Canada Law Journal.

VOL. XLI. MAY 15. NO. 10.

LEGACIES TO SERVANTS.

Some of the decisions involving the right of a claimant to take under a clause in a will by which legacies are bequeathed to the testator's "servants," as a class, may perhaps be said to embody simply the conception that, unless a contrary intention is indicated by the context, a testator will be presumed to have used this word in its ordinary signification, and that the persons designated are to be determined with reference to the diagnostic elements, which serve to indicate, first, whether the relation between the testator and the claimant of the legacy was that of master and servant; and, secondly, whether he was the servant of the party alleged to be his master(*a*). But in two cases in

---

(*a*) In *Billing* v. *Ellice* (1845) 9 Jur. 936 (bequest of one year's wages in advance to each of the testator's servants who should be in his service at his death and who should have lived with him five years or upwards), it was unsuccessfully argued that a farm-bailiff, who had lived in the home farm, rent free, all rates and taxes being paid for him by the testator, and whose sole remuneration consisted of his wages or salary, was an agent, rather than a servant. One special contention, rejected by the court, was that the claimant should be excluded from the benefits of the will merely for the reason that the amount of the bequests is expressly fixed with relation to the "wages" of the designated employees and the position occupied by him was of such a grade that, in common parlance, his remuneration would usually be described as a "salary."

In another case a clause by which the testator bequeathed to "all my servants and day laborers who shall be in my service at the time of my death one full year's wages above what may be then due to them respectively," was held to enure to the benefit of a man who had at first been appointed land agent of the testator, the owner of an extensive estate, at a salary of £300 a year, and had afterwards been entrusted with the duties of house-steward. The plaintiff shewed that, although it was customary for him to dine at the testator's table when he went to the latter's

which, as it would seem, the will might have construed upon this footing, the actual considerations upon which the courts mainly relied were, in one of the cases, the improbability, and, in the other, the probability, that the testator intended to include the claimant among his beneficiaries(*b*).

---

house, he had, on such occasions, been treated as a person in a dependent position and occupying the position of a confidential servant or secretary. *Armstrong* v. *Clavering* (1859) 27 Beav. 226.

(*b*) In *Chilcot* v. *Bromley* (1806) 12 Ves. 114 (bequests to "all my servants who shall be living with me at the time of my death"), the testator had been hiring a carriage and horses by the year from a job-master, who also supplied a coachman. The coachman did not board or lodge in the testator's house: but received from the testator 12s. a week, as board-wages, and a livery with the other male servants: the job-master also paying him 9s. a week. The plaintiff lived with the testator in that capacity and upon these terms about ten months previous to his death; having been procured for that purpose by the job-master; and was returned by the testator as his coachman under the act imposing a duty on male servants; and during that period he served no other person. Sir Wm. Grant, M.R., after remarking that the question to be determined was simply whether the plaintiff was a servant of the testator within the intent of the will, proceeded thus: "My opinion is, that there was no contract between them, out of which the relation of master and servant could grow. The contract was between the testator and the job-master. The latter engages to furnish the former with horses, and a man to drive them. The job-master has persons, whose duty it is to perform that service. The particular person serves the job-master by driving my carriage: and is so far in my service; but in consequence of a retainer by the other, and a contract with him. That contract would be fully satisfied, if he changed the coachman every week. Can the testator be supposed to include a person, whom he had not selected, and chosen to bring into his service for any definite period, and with reference to the continuance of his service utterly uncertain; for, as has been observed, the very week before the testator's death a different man, for whom the testator had no predilection, might have been furnished by the coach-master? It is not probable, that a testator in such a situation as this testator, with the experience he had of the manner, in which these servants were changed, could have intended to put this person upon a footing with

If, as is usually the case, the testator expressly restricts his bounty to such servants as shall be in his service at the time of his death, the success of a claimant is manifestly dependent upon proof that this condition was duly satisfied by him(*c*), parol evi-

---

servants, brought into his house by a contract of his own, from preference, arising out of previous inquiry into their characters, and satisfaction with their services. From his own experience he knew, a stranger might be introduced without any previous consent, or any thing but merely bringing him, in order to shew that he was not a person disagreeable to the testator. From the instant the testator expressed no disapprobation the contract goes on, not with him, but with the job-master; and it is stated, I believe, by some witnesses, that the amount of the board-wages is contracted for between the job-master and the employer. All the terms of the contract are between them. The coachman is merely the subject of the contract: not a party to it. This plaintiff therefore is not a servant within the intendment of this will." This decision, it may be remarked, was cited as an authority for the doctrine adopted by two of the judges in *Laugher* v. *Pointer* (1826) 5 B. & C. 547, that a man sent by a liveryman to drive a carriage was not the special servant of the person to whom he was sent,—a doctrine ultimately established by the unanimous decision of the Court of Exchequer in *Quarman* v. *Burnett* (1842) 6 M. & W. 499.

In *Howard* v. *Wilson* (1832), 4 Hagg. Eccl. 107, where it appeared that the claimant, a coachman, was a married man, who had been originally hired by, and had lived five years with, the testatrix; that he resided over her stables in town; that he occasionally accompanied her into the country, and when there, lived in the house, though, like her servants, on board wages; that he sometimes waited at table, and remained with her though she changed her job-man. *Held,* (although the several job-masters paid him his wages and board-wages—except 3s. per week extra in the country—and found him in liveries,) that he was entitled under a bequest "to each of my servants living with me at the time of my death £10." *Chilcot* v. *Bromley, supra,* was distinguished on the ground that the facts and probabilities of the cases were as remote as possible, since in the case before the court the only circumstance to shew that there was no intention to include the coachman was that the jobman was the party who was to pay him his wages out of the lump yearly sum which the testator paid for the hire of her horses.

(*c*) By a will dated November 1876, a testator who died in July, 1883, bequeathed "to each of my servants who shall at my

dence being admissible for the purpose of establishing that fact(*d*). A clause of this tenor is strictly interpreted and is held to contemplate actual service. Proof of what might be termed constructive service will not suffice(*e*). Moreover it may

---

death have been in my service twelve calendar months or longer, one year's wages in addition to anything owing by me, and to my gardener, P.G., £300 in addition. In August, 1880, P.G., who had been in the testator's service thirty-three years, left the service, and on his leaving the testator made him a present of £100. *Held* by Hay, J., that, as P.G. was not in the service at the death of the testator, he had not fulfilled the condition, and was not entitled to the £300. *Benyon* v. *Grieve* (1884), cited in Smith, Mast. & S., p. 573.

Where a legacy was bequeathed to the two servants "that might live with the testatrix at the time of her death," and she had three at that time, all of them were held entitled to take. *Sleech* v. *Thorington* (1754) 2 Ves. Sen. 560.

(*d*) In *Herbert* v. *Reid* (1810) 16 Ves. 481, where the claimant was no longer residing in the testator's house at the time of the latter's decease, the legacy was established upon evidence that the testator had referred to it, after the claimant's departure, in language which shewed that he regarded it as being still due. What he said was deemed to be competent evidence to shew that, in spite of appearances, the claimant had continued to be in his service.

(*e*) A master bequeathed an annuity to his servant Sarah, "provided she shall be in my service at the time of my decease," and a few days before his decease he, without any good cause, dismissed her from his service, and at his death she was not in his service:—*Held*, that she was not entitled to the legacy. *Darlow* v. *Edwards*, (Exch. Ch. 1862) 1 H. & C. 547; 9 Jur., N.S. 836; 32 L.J. Exch. 51; 10 W.R. 700; 6 L.T., N.S. 905. Blackburn, J., remarked during the argument: "The contract may continue so as to enable the servant to bring an action for the breach of it, but the service does not continue." He also compared the case to one in which a person commits a breach of a stipulation not to revoke the authority of an arbitrator, the revocation under such circumstances being valid.

A testator bequeathed a legacy to M.V. in case she should be in his service at his decease. The testator was shortly afterwards removed to a lunatic asylum, and M.V., who was a yearly servant, voluntarily quitted the house, receiving from the family her

be inferable from the wording of such a provision that it was intended to embrace only a particular portion of the servants who should be in the testator's employment at the time of his decease. Thus it has been held in two cases that, where a testator specifically gives a "year's wages," he should be understood to mean, that he gives to those whom he has hired at yearly wages(*f*). In other cases claims have been disallowed on the ground that the servant was not "continuously and exclusively employed" by the testator(*g*). But the mere fact that a ser-

---

wages up to the end of the year, which did not expire till after the death of the testator:—*Held*, that she was not entitled to the legacy. *Venes* v. *Marriott* (1862) 31 L.J. Ch. 519, following the case last cited.

The testatrix bequeathed to her servant M.B. a legacy of £300 to be paid within twelve months after her death, provided the said M.B. remained in her service until her death. Subsequently the testatrix was removed to a lunatic asylum, and M.B. was dismissed by a relative who was managing the affairs of the testatrix. A month later an order was made in lunacy, that the effects of the testatrix should be sold, and the proceeds paid into court. It was held that after the date of the order the service of M.B. was at an end, subject to such rights as she had in respect to notice and that she was not entitled to the legacy. *Re Hartley's Trusts* (1878) 47 L.J. Ch. 610, 26 W.R. 590.

(*f*) In *Booth* v. *Dean* (1833) 1 Mylne & K. 560 it was held that a man who had worked for several years as under-gardener at weekly wages, and another man who had served the testator as cowboy, also at weekly wages, were not entitled to take as legatees under a clause of this term.

