Canada Law Journal.

VOL. XL. FEBRUARY 1, 1904. NO. 3.

There is as yet no sign of the appointment of judges to compose the Bench of the new Exchequer Division of the High Court of Justice of Ontario. It was said that there was an imperative need of this additional strength to the Supreme Court judiciary of this Province. But if all judges were restricted to the duties properly belonging to their position, and if those not physically able for their work were given a proper retiring allowance, there never would have been any question as to this.

One of the most important public positions in the gift of the Dominion Government has just been filled by the appointment of one eminently fitted for it. Under the Railway Act of last session there was constituted a Board of three Commissioners, of whom it was agreed that one (the Chairman) should, very properly, be a lawyer. This Board has large judicial powers, as well as an extended control over freight rates and other matters relating to railways. It was therefore very fitting that the Government should offer the Chairmanship of the Board to one so competent as the late Minister of Railways and Canals, the Honorable Andrew G. Blair, K.C., who, as Minister, was not only familiar with the management of our National Railway—the Intercolonial, but who has necessarily a varied and extensive experience in railway matters which will add largely to his usefulness. When Mr. Blair resigned the Premiership of New Brunswick to become a Minister of the Crown at Ottawa he was the leading counsel of his Province. His ability as a lawyer will be a source of great strength to the personel of the Board. The fact of his resigning the portfolio of Railways and Canals because he could not agree with the Cabinet in its Railway policy indicates an independence of thought and action which augures well for his future usefulness in a position where such characteristics are so essential. It is gratifying to know that Mr. Blair was willing to accept the position, and the Government can be congratulated on having secured his services.

TERRITORIAL EXPANSION OF CANADA.

If the Alaskan Boundary Award has wrought us any appreciable good whatsoever we are inclined to say that it subsists in the fact that it has written the word *Finis* to the chapter of "Colonialism" in the history of this Canada of ours. Great-minded Englishmen really wish us God-speed in taking our true national position—have we not Lord Minto's fine words now echoing in our ears from the first annual banquet of the Canadian Club in Ottawa? "If I were a Canadian I would shout 'Canada for the Canadians' with the best of you"! We have emerged from the stage of Downing Street tutelage, and claim the recognition of our untrammelled right to the management of our commerce and our territorial estate. And we feel that we may claim all this without involving the severance of that very tenuous and yet extremely tenacious tie that binds us to the mother country; for to concede what we so claim may possibly be done without the Imperial Parliament adding one iota to the autonomy Canada now enjoys, i.e., the position of a "protected State." As Mr. W. E. Hall points out in his *International Law* (3rd ed. 129), "protectorates" are new international facts; and their genera cannot be definitively grouped while political cosmogony is still in a state of flux. Therefore, we are straining no venerable definition when we venture to apply this term to Canada to-day.

We think it is not necessary here to do more in support of the view we have put forward than to refer to so authoritative a book as Lewis' *Government of Dependencies*. This book was, of course, written before the union of the British North American provinces, and consequently the author had not the opportunity of directing his criticism to the distinctive features of our constitution; but it is obvious everywhere in the book, as it originally came from the author's hand, that he would have placed Canada in a class apart from the other British possessions whose constitutions he there specifically discusses. This is made abundantly clear in the extremely able introduction by Mr. C. P. Lucas to the edition of 1891. One passage supports the point we have taken with so much force that it justifies quotation at length. After observing that Great Britain controls the foreign policy of Canada he says: "This control is exercised with the consent of Canada, not in despite of the wishes of her people; and when a

question arises, which specially touches Canadian interests, the Dominion Government has its say as representing the Canadian people, and Canadian delegates have been present at international conferences. The fact, therefore, that the foreign policy of the empire is left in charge of the Imperial Foreign Office, does not vitiate the conclusion that Canada is substantially governed by the Dominion Parliament, not by the Government of Great Britain; but, inasmuch as foreign policy is ordinarily left to the mother country, and as the sanction of that policy lies in the strength of the British fleet, the colonies, whose relations to foreign countries are determined by the policy, and who are safe-guarded by the fleet, *are really in the position of independent but protected States.* In a word the British empire may be said to consist, partly of dependencies, which are not colonies, such as India; partly of dependencies which are colonies, such as Barbados or the Bermudas; *partly of colonies such as Canada, which are not dependencies but protected States.*"

If it be asked just here what diplomatic machinery has Canada for the purpose of negotiating treaties with foreign powers, we answer: Is there any good reason why she should not act through the appropriate existing Imperial channels? It is the power to make the treaty that constitutes her independence of action, not the agency through which that power is exercised.

This statement of what we conceive to be the true status of Canada to-day is merely prefatory to the following observations on a present desirable expansion of our national domain.

It is obvious to the casual observer who glances at the map that our Atlantic sea-board sadly needs to be rounded out by the inclusion of the island of Newfoundland and its appendant *lisière* along the Labrador peninsula. Even if these portions of territory lacked the splendid resources of mine, forest and fishery with which they are endowed, the commercial and strategic value of their ports and harbours would justify every effort being put forth to build them into the fabric of the Dominion. Sir John Macdonald once declared with all the shrewdness and foresight of the true nation-builder that he was, that Newfoundland, from a war point of view, was the "sentinel of the St. Lawrence;" and when we remember that she is separated from Ireland only by a distance of a little

over sixteen hundred miles, her mercantile greatness compels one to marvel at the apparent lack of fervour of the Canadian people in promoting a political union which would mean so stupendous a commercial gain to them. No matter how extravagant the price fixed by France for the commutation of her "treaty shore" rights, Canada, herself, could afford to pay it twice over in order to secure this valuable territory.

But our main concern in this article is with the acquisition of the two islands of St. Pierre and Miquelon over which France claims absolute sovereignty at the present day by virtue of cession under the Treaty of Versailles, in 1783. The military importance of these islets as a base of supplies for a foreign power is alone sufficient to incite Canada to acquire them; but we will not enlarge upon that feature of the question. The entrance of Newfoundland into the Canadian confederation means our future commercial gain; but the administration of the two smaller islands as a French colony in the Gulf of St. Lawrence is a present loss to our customs revenue of many thousands of dollars per year. This is due to the notorious system of smuggling in the gulf of which these two little islands constitute the chief base of operations. When statistics shew us that the imports of St. Pierre amount to some $260 per head, as compared with $30 per head in the Dominion of Canada, and when we further learn that the bulk of these imports are potable liquors, we recognize that howsoever bibulous the islanders may be the volume of imports is absurdly disproportionate to the possibilities of domestic consumption. If we look at the normal and legitimate trade of these islands we see at a glance that unless the inhabitants augmented their incomes by means of this illicit traffic they would soon be compelled to emigrate. France has spent millions of dollars during the past twenty years in bonusing her fishermen who go to the "treaty shore," and those who engage in *peche sedentaire* from St. Pierre and Miquelon; yet the business of cod-fishing is a confessed failure, and had it not been for the astuteness of M. Jusserand in securing the modus vivendi of 1890 (one of the latest exhibits of English diplomatic blundering), which permits the prosecution of lobster fishing and the maintenance of canning factories by the French on the Newfoundland shore, the Government of France might have bonused the general fisheries to

the top of its limit and yet failed to keep its subjects on these barren islands. Therefore, it is absurd to a degree that either the French or the British should wish to maintain a status quc at once financially burdensome to the one and an embargo upon the full territorial dominancy of the other. With the present cordial relations existing between the two nations, crystallized as they were last year by an arbitration treaty, it seems to us that the Governments of Canada and Newfoundland have a most favourable opportunity to press the home Government for the opening of negotiations, looking to a surrender by France of her "treaty shore" rights, and the sale of her title to the islands of St. Pierre and Miquelon. By such a consummation Canada and Newfoundland would be greatly benefited even under existing political conditions; but with confederation *fait accompli* the advantages of it could not be easily measured.

There is this further argument in favour of the acquisition of these several portions of contiguous territory by Canada, namely, that by no reasonable extension of the Monroe doctrine can the Government of the United States object to any part of the proceeding. It is true that President Polk's gloss upon the now famous doctrine enunciated by his predecessor Monroe, at the suggestion of the English statesman Canning, has been interpreted to mean that any European power would have to obtain the consent of the United States to any acquisition of dominion in the Americas whether by voluntary cession, or transfer, or by conquest (see Dana's Notes to Wheaton's Elements, p. 102; Taylor's International Law, p. 146). But Canada does not come within the letter or spirit of this inhibition, and the burden that might rest upon Great Britain, were she purchasing sua causa, of establishing that this inhibition is no part of the code of international law, or that Great Britain is herself an American power and so not within the inhibition even if it were valid, would not be raised in the matter of territorial expansion here advocated.

If our view is a correct one, the expediency of prompt action in the premises by those in authority needs no demonstration.

REPRIEVES IN MURDER CASES.

A little more than a year ago a Middlesex jury, scouting the evidence of one Herbert, who had pleaded guilty to an indictment joining him as an accomplice of Gerald Sifton in the murder of his father and who afterwards became a King's witness, acquitted the principal. If without the power to intervene, the public at that time certainly possessed the will to restrain the authorities from exacting the death penalty. To-day a situation has developed in the North-West Territories which provokes them to support as heartily any effort the Crown may use in order to have a convict endure it.

One Ernest Cashel, a farm-labourer, had, with singular brutality, taken the life of a rancher named Beit, who had frequently befriended him. Being apprehended, he was tried for and found guilty of the murder, and sentenced to be hanged on the 15th December last. On the 11th he, with the opportune aid of a brace of revolvers, which had in some mysterious way been smuggled into his cell, overcame his guards, and wrenching the keys from them, passed through the door, which he instantly locked behind him, leaving his keepers to sample the indifferent cheer he was himself content to forego. He then improvised a rope out of some handy material with which he seems to have been accommodated at the same time as he gained possession of the revolvers, scaled the prison-wall and escaped.

