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A writer in the August number of the *Law Magazine and Review* takes the English Incorporated Law Society to task for various faults and failures, suggesting, however, that when the members at large are fairly represented on the Council, and the present system, which practically amounts to the election of the nominees of a clique, is done away with, certain reforms will be easy and possible. He then proceeds with his list of grievances. One of these is akin to a matter which affects ourselves :—"The ridiculous incompetence of the Council of the Incorporated Law Society allows the profession to be tied up to a scheme of charges in conveyancing matters which amounts to only a fraction of the charges which house agents are able to recover as customary in the courts of law." Our difficulty is not quite the same as that of our brethren in England, but it is equally irritating and unfair to solicitors, and especially so in country places. The profession in Ontario are still looking to the Benchers to do something for their protection against unlicensed conveyancers. The writer concludes his article by saying "we ought to make a clean sweep of the present Council, and then reforms would be speedily put forward and duly carried."

"You shall refuse no man's cause." The *English Law Times* very properly denounces a resolution passed recently at a meeting in Carnarvon, calling on temperance men not to support "any candidate who acts professionally as counsel for the liquor trade at licensing sessions." Our contemporary justly characterises this as an attempt to identify the advocate with his client, and an assault on the true interests of society at large. Even in this country it may perhaps be necessary to call to mind that in the oath which every barrister is required to take, is included a promise "to refuse no man's cause," so that a barrister who conscientiously regards his oath, is not at liberty to pick and choose his clients, and even a man with an unpopular, or a bad case, is entitled to the benefit of the services of any advocate he may choose to employ and pay,

whose services have not already been secured on the other side. This being the position in which the law places an advocate for the benefit of the community, it is absurd and unjust for anyone to seek to identify counsel with their clients, or in any way make them responsible for the demerits of the case.

The question of the proper dress for men in public has been exercising one of the United States Courts. A traveller having bought a ticket on the defendant's steamer, desired to ride in the saloon in his shirt sleeves. The officers of the boat disagreed with the gentleman as to the propriety of his apparel, ladies being present. A suit resulted. The jury agreed with the officers of the boat and the plaintiff failed in his claim for damages. We quite agree with the jury, but note that in this instance, at all events, the boast of America being a "free country" is not borne out. The question of dress is really one for the ladies to pass upon, and having taken the opinion of some experts of that sex, we gather the unwritten law to be that a shirt without suspenders or a waistcoat is en regle, but that the presence of either of these articles without a coat to cover them puts the wearer out of Court; and we are told that Garibaldi's uniform was a plain red shirt. The writer remembers once appearing (as a student) before the then Clerk of the Common Pleas at Osgoode Hall in Vacation to tax a bill of costs, minus his coat, the weather being intensely hot. This was a terrible shock to the officer, who declined to "see" him or to proceed with business until the outside garment was resumed. That dignified official may perhaps be as much shocked now by a wigless Judge in England (see ante p. 476) as he once was by a coatless clerk; but what will he think, of a coatless Court? We read that on a torrid day last month in Ohio a Judge of that state remarked to the jury, that while he desired to maintain the dignity and decorum of the Court, yet he thought that in such weather some latitude should be permitted, and that any of the jurymen who pleased were at liberty to take of their coats. Shortly after one of the counsel asked if the privilege given to the jury might be extended to counsel. The Judge assenting, the counsel followed suit. After some hesitation the Judge himself did the same. One by one as the day advanced all the jurors took advantage of the permission, and before the Court adjourned were in their shirt-sleeves. This will doubtless be to our old friend at Osgoode Hall a sad proof of the degeneracy of this end of the nineteenth century.

TAX SALES.

A perusal of the authorities cannot fail to lead one to the conclusion that very few sales for taxes, if attacked in time, will stand the test. That this is largely due to the negligence of the officials entrusted with the collection of taxes is nother almost inevitable conclusion. These officials, namely, the treasurers, clerks and collectors of municipalities do not appear to be sufficiently versed in their duties, and in the requirements of the statutes, having in view the imperative necessity of strictly conforming thereto.

It must, however, be admitted that the Courts are very technical in the construction placed on the Acts dealing with the subject, but for this reason, if for no other, the officials should exercise a far greater degree of care. It may be that in a great many cases properties are sold for such a small sum in arrears, and at such a ridiculously low figure, that the Courts are glad to find some flaw in the proceedings to relieve a poor unfortunate, who wakes up to find his property gone like a passing shadow, and now in the hands of some land grabber, who is always to be found lurking about the civic bargain counter. Chief Justice Wilson, in *Deverill* v. *Coe*, 11 O. R. at p. 236, says :—"It is full time to stop these sales which are used for the benefit of speculators only, and who are furnished by the Government with the power of depriving the innocent but careless land-owner of his property, or of enforcing from him the almost extortionate demand for getting back what is in justice his own." Also Armour, J., in the same case at p. 241 :—"I do not appreciate very highly the hardship to the speculator in the purchase of lands for taxes, whose chief hope of gain lies in the owner of the land being kept in ignorance that his land has been sold for taxes, and who traffics upon the chances of his ignorance continuing until he may be able, as he hopes, to deprive him of his land." The statutes dealing with the subject have come in for much judicial discussion in recent years, but before referring to the cases, it will be well to briefly summarize the duties of the afore-mentioned officials in regard to sales for arrears of taxes, apart from their other duties, under the Assessment Act, R.S.O. 1897, c. 224.

I. It is the duty of the Treasurer:

1. To furnish to the clerk of his municipality a list of all the lands in his municipality, in respect of which any taxes have been

in arrear for the three years next preceding the 1st day of January in any year; the list to be furnished on or before the 1st of February in each year, and headed "List of lands liable to be sold for taxes in the year 18—."

2. In cases of towns and villages, within 14 days after the time appointed for the return and final settlement of the collector's roll, and before the 8th day of April in every year, to furnish the county treasurer with a statement of all unpaid taxes and school rates, directed in the said collector's roll, or by the school trustees, to be collected. Sub-s. 2 of s. 157 provides what such returns shall contain.

3. To prepare a list of the lands to be sold, and advertise them, as provided by ss. 177, 178, 179, 180 and 181. See ss. 152, 157, 177, 178, 179, 180 and 181 of the Act, and 61 Vict. c. 25, s. 3.

II. Of the Clerk:

1. To deliver the roll certified under his hand to the collector, on or before the 1st of October, or such other day as may be prescribed by by-law of the local municipality.

2. To keep the list furnished by the treasurer on file in his office for public inspection.

3. To deliver the copy of the list to the assessors in each year as soon as they are appointed.

4. To file the list returned by the assessor in his office for public use.

5. To furnish forthwith to the treasurer a copy of the same, certified by him under the seal of the corporation.

6. To examine the assessment roll and certify the lands which have become occupied, and make a return to the treasurer as provided by s. 155 of the Act. See ss. 131, 153 and 155.

III. Of the Assessor:

1. To ascertain if any of the lands, or parcels of land, contained in the list were occupied, or were incorrectly described.

2. To notify such occupants and owners, if known, whether resident within the municipality or not, upon their respective assessment notices, that the land is liable to be sold for arrears of taxes.

3 To enter on the list "occupied and parties notified," or "unoccupied," or "incorrectly described," as the case may be.

4. To sign such list and return it with the assessment roll to the clerk, together with a memorandum of any error discovered

therein, and to attach to each such list a certificate, verified by oath, in the form provided by s. 154.

5. If there is not sufficient distress upon the occupied lands to so return it in his roll to the treasurer, showing the amount collected, if any, and the amount remaining unpaid, and stating the reason why payment has not been made. See ss. 153, 154 and 156. See also s. 147, as amended by 61 Vict. c. 25, s. 2.