This case was followed in one where a gardener, employed at weekly wages (although paid at irregular intervals), was declared not to be entitled to the benefit of the bequest. *Blackwell* v. *Pennant* (1852) 9 Hare, 511; 16 Jur. 420. Here the words of the bequest were "each of the servants living *with me* at the time of my decease," but it was considered by the Vice-Chancellor that, although the evidence shewed that there were servants who lived in the house, and also servants who lived in the cottages and lodges about the grounds, as was the case with the plaintiff, no certain conclusion could be drawn from that fact, as to whether the testator intended this disposition to extend to one only, or to both of those classes.

vant's yearly salary was payable weekly will not exclude him from the scope of such a bequest(*h*).

There is some apparent authority for the doctrine that, where there are no express words restricting the benefit of the legacies to such servants as shall be in the testator's employment at the time of his death, a limitation of this character should be read into the will(*i*). But it is quite probable that there was something more in the case cited than is shewn by the report, and that this broad doctrine was not actually applied(*j*); and, speaking generally, the effect of the more recent decisions is, that no presumptions can be entertained in such cases with regard to the testator's intention, and that the servants to take must be determined by a consideration of the entire clause which relates to them(*k*).

(*g*) *Thrupp* v. *Collett* (1858) 26 Beav. 147; 5 Jur. N.S. 111 (a boy employed a few months in the year, whilst the testator was at his country residence, at weekly wages, to carry letters to the post).

Stewards of Courts, and such who are not obliged to spend their whole time with their masters, but may also serve any other master, are not "servants" within the intention of a bequest to persons so described. *Townshend* v. *Windham* (1706) 2 Vern. 546.

(*h*) *Ogle* v. *Morgan* (1852) 1 De G. M. & G. 359; *Thrupp* v. *Collett* (see last note).

(*i*) In construing a clause by which the testator gave £100 apiece to all his servants, the Court declared that none but such as were his menial servants before the making of the will and continued to serve him as such, until his death "could have any pretence" to the legacy. *Jones* v. *Henley*, (1685) 2 Chanc. Rep. 361.

(*j*) This suggestion was made by North, J., in the first of the cases cited in the note 11, *infra*.

(*k*) Where the descriptive words of the will were: "My office and warehouse employés, such as clerks and workmen, shall have to receive six months' full salary," the servants held to be entitled to take were those in the testator's service at the time of

In other cases the allowance or rejection of the claim has been made to turn upon the answer to the question, whether it was or was not the intention of the testator to benefit only those servants who may be properly described as "domestic" or "indoor" (*l*).

---

his death. The specific ground chiefly relied upon by North, J., was, that the words "full salary" could not by any other construction be made to bear a reasonable meaning. In his opinion the most obvious import of these words was, that the legacies were to be measured by the salaries which the servants should be receiving at the time of the testator's death, and except upon the assumption that only those servants were to take who should then be in his employment there would be no standard by which to measure their legacies. *Re Marcus* (1887) 56 L. J. Ch. 830.

Where a testator by a codicil gave legacies to several persons by name who had "lived many years in his family," and added "to the other servants £500 each," it was held that a servant who was living with the testator at the date of the codicil, but not at his death, was entitled to a legacy of £500. *Parker* v. *Marchant* (1842) 2 Y. & C. 290, 6 Jur. 292, aff'd 7 Jur. 457. The decision was put by Bruce, V.C., on the ground that the codicil did not, in express terms, annex to the gift the condition of continuing service, and that the circumstance of the testator's having described the legatees by their employments, and not by name, did not import that the employment and character must continue. On appeal the Lord Chancellor expressed his approval of this conclusion, and said that the case of *Jones* v. *Henley* (note 9, *supra*), did not apply.

Where a testator directed his trustees "to pay to each man who shall have been in my employ over ten years the sum of £10 for each year's service beyond the ten years," it was held, that a man who had been in the testator's employment for fifteen years, but had left his employment before the date of the will, and was not in his employment at the time of his death, was entitled to a legacy of £50. *Re Sharland* (1896) 1 Ch. 517, North, J., declined to read into the clause a condition as to the continuance of the employment till the death of the testator, especially as such a condition was expressly included in the clause of the will.

(*l*) In *Jones* v. *Henley* (1685) 2 Chanc. Rep. 361, it was held that only the menial servants of the testator were entitled to take until a will by which he bequeathed in general terms a legacy of £100 apiece to all his servants (see note *i*, *supra*). But

it is by no means certain that this case can be regarded as an authority for the broad doctrine which is required by sustain such a ruling. The probability is that, in view of the terms in which such clauses are usually drawn, there were words which clearly shewed that only menial servants were to be benefited (compare note *k, supra,* as to the supposed imperfection of the report).

In *Townshend* v. *Windham* (1706) 2 Vern. 546, the Lord Keeper refused to narrow the meaning of the general word "servants," so as to make it comprise such servants only that lived in the testator's house or had diet from him."

In *Blackwell* v. *Pennant* (1852) 9 Hare 551 ,16 Jur. 420, where the bequest was to each of my servants *living with me* at the time of my decease, it was argued "that the words italicised imported 'living in my house,' and that no servant who was not living in the house could be entitled under the bequest." The Vice-Chancellor declined to adopt this construction, saying: "The words 'living with me,' as applied to servants, may, I think, well be understood to mean living in my service, and this, I am much disposed to think, is the ordinary import of the words: but it is not necessary to go as far in the present case, for here the plaintiff (a gardener) was actually living in a cottage belonging to the testator, on the grounds adjoining to the testator's mansion; and it cannot, I think, reasonably be held that he was not living with the testator in the sense in which servants live with their masters, because he was not actually living in the same house with his master."

A testator gave to each person as a servant in his "domestic establishment" at the time of his decease, a year's wages beyond what should be due to him or her for wages:—*Held,* that a head gardener, who lived in one of the testator's cottages, and was not dieted by the testator, was not entitled to a legacy. *Ogle* v. *Morgan* (1852) 1 De G., M. & G. 359; 16 Jur. 277. The Court remarked: "For the purpose of ascertaining in what sense the testator used the expression 'domestic establishment' it appears to me to be important to distinguish between a servant in the establishment and one out of the establishment, between what is called an indoor and an outdoor servant; and I cannot but think that the testator had this very distinction in view."

A similar decision was rendered as to a gardener where the bequest was one of two year's wages to "each of my domestic servants." *Vaughan* v. *Booth* (1852) 16 Jur. 808. R. (following the case last cited).

C. B. LABATT.

EXCESSIVE DAMAGES.

A practice has grown up in appellate Courts here and in England of making the granting, or refusing, a new trial, where the Court finds the damages excessive, depend on whether or not the plaintiff will consent to a reduction of damages to a sum which the Court names; and it has been assumed that the plaintiff's wishes alone were to be consulted in giving this option. This practice which has been adopted not only by Divisional Courts of the High Court, but also by the Court of Appeal, has received a rude shock in a recent deliverance of the House of Lords in the case of *Watt* v. *Watt*, 21 Times L.R. 386. There the English Court of Appeal appears to have found the damages excessive, but refused a new trial on the plaintiff consenting to reduce the damages. The defendant, with the courageous persistence, characteristic of British litigants when a question of principle is at stake, appealed to the House of Lords, and has succeeded. And *Belt* v. *Lawes*, 12 Q.B.D. 356, has been overruled.

As usual the Lord Chancellor with that masculine force for which he is distinguished, put the case in a nutshell, when he said: "Assume it to be the constitutional view that a person can only have damages assessed against him for a tort [by a jury] what right has a Court to intervene and say that damages which in its judgment are appropriate shall be the amount assessed against him? The only judgment by a jury is one which the Court itself, by the hypothesis, says is unreasonable and excessive. Has not the defendant a right to say, I refuse to have judgment [damages] assessed against me by the Court? The law gives me a right to a jury, and because the jury have already found a verdict against me, which you decide cannot be allowed to stand because it is unreasonable and excessive, how does that displace my right to have the verdict of the jury upon the question?"

Put thus, the impropriety of the practice heretofore prevailing seems manifest.

The House of Lords, it is true, is not our ultimate Court of Appeal, but probably its high authority will be sufficient hereafter to warrant a modification in the practice on this point, and

we may expect in future the rule will be in cases where the Court finds the damages in an action of tort are excessive, that a new trial will be granted ex debito justitiæ, unless both parties consent to a reduction of damages.

A paper was read at the last meeting of the New York Bar Association on the influence of the Bar in the selection of judges. Much that was said on that occasion has no application here as the system of appointment is entirely different, but the germ thought is applicable; and what the writer says in the following words is worthy of consideration in Canada: "It is generally agreed by the lawyers throughout the country that the Bar should and can exercise an influence in the selection of judges, and that it does not exercise as much influence as it could or should." And again: "Lawyers and Bar Associations should therefore plan to work through the recognized political channels and there is no doubt that they can there influence the nomination of fit men for the Bench. Political leaders are well aware of the importance of keeping in touch with the public sentiment, and dread defeat, as their continuance in power depends upon success, and if they can be made to feel the influence of the Bar in defeating their incompetent favourites they will not force them on the tickets, but will make the best compromise they can. Lawyers need only unite and stand firm on such a platform."

The remarks lastly quoted have, of course, special reference to an elective system; but they give food for reflection, even where judicial appointments are in the gift of the Government. The taking of this patronage out of the political arena would, it is submitted, be for the benefit of the public; and therefore consideration might well be given to the thought above embodied. We should be glad to have suggestions on the subject from any of our readers. A cognate subject is the appointment of King's Counsel. This also should not be, as it is now, purely a matter of politics. The Governments of the Dominion and of Ontario are both so strong that they could well afford to deal with these matters on their merits rather than continue in the old miry path of political patronage.

REVIEW OF CURRENT ENGLISH CASES.