Contemporaneously, or nearly so, with the prisoner's achievement, his counsel petitioned the Governor-General for clemency; but the prayer was refused with scant ceremony. When tidings reached him that the criminal had broken gaol, the Minister of Justice was placed in a quandary. There was no trustworthy guide to be followed, no beaten path to be trod. Precedents were sought, and text-writers consulted in the hope of light being shed on the darkness. A reprieve, on the demand of the Minister, to emanate from the trial judge was ultimately regarded as the least unpromising way out of the difficulty.

Recourse, accordingly, was had to Chief Justice Sifton, and on the 14th December, the day before that named for the execution, he made an order postponing it for a week. Complexity surrounds, without mistake, the problem thus offered for solution. Professional judgment would seem to have entered a blind alley,

whence there is no prospect of emerging. Was the course the Department followed that which the law sanctions?

A reprieve is defined by Sir Matthew Hale—modern instructors accepting the exposition—"as the withdrawing of a sentence for an interval of time, whereby the execution of a criminal is suspended." Its granting must, as a result, be understood to be the exercise of a function which extends some indulgence or benefit, or at least carries with it a possibility of such to one adjudged to suffer capital punishment. The Encyclopædia of English Law, bearing out this notion, amplifies the definition by introducing the words "with a view to a pardon or commutation of sentence." It may, the treatises add, be "either by the Crown, ex mandato regis, at its discretion, its pleasure being signified by the Court by which execution is to be awarded, or by the Court empowered to award execution, either before or after verdict, ex arbitrio judicis." The Crown's prerogative may in this regard, as in the related subject of pardon, be narrowed or extinguished by statutory enactment. There its deprivation will be enacted in the interest of liberty; the Habeas Corpus Act, for instance, putting the injury of causing a man's imprisonment beyond the realm outside the grace. Such being so, what should be viewed as the consequence of those paragraphs of the Code which affect reprieves? Section 937 provides "that in the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State for the information of the Governor-General; and the day to be appointed for carrying the sentence into execution shall be such, as in the opinion of the judge will allow sufficient time for the signification of the Governor's pleasure before such day, and if the judge thinks such prisoner ought to be recommended for the exercise of the royal mercy, or if, from the non-decision of any point of law reserved in the case, or from any other cause, it becomes necessary to delay the execution, he, or any other judge of the same court, or who might have held, or sat in such court, may, from time to time, either in term or in vacation, reprieve such offender for such period or periods beyond the time fixed for the execution of the sentence as are necessary for the consideration of the case by the Crown." All these directions may be readily

enough apprehended. The Crown, to begin with, has to notify its pleasure, unless the judge enlarges the time, before the day originally set for the execution, and cannot itself defer that event; while the judge must not, where occasion for a stay is found, allow the day appointed for its carrying out to pass without proceeding to act. The most explicit assurance, however, to be derived from the section is the hard-and-fast nature of the reprieve. It is solely and purely to afford the Crown suitable facilities for dealing with an undetermined case. Now, as regards this matter, the Crown, as before intimated, had given its ultimatum. In the face of that knowledge any supposition that the practice was borrowed from the Code must be discarded. Nothing, it may be owned, is sought to be grounded on the fact of a suspension under the circumstances doing violence to the rooted understanding of a reprieve; although the giving of the name to a proceeding which, instead of promising him relief,—operates to a criminal's prejudice —which oil for him, so to speak, the wheels of doom—has about it a sufficient flavour of irony. It may be the proper estimate that the Crown is only dispossessed of the right to the extent to which Parliament has bestowed it upon the courts. In 1894, Sir John Thompson—or to be more accurate, the Governor-General on his advice (as asserted by the counsel for the prisoner, Mr. T. C. Robinette, K.C.)—respited McWherrell, the County of Peel murderer, by the channel of a direct communication, from June 1st of that year until October 1st—afterwards, in September, commuting his sentence to imprisonment for life. The adoption of any course by a Minister of such repute as the head, at that period, of the Department of Justice goes no little way, everyone must allow, towards establishing its validity.

Westminster Hall's records bequeath no example of the escape of a murderer lying under sentence of death, which presents even a remote analogy to that in question, though cases are furnished of condemned persons "fleeing to sanctuary" where the decision has gone forth that "the realm cannot be abjured by such means."

The point was urged, and debated with less perspicacity than freedom in the press, that, unless meanwhile reprieved, Cashel, as soon as the moment of execution arrived, whether he should have graciously lent himself to the hangman's good offices or not,

would have been defunct. Surely this represents a vulgar misconception. Sentence of death works a forfeiture of civil rights, of which an instance was given in the case of Birchall, the swearing of an affidavit by whom was not permitted. A murderer then becomes practically dead to the outside world. There could be no change wrought between sentence and execution. It might be more appropriately said that his body from the time spoken of was in a condition of insensibility, and could be galvanized into life by nothing less than a pardon.

Reference to pardons brings us to a discussion of that aspect of the Crown's position. The gratuity belongs to the Crown as a prerogative, and is incommunicable except to offshoots of the parent state. Either conditional or a free pardon may be extended, though it is difficult to comprehend what shape or direction, in the case of capital punishment, the first named would assume. Ticket-of-leave is representative of the class. Mossback interpreters allude to the substitution of a milder and pleasanter for a severer and grosser method of execution, as beheading, in lieu of hanging; and a dispensation with such paltry incidents as mutilation, or hanging in chains, as conditional pardons. Sec. 966 of the Code prescribes that "Whenever the Crown is pleased to extend the royal mercy to any offender convicted of an indictable offence punishable with death or otherwise, and grants to such offender either a free or a conditional pardon, by warrant under the royal sign-manual, countersigned by one of the principal Secretaries of State, or by warrant under the hand and seal-at-arms of the Governor-General, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon of such offender under the great seal as to the offence for which such pardon has been granted."

Is there not a serious difficulty obtruded, if we have to look upon the change of date for consummation of the sentence as giving it the character of a new judgment, and thus requiring the presence of the criminal to hear it? One of the "orders and directions" promulgated by the King's Justices *in 1708* (Kelyng, J.) was that "no prisoner convicted for any felony for which he cannot have clergy be reprieved but in open session." It has been likewise averred that "respite is matter of record, and

cannot be determined but by a new award or execution." Does not the making of the transaction matter of record necessitate a disclosure of it to the party it concerns? Hale's "Pleas of the Crown" exhibits a kindred case, that of a reprieve granted to a woman on the suggestion of pregnancy. This, with the occurrence of insanity, are the two conditions which, either seen to exist, or coming to pass after sentence, require, ex necessitate legis, its extension. The learned jurist remarks, "This reprieve is, or ought to be, matter of record, and, therefore, I have always taken it that, although she is delivered before the next sessions, yet the sheriff ought not to make execution after her delivery; neither ought the judge to give such direction upon the reprieve granted, but at the next sessions the woman must again be called to shew what she can say why execution should not be made, and she is to be heard." Besides, the rule established by the decision of Holt, C.J., in *Duke's case*, 1 Salkeld, 400, that "judgment cannot be given against a man in his absence for corporal punishment" stands in the way, unless the statute has dispensed with the formality. Sec. 660 of the Code assumes, no doubt, to regulate this matter of the presence of a felon during his trial. Sub-s. 1 reads: "Every accused person shall be entitled to be present in court during the whole of his trial, unless he misconducts himself by so interrupting the proceedings as to render their continuance in his presence impracticable." Sub-s. 2: "The court may permit the accused to be out of court during the whole or any part of any trial on such terms as it thinks proper." This, even if the expression "trial" can be supposed to include sentence, which to say the least, is doubtful, could not furnish authority for exclusion by the court of a prisoner, not seeking it, arbitrarily, or ex mero motu. One hundred and fifty years later the principle embodied in *Duke's case* was re-affirmed by a particularly strong court (Campbell, C.J., Patteson, J., and Earle, J.) in *Rex* v. *Chichester*, 17 Q.B., 504—that, in turn being—no further back than 1870—approved by a trio as eminent, (Cockburn, C.J., Blackburn, J., and Hannen, J.) in *Reg.* v. *Williams*, 18 W.R. 806. The last utterances were formulated, notwithstanding the circumstances that non-appearance in both matters was deliberate, one prisoner having gone to sea, and the other having departed for America. The doctrine nullus commodum

capere protest de injuriâ suâ propriâ (No man can take advantage of his own wrong) was evidently not deemed invocable

One accompaniment of the death penalty is that officer under whose direction it shall be executed is "that the officer in whose custody by law the prisoner is at the time of the judgment given, for into his custody he is to be remanded, and there to stay, till judgment executed." This may bring about a novel state of things. When there has been, as we find here, the escape of a prisoner, and his recapture should follow, the question of his identity with the individual against whom the verdict has been found and sentence pronounced would have to be formally tried. Sir Matthew Hale says: "Where the prisoner has not always remained in the custody of the court where he first had judgment, he shall not be concluded by the sheriff's return from saying that he is another person, and issue may be taken upon that, and that issue shall be tried before he shall have execution awarded against him."

Could it not be argued, with some show of reason, that since there must be an existing as well as a lawful judgment to sustain the plea of autrefois convict that a new trial of the prisoner, if he should be taken, is available. He, by his own act, might be be said to have nullified the sentence, and could hardly suggest the barrier of "twice placed in peril."

