Declaration as to signature—Art. 847 C.C.**]—Art. 847 of the Civil Code, which says that wills in authentic form cannot be dictated by signs, refers to the dictation of the will and not to the signature. The declaration that the testator is too weak to sign may be made by him to the notary by universally recognized signs. *Gordon* v. *Gordon*, Q.R. 12 S.C. 433.

VI. REVOCATION.

—**Proving will in solemn form—Parties—Procedure—Attestation of will—Revocation—Costs.**]—S.M., having made a second will, attested by one witness only, and which contained a clause revoking the first will, tore off his signature to the first will in presence of a witness, leaving the greater part of the letter "S" only as part of the signature, believing that he had made a subsequent valid will:—Held, that the first will was not revoked, and should be admitted to probate:—Held, also, on the evidence of one of the witnesses to the execution of the will, (although he could not distinctly remember that he and the other subscribing witness signed their names as witnesses in presence of the testator), and on the presumption of law in such cases, the Court having power to draw inferences of facts, that the proof was sufficient although the attestation clause was incomplete.—Costs of all parties allowed out of the estate, except costs of contestant, in connection with

the incapacity of the testator, which though set up, was not established. *Miller* v. *Miller*, 34 C.L.J. 743.

VII. Validity.

—Capacity of testamentary executor—Judicial proceeding—Question of validity, how raised.]

See Executors and Administrators, II.

And see Revenue.

WITNESS.

Contract of hiring—Commercial matter—Action for salary—Evidence of party.] — A contract by which the Quebec Harbour Commissioners engages the services of an engineer at a yearly salary is not a commercial matter, and in an action by the engineer for his salary he cannot be heard as a witness. *McGreevy* v. *The Quebec Harbour Commissioners*, Q.R. 7 Q.B. 17.

And see Evidence.

" Libel and Slander, III.

WORDS AND TERMS.

"Advancement."]—See *In re Estate of George Lewis*, 29 Ont. R. 609, ante, col. 11.

"Alienated."]—See *The Queen* v. *Victoria Lumber Co.*, 5 B.C.R. 288, ante, col. 37.

"Assaults."]—See *Hardigan* v. *Graham*, 1 Can. C.C. 437, ante, col. 127.

"Civil right."]—See *Madden* v. *Nelson & Fort Sheppard Railway Co.*, 5 B.C.R. 670, ante, col. 23.

"Commence operations."]—See *North Sydney Mining and Transportation Co.* v. *Greener*, 31 N.S.R. 41, ante, col. 78.

"Court of record."]—See *The Queen* v. *Gibson*, 29 Ont. R. 660, ante, col. 137.

"Creditor."]—See *In re Atlas Canning Co.*, 5 B.C.R. 661, ante, col. 79.

"Days."] — See *The Queen* v. *Aldous*, 5 B.C.R. 220, ante, col. 19.

"Disorderly house."] — See *The Queen* v. *France*, Q.R. 7 Q.B. 83, ante, col. 441.

"Disposing of premises.]"—See *Gold Medal Furniture Co.* v. *Lumbers*, 29 Ont. R. 75, ante, col. 238.

"Divide."]—See *In re School Section No. 16 Township of Hamilton*, 29 Ont. R. 390, ante, col. 425.

"Dying without leaving any lawful heirs."] —See *Re Brown and Campbell*, 29 Ont. R. 402, ante, col. 467.

"Effectual in law."] — See *Re Henderson* v. *City of Toronto*, 29 Ont. R. 669, ante, col. 288.

"Forthwith."] — See *Morton* v. *Bank of Montreal*, 18 C.L.T. Occ. N. 157, ante, col. 114.

"Grant."]—See *McDonald* v. *McDougall*, 30 N.S.R. 298, ante, col. 465.

"Heirs."]—See *Re Brown and Campbell*, 29 Ont. R. 402, ante, col. 467, and see *Sparks* v. *Wolff*, 25 Ont. A.R. 326, ante, col. 466.

"Heirs and assigns."]—See *Keefer* v. *Phœnix Insurance Company of Hartford*, 29 Ont. R. 394, ante, col. 217.

"In front of."]—See *McIntyre* v. *McKinnon*, 31 N.S.R. 54, ante, col. 167.

"Income."]—See *Chubbock* v. *Murray*, 30 N.S.R. 23, ante, col. 468.