The law appears to be well settled that the substantial compliance with the provisions of the above sections relating to the duties of these officials is a condition precedent to the right to sell or to distrain for arrears of taxes. In *Deverill* v. *Coe*, 11 O.R. where no notice of arrears was given to the then owner or occupant, and they were not entered on the roll as required by the Act, and no notice given as required by s. 109 of R.S.O. 1877 (s. 153 of R.S.O. 1897), that the land was liable to be sold for taxes, it was held that the sale could not be supported, and that the irregularity could not be cured by ss. 155 and 156 of the former Act (ss. 208 and 209 of the latter Act). In this case Wilson, C.J. makes some observations on the impropriety of tax sales as now conducted under the legislative authority, and he suggests a remedy in the following words at p. 236:—"But what would be infinitely better would be to put an end to the sale of lands for taxes. These sales were adopted here at a time when the country was thinly settled, and large tracts of land were held by absentees and other non-residents, and the taxes could not at that time be collected which were chargeable against them, and the lands were comparatively of little value. The country is in a different condition now, and it is full time to stop these sales. . . . . Means may be devised by the legislature to have these arrears placed yearly upon the collector's roll for collection until they are paid, and if they are not paid in some few years—say five—let the municipality become the owners of such lands upon some terms and conditions which may give the owner a chance of redemption for a longer period, and if not redeemed, with power to the council to sell such lands by public sale, and to apply the proceeds for the benefit of the municipality. If any one is to profit by these sales let it be the municipality, or in other words, the public, and not the private and unmeritorious speculator."

As to the imperative provisions of the Act, see also *Donovan* v. *Hogan*, 15 A.R. 432; *Town of Trenton* v. *Dyer*, 21 A.R. 379, 24

S.C.R. 474; *Love* v. *Webster*, 26 O.R. 453; *Caston* v. *City of Toronto*, 26 O.R. 459, 30 S.C.R. 390, and *Johnson* v. *Kirk*, 30 S.C.R. 434.

It has been held by the Court of Appeal, affirming *Hutchinson* v. *Collier*, 27 C.P. 249, and *The Church* v. *Fenton*, 28 C.P. 204, that the two years limited by s. 209 of R.S.O. 1897, run from the time of making the tax deed, not from that of the auction sale: *Donovan* v. *Hogan*, supra. In *Deverill* v. *Co.*, the judges question whether the effect of ss. 155, 156 of R.S.O. 1877 (ss. 208, 209 of R.S.O. 1897), is to make valid all sales for taxes so long as there are any taxes in arrears, notwithstanding every kind of neglect and misconduct of the municipal officers, they practically come to the contrary conclusion, Armour, J., being particularly emphatic; p. 241:—"The taxes must be legally due, and the arrears must be taxes legally in arrear, so that the land may be legally sold, otherwise ss. 155 and 156 of the Assessment Act do not apply." Again, "the owner should be considered, and the sales conducted as ordinary business transactions, as where property is sold by auction with a view to obtain its fair market value, and where the lands have been sold for a grossly inadequate price, as is generally the case, and the same is not redeemed in one year after the sale, as provided by s. 208, the sale might still be questioned as not having been openly and fairly conducted within the meaning of that section: *Deverill* v. *Coe* and *Donovan* v. *Hogan*." See also *Hall* v. *Farquharson*, 15 A.R. 457.

So that the apparent effect of these two sections, 208 and 209 as construed in the light of the above authorities, is:

(*a*) To make all sales unimpeachable after one year from the time of the auction sale where the taxes are legally due and in arrears, and where all requisite formalities have been observed, and the sale openly and fairly conducted;

(*b*) To make all sales unimpeachable after two years from the date of the making of the tax deed where the taxes are legally due and in arrears, notwithstanding the fact that the formalities required by the statute have not been observed, or that the sale has not been openly and fairly conducted; but some expression of doubt is thrown even on this conclusion by Wilson, C.J.;

(*c*) To make the sale impeachable after one year from the auction sale, and within two years from the giving of the tax deed,

where the sale has not been openly and fairly conducted, notwithstanding the fact that the taxes are legally due and in arrears, and that all requisite formalities have been observed;

(*d*) That they do not apply at all under certain circumstances referred to by the Judges in the above cases, where, for instance, there are no taxes legally due and in arrears.

It is interesting to note that McDougall, C.J. of York, has held that a county municipality is not liable for the cost of advertising the county treasurer's list of sales for arrears of taxes, although sent to the plaintiff by the county treasurer, and that the county treasurer does not act as an officer of the corporation in relation of tax sales, and that the duties connected therewith are not within the scope of his authority as county treasurer. He is merely persona designata on behalf of the local municipality, and the creditor must look to him personally: *Warwick* v. *County of Simcoe*, 36 C.L.J., 461.

Hamilton. JOHN G. FARMER.

Lord Alverstone, formerly Sir Richard Webster, has been appointed Lord Chief Justice of England, in succession to the late Baron Russell of Killowen. Mr. Justice A. L. Smith succeeds Lord Alverstone as Master of the Rolls.

The following judicial appointments were published in the Canada *Gazette* of October 13th: George F. Gregory, Q.C., of the City of St. John, to be a puisne judge of the Supreme Court of the Province of New Brunswick; and Joseph Emery Robidoux, Q.C., of the City of Montreal, to be a puisne judge of the Superior Court of the Province of Quebec.

The *Central Law Journal* notes a case of the *City of Kansas* v. *Orr*, 61 Pac. Rep. 397, where it is held that the fact that one who sustains injury by reason of the negligence or wrongful act of another may have been at the time of the injury acting in disobedience of his collateral obligations to the State, which required of him the observance of the Sunday law, will not prevent a recovery from one whose wrongful or negligent act or omission was the proximate cause of the injury.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

CONTRACT—WAGERING CONTRACT—MARINE INSURANCE ACT 1745 (19 GEO. 2, C. 37), S. 1—REFUSAL OF COURT TO ENFORCE ILLEGAL CONTRACT THOUGH DEFENCE OF ILLEGALITY NOT SET UP.

In *Gedge* v. *Royal Exchange Ass. Corp.* (1900) 2 Q.B. 214 the plaintiffs sought to recover on a policy of marine insurance, the plaintiffs' evidence disclosed that the policy sued on was a wagering contract, and, as such, null and void under the Marine Insurance Act, 1745, (19 Geo. 2, c. 37), s. 1. No defence of illegality was set up by the defendants, but Kennedy, J., who tried the action, held that the Court could not give effect to the contract which plainly was invalid under the statute and he dismissed the action, but without costs.

ARBITRATION—EXTENDING TIME FOR MAKING AWARD—JURISDICTION—ARBITRATION ACT, 1889, (52 & 53 VICT., C. 49), SS. 9, 24.—(R.S.O. C. 62, S. 10).

Knowles v. *Bolton* (1900) 2 Q.B. 253, was an appeal from Kennedy, J., refusing to extend the time for making an award. The arbitration in question was had under a statute which provided that the time for making the award, by arbitrators or an umpire, under the Act, should not in any case be extended beyond the period of two months from the date of the submission to arbitration or the date of the reference of the matters to the umpire, respectively. Kennedy, J., relying on the case of *In re Mackenzie & Ascot Gas Co.* 17 Q.B.D. 114, was of opinion that there was no jurisdiction to extend the time; the Court of Appeal (Smith and Romer, L. JJ.) reversed his decision and held that although the Act under which the arbitration took place precluded the arbitrators or umpire from extending the time for making their award beyond the time limited, it nevertheless did not exclude the jurisdiction of the High Court to grant an extension under the Arbitration Act 1889, (52 & 53 Vict., c. 49), ss. 9, 24, (R.S.O. c. 62 s. 10), and the Court of Appeal granted an extension of time notwithstanding that the two months' limit had expired.

PRINCIPAL AND AGENT—STOCK BROKER, DEFAULT OF—LIABILITY OF PRINCIPAL TO JOBBER—PRIVITY OF CONTRACT.

Anderson v. *Beard* (1900) 2 Q.B. 260 is a case somewhat similar to *Beckhuson* v. *Hamblet*, noted ante p. 441, the action being brought by a stock jobber against the client of a broker who had made default in completing a purchase of shares from the plaintiff. The plaintiff having discovered that the contract had been entered into by the broker on behalf of the defendant called on him to take up the shares, and on his refusal to do so he resold the shares and claimed to recover from the defendant the difference between the price agreed to be paid by the broker and the price realized on the resale. The case, however, differed from *Beckhuson* v. *Hamblet* inasmuch as the transaction was a single one and no others besides the defendant were interested in the purchase. Mathew, J., therefore held that the plaintiff's action was well founded, and he gave judgment in his favour for the amount claimed.