Deplorable as it would be, from every point of view, were Cashel to succeed in cheating the gallows, by reason of any legal hindrance that has come into being, such outcome would hardly surpass what transpired in *Rex* v. *Fletcher*, 1 Russ. & Ry. 58, where a murderer, by force of an equal division of opinion amongst sixteen judges as to whether the court's not clapping dissection upon it, vitiated a sentence of hanging, bore off an undamaged spinal column.

J. B. MACKENZIE.

NEGLIGENCE OF RAILWAY COMPANIES IN CANADA.

The obligations of Railway Companies in carrying on their business in Canada and the duties which they owe to the public are to a considerable extent and perhaps altogether prescribed and defined by statute and now embodied in The Railway Act of 1903 passed by the Parliament of Canada at its last session. That Act, it is true, only professes to deal with railways under the control of the Dominion Parliament, but inasmuch as nearly all railways in Canada are subject to such control, and as, moreover, the Provincial Acts governing purely local roads contain provisions similar to those in the Federal statutes, the latter only need be referred to.

How far a Railway Company in this country is still governed by the principles embodied in the common law maxim, sic utere tuo ut alienum non lædas, and is also, as employing a dangerous agent, under the common law obligation of using more than ordinary care and caution in operating its line of railway, is not by any means clear. The decisions of our own Court of final resort in cases in which this question is involved are at variance with those decided by Provincial Courts and also with each other, and the Judicial Committee of the Privy Council has never been called upon to consider it.

As early as 1858 this matter came before an Ontario Court in *Campbell* v. *G.W.R. Co.*, 16 U.C.R. 498, and it was necessary to determine whether or not the defendant company, which had complied with all that the statute required for protection of cattle at farm crossings, were called upon to take further precautions to that end. Sir John Beverley Robinson, C.J., said in giving judgment: "The statute 14 & 15 Vict., c. 51, s. 13, sub-s. 1, affords a strong argument that the legislature, when they passed the Act, did not understand nor intend that the railway companies to which the provisions of that statute were to apply, were to be relieved from the necessity of making use of ordinary care to avoid injury to the animals of others which they might find upon their railway under circumstances implying that they were there by the fault of their owner. . . . It will be for the legislature to consider whether it would, on the whole, be better to place farm crossings on the same footing in this respect as public highways

which intersect the railway; but until that has been done the principles and maxims of the common law must prevail in such cases as in others."

In 1886 the Court of Appeal referred to this case and affirmed the principle on which it was decided, *Hurd* v. *G.T.R. Co.*, 15 O.A.R. 58, though the company was held not liable as having taken all necessary precautions.

Spragge, C.J.O., says in *Rosenberger* v. *G.T.R. Co.*, 8 O.A.R. 488: "The duty of giving warning was a common law duty, and those who suffered injury by neglect of that duty had a common law right of action against the wrong-doers. The statute only defined how that duty should be performed and annexed a penalty, besides compensation, for its non performance in the way prescribed. It in no way abridged the duty; its purport was to define it. There is not a word in it that points to an abridging of the common law right of those suffering injury through a neglect of duty, or taking away the right of any one who, at common law, was entitled to a remedy." This, it is true, was only *obiter*, as the case was decided on another ground, and the Chief Justice expressly stated that he only spoke for himself, but it presents the view of an able jurist with which, practically, all the Ontario judges have always been in accord.

In *McKay* v. *G.T.R. Co.*, 5 O.L.R. 313, the Court of Appeal acted on the same principle. This case will be referred to later.

In Nova Scotia the same view of this question seems to prevail: see *Smith* v. *C.P.R. Co.*, 34 N.S. Rep. 22. In New Brunswick also: *Fleming* v. *C.P.R. Co.*, 31 N.B. Rep. 318. And in Manitoba: *McMillan* v. *Man. & N.W. R. Co.*, 4 Man. L.R. 220.

The Supreme Court of British Columbia in *Madden* v. *Nelson & Fort Sheppard R. Co.*, 5 B.C. Rep. 541, held that the common law remained except where expressly altered by the statute.

Having considered the view taken by the Courts of the several Provinces on this question, it is now necessary to examine the decisions of the Supreme Court of Canada and ascertain if possible how the law stands by the adjudication of the court of final resort in this Dominion.

In the case of *New Brunswick R. Co.* v. *Vanwart*, 17 S.C.R. 35, Mr. Justice Patterson, in giving the judgment of the court, laid down a distinct rule of jurisprudence, namely, that where the

Railway Act provided for warning to be given in a certain way of the approach of a train to a highway crossing, such provision, though only declaratory of the common law, afforded a criterion of what could reasonably be required, and that no further obligation could be imposed on the company in this respect. This rule was applied, in the case before the court, so as to exempt the company from all liability for injuries caused by failure to give warning on approaching a siding used for the business of a lumber mill, it being customary for trains to stop there, and the servants of the company knowing that a number of people were generally present when they did stop.

The rule, then, in the *Vanwart case*, may be shortly stated as follows: As specified warnings are prescribed on approaching a highway crossing, no other precautions need be taken at such place and none at any other place. That is the rule as applied to the special matter in question in the case, but the decision has a much greater effect and establishes the very broad principle that as to anything affecting the business of a Railway Company dealt with by the Act the common law is entirely superseded.

As has been shown, this ruling is at variance with the views of other Canadian Courts which, of course, if it is still law, are overruled. It is also opposed to the general rules governing the construction of statutes. Maxwell says (3 ed. p. 113): "One of these presumptions is that the legislature does not intend to make any alteration in the law beyond what it explicitly declares either in express terms or by implication. In all general matters beyond the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law without expressing its intention with irresistible clearness."

And Hardcastle (3 ed. p. 197) says: "It is a rule as to the limitation of the meaning of general words used in a statute that they are to be, if possible, construed so as not to alter the common law." Both writers cite numerous cases to support their views.

But the Supreme Court has itself since refused to follow the *Vanwart Case*. In *Fleming* v. *C.P.R. Co.* cited above, the facts were these: At a crossing of the Intercolonial Railway on one of the main thoroughfares of St. John, N.B., gates had been erected, though not required by the statute, which were to be lowered when

a train was passing. At the time of the accident which occurred these gates could not be lowered owing to frost, and Fleming seeing them up thought he could safely cross, and in attempting to do so was struck by a passing train and hurt. The statutory warnings had been given and the speed of the train was only five miles an hour. The Supreme Court affimed a verdict for Fleming in an action for damages holding that as it was known that the gates were liable to be frozen up, the company was bound to take other sufficient precautions to prevent injury to travellers on the highway.

An appeal from this judgment to the Supreme Court of Canada was quashed for want of jurisdiction (22 S.C.R. 33), but three of their Lordships, constituting the majority of the court, expressly stated that if they had been called upon to decide the merits of the appeal they would have affirmed the judgment below. The two dissenting judges, Gwynne and Patterson, JJ., consistently adhered to the view expressed by the latter (and concurred in by Judge Gwynne) in *Vanwart's case*, namely, that the company having done all that the statute required owed no further duty to the public. It may be mentioned also, that two of the majority of the court took part in the *Vanwart case*.

In his judgment in the Supreme Court of New Brunswick in this case, Mr. Justice King, with whose opinion the three judges on the appeal expressly agreed, said, p. 345: "There was no breach by the defendants of any statutory obligations, and if they are to be made liable at all it must be because, having regard to all the circumstances of the case, they omitted that reasonable degree of care which the law justly requires of those who, in the exercise of their rights, are using an instrument of danger."

It is clear from these remarks that the decision was not based on the ground that the public had come to rely on the use of the gates for protection, and when they could not be used it was the duty of the company to provide an efficient substitute, but that the ratio decidendi was that a common law duty had not been performed. After that decision, therefore, *New Brunswick R. Co.* v. *Vanwart* no longer expressed the law on this question.

But there is still another decision of the Supreme Court of Canada by which *C.P.R. Co.* v. *Fleming* is in its turn overruled. That is in the case of *G.T.R. Co.* v. *McKay*, judgment in which

was pronounced on December 1st, 1903, and is not yet reported. (See note of this case post p. 74.)

In this case the decision depended on the construction to be placed on s. 8 of 55 & 56 Vict., c. 27, which provides that in passing through a thickly peopled portion of a city, town or village, a railway train should not proceed at a greater rate of speed than six miles an hour unless the track was fenced in the manner prescribed by the Act. In s. 259 of the Railway Act of 1888 it was "unless the track is properly fenced." By another section of the latter Act the Railway Committee was given power to regulate the rate of speed in a city, town or village, but that it should not in any case exceed six miles an hour, "unless the track is properly fenced."

The only provision as to fencing, except that as to fences on both sides of the road, is contained in 55 & 56 Vict., c. 27, s. 6, which is substituted for and repeals s. 197 of the Railway Act, 1888, and is as follows: "At every public crossing at rail level of the railway the fence on both sides of the crossing and on both sides of the track shall be turned in to the cattle-guards so as to allow of the safe passage of trains." This section is plainly intended to keep cattle off railway tracks and not at all to protect persons using the highway, which is left entirely open, from danger by passing trains.

In the case of *G.T.R. Co.* v. *McKay* the train was approaching a crossing on Main Street, a thickly peopled portion of the town of Forest, at the rate of at least twenty miles an hour, and McKay attempting to drive across the track it struck the carriage and threw him and his wife out, the latter being killed and himself injured. In an action against the Railway Co., the jury found that it was negligent in going at too great speed and not having gates at the crossing. The Court of Appeal affirmed a verdict for the plaintiff but its judgment was reversed by the Supreme Court which held that the company had complied with all the requirements of 55 & 56 Vict., c. 27, s. 6, as to fencing, and was not, therefore, obliged to reduce the speed of its train to the maximum rate prescribed by s. 8, and owed no further duty to the public.

