# WORDS AND TERMS

## JUDICIALLY DEFINED

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BY

HIS HONOUR JUDGE WIDDIFIELD

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"A definition is the most dangerous of dicta."—MIDDLETON, J., 23 O. L. R., p. 586.

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TO

The Honourable A. B. Lucas, K.C., M.P.P.,

PROVINCIAL TREASURER FOR ONTARIO,

AS A SLIGHT TOKEN OF THE

AUTHOR'S FRIENDSHIP

AND ESTEEM.

# PREFACE

This volume is the outgrowth of a collection of cases on judicial interpretation and definition the author has been gathering for his own use and convenience during a number of years. It is the first attempt that has been made to place in available shape the judicial meanings of words and terms to be found in the judgments of the Canadian and Provincial Courts. Many of these definitions are hidden away in irregular reports and do not find their way into the digests, and many others are to be found only on a careful reading of the judgments.

Except where our Judges have adopted the definition of a word or term from the judgment of an English Court, or where the Privy Council has dealt with the construction of a Dominion or Provincial statute, no attempt has been made to go beyond our own Courts. To do so would be to go too far afield, and this apart from the fact that works like *Stroud* and *Wharton* are to be found in most modern law libraries.

As far as possible the exact language of the judgments has been followed and enough of the context or facts set out to enable the reader to judge how far the definition may apply to his own case. It is sometimes difficult to draw the line between definition and decision, and where any such doubt has arisen it has been thought better to include the authorities.

The table of statutes will be found of considerable practical value, more especially as the references to the Ontario statutes, unless otherwise indicated, are to the Revised Statutes of 1914.

The fact that more than three thousand five hundred cases, extending over the whole Dominion, are quoted or referred to, gives an idea of the labour involved in the preparation of such a volume. At the same time, it may form some excuse for faults both of omission and commission. The author can only hope that its value to the profession may be in some proportion to the labour involved.

C. H. WIDDIFIELD.

Owen Sound, Ont.,
September, 1914.

## ERRATA

Page 1 line 10 for "Abandoned" read "Abandon."
" 39 " 16 for "assume" read "assumed."
" 98 " 39 for "have" read "has."
" 107 " 20 for "action" read "section."
" 117 " 38 for "Jones v. O'Keefe" read "Janes v. O'Keefe."
" 119 line 28 for "descendant" read "descendants."
" 127 " 21 for "is essential" read "is not essential."
" 157 " 5 for "devise" read "device."
" 157 " 23 for "F.O.F." read "F.O.B."
" 180 By mistake the matter on pp. 180, 181, under the title "Husband and Wife," was inserted here. It properly forms a sub-head of the subject "Undue Influence." The same remark applies to the title "Parent and Child" on p. 287.
" 240 line 19 for "mortgage" read "mortgagee."
" 264 " 18 for "sec. 8" read "sec. 34."
" 276 " 5 for "R. S. C." read "R. S. O."
" 381 " 29 for "Gibson" read "Gibbons."

# LIST OF ABBREVIATIONS

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|---|---|
| A. C. | Appeal Cases, Privy Council. |
| Allen | Allen's New Brunswick Reports. |
| Alta. L. R. | Alberta Law Reports. |
| A. R. | Ontario Appeal Reports. |
| B. C. R. | British Columbia Reports. |
| C. C. | Civil Code, Quebec. |
| C. C. C. | Canadian Criminal Cases. |
| C. L. J. | Canada Law Journal. |
| C. L. T. | Canadian Law Times. |
| C. P. | Upper Canada Common Pleas Reports. |
| Cham. R. | Common Law Chambers Reports. |
| Chy. Ch. | Chancery Chambers Reports. |
| Con. Rule | Consolidated Rules of Practice, Ontario (1914). |
| Cr. Code | Criminal Code of Canada. |
| C. S. C. | Consolidated Statutes of Canada. |
| C. S. U. C. | Consolidated Statutes Upper Canada. |
| D. L. R. | Dominion Law Reports. |
| Dra. R. | Draper's Upper Canada King's Bench Reports. |
| E. & A. | Upper Canada Error and Appeal Reports. |
| E. C. | Election Cases (Ontario). |
| E. L. R. | Eastern Law Reports. |
| Exch. C. R. | Canada Exchequer Court Reports. |
| G. & O. | Geldert & Oxley's Nova Scotia Reports. |
| G. & R. | Geldert & Russell's Nova Scotia Reports. |
| Gr. | Grant's Chancery Reports (Upper Canada). |
| Han. | Haney's New Brunswick Reports. |
| H. E. C. | Hodgins' Election Cases. |
| Kerr. | Kerr's New Brunswick Reports. |
| L. C. J. | Lower Canada Jurist. |
| L. N. | Legal News (Quebec). |
| Man. R. | Manitoba Law Reports. |
| M. L. R. | Montreal Law Reports. |
| Mun. | Municipal. |
| N. B. Eq. | New Brunswick Equity Cases. |
| N. B. R. | New Brunswick Reports. |
| N. S. R. | Nova Scotia Reports. |
| O. L. R. | Ontario Law Reports (since 1900). |
| O. R. | Ontario Reports (1882-1900). |
| O. S. | Upper Canada Reports (Old Series). |
| O. W. N. | Ontario Weekly Notes. |
| O. W. R. | Ontario Weekly Reporter. |
| P. R. | Ontario Practice Reports. |
| Peters | Peters' Prince Edward Island Reports. |
| Pug. | Pugsley's New Brunswick Reports. |
| Pug. & Bur. | Pugsley & Burbidge's New Brunswick Reports. |

Q. L. R. ..... Quebec Law Reports.
Q. P. R. ..... Quebec Practice Reports.
Q. R., Q. B. ..... Quebec Reports, Queen's Bench.
Q. R., K. B. ..... Quebec Reports, King's Bench.
Q. R., S.C. ..... Quebec Reports, Superior Court.
R. & C. ..... Russell & Chesley's Reports, Nova Scotia.
R. & G. ..... Russell & Geldert's Reports, Nova Scotia.
Re. de J. ..... Revue de Jurisprudence, Montreal.
R. S. B. C. ..... Revised Statutes British Columbia.
R. S. C. ..... Revised Statutes of Canada.
R. S. N. S. ..... Revised Statutes Nova Scotia.
R. S. O. ..... Revised Statutes Ontario (1914).
R. S. M. ..... Revised Statutes Manitoba.
R. R. ..... Revised Reports.
R. L. ..... Revue Légale (Quebec).
S. C. R. ..... Supreme Court of Canada Reports.
Sask. R. ..... Saskatchewan Law Reports.
Terr. L. R. ..... Territories Law Reports.
Tay. ..... Taylor's Reports (Upper Canada).
T. W. .....Cases tempore Wood, C.J., Manitoba.
U. C. R. ..... Upper Canada Queen's Bench Reports.
W. L. R. ..... Western Law Reports.

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CONSOLIDATED RULES OF PRACTICE, ONTARIO, 1913.

# WORDS AND TERMS
## JUDICIALLY DEFINED

**A.**—"A," preceding a noun, may be read in the plural by virtue of the Interpretation Act, s. 8 (24). The Division Courts Act, s. 62 (*d*), gives jurisdiction in certain cases on production of "a document." *Held*, the jurisdiction may be given on production of two or more documents. Slater v. Laberee (1905), 9 O. L. R. 545; McIlhargy v. Queen, 2 O. W. N. 364.

The words "A caveat" in sec. 27 of the Real Property Act (Man.), are not to be construed to mean "only one caveat." Alloway v. Rural Mun. of St. Andrews, 15 Man. R. 188.

**ABANDON.**—Abandoned and desist have a common meaning, *i.e.*, to leave off, or discontinue. If a railway company ceases operations to expropriate lands, and gives a new notice as to other operations, that is a desistment or abandonment which involves the company in paying costs to the landowners. Re Oliver and Bay of Quinte Ry. Co. (1903), 6 O. L. R. 543.

"I think 'abandon' and 'desert' must in this legislation (The Children's Protection Act, R. S. O. ch. 231, sec. 12), involve a wilful omission to take charge of the child, or some mode of dealing with it calculated to leave it without proper care. Leaving the child with those who had contracted to take proper care of it cannot fairly be called abandonment or desertion—and the further giving up all claim to the child, is not, I think, an abandonment or desertion within the Act. The Act indicates such disregard of the welfare of the child as would shew the parent to be unfit to have it again in his charge." Re Davis (1909), 18 O. L. R. 384.

"Abandon" or "expose" includes a wilful omission to take charge of any child referred to on the part of a person legally bound to take charge of any such child, as well as any mode of dealing with it calculated to leave it exposed to risk without protection. Crim. Code, sec. 240 (*c*).

During the time a trespasser was occupying farm property the dwelling house burned down, and while it was being rebuilt the occupant did not actually live on the farm but stayed in the neighbourhood. *Held*, not an abandonment of possession so as to

stop the running of the statute. Hartley v. Maycock, 28 O. R. 515; Piper v. Stevenson (1913), 28 O. L. R. 379; 4 O. W. N. 963.

If a person enters into possession of the land of another, and then, without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment, is in the same position in all respects as he was before the intrusion took place. Robinson v. Osborne (1912), 27 O. L. R. 248.

Where the officer executing a warrant of commitment, releases the prisoner, at his request, for a temporary period, on a promise to surrender himself, such a release does not constitute a voluntary abandonment of the arrest and a re-arrest under the same warrant is justified. R. v. O'Hearon, 5 C. C. C. 531; Ex p. Doherty, 35 N. B. R. 43.

*V.* Adverse Possession.

**ABANDONMENT OF SEIZURE.**—Abandonment is a question of fact for the jury. Where a landlord's bailiff, after seizure of goods, takes a bond from the tenant to keep and deliver the chattels and to hold them for the bailiff, that is not evidence of an abandonment of the seizure, but the contrary. Anderson v. Henry, 29 O. R. 719; Dodd v. Vail, 23 W. L. R. 62, 903. A contrary decision in Langtry v. Clark, 27 O. R. 280, where, with the exception of a suspension of the distress for two weeks, the facts were similar, was not followed in Anderson v. Henry. See also Lossing v. Jennings, 9 U. C. R. 406; Duffus v. Creighton, 14 S. C. R. 740.

Where goods had been advertised for sale by the sheriff, and twice attempted to be sold, held no abandonment. Walton v. Jarvis, 14 U. C. R. 640. Where a bailiff made an inventory of the goods seized, leaving no one in possession, held an abandonment. Hart v. Reynolds, 13 C. P. 501. See Flynn v. Cooney, 18 P. R. 321. But it is not necessary for a sheriff to put a man in possession in order to hold goods of which he has made a valid seizure, as against those who have notice of the seizure. Dixon v. McKay, 21 Man. R. 762; Dodd v. Vail, *supra*.

A sheriff's bailiff went to the debtor's shop and told the debtor he had a *fi. fa.* against his goods, but did no more, thinking more money could be made by allowing the debtor to go on with his business. *Held*, if there was a seizure it was abandoned. Foster v. Glass, 26 U. C. R. 277; Craig v. Craig, 7 P. R. 209. A chattel seized by the sheriff and loaned by him before the return of the writ is not abandoned. Hamilton v. Bouck, 5 O. S. 664. Where there was an understanding between the execution creditor and the debtor that the execution would not be enforced by sale until other creditors pressed, and the debtor continued to carry on business, it was held this amounted to an abandonment. Hazley v. McArthur, 11 Man. R. 602.

*V.* Seizure.

**ABILITY TO PAY.**—The Division Courts Act, R. S. O. ch. 63, sec. 191 (*e*).

"I think it would be a most unfortunate thing if the interpretation should prevail—that the word "ability" is not to be read in the wide sense in which it is said the learned Judge thought it should be read—I would be very sorry if it were the law that a man against whom a judgment has been recovered in a Division Court may say: "I absolutely refuse to pay," and, although he is able-bodied and in a position to earn the money speedily to pay the debt, he may absolutely refuse to do anything to earn it, and I think that in a case of that kind the Judge may well find that he has ability to pay the debt." Re Kay v. Storey (1904), 8 O. L. R. 45, 51.

**ABOUT.**—"About" is a relative and ambiguous term, the meaning of which is affected by circumstances, and evidence may be received to shew the intention of the parties in the light of surrounding circumstances. Where the plaintiff was to import from Spain and ship to the defendants at Toronto "about February from Montreal," it was held the word "about" was used to give some latitude and to allow for contingencies of the voyage and land transit to Montreal. February was not meant to be the limit, but "about" gave a margin of delay beyond that month. Wagner v. Croft, 1 O. W. N. 1016.

An agreement in writing provided that the contractor should build a house at a cost of "about $3,500." *Held*, to be a mere expression of judgment and not a warranty or condition limiting its cost to that figure. McKissock v. Black, 21 W. L. R. 424; 3 D. L. R. 653.

The defendants were authorized to construct a canal to a point on a river "about, or south of the whirlpool." *Held*, this did not mean "about and south," and did not restrict the defendants to a point less than two and a half miles south of the whirlpool. Hewson v. Ontario Power Co. (1904), 8 O. L. R. 88.

**ABROAD.**—A testator by his will provided for the appointment of new trustees if any of the named trustees should die, or go "to reside abroad." *Held*, that residing in the United States was residing abroad. "I cannot accept the view that 'abroad' means 'beyond the seas,' so that he would be abroad if he were in England, and not abroad if he were in the United States. 'Abroad' is simply in foreign parts—and that means any place out of Ontario, whether under the British flag or not." Re Curran, 2 O. W. N. 1268.

V. BEYOND THE SEAS.

**ABSENCE.**—The absence from Canada, required by sec. 999 of the Criminal Code, before using depositions taken at a preliminary enquiry, must be of a permanent character, and a mere temporary absence is insufficient. R. McCullough, 8 C. C. C. 278. But if the ordinary employment of the witness necessitates his continued absence for such a period as would involve an obstruction of justice if the trial were delayed until his return, the depositions may be read. A sailor shipped on a sailing voyage for six months is "absent from Canada." R. v. Deloe, 11 C. C. C. 224.

Evidence that a captain of a schooner had cleared from a Canadian port a week before the trial, and put to sea, is insufficient. Per Walkem, J., R. v. Morgan, 2 B. C. R. 329. Nor is the evidence of a constable that he had not been able to find the witness, and that he had been told by another man (who was not produced) that the witness was absent from Canada. R. v. Graham, 2 C. C. C. 388.

Where a summons to appear before a magistrate was served on defendant's wife at his usual place of abode, but during his absence from Canada, it was held, notwithstanding sec. 658 of the Criminal Code, that the magistrate could acquire no jurisdiction over the defendant while out of Canada, and the service was void. Ex p. Donovan (S. Ct. N. B.) 3 C. C. C. 286. But where the defendant has been duly served and though personally absent is represented by counsel, the magistrate may proceed in his absence. R. v. Matheson, 20 C. C. C. 153.

Where a statute authorized another magistrate to act in the absence of the police magistrate, it does not mean absence from the place of trial, but inability to attend to the business of the Court, although actually present in the Court room during part of the trial. Ex p. Cormier, 39 N. B. R. 435; 17 C. C. C. 179. See also Byrne v. Arnold, 5 C. L. T. 524; 24 N. B. R. 161.

**ABSENCE BEYOND THE SEAS.**—V. BEYOND THE SEAS.

**ABSOLUTE.**—The word "absolute," in sec. 773 of the Criminal Code, is used in the sense of "unconditional," that is to say, not dependent upon the conditions precedent to the right to exercise the jurisdiction which are prescribed by the Act having been complied with. R. v. Helliwell, 5 O. W. N. 936.

**ABSOLUTE ASSIGNMENT.**—The term "absolute assignment," formerly in the Judicature Act, now in sec. 45 of the Conveyancing and Law and Property Act, R. S. O. ch. 109, applies to an absolute assignment of a mortgage, even if it appears on the face of the assignment that it was only for the purpose of securing a debt lesser in amount, so long as the assignment does not purport to

be by way of charge only. Re Bland and Mohun, 5 O. W. N. 522; (1913), 30 O. L. R. 100.

When an assignment is absolute in form, it is quite immaterial that the assignee holds in trust, and it is also immaterial that the assignor is himself beneficially interested as an object, or indeed as the sole object, of the trust. Colville v. Small (1910), 22 O. L. R. 1.

But if the transaction is merely one under the cover of an assignment to appoint the assignee as agent on behalf of the assignor—if the assignee is not the real *dominus litis*, the assignment is not "absolute" within the Act., Mills v. Small (1907), 14 O. L. R. 105.

**ABSOLUTE PURCHASE.**—"The words 'absolute purchase of any pew in the church' (in the Church Temporalities Act) do not mean that the purchaser is to hold free from all claims or control of the incumbent or wardens, or free from all interest of these persons in the general property of the church; but they are used in opposition to the rights of leaseholders of pews, and of those who have only sittings, and subject to the necessary incidents of such species of property, a person may not improperly be said to be an absolute purchaser of, and to have a freehold of inheritance in the pew which he has bought." Ridout v. Harris, 17 C. P. p. 98.

**ABSOLUTELY.**—A testator, who died in 1891, devised and bequeathed all his estate to his wife "absolutely," and in the event of her death to be equally divided among her children. *Held*, the will was to be construed as if the words "in my lifetime" followed the words "in the event of her death," and the widow took an estate in fee simple in the lands. Re Walker and Drew, 22 O. R. 332.

**ABSOLUTELY DISPOSE OF.**—The words "to sell and absolutely dispose of" the mortgaged premises, in the Short Form Mortgage Act, R. S. O. ch. 117, sch. B. sec. 14, gives the mortgagee the right to exchange the mortgaged premises for other lands. Smith v. Spears, 22 O. R. 286. But a power in a will to "sell or dispose" of real estate does not give the executors authority to exchange the lands of the testator for other lands. In Re Confederation Life Association v. Clarkson (1903), 6 O. L. R. 606.

**ABUTTING THE STREET.** — Assessment by the frontage method. See Botherton v. City of Medicine Hat, 1 Alta. R. 119. "Abutting" does not necessarily mean fronting. Land abuts on all adjoining land, whether in front, at the rear or at the side, but almost invariably here fronts upon a highway: and residential buildings, as a rule, are altogether within the limits of the lot

and do not abut upon other buildings at all; though of course buildings often abut upon one or two highways, and in some cases, upon the surrounding lands on all sides. Per Meredith, J.A., Re Dinnick and McCallum (1913), 28 O. L. R., p. 55.

**ACCEPTANCE.**—A sale of part of the goods received under a contract is an acceptance within the Statute of Frauds. Robinson v. Gordon, 23 U. C. R. 143; or an offer to resell the goods. Clarkson v. Noble, 2 U. C. R. 361; or any such dealing with the goods as implies the assumption of ownership. Tower v. Tudhope, 37 U. C. R. 200.

But taking samples of the cargo for inspection is not acceptance. Scott v. Melady, 27 A. R. 193. Writing a letter to the vendor in reference to the goods is not an acceptance. Calder v. Hallett, 5 Terr. L. R. 1.

Acceptance distinguished from actual receipt. Livingstone v. Colpitts, 4 Terr. L. R. 441. Acceptance is a question for the jury. Raymond v. Saunders, 27 N. B. R. 38.

**ACCEPTANCE — CONDITIONAL.**—The following have been held to be conditional acceptances within the meaning of sec. 38 of the Bills of Exchange Act, R. S. C. ch. 119.

"When in funds as a first preference out of the estate." Potters v. Taylor, 20 N. S. R. 362. "Provided they have done sufficient to earn that sum." McLean v. Shields, 1 Man. R. 278. "When certain debentures are sold." Ontario Bank v. McArthur, 5 Man. R. 381.

Performance of the condition before action makes the acceptance absolute. Potters v. Taylor, *supra*.

When a bill is payable in instalments, the payment of the first instalment when due and an endorsement of the payment on the bill, is an acceptance of the remaining instalments. Berton v. Central Bank, 5 Allen N. B. R. 493.

**ACCESSORY—ACCOMPLICE.** — An accomplice is one who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime. R. v. Ah Jim, 10 C. C. C. 126.

"Such a witness (an accomplice) stands in a situation differing from one whose general character is shewn to be bad; he is immediately connected with the crime and the subject of inquiry, and has an obvious interest in obtaining the conviction of those whom he represents to have acted with him in committing it, and therefore I think it is to be regretted there should be an omission to submit his evidence to the jury coupled with a caution which the practice and authority of the most eminent Judges in

England recommended. Per Draper, C.J. R. v. Beckwith, 8 C. P. 274, 280.

But, where the proper caution has been given, the earlier English cases, refusing to uphold a conviction on the unsupported evidence of an accomplice, will not be followed. R. v. Betchel, 19 C. C. C. 423. When the trial is by jury the Court should call the attention of the jury to the character of the witness as an accomplice, and the reasons why care should be taken in accepting his unsupported evidence, but the Court has no power to require the jury to reject such evidence. R. v. Frank (1910), 21 O. L. R. 196; 16 C. C. C. 237; R. v. McNulty (1910), 22 O. L. R. 350; 17 C. C. C. 26. And a new trial will be granted for the failure of the Judge to so caution the jury. R. v. Ratz, 21 C. C. C. 343.

The test by which one is to determine whether one is an accomplice is to ascertain whether he could be indicted for the offence for which the accused is being tried. An accessory before the fact is an accomplice within the rule requiring corroboration. R. v. Ratz, *supra*.

**ACCIDENT.**—Where the original of a notarial minute has disappeared without the fault of the parties, by some inexplicable circumstance, the case comes within Art. 1233 of the Civil Code, which provides that proof may be made by testimony "in cases in which the proof in writing has been lost by unforeseen accident." Filiatrault v. Feeny, 20 Que. S. C. 11.

Death from natural causes caused by intoxication is not an accident within sec. 114 of the Liquor License Act. Bobier v. Clay, 27 U. C. R. 438. But where the death was from drowning the fact that the deceased, when last seen on the same day was intoxicated, is not prima facie evidence that he met his death while under the influence of liquor. Haines v. Canadian Pacific Ry. Accident Co., 20 Man. R. 69; 44 S. C. R. 386.

Death resulting from the accidental taking of poison creates liability under a policy insuring against death caused by "external, violent and accidental means." Healy v. Mutual Accident Association, 26 C. L. J. 534.

A finding by a jury "that he came to his death through external injuries unknown to us," is too vague to be construed as a finding of accidental death within the meaning of the Ontario Insurance Act, R. S. O. ch. 183, sec. 172; Fowlie v. Ocean Accident and Guarantee Corpn. (1901), 4 O. L. R. 146; 33 S. C. R. 253.

Deceased was on a fishing trip and had been drinking heavily. His companions left him cooling his bare feet in a stream, and, returning in less than an hour found him dead in about 27 inches of water. He had his boots on and his fishing rod was on the

bank. The jury found that the cause of his death was drowning, and, on appeal the verdict was upheld and the defendants held liable on an accident policy insuring against "bodily injuries effected from external, violent and accidental means." Young v. Maryland Casualty Co., 14 B. C. R. 146; 10 W. L. R. 8.

Injury caused by a piece of steel striking a workman's eye while he was engaged in chipping burs from a steel plate with a cold chisel, is an accident. Neville v. Kelly, 13 B. C. R. 125; 5 W. L. R. 427; Re Milholm and Conaty Stack Co., 19 W. L. R. 860.

A collision, the result of a break in a vital or material part of the machinery of a ship, where the command and movement of the ship is lost and cannot be regained, is an inevitable accident; but not if it is the result of any antecedent negligence, or if the break is in some mere accessory of the equipment of the ship, where the command of the ship is thereby lost. Taylor v. The S. S. Prescott, 13 Exch. C. R. 424.

The assured was frozen to death on the prairie and it was held he met his death as the result of an injury through external, violent and accidental means within the meaning of the policy. North-West Commercial Travellers Assn. v. London Guarantee and Accident Ins. Co. (1913), 10 Man. R. 537.

Death caused by fits.—See Wadsworth v. Canadian Railway Accident Ins. Co. (1913), 28 O. L. R. 537.

The freezing of a servant's limb as the result of his exposure for ten hours to intense cold in the discharge of his duties, was held to constitute an "accident" within the meaning of sec. 7321 of the Quebec Workmen's Compensation Act. Canada Cement Co. v. Pazuk, 22 Que. R. K. B. 432; 12 D. L. R. 303.

**ACCIDENT BY FIRE OR TEMPEST.**—The word "tempest" has an undoubtedly plain popular meaning and significance, however varying that may be, from its apparent root "*tempus*," "*temps*," "*tempestus*," "*intempestive*," time, weather generally, seasons and seasonable, &c. The modern meaning being universally "an extreme current of wind, rushing with great velocity and violence—a storm of extensive violence." We usually apply the word to a steady wind of long continuance; but we say also of a tornado, it blew a tempest. The currents of wind are named according to their respective degrees of force or rapidity, a breeze, a gale, a storm, a tempest; but a gale is used as synonymous with storm, and storm with tempest. Hagarty, C.J., Thistle v. Union Forwarding & Ry. Co., 29 C. P. 76.

"It is not necessary to confine injuries from 'tempest' to the mere violence of waves. If a disabled or abandoned vessel be dashed by the violence of a storm against a wharf to its damage, I

think that would be within the exception. A vessel coming in contact with the wharf from the carelessness of the crew, although in a sense driven against it by action of wind and water, would not, as I believe, come within the exception. The storm or tempest must be, as it were, the overruling force." Ib. 82.

A fire in a leased premises, the cause of which is unknown, or not legally proved, is an accident within the meaning of the exception. There is no presumption of fault against the lessee where a fire occurs, the origin of which is unknown, but rather a presumption of absence of fault, and the burden of proving fault is on the lessor. Ford v. Phillips, 22 Que. S. C. 296.

**ACCLAMATION.**—A resolution is said to be carried by acclamation, when, after it has been proposed and heard, it receives no opposition, but is carried by the consent of the meeting, expressed or implied from its silence, but in no case can it be correctly said to pass by acclamation when it has not been proposed or not understood. The statute does not mean that the returning officer, if no other nominations are made, shall simply declare those who have been proposed duly elected, it means that these nominations shall be put *seriatim* to the electors and then votes taken upon them. The law prescribes no form of words, but it requires that the proposition should be explained so as to be understood by men of ordinary understanding. R. ex rel. Corbett v. Jull, 5 P. R. 41. See also R. ex rel. Smith v. Brouse, 1 P. R. 180.

**ACCORDING TO THE TENOR.**—"Purport" means the substance of an instrument as it appears on the face of it to every eye that reads it; "tenor" means an exact copy of it. The tenor of a thing is the transcript—an exact copy. It has a stricter sense than "form"—it means *verbatim*. "According to the tenor of policy No. 65996" cannot be construed otherwise than as importing the policy and all contained therein or thereon." Youlden v. London Guarantee & Accident Co. (1913), 28 O. L. R. 161.

**ACCOUNT CURRENT.**—A mortgage of a vessel was given to secure a present indebtedness and "account current" to be balanced at the end of each year. *Held*, "account current" was not confined to cash advances for shipping purposes but included the value of goods supplied by the mortgagee himself and other persons at his request. Cleveland v. Boak, 39 N. S. R. 39.

**ACCRETION.**—Accretion, in law, means the gradual, imperceptible increase of real estate by the addition of portions of soil through the operation of natural causes, to that already in possession of the owner. It is of two kinds, by alluvion, *i.e.*, by the

washing up of soil, so as to form firm ground; or by dereliction, as where the sea shrinks below the usual watermark.

**ACCUSE.**—"To accuse" is used to denote the bringing of a charge against one before some Court or officer. Anyone who lays "an information in writing and under oath" before a magistrate accuses that person of the offence charged against him in such information. Where an information for rape is laid with the sole intent to extort money or property the informant thereby "accuses" such person with intent to extort or gain something from him within the meaning of sec. 453 of the Criminal Code, and commits an indictable offence. R. v. Kempel, 31 O. R. 631; 3 C. C. C. 481.

**ACKNOWLEDGE.**—A company does not "acknowledge" insolvency by allowing a judgment against it to remain unpaid. Re Q'Appelle Valley Farming Co., 5 Man. R. 160.

**ACKNOWLEDGMENT.**—To prove an acknowledgment within the meaning of sec. 55 of The Limitations of Actions Act, R. S. O. ch. 75, one of three things is requisite: (1) a distinct acknowledgment of the debt; (2) a distinct promise to pay the debt; or (3) a conditional promise as to which the condition has happened. The following have been held to be sufficient: Depositions in an action signed by the debtor. Roblin v. McMahon, 18 O. R. 219. See however King v. Rogers, 31 O. R. at p. 577. "Your account has been handed us by Captain Day and we shall write our Hamilton friends to have the amount placed to your credit." Jones v. Brown, 9 C. P. 201.

An account stated. House v. House, 24 C. P. 526.

"Being indebted to J. L. . . . we authorize you to pay this amount to him as soon as you may deem practicable." Lyon v. Tiffany, 16 C. P. 197.

A letter giving an account of debtor's property and expressing a desire to pay, "when the times get better I will make some arrangements to pay you your money." Grant v. Cameron, 18 S. C. R. 716.

A promise to "fix it up all right" in a week or two, contained in a letter written by the debtor in reply to a demand for payment. Eyre v. McFarlane, 19 Man. R. 645.

"I cannot see that I owe the firm anything but the last note and interest on it," *held* sufficient in an action on the last note. John Watson Mfg. Co. v. Sample, 12 Man. R. 373.

The following have been held insufficient:

"I have not any books and I know nothing about it." McCormack v. Berzey, 1 U. C. R. 388.

Defendant's statement that he did not think he owed the money and if he did the statute would prevent recovery, but that he would give $50 rather than have any trouble about it. Spalding v. Parker, 3 U. C. R. 66.

"The notes are genuine but I am under the impression they were paid." Grantham v. Powell, 6 U. C. R. 494.

A letter from defendant's attorney that "the debt has not been paid, but that the defendant has no property, and I cannot help the debt being unpaid." Dougall v. Cline, 6 U. C. R. 546.

An unaccepted offer of composition. Barnes v. Metcalf, 17 U. C. R. 388.

An offer to convey a parcel of land in payment, the offer not being accepted. Young v. Moore, 23 U. C. R. 151.

A letter by an executor of one joint maker of a promissory note to the effect that the holder ought to look to the surviving maker for payment, as he was doing well, and a letter to the holder's solicitor asking him not to take proceedings until he could hear from the surviving maker. King v. Rogers, 31 O. R. 573; 1 O. L. R. 69.

The following have been held to be conditional acknowledgments:

"I am sorry I cannot do anything for you at present but shall remember as soon as possible." Gemmell v. Colton, 6 C. P. 57.

"It will be impossible for me to pay you anything until my son's estate is wound up." Roblin v. McMahon, 18 O. R. 219.

A promise to pay as soon as the debtor could get the money. Eyre v. McFarlane, 19 Man. R. 645.

A statement by an executor that if there were assets the debt should be paid. Lampman v. Davis, 1 U. C. R. 179.

An executor *de son tort* cannot make an acknowledgment binding on the rightful administrator. Grant v. McDonald, 8 Gr. 468; Cook v. Dodds (1903), 6 O. L. R. 608; but an executor *de son tort* cannot, by setting up his own wrongful act, escape the effect of an acknowledgment, as between himself and the creditor. Cook v. Dodds, *supra*.

Where the debt is not a debt by specialty the acknowledgment must be to the creditor or his agent; an acknowledgment to a third person is not sufficient. Goodman v. Boyes, 17 A. R. 528; King v. Rogers, 31 O. R. 573. But an acknowledgment to the person entitled to, and who subsequently takes out letters of administration to the debtor's estate, is sufficient. Robertson v. Burrill, 22 A. R. 356.

An acknowledgment may revive a debt already barred. Re Williams (1903), 7 O. L. R. 156.

An acknowledgment signed by a party after he becomes of age, to amount to ratification of a contract entered into by him while under age, must contain an admission of an existing liability —a mere recognition that an account exists and that it has been charged against the party signing it is not sufficient. The Louden Mfg. Co. v. Milmine (1907), 14 O. L. R. 532; 15 O. L. R. 53.

Section 14 of the Act relates to acknowledgments by a trespasser or tenant in possession of lands, or receipt of rents and profits. Sections 20, 21, 22, to acknowledgments by mortgagees in possession, and sec. 24 to acknowledgments by mortgagors.

A statement of the amount due on a mortgage in a conveyance to a purchaser is not an acknowledgment of which the mortgagee can take the benefit. Coloquhoun v. Murray, 26 A. R. 204.

Where the statutory period has elapsed, the mortgagee's title is extinguished and is not restored by a subsequent acknowledgment. Court v. Walsh, 1 O. R. 167; 9 A. R. 294; McIntyre v. Canada Co., 18 Gr. 367.

An acknowledgment to a trustee is sufficient. McIntyre v. Canada Co., *supra*.

"I will comply with your request for the repayment of $500 I borrowed from you" is sufficient where it is shewn the only sum loaned was $500 advanced on a mortgage. Barwick v. Barwick, 21 Gr. 39.

A letter by a mortgagee in possession to the owner of the equity of redemption stating that no part of the amount due has been paid, but that the rents he has received "have nearly kept down the interest" is sufficient. Miller v. Brown, 3 O. R. 210.

An agreement to purchase is sufficient. Cahuac v. Cochrane, 41 U. C. R. 436; so an offer to purchase. Penlington v. Brownlee, 28 U. C. R. 189. But not if the offer is made merely to strengthen an imperfect title by getting in an outstanding claim. Drake v. North, 14 U. C. R. 476.

**ACCOUNT.**—*V.* FULLY ACCOUNT.

**ACQUIRE.**—Under sec. 90 of the Bank Act it was held that a bank had "acquired" the bills of lading as soon as cattle were received on ship-board, though they did not at the time actually hold the bills. Re Central Bank; Canada Shipping Co.'s Case, 21 O. R. 515; Suter v. The Merchants Bank, 24 Gr. 365.

As used in sec. 6 of the Municipal Act, 1913, where "power to acquire land" is conferred upon a municipal corporation. See Re Boyle and City of Toronto, 5 O. W. N. 97.

**ACQUISITION.**—The seven years during which a religious institution may hold lands under sec. 24 of ch. 307, R. S. O., 1897,

does not commence to run in case of a devise of a reversion dependent upon a life estate until the expiry of the life estate. Re Naylor (1903), 5 O. L. R. 153.

**ACQUITTED.**—"Acquitted" is not synonymous with "discharged." A spontaneous abandonment of a criminal prosecution or entry of a *nolle prosequi* is *prima facie* evidence that the charge was without foundation; but an abandonment due to a settlement or compromise is not. The plaintiff was arrested, charged with disposing of his property with intent to defraud. He gave defendant some money and notes for the balance of his claim and the prosecution was withdrawn and the information indorsed "settled out of Court." *Held*, not an acquittal. Baxter v. Gordon Ironsides & Fares Co. (1907), 13 O. L. R. 598.

Where the prosecutor withdraws the charge before the preliminary hearing and the matter is allowed to drop, the proceedings are terminated. Beemer v. Beemer (1904), 9 O. L. R. 69; or where the charge is withdrawn in open Court by the Crown Attorney; Fancourt v. Heaven (1909), 18 O. L. R. 492.

On a preliminary inquiry before two justices, if they disagree, and nothing further is done, that is not an acquittal. Durrand v. Forrester, 15 C. C. C. 125.

The finding of no bill by a Grand Jury is the termination of the proceedings, because the particular prosecution complained of is at an end. In Saskatchewan the functions of a Grand Jury are performed by the Attorney-General and his agents. On a case being called the agent of the Attorney-General announced that he would prefer no indictment. *Held*, this was a termination in the accused's favor. Mortimer v. Fisher, 23 W. L. R. 905.

In an action for malicious prosecution, although the prosecution may have in fact terminated *prima facie* in favour of the plaintiff, it is competent for the defendant to shew it did not so terminate, and that the termination was the result of a compromise or agreement to withdraw the prosecution. Cockburn v. Kettle (1913), 28 O. L. R. 407.

**ACT.**—"Act" as meaning an Act of a Legislature, includes an Ordinance of the North West Territories as now or heretofore constituted, or the District of Keewatin, or of the Yukon Territory. Int. Act, R. S. C. ch. 1, sec. 34 (1).

"No action shall be instituted against a Justice of the Peace for any act done by him," etc., 1 Geo. V. ch. 22, sec. 3. The negligent omission to do something which it is the duty of a public officer to do is not an "act done" by him, but something not done. Harrison v. Brega, 20 U. C. R. 324; Mason v. Palmer, 13 C. P. 528. Where the real ground of complaint is the improper taking of money by a public officer, the taking is an "act."

Geller v. Loughrin (1911), 24 O. L. R. p. 31; Ross v. McLay, 40 U. C. R. 83.

V. NOTICE OF ACTION.

**ACT OF GOD.**—A phenomenon that is extraordinary, and such as could not reasonably be expected, even though it has happened before, may be an act of God. An extraordinary rain-fall, though not of unprecedented severity, if there is no previous experience to point to a probable recurrence, may be treated as an act of God. Garfield v. City of Toronto, 22 A. R. 128. In Rose v. Rural Municipality of Ochre River, 15 W. L. R. 200, it was held that a rain-fall, though a severe one, was not so severe as to bring it within the term "act of God." See McDougall v. Snider (1913), 29 O. L. R. 448.

**ACT OF STATE.**—In the broad sense of the term, many lawful acts of the executive government, and many instances of the exercise of the prerogative of the Crown, might be designated "acts of state"; but there is a narrower sense, and that in which the term is more technically if not exclusively employed, which relates to acts done or adopted by the ruling powers of independent states, in their political and sovereign capacity, particularly an act injurious to the person or to the property of some person who is not at the time of that act a subject of His Majesty; which act is done by any representative of His Majesty's authority, civil or military, and is either previously sanctioned or subsequently ratified by His Majesty.

In an action, to which the parties are British subjects, for a trespass committed within British territory, in time of peace, it is no sufficient answer to say, in exclusion of the municipal Courts, that the trespass was "an act of state" committed under the authority of an agreement or *modus vivendi* with a foreign power. Baird v. Walker, 11 C. L. T. 223 (S. Ct. Newfoundland).

**ACTION.**—"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by the Rules. Judicature Act (Ont.), sec. 2 (*a*). In the Evidence Act "action" includes an issue, matter, arbitration, reference, investigation, inquiry, a prosecution for an offence committed against a Statute of Ontario or against a by-law or regulation made under the authority of any such Statute and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a Court under the law of Ontario. In the Division Courts Act it includes a proceeding, suit, matter and cause, and in the Limitations Act it includes an information on behalf of the Crown and any civil proceeding. In the Bills of Exchange Act "action" includes counterclaim and set-off.

In Ontario an interpleader proceeding is an action. Before the present Rules of practice were adopted it was held otherwise. Hogaboom v. Gillies, 16 P. R. 402. The conflicting decisions before the present Rule are collected in 20 C. L. T. 347. In Manitoba it has been held an interpleader issue is within the term "action." Douglas v. Burnham, 5 Man. R. 261.

The word "action" in R. S. Man. ch. 36, sec. 65, providing for the examination of any party to an action, was held wide enough to include proceedings taken after judgment. Imperial Bank v. Smith, 8 Man. R. 440; 12 C. L. T. 432. A proceeding by way of *certiorari* is not an action. R. v. Fee, 13 O. R. p. 592; or a proceeding begun by a writ of *habeas corpus*. R. Graves (1910), 21 O. L. R. 329. A prosecution under the Ontario Election Act is not an action for a penalty within the meaning of sec. 200. Re A. E. Cross, 4 C. C. C. 173. A levy under execution is "an action or proceeding" to set aside a transfer of goods within the meaning of R. S. N. S. ch. 145, sec. 4. The Shediac Boot & Shoe Co. v. Buchanan, 35 N. S. R. 511. An issue directed to try the question of liability upon a judgment more than 20 years old, is an action within sec. 49 of the Limitations Act. Price v. Wade, 14 P. R. 351. A garnishee proceeding in a Division Court is an action, and may be transferred to another Division Court. Re McCabe and Middleton, 27 O. R. 170. Filing an objection, under the Land Titles Act, to the registration of another party as absolute owner of lands is not "bringing an action." Re Woodhouse, 4 O. W. N. 1265; 5 O. W. N. 141.

**ACTION OF COUNCIL.**—See Tetley v. The City of Vancouver, 33 C. L. J. 370.

**ACTIVE NEGLIGENCE.**—In the sense of separate or collateral negligence. See Allen v. Canadian Pacific Ry. Co. (1910), 21 O. L. R. 416.

**ACTUAL BODILY HARM.**—The words "actual bodily harm" in sec. 295 of the Criminal Code do not necessarily imply a breaking of the skin or wounding. R. v. Hostetter, 5 Terr. L. R. 363; 7 C. C. C. 221.

**ACTUAL OCCUPATION.**—Municipal Act, 1913, sec. 52 (*e*). "Actual occupation" does not necessarily mean exclusive occupation. When partners are in occupation of partnership property, each is to be deemed in actual occupation of his interest therein. R. ex rel. Joanisse v. Mason, 28 O. R. 495; R. ex rel. Harding v. Bennett, 27 O. R. 314.

**ACTUAL AND CONTINUED CHANGE OF POSSESSION.**—The phrase has no reference whatever to possession taken by a mortgagee under his mortgage upon default being made by the mortgagor. Gillard v. Bollert, 24 O. R. 147. It applies to sales of chattels by a husband to his wife. Hogaboom v. Graydon, 26 O. R. 298. See also Danford v. Danford, 8 A. R. 518.

The change of possession must be actual and not merely constructive, and is not sufficient if the vendor comes back next day apparently as owner, but really as clerk for the purchaser. Scribner v. Kinloch, 12 A. R. 367; 14 S. C. R. 77. The nature of the goods, the locality, and what kind of delivery the goods are capable of, must all be looked at. Whether there has been such a change of possession is a question of fact to be determined according to the facts of each particular case. Waldie v. Grange, 8 C. P. 431; McMaster v. Garland, 31 C. P. 320; 8 A. R. 1. The change of possession must, however, be the most open and complete that the nature of the goods will admit of. McMaster v. Garland, *supra*.

A clerk in the employ of wholesale grocers to whom the possession of a part of their stock is committed, being set apart in premises leased to him by them at a nominal rental, is a "bailee in actual, visible and continued possession" of the goods, within sec. 2 (*g*) of the Bank Act, R. S. C. ch. 29. La Banque Nationale v. Roger, 20 Que. K. B. 341.

*V.* ADVERSE POSSESSION.

**ACTUAL DISBURSEMENTS.**—Section 42 of the Mechanic's Lien Act provides that "the costs of the action, exclusive of actual disbursements, shall not exceed," etc. The "actual disbursements" referred to, do not include counsel fees paid to counsel retained, and *a fortiori* not counsel fees to the solicitor when acting as counsel. Cobban Mfg. Co. v. Lake Simcoe Hotel Co. (1903), 5 O. L. R. 447; Robock v. Peter, 13 Man. R. 124; Leibrock v. Adams, 7 W. L. R. 700.

What a solicitor is called upon *virtute officii* to pay out is styled disbursements, and he is not called upon to pay himself a counsel fee. In alimony actions an order for interim disbursements will not include counsel fee, where the counsel to be engaged is the solicitor for the plaintiff or his partner, *i.e.*, unless it is an actual cash disbursement. Lalonde v. Lalonde, 11 P. R. 143; Gallagher v. Gallagher, 17 P. R. 575; Cowie v. Cowie (1908), 17 O. L. R. 44.

"Those payments only which are made in pursuance of the professional duty undertaken by the solicitor, and which he is bound to perform, ought to appear as professional disbursements in the bill of costs, and other disbursements ought to be included in a separate cash account." Cobban Mfg. Co. v. Lake Simcoe Hotel Co., *supra*.

**ACTUAL FIRST COST.**—See Black v. Toronto Upholstering Co., 15 O. W. R. 642.

**ACTUAL NOTICE.**—Actual notice, within the meaning of the term as used in sec. 71 of the Registry Act, must be such notice as will make the conduct of the subsequent purchaser in taking and registering his conveyance fraudulent. New Brunswick Ry. Co. v. Kelly, 33 N. B. R. 310; 26 S. C. R. 341; Ross v. Hunter, 7 S. C. R. 289. Possession by the party claiming adversely to the registered title is not actual notice. New Brunswick Ry. Co. v. Kelly, *supra;* Roe v. Braden, 24 Gr. 589; Sherboneau v. Jeffs, 15 Gr. 574.

Where a purchaser knew that a deed absolute in form was given as security for a loan, he was not allowed to set up the Registry Act as a defence to an action to redeem. Peterkin v. McFarlane, 9 A. R. 429; 13 S. C. R. 677. But where a purchaser was informed of the existence of an unregistered agreement that did affect lands, but was told it did not affect them, and he made no further inquiry, it was held that he did not have actual notice of the contents of the agreement. Coolidge v. Nelson, 31 O. R. 646. If there is actual notice it makes no difference that the purchaser is not aware who the true owner may be. McLennan v. McDonald, 18 Gr. 502. A subsequent purchaser buying with actual notice of an unregistered deed of an unascertained part of the land takes subject to whatever the unregistered deed conveys. Severn v. McLellan, 19 Gr. 220.

"It has been doubted whether it was wise to allow an unregistered title to be defeated by evidence of notice of a prior deed, even when such evidence was quite satisfactory; and certainly no evidence short of that should be allowed to prevail. In this case I am free to admit that I am not without suspicion that Waters did not know of the prior conveyance to the plaintiff; but I cannot say that I am satisfied of the fact, as I think I ought to be satisfied, before setting aside a registered title of a purchaser for value." Per Spragge, V.C., Hollywood v. Waters, 6 Gr. 329.

**ACTUAL OCCUPATION.**—Municipal Act, 1913, sec. 52 (*e*). Actual occupation means no more than possession; residence is not essential. Where no one else was in possession of the premises and the candidate had the exclusive unqualified right to possession, it was held he was in actual occupation within the meaning of the Act and entitled to qualify. R. ex rel. Sharpe v. Beck, 13 O. W. R. 457. The English authorities as to what constitutes actual occupation under the Poor Laws, viz., exclusive beneficial occupation, are not to be applied. Where two partners are in

occupation of partnership property each is deemed to be in actual occupation of his interest in the property. R. ex rel. Joanisse v. Mason, 28 O. R. 495.

**ACTUAL RESIDENT.**—An owner of real estate in the district, with a furnished house, but living in a rented house outside of the district, was held not to be an "actual resident" within the meaning of a School Ordinance. Curren v. McEachern, 5 Terr. L. R. 333.

**ADEMPTION.**—Ademption is the revocation, recalling or cancellation of a legacy, according to the apparent intention of the testator, implied by the law from acts done by him in his lifetime, though such acts do not amount to an express revocation of it. It means simply the taking away of the benefit by the act of the testator. A specific devise of land may be adeemed by the property being sold or conveyed after the date of the will, and even if the testator, on sale of the devised land, takes back a mortgage to secure the purchase money, the benefit of the mortgage does not pass to the devisee. Re Tracy, 5 O. W. N. 530.

**ADDRESS.**—*V.* NAME AND ADDRESS.

**ADJACENT.**—See Crason v. Martley, 1 B. C. R. 381; 20 S. C. R. 634.

*V.* ADJOINING.

**ADJOINING.**—The word "adjoining" is different to the word "adjacent." Adjoining, as its derivation implies, signifies being joint together; adjacent is simply lying near. In an Act relating to Line Fences and Watercourses (B.C.), lands were held to be adjoining lands where they were separated by a road. Re Bowker and Richards, 1 W. L. R. 194.

**ADJOINING MUNICIPALITY.**—Adjoining municipality does not necessarily mean "next adjoining." Re Gallerno and Township of Rochester, 46 U. C. R. 279.

**ADJUDGED.**—Used in an agreement as contemplating a determination of disputes. Waller v. Sarnia, 4 O. W. N. 401.

**ADJUDICATION.**—The report of a trial Judge, who hears an election petition, that certain persons have been guilty of corrupt practices, is not as to them an adjudication, for the voters are not, in a proper judicial sense, parties to the proceedings at an election trial. Re Cornwall, H. E. C. p. 656.

**ADJUNCTS OF THE CANAL.**—These words, in the first schedule of the B. N. A. Act, apply only to those things necessarily required and used for the working of the canal. McQueen v. The Queen, 16 S. C. R. 1.

**ADOPTION.**—"The law of England, strictly speaking, knows nothing of adoption . . . and parents cannot enter into an agreement legally binding to deprive themselves of the custody and control of their children; and, if they elect to do so, can at any moment resume their control over them." Riddell, J., Re Davis (1909), 18 O. L. R. 384. See also Roberts v. Hall, 1 O. R. p. 404; Farrell v. Wilton, 3 Terr. L. R. 232; Fidelity Trust Co. v. Buchner (1912), 26 O. L. R. 367; In Re Hutchinson (1912), 26 O. L. R. 113, Boyd, C., sought to distinguish Re Davis on the ground that the Infants Act, R. S. O. ch. 153, sec. 3, validated such an agreement. The judgment was, however, reversed by the Divisional Court (26 O. L. R. 601), and the Statute held not to apply, and a father was not bound by, but was at liberty to revoke or ignore an agreement he had made as to the custody of his child. Re Hutchinson was before the Court of Appeal (28 O. L. R. 114), but no decided opinion was expressed as to the effect of the Statute, but the intimation was that it did not have the effect contended for by Boyd, C.

**ADULT.**—One grown up to the age of man, as opposed to infant, meaning one under age. Warnock v. Prieur, 12 P. R. at p. 271.

*V.* MAN.

**ADVANCE.**—Where in a real estate joint venture one party agreed to "advance and pay one-half of the total cost," etc., it was held the word "advance" meant pay and not to pay out money which was to be later repaid. Galbraith v. McDougall, 4 O. W. N. 919. The advances within the Bills of Sale Act, R. S. O. ch. 135, sec. 6, are not confined to mere money advances. Sutherland v. Nixon, 21 U. C. R. 629; Goulding v. Deeming, 15 O. R. p. 213.

**ADVANCEMENT.**—The word "advancement" standing by itself has a narrow and restricted meaning, and is a word appropriate to an early period in life. It may not be easy to define with precision what is meant by "advancement in life," since the meaning may depend, to a greater or less degree, on circumstances; but it seems to point to some occasion out of the everyday course, when the beneficiary has in mind some new act or undertaking which calls for pecuniary outlay, and which if properly conducted, holds out a prospect of something beyond a mere transient benefit or employment. Thus, if the beneficiary were going to enter

upon a business or profession, or to get married, or to build a dwelling house, or to make some unusual repairs or renovation, it would be a proper occasion for the trustee to use his discretion. Brooke v. Brooke, 3 O. W. N. 52.

The English cases exhibit a very peculiar and anomalous state of the law. It seems to be held that for the purposes of distribution, a loan, gift and advancement may be treated almost as interchangeable terms. That which is originally a debt may, by the act of the father, be converted afterwards into an advancement, and that which is a gift may afterwards be taken into account as part of the son's share of the father's estate. But our Statute (sec. 28, The Devolution of Estates Act) requires that some certainty of definition be given to the term "advancement," by the very fact that it is to be evidenced in writing. This writing may be either an expression of the intestate that the donation is by way of advancement (which I take is to be made contemporaneously with the transaction) or an acknowledgment to the same effect by the child. The intention of the parent at the time of the donation is the all important point, and the character of the dealing at that time must remain fixed unless it be changed with the concurrence of both parties.

"Under our law an advancement is neither a loan or a debt to be repaid, or an absolute gift. It is a bestowment of property by a parent on a child on condition that if the donee claims to share in the intestate estate of the donor, he shall bring in this property for the purposes of equal distribution." Per Boyd, C., Re Hall, 14 O. R. 557. Among the intestate's papers was found a promissory note for $500 made by a son who predeceased the intestate, leaving one child. *Held*, that the grandchild was not bound to bring the $500 into hotch-pot. Re Hall, *supra*. But where at the time of the advancement there is an agreement that the sum paid is to be in full of his distributive share of the estate, then in case the son predeceases the parent the grandchildren are precluded by the agreement. Re Lewis, 29 O. R. 609.

A testator invested money in Government securities in his own name for his daughters, because he had reached the limit which he could invest in his own name. He subsequently spoke of these investments as his daughters' money. *Held*, an advancement and the circumstances did not rebut the presumption of advancement. Jones v. Kinnear, 16 N. S. R. 1.

Where a father purchased a farm for his son, paying therefor $3,700, and gave him farm stock worth $600, and at his death left an estate of about twelve thousand dollars, not including the gift to the son, it was held that a gift of so considerable a portion of his estate would be treated as an advancement. Miller v. Miller, 8 E. L. R. 161 (P. E. Island).

**ADVANTAGE.**—Municipal Act, 1913, sec. 325. The "advantage" referred to in this section is not limited to the increase in value from the contemplated work as direct and peculiar to the particular property, but includes such as may be shared by that property in common with other lands benefited by the work. In Re Pryce and Toronto, 16 O. R. 726; 20 A. R. 16; In Re Richardson and Toronto, 17 O. R. 491.

V. CONTEMPLATED WORK.

**ADVERSE CLAIM.** — Where unpaid purchase money was claimed in an action by the vendor, and an action was brought by creditors of the vendor's husband to set aside the conveyance of the land by the husband to his wife, held to be an "adverse claim" within Con. Rule (1913) 625. Molsons Bank v. Eager (1905), 10 O. L. R. 452.

**ADVERSE PARTIES.**—A defendant is not a "party adverse in interest" to a co-defendant unless there are some rights to be adjusted between them in the action. The mere fact that one defendant admits the allegations in the statement of claim and the other denies them, does not make them "adverse parties." Fonseca v. Jones, 13 W. L. R. 206.

**ADVERSE POSSESSION.**—"By a long and unbroken chain of decisions extending over a period of upwards of forty years, it has been held by the Courts in Upper Canada that the possession which will be necessary to bar the title of the true owner must be actual, constant, visible occupation by the same person or persons . . . to the exclusion of the true owner for the full period of twenty (now ten) years." McConaghy v. Denmark, 4 S. C. R. 609.

Since the decision in McConaghy v. Denmark the tendency has been more than ever in the direction of requiring satisfactory proof of a possession answering in all respects to conditions above indicated. Coffin v. North American Land Co., 21 O. R. 80; Harris v. Mudie, 7 A. R. 414; Griffith v. Brown, 5 A. R. 303.

The possession must not be equivocal, occasional, or for a special or temporary purpose. Sherren v. Pearson, 14 S. C. R. 581. The defendant failed where the acts relied on to prove adverse possession of lands, not wholly enclosed, were selling timber, clearing and sowing the land, harvesting one crop and taking off hay for some years, and using the land for pasture. McIntyre v. Thompson (1901), 1 O. L. R. 163. Carrying on lumber operations during successive winters with no acts of possession during the remainder of each year does not constitute continuous possession, and is not exclusive where other parties lumber on the lands at intervals of the same period. Wood v. LeBlanc, 36 N. B. R.

47; 34 S. C. R. 627. Building a bush fence on unenclosed land is of no significance as an act of ownership. Cutting and removing wood and pasturing cattle, being intermittent and isolated, were held to be merely occasional acts of trespass and insufficient to constitute the required possession. Reynolds v. Trivett (1904), 7 O. L. R. 623. Merely fencing a lot without putting it to some actual continuous use, is not sufficient. Stovel v. Gregory, 21 A. R. 137; Campeau v. May, 2 O. W. N. 1420. And storing lumber and other building material on the lot for twenty years, even when supplemented by the vague statement "some material remained there continuously," does not make a possessory title. Re Hewitt, 3 O. W. N. 902.

In Coffin v. North American Land Co., *supra*, where the plaintiff took possession of enclosed vacant city lots, cropped them in the summer, but did not occupy them during the winter months except by drawing manure thereon, a Divisional Court held there was no continuous possession—that the winter months must be separated from the summer months and these months must be looked at by themselves. The Coffin case was distinguished in Hartley v. Maycock, 28 O. R. 508, and finally overruled in Piper v. Stevenson (1913), 28 O. L. R. 379, where the facts were the same. The result in Piper v. Stevenson is that actual residence on the land is not necessary to constitute visible possession: that abandonment is a matter of intention: and cropping and cultivating from year to year negatives such intention.

Piper v. Stevenson was followed in Nattrass v. Goodchild, 6 O. W. N. 156, where it was held that possession of an island of about seven acres in Lake Erie, as a fishing station during the summer seasons for eighteen years, going there early in the spring and returning to the mainland late in the fall, was adverse possession sufficient to give title. See also Cowley v. Simpson, 6 O. W. N. 192.

The occupant of the surface of the soil may obtain a title to the surface by possession while the true owner retains an easement therein. Where the defendant had possession of land one foot wide under the overhanging roof of plaintiff's house, it was held he had obtained a title thereto subject to the plaintiff's right to maintain the roof and of access to the building for painting, etc. Rooney v. Petry (1910), 22 O. L. R. 101.

The doctrine of constructive possession has no application in the case of a mere trespasser, and he acquires title by possession only to such land as he has had actual and visible possession of by fencing or cultivating for the requisite period. Harris v. Mudie, 7 A. R. 414; Wishart v. Cook, 15 Gr. 237.

In Humphrey v. Holmes, 5 Allen 59, the appellate Court of New Brunswick, by a bare majority, followed the American

doctrine of constructive possession of the whole property where the occupant enters under colour of right. The decision is not satisfactory, and was disapproved of in, if not overruled by, Buskirk v. Carney, 2 Pugs. 233. For a careful review of the N. B. cases see 19 C. L. Times, 237.

Where a contract of hiring exists between the parties, and the possession has been incidental to that contract, the possession is not adverse. Truesdall v. Cook, 18 Gr. 535; Perry v. Henderson, 3 U. C. R. 186. So the possession of a caretaker is the possession of the real owner. And it makes no difference whether the original entry of the occupant was as caretaker or as a trespasser, or whether the original possession was of a portion or of the whole of the lot. Greenshields v. Bradford, 28 Gr. 299; Ryan v. Ryan, 5 S. C. R. 387. Where the possession is as caretaker for one owner, and subsequently the property is severed by judicial decree and the possession continues of the different parcels, the severance of the property does not alter the relation between the person in possession and the different owners, and he still remains in possession of each parcel as caretaker. Heward v. O'Donohoe, 19 S. C. R. 341. The evidence for the purpose of shewing that the occupant was in the position of caretaker or agent for the owner may be given by parol. Hickey v. Stover, 11 O. R. 106.