LANDLORD AND TENANT—FORFEITURE—COVENANT NOT TO ASSIGN—EQUITABLE ASSIGNMENT—DECLARATION OF TRUST—NOTICE BEFORE ACTION—SERVICE OF NOTICE ON "LESSEE" CONVEYANCING AND LAW OF PROPERTY ACT, 1881, (44 & 45 VICT., C. 41) S. 14, SUB-SS. 1, 6, (*i*); S. 67, SUB.-S. 2—(R.S.O. C. 170, S. 13, SUB.-SS. 1, 6 (*a*))—JUD. ACT, 1873, S. 24, SUB-S. 4 - (ONT. JUD. ACT, S. 57, SUB-S. 8).

Gentle v. *Faulkner* (1900) 2 Q.B. 267 was an action of ejectment brought by a landlord against his lessee. The lease under which the defendant held provided that the lessee should not assign or sub-let the demised premises, and it also provided for re-entry in the event of the lessee making any assignment for the benefit of creditors. The lessee had made an assignment of his property, except the demised premises, for the benefit of his creditors, and declared that he would stand possessed of the leasehold upon trust for the trustee and to assign and dispose of the same as the trustee should direct. Notice had been given of the claim of the plaintiff to reenter to the assignee for creditors who had taken possession, but no notice had been served on the lessee, the defendant. Byrne, J., who tried the action, held that the deed of assignment followed by the possession by the assignee was by virtue of the Jud. Act, s. 24, sub-s. 4, (Ont. Jud. Act, s. 57, sub-s. 8) an assignment of the demised premises, and a breach of the covenant not to assign, and that the plaintiff was entitled under the Conveyancing Act, 1881, s. 14, sub-s. 1,—(R.S.O. c. 170, s. 13, sub-s. 6 (a).)—

to enforce his right of reentry without giving any notice. On appeal, however, the Court of Appeal (Smith, Williams, and Romer, L.JJ.), came to a different conclusion. In the opinion of that Court a covenant not to assign or sublet, is only broken by the execution of a legal assignment or sub-lease, and a mere equitable assignment is not a breach; furthermore, in order to entitle the plaintiff to recover on the ground that the execution of an assignment for the benefit of creditors worked a forfeiture, it was necessary for him to give notice to the "lessee," under the Conveyancing Act, 1881, (R.S.O. c. 170, s. 13, sub-s. 1), and notice to the assignee for creditors was not a notice to the "lessee" and was insufficient. The contention of the plaintiff that notice to the lessee was unnecessary was met by Romer, L.J., by the observation that notwithstanding the assignment, the lessee continued to have an interest in the premises, not only onerously but beneficially, in the first place in the resulting trust, and in the second place, as trustee of the leasehold he would be entitled to retain the lease as an indemnity against any breach of covenant, and besides was the only defendant in the action.

INSURANCE (MARINE)—POLICY ON SHIP—"FURNITURE" ON SHIP, MEANING OF.

In *Hogarth* v. *Walker* (1900) 2 Q.B. 283, the Court of Appeal (Smith, Williams, and Romer, L.JJ.) have affirmed the judgment of Bigham, J., (1899) 2 Q.B. 401, (noted ante vol. 35, p. 681) to the effect that certain mats and cloths used upon a ship for the proper carriage of a certain kind of cargo, were properly within the term of "furniture" of the ship in a policy of insurance, although at the time of the loss of the ship, it was not engaged in the carriage of a cargo requiring the use of such cloths and mats and which were not in fact then in use, but stowed away in the fore peak.

CONTRACT—IMPOSSIBILITY OF PERFORMANCE—IMPLIED CONDITION—MEASURE OF DAMAGES.

Nickoll v. *Ashton* (1900) 2 Q.B. 298, was an action brought to recover damages for breach of a contract. By the contract in question, made in October 1899, the defendants sold to the plaintiffs a cargo of cotton seed to be shipped at certain Egyptian ports during the month of January, 1900, per steamship Orlando, and to be delivered to the plaintiffs in the United Kingdom. The contract provided that "in case of prohibition of export, blockade,

or hostilities preventing shipment, this contract, or any unfulfilled part thereof, is to be cancelled." In December, 1899, the Orlando, without any default of the defendants, stranded, and it was so much damaged as to be incapable of reaching the ports of loading before the end of January. On the 20th December notice of that fact was given to the plaintiffs. Upon receipt of this notice the plaintiffs might have bought another cargo of cotton seed in substitution for that sold by the defendants, but declined doing so. The market was rising, and by the end of January the market price had risen considerably above the point at which it stood on the 20th December. The plaintiffs claimed as damages the difference between the contract price and the market price at the end of January. The case was tried by Mathew, J., who dismissed the action on the ground that there was an implied condition in the contract, that in the event of the ship not arriving at the ports of loading within the stipulated time in a fit condition to receive the cargo, the contract should be treated as at an end, and that the implication of this condition was not excluded by the clause expressly providing for the cancellation of the contract in the specified events. He also expressed the opinion that even if the plaintiffs had been entitled to recover, they were, under the circumstances, bound to endeavour to mitigate the loss, and that the measure of damages would have been the difference between the contract price and the market price at the date when the plaintiffs had notice of the stranding.

COMPANY—WINDING UP ORDER—CREDITOR'S PETITION—DISCRETION.

In re Greenwood (1900) 2 Q.B. 306. A proceeding had been instituted by a joint stock company in the interest of its debenture holders which had been dismissed with costs. The costs not having been paid, the person to whom they were payable presented a petition to wind up the company in order to compel the company to enforce its right to indemnity against the debenture holders. It appeared that the assets of the company were insufficient to pay the claims of the debenture holders, but inasmuch as the enforcement of the right of indemnity would be of no benefit to the general body of the creditors of the company, Bigham, J., held that the winding up order, in the exercise of a proper discretion, ought not to be granted.

DISCOVERY—OFFICER OF CORPORATION—RULES 343, 347, 366,—(CF. ONT. RULES 439, 461),—EVIDENCE.

In *Welsbach Incandescent Light Co.* v. *New Sunlight Co.* (1900) 2 Ch. 1, the Court of Appeal (Webster, M.R., and Rigby and Collins, L.JJ.,) discusses the questions as to the extent to which an officer of a corporation may be examined for the purposes of discovery, and how far such examination is evidence against the corporation. With regard to the first point the rule is laid down that a servant of a corporation examined for discovery is only bound to answer as to his knowledge acquired in the course of his employment by the company, and as to the result of inquiries made by him of other officers and agents of the company with regard to their knowledge acquired in the same way, but that he is not bound to answer as to his own knowledge, or to make inquiries of the other officers or agents of the company as to their knowledge acquired accidentally or in some other capacity. Such examination may be read against the company, but it would seem that it is not conclusive, and that it is only prima facie evidence, and that the company would be at liberty to shew that the answers of their officers were mistaken or otherwise wrong. In Ontario an express Rule 461 defines the limits within which such an examination may be used as evidence against the corporation.

PRIVATE INTERNATIONAL LAW—LUNACY—FOREIGN LUNATIC—ACTION BY LUNATIC AND FOREIGN ADMINISTRATEUR PROVISOIRE—LUNATIC NOT SO FOUND—ORDER OF FOREIGN COURT.