A perusal of the written opinions of the judges in this case will show that it not only overrules the *Fleming case* but goes much further than *N.B.R. Co.* v. *Vanwart* in upholding the statute as

against the common law. In fact Mr. Justice Sedgewick expressly declares as his view that the Railway Act contains the whole law respecting the management and operation of railways, and the opinion of Mr. Justice Davies, concurred in by the Chief Justice and Killam, J., is almost as explicit in the same direction.

It is not necessary for the purposes of the matter under consideration to analyze the opinions of these learned judges and see how they will stand the test of criticism. It is sufficient to say that as the latest decision of the Supreme Court, *G.T.R. Co.* v. *McKay* settles the law in Canada as to the duty of a Railway Co. in respect to highway crossings in thickly peopled districts, and so far as the opinions of four judges are concerned it appears to lay down the rule that the common law can no longer be invoked in any railway case.

Though this question has never come directly before the Judicial Committee of the Privy Council it has been incidentally referred to in two or three cases, and the remarks of their Lordships on the subject may be usefully quoted as indicating a view not entirely in accord with that of the Supreme Court in *McKay's case.*

In *C.P.R. Co.* v. *Roy* (1902), A.C. 231, the Courts in Quebec had held that their Civil Code made the railway companies liable for damages by fire even without negligence. In reversing this the Lord Chancellor said, in giving judgment for the committee: "The law of England, equally with the law of the Province, in question, affirms the maxim, sic utere tuo ut alienum non lædas, and the whole case turns, not upon what was the common law of either country, but what is the true construction of plain words." And in *E.&S.A. Tel. Co.* v. *Cape Town Tramway Companies* [1902], A.C. 391, Lord Robertson says: "The question of common law is thus raised directly (as well as indirectly in the just construction of the statutory provisions.") These observations are only quoted as indicating that the committee apparently did not consider all the prior law to be swept away by a Railway Act.

But the most significant indication of this view is found in the case of *Madden* v. *Nelson & Fort Sheppard R. Co.*, [1899], A.C. 629. In that case the Supreme Court of British Columbia had, after discussing the principles governing repeal of statutes and pointing out that the previous state of the law can only be altered

by express provision or necessary implication, decided that the section of the Railway Act of 1888 as to fencing the track, superseded the common law. In this the learned judge who gave the judgment fell into error, as the section referred to is admittedly aimed at keeping in the cattle of neighbouring land-owners, an obligation not imposed by the common law. The Judicial Committee did not deal with this question, but decided the case solely on the validity or otherwise of a Provincial Act as to railway fencing, and these remarks appear at the close of their Lordships' judgment: "The only further observation their Lordships have to make is that these propositions are sufficient to dispose of this case and that, so far as the judgment in the court below is concerned, they do not propose to adopt in all respects, or to agree with some of, the remarks made as to the state of the common law, and as to how the common law would have existed without this legislation. Although it is unnecessary to consider that point their Lordships are not to be taken as adopting the reasons given by the judges in the court below upon the common law."

Taken in connection with what was said in the other cases these observations do not appear to be in accord with the decision in *G.T.R. Co.* v. *KcKay*.

C. H. MASTERS.

Ottawa.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

PRACTICE—COSTS—JURISDICTION—RELIEF CLAIMED AGAINST DEFENDANTS ALTERNATIVELY—RULES 126, 976—(ONT. RULES 185, 1130).

In *Sanderson* v. *Blyth Theatre Co.* (1903) 2 K.B. 533, the Court of Appeal (Williams, Romer, and Stirling, L.JJ.) affirmed the decision of Grantham, J., on a point of practice. Relief was claimed by the plaintiff against two defendants alternatively; he succeeded as to one and failed as to the other. Grantham, J., ordered the plaintiff to pay the successful defendants' costs, and add them to his own, which he ordered the unsuccessful defendant to pay. The appeal was simply on the point of jurisdiction as to whether the court could order a defendant to pay the costs of a co-defendant as to whom the action failed, the cause of action being on contract or for breach of warranty. The Court of Appeal held that there was jurisdiction to do this and it might be exercised in the way Grantham, J., had exercised it, or by directing the unsuccessful defendant to pay his co-defendant's costs without ordering them to be paid by the plaintiff. "The mode in which the Court of Chancery dealt with the costs of defendants to Chancery suits affords an analogy which in my opinion ought to guide the court on the present occasion," per Romer, L.J.

TRADE UNION—CAUSE OF ACTION—INTERFERENCE WITH LEGAL RIGHT—CONSPIRACY—MALICIOUS INTENTION—"STOP DAY."

Glamorgan Coal Co. v. *South Wales Miners* (1903) 2 K.B. 545, is one of a class of actions which are becoming rather frequent in the furtherance of the efforts of employers to relieve themselves from injuries caused by the interference of trades unions with their workmen. In this case the injury complained of was that the miners employed in the plaintiff's collieries in breach of their contract abstained from working on certain days called "stop days." In so doing they acted under the direction of a trade union given by its executive council, the object being to limit the

mining of coal so as to keep up its price, upon which the amount of the miners' wages depended. Bigham, J., (1903) 1 K.B. 118 (see ante p. 192) on the evidence found that the defendants had only bona fide given advice to the men at their request as to the course best to be pursued in their own interests and without any malicious intention of injuring the plaintiff, and with this finding Williams, LJ., agreed, but the majority of the Court of Appeal (Romer, and Stirling, L.JJ.) considered the case to be governed by the decision of the House of Lords in *Quinn* v. *Leathem* (1901) A.C. 495, and that the defendants had interfered and induced the workmen to break their contracts, and had failed to shew any sufficient justification for so doing.

COMPANY—INDEMNITY—FORGED TRANSFER OF STOCK—INNOCENT PRESENTMENT OF FORGED TRANSFER FOR REGISTRATION—IMPLIED CONTRACT TO INDEMNIFY.

In *Sheffield* v. *Barclay* (1903) 2 K.B. 580, the Court of Appeal (Williams, Romer, and Stirling, L.JJ.) have failed to agree with the judgment of Lord Alverstone, C.J. (1903) 1 K.B. 1 (see ante p. 186). The plaintiff corporation had transferred certain stock to the defendants on the faith of a forged transfer thereof, which the defendants in good faith believing it to be genuine, presented to them, and issued to the defendants a certificate that they were the owners thereof. The plaintiff corporation claimed that the defendants had impliedly guaranteed the genuineness of the transfer, and were bound to indemnify the plaintiffs, they having been compelled to replace the stock at the instance of the true owner. The Court of Appeal, however, came to the conclusion that as the transfer to the defendants was registered, and a certificate issued to the defendants in pursuance of the plaintiffs' statutory duty, and not voluntarily by reason of the request of the defendants, there was no implied contract by the defendants to indemnify the plaintiffs against the loss which they had sustained. This may be good law, but it seems to be poor justice. As between two innocent persons, the one who is the immediate victim of a fraud should be the one to suffer, and he ought not to be able to pass on to others the loss which he himself ought to sustain. In this case if the fraud had at once been discovered the defendants would have been the losers, but because they got the plaintiffs to act on the fraudulent document the plaintiffs have to bear the loss. In short, in an ideal system of law, frauds ought not to be negotiable.

RESTRICTIVE CONDITION—COVENANT RUNNING WITH LAND—PERSONAL AND COLLATERAL COVENANT—BREACH OF CONDITION AFTER DEATH OF GRANTOR—RIGHT OF ACTION—ASSIGNS OF ESTATE SOLD SUBJECT TO RESTRICTIVE CONDITION.

In *Formby* v. *Barker* (1903) 2 Ch. 539, the plaintiff was executor and sole devisee of a vendor who had sold an estate of which he retained no part. In the conveyance was contained a covenant against erecting any beerhouse or shop or hotel of less annual value than £50. The vendees did not execute the deed. It was consequently held that there was in fact no covenant, but what purported to be a covenant was in fact a condition. The vendees sold the land and the defendants by virtue of certain mesne conveyances became the owners, and were proceeding to erect a building in alleged breach of the condition. Before this alleged breach the vendor had died, and the present action by his real and personal representative was brought to restrain the alleged breach. Hall, V.C., who tried the action, dismissed it on two grounds, first because, as he found, there had been no breach, and second, because if there had been the plaintiff could not maintain an action in respect of a breach committed after the death of the vendor. The Court of Appeal (Williams, Romer, and Stirling, L.JJ.) agreed with him on both grounds. In the point of law involved on the second ground of his decision they held that the doctrine of *Tulk* v. *Moxhay*, 2 Ph. 774, did not apply because the vendor retained no land intended to be benefitted by the covenant or condition, that it was therefore merely personal and collateral. That even if there had been a legal covenant it would not run with the land so as to bind an assign of the vendee, nor would the benefit of it be transmissible to the real or personal representative of the vendor except as to breaches committed in his lifetime; therefore they held that an injunction was properly refused.

SETTLEMENT—COVENANT TO SETTLE AFTER ACQUIRED PROPERTY—GENERAL POWER OF APPOINTMENT.