SOLICITOR AND CLIENT—CROSS-CLAIM OF CLIENT—ACCOUNT STATED —ACTION BY SOLICITOR FOR AMOUNT DUE ON ACCOUNT STATED —DELIVERY OF BILL.

In *Turner* v. *Wells* (1905) 1 K.B. 486, the plaintiff was a solicitor and the action was brought to recover from a client the balance due on an account stated. The solicitor had a claim for costs no bill of which had been delivered, the client had cross-claims against the solicitor, the parties had met and had verbally agreed upon the amounts of their respective claims and that after setting off the one against the other a balance remained due to the solicitor. The defendant contended that the action would not lie, because there had been no delivery of a bill of costs. At the close of the plaintiff's case the county judge, who tried the action, held that the plaintiff's claim was barred by the Statute of Limitations, and that the agreement amounted in effect to an agreement to pay a lump sum for costs which was not binding on the client. The Divisional Court (Lord Alverstone, C.J., and Kennedy and Ridley, JJ.) were of the opinion that if the facts were, that there were cross-claims between the plaintiff and defendant and the amounts of these claims had been agreed on, then the action would lie though there was no writing; but if there was no cross-claim by the defendant, and the agreement merely consisted in fixing the amount of the solicitor's costs, then that would not be sufficient to support the action. As the defendant's witnesses had not been heard a new trial was granted.

NEGLIGENCE OF LANDLORD—HOUSE LET IN FLATS—DAMAGE TO TENANT BY REASON OF DEFECT IN ROOF UNDER LANDLORD'S CONTROL.

Hargroves v. *Hartopp* (1905) 1 K.B. 472 was an action by a tenant of a flat, for damages occasioned by a gutter on the roof of the premises being choked up. The action was brought against the landlords who retained the control of the roof of the house. The defendants were notified that the gutter was choked, but neglected to have it cleared out till after the lapse of five days from the receipt of the notice, and in the meantime the plaintiffs suffered the damage complained of by reason of rain water finding its way into the plaintiff's flat consequent

upon the stoppage. The judge at the trial gave judgment for the plaintiff and the Divisional Court (Lord Alverstone, C.J., and Kennedy and Ridley, JJ.) affirmed his decision, holding that though the gutter in question was not demised, and there was no implied covenant to keep it in repair, yet that the landlord in maintaining a gutter and not keeping it in proper repair was guilty of a breach of duty, for which he was liable to persons injured thereby.

PRACTICE—FORECLOSURE—SUBSEQUENT CONCURRENT ACTION ON COVENANT—STAY OF PROCEEDINGS—MORTGAGE ACTION.

In *Williams* v. *Hunt* (1905) 1 K.B. 512 the Court of Appeal (Collins, M.R., and Stirling, L.J.) have decided that where a mortgagee commences an action for foreclosure, and then commences a concurrent action on the covenant for payment in the mortgage, in order to obtain a speedy judgment as on a specially indorsed writ, the second action must be stayed and the plaintiff left to pursue all his remedies in the foreclosure action.

LANDS TAKEN FOR PUBLIC DEFENCE—COMPENSATION.

In *Blundell* v. *The King* (1905) 1 K.B. 516 lands were expropriated for the purpose of public defence in order to construct a fort, a petition of right for compensation was filed, and Ridley, J., who tried it, held that the owner was entitled to compensation for injurious affection of his adjoining lands arising from the natural and ordinary use of the lands as a fort and the firing of guns placed therein.

MUNICIPAL BY-LAW—EVIDENCE—MUNICIPAL CORPORATIONS ACT, 1882 (45 & 46 VICT. C. 50) S. 24 (THE MUNICIPAL ACT, 3 EDW. VII. C. 19, S. 333, ONT.).

Robinson v. *Gregory* (1905) 1 K.B. 534 was a summary proceeding to recover a penalty for breach of a municipal by-law. In support of the plaintiff's case a copy of the by-law under the corporate seal was produced. By the Municipal Corporations Act, s. 24 (and see the Municipal Act, 3 Edw. VII. c. 19, s. 33), such copy is, until the contrary is proved, "sufficient evidence of the due making and existence of the by-law." On the hearing of the case the defendant contended that the production of the copy was no evidence of its due publication and the justices refused to convict. The Divisional Court (Lord Alverstone, C.J., and Kennedy and Ridley, JJ.) held that they were wrong, and that in the absence of any evidence to the contrary, the copy produced

was evidence not only of the by-law, but also that all conditions precedent to its becoming operative had been complied with.

CRIMINAL LAW—EVIDENCE—INDECENT ASSAULT—COMPLAINT BY PROSECUTRIX—COMPLAINT ELICITED BY QUESTION.

In *The King* v. *Osborne* (1905) 1 K.B. 551 the defendant was indicted for an indecent assault upon a girl under the age of thirteen. The girl had been left by two companions in the defendant's shop and on their return shortly afterwards they met her coming away, and one of them asked why she had not stayed till their return, when the prosecutrix made an answer incriminating the defendant. On the trial the reception of this evidence was objected to, but the Court for Crown Cases Reserved (Lord Alverstone, C.J., and Kennedy, Ridley, Channell and Phillimore, JJ.) held that it was admissible not as evidence of the truth of the charge alleged, but as corroborating the credibility of the girl and as evidence of the consistency of her conduct.

SALE OF GOODS—RELIANCE ON SELLER'S SKILL—MILK SUPPLIED FOR CONSUMPTION—REPRESENTATION BY VENDOR OF CARE USED BY HIM IN SEEING THAT MILK SOLD WAS PURE—IMPLIED WARRANTY.

Frost v. *Aylesbury Dairy Co.* (1905) 1 K.B. 608 was an action brought by the plaintiff a purchaser of milk from the defendants to recover damages occasioned by the milk sold being impure and containing typhoid germs, and in consequence thereof the plaintiff's wife contracted and died of typhoid fever. A book furnished by the defendants, in which the daily supply was entered, was interleaved with printed notices of the precautions taken by the defendants to supply milk pure and unadulterated and free from the germs of disease. Under these circumstances the Court of Appeal (Collins, M.R., and Mathew and Cozens-Hardy, L.JJ.) held that there was an implied warranty on the part of the defendants that the milk supplied was free from germs of disease and that the plaintiff was entitled to recover.

SHERIFF—POSSESSION MONEY—SEVERAL WRITS.

In *Glasbrook* v. *David* (1905) 1 K.B. 615 Farwell, J., decides that where a sheriff takes possession of goods under a fi fa, and subsequently other fi fas against the debtor are put in his hands for execution, and he has merely kept the same man in possession for all the creditors, he cannot, upon the execution being withdrawn, recover possession money from more than one creditor.

COMPANY—CERTIFICATE OF SHARES—NOTE ON CERTIFICATE THAT TRANSFER WILL NOT BE REGISTERED WITHOUT ITS PRODUCTION — REGISTERING TRANSFER WITHOUT PRODUCTION OF CERTIFICATE.

Rainford v. *Keith* (1905) 1 Ch. 296 is one of those cases in which it would seem more in accordance with natural justice if the decision had been the other way. A certificate of shares in a limited company bore upon its face a note to the effect that no transfer of the shares therein mentioned could be registered without the production of the certificate. One C., the owner of the shares, deposited the certificate, together with a transfer of the shares, with the plaintiff as security for an advance. Subsequently, unknown to the plaintiff, C. sold the same shares to one Y., and lodged with the company for registration a transfer of the shares to Y. without the certificate, but with a written declaration of C. that the certificate was in the possession of a friend, but not as security for a loan or other consideration. C. was a servant of the company, and the directors, acting in good faith, and relying on the declaration, registered the transfer to Y., and issued to him a certificate as owner of the shares. The plaintiff afterwards applied to the company to register his transfer, and registration was refused; he, therefore, brought the action claiming damages against the company for having wrongfully registered the shares in Y.'s name: but Farwell, J., held that the company was not liable, and that the note on the certificate did not amount to a representation to, or a contract with, the holder of the certificate, that the shares would not be transferred without its production, but was only a warning to the holder to take care of the certificate, because without its production he could not compel the company to register a transfer.

COMPANY — WINDING-UP — CREDITORS—"FINAL DIVIDEND"—ACCEPTANCE OF "FINAL DIVIDEND"—SURPLUS ASSETS—FURTHER CLAIM FOR INTEREST—ACCORD AND SATISFACTION.

In re Duncan (1905) 1 Ch. 307. The company in liquidation had acted as brokers and received from certain customers moneys in respect of what were held to be illegal gambling transactions. The customers were held entitled to prove a claim in the winding-up for the amounts remaining in the company's hands as deposits. Two dividends were paid, amounting together to 20s. in the pound, and each creditor gave a receipt for the last dividend, describing it as "the amount payable to me in respect of the second and final dividend." After making these payments a surplus of assets remained in the liquidator's hands, and the cred-

itors then claimed to be paid interest on the deposits; and it was shewn that in the course of dealing between the company and its customers, interest at 4 per cent. was paid on deposits. It was contended by the liquidator that the acceptance of the final dividend amounted to an accord and satisfaction; but Buckley, J., held that there was an implied contract on the part of the company to pay interest, and that the creditors were entitled to receive out of the surplus, interest from the date of the winding-up until the date of the payment of the second dividend, and that the form of the receipt for the second dividend did not preclude them from setting up the claim to interest, on it appearing that the company was solvent.

VENDOR AND PURCHASER—IMPLIED COVENANTS FOR TITLE—BREACH OF IMPLIED COVENANT—DAMAGES—CONVEYANCING AND PROPERTY ACT, 1881 (44 & 45 VICT. c. 41), s. 7—(R.S.O. c. 119, s. 17).