The possession by a father of his infant child's land, is the possession of the infant. Kent v. Kent, 20 O. R. 445; 19 A. R. 352. And the character of the possession is not altered after the child has attained its majority. The decisions in Hickey v. Stover, and Clarke v. McDonnell, 20 O. R. 564, on this point, may be said to be, in effect, overruled by the judgment of the Court of Appeal in Kent v. Kent. Where trustees for an infant take possession of land for an infant, their possession is the possession of the infant. Re Goff, 8 P. R. 92. But where a stranger takes unauthorized possession of an infant's land there is no such fiduciary character as to create an express trust, and he may gain a title against an infant by adverse possession. Re Taylor, 28 Gr. 640.

The possession of a son may be adverse to the title of his father. Quinsey v. Caniff, 5 U. C. R. 602; McCowan v. Armstrong, (1902), 3 O. L. R. 100; Bentley v. Peppard, 33 S. C. R. 414; or that of the father to the son, where there is no fiduciary relationship. Truesdall v. Cook, 18 Gr. 532.

The possession of the wife is the possession of the husband. Plaintiff left his wife and family for more than 30 years and held no communication with them. His wife, believing he was dead, married one D., and she and D. resided on the farm for more than 20 years. *Held*, that, as the second marriage was

illegal, the possession of the wife was the possession of the husband, and the possession of D. along with the wife was no more than if he was her bailiff, or working the farm with her on shares. McArthur v. Egleson, 43 U. C. R. 406. Where a husband and wife are living together, the possession must ordinarily be attributed to the husband as the head of the family, and the wife cannot acquire title to the property for herself by length of possession under the Manitoba Act. Callaway v. Platt, 17 Man. R. 485.

**ADVERTISEMENT FOR CREDITORS.**—The advertisement for creditor's claims required by sec. 56 of The Trustee's Act need not be published in the Ontario Gazette. Re Cameron, Mason v. Vameron, 15 P. R. 272. A month at least should be allowed for creditors to file claims, and mere lapse of time from the death of the testator, or intestate, is no excuse for not advertising.

**AFFIDAVIT.**—"Affidavit" shall in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration. Int. Act, Ont.

The letters "J. P." followed the signature of the party before whom an affidavit is sworn, is sufficient to describe him as a Justice of the Peace. Re Gordon (1901), 7 Terr. L. R. 134. "A Comr." is sufficient. Pawson v. Hall, 1 P. R. 294; Brett v. Smith, 1 P. R. 309; Murphy v. Boulton, 3 U. C. R. 177. But the mere signature is insufficient. Babcock v. Township of Bedford, 8 C. P. 527. So where the commissioner swore the deponent but neglected to sign the jurat. Nesbit v. Cock, 4 A. R. 200. Where the words "before me" in the jurat were omitted the affidavit was held bad, and the bill of sale (under the Nova Scotia Act) void, and the defect could not be supplied by parol evidence. Archibald v. Hubley, 18 S. C. R. 116. But where the jurat read "Sworn before at" omitting the word "me" it was held sufficient. Martin v. McCharles, 25 U. C. R. 279. Where the commissioner signed both the affidavit of *bona fides* and the affidavit of execution to a chattel mortgage, and placed his addition to one, but not to the other—held good. Hamilton v. Harrison, 46 U. C. R. 127.

In Smith v. McLean, 21 S. C. R. 355, the affidavit did not state the occupation of the grantor in a bill of sale, but the affidavit referred in terms to the instrument itself in which his occupation was stated. The Supreme Court (reversing the Sup. Ct. of Nova Scotia) held the statute was complied with. But where the jurat was "sworn at Middleton this 6th day of July, A.D. 1891," without naming the county, the Supreme Court again reversed the N. S. Sup. Ct. and held the affidavit defective, because the county was not named, although it was headed "In the County of Anna-

polis." Morse v. M'Phinney, 22 S. C. R. 563. It is somewhat difficult to catch the distinction, more especially as, according to the judgment of King, J., concurred in by Sedgwick, J., it would have been different if the jurat had read "Sworn to at Middleton aforesaid." In Yeoman v. Steiner, 5 P. R. 166, an affidavit in an action was "Sworn at Toronto," no county being named, and it was held sufficient. An affidavit stating that the deponent was "Sworn," whereas he affirmed, was held to be saved by the Interpretation Act. Dyck v. Greening, 17 Man. R. 158.

An affidavit purporting to be sworn on a day not yet arrived is bad. In Re Robertson, 5 P. R. 132; Ex p. Emerson (Sup. Ct. N. B.) 15 C. L. T. 294. The jurat to the affidavit of a marksman read "seemed fully to understand the same," instead of the usual form "who appeared perfectly to understand the same." *Held*, sufficient. Ex p. Alain, 35 N. B. R. 107.

Papers annexed to an affidavit are not filings distinct from the affidavit so as to require to be stamped. Case v. Stephens, 6 Man. R. 552; 10 C. L. T. 232. But the affidavits of execution and justification to an appeal bond are separate documents, and must be stamped as such when filed. Macbeth v. Smart, 1 Chy. Ch. 269.

A document beginning "I . . . Make oath and say," and ending "And I make this solemn declaration," etc., is neither an affidavit or a solemn declaration, Schultz v. Archibald, 8 Man. R. 284. The affidavit of bona fides on a chattel mortgage is sufficient, although it purports to be the joint affidavit of two mortgagees, and the jurat does not shew they were severally sworn. Moyer v. Davidson, 7 C. P. 521; Dyck v. Greening, 17 Man. R. 158; 6 W. L. R. 171. An affidavit for use in Court sworn before a notary public should be authenticated by his official seal. Boyd v. Spriggins, 17 P. R. 331.

**AFFIRM.**—The condition of an appeal bond was that the appellant would "prosecute his appeal and pay such costs and damage as might be awarded in case the judgment was affirmed." The appellant discontinued the appeal. Rose, J.: I find that "affirm," "confirm," and "establish" are synonymous. Other meanings are "to make firm or certain," "to make free from doubt." Taking the word "affirmed" in its ordinary natural meaning, it is clear that the judgment appealed from has been by the discontinuance and ending of the appeal confirmed, established, made certain and free from doubt." Hughes v. Boyle, 5 O. R. 395.

**AFFIRMATIVE PROOF.**—One of the terms of an accident policy required "affirmative proof" of death. Held, that this meant reasonably sufficient information of a credible character; reasonably sufficient proof Johnson v. Dominion Guarantee and Accident Co., 11 O. W. R. 363.

**AGAIN.**—A warrant recited a first conviction and that, on a day mentioned, the defendant was "again" duly convicted. *Held* a sufficient statement of a second conviction with the Liquor License Act, N. S. R. v. McLean, 14 C. L. T. 312.

**AGAINST ALL CASUALTIES.**—A condition in a contract by a common carrier that all baggage must be "at owner's risk against all casualties," extends the meaning of the words "owner's risk" to all possible contingencies other than wilful misconduct on the part of the carrier. Dixon v. Richelieu Navigation Co., 15 A. R. 647; 18 S. C. R. 704.

**AGAINST ALL DEFECTS.**—In an agreement for the sale and purchase or exchange of a horse, or other animal, a warranty "against all defects" means a warranty that the horse or animal is free from all defects concealed or apparent, maladies of every kind, and anything which would make it unfit for use. Fortier v. Tanguay, Que. R. 44 S. C. 440.

**AGENT.**—A person who obtains possession of goods by fraud or false pretences is not an agent within the meaning of the Act Respecting Goods Entrusted to Agents, R. S. O. 1897, ch. 150 (now The Factors Act, R. S. O. ch. 137), Bush v. Fry, 15 O. R. 122. The term "agent" therein does not include a mere servant or caretaker, or one who has possession of goods for a carriage, safe custody or otherwise as an independent contracting party, but only persons whose employment corresponds to that of some known kind of commercial agent like factors; our Act being taken from the English Act known as the Factors Act. Ib. The agent must be one who is entrusted with the possession as agent in a mercantile transaction for sale, or an agent connected with the sale of the property. These requirements must unite in order to invoke the benefit of the Act. Moshier v. Keenan, 31 O. R. 658; Ontario Wind Engine and Pump Co. v. Lockie (1904), 7 O. L. R. 385. Persons securing promissory notes for special purposes and failing to comply with the conditions on which the notes were obtained—not agents. R. v. Armstrong, 20 U. C. R. 245; R. v. Hynes, 13 U. C. R. 194.

Defendant was appointed agent for the location and sale of Crown lands, and had been advised of his appointment by letter and instructed to enter upon his duties but not to sell lands or receive money until he had given the usual security. *Held*, he was an agent for the sale of Crown lands and so liable for voting at an election contrary to the provisions of the Ontario Elections Act. Srigley v. Taylor, 6 O. R. 108.

A member of a firm carrying and exposing samples, or making sales himself, is not an agent within the meaning of sec. 415 of

the Mun. Act, 1913, relating to hawkers and pedlars. R. v. Marshall, 12 O. R. 55.

A customs officer of the United States is an "agent" of the U. S. Government within the Extradition Convention of 1889 making "fraud by an agent" extraditable. United States v. Browne, 11 C. C. C. 167.

Agent, within the meaning of sec. 2 (*k*) of the Public Health Act means a person acting for the owner as trustee, or in some such capacity in connection with the construction of any building. It does not include a plumber doing work under a contract. R. v. Watson, 19 O. R. 646.

*V.* Officer or Agent—Clerk, Servant or Agent.

**AGGREGATE VALUE.**—In the Succession Duty Act, "Aggregate value" means the fair market value of the property after the debts, encumbrances and other allowances authorized by sec. 4 are deducted therefrom, and for the purpose of determining the aggregate value and the rate of duty payable the value of property situate out of Ontario shall be included.

**AGGREGATE POPULATION.** — The term "aggregate population" in sub-sec. 4 of sec. 57 of the B. N. A. Act, relates to the whole of Canada as constituted by the Act, and therefore includes, not merely the four Provinces constituted by proclamation issued under sec. 3, but also all the Provinces subsequently admitted into the Confederation. Attorney-General for Prince Edward Island v. Attorney-General for Canada (1905), A. C. 37.

**AGGRIEVED.**—*V.* Person Aggrieved.

**A HOME.**—*V.* Home.

**AID.**—The representative of a trade union who gives cheques to merchants for goods supplied to strikers for the purpose of enabling the strikers to continue the strike, "aids" them to continue the strike within the meaning of sec. 60 of the Industrial Disputes Investigation Act, ch. 20, 6-7 Ed. VII.; R. v. Neilson, 17 C. C. C. 298.

**AIDING AND ABETTING.** — Aid rendered to the principal offender after the commission of the crime is alone insufficient to justify a conviction for aiding and abetting. R. v. Graham, 2 C. C. C. 388. The accused must be present, ready to afford assistance if necessary; but the presence need not be a strict, actual, immediate presence, but may be a constructive presence. There must be some participation. R. v. Curtley, 27 U. C. R. 613.

A person who knowingly assists a thief to conceal money which he is in the act of carrying away, by receiving the money for the purpose of concealing it, aids and abets the theft, and may be convicted as a principal under sec. 69 (*c*) of the Code. R. v. Campbell, 2 C. C. C. 357.

**ALIEN.**—A British subject is neither an alien nor a foreigner although he happen to be living abroad. A person born in the United States, but whose father was born in Canada, there being no evidence that either father or son became United States citizens by naturalization, is not an alien within the meaning of the Alien Labour Act, R. S. C. ch. 97, sec. 2. R. v. Hayes, 6 C. C. C. 357; Prescott Election, H. E. C. 1.

An alien who came to Canada and after a residence of ten years took the oath of allegiance, but had taken no proceedings to obtain a certificate of naturalization, was held to be still an alien. Bacon's Case, H. E. C. 129. As to presumption arising from long residence, etc., see Montgomery v. Graham, 31 U. C. R. 57. It is not sufficient to swear that a person is an alien without giving the facts from which the inference can be drawn. Carroll v. Beckwith, 1 P. R. 278.

An immigrant, who is a skilled workman in his trade, and who has been advanced by his employer in Canada, to be worked out, the sum of $25, possesses "in his own right" sufficient money to entitle him to land in Canada under the statute and regulations. Re Walsh, Collier & Filsell (1913), 13 E. L. R. 132; 22 C. C. C. 60.

**ALIENATED.**—British Columbia Island Railway Act, 1884, ch. 14, sec. 6.

See Attorney-General for British Columbia v. Esquimalt and Nanaimo Ry. Co., 19 W. L. R. 693.

**ALIMONY.**—*V.* Debt.

**ALIMONY, JUDGMENTS FOR.**—*V.* All Judgments and All Executions not Completely Executed by Payment.

**ALL.**—Construed as "any" in a covenant in a lease that the lessee "should not sow fall grain in *all* fields now cleared in the first or last year of the term." Gilmore v. Lockhart, H. T. 6 Vict.

**ALL ABOARD.**—Is a notice to passengers to get into the cars. Where after such notice the conductor did not allow a sufficient time for the passengers to get into the cars and one of them was injured when getting into a moving car, the conductor was held guilty of negligence. McFadden ats Hall, Cameron S. Ct. Cases 589.

**ALL THE BENEFICIARIES.**—In the Ontario Insurance Act the words "all the beneficiaries" are wide enough to cover the case of a sole beneficiary. Re Caiger, 4 O. W. N. 1174.

**ALL CREDITORS.**—In a composition deed containing a proviso that "all the creditors" should accept a composition, it was held that "all the creditors" meant all the creditors of the insolvent and not all the creditors signing the deed. Shepherd v. Murray, 3 O. W. R. 733.

**ALL DAYS EXCEPT SUNDAY.**—Under the defendants charter they were authorized to operate a street railway "on all days except Sunday." *Held*, an information would not lie to prohibit cars running on Sunday, the restriction being merely an implied one, and no substantial injury to the public being shewn. Attorney-General v. Niagara Falls, etc., Co., 19 O. R. 624; 18 A. R. 453.

**ALL JUDGES OF THE COUNTY COURT.**—In the Extradition Act, R. S. C. ch. 155, sec. 9, includes a Junior Judge. Re Parker, 19 O. R. 613. "I think that sec. 11 of ch. 138 R. S. C. is sufficient to shew that a Junior Judge of a County Court is a Judge of a County Court." Re Garbutt, 21 O. R. 179, per Street, J.

A deputy County Court Judge, in the case of the illness of the County Judge, has jurisdiction to hold a recount of ballots in an election for the local legislature. Re Prince Edward Provincial Election (1904), 9 O. L. R. 463.

**ALL JUDGMENTS AND ALL EXECUTIONS NOT COMPLETELY EXECUTED BY PAYMENT.**—The precedence given to an assignment for the general benefit of creditors by the Assignments and Preferences Act (sec. 14) does not extend to a judgment for alimony registered against the lands of a defendant prior to the registration of an assignment made by him. Abraham v. Abraham, 19 O. R. 256; 18 A. R. 436.

**ALL MY CHILDREN.**—A testator directed that all his estate should "be divided amongst all my children." One daughter died before the execution of the will leaving children and it was held the grand-children did not take directly under the will, or by virtue of the Wills Act, R. S. O. ch. 120, sec. 37. Re Williams (1903), 5 O. L. R. 345. In Re Clerk (1904), 8 O. L. R. 599, where the devise was to the testator's "children at B. to be divided among them in equal shares," and one of the four children at B. died after the making of the will, and before the testator, leaving children, it was held the grand-children did not take—the gift was

to a class, and only the members of the class alive at the testator's death take under such a provision. And where the gift is to "all my children" as a class, the fact that one of the class is specially named and predeceases the testator leaving children, makes no difference. Re Moir (1907), 14 O. L. R. 541.

The foregoing cases were distinguished in Re Bauman, 1 O. W. N. 293, where the residue of the estate was to be "divided between all my children." There were seven children, all mentioned by name in the will. Four of these predeceased the testator, leaving children. Britton, J., "In Re Stansfield, 15 Chy. D. 84; Bacon, V.C., said, 'When he speaks of *my nine children* that is the same as if he had mentioned them all by name,' and, because he did, I think the case distinguished from Re Williams, Re Clark and Re Moir."

**ALL MY ESTATE BEING COMPOSED OF.**—A testator devised "all my real estate, said real estate being composed of the south-east part of lot 10," etc. After the date of the will the testator purchased the northerly half of lot 10, and it was held the after acquired portion passed under the devise. It was always the rule that a general gift of personal estate carried the whole personalty though there might be an imperfect enumeration of the particulars of the estate, and it would seem that no reason now exists to make such a distinction *quoad* realty as was adverted to in Crombie v. Cooper, 22 Gr. 267, 24 Gr. 470. In Re Smith (1905), 10 O. L. R. 449.

**ALL NECESSARY ACCOMMODATION.** — An agreement "to construct a freight and passenger station with all necessary accommodation" is not complied with by the erection of a station building not used, or intended to be used, and for which proper officers, such as a station master, etc., are not appointed. Bickford v. Chatham, 14 A. R. 32; 16 S. C. R. 235; Township of Nottawasaga v. Hamilton and N. W. Ry. Co., 16 A. R. 52.

**ALL PARTIES CONCERNED.**—The trustees of a school section come within the term "all parties concerned" in the Assessment Act under which the rolls as passed by the Court of Revision are valid and binding on all parties concerned. Trustees of S. S. No. 24 Burford v. Tp. of Burford et al., 18 O. R. 546.

**ALL PLANT AND TIMBER CUT.**—See Klock v. Molsons Bank, 3 D. L. R. 521.

**ALL THE CAUSES OF ACTION.**—Con. Rule (1913) 314. Where there are two causes of action, although they may be

alternative, a satisfaction of one is a satisfaction of both. Frost & Wood v. Leslie, 4 O. W. N. 472.

**ALL THE CONTENTS THEREOF.**—A gift of a residence and "all the contents thereof" will include the personal jewellery of the testatrix found in the residence at her death, although the gift was jointly to a man and a woman and the idea of joint enjoyment of the jewellery was so excluded. Re Perrie (1910), 21 O. L. R. 100.

**ALL THE PROCEEDS.**—A devise of "all the proceeds" from a farm for life, gives a life estate in the farm by implication. Brennan v. Munro, 6 O. S. 92.

**ALLOW.**—Where a statute imposes a penalty on a licensee "who allows" gambling on his premises, the word "allows" means that the person has a knowledge of what is being done. A person cannot "allow" a thing of which he has no knowledge. It might be different if the statute purports to govern the premises and not the licensee, i.e., if it provided that no gambling shall be allowed on the premises. R. v. Whelan, 9 W. L. R. 424.

In a contract providing that upon non-completion by a fixed date the contractor was to "allow" $10 per day as liquidated damages, "allow" is equivalent to "deduct." McBean v. Kinnear, 23 O. R. 313.

V. PERMIT.

**ALLOTMENT.**—"As applied to a fixed quantity of anything, or a fixed number of shares, the word 'allotment' can mean nothing more than to give, to assign, to set apart, to appropriate. The word has all these meanings. Nor does the word 'issue' in the present case mean the doing of any particular act, and I think 'issue' and 'allotment' taken together mean no more than some signification by the company of its assent that the defendant now was or had become the owner of the number of shares which he agreed to take. All that was required was, in the language of Lord Cairns in Pellatt's Case, "a response," that is, a favourable response by the company; or, as interpreted by Rolt, L.J., in writing, or verbally, or by conduct, something to shew the applicant that there was a response by the company to his offer." Per Maclennan, J.A., Nelson Coke Co. v. Pellat (1902), 4 O. L. R. p. 489.

An allotment only constitutes one of the steps which go to form a complete contract. It is an appropriation, not of specific shares, but of a certain number of shares. It does not, however, make the person who has thus agreed to take the shares a member

from that moment; all that it does is simply this—it constitutes a binding contract under which the company is bound to make a complete allotment of the specified number of shares, and under which the person who has made the offer, and is now bound by the acceptance, is bound to take the particular number of shares. Hill's Case (1905), 10 O. L. R. 501.

Where a subscriber was debited in the company's stock ledger with one share, was placed on the shareholder's list, and was drawn upon for the first payment of 10 per cent., and paid the draft, there being no formal allotment, the Court held this must be taken to have been done by the authority of the directors, and to be a mode of allotment "ordained" by them within the meaning of the Companies Act. Hill's Case, *supra*. See Calderwood's Case (1905), 10 O. L. R. 705; Rankin's Case (1909), 18 O. L. R. 80.

A subscriber for shares, who has already paid one call, cannot be heard to deny the allotment of his shares. Morden Woolen Mills Co. v. Heckels, 17 Man. R. 557.

As to unreasonable delay in proceeding with the undertaking of the company: see Patterson v. Turner (1902), 3 O. L. R. 373.

A subscriber may waive the formal allotment of his shares, and it was held he had done so in Fort William Commercial Chambers v. Braden, 6 O. W. N. 24.

**ALONG.**—The term "along" in sec. 87 of the Ontario Railway Act, 1906, means "on" and not "alongside of," or "by the side of." Gunning v. South Western Traction Co., 10 O. W. R. 287. See now R. S. O. ch. 189, secs. 114, 115.

**ALONG THE BANK.**—See Gage v. Bates, 7 C. P. 116.

*V.* BANK.

**ALONG THE WATER'S EDGE.**—The term "along the water's edge," in a conveyance, may either signify the line which separates the land from the water, or a water space of greater or less width constituting the margin of the river; and the description is capable of being explained by possession. Booth v. Ratte, 15 A. C. 188, affirming 14 A. R. 419.

**ALTER—ALTERATION.**—A statute giving power to alter a school section does not authorize a division of the section into two sections. Alteration of the boundaries of a section means some change in the lines delimiting the territorial area of the particular section so being modified, leaving it in other respects intact. Re S. S. No. 16, Tp. of Hamilton, 29 O. R. 390.

Where a promissory note had the word "renewal" written in one corner, to indicate it was a renewal of an original note, an erasure of the word is a material alteration; but where the erasure was not apparent the holder in due course was held protected by sec. 145 of the Bills of Exchange Act, R. S. C. ch. 119. Maxon v. Irwin (1908), 15 O. L. R. 81.

A holder of a note bearing interest at 2 per cent. per month altered it to read "12 per cent. per annum" (to avoid the Money-Lenders Act, R. S. C. ch. 122, sec. 6). *Held*, a material alteration. Bellamy v. Porter (1913), 28 O. L. R. 572. Striking out the provision for "interest at 6 per cent." although the alteration benefits the maker. Langley v. Lavers, 13 E. L. R. 141.

Altering the date is material. Meredith v. Culver, 5 U. C. R. 218; Gladstone v. Dew, 9 C. P. 439; or a joint note to a several note. Samson v. Yager, 6 O. S. 3; but see Leslie v. Emmons, 25 U. C. R. 243. Erasing a condition is material. Campbell v. McKinnon, 18 U. C. R. 612; Swasiland v. Davidson, 3 O. R. 320.

After maturity a joint note (one of the makers being an accommodation maker) was signed by a third person as additional maker, and this was held a material alteration discharging the accommodation maker. Carrique v. Beaty, 24 A. R. 302; Reid v. Humphrey, 6 A. R. 403. So the alteration of a note payable on demand, to a later date, though the effect of the alteration may benefit the maker. Boulton v. Langmuir, 24 A. R. 618. But not if the alteration is to correct a manifest error—the date first inserted being a Sunday. Merchants Bank v. Sterling, 1 R. & G. (N.S.), 439.

Alteration in the place of payment is material. McQueen v. McIntyre, 30 C. P. 426; or of the time of payment, even where the maker subsequently promises to pay. Westloh v. Brown, 43 U. C. R. 402. Making a marked cheque payable to order instead of bearer is material. Re Commercial Bank, 10 Man. R. 171.

Whether the alteration is material or not is a question of law and must be considered with reference to the contract itself, and not at all with reference to the surrounding circumstances. Re Commercial Bank, *supra*.

**ALLUVIAN.**—The accretion formed in a navigable river during a single night is not an alluvian and does not become the property of the riparian owner. German v. Price, Q. R. 27 S. C. 188.

In Quebec the proprietor of land carried away by reason of a landslip through natural causes, may reclaim it within a year. If it is inconsiderable and indistinguishable, or if it is not

reclaimed within a year, it becomes by right of accession the property of the owner of the land to which it is united. Bells v. The Kings Asbestos Mines, 21 Que. K. B. 234.

Lands formed by alluvian or gained by the recession of water belongs to the owner of the contiguous land, to which the addition is made, and, conversely, lands encroached upon by navigable waters ceases to belong to the former owner, on the principle that one who derives an advantage should also bear the burden; but, when the boundary of the land along the shore is clearly and rigidly fixed by deed, survey, or otherwise, the principle does not apply, and the owner thereof who cannot gain by alluvian or recession, does not lose by encroachment. Volcanic Oil and Gas Co. v. Chaplin (1912), 27 O. L. R. 34.

**AMONG.**—*V.* BETWEEN.

**AMOUNT IN QUESTION.**—The Manitoba County Courts Act provides for an appeal where the "amount in question" is $20 or more. *Held*, this is applicable only to a money demand and not to a claim in replevin. Haddock v. Russell, 8 Man. R. 25; 11 C. L. T. 350. It means the amount the plaintiff might possibly have recovered. Aitken v. Doherty, 11 Man. R. 624. It is not the amount claimed by the plaintiff, but the amount which the party appealing seeks to relieve himself from, or to recover in the appeal, which is the test. Massey-Harris Co. v. McLaren, 11 Man. R. 370.

**AMOUNT RECOVERED.**—*V.* RECOVER.

**AND.**—The word "and" is sometimes read as "or" and the word "or" as "and." An offer for the sale of land was accepted by C. for "myself or assigns." To avoid holding the contract void "or" was read as "and." "There is no doubt of the intention of the parties, and, where sense requires it, there are many cases to shew that we may construe the word "or" into "and" and "and" into "or" in order to effectuate the intent of the parties." Clergue v. Vivian, 41 S. C. R. 607.

"Or" was read as "and" in the case of a gift over, by will, "to the surviving daughter or her heirs." Re Edgerley and Hotrum, 4 O. W. N. 1434. But a devise to A. in fee with a devise over if he should die before testator's "brother and sister," it was held that "and" could not be read as "or." Lillie v. Willis, 31 O. R. 198.

Where a statute of Canada imposes a "fine and imprisonment" the punishment is in the discretion of the Court, which is not bound to inflict both. R. v. Robidoux, 2 C. C. C. 19; Ex. p. Kent, 7 C. C. C. 447.

By Statute, 51 Geo. III., ch. 9, sec. 6, contracts were declared void where usurious interest was "reserved *and* taken." The Court construed the word "and" as "or." Boag v. Lewis, 1 U. C. R. 357.

V. Between—Charitable and Philanthropic Purposes.

**ANIMALS FERAE NATURAE.**—A raccoon is an animal *ferae naturae*. Andrew v. Kilgour, 19 Man. R. 545.

**ANNUAL EXPENDITURE.**—V. Current Annual Expenses.

**ANNUAL INSTALMENTS.**—A promissory note for a sum certain payable in "three annual instalments" means three equal annual instalments, and each of these instalments is an ascertained amount. In Re Babcock v. Ayers, 27 O. R. 47.

**ANNUAL RENTS.**—The term "annual rents," in the Supreme Court Act (R. S. C. ch. 139, sec. 46 (*b*)), means ground rents (*rentes foucieres*) and not an annuity or other like charge or obligation. Rodier v. Lapierre, 21 S. C. R. 69.

**ANNUAL VALUE.**—On a reference to take accounts of rents and profits of lands the "annual value" of land is what it could probably have been rented for, or what might reasonably have been derived from it for use and occupation during the period of the defendant's wrongful withholding, and in the absence of special circumstances, no more than a fair rental, or use and occupation value of the property should be allowed. Fraser v. Kaye, 14 C. L. T. 140 (N. S.).

**ANNUITY.**—An annuity although personal property is frequently ranged under incorporeal hereditaments, issuing out of land, and even the legislature treats it sometimes as a rent-charge, from which it materially differs. The words "annuity" and "rent-charge" are frequently used as interchangeable terms.

V. Apportionment.

An annuity is not a debt within the meaning of the term in the Assignments and Preferences Act, and the annuitant is not a creditor. The growing payments of an annuity are in the nature of contingent debts only, and the annuitant is not entitled to rank on the estate for the present value of such payments. Carswell v. Langley (1902), 3 O. L. R. 261.

**ANY.**—The term "the creditors" is equivalent to and interchangeable with "any creditors." Emerson v. Bannerman, 1 Terr. L. R. 224; 19 S. C. R. 1.

V. Either Party.

The word "any" is frequently used in the sense of "every." For instance, a devise of "any freehold or leasehold house which may belong to me at the time of my death" was held to pass two leasehold properties. Re Greenshields, 6 O. W. N. 303.

**ANY BUILDING.**—The words "any building or other place" in sec. 90 of The Inland Revenue Act, R. S. C. ch. 51, include a private residence. Duquenne v. Brabant, Q. R. 25 S. C. 451.

**ANY LAW OF CANADA.**—*V.* ARISING UNDER ANY LAW OF CANADA.

**ANY MAN.**—The term "any man" in sec. 217 of the Criminal Code does not include the accused who is the owner or occupant of the premises and who induces a girl to be thereon for the purpose of himself having connection with her. R. v. Sam Sing (1910), 22 O. L. R. 613; 17 C. C. C. 361.

**ANY MUNICIPALITY.**—As used in sec. 18 of the Liquor License Act, R. S. O. 1897, the term "any municipality" does not include a Township municipality. Re McCracken and United Townships of Shereborne, et al. (1911), 23 O. L. R. 81.

**ANY PARTY.**—*V.* EITHER PARTY.

**ANY PERSON.**—The term "any person," in a statute, is not always to receive a literal construction, but should be construed in connection with the entire statute, and if, when literally construed, it would lead to a conflict between different portions of the Act, or to absurd conclusions, it may be restricted or enlarged in its operation so as to cause each part of it to harmonize with every other part. Lemay v. Canadian Pacific Ry., 17 A. R. p. 300.

In a *qui tam* action for a penalty under the Registration of Partnerships Act, R. S. O. ch. 139, sec. 1, two joint plaintiffs may sue although the right is given to "any person." Chaput v. Robert, 14 A. R. 354. An infant cannot bring such an action because he is obliged to sue by his guardian. Garrett v. Roberts, 10 A. R. 650. *Semble*, a corporation cannot sue as a common informer. *Per* Osler, J.A., Chaput v. Robert, *supra*.

The words "any person or persons" in the long form of the covenant in the Act Respecting Short Forms of Leases, R. S. O. ch. 116, includes the original lessee, and where he had made an assignment to P. with the consent of the lessor a re-assignment to the original lessee without a fresh consent was held a breach of the covenant. Munro v. Waller, 28 O. R. 29.

**ANY PLACE.**—*V.* IN ANY PLACE.

**ANYTHING CAPABLE OF BEING STOLEN.**—These words, in sec. 397 of the Criminal Code, are not restricted to things capable of being stolen by the accused, but include anything that comes within the definition of sec. 344 of things capable of being stolen. R. v. Goldstaub, 5 C. C. C. 357.

**ANYTHING DONE UNDER THIS ACT.**—Where a statute gives protection to an official or other person for "anything done under this Act," or "in pursuance of this Act," it means that the defendant must honestly and really (although mistakenly) believe that the act which constitutes the cause of action was done in pursuance of the statute, and such belief should not be a vague general belief, involving matter of law only, or mixed matter of law and fact, but should be a *bona fide* belief in such a state of facts as, had it existed, would have justified the act, the subject of the action. Grant v. Culbard, 19 O. R. 20, (an action arising out of the Inspection and Sale Act, R. S. C. ch. 85, sec. 47).

**APARTMENTS.**—*V.* DETACHED DWELLING HOUSES.

**APOTHECARY.**—An apothecary is one who prepares drugs for medicinal uses and keeps them for sale. Formerly an apothecary merely compounded and dispensed the prescription of physicians and surgeons. The term is now, however, also applied in England to those who practise medicine and at the same time deal in drugs. A druggist registered under the Pharmacy Act (Ont.), which entitles him to act as an apothecary as well as a druggist, does not authorize him to practice medicine. R. v. Howarth, 24 O. R. 561.

**APPARENTLY.**—Section 78 of the Liquor License Act, as amended. Selling to a minor "apparently" under the age of 21 years. See R. v. Farrell (1910), 21 O. L. R. 540; 16 C. C. C. 419.

**APPEAL.**—On an appeal from a summary conviction the Court hearing the appeal tries the case *de novo*, and is absolute judge both of law and facts. R. v. Baird, 13 C. C. C. 240. The appeal Judge is to exercise an independent judgment unfettered by the findings; in other words, a decision which commends itself to his judgment as a just one, without regard to the findings below. R. v. McNutt, 4 C. C. C. 392. The burden of proof is the same before the County Court Judge as before the magistrate—not upon the appellant, as it would be in the case of an appeal properly so-called, to prove that the Court below is wrong—the findings of the Court below are wholly irrelevant, and it is for the County Court Judge to determine the complaint himself, upon the evidence brought before him. R. v. Farrell, 21 O. L. R. 540; 16 C. C. C. 419.

A person "appeals" when he formally gives notice to the opposite party of his intention to appeal, although he does not in fact comply with the conditions precedent required to bring the appeal on for hearing. Cooksely v. Toomaten Oota, 5 C. C. C. 26.

Neither a proceeding to quash a summary conviction by way of *certiorari*, nor a motion to discharge a *habeas corpus* with *certiorari* in aid constitutes an "appeal." Re Ching How, 19 C. C. C. 176; R. v. Graham, 1 C. C. C. 405.

**APPLIANCES.**—A bar with a beer pump which pumps local option beer—calendars and advertising matters on the wall—are not "appliances" within sec. 11 of the Liquor License Act as amended. To constitute an offence it is essential that what is done should induce belief that the premises are licensed and intoxicating liquor is sold and served therein. R. v. Beaven, 4 O. W. N. 400.

Dories used with a fishing vessel are a part of the appliances of the vessel. The King v. Chlopek, 17 B. C. R. 50; 19 C. C. C. 277.

**APPLICABLE.**—Where the word "applicable" first occurs in sec. 11 of the North-West Territories Act, it means suitable or properly adapted to the conditions of the country; where it occurs the second time it has the same meaning as in the Colonial Laws Validity Act, and means "applicable by the express words or necessary intendment of any Act of Parliament." The Infants' Relief Act, 1874, (Eng.), not being applicable by express words or necessary intendment was held not to be in force in the Territories and not in force in Alberta. Brand v. Griffen, 1 Alta. R. 510; 9 W. L. R. 427.

The obsolete crimes of maintenance and champerty were held not applicable to the local conditions in Manitoba, and not introduced into the province under the Act making the laws of England the provincial law "in so far as it is applicable." Thomson v. Wishart, 19 Man. R. 340; 16 C. C. C. 446.

**APPORTIONMENT.**—The Apportionment Act, R. S. O. ch. 156.

Apportionment is the division, partition or distribution of a subject-matter in proportionate parts. The Ontario cases turn largely on the apportionment of rent under the above Act.

Rent accruing due may be attached before the gale day, payable on the gale day, but only the proportionate part due at the date of attachment. Massie v. Toronto Printing Co., 12 P. R. 12. Galt, J., doubting whether rent can be garnished against a mortgagee or a landlord. The landlord's right of distress is suspended while the attaching order is in force. Patterson v. King, 27 O. R.

56. The apportioned part of the rent can be garnished in the Division Court. Birmingham v. Malone, 32 C. L. J. 717. The contrary was held in Christie v. Casey, 31 C. L. J. 45, but has not been generally followed.

If a tenant is evicted from a part of the demised premises there can be no apportionment of the rent. Shuttleworth v. Shaw, 6 U. C. R. 539. But where the demised property is sold by a prior mortgagee and the lease thereby determined between two gale days the rent is apportionable. Kinner v. Aspden, 19 A. R. 468. The parties may contract themselves out of the Act. Linton v. Imperial Hotel Co., 16 A. R. 337.

Where under an annuity bond payable quarterly the annuitant died between quarter days the payment was apportioned. Cuthbert v. North American Life Assurance Co., 24 O. R. 511. Ausman v. Montgomery, 5 C. P. 364, where the contrary was held, decided under the English statute, assume to be in force in Upper Canada, was not followed.

In an action under the Fatal Accidents Act (R. S. O. ch. 151, secs. 4, 9), Meredith, C.J., said: "Different methods have been adopted in dividing moneys thus recovered; in some cases statutes of distribution of deceased estates have been taken as the guide . . they cannot be the best guide. The true guide must be the actual pecuniary loss to each of the claimants. Accordingly there seems to me to be but two ways in which an apportionment can rightly be made in cases such as this: first, by finding the amount of pecuniary damages which each of the claimants has really sustained, and, if the whole be more or less than the fixed sums, awarding to each his proper proportion; or, second, by finding the proportion which the right of each bears to the others, and dividing the amount available accordingly." Brown v. Grand Trunk Ry. (1913), 28 O. L. R. 354; 4 O. W. N. 942.

Under an employment "at the rate of" a stated sum per annum, the salary is apportionable, and if the employee is discharged before the end of the year he is entitled only to such proportionate part of his salary as he has actually earned. King v. McLeod, 17 B. C. R. 189; 4 D. L. R. 491.

As between vendor and purchaser local improvement rates are not apportionable as "taxes, rates and assessments." Re Taylor and Martyn (1907), 14 O. L. R. 132.

As to apportioning costs in cases of divided success, see Clark v. Vigo, 17 P. R. 260; Zavitz v. Dodge, 17 P. R. 295; Segsworth v. Meridian Silver Plating Co., 3 O. R. 413.

**APPROACHES.**—Sec. 605, Mun. Act, 1903; sec. 442, Mun. Act 1913.

"I think that the proper meaning to be attached to the word 'approaches' in this provision is such artificial structures as may be reasonably necessary and convenient for the purpose of enabling the public to pass from the road to the bridge and from the bridge to the road. If no such artificial structures are required for the purpose there is, in my opinion, no liability to keep up and maintain any. If such artificial structures are required, but not to the extent of 100 feet, the liability is only to keep up and maintain them to the extent to which they are required." *Per* Armour, C.J., Traversy v. Gloucester, 15 O. R. 214.

When the approach is not reasonably safe for ordinary travel without a guard rail or other protection, it is negligence on the part of the municipality not to provide it. Johnson v. Nelson, 17 A. R. 16. And this notwithstanding any liability that may be cast by statute upon a railway company to maintain and repair a bridge and the approaches thereto. Mead v. Etobicoke, 18 O. R. 438.

**APPRENTICE.**—An apprentice is a person, usually a minor, bound in due form of law to a master to learn from him his art, trade, or business, and to serve him during his apprenticeship.

V. LABOURERS, SERVANTS AND APPRENTICES.

**APPROPRIATION.**—The act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund. As applied to payments it means the application of a payment to the discharge of a particular debt.

Where a variety of transactions are included in one general account the presumption that the items of credit are to be appropriated to the items of debit in order of date in the absence of other appropriation may be rebutted by circumstances of the case shewing that such could not have been the intention of the parties. Griffith v. Crocker, 18 A. R. 370; Thomson v. Stikeman (1913), 29 O. L. R. 146.

**APPURTENANCES.**—A testator devised "my present residence and all appurtenances connected therewith, and all my household goods." Boyd, C.: "This, no doubt, is a word of large and flexible meaning, and, apart from its legal conveyancing sense, it has a popular meaning, and may be applied to personalty. One of its meanings in the Oxford Dictionary is, 'things which naturally and fitly form a subordinate part of and belong to a whole system —contributing adjuncts.' Thus, as applied to a whaling ship, it will comprise harpoons and all the outfit of fishing stores. The Dundee, 1 Hagg. Adm. R. 109, 126. As applied to a silver kettle and lamp, it will carry the stand and frame that supports the

kettle. Hunt v. Berkely, Mosely p. 47. I would doubt the sufficiency of the words "my farm and residence with all appurtenances connected therewith," *per se* to pass the farm stock and implements, but having regard to the context of the whole will I think they may be eked out by the general words carrying all his estate, real and personal." Re Hudson (1908), 16 O. L. R. 165.

Where the owner of lot 26 had obtained a title by possession of part of lot 25, a deed by him of lot 26 with "all appurtenances belonging or in anywise appertaining" did not convey the part of lot 25. McNish v. Munro, 25 C. P. 290.

A way used by the owner of two tenements over one for access to the other, is not in law appurtenant to the dominant tenement so as to pass with a grant of it under the word "appurtenances" unless the deed shews an intention to extend the meaning and embrace the way. Harris v. Smith, 40 U. C. R. 33.

The term "appurtenances" in connection with mining property, held to mean articles of movable property used in working the mines. Pelton v. Black Hawk Mining Co., 40 N. S. R. 385.

**ARISING IN THE COURSE OF THE REFERENCE.**—A claim made in arbitration proceedings for damages for short delivery of coal, such shortage being claimed whatever construction might be placed on the agreement. *Held*, the proper construction of the contract was a question of law "arising in the course of the reference" under the Arbitration Act, R. S. O. ch. 65, sec. 29. Rathbun v. Standard Chemical Co. (1903), 5 O. L. R. 286.

**ARISING UNDER ANY LAW OF CANADA.**—These words in the Exchequer Court Act, R. S. C. ch. 140, sec. 20 (*d*), do not necessarily mean any prior existing law or statute law of the Dominion, but may mean the general law of any province of Canada. City of Quebec v. The Queen, 3 Exch. C. R. 163; 24 S. C. R. 420.

**ARRANGE.**—A written notice by a depositor to a bank to so "arrange" a savings account that it might be withdrawn by another, is not sufficient authority for the bank to transfer the money to a joint account. Everly v. Dunkley (1912), 27 O. L. R. 414.

**ARRANGEMENT.**—Workmen's Compensation for Injuries Act, R. S. O. ch. 146, sec. 3 (*a*). "This expression—arrangement of the ways—seems to me calculated, as it was probably intended, to stamp as a defect, the element of danger arising from the position and collocation of machinery in itself perfectly sound and well-fitted for the purpose to which it is to be applied or used." McCloherty v. The Gale Mfg. Co., 19 A. R. 121.

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**ARREARS.**—Arrears mean something which is behind in payment, or which remains unpaid, as for instance, arrears of rent, meaning rent not paid at the time agreed upon by the tenant. It implies a duty and a default. Where the defendant conveyed land on 13th April, covenanting against arrears of taxes, and the amount had not been ascertained, no rate having been fixed, it was held there were no arrears of taxes for the current year at the date of the deed. Corbett v. Taylor, 23 U. C. R. 454.

**ARREARS OF RENT.**—Rent due for three months following the execution of the assignment, R. S. O. ch. 155, sec. 38, means arrears of rent becoming due during the three months following the execution of the assignment. Where rent was payable quarterly in advance, and the gale day occurred thirteen days after the date of the assignment, the landlord was held entitled to the quarter's rent payable in advance on the quarter day next after the assignment. Lazier v. Henderson, 29 O. R. 673; Tew v. Toronto S. & L. Co., 30 O. R. 76.

**ARREST.**—Arrest is well described in the old books as "the beginning of imprisonment, when a man is first taken and restrained of his liberty, by power of lawful warrant." 2 Shep. Abr. 299.

The question of arrest or no arrest is one of law. If an officer of the law, known to be such, takes charge of a man and the man reasonably thinks he is under arrest from the conduct of the officer, that constitutes an arrest. Forsyth v. Goden, 32 C. L. J. 288.

Going to defendant's house and telling him he has a writ against him, but not entering the house or touching defendant, and leaving him on his promise to put in bail the next day, which he did, is not an arrest. Perrin v. Joyce, 6 O. S. 300.

The sheriff went to the debtor's house, and without laying hands on the debtor, told him he must come to the sheriff's house, which he did, and remained there until discharged, was held an arrest. McIntosh v. Demeray, 5 U. C. R. 343. So where the debtor went with the sheriff to find bail, and the bail-bond was executed. Morse v. Teetzel, 1 P. R. 369. A constable having a warrant for the plaintiff's arrest, informed the plaintiff of the fact, and allowed the plaintiff to read the warrant, whereupon the plaintiff said he would go with the constable, which he did. *Held*, an arrest. Alderich v. Humphrey, 29 O. R. 427.

**ARTIFICIAL INLAND WATER.**—A drainage ditch filled with water is not an "artificial inland water" within the meaning of sec. 510 (*b*) of the Criminal Code. R. v. Braun, 8 C. C. C. 397.

**ARTISTIC WORK.**—A basso-relievo cast from an engraved historical portrait is "artistic work" within the meaning of sec. 4 of the Copyright Act, R. S. C. ch. 70. Beullac v. Simard, 39 Que. S. C. 97, 517.

**AS BEING DUE.**—*V.* BEING DUE.

**AS HIS OWN PROPERTY.**—A person, being a member of two firms, may sign a warehouse receipt on behalf of one of the firms without giving receipts "as his own property" within the meaning of sec. 2 (*d*) of the Bank Act. Ontario Bank v. O'Reilly (1906), 12 O. L. R. 420.

**AS IN CASE OF ORIGINAL JURISDICTION.**—Railway Act, R. S. C. ch. 37, sec. 209. See Re Cavanagh and Canada Atlantic Ry. Co., 9 O. W. R. 842.

**AS NEARLY AS MAY BE.**—The jurat in an affidavit to an instrument under the Nova Scotia Bills of Sale Act omitted the words "before me." Ritchie, C.J.: "I cannot think the words 'as nearly as may be' were intended to permit material and substantial omissions and departures from the forms given, but rather referred to the material facts set forth in the body of the affidavit, which, under the peculiar circumstances of the case, cannot be, or are not, in the exact words of the affidavit given, but are as nearly as may be substantially the same. The jurat, unless strictly as provided for, cannot be 'as nearly as may be,' for the substantial requisities of the jurat are entirely omitted." Archibald v. Hubley, 18 S. C. R. p. 122.

A mortgage was given to secure an existing indebtedness and an indebtedness not yet due. The affidavit followed neither form given in the Act but combined the main features of both forms, and it was held it was not "as nearly as may be" to the forms prescribed. Reid v. Creighton, 24 S. C. R. 69.

**AS NOW ENJOYED.**—Land was sold to a railway company reserving a right of way under a bridge "as now enjoyed" by the vendors. It was held this meant "as now used," *i.e.*, for farm purposes, and did not justify the laying and using a railway under the bridge. Canadian Pacific Ry. Co. v. Grand Trunk Ry. (1906), 12 O. L. R. 320.

**AS OF RIGHT.**—In Warrin v. London Loan Co., 7 O. R. 706, Wilson, C.J., quoted Lord Denman's definition of the term "as of right" as being "an enjoyment had, not secretly or by stealth, or by tacit sufferance, or by permission asked for from time to time.

on each occasion, or even on many occasions of using it, but an enjoyment had openly, notoriously, without particular leave at any time, by a person claiming to use it without danger of being treated as a trespasser, as a matter of right, whether strictly legal by prescription and adverse user."

Mere enjoyment of an easement is not enough to give a title by prescription—it must be enjoyed by a person claiming as of right. Warrin v. London, *supra*.

If the enjoyment originates under an agreement with the owner of the servient tenement it is precarious and not as of right. Malcolm v. Hunter, 6 O. R. 102.

**AS SOON AS POSSIBLE.**—In general the words "as soon as possible" mean no more than "without unreasonable delay;" in other words "within a reasonable time." Parsons v. The Queen Insce. Co., 43 U. C. R. 271.

In a claim under an accident policy held that eight months in producing a magistrate's certificate not unreasonable. Cammell v. Beaver Fire Insce. Co., 39 U. C. R. 1. In another case eleven months held not unreasonable. Mann v. Western Assurance Co., 19 U. C. R. 314.

The Merchant Shipping Act, 1854, requires every entry in an official log to be made "as soon as possible" after the occurrence to which it relates. Held to mean within a reasonable time, and what is a reasonable time must depend upon the facts governing the particular case in which the question arises. The Queen v. The Ship "Beatrice," 5 Exch. C. R. 9.

A statute required a notice of a by-law to be published in the Manitoba Gazette "as soon as possible" after the second reading. The second reading was on 5th October and the first publication was on the 16th. It might have been a week earlier. Mathers, C.J.K.B.: "I don't think the expression 'as soon as possible' means that the clerk of the municipality must cease every other duty and devote himself to the preparation and publication of this notice; but that he must publish it as soon as possible, following the ordinary routine of official duty." Re Shaw and Portage La Prairie, 14 W. L. R. 542; 20 Man. R. 469.

*V.* FORTHWITH.

**ASCERTAINED.**—The Division Courts Act, s. 62 (*d*).

An amount is not ascertained within the meaning of this Act if the document signed is subject to any condition or contingency. Wiltsie v. Ward, 8 A. R. 549; McDermid v. McDermid, 15 A. R. 287; or where the plaintiff must prove the performance of the condition before he can recover. In Re Wallace and Virtue, 24 O. R. 558.

If other extrinsic evidence is required, such as to shew the completion of the contract (in the case of a signed building contract) the stipulated price is not ascertained by the mere evidence of the contract. It is not open to the Division Court to decide the disputed matters as to the proper completion of the contract, the fulfilment of conditions and the like. Kreutzizer v. Brox, 32 O. R. 418. But evidence of the dishonour of a promissory note and notice of dishonour may be given by the production of the protest. Re Slater and Laberee (1905), 9 O. L. R. 545. And the amount can be ascertained by the production of two or more documents and the proof of signature to each. *Ib.*

V. Other and Extrinsic Evidence.

**ASSAULT.**—An assault is an unlawful attempt or offer, on the part of one person, with force or violence, to inflict a bodily hurt upon another. An attempt or offer to beat another without touching him—as if one lifts up his cane or his fist in a threatening manner at another or strikes at him but misses him.

Pointing a loaded gun at a person within shooting distance is an assault. R. v. Chartrand, 21 W. L. R. 850.

**ASSESSMENT.**—An assessment is complete *quoad* any particular property as soon as the assessor has valued it and placed it on the assessment roll. Bradshaw v. Riverdale Public School District, 3 Terr. L. R. 164.

**ASSETS.**—The word assets is suggestive of liquidation, and is usually opposed to liabilities, and ordinarily refers to such as may be available for meeting the liabilities, although not always restricted to these. Bridges are not assets of a township within the meaning of sec. 37 of the Municipal Act, 1913. Re City of Ottawa v. Township of Nepean, 2 O. W. N. 480. School houses are not proper subjects of valuation as assets, being vested in school boards whose limits of control may or may not be the same as that of the municipal corporation. Re Town of Southampton and Tp. of Saugeen (1906), 12 O. L. R. 214. In the last case, Falconbridge, C.J., held that sidewalks are assets. It is difficult to reconcile this with the judgment of the Court of Appeal in the Ottawa and Nepean Case, *supra*, or to draw a distinction between bridges and sidewalks. See also Re Township of Albemarle, 45 U. C. R. 133.

"Assets in the Territories," used in the Judicature Ordinance, in order to confer jurisdiction on the Court, must be such a class or nature of assets as to which a real locality can be assigned, and should not be extended to include assets which have a mere theoretical or conventional locality. A debt owing by a person

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residing in Alberta to a person residing in Ontario has not any such real situs in Alberta, and is not such assets. Love v. Bell Furniture Co., 2 Alta. R. 209. But debts owing by a person living in Ontario are "assets" in Ontario. Purvis v. Slater, 11 P. R. 507.

**ASSIGNED.**—The statutory condition in sec. 194 (3) of the Ontario Insurance Act providing that "If the property insured is assigned without a written permission" the policy shall be void, does not apply to an assignment by way of mortgage. Sands v. Standard Insce. Co., 27 Gr. 167; Bull v. North British Insce. Co., 15 A. R. 421; Sovereign Fire Ins. Co. v. Peters, 12 S. C. R. 33. The assignment intended is one by which the insured divests himself of all title and interest. McQueen v. Phœnix Mutual, 4 S. C. R. 660.

An assignment for the benefit of creditors is not within the condition. Wade v. Rochester German Fire Insc. Co. (1911), 23 O. L. R. 635.

A writing in the words "For collateral security I have placed aside and assigned to you a policy of insurance in the Standard Life Company for similar amount" was held operative as an assignment of the policy and the assignee became "the beneficiary" for whose benefit the assignment was made. Thomson v. Macdonnell (1907), 13 O. L. R. 653.

**ASSIGNS.**—Under the Short Forms of Mortgage Act, R. S. O. ch. 117, the wife of the mortgagor is not an "assign" within the meaning of Schedule B. Her right to dower is not derived by assignment or transfer from her husband, but is a right conferred on her by law, arising out of the marriage relation and the seisin of the husband. Re Martin and Merritt (1901), 3 O. L. R. 284.

Execution creditors, having executions in the sheriff's hands, are assigns within the Act; but only those execution creditors whose executions are in the sheriff's hands at the time when the notice of sale is given to the mortgagor are entitled to be served with notice of sale. Re Abbott and Medcalf, 20 O. R. 299.

A purchaser made lasting improvements on land under the belief that he was the owner in fee, and mortgaged the lands to the plaintiff. It turned out that the purchaser had only acquired a life estate. It was held the mortgagee was an "assign" within sec. 30, ch. 119, R. S. O. (1897), now sec. 37 of the Conveyancing and Law of Property Act, R. S. O. ch. 109. McKibbon v. Williams, 24 A. R. 122.

Where "assigns" held to mean assigns of the rights created by the contract and not representation. Deschenes Electric Co. v. Royal Trusts Co., 11 O. W. R. 316; 39 S. C. R. 567.

As to the position of the widow of the former owner of an equity of redemption who dies intestate and possessed of lands mortgaged by him, see The Canadian Bank of Commerce v. Mary Rolston (1902), 4 O. L. R. 106.

**ASSUMED.**—A bill of complaint alleged that the defendants *assumed* to purchase lands for a right of way. *Held*, the word "assumed" was sufficient allegation of the fact of sale and conveyance. Owston v. Grand Trunk Ry. Co., 28 Gr. 428.

**ASSUMED FOR PUBLIC USER.**—(Section 460 (6) Municipal Act, 1913.)

The acts relied upon to prove an assumption under the above Act must be corporate acts, clear and unequivocal, and such as clearly and unequivocally indicate the intention of the corporation to assume the road. The performance of statute labour with the consent of the pathmaster, and on one occasion with the consent of members of the council, are not sufficient. Hubert v. Tp. of Yarmouth, 18 O. R. 458. But where a bridge connecting two highways was dedicated to the public and in public use nine or ten years, and during this time had been repaired by and at the expense of the municipality, held an assumption, although no by-law had been passed. R. v. Yorkville, 22 C. P. 431.

Where the municipality has appropriated money to pay for the construction or repairs of walks this is a corporate act within the decision in Hubert v. Yarmouth. Holland v. Tp. of York, (1904). 7 O. L. R. 533.

**ASSURANCE.**—The word "assurance" in s. 6 of the Mortmain and Charitable Uses Act, R. S. O. ch. 103, does not include gifts by will, and a residuary devise of realty for charitable purposes was held good though not made six months before the testator's death. Madill v. McConnell (1907), 16 O. L. R. 314.

**ASYLUM.**—A person was acquitted of a criminal charge on the ground of insanity and committed to an insane asylum. *Held*, the asylum was a prison within the meaning of sec. 192 of the Criminal Code. R. v. Trapnell (1910), 22 O. L. R. 219; 17 C. C. C. 346.

**AT.**—Like many other words "at" takes its coloring from its circumstances and situation. In a contract to deliver 1,000 tons of coal "at the coal shed," it was held that "at" meant "in" or "in close proximity to" the shed. Holmes v. Town of Goderich, 20 C. L. T. 308. This was reversed by the Supreme Court and held, on the evidence, the coal had not been delivered "at

the coal shed;" that whether the contract was to deliver it in or in close proximity to the shed, a delivery 80 feet away was not "at" the shed. 32 S. C. R. 211.

"At" and "to" are taken inclusively according to the subject matter. Authority to construct a railway beginning at A. and running to B. is held to confer authority to commence the road at some point within A., and to end it at some point within B. Re Bronson and Ottawa, 1 O. R. p. 421.

A testator devised to H. "my real estate at 62 Muir Avenue." He owned a corner lot 46 feet on Muir Avenue and 109 feet on Sheridan Avenue. There were on the lot a dwelling known as 62 Muir Avenue, and a store as 64 Muir Avenue. There was also a stable, which, if the lot was divided by a line between 62 and 64 would pass through the stable. *Held*, that H. took all the estate. Per Riddell, J.: "It is contended that the word 'at' in a will is synonymous with 'in;' sometimes it is, but more often not. For example, a devise of 'all the estate I have in any lands at C.,' could not cover lands in M.; so 'lands situate at D' does not mean anything but lands situate within the manor of D. But it is common knowledge that 'at' very frequently is not synonymous with 'in.' At often means near. And its original meaning is rather near than in." Re Seaton, 4 O. W. N. 266.

A contract to deliver a raft of timber "at Indian Cove booms" does not mean that the vendor has to put the timber into the booms, but outside the booms. Supple v. Gilmour, 5 C. P. 318; 117 R. R. 97.

*V.* At or Near.

**AT AND FROM.**—A ship was insured for a voyage "at and from Sidney." She went to Sidney for orders and, without entering the limits of the port, as defined by statute for fiscal purposes, received her orders by signal, and in putting about missed stays and was wrecked. *Held*, the ship was *at* Sidney within the terms of the policy. St. Paul F. & M. Insce. Co. v. Troop, 33 N. B. R. 105; 26 S. C. R. 5.

**AT ANY PLACE.**—As meaning "anywhere." R. v. Brennan, 35 N. S. R. 106.

**AT LARGE.**—The amendment to the Railway Act, now embodied in sec. 294, ch. 37 R. S. C., does not apply to animals grazing or feeding at will in the field of the owner adjoining a railway track. The negligence of the owner provided for by the section is when the animals get at large or are at large, and does not cover, and is not meant to cover, the case of an owner pasturing

his land in the usual manner. Cattle on the lands of the owner are not "at large," but "at home." McLeod v. Canadian Northern Ry. Co. (1909), 18 O. L. R. 616.

Where an animal is deliberately placed in a field, with an open space to the highway, and wanders, as it may, to the highway, it is legally "at large." Clayton v. Canadian Pacific Ry., 7 W. L. R. 721; but not if the open space was made or carved by the railway company. McLeod v. Canadian Northern Ry. Co., *supra*.

A horse that escapes, gets away without the knowledge or permission of its owner, is at large. Simpson v. Great Western Ry., 17 U. C. R. 57. But where animals have escaped from their owner's premises to the highway through no fault or neglect of the owner, and he makes suitable efforts to recover them, they are not "running at large" within the meaning of a municipal by-law. Spurr v. Dominion Atlantic Ry. Co., 40 N. S. R. 417.

"At large" in sec. 294 of the Railway Act does not apply to animals getting upon the railway from an adjoining enclosure, but only to animals at large upon the highway or elsewhere than upon the land of their owner. Yeates v. Grand Trunk Ry. Co. (1907), 14 O. L. R. 63; Higgins v. Canadian Pacific Ry. (1908), 18 O. L. R. 12; Palo v. Canadian Northern Ry. Co., 5 O. W. N. 176; (1913), 29 O. L. R. 413.