In re O'Connell, Mawle v. *Jagoe* (1903) 2 Ch. 574, Kekewich, J., decided that property over which a married woman had during coverture acquired under a will a general power of appointment, and which in default of appointment was bequeathed to her absolutely, was property within the meaning of a covenant in her

marriage settlement binding her to settle after acquired property. *Ex p. Gilchrist*, (1886) 17 Q.B.D. 521, the Court of Appeal decided emphatically that a general power of appointment was not "property." In the present case, however, there is the circumstance of the gift over absolutely in default of appointment, which Kekewich, J., holds makes it "property" within the covenant; following *Steward* v. *Poppleton*, W.N. (1877) 29, notwithstanding *Townshend* v. *Harrowby*, (1858) 27 L.J. (Ch.) 553, to the contrary.

CROWN—JURA REGALIA—TREASURE TROVE - GRANT TO SUBJECT - FRANCHISES —TITLE OF CROWN—JUS TERTII.

Attorney-General v. *British Museum* (1903) 2 Ch. 598, was a suit on behalf of the Crown to recover certain ancient Celtic ornaments found in Ireland and subsequently sold by the owner of the land on which they were found to the British Museum, the Crown claiming to be entitled thereto as treasure trove. The land on which the articles were found had been granted by the Crown with all such franchises as the Crown could grant to the predecessor in title of those who owned the land at the time the articles in question were found. The articles were found together in a space nine inches square about fifteen or eighteen inches beneath the surface of the soil. Farwell, J., found as a fact that they had been intentionally concealed for the purpose of security probably about a thousand years ago. The suggestion of the defendants that they were votive offerings to some sea god, he held was not sustained, and he also held that the articles were treasure trove, the right to which was a prerogative right, and as such part of the flowers of the Crown, and did not pass under the grant of franchises. Whether they would pass under the grant of royalties he declined to say, but as the only grant of royalties proved was those relating to the office of vice-admiral, he held that at all events treasure trove was no part of such royalties. Judgment was therefore given in favor of the Crown.

SOLICITOR—PARTNERSHIP—LIABILITY FOR ACTS OF CO-PARTNER - SCOPE OF PARTNERSHIP—SOLICITOR TRUSTEE—FRAUD.

Tendring Hundred Waterworks Co. v. *Jones* (1903) 2 Ch. 615, was an action in which the plaintiffs sought to make a partner of a solicitor, who was trustee for the plaintiffs, responsible for the trustee's breach of trust. The defaulter was secretary of the

plaintiff company, and the company for its own convenience had certain property which it had purchased conveyed to the secretary without any declaration of trust. The conveyance was prepared in the office of the firm of which the secretary was a member, and the deed was retained in the possession of the solicitor trustee, who subsequently fraudulently raised money thereon by deposit of the conveyance, and subsequently executed a legal mortgage of the property to the equitable mortgagee. The defendant had no actual notice of the conveyance, or of the fraud of his partner. The partnership deed made the secretaryship a part of the partnership business. It was held by Farwell, J., that as the trustee had a legal right to the possession of the deed, it was no part of the duty of the firm to see that he did not obtain it without the consent of the company, and even assuming that the firm would have been liable for any negligence of the solicitor as secretary, it was no part of his duty as secretary to act also as trustee. The defendant was therefore exonerated from liability for his partner's fraud.

COMPANY — WINDING UP — LIQUIDATOR — CREDITORS — ADVERTISEMENT FOR CREDITORS — NEGLIGENCE

Pulsford v. *Devenish* (1903) 2 Ch. 625, was an action brought by creditors of a company, which had been voluntarily wound up, against the liquidator for neglecting to pay, or see that the assets were applied in payment of, the plaintiff's debt. The business and assets of the company had been transferred as a going concern to another company, the purchasers covenanting to pay all debts of the liquidating company. The liquidator received fully paid-up shares in the purchasing company as the consideration of the sale, and distributed them among the shareholders of the liquidating company. The assets of the liquidating company were sufficient to pay all its debts in full, but the liquidator beyond advertising for creditors (insufficiently as the Court found) took no steps to ascertain the debts or to see that they were paid, but left everything to the purchasing company. He knew of the existence of the plaintiff's claim, but the plaintiff had no notice of the liquidation until after the dissolution of the liquidating company. Under these circumstances Farwell, J., held that the liquidator had been guilty of negligence and was liable for the amount of the plaintiff's claim.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.] [Nov. 16, 1903.

CAN. MUTUAL RESERVE FUND LIFE ASS. *v.* DILLON.

Appeal—New trial—Alternative relief.

In an action on a policy of insurance on the life of plaintiff's husband, the defence being misrepresentation and concealment of material facts, plaintiff obtained a verdict though defendant's counsel claimed that there was no case to go to the jury. On appeal to the Court of Appeal, claiming judgment for defendants or in the alternative a new trial, such alternative relief was granted (5 O.L.R. 434). The defendants then appealed to the Supreme Court to obtain the larger relief

Held, that the appeal did not lie; that it was not an appeal from the order for a new trial, and that the judgment refusing to enter a dismissal of the action was not final. Appeal quashed without costs.

Lucas and *Wright*, for motion to quash. *Aylesworth*, K.C., contra.

Ont.] CANADIAN MUTUAL LOAN CO. *v.* LEE. [Nov. 19, 1903.

Appeal—Amount in dispute—Title to land—Future rights.

L. had given a mortgage to The Standard Loan and Savings Co. as security for a loan and had received a certain number of the company's shares. All the business of that company was afterwards assigned to the Canadian Mutual Loan Co., and L. paid the latter the amount borrowed with interest and $460.80 in addition and asked to have the mortgage discharged. The company refused, claiming that L. as a shareholder in the Standard Co. was liable for its debts and demanding $79.20 therefor by way of counterclaim. At the trial of an action by L. for a declaration that the mortgage was paid and for repayment of the said $460.80, such action was dismissed (1 O.L.R. 191), but on appeal the Court of Appeal ordered judgment to be entered for L. for $47.04 (5 O.L.R. 471). The defendants appealed to the Supreme Court.

Held, that the appeal would not lie; that no title to lands or any interest therein was in question; that no future rights were involved within the meaning of subs. (d) of 60 & 61 Vict., c. 34; and that all that was in

dispute was a sum of money less than $1,000, and therefore not sufficient to give jurisdiction to the court. Appeal quashed with costs.

W. J. Clark, for motion. *Shepley*, K.C., and *Macdonell*, contra.

Ont.] C.P.R. Co. *v.* BLAIN. [Nov. 30, 1903.

Railway—Injury to passenger—Duty of conductor.

B., a passenger on a railway train, was assaulted shortly after beginning his trip by an intoxicated fellow-passenger. He complained to the conductor who promised to get a policeman at the next station, but failed to do so. The assailant having become more quiet B. did not anticipate a further attack, but was assaulted a second time, which was also reported to the conductor who took no action and a third assault having been made, B. left the train and completed his journey on the following day. In an action against the railway company B. obtained a verdict for $3,500 which was sustained by the Court of Appeal. On appeal to the Supreme Court of Canada,

Held, affirming the judgment of the Court of Appeal (5 O.L.R. 334) that the company was liable; that it was the duty of the conductor on being informed of the first assault to take precautions to prevent a renewal, and his failure to do so gave B. a right of action.

Held, also, that as B. did not anticipate the second assault the conductor could not be assumed to have foreseen it and the jury having evidently given damages for that as well as the third, the amount recovered should be reduced to $1,000 and a new trial had if this sum was not accepted. Appeal allowed without costs.

Johnston, K.C., and *Denison*, for appellants. *Riddell*, K.C., and *D. O. Cameron*, for respondent.

Ont.] THOMPSON *v.* COULTER. [Nov. 30, 1903.

Executors—Action by—Evidence—Corroboration—R.S.O. (1897) c. 73, s. 10.

In an action by executors to recover money due from C. to the testator it was proved that the latter when ill in a hospital had sold a farm to C. and $1,000 of the purchase money was deposited in a bank to testator's credit; that subsequently C. withdrew this money on an order from testator who died some weeks after when none was found on his person nor any record of its having been received by him. C. admitted having drawn out the money, but swore that he had paid it over to testator. No other evidence of any kind was given of such payment.

Held, reversing the judgment of the Court of Appeal that a prima facie case having been made out against C. and his evidence not having been

corroborated as required by R.S.O. 1897, c. 73, s. 10, the executors were entitled to judgment. Appeal allowed with costs.

F. E. Hodgins, K.C., for appellants. *Aylesworth*, K.C., for respondent.

Man.] MANITOBA & N.W. LAND CORP. *v.* DAVIDSON. [Nov. 30, 1903.

Principal and agent—Breach of duty—Secret profit.

D. represented to the manager of a land corporation that he could obtain a purchaser for a block of its land and was given the right to do so up to a fixed date. He negotiated with a purchaser who was anxious to buy but wanted time to arrange for funds. D. gave him time, for which the purchaser agreed to pay $500. The sale was carried out and D. sued for his commission, not having then received the $500.

Held, reversing the judgment appealed from (14 Man. L.R. 233) that the consent of D. to accept the $500 was a breach of his duty as agent for the corporation which disentitled him from recovering the commission. Appeal allowed with costs.

Aylesworth, K.C., for appellants. *G. A. Elliott*, for respondent.

Ont.] G.T.R. Co. *v.* MCKAY. [Dec. 1, 1903.

Railway—Speed of train—Crowded districts—Fencing—Negligence—50 & 51 Vict., c. 29, ss. 197, 259 (D)—55 & 56 Vict., c. 27, ss. 6, 8 (D).