Great Western Railway Co. v. *Fisher* (1905) 1 Ch. 316 was an action to recover damages for breach of an implied covenant for title on the sale of land. The land in question formed part of a building estate, on which a road had been laid out, and parts previously sold according to a building scheme. The bargain between the vendor and the purchaser was, that the purchasers were to have the road free from any rights of easement of any third parties, but the deed contained no express covenants for title, but the defendant by the deed purported to convey as beneficial owner in fee simple. On the completion of the purchase the purchasers proceeded to block up the road, whereupon they were sued for damages by a previous purchaser under the building scheme. This claim was referred to arbitration, and resulted in an award in favour of the claimants for £510; the plaintiffs still disputing their liability, the claimant brought an action in which the plaintiffs were held liable to pay the £510 and interest, and the costs of the action and arbitration, which they accordingly paid; and the present action was brought to recover over against their vendor the amounts so paid, together with the plaintiffs' own cost of the proceedings. Buckley, J., held that under the Conveyancing and Property Act, 1881, s.7 (see R.S.O. c. 119, s. 17), there was an implied covenant by the vendor against incumbrances, and that under it the plaintiffs were entitled to recover the £510 and interest thereon, and subsequent interest since payment by the plaintiffs, and also their own and the claimants' costs of the arbitration; but that the

defendant was not liable for the costs of the action brought on the award. The fact that the plaintiffs knew of the outstanding claim when they took their conveyance was held not to preclude them from making the claim to be indemnified against the same.

CONTRACT—SALE OF CHATTELS—EXECUTED CONTRACT—MISREPRESENTATION—RESCISSION—DELAY.

Seddon v. *North Eastern Salt Co.* (1905) 1 Ch. 326 was an action to rescind a sale of the shares of a limited company. The contract was completed in October, 1903, when the plaintiff, as the purchaser of all the shares, took possession of the business of the company and carried it on until 20th January, 1904, when he commenced the present action. The plaintiff claimed that in the negotiations which led to the purchase it was represented that the company's net trading loss had not been over £200: but on an audit made of the company's affairs, in December, 1903, it appeared that a loss of £900 had been made. No fraud was charged or proved against the vendors, and Joyce, J., held that in the absence of fraud a purchaser is not entitled to the rescission of an executed contract. That in the present case the utmost that was shewn was an innocent misrepresentation, which, though a good ground for the Court refusing to enforce an executory contract, was nevertheless an insufficient ground for rescinding an executed one. Moreover, the delay which had taken place was itself a bar to the granting any such relief.

MUNICIPALITY—ROAD—MAINTENANCE AND REPAIR OF ROAD—MANDATORY ORDER—LOCAL GOVERNMENT ACT, 1888 (51 & 52 VICT. c. 41), s. 11—(3 EDW. VII. c. 19, ss. 601, 606 (O.)).

Attorney-General v. *Staffordshire* (1905) 1 Ch. 336 was an action brought by the Attorney-General at the relation of two private persons to compel the defendants to execute certain works for the maintenance and repair of a public road. The defendants were a County Council, and by the Local Government Act, 1888, the road in question was vested in them, and by that Act it was to be wholly maintained and repaired by them (see 3 Edw. VII. c. 19, ss. 601, 606(O.)). At a certain point the road was cut out of the side of the hill, and in such places was supported on the lower side by embankments, and a retaining stone wall. These embankments and wall had become out of repair. The plaintiff claimed a declaration that the defendants were liable to repair and maintain the embankments and a mandatory order commanding them to make such repairs. Joyce, J., on the evidence, found that the road was duly maintained and not out of repair, but he

says even if it were out of repair, it would be contrary to the practice of the Court to grant a mandatory order to repair, because the Court will not superintend works of building and repair, and an injunction or a mandatory order, if granted, must be certain and definite in its terms, and must explicitly state what the person against whom it is granted is required to do, or refrain from doing. The action was therefore dismissed.

SOLICITOR AND CLIENT—THIRD PARTY—COSTS—TAXATION—SOLICITORS' ACT, 1843 (6 & 7 VICT. c. 73), s. 38—(R.S.O. c. 174, s. 45).

In re Cohen (1905) 1 Ch. 345. A third party had obtained an order for taxation of a solicitor's bill under the Solicitors' Act, 1843, s. 38 (see R.S.O. c. 174, s. 45), and the question was on what basis the taxation was to be made. Eady, J., held that, in such cases, the bill must be taxed as between solicitor and client, and not as between the solicitor and the third party, though items in the bill for services which the third party is not liable to pay must, as against him, be disallowed, following *In re Longbotham* (1904) 2 Ch. 152 (noted ante, vol. 40, p. 741).

LIFE INSURANCE—DECLARATION AS TO AGE OF ASSURED—MISTAKE—ACCEPTANCE OF PREMIUMS AFTER DISCOVERY OF MISTAKE—AFFIRMANCE OF VOIDABLE CONTRACT.

Hemmings v. *Sceptre Life Association* (1905) 1 Ch. 365. This was an action on a policy of life assurance payable at the death of the assured, or on her attaining sixty. The policy (issued in 1888) stated that the proposal and the answers of the assured to certain questions formed the basis of the contract, and if it should thereafter appear that the proposer had made any false statement the policy should be void and the premiums forfeited. The assured in answer to questions as to her age, by mistake, stated that she was three years younger than she actually was. In 1897 the mistake as to age was discovered and made known to the insurance company and they thereafter accepted payment of two annual premiums. In August, 1899, the company wrote to the plaintiff who was assignee of the policy informing him of the mistake and stating that the proper premium for the correct age of the assured was £135 6s. 8d. instead of £112 16s. 8d., and suggesting that the plaintiff should pay the yearly difference of £22 10s. on the previous twelve years with compound interest at 5 per cent., and should in future pay the larger premium. This the plaintiff declined to do, but annually tendered the premium of £112 16s. 8d. which the company refused to accept. The

assured having attained 60 years the action was brought. Kekewich, J., held (1) that, as the misrepresentation had not been wilful, the defendants were not entitled to avoid the policy, and forfeit the premiums; (2) that when the mistake was discovered in 1897 they might have returned the premiums previously received, and refused to continue the policy; and (3) that by accepting the two premiums, after discovering the mistake, they must be taken to have elected to affirm the policy as still subsisting, and that therefore the plaintiff was entitled to recover.

WILL—CONSTRUCTION—POWER TO SELL—DEVISE OF "WHAT IS LEFT" AFTER DEATH OF A. TO TWO OF SEVERAL CO-HEIRS—LIFE ESTATE BY IMPLICATION.

In re Willatts, Willatts v. *Artley* (1905) 1 Ch. 378 is a decision of Farwell, J., on the construction of a will, concerning which it would not be surprising to find an appellate Court coming to a different conclusion. The testator appointed his wife sole executor; he bequeathed his furniture to her absolutely, "and at my death the said Emma Willatts to have power to sell all property and land belonging to me, and at her death what is left to be divided between" my two daughters, the two daughters being two of his five co-heiresses. Farwell, J., decided that as the two daughters were some only of the testator's heirs, there was no implied life estate in favour of the widow, as there would have been had the gift over after her death been to all the testator's heirs; and that "what is left" meant "the net residue" after payment of debts, and costs of realization, as to which during the widow's life he held that there was an intestacy. As the learned judge admits, his decision probably fails to carry out the true intention of the testator which was doubtless, as he guesses, to give the widow power to apply the corpus to such an extent as she required for her own benefit; it is possible that another Court may discover how the testator's probable intention may be effectuated consistently with what he actually said.

ADULTERY—CONDONATION—REVIVAL—HUSBAND AND WIFE.

In *Copsey* v. *Copsey* (1905) P. 94, a divorce case, it was held by Barnes, J., that desertion for two years without reasonable excuse revives condoned adultery.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

EXCHEQUER COURT.

Burbidge, J.] WHEATLEY *v.* THE KING. [Nov. 14, 1904.

Government railway—Carriage of goods—Breach of contract—Damages—Negligence.

The suppliant sought to recover a sum of $886.38 alleged to have been lost by him on a shipment of sheep undertaken to be carried by the Crown from Charlottetown, P.E.I., to Boston, U.S.A. The loss was occasioned by the sheep not arriving in Boston before the sailing of a steamship thence for England on which space had been engaged for them; and the cause of such failure was lack of room to forward them on a steamboat by which connections are made between the Summerside terminus of the P.E.I. Railway and Pointe du Chene, N.B., a point on the Intercolonial Railway. The suppliant alleged that before the shipment was made the freight agent of the P.E. Island Railway at Charlottetown represented to him that if the sheep were shipped at Charlottetown on a certain date, which was done, they would arrive in Boston on time.

Held, 1. Even if the suppliant had proved, which he failed to do, that this representation had been made, it would have been inconsistent with the terms of the way-bill and contrary to the regulations of the Prince Edward Island Railway, and therefore in excess of the freight agent's authority.

2. The evidence did not disclose negligence on the part of any officer or servant of the Crown within the meaning of section 16(c) of the Exchequer Court Act.

Weeks, for suppliant. *Haszard*, K.C., for respondent.

Routhier, J.] GAGNON *v.* SS. SAVOY. [Dec. 22, 1904.

DION *v.* SS. POLINO.

Maritime law—Seaman's wages—Jurisdiction of Court to hear claim for wages under $200—Foreign ship—Costs.

1. When the exceptions in s. 56 of the Seaman's Act (R.S.C. c. 74) do not apply, the Exchequer Court, on its Admiralty side,

has no jurisdiction to entertain a claim for seamen's wages under the amount of $200 earned on a ship registered in Canada. *The Ship V. J. Aikens*, 7 Ex. C.R. 7, decided under similar provision in s. 34, c. 75, R.S.C., not followed.