Didisheim v. *London & Westminster Bank* (1900) 2 Ch. 15, was an action brought by a foreign lunactic by her next friend and a foreign administrateur provisoire of her estate. The lunatic was administrator of her husband's estate, part of which was in the possession of the defendants. She was also, in her own right, entitled to moneys and securities in the defendants' hands. Her husband was a foreigner domiciled in Belgium at the time of his death. After his widow had obtained letters of administration, with the will annexed, to his estate in England, she became a lunatic, and was confined in a lunatic asylum in Belgium, but she had not been placed under "interdiction" nor under guardianship, but, at the request of a family council, one, Didisheim, had been appointed administrateur provisoire of her estate, without security. He obtained letters of administration de bonis non to her hus-

band's estate, and claimed from the defendants the delivery of the moneys and securities in their hands belonging to the estate of the husband, and to the lunatic in her own right. The lunatic was joined as a plaintiff by Didisheim as her next friend. An order authorizing the bringing of the suit had been made by the Belgian Court, but no such order had been made by the English Court of Lunacy. The defendants contended that an action by the lunatic by a next friend for the delivery up of property would not lie because neither the lunatic nor next friend could give a valid receipt. As regards the property of the husband they claimed that although Didisheim might, as administrator de bonis non, be entitled to recover property outstanding belonging to his estate, yet he could not recover property which had been got in and appropriated by the lunatic administratrix; and as to the lunatic's own estate they contended that the only Court which could give Didisheim as administrateur provisoire, the right to recover English property was the English Court of Lunacy. North, J., dismissed the action, but the Court of Appeal (Lindley, M.R., Rigby and Williams, L.JJ.) reversed his decision. That Court was of opinion that an action by a lunatic not so found, by his next friend, was maintainable to recover the property of the lunatic, and that there was no ground for the contention that the previous sanction of the Court of Lunacy to the bringing of such a suit was necessary, and that on principles of private international law the English Court was bound to give effect to the order of the Belgian Court. So far as the lunatic's own property was concerned the action was held to be properly brought, and the plaintiff entited to recover: as regards the claim of Didisheim to recover as administrator de bonis, the Court of Appeal held that although formerly such a claim could not have been joined with the claim of the lunatic to recover her own property, yet under the Judicature Act the two claims might be joined, the defendants having made no objection thereto, and that Didisheim was entitled to recover the property of the deceased husband. The Court of Appeal, however, held that the defendants were, under the circumstances, entitled to put the plaintiffs to proof of their title, and were, therefore, entitled to their costs against the plaintiffs. The report sets out in extenso the formal judgment of the Court.

COMPANY—SPECIAL ARRANGEMENT AS TO CALLS AUTHORIZED—DIRECTORS USING POWERS FOR THEIR PERSONAL BENEFIT.

In *Alexander* v. *Automatic Telephone Co.* (1900) 2 Ch. 56, the Court of Appeal (Lindley, M.R., and Rigby and Williams, L.JJ.) have overruled the decision of Cozens-Hardy, J., (1899) 2 Ch. 302 (noted ante, vol. 35, p. 714). The object of the action was to compel the defendants, who were directors of a joint stock company, to pay the same calls on shares allotted to themselves, as were payable on shares allotted to the plaintiff and the other shareholders of the company. The articles of association authorized the directors to make arrangements on the issue of shares for a difference in the amount of calls to be paid thereon, and the time of payment. The defendants had availed themselves of this provision in respect of shares allotted to themselves and without informing other shareholders thereof, and the Court of Appeal held that directors were not entitled so to use their powers as to obtain benefits for themselves at the expense of the other shareholders without informing them of the facts, and that they could not be allowed to retain those benefits, and must account for them to the company so that all the shareholders might participate therein. A declaratory judgment was accordingly pronounced declaring that the defendants were bound to pay the same calls on their shares as had been made on the shares of the plaintiffs and other shareholders, with liberty to the plaintiff to apply for an order for payment if necessary, and the directors were ordered to pay the costs. The form of the action is discussed by Lindley, M.R., and he held that it was preferable to bring the action in the name of the plaintiff on behalf of himself and the other shareholders other than the directors, against the company and the directors—rather than to bring the action in the name of the company, it being alleged and proved that the directors held a preponderating proportion of the shares, and practically controlled the company.

The Forum.

A CAUSERIE OF THE LAW.

CONDUCTED BY CHARLES MORSE.

"Existe-t-il une société juridique entre les hommes et les animaux?" asks M. Henri Rollin in reviewing M. Englehart's book on the legal rights of the lower animals, ("De l'Animalité et de son Droit"). As our humble energies are more or less absorbed in exploiting the "juridicial relation" between man and man, we shall not undertake to find an answer to M. Rollin's interesting query; but we would venture to suggest that he take out an order to examine, viva voce, on the subject, Mr. Kipling's "Shere Khan," or, better still, the shades of those leonine epicures of Marco Polo's day who had a playful habit of breaking in upon Oriental forensic functions, and lunching on the presiding magistracy. The subject is not a new one, for we bear in mind what that brilliant young Canadian, Mr. Ernest Seton Thompson, has to say about it in his preface to "Wild Animals I have Known," viz.: "Since then the animals are creatures with wants and feelings differing in degree only from our own, they surely have their rights. This fact, now beginning to be recognized by the Caucasian world, was emphasized by the Buddhist over 2,000 years ago." But we do not expect to see a practical "animal jurisprudence" such as M. Englehart speculates about, until the millennium has first ended "man's inhumanity to man." We suspect that the hard-headed votary of Themis to-day would look upon the advocate of such a propagandism as Gœthe's "Werther" exhumed, or, possibly an impersonation of the "Sentimental Shepherd" of whom the humourist sang:

> "I sits wid me toes in a brook
> And when they ax me: "For why?"
> I hits them a tap wid me crook—
> 'Tis sentiment kills me, says I!"

* * * In looking over the fine new English edition of the late Dr. Broom's "Legal Maxims" we are reminded of what Sir James Fitzjames Stephen said of the value of legal maxims in his "History of the Criminal Law" (vol. 2 page 94 n. 1): "It seems to me that legal maxims in general are little more than pert headings

to chapters. They are rather minims than maxims, for they give not a particularly great, but a particularly small amount of information. As often as not the exceptions and qualifications to them are more important than the so-called rules." And yet, mirabile dictu, at another place in the same work (p. 2, vol. 1) he said: "A judge who wilfully refuses to act upon recognized legal maxims would be liable to impeachment." So we incline to the view that the possession of a "little hoard of maxims" is not a bad property for the man of the law.

* * * Notwithstanding Sir Henry Maine's postulate that "neither ancient law, nor any other source of evidence discloses to us society entirely destitute of the conception of contract" (Anc. Law, p. 312), we imagine it to be quite proper to say that a definite system of contract is not to be found in history at an earlier date than the decline of the Roman regal period. Contract arises from the relations existing between men in a state of commerce; and trade, as we know it, began its existence in that epoch. It has to be conceded, of course, that the elements of barter and exchange appear at a much more archaic period in history, for instance, take the dealings referred to by Homer in the Iliad, VI. 234; VII. 472; and, particularly the transaction mentioned in the Odyssey, I. 430. But it was clearly not until after Rome became a great cosmopolitan centre that the normalization of mercantile transactions began. Dr. Muirhead (Roman Law, sec. 12, p. 49) says: "To speak of a law of obligations in connection with the regal period [of Rome], in the sense in which the words were understood in the later jurisprudence, would be a misapprehension of language. It would be going too far to say, however, as is sometimes done, that before the time of Servius, Rome had no law of contract." Trade, then, may be said to be the mother of contract.

* * * Mr. Pike's latest issue of the "Year Books of Edward III." (Year XVI., pt. II.) contains several features of interest to legal scholars, but perhaps the most notable fact established for them is that at the particular period covered by these records "wager of law" had fallen into obsolescence, and proof per testes prevailed. We have here the record of an action of dower by the widow of one William Oky, in respect of a certain messuage at Coventry. The widow alleged that her husband had died in the army abroad

three years before, and produced a sealed certificate of the Mayor and Commonalty of Bristol to the effect. This evidence was rejected because not given viva voce. The widow then promptly produced two witnesses who swore that her husband had died at Ipswich—a tour de force which demonstrates that the medieval practitioner was not unresourceful when the exigencies of his case became strenuous.