By s. 259 of Railway Act, 1888, as amended by 55 & 56 Vict., c. 27, s. 8, "no locomotive or railway engine shall pass in or through any thickly peopled portion of any city, town or village at a speed greater than six miles an hour unless the track is fenced in the manner prescribed by this Act." Besides the usual railway fences the only fencing required is that provided for by 55 & 56 Vict., c. 27, s. 6, which is substituted for s. 197 of The Railway Act, 1888, namely, "At every public road crossing at rail level of the railway the fence on both sides of the crossing and on both sides of the track shall be turned into the cattle guards, so as to allow of the safe passage of trains." The plaintiff, McKay, was injured and his wife was killed by a train passing through a thickly peopled portion of the town of Forest at a speed of at least twenty miles an hour and on the trial the jury found that such speed was excessive for that place and constituted negligence on the part of the company.

Held, reversing the judgment of the Court of Appeal (5 O.L.R. 313), GIROUARD, J. dissenting, that the company, having complied with the statutory provisions as to fencing, were not liable. Appeal allowed with costs.

Riddell, K.C., and *Rose*, for appellants. *Hellmuth*, K.C., and *Hanna*, for respondent.

N.S.] DICKIE *v.* CAMPBELL. [Dec. 4, 1903.

Rivers and streams—Floating logs—Damage to riparian owners.

The Nova Scotia statute R.S.N.S. (1900) c. 95, s. 17, gives to persons engaged in the transmission of saw logs and timber down rivers and streams the reasonable use of and access to the same for their business and relieves them for liability from any but actual damage thereby, unless caused by their own wilful act.

Held, affirming the judgment appealed from (36 N.S. Rep. 40) that such persons are liable for all actual damage caused in transmitting logs, even without negligence, and the owner of the logs is not relieved from liability though they were transmitted by other persons under contract with him.

On motion for a new trial one of the grounds was misdirection in the charge to the jury. The trial judge reported to the full court that he did not make the direction on which this objection to his charge was based and gave a correct report of what he said.

Held, that this was not an objectionable course for the judge to pursue and in any case it was a matter for the court appealed from whose ruling was not subject to review. Appeal dismissed with costs.

Harris, K.C., for appellant. *W. B. A. Ritchie*, K.C., for respondents.

Yukon Terr.] CREESE *v.* FLEISCHMAN. [Dec. 9, 1903.

Appeal—Discretion—Amendment—Formal judgment.

The Supreme Court would not interfere with the exercise of discretion by a provincial court in refusing to amend its formal judgment. Such amendment is not necessary in a mining case where the mining regulations operate to give the judgment the same effect as it would have if amended. Appeal dismissed without costs.

J. Travers Lewis, for appellants. *Russell*, K.C., and *Haydon*, for respondents.

EXCHEQUER COURT OF CANADA.

Burbidge, J.] [Nov. 23, 1903.

IN RE GRAND TRUNK R.W. CO.; THE CITY OF KINGSTON; THE COUNTY OF FRONTENAC; AND THE KINGSTON AND STORRINGTON ROAD CO.

Railway Committee of Privy Council—Construction of subway—Country road and city street—Cost of construction—Ultra vires—Merits of order.

The Municipal Corporation of a city was one of the movers in an application to the Railway Committee of the Privy Council for an order authorizing the construction of a sub-way under a railway, by which one of

the city streets was made to connect with a country road, the works being adjacent to a city street but not within the city limits.

Held. 1. The city was interested within the meaning of the term as used in the 188th section of the Railway Act, which provides that the Railway Committee might apportion the cost of such works as those in question between the railway company "and any person interested therein."

2. On an application to make an order of the Railway Committee of the Privy Council a rule of Court, the Courts will not go into the merits of the order, or consider objections to the procedure followed by the Railway Committee.

Semble, that while the Railway Committee of the Privy Council has jurisdiction in such a case, to impose upon the party interested an obligation to bear part of the expenses, it has no jurisdiction to compel a party other than the railway company to execute the works.

Orders made a rule of Court.

J. McD. Mowat and *Glyn Osler* for the motion. *D. M. McIntyre* contra.

Burbidge, J.] VROOM *v.* THE KING. [Dec. 7, 1903.

Petition of right—Damage to lands—Subsidence—Release of claim—Liability.

In connection with the work of affording terminal facilities for the Intercolonial Railway at the port of St. John, N. B., the Dominion Government acquired a portion of the suppliant's land and a wharf, the latter being removed by the Crown in the course of carrying out such works. For the lands and wharf so taken by the Crown, the suppliant was paid a certain sum, and he released the Crown from all claims for damages arising from the expropriation by Her Majesty of the "lands and premises, or the construction and maintenance thereon of a railway or railway works of any nature". One of the effects of the removal of the wharf was to leave a wharf remaining on the suppliant's land more exposed than it formerly had been to the action of the waves and tides; but no sufficient measures were taken by the suppliant to protect his property or to keep it in a state of repair.

Held, that there was no obligation upon the Crown, under the circumstances, to construct works for the purpose of protecting the suppliant's property; and as the injury complained of happened principally because the suppliant had failed to repair his wharf the Crown was not liable therefor.

W. Pugsley, K.C., for suppliant. *McAlpine*, for the respondent.

Burbidge, J.] JOHNSTON *v.* THE KING. [Dec. 7, 1903

Contract—Bailment—Hire of horses for construction of public work—Loss of horses—Negligence—Liability—Demise of Crown—50 & 51 Vict. c. 16, sec. 16 (c).

When the suppliant's goods were in the possession of an officer or servant of the Crown under a contract of hiring made by him for the Crown, the obligation for the hirer in such a case is to take reasonable care of the goods according to the circumstances, and the hirer is liable for ordinary neglect. Where there is a breach of the hirer's obligation in such a case the Crown is liable under the contract of its officer or servant.

The suppliant entered into a contract with the Crown, through an officer of the Department of Public Works, to supply certain pack-horses, with aparejos and saddles, for the purpose of construction of the Atlin-Quesnelle Telegraph line, at the sum of $2.00 per horse for each day the animals were so employed. It was not practicable, as the suppliant knew, at the time of making the contract, to carry food for the horses along the line of construction, and it was necessary to turn the horses out to graze for food. As the season advanced and the character of the country in which the line was being constructed changed, the grazing failed, with the result that the horses died or were killed to prevent them from starving to death. It appeared that the aparejos and saddles were not returned to the suppliant. There was a time during construction when the horses could have been taken back alive, and no prudent owner of horses would have continued them on the work beyond that time. The officer of the Crown in charge of the work, however, deemed that the interests of the construction were sufficiently urgent to justify him in sacrificing the horses to the work.

Held. 1. Having regard to the circumstances, the hirer had acted imprudently in continuing the horses on the work after the grazing failed, and the Crown was liable therefor.

2. Wherever there is a breach of a contract binding on the Crown a petition will lie for damages notwithstanding that the breach was occasioned by the wrongful acts of the Crown's officer or servant. *Windsor & Annapolis R.W. Co.* v. *The Queen*, 11 A.C. 607 referred to.

3. The Crown is liable in respect of an obligation arising upon a contract implied by the law. *The Queen* v. *Henderson*, 28 S.C.R. 425 referred to.

4. An action arising out of a contract for the hire of horses to be used in the construction of a public work of Canada lies against the executive authority of the Dominion, and is not affected or defeated by the demise of the Crown.

Semble. The loss sustained by the suppliant in this case was an "injury to property on a public work" within the meaning of clause C of s. 16 of Exchequer Court Act.

A. E. McPhillips, K.C., for suppliant. *Howay* for respondent.

Province of Ontario.

COURT OF APPEAL.

Osler, J.A.] IN RE NORTH YORK PROVINCIAL ELECTION. [Dec. 28, 1903.

KENNEDY *v.* DAVIS.

Parliamentary elections—Controverted election petition—Examination of respondent for discovery—Inquiry into corrupt practices committed at former election—Scope of—Lengthy examination—Discretion—Adjournment—Continuation.

Corrupt practices said to have been committed by the respondent to a controverted election petition at a former election, on the petition against which he was declared to have been duly elected, cannot, as such and as committed with reference to that election, be inquired into for the purpose of invalidating the election in question. Therefore, the petitioner has no right, upon the examination of the respondent for discovery, to make a general inquiry into such corrupt practices, unless it can be shewn that they are in some way connected with and are still operative upon the election in question.

Where a question was asked with reference to a discussion between the respondent and another person before the previous question, coupled with a statement that the discussion was alleged to have been renewed at the election in question:

Held, that the question should be answered.

If an examination for discovery is not connected with discretion or becomes oppressive, the court is empowered to declare that it shall be closed.

Where the examination was continued until late at night, when the examiner became exhausted and was unable to proceed further with it;

Held, that the respondent must attend for further examination.

S. B. Woods, for petitioner. *Aylesworth*, K.C., for respondent.

HIGH COURT OF JUSTICE.

Cartwright, Master.] NOXON CO. *v.* COX. [Nov. 26, 1903.

Venue—Change of—Contract giving jurisdiction where plaintiffs' head office is.

In an action brought in the County Court of the county where the plaintiffs' head office was located, on an agreement, which contained a provision "that on default in payment, suit therefore may be entered, tried

and finally disposed of in the court where the head office of the Noxon Co. (Ltd.) is located," a motion to change the venue to another county was refused on the grounds that the word "court" is to be understood as meaning "the court having jurisdiction" mentioned in section 1 *a* of 3 Edw. VII. (o) and should be construed in reference to the contract in which it occurs; and that the parties had agreed that in case of litigation the suit should be carried on in the court, whether High Court, County Court or Division Court having jurisdiction in the locality where the head office was.

Quære. Whether stronger grounds must be shewn on motion to change a venue in a County Court than a High Court action.

Proudfoot, K.C., for motion. *C. A. Moss*, contra.

Cartwright, Master.] FITZGERALD *v.* WALLACE. [Nov. 26, 1903.