2. The Admiralty Act, 1891, being a general law, and enacting general provisions as to jurisdiction, does not repeal by implication the special provisions of R.S.C. c. 74, s. 56, limiting the jurisdiction of this Court in proceedings for seamen's wages.

3. This Court has no jurisdiction to entertain a claim for seaman's wages under an amount of $200 earned on a ship registered in England when the exceutions mentioned in s. 165 of the Merchants Shipping Act, 1894, do not apply.

4. Costs in these actions were not allowed to the defendants because exception to the jurisdiction to entertain the claim sued for was not taken in limine litis.

Pentland, K.C., for plaintiffs. *Gibsone*, for defendants.

Burbidge, J.] [Jan. 12.

NICHOLLS CHEMICAL CO. *v.* THE KING.

Liability of Crown as common carrier—Loss of acid in tank car during transportation—Contract—Negligence—Liability of Crown—Costs.

The Crown is not, in regard to liability for loss of goods carried, in every respect in the position of an ordinary common carrier. The latter is in the position of an insurer of goods, and any special contract made is in general in mitigation of its common law obligation and liability. The Crown, on the other hand, is not liable at common law, and a petition will not lie against it for the loss of goods carried on its railway except under a contract, or where the case falls within the statute under which it is in certain cases liable for the negligence of its servants (50-51 Vict., c. 16, s. 16) and in either case the burden is on the suppliant to make out his case.

By an arrangement between the consignee of the acid in question and the Intercolonial Railway freight charges on goods carried by the latter were paid at stated times each month, and in case anything was found wrong a refund was made to the consignee. In the present case the consignee paid the freight on the acid amounting to $135.00, no refund being made by the Crown. This amount was paid to the consignee by the suppliant, and it claimed recovery of the same from the Crown in its petition of right. The evidence shewed that by the arrangement above mentioned the freight was not payable on the transporta-

tion of the tank car, but on the acid contained in the car at the rate of 27 cents per 100 pounds of acid.

Held, that the Crown was only entitled to the freight on the number of pounds delivered to the consignee at Sydney; and that the balance of the amount paid by the consignee should be repaid to the suppliant with interest.

As the suppliant, while succeeding as to part of the amount claimed, had failed on the main issue in controversy, each party should bear its own costs.

Davidson, for suppliant. *Mellish,* K.C., for respondent.

Burbidge, J.] McLELLAN *v.* THE KING. [Jan. 12.

Contract for sale of railway ties—Delivery—Inspection—Payment—Purchase by Crown from vendee in default—Title.

In January, 1894, the suppliant agreed with M., acting for the B. & N.S.C. Company, to supply the company with railway ties. The number of the ties was not fixed, but the suppliant was to get out as many as he could, to place them along the line of the Intercolonial Railway, and to be paid for them as soon as they were inspected by the company. The ties were not to be removed from where the suppliant placed them until they were paid for. During the season of 1894 the suppliant got out a number of ties, which were piled alongside the Intercolonial Railway, inspected, those accepted being marked with a dot of paint and the letters B. & S. and thereafter paid for by the company. In 1905 the suppliant made a second agreement with M. to get out another lot of ties for the company upon the same terms and conditions. Under this agreement the suppliant got out ties and placed them along the Intercolonial Railway where the former ties were piled, but the lots were not mixed. The second lot was inspected and marked with the dot of paint, but the letters B. & S. were not put on them. The suppliant demanded payment for them from the company but was not paid. In November, 1896, the company sold both lots of ties to the Crown for the use of the Intercolonial Railway, and was paid for them; and in May or June, 1897, the Intercolonial Railway authorities removed all the ties.

Held, that the B. &. N.S.C. Company had not at the time when they professed to sell the second lot of ties to the Crown any right to sell them, and the Crown did not thereby acquire a good title to the ties. That being so, the suppliant was entitled to have the

possession of the ties restored to him, or to recover their value from the Crown.

J. A. Chisholm and *McLellan*, for suppliant. *Mellish*, K.C., for respondent.

Burbidge, J.] [Jan. 18.

IN RE THE ATLANTIC AND LAKE SUPERIOR RY. CO.

Scheme of arrangement—Motion to restrain pending action—Grounds for refusal.

In proceedings taken to confirm a scheme of arrangement, filed by a railway company under the provisions of s. 285 of the Railway Act, 1903, an application was made on behalf of the railway company for an order to restrain further proceedings in an action against such company begun in the Superior Court for the District of Montreal, by certain creditors, before the filing of the scheme of arrangement, but which had not proceeded to judgment:

Held, that as there were real and substantial issues to be tried out between the parties in the action pending in the Superior Court, the same ought to be allowed to proceed pending the maturing of the scheme of arrangement. *In re Cambrian Railway Company's Scheme*, L.R. 3 Ch. App. 280, n. 1, referred to.

F. S. Maclennan, K.C., in support of motion. *T. Chase-Casgrain*, K.C., contra.

Burbidge, J.] BEACH *v.* THE KING. [Feb. 15.

Lease of water power—Stoppage of power on improvement of canal — Damages — New lease — Waiver — Surrender — Measure of damages.

The suppliant was the owner of a flouring mill at Iroquois, Ont., which was built upon a portion of the Galops Canal reserve, and, prior to Dec. 12, 1898, was operated by water power taken from the surplus water of the canal. The site upon which the mill was built, as well as the water power sufficient to drive four runs of ordinary mill stones, equal to a ten horse power for each run, were held by the suppliant under a lease from the Crown. On that date the canal was unwatered to facilitate the construction of certain works that were being carried out by the Government of Canada for its enlargement and improvement. At that time it was not intended that the stoppage of the supply of such surplus water to the mill should be permanent, but temporary

only. Subsequently, however, certain changes in the work were made which resulted in such supply being permanently discontinued. These changes were made by the Crown, at the request of the suppliant, and others, for the purpose of developing the water power, of which the suppliant expected to obtain a lease on favourable terms. If the suppliant had obtained a lease of considerable power, as he had hoped to get, he would have been willing to release all claim for damage arising from the loss of the forty horse power supply of water he had under his first lease; but in the end the Minister of the Department of Railways and Canals was not able to lease the suppliant as much power as he had expected, and in accepting the lease of a smaller quantity of power it was agreed between him and the Department that his rights under the earlier lease should not be affected by the grant of the new one.

Held, 1. The suppliant was entitled to recover compensation for the loss of power to which he was entitled under the earlier lease.

2. The Court did not include in such compensation any claim for loss of profits or dissipation of business, because, on the one hand, in its inception the stoppage of water was lawful and within the lease, and there was no ground upon which such claim could be allowed except that founded upon a change in the works that was made in part at the instance of the suppliant and to meet his views, and wholly with his acquiescence and consent; while on the other hand he had at all times a well-founded claim either to have the power granted by the former lease restored to him, or to be paid a just compensation for the loss of it.

It was provided in the first lease that the suppliant would have no claim for damages in the event of a temporary stoppage of the water for the purpose inter alia, of improving or altering the canal. Upon the question whether the stoppage of the water supply for the period of two and one-half years, being the time actually necessary for the execution of the works for enlarging and improving the canal, would have been a temporary stoppage within the meaning of the former lease,—

Held, 1. Having regard to the subject matter of the lease, any stoppage of the supply of surplus water actually necessary for the repair, improvement or alteration of the canal, in the public interest, and to meet the requirements of the trade of the country, would be temporary within the meaning of the provision above referred to, although it might last for several years.

2. Upon the question as to whether the acceptance by the suppliant of the lease of 1901 worked a surrender of the grant of surplus water made by the former lease.

3. As there was nothing within the two leases which would go to affect the validity of either of them, and there was no inconsistency between them, the two leases should stand.

4. The damages herein should be measured by the cost of supplying and using for the operation of the mill forty horse power furnished some other way than by the water supply in question.

Shepley, K.C., and *Hilliard*, for suppliant. *Chrysler*, K.C., and *Larmouth*, for respondent.

Burbidge, J.] RYDER *v.* THE KING. [Feb. 27.

Public work—Injury to the person—Negligence—Doctrine of common employment in Manitoba—Liability of Crown.

1. The effect of clause (*c*) s. 16 of the Exchequer Court Act is not to extend the Crown's liability so as to enable anyone to impute negligence to the Crown itself, or to make it liable in any case in which a subject under like circumstances would not be liable.

2. In the Province of Manitoba the Dominion Government is not liable for any injury to one of its servants arising from the negligence of a fellow-servant. *Filion* v. *The Queen*, 24 S.C.R. 482 referred to.

3. With respect to the liability of the Dominion Government in cases involving the doctrine of common employment, nothing short of an Act of Parliament of Canada can alter the law of Manitoba as it stood on that subject on the 15th July, 1870.

Semble, the Workmen's Compensation Act, R.S. Man. c. 178, does not apply to the Crown, the Crown not being mentioned therein.

Heap, for suppliant. *Howell*, K.C., and *Mathers*, for respondent.

Burbidge, J.] RE BAIE DE CHALEUR RY. CO. [March 27.

Railway Act, 1903—Scheme of arrangement—Unsecured creditor not assenting to scheme—Objection to confirmation of scheme.

An unsecured creditor who does not assent to a scheme of arrangement filed under section 285 of the Railway Act, 1903, is not bound thereby.

It is, however, a good objection to such scheme that it purports in terms to discharge the claim of such a creditor.