A lad of 14 driving four horses, not haltered but loosely, cannot be said to have them in charge. Thompson v. Grand Trunk Ry., 18 U. C. R. 92; Cooley v. Grand Trunk Ry., 18 U. C. R. 96. Horses which are driven near or across the railway loose, without halter, bridle or other fastening, and therefore under no actual present check or holdfast, and are not so close to their driver as to be under his immediate manual control or restraint, are not "in charge" within the meaning of the Act. Markham v. Great Western Ry., 25 U. C. R. 572.

A boy driving seven cows, left six standing on the road while he went to recover one that had run off, and it was held he was not in charge of the six cows. Thompson v. Grand Trunk Ry., 22 A. R. 453; Markham v. Great Western Ry., 25 U. C. R. 572; Duffield v. Grand Trunk Ry., 31 C. L. J. 667. But where a lad of ten years was driving fourteen cows along a public highway and across the railway track, and the jury found the boy was a "competent person," Riddell, J., held the plaintiff entitled to recover. Sexton v. Grand Trunk Ry. (1909), 18 O. L. R. 202.

Whether cattle are at large, or no, depends on whether they are under restraint or control, quite irrespective of whether they are on the plaintiff's land or not. Kreuzenbeck v. Canadian Northern Ry., 13 W. L. R. 414.

Section 294 of the Railway Act refers to animals at large elsewhere than upon the land of the owner, and does not apply where the owner of the land turns out his horses to pasture on his own lands. Palo v. Canadian Northern Ry., 5 O. W. N. 176; (1913), 29 O. L. R. 413. The plaintiff turned his horses out of the stable to allow them to go to a watering trough 15 yards away, and the horses after drinking, ran to the highway. The plaintiff followed them, trying to drive them back to the stable, and, while so doing, the horses got on the track and were killed. It was held the horses were not at large through the negligence or wilful act of the plaintiff. Parks v. Canadian Northern Ry., 18 W. L. R. 118.

Horses placed in a "corral" closed on three sides only, with no guard at night, are at large. Murray v. Canadian Pacific Ry., 7 W. L. R. 50.

The mere fact that animals are at large is no defence by a railway company, if the animals are killed at a point on the railway other than an intersection with a highway, if they are not at large through the negligence or wilful act of the owner. Arthur v. Central Ontario Ry. Co. (1906), 11 O. L. R. 537.

"Animals at large upon the highway or otherwise" must be construed to mean "otherwise at large," that is, at large otherwise than upon the highway, and not as suggested "at large or otherwise upon the highway." In my opinion the words, reasonably and fairly construed, mean at large upon a highway, or at large in any other way or place." Carruthers v. Canadian Pacific Ry., 16 Man. R. 323; 39 S. C. R. 251.

Plaintiff's animals were pasturing at large in an open country and were killed at a place where the company was not bound to fence. Defendants held not liable. McDaniel v. Canadian Pacific Ry., 13 B. C. R. 49.

Sheep grazing upon a common, herded by a boy, were held not to be "running at large" in contravention of a municipal by-law. Ibbotson v. Henry, 8 O. R. 625.

A statement that dogs were at large on the defendant's premises is no evidence under the Ontario Game and Fisheries Act, R. S. O. ch. 262, sec. 13 (5). R. v. Crandall, 27 O. R. 63.

A person who allows fire to run on his own property under proper care, and the fire does not escape from his property, does not allow fire to "run at large" within the meaning of an Act to protect the public from fires. Gedge v. Lindsay, 7 Terr. L. R. 141.

*Semble*, Is a dog returning home on the highway, at the bidding of the owner's wife, whom it had been following, running at large? Allan v. MacKay, Man. T. W. 111. See also McNair v. Collins (1913), 27 O. L. R. 44.

**AT LEAST.**—The term "at least" means not less than. Farmers v. Langstaff, 9 U. C. R. 183. "At least five days' notice" means five clear days, neither the date of service or the day of hearing being computed. R. v. Dolliver Mountain Co., 10 C. C. C. 405 (N.S.); Canadian Canning Co. v. Fagan, 12 B. C. R. 23; Chambers Electric L. & P. Co. v. Crowe, 11 E. L. R. 589; 5 D. L. R. 545.

Records which require to be entered "at least four days before" the trial, must be entered not later than Thursday for the following Tuesday. Calder v. Dancey, 2 Man. R. 383.

**AT OR NEAR.**—Plaintiffs were authorized to construct and connect a railway with any other railway having a terminus "at or near" Ottawa. *Held*, to mean "in or near the City of Ottawa." Montreal & Ottawa Ry. Co. v. City of Ottawa (1902), 4 O. L. R. 56; 33 S. C. R. 376. See also Re Bronson and Ottawa, 1 O. R. 415.

**AT OWNER'S RISK.**—In a contract by a common carrier the words "at owner's risk," do not relieve from a loss which obviously results from the carrier's improper dealing with the goods, and not from any of the risks by the contract imposed on the owners. Fitzgerald v. Grand Trunk Ry. Co., 4 A. R. 601; 5 S. C. R. 204.

The cases establish that the words "owner's risk" protect the carrier from all liabilities except wilful misconduct. Dixon v. Richelieu Navigation Co., 15 A. R. p. 654; 18 S. C. R. 704.

Wheat was received by a miller under a receipt stating same was received in store at owner's risk, and it was held this covered a risk of loss by fire. Clark v. McClellan, 23 O. R. 465.

**AT THE RATE OF.**—*V.* APPORTIONMENT.

**AT THE SAME TIME.**—A testator made alternative provisions "in case both my wife and myself should by accident or otherwise be deprived of life at the same time." Both husband and wife died in Europe—the wife on 11th December and the husband on 27th December. *Held*, they did not die "at the same time"—that this meant without any interval of time, and not "practically at the same time." Heming v. McLean (1902), 2 O. L. R. 169; 4 O. L. R. 667.

**AT THIS OFFICE.**—One of the conditions of a contract, made at a branch office, was that a claim for loss or damage should be presented "at this office.' *Held*, that it was not clear what was meant by "at this office," and it was amply satisfied, so far as the practical and substantial information as to the loss was

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called for, by communicating with the head office of the company. James v. Dominion Express Co. (1907), 13 O. L. R. 211.

**ATTACHABLE DEBTS.**—*V.* DEBTS.

**ATTEMPT.**—Criminal Code, sec. 512. Attempting to commit a crime is clearly distinguishable from intending to commit it. But if the actual transaction has commenced which would have ended in the crime, if not interrupted, there is clearly an attempt to commit the crime.

On an indictment for attempt to commit arson the evidence shewed that a blanket had been saturated with oil and placed against a building, a match lighted to start the fire, but went out, when the prisoner walked away. *Held*, an attempt. R. v. Goodman, 22 C. P. 338.

**ATTEMPT TO REMOVE.**—To justify an attachment under sec. 199 (*b*) of the Division Courts Act there must be something more than an intent—something more than a suspicion or belief on the part of the creditor. Hood v. Cronkite, 29 U. C. R. 98; Sharp v. Matthews, 5 P. R. 10.

**AUCTIONEER.**—An auctioneer is a person who sells property of any kind by public auction. Section 412 (1) of the Municipal Act, 1913, does not extend to persons selling lands by auction, or anything but goods, wares, merchandise or effects. Merritt v. Toronto, 22 A. R. 205. A conviction for selling land by auction without a license was quashed. R. v. Chapman, 1 O. R. 582.

**AUDITOR.**—*V.* CLERK OR OTHER PERSONS.

**AUTHENTICATED.**—The word "authenticated" in secs. 16 and 17 of The Extradition Act, R. S. C. ch. 155, is in effect, the same as "attested" in sec. 2 of 31 Vict. ch. 94. Re Weir, 14 O. R. 389.

**AUTHOR.**—*V.* BOOK.

**AUTOMOBILE.**—An automobile is not a carriage within the meaning of sec. 3 (5) of the Innkeepers Act, R. S. O. ch. 173. Automobile and Supply Co. v. Hinds (1913), 28 O. L. R. 585.

**BAD.**—The word "bad" is opposed to good, denoting a want of good qualities, whether physical or moral. It is a word of extensive application, and seems to mean evil; ill; injurious;

noxious; vicious; wicked; dishonest. In an action of slander against a married woman, the words alleged were "you are a blackguard; you are a bad woman," and it was held these words might be employed in such circumstances and surroundings that bystanders would think they implied a want of chastity, and the plaintiff a common prostitute. Paladino v. Gustin, 17 P. R. 553.

**BAGGAGE.**—Great difficulty has been experienced from time to time in defining what is meant by personal luggage. It is not confined to mere wearing apparel, or things carried for mere use on a journey, and in a work of authority it is laid down thus: "All articles which it is usual for persons travelling to carry with them, whether from necessity, convenience or amusement (such as a gun or fishing tackle) fall within the term "baggage." Burton, J.A., Dixon v. Richelieu Navigation Co., 15 A. R. p. 653; 18 S. C. R. 704. In this case the plaintiff was a commercial traveller and took on board defendants' boat three trunks containing jewelry, jeweler's tools and other valuables, known as commercial traveller's baggage, and they were checked as such. *Held*, they were baggage.

Deeds and valuable papers carried in a trunk are not baggage. Thomas v. Great Western Ry., 14 U. C. R. 389. Nor does the term include such articles as window curtains, blankets, cutlery, books, ornaments, etc., even when these are packed with the baggage for which a carrier is liable. McCaffery v. Canadian Pacific Ry. Co., 3 Man. R. 350.

Baggage implies a passenger who intends to go upon the train with his baggage, and receive it upon the arrival of the train at the end of the journey. If the owner does not go on the same train and the baggage is placed in the baggage-room the liability of the carrier is that of a gratuitous bailee only. Carlisle v. Grand Trunk Ry. Co. (1912), 25 O. L. R. 372.

In the case of a married woman travelling with infant children to join her husband, the husband's clothing, household effects and the clothing of grown up daughters cannot be classed as personal baggage. Callan v. Canadian Northern Ry., 19 Man. 141.

As to a condition printed on the back of passenger's baggage check limiting liability: see Spencer v. Canadian Pacific Ry. (1913), 29 O. L. R. 122. For a review of the American cases, and many of the English cases, on baggage, see article in 13 C. L. T. 207.

**BALL—BALL GAME.**—The word "ball" as used in the Lord's Day Act (R. S. O. 1897, ch. 203, sec. 3), does not indicate a class of games, but means a specific game known at the passing of the statute, and the game of golf is not therefore included under such

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word. Golf is not a "noisy game" within the general words of the statute. R. v. Carter, et al., 31 C. L. J. 664.

**BAKER.**—*V.* TRADER.

**BALANCE.**—A will provided for payment of two specific legacies "absolutely" and "the balance is to be paid to my husband by my executor at such times and in such amounts as to my executor may seem necessary for the proper maintenance of my said husband." It was held that the word "balance" was controlled by the directions following it, and the husband was entitled only to so much thereof as the executor thought proper to pay him. Re Holman and Rea, 4 O. W. N. 206.

"Balance" read as synonymous with "rest" or "residue." Re Newborn, 22 C. L. Times, 120. See also Re Morrison, 7 O. W. R. 231; Re Fletcher, 6 O. W. N. 235.

**BANK.**—The bank is the outermost part of the bed in which the river flows at its fullest. When the water is reduced in the summer season the space between high and low water is not a part of the bank. When the river overflows it does not, by such overflow, change its banks. Robertson v. Wilson, 27 C. P. p. 597. Where land is bounded by the bank of a stream it necessarily excludes the stream itself. *Ib.*

A grant of land to within one chain of a river means to within one chain of the edge of the river, and not to the top of the bank of the river. Stanton v. Windeat, 1 U. C. R. 30.

A grant of land commencing "in front on Lake Erie at the south-east angle of the lot" means the south-east angle as it stood at the time the grant issued, and not a point shifting with the encroachment of the lake. Iler v. Nolan, 21 U. C. R. 309.

A grant to a lake, or the bank of a lake, means to high water mark. Parker v. Elliott, 1 C. P. 471. A grant of land with a boundary "along the bank" of a lake, means along the bank in all its windings, including the bank of an inlet, if such inlet is navigable waters. Gage v. Bates, 7 C. P. 116.

The expression "along the western bank" was treated as allowing, where the bank was not defined, a continuance of the boundary along the line of the bed, as that is made by the average and mean stage of the water. Bartlett v. Delaney (1913), 29 O. L. R. p. 436.

A testator gave "all my cash in bank" to a named brother. At the time of his death he had moneys in deposit in two chartered banks and in a mortgage corporation that took deposits. It was held that by "bank" the testator intended to pass the money on deposit with the mortgage corporation. Re Cooper, 4 O. W. N. 1360.

**BANKRUPTCY AND INSOLVENCY.**—See Clarkson v. The Ontario Bank, 15 A. R. 166.

**BARBER.**—*V.* Workman.

**BARGE.**—*V.* Steam Barge.

**BAWDY HOUSE.**—Criminal Code, sec. 774. Same as brothel. In its legal acceptation it applies to a place resorted to by persons of both sexes for the purposes of prostitution. A woman cannot be convicted of unlawfully keeping a bawdy house unless it is shewn that the house is resorted to or occupied by more than one female for the purpose of prostitution. R. v. Young, 6 C. C. C. 42; R. v. Mannix (1905), 10 O. L. R. 303.

The statutory definition of a common bawdy house contained in the Code is intended merely to define the nature of the premises within which the bawdy house may be kept, and not as stating what acts constitute such keeping. R. v. Osberg, 9 C. C. C. 180; R. Mannix (1905), 10 O. L. R. 303; 10 C. C. C. 150.

"In my opinion the term 'disorderly house' has acquired in criminal jurisprudence a defined legal meaning, and it includes any house to which persons resort for criminal or immoral purposes; and it is immaterial that the house is conducted quietly so as not to disturb the neighbours." Hunter, C.J. (B.C.) R. v. Ah Sam, 12 C. C. C. 538.

The Appeal Court in Quebec held that the term "disorderly house" does not include a gaming house, but is confined to houses of the same character as houses of ill-fame, being governed by the rule of *noscitur sociis*. R. v. France, 1 C. C. C. 321; while Drake, J., in Ex p. Cook, 3 C. C. C. 72, held it included gaming houses.

*V.* Disorderly House.

**BED OF THE RIVER.**—The bed of the river extends to high water mark within the banks of the river. Attorney-General of Quebec v. Pilon, 5 E. L. R. 234.

*V.* Navigable Rivers.

**BEST CONDITION.**—*V.* In the Best Condition.

**BE THE SAME MORE OR LESS.**—*V.* More or Less.

**BEGGING.**—*V.* Visible Means of Maintaining Himself.

**BEFORE.**—A replication filed on 9th October is filed "three weeks before" 30th October. Wilson v. Black, 6 P. R. 130.

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**BEFORE RECEIVING.**—Gift to wife for life and at her death proceeds to be divided among testator's daughters, and if any of these should die "before receiving her share" her heirs should take. One daughter died after the death of the wife, unmarried, without having received her share, and it was held her share had become vested. The words "before receiving" might be interpreted as "before time to receive," or "before entitled to receive." In Re Charles Tuck (1905), 10 O. L. R. 309.

**BEING COMPOSED OF.**—*V.* ALL MY ESTATE BEING COMPOSED OF.

**BEING DUE.**—An amendment to the County Courts Act gave jurisdiction where "the amount is liquidated or ascertained as being due by the act of the parties or the signature of the defendant." *Semble*, this confined the jurisdiction to cases where the claim had been admitted by the signature of the defendant or something in the nature of an account stated. Amyot v. Sugarman, 13 O. W. R. 429. The restriction has been removed by the County Courts Act, now R. S. O. ch. 59.

**BELIEF.**—Belief is a conviction of the truth of a proposition, existing subjectively in the mind, and induced by argument, persuasion, or proof addressed to the judgment. It is to be distinguished from proof and evidence.

On an application for arrest in Nova Scotia the statute requires the plaintiff to swear he "believes" the debt will be lost, etc. The plaintiff swore he "feared" the debt would be lost. *Held*, that "fear" is not equivalent to belief. Sidney & Louisburg Coal & Ry. Co. v. Kimber, 12 C. L. T. 500.

**BENEFICIARY.**—*V.* ASSIGNED.

**BENEFIT.**—"Benefit" is not a word of art, not a technical legal expression, such, for example, as "heirs of the body," to which a certain fixed interpretation must be given. It may imply an absolute interest or a life interest or any less interest. In a will the words "I also will that my wife shall have the benefit of all my real and personal property," were held to pass the fee. Re Story, 1 O. W. N. 141.

**BEQUEATH.**—The use of the word "bequeath' in the language of wills is primarily applicable to a disposition of personal property, yet, if the intention of the testator, to be gathered from the whole will, is to dispose of his real estate, the use of the

word "bequeath" instead of the more appropriate word "devise" cannot defeat that intention. Re Booth and Merriam, 1 O. W. N. 646.

Where a testator used the word "bequeath" when disposing of lands, "legatee" was held to include "devisee." Patterson v. Hueston, 40 N. S. R. 4.

**BETWEEN.**—In common use the word "between" does not always exclude the places to which it relates. A grant of a privilege to construct a railway "between P. and T." would very clearly include the right of carrying the railway into each place. Re Bronson and Ottawa, 1 O. R. p. 421.

Two counties, separated by a water-channel, were connected by a bridge. The Municipal Act gave the county councils joint jurisdiction over bridges "between the two counties." It was held that the word "between" must be construed in its popular sense, and on this construction the bridge was "between" the two counties. Harold v. Counties of Simcoe and Ontario, 18 C. P. 1.

A conviction is not bad for uncertainty because the time of the commission of the offence is stated as being "between" two dates, the last of which is the date of the information. Ex p. Wilson, 14 C. C. C. 32.

The word "between" is etymologically more appropriately used where a division into moieties is contemplated, and is so commonly applied as the equivalent of "among" that little weight should be attached to its use as indicative of a testator's intent as to mode of division. In Re Ianson (1907), 14 O. L. R. 82. Where a fund was to be "equally divided between the children of my said daughters . . . or their legal representatives," Anglin, J., held, that on the death of the daughters their children took *per capita* and not *per stirpes*. *Ib.*

A testator directed the proceeds of his estate to be "equally divided between my wife and my brother and sister." *Held*, the word "between" was not to be construed as "amongst." "I lay great stress on the use of the word 'and.' The use of it coupled with the word 'between' shews that there was to be one equal division between the wife on the one hand and the brother and sister on the other." Armour, C.J. (for the Court). Hutchinson v. La Fortune, 28 O. R. 329.

In a more recent case the will directed that a fund "is to be equally divided between my said wife and my said (three) daughters share and share alike." The widow contended for a division as in the last case. Middleton, J.: "The argument for the widow hinges mainly upon the meaning of the word "between." It is said that it implies a division into two equal parts: but apart from the fact that the strict etymological meaning of the word

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'between' is not always observed, and that it is frequently used as equivalent to 'among,' I find it stated in Murray's Dictionary that the word may be used as 'expressing division and distribution, to two (or more) partakers;' and, after giving many senses in which the word can be properly used, this note follows: 'In all senses 'between' has been from its earliest appearance extended to more than two.'" And on the general scope of the will, held the fund should be divided into four equal portions. Re Davies, 4 O. W. N. 1013.

**BEYOND THE SEAS.**—A defendant's absence beyond the seas at the time of the cause of action accruing, within the meaning of the Statute of Anne, as applied to the British Dominions, may still be availed of by a plaintiff for not bringing an action until his "return from beyond the seas." The expression "beyond the seas" in 4-5 Anne, ch. 3, sec. 19, must, of course, receive the construction which was given to it as applied to a plaintiff in the principal Act, 21 Jac. 1, ch. 16, sec. 7, viz., that it is synonymous in legal import with the phrase "out of the Province of Upper Canada." So it was construed in Forsyth v. Hall, Draper's Rep. 304, and so also by the Privy Council many years afterwards in Ruckmaboye v. Lulloo Chop, 8 Moo. P. C. 4, an East Indian appeal, where it was held to be synonymous with "out of the realm," "out of the land," or "out of the territories," and was to be construed literally. Boulton v. Langmuir, 24 A. R. 618.

The United States of America is "beyond the seas." The statute applies as against a debtor who has never been within the jurisdiction at all. Kasson v. Holley, 1 Man. R. 1.

*V.* ABROAD.

**BIAS.**—*V.* INTEREST.

**BICYCLE.**—A bicycle is a vehicle. R. v. Justin, 24 O. R. 327.

**BIGAMIST.**—To say of another that "he is a bigamist" would be actionable as imputing a crime, although at the time bigamy was not defined in the statute. Anon. 29 U. C. R. p. 462. It is now defined by sec. 307 of the Criminal Code.

**BILL OF COSTS.**—*V.* FEES, CHARGES AND DISBURSEMENTS.

**BLACKGUARD.**—Ordinarily means a vulgar, base fellow; a ruffian; a scoundrel. Strictly, the word may be considered as not being applicable to a female; yet a man who calls a woman a "blackguard" would be answerable in respect of the meaning that the ordinary bystander would in all the circumstances attach

to it. In an action of slander brought by a married woman, the words "You are a blackguard; you are a bad woman," might be employed so as to impute a want of chastity, although the word "blackguard" alone would not. Paladino v. Gustin, 17 P. R. 553.

**BLACK JACK.**—Black jack is a game of chance within sec. 226 of the Criminal Code, and the dealer or manager is a "banker." The statute is not intended to effect games of skill, but where chance is the main element in the game the Act applies. R. v. Petrie, 3 C. C. C. 439.

**BLACKMAIL.**—In common parlance and in general acceptation the word "blackmail" is equivalent to and synonymous with extortion—the exaction of money, either for the performance of a duty, the prevention of an injury, or the exercise of an influence. It supposes the services to be unlawful and the payment involuntary.

In Macdonald v. The World, 16 P. R. 324, Meredith, C.J., said he was unable to say the Master in Chambers was wrong when he held the word "blackmail" to involve a criminal charge.

In Macdonald v. Mail Printing Co., 32 O. R. 163, Meredith, J., said the word 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 succeeds in the action) receives $4,500 to hush 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 described as 'blackmailing' in the proper and ordinary meaning of these words; indeed it seems to me almost if not quite, a typical case of blackmailing of the present day."

On appeal this judgment was reversed. Boyd, C.: "The better view is that colloquial use has broadened its meaning so that it may not necessarily have a criminal connotation. But, when put in writing and published, it is manifestly defamatory. I agree with what is said in the latest American case I have found, that the term 'blackmailing' is libellous *per se*." (1901), 2 O. L. R. 278.

**BOARD.**—An indictment charged the defendant with obtaining board by false pretences. Draper, C.J.: "It may well be doubted whether, if the indictment had charged the defendant with having by false pretences obtained a dinner it would not have been too general. But the term 'board' is more general still. It implies a succession of meals obtained from day to day, or week to week, or month to month, &c., and it may be said that

each meal obtained is a distinct offence." R. v. McQuarrie, 22 U. C. R. 600.

**BODILY HARM.**—Any touching of the person of another against his will with physical force, in an intentional, hostile and aggressive manner, or a projecting of such force against his person is "bodily harm."

"Actual bodily harm" does not imply a wounding or breaking of the skin. R. v. Hostetter, 5 Terr. L. R. 363; 7 C. C. C. 221.

**BOOK.**—In general acceptation the term "book" is applied to any literary composition which is printed, but appropriately to a printed composition bound in a volume. In copyright law the meaning of the term is more extensive than in popular usage, and an illustrated newspaper was held to be a book within the Imperial Copyright Act. Life Publishing Co. v. Rose Publishing Co. (1906), 12 O. L. R. 386.

Books are within the term "goods, wares or merchandise" in a law preventing hawkers selling without a license. R. v. Wolfe, 4 W. L. R. 553.

If the author of a book pirates and includes in it the protected composition of another, no registration can give him property in that which he has stolen. Bain v. Henderson, 17 W. L. R. 125.

**BOOK DEBTS.**—After giving his wife the family residence, furniture, &c., a testator provided: "I also will, devise and bequeath unto my wife all money in bank, notes, mortgages, and all goods and chattels whatsoever and wheresoever." Clute, J.: "I think book debts are *ejusdem generis* with moneys in bank, notes and mortgages as representing obligations for debts owing. But whether this be so or not, the words 'goods and chattels' being broad enough to cover the book debts, I find nothing in the context limiting their meaning." Affirmed on appeal. Re McGarry (1909), 18 O. L. R. 524.

Book debts are not within the Bills of Sale Act, and a transfer of them does not require registration. National Trusts Co. v. Trusts and Guarantee Co. (1912), 20 O. L. R. 279. A mortgage to secure bondholders covered "all property real and personal . . . tolls, income and sources of money." *Held*, sufficient to cover book debts, *Ib.*

So a mortgage of "all property, real and personal, that shall hereafter be acquired and owned by the company," was held to include books debts not at the time in existence, but which thereafter came into existence. Re Perth Flax and Cordage Co., 13 O. W. R. 1140.

Book debts are "property" within the Assignment and Preferences Act, and any gift, transfer, etc., thereof by a debtor in insolvent circumstances is void. "The debts due to a man, whether they are called 'book debts' or debts generally, are, I think, clearly of the same class of subject as his "bills, bonds, notes or securities,' and after such enumeration we find the words 'or any other property real or personal.' We should hesitate long before declaring that the debts due a trader, possibly the largest and most valuable part of his assets, are excluded from the operation of a statute clearly (as I think) designed to affect the debtor's property at large, and prevent preferential or fraudulent application of it." Hagarty, C.J., Warnock v. Kloepfer, 15 A. R. 324. Affd. 18 S. C. R. 701.

**BONA FIDE POSSESSION.**—"Where a man shall be said to be *bona fide* possessed is where the person possessing is ignorant of all the facts and circumstances relating to his adversary's title." *Per* Wilson, C.J., Stewart v. Baldwin, 41 U. C. R. 483, citing Dormer v. Fortescue, 3 Atk. 124.

**BONA FIDE GUESTS.**—*V.* GUESTS.

**BRANCH.**—Defendants had an agent at Kingston who received applications and collected premiums thereon. *Held*, that the office at Kingston was not a "branch" business within the meaning of the Assessment Act then in force. "The different local agencies, like Kingston, to send in applications for insurance, to collect premiums to be remitted to the central office, may be 'feeders' to the great trunk, but with such slight organization can hardly be regarded as branches of the concern." City of Kingston v. The Canada Life Assurance Co., 19 O. R. 453.

**BREAKING.**—To effect an entrance to a dwelling house by further lifting a partly open window is not breaking within sec. 335 (*c*) of the Criminal Code. The definition in that section does not extend the law beyond what it was before the Code was enacted. R. v. Burns, 7 C. C. C. 95.

**BRICK HOUSES.**—An agreement referred to the property as "two solid brick houses." Ferguson, J.: "I do not know that there is really any distinction between a 'brick house' and a 'solid brick house,' or that the use of the word 'solid' makes the statement really different from what it would have been if this adjective had not been used. It does, however, appear to me that the use of the word, as it was used, would probably convey to the mind of the reader or hearer the idea that the houses were brick

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throughout." The houses were built with rear extensions in a terrace, the outer walls of the terrace and extensions being brick, but the inside walls, between the houses themselves and the adjoining house, and also between the extensions, being of wood, and it was held they were not "solid brick houses," and, *semble*, not brick houses. Stevenson v. McHenry, 16 O. R. 139.

**BRIDGE.**—The essential purpose of a bridge is to carry a road at a desired height over a river, and its channels, a chasm or the like; that of a culvert to make a passage for a small stream crossing under the embankment of a railway or highway, or beneath a road where the configuration of the surface does not require a bridge. A circular concrete pipe with an inside diameter of three feet had been constructed to replace a former bridge about 8 or 10 feet in span, and it was held to be a culvert and not a bridge. County of Dufferin v. County of Wellington, 10 O. W. R. 239.

In the Local Improvement Sections of the Mun. Act, R. S. O. ch. 193, "bridge" includes a viaduct, a culvert, a subway and an embankment and also a pavement on a bridge. Sec. 2 (*a*).

In the Mun. Act, 1913, bridge means a public bridge, and includes a bridge forming part of a highway on, over or across which a highway passes. Sec. 2 (*b*).

A structure crossing a lake, with a wooden section 243 feet long spanning the waters at low water, and artificial structures uses as embankments at either end of 140 and 260 feet respectively, the whole width of 640 feet being covered at high water, is a bridge over 300 feet long within the meaning of sec. 449 of the Mun. Act, 1913. That section is not limited to bridges crossing rivers, streams, ponds or lakes, but may apply to a bridge crossing a ravine. In re Mud Lake Bridge (1906), 12 O. L. R. 159. But where the approaches to the bridge (or embankments) are a part of the highway, though graded and built up higher than the surrounding land, they do not form a part of the bridge. Where the bridge cannot be built without making the approaches, the latter are practically parts of the bridge. Re Tp. of Williamsburg and United Counties of Stormont, et al. (1908), 15 O. L. R. 586.

Bridges over rivers. See Tp. of North Dorchester v. County of Middlesex, 16 O. R. 658.

A bridge is real property within the meaning of the Assessment Act and liable to assessment. New York & Ottawa Ry. v. Tp. of Cornwall (1913), 29 O. L. R. 522.

*Quære*: What constitutes a "railway bridge?" See City of New Westminster v. S. S. Maagen, 14 Exch. C. R. 323.

V. Approaches: Important Road.

**BRITISH SUBJECTS.**—It is assumed that resident and assessed inhabitants of this country are British subjects until something

is shewn to the contrary. R. Ex rel. Carrol v. Beckwith, 1 P. R. 278.

A company chartered in Ontario, although subject to Ontario laws, is not a British subject within the meaning of Con. Rule (1913) 29, relating to service of writs of summons out of Ontario. Gilpin v. Hazel Jules Cobalt Silver Mining Co., 5 O. W. N. 518.

**BRITTLE AND FRAGILE OBJECTS.**—In a contract for the carriage of goods, wooden cheese boxes do not come under the description of "brittle and fragile objects," especially when the term appears at the end of a long enumeration of objects wholly dissimilar. Alexander v. Canadian Pacific Ry., 33 Que. S. C. 438; Affd. 18 Que. K. B. 532.

**BROTHEL.**—V. Bawdy House.

**BROTHER.**—Lexicographers favour the idea that "brother" means the offspring of the same parents. But in wills a gift to brothers and sisters extends to half brothers and sisters. On an application for life insurance the applicant stated, in answer to a question, that he had three brothers, whereas it appeared he also had four half brothers. The jury found the applicant had not been guilty of an untruth and the verdict for the plaintiff was sustained. Bridgman v. The London Life Assurance Co., 44 U. C. R. 536.

**BROTHER-IN-LAW.**—The Liquor License Act (Ont.) authorizes "the parent, brother or sister of the husband or wife of a person addicted to the excessive use of liquor, to give notice to the Inspector for the purpose of putting such person on the "Indian list." This does not authorize a brother-in-law to give the notice. "The compound word is sometimes used colloquially or flexibly to include 'the husband of one's wife (or husband's) sister;' but, as the dictionaries tell us, its proper use is as applied to 'the brother of one's husband or wife or the husband of one's sister.'" Piggott v. French (1910), 21 O. L. R. 87.

**BUCKET SHOP.**—A "bucket shop" is a place where bets are made against the rise or fall of stocks or commodities, and where the pretended transactions of purchase or sale are fictitious. Richardson v. Beamish, 21 C. C. C. 487; where the transactions exist only on paper. Pearson v. Carpenter, 35 S. C. R. 380.

V. Gambling.

**BUILDING.**—A building is a structure or edifice erected by the hand of man, composed of natural materials, as stone or wood, and intended for use or convenience.

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A tug is not a building within the meaning of clause f. of the statutory conditions of the Ontario Insurance Act, R. S. O. ch. 183. But an insurance company cannot avoid liability by miscalling a tug a building. Mitchell v. City of London Fire Ins. Co., 12 O. R. 706.

As between mortgagor and mortgagee, the fixed movable machinery, shafting, gearing and belting, boilers and boiler connections, are included under the word "building." Carr v. The Fire Insurance Association, 14 O. R. 487.

The remains of a wooden dwelling house, after a fire, which left only a few rafters of the roof, and injured the sides and floors so as to render it untenantable, is not a building within sec. 511 of the Criminal Code, so as to be the subject of arson. R. v. Labadie, 32 U. C. R. 429.

The words "any building or other place" in sec. 90 of the Inland Revenue Act, R. S. C. ch. 34, include a private residence. Duquenne v. Brabant, Q. R. 25, S. C. 151.

In a rental agreement, the tenant was given an option "of buying the building." Practically all the demised premises was covered by the store building, and it was held that the word "building" was intended to cover the land as well as the erection thereon, following Hughes v. Parker, 8 M. & W. 244; Hunter v. Farrell, 13 E. L. R. 354.

**BUILDINGS AND ERECTIONS.**—An erection is a raising up or fixing something in an upright position, *e.g.*, a building, a column or a flagstaff. Its secondary meaning is that which is erected, especially (but not solely) a building or structure of any kind. Erections may cover fixtures and machinery. Re Brantford E. & P. Co. and Draper, 28 O. R. 40; 24 A. R. 301.

Crib work and earth filling done for the purpose of a foundation is not within a covenant in a lease to pay for the "buildings and erections." Adamson v. Rogers, 22 A. R. 415; 26 S. C. R. 159.

But where mud flats were leased with a covenant that if the lessee should "put up any buildings and erections for manufacturing purposes," the lessors would pay for the same at the expiration of the lease, it was held that piling and filling in on the lots to form a foundation for buildings erected and in existence at the expiration of the lease were within the covenant, but not piling and filling in at a place where no buildings existed, but upon which buildings were intended to be erected for manufacturing purposes. City of St. John v. Gordon, 38 N. B. R. 542; 39 N. B. R. 56; 5 E. L. R. 391; 6 E. L. R. 129; 46 S. C. R. 101.

**BUILDINGS AND FIXTURES.**—In a lease of lands for use as a dock and shipyard, the lessees covenanted to pay for

buildings and fixtures." *Held*, this covered not only buildings in the ordinary acceptation of the term, and the dock itself, but whatever was accessory to, and necessary for the use of such buildings and dock. Grier v. The Queen, 4 Exch. C. R. 168.

**BUILDING MATERIAL.**—In a contract for the sale of "building material" to be removed from a certain lot, it does not include fixtures and appliances contained in the building for supplying heat, for lighting by gas, and for distribution of water. Labbe v. Francis, Montreal, L. R. 7 S. C.; 27 C. L. J. 584.

**BUILDING OCCUPIED EXCLUSIVELY AS A CHURCH.**—*V.* EXCLUSIVELY.

**BUILDING SOCIETY.**—For a definition of a building society proper, and a comparison between a building society mortgage and the one in question in the action, see Colonial Investment Co. v. Borland, 19 W. L. R. 588.

**BURYING GROUND.** — Synonymous with "cemetery" and "grave-yard." In looking closely for a distinction, a "burying ground" would by itself imply a place where burying is presently taking place—and "burial ground" a place used in the past—but, in the ordinary use of the words, there is no practical difference between burial-place and burial ground.

A cemetery, maintained as such, though not used for new interments, is a burying ground within the meaning of the Assessment Act, sec. 5 (2), and is exempt from taxation. Roman Catholic Episcopal Corpn. Sault St. Marie v. Town of Sault St. Marie (1911), 24 O. L. R. 35.

A cemetery differs from a church-yard in that a grave or plot cannot be obtained in perpetuity in a church-yard, while it can in a cemetery. In the church-yard the freehold is vested in the church authorities. Luke v. Kerr, 27 C. L. J. 181.

Persons having an estate or interest in ground used as a family burying ground, in which the bodies of relatives are interred, may maintain an action to restrain injury to, or interference with the graves or monuments. May v. Belson (1905), 10 O. L. R. 686.

The Statute of Limitations applies to an action for trespass to a burial plot in a cemetery. Steenson v. Town of Palmerston, 25 C. L. T. 147.

*Semble*, Exemption from taxation would not apply to land forming part of a cemetery but used for farm purposes. Luke v. Kerr, *supra*.

**BUSHEL.**—A bushel is eight gallons, and a gallon contains ten Dominion standard pounds weight of distilled water weighed in



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air against brass weights with the water and the air at the temperature of 62 degrees of Fahrenheit's thermometer, and with the barometer at 30 inches. R. S. C. ch. 52, sec. 20.

In cases of contracts for sale and delivery the use of weights is to determine the bushel. In other cases the bushel is a measure of capacity. Where a thresher was to be paid by the bushel, and he measured the grain in bags, calling each bag two bushels, it was held this was contrary to the provision of the Weights and Measures Act, and he could not recover for his work. Macdonald v. Corrigan, 9 Man. R. 284; 13 C. L. T. 346.

But the Act does not apply to a contract for carrying wheat by the carload, although the quantity has been ascertained by bag measurement. Ferris v. Canadian Northern Ry., 15 Man. R. 134.

**BUSINESS ASSESSMENT.**—The Assessment Act, sec. 10. The word "business" standing by itself is, as said by the Master of the Rolls in Smith v. Anderson, 15 Ch. D. 258, a word of extensive use and large and indefinite signification. In Murray's Oxford Dictionary no less than 24 different meanings are assigned to it. Its meaning in each case must depend largely on the context, and most of these 24 different meanings would be quite inapplicable when one speaks of carrying on business, or carrying on a particular business, which is the language of the section of the Act now in question (sec. 106 of the Assessment Act). Maclaren, J.A.: The Rideau Club v. Ottawa (1907), 15 O. L. R. p. 124.

A social club, having no capital stock, no dividends or profits, although it furnishes meals and liquors to its members and guests, is not a club within the meaning of the above section, and is not liable to a business assessment. The Rideau Club v. Ottawa, *supra*.

An express company using the wharf of a navigation company and employing the latter's agent, was held not liable for business assessment, the property "not being occupied or used mainly for the purposes of its business." The Dominion Express Co. v. Town of Niagara Falls (1907), 15 O. L. R. 79. So where an express company had an office in a drug store. Dominion Express Co. v. Town of Alliston, 14 O. W. R. 196.

Where a hotel is deprived of its license it is no longer liable for a business tax. Re Rattenbury and Town of Clinton, 4 O. W. N. 1607.

**BUSINESS OF THE DEFENDANT.**—See Marshall v. McRae, 16 O. R. 495; 17 A. R. 139; 19 S. C. R. 10.

**BUTCHER.**—In modern use the word "butcher" sometimes denotes a tradesman who merely deals in meats. As such he may be a transient trader under a by-law of a municipality fixing a

license fee to be paid by transient traders. R. v. Meyers (1903), 6 O. L. R. 120; 7 C. C. C. 303.

**BY-LAW.**—A by-law is a rule or law of a corporation, for its government, and is a legislative act, and the solemnities and sanction required by the statute or charter creating the corporation must be observed. A resolution is not necessarily a by-law, though a by-law may be in the form of a resolution.

A municipal by-law is not an agreement, but a law binding upon all persons to whom it applies, whether they care to be bound by it or not; and a resolution can no more alter a by-law than a statute. City of Victoria v. Meston, 11 B. C. R. 341.

Where a by-law was not to come into force until the execution of a supplementary agreement between the municipality and a railway company, it was held that the "passage of the by-law" was not complete until the agreement was executed. City of Winnipeg v. Brock, 20 Man. R. 669; 18 W. L. R. 28; 20 W. L. R. 243.

There is no proceeding by which a proposed or inchoate by-law can be quashed or set aside or be declared invalid. Proceedings of that kind can be taken only with respect to something that has, at all events, the force of law. Re Liquor License Act (1913), 29 O. L. R. 475.

V. FINALLY PASSED.

**BY 30TH APRIL.**—The defendants held under a monthly tenancy expiring on the last day of the month. A notice to quit in these words: "You will please vacate by 30th April, 1894," was held insufficient. By 30th April meant "not later than," or "as early as," and therefore required the tenant to leave before the expiration of the term. Re Magee and Smith, 10 Man. R. 1; 30 C. L. J. 367.

Where under a building contract the work was to be commenced "by November 31st" the contract was read as meaning November 30th. McBean v. Kinnear, 23 O. R. 313.

**BY CONTRACT.**—Held not to mean a contract under seal, although the defendants were a corporation. McBrain v. The Water Commissioners of Ottawa, 40 U. C. R. 80.

**BY REASON OF A MOTOR VEHICLE ON A HIGHWAY.**—R. S. O. ch. 207, sec. 23. See Marshall v. Gowans (1911), 24 O. L. R. 522.

**BY REASON OF THE CONSTRUCTION.**—R. S. C. ch. 37, sec. 306. The limitation provided by the above section of the Railway

Act relates only to injuries sustained by the actual construction or operation of the railway; it does not apply to cases where the injuries have been sustained by employees engaged in works undertaken by a railway company for procuring or preparing materials which may be necessary for the construction of its railway. Anderson v. Canadian Northern Ry., 21 Man. R. 45; 45 S. C. R. 355.

It does not apply to the case of a workman who is injured while working on the construction of an ice-house for the railway company, and he is injured by reason of a defective scaffold. Sutherland v. Canadian Northern Ry., 18 W. L. R. 211; nor to injuries suffered through the refusal by a railway company to furnish proper facilities for receiving, forwarding and delivering freight. Robinson v. Canadian Northern Ry., 21 Man. R. 121; 43 S. C. R. 387.

**BY REASON OF THE RAILWAY.**—R. S. O. 1897, ch. 207, sec. 42, provided that all actions for damages "sustained by reason of the railway" should be brought within six months. This is now contained in sec. 265 of the Ontario Railway Act, R. S. O. ch. 185, but has been amended to read "sustained by reason of the construction or operation of the railway" and the limitation is one year, corresponding with sec. 306 of the Dominion Railway Act, R. S. C. ch. 37.

"By reason of the railway" covers all things done in supposed pursuance of the Act and intended to be in conformity with the Act—looking to the construction and operation of the railway. Burning up worn-out and decayed ties, removed in the ordinary course of the maintenance of the railway, comes within the term. Greer v. Canadian Pacific Ry., 6 O. W. N. 438.

The limitation does not apply to an action growing out of a contract, but to actions for damages occasioned by the railway company in the execution of the powers given or assumed by them to be given for enabling them to maintain the railway. Roberts v. Great Western Ry. Co., 13 U. C. R. 615; Anderson v. Canadian Pacific Ry. 17 O. R. 747; 17 A. R. 480. It applies to acts of commission, not to acts of omission. Findley v. Canadian Pacific Ry., 5 Terr. L. R. 143.

Any damage done through negligence upon a railway in the carriage of passengers and the like is "by reason of the railway." May v. Ontario and Quebec Ry. Co., 10 O. R. 70.

The limitation has been applied in the following cases: Injuries to horses on the track. Auger v. Ontario, Simcoe & Huron Ry. Co., 9 C. P. 164. Accident or collision at a crossing owing to neglect to blow the whistle or ring the bell. Brown v. Brockville and Ottawa Ry. Co., 20 U. C. R. 202. Negligently allowing dry wood to accumulate on the track which caught fire from an engine

and extended to plaintiff's property. McCallum v. Grand Trunk Ry., 30 U. C. R. 122. (See Prendergast v. Grand Trunk Ry. *post.*) Driving a car negligently so that the plaintiff was compelled to jump into a drain or ditch to avoid it. Kelly v. Ottawa Ry. Co., 3 A. R. 616. A railway trespassing on lands of an adjoining owner and cutting timber for construction purposes. McArthur v. The Northern Pacific Jun. Ry., 15 O. R. 733; 17 A. R. 86; Lumsden v. Temiskaming & Northern Ontario Ry. Co. (1907), 15 O. L. R. 469.

*Held*, not to apply in the following cases: In an action for loss of baggage. Anderson v. Canadian Pacific Ry., 17 O. R. 747; 17 A. R. 480; Carty v. London & London Street Ry. Co., 18 O. R. 122. For negligence in carrying passengers where the railway company would be liable at common law. Roberts v. Great Western Ry., 13 U. C. R. 615; Ryckman v. Hamilton G. & B. Electric Ry. Co. (1905), 10 O. L. R. 419; Sayers v. British Columbia Electric Ry. Co., 12 B. C. R. 102; 2 W. L. R. 152; 3 W. L. R. 44. For negligently allowing fire to spread to an adjoining property, where the fire starts by no fault of the railway company, because the negligence is independent of any user of the railway. Prendergast v. Grand Trunk Ry. Co., 25 U. C. R. 193. To an action, either contract or tort, for damages for non-delivery of goods delivered to the railway for carriage. White v. Canadian Pacific Ry., 6 Man. L. R. 169.

**BY THE DAY.**—Men employed and paid at the rate of so much per hour are not workmen "by the day" within the meaning of sec. 3 of the Builder's and Workmen's Act (Man.) Dunn v. Sedziak, 7 W. L. R. 563; 17 Man. R. 484. Note.—The statute has since been changed by substituting the words "by time" for "by the day."

**BY WAY OF SUCCESSION.**—The Settled Estates Act, R. S. O. ch. 74, sec 2 (*f*). A devise of land on trust to permit occupation during life or widowhood of the testator's wife, and then to sell, has been held to be a limitation "by way of succession;" so where trustees are to receive rents during minority of the children who are not entitled to possession until the youngest child comes of age; and where land is to be rented by executors until the youngest child comes of age, unless with the sanction of the adult children, it is a limitation by way of succession. In re Cornell (1905), 9 O. L. R. 129.

**BY YOU.**—V. THROUGH YOU.

**CALCULATED.**—The term "calculated to disturb the inhabitants" in sec. 399 (45) of the Municipal Act, 1913, is not synony-

mous with "creating a disturbance." "Calculate" is a word, which it is said, must refer to the future—and it is frequently used with the meaning to intend or to expect a certain event or act. It is in this latter or irregular sense it is used in the statute; or as meaning the making of a noise which would be likely to disturb the inhabitants. R. v. Martin, 12 O. R. 800. See also R. v. Nunn, 10 P. R. 395.

**CANADIAN POLICY.** — The terms "Canadian Policy" and "Policies in Canada" in the Insurance Act (R. S. C. ch. 34), in the case of a distribution of assets, are not confined to policies issued after the deposit was made and license obtained. Re Briton Medical & General Life Assurance Co., 12 O. R. 441.

**CAPABLE.**—A contract to build a hoist "capable" of raising a weight of 2,000 pounds," means with strength enough to lift and sustain such a weight during the lifting. Hamilton v. Myles, 24 C. P. 309.

**CAPACITY TO INDORSE.**—Capacity to indorse means the ability to transfer a valid title to the indorsee, and covers compliance with all local laws necessary to make the indorsement effectual. The "capacity to indorse" is to be presumed. This means, in the case of a company, that the company has officers who can indorse, for only through officers or agents can a company exercise this function. Canadian Bank of Commerce v. Rogers (1911), 23 O. L. R. 109.

**CAR.**—*V.* Modern and Efficient Apparatus.

**CAR-LOAD.**—A contract for a car-load of hogs may mean either a double-decked or single-decked car. Where the kind of car-load was not specified, and the plaintiff sent a double-decked car-load, the plaintiff was held entitled to recover, there being conflicting evidence as to the meaning given in the trade to the term. Hanley v. Canadian Packing Co., 21 A. R. 119.

**CARE.**—*V.* Take Care of.

**CARRIAGE.**—An automobile may be described as a "carriage," but it is not a carriage within the meaning of sec. 3 (5) of the Innkeepers Act, R. S. O. ch. 173. The context shews the legislature was speaking with reference to livery stables where horses are ordinarily kept. Automobile and Supply Co. v. Hinds (1913), 28 O. L. R. 585.

**CARRYING GOODS FOR SALE.**—There is no difference in meaning between "carrying for sale" and "carrying to sell." A traveller carrying samples and taking orders, and afterwards delivering the goods, is not "carrying goods for sale." R. v. Coutts, 5 O. R. 644.

**CARRYING ON BUSINESS.**—It is impossible to deduce from the cases, of which there are many, any clear principle which is to be applied in determining the meaning of a covenant not to carry on business, or be engaged in a similar business, unless it be that the guiding rule is to construe it so as to carry out the objects and intention of the parties so far as the language of the covenant will fairly allow and no further. Per Meredith, C.J. Anderson v. Ross (1907), 14 O. L. R. 683, where the authorities are reviewed.

Carrying on business is a different thing from "transacting business." A person living in the United States made a contract in Ontario for the building of a house on his wife's land. *Held*, he was not carrying on business in Ontario. Nelson v. Lenz (1905), 9 O. L. R. 50.

A firm at B. had a storehouse in L. where it kept a large quantity of sugar in store. Orders were sent to B. and the sugar to fill these orders was shipped from L. The firm was held not to be carrying on business at L. Watt v. City of London, 19 A. R. 675; 22 S. C. R. 300.

Where an agent had been employed in a single transaction of a sale of an engine, this did not constitute "carrying on business." Halifax Hotel Co. v. Canadian Fire Engine Co., 41 N. S. R. 97.

A company incorporated in New York to buy and sell real estate sent an agent to Ontario and while in this province sold the defendant a lot in New York state. In an action on the agreement for the purchase price it was contended that the plaintiffs were "carrying on business" in Ontario in violation of sec. 6 of the Extra-Provincial Corporation Act, R. S. O. ch. 179, but it was held this was not carrying on business. Securities Development Corporation of New York v. Brethour, 3 O. W. N. 250.

An extra-provincial corporation contracted, outside of British Columbia, for machinery to be delivered in British Columbia and there installed by the vendors and tested to the satisfaction of the purchasers. It was held the vendors were carrying on business in British Columbia within the meaning of the Companies Act of that province. Kominick Co. v. British Columbia Pressed Brick Co., 22 W. L. R. 526; 8 D. L. R. 859.

Where the defendant had covenanted not to carry on the business of a butcher, and the trial Judge found he was carrying on

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business as a butcher for another party, it was held not to be within the covenant. Kerr v. Bowden, 1 W. L. R. 28. See also under "Connected in any way."

A benevolent society whose head office is not fixed by statute or charter may properly be said to "carry on business" within the meaning of sec. 155 of the Division Courts Act in the place where the principal financial officer resides and transacts business Franklin v. Owen, 15 C. L. T. 105.

A United States Consular Agent resided in Detroit but came daily to Windsor, Ontario, to perform his Consular duties. *Held*, he was not carrying on business at Windsor, his duties being that of a clerk or servant and his work was the business of the government and not his own. Detroit Soap Co. v. Thatcher, 15 C. L. T. 161.

An insurance company with its head office in Montreal, having an agent in Winnipeg to solicit applications, etc., cannot be said to be carrying on business in Manitoba. Braun v. Davis, 14 C. L. T. 194.

Con. Rule 23 (1913), giving power to serve a writ of summons on "any person who, within Ontario, transacts or carries on any of the business" of a foreign corporation, is limited to cases where the business carried on is of such a nature and is so conducted as to make the corporation, though of foreign organization, resident within the jurisdiction. Murphy v. Phoenix Bridge Co., 18 P. R. 495. It contemplates some person resident in the Province on whom service can be effected. Burnett v. General Accident Assurance Corpn., 6 O. W. R. 144.

But where the defendants had an office in Toronto occupied by a person called the "traffic soliciting representative," whose business consisted in securing freight traffic, and who did all that was done in order to have goods freighted from Ontario, it was held he was "carrying on business" within the words of Rule 23. Wagner, Brasier & Co. v. Erie R. R. Co., 6 O. W. N. 386.

A foreign corporation soliciting business in Quebec through an agent acting as a traveller and taking orders, and consigns them direct to the customer, who pays direct to the company, does not thereby "carry on business" in Quebec within the meaning of 4 Edw. VII. ch. 34. Que. Standard Sanitary Co. v. Standard Ideal Co., 20 Que. K. B. 109; (1911) A. C. 78.

Nor does such a company carry on business where it enters into an agreement with a resident of the province giving him the exclusive right to sell the company's goods in the province, such goods being shipped from the company's headquarters to the agent, he assuming all charges and risks. John Deere Plow Co. v. Agnew, 2 W. R. 1013; 48 S. C. R. 208; John Deere Plow Co. v. Merritt, 24 W. L. R. 221.

A company incorporated by Dominion charter with its head office in Manitoba, registered in British Columbia and with a local office there, was held not to be within the term "dwells and carries on his business" in the County Courts Act (B. C.). Pearlman v. Great West Life Assurance Co., 21 W. L. R. 557.

A company incorporated and having its head office in Ontario, which ships goods to Saskatchewan, ordered by letter from Saskatchewan, does not carry on business in Saskatchewan, within the meaning of sec. 44 of the Sask. Judicature Act. Reinhorn v. Knechtel Furniture Co., 22 W. L. R. 605.

**CASE OF EMERGENCY.**—V. EMERGENCY.

**CASH.**—Unpaid purchase money of land sold by the testator in his lifetime will not pass under a bequest of "all cash, negotiable notes and mortgages." Re Ferguson Estate, 18 Man. 532; 10 W. L. R. 637.

A sale for cash means immediate or prompt payment in current funds. Higginbotham v. Mitchell, 13 W. L. R. 649.

Where on an agreement for sale a "cash" or "down" payment is made and referred to in the agreement, the payment is not to be regarded as a deposit, and therefore forfeited, unless the agreement so provides. Tavender v. Edwards, 1 Alta. R. 333.

**CASH PAYMENTS.**—The term "cash payments" in sec. 3 of the Limited Partnership Act, R. S. O. ch. 138, does not include a payment by bill of exchange. Whittemore v. Macdonnell, 6 C. P. 457; or a payment by surrendering to the general partner notes held against him. Benedict v. Van Allen, 17 U. C. R. 234.

**CASH IN BANK.**—V. BANK.

**CATHOLIC FREEHOLDER.**—The term "Catholic freeholder" in a statute permitting the levying of a tax, does not apply to a corporation formed for secular purposes. Syndics of the Parish of St. Paul de Montreal v. Compagnie des Terrains, Q. R. 28 S. C. 493.

**CATTLE.**—Cattle means animals of the bovine species. In a wider sense it includes all domestic animals used by man for labor or food, including sheep and hogs.

In an act requiring railways to maintain fences "sufficient to keep out hogs, sheep and cattle" the word "cattle" was held to apply to horses. McAlpine v. Grand Trunk Ry., 38 U. C. R. 446.

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**CAUSE.**—Cause shall include any action, suit or other original proceeding between a plaintiff and a defendant. Ont. Jud. Act sec. 2 (2). A garnishee proceeding before judgment in a Division Court is an "action" or a "cause" within the meaning of sec. 59 of the Division Courts Act. Re McCabe and Middleton, 27 O. R. 170.

**CAUSE OF ACTION.**—"Cause of action" means the whole cause of action, in other words, whatever the plaintiff must prove to entitle him to recover. Watt v. Van Every, 23 U. C. R. 196; Noxon v. Holmes, 24 C. P. 541; Conner v. Dempster (1903), 6 O. L. R. 354; Joly v. Dodbout, 9 Que. P. R. 93; Black v. Blair, 8 E. L. R. 294.

A contract by proposal and acceptance is made where it is accepted. O'Donohoe v. Wiley, 43 U. C. R. 350.

Where defendant at P. by letter instructed plaintiff, a solicitor at T., to take legal proceedings for him, Hagarty, C.J., held that to entitle plaintiff to recover he would have to prove the writing of the letter at P. and that was a part of the cause of action. Re Hagel v. Dalrymple, 8 P. R. 183.

Defendant telegraphed from W. to plaintiff at A. an order for fish, and plaintiff shipped the fish from A. to W. *Held*, the cause of action arose at A.—that the telegram did not create any part of the contract until delivered at A. Re Noble and Cline, 18 O. R. 233. But where the plaintiffs telegraphed from A. to defendants in T. offering fish at a certain price F. O. B. at A. and the defendant replied by telegram to ship fish, it was held the contract was made partly at A. and partly at T. The contract was not complete without the proof of both telegrams. Re Glanville v. Doyle Fish Co., 2 O. W. R. 616; 823.

Damages to lands by the backing up of water caused by the building of a dam, the injured lands and the dam being within the limits of certain Courts, the building of the dam is a part of the cause of action. Re Doolittle v. Electrical M. & C. Co. (1902), 3 O. L. R. 460.

Defendants at B. wrote plaintiff at M. ordering abstracts of title, which were mailed by plaintiff at M. addressed to defendants at B. Plaintiff sued at M. and recovered judgment and the Court refused prohibition, holding the cause of action arose at M. Brisbois v. Poudrier, 1 Man. R. 29.

*V.* All the Causes of Action.

**CAUSED BY SUCH INTOXICATION.**—These words (in sec. 114 of the Liquor License Act) do not necessarily mean caused directly by such intoxication, and do not exclude the liability if

the intoxication is only one of two or more concurring causes of death. Where the deceased perished from cold while in a state of intoxication, the death was "caused by such intoxication." DeStruve v. McGuire (1911), 25 O. L. R. 87; 491. See also Trice v. Robinson, 16 O. R. 433.

**CEASED.**—Held that the doing of work or supplying materials, even of a trivial character, should be taken into consideration in determining when a claimant has "ceased" work, within the meaning of the Mechanics Lien Act (Alta.) Clark v. Moore, 1 Alta. R. 49. But see under "Completion." And see cases under "Completion" and "Last material."

**CEMETERY.**—*V.* Burying Ground.

**CENTRE OF THE CONCESSION.**—Where the dividing line between the north and south halves of a lot on a broken front was the "centre of the concession," the term was held to mean the centre of the particular lot, and not the centre of the concession where the lots were not broken. Schryver v. Young, 14 O. W. R. 530; 15 O. W. R. 27.

**CERTIORARI.**—Certiorari is a writ issued out of a Court of law, having power to grant it, in the name of the Sovereign and tested by the Chief Justice, by virtue of that Court's superintending authority over all Courts of inferior jurisdiction in the Province, for the purpose of a supervision of any of their proceedings which may be investigated in such Superior Court. Except in cases where legislation has provided for an appeal, the writ of certiorari is the only mode by which a revision of proceedings in summary convictions can be had in a higher Court. R. v. Titchmarsh, 6 O. W. N. 317.

**CHAMPERTY.**—*V.* Maintenance.

**CHANGE OF RISK.**—A change of risk within the meaning of the words "If the risk be increased or changed in any manner whatever," is synonymous with "increase of risk"—something that increases the hazard or changes the character of the insured premises. Gill v. Canadian Fire & Marine Insce. Co., 1 O. R. 341.