Security for costs—Increased—Appeal to Court of Appeal—Where application for to be made—Con. Rules 826, 827, 830.

Applications for increased security for costs on an appeal from the High Court should not be made in the High Court, but must be made to the Court of Appeal or a judge thereof. *Centaur Cycle Co.* v. *Hill* (No. 2) (1902) 4 O.L.R. 493, referred to and followed.

Saunders, for motion. *Harcourt*, for infant defendants. *Rose*, for plaintiffs.

Cartwright, Master]. [Nov. 26, 1903.

FLYNN *v.* INDUSTRIAL EXHIBITION ASSOCIATION.

Pleading—Action for damages caused by machine—Striking out allegation in statement of claim of insurance by defendants against.

In an action for damages caused by a machine alleged to have been defectively constructed belonging to the defendants the fact that the defendants were insured in an insurance company against such accidents, cannot be given in evidence as is not in any way relevant; and a pleading alleging the fact of such insurance was struck out as embarrassing to the defendants.

G. L. Smith, for motion. *W. N. Ferguson*, contra.

Cartwright, Master.] HUNTER *v.* BOYD. [Nov. 28, 1903.

Amendment of pleadings after new trial ordered—Alleging special damages.

All necessary amendments may be made at any time and an action in which a non-suit has been set aside as against one defendant and a new trial ordered as to him by a Divisional Court is in the same position as if it was at issue and had not been tried; and the plaintiff may be allowed to

amend the statement of claim by inserting a paragraph claiming special damages. *The Duke of Buccleuch* (1892) P.D. 201 cited and referred to.

Semble, that while it may be convenient to submit a draft amendment it is not necessary so to do.

Wadsworth, for motion. *Riddell*, K.C., contra.

Cartwright, Master.] [Nov. 28, 1903.

CANADIAN GENERAL ELECTRIC CO. *v.* TAGONA WATER & LIGHT CO.

Motion for judgment under rule 603—Goods sold and delivered—Amount admitted—Defence—Company's indebtedness exceeding statutory limit—Directors' liability—Triable issue.

In action against a company incorporated under R.S.O. 1897, c. 199, for goods sold and delivered, the amount claimed being admitted, in which the defendants set up that their indebtedness when the goods were purchased largely exceeded the limits prescribed by ss. 11, 40 of that Act and that the directors were personally liable and not the company, a motion for summary judgment was dismissed. *Jacob's* v. *Booth's Distillery Co.* (1901) 85 L.T.R. 262 followed.

Long, for motion. *Bain*, contra.

Cartwright, Master]. WILLIAMS *v.* HARRISON. [Dec. 2, 1903.

Writ of summons—Renewal—Statute of limitations—Ex parte order—Master in Chambers—Local judge.

The Master in Chambers has jurisdiction to rescind an order made on the ex parte application of the plaintiff by a local judge for the renewal of a writ of summons if material evidence has, even unintentionally, been withheld.

Such an order was rescinded where on the ex parte application the facts that the writ had expired and that the Statute of limitations had run as against the claim were not brought to the notice of the local judge.

T. P. Galt, for application. *C. A. Moss*, for plaintiff.

Cartwright, Master]. APPLETON *v.* FULLER. [Dec. 7, 1903.

Parties—Joinder—Several torts.

Claim against two or more defendants in respect of their liability for several torts cannot be joined in the same action. Where, therefore, an action was brought against an extra-provincial company for penalties for carrying on business in Ontario without a license, and against an individual for penalties for carrying on the company's business in Ontario during the

same period as its agent, the plaintiffs, were ordered to elect as against which defendant they would proceed and the action was dismissed with costs as against the other.

J. B. O'Brian, for defendants. *S. Casey Wood*, for plaintiffs.

Boyd, C.] IN RE WAGNER. [Dec. 8, 1903.

Distribution of estates—Devolution of estates Act—Relations of the half-blood.

In the distribution under the Devolution of estates Act of the real and personal estate of an intestate, brothers and sisters of the half-blood share equally with those of the whole blood.

W. S. McBrayne, *H. E. Rose*, *Armour*, K.C., and *Aylesworth*, K.C., for the various parties.

Osler, J.A.] CENTRE BRUCE PROVINCIAL ELECTION. [Dec. 9, 1903.

STEWART *v.* CLARK.

Election petition—Fixing time for trial—Rota judges' obligation—Application by petitioner—Extending time.

While there is nothing to prevent a petitioner from making an application to fix the time and place of trial he cannot be said to be in default for not having done so. The obligation and initation in that respect are cast upon the Rota Judges, the only penalty (if so called) upon the petitioner being that if three months lapse after the presentation of the petition until the day for the trial being fixed any elector may on application be substituted for the petitioner on proper terms. And in such cases as when the judges' other engagements are such as to make it difficult for them to try the petition an application to extend the time for proceeding to trial will be granted almost as a matter of course.

R. A. Grant, for petitioner.

Cartwright, Master,] PHERRIL *v.* PHERRIL [Dec. 10, 1903.

Alimony—Interim—Inability of defendant to pay—Order refused.

An order for interim alimony, will not be made against a defendant where it is not shewn that he has the means to comply with such an order if made.

Godfrey, for the motion. *McNab*, contra.

Cartwright, Master] RE TRAVELLERS INSURANCE CO. [Dec. 15, 1903.

KELLY *v.* MCBRIDE.

Insurance—Life—Policy payable to mother—Surrender—New policy issued. Disposition varied—Sister if she survived mother—Claim by executors of assured—Sister entitled.

In 1888 the deceased was insured in the Travellers' Ins. Co., for $1,000, payable at his death, in favour of his mother as sole beneficiary. In 1894 he assumed to surrender that policy in consideration of $148.62 and a paid up policy for $500. payable at his death. In the latter policy it was provided that "the sum insured is to be paid to (mother), or in the event of her prior death to (a sister) or if the insured shall survive the aforesaid beneficiaries to his legal representatives or assigns". The mother died in 1901, and the assured died in 1903.

Held, that the sister, who had supported the mother, for the last four years of her life at the request of the assured, was entitled to the insurance money as against the executors of the latter.

Loftus, for the executors. *James Bicknell*, K.C., for the sister.

Meredith, C.J., MacMahon, J., Teetzel, J.] [Dec. 17, 1903.

LINTNER *v.* LINTNER.

Detinue—Demand and refusal after action—Inference of conversion before action—Husband and wife.

The plaintiff left her husband, the defendant, on the 21st October, 1902, and shortly afterwards brought this action for certain chattels of hers which remained upon his land, and for pecuniary damages for the detention thereof. On the 27th November, 1902, after the action had been begun, she went to his house and demanded her property. He said, in effect, that he did not wish her to take her things away, because he was anxious that she should go back and live with him, and did not consent to her removing the articles, but that she might remove or leave them as she saw fit.

Held, that this did not shew such a refusal of her demand as would enable her to sustain the action, if a demand and refusal after action were sufficient in detinue; as to which quære.

Semble, that, if the action had been for the conversion of the plaintiff's property, nothing was shewn from which the inference that there had been a conversion before action could properly be drawn.

Judgment of FALCONBRIDGE, C.J., reversed.

R. S. Robertson, for defendant. *Mabee*, K.C., for plaintiff.

Osler, J.A.] GIBSON *v.* LE TEMPS PUBLISHING CO. [Dec. 18, 1903.

Partnership—Foreign judgment against corporation—Action on, against partnership — Recovery of judgment—Estoppel—Service — Execution against partners—Rule 228—Issue.

A judgment was recovered by the plaintiff in a superior court of the Province of Quebec against certain defendants sued and described as "La Compagnie de Publication Le Temps, a body politic and corporate, having its principal office and place of business in the city of Ottawa, in the Province of Ontario," in an action for libel. There was no incorporated company in Ontario of that name, but a partnership firm of that name was registered in Ottawa, the partners being F. M. and his wife. This action was begun in Ontario by a writ specially indorsed with a claim for the amount of the Quebec judgment. The writ was served upon F.V.M., the manager of Le Temps Publishing Co., but without the notice in writing required by Rule 224, informing him in what capacity he was served. Le Temps Publishing Co. appeared by the name mentioned in the writ as if sued as a corporation, and the plaintiff obtained a summary judgment against the defendants, and afterwards an order to examine F.M. as "one of the registered partners of the defendants, otherwise called La Campagnie de Publication Le Temps." Upon a motion by the plaintiff for leave to issue execution against F. M. and his wife as members of the defendant partnership, an issue was directed to be tried to determine whether they were members of the partnership and liable to have execution issued against them.

Held, that it must be taken that the judgment in this jurisdiction was recovered against a partnership firm, and not against a corporation. If the Quebec judgment was to be regarded as one against a corporation and therefore not capable of being the foundation of an action thereon against a partnership firm of the same name, that objection should have been taken, but was not, on the motion for summary judgment. On that motion it might have been shewn, but was not, that there never had been an effective service of the writ upon the firm, or the firm might have moved to set aside the faulty service on the manager. Neither of these courses having been taken, there was an impeached judgment against a firm, which could not be attacked in a collateral proceeding; and it was open to the plaintiff to apply under part (2) of Rule 228 for leave to issue execution against F. M. and his wife as members of the firm; and as they disputed their liability, the question, not of the validity of the judgment, but of their liability as members of the firm to execution thereon, should be determined by the issue directed.

W. H. Barry, for Sara Moffat. *D. J. McDougal*, for plaintiff.

Meredith, J.] [Dec. 18, 1903.

CONFFDERATION LIFE ASSOCIATION *v.* MOORE.