By a scheme of arrangement between an insolvent railway company and its creditors, it was proposed to cancel certain out-

standing bonds and to issue new debentures in lieu thereof against property that was at the time in the possession of the trustees for the bondholders of another railway company.

A portion of such new debentures was to be issued upon the insolvent company acquiring the control of certain claims, bonds and liens against the railway; and part upon a good title to the railway being secured and vested in the trustees for the new debenture holders. The railway company, the trustees for whose bondholders were in possession of the railway, objected to the scheme of arrangement. Its rights therein have not been determined or foreclosed.

Held, that the railway company was entitled to be heard in opposition to the scheme, and that the latter was open to objection in so far as it purported to give authority to issue a part of the new debentures upon acquiring the control of such claims, bonds and liens, and without any proceedings to foreclose or acquire the rights of such railway company in the railway.

No scheme of arrangement under the Railway Act, 1903, ought to be confirmed if it apepars or is shewn that all creditors of the same class are not to receive equal treatment.

Hogg, K.C., *T. Chase-Casgrain*, K.C., and *A. C. Casgrain*, in support of motion for order to confirm scheme. *F. S. Maclennan*, K.C., *J. L. Perron*, K.C., *N. K. Laflamme*, *E. N. Armstrong*, *C. Barnard*, *P. Trudel*, *E. Armstrong*, contra.

Province of Ontario.

COURT OF APPEAL.

From Meredith J.] REX *v.* ELLIOTT. [Jan. 23.

Criminal law—Conspiracy to prevent or lessen competition—Cross appeal by Crown against acquittal.

Defendant was president and took an active interest in an association for the protection of its members (coal dealers) against the shipment of coal direct to consumers and to prevent members from buying coal from any producer who sold direct or to dealers who refused to maintain prices, with a penalty of 50 cents a ton on all such sales and made provision for expulsion of members who bought from such producer and sent out lists of members and persons, not regular dealers, and stated that sales to the latter would cause enquiry, perhaps resulting in

trouble. Evidence was given of sales refused to dealers, not members of the Association, and that all dealers could not become members as of right, as tending to increase competition, etc.

Held, on appeal that the defendant was rightly convicted of an offence under sub-s. (*d*) of s. 520 of the Code.

Held, also, that a cross appeal by the Crown which asked that defendant should be convicted on counts of the indictment on which he had been acquitted should be dismissed as s. 5 of 52 Vict. c. 41 (D.), only gives an appeal from a conviction.

Judgment of MEREDITH, J., affirmed.

Brewster, K.C., for appeal. *J. R. Cartwright*, K.C., Dep. Atty.-Genl., and *Clute*, K.C., contra.

Full Court.] [Jan. 23.

ARCHER *v.* SOCIETY OF THE SACRED HEART.

Contract—Religious Society—Member of—Service in—Dismissal from — Disfranchisement—Damages—Release—Foreign association—Statute of Frauds.

The defendant, the Society, was a religious association, incorporated under the laws of France, having local institutes in the United States, Ontario, Quebec and other countries separately incorporated according to the laws of those countries, composed of two classes of women, those destined for teaching and lay sisters employed in household duties, with periods of probation, during the second of which (after the first three months) they took vows of poverty, chastity and obedience and became "aspirants," before being permitted to take final vows, up to which latter time the Society, according to its rules, retained the right to dismiss them for grave causes; that right belonging to the Superior General in France who might communicate it to others. The plaintiff became a lay sister in the United States in 1884 and was admitted to the three vows of an "aspirant," but proceeded no further, remaining an "aspirant" only, until dismissed. In February, 1901, she was transferred to an Institute in Ontario until the following June when in consequence of great disturbance and destruction of property, ascribed to her, she was removed to an asylum on the certificate of two physicians, as insane, until the following September, when she was declared cured and discharged. The defendant E.S.,

the Superior of the local organization, reported the facts to the Superior General in France and asked for a discharge of the plaintiff from her vows; which was sent to her, to be used as she considered expedient, and she caused it to be delivered to the plaintiff after her release from the asylum; and the plaintiff executed a release prepared by the Society of all causes of action, contracts, etc., in consideration of $300. Then plaintiff brought an action against the Society, the Institute and E S. for compensation or on a quantum meruit in respect of her 17 years' services and damages for wrongful dismissal, false imprisonment and imputation of insanity, alleging the release was obtained from her by importunity and undue influence.

Held, 1. There was jurisdiction to entertain the action in this Province against the Society upon the ground that the Society "resides" in this Province and that the defence of the Statute of Frauds failed.

2. The action was properly dismissed as against the Institute and should be dismissed as against E.S. with neither of whom was there any contract and the jury had absolved the latter from all liability in tort.

3. There was no liability of the Society for compensation for services or damages, and that the defence based upon the plaintiff's release should be sustained.

Shepley, K.C., and *McKillop,* for defendants' appeal. *Betts* and *H. Cronyn,* contra.

From Britton, J.] RE ATLAS LOAN CO. [March 17.

CLAIMS ON RESERVE FUND.

Loan company—Winding up—Shareholders contributing to reserve fund—Rights of creditors.

Shareholders in a loan company in answer to a proposal from the company paid in towards the company's reserve fund dividends coming to them from the company and various other sums of money with a view to increase the reserve fund to the same amount as the paid up stock. In winding up proceedings:

Held, that such shareholders were not entitled to rank as creditors upon the assets of the company equally with other creditors and that any claim they had against the company and

its reserve fund was subject to the payment of the debts of the company. Judgment of BRITTON, J., 40 C.L.J. 677, 7 O.L.R. 706, affirmed.

J. A. Robinson, Hellmuth, K.C., *Douglas*, K.C., *Casey Wood* and *H. L. Drayton*, for the various parties.

From Street, J.] IN RE CHANTLER. [April 4.

Jury—Inspection of panel—Criminal law.

The restriction imposed by s. 94 of the Jurors' Act, R.S.O. 1897 c. 61, upon the disclosure of the names of the jurors and inspection of the panel, applied in criminal proceedings.

Judgment of STREET, J., affirmed, OSLER, J.A., dissenting.

Arnoldi, K.C., for appellant. *J. R. Cartwright*, K.C., for respondent.

From Meredith, C.J.C.P.] [April 4.

FLYNN v. TORONTO INDUSTRIAL EXHIBITION ASSOCIATION.

Negligence—Dangerous premises—Invitation—Landlord and tenant.

The defendants were the lessees of large grounds which they used for the purpose of holding an annual exhibition of arts and manufactures, etc., and as an additional means of attracting the public various amusements were provided. Among these was a merry-go-round in a small fenced-in enclosure within the grounds, the owner of this merry-go-round having entered into a special agreement with the defendants as to the place and mode of using it and for the payment to them of a certain sum out of the moneys received by him for its use. For entrance to the grounds a fee was charged by the defendants and for entrance to the small enclosure and use of the merry-go-round a further fee was charged by its owner. The plaintiff having paid these fees got on the merry-go-round and was severely injured on its breaking because of a defect in its construction.

Held, that the agreement in question was a license, not a lease; that the defendants had a right of supervision which they should have exercised; that they had impliedly invited the public

to use the merry-go-round; and that they were liable in damages because of its negligent construction.

Judgment of MEREDITH, C.J., affirmed.

Shepley, K.C., and *R. H. Greer*, for appellants. *W. N. Ferguson* for respondent.

From Divisional Court.] [April 4.

GIBB *v.* MCMAHON.

Trustees—Sale of land—Majority of trustees—Specific performance.

Land was vested in three trustees in trust to sell at any time in their discretion. Two of the trustees entered into an agreement to sell the land without, as was held on the evidence, giving the third an opportunity of considering the offer and without authority from him to accept it: —

Held, that the two trustees could not bind the third, and that specific performance of the agreement to sell should not be enforced.

Judgment of a Divisional Court reversed

Delamere, K.C., and *Aylesworth*, K.C., for appellants. *Ritchie*, K.C., and *Ludwig*, for respondents.

From Falconbridge, C.J.K.B.] [April 12.

TOWNSHIP OF FITZROY *v.* COUNTY OF CARLETON.

Municipal corporations—Highways and bridges—Deviation.

Held, OSLER, J.A., dissenting, that the road in question was a boundary line road within the meaning of 3 Edw. VII. c. 19, s. 617, sub-s. 2, notwithstanding its deviation for the purpose of avoiding the expense of building bridges across a river.

The history and meaning of the boundary line road legislation discussed.

Judgment of FALCONBRIDGE, C.J.K.B., reversed in part.

Aylesworth, K.C., for County of Renfrew. *J. A. Allan*, for County of Lanark. *Shepley*, K.C., and *R. V. Sinclair*, for Township of Fitzroy. *D. H. McLean*, for County of Carleton.

ELECTION CASES.

Maclennan, J.] [March 2.

RE WEST HURON PROVINCIAL ELECTION.

Recount—Ballots—Mistaken initials endorsed—Torn ballot—Two adhering as one—Marked with numbers in poll book.

1. On a recount of ballots the county judge having found that three ballots marked as delineated in the judgment were good and that the letters "B.S." on the back of a ballot were placed there by the deputy returning officer by mistake for his own initials "R.S." and that the validity of that ballot was saved by sub-s. 3 of s. 112 of R.S.O. 1897 c. 9, his division was affirmed on appeal.

2. A ballot torn in two and pinned together, no part of it being absent or wanting, is a good ballot. *Re West Elgin* (1898) 2 O.E.C., p. 62, distinguished.

3. Two ballots, consecutive in number, were supposed to have been handed to a voter sticking together as one, with the deputy returning officer's initials on the lower one and the voter was supposed to have marked the upper one, not initialed, which was not discovered until the counting of the votes. Held that the ballot marked, but not initialed, was properly rejected.