A mere change of occupant was held not to avoid a policy on a condition prohibiting a change of occupation. Hobson v. The Western District Assurance Co., 6 U. C. R. 536; Gould v. British America Assurance Co., 27 U. C. R. 473. But if the condition is directed against a change of occupant it must be given effect to. Ottawa Forwarding Co. v. Liverpool Insc. Co., 28 U. C. R. p. 523.

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**CHANGE OF TITLE.**—A chattel mortgage on insured property is not a sale or transfer within the meaning of a condition providing against "any sale, transfer, or change of title," but it is a change of title. The Citizens Insce. Co. v. Salterio, 23 S. C. R. 155. But a chattel mortgage is not within a condition "if the property insured is assigned," &c. Sovereign Fire Insce. Co. v. Peters, 12 S. C. R. 33.

*V.* Assigned.

**CHANNEL.**—"Channel" as applied to a river, may mean the place or bed in which the river flows. That is perhaps the primary meaning. Where the word has that meaning, the side or bank of the channel is, of course, identical with the side or bank of the stream. But the primary signification may be controlled by the circumstances. Where a grant of land defined one of its limits by the "channel" of the Detroit river, Latchford, J., said: "I think 'channel' is used in the description in this case to designate the deeper parts of the Detroit river most convenient as a track for shipping. . . . I am unable to distinguish between 'channel bank'—that is, bank of the channel—in the license of occupation, and 'side of channel'—in the patent. In my opinion, there is no difference in meaning between bank of a channel and side of a channel, or between channel-bank and channel-side, when used to define a boundary in the same locality." Bartlett v. Delaney (1913), 27 O. L. R. 594.

No doubt "channel" may and does often mean "navigable channel;" but that is not its primary meaning. It sometimes means the place where the water flows, including the whole breadth of the river—where the controlling consideration is navigation it will be construed as meaning the navigable channel—the place where the water is deepest and the navigation safest. In questions of geography or boundaries it is more generally used to designate the general stream or current of water between permanent banks. Bartlett v. Delaney, 29 O. L. R. 426.

*V.* Main Channel.

**CHARACTER.**—*V.* Previously Chaste Character.

**CHARGE OR CONTROL OF.**—*V.* Person Having Charge or Control of.

**CHARGED.**—*V.* Person Charged.

**CHARITABLE AND PHILANTHROPIC PURPOSES.**—A testator gave his residuary estate to be applied "in charitable and philanthropic purposes." *Held*, these words meant charitable

purposes which were also in the judgment of the trustees of a philanthropic character—that the word "and" should not be read as equivalent to "or," and the gift was not void for uncertainty. Re Huyck (1905), 10 O. L. R. 480.

**CHARITABLE USE.**—See Madill v. McConnell (1907), 16 O. L. R. 314.

*V.* To the Benefit of any Charitable Use.

**CARITABLE INSTITUTION.**—See Re City of Ottawa and Grey Nuns (1913), 29 O. L. R. 568.

**CHARITY, WORKS OF.**—*V.* Works of Necessity and Charity.

**CHATTELS.**—"Chattels" will comprise the entire personal estate of a testator unless restrained by the context within narrower limits. A bequest of "all my chattels and movables and all monies on hand and monies to be received by my notes, and in case any of my said sisters should die before me, I will and bequeath the said chattels, monies and notes to" the survivor, was held sufficient to pass a mortgage. Re McMillan (1902), 4 O. L. R. 415.

But if the will makes a distinction between chattels and other personalty, the word "chattels" will be restricted to such tangible and movable articles as furniture, farm implements, etc. Peterson v. Kerr, 25 Gr. 583.

So if the term is followed by a bequest of annuities charged on the estate generally and there is a residuary disposition of the real and personal property in general terms. Davidson v. Boomer, 15 Gr. 1.

A crop of corn ready for the harvest is a chattel within the 17th section of the Statute of Frauds. Haydon v. Crawford, 3 O. S. 583.

A sale of growing timber to be removed within a reasonable and a stated time is a sale of goods and chattels. McGregor v. McNeil, 32 C. P. 538.

But where the lumber is not to be removed for twenty years, it is an interest in land. McNeill v. Haines, 17 O. R. 479; Summers v. Cook, 28 Gr. 179, where the purchaser had eight years to remove the timber. The test would seem to be whether the time is so extended that the purchaser is looking to a benefit from the land by the growth of the timber or not. *Ib.*

It is extremely difficult to say upon what principle it can be said that a sale of trees to be severed in two years is a sale of chattels, while a sale of trees to be severed in ten years is a sale of an interest in land. Handy v. Carruthers, 25 O. R. 279.

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In Quebec a sale of the right to cut standing timber has no effect on the title to the land. Laurentide Paper Co. v. Baptiste, Q. R. 16 K. B. 471; 41 S. C. R. 105.

An engine and boiler set in bricks and bolted to timber is not a chattel so as to be sold under a *fi. fa.* goods. Walton v. Jarvis, 13 U. C. R. 616. But a stamp mill resting by its own weight on the soil or steadied by bolts is a chattel. Liscombe Falls Gold Mining Co. v. Bishop, 36 N. S. R. 395; 35 S. C. R. 539.

A contract for the sale of a tombstone to be placed in a particular spot in a cemetery is a sale of a chattel. Wolfenden v. Wilson, 33 U. C. R. 442.

Electric cars are personal estate. Toronto Ry. Co. v. City of Toronto (1904), A. C. 809; Kirkpatrick v. Cornwall Electric Ry. Co., 2 O. L. R. 113, not followed.

**CHILD.**—In the Succession Duty Act, R. S. O. ch. 24, sec. 2 (*c*) "child" includes any lawful child or any lineal descendant of such child or any person adopted while under the age of 12 years, or any infant to whom the deceased for not less than five years immediately preceding his death stood in *loco parentis*, or any lineal descendant of such adopted child or infant born in lawful wedlock.

In the Fatal Accidents Act, R. S. O. ch. 151, sec. 2 (*a*), "child" includes son, daughter, grandson, granddaughter, stepson, stepdaughter, adopted child, and a person to whom the deceased stood in *loco parentis*. The former Act did not give a right of action for the death of an adopted son—such person was not a "child" within the meaning of the Act. Blayborough v. Brantford Gas Co. (1909), 18 O. L. R. 243. In Gibson v. Midland Ry. Co., 2 O. R. 658, it was held the mother of an illegitimate child could not recover.

Child within the meaning of the Wills Act does not include an illegitimate child. Where a testator gave a legacy to an illegitimate daughter and she predeceased him leaving illegitimate children, the legacy lapsed. Hargraft v. Keegan, 10 O. R. 272.

A child *en ventre* at testator's death is within the meaning of the word children in a residuary disposition. Aldwell v. Aldwell, 21 Gr. 627.

The putative father of an illegitimate child has no right in respect of the custody of such infant child. Re C., an Infant (1911), 25 O. L. R. 218; Re Maher (1913), 28 O. L. R. 419.

*V.* ADOPTION: CHILDREN.

**CHILDREN.**—Prima facie "children" imports legitimate children. Hargraft v. Keegan, 10 O. R. 272; but this interpretation will yield where there is clear evidence of an opposite intention.

A testator had a wife and family in England, and was living with another woman in Ontario by whom he had illegitimate children. By his will he left specific bequests to this woman and the illegitimate children, referring to them by name as "my wife," "my son," "my daughter," and then divided the residue of his estate among his "children," and it was held the illegitimate children alone were entitled. Lobb v. Lobb (1910), 21 O. L. R. 262; 22 O. L. R. 15.

In Saskatchewan and Alberta, it has been enacted that if in any will of a testatrix any devise or bequest is made to her issue or to her child or children, illegitimate children may take. In the absence of such special legislation, children, in the Wills Act, means legitimate children. *Doe dem.* McEachren v. Taylor, 6 N. B. R. 525.

A New Brunswick statute provides: "And if there be no widow, all such surplusage shall be distributed equally amongst the children, and if no child to the next of kindred." *Held,* the legislature intended to provide for a distribution among the intestate's descendants, failing these, his next of kin, and that the word "children" must be construed to include grandchildren. Re Estate of David Kennedy, 10 E. L. R. 57; 167.

The legal construction of the word "children" accords with the popular signification, viz., as designating the immediate offspring. Paridis v. Campbell, 6 O. R. 632; Murray v. Macdonald, 22 O. R. 557. Primarily the words "child" or "children" mean issue in the first generation only, sons and daughters, to the exclusion of grandchildren or other remoter descendants. Rogers v. Carmichael, 21 O. R. 658; McPhail v. McIntosh, 14 O. R. 312; Gourlay v. Gilbert, 12 N. B. R. 85. But in Re Weir, 6 O. W. R. 58, it was held, on the context, to mean issue of any degree.

Where a policy of life insurance was payable to "children," and one of the children died before the insured, leaving a child, it was held the grandchild was not entitled to a share of the insurance money. Murray v. Macdonald, *supra.*

"Child" and "children" are primarily words of purchase in a will, but may be converted into words of limitation. Gourley v. Gilbert, 12 N. B. R. 85. "Children if any at her death," with a devise over, held not words of limitation. Grant v. Fuller, 33 S. C. R. 34; Chandler v. Gibson (1902), 2 O. L. R. 442. "Children and children's children," held to be words of purchase. Peterborough Real Estate Co. v. Patterson, 15 A. R. 751.

"Child or children" read as *nomen collectivum;* "child" under the circumstances was not *designatio personae,* but comprehended a class. Stobbart v. Guardhouse, 7 O. R. 239; Re Mackinlay, 38 N. S. R. 254.

"Children by first marriage" was held to be satisfied by the children of a second marriage in Ling v. Smith, 25 Gr. 246.

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"Children or their heirs" construed as "children or their issue." In Re Gardner (1902), 3 O. L. R. 343.

*V.* All My Children.

**CHURCH.**—In the Nova Scotia Assessment Act "churches" means the edifice or building, not the institution, and does not include a place of residence for the pastor or glebe lands. The Catholic Episcopal Corpn. of Antigonish v. Co. of Richmond, 9 E. L. R. 478.

**CHURCH AND RELIGIOUS DENOMINATION.**—*V.* Religious Denomination.

**CIRCULATION.**—A person who knowingly purchases an obscene picture for another and has possession of the same for delivery to such other person, has it in his possession for circulation contrary to sec. 207 of the Criminal Code. R. v. McCutcheon, 15 C. C. C. 362.

**CLAIM.**—The word "claim" in the various sections of the Assignments and Preferences Act, R. S. O. ch. 134, means a debt due or accruing due. It does not cover damages for breach of contract. Mail Printing Co. v. Clarkson, 25 A. R. 1. Nor a contingent claim on a contract of suretyship, where the notes guaranteed have not matured. Clapperton v. Mutchmor, 30 O. R. 595.

In the second paragraph of sec. 4 of the Manitoba Mechanics Lien Act "claim" means the amount actually due to the claimant under his contract or employment, and not the amount to which his right or remedy against the land may on inquiry be found to be limited. Phelan v. Franklin, 15 Man. R. 520.

In Hilditch v. Yott, 9 W. L. R. 53, it was held that an assignment of all "claims and demands" covered a right of action for trespass to a mining claim.

By sec. 53 of the Mun. Act, 1913, any person having a "claim" against the corporation is not eligible to be elected a member of the council. The term "claim" therein includes money due on a contract although the contract is completed, the price undisputed, and nothing remains but payment. R. ex rel. Davis v. Carruthers, 1 P. R. 114. The contract need not be binding on the corporation. R. ex rel. Fluett v. Gauthier, 5 P. R. 24.

A contract to keep a bridge in repair for a term not expired is a "claim." R. ex rel. Patterson v. Clarke, 5 P. R. 337. It makes no difference however small may be the amount of the contract.

An absolute assignment of the contract before election removes disqualification. R. ex rel. Mack v. Manning, 4 P. R. 73; but not if the assignor retains any interest in the contract. R. ex rel.

Ross v. Rastal, 2 C. L. J. 160; and the assignment must be assented to by the corporation. R. ex rel. McGuire v. Birkett, 21 O. R. 162.

An agent of an insurance company has no "claim" because he insures corporation property. Bugg v. Smith, 1 C. L. J. 129; Pinder v. Evans, 23 Que. S. C. 229.

An unsatisfied judgment in favour of the corporation against the candidate is a contract. R. ex rel. Macnamara v. Heffernan (1904), 7 O. L. R. 289; In Mason v. Meston, 9 W. L. R. 113, the Court of Appeal (B.C.), seemed to be of the opinion that "it would be a very strained and far-stretched construction of the statute to say that the word contract included judgment."

The word "claim" as used in sec. 38 of the Exchequer Court Act, R. S. C. ch. 140, means a cause of action. Brown v. The King, 13 Exch. C. R. 354.

*V.* CONTRACT.

**CLAIM FOR DAMAGES.**—Division Courts Act, sec. 146. Plaintiff bought and paid for a lot of hay in a mow on a representation that there were nine tons. When he came to draw it away he found below the surface a lot of straw. *Held*, there was only a partial failure of consideration, and his claim was for damages for failure to receive the quantity of hay he purchased, and there was no right to garnish before judgment. Re McCreary and Brennan, 3 O. W. N. 1052.

**CLAIM OR DEMAND.**—The "claim or demand" referred to in sec. 69 of The Surrogate Courts Act, R. S. O. ch. 62, is a claim or demand against the estate by a creditor for a money demand, and does not extend to a claim in the nature of a *donatio mortis causa*. Re Graham (1911), 25 O. L. R. 5.

The words "claim or demand" in Rule 759 of the King's Bench Act (Man.), do not extend to a claim in tort for unascertained damages before judgment recovered therefor. McIntyre v. Gibson, 17 Man. R. 423. See also Grant v. West, 23 A. R. 533.

**CLAIM NOT ACCRUED DUE.**—A claim depending upon a contingency cannot rank upon the estate of an insolvent, but only debts strictly so called. An advertising contract, giving a right to use a certain space in a newspaper for $1,000 a year, whether the space is used or not, does not create a debt by effluxion of time. Mail Printing Co. v. Clarkson, 28 O. R. 326; 25 A. R. 1.

**CLAIMANTS.**—Attaching creditors may be "claimants" within the meaning of the Interpleader Act. Leech v. Williamson, 10 P. R. 226; Standard Insc. Co. v. Hughes, 11 P. R. 220. And, *semble*, creditors certificated under the Creditors Relief Act. *Ib.*



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**CLAIMING RIGHT THERETO.**—*V.* Person Claiming Right Thereto.

**CLEAN FARM.**—On a sale of a farm represented to be a "clean farm" it was held this did not mean that the farm was absolutely free from weeds; and it should be construed as describing a farm on which there were no weeds in such quantities as to be materially injurious to the crops. Johnstone v. Hall, 10 Man. R. 161, 30 C. L. J. 328.

**CLERKS OR OTHER PERSONS.**—Winding-up Act, R. S. C. ch. 144, sec. 70.

A commercial traveller is of the class "clerks or other persons" and is entitled under the above section to a special claim over other creditors in respect of a claim for salary and expenses. Re Morlock & Cline, Limited (1911), 23 O. L. R. 165.

An auditor employed in auditing the books of a company, whose services occupied six or seven weeks of the year, is not within the term. Re Ontario Forge & Bolt Co., 27 O. R. 230. See also Welsh v. Ellis, 22 A. R. 255.

The word "clerk" is the ruling term, and the maxim *noscitur a sociis* must be invoked to ascertain the meaning of the general term "other persons." So interpreted "other persons" means persons of a companionable class or associate occupations, in the employment of the company, of the servant and not of the master class. It does not apply to a managing director. Re Ritchie-Hearn Co., 6 O. W. R. 474.

*V.* Other Persons.

It makes no difference that the clerk or other person is paid, not a fixed salary or wages, but a commission on the amount of his sales; the adoption of that means of payment does not affect the relationship of the parties towards each other or take the claim out of the class intended to be benefited. Re Hartwick Fur Co. Limited, 6 O. W. N. 363.

**CLERK, SERVANT OR AGENT.**—An illegal sale by a hotel clerk or other employee unauthorized by the hotel proprietor to sell liquors is not a sale "by his clerk, servant or agent" within the Indian Act, R. S. C. ch. 81, sec. 135; R. v. Michael Gee, 5 C. C. C. 148 (B.C.)

**CLOSE.**—A statute provided that if a commission to take evidence "be returned close" it should be deemed to have been duly taken. A commission came to hand with one end of the envelope broken open, but not enough to allow the papers to escape, and it was held to be "close." "Close should receive the meaning

which the word ordinarily bears when applied to parcels generally which are not wholly closed or enclosed; and we are not prepared to say that a document quite enclosed in an envelope except that one end of the covering is burst, is not a document which may be called close or closed; or that a parcel folded and secured by a tape or cord merely, so that it cannot be read or opened without force, is not also a document which may properly be called close or closed." Frank v. Carson, 15 C. P. 151.

**CLUB.**—"Club" is a word of different significations, whether applied to a corporation or an association of individuals. There is the proprietary club owned by an individual; the club with a share capital; and the members' club—the latter being maintained for the social purposes and conveniences of the members and practically their private houses, and the up-keep of which is derived from their subscriptions, or payment for refreshments or accommodation furnished to them or their guests, but not maintained (in any sense) for the purpose of gain or profit.

A social club having no capital stock, and consequently no dividends, profits or earnings to be divided among its members, although it furnished meals and liquors to them and their guests, is not a club within the meaning of sec. 10 (*c*) of the Assessment Act. The Rideau Club v. The City of Ottawa (1907), 15 O. L. R. 118.

The collection by an incorporated club from its shareholders of charges for using the club's billiard tables and bowling alleys, the receipts being applied to club expenses, does not prove a "keeping for hire or gain" by the club; nor is such a club a house of public entertainment or resort. R. v. Dominion Bowling & Athletic Club, 15 C. C. C. 105.

The supplying of the club's liquors by the steward to the members of an incorporated club at a tariff charge is not a mere distribution of club property among the members, but is a sale by the club to the members. R. v. Simmonds, 16 C. C. C. 498 (Sup. Ct. N. S.); R. v. Lightburne, 4 C. C. C. 358; R. v. Charles, 24 O. R. 432; R. v. Slattery, 26 O. R. 148.

Persons who contribute to a common fund for the purpose of buying intoxicating liquors in bulk, and renting a room wherein to drink the same, constitute an association or club within sec. 45 of the Liquor License Act. R. v. Cahoon, 17 C. C. C. 65.

**COAST LINE.**—See Mowat v. North Victoria, 9 B. C. R. 205.

**COERCION.**—*V.* UNDUE INFLUENCE.

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**CO-INSURANCE.**—A provision in a fire insurance policy requiring the assured to maintain insurance to a certain amount or percentage of the cash value, and failing to do so that the assured is a co-insurer to the extent of the deficit, is a condition and a variation of the statutory conditions. Wanless v. Lancashire Insc. Co., 23 A. R. 225.

A co-insurance clause requiring 75 per cent. insurance was held not to be "just and reasonable," the premium having been reduced in consideration of the condition. Eckhardt v. Lancashire Insc. Co., 27 A. R. 373.

**COLLECTOR.**—Having regard to the duties devolving upon the "collector" in sec. 155 of the Quieting Titles Act (B.C.), it was held that the collector is *persona designata*. Re Brennan, 9 W. L. R. 500; 14 W. L. R. 633.

**COLLUSION.**—The Assignments and Preferences Act, R. S. O. ch. 134, sec. 4.

In Turner v. Lucas, 1 O. R. 623, the Court held that where one creditor obtained a speedy judgment against an insolvent debtor by an arrangement by which the debtor appeared, pleaded and consented to the pleading being struck out and judgment entered, there was no collusion within the Act. The British Columbia statute is identical with the Ontario Act, and the Supreme Court of British Columbia upheld a judgment obtained as in Turner v. Lucas. This was reversed by the Privy Council, which held that "collusion" in the section means agreement, or acting in concert—that the confession need not be fraudulently given. "The section does not use that word; but the giving a judgment by confession by a person in insolvent circumstances voluntarily or by collusion with a creditor with intent to defeat or delay his creditors, or to give a preference to one of them over the others, is treated by the statute as a fraudulent act." Edison General Electric Co. v. Westminster & Vancouver Tramway Co. (1897), A. C. 193.

In the last-mentioned case the Privy Council approved of the judgment in Martin v. McAlpine, 8 A. R. 675, where a judgment was obtained on a cognovit.

But the fact that an insolvent debtor does not defend an action brought on an account before the term of credit has expired does not prove a "collusion." McDonald v. Crombie, 10 A. R. 92; 11 S. C. R. 107; Bowerman v. Phillips, 15 A. R. 679.

The mere use of the words "in collusion" in a pleading claiming damages for having "in collusion with" another defamed the plaintiff, is insufficient to support a claim for damages for conspiracy. Alexander v. Simpson, 22 Man. R. 424; 1 D. L. R. 534.

**COLOUR OF RIGHT.**—"I take the meaning of 'colour of right' as used in the Act (the former Over-holding Tenants Act) to be such a semblance or appearance of right as shews that the right is really in dispute, for there may be a colour of right where there is no right." Armour, C. J., Price v. Guinane, 16 O. R. 264.

The narrower construction placed upon the term in Gilbert v. Doyle, 24 C. P. 60, and Woodbury v. Marshall, 19 U. C. R. 597, has not been followed.

A dispute as to the date when the tenancy commenced gives a colour of right. Bartlett v. Thompson, 16 O. R. 716.

As used in section 541 of the Criminal Code "colour of right" means an honest belief in a state of facts which, if it existed, would be a legal justification or excuse. This would not be an answer to a civil action, but it is properly made an answer to a criminal charge, because it takes away from the act its criminal character. To do an act in ignorance that it is prohibited by law is not to do it with colour of right. R. v. Johnson (1904), 7 O. L. R. 525; 8 C. C. C. 123.

There must be some colour or shew of reason for the claim made, and if the claim be only colourable, yet if made sincerely, it is good. R. v. Daigle, 13 C. C. C. 55; R. v. Davey, 4 C. C. C. 28.

An honest belief on the part of the accused that he had a moral right to do the act charged as mischief will not constitute colour of right. R. v. Watier, 17 C. C. C. 9; 15 W. L. R. 427; 19 W. L. R. 427. But a belief, though erroneous, of a prisoner in the existence of a right to do the act complained of excludes criminality. R. v. McDonald, 12 O. R. p. 387.

The question of colour of right is a question of right to be determined by the magistrate, and his decision upon a matter of fact will not be reviewed. But that means, firstly, that the defendant has given evidence to shew a colour of right, and, secondly, that there is a conflict of testimony on that point. It does not apply where the whole facts shew that the matter or charge itself is one in which such reasonable supposition exists. R. v. McDonald, 12 O. R. 381; R. v. Malcolm, 2 O. R. 511; Re Canadian Pacific Ry. and Lechtzier, 23 C. L. T. 339.

A claim by a tenant of a railway company that the company's agents had prior to and at the time of the execution of the lease, verbally promised that the tenant would not be required to give up possession until the land was required for building purposes, was held to be too indefinite to support a colour of right. Canadian Pacific Ry. v. Lechtzier, 14 Man. R. 566.

**COMBINE.**—A "combine" within the meaning of the Combines Investigation Act, is any compact about the making or

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selling of one article which would fix the price not only of that one article, but of any other article, to the detriment of consumers or producers of the last-mentioned article. United Shoe Machinery Co. v. Dourin, 2 D. L. R. 77.

**COMMENCE.**—An oil lease provided that if work was "not commenced," etc., it should be void. At the end of the time limited the lessee had done no work on the ground, but had brought thereon plant for operation, and it was held this was not a commencement of the work. "What is the fair meaning of the phrase? It was held in a case before the Railway Commissioners in England that the words "to break the ground" meant "to commence work," and did not include preparations for the work: Bristol v. Somerset, etc., 32 L. T. N. S. 338. To like effect appears to be the holding in the American cases. One of the clearest in expression is by the Chancellor in Mutual Benefit Life Insc. Co. v. Rowand (1875), 23 N. J. Eq. at p. 392, where he says: 'The excavation for the foundation is the commencement of the building within the meaning of the law.' He goes on to quote from the decisions and approves of this statement: 'The *commencement of the building* is some work and labour on the ground, the effects of which are apparent, such as beginning to dig the foundation, or work of like description, which every one can readily see and recognize as the commencement of a building. Another case cited shews that the mere placing of materials on the ground would not be enough to indicate the commencement of the work of construction, and gives very good reasons for so holding. . . . I think that the terms of the lease import that some work was contemplated to be done upon and in the ground—'breaking the ground' in order to the commencement of a well." Lang v. Provincial Gas & Fuel Co. (1908), 17 O. L. R. 262.

An arbitration is not commenced or pending until arbitrators have been appointed, and they cannot be said to be appointed until they have accepted office as such. Re Taylor and Canadian Northern Ry. Co., 23 W. L. R. 645.

Making an affidavit of claim under the Creditors Relief Act is not a commencement of proceedings. It must, at least, be filed with the clerk. Bank of Hamilton v. Aitken, 20 A. R. 616.

**COMMENT.**—By sec. 4 of the Canada Evidence Act, R. S. C. ch. 145, every person charged with an offence is a competent witness for the defence, and the failure of such person to testify "shall not be made the subject of comment by the Judge, or by the counsel for the prosecution."

Where, during the address to the jury by the prisoner's counsel, the counsel for the Crown interjected a remark intimating that the accused could have given evidence as to the alleged occurrence then being referred to by the former counsel, such comment is no ground for a new trial where the occurrence commented on is not a fact material to the issue. R. v. Weir, 3 C. C. C. 262.

When once the comment is made the mischief which the law was designed to prevent has been done, and nothing can afterwards be said by either counsel or Judge that will be calculated entirely to remove the effect of that comment upon the minds of the jury. R. v. Corby, 1 C. C. C. 457; R. v. Coleman, 2 C. C. C. 523.

It makes no difference that the comment by a Crown prosecutor is made by way of reply to the speech of the prisoner's counsel excusing the prisoner for not giving evidence on his own behalf. R. v. Hill, 7 C. C. C. 38.

A Crown counsel in his address to the jury said the prisoner's counsel "took the very best and wisest course in not having the prisoner go on the witness stand." The Court held this was a comment forbidden by the statute—was a substantial wrong, and entitled the prisoner to a new trial. R. v. King, 9 C. C. C. 426.

But a direction to the jury that the prisoner has failed to account for a particular occurrence, when the onus is upon him to do so, is not a comment within the statute. R. v. Aho, 8 C. C. C. 453. So on a charge of theft where there was a presumption of guilt from the prisoner's possession of the stolen goods, it is not comment for the Judge to tell the jury that if the defendant's witness is believed the prisoner has not given a "satisfactory account" of how he came into possession of the goods. R. v. Burdell, 10 C. C. C. 365; (1906), 11 O. L. R. 440.

The trial Judge called the attention of the jury to the fact that the prisoner was not called to testify on his own behalf and warned the jury that they were not to take that fact to his prejudice; and added, if he was an innocent man he could easily have shewn where he had been on the afternoon of that day. Held this was a prohibited comment. R. v. McGuire, 9 C. C. C. 554. But the Judge's instructions to the jury that the prisoner is entitled under the law to remain silent at the trial is not comment. R. v. McLean, 11 C. C. C. 283; 1 E. L. R. 334.

A statement by the Judge that the evidence of a witness for the Crown, who related a conversation with the prisoner, is wholly uncontradicted, is not a comment on the prisoner's failure to testify. R. v. Guerin (1909), 18 O. L. R. 425.

**COMMERCIAL TRAVELLER.**—*V.* CLERKS OR OTHER PERSONS.

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**COMMERCIAL MATTERS.**—Sales and purchases of shares by stockbrokers for speculation on the account of customers are "commercial matters" within article 1233 Civil Code (Quebec). Forget v. Baxter (1900), A. C. 467.

**COMMITTED TO GAOL FOR TRIAL.**—Where an accused, out on bail, is surrendered by his bail, or surrenders himself, he is then "committed to gaol" within the meaning of sec. 825 of the Criminal Code. R. v. Burke, 24 O. R. 64.

The words apply to any case where the accused is found in custody charged with an offence of the kind in respect of which an election is given. R. v. Lawrence, 1 C. C. C. 295 (B.C.)

In R. v. Gibson, 29 N. S. R. 4; 3 C. C. C. 451, it was held that where the accused was admitted to bail, without being committed for trial, and is subsequently rendered up by his bondsmen, he is not "committed to gaol." See also R. v. Smith, 3 C. C. C. 467. The amendment of 63 Vict. ch. 46 (now sec. 825 (4) of the Criminal Code) adopts the practice as laid down in the former cases.

"Gaol" in sec. 826 means the gaol to which the accused is committed for actual incarceration, and not another gaol in which he is detained *en route*. The accused was committed to gaol at Prince Albert. En route he was detained at Battleford and there elected for speedy trial. Held, bad, and a new trial was ordered. R. v. Tetreault, 17 C. C. C. 259.

**COMMON GAMING HOUSE.**—*V.* GAMING.

**COMMONS.**—Proviso in a conveyance giving the grantee access to "*commons.*" See Re Lorne Park, 5 O. W. N. 626 (1913), 30 O. L. R. 289.

**COMMUNITY OF PROPERTY.**—See Hughes v. Rees, 5 O. R. 654.

**COMPENSATION.**—*V.* DUE COMPENSATION.

**COMPETENT PERSON.**—Where a jury found that a lad of ten years of age was a "competent person" within sec. 294 of the Railway Act (D) the trial Judge refused to hold, as a matter of law, that he was not. Sexton v. Grand Trunk Ry. (1909), 18 O. L. R. 202.

**COMPETENT PROVISION.**—A direction in a will to a devisee to make a "competent provision" for another named person, is not void for uncertainty. What may be a "competent provision"

is a matter of evidence, having all the circumstances in view. In this case there was a reference to a Master. Baby v. Miller, 1 E. & A. 218.

**COMPETING BUSINESS.**—It is doubtful if a business in Michigan can be said to be a "competing business" with a similar business in Ontario. Livingston v. Livingston (1912), 26 O. L. R. 246.

**COMPLAINED OF.**—As equivalent to "petitioned against." Patterson v. Brown, 11 Man. R. 612.

**COMPLETION.**—The "completion of the work," within sec. 22 of the Mechanics' Lien Act, means the substantial completion of the contract. Where the contract is completed and no lien is filed within thirty days and slight alterations are subsequently made, such alterations or repairs do not have the effect of extending the time. Summers v. Beard, 24 O. R. 641. See also Brooks-Sanford Co. v. Theodore Tellier Construction Co. (1910), 22 O. L. R. 176.

In the light of surrounding circumstances it was held that the parties meant by "completion of the sale" the execution of a binding agreement of sale. Haffner v. Cordingly, 18 Man. R. 1; 7 W. L. R. 764; 8 W. L. R. 743.

*V.* CEASED.

**COMPLETELY EXECUTED BY PAYMENT.**—An execution is "completely executed by payment" within the meaning of sec. 14 of the Assignments and Preferences Act, R. S. O. ch. 134, as soon as the money has been paid, voluntarily or involuntarily, to the sheriff. The money is then the property of the execution creditor and not of the debtor. Clarkson v. Severs, 17 O. R. 592.

**COMPOSITION OF MATTER.**—The term "composition of matter" in sec. 7 of the Patent Act, R. S. C. ch. 69, includes all composite articles, whether they be the result of chemical union or of mechanical mixture, and the latter may therefore be the subject of a patent. Electric Fireproofing Co. v. Electric Fireproofing Co. of Canada, Que. R. 31 S. C. 34; 2 E. L. R. 532.

**CONCERNED.**—A municipality in which there is any territory forming part of the Union school section is "concerned" within sec. 21 (2) of the Public Schools Act, R. S. O. ch. 266, in any proceedings for the formation, alteration or dissolution of a Union school section. Nichol School Trustees v. Maitland, 26 A. R. 506.

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A saw mill was built on land owned by a magistrate, under a lease for 15 years, of which 9 had expired when the mill burned down. In proving his loss the plaintiff was required to obtain a certificate from a magistrate "not concerned in the loss." He obtained a certificate from the owner of the land. The trial Judge held he was not concerned in the loss, and, on appeal, Morrison, J., agreed with the trial Judge, Wilson, J., contra. Morrison, J., held the term means a pecuniary interest, and as the rent was paid and the landlord not bound to rebuild, his pecuniary interest was too remote. McRossie v. Provincial Insurance Co., 34 U. C. R. 55.

Evidence that particular parts of a concession had not been surveyed at all is not evidence "concerning any boundary" within the meaning of these words in sec. 46 of the Surveys Act, R. S. O. ch. 166. Manary v. Dash, 23 U. C. R. 580.

*V.* PARTY CONCERNED.

**CONCESSION.**—*V.* CENTRE OF CONCESSION.

**CONCLUSIVE EVIDENCE.**—Anything which is duly prescribed as "conclusive evidence" of a fact, is absolute evidence of such fact, as well civilly as criminally, for all purposes for which it is made evidence. R. v. Lightburne, 4 C. C. C. p. 362.

**CONDITION.**—*V.* GOOD CONDITION.

**CONDITION OF RE-ENTRY.**—Or condition so called, as distinguished from a "conditional limitation," is a means by which an estate or interest is to be prematurely defeated and determined, and no other estate created in its room. In Re Melville, 11 O. R. 626.

A mere prohibition of alienation, though called a "condition," does not constitute a good common law condition so as to work a forfeiture. Re Buchanan and Barnes, 5 O. W. N. 524.

**CONDITIONAL ACCEPTANCE.**—*V.* ACCEPTANCE.

**CONDITIONAL APPEARANCE.**—See Wolsley Tool & Motor Co. v. Jackson, 6 O. W. N. 109.

**CONNECTED WITH HIS DUTY.**—The wrongful dismissal of a teacher is a matter "connected with his duty" within sec. 93 of the Manitoba School Act, and consequently not the subject of an action, but of arbitration only. Pearson v. School Trustees St. Jean Baptiste Centre, 2 Man. R. 161.

**CONNECTED IN ANY WAY.**—Defendant had covenanted not to be "connected in any way in any similar business carried on by any person." His son started a similar business. Defendant had no pecuniary interest in the son's business and was not employed or paid by the son, but desired to help the son and introduced him to customers of the plaintiff and solicited orders. It was held this constituted no breach of the covenant, there being no contract of any kind between father and son. Roper v. Hopkins, 29 O. R. 580.

V. CARRY ON BUSINESS.

**CONSECUTIVE DAYS.**—Publication of an election petition in three consecutive issues of a weekly paper is not publication for "three consecutive days." Owens v. Upham, 39 N. B. R. 198. See City of Three Rivers v. Banque du Peuple, 22 S. C. R. 352.

V. TIME.

**CONSENT.**—An endorsement signed by the Judge upon the indictment by which he directs that it be submitted to the Grand Jury, is a sufficient "consent" of the Judge under sec. 873 of the Criminal Code. R. v. Weir, 3 C. C. C. 155.

The "consent of the parties" in sec. 204 of the Railway Act, may be given verbally and parol evidence of it is admissible. Canadian Northern Quebec Ry. Co. v. Naud, 22 Que. K. B. 221.

**CONSENT OF THE INFANT.**—Infants Act, R. S. O. ch. 153, sec. 13. Where three infants, all over the age of 14 years, were interested in land, and one had disappeared, it was held that the consent of the other two was sufficient. Re Harding, 13 P. R. 112.

Where two of five infants resided in the United States, and the three in Ontario consented, the consent of the other two was dispensed with. Re Lane, 9 P. R. 251. So where the infant interested was an imbecile. Re Delanty, 13 P. R. 143.

Where infants consented to a sale, but the offer fell through, their consent was dispensed with on a sale on a new offer, even though at a lower price. Re Bennett Infants, 17 P. R. 498.

**CONSTITUTION OF THE CONGREGATION.**—See McRae v. McLeod, 26 Gr. 255.

**CONSTITUTION OF THE GRAND JURY.**—An objection that a juror was not indifferent because of an alleged interest in the subject matter of the prosecution, and was therefore disqualified, is not an objection to the "constitution of the Grand Jury" within the meaning of sec. 899 of the Criminal Code. R. v. Hayes, 9 C. C. C. 101.

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Where the Grand Jury panel was thirteen, and eleven answered their names when the roll was called, but only ten were empannelled and sworn, it was held the jury was properly constituted. R. v. Fouquet, 10 C. C. C. 255.

**CONSTRUCT.**—A contract required the defendants to "construct the tracks and superstructure according to the best modern practice," &c. Held, this did not limit the construction to original structure but included necessary reconstruction. City of Toronto v. Toronto Ry. Co. (1911), 25 O. L. R. 9.

**CONSTRUCTION.**—The work done in excavating a basement of a building is included in the term "construction" in the Mechanics Lien Act (Alberta), and gives rise to a lien. Farr v. Groat, 24 W. L. R. 860.

Under the Drainage Trials Act, see Sage v. Township of West Oxford, 22 O. R. 678: As applied to railways, see McRae v. Toronto & Nipissing Ry. Co., 22 C. P. 1.

**CONSTRUCTIVE NOTICE.**—Knowledge of solicitor when imputed to client. Brown v. Sweet, 7 A. R. 725; North West Construction Co. v. Valle, 16 Man. R. 201.

**CONSTRUCTIVE RESIDENCE.**—The term "constructive residence" is used to denote physical absence from a person's residence if he has an *animus revertendi, e.g.*, a sailor at sea when there is no doubt of both the power and the intention to return as soon as the voyage is over. Re Sturmer and Beaverton (1911), 24 O. L. R. p. 74.

**CONSULT.**—A church canon provided that on the vacancy of any rectory before making a new appointment the Bishop "shall consult with the churchwardens." The consultation here meant is not intended to be by correspondence, but a personal interview so as to afford an opportunity of stating reasons for or against any nominee. Johnson v. Glen, 26 Gr. 162.

**CONTENTS.**—*V.* ALL THE CONTENTS THEREOF.

**CONTINUOUSLY.**—*V.* RESIDED CONTINUOUSLY.

**CONTRACT.**—Section 53 (p) of the Municipal Act, 1913, which prohibits any member of a council having any interest in a contract with the corporation, must be read in its widest sense. An unsatisfied judgment by the corporation is a contract within the Act. R. ex rel. Macnamara v. Heffernan (1904), 7 O. L. R.

289; Re Kerr v. Smith, 24 O. R. 473; O'Shea v. Letherby (1908), 16 O. L. R. 581. But in Mason v. Meston, 9 W. L. R. 113, the B. C. Court of Appeal said: "It would be a very strained and far-stretched construction of the statute to say that the word contract included judgment."

A surety on a bond of a municipal officer for the due performance of his duties and payment of monies collected by him, was held to be within the Nova Scotia Act, the same in effect as the Ontario statute. R. v. Kirk, 24 N. S. R. 168.

The word "contracts" in sec. 95 of the Winding-up Act, R. S. C. ch. 144, covers mortgages. Canadian Bank of Commerce v. Smith, 17 W. L. R. 135.

*V.* CLAIM: TORT.

**CONTRACT IN WRITING.**—*V.* WRITTEN CONTRACT.

**CONTRACTING.**—As used in the term "trading, manufacturing, contracting or mining," in the Partnership Act (Alberta) relating to registration of firm names, the word "contracting" is to be interpreted in its popular sense as referring to what is usually known as a contracting business (e.g. building or contracting work) and does not include the making of contracts for the sale or purchase of real estate either on one's own account or as a broker or agent. Lambert v. Munro, 7 D. L. R. 264.

**CONTRARY INTENTION.**—Section 27 of the Wills Act, R. S. O. ch. 120, provides that every will is to be construed as if executed immediately before the death of the testator "unless a contrary intention appears by the will." Section 37 provides that in a devise of incumbered real estate the devisee shall take such estate *cum onere* unless there is a "contrary or other intention" shewn in the will, and that a direction to pay debts out of the personal estate does not shew such a "contrary or other intention."

In Morrison v. Morrison, 9 O. R. 223; 10 O. R. 303, it was held that a devise of "the property on H. street" did not include after acquired property on H. street, where it was followed by a residuary devise—that such residuary devise shewed a "contrary intention." That case was distinguished in Hatton v. Bertram, 13 O. R. 766, where a devise of "my property known as Walkerfield I now reside upon" was held to pass property subsequently acquired as a part of "Walkerfield," there being here no general devise of the whole of the property at the beginning of the will, and the word "now" did not shew a "contrary intention." See also Re Stokes (1910), 21 O. L. R. 464.

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But a devise of "the homestead farm on which I reside" will not pass after acquired land not connected with the farm on which the tsstator lived at the time of his death, although the word "now" was not used. Ayer v. Estabrooks, 2 N. B. Eq. 392.

Where a testatrix referred to her estate as being worth $40,000 "as at present invested" and at her death she had acquired $60,000, held this did not shew a "contrary intention." Re Lawson, 25 N. S. R. 454.

Where the will contains a particular description of the real estate devised, after acquired property will not pass by general words. Crombie v. Cooper, 24 Gr. 470. But this rule does not apply where the description is merely an enumeration of the lands owned at the date of the will. Re Smith (1905), 10 O. L. R. 449.

Sec. 38 does not apply where the devisee is in the position of a purchaser, e.g. a devise of a portion of the testator's lands to his wife in lieu of dower. Dungey v. Dungey, 24 Gr. 455.

A devise of mortgaged lands "after payment of debts" does not indicate a contrary intention. Burk v. Burk, 26 Gr. 195; Mason v. Mason, 13 O. R. 725. But a devise of land "free from all incumbrances" exonerates the land. Toronto General Trusts Corporation v. Irwin, 27 O. R. 491. So too where the testator charges all his real estate with the payment of debts and incumbrances. Sproatt v. Robertson, 26 Gr. 333; Scott v. Supple, 23 O. R. 393.

Sec. 37 of the Act provides that gifts to children of the testator dying in his lifetime leaving issue shall not lapse unless a "contrary intention" appears by the will. This section does not apply where the devise is to children as a class, as a devise "to my children at B. to be divided between them in equal shares." If one of such children dies in the lifetime of the testator leaving issue, such issue are excluded. In Re Clark (1904), 8 O. L. R. 599; In Re Sinclair, Clark v. Sinclair (1901), 2 O. L. R. 349. Even if one of the class is mentioned by name, thus "to all my children except J." Re Moir (1907), 14 O. L. R. 541; or where a child was dead at the date of the will leaving issue. Re Williams (1903), 5 O. L. R. 345.

As to the term "contrary intention" in sec. 24 of the Manitoba Partnership Act, see Kelly v. Kelly, 12 W. L. R. 365; 16 W. L. R. 575; 23 W. L. R. 953.

V. My Lawful Heirs.

**CONTRIBUTORY.**—A shareholder who has fully paid up all his shares is a "contributory" within the meaning of sec. 188 of the Ontario Companies Act so as to entitle him to initiate winding-up proceedings. Re Macdonald and the Noxon Mfg. Co., 16 O. R. 368.

**CONVENIENT—CONVENIENTLY.**—Convenient means fit, suitable, proper, well adapted, commodious, easily used, serviceable; to which must be supplied in each case the proposition by or for some person or thing or purpose. Conveniently is in a convenient manner, without difficulty. In sec. 109 of the Ontario Elections Act, it means "conveniently for the voter and for his wish, purpose and intention of voting"; and a ballot marked by mistake for the wrong candidate cannot be "conveniently" used by the elector. Hastings v. Summerfeldt, 30 O. R. 577.

**CONVEY.**—"Convey" has not the legal technical meaning assigned to "exchange." In an action on an agreement for the exchange of lands, a plea alleging that the parties had "conveyed" the lands to each other was held bad on demur. Leach v. Dennis, 24 U. C. R. 129.

The words "convey, assign and deliver" are operative words of conveyance. McDonald v. Georgian Bay Lumber Co., 24 Gr. 356; 2 A. R. 36.

**CONVEYING TRAVELLERS.**—Taking persons in street cars from point to point in a city is not "conveying travellers" within the meaning of sec. 1 of the Lord's Day Act. So a person carrying passengers from Toronto to the Island was held not to be conveying travellers. R. v. Tinning, 11 U. C. R. 636.

*V.* TRAVELLERS.

**COPY.**—*V.* TRUE COPY.

**CORNER.**—A description of a house as being on the "corner" of a lot is not supported by shewing that it forms a part of the south-east corner of the lot where there are two or three other houses between the house in question and the angle of the lot. Stanton v. Windeat, 1 U. C. R. 30.

**CORROBORATIVE EVIDENCE.**—*V.* MATERIAL EVIDENCE.

**COST.**—In a by-law for prolonging a street and assessing the adjacent property with the "cost," the term cost includes the purchase price of the land required for prolongation. City of Victoria v. Meston, 11 B. C. R. 341.

**COST OF REPAIRS.**—In a marine policy the insurers were not liable for a total constructive loss unless the cost of repairs should amount to more than half the declared value of the vessel. Held, "cost of repairs" meant the net amount after allowing one-third of the actual cost in respect of new for old, and not

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the estimated amount of the gross cost of repairs. Gerow v. The Royal Canadian Insc. Co., 16 S. C. R. 524.

**COSTS IN THE CAUSE.**—The term "costs in the cause," generally means the costs only of the party successful in the cause. But where it was used in an award, as follows: "We also order and award that the plaintiff and defendant shall each pay half the costs of the cause," it was held the term meant the whole costs of both parties. Scott v. Grand Trunk Ry., 3 P. R. 276.

Costs of irregular proceedings are not costs in the cause. Cameron v. Campbell, 1 P. R. 170.

**COSTS OF THE DAY.**—The phrase costs of the day is a general term applicable to different circumstances, and varying with these circumstances. There were costs of the day for not proceeding to trial pursuant to the practice of the Court; and in such cases no counsel fee was chargeable. There were costs of the day for not proceeding to trial according to notice, that is, where the plaintiff had given notice of trial and did not countermand it, but did not enter his record; and in such cases it became and was the practice in the taxing office, although a counsel fee was chargeable, to tax only $10. There were costs of the day where the plaintiff gave notice of trial and entered his record and afterwards withdrew it; and counsel fees were in such cases chargeable, but were taxable according to the discretion of the taxing officer, and not according to any arbitrary limit. And there were costs of the day where the plaintiff gave notice of trial and entered his record, and the defendant moved to postpone the trial, and it was postponed upon payment of the costs of the day; and the counsel fees were in such cases chargeable, but were taxable according to the discretion of the taxing officer. Outwater v. Mullett, 13 P. R. 509; 10 C. L. T. 299.

**COSTS TO ABIDE THE EVENT.**—Do not mean that the plaintiff, if successful, shall have full costs no matter how small a sum he may recover. It means no more than he shall have such costs as under the statutes or rules a plaintiff recovering the amount he recovers by the event is entitled to. Watson v. Garrett, 3 P. R. 70.

A verdict was taken by consent for $1, to be altered according to the result of a reference, the costs "to abide the event." On the reference the plaintiff recovered $85, and it was held he was entitled to costs on the High Court scale. Andrews v. City of London, 12 P. R. 45.

**COUNT.**—The word "count," in sec. 852 of the Criminal Code includes an information before a Justice for an indictable offence. R. v. Coolen, 36 N. S. R. 510; 8 C. C. C. 157.

Count in sec. 854 includes a charge reduced to writing by the magistrate and to which the defendant is called upon to plead as provided by sec. 778 (3) of the Code. R. v. Mah Sam, 15 W. L. R. 666.

**COUNTERFEIT.**—A paper which is a spurious imitation of a Government treasury note is a counterfeit although there is no original of its description. R. v. Corey, 1 C. C. C. 161. But genuine bank notes unsigned offered for sale by a person who represents them as counterfeits, are not counterfeits within the Code. R. v. Attwood, 20 O. R. 574.

**COUNTRY.**—The word "country" has, among others, the two following meanings, which require to be carefully distinguished: (1) A country, in what may be called the political sense of the word, means the whole of the territory subject to the sovereign power, such as France or the British Empire. (2) A country, in what may be called the legal sense of the word, meaning a territory (whether it constitutes the whole or a part only of the territory subject to one sovereign) is the whole of a territory subject to one system of law, e.g. New York or Ohio, Ontario or Quebec. If a defendant is, at the time of a judgment recovered against him, a subject of the "country" where the judgment is recovered he is bound by it. In Dakota Lumber Co. v. Rindernecht, 2 W. L. R. 275, an action was brought upon a judgment recovered in South Dakota. Defendant was born in Wisconsin, removed to South Dakota and executed the mortgage there and removed to the N. W. Territories and resided there when the judgment was recovered. It was held the action could not be maintained on the judgment in the N. W. T. See also Deacon v. Chadwick, 1 O. L. R. 346; Fowler v. Vail, 4 A. R. 267.

**COUNTY.**—The word "county" shall include two or more counties united for the purpose to which the enactment relates. Int. Acts. Canada and Ontario.

As used in the Canada Temperance Act it means the county as defined for municipal purposes and not for electoral purposes. R. v. Shavelear, 11 O. R. 727; and means the county as it existed when the Act was brought into force and not as afterwards altered. R. v. McMudlinz, 25 C. L. T. 108; 38 N. S. R. 129. *Semble*, where the territorial limits of the county for municipal purposes and the territorial limits for judicial purposes are not the same. R. v. Monteith, 15 O. R. 290.

Chapter 33, R. S. N. S., gives a county stipendiary magistrate jurisdiction throughout "the whole of the county." *Held*, this



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includes an incorporated town, and a magistrate for the county of Cape Breton has jurisdiction in Sydney. R. v. Giovanetti, 5 C. C. C. 157.

By an Act of incorporation the plaintiffs were given exemption from taxation if they located any of their works in any part of the county of Cape Breton, and it was held that the word "county" must be read as meaning the whole geographical area of the county including any city or town within its borders. Dominion Iron & Steel Co. v. City of Sydney, 37 N. S. R. 495.

**COUNTY COURT.**—In its application to the Province of Ontario includes District Court. Int. Act, Canada.

**COUNTY JUDGE.**—In the Extradition Act, R. S. C. ch. 155, sec. 9, "Judge of the County Court" includes the Junior Judge. In Re Parker, 19 O. R. 613. "I think that sec. 11 of ch. 138 R. S. C. is sufficient to shew that a Junior Judge of a County Court is a Judge of a County Court." Street, J. Re Garbutt, 21 O. R. 179.

A deputy County Court Judge, in the case of the illness of the County Court Judge, has jurisdiction to hold a recount of ballots in an election for the Provincial Legislature. Re Prince Edward Provincial Election (1905), 9 O. L. R. 463. See also Re Leibes v. Ward, 45 U. C. R. 375.

**COUPON.**—See McKenzie v. The Montreal and City of Ottawa Junction Ry. Co., 27 C. P. 224.

**COURT OF LAST RESORT.**—In the Supreme Court Act, R. S. C. ch. 139, sec. 36, the term "Court of last resort" means the highest Court of Appeal in the province in which the suit, action or proceeding has arisen. "Court of last resort" and "highest Court of last resort" are convertible terms and equivalent in meaning. Danjou v. Marquis, 3 S. C. R. 251; Barrington v. City of Montreal, 25 S. C. R. 202.

But no appeal lies to the Supreme Court from the judgment of a County Court Judge in Ontario, hearing an appeal from a municipal Court of Revision. City of Toronto v. Toronto Ry. Co., 27 S. C. R. 640. See also City of Halifax v. McLaughlin Carriage Co., 39 S. C. R. 174.

**COURT OF RECORD.**—A Court of Record is one whose acts and judicial proceedings are enrolled or recorded for a perpetual memory and testimony, and which have power to fine or imprison for contempt.

Division Courts are now Courts of Record. R. S. O. ch. 63, sec. 8. A Coroner's Court is a Court of Record, and the coroner is a Judge of a Court of Record. Davidson v. Garrett, 30 O. R. 653; 5 C. C. C. 200; Haney v. Mead (1898), 34 C. L. J. 330.

A district magistrate acting under the Speedy Trials Act acts as a Court of Record for all the purposes of the trial, and the proceedings connected therewith or relating thereto, although he does not retain the record, but files it in the Court of General Sessions. Ex p. O'Kane, Ramsay's Cas. (Que.), 188.

A police magistrate trying a prisoner with his own consent for an offence triable at a Court of General Sessions, does not constitute a Court of Record within the meaning of the Ontario Habeas Corpus Act, R. S. O. ch. 84. "I think the words 'a Court of Record' are intended to include only Superior Courts or principal Courts of Record, and not inferior Courts or less principal Courts of Record, and do not include any Courts of Record inferior to or less principal than the High Court of Justice." Per Armour, C.J. R. v. Gibson, 2 C. C. C. 302.

The County Judge's Criminal Court is a Court of Record. R. v. Murray, 1 C. C. C. 452.

The judgment of a superior Court of Record having general jurisdiction over the offence is *res judicata* as to questions of jurisdiction, as well as to all other objections. Re Sproule, 12 S. C. R. 140, 205.

**COUSINS.**—The *prima facie* meaning of "cousins," is first cousins only, i.e., children of uncles or aunts of the testator. Higginson v. Kerr, 30 O. R. 62.

**CREATED.**—In an action for an account a solicitor obtained a judgment of reference. The plaintiff then changed his solicitor. The result of the action was a recovery of $250. Boyd, C., held that the fund was "created" by the first solicitor, Meredith, J., contra. Ford v. Mason, 15 P. R. 392.

**CREDITOR.**—In the Money Lenders Act, R. S. O. ch. 175, "creditor" includes the person advancing the money lent and the assignee of any claim arising or security given in respect of money lent. For the extended meaning given to the word in the Ontario Insurance Act, see R. S. O. ch. 183, sec. 2 (18).

In the Benevolent Societies Act, R. S. O. 1897, ch. 211, sec. 12, the word creditor is to be read as equivalent to "persons to whom the member is indebted or to whom he is liable to pay money." *Semble*, the wife of a member having a judgment for alimony is a creditor. Slemin v. Slemin (1903), 7 O. L. R. 67.

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A liquidator is not a creditor and cannot take advantage of the provisions of the Bills of Sale Act and other like statutes. The doctrine of Street, J., to the contrary in Re Canadian Camera & Optical Co. (1901), 2 O. L. R. 677, not followed. Re Canadian Ship Building Co. (1912), 26 O. L. R. 564.

Before 55 Vict. ch. 26, it had been held that an assignee for the benefit of creditors could not claim in the capacity of creditor for any benefit from want of registration. Parke v. St. George, 2 O. R. p. 347, per Boyd, C.; Kitching v. Hicks, 6 O. R. p. 745, per Proudfoot, J.; Per Osler, J. And while an assignee in insolvency was held to be entitled to take advantage of the Act, that was so "decided upon the peculiar language of our late Insolvent Act." Per Osler, J., Kitching v. Hicks, citing Re Barrett, 5 A. R. 206; Re Andrews, 2 A. R. 24.

A plaintiff who has recovered a verdict in an action of tort, the entry of which has been stayed, is not a creditor. Burdett v. Fader (1903), 6 O. L. R. 532; 7 O. L. R. 72. The same rule applies where the verdict is recovered for money loaned. Scully v. Madigan, 4 O. W. N. 981; 1003.

A surety is not a creditor until he pays the money. Roe v. Smith, 15 Gr. 344; except in certain cases under the Assignment and Preferences Act.

A person having a right of action for a tort and subsequently recovering judgment is not a creditor until judgment is actually entered. Cameron v. Cusack, 17 A. R. 489, an action for seduction; Ashley v. Brown, 17 A. R. 500, an action for crim. con.; Gurofski v. Harris, 27 O. R. 201; 23 A. R. 717, an action of slander. In these cases the plaintiffs sought to attack a conveyance under the Statute of Elizabeth, or the Assignments and Preferences Act, and failed on the ground they were not creditors.

In the case of a deposit of money with a bank, the relation between the customer and the bank is that of creditor and debtor. Royal Trust Co. v. Molsons Bank (1912), 27 O. L. R. 441.

Though a solicitor cannot bring an action to enforce payment of his account until one month after a bill has been duly rendered, he is nevertheless a creditor of his client. MacPherson v. Tisdale, 11 P. R. 261. And as such he may bring an action to set aside a transaction by the client as being a fraud upon his creditors. Scane v. Duckett, 3 O. R. 370.

**CRIME.**—The proper definition of the word "crime," is an offence for which the law awards punishment. A crime or misdemeanour is an act omitted or committed in violation of a public law either forbidding or commanding it. This general definition comprehends both crimes and misdemeanours, which, properly speaking, are synonymous terms, though in common usage the word

crime is made to denote such offences as are of a deeper dye, while smaller faults and omissions of less consequence are comprised under the general name of misdemeanours. R. v. Roddy, 41 U. C. R. p. 298.

"Offences against provincial laws and local municipal by-laws may, I think, be called provincial crimes, notwithstanding the aversion to the use of the latter word for fear of coming in even seeming conflict with the provisions of sec. 91 (27) of the B. N. A. Act. So that many things which are in reality crimes, however much one may struggle to apply some other appropriate word to them, are created by provincial legislation." Copeland-Chatterson Co. v. Business Systems (1908), 16 O. L. R. p. 487.

V. Criminal Matters; Criminal Proceedings.

**CRIMINAL CHARGE.**—The words "involve a criminal charge" in the Libel and Slander Act, R. S. O. ch. 71, sec. 8 (*c*) mean "involve a charge that the plaintiff has been guilty of the commission of a criminal offence." Georgian Bay Ship Co. v. The World, 16 P. R. 320.

A corporation cannot be charged criminally with a crime involving malice or intention. *Ib.*

A statement in a newspaper that the plaintiff was an "unmitigated scoundrel," and that he had endeavoured to ruin his wife by inciting another person to commit adultery with her, does not involve a criminal charge. Bennett v. Empire Printing Co., 16 P. R. 63.

Where the Master in Chambers held the word "blackmail" involved a criminal charge, Meredith, C.J., said he was unable to say he was wrong. Macdonald v. The World, 16 P. R. 324. But see Macdonald v. The Mail Printing Co., 32 O. R. 163, under "Blackmail."

A defendant is not entitled to security for costs under the above Act where the words, if used in the sense alleged by the plaintiff, involve a criminal charge. If it is clear that the words cannot have such meaning then it may be different. Smyth v. Stephenson, 17 P. R. 374.

A trial and conviction for keeping liquor for sale contrary to the provisions of the Nova Scotia Temperance Act, 1910, are proceedings in a "criminal charge," within the meaning of sec. 39 (c) of the Supreme Court Act. Re McNutt, 21 C. C. C. 157; 47 S. C. R. 259; 46 N. S. R. 209.

**CRIMINAL LAW.**—The term "criminal law," in sec. 91 of the B. N. A. Act, is not to be tested by the severity of the sanction of the Provincial enactment so long as the latter is limited to fine, penalty or imprisonment; in other words, it cannot be

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argued that the thing prohibited is brought within the range of criminal law merely by reason of the high nature of the punishment which may be inflicted upon the offender, and therefore those cases in which that has been made the test of an act being a crime and the proceeding for its punishment a "criminal" as distinguished from a civil proceeding are of little or no assistance in construing this provision of the Constitutional Act. Reg. v. Wason, 17 A. R. 221, where an Act to provide against fraud in delivering milk to cheese factories, was held not to deal with criminal law, although it provided for fine and imprisonment.