* * * We have frequently heard it stated that the education of the masses has a tendency to promote crime by making the poor dissatisfied with their narrow surroundings, and creating in them a craving for amenities of life unattainable to them by lawful means. We are glad to be put in possession of satisfactory evidence that such a postulate is untrue, so far, at least, as Great Britain is concerned. In the Home Office Report for 1898, Mr. C. E. Troup furnishes us with statistics showing that since the inauguration in England of a national system of education the volume of crime has steadily ebbed. This answer to the croaking of the reactionary is the more complete in that Mr. Troup is able to show that the diminution of crime is chiefly notable in the departments which have to do with the covetous and furtive instincts in human nature.

* * * Lord Selborne's love and veneration for literature is manifested in his letter of thanks to Tennyson for the latter's dedication to him of the drama "Becket." He declared that this courtesy on the part of the poet was "the greatest real honour" that had ever been done him; and that the fact that he had won the laureate's friendship and esteem was "more than he could have hoped for." What a contrast, this, to the relations existing between Lord Eldon and Shelley, perhaps the greatest poet of that day! And what a tribute, too, to the graciousness and goodness of the later period!

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Practice.] McKIN v. TOWNSHIP OF EAST LUTHER. [Sept. 19.

Local Masters—Jurisdiction—Referring actions to Drainage Referee.

A Local Master of the High Court has jurisdiction by virtue of Rules 42 and 49—see also Rule 6 (a)—to make an order, under s. 94 of the Municipal Drainage Act, R.S.O. c. 226, referring an action brought in his county to the Referee under the Drainage Laws.

Mabee, Q.C., for appellants. *M. Wilson*, Q.C., for respondent.

Osler, J. A.] IN RE REDDOCK AND CITY OF TORONTO. [Sept. 28.

Appeal—Leave—Judicature Act, s. 77.

Where a motion to quash a municipal by-law was refused by the Judge who heard it, and his order affirmed by a Divisional Court, an application for leave for a further appeal was dismissed.

Held, that, under s. 77 of the Judicature Act, upon such an application for leave, it must appear that there is some reasonable ground for doubting the soundness of the judgment, and in addition thereto, that special reasons exist for taking a case out of the general rule, which forbids more than one appeal to the same party.

F. E. Hodgins, for applicant. *Fullerton*, Q.C., for city.

HIGH COURT OF JUSTICE.

Ferguson, J.] RE METCALF. [July 10.

Will—Devise of residue—Executory devise—Event happening in part.

A testator by his will gave his wife a life interest in his estate, and at his death some specific legacies, and then provided "The residue * * * I give, devise and bequeath as follows, that is to say: it shall be equally divided between my brothers R. M. and M. M., or in case of their dying before my * * * wife L. M., it shall be equally divided between the heirs of my brothers R. M. and M. M." R. M. died in the lifetime of the widow and M. M. survived her.

Held, that as the event provided for, viz., the death of both R. M. and M. M. during the widow's lifetime had not happened, the devise of the

residue to R. M. and M. M. was not divested, and R. M.'s widow took his share under his will.

R. R. Hall, for appellant. *George J. Sherry*, *W. A. F. Campbell* and *G. L. Smith*, for other parties.

Ferguson, J.] HERMAN *v.* WILSON. [July 10.

Mining Company—Manager—R.S.O. 1897, c. 197, s. 8—Payments to labourers—Motion to dismiss—Con. Rule 616.

A manager of a company is not a labourer, servant or apprentice within the meaning of R.S.O. 1897, c. 197, s. 8, and an action brought by such a manager, who had recovered a judgment against the company for wages due him and payments made on its behalf to labourers, etc., and had subsequently obtained assignments of the amounts paid the labourers, was dismissed on a motion under Con. Rule No. 616 on the ground that the first action was not such an action as is contemplated by that section.

C. C. Robinson, for motion. *W. J. Elliott*, contra.

Ferguson, J.] RE WRIGLEY ESTATE. [July 10.

Will—Devise—To legatee or heirs, executors or assigns—Death of legatee in lifetime of testator—Who entitled—"Heirs"—Next of kin.

A testator by his will after a provision in favour of his wife for life, provided, "At the death of my beloved wife * * any money that may then be remaining * * * shall be equally divided and paid to (two nephews and two nieces, naming them) or their heirs, executors or assigns." One of the nieces predeceased the testator, leaving a husband and children.

Held, that the gift to the deceased niece did not lapse and that her heirs were entitled to her share, and that her heirs were those who would have taken her personal property under the statute of distributions in case of her dying intestate possessed of personal property.

Langmuir, for Toronto General Trusts Corporation. *Edgar*, *Harcourt* and *Milliken*, for other parties.

Meredith, C. J.] NELSON *v.* BELL. [July 18.

Sale of lands by trustees—Approval of Court—R.S.O. 1897, c. 129, s. 39—Con. Rule 938.

Trustees having unsuccessfully offered for sale estate property consisting of a block (hotel and stores) and a dock together, and subsequently the hotel and stores together, received an offer for the hotel by itself.

Held, on an application to the Court to approve and confirm the sale under R.S.O. 1897, c. 129, s. 39, and Con. Rule 938, that the Court had

jurisdiction to express its approval and that under the circumstances it was a case in which the jurisdiction ought to be exercised.

W. H. Blake, for trustees. *Dr. Hoskin*, Q.C., for infant. No one for widow.

Meredith, J.] BOOK *v.* BOOK. [August 29.

Life insurance—Change of beneficiary—Preferred class—Beneficiary for value—R.S.O. c. 203, ss. 151, 159, 160—Will—Testamentary capacity—Premiums paid by beneficiary.

A person whose life was insured by a benevolent society in favour of his wife, a preferred beneficiary, though not stated to be so in the certificate, was unable or unwilling to keep the insurance in force, and the later assessments, before his death, were paid by the wife. By his will the assured gave the whole of the insurance money to one of his sons.

Held, that he had power to do so by virtue of s. 160 of the Ontario Insurance Act, R.S.O. c. 203.

The proviso at the end of sub-s. (2) shews that the section is applicable to the case of a beneficiary for value, and that those only who appear as such expressly in the policy are protected against the wide power to change beneficiaries conferred by the section.

Section 159 does not apply to a case of this kind, but only to a pledge of a policy before it has been declared to be for the benefit of any preferred beneficiary.

Section 151 is not to be read as conflicting with s. 160; the latter applies to a change confined to the class of preferred beneficiaries, and the former to a change in all other cases.

Held, also, that the evidence did not sustain the allegation that the testator's mind was affected by insane delusions respecting his wife and some of his children; nor the theory that there was an abandonment of the husband's insurance on his own life and the substitution of an insurance by the wife upon his life. It was conceded that the wife should have a return of all moneys paid by her to keep the certificate in force, with interest.

Teetzel, Q.C., for plaintiff. *W. W. Osborne*, for defendants.

Meredith, J.] BOGART *v.* TOWNSHIP OF KING. [August 29.

Assessment and taxes—Special rate—Bonus by-law—Duty of clerk—Collector's roll—Debentures, sale of—Failure of scheme.

Where a by-law of a township corporation provided for the raising by the issue and sale of debentures of a certain sum to be paid by way of bonus to a railway company, and for the levying of an annual rate for the purpose of paying the debentures.

Held—1. It was the duty of the township clerk under s. 129 of the Assessment Act, without any further direction or authorization, to insert in the collector's rolls the amount with which each ratepayer was chargeable under such by-law; and it was not necessary that the amount levied each year under such by-law should be mentioned in the annual by-law authorizing the levy of sums for ordinary expenditure; and s. 402 of the Municipal Act had not the effect of making it necessary. *Clarke* v. *Town of Palmerston*, 6 O.R. 616, distinguished.

2. The rate could be levied notwithstanding that none of the debentures had been sold.

3. The failure to collect the rate for the first year after the passing of the by-law did not cause the failure of the whole scheme.

Semble, that if the scheme should fail and nothing be paid to the railway company, the ratepayers could recover their money from the corporation.

S. H. Blake, Q.C., and *T. H. Lloyd*, for plaintiff. *Shepley*, Q.C., and *A. B. Armstrong*, for defendants.

Meredith, J.] [August 29.