Pleading—Statement of claim—Delivery after defence—Irregularity.

The defendants entered an appearance and at the same time filed a statement of defence and counterclaim, which he then served, and gave notice to the plaintiffs that he did not require the delivery of a statement of claim.

Held, that a statement of claim subsequently delivered by the plaintiffs was irregular. The indorsement on the writ of summons had become the statement of claim, and if not sufficient could be amended without leave.

Rules 171, 243, 247, 256, 300, considered.

Middleton, for defendants. *C. P. Smith*, for plaintiffs.

Trial—Street, J.] CROWDER *v.* SULLIVAN. [Dec. 19, 1903.

Promissory note—Illegal consideration—Contract in restraint of marriage—Insanity.

The only consideration for the making of a promissory note for $1,500 by the defendant's intestate in favour of the plaintiff was an agreement on the plaintiff's part not to marry L. or any other man as long as the intestate should live. She was about 30 years old and was his cook and housekeeper; he was about 60 years of age and apparently in excellent health; but three months after he made the note he became insane and died a year later.

Held, that the contract was one in restraint of marriage for an unreasonable period, and the consideration for the note was therefore an illegal one, and no recovery could be had upon it.

On the evidence, the issue raised as to the capacity of the deceased at the time the note was made was found in favour of the plaintiff.

D. B. Maclennan, K.C., and *C. H. Cline*, for plaintiff. *J. Leitch*, K.C., and *W. B. Lawson*, for defendant.

Osler, J.A.] IN RE DELLER. [Dec. 24, 1903

Will—Construction—Devise—Absolute gift—Conditional gift over—Validity—Disposition of corpus—Income—Executor.

A testator by his will bequeathed a small sum for a religious object, and proceeded: "my wife shall have the whole of my estate which remains at my decease, however with the observation that should she marry again then she shall receive only the third part, and the residue shall

be equally divided between my five children. The estate consisted of realty.

Held, that the words were sufficient to create a condition; that the condition was a valid one; that there was an absolute gift of the whole residue to the widow followed by a gift over as to two-thirds if she married again; and that the executor should retain in his hands two-thirds of the estate, paying the widow the income till her death or marriage, when it would fall to be disposed of, in the latter case under the testator's will, and in the former by her own will or otherwise by the course of law.

Flintoft, for executor. *Frank Denton*, K.C., for widow. *Geary*, for children.

Meredith, J.,] IN RE ADAMS. [Dec. 28, 1903.

Distribution of estates—Devolution of Estates Act—Next of kin—Collateral relations—Per capita distribution—Half-blood—Double blood.

An intestate was possessed of both real and personal property, and left no wife, child, father, brother, uncle or aunt.

His next of kin were cousins, more of whom were the children of his father's half brother, and one of whom was the neice both of his father and mother.

Held, that the estate should be distributed equally among the cousins. Under the Devolution of Estates Act the whole estate is to be distributed as personal property is now distributable. Collateral relatives in the same degree of kinship take equally in their own rights, not by way of representation; those of the half-blood take equally with those of the whole blood and those of the double blood take no more.

Farewell, K.C., *Armour*, K.C., *G.C. Campbell*, and *George Bell* for the various parties.

Meredith, C.J.C.P.] SLEMIN *v.* SLEMIN. [Dec. 29, 1903.

Receiver Interim alimony "Creditor"—Police Benefit Fund—Pension.

The plaintiff, the wife of a retired member of the Toronto Police Force, and who was entitled to certain interim alimony under an order theretofore made, now applied to be appointed receiver of moneys to which the defendant, her husband, would become entitled as pension, under the rules of the Police Benefit Fund, (a Friendly Society incorporated under R.S.O. 1897, c. 211,) on application by him before the Benefit Fund committee, which application however, he had not yet made.

Held, that the plaintiff was not entitled to succeed, for whereas arrears of pension constitute a debt which may be attached by garnishee proceed-

ings, unearned pension cannot be reached either by that procedure, or by the appointment of a receiver.

Semble, that the plaintiff was a "creditor" within the meaning of s. 12, of the Police Benefit Fund Act, and on that ground also, her application must fail.

O'Neal, for plaintiff. *Godfrey*, for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court] LE ROI MINING CO. *v.* NORTHPORT SMELTING CO. [June 22, 1903.

Smelting contract—Sampling ores—Automatic or hand sampling—Mine owner's representative at smelter—Authority of—Ores improperly sampled—Method of estimating values of.

Appeal from judgment of HUNTER, C.J., awarding the plaintiffs judgment for $3974.70 and costs.

A contract between mine owners and smelter owners provided *inter alia* that the ores supplied by the former to the latter should be sampled within one week after shipment. The evidence shewed that "automatic" or machine sampling had displaced the old method of "grab" or "shovel" sampling and had been in vogue for about twenty years:—

Held, per HUNTER, C.J., and WALKEM, J., that the contract was entered into on the footing that the sampling was to be done automatically.

Per DRAKE and IRVING, JJ.: The contract permitted any mode of sampling so long as it was done properly and the true value of the ore was arrived at.

A mine owner's representative at a smelter for the purpose of watching the weighing and sampling of ores so that the mine owner may be satisfied as to the correctness of the weight and sampling, has no authority to consent to a method of sampling not allowed by the contract.

Where the smelter returns of ore of average character sampled either negligently or in a manner not contemplated by contract, shew a value below the average, the probable value of the ore will be estimated by the Court by taking the average value of a certain number of lots immediately before and after the lots in dispute.

Amount of judgment reduced to $2,550.58.

C.R. Hamilton, for appellant. *J.A. Macdonald*, for respondent.

Full Court] MARSHALL *v.* CATES. [Nov. 10, 1903.

Master and servant—Negligence—Verdict—Inconsistent answers—Construction of.

Appeal from judgment of MARTIN, J., in favour of the plaintiff in an action for damages for personal injuries received by the plaintiff while in the employ of the defendant.

In construing a jury's verdict, consisting of a number of questions and answers, the whole verdict must be taken together and construed reasonably, regard being had to the course of the trial.

In an action for damages for personal injuries from an accident happening because of plaintiff's failure to withdraw himself from danger in response to a signal the jury found that the defendant was negligent and that the signal was given prematurely and that the plaintiff should have heard the signal but being busy may not have heard it. The answer to the question as to contributory negligence, to which the jury's attention was directed by the Judge, was "We do not consider that plaintiff was doing anything but his regular work." Judgment was entered for plaintiff.

Held, that the judgment must be affirmed.

E.P. Davis, K.C., for appellant. *J.A. Russell*, for respondent.

Full Court] HOOPER *v.* DUNSMUIR. [Nov. 17, 1903.

Practice—Undue influence—Particulars.

Appeal from an order of DRAKE, J. whereby the plaintiff was ordered to give particulars of undue influence alleged to have been exercised by defendant in obtaining a signature to a certain agreement.

Held, dismissing the appeal, that a party alleging undue influence will be required to give particulars of the acts thereof, the practice in this respect differing from that in the Probate division in England. *Lord Salisbury* v. *Nugent* (1883) 9 P.D., 23, considered.

Bodwell, K.C. for the appeal. *Davis*, K.C. and *Luxton*, contra.

Book Reviews

Canadian Railway Cases. A selection of cases affecting Railways recently decided by the Judicial Committee of the Privy Council, the Supreme Court and the Exchequer Court of Canada, and the Courts of the Provinces of Canada, with Notes and Comments, by Angus MacMurchy and Shirley Denison, Barristers-at-law, Vol. II. Toronto: Canada Law Book Company. Half-calf $7.50.

The authors of this work have in the second volume of the series made

an excellent selection of railway cases which they have supplemented with useful notes. The volume includes a number of unreported decisions, while other cases are drawn from reports not readily accessible. It may be safely said that cases of the class dwelt with in this series have with the rapid growth of steam and electric railways come to form almost the most important of our legal reports. The series will be found a great assistance not only to the railway corporation lawyer but to the general practitioner. The first part of Volume III is now ready.

Parliamentary Procedure and Practice in the Dominion of Canada with Historical Introduction and an Appendix: by Sir John George Bourinot, K.C.M.G., late Clerk of the House of Commons of Canada: Third Edition, edited by Thomas Bernard Flint, M.A., L.L.B., D.C.L., of the Nova Scotia Bar, Clerk of the House of Commons. Toronto: Canada Law Book Company. Half-calf, $9.00.

The third edition of this well known treatise upon which Sir John Bourinot was engaged at the time of his lamented death has been most judiciously completed and brought down to date by his successor the present Clerk of the House of Commons. The work is not merely the Canadians parlimentarian's vade mecum but is of the great importance and interest to every student of Canada's political institutions. It may be added that the printing and binding are of the best style and reflect great credit on the publishers of this edition.

UNITED STATES DECISIONS.

RAILWAY.—A passenger going upon a railroad train, is held, in Kansas City, *Ft. Scott & M. R. Co.* v. *Little* (Kan.) 61 L.R.A. 122, to have a right to rely upon the representations of a local ticket agent that such train will stop at a certain point to which he has purchased a ticket and desires to ride; and the company is held to be liable if he is compelled to leave the train before reaching his destination, because by the general rules of the company, unknown to the passenger, such train is not scheduled to stop at such station.

MUNICIPAL LAW.—A statute which requires municipal corporations to pay more for common labour employed on public improvements than it is worth in the market is held, in *Street* v. *Varney Electrical Supply Co.* (Ind.) 61 L.R.A. 154, to unconstitutionality deprive the taxpayers of their privileges and immunities, and of their property without due process of law, to interfere with their right of contract, and to be invalid as class legislation.