The term must include every act or omission which was regarded as criminal by the law of the Provinces when the B. N. A. Act was passed, and which was not merely an offence against a by-law of a local authority. R. v. Shaw, 7 Man. R. 518.

The imposition of penalties for the purpose of enforcing the provisions of a provincial statute does not, in itself, amount to legislation on the subject matter of criminal law within the meaning of sec. 91 (27) of the B. N. A. Act. Hodge v. The Queen, 9 A. C. 117; Quong-Wing v. The King, 49 S. C. R. 440.

**CRIMINAL MATTERS.**—Where a writ of sequestration has been issued for contempt of Court an appeal from such order was held not to be a "criminal matter," within the meaning of sec. 91 (27) of the B. N. A. Act. The term covers only matters which are criminal in the strict meaning of the words, criminal matters such as are under the Act committed to the exclusive authority of the Parliament of Canada. It would not cover a penalty for the breach of a by-law. While contempt of Court is a criminal offence or matter, it is a provincial crime, one within the exclusive legislative authority of the Provincial Legislature. The Copeland-Chatterson Co. v. Business Systems Co. (1908), 16 O. L. R. 481.

Contempt of Court is a criminal matter, even when it affects the dignity of, or the administration of justice in, a provincial Court, and so not within the jurisdiction of the Provincial Legislatures. Ellis v. The Queen, 28 N. B. R. 497; 22 S. C. R. 7; Rex ex rel. Bawkes Letherby, 12 O. W. R. 703.

**CRIMINAL PROCEEDINGS.**—The violation of a public statute, when that violation is spoken of as an offence and is punishable by fine, or imprisonment as substitutionary for a fine, is a crime in law, and the proceedings taken against the party are criminal proceedings. In re Lucas and McGlashan, 29 U. C. R. p. 92.

The broad distinction between civil and criminal proceedings appears to be this: where the proceeding is conducted with the view and for the purpose of obtaining redress for the violation

of a private right only, the proceeding is a civil one: where the proceeding is directed for the punishment of an offence which militates against the general interest of the community at large, and is for the punishment of an infraction of some public duty, such proceeding is a criminal proceeding. Ib. p. 30.

A charge of selling liquor contrary to the Liquor License Act, is a criminal proceeding. R. v. Roddy, 41 U. C. R. 291.

A charge of unlawfully resisting and wilfully obstructing an official in making a distress and seizure is a "criminal proceeding" within sec. 2 of the Canada Evidence Act. R. S. C. ch. 145, R. v. Rapay, 5 Terr. L. R. 367.

**CRIMINATE.**—The benefit of the provisions of the Evidence Act, R. S. O. ch. 76, sec. 7, and the Canada Evidence Act, R. S. C. ch. 145, sec. 5, extends to an examination for discovery in a civil action. D'Ivry v. The World, 17 P. R. 387; Hall v. Gowanlock, 12 P. R. 604.

Where a witness claims the protection afforded him by the statute the party examining him is entitled to have the oath of the witness that he believes his answer would tend to criminate him. The privilege of protection belongs to the witness, and it is for the witness to claim the protection of the Court on the ground that the answer would tend to criminate him. Power v. Ellis, 6 S. C. R. 1; 20 N. B. R. 40.

**CROPS.**—In the Landlord and Tenant Act, R. S. O. ch. 155, sec. 2, "crops" mean and include all sorts of grain, grass, hay, hops, fruits, pulse and other products of the soil; and "standing crops" mean crops standing or growing on the demised premises.

Sec. 298 of the Railway Act (R. S. C. ch. 37) provides that "whenever damage is caused to crops, plantations or buildings and their contents" by fire from a locomotive, the company is liable. In this Act the word "crops" does not cover hay, or other crops, cut without the danger zone and brought within for the purpose of delivering it to a purchaser. The persons intended to be protected are the owners of land along the line of railway. Fraser v. Pere Marquette R. W. Co. (1908), 18 O. L. R. 589. The judgment of Riddell, J., in the Divisional Court, contains an elaborate discussion of the above section of the Railway Act, and of the word "crops."

**CROSS.**—Sec. 227 of the Railway Act (R. S. C. ch. 37) provides that the railway lines or tracks of any company shall not "cross or join" by or with any railway line or tracks other than those of such company without the consent of the Railway Board. The word "cross" in this section means the passing of the tracks

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of one railway on, over, or under the tracks of another by meeting at any angle, continuing at the same angle to the opposite side of the track crossed and immediately leaving the track crossed. Canadian Northern Ry. Co. v. Canadian Pacific Ry., 25 W. L. R. 212.

V. JOIN.

**CROSSING.**—A crossing is a part of the sidewalk within the meaning of the Municipal Act making the municipality liable for accidents arising from persons falling owing to snow or ice on the sidewalks. Drennan v. City of Kingston, 23 A. R. 406; 27 S. C. R. 46.

A pedestrian may cross a street at any point, but he has no right to expect a higher degree of repair than would render the street reasonably safe for vehicles. Belling v. City of Hamilton, (1902), 3 O. L. R. 318. See Ling v. Montreal, under "Sidewalk."

It is not actionable negligence to construct a sidewalk crossing at a level of four inches above the grade of the street. London v. Goldsmith, 11 O. R. 26; 16 S. C. R. 231; St. John v. Campbell, 33 N. B. R. 131; 26 S. C. R. 1.

A street running at right angles to the street upon which a car is being operated, though not an intersecting street, is a crossing within a rule directing motormen to shut off power "before reaching a crossing." Brenner v. Toronto Ry. Co. (1907), 13 O. L. R. 423.

The defendants were bound (57 Vic. ch. 76 Ont.) to sound a gong when a car approached each crossing. *Held*, Moss, J.A., that the term "crossing," as therein employed, was intended to indicate any place on or along the street occupied by the railway where there is a walk laid for the purpose of enabling foot passengers to cross from one side of the street to another, and where the cars stop to take up or let down passengers. Wallingford v. Ottawa Electric Ry. Co. (1907), 14 O. L. R. 383.

V. SIDEWALK.

**CROWN OFFICERS.**—The mere fact that the Lieutenant-Governor in Council appoints the Governors of the University of Toronto does not confer upon them the character of Crown officers. Scott v. Governors of University of Toronto, 4 O. W. N. 993.

**CRUELTY.**—Cruelty is the intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; or as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions.

In alimony actions legal cruelty does not necessarily depend on physical acts or threats of violence, but may arise from acts or conduct operating entirely upon the mental condition of the wife. If there is reasonable apprehension of danger to life, limb, or health, bodily or mental, it constitutes legal cruelty. Lovell v. Lovell (1906), 11 O. L. R. 547; 13 O. L. R. 569, 587.

In Moon v. Moon, 23 W. L. R. 153, it was held, following Russell v. Russell (1897), A. C. 395, that an unfounded charge of adultery does not amount to legal cruelty. But if such a charge affects the health of the party charged it may amount to cruelty. See Lovell v. Lovell, *supra*, for a discussion as to the effect of the judgment in Russell v. Russell.

Swearing at a wife, moroseness and unsympathetic conduct is not legal cruelty. Willey v. Willey, 18 Man. R. 298.

The Court scrutinizes very closely acts of alleged violence which grow out of headstrong and irritating conduct on the part of the wife. She will not gain the help of the Court when she misconducts hereself: provokes ill-treatment and then makes complaint that it is not safe to live with her husband. The Court will hesitate to call retaliatory acts thus provoked to be acts of legal cruelty unless the ill behaviour of the wife has been visited with intemperate and excessive violence by the incensed husband. Payne v. Payne (1905), 10 O. L. R. 742.

In considering the question of legal cruelty, the station in life of the parties must be borne in mind. Harris v. Harris, 3 Terr. L. R. 416; Lovell v. Lovell, 13 O. L. R. at p. 575.

A wife cannot set up acts of cruelty as a ground for alimony as long as she remains in her husband's house. Price v. Price (1910), 21 O. L. R. 454.

Cruelty, as a ground for divorce, must be such as to cause danger of life, limb or health, bodily or mental, or a reasonable apprehension of it. Edmonds v. Edmonds, 17 B. C. R. 28; 20 W. L. R. 541.

**CRUELTY TO ANIMALS.**—Pigeon shooting from traps is not cruelty to animals within the meaning of sec. 542 of the Criminal Code. Society for the Prevention of Cruelty to Animals v. Coursolles, 22 C. L. J. 304.

**CULVERT.**—*V.* BRIDGE.

**CURRENCY.**—Where a promissory note is payable in the United States, "currency" must be held to mean United States currency. Wallace v. Souther, 20 N. S. R. 509; 16 S. C. R. 717.

**CURRENT ACCOUNT.**—*V.* ACCOUNT CURRENT.

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**CURRENT ANNUAL EXPENSES.**—"The expression in the statute (Mun. Act) is 'current annual expenses,' which would cover salaries of officers, ordinary repairs and works of that kind, but not erecting an engine house or constructing extensive sewer works. The term 'current annual expenses' shews that it refers to that which must be provided for year by year, as distinguished from that which is to last for many years." Potts v. Corporation of Dunnville, 38 U. C. R. 96.

The cost of constructing a main drain and macadamizing a street was held not to be "ordinary expenditure." Cross v. City of Ottawa, 23 U. C. R. 288; or building a bridge across a river. Scott v. Peterborough, 19 U. C. R. 469.

**CURRENT EXPENDITURE.**—See Holmes v. Town of Goderich (1902), 5 O. L. R. 33; R. ex rel. Moore v. Hamill (1904), 7 O. L. R. 600.

**CURRENT MONEY OF CANADA.**—In a statute requiring a deposit to be made in current money of Canada, the term means gold coin or Dominion notes. In re St. Boniface Provincial Election, 8 Man. R. 474.

**CURRENT QUARTER'S RENT.**—See Langley v. Meir, 25 A. R. 372.

**CURRENT YEAR.**—See Vanier v. City of Montreal, Q. R. 15 K. B. 479, 39 S. C. R. 151.

**CURTILAGE.**—In its usual meaning "curtilage" is the enclosed space of ground and buildings immediately surrounding a dwelling house. It is distinct from farm and means more than "dwelling" or "residence" or "house." It is distinct from "garden" and from "lawn."

A testator gave a farm "and also the house wherein I live and the curtilage and buildings thereof." The residence and dwelling were enclosed, but adjoining the residence was a triangular piece of land on which was a barn. *Held*, this piece of land was included in the word curtilage and passed under the devise. Thompson v. Jose, 10 O. W. R. 173.

**CUSTOM.**—The Division Courts have no jurisdiction where "any toll, custom or franchise comes in question." Sec. 61 (a). What is here meant by "custom" is some legal custom by which the right or title to property is acquired or on which it depends, and not mere usages of husbandry, which are not "customs" in the strict legal signification of the word. Talbot v. Poole, 15 P. R. 99.

It is doubtful if a custom can be proved in Ontario, there being no time immemorial on which to found it. Grand Hotel Co. v. Cross, 44 U. C. R. p. 163.

*V.* USUAL CUSTOM.

**CUSTOMER.**—Where the defendants contracted to furnish information of the mercantile standing of the subscriber's customers, the word "customers" would include intending as well as actual customers. McLean v. Dun, 39 U. C. R. 551.

**DAMAGE BY REASON OF THE RAILWAY.**—*V.* BY REASON OF.

**DAMAGES.**—Alimony, when granted, is neither debt nor damages: Wheeler v. Wheeler, 17 P. R. 45.

Damages in alteration of the grade of a street by a railway company. See Toronto H. & B. Ry. Co. v. Kerner, 28 O. R. 14.

An action for injuries by collision with a motor vehicle is not an action for "damages" within sec. 49 (h) of the Limitations Act, R. S. O. ch. 75, "an action for a penalty, damages, or a sum of money given by any statute." It is an action upon the case under clause (g) of the same action. Maitland v. Mackenzie, 4 O. W. N. 109.

**DANGER.**—An accident policy exempted the company from payment if the insured was injured by a "voluntary exposure to unnecessary danger," and it was held this means a voluntary exposure to danger unnecessary to be done by the insured. A baggageman who was in the habit of frequently coupling cars was killed by so doing. *Held* not within the exemption. McNevin v. Canadian Pacific Ry. Accident Insc. Co. (1901) 2 O. L. R. 521; 32 S. C. R. 194.

**DANGERS OF NAVIGATION.**—A vessel struck a sunken rock, unknown to all parties, at the bottom of a harbour, which broke a hole in the bottom of the vessel, causing her to sink and damage her cargo. *Held*, a loss caused by the "dangers of navigation." Cluxton v. Dickson, 27 C. P. 170.

**DANGERS OF THE LAKE.**—Damage to a steamer by an accidental fire, not occasioned by lightning, is not within the term "dangers of the lake." *Quaere*, if the fire occurred from some cause closely connected with the use of steam while navigating the boat. Larned v. McRae, 1 U. C. R. 100.

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**DAY: DAYS.**—The day, according to our law, commences at midnight and ends the following midnight. Re Town of Thornbury and Co. of Grey, 15 P. R. 192.

In computing demurrage Sunday is to be included. The rule is that day and running days mean the same thing, viz., consecutive days, unless there be some particular custom to the contrary. If the parties wish to exclude any days from the computation they must be expressed. Gibbon v. Michael's Bay Lumber Co., 7 O. R. 746.

In computing a period of days, where a statute requires an act to be done in a stated number of days, fractions of a day will not be considered. Clarke v. Moore, 1 Alta. R. 49; McMartin v. McDougall, 10 U. C. R. 399.

Where an option was for thirty days and was signed at 4 P. M., it was held that the thirty days did not expire at 4 P. M. the last of the thirty days for which it was to run. "To treat the expression 'day' as meaning 24 hours, and 'days' as meaning consecutive periods of 24 hours, would add to the difficulties to be met with in determining the rights of the parties, the difficulty of ascertaining the exact hour at which the time began to run and the exact hour at which the act or thing to be done was done." Meredith, C.J.O. Beer v. Lea (1913), 29 O. L. R. 255.

In determining the priority of writs the Court will look to the fraction of a day. Beekman v. Jarvis, 3 U. C. R. 280; Converse v. Michie, 16 C. P. 167.

*V.* By the Day: Time.

**DAY'S SITTINGS.**—Schedule B. to the Arbitration Act, R. S. O. ch. 65, fixes the fees to arbitrators. "For every day's sittings to consist of not less than six hours, not less than $5, nor more than $10." The arbitrators worked more than six hours per day and charged one-sixth of $10 per hour. *Held*, they could not charge more than $10 per day, no matter how many hours per day they were engaged. Re Town of Thornbury and Co. of Grey, 15 P. R. 192.

**DEALING.**—Threshing grain at a price per bushel and ascertaining the quantity of grain threshed by cubic measurement is not a "dealing" within the meaning of sec. 24 of the Weights and Measures Act, R. S. C. ch. 52. Conn. v. Fitzgerald, 5 Terr. L. R. 346.

**DEBT.**—"Debt" is not restricted to a sum certain or capable of being reduced to a certainty by calculation, but includes a claim for value of goods sold where no price is mentioned. Henry v.

Magean, 5 Terr. L. R. 512. But it does not include a claim for the value of "two loads of hay which defendant agreed to deliver" on account of the purchase price of oxen and which he failed to deliver. Cosgrave v. Duchek, 3 W. L. R. 320.

A niece went to live with an uncle on a promise that if she would look after his household he would leave her all his property. *Held*, this constituted a "debt incurred by the deceased," and the amount should be deducted from the estate under the Succession Duties Act. Attorney-General v. Brown (1902), 5 O. L. R. 167.

The liability incurred by an accommodation indorser does not create a debt. Cockburn v. Sylvester, 1 A. R. 471, reversing 27 C. P. 34, which followed Re Coleman, 36 U. C. R. 559.

Alimony, when granted, is not to be classed either as a debt or damage, but is an allowance which a married woman is entitled to upon separation from her husband. Wheeler v. Wheeler, 17 P. R. 45; but see Slemin v. Slemin (1904), 7 O. L. R. 67.

A landlord distrained for rent and the tenant claimed damages for breach of a covenant to repair and to lease an adjoining piece of land, and asked for an injunction to restrain the distress, but it was held such damages were not a debt. Walton v. Henry, 18 O. R. 621.

Where an advertising contract gave a merchant certain space in a newspaper for $1,000, the space to be used any time in one month, and to be paid for whether used or not, and the merchant made an assignment for the benefit of his creditors before using the space. *Held*, this was not a debt payable *in futuro* and not provable against the estate. Mail Printing Co. v. Clarkson, 28 O. R. 326, 25 A. R. 1; Grant v. West, 23 A. R. 533. This was followed in Carswell v. Langley (1902), 3 O. L. R. 261, where it was held that the growing payments of an annuity were in the nature of contingent debts and the annuitant was not entitled to rank on the estate for the present value of such payments.

A deposit receipt issued by a bank had printed across it "not transferable." *Held*, a debt due by the bank and capable of being assigned under the provisions of R. S. Man. ch. 1, sec. 3. In Re Commercial Bank of Manitoba, Barkwell's claim, 17 C. L. T. 152.

A solicitor's claim for costs is a debt, although no bill may have been delivered. McPherson v. Tisdale, 11 P. R. 263.

A claim upon a covenant in a mortgage given to secure the proceeds of a sale of horses, less a fixed commission, is a "debt or liquidated demand" although an inquiry may be necessary to ascertain the amount. Stimson v. Hamilton, 1 W. L. R. 20.

In Wickett v. Graham, 2 O. W. R. 402, Morson, JJ., *held* that the remuneration of an alderman under a city by-law was

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not a debt and so not attachable; that it was "only an obligation to pay, arising out of, and by force of, the statute and by-law."

Fees payable to a juror do not constitute a debt. Phillips v. Austin, 3 C. L. T. 316.

Interest made payable by a note is part of the debt, and not damages for detaining the principal. Crouse v. Park, 3 U. C. R. 458; Howland v. Jennings, 11 C. P. 272.

The claim of a residuary legatee against the executors is not a debt, though, if the executor admits to the legatee that he holds any specific sum to the legatee's use, or as it is sometimes put, "assents to the legacy," the legatee might recover upon the common *indebitatus* count at law. Gilroy v. Conn, 3 O. W. N. 733.

The words "debt due" in sec. 92 of the Division Courts Act, (R. S. O. 1897) do not include damages in tort. Spencer v. Wright, 37 C. L. J. 245. (The limitation to a debt due, where a clerk or bailiff is suing, has been abolished.)

A claim by a servant, hired by the month, for wrongful dismissal in the middle of a month, does not fall within the meaning of the words "all claims and demands for debt." McNeilly v. Beattie, 4 Terr. L. R. 360.

V. Book Debts: Claim not Accrued Due.

**DEBT OR LIQUIDATED DEMAND.**—Con. Rule (1913), 33.

A claim for the price of land sold, but not conveyed, where the defendant alleged a mistake as to the land, is not a liquidated demand. Hood v. Martin, 9 P. R. 313.

A claim for an overdrawn account is liquidated if a date is fixed at which the account is overdrawn. Imperial Bank v. Britton, 9 P. R. 274; Ontario Bank v. Burk, 10 P. R. 648.

The amount of a foreign judgment is a liquidated demand. Solmes v. Stafford, 16 P. R. 78; 264, but interest upon a foreign judgment is recoverable only as unliquidated damages. *Ib.*

An action to recover the penalty on a bond with interest is unliquidated. Star Life Assurance Co. v. Southgate, 18 P. R. 151; also the claim against the sureties on an appeal bond to secure the costs of an appeal. Appleby v. Turner, 19 P. R. 145.

A claim for damages against an overholding tenant for double value is unliquidated. Magaan v. Ferguson, 29 O. R. 235; or to recover balance of advances overpaid. McIntyre v. Munn (1903), 6 O. L. R. 290. A claim upon a covenant in a mortgage to secure the proceeds of a sale of a horse is a debt or liquidated demand under Terr. Rule 384, although an inquiry may be necessary to ascertain the amount. Stimson v. Hamilton, 7 Terr. L. R. 281; 1 W. L. R. 20. So an action by one partner against another for a specific sum, although an account may be necessary to determine the exact sum due. Alexander v. Thompson, 1 Alta. R. 501; 8 W. L. R. 659.

Under the Bills of Exchange Act the interest allowed on a bill or note is liquidated damages. Jenkins v. Arnold-Fortescue, 19 C. L. T. 42.

An action against a J. P. to recover a deposit and an accounting for a claim placed in his hands for collection is neither a debt nor liquidated demand within the Nova Scotia County Court Act, McGillivray v. Conroy, 11 E. L. R. 111.

A storekeeper's account is a liquidated demand. Parkin v. Parkin, 7 W. L. R. 66.

"I think that in interpreting the words 'debt or liquidated demand,' one should not consider himself restricted to the cases which fall within the definition of debt under the common law system of jurisprudence. Whether or not an ordinary tradesman's account, where no specific prices are agreed upon, fall within the definition, it is clear that it is a 'debt or liquidated demand' under the Judicature Rules. So also a claim for work done on a *quantum meruit*, and a building contract, and on an untaxed solicitor's bill." Beck, J. Alexander v. Thompson, 8 W. L. R. 659.

The claim of an estate agent for commission for his services in finding a purchaser is a debt or liquidated demand. Van Ripper v. Bretall, 25 W. L. R. 162.

**DEBTS AND TESTAMENTARY EXPENSES.**—A direction by a testator to his executors to pay his debts and testamentary expenses does not include succession duties. Such duties are neither debts of the testator, nor testamentary expenses. Re Bolster (1905), 10 O. L. R. 591; Re Holland (1902), 3 O. L. R. 406; Manning v. Robinson, 29 O. R. 483.

**DEBTS ATTACHABLE.**—In the Supreme Court of Ontario and the County Courts all "debts owing or accruing" are attachable. Con. Rule (1913) 590. In the Division Courts it must be "a debt or money demand . . . due and owing," sec. 146.

A fair test of a debt being attachable is whether or not it could be the subject of a set-off. McNaughton v. Webster, 6 U. C. L. J. 17; McPherson v. Tisdale, 11 P. R. p. 263.

An attachable debt does not lose its character because a judgment has been recovered on it. McKay v. Tait, 11 C. P. 72.

Taxed costs are attachable. McPherson v. Tisdale, *supra*. So is money in the hands of an assignee for the benefit of creditors, even though a dividend has not been declared. Parker v. Howe, 12 P. R. 351.

Moneys owing by an insurance company, although unadjusted, were held attachable under former Con. Rule 935. Canada Cotton Co. v. Parmalee, 13 P. R. 308; but not in the Division Court. Simpson v. Chase, 14 P. R. 280. Where the policy provides that

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the loss is not payable until thirty days after the completion of the proofs of loss, it was held the money was not attachable until the completion of such proofs. Lake of the Woods Milling Co. v. Collin, 13 Man. R. 154. The amount due on a policy of insurance ascertained by an award was held attachable. Victoria Mutual v. Bethune, 23 Gr. 568; 1 A. R. 398.

In Alberta the amount due on an unadjusted insurance loss was held not attachable. Hartt v. Edmonton Steam Laundry, 2 Alta. R. 130.

Rent accrued but not payable is attachable. Massie v. Toronto Printing Co., 12 P. R. 12; but not if the tenant has attorned to the landlord's mortgagee. Parker v. M'Ilwain, 17 P. R. 84.

Surplus proceeds of a sale in the hands of a mortgagee are attachable. Mead v. Creary, 32 C. P. 1; and surplus money in the hands of a bailiff of a chattel mortgagee. Re Tomlinson v. Hunter, 2 O. W. R. 948; and money in the hands of a sheriff made under an execution. Re Smart and Miller, 3 P. R. 385; or in the hands of a Division Court clerk. Bland v. Andrews, 45 U. C. R. 431; or bailiff, Lockhart v. Gray, 2 C. L. J. 163; but see Otto v. Connery, 16 Man. R. 532, where money paid into a County Court for the benefit of one of the parties was held not attachable in the hands of the clerk. See also Ross v. Goodier, 5 W. L. R. 393. In these Manitoba cases, the decisions are based on the ground that a mere statutory duty to account for and pay over does not constitute a debt, obligation or liability. It remains simply a duty, performance of which may be enforced by the means provided by the statute.

Money due under an award and judgment of a Court is attachable. In Re Sato v. Hubbard, 8 P. R. 445, so the salary of a municipal officer. Wilson v. Fleming, (1901) 1 O. L. R. 599; wages of a police constable. Fallis v. Wilson, (1907) 13 O. L. R. 595; money actually in the hands of a receiver, but not money payable *in futuro*. Leeming v. Woon, 7 A. R. 42; See Stuart v. Gough, 15 A. R. p. 304. Also money that may be found due a plaintiff in a Mechanics' Lien action. Poucher v. Donovan, 19 C. L. J. 97.

An overdue negotiable note is attachable. Roblee v. Rankin, 11 S. C. R. 137. Exley v. Dey, 15 P. R. 353, is not opposed to this. In the latter case the garnishee was not the maker, but only the holder of the note, and Boyd, C., *held* the proper parties were not before the Court. The report at p. 405 shews the note was not yet due.

In British Columbia it was held that the debt represented by a note not yet due was attachable. Girard v. Cyrs, 5 B. C. R. 45. This is opposed to the Ontario cases. See Jackson v. Cassidy, 2 O. R. 521. In Alberta it was held a note not yet due was not attachable. Simpson v. Phillips, 3 Terr. L. R. 385.

The amount owing to a debtor as residuary legatee, although not ascertained or determined, was held attachable in McLean v. Bruce, 14 P. R. 190, but it is doubtful if it could be attached under the present rule which is not as wide as the rule in force when that case was decided. Gilroy v. Conn, 3 O. W. N. p. 733. In any event such a claim is not garnishable in the Division Courts. Hunsberry v. Kratz, (1903) 5 O. L. R. 635.

In Davidson v. Taylor, 14 P. R. 78, Osler, J., *held* that the judgment of the Judge who tries the case, with or without a jury, is an effective judgment on the day it is pronounced; and the damages awarded are attachable as a debt without the formal entry of the judgment. In Scully v. Madigan, 4 O. W. N. 981; 1003, where an action for money loaned had been tried and judgment directed to be entered, but the usual stay of 30 days granted, it was held the debt was not attachable—that a judgment on which a stay is granted for the purpose of appeal is not proof of a right of action. It is difficult to understand how a debt for money loaned loses its quality of a debt because judgment has been recovered upon it.

In Tate v. City of Toronto, 3 P. R. 181, the sum sought to be garnished was money awarded by arbitrators, part of it for work done under a contract and part for damages. The Court held the latter part not a debt until the award was made a judgment, but assumed the former part to be attachable. See also City of Toronto v. Burton, 4 P. R. 56.

Arrears of pension constitute a debt which may be attached; but unearned pension money cannot be reached either by that procedure or by appointment of a receiver. Trust & Loan Co. v. Gorsline, 12 P. R. 654; Slemin v. Slemin (1904), 7 O. L. R. p. 69.

The proceeds of chattels, exempt from seizure and sale under execution, voluntarily sold by a debtor, are attachable. Slater v. Rodgers, 2 Terr. L. R. 310.

**DEBTS NOT ATTACHABLE.**—Unliquidated damages are not the subject of attachment. Nothing but what can properly be described as a legal or equitable debt can be reached by that process. Stuart v. Gough, 15 A. R. 229. Claims for unliquidated damages cannot be attached until judgment, by which they become debts. Toronto v. Burton, 4 P. R. 56; Scully v. Madigan, 4 O. W. N. 1003; McIntyre v. Gibson, 17 Man. R. 423.

A verdict against an insurance company for unliquidated damages before judgment entered. Boyd v. Hayes, 5 P. R. 15; Hartt v. Edmonton Steam Laundry, 2 Alta. 130. *Semble*, even where the amount has been settled and adjusted so long as it is open to the company to apply the amount in rebuilding. Simpson v. Chase, 14 P. R. 280.



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A liability incurred under a bond. Griswold v. Buffalo Ry. Co., 2 P. R. 178.

A debt due to a trustee of the debtor—there must be a legal debt due by a legal debtor to a legal creditor. Boyd v. Haynes, 5 P. R. 15.

Amount owing on a note not yet due. Simpson v. Phillips, 3 Terr. L. R. 385; Jackson v. Cassidy, 2 O. R. 521.

A debt owing to two cannot be attached to answer a claim against one of the two. Re Smart, 3 P. R. 385; Parker v. Odette, 16 P. R. 69; Braun v. Davis, 9 Man. R. 534.

The interest of a residuary legatee is not attachable in the Division Court, and probably not under Con. Rule 590 (1913), which is much narrower than the former rule. Hunsberry v. Kratz (1903), 5 O. L. R. 635.

The interest of the debtor, being a share of the proceeds of the sale of a trust estate, is not attachable. Moneys which may or may not become due by a trustee to his *cestui que trust* are not debts. Stuart v. Gough, *supra;* McFadden v. Kerr, 12 Man. R. 487.

Dues and assessments payable by members of a benevolent society, being voluntary payments, are not debts. Wintemute v. Brotherhood of Railway Trainmen, 19 P. R. 6.

The salary of a police magistrate appointed by the Crown, but paid by a municipality. Central Bank of Canada v. Ellis, 20 A. R. 364. Fees payable to a juror. They are not a debt within the meaning of the Division Courts Act, and on ground of public convenience it would be mischievous to hold such fees attachable. Phillips v. Austin, 3 C. L. T. 316. The claim of a residuary legatee, if the amount has not been assented to by the executor, Gilroy v. Conn, 3 O. W. N. 732.

The treasurer of a municipality is not, as such, a "third person indebted or liable," and the municipal funds in his hands cannot be attached to answer the debt of the municipality. London & Canadian Loan Co. v. Rural Mun. of Morris, 9 Man. R. 431.

**DEBENTURE.**—Debenture means merely an instrument which shews that the party owes and is bound to pay, or, as more concisely put in Skeat's Dictionary, it is "an acknowledgment of a debt." Etymologically, debenture is but debt "writ large."

Debentures are negotiable instruments. The fact that they are sealed does not detract from their character, being rather that of promissory notes than of mortgages. Bank of Toronto v. Cobourg, etc., Ry. Co., 7 O. R. 1.

**DECISION.**—V. Opinion of the Court.

**DEEP-SEA FISHING.**—See The Queen v. Eldridge, 5 Exch. C. R. 38.

**DEDICATION.**—No right by dedication can be gained by the public passing over lands while the fee is in the Crown. R. v. Plunkett, 21 U. C. R. 536. But the property of the Crown may be dedicated to the public, and the presumption of dedication will arise on the same evidence that will prove dedication by a subject. The Queen v. Moss, 5 Exch. C. R. 30; 26 S. C. R. 322.

Where the owner of land registered a plan shewing a lane and sold some of the lots but afterwards repurchased them and fenced all the lots in with one fence, it was held this did not constitute a dedication. In re Morton and St. Thomas, 6 A. R. 323; so filing a plan shewing a street or lane does not, in the absence of user by the public, amount to dedication. Wright v. Winnipeg, 3 Man. 349; 4 Man. 46. But laying out lots and streets on a plan and selling according to such plan is dedication unless the fact of dedication is rebutted by other evidence. O'Brien v. The Village of Trenton, 6 C. P. 350; R. v. Boulton, 15 U. C. R. 272.

In order to constitute a dedication of a highway to the public by the owner of the soil there must be an intention so to dedicate, of which user by the public with his knowledge is evidence. Beveridge v. Creelman, 42 U. C. R. p. 36. There is no power to dedicate before the patent is obtained. *Ib.*

Placing a gate across the road is evidence to rebut the presumption of dedication, but it is not conclusive, for it may be shewn that the gate was placed on the road for a temporary purpose. Johnston v. Boyle, 8 U. C. R. 142.

The question of dedication or no dedication is a question for the trial forum. Belford v. Haynes, 7 U. C. R. 464.

The mere acting so as to lead persons into the supposition that a way is dedicated does not amount to a dedication, if there be an agreement that explains the transaction. O'Neil v. Harper (1913), 28 O. L. R. 635, where many of the earlier cases are collected. See Rideout v. Howlett, 12 E. L. R. 527, for a review of the New Brunswick cases.

The expression, contained in a deed, "to use as a public street or highway," was held not to be a dedication of the way to the public, but an illustration to what extent the grantee might use it. Plumb v. McGannon, 32 U. C. R. 8.

V. Assumed for Public User.

**DEEM: DEEMED.**—"If a Judge deems a decision previously given to be wrong," etc., Jud. Act, R. S. O. ch. 56, sec. 32 (3). "Deem the decision to be wrong" does not mean "have a suspicion that the decision may be wrong." "Deem" must mean something in the nature of a decree or judgment; and . . . I

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cannot say that my mind is so clearly convinced as to the law to deem, decree or adjudge the decision in Re M. to be wrong. Such being the state of my mind, I am bound by this decision. Per Riddell, J., In re Shafer (1907), 15 O. L. R. 273.

By the former Insolvent Act certain acts "are to be presumed to be made with intend to defraud." Wilson, J., "If the word had been *deemed* instead of *presumed*, the fact of the transaction having happened would alone have been evidence, and conclusive evidence, that it had been done in contemplation of insolvency." Campbell v. Barrie, 31 U. C. R. 279.

An agreement for the sale of timber provided that all logs "shall be deemed to be the property" of the vendors until the purchasers shall have paid, etc. *Held*, that the words "shall be deemed to be" were not equivalent to "shall be" when read with the rest of the document. "Generally speaking, when talk of a thing being deemed to be something, you do not mean that it is that which it is deemed to be. It it rather an admission that it is not what it is deemed to be, and that, notwithstanding it is not that particular thing, nevertheless, for the purposes of the Act, it is to be deemed to be that thing." Mutchenbacker v. Dominion Bank, 21 Man. R. 320; 13 W. L. R. 282; 18 W. L. R. 19.

"Deemed to be liquidated damages" means a conclusive presumption. Re Rogers and McFarland (1909), 19 O. L. R. p. 626.

The Nova Scotia Temperance Act provides that any person who shall offer for sale any intoxicating liquor "shall be deemed to have made an unlawful sale," etc. *Held*, that the true meaning of the word "deemed" as here used is that the fact of offering for sale shall be treated as *prima facie* evidence of an unlawful sale, leaving it open to the accused to shew there was no sale, or that the sale was within the exceptions of the Act. R. v. Fraser 45 N. S. R. 218.

In an action for damages for illegal seizure of horses under the conditions in a lien note, the defence was that the defendant had a right to seize under a term of the note giving the holder a right of distress at any time he "deemed himself insecure." The trial Judge held, on the evidence, that the defendant had no proper and sufficient reason to "deem himself insecure," and the distress was illegal. Peterson v. Johnston, 17 W. L. R. 597.

**DEEMED TO BE ABANDONED.**—The Mining Act, R. S. O. ch. 32, sec. 152 (2) provides that unless an appeal is set down, etc., it "shall be deemed to be abandoned." *Held*, that "deemed" means nothing less than "adjudged" or "conclusively considered" for the purposes of the legislation. Re Rogers and McFarland (1909), 19 O. L. R. 622. The case contains a review

of many English and American authorities where the word has been dealt with.

When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is resorted to.

A mining regulation provided that "a claim shall be deemed to be abandoned and open to occupation" when it remained unworked for a certain time, and it was held that upon the lapse of this time the claim became absolutely forfeited. Grant v. Treadgold, 4 W. L. R. 173.

**DEFAULT.**—Where a building contract provided that payments should be made only upon the certificate of the architect, "unless the architect is in default in issuing the same," it was held the word "default" meant the omission to do something which the architect was called upon to do. Alsip v. Robinson, 18 W. L. R. 39.

**DELAY.**—It is "delay," within the meaning of sec. 284 of the Railway Act, R. S. C. ch. 37, to ship goods by a longer route than necessary for the convenience and profit of the railway company. The railway company has no right to make any unnecessary deviation unless for the safe carriage of goods. Vernon Fruit Co. v. Canadian Pacific Ry., 12 W. L. R. 445.

**DELIVER IN.**—A policy of insurance contained a condition that the applicant was to "deliver in" certain particulars. Held, "deliver in" meant, having regard to other provisions in the contract, "deliver in writing." Davis v. The Scottish Provincial Insc. Co. 16 C. P. 176.

**DEMISE.**—The word demise is an effective word to convey an estate of freehold, and is of like import with and equivalent to the word "grant." An estate for life was held to be created by the words "demise and lease" to E. M. for life. Spears v. Miller, 32 C. P. 661. The words "demise" or "let" imply a covenant for quiet enjoyment. Bulmer v. The Queen, 3 Exch. C. R. 185; 23 S. C. R. 488.

**DEMISED PREMISES.**—Unless the words "demised premises" are used in a restricted sense, they will include all the property used by, or granted to, the lessee. In Re Jones v. O'Keefe, 26 O. R. 489; 23 A. R. 129, it was held the words were restricted by the context, so as to exclude a lane over which the lessee had a right to build.

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In the absence of any special provision in a lease of an unfurnished house, there is no liability on the part of the landlord for any accident which may happen in consequence of the premises being in a dangerous and unsafe condition. A radiator in one of the suites of an apartment block, heated by a general steam plant, is a part of the demised premises. McIntosh v. Wilson, 26 W. L. R. 91.

**DENOMINATION.**—*V.* Religious Denomination.

**DEPENDENT.**—The plaintiff married a man in ignorance that he had a wife living. He insured his life in a friendly society and the policy was made payable to her by name as his wife. *Held*, although not a legal wife, she was entitled to recover as a dependent, notwithstanding the conjunction of that word with a number of others importing relationship by blood or affinity. "Dependent" is one who is sustained by the member, or relies on the member for support or maintenance. Crosby v. Ball (1902), 4 O. L. R. 496.

The term "dependents" in the Workmen's Compensation Act, (B.C.), is not confined to dependents living within the Province. *Held*, that the deceased's father and mother, living in Austria, might be "dependents," but, in this case, the evidence did not shew they were depending on the deceased for maintenance. Re Varesick & British Columbia Copper Co., 5 W. L. R. 56; 12 B. C. R. 286. This case was overruled in Re Krzus & Crow's Nest Pass Coal Co., 17 W. L. R. 687, the Court of Appeal holding the Act did not apply to alien dependents.

**DEPOSIT.**—The word "deposit" is sometimes used to designate money lodged with a person as an earnest or security for the performance of some contract, to be forfeited if the depositor fails in his undertaking.

On an agreement for the sale and purchase of real estate, a deposit is a guarantee that the contract shall be performed. If the sale goes on, the deposit is applied in part payment of the purchase money for which it is deposited. A deposit, if nothing more is said about it, is a security for the completion of the purchase. In the event of the purchaser making default, the money is forfeited.

The position of a deposit is not changed by a subsequent sale by the original vendor, except that in an action of damages against the vendee, the amount of the deposit must be taken into consideration in reducing the damages.

Where a real estate agent was to be paid his commission "out of the purchase money," and the only sum paid by the proposed purchaser was $200 as a deposit, and the sale fell through

without the fault of the vendor, it was held the deposit was not purchase money and the agent could not recover any commission. Fletcher v. Campbell (1913), 29 O. L. R. 501.

See Re Barnett v. Montgomery, 5 O. W. N. 884.

It is well settled that by our law, following the rule of the civil law, a pecuniary deposit upon a purchase is to be considered as a payment in part of the purchase money, and not as a mere pledge. And notwithstanding that the contract provides for a forfeiture of the deposit in case of failure by the purchaser to carry out the contract "as liquidated damages," the Court will treat it as a penalty and grant relief from the consequences of such failure. Snell v. Brickles (1913), 28 O. L. R. 358; 49 S. C. R. 360.

*V.* FORFEIT: MONEY.

**DEPOSITING.**—The Franchise Act required a notice to be "deposited with or mailed to the Revising Officer." Leaving such notice with the clerk of the Revising Officer at his office was held to be sufficient. Re Simmons and Dalton, 12 O. R. 505.

**DEPOSITIONS.**—In sec. 1124 of the Criminal Code "depositions" include the caption to the depositions. R. v. McGregor, 2 C. C. C. C. 410.

**DEPOT.**—The word "depot" is used in the United States, and is used also in Canada as synonymous with station, as designating a building or buildings for the taking up and letting down of passengers, and also the deposit of goods. Goyeau v. Great Western Ry. Co., 25 Gr. 62.

**DEPUTY JUDGE.**—*V.* COUNTY JUDGE.

**DESCENDANTS.**—Descendant means children and their children and their children to any degree and is, in most instances, equivalent to "issue." A devise to "E. S. and to her descendants" gives an estate tail. But a bequest of $4,000 to J. S. "the said money to be for her descendants, and if she should die without leaving any living issue, then her share to go to my nearest living relatives," is an ineffectual attempt to make an estate tail of personal estate, and confers an absolute gift. Re Sutherland, 2 O. W. N. 1386.

**DESERTED.**—*V.* ABANDONED.

**DESIRE.**—A testator gave all his estate to his wife, adding: "It is my desire . . . that at her death she will divide the

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estate . . . among our children in the most just manner possible." The word "desire" was held not to constitute a precatory trust. The tendency of the more recent cases is not to construe such words as cutting down a previous absolute gift. Re Souiliere and McCracken, 4 O. W. N. 1092.

*V.* WISH.

**DESIST.**—The word "desist" in the Railway Act has the same meaning as "abandon," i.e., to leave off or discontinue. Whether voluntarily or compulsorily makes no difference; if the railway company cease operations, that is a desistment or abandonment, and the company must pay the landowner's costs. Re Oliver and Bay of Quinte Ry. Co. (1903), 6 O. L. R. 543.

**DETACHED DWELLING HOUSE.**—*Held*, per Meredith, C.J., that a three-suite apartment house, where the suites were intended to be separately let and occupied, would not constitute a breach of a covenant not to build "a detached house." Re Robertson & Dafoe (1911), 25 O. L. R. 286.

In Pearson v. Adams (1912), 27 O. L. R. 87, the Court held a six-suite apartment house was not "a detached dwelling-house." Middleton, J., said he would have "thought it clear that the building was in truth a series of separate buildings, attached, and separated" by partitions, but yielded to Robertson & Dafoe. The Divisional Cort reversed Middleton, J. The Court of Appeal reversed the judgment of the Divisional Court and restored the judgment of Middleton, J. 28 O. L. R. 154.

**DETAINED.**—In an action of detinue the word "detained" in a pleading means adverse detention, and in a declaration under the former C. L. practice meant "that the defendant withholds the goods and prevents the plaintiff from having possession of them." Bain v. McDonald, 32 U. C. R. 190.

**DEVIATE: DEVIATION.**—Mun. Act, 1913, sec. 458. The term "deviation" indicates a departure from some other course or way which might have been pursued at more or less inconvenience, and is inappropriate where there is none such to follow or deviate from. It is used in the Act as meaning a departure from the allotted road allowance in the boundary line where that is necessary for the purpose of obtaining a good line of road. Co. of Victoria v. Co. of Peterborough, 15 A. R. p. 627.

A road eight or nine miles in length wholly within one township, not substituted for any possible road on a boundary line, is not a deviation within sec. 458. Ib.

The Act applies only where the deviation has been made to obtain a good line of road, not in order to suit the convenience of either municipality. Re Brant and Waterloo, 19 U. C. R. 450. It applies where the purpose of the deviation is to avoid the expense of building bridges across a river. Tp. of Fitzroy v. Co. of Carleton (1905), 9 O. L. R. 686.

The deviating road must come back, and have been intended to come back, at some point in its course, to or at all events near to the original road deviated from. *Ib.* p. 694. And it matters not that one of the purposes of the deviation (in this case a way into the City of Hamilton), is fulfilled before going as far as that. Per Meredith, J.A. Co. of Wentworth v. West Flamborough (1912), 26 O. L. R. p. 203.

"Deviation" as used in railway legislation has received a liberal meaning as permitting a change of line from that laid down on the plans to a new line to deviate more than the prescribed distance—a changing of the site from one place to another. It is not to be restricted to a lateral variance on either side of such line, but may mean a change *de via* in any direction within the prescribed limits, whether at right angles to, or deflecting from, or extending beyond that line. Murphy v. Kingston & Pembroke Ry. Co., 11 O. R. 302.

Where a cargo is insured from one port to another without a provision for touching at intermediate ports, the fact that the ship remains six hours at one intermediate port and four days at another, constitutes a deviation in maritime law. Manheim Insc. Co. v. Atlantic & Lake Superior Ry. Co., 11 Que. K. B. 200.

**DEVOLVE.**—The word "devolve" in sec. 3 of The Devolution of Estates Act, R. S. O. ch. 119, is not to be used in the strict meaning of falling upon by way of succession, but in the sense of "passing to another." In re Booth's Trusts, 16 O. R. 429.

**DIE CHILDLESS.**—*Held* to mean "die not having children or a child living at the time of such death." Re Thomas and Shannon, 30 O. R. 49. See Gourley v. Gilbert, 12 N. B. R. 80; Vanluven v. Allison (1901), 2 O. L. R. 198.

**DIE WITHOUT ISSUE.**—A devise was to two sons "as tenants in common, subject, however, to this proviso, that if either should die without issue, his share as aforesaid shall revert to and become vested in the other son united with him in the aforesaid devise." *Held*, that although the words "die without issue" pointed to an indefinite failure of descendants, the context was sufficient to restrict the interpretation: that the devise was of a defeasible fee, and on the death of one son unmarried, became

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absolute in the other son. VanTassell v. Frederick, 27 O. R. 647; 24 A. R. 131.

A devise to B. but "in the event of . . . dying without issue, all her interest in my estate shall lapse." *Held*, "dying without issue" meant without a child being born; and therefore, on the birth of a child the devise became absolute. Re Johnston and Smith (1906), 12 O. L. R. 262.

Where a will contained a proviso that "should either of my two sons, R. and L., die without issue I wish that their shares should be divided among my surviving children," it was held the sons took an estate tail subject to an executory devise over. Little v. Billings, 27 Gr. 353.

But in Ashbridge v. Ashbridge, 22 O. R. 146, on a devise to two sons without limitation, adding "and in case either of my two sons should die without issue . . . then his share to go to the remaining survivor," Boyd, C., held that the gift in the earlier part of the devise without words of limitation carried the fee.

In a subsequent case where the words were, "If either of my daughters die without issue the portion of the deceased shall revert to the surviving daughter," Street, J., held this gave an estate in fee simple subject to an executory devise over in case of death without issue; and this was affirmed by the Supreme Court. Nason v. Armstrong, 22 O. R. 542; 21 A. R. 183; 25 S. C. R. 263.

In Re Fraser v. Bell, 21 O. R. 455, the words "die without leaving issue" were held not to mean an indefinite failure of issue.

**DIRECT TAXATION.**—*V.* TAX.

**DIRECT LINE.**—*V.* VIA DIRECT LINE.

**DISBURSEMENTS.**—*V.* ACTUAL DISBURSEMENT.

**DISMISSED.**—*V.* ACQUITTED.

**DISPOSAL.**—*V.* SALE AND DISPOSALS: DISPOSING OF.

**DISPOSE.**—The term "dispose," used alone, carries the meaning "to dispose of, to deal with in any way." The common meaning of "dispose of" in legal aspect, is "to make over or part with a thing by way of bargain and sale." A power to a life tenant to "dispose and deal with the property as fully as I could do if living" was held not to enlarge the life estate. Re Armstrong, 3 O. W. R. 627; 798.

A power to "dispose" of a pledge does not authorize the pledgee to purchase them at a sale thereof by auction of which notice was given to intending purchasers by circular. Campbell v. Berger, Q. R. 30 S. C. 86.

The word "dispose" can be applied in many ways. A man may dispose of his property or business by gift, exchange or sale; a person may have a disposing mind, as in making his will, meaning he is conscious of the act he is doing; a person may dispose of his grounds or books according to a certain plan or order; and a person may not be disposed to do a particular act, meaning that he is not inclined to do it. I have no idea that "dispose in any manner whatsoever" is confined to a sale, when the whole tenor and purport of the statute (Canada Temperance Act) points to a different construction. Wilson, C.J. R. v. Hodgins, 12 O. R. 367.

A power given to an executor to "sell and dispose of" any real estate, does not include an authority to exchange the lands of the testator for other lands. In re Confederation Life Association v. Clarkson (1903), 6 O. L. R. 606.

**DISORDERLY HOUSE.**—In sec. 773 of the Criminal Code the meaning of the term "disorderly house" is governed by the rule *noscitur sociis*, and is limited by the words which immediately follow it, "house of ill fame or bawdy house." It does not include a common gaming house. R. v. France, 1 C. C. C. 321 (Que.); R. v. Lee Guey (1907), 15 O. L. R. 235. The contrary has been held in British Columbia. Ex p. John Cook, 3 C. C. C. 72; R. v. Ah Sam, 12 C. C. C. 538. Both of these decisions were by a single Judge, while the France case was a decision by the full Court of Q. B. (Appeal side), and the Lee Guey case a decision by the Ontario Court of Appeal.

*V.* Bawdy House.

**DISPOSING OF.**—A lease contained a proviso "that in the event of the lessor disposing of the factory" the lessees would vacate on notice. *Held*, that an agreement for the sale of the factory, not enforceable under the Statute of Frauds, was a "disposing of." Gold Medal C. v. Lumbers, 26 A. R. 78; 30 S. C. R. 55.

An Act provided that no raw hides "shall be offered for sale or sold" before inspection; and that every purchaser of such hides shall cause them to be inspected "before selling or disposing of them in any way whatever." *Held*, that manufacturing the hides into leather was not a "disposing of" them within the meaning of the statute; that the term was synonymous with selling, and referred to trafficking by barter or exchange, and not to a conversion of them by tanning into leather. Oliver q. t. v. Hyman, 30 U. C. R. 517.

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**DISQUALIFICATION OF MAGISTRATE.**—V. INTEREST.

**DISTRACTION OF COSTS.**—"Distraction of costs" as provided for in sec. 553 of the Code of Civil Procedure of Quebec, means the diverting of costs from the client or party who would in the ordinary course be entitled to them, and their ascription to his solicitor or other person equitably entitled; and such solicitor is entitled to recover such costs in his own name without the intervention of his client. Hutchinson v. McCurry (1902), 5 O. L. R. 260.

**DISTURBING.**—The statute speaks of "disturbing the inhabitants." The conviction is, that the defendant, by a noise, "created a disturbance." Are these equivalent terms? I think not. Disturbing the inhabitants is annoying them—as by making a noise which interferes with the thoughts or proceedings of others. But creating a disturbance applies either to raising a clamour, commotion, quarrelling or fighting. The former seems to apply to the comfort or convenience of the inhabitants—the latter to a breach of the peace or something like it. Wilson, C.J. R. v. Martin, 12 O. R. 800.

**DIVIDE: DIVISION.**—An agreement that the profits are to be "divided," in the absence of any other evidence, means that they are to be equally divided. Bindon v. German, 4 O. W. N. 1505.

**DIVIDEND FROM THE ESTATE.**—See McMaster v. King, 3 A. R. 106.

**DIVISIBLE PROFITS.**—Divisible profits are the profits which a firm or corporation, after making in good faith all reasonable and proper provision for its safety and property, divide among the parties entitled to such profits. Bain v. Aetna Life Insc. Co., 21 O. R. 233.

V. ENTIRE PROFITS.

**DOCUMENT.**—A report of a railway accident prepared by the company's motorman or conductor at the time of the accident, such report being required from them in the ordinary course of their duties, is a "document" within the meaning of the Civil Code of Procedure (Que.) and must be produced. Feiglman v. Montreal Street Ry. Co., 13 Que. P. R. 353; 3 D. L. R. 125; Stocker v. Canadian Pacific Ry., 5 Que. P. R. 117; Savage v. Canadian Pacific Ry., 15 Man. R. 401; 16 Man. R. 381.

"A document" in sec. 62 (*d*) of the Division Courts Act may be read in the plural, and the increased jurisdiction is given where

proof has to be made by the production of two or more documents. Slater v. Laberree (1905), 9 O. L. R. 545; McIlhargy v. Queen, 2 O. W. N. 364.

Photographs are documents subject to production. Fox v. Sleeman, 17 P. R. 492. A summons by a Justice of the Peace is a "document containing an accusation" within the meaning of sec. 454 of the Criminal Code. R. v. Cornell, 8 C. C. C. 416.

For the meaning of "document" within the Custody of Documents Act, see R. S. O. ch. 125, sec. 2.

**DOING BUSINESS.**—Defendants agreed with M. to supply him with and give him the sole right to sell their goods in Halifax on commission, all monies and securities to be defendants' property and unsold goods to be returned. Under this arrangement it was held the defendants were not doing business in Halifax. City of Halifax v. McLaughlin Carriage Co., 39 N. S. R. 403; 39 S. C. R. 174.

An insurance company having its chief office in Montreal, but insuring property outside of the city only, was held to be "doing business in Montreal." City of Montreal v. Union Mutual Fire Insc. Co., 21 C. L. T. 52.

"Carrying on business within the jurisdiction" means actually carrying on a trade or business either in person or by agents so engaged, with an office or place of business, and does not cover the case of an agent sent into the province to carry on negotiations for sales of their goods, or even a person residing in the province appointed for the same purposes. In one sense it is doing business in the province, but only in the same way as if they had done the business by letters and correspondence. Here the business was confined to one transaction, and the agent was employed for that alone. Halifax Hotel Co. v. Canadian Fire Engine Co., 2 E. L. R. 277.

A company incorporated under the Ontario Act and carrying on business in Ontario was held to be "doing business in Canada" within the meaning of the former Winding-up Act. See however sec. 6 of the present Act, R. S. C. ch. 144. Re Ontario Forge & Bolt Co., 25 O. R. 407.

**DOMICILE.**—In a strict and legal sense, that is properly the domicile of a person where he has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. Story, Conflict of Laws.

A person may have more than one residence, but as a general rule he cannot have two domiciles. Cartwright v. Hinds, 3 O. R. p. 395; Wanzer Lamp Co. v. Woods, 13 P. R. p. 515.

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The domicile of origin must prevail until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicile and acquiring another as his sole domicile. The acquisition of a new domicile involves two facts—residence in a new country and intention permanently to reside there. *Held*, in this case, the defendant had never acquired a domicile in the United States. Magurn v. Magurn, 3 O. R. 570; 11 A. R. 178.

There is no safe ground for distinction between domicile for succession, and for matrimonial purposes, or a domicile by residence. *Ib.* per Hagarty, C.J.

In McConnell v. McConnell, 18 O. R. 36, it was held a change of domicile had been established; in Wanzer Lamp Co. v. Woods, 13 P. R. 513, it had not.

In a case of nicely balanced circumstances the declaration of the party, made in good faith, of his election to make the one place rather than the other his home is considered sufficient to turn the scale. Jones v. St. John, 30 S. C. R. 122.

The domicile of the husband is the domicile of the wife; and the fact that a man removes to the United States affords no ground for the wife refusing to return to his domicile. Edwards v. Edwards, 20 Gr. 392; Macdonald v. Macdonald, 5 C. L. J. 66.

In order that a man may change his domicile of origin he must choose a new domicile by fixing his sole or principal residence in a new country with the intention of residing there for a period not limited as to time. *Held*, in this case, the defendant had acquired a domicile of choice in Ontario. Bonbright v. Bonbright (1901), 1 O. L. R. 629; 2 O. L. R. 249. R. v. Townsend, 5 C. C. C. 142.

The presumption of law is against the intention to abandon the domicile of origin; and such abandonment is not to be inferred from a lengthened absence. Residence in a foreign country for the mere purpose of trading does not, by length of residence alone, create a new domicile. Wanzer Lamp Co. v. Woods, 13 P. R. 514.

V. Residence: Temporarily Domiciled.

**DONATIO MORTIS CAUSA.**—A *donatio mortis causa* is a gift made by a person in sickness, who, apprehending his dissolution near, delivers or causes to be delivered to another the possession of any personal goods, to keep as his own in the case of the donor's decease.

It differs from a legacy (1) it need not be proved and cannot be proved as a testamentary act; (2) it requires no assent or act on the part of the executor to perfect the title of the donee. It

differs from a gift *inter vivos* (1) it is ambulatory, incomplete and revocable during the donor's lifetime; (2) it is liable to the debts of the donor upon a deficiency of assets.

It is a gift of personal property by a person in peril of death, upon condition that it shall presently belong to the donee in case the donor shall die, but not otherwise. To make the gift effective, there must be a delivery of it to the donee or his agent, subject to be defeated by revocation or recovery. The delivery must be such as to indicate on the part of the donor a present determination to part with all dominion over the gift. Hagarty, C.J. Rupert v. Johnston, 40 U. C. R. 17.

Where the delivery is to a third person for the use of the donee, such third person must not be a mere trustee, agent or servant of the donor. The assent of the donee, or even his knowledge, is not requisite. Walker v. Foster, 32 N. S. R. 156; 30 S. C. R. 299.

Any evidence which is sufficient to prove a claim against an estate is sufficient to prove a *donatio mortis causa*. In Re Reid (1903), 6 O. L. R. 421. The corroborative evidence may be circumstances or fair inferences from facts proved. The evidence of an additional witness is essential. McDonald v. McDonald, 35 N. S. R. 205; 33 S. C. R. 145.

To constitute a valid donation there must be sufficient words of gift and an act. Delivery of property to one who is executor is not necessarily by way of donation. Blain v. Terryberry, 9 Gr. 286.

A delivery of the key of a trunk containing a deposit receipt, held not sufficient, the trunk not being in the possession of the donee. McCabe v. Robertson, 18 C. P. 471; so the delivery of the key of a cash-box containing a promissory note, but the box remaining as much in the donor's possession as before the gift. Young v. Derenzy, 26 Gr. 509.

The delivery of the keys of a cash-box, then in the hands of the donor's solicitor, and of two rooms in which were securities, with appropriate words of gift, were held insufficient. Hall v. Hall, 20 O. R. 684; 19 A. R. 292. But the delivery of the keys of a desk containing the property were held sufficient in Walker v. Foster, 30 S. C. R. 299.

A gift of a bank deposit book, with a view of giving to the donee the whole sum secured by it, is a good *donatio mortis causa*, and though incomplete the Court will compel the completion of it by the executors. Brown v. Toronto General Trusts Corpn., 32 O. R. 319. In Re Reid (1903), 6 O. L. R. 421; Perry v. Thorne, 35 N. B. R. 398.