"Instrument."] — See *Re Henderson and City of Toronto*, 29 Ont. R. 669, ante, col. 288.

"Intervale."]—See *Guild* v. *Dodd*, 31 N.S. R. 193, ante, col. 102.

"Issue."]—See *Re Brown and Campbell*, 29 Ont. R. 402, ante, col. 467.

"Judicial matter."]—See *In re Town Council of New Glasgow*, 30 N.S.R. 107, ante, col. 63.

"Judicial tribunal."]—See *In re Town Council of New Glasgow*, 30 N.S.R. 107, ante, col. 63.

"Last dwelt."]—See *Re estate of Caroline Fraser*, 30 N.S.R. 272, ante, col. 393.

"Last resided."]—See *Re estate of Caroline Fraser*, 30 N.S.R. 272, ante, col. 393.

"Lien."]—See *Neil* v. *Almond*, 29 Ont. R. 63, ante, col. 189.

"Money charged upon land."]—See *Neil* v. *Almond*, 29 Ont. R. 63, ante, col. 189.

"Mutual mistake."]—See *Chisholm* v. *Peters*, 31 N.S.R 16, ante, col. 335.

"Next of kin."]—See *Yelland* v. *Yelland*, 25 Ont. A.R. 91, ante, col. 51.

"Now."]—See *Watson* v. *Dandy*, 12 Man. R. 175, ante, col. 376.

"Officer thereof."]—See *Hamilton* v. *Stewiacke, &c., Co.*, 30 N.S.R. 92, ante, col. 76.

"One clear day."] — See *Barrowman* v. *Fader*, 31 N.S.R. 29, ante, col. 418.

"Other disposal."]—*The Queen* v. *Walsh*, 29 Ont. R. 36, ante, col. 258.

"Other obstruction."]—See *Farquharson* v. *Imperial Oil Company*, 29 Ont. R. 206, ante, col. 461.

"**Ordinary beneficiary.**"]—See *Videan* v. *Westover*, 29 Ont. R. 1, ante, col. 220.

"**Own right heirs.**"]—See *Turner* v. *Bennett*, 28 S.C.R. 38, ante, col. 469.

"**Patent.**"]—See *Chisholm* v. *Peters*, 31 N. S.R. 16, ante, col. 335.

"**Penalty.**"]—See *The Queen* v. *Gavin*, 1 Can. C.C. 59, ante, col. 64.

"**Proceeds.**"]—See *Chubbock* v. *Murray*, 30 N.S.R. 23, ante, col. 468.

"**Proceeding.**"]—See *Neil* v. *Almond*, 27 Ont. R. 63, ante, col. 189.

"**Profits.**"]—See *Rennie* v. *Frame*, 29 Ont. R. 586, ante, col. 255.

"**Protestant.**"]—See *Manning* v. *Robinson*, 29 Ont. R. 483, ante, col. 471.

"**Protest charitable institutions.**"]—See *Manning* v. *Robinson*, 29 Ont. R. 483, ante, col. 471.

"**Publication.**"]—See *Huyck* v. *Wilson*, 18 Ont. P.R. 44, ante, col. 32.

"**Reservation.**"]—See *McDonald* v. *McDougall*, 30 N.S.R. 298, ante, col. 465.

"**Shall.**"]—See *The Queen* v. *Buchanan*, 12 Man. R. 190, ante, col. 139.

"**Share.**"]—See *In re Finlayson*, 5 B.C.R. 517, ante, col. 469.

"**Stealing.**"]—*In re Gross*, 25 Ont. A.R. 83, ante, col. 132.

"**Theft.**"]—See *In re Gross*, 25 Ont. A.R. 83, ante, col. 132.

"**Upland.**"]—See *Guild* v. *Dodd*, 31 N.S.R. 193, ante, col. 102.

WORKMEN.

By-law — Workmen engaged by corporation contractors.]

See MUNICIPAL CORPORATIONS, II (*e*).

WORKMEN'S COMPENSATION FOR INJURIES ACT.

See MASTER AND SERVANT, IV (*b*).

WORKMEN'S UNION.

See TRADES-UNIONS.

WRIT OF EXTENT.

Bond to Crown — Remedy.]—The writ of extent is a proper and effectual proceeding for enforcing the rights of the Crown on a bond given by a public official for the proper performance of his duties. *The Queen* v. *Sivewright*, 34 N.B.R. 144.

WRIT OF RESTITUTION.

See RESTITUTION.