4. Ballots marked on the back with the number in the poll book opposite to the name of each voter were properly counted. *Re Russell No.* 2 (1879) H.E.C. 519, followed.

Dickinson, for the appeal. *Mowat*, K.C., and *Killoran*, contra.

[March 2.

RE PRINCE EDWARD PROVINCIAL ELECTION.

Recount—Jurisdiction of deputy judge—Deputy returning officer's non-compliance with Act—Ascertaining result—Ballots—Marking.

Held, 1. A deputy County Court judge in case of the illness of the county judge has jurisdiction to hold a recount of ballots in an election for the Provincial legislature.

2. There is nothing in the Election Act making invalid or void the votes cast at any particular poll in case the deputy returning officer has failed to comply with the requirements of the Act after the close of the poll and when the deputy returning officer omitted to return a statement of the votes cast by the returning officer had no difficulty in ascertaining the number of

votes cast at the poll, the votes were properly counted and ought not to be rejected.

3. A ballot was properly counted for a candidate which had a well formed cross in his division, although there was a distinct indication that a cross had been placed in the other candidates division which was afterwards erased: *Re West Elgin*, No. 1 (1898) 2 O.E.C., at p. 45; and *Re Lennox* (1898) 4 O.L.R. 378, followed.

4. A ballot with a mark 2 in one of the divisions was well marked: *Re West Huron* (1898) 2 O.E.C. 38.

D. C. Ross, for the appeal. *C. H. Widdifield*, contra.

HIGH COURT OF JUSTICE.

Master in Chambers.] DUNLOP *v.* DUNLOP. [February 10.

Evidence—Ex parte motion—Examination of witness.

Con. Rule 491 applies to an ex parte motion, and therefore a witness may be examined in support of such a motion.

W. J. Elliott, for plaintiff. *Middleton*, for defendant.

Master in Chambers.] [March 2.

REX EX REL. JAMIESON *v.* COOK.

Municipal election—Councillor elected while member of school board—Disqualification.

The respondent having been elected in January, 1903, as school trustee for two years took the oath of office on Jan. 21st, 1903. On Dec. 26th, 1904, he was nominated as councillor and school trustee, but next day filed with the secretary of the school board a memorandum in these words: "I hereby tender my resignation as candidate for trustee for 1905." He took the oath of qualification as councillor Dec. 27th, 1904, made his declaration of office as such on Jan. 9th, 1905, and took his seat in the council. The first meeting of the new school board when the same was organized was held Jan. 18th, 1905.

Held, that the election of the respondent as councillor must be set aside: *Rex ex rel. Zimmerman* v. *Steele* (1903) 5 O.L.R. 565 followed; *O'Connor* v. *City of Hamilton* (1904) 8 O.L.R. 391 referred to.

F. E. Hodgins, K.C., and *D. S. Storey*, for relator. *J. E. Jones*, for respondent.

Divisional Court.] [March 20.

SHEPPARD PUBLISHING COMPANY *v.* HARKINS.

Master and servant—Servant engaging in other business—Right of master to profits—Contract for exclusive service—Damages.

A servant who enters into a contract to devote his entire time and attention to the interests of his master and to engage in no other business, is liable in damages for the breach of that contract; but if he does work in a different capacity and does not use time which should be devoted to his master's business, or engage in competitive undertakings, he is not liable to pay to his master the earnings or profits received by him in respect of such work.

Judgment of IDINGTON, J., varied.

Aylesworth, K.C., and *W. J. Elliott*, for appellants. *Riddell*, K.C., and *W. T. J. Lee*, for respondent.

Master in Chambers.] [March 24.

TORONTO INDUSTRIAL EXHIBITION ASSOCIATION *v.* HOUSTON.

Evidence—Foreign commission—Interrogatories.

There is no power at the instance of the opposite party to strike out or modify interrogatories prepared by the party who has obtained an order for a foreign commission. He may frame them as he pleases taking the risk of the evidence being rejected in whole or in part by the judge at the trial.

F. R. Mackelean, for plaintiffs. *Grayson Smith*, for defendant.

Clute, J.] [March 24.

CANADIAN PACIFIC RY. CO. *v.* OTTAWA FIRE INS. CO.

Fire insurance—Standing timber—"Property."

The defendants, an insurance company incorporated under the laws of Ontario, insured the defendants, a railway company, having a branch line in the State of Maine, "against loss or damage by fire . . . on property as follows: On all claims for loss or damage caused by locomotives to property located in the State of Maine not including that of the assured." By the statute law of the State of Maine where "property" is injured by fire communicated by a locomotive engine the railway company is made responsible and it is declared to have an insurable interest in the property along its line for which it is responsible:

Held, that the policy in question was in consequence of this statutory provision a valid policy of fire insurance and not an

ultra vires policy of indemnity, but that the property in respect of which the insurance attached was that defined by the enabling section of the Ontario Insurance Act (R.S.O. 1897 c. 203, s. 166) and that standing timber was not included.

Riddell, K.C., and *MacMurchy*, for plaintiffs. *Shepley*, K.C., and *Magee*, for defendants.

Meredith, C.J.C.P.] IN RE FARLEY. [March 31.

Life insurance—Benefit certificate—Designation of beneficiary —Trust for "legal heirs"—Preferred beneficiaries—Revocation.

By its beneficiary certificate bearing date Sept. 12, 1901, a benevolent society agreed to pay $2,000 to the beneficiary or beneficiaries designated on the certificate, power of revocation and substitution being reserved to the member. By an indorsement made in the same month the member directed that payment should be made to three named persons "executors in trust for legal heirs," reserving power of revocation and substitution. Two years later the member, by instrument in writing identifying the certificate, directed that the moneys payable under it should be paid to his daughter-in-law, and by his will made about the same time he also assumed to dispose of the moneys in her favour. The member died in may, 1904, leaving him surviving a grandson, the daughter-in-law, and several brothers and sisters:

Held, that a designation of "legal heirs" as beneficiaries, although these legal heirs may in fact be members of the preferred class of beneficiaries, does not come within sub-s. 1 of s. 159 of the Insurance Act; that the declaration was revocable and had been revoked; and that the grandson, who claimed as "legal heir" was not entitled to the fund.

H. E. Rose, for trustees. *W. R. Riddell*, K.C., for grandson. *A. Hoskin*, K.C., for daughter-in-law.

Divisional Court.] SLATER *v.* LABEREE. [April 3.

Division Court — Jurisdiction — Claim over $100 — Promissory note—Endorser.

Having regard to s. 8, sub-s. 24, of the Interpretation Act, the word "document" in s. 1 of 4 Edw. VII. c. 12, amending s. 72 of the Division Courts Act, may be read if necessary in the plural, and therefore the increased jurisdiction of the Division

Court may be exercised where the claim can be established by the production of one or more documents and the proof of the signatures to them.

Production of a promissory note and proof of the signature of the defendant as an endorser, and production of the protest setting out the facts of presentment and notice of dishonour make out a primâ facie case within the jurisdiction of the Division Court.

Judgment of MAGEE, J., reversed.

Middleton, for appellants. *Russell Snow*, for respondent.

Province of Manitoba.

KING'S BENCH.

Perdue, J.] [April 8.

SMITH v. PUBLIC PARKS BOARD OF PORTAGE LA PRAIRIE.

Entry by Parks Board on land prior to expropriation—Power of Parks Board under Act—Right of action—Arbitration—Injunction.

The defendants, assuming to act under the powers conferred upon them by s. 39 of the Public Parks Act, R.S.M. 1902 c. 141, by the erection of a dam, caused the flooding of a large portion of the plaintiff's property during the summer of 1904 and damage to his hay and crops.

They had taken no steps towards expropriating the land under the powers conferred on them by that Act and the Municipal Act, and the plaintiff brought this action for damages and for an injunction, instead of asking for an arbitration under the expropriation and arbitration clauses of the Municipal Act. Section 43 of the Public Parks Act only enables the Board to enter upon lands with the consent of the owner, but the defendants relied upon s. 44, which provides that: "The Board may exercise all the powers of the council under the Municipal Act in regard to all expropriations of lands and property deemed necessary to be taken or entered upon for the purposes of a park, but the council is not hereby divested of any right or power in regard to the same."

The powers of the municipal council of a city to expropriate land for a park are found in s. 755 of the Municipal Act, and s. 769 of the same Act provides that, upon payment of the amount awarded for compensation to the County

Court Clerk, the land shall be vested in the city and the council may then enter into possession of the land. That Act confers no powers of expropriation for park purposes except in the case of cities.

Held, that the defendants had no more power of entering upon land and expropriating same for their purposes than the council of a city would have under the Municipal Act, and that such council has no power to enter, without the consent of the owner, upon land which it may desire to acquire for park purposes, without first taking steps to expropriate the land and depositing the amount ascertained as damages or compensation, and that defendants were liable in an action at the suit of the plaintiff. *Parkdale* v. *West*, 12 A.C. 602, and *Arthur* v. *G.T.R. Co.*, 25 O.R. 40, followed.

Held, also, that the defendants had power, under ss. 39 and 43 of the Act to construct the dam in question, provided they took the proper steps to compensate persons injured by its construction.

Verdict for $480 damages and costs, and leave reserved to renew the motion for an injunction against the continuance of the trespass and the maintenance of the dam, unless defendants undertook to proceed within three months to expropriate the portion of the plaintiff's land occupied or flooded by them and to settle and pay the compenastion awarded and the amount of the present judgment.

Aikins, K.C., *Robson* and *Meighen*, for plaintiff. *Anderson*, for defendants.

Province of British Columbia.

SUPREME COURT.