In Tiffany v. Clarke, 6 Gr. 474, it was held that a mortgage security cannot be the subject of a *donatio mortis causa*. But

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see the remarks of Spragge, C.J.O., in Re Murray, 9 A. R. 369. And in Ward v. Bradley (1901), 1 O. L. R. 118, although the claim failed, it seems to have been assumed that mortgages can be the subject of donation. See also Travis v. Travis, 8 O. R. 516; 12 A. R.438.

As to what amounts to delivery see Travis v. Travis, *supra*: Ward v. Bradley, *supra;* Hall v. Hall, *supra;* Brown v. Davy, 18 O. R. 559; Charlton v. Brooks (1903), 6 O. L. R. 87.

If the intention of the donor is to make an absolute and unconditional gift, it cannot operate as a *donatio mortis causa.* There must be revocability. Where a mortgagee, then being very ill, handed a mortgage and some title deeds to the defendant, telling her they were for her and that he would execute an assignment of the mortgage to her if it was prepared, and he died before the assignment was executed, it was held this was an incomplete and ineffective gift *inter vivos* and not a *donatio mortis causa.* Ward v. Bradley, 1 O. L. R. 118.

As to evidence to prove delivery, see Attorney-General for Ontario v. Page, 6 O. W. N. 228.

**DONE IN PURSUANCE OF THIS ACT.**—The improper construction of a culvert across a road is something "done in pursuance of this Act" within the meaning of sec. 66 of the Toll Roads Act, R. S. O. ch. 210. Webb v. The Barton Stoney Creek Road Co., 26 O. R. 343.

**DOWER.**—A widow's right to dower is not derived by assignment or transfer from her husband, but is a right conferred on her by law, arising out of the marriage relation and the seisin of the husband. A wife of a mortgagor is not an "assign" within the meaning of the power of sale in the Short Form Act, and notice of exercising power of sale is not required. Re Martin v. Merriott (1901), 3 O. L. R. 284.

Construed as meaning one-third absolutely. Re Manual (1906), 12 O. L. R. 286.

**DOWN PAYMENT.**—*V.* CASH PAYMENT.

**DREDGE.**—A dredge is not a ship or vessel within the Maritime Jurisdiction Act of 1877. The Nithsdale, 15 C. L. J. 268.

**DRESSED ON ONE SIDE ONLY.**—Sawn boards or planks which have been dressed on one side only by a machine, which not only dresses them on one side, but at the same time reduces them to uniform widths, have not been subjected to such "further manufacture" as would bring them within the exception from free duty entry under item 504 of the Customs tariff. The Fess Lumber Co. v. The King, 47 S. C. R. 130; 14 Exch.; C. R. 53.

**DRUG OR MEDICINE.**—Tobacco is not a drug or medicine within the exception of the Lord's Day Act, C. S. U. C. ch. 104, sec. 1. Because the Act permits the sale of drugs and medicines it does not permit the sale of ordinary food or luxuries by shewing, by an expert, that the thing sold or its main ingredient, has some medicinal properties. R. v. Wells (1911), 24 O. L. R. 77. This decision will probably be followed in preference to R. v. Lee, 17 C. C. C. 190, a judgment of Morson, J.J., to the contrary.

**DRUGS OR OTHER NOXIOUS THINGS.**—Criminal Code, sec. 305. "In my opinion, the requirements of the enactment in question are satisfied if the substance administered or supplied be a drug: if not a drug, it must, of course, be proved to be a noxious thing, and, in my opinion, noxious in the quantity administered or to be taken." Meredith, J.A., R. v. Scott, 3 O. W. N. 1167.

**DRUNKENNESS.**—See 28 C. L. J. 269.

**DRY GOODS.**—The term "dry goods" in that part of the Municipal Act relating to hawkers does not include clothing ordered to be manufactured from cloths, samples of which are exposed, with a view to solicit orders. R. v. Bassett, 12 O. R. 51.

**DUE.**—The word "due" has a variety of meanings depending on the connection in which it is used. It has been generally defined to be that which is owed, that which custom, statute or law requires to be paid. The question which the Courts have most frequently to deal with in regard to the meaning of this term is whether it signifies that a debt is owing and payable or merely owing. In the commercial and popular acceptance of the word, when employed particularly or adjectively after "debt" without adding some verb or participle denoting future time, it is equivalent to "payable at the present time," i.e., "due" is a synonym of "payable." The term in its actual acceptation signifies not only that the time of payment has expired, but that the debt is unpaid. D'Hart v. McDermaid, 9 E. L. R. 183.

A railway contractor assigned "all moneys due under my contract . . . as shewn by the estimates hereto annexed." *Held*, the words "moneys due" were not used in the sense of presently payable, but included moneys owing, though not presently payable. Re Bunyan and Canadian Pacific Ry. 5 O. W. R. 242.

*V.* Due or Accruing Due.



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**DUE COMPENSATION.**—"Due compensation" within the meaning of sec. 325 of the Municipal Act, 1913, means a full indemnity in respect of all pecuniary loss by reason of the exercise of the powers of the corporation. The only subjects of such pecuniary loss are: (1) the lands actually taken; and (2) the injury to the leasing or selling value of what is left. The injury must be to the land itself, and must be such as affects its value—nothing is allowed upon merely sentimental or aesthetic grounds. Re Macdonald and Toronto (1912), 27 O. L. R. 179.

**DUE INQUIRY.**—See Hands v. The Law Society of Upper Canada, 17 O. R. 300, 17 A. R. 41.

**DUE OR ACCRUING DUE.**—Salary payable monthly is not "due" before the end of the month, nor is any part of it "accruing due" until the month has expired, where the liability of the employer is contingent upon the completion of the month's service. An attaching summons served the last day of the month was discharged. Main v. McInnis, 4 Terr. L. R. 517.

When the damages claimed do not depend on any computation of indebtedness, but simply in the view a Judge or jury might take of the loss by a defendant's acts, all that exists is a bare right of claim, by action, in respect of the alleged wrong, and no sum can be said to be due or owing. McIntyre v. Gibson, 8 W. L. R. 202.

**DUE NOTICE.**—A plea that the plaintiff had "due notice" of an assessment is sufficient in pleading. Smith v. Mutual Insc. Co. of Clinton, 27 C. P. 441.

In a defence to an action on a note, an allegation "of all which the plaintiff had due notice," imports such notice as will constitute a good ground of defence—notice at the time the plaintiffs received the note. Ontario Bank v. Gibson, 3 Man. R. 406; 4 Man. R. 440.

**DUE TO CALVE.**—The words "due to calve" in themselves do not import a warranty that the cow is in calf. They are synonymous with "reckoned upon as arriving," that is, "I expect the cow to calve on the day named. . . . I think she is pregnant, and reckon upon her having a calf by that day."

The words may import a warranty, if both parties understood them in that sense, or if the vendor knows that the purchaser so understands them. Wilson v. Shaver (1912), 27 O. L. R. 218.

**DULY.**—Whether a thing was or was not duly done is a matter of law and not of fact. McKenzie v. Dewan, 36 U. C. R. p. 529.

A statute required a certificate that a married woman "was examined apart from her husband." The certificate produced stated that she had been "duly examined." *Held*, insufficient. Stayner v. Applegate, 8 C. P. 133.

An allegation in a pleading that a chose in action was "duly assigned" is sufficient. Cousins v. Bullen, 6 P. R. 71.

A return by a bailiff that he had served "duly certified" copies of an election petition is sufficient. It need not state by whom the copies were certified. Beauharnois, E.C., 27 S. C. R. 232.

"Entry duly made." See Re Sprouted Food Co., 6 O. W. R. 514.

**DURING THE TRIAL.**—Criminal Code, sec. 1014. The trial ends with the verdict of the jury, and an application for a reserved case must be made before verdict. Ead v. The King, 13 C. C. C. 348. See the Editor's notes at p. 367.

*V.* Trial.

**DUTIABLE VALUE.**—*V.* Aggregate Value.

**DWELLING.**—See Gouinlock v. Manufacturers Mutual Insc. Co., 43 U. C. R. 563.

A grant or devise of a dwelling or house includes not only the curtilage, but also a garden attached to the house and any buildings forming part of or appertaining to the messuage. Re Stokes (1910), 21 O. L. R. 464.

A dwelling-house does not lose its character as such from the fact that it is occupied by one or more lodgers. Mahomed v. Anchor Fire & Marine Insc. Co., 17 B. C. R. 517; 48 S. C. R. 546.

*V.* Detached Dwelling House.

**DWELLS OR CARRIES ON BUSINESS.**—*V.* Carry on Business.

**DWELT.**—*V.* Last Dwelt.

**EARNINGS.**—*V.* Wages: Personal Earnings.

**EARTH FILLING.**—*V.* Buildings and Erections.

**EFFECTS.**—"Effects" is sufficient to pass realty, in a residuary disposition, which directs the balance of personal property to be given to one, and, "if there be any effects possessed by me at the time of my decease," the same to be given to another. Hammill v. Hammill, 9 O. R. 530.

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Where a testator gave to A. his "mill, tannery, houses, lands, and all my real estate, effects and property whatsoever" at a certain place, and otherwise dealt with personalty, the word "effects" was held to be restricted to the realty. Thorne v. Parsons (1902), 4 O. L. R. 682; 33 S. C. R. 309.

In a bequest of "clothing, wearing apparel and personal effects," the word "effects" was held to be limited to wearing apparel and a watch. Re Pink (1902), 4 O. L. R. 718.

V. Personal Effects.

**EFFECTUAL IN LAW.**—The words "effectual in law," in sec. 70 (10) of the Registry Act, R. S. O. ch. 124, means effectual in law for any purpose, and not as notice. Re Henderson and City of Toronto, 29 O. R. 669.

**EFFECTUALLY PROSECUTE.**—In an assessment of damages on an appeal bond, the appellant having discontinued: *semble*, "effectually prosecute" does not mean to prosecute to a successful issue, because the respondents would not, in that event, be damnified. Hughes v. Boyle, 5 O. R. 395.

In an action on a bond to prosecute a replevin suit "without delay," where, after verdict, and on a motion for a nonsuit on leave reserved, the Court held it had no jurisdiction, it was held this was not a successful termination of the suit. Welsh v. O'Brien, 28 U. C. R. 405.

To prosecute with effect, means to prosecute to judgment and to succeed in the result. Johnson v. Parke, 12 C. P. at p. 182; International Bridge Co. v. Canada Southern Ry. Co. 9 P. R. 250.

**EFFICIENT.**—The word "efficient," as applied to a medical practitioner in a statement of claim for damages for his unskilful treatment of the plaintiff, was held to be ambiguous, inasmuch as it might be taken to mean that the defendant was merely competent, or that he was not only competent, but would, in fact, skilfully treat, and the statement of claim was, therefore, held to be embarrassing. Schiller v. Canada North-West Coal & Lumber Co. 1 Terr. L. R. 421.

**EITHER PARTY.**—A Rule provided that "either party" might give notice of trial. *Held*, that "either party" might be read "any party," so that one of several defendants could give notice of trial. McLean v. Thompson, 9 P. R. 553; Tinning v. Grand Trunk Ry. 11 P. R. 438.

**EMBARRASSING.**—The meaning of "embarrassing," as applied to pleadings, is to bring forward a defence which the defendant is not entitled to make use of. Stratford Gas Co. v. Gordon, 14 P. R. 407; Bristol v. Kennedy, 4 O. W. N. 537.

**EMBLEMENTS.**—"Emblements" is the right which the law gives to a tenant, or his representatives, to reap in peace the crop which he has sowed when the tenancy has been determined by death or otherwise unexpectedly from a cause beyond the tenant's control.

Where there is a stipulation in a lease as to away-going crops, all questions as to customary right to such crops is excluded. In this country, such a custom must be one by prescription and not mere usage. Burrows v. Cairns, 2 U. C. R. 288; Kuntz v. White, 19 C. P. 36.

When a mortgagee enters into possession under an overdue mortgage, the crops on the land become part of the security, even against a chattel mortgagee. Bloomfield v. Hellyer, 22 A. R. 232.

A tenant at will is entitled to the emblements, if the landlord terminates the lease after the grain is sown. Argles v. McMath, 26 O. R. at p. 246. As to the Quebec law, see Pickham v. Parizeau, 39 Que. S. C. 9.

**EMERGENCY.**—The word "emergency" in sec. 6 of the Lord's Day Act, R. S. C. ch. 153, must be given an elastic and varying meaning according to the circumstances, especially in the case of vessels engaged in the coasting trade in dangerous waters, where conditions of wind, tide and weather must be carefully considered, so as to insure, as far as possible, the safety of the vessel and those on board. Murray v. Coast Steamship Co. 22 W. L. R. 572; 8 D. L. R. 378.

The term "in cases of emergency," in Con. Rule (1913) 211, means a sudden or unexpected happening, an unforeseen occurrence or condition. Capital Mfg. Co. v. Buffalo Specialty Co., 3 O. W. N. 553.

**EMPLOYEE.**—By sec. 7 of the Wages Act, R. S. O. ch. 143, the wages of "a mechanic, labourer, clerk or employee" to the extent of $25 are exempt from attachment. The term is a commonplace one to designate the relation or situation of a class of persons who are not precisely menial servants, but whose whole time and services are employed and paid for by another person.

A Medical Health Officer, whose duties are prescribed by statute, is not an employee. Re Macfie v. Hutchinson, 12 P. R. 167.

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See Gowans v. Barnett, 12 P. R. 330, where Armour, C.J., held a solicitor was an employee, and Falconbridge, J., held he was not. This was under the former A. J. Act, which allowed the examination of any clerk or employee of a judgment debtor.

The Railway Act provided for notice of action to "any officer, employee or servant." *Held,* that a contractor with the Minister of Railways for the construction of a branch line was not an employee. Patterson, J.: "The word, as used in the statute, means, in my opinion, 'servant' and nothing more. It is, perhaps, inserted to save the feelings of those servants who do not like to be called servants, or by way of concession to the tendency of the day to understand the word servant as expressive only of service of a lower *quasi* menial grade." Kearney v. Oakes, 20 N. S. R. 30; 18 S. C. R. 148.

An Act provided that "no extra salary . . . shall be paid to any deputy-head, officer or employee" in the civil service. *Held,* that reporters on the Hansard staff are within the statute. Bradley v. The Queen, 5 Exch. C. R. 409; 27 S. C. R. 657.

A mining employee who has gone out on strike with others, but has not been discharged and is still privileged to return to his work, is an "employee" within the meaning of sec. 60, ch. 20, 6-7 Ed. VII., the Industrial Disputes Investigation Act. R. v. Neilson, 17 C. C. C. 298.

**EMPLOYMENT.**—The president of an insurance company resided outside the city, but attended daily at the company's office in the city for the purpose of signing policies and such other business as was assigned to him. *Held,* that was an "employment within the city" within the meaning of "The St. John Assessment Act, 1882." Ex p. Tucker, 4 C. L. T. 504.

*Quaere,* whether the word "employment" used in the bribery clauses of the Election Act refers to an indefinite hiring, or would include a mere casual hiring. West Peterboro, H. E. C. 274.

**ENCOUNTER.**—In the statutory definition of a prize fight (Criminal Code, sec. 31) as an "encounter or fight," encounter and fight are synonymous. A sparring or boxing match for a given number of rounds, which would not ordinarily exhaust either participant, is not an encounter. R. v. Fitzgerald, 19 C. C. C. 145.

**ENCUMBER.**—Encumber means to clog, to impede, to hinder, to obstruct. It is not restricted to objects at rest. Riding a bicycle on a sidewalk is "encumbering" the street within the meaning of a municipal by-law. R. v. Justin, 24 O. R. 327.

"To ordinary comprehension, a horse, or a wagon, or a drove of sheep or oxen, driven along the sidewalk, would be understood to be an obstruction or encumbrance to the legitimate use of it by those desirous of using it" R. v. Plummer, 30 U. C. R. 41, where the use of a velocipede on the sidewalk was held to be a breach of a by-law to prevent encumbering or obstructing streets.

**ENGAGE.**—"Engage" is a word of various meaning, depending on the circumstances in which it is found, and therefore to that extent, ambiguous. But it does not necessarily mean a hiring or contract of any kind. An accident policy provided for higher rates if the insured met with an accident "while temporarily or permanently engaged" in a more hazardous occupation. Deceased applied for employment as a brakesman, and was making a trial trip before being employed, and it was held this was being temporarily "engaged." Stanford v. Imperial Guarantee Co., 13 O. W. R. 1171.

An agreement not to engage in a certain business is broken if the party is employed as a servant by another on the same or a similar business. Skeans v. Hampton, 5 O. W. N. 719; 6 O. W. N. 463.

**ENGINE.**—*V.* MACHINE.

**ENJOYED.**—*V.* AS NOW ENJOYED.

**ENJOYED AS OF RIGHT.**—Means an enjoyment had openly, notoriously, without particular leave at the time, by a person claiming the use without danger of being treated as a trespasser. Smith v. Wallbridge, 6 C. P. 324.

**ENTIRE ACCOUNT.**—A current account for materials without any binding agreement, either to purchase or to supply, and with no preliminary arrangement or even understanding, beyond what can be inferred from the actual delivery and receipt of the materials more or less continuously from time to time, is deemed an entire account. Robock v. Peters, 13 Man. R. 124; Carroll v. McVicar, 15 Man. 379; Canada Law Book Co. v. Fieldhouse, 12 W. L. R. 396.

**ENTIRE PROFITS.**—"Entire profits" means nothing more than or different from "all the profits," and that is the same as "the profits," and may mean net profits or gross profits according to the contract, etc., in which the phrase appears.

In a business sense, as applied to a stock company's profits, out of which a dividend should be declared, it means the excess

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of receipts over expenses properly chargeable to revenue account, with care taken to write down bad debts. Lost capital may be made good before estimating these profits.

In an agreement whereby the stock of a stock holder was "entitled to receive its proportion of the entire profits," the term was held to mean simply the "profits out of which a dividend might be declared." Leslie v. Canadian Birkbeck Co., 4 O. W. N. 1102; 5 O. W. N. 558.

**ENTRUSTED.**—The word imports that confidence has been reposed in the agent by the principal—the owner of the goods—and that the possession of the goods at the particular time and in the particular way they are in the hands of the agent is intended and contemplated by the owner. If the possession has been obtained in violation of instructions or by means of a breach of faith that is not an "entrusted" possession within the provisions of the Act. Moshier v. Keenan, 31 O. R. 658.

NOTE.—The new Ontario Factors Act, R. S. O. ch. 137, does not use the word "entrusted."

Goods are not entrusted to an agent who obtains them by false pretences or by a trick. Bush v. Fry, 15 O. R. 122; Ontario Wind Engine & Pump Co. v. Lockie (1904), 7 O. L. R. 385.

**ENTERED.**—While an officer was engaged in entering a judgment, but before the stamps were attached, the defendant's solicitor tendered an appearance. *Held*, that the judgment had not been entered—that it was not complete until the stamps were attached and cancelled. Smith v. Logan, 17 P. R. 121, 219.

**ENTRY.**—Visits on the land by the true owner, extending over several days, do not constitute an entry. An entry on the lands by the true owner is not effective if it is not against the consent of the tenant at will in such a way that but for the determination of the will he would be liable for an action of trespass. McGowan v. Armstrong (1902), 3 O. L. R. 100.

When the entry would constitute a trespass if unlawful, it is sufficient. Hooker v. Morrison, 28 Gr. 369. Putting up notices on the land stating it is for sale, is an entry. Donovan v. Herbert, 4 O. R. 635. Entering in possession and granting a lease, is an entry. Arnold v. Cummer, 15 O. R. 382; Canada Co. v. Douglass, 27 C. P. 339.

But staying on the land as a guest of the party in possession is not an entry; nor is an entry by one tenant in common an entry by his co-tenant. Hartly v. Maycock, 28 O. R. 508.

**ENTITLED TO CROSS-EXAMINE.**—These words in sec. 682 of the Criminal Code imply for the accused the right to hear the

evidence delivered in his presence, to catch the words as they fall from the lips of the witness and note his demeanour while testifying. Evidence taken at a hearing when the accused was not present and then read over to the witness and signed in the presence of the accused, is not sufficient. R. v. Lepine, 4 C. C. C. 145.

**EQUAL MOIETIES.**—Although the proper meaning of the word "moiety" is a half-part, it may mean a part or share. Where a testator gave a fund to his son and three daughters "in equal moieties" it was held the four children each took a one-fourth share. Jordan v. Frogley, 5 O. W. R. 704.

**EQUALLY.**—In a devise to two or more persons equally, the word "equally" refers to the area of the land and not to the estates of the devisees therein. Fraser v. Fraser, 26 S. C. R. 316.

Where, after the termination of a life estate, land was directed to be sold and the price "equally divided between the children of my said daughters," it was held that the children took *per capita*, and not *per stirpes*. Re Ianson, (1907) 14 O. L. R. 82. See also Woodhall v. Thomas, 18 O. R. 277.

*V.* BETWEEN.

**EQUITABLE EXECUTION.**—Equitable execution is not like legal execution; it is an equitable relief which the Court gives because execution at law cannot be had. It is not execution but a substitute for execution. Re Craig and Leslie, 18 P. R. p. 273.

**EQUITY AND GOOD CONSCIENCE.**—Division Courts Act, R. S. O. ch. 63, sec. 63.

"What is exactly the meaning of that provision of the Division Courts Act has never been definitely defined; but certainly it appears to me to require the Division Court not to give effect to formal and technical objections, where in honesty the defendant is liable or ought to pay the sum for which he is sued." Meredith, C.J., Township of Tiny v. Archer, 12 O. W. R. 255.

**EQUIPPING.**—Water supplied to a ship for the use of her engines and crew is not "equipping a ship" within the meaning of sec. 4 of the Admiralty Courts Act, 1861. The scope of the Act is to protect material men who build, equip or repair a ship as a ship, and to extend a lien to those who furnish necessaries in foreign ports, the latter term meaning anything necessarily supplied to the ship in the prosecution of her work. Judge v. The Ship "John Irwin," 14 Exch. C. R. 20.

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**ERECT.**—An agreement for sale provided that if the purchasers "do not before . . . . erect works for refining . . . they shall," etc. It was held that "erect" was not equivalent to "erect, complete and have ready for operation." Canadian Nickel Co. v. Ontario Nickel Co., 1 O. W. N., at p. 640.

Sec. 502 of the Municipal Act, 1913, provides that a locality may be "erected into a police village." The word erected as here used is something short of incorporation and the new territory does not become a separate incorporation. Smith v. Township of Bertie, 4 O. W. N. 907.

**ERECTION.**—Re-shingling an old house, as it had been shingled, is not an "erection" within a fire by-law. R. v. Howard, 4 O. R. 377.

Where a statute gives a municipal corporation power to pass a by-law to regulate the "erection" of buildings, the council has no power, by the by-law, to interpret the meaning of "erection" or "re-erection," or to say that such shall include repairs. R. v. Nunn, 1 W. L. R. 559.

*V.* Buildings and Erections.

**ERROR OR MISCALCULATION.**—An error of twenty cents and the calculation of interest and commission on it falls within the meaning of the words "error or miscalculation" in the Assessment Act. Claxton v. Shibley, 10 O. R. 295.

**ESCAPE.**—An "escape" within sec. 196 of the Criminal Code is where one who is arrested gains his liberty before he is delivered by the Courts of law. On a summary conviction a person was sentenced to gaol and gave bail pending an appeal to the Quarter Sessions. When the appeal came on the presiding Judge held he had no jurisdiction. The prisoner was not returned to gaol, and, no one interfering, he left the Court room and remained at large. *Held,* an escape. R. v. Rapp, 6 O. W. N. 69.

**ESTABLISH.**—A contract to "erect, build, complete and establish" station buildings at certain points. *Held,* the word "establish" did not mean permanent, or co-existent with the railway; and had been complied with when the railway erected and completed the stations and used them in good faith for a number of years. Nottawasaga v. Hamilton & N. W. Ry. Co., 16 A. R. at p. 67.

In Geauyeau v. Great Western Ry., 3 A. R. 412, the Court refused to read "establish" as meaning "maintain and use for ever."

"Establish," as used in the Municipal Act (now sec. 396 (*c*) of the Mun. Act, 1913), does not mean set upon a secure and permanent basis; and an industry going for ten months, though in rented premises, is established within the meaning of the Act. Re Black and Town of Orillia, 5 O. W. N. 67. Even though the owners of the business had already decided to remove their business. Re Village of Markham and Town of Aurora (1901), 3 O. L. R. 609. The Statute applies to prevent a bonus in aid of a branch business being established elsewhere in Ontario. Re Wolfenden and Village of Grimsby, 5 O. W. N. 901.

*V.* LOCATED AND MAINTAINED.

The term "establish a park," in a municipal by-law, does not denote the idea of permanency or unchangeability and the doctrine of irrevocable dedication is not applicable to the case of a park which is established by by-law out of corporation lands. Attorney-General v. City of Toronto (1903), 6 O. L. R. 159.

**ESTATE.**—The words "property" and "estate" are both sufficient, in a will, to pass realty. Cameron v. Harper, 21 S. C. R. 273; McCabe v. McCabe, 22 U. C. R. 378.

The doctrine of modern cases, where there is nothing to qualify the word "estate," is that it will carry real as well as personal property, and the contrary intention ought to appear before the Court will give it a less signification. O'Neil v. Carey, 8 C. P. 344, 347. A grant of "all my right, interest and estate of, in, and to the estate of G." was held to pass all the estate of the grantor therein. *Ib.*

And the word will pass realty although used in connection with personalty; e.g., "all my estate, goods and chattels." McCabe v. McCabe, 22 U. C. R. 378.

"I am not disposed to dispute the effect given to the word 'estate' as sufficient to include lands or real estate, although I have not been able to find any precedent in which lands have been held to pass under a deed by force of that word alone. An instance of the use of the word estate as synonymous with lands, is found in an Irish deed which is set out in Moore v. Magrath, 1 Cowp. 9." McDonald v. Georgian Bay Lumber Co., 2 A. R. 36.

**ESTIMATE.**—The word "estimate" in sec. 73 (o) of The Public Schools Act, R. S. O. ch. 266, does not mean a lump sum with no further particulars, e.g. $500, for the purchase of a site and $2,000 for the erection of a school house thereon." School Trustees of Port Hope v. Town of Port Hope, 4 C. P. 418.

In such a case the size and character of the proposed school house should be given. In Re School Trustees and Mount Forest, 29 U. C. R. 422.

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The council has the right to know the purposes for which the money is required by the trustees. In re School Trustee of South Fredericksburgh, 37 U. C. R. 534.

There should be something to shew that proper inquiries and calculations have been made, leading to the conclusion that the sum asked is necessary and will be adequate. In re School Trustees and Sandwich, 23 U. C. R. 639.

It should be of the same character as the estimates of municipal councils for the purpose of striking the municipal yearly rate and contain the like details as those upon which the trustees have based their own calculations. The Board of Education of the City of London v. The City of London (1901), 1 O. L. R. 284.

**EUCHRE.**—Is a game of chance, and playing eucnre for amusement in an hotel is a violation of a resolution under the Liquor License Act prohibiting "any gambling or game of chance whatever for gain or amusement." R. v. Laird (1903), 6 O. L. R. 180.

V. GAMBLING.

**EVERYONE.**—"Everyone" is an expression of the same kind as "person," and therefore includes bodies corporate unless the context requires otherwise. There is no doubt that the expression "everyone" is, whether in a legal or a popular sense, a wider term than the word "person." There can be no reason, that I can see, why a corporation should not be included in the phrase "every one." Sedgewick, J., Union Colliery v. The Queen, 7 B. C. R. 247; 31 S. C. R. p. 88; 4 C. C. C. 400.

**EX PARTE ORDERS.**—The term "*ex parte* order" is applied only to such orders as a party obtains without the attendance of the other, without his consent, and solely on the applicant's own shewing. Interim orders for injunction, orders of *ne exeat,* for production and the like, are instances of *ex parte* orders. But an order obtained by one party upon the written consent of another is not an *ex parte* order in the true sense of that term. Brown v. Pepall (1911), 23 O. L. R. 630.

A judicial officer can always review a matter involved in an *ex parte order;* not by way of appeal, but by way of reconsideration, allowing both sides to be heard, and to prevent injustice. This may apply to orders by default, where through some slip, cause has not been shewn. Hughes v. Field, 9 P. R. 127; Flett v. Way, 14 P. R. 123.

**EXAMINATION.**—Section 70 of the Judicature Act, provides for the physical examination of a plaintiff in an action brought in respect of a bodily injury. "Examination" is here used in the

sense of inspecting, observing carefully, looking into the state of, as for instance, to examine a building, a record, or a wound; and not in the sense of interrogating or examining a witness for the purpose of eliciting testimony. Clouse v. Coleman, 16 P. R. 496; 541.

**EXCEPT.**—*V.* ALL DAYS EXCEPT SUNDAY.

**EXCHANGE.**—As applied to an exchange of lands—according to the old authorities no other word can be substituted for "exchange" in order to give the peculiar operation belonging to such a mode of conveyance. See Towsley v. Smith, 12 U. C. R. 555, where many of the leading cases are collected.

A plea that parties had "conveyed" the lands to each other was held bad as not shewing an "exchange." Leach v. Dennis, 24 U. C. R. 129.

**EXCLUSIVELY.**—A Salvation Army barracks was held to be "a building occupied exclusively as a church," although the Captain and his wife lived in the front part of the building. Their residence there was held to be partly in the nature of caretakers, and partly to facilitate carrying on the work of the Army. Their residence is a natural, reasonable, convenient and usual incident of the direct and immediate object and services of the Army, as the occupation of a bank building by the employees of a bank. Re Barnhouse and Evans, 19 W. L. R. 233.

But a building is not so "exclusively" used where only the lower storey is used for religious worship while the upper storey is rented for other purposes. Re Prudhomme and Prince Rupert License Commissioners, 19 W. L. R. 289.

A contract to use the plaintiff's ready prints "exclusively every week," means that the defendant would not use the ready prints of others during the life of the contract. Winnipeg Saturday Post v. Couzens, 19 W. L. R. 25.

**EXCLUSIVE POSSESSION.**—*V.* ADVERSE POSSESSION.

**EXCUSE.**—*V.* JUST EXCUSE.

**EXCUSED.**—The word "excused" in sec. 5 of The Canada Evidence Act, R. S. C. ch. 145, does not *per se* imply a prior request or claim. *Excusare* in civil law is "to relieve," or "absolve one from a thing." A well recognized synonym for "excused" in this connection is "exempted." That is the word used in the French version of the Act: "*Personne ne sera exempte de respondre.*" La Banque Jacques Cartier v. Gagnon, 5 S. C. Que. 251.

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A witness before a Coroner's Court is compelled to give evidence, such Court being a criminal Court. R. v. Hammond, 1 C. C. C. 373.

**EXECUTED BY PAYMENT.**—V. COMPLETELY EXECUTED BY PAYMENT.

**EXECUTION.**—"Execution" sometimes means the writ itself, and sometimes what is done under it. McDonald v. Cleland, 6 P. R. p. 293.

Where goods have been taken in execution the sheriff is liable for the value no matter what becomes of them. Ross v. Grange, 25 U. C. R. 396.

The terms "*fieri facias*" and "warrant of execution" in the Division Courts Act are convertible terms, meaning the same thing when relating to the ordinary execution issued upon a judgment. Macfie v. Hunter, 9 P. R. p. 155.

V. LEVY—EXIGIBLE UNDER EXECUTION.

**EXECUTOR DE SON TORT.**—An executor *de son tort* is one, who, being neither an executor or administrator, intermeddles with the goods of the deceased, or does any other act characteristic of the office of executor. Kingsford, 53.

A party who sells or gives the goods of a deceased person to another becomes an executor *de son tort*, but not the purchaser or receiver; but a person claiming such goods under a colourable title does not. Merchants Bank v. Monteith, 10 P. R. 467.

A party may make himself an executor *de son tort* by answering as executor to an action brought against him, or by pleading any other plea than *ne unques* executor. Haacke v. Gordon, 6 U. C. R. 424.

An infant executor or executor *de son tort* is not liable for a devastavit. Young v. Purvis, 11 O. R. 597.

For the limits of the authority of an executor *de son tort*, see Hunter v. Wallace, 13 U. C. R. 385.

An executor *de son tort* is not an executor within sec. 62 (d) of the Division Courts Act. In re Dey v. McGill (1905), 10 O. L. R. 408.

**EXEMPT FROM TAXATION.**—See R. ex rel. Harding v. Bennett, 27 O. R. 314; Pringle v. Stratford (1909), 20 O. L. R. 246.

V. MUNICIPAL TAXES.

**EXEMPTED SHIP.**—The Shipping Act, R. S. C. ch. 113, sec. 477.

The meaning of an "exempted ship" in the above Act is a ship making regular periodical voyages, with termini as indicated in

the Act, either throughout the year or during a certain season of the year. A ship employed on a sealing voyage from Halifax to Newfoundland and back was held not to be an "exempted ship." Farquhar v. McAlpine, 35 N. S. R. 478.

**EXEMPTIONS.**—The Execution Act, R. S. O. ch. 80, sec. 3.

A boat used by the owner is exempt, although the owner is not a fisherman. Darragh v. Dunn, 7 U. C. L. J. 273.

A debtor can do as he pleases with the statutory exemptions. Temperance Insurance Co. v. Coombe, 28 C. L. J. 88; Field v. Hart, 22 A. R. 449; Young v. Short, 3 Man. R. 302.

Tools and implements include instruments of manual labour, but particularly such as are used by farmers or mechanics. Oliver v. White, Bicknell v. Seagar, D. C. 409.

Where a debtor changes his occupation and the tools are not required in the new occupation they are no longer exempt. Wright v. Hollingshead, 23 A. R. 1.

The proceeds of chattels, exempt from seizure and sale under execution, voluntarily sold by a debtor, are attachable. Slater v. Rodgers, 2 Terr. L. R. 310.

Where the execution debtor fails to select the exemptions the bailiff or assignee may do so. Clouthier v. Georgeson, 36 C. L. J. 244.

An execution debtor may claim exemptions although not a resident of the Province. DeMill v. McTavish, 30 C. L. J. 405.

An injunction may be granted restraining the sale of exemptions. Harris v. Canada Permanent, 17 C. L. T. 424.

Goods entrusted to persons carrying on certain trades to exercise their trades upon are exempt. Patterson v. Thompson, 9 A. R. 326.

Timber being used by a tenant, who is a shipbuilder, in repairing vessels, and the vessels being repaired, are exempt. Gildersleeve v. Ault, 16 U. C. R. 401.

Hop poles in the ground after the crop is gathered are not distrainable. Alway v. Anderson, 5 U. C. R. 34.

Where a debtor did not own an ordinary farm wagon, but was possessed of two buggies, he was held entitled to claim as exempt one buggy as a "wagon," and he had the choice of the buggies. Ashcroft v. Hopkins, 2 Alta. R. 253.

Horse and harness held exempt, but a set of weighing scales not exempt. Nelson v. Gurney, T. W. 173.

**EXERCISE THE OPTION.**—In an offer respecting the sale of land the term "exercise the option" means the same thing as "accept the offer." Lawrence v. Pringle, 21 W. L. R. 546.

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**EXIGIBLE UNDER EXECUTION.**—Con. Rule 482 (1913). "Exigible under execution" within the meaning of the above rule means a legal execution only, and does not include an equitable execution or the appointment of a receiver. A third mortgage upon real estate made by a judgment debtor is not a transfer of property "exigible under execution" within the rule. Canadian Mining & Investment Co. v. Wheeler (1902), 3 O. L. R. 210.

**EXIST.**—The word exist means "to be," or "is." Where the finding of a bar or other appliances is made proof that there "exists" in such place, etc., the word "exists" means "is." R. v. Nugent, 9 C. C. C. 1.

**EXISTED IN FACT.**—The High Schools Act, R. S. O. ch. 268, sec. 4. The effect of the legislation is that High School districts that existed on paper only were suffered to perish. It was intended to contrast the actual, living, working districts with those that exist "in law" upon paper or as a matter of theory only. Re Henderson and Township of West Nissouri (1911), 23 O. L. R. 21; (1911) 24 O. L. R. 517.

**EXISTING RIGHT.**—See Fowler v. Vail, 4 A. R. 267; Card v. Cooley, 6 O. R. 229.

**EXPEDIENT TO THE ENDS OF JUSTICE.**—Criminal Code, sec. 884. A change of venue was held "expedient to the ends of justice" where the conduct of a mob, on the first trial, tended to bring the administration of justice into contempt, and because of its possible influence on a jury at the next trial. R. v. Ponton, 2 C. C. C. 192.

The principal ground for a change of venue, in criminal cases, is a reasonable probability of partiality and prejudice in the county within which the indictment would otherwise be tried. R. v. O'Gorman, 12 C. C. C. 230.

The fact of two abortive trials is not sufficient of itself. R. v. Nichol, 4 C. C. C. 1.

**EXPENSE.**—"Expenses" do not include succession duties and customs duties, in a will directing payment of expenses. Re Meudell, 11 O. W. R. 1093.

Board, while at his headquarters, is not included in "usual expenses," which a person was to receive in addition to his salary, but sums paid out for board while away from his usual quarters on the employer's work would be so included. Forrest v. North-West Central Ry. Co., 12 Man. R. 472.

"Expenses, operation and management" of a railway. See Charlebois v. Great North-West Central Ry. 11 Man. R. 135; Gray v. Manitoba & North-West Ry. Co. 11 Man. 42; (1897) A. C. 254.

"Expense" within the meaning of the Poor Relief Act, N. S. (Rev. Stat. 1900, ch. 50) see Sillers v. Overseers of Poor Section 26, 9 E. L. R. 565.

**EXPERTS.**—Section 10 of The Evidence Act, R. S. O. ch. 76, provides that where it is intended to examine as witnesses persons entitled, according to the law or practice, to give opinion evidence, not more than three of such witnesses may be called upon either side without the leave of the Judge.

In an action where the building of a silo was involved the following were held to be expert witnesses, and within the meaning of this section: a consulting engineer; a man engaged in cement construction; a man engaged in concrete work; a farmer and cattle dealer, who had a silo and professed to know how a silo should be built. Rice v. Sockett (1912), 27 O. L. R. 410.

"Expert" signifies instructed by experience. The expert witness is one possessed of special knowledge or skill in respect of the subject upon which he is called to testify. Mechanics, artisans and workmen are experts as to matters of technical skill in their trades, and their opinions in such cases are admissible. Ib.

A person, not a licensed surveyor, is a competent witness on a question of boundary. Potter v. Campbell, 16 U. C. R. 109.

The weight to be given to "experts" is diminished by the efforts made by them to sustain the views of the parties who call them. Re Tveit & Canadian Northern Ry., 25 W. L. R. 188.

An expert witness, whether a professional man or not, is not entitled to refuse to testify as to any matter relevant to the issue as to which he is competent to speak, until he has been paid a fee for his opinion, though it be necessary for him to use his technical knowledge or skill in order to answer the question. But he is not bound to qualify himself to give an opinion without being paid for such services. Butler v. Toronto Mutoscope Co. (1905), 11 O. L. R. 12.

**EXPOSE.**—*V.* Abandon.

**EXTRA JUDICIAL SEIZURE.**—Taking possession of goods sold under the ordinary conditional sale agreement is an "extra-judicial seizure" within the Alberta Ordinance respecting Distress for Rent and Extra-Judicial Seizures. Albertan Pub. Co. v. Miller & Richards, 10 W. L. R. 528.

A taking of possession under such an agreement is not a seizure within the Criminal Code. R. v. Shand (1904), 7 O. L. R. 190.

*V.* Lawful Seizure.



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**EXTRA SALARY.**—The Civil Service Act, R. S. C. ch. 16, sec. 90, applies only to payments made which would be extra or additional to the salary or remuneration payable to an officer for services, which at the time of acceptance of office, could reasonably have been intended to be within the scope of his ordinary duties, although additional to them. Reporters on the Hansard staff are within the section. The Queen and Bradley, 27 S. C. R. 657; 5 Exch. C. R. 409.

**FACED OR SHEWN SURFACE.**—R. S. C. ch. 85, sec. 321 (c). The faced or shewn surface of the package referred to in the above section of the Inspection Act is not limited to the branded end of such package, but applies to any shewn surface thereof. R. v. James (1902), 4 O. L. R. 537; 6 C. C. C. 159.

**FACILITIES FOR SHIPPING CATTLE.**—The defendants agreed to furnish "proper facilities for shipping cattle." *Held*, this did not include the permanent appointment of a station agent, but referred to the physical structures on the spot; and had nothing to do with the ease or difficulty of procuring cars. St. Mary's & Western Ry. Co. v. Township of West Zorra, 2 O. W. N. 455.

**FACTORY.**—"Factory" in the Ontario Factories Act, R. S. O. ch. 229, includes a tailoring establishment in the rear of a store where fourteen persons were employed. R. ex rel. Burke v. Ferguson (1907), 13 O. L. R. 479.

The power house of an electric power plant was held not to be a factory as defined by the Act. Hicks v. Smith's Falls Electric Power Co., 4 O. W. N. 1215.

A saw-mill is a factory within the meaning of sec. 20 of the Nova Scotia Factory Act, 1901, which requires that dangerous machinery be guarded, as far as practicable. Kizer v. the Kent Lumber Co., 11 E. L. R. 41; 5 D. L. R. 317.

**FAIR AND REASONABLE.**—The words "fair and reasonable supposition that he had the right to do the act complained of," in sec. 540 of the Criminal Code, mean that there must have been a fair and reasonable ground for the supposition of the right. The mere honest belief on the part of the person charged is not enough to oust the magistrate's jurisdiction. R. v. Davey, 27 A. R. 508.

Whether there was or was not a "fair and reasonable" supposition of right is a matter to be adjudicated on by the convicting magistrate upon the evidence, and *certiorari* will not lie for want of jurisdiction. R. v. Malcolm, 2 O. R. 511.

But this rule does not apply where the facts shew that the matter or charge itself is one in which such reasonable supposition exists; or, in other words, that the case and the evidence are all one way in that respect. R. v. McDonald, 12 O. R. 381.

**FAIR MARKET VALUE.**—Succession Duty Act, R. S. O. ch. 24, sec. 8. The "fair market value" is the market value, that is to say, the price at which, at the prescribed time, would probably have been obtained in the open market. That must be solved by the evidence of what could have been procured had it been offered for sale. Re Marshall (1909), 20 O. L. R. 116.

As to valuation of lands in expropriation proceedings; evidence of market value; addition of 10 per cent. to true market value, and interest. See Re National Trust Co. v. The Canadian Pacific Ry. (1913), 29 O. L. R. 462.

**FALSE DOCUMENT.**—Criminal Code, sec. 338. In pursuance of a fraudulent conspiracy between A. and B., B. drew a cheque, under a fictitious name, on a bank in which he had opened an account in such name. A. negotiated the cheque knowing there were no funds to meet it. *Held*, the cheque was a "false document" both at common law and under the above section of the Code. Re Murphy, 26 O. R. 163; 22 A. R. 386; 2 C. C. C. 562.

*Semble*, it would not be a false document merely because of the fictitious name, if there had been no conspiracy. Per Hagarty, C.J.O., 22 A. R. p. 388.

**FALSE SWEARING.**—Under a condition "that any fraud or false swearing" should cause a forfeiture of the insurance money, the word "false" was held to mean wilfully and fraudulently false. Mason v. Agricultural Mutual Insc. Co., 18 C. P. 19.

**FAMILY.**—The primary meaning of "family" is children: Ward v. McKay, 2 E. L. R. 353; 41 N. S. R. 282; Campbell v. Mooney, 17 C. L. J. 226; Harkness v. Harkness (1905), 9 O. L. R. 705; Re Hope, 2 O. W. N. 63; Anderson v. Bell, 29 Gr. 452. It may include a widow. Dawson v. Fraser, 18 O. R. 496.

A gift to "my family" is a gift to a class, and, in the absence of any context, means children. If one of the children predeceases the testator the surviving children form the "family" to the exclusion of the children of the deceased child. Re Wilkie, 7 O. W. R. 473.

Where the provision of the will was that "the real estate is to belong to the *family* as long as any of them are alive and to remain the property of my son's heirs," it was held "family" meant children and not descendants. McKinnon v. Spence (1910), 20 O. L. R. 57.

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Under a settlement property was to go to such one or more persons, who, at the time of appointment, should be members of the testator's family. It was held that the context was sufficiently wide to cover grandchildren if at the time of the testator's death they resided with and formed part of the recognized "family" in a colloquial sense. Re Irwin, 3 O. W. N. 936.

In R. v. Barthos, 17 C. C. C. 459, it was held that an illegitimate child, whether resident with the father or not, is included in the word "family" in sec. 238 (b) of the Criminal Code—the vagrancy clauses. This decision seems to carry the law too far by including illegitimate children not residing with the father.

**FAMILY ARRANGEMENTS.**—"Family arrangements" are in the nature of a compromise of disputed rights; and there can be no compromise where no question has arisen, or where all the parties are under a common mistake. There must be a consideration for the agreement, and a deliberate abandonment of a right. Baldwin v. Kingstone, 16 O. R. 341; 18 A. R. 63.

**FARM CROSSING.**—V. CROSSING.

**FARM PURPOSES.**—Hauling gravel from a farm to the highway, for which purpose it was necessary to cross the railway, is a user for "farm purposes." Plester v. Grand Trunk Ry., 32 O. R. 55.

**FARMER.**—A farmer, engaged in farm work, is not within the Lord's Day Act, not being *ejusdem generis* with mechanic, workman, or labourer. R. v. Hamren, 7 C. C. C. 188.

**FAN TAN.**—V. GAMBLING.

**FAULT.**—The word "fault" as used in article 1053, C. C. Que., is equivalent to the term "negligence" as employed in sec. 20 (c) of the Exchequer Court Act, R. S. C. ch. 140. Cloutier v. The King, 13 Exch. C. R. 109; 8 E. L. R. 119.

**FEAR.**—V. BELIEF.

**FEE SIMPLE.**—"Fee simple" is an expression of known legal import admitting of no secondary or alternative meaning; and, in case of a devise, must prevail over other words which may have a fluctuating meaning. King v. Evans, 23 O. R. 404; 21 A. R. 519; 24 S. C. R. 356.

**FEES, CHARGES OR DISBURSEMENTS.**—A bill of costs, charges and disbursements in which the amount charged for each service is not stated, but a lump sum charged, is not a bill of "fees, charges or disbursements" within sec. 34 of The Solicitors' Act, R. S. O. ch. 159. Gould v. Ferguson (1913), 29 O. L. R. 161.

**FERRY.**—The word "ferry" in The Ferries Act, R. S. C. ch. 108, does not apply to local ferries, that is, ferries running between points in the same province. Ex p. Savoy, 16 C. C. C. 457. A ferry within two points in a province is within the jurisdiction of the Provincial Legislature. Dinner v. Humberstone, 26 S. C. R. 252.

**FICTITIOUS PERSON.**—The term "fictitious person" within the meaning of sec. 21 (5) of the Bills of Exchange Act, R. S. C., ch. 119, means "fictitious *qua* the transaction." See Agricultural S. & L. Association v. Federal Bank, 6 A. R. 192; London Life Insc. Co. v. Molsons Bank (1904), 8 O. L. R. 238.

**FIERI FACIAS.**—The terms "*fieri facias*" and "warrant of execution" used in the Division Courts Act are convertible terms. Macfie v. Hunter, 9 P. R. 149.

**FIGHT.**—V. Prize Fight; Encounter.

**FILING.**—Though "filing" a document may include the stamping or indorsing the date of filing on the document and the entering thereof in the proper book, the fact that the officer omits to make the entry in the book should not prejudice the party on whose behalf the document is sought to be filed. Gorman v. Archibald, 8 W. L. R. 916.

**FINAL.**—The former Insolvent Act declared that the judgments of certain Courts "shall be final," and it was held that the word "final" excluded appeals as of right to her Majesty; but did not derogate from the prerogative of the Crown to allow an appeal as an act of grace. Cushing v. Dupuy, 5 A. C. 409.

An Act declaring that a summary conviction for selling liquor without a license shall be "final and conclusive" takes away the right of *certiorari*, except as regards the jurisdiction of the magistrate. Ex p. Hebert (S. Ct. N. B.), 4 C. C. C. 153.

**FINAL DECISION.**—V. Opinion of the Court.

**FINAL DISPOSITION OF THE ACTION.**—The meaning of the phrase "until the trial or other final disposition of the action"

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in an interlocutory injunction, means until the action is finally disposed of or until some other order is made with regard to the injunction. The action is not finally disposed of in regular course until final judgment is entered. The pronouncing of judgment is not equivalent to entry of judgment and is not a final disposition of the action. Carroll v. Provincial Natural Gas Co., 16 P. R. 518.

**FINAL JUDGMENT.**—An order for leave to sign judgment is not a "final judgment" within the meaning of a bond given pursuant to ch. 16 of the Statutes of Nova Scotia, 1901, amending the Rules of the Supreme Court respecting the arrest of a defendant before final judgment. The final judgment there contemplated is a judgment entered up by the proper officer of the Court pursuant to the order. Chesley v. Benner, 12 E. L. R. 266.

Where a Court by a judgment declares itself to be without jurisdiction and transfers the cause to another Court, such judgment or order is not interlocutory, but final in its nature. Troudeau v. The Town of Montmagny, Q. R. 22 K. B. 289.

**FINAL ORDER.**—An order dismissing an action for want of prosecution is a final order, but the application to dismiss is itself interlocutory. The test ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does then it ought to be treated as a final order; but if it does not, it is an interlocutory order. Gibson v. Stevenson, 7 Terr. L. R. 88; Smith v. Traders Bank (1905), 11 O. L. R. 24.

An order staying proceedings in a County Court action until after the disposition of another action in the High Court is interlocutory and not final. Gibson v. Hawes (1911), 24 O. L. R. 543; but see Gibbons Limited v. Berliner Gramaphone Co., 4 O. W. N. 1068.

The term has been much more liberally construed in Ontario than in England. Bank of Minnesota v. Page, 14 A. R. 347; I. F. Castle Co. v. Knox (1909), 18 O. L. R. 462. The decisions are collected in Gorman's County Court Manual, pp. 140-4.

**FINALLY PASSED.**—A local option by-law was passed by the council within the time limited, but was not signed or sealed until afterwards. *Held*, the word passed in the Act refers to the final motion of the council in enacting the by-law and has no reference to the signing or sealing. In re Local Improvement District No. 189. 4 S. L. R. 522.

It is not necessary that signing or sealing of a municipal by-law be done at the council meeting. McLellan v. Assiniboia, 5 Man. R. 127; Brock v. Toronto & Nipissing Ry., 17 Gr. p. 434.

Or that schedules should actually be attached. Re Robertson and Township of Colborne, 4 O. W. N. 274; 23 O. W. R. 325.

**FINE AND IMPRISONMENT.**—V. And.

**FIRE AND TEMPEST.**—V. Accidents by Fire and Tempest.

**FIRM.**—The word "firm" has a recognized legal signification. It is synonymous with partnership. It means the name or names under which any house or trade is established. Bolckow v. Foster, 25 Gr. 476.

**FIRST PUBLICATION.**—A paper printed and published in the United States and mailed there to subscribers in England and the United States cannot be considered to be "first published" in England so as to come within the Imperial Copyright Act. Grossman v. Canada Cycle Co. (1902), 5 O. L. R. 55.

**FIRST RIGHT OR OPTION.**—V. Option.

**FISCAL YEAR.**—Same as "financial year." In Dominion matters is the twelve months, ending 31st March: R. S. C. ch. 1 sec. 34 (5).

**FISHING.**—"The act of fishing is a pursuit consisting not of a single but of many acts according to the nature of the fishing. It is not the isolated act alone either of surrounding the fish by the net, or the taking of them out of the water and obtaining manual custody of them. It is a continuous process beginning from the time when preliminary preparations are being made for the taking of the fish and extending down to the moment when they are finally reduced to actual and certain possession." Per Sedgewick, J. The Ship Frederick Gerring v. The Queen, 5 Exch. C. R. 164; 27 S. C. R. p. 281.

Where fish had been enclosed in a seine and the seine pursed up and secured to the vessel, and the vessel then drifted into the three-mile limit, and while so within the limit the fish were being baled out of the seine, it was held the vessel was "fishing" in violation of the Treaty. *Ib.*

See also The King v. Chlopek, 17 B. C. R. 50; 19 C. C. C. 277.

**FIT FOR CULTIVATION.**—A representation that farm land is "fit for cultivation" implies two things, quality and situation. Where part of a farm was divided from the other part by a river, with no means of access, it was held to be within the representation. "Not being available, it is not fit for cultivation." Strome

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v. Craig, 15 W. L. R. 197. On appeal, Cameron, J., delivering the judgment of the Court, said: "I confess I find myself in a difficulty in giving the expression 'all fit for cultivation' the comprehensive meaning adopted by the trial Judge. Ordinarily speaking, the expression would refer to the quality of the soil, and would not be intended to include accessibility." The judgment, however, was not disturbed. 17 W. L. R. 51.

**FIT TO BE TRIED IN THE HIGH COURT.**—The words "fit to be tried in the High Court," in sec. 29 of the County Courts Act, mean "that ought to be tried in the High Court" rather than in the County Court. Re Emmons v. Dymond, 4 O. W. N. 1363, 1405.

**FIXED.**—Where assessments were to be levied on the first of the month, but not every month—only as required, depending on the needs of the society, held these assessments could not be regarded as "payable at fixed dates." Fixed periods mean certain definite periods prescribed and pointed out by the instrument; such, for example, as the usual quarter days, or half-yearly days; but when the times of payment are altogether indefinite, depending not upon anything prescribed but on the will and pleasure of one of the parties, it is not fixed. Re Select Knights of Canada—Cunningham's Case, 29 O. R. 708.

**FIXTURES.**—A fixture is an article which though naturally movable, has become a part of the freehold by being annexed actually or constructively to the soil as a part thereof. Every article not so affixed to the soil is *prima facie* a chattel and does not pass with a grant of the land unless specially named. Minhinnick v. Jolly, 29 O. R. 238; 26 A. R. 42; Carroll v. Provincial Natural Gas Co., 26 S. C. R. 181; Keefer v. Merrill, 1 C. L. T. 198.

Whether an article not actually annexed or fastened to the freehold is a fixture is entirely a matter of intention, and in considering the question, the character of the person placing it, whether owner of the land, or tenant or a stranger, forms an important element. Russell v. Nesbitt, 3 Terr. L. R. 437. Or it may be controlled by agreement. Thompson v. Thompson, 2 E. L. R. 401.

But where a chattel, such as a furnace, is annexed to the land so that it would ordinarily become a part of the realty, it cannot be deemed a chattel because of an agreement between the vendor and purchaser that the property shall remain in the vendor. Andrews v. Brown, 19 Man. R. 4.

As between mortgagor and mortgagee the purposes to which the premises have been applied must be regarded in deciding the object of the annexation of movable articles. Haggart v. Brampton, 28 S. C. R. 174; Stevens v. Barfoot, 13 A. R. 366; 9 O. R. 692.

As between landlord and tenant fixtures include only irremovable fixtures affixed to the freehold (*e.g.* doors and windows) or placed on the freehold (*e.g.* fences) by the tenant, which pass to the landlord; but does not include removable fixtures, which are such things as may be affixed to the freehold for the purposes of trade or of domestic convenience or ornament, *e.g.* brass window fixtures and mirrors, awnings, etc. Argles v. McMath, 26 O. R. 224; 23 A. R. 44. See now clause 10 in The Short Forms of Leases Act, R. S. O. ch. 116.

A hot air furnace fixed to the floor by screws cannot be removed. Scottish American Investment Co. v. Sexton, 26 O. R. 77.

A small building of three rooms resting by its own weight on loose bricks laid on the soil was held not to be a fixture as against a mortgagee. Miles v. Ankatell, 29 O. R. 21; 25 A. R. 458; Dixon v. Mackay, 21 Man. R. 762.

A bank vault door was held to be removable by a tenant. Cronkhite v. Imperial Bank (1906), 14 O. L. R. 270.

A fastening by cleats affixed to the building only, and not affixed to the machine except by being placed close against it, is not an affixing of the machine at all so as to make it a part of the realty. Sun Life Assurance Co. v. Taylor, 9 Man. R. 89.

**FLOATING SECURITY.**—A floating security is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition in which it happens to be from time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes. His right to intervene may be suspended by agreement. But if there is no agreement for suspension, he may exercise his right any time after default.

The bonds and debentures issued by a company usually contain a charge on the general property of the company, such charge being a floating security. Johnston v. Wade (1908), 17 O. L. R. p. 378.

**FOOTPATH.**—A part of the road most convenient for foot passengers; *i.e.* that part of the road most convenient for foot passengers is as much a part of the road as the other part which can be used for horses and carriages. R. v. Yates, 6 C. C. C. 782.

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**F. O. B.**—*V.* Free on Board.

**FORBORNE AT INTEREST.**—The words "foreborne at interest" are not a sufficient statement of an agreement to pay interest. It leaves it rather a matter of inference than express statement. Glover v. Ferguson, 10 C. L. T. 382 (N. B.).

**FORCIBLE ENTRY.**—Criminal Code, secs. 102, 103. An entry which has no other force than such as is implied by the law in every trespass, is not a "forcible entry." To constitute a forcible entry it is only necessary that the entry should be with such a number of persons and shew of force as is calculated to deter the rightful owner from making resistance. R. v. Smith, 43 U. C. R. 369.

The act of going upon the land must be done with the intention of taking possession of the land itself. An entry for the purpose of seizing and taking away chattels thereon, is not a forcible entry, although made against the will of the occupant and in a manner likely to create a breach of the peace. R. v. Pike, 12 Man. R. 314; 2 C. C. C. 314.

Forcible entry of a dwelling house may consist of an entry made with such threats and show of force as would, if resisted, cause a breach of the peace, although actual force is not used. R. v. Walker, 4 W. L. R. 288; 12 C. C. C. 197. But there must be some circumstances of actual violence or terror; and, *semble*, it cannot be made in respect of a vacant building. R. v. Campey, 20 C. C. C. 492.

On an indictment for forcible entry and detainer of land, evidence of title in the defendant is not admissible. R. v. Cokely, 13 U. C. R. 521.

**FOREIGN.**—The locality of the forum of litigation is the test whether a corporation or individual suing in it is "foreign," or not within its jurisdiction. Thus the Bank of Montreal is a foreign corporation within Ontario, having its head office in Quebec. Bank of Montreal v. Bethune, 4 O. S. 341. So a judgment of a Quebec Court is a foreign judgment in Ontario. McPherson v. McMillan, 3 U. C. R. 34; or a judgment of a Manitoba Court. McLean v. Shields, 9 O. R. 699; or a British Columbia Court. Solmes v. Stafford, 16 P. R. 78.