GRAND TRUNK R.W. CO. *v.* CITY OF TORONTO.

Constitutional law—Railways—Municipal corporations—Construction of highway across railway—Railway Committee of Privy Council—Railway Act of Canada, s. 14—Intra vires.

Upon the application of the defendants under s. 14 of the Railway Act of Canada for an order authorizing the extension of a street in their city across the tracks of the plaintiffs, the Railway Committee of the Privy Council for Canada ordered and directed that the defendants "may have a temporary crossing, at rail level, for foot passengers only, over the said tracks," upon certain conditions.

Held—1. The Provincial Legislature alone had power to confer upon the defendants legal capacity to acquire and make the street in question.

2. It has conferred such capacity.

3. In virtue of its power over property and civil rights in the province, the Provincial Legislature has power to authorize a municipality to acquire and make such a street, and to provide how and upon what terms it may be acquired and made.

4. But that power is subject to the supervention of Federal legislation respecting works and undertakings such as the railway in question.

5. The manner and terms of acquiring and making such street, and also the prevention of the making or acquiring of such a street, are proper subjects of such supervening legislature.

6. Such legislation may rightly confer upon any person or body the power to determine in what circumstances, and how and upon what terms,

such a street may be acquired and made, or to prevent the acquiring and making of it altogether, and therefore s. 14 of the Railway Act is not ultra vires.

7. Such legislation, in virtue of its power over such railway corporations, as well as such works and undertakings, may confer power to impose such terms as have in this case been imposed upon the plaintiffs, and to deprive such corporations of any right to compensation for lands so taken or injuriously affected; and has conferred such power on the Railway Committee, under s. 14, in such a case as this; which power has been exercised to some extent.

8. Such legislation has not conferred upon the committee power to give the temporary footway in question.

9. Nor any authority to delegate its powers.

10. The work it directs must be constructed under the supervision of an official appointed for that purpose by the committee.

11. The railway company may, if they choose, construct the works directed, under such supervision, instead of permitting the municipality to do so.

H. S. Osler, for plaintiffs. *Fullerton*, Q.C., for defendants.

Meredith, J.] IN RE HYNES—HODGINS *v.* ANDREWS. [August 29.

Partition — Summary proceeding — Parties — Absentee — Guardian — Dispensing with service—Substituted service.

Where, in a proceeding for partition or sale of lands, begun by summary application, a person interested in the estate, not originally made a party, had been long unheard of, and there was uncertainty whether he were living or dead, an order was made by a judge, under ss. 16 to 20 of the Partition Act, R.S.O. c. 123, which are expressly made applicable by s. 33 of the Judicature Act. R.S.O. c. 51, appointing a guardian and directing that he be served with an office copy of the judgment or order for partition and notice for the absentee.

Semble, that the Master to whom a reference is directed by the judgment or order has power to dispense with service of his warrant or of an office copy of the judgment: Rules 203, 659. *Smith* v. *Houston*, 15 P.R. 18, discussed.

Semble, also, that the court or judge has power to make an order for substituted service of an office copy of a judgment or order.

Coleridge, for plaintiff. *Essery*, for defendants.

Meredith, J.] DICKERSON *v.* RADCLIFFE. [August 30.

Costs—Interlocutory order—"Costs in the cause"—Discretion of trial judge.

Where an interlocutory order in an action directs that the costs of certain proceedings shall be "costs in the cause," that is not a final

disposition of such costs in favour of the party who shall succeed in the action, but merely puts these costs in the same position as any other of the ordinary costs of the action, that is, leaves them to be dealt with in the discretion of the trial judge under Rule 1130 and s. 119 of the Judicature Act, R.S.O. c. 51.

Koosen v. *Rose* (1897), W.N. 25, 76 L.T. 145, 45 W.R. 137, 13 Times L.R. 257, distinguished.

J. W. Bain, for plaintiffs. *J. B. Holden*, for defendants.

Armour, C. J., Falconbridge, J., Street, J.] [Sept. 8.

WILSON *v.* FLEMING.

Evidence—Cross-examination on affidavit—Proper questions—Attachment of debts—Salary of municipal officer—Advances—By-law—Production.

An order having been made attaching all debts due to a judgment debtor by a city corporation, a person describing himself as "paying teller" of the corporation made an affidavit in answer to the judgment creditor's application for a garnishing order absolute, stating that nothing was due from the corporation to the debtor at the time of service of the attaching order. Cross-examined upon his affidavit the affiant said that the debtor was assessment commissioner for the corporation and in receipt of a salary, but that advances had been made to him on account of it, by the authority of the treasurer of the city, so that nothing was due. The affiant declined to answer certain questions put to him on cross-examination.

Held, 1. The affiant should be compelled to answer all questions put to him bearing on the advances made in the past to the debtor, and those bearing on the affiant's authority to make them, and his motives in doing so if he were exercising a discretion.

2. (STREET, J., dissenting), The affiant should answer the question whether he had ever made advances on account of salary to any other employee of the city, and, if he should answer it in the affirmative, he might be further interrogated as to the number of such instances, but he was not to be compelled to disclose the names of persons to whom such advances had been made.

3. The affiant was not compellable to produce any of the city by-laws, not being the custodian thereof.

S. W. McKeown, for judgment creditor. *Lindsey*, Q.C., for judgment debtor and witness. *H. L. Drayton*, for garnishees.

Rose, J.] IN RE VANLUVEN AND WALKER. [Sept. 11.

Costs—Taxation—Mortgagor and mortgagee—Appeal.

No appeal lies from the taxation of a mortgagee's costs of proceedings under the power of sale in a mortgage had under R.S.O. c. 121, s. 30.

A. R. Clute, for mortgagor. *J. H. Moss*, for mortgagee.

Falconbridge, J., Street, J.] [Sept. 15.

TOWNSHIP OF TILBURY WEST *v.* TOWNSHIP OF ROMNEY.

Stay of proceedings—Prior action pending—Parties.

In this action the plaintiffs sought to recover from the defendants a large sum of money, being the portion assessed upon the defendants of the cost of certain drainage works constructed and paid for by the plaintiffs. In a previous action against the same defendants, the plaintiffs therein, who were land-owners in the defendants' township and assessed for a portion of the sum now sued for, sought a declaration that the defendants' by-laws purporting to impose this assessment upon the plaintiffs therein, and all the proceedings upon which they were founded, were void, and for an injunction to restrain any proceedings for the collection of the amount for which the plaintiffs therein were assessed. In that action judgment had been given in the defendants' favor, but the plaintiffs had an appeal to the Supreme Court of Canada pending when the present action was brought.

Held, that the present action should not be stayed until after the determination of the appeal in the other.

Du Vernet, for plaintiffs. *Aylesworth*, Q.C., for defendants.

Rose, J.] MURR *v.* SQUIRE. [Sept. 17.

Costs—Interlocutory order—"Costs in the cause"—Discretion of trial judge.

The judgment of the trial judge was in favour of the plaintiff, and was not appealed against. As to costs, it adjudged that the defendant should pay to the plaintiff the costs of certain witnesses, and continued: "This Court doth not see fit to interfere with the interlocutory orders disposing of certain costs throughout the action, nor make any further or other order as to costs."

Two interlocutory orders made the costs of applications "costs in the cause;" two made them "costs in the cause to the successful party;" one order provided "that the defendant do pay to the plaintiff the costs of this motion to be taxed in any event of the cause but on the final taxation of the costs herein."

It was conceded that the plaintiff was entitled to the costs made payable in any event.

Held, following *Dickerson* v. *Radcliffe* (decision of Meredith, J., of 30th August, 1900), that the costs made costs in the cause were subject to the disposition of the trial judge, and under the judgment were not to be taxed to the plaintiff.

Held, also, that "costs in the cause to the successful party" did not mean more than costs in the cause; and, even if it did, the plaintiff was not a successful party.

Brotherton v. *Metropolitan District Railway Joint Committee* (1894), 1 Q. B. 666, followed.