Full Court.] [Nov. 15, 1904.

CAMSUSA *v.* COIGDARRIPE.

Trustee—Sale of trust business to stranger with arrangement that one of trustees go into partnership in the business—Validity of—Lapse of long term before action—Adequate price.

Evidence—Entries made by an executor in private books—Whether admissible for or against co-executor—Entries by solicitor as to instructions from client.

Appeal from judgment of IRVING, J., dismissing an action against trustees for breach of trust. In 1885 the trustees of a

certain business sold it at an adequate price to B., who before purchasing stipulated with C., one of the trustees, that he should go into partnership with him; C. did go into partnership and in 1893 he sold out his interest at a large profit.

In 1903, certain beneficiaries commenced an action founded on an alleged breach of trust against C. and the representatives of his deceased co-executor and asked for an order declaring that the sale to B. was a sham and was really one to C.

Held, that, considering the number of years since the sale took place and that it was for a fair price, C.'s account of the transaction must be accepted notwithstanding several suspicious circumstances.

In cross-examination of a defendant it is admissible to question him as to what disposition he has made of his property since the suit was begun or in anticipation of it and a defendant so disposing of his property does an act which will be viewed with suspicion.

Per HUNTER, C.J.:—Entries made by the deceased executor in a private book kept by him were not admissible in evidence either for or against the other executor, neither were the entries in the charge book of the solicitor for B. as to instructions received by him from B. for the drawing of certain papers carrying out the arrangement between B. and C., admissible in evidence as against C.

Decision of IRVING, J., affirmed.

Davis, K.C., and *A. D. Crease*, for plaintiffs (appellants). *Bodwell*, K.C., for defendant Coigdarripe. *A. E. McPhillips*, K.C., for other defendants.

Full Court.] [Dec. 2, 1904.

MURRAY *v.* ROYAL INSURANCE COMPANY.

Trial—Damages—Measure of—What jury should take into account—Directions to jury—Failure of counsel to take objection or ask for direction—Costs.

The defendant company instead of paying to the plaintiff the amount of damages sustained by a fire in her bakery undertook to repair the damages and for the faulty manner in which the work was carried out plaintiff sued for the amount of the damage caused by the fire and also for damages in respect of loss occasioned by reason of being unable to carry on the business. The plaintiff's chief witness stated that the injury to the business was $3,000, and the jury returned a verdict

for her for that amount. On appeal to the Full Court, being of opinion that the amount of damages was excessive, with plaintiff's consent, reduced it to $1,000.

As precise directions were not given to the jury as to what they should have taken into account in estimating the damages, and as the case had been allowed to go to the jury without such directions without objection by defendants' counsel and without contradiction of the statement as to the damages being $3,000, no costs of the appeal were allowed.

Davis, K.C., for defendants (appellants). *Macdonell*, for plaintiff (respondent).

Full Court.] [April 15.

CENTRE STAR MINING CO. *v.* ROSSLAND-KOOTENAY MINING CO.

Mining law—Trespass—Wrongful abstraction of ore by trespass workings—Conversion—Injury to adjoining mine by accumulation of water—Nuisance—Injunction—Liability of company for trespass of predecessor in title.

Appeal from judgment of MARTIN, J., dismissing plaintiffs' action for damages for trespass and taking ore from plaintiffs' mineral claim and also for damages caused by an accumulation of water in the trespass workings. Defendants purchased a mineral claim having ore on the dump which had been wrongfully taken from plaintiffs' claim; they let the ore remain where it was at plaintiffs' disposal:

Held, there had been no conversion of the ore by defendants. Defendants' predecessors in title ran trespass workings from their mineral claim, the Nickle Plate, through the Ore-or-No-Go mineral claim, in which they had a right to mine, but of which the plaintiffs were the owners in fee, into plaintiffs' mineral claim, the Centre Star, which adjoined the Ore-or-No-Go claim; to stop the flow of water from the Nickle Plate through the trespass workings to the Centre Star claim defendants built bulkheads on the boundary between the Centre Star and Ore-or-No-Go claims and at this point a large body of water accumulated:

Held (reversing MARTIN, J., in this respect), that the accumulation of water was a menace to plaintiffs and amounted to a nuisance and that the bulkheads should have been built at the Nickle Plate boundary so as to keep the water from flowing from the Nickle Plate into the trespass workings.

A mining company which purchases the assets of an old company whose debts and liabilities it agrees to pay and satisfy is not liable to a stranger to the contract for a tort committed by the old company.

Galt, for appellants. *Davis*, K.C., and *Hamilton*, for respondents.

Province of New Brunswick.

SUPREME COURT.

Barker, J.] LEIGHTON *v.* HALE. [Oct. 18, 1904.

Partnership—Purchase of property—Re-sale at profit—Agreement for division of profits—Consideration—Declaration of trust.

Upon information supplied by the plaintiff, the defendant purchased certain property which upon re-sale yielded a surplus after meeting a liability the defendant had assumed for the benefit of plaintiff's father. The defendant promised the plaintiff that in the event of there being a surplus it should belong to him:

Held, that the plaintiff and defendant were not partners, entitling the plaintiff to share in the profits from the re-sale of the property, and that the defendant's promise, which was not a declaration of trust, was nudum pactum.

Carvell, for plaintiff. *Hartley*, for defendant.

Barker, J.] WINSLOWE *v.* MCKAY. [Dec. 20, 1904.

Deed—Incapacity of grantor—Absence of consideration—Conflict of evidence—Belief.

Where at the time of the execution of a deed of conveyance the grantor was 70 years of age, was sick and in feeble health, and it was the opinion of some witnesses, though not of others, that he did not understand the nature of his act; and the effect of the deed was to deprive him of means of support, and the evidence was uncertain respecting the existence of adequate consideration for the deed and favoured the view that it was intended as a gift, the deed was set aside.

W. A. Trueman, for plaintiff. *Dixon*, K.C., for defendants.

Barker, J.] LODGE *v.* CALHOUN. [Feb. 21.

Interrogatories—Answer—Reference to answer of co-defendant —Exceptions.

To an interrogatory to set out particulars of a claim of debt by the defendant against the defendant company, the defendant answered that he believed that schedules (which contained the information sought) attached to the answer of the defendant company were true:

Held, allowing an exception for insufficiency, that the interrogatory relating to a matter within the defendant's knowledge he should have made positive oath of the correctness of the schedules, or that they were correct to the best of his knowledge, information and belief, accounting for his inability to swear positively to their correctness.

Chandler, K.C., in support of exceptions. *F. R. Taylor,* contra.

The news of the death of Lord St. Helier, better known as Sir Francis Jeune, within three months of his retirement from the Bench, has been received with much regret by the profession in England. The country has lost, it is said, "a good friend and citizen and a learned judge." It will be remembered that he was one of the junior counsel for the claimant in the first Tichbourne trial. He was appointed to the Bench in 1891, becoming President of the Probate Division a year afterwards.

Courts and Practice.

ONTARIO.

The following regulations made by the judges of the High Court of Justice are not known to all; we therefore reproduce them:—

ORDERS RELATING TO MONEYS IN COURT.

1. As a general rule all orders affecting money in Court, ought to be entitled in the cause or matter to the credit of which the said money is standing in Court, where there is any such cause or matter; and in cases where money has been, by mistake, paid into Court to the credit of some non-existing cause or matter, the order correcting the mistake should be entitled in the cause or matter to the credit of which the money was intended to be paid into Court, and should recite the mistake.

2. All orders affecting the moneys in Court of infants or other persons under disability, ought to be made on the application of such persons, by their guardians, next friends, or committees, as the case may be; or, if made on the application of any other person, it should appear by the order that the person under disability

whose money is sought to be affected, had due notice of, and, if so, was properly represented on the application.

3. Officers are to be careful to see that all orders and judgments settled or issued by them, are drawn up in conformity with the foregoing regulations.

SEPT. 18, 1899.

PASSING RECORDS AND ENTERING CAUSES FOR TRIAL, OR HEARING.

4. From and after the first day of January next (1900), all officers passing records are hereby directed, and required, to see that they contain, in addition to a certified copy of the pleadings, a note or memorandum stating the state of the action as against every defendant or defendants who has, or have, put in no defence, or as against whom the action has been discontinued. No extra charge is to be made for such note or memorandum.

5. All officers and clerks when entering causes for trial, or for hearing on motion for judgment, are required to see that the same are in a proper state for trial, or hearing, and are not otherwise to enter the same; and for that purpose may require either the production of the record, or a certificate of the state of the action, when the necessary information cannot be obtained from their own books of office.

OCT. 28, 1899.

The following regulations were passed at a meeting of the judges of the High Court held on the 17th December, 1904, and are to take effect from and after 31st December, 1904:—

TRANSMISSION OF DOCUMENTS TO CENTRAL OFFICE.

6. When the judge at a trial reserves judgment in any case, elsewhere than at Toronto, the clerk of the Court shall forthwith forward the record and exhibits to the central office.

7. All local officers of the Court when sending papers or exhibits to the central office shall indorse on the wrapper enclosing such papers or exhibits, the short style of cause, the title of the officer sending them, and the purpose for which they are sent —*e.g.*, "*Jones* v. *Smith*. From Local Registrar at Brantford, for Appeal to Divisional Court" *or* "For Mr. Justice Magee"— *or as may be.*

SETTING DOWN CAUSES.

8. When a case is required to be set down for a Divisional Court, Weekly Court or Chambers, the officer shall require the party desiring the case to be set down to indorse on the notice of motion the name of the office in which the action or proceeding was commenced, and the officer shall not set down any case without such indorsement unless otherwise ordered by the Court or a judge.