**FOREIGNER.**—*V.* Alien or Foreigner.

**FORESHORE.**—The foreshore is that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides.

It does not follow that, because the foreshore or the margin of a harbour is Crown property, it necessarily forms a part of the harbour. It may or may not do so, according to circumstances. If, for example, it had actually been used for harbour purposes, such as anchoring ships or landing goods, it would no doubt form a part of the harbour. Attorney-General for Canada v. Attorney-Generals for Provinces, 1898, A. C. 700, p. 712.

The Court will, at the instance of a riparian owner, enjoin any obstruction of the foreshore. Borison v. Kolosoff, 15 B. C. R. 26; 13 W. L. R. 629.

The foreshore of a public harbour is vested in the Dominion so far as it is necessary for the proper management of the harbour. Attorney-General for British Columbia v. Canadian Pacific Ry., 1 W. L. R. 299.

**FORFEIT.**—On a sale of lands the vendor agreed to "forfeit" $1,000 if the purchaser did not re-sell in a limited time. *Held*, that the word "forfeit" did not import a penalty, but was used in a colloquial sense and meant "pay." Crippen v. Hitchner, 18 W. L. R. 259.

V. Deposit.

**FORM.**—Where a contractor agreed to "form" a barricade around an excavation to prevent any one from falling in: *semble*, the term "form" is synonymous with "construct." McLean v. Crown Tailoring Co., 5 O. W. N. 217; (1913), 29 O. L. R. 455.

**FORSWORN.**—"Forsworn" does not, like the word "perjury," mean that the forswearing has been made in a Court of Justice, or in a judicial proceeding. Anon., 29 U. C. R. 462.

**FOR THE TIME BEING.**—The expression, "rules for the time being," has a future aspect, and implies successive periods of time, and members of an association or company are bound by all by-laws duly enacted from time to time. Williams v. Dominion Permanent Loan Co. (1901), 1 O. L. R. p. 539.

**FOR THE USE OF THE CORPORATION.**—V. Use of the Corporation.

**FORTHWITH.**—The word "forthwith" has sometimes received a free construction, and sometimes a strict one, according to the circumstances under which it has been used. An act has sometimes been said to have been done "forthwith" when done within a reasonable time, and sometimes when done with the least possible delay.

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"Forthwith" as used in sec. 6 of The Creditors' Relief Act, R. S. O. ch. 81, is to be strictly construed and means "without delay." Even if equivalent to "within a reasonable time," a delay by the Sheriff of fifteen days in making the entry, is not reasonable. Maxwell v. Scarfe, 18 O. R. 529.

Where a party is ordered to give security for costs "forthwith" he must do so with all reasonable celerity. Morton v. Bank of Montreal, 3 Terr. L. R. 466; 18 C. L. T. 158.

In Prairie City Oil Co. v. Standard Mutual Fire Insc. Co., 14 W. L. R. 41; 380, it was said that the words "forthwith" and "immediately" have the same meaning. They are stronger than the expression "within a reasonable time," and imply prompt, vigorous action without any delay, and whether there has been such action is a question of fact, having regard to the circumstances of the particular case. A notice on 30th November, of a loss by fire on 13th November, was held not to be "forthwith."

Publication of a by-law required by statute to be "forthwith" was held to mean with reasonable promptness. In re Lake and Co. of Prince Edward, 26 C. P. 173. See Re Shaw and Portage La Prairie, 14 W. L. R. 542, under "As soon as possible."

**FORTUNE TELLING.**—The statute 9 Geo. II. ch. 5, is in force in Ontario. The mere undertaking to tell fortunes constitutes the offence. R. v. Milford, 20 O. R. 306.

**FORWARD.**—Under an agreement to "forward a deed," it was held this meant to do all that was necessary to forward it—*i.e.*, to give it being, prepare and execute it, as well as forward it. Dalgleish v. Conboy, 26 C. P. 254. A covenant to "give a lease" requires the lessor to prepare, execute and deliver the lease. Walker v. Kelly, 24 C. P. 147.

**FOUND RUNNING AT LARGE.**—*V.* Running at Large.

**FRAGILE.**—*V.* Brittle and Fragile Objects.

**FRAUD.**—"Fraud" is not mistake or error in interpreting a contract; fraud is something dishonest and morally wrong, and much mischief is done as well as pain inflicted by its use where "illegality" and "illegal" are the really appropriate expressions. A mistake or error in charging sums of money for expenses, etc., is not "fraud" within sec. 3 (2) of The Master and Servant Act, R. S. O. ch. 144. Washburn v. Wright, 6 O. W. N. 131; 30 O. L. R.

The word "fraud" in sec. 135 of the Land Titles Act (Alberta), means fraud on the part of the person taking or

proposing to take a transfer, mortgage, incumbrance or lease from the holder of the certificate of title. Fialowski v. Fialowski, 19 W. L. R. 644.

V. UNDUE INFLUENCE: MISTAKE OR FRAUD.

**FRAUDULENT DEVICE.**—The term "fraudulent device" in the Elections Act, does not include a false statement issued by or on behalf of a candidate at the election to mislead voters. East Northumberland, H. E. C. 387.

**FREE FROM PARTIAL LOSS.**—See Mowat v. Boston Marine Insc. Co., 33 N. B. R. 109; 26 S. C. R. 17.

**FREE GRANT TERRITORY.**—See Shairp v. The Lakefield Lumber Co., 17 A. R. 322; 19 S. C. R. 657.

**FREE IN AND OUT.**—The meaning of "free in and out," in a shipping contract, is that the cargo is to be loaded and unloaded by the consignor and consignee without expense to the vessel owner. Conlon v. Conger, 20 C. L. J. 322.

**FREE OF LEGACY DUTY.**—In England a definite meaning attaches to the expression "legacy duty," but in Ontario the inheritance tax is called "succession duty." Where a testatrix, domiciled in Ontario, gave a bequest "free from legacy duty," it was held she intended to exonerate it from succession duty. Re Gwynne, 3 O. W. N. 1438.

**FREE ON BOARD.**—The letters "F. O. B." signify free on board. The expression means that the buyer is to have the goods on board at the price named without any additional cost on account of charges or expenses of any kind. Coleman v. McDermott, 1 E. & A. 445.

The term includes the shipment and all port and harbour charges. The purchaser need not pay until the goods are on board. George v. Glass, 14 U. C. R. 514; Clark v. Rose, 29 U. C. R. 302; Coleman v. McDermott, 5 C. P. 303.

Where the owner of grain agrees to deliver it F. O. B. the cars at a certain point it is the duty of the buyer to provide the cars. Marshall v. Jamieson, 42 U. C. R. 115; Wilmot v. Wadsworth, 10 U. C. R. 594.

If, upon an order for undetermined goods to be shipped F. O. B., the seller delivers to the designated carrier, goods which answer the order, without more, the property passes forthwith to the purchaser. If, however, the bill of lading is taken in the name of the seller, *prima facie* he retains the disposing power

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over and property in the goods. Vipond v. Sisco (1913), 29 O. L. R. 200.

**FREEHOLDER.**—The Municipal Act required a petition from a certain number of freeholders to enable a County Council to pass a by-law constituting a village corporation. *Held* "freeholder" meant a person actually seized of an estate of freehold, legal or equitable. It did not include persons in possession of land under contracts for purchase upon the performance of certain conditions. In re Flatt and United Counties of Prescott and Russell, 18 A. R. 1.

**FREQUENTER.**—*V.* HABITUAL FREQUENTER.

**FRIVOLOUS.**—An attempt to litigate matters disposed of in a prior action is vexatious, and the action will be dismissed as frivolous and vexatious. Wightman v. Coffin, 6 O. W. N. 102.

*V.* TRIVIAL AND FRIVOLOUS.

**FROM.**—"From" is *prima facie* an exclusive term, so that if in a contract any right is to continue under it for a certain period "from" a given day, that day is to be excluded; but the term is not so unambiguously exclusive as not to be susceptible of an inclusive construction if there is anything in the context to shew that an inclusive meaning was intended by the parties. 26 C. L. J. 597.

In re Bronson and Ottawa, 1 O. R. 415, a charter to build "from the City of Ottawa" was held to give the right to enter the city. See also Dougall v. The Sandwich and Windsor Road Co., 12 U. C. R. 59; Boulton v. Ruttan, 2 O. S. 362.

A by-law provided it should take effect "from and after" instead of on "the first day of January." *Held*, no objection. In re McAlpine and The Township of Euphemia, 45 U. C. R. 199.

**FRONT OF.**—In an Act requiring a street railway company to use a fender "in the front of each car," "the front" of the car is that end of it which would first meet a person moving in the opposite direction, irrespective of the end of the car in which the controller may be. City of Toronto v. Toronto Ry. Co. (1905), 10 O. L. R. 730.

In a building scheme one of the restrictions was that any building on a corner lot "shall have to front on P. avenue." *Held*, this meant the substantial or predominating front of the building. Holden v. Ryan, 3 O. W. N. 1585; 4 O. W. N. 608.

The defendant obtained a deed of a triangular piece of land fronting on a bay "together with the land in front of the said land to high water mark." The words "in front of" were held

to intend to convey land of the same width as the front line of the triangular piece, and not the width that would be obtained from extending the oblique line of the triangle to high water mark. McIntyre v. McKinnon, 34 C. L. J. 277 (N. S.)

"In this province, where nearly all lands and intersecting streets are laid out in rectangular fashion, and where almost invariably lots are laid out fronting upon some concession, or other highway, no one would ever think of saying that any lot fronted upon any highway except that upon which it is numbered: lot 10 in the 10th concession, for instance, would never be said to front upon the side road between lots 10 and 11; nor would it ever be said that any lot on St. Clair avenue fronted on any other street, although a corner lot abutting upon a side street, nor if the land in question were sold, as such land nearly always is, at so much a foot 'frontage,' would any one dream of measuring all the 'four fronts' of the lot; nor would any one . . . assert that any lot on St. Clair avenue really fronts on Avenue road, any more than a lot on Avenue road fronts on St. Clair avenue." Meredith, J.A. Re Dinnick and McCallum (1913), 28 O. L. R. 52.

The term "properties fronting" on the line of a street, includes properties adjoining or contiguous to the line of the street, although the buildings thereon front on a street intersecting the other, and the properties are only bounded on the side line by the street first mentioned. Watson v. Maze, Q. R. 15 S. C. 268; Q. R. 17 S. C. 579.

**FULL ANSWER AND DEFENCE.**—Criminal Code, sec. 715. The accused is not denied "full answer and defence" within the meaning of the above section, because the magistrate, after hearing the evidence for the prosecution, states that a denial on oath by the accused will not alter his opinion. R. v. McGregor, 2 C. C. C. 410.

Where the accused is represented by counsel, the fact that the accused does not understand the language of the witnesses who give evidence against him, if he asks for no translation of the evidence, is no limitation of his right under the above section. R. v. Long, 5 C. C. C. 493. *Semble*, there is no inherent right in any foreigner that the evidence shall be made wholly intelligible to him. R. v. Mecklette (1909), 18 O. L. R. 408; 15 C. C. C. 17; R. v. Sylvester, 19 C. C. C. 302 (S. Ct. N. S.).

A refusal to grant a reasonable adjournment at the request of the accused is a denial of his right to make full answer and defence. R. v. Farrell (1908), 15 O. L. R. 100; 12 C. C. C. 524. But not where the accused, after a refusal by the magistrate to grant an adjournment, gives evidence on his own behalf

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sufficient to sustain the conviction, and the charge appears well founded and no injustice done. R. v. Irwing (1909), 18 O. L. R. 320; 14 C. C. C. 489. Nor where the adjournment is not asked for until after evidence for the prosecution is closed. R. v. Pfisher, 19 C. C. C. 92.

V. FULL OPPORTUNITY TO CROSS-EXAMINE.

**FULL COSTS.**—In expropriation proceedings "full costs" mean costs as between solicitor and client, though that is not the meaning of the term in ordinary litigation in the Courts. Ireland v. Pitcher, 11 P. R. 403. Re Bronson & Canada Atlantic Ry., 13 P. R. 440.

**FULL OPPORTUNITY TO CROSS-EXAMINE.**—There is no such opportunity within sec. 999 of the Criminal Code, where the cross examination is interrupted by the illness of the witness, and the magistrate, in the absence of the accused and his counsel, afterwards obtains the witness' signature to the depositions with no further chance to the accused to cross-examine. R. v. Trevane (1902), 4 O. L. R. 475; 6 C. C. C. 124.

"Full opportunity to cross-examine" implies the actual seeing by the accused of the witness as he testifies, and the hearing of his words as they fall from his lips. If this has not been accorded the opportunity for subsequent cross-examination is not sufficient. R. v. Lepine, 4 C. C. C. 145.

**FULL PARTICULARS.**—In an accident policy a condition requiring "full particulars of the loss," means the best particulars that can reasonably be given within a convenient time after the loss to enable the company to form a judgment as to whether or no the assured has sustained a loss. Johnson v. Dominion Guarantee, &c., Accident Co., 11 O. W. R. 363.

It is a question of fact whether the assured did deliver as particular an account of his loss as the nature and circumstances of the case admitted of. In case of a loss by fire a mere estimate is not sufficient where better particulars could have been given. Nixon v. The Queen Insc. Co., 25 N. S. R. 317; 23 S. C. R. 26.

**FULFILLING PUBLIC DUTY.**—V. PERSON FULFILLING PUBLIC DUTY.

**FULLY ACCOUNT.**—Where under any statute an officer is bound "fully to account for all moneys received," he does not "account" by rendering an account of his receipts and disbursements, but he must account for and pay over the moneys. In re Botsford, 22 C. P. 65.

**FULLY EQUIPPED.**—An agreement in writing for the sale of an automobile "fully equipped" was held not to include other than plain tires. Halifax Automobile Co. v. Redden, 13 E. L. R. 436; 15 D. L. R. 34.

**FURNISHES ANY MATERIALS TO BE USED.**—Section 6, The Mechanics' Lien Act, R. S. O. ch. 140. Unless the materials are furnished by the material-man for the purpose of being used in the building or other work, they cannot be the subject of a lien, even though used. Brooks-Sanford Co. v. Tellier Construction Co. (1910), 22 O. L. R. 176.

**FURNITURE.**—The word "furniture" ordinarily relates to movable personal chattels. It is very general both in meaning and application; and its meaning changes so as to take the colour of, or be in accord with, the subject to which it is applied. As applied to a policy of marine insurance "furniture" embraces the ship's provisions, and everything which is required to make the ship seaworthy. As applied to a hotel "furniture" covers linen, crockery, glassware, etc. In a will, "household furniture" will pass all personal chattels which may contribute to the use or convenience of the householder or the ornament of the house, as plate, linen, china and pictures.

As used in sec. 377 of the Mun. Act, 1913, it covers everything necessary for the furnishing of the offices in the Court House for the purpose of transacting such business as may properly be done in the offices, and includes stationery and printed forms. Newsome v. County of Oxford, 28 O. R. 442.

But "furniture" does not include text books, or books of practice, in the office of a Local Master or Local Registrar, even though such books may be a practical necessity. Re Local Offices of the High Court (1906), 12 O. L. R. 16.

As to offices of Police Magistrate, see Mitchell v. Town of Pembroke, 31 O. R. 348.

A chattel mortgage on "all office fixtures, lamps, desks, chairs, furniture and all goods, chattels and effects" does not include a safe. Goldie v. Taylor, 2 Terr. L. R. 298.

V. Household Furniture.

**FURTHER MANUFACTURE.**—V. Dressed on one Side Only.

**FURTHER PROCEEDINGS.**—Con. Rule (1913), 498. An application for an injunction to restrain the defendant from dealing with partnership property after security has been perfected,



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is a "further proceeding" within the meaning of the above Rule. Embree v. McCurdy, 9 O. W. R. 961.

**FUTURE LICENSE YEAR.**—The words "for any future year" in sec. 16 of the Liquor License Act, mean for any year future as regards the date of the by-law. They allow the Council, if they are dealing with their own year, to deal at the same time with succeeding years, without depriving future councils of the power of altering or repealing the by-law. Bourgon v. Township of Cumberland (1910), 22 O. L. R. 256.

**FUTURE RIGHTS.**—*V.* Rights in Future.

**GAIN.**—"Gain" is that which is derived or comes as a benefit, profit or advantage, and it may be derived indirectly as well as directly. An actual substantial profit is not the proper test as to whether a place is kept for "gain"; it may be kept for gain even if there is no profit. R. v. James (1903), 6 O. L. R. 35; 7 C. C. C. 196.

But there must be the purpose of profit. Where fees were charged members of a club for using billiard tables, and these fees applied in payment of the club expenses, there was no "keeping for hire or gain" by the club. R. v. Dominion Bowling & Athletic Club (1909), 19 O. L. R. 107; 15 C. C. C. 105.

If the occupant of a cigar-store or hotel permits card playing on the premises under an arrangement by which a rake-off is taken to advance the sale of cigars or drinks, it is a keeping for "gain" within sec. 226 of the Criminal Code. R. v. James, *supra;* R. v. Sala, 13 C. C. C. 198; 7 W. L. R. 336; R. v. Dubois, 17 W. L. R. 35.

The proprietor of a moving picture shew who keeps his amusement hall open on Sundays as on week-days and charges an admission fee, thereby pursues his business for "gain." R. v. Ouimet, 14 C. C. C. 136.

*V.* Garage.

**GAOL.**—*V.* Committed to Gaol.

**GAMBLING: GAMING.**—In R. v. Laird (1913), 6 O. L. R. 180, a Divisional Court held that euchre is a game of chance. Per MacMahon, J., dissenting: "Whist has always been regarded as a game of skill, although an element of chance arising out of the dealing of the cards enters into it; and it is the same with euchre."

"Black Jack" is a game of chance, and a place used for playing it is a gaming house within sec. 226 of the Criminal Code. R. v. Petrie, 3 C. C. C. 439.

"Fan tan" is not *per se* an unlawful game. Per Begbie, C.J. R. v. Ah Pow, 1 B. C. R. 147. It must be shewn that the method of playing is within sec. 226 of the Code. R. v. See Woo, 16 C. C. C. 213; R. v. Hung Gee, 21 C. C. C. 404; 24 W. L. R. 605.

But where the proprietor of a house where fan tan was being played said he "was doing well out of it," this was held evidence of gaming. R. v. Mah Kee, 9 C. C. C. 47.

Buying and selling on margin, without any *bona fide* intention of making or receiving delivery of the commodity, is "gaming" within sec. 231 of the Criminal Code. R. v. Harkness (1905), 10 O. L. R. 555; 10 C. C. C. 199; French v. Brink, 1 O. W. N. 789; Allen v. Robert, 2 E. L. R. 556.

But where a broker makes actual contracts of purchase and sale on behalf of a principal whose object is speculation and not investment, and is paid by commission, this is not gaming. Forget v. Ostigny (1895), A. C. 318, reversing the judgment of the Court of Q. B. (Que.).

A device for disposing of property by which each purchaser was entitled to a draw, the drawings consisting of envelopes, some blank and some containing money, is gaming. R. v. Parker, 13 C. L. T. 316; 9 Man. R. 203.

Betting on horse-racing is not "gaming" within clause (1) of sec. 238 of the Criminal Code. R. v. Ellis (1909), 20 O. L. R. 218; 15 C. C. C. 379.

A bet on a Parliamentary election made and won in Ontario is invalid and cannot be enforced by action. Harris v. Elliott (1913), 28 O. L. R. 349.

14 Geo. III. ch. 48, making illegal life insurance where the beneficiary has no interest "or by way of gaming" does not apply to an insurance on a man's own life. North American Life Assurance Co. v. Craigen, 13 S. C. R. 278.

A gambling house is the same thing as a "common gaming house"—keeping a gambling house is an offence against the general criminal law; consequently it can be dealt with only by the Parliament of Canada, or by a municipal by-law passed under the authority of such an Act. R. v. Shaw, 7 Man. R. 518.

A policeman entered a laundry and found 25 men in the room playing cards at a table, upon which there was money. There was no evidence to shew that a bank was kept or that there was any gain to the accused, and, in the absence of the presumptions raised by secs. 985 and 986 of the Criminal Code, it was held this was not sufficient to prove the keeping of a common gambling house. R. v. Jung Lee, 5 O. W. N. 80.

Money lost at gaming cannot be recovered back in an action. Carleton v. Miller, 20 C. L. J. 402.

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A gambling debt exists where a player, in a card room, gives a note for his losses to the proprietor of the room who receives a share of the profits by selling chips to the players. No suit on such note will lie. Riopelle v. Riopelle, 1912, 19 R. L. 249.

A sum due on a cheque given for losses in matching coppers is a gambling debt. Summerfeldt v. Worts, 12 O. R. 48.

**GAME OF BALL.**—*V.* GOLF.

**GARAGE.**—A garage built to be used by the tenants of an apartment house, although it may yield an income, is not within the meaning of the term "garages to be used for hire or gain" in sec. 410 of the Mun. Act, 1913. What is there meant is rather a livery where an automobile may be kept by any transient or traveller. City of Toronto v. Delapante, 5 O. W. N. 69.

**GENERAL ADVANTAGE OF CANADA.**—See The Toronto General Trusts Corporation v. The Central Ontario Ry. Co. (1903), 6 O. L. R. 1; Re The Shore Line Ry. Co., 3 Can. Ry. Cases, 277; Armstrong v. McGibbon, Q. R. 15 K. B. 345.

**GENERAL APPLICATION.**—A question to be of "general application" within sec. 81 of the Assessment Act, must involve a question of law, a pronouncement upon which could or should form a guide in other cases. Re Knox Assessment (1908), 17 O. L. R. 175; Re Norfolk Voters' Lists (1907), 15 O. L. R. 108, where the words are "general question." See also In re Ontario Medical Act (1906), 13 O. L. R. 501.

**GENERAL COURSE OF A RIVER.**—*Quære*, how a boundary line following "the general course of a river" for a given distance is to be ascertained. White v. Dunlop, 27 U. C. R. 237.

**GIFT.**—A gift is a transaction consisting of two contemporaneous acts, the giving and the acceptance, and these acts cannot be completed without an actual delivery of the subject of the gift. Hardy v. Atkinson, 18 Man. R. 351.

Where plaintiff's father purchased a piano and gave it to his daughter, then living with him, and she accepted it and treated it as her property, she was held entitled to recover it from the defendant, who claimed it under an alleged subsequent sale from the father. Tellier v. Dugardin, 16 Man. R. 423.

A "gift, delivery or transfer of any property" within the meaning of sec. 192 (d) of The Division Courts Act, includes a conveyance of real estate. Kidd v. O'Connor, 43 U. C. R. 193; Kitchen v. Saville, 17 C. L. T. 88.

As to the necessity of delivery to perfect a gift, and as to what amounts to delivery, see Schwent v. Roetter (1910), 21 O. L. R. 112.

V. UNDUE INFLUENCE.

**GIVE A LEASE.**—Where a covenant was that the defendant would "give a lease," it was held that the defendant was bound to prepare, execute and deliver the lease. Walker v. Kelly, 24 C. P. 147. So where the agreement was to "forward" a deed. Dalgleish v. Conboy, 26 C. P. 254.

**GIVEN.**—Where a statute required that notice of calls "shall be given," O'Connor, J., held that sending the notices by mail was not "giving notice" in the legal sense. Ross v. Machar, 8 O. R. p. 432 See also McCann v. Waterloo City Mutual Insc. Co., 34 U. C. R. 376. *Per contra*, Union Fire Insc. Co. v Fitzsimmons, 32 C. P. 602.

A statement in a will "Having already *given* to my son lot number one," does not of itself constitute a devise. Smith v. Meyers, 2 O. S. 301, nor "having absolutely conveyed to my daughter." Miles v. Coy, 12 N. B. R. 174.

A power to sell "by giving fifteen days' notice" does not mean *after* giving the notice, but rather *on* notice. Where the notice was given, but no sale made, a new notice was held necessary. Toronto General Trusts Corpn. v. Central Ontario Ry. Co. (1905), 10 O. L. R. 347.

**GIVEN IN CHARGE.**—An accused person is not "given in charge to the jury" within the meaning of sec. 871 of the Criminal Code, until the jury are sworn; and his arraignment and pleading not guilty do not constitute a "giving in charge." R. v. Lepine, 4 C. C. C. 145.

**GOLF.**—Golf is not a "noisy game" or a "game of ball" within the meaning of The Lord's Day Act, R. S. O. 1897, ch. 243, sec. 3. R. v. Carter, 31 Ch. J. 664.

V. BALL.

**GOOD.**—The effect of presenting a cheque to a bank and having it marked "good," or "accepted," is to give credit to the bank and not to the drawer. Boyd v. Nasmith, 17 O. R. 40.

And if the bank fails before actual payment, the loss falls on the payee and not on the drawer. Johns v. Standard Bank, 2 O. W. N. 910; Township of Wellesley v. McFadden, 2 O. W. N. 1337.

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A mere initial by the manager of the bank, or other official, is not an acceptance. Scott v. Merchants' Bank, 2 O. W. N. 514.

The customary certification of a cheque constitutes an acceptance within the meaning of The Bills of Exchange Act. Such an acceptance makes the bank directly liable to the holder and discharges the drawer. Northern Bank v. Yuen, 2 Alta. R. 310. But see *contra*, Re Commercial Bank of Manitoba, 10 Man. R. 187.

**GOOD AND ACCEPTED.**—A traveller was to be paid a commission "on all good and accepted orders." Riddell, J.: "I am of opinion that 'good and accepted orders' is not synonymous with 'orders accepted and filled'; nor do these words refer only to orders which the customer ordering could by process of law compel the defendants to fill or pay damages for failing to do so. If the defendants dealt with an order in such a way as would lead the plaintiff and the customer to believe that they intended to fill it, I think it was 'accepted' within the meaning of this contract." McDougal v. Van Allen Co. (1909), 19 O. L. R. p. 354. And see White v. National Paper Co., 6 O. W. N. 521.

**GOOD AND SUFFICIENT.**—In a grant of "a good and sufficient right of way . . . not less than ten feet wide," it was held "good," had relation to the condition of the roadway, being suitable for the purpose required, and "sufficient" meant broad enough to be used conveniently and not necessarily limited to ten feet. Brocklebank v. Colwill, 8 O. W. R. 231.

**GOOD AND VALID SECURITY.**—A covenant by the assignor of a mortgage that the mortgage assigned is a "good and valid security" does not mean that the mortgage is a sufficient security for the debt, but only that it is a mortgage valid in law. Agricultural Savings & Loan Co. v. Webb (1907), 15 O. L. R. 213; Toffey v. Stanton, 2 O. W. N. 1210. See also Clarke v. Joselin, 16 O. R. 68, where the words were held to cover a case where the mortgaged lands had been sold under a prior mortgage.

In Manitoba, it was held that the words do not mean that the mortgagor had a good title to the land, or that the mortgage is effective to charge the lands with payment of the mortgage moneys, but only that the instrument is a genuine one, duly executed, and that there is nothing to effect its validity as a binding contract for payment of the debt assigned. McEwan v. Henderson, 10 Man. R. 503.

**GOOD CONDITION.**—In a contract for the sale of fruit trees "good condition" was held to be synonymous with "good quality,"

and the term did not refer merely to the external and apparent condition. Wellington v. Fraser (1909), 19 O. L. R. 88.

**GOOD FOR THIS DAY ONLY.**—These words, on a railway ticket, create a limited contract to convey the purchaser in one continuous journey from and to the places named, to be commenced on the day of the issuing of the ticket. Briggs v. Grand Trunk Ry. 24 U. C. R. 510.

A ticket "good for twenty days" is good only for a continuous journey. Craig v. Great Western Ry. 24 U. C. R. 504.

**GOOD GOVERNMENT OF THE MUNICIPALITY.**—Where it was alleged that corrupt practices had prevailed at an election for members of the council and board of education, it was held this was a "matter connected with the good government of the municipality," within the meaning of the term as found in sec. 248 of the Mun. Act, 1913. Lane v. City of Toronto (1904), 7 O. L. R. 423.

**GOOD LINE OF ROAD.**—Mun. Act, 1903, sec. 617 (2). A good line of road, within the meaning of the above section, is one that is serviceable, convenient, easy of construction and repair. Township of Fitzroy v. County of Carleton (1905), 9 O. L. R. p. 694. The above section is now embodied in sec. 458 of the Mun. Act, 1913, and has been changed to "a better line of road."

**GOOD MERCHANTABLE TIMBER.**—See Clarke v. White, 28 C. P. 293; 3 S. C. R. 309.

**GOOD NOTES.**—An agreement to pay in "good notes," does not necessarily mean "in good negotiable notes." A promissory note may be good without being negotiable. McArthur v. Winslow, 6 U. C. R. 144.

**GOOD REASON TO BELIEVE.**—Whether a tax collector has "good reason to believe" a ratepayer is about to remove his goods, so as to justify him in a distress, is a question for the Judge or jury and the onus is on the collector. Where the collector has no personal knowledge, and the only inquiry made is from a person having an interest in forwarding the seizure, he has not satisfied the onus. McKinnon v. McTague (1901), 1 O. L. R. 233.

**GOOD STANDING.**—V. MEMBERS IN GOOD STANDING.

**GOODS AND CHATTELS.**—In the Execution Act, goods and chattels include shares and dividends of stock-holders in any incorporated bank or company. See the amendment of 58 Vic. ch. 13, sec. 32, to meet the decision in Morton v. Cowan, 25 O. R. 529.

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A bequest of "goods and chattels," where there is no context limiting the meaning of the words, is broad enough to cover book debts. Re McGarry (1909), 18 O. L. R. 524.

An interest of a lessee under an oil lease is an interest in land, and is not liable to seizure and sale under execution as goods and chattels. Canadian Ry. Accident Co. v. Williams (1910), 21 O. L. R. 472; United Fuel Supply Co. v. Volcanic Oil & Gas Co. 3 O. W. N. 93.

The expression "goods and chattels," as used in 13 Elizabeth, ch. 5, was held not to include book debts, because they could not be reached by execution; and the expression as used in the Execution Act, does not include debts. Rennie v. The Quebec Bank (1902), 3 O. L. R. 541.

**GOODS, WARES AND MERCHANDISE.**—The term is usually applied to personal chattels only; and to those which are not required for food or immediate support, but such as remain after having been used, or which are used only by a slow consumption. Fish, peddled from door to door, were held not to be goods, wares or merchandise within the Pedlars' Ordinance (Sask.). R. v. Prosterman, 11 W. L. R. 141.

Debts are not included in the expression "goods, wares and merchandise" as used in the Bank Act. Rennie v. The Quebec Bank (1902), 3 O. L. R. 541. And the expression, as used in the 17th section of the Statute of Frauds, does not include choses in action. *Ib.* p. 546.

**GOVERNED.**—See R. v. Hyndman, 17 C. C. C. 469; R. v. Labbe, 17 C. C. C. 417.

**GOVERNMENT BUILDINGS.**—A private house under lease to His Majesty's principal Secretary of State for the War Department, for the purpose of residence by an officer, for whom there was no accommodation in the barracks in Halifax, was held to be a "Government building" within a statute exempting "Government buildings or barracks" from taxation. Smith v. Halifax, 35 N. S. R. 373.

The term means buildings belonging to the Government, in which some business of or relating to the Government—public business—is carried on; and hence "public buildings." Attorney-General for Canada v. Toronto, 20 O. R. 19; 18 A. R. 622; 23 S. C. R. 514.

**GRANDSON.**—*Prima facie* "grandson" will exclude an illegitimate grandson. Doe v. Taylor, 1 Allen (N.B.) 525.

*V.* CHILDREN.

**GRASS.**—*V.* HAY.

**GRAVE-YARD.**—*V.* BURYING GROUND.

**GRAZING.**—*V.* PASTURING.

**GREATER SPEED.**—The term "greater speed than one mile in four minutes," in the Alberta Motor Vehicle Act, means any speed for any distance less than a mile, which, if continued, would result in a full mile being covered in less than four minutes; the word "speed" is used as meaning rate of motion, and the words "one mile in four minutes" simply supply the measure of time. R. v. Ley, 7 D. L. R. 764; 20 C. C. C. 170.

**GRIEVOUS BODILY HARM.**—The expression "grievous bodily harm," in sec. 284 of the Criminal Code, includes injuries immediately resulting in death. R. v. Union Colliery Co., 7 B. C. R. 247; 31 S. C. R. 81; 3 C. C. C. 523.

It is not necessary that an injury, to constitute grievous bodily harm, should be either permanent or dangerous; if it be such as seriously to interfere with the comfort or health, it is sufficient. R. v. Archibald, 4 C. C. C. 159.

**GROSS INCOME.**—*V.* INCOME.

**GROSS NEGLIGENCE.**—The distinction between slight, ordinary and gross negligence, as the foundation of liability, does not seem to rest upon any sound juridical basis. The correct rule seems to be to pay regard to the degree of diligence which the situation assumed by a person demands, rather than to his carelessness. If much is required of him, a slip from the narrow path of duty may well be called slight negligence. If no more is due from him than the care which a prudent man bestows upon his own affairs, failure to give that degree of care may conveniently be termed ordinary negligence. If trifling care would suffice for the discharge of duty, and that is not given, there is no harm in calling it gross negligence. But the substantial question always must be whether that care has been exhibited which the special circumstances reasonably demand. Per Moss, C.J.A., Fitzgerald v. Grand Trunk Ry. 4 A. R. 601.

In James v. Dominion Express Co. (1907), 13 O. L. R. 211, a Divsional Court defined "gross negligence" as "that want of reasonable care, skill and expedition which may properly be expected."

As applied to a gratuitous bailee, gross negligence means failure to exercise the degree of skill which he possesses; or the

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want of that ordinary diligence which men of common prudence generally exercise about their own affairs. Carlisle v. Grand Trunk Ry. (1912), 25 O. L. R. 372.

In the case of a railway company, where injury is sustained by a passenger by reason of a head-on collision, that is evidence of gross negligence, since it is evidence of the absence of that reasonable care in the particular business of the conduct and management of a railroad which the company owe to passengers and persons being carried on a free pass. Ryckman v. Hamilton, G. & B. Ry. Co. (1905), 10 O. L. R. 419.

The liability for gross negligence can only arise from actual clear negligence. Palin v. Reid, 10 A. R. 63.

In a moment calling for instant action, a man may act unwisely and imprudently without being guilty of gross negligence or carelessness. Per Davies, J., Stone v. Canadian Pacific Ry., 47 S. C. R. p. 638.

An accidental explosion in a baggage room, injuring a passenger's baggage, was held not to be gross negligence. See Carlisle v. Grand Trunk Ry. (1912), 25 O. L. R. 373, where many of the English and Ontario cases are collected.

Sec. 460 (3) of the Municipal Act, 1913, provides that no municipal corporation shall be liable for accidents owing to snow or ice upon the sidewalks "except in case of gross negligence." In Drennan v. Kingston, 27 S. C. R. 46, gross negligence was said to be "very great negligence."

"Gross" must be used here in the sense of at least "great" negligence, according to one of the common meanings of the word. Ince v. Toronto, 27 A. R. 410; 31 S. C. R. 323.

**GROSS RECEIPTS.**—The defendants covenanted to pay plaintiffs a certain proportion of the "gross receipts." Subsequently, defendants extended their railway outside of the city limits. *Held*, that "gross receipts" included fares paid by passengers outside the city limits and using any part of the railway within the city, but not fares received in respect of services rendered entirely outside the city; and included moneys received from the sale of tickets which might possibly not be used. City of Hamilton v. Hamilton Street Ry. Co. (1905), 8 O. L. R. 455; 10 O. L. R. 575; 38 S. C. R. 106.

In Montreal Street Ry. Co. v. City of Montreal, 34 S. C. R. 459; 1906, A. C. 100, the Privy Council held that "gross receipts" applied only to receipts earned within the city limits, but the decision turned on the construction of the contract—that the words "the said railway" referred to the lines within the limits of the city.

"Gross income" is synonymous with "whole income," or "total income." City of Kingston v. Canada Life Assurance Co., 19 O. R. 453.

**GUARANTEED ADVANCE.**—See Kelly v. Stevenson, 5 O. W. N. 10.

**GUARDIAN.**—A guardian is a person appointed to have the custody of the person and property of an infant, or of a person incapable of directing his own affairs.

In modern times, guardians may be said to be of six kinds—testamentary, maternal, customary, *ad litem*, by appointment of the Court, and guardian in tort or by intrusion. Hall v. Public School Trustees of Stisted, 28 O. R. p. 132.

A person having the custody of a child under a "boarding-out agreement" to clothe, maintain and educate him, is not a guardian. Hall v. Stisted School Trustees, 24 A. R. 476.

Nor is such a person a "guardian" within the meaning of the word as used in sec. 242 of the Criminal Code. R. v. Coventry, 3 C. C. C. 541.

**GUEST.**—A guest is one who resorts to and is received at an inn for the purpose of obtaining the accommodation which it purports to afford. He may be a wayfarer, traveller or passenger who stops or patronizes an inn as such. He may come from a distance, or live in the immediate vicinity. He comes for a more or less temporary stay, without any bargain for time, remains without one and may go when he pleases, paying only for the actual entertainment received. His stay and entertainment may be of the most transient kind. One who goes casually to an inn and eats and drinks or sleeps there is a guest, although not a traveller. And a person continues a guest, though he leaves the inn to go sight-seeing, or goes and says he will return at night. The liability of the inn-keeper will continue during such temporary absence of the guest. Fraser v. McGibbon, 10 O. W. R. 54.

If the relation of landlord and guest be once established, the presumption is that it continues until a change of that relation is shewn. Whiting v. Mills, 7 U. C. R. 450.

The relation of landlord and guest may begin, as far as the guest's baggage is concerned, when a traveller delivers his baggage, or check therefor, to the hotel porter at a station or wharf. Fraser v. McGibbon, *supra*.

**GUILTY WITHOUT INTENT.**—A verdict so worded is to be construed as a finding that the act was done without malice, and removes the essential requirements of a crime, whether malice is

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to be inferred from an unlawful act or is express. R. v. Slaughenwhite, 9 C. C. C. 173.

**HABITUAL FREQUENTER.**—The words "frequent" and "frequenter," themselves, may have a meaning quite as wide as any that could be given to the phrases "habitually frequent" or "habitual frequenter." To frequent is to visit often; to resort to often or habitually. "Frequently" implies the habit of being in a place.

"I do not myself see how the word 'habitual' can add anything to the meaning of the word 'frequenter.' I think the word 'habitual' is merely tautologous, and that the statement the defendant is a frequenter is in itself sufficient to meet the requirements of sec. 773 (g) of the Criminal Code." Per Anglin, J. The Court of Appeal, however, thought that the term "habitual frequenter" was not synonymous with "frequenter," and an information charging the defendant with being a "frequenter" of a house of ill-fame was bad. R. v. Lamothe (1908), 18 O. L. R. 310.

"Unlawful frequenter" is not synonymous with "habitual frequenter," and an information so laid is bad. R. v. Clark, 2 O. R. 523.

The word "habitual" in the definition of residence does not mean presence in a place either for a long or short time, but the presence there for the greater part of the period. In re Banff Election, 19 C. L. T. 119.

**HAND-CAR.**—V. Train.

**HANDLE.**—A covenant not to "handle" certain goods, was held too vague and uncertain. Bentley v. Bentley, 12 Man. R. 436.

**HAPPENING.**—The words "happening of the event" (in The Ontario Insurance Act, R. S. O. ch. 183), as relates to accident insurance, has reference to the death of the person insured, and not to the accident which caused his death. Atkinson v. Dominion, etc., Insc. Co. (1908), 16 O. L. R. 619.

The words "happening of the alleged negligence" in sec. 667 of the Municipal Act, R. S. Man. 1902, should either be construed to read "happening of the injury or damages resulting from the alleged negligence," or it should be held that the negligence continued to "happen" up to the time that the damages resulted from it. Curle v. Brandon, 15 Man. R. 122.

**HARBOUR.**—V. Public Harbour.

**HAVING GIVEN.**—A statement in a will: "Having given to my son lot number one," does not, of itself, constitute a devise. Smith v. Meyers, 2 O. S. 301. But see Miles v. Coy, 12 N. B. R. 174.

**HAWKER.**—Within the provision of sec. 416 of the Mun. Act, 1913, "hawker" includes agents for persons not resident within the county, who sell or offer for sale tea, coffee, spices, baking powder, dry goods, watches, plated ware, silver ware, furniture, carpets, upholstery, millinery, or jewellery, spectacles, or eye-glasses, or who carry and expose samples or patterns of any such article, which is to be afterwards delivered within the county to a person not being a wholesale or retail dealer in such article.

A hawker is defined to be an itinerant trader, who goes about from place to place, carrying with him and selling wares—one who sells his wares by proclaiming them on the street: and a pedlar as a hawker in small wares—one who travels the country with small wares. R. v. Coutts, 5 O. R. p. 649.

"My own idea of a 'hawker' has always been that of a man who goes through the streets or roads of the city or country calling out his wares for sale. A pedlar in the olden times was one who went through the country with a pack on his back peddling his small wares from door to door and from farm house to farm house." Tuck, C.J. (N.B.). R. v. Phillips, 7 C. C. C. 133.

The definition of hawkers in the Municipal Act is not intended to be exhaustive (1909). R. v. Van Norman, 19 O. L. R. 447.

A person who engages a room at a hotel and there solicits orders for clothing to be made up from samples is not a "hawker" or "pedlar." R. v. St. Pierre (1902), 4 O. L. R. 76; 5 C. C. C. 365.

Nor a sewing machine agent, who, in addition to keeping a shop, goes from house to house with a sample machine soliciting orders. R. v. Phillips, 7 C. C. C. 131.

One selling goods from a sample is not a hawker. R. v. Wolfe, 4 W. L. R. 553.

Proof of only one sale is insufficient to establish "hawking" or "peddling" upon a prosecution under a licensing law. *Ib.*

But one sale and a going from place to place with a conveyance and articles for sale may come within a by-law under the Ontario Municipal Act. R. v. Van Norman (1909), 19 O. L. R. 447.

**HAY.**—"Hay" is not an appropriate word to designate grass before it is cut. It is defined to be "grass cut and dried for fodder; grass prepared for preservation." Grass is defined to be:

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In common usage, "herbage," "the plants which constitute the food of cattle and other beasts." As sometimes, perhaps commonly, used, hay signifies what may be called natural grass, timothy and clover while growing, or ripe for harvest, and still uncut.

As used in the Indian Act, R. S. C. ch. 81, sec. 127, "hay" does not necessarily mean hay cut from natural grass only. R. v. Good, 17 O. R. 725.

Hay to be grown on certain lands during the ensuing season is an interest in land. Sharpe v. Dundass, 21 Man. R. 194.

Growing wild hay, when sold to a person who is to cut and remove it the same season, is "goods" within the meaning of paragraph (h) of sec. 2 of The Sale of Goods Act, R. S. Man. 1902. Fredkin v. Glines, 18 Man. R. 249.

Hay, being the natural product of land of which a wife was the tenant, was held to be issues and profits of her separate estate within the meaning of sec. 3 of The Married Women's Act, R. S. Man. Slingerland v. Massey Mfg. Co., 10 Man. R. 21.

The words "grain, root crops or other produce" in secs. 38 and 39 of the Indian Act, do not include wild hay. Prince v. Tracey, 25 W. L. R. 412.

**HEAR AND DETERMINE THE MATTER OF THE APPEAL.**—Means a hearing and decision upon the merits. In re Robert Madden, 31 U. C. R. 333.

**HEARING OF THE ACTION.**—Sec. 14 of the Workmen's Compensation Act which requires notice of a particular defence to be given "seven days before the hearing of the action," refers to the day originally fixed for the trial, and not to any adjourned day or to the day of actual hearing. Potter v. McCann (1908), 16 O. L. R. 535.

**HEIRS.**—The word "heir" is *nomen collectivum* and carries the fee. Grant v. Squire (1901), 2 O. L. R. 131.

There is no distinction in meaning between "heirs" and "lawful heirs." *Per* Moss, J.A. Sparks v. Wolff, 25 A. R. p. 339.

"Heirs" means those who by the law of the land at the date of the will are technically heirs-at-law, unless a contrary intention appears, and such contrary intention is not shewn by the fact that the gift is of a part or the whole of a fund derived from the sale of real and personal property. Coatsworth v. Carson, 24 O. R. 185; Re Read, 12 O. W. R. 1009.

Heirs may include devisees, the persons who are made heirs "*haeredes facti*," but this meaning is not to be attributed to it unless the will renders it imperative. Thus where a will gave

legacies of $50 to each of nine persons, six of whom were described as nephews and nieces—the other three being strangers in blood—and the residue "to be equally divided among the aforesaid heirs," it was held the nephews and nieces were entitled to the residue. Re Phillips, 4 O. W. N. 898.

A gift of a residue to "my heirs" is a gift to those who would take real estate upon an intestacy. Re Cust, 13 W. L. R. 102.

In a will "heirs" does not include a widow, where there is a devise of land to be sold and the proceeds distributed among the heirs of the testator. Re Woodworth, 5 N. S. R. 101; Smith v. Robertson, 7 E. L. R. 312; Bateman v. Bateman, 17 Gr. 227; Re Sons of England Benefit Society v. Courtice, 3 O. W. R. 680.

As used in the sense of "children" or "issue." Zwicker v. Ernst, 33 C. L. J. 85 (S. Ct. N. S.); Latta v. Lowry, 11 O. R. 517.

As confined to children. Paradis v. Campbell, 6 O. R. 639; Smith v. Smith, 8 O. R. 677; Otty v. Crookshank, 21 N. B. R. 169.

Not limited to children. Re Cummer Marriage Settlement, 2 O. W. N. 1486; Re Phillips, 4 O. W. N. 898.

As meaning heirs of the body. In re McDonald, 6 O. L. R. 478.

"Heirs and next of kin." See Rees v. Fraser, 25 Gr. 253; 26 Gr. 233.

"Heirs and representatives." See Burkett v. Tozier, 17 O. R. 587.

"Heirs-at-law." See Harrison v. Spencer, 15 O. R. 692.

**HEIRS ACCORDING TO WILL.**—Where a policy of life insurance was made payable to "heirs according to will" the testator meant those who according to his will would succeed to his property, and the word "heirs" was not used in its strict legal sense. Re Sawden, 3 O. W. N. 136.

**HELD THE TOWN UP.**—The term does not imply a criminal act, and in its natural signification is not actionable *per se*. Holland v. Hall, 3 O. W. N. 1304.

**HER MAJESTY'S POSSESSIONS.**—*V.* POSSESSIONS.

**HEREIN.**—Wherever the word "herein" is used in any section of an Act it shall be understood to relate to the whole Act and not to that section only. Interpretation Acts. R. S. C. ch. 1, sec. 34 (9); R. S. O. ch. 1, sec. 29 (*i*). These provisions were probably inserted because of the decision in McGill v. Peterborough, 12 U. C. R. 44, which decided that the words "herein contained" might apply to the section only, according to the context. It appears for the first time in the Interpretation Act to the Consolidated Statutes of Upper Canada, 1859.

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**HEREINAFTER.**—The word "hereinafter" in a power of sale was construed as "herein," or "hereinbefore" where there was no such power referred to after the provision, but the statutory power of sale was contained in an earlier part of the mortgage. Campbell v. Imperial Loan Co., 18 Man. R. 144.

**HIGH WATER MARK.**—In ascertaining the high water mark of a river the true limit would appear to be, by analogy to tidal waters, the average height of the river after the great flow of the spring has abated, and the river is in its ordinary state. Plumb v. McGannon, 32 U. C. R. 8.

The meaning of "high water mark" may be explained by the grant or by other deeds between the same parties. Graham v. Brown, 12 C. P. 418. See also Ireson v. Holt Lumber Co., 4 O. W. N. 1106; 30 O. L. R. 209.

**HIGHWAY.**—*V.* STREETS.

**HILL.**—In the Mining Act (Y.T.). See Jones v. Joyal, 6 W L. R. 407.

**HIS MAJESTY'S POSSESSIONS.**—*V.* POSSESSIONS.

**HOLDER IN DUE COURSE.**—R. S. C. ch. 119, sec. 131. See McDonough v. Cook (1908), 19 O. L. R. 267.

**HOLIDAYS.** — In Dominion legislation "Holiday" includes Sundays, New Year's Day, the Epiphany, Good Friday, the Ascension, All Saints Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Victoria Day, Dominion Day, the first Monday in September, designated Labour Day, and any day appointed by proclamation for a general fast or thanksgiving. R. S. C. ch. 1, sec. 34 (11).

In matters relating to Bills of Exchange the Epiphany, the Ascension, All Saints and Conception Day, are legal holidays in Quebec only.

In addition to the holidays above named the following are legal bank holidays. Any day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign, when such days respectively fall on Sunday. R. S. C. ch. 119, sec. 43.

In Ontario "holiday" includes Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday, or other day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Victoria Day, Dominion Day, Labour Day, and

any day appointed by proclamation of the Governor-General or the Lieutenant-Governor as a public holiday, or for a general fast or thanksgiving. R. S. O. ch. 1, sec 29 (*l*).

Legal holidays are *dies non juridici* as well as Sundays. On these days the Courts cannot do any judicial act. A preliminary inquiry by a magistrate and commitment for trial made on a statutory holiday is bad in law. R. v. Murray, 28 O. R. 549; 1 C. C. C. 452; R. v. Cavelier, 1 C. C. C. 134; R. v. Cooper, 5 P. R. 256.

But the taking of the verdict of the jury on a Sunday or other holiday does not render the verdict invalid. Criminal Code, sec. 961. So a warrant of arrest may be issued and executed on a Sunday, sec. 661 (3).

The decisions in the New Brunswick Courts do not seem consistent with the law as laid down by the Ontario Courts. In Gilmore v. Gilbert, 7 N. B. R. 50, it was held that Good Friday, though a public holiday, is not a *dies non*, and that a taxation of costs on that day is regular. In Upton v. Phelan, 18 N. B. R. 192, it was held that service of process on the Queen's birthday was good. In Ex p. Cormier, 12 C. C. C. 339, the Court held that a magistrate may try a complaint and make a summary conviction on Easter Monday.

If the time limited by an Act for any proceeding, or for the doing of anything under its provisions, expires or falls upon a holiday, the time so limited shall extend to, and such thing may be done on, the day next following which is not a holiday. R. S. C. ch. 1, sec. 31 (*h*); R. S. O. ch. 1, sec. 28 (*h*).

The 20th May, 1910, was proclaimed by the Governor-General as a day of general mourning for King Edward VII. *Held*, it was not a holiday within the Interpretation Act. Paterson v. Drabeson, 15 W. L. R. 87.

**HOME.**—A bequest to a child of "a home" would probably, in the case of an infant, include maintenance; but where the legatee is of age maintenance would not be included without express words. Augustine v. Schrier, 18 O. R. 192. Re McMillan, 3 O. W. R. 418.

A devise of lands to trustees to permit certain relatives to use it for a home gives such relative no estate in the lands—nothing more than the right to call upon the trustees to permit them to live in the house, and such right is not exigible under execution. Cameron v. Adams, 25 O. R. 229, distinguishing Allan v. Furness, 20 A. R. 34, where land was given to the father "during life" for the support of himself and family.



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A direction by a testator that a fixed sum be invested for his son F. and the income paid to him, and, if he marries, it be invested in real estate "so that my said son shall have a home for his absolute use," confers an absolute estate on F. on his marriage. Re Sheard, 4 O. W. N. 1395.

**HOMESTEAD.**—The word "homestead" in sec. 2 (9) of the Exemption Ordinance (Sask.), does not mean the land acquired by a homestead entry under the Dominion Lands Act. A "homestead" therein means the home place, the actual residence of the debtor and his family. John Abell Engine Co. v. Scott, 6 W. L. R. 272; Purdy v. Coulton, 7 W. L. R. 820.

It does not include land upon which the debtor intended to reside, but upon which neither himself nor his family ever actually took up their residence. To render the land exempt from seizure under execution there must be actual occupation of it by the debtor and actual residence thereon. There must be on the land a dwelling house in which the debtor lives. Imperial Electric Co. v. Shere, 14 W. L. R. 332.

The land constituting the "homestead" may be identified by extrinsic evidence. Bigelow v. Bigelow, 19 Gr. 549.

**HONESTLY AND REASONABLY.** — Whether a trustee has acted "honestly and reasonably" within the meaning of sec. 36 of the Trustee Act, R. S. O. ch. 121, must be determined in the light of all the surrounding circumstances, not as they would appear in the eyes of lawyers and Judges, but as they would appear in the eyes of ordinary prudent business men. Trustees acting honestly, with ordinary prudence and within the limits of their trust, are not liable for mere errors of judgment. Dover v. Denne (1902), 3 O. L. R. 664.

In the case of an honest trustee the rule protecting a trustee is not to be applied grudgingly and should lean to the side of the trustee; but where trustees neglected to sell bank stock in a falling market, they were held not protected by the statute. Re Nicholls, Hall v. Wildman (1913), 29 O. L. R. 206; 4 O. W. N. 1511.

The rule is that where the Court finds that the trustee has acted both honestly and reasonably, there is then a case for the Court to consider whether the trustee ought fairly to be excused for the breach, looking at all the circumstances. *Ib.* p. 219, 29 O. L. R.

Executors paying promissory notes of the testator with notice that such notes were made without consideration and were intended as gifts to the payees, are not protected under the above section, or section 51, making it lawful for "executors to pay

any debts or claims upon any evidence they may think sufficient." Re Williams, 27 O. R. 405. The opinions of bankers or other financial men as to whether the trustee has acted "honestly and reasonably" in the course he has taken or omitted to take is not competent evidence. *Semble*, such kind of evidence may be given where the opinion is shewn to have been prevalent in the neighbourhood, and to be concurrent with the transaction. Smith v. Mason (1901), 1 O. L. R. 594. See also Re Nichols, *supra*.

**HOSPITAL.**—V. PUBLIC HOSPITAL.

**HOTCHPOT.**—V. ADVANCEMENT.

**HOTEL KEEPER.**—V. INN KEEPER.

**HOUSE.**—"House" means, presumptively, a dwelling house; a building divided into apartments, with four walls, a roof, and doors and chimneys; but it does not necessarily mean precisely this, and is not synonymous with "dwelling-house."

In the Public Health Act it includes a dwelling house, lodging house, or hotel, students' residence a fraternity house. R. S. O. ch. 218, sec. 2 (c).

A restrictive covenant not to "erect or build more than one house upon" the lot sold, is not broken by building a stable on the lot, even though the stable be built before the house is built. Hime v. Lovegrove (1905), 9 O. L. R. 607.

A verandah is an integral part of a dwelling house, and not a porch or projection attached to it. Williams v. Town of Cornwall, 32 O. R. 255.

**HOUSEHOLDER.**—In the Public Health Act, R. S. O. ch. 218, sec. 2 (d), "householder" includes the proprietor, master, mistress, manager, housekeeper, janitor, and caretaker of a house.

A householder is one who lives in, and is master of, a house. Hence, one who lives in his father's house and carries on business therein, having the use of one room to sleep in, and another in which to receive clients, and who contributes to the household expenses, is not a householder within the meaning of a statute conferring municipal qualifications on "householders." Prevost v. Menard, 34 Que. S. C. 31.

**HOUSEHOLD FURNITURE.**—"Household furniture is an elastic term, and its meaning may vary according as the habits and mode of living change. Cases are to be found in which it has been held that books are not household furniture, because it was said in one of the cases, only articles for use or ornament are household furniture, which books are not, being for entertainment

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of the mind. But where books are now so common the older cases are not a safe guide, and in Re Holden (1903), 5 O. L. R. 156, a number of books passed as "household furniture."

*V.* FURNITURE.

**HOUSEHOLD GOODS.**—The words "household goods," in connection with the context, were held to pass money, farm stock and farm implements. Re Hudson (1908), 16 O. L. R. 165.

**HUNT.**—The word "hunt" in sec. 14 of the British Columbia Game Protection Act, means to pursue some particular animal; it does not mean hunting in the sense of going out with the intention of pursuing whether there is an actual pursuit of or killing animals or not. R. v. Oberlander, 13 W. L. R. 643.

**HUSBAND AND WIFE.**—In McCaffrey v. McCaffery, 18 A. R. 599, the doctrine of confidential relationship was applied, and a deed of a large portion of his property by a husband to his wife set aside. See also Hopkins v. Hopkins, 27 A. R. 658.

Mere influence by a wife over the mind of her husband is not sufficient to invalidate a will in her favour. Waterhouse v. Lee, 10 Gr. 176.

Where a wife pledges her separate estate to secure a debt owing by her husband the mere fact that she acted without independent advice does not amount to undue influence. Bank of Montreal v. Stuart (1911), A. C. 120; overruling Cox v. Adams, 35 S. C. R. 393; Euclid Avenue Trusts Corp. v. Hobs (1911), 23 O. L. R. 377; 24 O. L. R. 447.

*Other Cases.*

Where the plaintiff, an infant, was living with the defendant as his mistress, and she handed him certain sums of money which he invested in property in his own name, the Court presumed undue influence on the part of the defendant. Desulniers v. Johnston, 15 W. L. R. 20; 20 Man. 64.

The case is very strong against a transaction between a tavern-keeper and a drinking lodger. Clarkson v. Kitson, 4 Gr. 244; Hume v. Cook, 16 Gr. 84.

In all cases where the confidential relationship exists the burden of proof lies on the recipient of the bounty, and his evidence alone is not sufficient to rebut the presumption; the gift must be established by separate and independent evidence. Mason v. Seney, 11 Gr. 447; Lavin v. Lavin, 27 Gr. p. 571; Taylor v. Yeandle (1912), 27 O. L. R. 531.

Undue influence may be presumed in cases of sales at gross under-value, without competent advice. Elgie v. Campbell, 12 Gr. 132; Mason v. Seney, *supra*; Watson v. Watson, 23 Gr. 70. Or in cases of improvident bargains where the parties are very unequal as regards means, intelligence and otherwise, and the vendor has had no

independent and competent advice. Fallon v. Keenan, 12 Gr. 388; Brady v. Keenan, 14 Gr. 214; Edinburgh Life Assurance Co. v. Allen, 18 Gr. 425; even if no confidential relation exists between the parties if undue influence has been exerted the transaction cannot stand. Waters v. Donnelly, 9 O. R. 391.

2. The rules of equity in relation to gifts *inter vivos* by which fraud is presumed when they are obtained by persons in confidential relation to the donors are not applicable to gifts by will. The influence of a person standing in a fiduciary relation to the testator may lawfully be exerted to obtain a devise or a legacy, so long as the testator thoroughly understands what he is doing, and is a free agent; and the burden of proof of undue influence lies upon those who assert it. To be undue influence, in the eyes of the law, there must be, to sum it up in one word, coercion. It is only when the testator's will is coerced into doing that which he does not desire to do, that it is undue influence. But if the person who obtains the benefit takes part in the actual drawing of the will the onus is cast upon him of shewing the righteousness of the transaction. Collins v. Kilroy (1901), 1 O. L. R. 503, where a gift to a spiritual advisor was upheld. See also Kaulbach v. Archbold, 31 S. C. R. 387; Clark v. Loftus (1912), 26 O. L. R. 204; Lamoreux v. Craig, 49 S. C. R. 305.