R. McKay, for plaintiff. *J. H. Moss*, for defendant.

Rose, J.] IN RE HUBBELL. [Sept. 19.

Interpleader issue—Parties—Onus.

Where the proceeds of a life insurance policy were claimed by the widow of the assured and also by an assignee for value, and it appeared that the assured had first made a declaration in writing on the policy devoting all the benefit to his wife, and had subsequently by writing assumed to limit such benefit to $1 and had then made the assignment to the other claimant:—

Held, that the latter should be plaintiff in an interpleader issue ordered to be tried between the claimants.

H. M. Mowat, Q.C., for Hubbell. *A. G. Slaght*, for Russell. *W. F. Burton*, for Insurance Company.

Rose, J.] EDSALL *v.* WRAY. [Sept. 22.

Venue—Residence of plaintiff—Statement of claim—Rule 529 (b).

Rule 529 provides that: (*a*) the plaintiff shall, in his statement of claim, name the county town at which he proposes that the action shall be tried; (*b*) where the cause of action arose and the parties reside in the same county, the place so to be named shall be the county town of that county.

Held, that the residence of the plaintiff at the time of the delivery of the statement of claim, and not at the time of the issue of the writ of summons, is the time referred to in Rule 529 (*b*).

W. H. Blake, for defendant. *Cattanach*, for plaintiff.

Meredith, C.J.] STEWART *v.* JONES. [Sept. 22.

Receiver — Equitable execution — Claim against Crown — Distribution of fund — Creditors' Relief Act — Undertaking.

The plaintiff and defendant were partners, and as such had a claim against the Crown for work done, which resulted in the payment of a large sum. Subsequently the partnership made a further claim for interest on the sum paid, which was rejected, and could not have been enforced by a petition of right. The Crown, however, without admitting any liability, offered a sum in satisfaction of the claim for interest, and an appropriation was made by Parliament to enable that to be done, but the appropriation lapsed. A Minister of the Crown afterwards offered to pay the defendant

half the amount of the appropriation, and the defendant agreed to accept it. Accordingly a sum was granted by Parliament for this purpose, and, by an order-in-council, authority was granted to pay it to the defendant.

Held, that on the date of the order-in-council there existed a debt due by the Crown to the defendant, arising out of contract, and recoverable by petition of right.

Held, also, that this sum could be made available for satisfaction of a judgment recovered by the plaintiff against the defendant.

Willcock v. *Terrell*, 3 Ex. D. 323, and *Manning* v. *Mullins* (1898), 2 Ir. R. 34, followed.

The fact that the Crown is the debtor does not stand in the way of the court going as far as it can go, without directing or assuming to direct what shall be done by the Crown, towards making such an asset of a judgment debtor available to satisfy the claim of his judgment creditor.

Upon the plaintiff undertaking that the fund, if and when it should come to the hands of the receiver, should be applied as if it had come to the hands of the sheriff under the Creditors' Relief Act, an order was made restraining the defendant from receiving the fund, authorizing a receiver to receive it, and providing that his receipt should be a sufficient discharge to the department or officer making payment.

J. H. Moss, for plaintiff. *Shepley*, Q.C., for defendant. *J. A. Paterson*, for the Crown.

Meredith, J.] TOLTON *v.* MACGREGOR. [Sept. 24.

Payment out of court—Proof of age of applicant.

By decree of the 18th September, 1878, in a partition action, it was directed that the share of an infant defendant, J. F. M., should remain in court, and the interest thereon should be paid to his father, a co-defendant, as tenant by the curtesy.

On the 24th September, 1900, J. F. M. and his father moved for payment out of J. F. M.'s share, upon the father's affidavit identifying the infant defendant as his son, J. F. M., and stating that J. F. M. was of age, having reached the age of twenty-one years on the 5th February, 1899, and that the father consented to payment out and released all his rights in the fund.

Held, that the proof of the age was not sufficient, the father not having stated his reasons for believing that the son was of age, or referred to any family or other records in support of his statement, and the fact that the son was named as a party in the decree of 18th September, 1878, was not conclusive proof that he was now of age.

H. W. Mickle, for applicants.

Meredith, J.] MACDONALD *v.* MAIL PRINTING CO. [Sept. 28.

Trial—Nonsuit after verdict—Libel—Innuendoes—Onus—Evidence for jury—Newspaper—Report of speech—"Blackmailing," meaning of—Truth of defamatory words.

Where in the course of the trial of an action before a judge and jury a motion for a nonsuit is made at the close of the plaintiff's case, and again at the close of the whole evidence, and the judge adopts the course of taking a verdict, and of fully hearing and considering the motion, if necessary, after the verdict, the judge may, in a proper case, nonsuit the plaintiff, notwithstanding a verdict of the jury in his favour.

Perkins v. *Dangerfield*, 51 L. T. N. S. 353, and *Moore* v. *Connecticut Mutual Ins. Co.*, 6 App. Cas. 644, distinguished. *Floer* v. *Michigan Central R. W. Co.*, 27 A. R. at p. 127, referred to.

In an action for libel the words complained of were: "It can readily be understood what interest Mr. M. has in the matter, and why he should make advances, hire committee rooms, and generally control the campaign, when $4,000,000, which he controls, will be made available if E. A. Macdonald (the plaintiff) can be elected mayor. In addition to this, Mr. M. has between $7,000 and $10,000 of claims against Macdonald, which, in proceedings, it was shown under oath of Mr. M. that he hoped to be paid, should he succeed in qualifying Macdonald for mayor, and then electing him."

The innuendo was that the defendants charged the plaintiff with having "entered into a corrupt arrangement" with one M., "whereby the plaintiff should use the office of mayor, when elected, for private gain," and with having "unlawfully and corruptly influenced, or attempted to influence the said M. to support him in the mayorality campaign, both financially and otherwise," and with being "unlawfully aud corruptly influenced" by said M. "to use the said office of mayor to improperly advance the pecuniary and private undertakings of said M."

Held, that, there being no evidence, apart from the newspaper article in which they appeared, to shew that the words bore any other than their ordinary meaning, the onus of proof of the inneudo was not satisfied; there was no reasonable evidence to go to the jury that the words conveyed the meaning which the plaintiff attributed to them.

The plaintiff also complained of a statement published by the defendants that a speaker at a public meeting "characterized" the plaintiff's behaviour as "blackmailing." The defendants pleaded the truth of the words used.

Held, that it made no difference that the defendants were only reporting, or purporting to report, the words of another, or whether the report was accurate or inaccurate—that question arises on a defence of fair and accurate report only. If the words were true, the plaintiff could not recover.

The word "blackmailing" should not, at the present day, and in this country, be limited in its meaning to the case of the crime of extortion by threats or any other crime.

Where a man, having no right, nor any pretence of right, to receive one farthing (except his proper law costs, if he succeed in the action) receives $4,500 to push a complaint of, and to stifle his legal proceedings to prevent, a wrong which he charges is about to be perpetrated by means of audacious bribery of public officers, his conduct may be "characterized as blackmailing" in the proper and ordinary meaning of these words.

There being no evidence of the falsity of the words used, but they appearing, upon uncontroverted evidence, to be true, the plaintiff's case failed.

Semble, also, that the innuendoes that the plaintiff had "committed a crime punishable by law," that he was "unworthy of any position of trust," and that he "was a blackmailer," could not be supported.

Quære, whether the plaintiff, having chosen to put his own interpretation upon the words, and to bring the defendants down to trial upon that interpretation, and to try the case out accordingly, could be permitted subsequently to reject the innuendoes and rely upon the words (if untrue) having another libellous meaning, whether libellous in themselves or not.

The respective functions of judge and jury are in an action of libel in no way different from such functions in other actions, except for the statutory provision in favour of a defendant, R.S.O. c. 68, s. 2.

It is the duty of the court to consider whether there is any reasonable evidence to go to the jury, and, if not, to dismiss the action.

E. F. B. Johnston, Q.C., and *Bradford*, for plaintiff. *J. B. Clarke*, Q.C., and *Swabey*, for defendants.

Falconbridge, C.J., Street, J.] [Sept. 29.

INDEPENDENT ORDER OF FORESTERS *v.* BEGG.

Mortgage—Foreclosure—Mortgagee in possession—Account of rents—New day—Final order—Rights of purchaser after decree—Parties—Power of sale.

Mortgagees had been in possession of several of the parcels of land comprised in their mortgage before they commenced an action for foreclosure. In that action the usual judgment was pronounced, and while the reference thereunder was pending the plaintiffs agreed to sell some of the parcels to B. in case the mortgagors should not redeem; and B. went into possession. The Master made his report on the 13th February, 1900, fixing the 14th August, 1900, as the day for redemption, and ascertaining the amount due by the defendants up to that day. On the 15th May an order was made amending the report by deducting amounts received by the plaintiffs for rent, and directing that any other

rents received up to that time should be credited on the final adjustment. On the 15th August the defendants applied for a new day, when the plaintiffs stated on affidavit that sums paid by them for taxes and costs more than exhausted the rents received since the date of the report. No other statement was made by the plaintiffs. The application was refused, and on the 17th August a final order of foreclosure was granted.

Held, that the statement of the plaintiffs was insufficient; the mortgagor, before a final order of foreclosure is made, is entitled to know how much he must pay in order that he may redeem, and the modes in which that amount may be ascertained, where it has been changed after report, are pointed out in Rule 387.

Held, also, that a purchaser who has purchased during the pendency of foreclosure proceedings, and whose rights are expressly subject to the termination of the proceedings by a final order of the Court in favour of the mortgagee, stands in a different position from one who comes in for the first time after a final order has been made, and is much more readily made subject to the discretion of the Court to open the foreclosure. *Campbell* v. *Holyland*, 7 Ch. D. 166, and *Johnston* v. *Johnston*, 9 P. R. 259, followed. *Gunn* v. *Doble*, 15 Gr. 655, distinguished.

In this case the mortgagors were in no default. The slightest examination of the proceedings on the part of the purchaser would have shown him that the mortgagors had never been properly foreclosed, and that no day had ever been fixed for payment of the balance due the mortgagees; but he did not even ask whether a final order had been obtained, which was the condition upon which his sale was to be carried out.

Held, therefore, that the mortgagors had a clear right to redeem; and, having come in promptly for relief and taken vigorous steps to assert their rights, they were entitled to have the final order of foreclosure set aside, a new account taken and a new day fixed, and to redeem both as against the plaintiffs and B., for which purpose the latter should be added as a party.

Held, lastly, that the sale to B. was not, under the circumstances, sustainable under the power of sale contained in the plaintiff's mortgage. *Kelly* v. *Imperial Loan Co.*, 11 S.C.R. 516, distinguished.

J. Bicknell, for plaintiffs. *W. H. Blake* and *S. B. Woods*, for defendants. *Aylesworth*, Q.C., for purchaser.

Province of Nova Scotia.

SUPREME COURT.

Ritchie, E. J., in Chambers.] [Sept. 21.

BALCOM v. CROFT.

Change of venue.

Motion to change the venue. The statement of claim had been delivered and the defence put in, but no reply had been delivered.

Held, on the authority of *Read* v. *Henderson*, 20 N.S.R., which held that the application there was premature, that an application of this nature should not be made until after issue joined, or until it was clearly ascertained what the issues would be, that the reply not having been delivered, and that new issues might be raised by the same when delivered, the application was premature, and the motion should be dismissed with leave to move again when the cause was at issue.

J. A. McLean, Q.C., for applicant. *F. B. Wade*, Q.C., contra.

Ritchie, E. J., in Chambers.] [Sept. 21.

FORBES v. PEARSON.

Particulars—Partnership.

Application for further particulars of plaintiff's claim as regards the partnership agreement in question.

Held, that any terms and conditions of the partnership agreement other than those set out in the statement of claim were not particulars of such claim, and therefore could not be obtained by the defendant in this way if he wished to make them available as a defence.

Held, further, that defendant could not obtain particulars of transactions by which plaintiff alleged defendant became possessed of partnership funds. *Augustinus* v. *Nerinck*, L.R. 16 Ch. D. 13 followed.

R. E. Harris, Q.C., for applicant. *F. B. Wade*, Q.C., and *F. T. Congdon*, contra.

Province of British Columbia.

SUPREME COURT.

Irving J.] McCLARY v. HOWLAND. [Sept. 11.

Practice—Security for costs—Joint plaintiffs, one an extra-provincial company—R.S.B.C. 1897, c. 44, s. 144.

Summons for security for costs. The McClary Manufacturing Company was an extra-provincial company, having valuable assets in the province, and the plaintiff Drake was resident within the province.

Held, that an extra-provincial company must give security for costs under R.S.B.C. 1897, c. 44, s. 144, notwithstanding it is suing along with a resident of the province, and has assets within the province. Security ordered in the sum of $200.00.

Kappele, for the summons. *Bloomfield*, contra.

Martin, J.] ATTORNEY-GENERAL v. DUNLOP. [August 15.

Practice—Judgment—When delivered.

After the trial of the action of *Dunlop* v. *Haney* in Vancouver, judgment was reserved by MARTIN, J., who then went to Victoria, subsequently reduced his judgment to writing, and signed it on August 11th, 1899, and enclosed it in an envelope with a covering letter directed to the District Registrar at Vancouver. The letter should have reached the District Registrar early the next morning, according to the regular course of the mails, but the office receipt stamp of the Vancouver Registry stamped on the judgment bore date August 15th, 1899.

For the determination of the present action it became necessary to decide when the judgment in *Dunlop* v. *Haney* was pronounced.

Held, that judgment was pronounced on 11th August, 1899, when the matter was finally determined so far as the Judge was concerned; and that the parties to the action could not be prejudiced by any delay in the Registry or the Post Office.

Book Reviews.

A Collection of Legal Maxims, Classified and illustrated by Herbert Broom, LL.D., seventh edition, by Herbert F. Manisty, LL.B., and Herbert Chitty, M.A., barristers-at-Law: London; Sweet & Maxwell, Limited, 3 Chancery Lane, Law Publishers.

The first edition of this book was published in 1845, and obtained a wide circulation as a text-book for students. Five editions were produced by Dr. Broom himself and a sixth edition two years after his death was published by Mr. Manisty and Mr. Cagney. The main idea of the work is to present under the heading of maxims certain leading principles of English law, and to illustrate some of the ways in which those principles have been applied by reference to a selection of reported cases. The author's idea has been maintained in this the last edition. Whilst more particularly used by students, this work is often found very helpful to the practicing barrister, and is of course a standard work without which no law library would be complete. The editors acknowledge valuable assistance from a copy of the second edition noted up by Lord Lindley and kindly lent to them by him.

The Law Magazine and Review, August, 1900: London; J. G. Hammond & Co., Limited, 161 Strand, W. C.

This number of this excellent periodical contains the following articles: Solicitors and Reform—Notes on the Early History of Legal Studies in England—Privileged communications, husband and wife—Suzerainty, mediæval and modern—Criminal statistics, 1898, in which the writer comes to the conclusion that crime is, on the whole, diminishing; We must say, however, the reasoning does not seem to us to warrant the conclusion. Another article discusses the limited liability of landlords, where the ground is taken that landlords should be held to impliedly warrant fitness for habitation of their premises during the whole of the hiring, and be made liable for damage resulting from every cause directly attributable to the condition of the premises, not due to any omission or act on the part of the tenant.

Flotsam and Jetsam.

A new military prison chaplain was recently appointed in a certain town in Scotland, and entering one of the cells on his first round of inspection, he, with much pomposity, thus addressed the prisoner who occupied it: "Well, sir, do you know who I am?" "No, nor I dinna care," was the nonchalant reply. "Well, I'm your new chaplain." "Oh, ye are; well, I hae heard o' ye before." "And what did you hear?" returned the chaplain, his curiosity getting the better of his dignity. "Well, I heard that the last twa kirks ye were in ye preached them baith empty, but I'll be hanged if ye find it such an easy matter to do the same here."—*Argonaut.*