In Freeman v. Freeman, 19 O. R. p. 155, MacMahon, J., defines "coercion," in this connection, as "importunity which could not be resisted; that it was done merely for the sake of peace, so that the motive was tantamount to force and fear."

An improper and untruthful suggestion to a testator as to the conduct of his wife was held undue influence. Mayrand v. Dussault, 38 S. C. R. 460.

Undue influence at elections is where anyone interferes with the free exercise of a voter's franchise by violence, intimidation, restraint, or otherwise.

A clergyman has no right, in the pulpit or out, by threatening any damage, temporal or spiritual, to restrain the liberty of a voter so as to compel or frighten him in voting or abstaining from voting otherwise than as he freely wills. If he does, in the eyes of the law this is undue influence.

The sermons and threats by certain parish priests of the County of Charlevoix were held to amount to undue influence sufficient to avoid the election. Brassard v. Langevin, 1 S. C. R. 145.

Detaining a person against his will so as to prevent him going to the poll is undue influence. North Ontario, H. E. C. 785.

An appeal by a candidate to his business, or his employment of capital in promoting the prosperity of his constituency, if honestly made, is not undue influence. West Peterboro, H. E. C. 274.

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An agent telling a voter that if he took the oath "he would look after him" was held not to be undue influence. Halton, H. E. C. 283.

**HUSBANDLIKE.**—A covenant in a lease to cultivate the demised land "in a husbandlike and proper manner" means to cultivate according to the course of farm cultivation and management in that part of the country where the land is situate. Coulter v. McCarter, 17 W. L. R. 720.

**I PROMISE.**—When two or more persons sign a promissory note which reads "I promise," etc., they are jointly and severally bound pursuant to the terms of section 179 of the Bills of Exchange Act, R. S. C. ch. 119. David v. Backman, Q. R. 31 S. C. 23.

**IF KNOWN.**—The Assessment Act, R. S. O. ch. 195, sec. 49 (4) requires notice to be transmitted by post to a non-resident's address, "if known." The Act further provides for a non-resident furnishing his address, such address to "stand until revoked in writing." The plaintiff had duly given his address in New York, and two letters sent to that address by the town treasurer had been returned undelivered. The next year the treasurer sent the tax notice to the plaintiff at Toronto, his former residence. *Held*, that the plaintiff's address was "known" within the above Act, notwithstanding the return of the undelivered letters. Gast v. Moore, 4 O. W. N. 525.

**IMMEDIATE—IMMEDIATELY.**—It is impossible to lay down any hard and fast rule as to what is the meaning of the words. The words "forthwith" and "immediately" have the same meaning. They are stronger than the expression "within a reasonable time," and imply prompt, vigorous action, without any delay, and whether there has been such action is a question of fact, having regard to the circumstances of the particular case.

Although a Justice of the Peace was required to make an immediate return of convictions he was held to have "a reasonable time, a time to enable him to do it conveniently, and in proper order." McLellan v. Brown, 12 C. P. 542.

The word "immediately" in Con. Rule (1913), 538, means "instanter;" and a party to whom costs are awarded by an order may issue execution therefor on the day of taxation. Clark v. Creighton, 14 P. R. 34.

An accident insurance policy contained a clause that if "accidental injuries . . . shall immediately, continuously and wholly disable," etc. The plaintiff was injured accidentally but did not become wholly disabled until three months after . . .

*Held*, the word "immediately" in the clause had relation to causation and not to time and that the plaintiff was entitled to recover. Shera v. The Ocean Accident & Guarantee Corpn., 32 O. R. 411.

An accident policy required "immediate written notice" of any accident to be given. Fifteen days after a fatal accident the official administrator in British Columbia advised the defendants by letter of the death of the insured and the cause of the death. The defendants acknowledged the letter and sent on papers for the purpose of filing claim. In these circumstances, Boyd, C., held they could not shelter themselves under the elastic word "immediate." Johnson v. Dominion Guarantee & Accident Co., 11 O. W. R. 363.

*V.* As soon as possible: Forthwith.

**IMMEDIATELY FOLLOWING.** — Section 78 of the Mining Act, R. S. O. ch. 32, provides that the recorded holder of a mining claim shall perform work thereon during the three months "immediately following the recording." *Held*, that the three months begins to run, not on the day of recording, but on the next day thereafter. *Per* Boyd, C.: I think the words "immediately following" are synonymous with "next after," referring (in the words of the Act later used) to a "period of time" and not to the creation of a term . . . The matter appears to me to be admirably put in language which I adopt from an Irish case in point, Miller v. Wheatley (1891), 28 L. R. Ir. 144. The three months is a collective or aggregate space, and the "space is reckoned, not from a point of time, but from an act."

The wording of the Irish case was "next after," which is, I think, the exact equivalent of "immediately following." Indeed following, *per se*, would probably mean, in statutory usage, "next after." Re Burns and Hall (1911), 25 O. L. R. 168.

**IMPAIRING.**—The word "impairing" in sec. 340 of the Railway Act, is intended to cover the case of total exemption from liability. "It is not the most appropriate word to convey that idea, but such is, I think, its meaning as used here. The dictionary meaning of "impair" is "to make worse, to weaken, to lessen injuriously, to deteriorate, to effect injuriously," etc. Clearly the word was not used here in any such sense. . . . It was not necessary for the purpose of "restricting or limiting" liability. Unless, therefore, it is given the meaning of "exempting from" liability it is meaningless. Heller v. Grand Trunk Ry. Co. (1911), 25 O. L. R. 117, 488.

**IMPEDIMENT.**—*V.* Inevitable Difficulty.

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**IMPLEMENTS OF TRADE.**—A horse is an implement of trade within sec. 3 (f) of the Execution Act. Davidson v. Reynolds, 16 C. P. 140; McMartin v. Hurlburt, 2 A. R. 146.

Where a person, not an expert, hired an expert to run a laundry for him, held he could not maintain a claim for tools and implements of trade used in connection with the laundry, "though he sometimes tinkered about the laundry." In re Demaurez, 5 Terr. L. R. 84.

Where a debtor changes his occupation for another in which his implements of trade are not ordinarily used they cease to be exempt. Wright v. Hollingshead, 23 A. R. 1.

**IMPLICATING.** — The corroborative evidence "implicating" the accused, made necessary by section 1002 of the Criminal Code to sustain a charge of seducing a girl under the age of sixteen years, may consist of the prisoner's admission made after she attained sixteen. R. v. Wyse, 1 C. C. C. C. 6.

Evidence by way of admission that justifies the other evidence being accepted and acted upon is evidence "implicating the accused." R. v. Daun, 11 C. C. C. 244.

**IMPORTED INTO CANADA.**—"When such goods are imported into Canada" in the Customs Act, means that the importation is not complete until the vessel containing the goods arrives at its port. The Queen v. The Canada Refining Co., 5 Exch. C. R. 177; 27 S. C. R. 395. Or when the goods are landed and delivered to the importer or to his order, or when taken out of the warehouse. *Ib.* 1898, A. C. 735.

**IMPORTANT HIGHWAY.**—Municipal Act, 1913, sec. 449 (*b*). To be an important highway within this section it is not essential that there should be one long line of road, extending through townships and counties, or one trunk road with various branches into different townships. It is enough if we find "an important road" which affords facilities whereby travellers from several municipalities may and do pass and repass upon the bridge. The test again of this requirement points to some general convenience of access available for the benefit of several municipalities, as distinguished from local use serving merely or entirely the township or the site.

A road may afford means of access, though it is not travelled habitually by outsiders, and the statute does not say that it is to afford direct access. The approaches to it may be through lanes or concession roads or other travelled ways. Township of McNab v. County of Renfrew (1905), 11 O. L. R. 180.

**IMPRISONMENT.**—Imprisonment means an entire restraint upon the will of the person detained to move at his free will in any direction, or compelling one to go in a particular direction against his will. A partial obstruction of his will, whatever inconvenience it may bring on him, is not an imprisonment.

The defendants were convicted of unlawfully assaulting E. V. "by standing in front of the horses and carriage driven by the said E. V., in a hostile manner, and thereby forcibly detaining him in a public highway against his will." *Held*, not an imprisonment. R. v. McElligott, 3 O. R. 535.

A person admitted to bail is in custody, and he has the same right to be released from this custody as he would have to be released from imprisonment. R. v. Cameron, 1 C. C. C. 169.

The word "imprisonment" in sec. 92 of the B. N. A. Act, does not necessarily exclude the imposition of hard labour as part of the punishment. R. v. Hodge, 7 A. R. 246; 9 A. C. 117.

**IMPROVED.**—As to the meaning of the word "improved" in sec. 199 of the Railway Act, 3 Ed. VII. See Phair v. Canadian Northern Ry., 6 O. W. R. 137, and Dreger v. Canadian Northern Ry., 15 Man. R. 386, 1 W. L. R. 126. But see Schellenberg v. Canadian Pacific Ry., 16 Man. R. 154, and the change in the wording of the section in the present Act, R. S. C. ch. 37, sec. 254 (4).

**IMPROVEMENTS.**—*V.* MISTAKE OF TITLE.

**IMPROVIDENCE AND ERROR.**—In the issuing of Letters Patent granting land so as to justify avoidance of the grant. See Fonseca v. The Attorney-General of Canada, 17 S. C. R. 612; 1 Man. R. 173.

**IN ANY PLACE.**—The term "in any place" held to mean "anywhere." R. v. Brennan, 35 N. S. R. 106; 6 C. C. C. 29.

**IN ANY YEAR.**—*V.* YEAR.

**IN ARMS.**—See R. v. Slaven, 17 C. P. 205.

**IN BOND.**—A description of goods in a chattel mortgage as "in bond" means in the Customs warehouse, and is a sufficient description as regards locality. May v. The Security Loan and Savings Co., 45 U. C. R. 106.

**IN CASE OF THE DEATH OF.**—See Re Jebb, 2 O. W. N. 1163.

**IN CHARGE OF.**—*V.* AT LARGE.

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**IN COURSE OF CONSTRUCTION.**—On an application for fire insurance the property to be insured was described as "buildings and additions now in course of construction." On account of financial difficulties building operations had been suspended and not recommenced when a fire occurred. *Held*, that it might, in these circumstances, properly be said, that the buildings were in course of construction. Dodge v. York Fire Insc. Co., 2 O. W. N. 571.

"In course of construction" does not mean that construction must be continued from day to day or month to month without interruption, but is to be construed in the light of such contingencies as weather, condition of trade and labour, and inevitable accident, and even financial embarrassment. Dodge v. Western Canada Fire Insc. Co., 6 D. L. R. 355.

**IN FORCE.**—Section 32 of the Mun. Act, 1913, provides for retaining in force the by-laws "in force" in an old corporation where a new corporation is formed until repealed by the council of the newly erected municipality. The words "in force" mean "having the force of law," or "being in existence," and that, therefore, a local option by-law passed by the township council before a village was incorporated, continued in force within the village after the incorporation, although such by-law was not to take effect until the 1st day of May following the incorporation. In re Dennison and Wright (1909), 19 O. L. R. 5.

The words "in force" are used in various parts of the statute of this province, and not always, as I think, in the same sense, and the meaning to be attached to them must be gathered in each case by a consideration of the subject matter to which they relate." *Per* Meredith, C.J. *Ib.*

**IN FRONT OF.**—*V.* FRONT OF.

**IN FULL.**—*Held*, following Day v. McLea (1889), 22 Q. B. D. 610, that retaining a cheque marked "in full" is not conclusive evidence of accord and satisfaction, but it may be shewn that, as a matter of fact, the creditor did not accept the cheque in full. McPherson v. Copeland, 1 Sask. R. 519.

Defendant paid a sum into Court "in full satisfaction of the plaintiff's claim herein." *Held*, the plaintiff was not entitled to take the amount out of Court and proceed for the balance. Barrie v. Toronto & Niagara Power Co. (1905), 11 O. L. R. 48.

**IN PURSUANCE OF THE ACT.**—*V.* PURSUANT TO THE ACT.

**IN STORE.**—A farmer left fall wheat with a miller taking a receipt in these words: "Received from W. in store 296 bush.

wheat, fire accepted, price to be set on or before 1st August next." *Held*, that the words "in store" did not indicate a sale. Isaac v. Andrews, 28 C. P. 40. It was competent for the plaintiff to have proved there was a sale notwithstanding the words "in store." *Ib.* p. 44. See McBride v. Silverthorne, 11 U. C. R. 545.

**IN THE BEST CONDITION.**—An informal lease of a house and land whereby the tenant, who was to receive the premises "in the best condition," agreed "to give up the house in the same condition and repairs." In an action by the landlord for a breach of this agreement, the trial judge allowed damages excluding, in his compensation, damages attributable to ordinary wear and tear. On appeal, the Divisional Court held he was not warranted in reading this exception into the undertaking, which was in form absolute. "The extent of the obligation of a tenant under a repairing lease is discussed in the recent case of Lurcott v. Wakely (1911), 1 K. B. 905, where the Court of Appeal review most of the earlier authorities." Bornstien v. Weinberg (1912), 27 O. L. R. 536.

The degree of repair which is described in this lease as "the best condition" must be taken in relation to the kind of house that was demised and the conditions of repairs in which it was at the time of the demise." *Ib.*

**IN THE MEANTIME.**—*V.* MEANTIME.

**IN THE PREMISES.**—See Vogel v. Grand Trunk Ry. Co., 2 O. R. 197.

**INADVERTENTLY.**—The Ontario Election Act, R. S. O. ch. 8, sec. 109.

Where an elector by mistake marked his ballot paper for the candidate against whom he intended to vote, the Deputy Returning Officer held that, because it was good upon its face, it had not been "inadvertently dealt with" under the above section, and refused a new ballot paper. *Held*, he was wrong, and it had been so dealt with. Hastings v. Summerfeldt, 30 O. R. 577.

**INCIDENTAL.**—The Ontario Companies Act, R. S. O. ch. 178, sec. 23 (1).

"Incidental" is equivalent to what may be derived by implication from the language of the Act. Incidental powers, if conferred by general words, are to be taken in connection with what are shewn by the context to be the dominate or main object, and are not to be read so as to enable a company to carry on any business or undertaking of any kind whatever. It does not authorize the financing a business which it could not engage in.

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Union Bank of Canada v. McKillop, 4 O. W. N. 1253; 5 O. W. N. 493.

The incidental powers of a trading company, incorporated under the Ontario Companies Act, do not extend to guaranteeing the debts of another and different company, whose sole connection with the former is that of a customer. In this respect, "incidental" means what may be derived by reasonable implication from the language of the Act. Even the words "incidental or conducive" have been given a restricted meaning, although conducive to the interests of the company by increasing the company's connections. And these incidental powers, if conferred by general words, are to be taken in connection with what are shewn by the context to be the dominant or main object, and are not to be read so as to enable the company to carry on any business whatever. Union Bank of Canada v. McKillop (1913), 30 O. L. R. 87.

**INCLUDING.**—"Including" imports addition, i.e., indicates something not included. A testator by his will devised real estate, and proceeded: "I give the residue of my property, including life insurance, to my wife." The word "including" did not mean that the life insurance was a part of the residuary estate, but that it was given in addition to the residuary estate. Re Harkness (1904), 8 O. L. R. 720; Re Duncombe (1902), 3 O. L. R. 510.

The word "including" in a bequest of life insurance is sufficient to identify the policy within the Insurance Act. Re Cheesborough, 30 O. R. 639; Re Harkness, *supra*.

**INCOME.**—Income means the balance of gain over loss made in the fiscal year, and where no such balance of gain has been made, there is no income or fund which is capable of being assessed. Lawless v. Sullivan, 6 A. C. 373, reversing 3 S. C. R. 117; City of Kingston v. Canada Life Assurance Co., 19 O. R. 453.

"Our statute does not make any plain distinction between income tax so called and a rate levied upon personal property—though these are becoming broadly contrasted by social economists. The assessments here imposed were in respect of 'income' only, and not in respect of personal property, or of income and personal property. The distinction is, I think, material in view of the application of the statute as it is framed. Income is not perhaps the most appropriate word to use with reference to corporations, but being used for convenience or comprehensiveness, it must receive the meaning which 'income' has in connection with individuals or partnerships. Whatever difficulty one might have in arriving at a conclusion as to this word, its statutory signification

has been obviated by the judgment in the Privy Council in Lawless v. Sullivan, which was upon a fiscal statute, using very much the same collocation of words as are found in the Ontario Assessment Act." Boyd, C., City of Kingston v. Canada Life, *supra*.

In the last case, it was held that premiums of insurance, collected at a local agency, were not assessable as income at the place of collection.

The British Columbia Assessment Act assessed all income. The Act contained no definition of "income." Irving, J., held that income includes all gains and profits derived from personal exertions, whether such gains and profits are fixed or fluctuating, certain or precarious, whatever may be the basis of calculation. The Supreme Court of British Columbia reversed this decision, holding that income for the purpose of taxation included only what was actually received, gained or earned. The Privy Council reversed the judgment of the Supreme Court and restored the judgment of Irving, J. Attorney-General of British Columbia v. Ostrum, 1904, A. C. 144.

The net receipts for the year's work of a mine, left after deducting working expenses, etc., is "the income derived from the mine" within the meaning of sec. 36 (3) of the Assessment Act, 4 Edw. VII., ch. 23. It is what has been gained from the year's operations, that which comes to the proprietors which is taxable. In re Coniagas Mines Co. and the Town of Cobalt (1907), 15 O. L. R. 386.

Wages earned as a section-foreman of a railway company is income; and as such liable to taxation, and it is immaterial that such wages have been invested in property which is also liable to taxation. Graham v. Trustees Broadview School District, 3 Terr. L. R. 200.

Judges' salaries are income and so assessable. Re County Court Judges' Income Assessment, 5 O. W. N. 657; Dugas v. Macfarlane, 18 W. L. R. 701; but not the living allowance allowed the Judges of the Yukon Territory. *Ib.*

A charge on all the property and income of a company was held not to give a charge on debts, except in so far as they represented income; and the term income was held in such a case to mean net earnings, after providing for current expenses. McCargar v. McKinnon, 15 Gr. 361.

**INCOMMODE.**—The word "incommode" used in sec. 13 of ch. 107, 2 Edw. VII. (d) does not refer to the charges arising from the subsequent transmission of power, but to inconvenience in the actual placing of the plant on the public highway. Toronto & Niagara Power Co. v. Town of North Toronto (1911), 24 O. L. R. 537.

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**INCUMBRANCE.**—The registration of a certificate of *lis pendens* is not an incumbrance within the meaning of sec. 21 of The Conveyancing and Law of Property Act, R. S. O. ch. 109. It does not create any lien or charge upon the lands against which it is registered. Molson's Bank v. Eager (1905), 10 O. L. R. 452.

A caution under the Land Titles Act amounts to no more than the notice of an adverse claim equivalent to a *lis pendens* and expires by lapse of time or otherwise; it does not form a blot on the title. Attorney-General of Ontario v. Hargrave (1906), 11 O. L. R. 530.

Notwithstanding the provisions of sec. 681 of the Mun. Act, 1903, it was held that a vendor who had agreed to "convey the land freed and discharged from all incumbrances" was not bound to apportion local improvement rates as "taxes, rates and assessments." Re Taylor and Martyn (1907), 14 O. L. R. 132.

Such rates would not be an incumbrance within a covenant that a vendor "had done no act to incumber the lands." *Ib.*

A fire insurance policy contained a condition that "if the subject of insurance be personal property, and be or become incumbered by a chattel mortgage," it should be void. *Per* Duff, J. A security receipt under sec. 88 of the Bank Act given to a bank for advances is not a chattel mortgage within the meaning of this condition. Guimond v. Fidelity Phœnix Fire Insc. Co., 47 S. C. R. 216.

A vendor's lien for unpaid purchase money is an incumbrance upon insured property within the meaning of a question in that behalf. Chatillon v. The Canada Mutual Fire Insc. Co., 27 C. P. 451.

In Saskatchewan, a seed grain lien and taxes are incumbrances. Moritz v. Christopherson, 18 W. L. R. 63.

In the Mortgages Act, R. S. O. ch. 112, "incumbrance" includes a mortgage in fee or for a less estate, a trust for securing money, a lien, and a charge of a portion, annuity or other capital or annual sum; and "incumbrancer" has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof. Sec. 2 (b).

**INDECENT.**—The word "indecent" has no fixed legal meaning, and it devolves on the prosecution in the charge of presenting an indecent performance to prove it was of a depraving tendency. R. v. McAuliffe, 8 C. C. C. 21.

**INDIAN.**—The Indian Act, R. S. C. ch. 81, sec. 2, defines an Indian as meaning "any male person of Indian blood reputed to belong to a particular band." The words "reputed to belong"

are used to provide facility of proof, that is, that proof of mere repute that he so belongs is sufficient for all the purposes of the Act: *a fortiori* evidence that he actually belongs is sufficient. R. v. Howson, 1 Terr. L. R. 492.

The status of an Indian as such may be proved by his certificate of birth, his general reputation, his residence in the reserve, or his election as councillor. The real and personal property of Indians inside the reserve is exempt from seizure. Charbonneau v. DeLarimier, 8 Que. P. R. 115.

In R. v. Howson, *supra*, it was held as follows: (1) Against the contention that "of Indian blood" means of full Indian blood, or at least of Indian blood *ex parte paterna*—that a half breed of Indian blood *ex parte materna* is "of Indian blood." (2) Against the contention that the defendant having been shewn to have actually belonged to a particular band, this disproved, or was insufficient to prove, that he was reputed to belong thereto. (3) Against the contention that the mother of the defendant (an Indian) by her marriage to his father (a white man) ceased to be an Indian, and that, therefore, the defendant was not a person of Indian blood.

Sec. 135 of the Indian Act prohibits the sale, barter or supply of intoxicating liquor to any Indian. A half-breed Indian who has "taken treaty" is an Indian within the Act. A conviction under this section was quashed because the licensee did not know, and had no means of knowing, that the half breed shared in Indian treaty payments. *Mens rea* must be shewn. R. v. Mellon, 5 Terr. L. R. 301; R. v. Hughes, 12 B. C. R. 290.

An unenfranchised treaty Indian residing on a reserve is a "person" within sec. 47 of the Ontario Medical Act, R. S. O. ch. 161, and is liable to conviction for practising medicine for hire off the reserve. To the extent to which Parliament has not removed Indians from the scope of provincial laws, they must, in their dealings outside the reserve, govern themselves by the general law which applies there. R. v. Hill (1907), 15 O. L. R. 406.

But such an Indian has no right to vote on an election under The Canada Temperance Act. Re Metcalfe, 17 O. R. 357.

Indians in Canada are British subjects and entitled to all the rights and privileges of such, except so far as these rights are restricted by statute, and notwithstanding sec. 91 (24) of the B. N. A. Act, are subject to all provincial laws which the Province has power to enact. Sanderson v. Heap, 19 Man. R. 122.

An Indian, otherwise qualified, may be elected a reeve of a township. Reg. *ex rel.* Gibb v. White, 5 P. R. 315. And an Indian may make a will. Johnson v. Jones, 26 O. R. 109.

The prohibition of sale of lands by Indians applies only to reserve lands. Totten v. Watson, 15 U. C. R. 392.

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Money deposited in a bank to the credit of an unenfranchised Indian, living upon a reserve, is "personal property outside of the reserve" within sec. 99 of the Indian Act. Avery v. Cayuga (1913), 28 O. L. R. 517.

The Criminal Code applies to Indians as to others. Rex v. Beboning (1908), 17 O. L. R. 23.

**INDORSE.**—The word "indorse" in the case of negotiable instruments, imports a dealing and transfer to the indorsee, so as to pass title thereto, but has no such effect in the case of non-negotiable instruments, such as a deposit receipt. Lee v. Bank of B. N. A., 30 C. P. 255.

**INDUSTRIAL ENTERPRISE.**—By a special Act, 57 Vict. ch. 62, sec. 2, the defendants were empowered "to grant aid, by way of loan or bonus, to an industrial enterprise." Pursuant to this Act, the defendants purported to give the plaintiffs exemption from taxation, etc., on their machine and repair shops. In an action for an injunction restraining the defendants from collecting taxes, Britton, J., said: "Are the plaintiffs an 'industrial enterprise' within the meaning of that Act? I am of opinion they are not. The whole spirit and tenor of the Municipal Act and of this special Act are contrary to the contention that a railway corporation, such as the plaintiffs, can properly be called an industrial enterprise. The plaintiffs are carriers, engaged in transportation of people and property. There are special provisions enabling municipalities, under certain conditions, to aid railways. To aid an industrial enterprise is quite another thing. The word 'industrial' as generally used, denotes 'the process or products of manufacture or commercial production in general.' "The term 'industrial' is almost always applied to incorporated concerns for manufacture"—Standard Dictionary. Canadian Pacific Ry. v. Town of Carleton Place, 12 O. W. R. 567.

**INEVITABLE ACCIDENT.**—*V.* ACCIDENT.

**INEVITABLE DIFFICULTY.**—In McLeod v. Traux, 5 O. S. 455, it was held that infancy was not an "inevitable difficulty" within sec. 15 of the then Registry Act (see now The Registry Act, R. S. O. ch. 124, sec. 77), so as to preclude an infant devisee registering a will. This was followed in Manderville v. Nicholl, 16 U. C. R. 609.

Where the will was burned eleven months after the death of the testator, held no inevitable difficulty. To render difficulty inevitable, it would need to be one extending over the whole twelve months named in the statute. Re Davis, 27 Gr. 199.

Where there were serious doubts as to which of three documents constituted the last will, and this was only determined by the Court more than a year after the death, this was held to be an inevitable difficulty. "The words used by the Legislature are 'inevitable difficulty' and 'impediment.' By these, I think, must be meant something less than an absolute impossibility; and, if so, it appears to me that it would be difficult to conceive a case in which the circumstances and facts would present inevitable difficulty, if they did not do so in the present case." O'Neill v. Owen, 17 O. R. 525.

**INFAMOUS OR DISGRACEFUL CONDUCT.**—By sec. 31 of The Ontario Medical Act, R. S. O. ch. 161, power is given to the Council to erase from the register the name of any member who has been guilty of any "infamous or disgraceful conduct in a professional respect." C. was charged with such conduct in advertising a secret remedy, and the finding was that he was guilty of deceitful and fraudulent advertising. *Held*, the order erasing his name could not be supported. *Per* Boyd, C.: The meaning of the statute is not what is "infamous" or "disgraceful" from a professional point of view or as regarded by a doctor, and as construed in the light of the written or unwritten ethics of the profession; it is whether his conduct in the practice of his profession has been infamous or disgraceful in the ordinary sense of the epithets, and according to the common judgment of men. Re Crichton (1906), 13 O. L. R. 271, 282.

*Per* Riddell, J.: "The Legislature cannot, I think, have intended that an abortionist should be able to snap his fingers at the Council, and, under the guise of a registered practitioner, continue his nefarious work, if only he has been astute or lucky enough to escape conviction." Re Stinson and College of Physicians and Surgeons of Ontario (1911), 22 O. L. R. 627. And see Re Robert Telford, 11 B. C. R. 355.

Immoral relations of a dentist with a member of his office staff was held to be within the purview of the British Columbia Dentistry Act. Re G. and College of Dental Surgeons of B. C., 9 W. L. R. 650.

**INFANT.**—In law an infant is a person within age, not of age, or not of full age; a person under the age of twenty-one years; a minor.

A parent is not, because of his family relation, legally responsible to answer in damages for the torts of his infant child. Thibodeau v. Cheff (1911), 24 O. L. R. 214; Corby v. Foster (1913), 29 O. L. R. 83. But he is responsible if he encourages, countenances or consents to the conduct of the infant. *Ib.*

*V.* Adoption: Consent of the Infant.



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**INFLUENCE.**—V. UNDUE INFLUENCE.

**INHABITANT.**—The term "inhabitant" has no precise legal meaning, and is to be construed according to the subject matter in which it is found. R. ex rel. McNamara v. Christie, 9 U. C. R. 682.

In ordinary phraseology, it means a dweller, or one who dwells or resides permanently in a place, or who has a fixed residence, as distinguished from an occasional lodger, or visitor, unless a statutory signification is given to the term when used in a particular connection different from its grammatical import, or its usual meaning in common parlance. Ex p. Smith, 2 Pugs. N. B. 147; Wanzer Lamp Co. v. Woods, 13 P. R. 511.

When a person keeps the dominion over his house, and goes away for an indefinite time, with an intention of returning at an indefinite time, he may be considered as inhabitant of the house while he is not bodily in the house. Re Sturmer and The Town of Beaverton (1911), 24 O. L. R. 65.

V. DOMICILE: RESIDENCE.

**INJURE TRADE.**—V. RESTRAIN OR INJURE TRADE.

**INJURIOUSLY AFFECTED.**—The compensation which is given in respect of lands "injuriously affected" (sec. 325 of the Mun. Act, 1913) has been held to embrace only such damage as would have been actionable if the work causing it had been executed without statutable authority; and as giving compensation for whatever damage would be otherwise recoverable by action. Re Collins and Water Commissioners of Ottawa, 42 U. C. R. 385.

**INMATE.**—An inmate is one who dwells in a part of another's house, the latter dwelling at the same time in the same house. Lodgers are inmates.

Where a defendant could not be served personally, and the constable left the process at the defendant's hotel "with David Franey who stays there most of the time," held that this was not sufficient to shew that David Franey was an inmate. R. v. Franey, 7 E. L. R. 411.

Service on a clerk at an hotel where the defendant resided held insufficient, as it did not shew that the clerk was an inmate. Ex p. Wallace, 19 C. L. T. 406.

A man cannot be an "inmate" of a bawdy house within the meaning of sec. 238 (j) of the Criminal Code. R. v. Knowles, 25 W. L. R. 294.

**INN.**—In The Inn-keepers' Act (R. S. O. ch. 173, sec. 2 (a)), "inn" includes an hotel, inn, tavern, public house or other place of refreshment, the keeper of which is by law responsible for the goods and property of his guests; and "inn-keeper" means the keeper of any such place.

"I take the true definition of an inn to be a house where the traveller is furnished with everything which he has occasion for while upon his way. A house, the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a situation in which they are fit to be received." Newcombe v. Anderson, 11 O. R. p. 672.

Inn and tavern are ordinarily, in Ontario, used as synonymous terms; in England, it appears to signify a house where food and drink without lodgings may be obtained. Fraser v. McGibbon, 10 O. W. R. 57.

**INN-KEEPER.**—Section 1 of the Provincial Lord's Day Act, C. S. U. C. ch. 104, does not apply to an hotel keeper or restaurant keeper as such; they are not "merchants or tradesmen" of the "employee" class. The services they render to their guests are in the nature of "work and labour" rather than of the sale of goods. But if an inn-keeper thinks it a matter of convenience to his guests and a source of profit to himself to sell merchandise, such as books, papers, etc., then, as to these adjuncts to his inn-keeping, he becomes subject to the laws applicable to merchants and traders.

"It may not always be easy to draw the line. As inn-keeper, it is his business to provide his guests with food, refreshment and shelter. All that a guest, as guest, is entitled to demand and receive as 'food and refreshment' he may supply, even though it involve a sale of goods; but the fact that the inn-keeper is an inn-keeper must not be made the cloak for the sale of goods by the hotel-keeper in his ancillary mercantile business; and, *a fortiori*, will not authorise him to sell his merchandise to one who is not a guest." R. v. Wells (1911), 24 O. L. R. 77, where the proprietor of a news-stand in an hotel sold cigars as part of his business on a Sunday, and it was held he was within the Act.

An inn-keeper may limit his accommodation and entertainment to a certain class. He may exclude such as are not sober, orderly, able to pay his reasonable charges, or such as ply his guests with solicitations for patronage in their business, or whose filthy condition would annoy other guests. The relation of inn-keeper and guest commences as soon as the traveller presents himself and is accepted, and the absence of active objection on the part of the inn-keeper may amount to an acceptance. Fraser v. McGibbon, 10 O. W. R. 56.

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J. and his wife took rooms in defendant's hotel, partly furnishing them and paying $50 a month for rooms and board. They left the hotel in debt for board and lodging. The defendant detained a piano and claimed a lien thereon. The piano had been obtained from plaintiffs under a hire agreement. It was held that the relation between J. and the defendant was not that of innkeeper and guest, but of boarding-house keeper and boarder and there was no lien on the piano for board and lodging. Newcombe v. Anderson, 11 O. R. 665.

*V.* GUEST.

**INQUEST.**—The term "inquest" has at least three meanings, one being a body of men appointed by law to inquire into certain matters; the Grand Jury is sometimes called the grand inquest: and the judicial inquiry itself by the jury summoned for the purpose. The finding itself by such jury, upon an investigation, is also called an inquest, or an inquisition. In the Coroners Act, R. S. O. ch. 92, the word is apparently used with different meanings. Davidson v. Garrett, 30 O. R. 653; 5 C. C. C. 200.

**I PROMISE.**—A promissory note signed by two or more persons and beginning "I promise to pay" is a joint and several promissory note. David v. Backman, Q. R. 31 S. C. 23.

**INSOLVENT.**—In considering the question of the solvency or insolvency of a debtor, I do not think we can properly look upon his position from a more favourable point of view than this, to see and examine whether all his property, real and personal, be sufficient if presently realized for the payment of his debts, and in this view we must estimate his land, as well as his chattel property, not at what his neighbours or others may consider to be its value, but at what it will bring in the market at a forced sale; or at a sale when the seller cannot await his opportunities, but must sell. . . . There is no doubt of the meaning of the words "in insolvent circumstances"—that it is not necessary that the debtor should be either technically a declared insolvent or openly and notoriously insolvent. The statute has been acted upon in many cases where the debtor was neither the one nor the other, the words of the Act having been interpreted as they should be according to their plain, ordinary, grammatical meaning. Davidson v. Douglass, 15 Gr. 347.

A debtor is *legally* insolvent when he has not sufficient property subject to execution to pay all his debts, if sold under legal process, and *commercially* insolvent when he has not the means to pay off and discharge his commercial obligations as they become due in the ordinary course of business. Rae v. McDonald, 13 O.

R. 352. In the latter case Cameron, C.J., said that in determining whether a debtor is insolvent or not "his assets are not to be estimated at what they might bring at a forced sale under execution, but at their fixed value in cash on the market at an ordinary sale." This view is not in accord with the earlier Ontario cases and was dissented from by the Court in Warnock v. Kleopfer, 14 O. R. 288; 15 A. R. 324; 18 S. C. R. 701.

"A man may be deemed insolvent in the sense of the Act (Assignment and Preferences Act) if he does not pay his way, and is unable to meet the current demands of creditors, and if he has not the means of paying them in full out of his assets realised for cash or its equivalent." Warnock v. Kleopfer, supra; Empire Sash & Door Co. v. Maranda, 21 Man. R. 605; 19 W. L. R. 78.

"While I do not desire to depart from the definition given in Rae v. McDonald of legal insolvency—i.e., a condition in which a debtor is placed when he has not sufficient property to pay all his debts if sold under legal process—I would desire to add that such sale must be fair and reasonable. What would be fair and reasonable must be determined on the facts of each case. Property worth to-day double a man's liabilities, and which to-morrow may, for temporary causes, be quite unsaleable, but which, if kept for a short time and judiciously handled, could be sold for more than sufficient to pay all his liabilities, should not, it seems to me, be valued at the price realized by a forced sale under the temporary disadvantage." *Per* Rose, J. Clarkson v. Sterling, 14 O. R. 463.

"Unable to pay his debts in full" is to be given the same meaning as "insolvent circumstances." Both expressions refer to the same financial condition; that is, a condition in which a debtor is placed when he has not sufficient property subject to execution to pay all his debts if sold under legal process at a sale fairly and reasonably conducted." Dominion Bank v. Cowan, 14 O. R. 465.

A man whose liabilities are not wholly matured and who can sell his property on terms which will enable him to pay matured claims, and others as they mature, is not insolvent. Bertrand v. Canadian Rubber Co., 12 Man. R. 27.

A person is not so notoriously insolvent as to render a hypothec deed void against creditors where his insolvency was known to but a few people; and most of his creditors, including the grantee in the deed, were unaware thereof. Eastern Township Bank v. Picard, 13 D. L. R. 389.

A trader who has faithfully paid all his acknowledged debts cannot be deemed insolvent for leaving unpaid some that can reasonably be disputed, especially when the creditor who demands

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an assignment admits that his claim is litigious. Ward v. Proulix, 14 Que. P. R. 133.

**INSTALMENT.**—As meaning principal of a mortgage debt due in one payment. Biggs v. Freehold Loan & Savings Co., 26 A. R. 232.

**INSTRUMENT.**—The term "instrument" as defined in sec. 2 (d) of the Registry Act, R. S. O. ch. 124, includes every document whereby lands may be transferred, charged or affected. McMaster v. Phipps, 5 Gr. 253. An agreement to charge lands for a debt due. Hoofstetter v. Rooker, 22 A. R. 175. A conveyance of growing timber. Ellis v. Grubb, 3 O. S. 611; McLean v. Burton, 24 Gr. 134.

A document stating "I claim the lands and premises known as" (describing them), is not an "instrument." Ontario Industrial Loan Co. v. Lindsey, 3 O. R. 66. See Re Henderson and City of Toronto, 29 O. R. 669.

**INSTRUMENT IN WRITING.**—A will not validly executed is not an "instrument in writing" within the meaning of sec. 160 of the Ontario Insurance Act, R. S. O. 1897, which provided that "the assured may, by an instrument in writing, vary the beneficiaries." In re Janson (1906), 12 O. L. R. 63. The new Act, R. S. O. ch. 183, sec. 179, substitutes the word "declaration" for the term "instrument in writing."

**INSURANCE.**—An applicant for life insurance was required to state "amount of insurance you now carry on your life." He named several policies of life insurance, but did not mention two policies he held in accident insurance companies. *Held* that "accident insurance" is not insurance of the character embraced in the term "insurance on life." The Metropolitan Life Insc. Co. v. Montreal Coal & Towing Co., 35 S. C. R. 266; Que. R. 24 S. C. 399.

**INTENT.**—V. ATTEMPT.

**INTEREST.**—Interest, as synonymous with "bias," means inclination; bent, prepossession, a preconceived opinion; a predisposition to decide a cause or a matter in a certain way which does not leave the mind perfectly open to conviction.

Except where a magistrate acts upon his own view of an offence, he should not be a promoter of the prosecution, or be interested personally in the matter he is called on magisterially

to investigate. It is contrary to natural justice that the Judge should be interested in securing the conviction of the accused, or be influenced by any bias other than that produced by the evidence on the mind of one unpredisposed by any kind of interest to have his judgment so warped as to prevent his giving an impartial decision. If such an interest exists, the magistrate is disqualified from acting judicially, be the interest ever so small. The Court cannot weigh the interest or estimate its force. R. v. Sproule, 14 O. R. p. 381.

There are many cases to be found in the books in which convictions, orders and decisions of tribunals, the members or a member of which were, according to the principles upon which, in English Courts, justice should be administered, disqualified by reason of interest or bias from adjudicating upon the matters in question before them, have been granted on that ground.

That a pecuniary interest, however small, is an absolute disqualification, is beyond question. Where too, the magistrate, or person exercising judicial functions is the prosecutor, or the person or one of several persons on whose behalf, at whose instance, or in whose interests, the proceedings are taken, he is disqualified, conformably to the rule which is well expressed in the maxim "*nemo debet esse judex in propria sua causa.*" R. v. Steele, 26 O. R. p. 542.

In order to disqualify a magistrate from acting, on the ground of bias, it is not necessary to shew that he is in fact biased, but only that he is in such a position that he might be biased. R. v. Woodroof, 20 C. C. C. 17.

A magistrate who states that he will convict parties charged with illegally selling liquor, whether the evidence proves it or not, if he believes them to be guilty, shews a disqualifying bias. R. v. Rand, 22 C. C. C. 147.

Where the interest of a justice in a matter in which he has taken part is not pecuniary, it must be a substantial interest, so as to make it likely that he has a real bias, the mere possibility of bias is not enough to disqualify him; relationship is not of itself a disqualification. Ex p. Grieves, 29 N. B. R. 543.

A police magistrate, who is also a statutory member of the Board of Police Commissioners, is not disqualified from trying a charge of selling liquor without a license by reason of having, at a meeting of the Commissioners, moved a general resolution instructing the police to prosecute for infractions of the Act. R. v. Suck Sin, 18 C. C. C. 267.

The fact that a magistrate's salary is paid out of the city's funds, and that all fines recovered under a certain Act form a part of this fund to be applied towards the due administration of justice, does not give the magistrate such an interest in the

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fines as to make him incompetent to adjudicate on the case. In re John Joy, 7 C. L. T. 29; or the fact that he is a rate-payer of the city. R. v. Suck Sin, 20 Man. R. 720.

In the case of a conviction for selling liquor without a license the fact that one of the magistrates is a druggist, and as such fills prescriptions containing small quantities of liquor, does not disqualify him. R. v. Richardson, 20 O. R. 514.

In R. v. Simmons, 14 N. B. R. 158, it was held that if the Justice is interested in the prosecution, as where he was a member of a division of the Sons of Temperance by which a prosecution for selling liquor was carried on, he is disqualified. But see R. v. Klemp, 10 O. R. 143; R. v. Eli, 10 O. R. 727.

But a magistrate who is engaged in the same kind of business as a trader prosecuted under a transient trader's license is thereby disqualified. R. v. Leeson, 5 C. C. C. 184.

The defendant was convicted of selling property by auction without having an auctioneer's license. Two of the four magistrates were licensed auctioneers, and it was held they were disqualified and the conviction quashed. R. v. Chapman, 1 O. R. 582.

The fact that the accused has brought a civil action against the magistrate is no ground for *certiorari* on the ground of interest if the Court is satisfied the action is not *bona fide*. Ex p. Schribner, 32 N. B. R. 175; 13 C. L. T. 412.

But if there is *bona fide* litigation pending between the parties that is ground for disqualification. R. v. Milne, 20 N. B. R. 394. Or where the magistrate has himself prosecuted the same defendant before another magistrate for an offence under the same statute, and *certiorari* proceedings thereon are still pending. Ex p. Daigle, 18 C. C. C. 211.

The Supreme Court of New Brunswick held, in Ex p. Wallace, 27 N. B. R. 174, that a Justice was disqualified from hearing a case against his daughter-in-law after the death of her husband, the death of the husband not having affected the relationship between the Justice and his son's widow; and in Ex p. Jones, 27 N. B. R. 552, the conviction was quashed where the grandfather of the Justice was a brother of the defendant's great-grandfather, following the common law principle that judicial officers should not act if related within the ninth degree of consanguinity.

In Ex p. McEwen, 1 E. L. R. 352; 12 C. C. C. 97, the same Court refused to quash a summary conviction on the ground that one of the Justices was related to the defendant within the ninth degree, when the Justice was not aware of the relationship, and no objection was taken at the beginning.

The reason usually given for the rule that relationship within the ninth degree of consanguinity constitutes bias is that such relationship may reasonably create interest. "Perhaps that is too limited a reason, and this Court has well decided in Wetmore v. Levy, 10 N. B. R. 180, that a relationship existing between the sheriff who empannelled the jury and the defendant is as effective an objection to the jury, at the instance of the defendant, as it would be if made by the party not related. The same principle applies to any person who is a necessary constituent of the Court." R. v. McEwen, *supra*.

Where the convicting Justice was the son of the complainant the conviction was quashed. R. v. Steele, 26 O. R. 504. And where he was the father of the young girl alleged to have been assaulted. R. v. Longford, 15 O. R. 52. But a Justice can take an information, even though related, where he has no intention of personally trying the case. Campbell v. Walsh, 18 C. C. C. 304.

In Vineberg v. The Guardian Fire Insc. Co., 19 A. R. 293, an arbitrators' award was set aside where one of the arbitrators was sub-agent for an agent of the defendants in obtaining insurance risks.

In Township of Burford v. Chambers, 25 O. R. 663, Meredith, J., said he was unable to reconcile the cases, and appears to have thought the Court went a long distance in the Vineberg case, but said he was bound by it and restrained a barrister from acting as arbitrator where it was shewn he had acted as counsel for the husband in an action against the township.

The Vineberg case certainly goes the farthest of any that can be cited. It was a judgment of Rose, J., and in Re Christie and Town of Toronto Junction, 24 O. R. 443, the same Judge refused to set aside an award when one of the arbitrators had acted as Chamber counsel for the town solicitor, although he said, "it is a little difficult to distinguish in principle that case from the one before me."

Pending the reference one of the arbitrators was offered the solicitorship of the defendant railway company, and, after the findings were made, accepted it. The award was set aside. Conmee v. Canadian Pacific Ry., 16 O. R. 639.

And where the reference is not a voluntary one, and the referee is not chosen by the parties, the rule is very strict. In Livingstone v. Livingstone (1906), 13 O. L. R. 604, there had been a reference to a Local Master, who was one of a firm of solicitors. Pending the reference, the firm had accepted a retainer from one of the litigants for some non-contentious business in the Surrogate Court, and, although the reference was nearly closed and there was no pretence of moral wrong, the reference and proceedings were set aside.

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An objection to an arbitrator that he had previously given a valuation to one party and would naturally be biased in favour of the amount he had fixed, was held untenable in view of the provisions of the Manitoba Railway Act providing that an arbitrator "shall not be disqualified by reason . . . that he has previously expressed an opinion as to the amount of compensation." Re Nicholson and Railway Commissioner, 6 Man. R. 419.

An alderman of the City of St. John was held disqualified from acting as an arbitrator appointed by the city to determine, with other arbitrators, the value of property expropriated by the city. In re Abell, 2 N. B. Eq. 271.

But an arbitrator appointed to assess damages for lands taken is not disqualified merely because he is an assessed ratepayer of the municipality. R. v. Town of Glace Bay, 36 N. S. R. 456; Ex p. Driscoll, 27 N. B. R. 216.

See Campbell v. Irwin, 5 O. W. N. 957.

**INTERESTED.**—*V.* PERSON INTERESTED.

**INTEREST IN LAND.**—An agreement for the sale of a share in a timber limit held by a licensee under the Crown Timber Act, is an agreement for the sale of an interest in land within the fourth section of the Statute of Frauds. Hoeffler v. Irwin (1904), 8 O. L. R. 740; Thomson v. Playfair (1912), 25 O. L. R. 365; 26 O. L. R. 624.

An agreement for the sale of all the standing timber on certain lands to be removed within eight years is an interest in lands. "Marshall v. Green, L. R. 1 C. P. D. 35, would have to be almost indefinitely extended if the clause 'the trees to be got away as soon as possible,' be enlarged so as to cover a period of eight years." Summers v. Cook, 28 Gr. 179. This was followed in Bridge v. Johnston (1903), 6 O. L. R. 370, where it was held that on a sale of timber on unpatented Indian lands, where the vendee was "to have five years from the date hereof to cut and remove the said timber." See also Ford v. Hodgson (1902), 3 O. L. R. 526.

*Semble*, if the timber was to be removed within two years it "must be treated as a chattel or personal property." Steinhoff v. McRae, 13 O. R. p. 549.

A sale of all the pine timber the purchaser might choose to cut for twenty years, with a right to make roads, etc., is an interest in lands. McNeill v. Haines, 17 O. R. 479.

In Handy v. Carruthers, 25 O. R. 279, there was a parol sale of timber with an agreement to remove it within three years, or such further time as should be necessary. Street, J.: "Upon the question as to whether this sale is to be treated as a sale of

an interest in land or a sale of chattels the authorities are in a most unsatisfactory condition. The current of the later cases seems to have set towards a return to the general rule, so far as possible, that a contract for the sale of growing timber which is not to be severed immediately, is a contract for the sale of an interest in land. . . . It is extremely difficult to say upon what principle it can be said that a sale of trees to be severed in two years is a sale of chattels, while a sale of trees to be severed in ten years is a sale of an interest in land. Following the cases above cited from our own Courts I think that the parol sale here intended was a sale of an interest in land."

Where a locatee of lands under the Free Grant and Homesteads Act sells the land and takes back a mortgage thereon, such mortgage is not an "interest" in the land so as to be exempt from execution under sec. 45 of the Public Lands Act, R. S. O. ch. 28. Cann v. Knott, 19 O. R. 422.

A person to whom the owner of land under the Real Property Act (Man.) has agreed to give a mortgage, has an "interest" in the land, which he may protect by filing a caveat. "Interest" in the Act as used is synonymous with "estate." Thompson v. Yockney, 22 W. L. R. 863.

The Land Titles Act, relating mainly to conveyancing, whatever gives a valid claim to call for or receive a conveyance of land is an "interest" within the scope of the statute. Re Clagstone and Hammond, 28 O. R. 409.

The interest of a lessee under an oil lease is an interest in land and is not liable to seizure and sale under execution as goods and chattels. Canadian Railway Accident Co. v. Williams (1910), 21 O. L. R. 472.

An agreement for the sale of a share in a timber limit held by license under the Crown Timber Act is an agreement for the sale of an interest in land. Hoeffler v. Irwin (1904), 8 O. L. R. 740.

**INTERESTED PARTIES.**—By virtue of secs. 8 (*a*), 59, 237, 238, of the Railway Act, as amended by ch. 32 of 8-9 Edw. VII. the Board of Railway Commissioners has jurisdiction to determine the "interested parties" in respect of the proposed works and direct what proportion of the cost thereof should be borne by each of them. The British Columbia Electric Ry. Co. v. the Vancouver Co. and the City of Vancouver, 48 S. C. R. 98.

As to "interested parties" under the Act relating to drainage, see Re Townships of Harwick and Raleigh, 20 O. R. 154; Re Townships of Romney and Tilbury East, 18 A. R. 477.

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**INTERIM RECEIPT.**—An interim receipt being merely an agreement for interim insurance preliminary to the grant of the policy is not a policy within that term in the Ontario Insurance Act. Citizens Insurance Co. v. Parsons, 4 S. C. R. 215; 7 A. C. 96.

**INTERLOCUTORY ORDER.**—*V.* FINAL ORDER.

**INTERRUPTION.**—An interruption is an adverse obstruction acquiesced in for more than a year, not a mere discontinuance of user. McKechnie v. McKeyes, 10 U. C. R. 37; Ker v. Little, 25 A. R. 387.

A unity of possession is an interruption; the dictum of Hatherley, L.C., in Ladyman v. Grave, L. R. 6 Ch. 763, to the contrary, not followed. Re Cockburn, 27 O. R. 450.

**INTERSECTION.** — The word "intersection" usually means "the place where two things intersect or cross." It has, however, another meaning, although rarely applied, "to divide or separate (two things) by passing between them." The latter meaning was given to a description in a conveyance, where, to give the former meaning, would involve the division of a wall. Weston v. Smythe (1905), 10 O. L. R. 1.

**INTOXICATING LIQUOR.**—Diluted lager beer shewing, on analysis, an average strength of 2.05 per cent. of alcohol, was held by McDougall, Co.J., to be intoxicating liquor within the prohibition of the Liquor License Act. R. v. McLean, 3 C. C. C. 323. See also R. v. Wooten, 34 C. L. J. 746.

*V.* LIQUOR.

**INTOXICATION.**—*V.* CAUSED BY SUCH INTOXICATION.

**INVEST.**—Where a settlement authorized the trustees to "invest" in real estate, this was held to authorize an actual purchase of real estate. "So far as the word 'invest' is concerned, in connection with money, I am satisfied that it may well apply to the case of a purchase of land as distinguished from a mortgage of land. It has been of long and familiar use in this sense." Re Barwick, 5 O. R. 710.

"Investment" is not a proper term as to moneys in trade, and the employment of trust funds in a business concern cannot be treated as an "investment." Worts v. Worts, 18 O. R. 332.

**INVOLVE A CRIMINAL CHARGE.**—*V.* CRIMINAL CHARGE.

**ISSUE.**—The word "issue" though prima facie a word of limitation equivalent to "heirs of the body" is a more flexible expression than the latter and more easily diverted by a context or superadded limitations from its *prima facie* meaning; and it will be interpreted to mean "children" when such limitations or context requires it. Evans v. King, 23 O. R. 404; 21 A. R. 519; 24 S. C. R. 356.

In Fisher v. Anderson, 4 S. C. R. 415, it was construed as a word of purchase and not of limitation.

Construed as "children:" Re Hamilton, 18 O. R. 195; Eville v. Smith, 44 C. L. J. 585.

"Without issue" does not import a definite failure of issue. Asbridge v. Asbridge, 22 O. R. 146; Martin v. Chandler, 26 O. R. 81.

Sec. 33 of the Wills Act, R. S. O. ch. 120, is to be construed strictly, and is confined to cases in which the word "issue," or some word of precisely similar import, is used; and does not extend to cases in which the word "heirs" is used. Re Brown and Campbell, 29 O. R. 402.

"Issue" limited to children, where the "issue" take the share of "their respective mothers." Re Rebecca Barrett, 5 O. W. N. 807.

**JAIL.**—*V.* COMMITTED TO GAOL.

**JEWELRY.**—The defendant was convicted under a by-law preventing hawkers from selling "tea, dry-goods or jewelry," etc. It was proved that he sold electrotype wares. Wilson, C.J.: "As to the term jewelry, it is a term not aptly described by the words of the conviction, 'electrotype wares and other goods, wares and merchandise.' Jewelry is the term given to ornaments or decorations for the person; and so far as I can form an opinion, distinct from mere articles of dress, and distinct also from the tattooing, painting, or cutting of the person. A feather in the hair, or a fish bone through the nose, may be an ornament, but neither of these articles is jewelry. So the war paint of the Indian is not, nor are the painted eyes of the Eastern women, jewelry. Jewelry, as commonly understood, consists of ornaments of gold or silver, or precious metals, or precious stones. Richly cut glass, or highly finished steel may, perhaps, be also held to be jewelry." R. v. Chayter, 11 O. R. 217.

**JOBBING.**—Jobbing possibly means something more than selling by retail and less than selling by wholesale. *Per* Rose, J. Cook v. Shaw, 25 O. R. p. 126.

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**JOIN.**—The joining of two different lines of railway, within the meaning of sec. 227 of The Railway Act, means joining on the same level, so as to enable cars to be transferred from one road to another. Canadian Northern Ry. v. Canadian Pacific Ry., 25 W. L. R. 212.

V. CROSS.

**JOINT ASSIGNEES.** — Where three persons were appointed "joint assignees" of an insurance company, it was held that calls made by two of them (the third being ill) were invalid—that all three must join in making the calls. Ross v. Machar, 8 O. R. 417.

**JOINT PETITION.**—For the formation, alteration or dissolution of a Union School Section. See Union School Section of East and West Wawanosh and Hullett v. Lockhart, 27 O. R. 345.

**JOINTLY.**—Persons are "jointly" bound in a contract when both or all must be sued in one action for its enforcement, not either one at the election of the creditor. Persons who bind themselves "jointly and severally" may all be sued together or the creditor may select any one or more of them as defendants.

A will contained the following bequest: "I hereby bequeath unto my nephew J. and my sister M. *jointly* a piece of land situate . . . and they are to pay my nephew G. the sum of $200." *Per* Falconbridge, C.J.: I think, apart from circumstances, that the use of the word "jointly" in the will creates a joint tenancy, especially when it is coupled with the direction that "they are to pay my nephew the sum of $200;" not that each of them is to pay the sum of $100. Re Campbell, 4 O. W. N. 221, 766.

**JUDGMENT.**—A judgment is the determination or sentence of the law, pronounced by a competent Judge or Court, as the result of an action or proceeding instituted in such Court, affirming that, upon the matters submitted for its decision, a legal duty or liability does or does not exist. Black.

The term "judgment" is also used to denote the reason which the Court gives for its decision; but this is more properly denominated an "opinion."

For the purposes of execution, a judgment is complete when it is signed. The signing is the essential thing and it is not necessary that the judgment be entered. The entering makes the judgment of record and facilitates its proof, but it may be otherwise verified, if in fact a judgment exists. Rossiter v. Toronto Street Ry. (1907), 15 O. L. R. 297.

**JUDGMENT CREDITOR.**—In a Division Court judgment creditor includes a creditor who has obtained judgment against a garnishee; and judgment debtor includes a garnishee against whom judgment has been recovered.

**JUDICIAL PROCEEDINGS.**—"Judicial proceedings" is a general term for proceedings relating to, practiced in, or proceeding from a court of justice; or the course prescribed to be taken in various cases for the determination of a controversy or for legal redress or relief.

Where the accused appears before a magistrate having jurisdiction and raises no objection to the want of an information or the regularity of the process by means of which his attendance is compelled, his evidence given on the hearing of the charge is evidence in a "judicial proceeding" within sec. 171 of the Criminal Code. R. v. Yaldon (1908), 17 O. L. R. 179; 13 C. C. C. 489.

An examination ordered by a Judge to be taken before the Registrar of the Court in a civil proceeding ceases to be a "judicial proceeding" under secs. 170, 171, of the Criminal Code as to the offence of perjury, when the Registrar, after swearing the witness, leaves the room in which the examination is being held, although the stenographer took the depositions in the presence of counsel for both parties. R. v. Rulofson, 14 C. C. C. 253.

Where a magistrate having no jurisdiction assumes to act as a Justice of the Peace and hear the charge, it is a judicial proceeding within the meaning of sec. 171. R. v. Drew, Q. R. 11 K. B. 477; 33 S. C. R. 228.

And so where the regularity of the appointment of a Registrar under the Manhood Suffrage Registration Act was questioned, yet, being a *de facto* Registrar the proceedings before him were judicial proceedings and a person swearing falsely before him might be convicted of perjury. R. v. Mitchell (1913), 27 O. L. R. 615.

Proceedings on an originating summons issued by a Judge of the Supreme Court of Alberta on an application to cancel a liquor license, are judicial proceedings within the meaning of sec. 37 of the Supreme Court Act, R. S. C. ch. 139. Finseth v. the Ryley Hotel Co., 43 S. C. R. 646.

An examination for discovery in a civil action is a judicial proceeding within sec. 171 of the Code. R. v. Thickens, 11 C. C. C. 274.

The act of the Board of Railway Commissioners approving of the form of a special contract is a judicial proceeding. Buskey v. Canadian Pacific Ry. (1905), 11 O. L. R. 1.

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The signing of a judgment and the issuing of a *fieri facias* are judicial acts; they are the acts of the Court, not of the party. Converse v. Michie, 16 C. P. p. 174.

So the issuing of a summons, whether in relation to an offence punishable summarily or to an indictable offence, is a judicial act. R. v. Ettinger, 32 N. S. R. 176; 3 C. C. C. 387.

A proceeding under the Alberta Controverted Elections Act to question the validity of an election is not a judicial proceeding within sec. 2 (e) of the Supreme Court Act. *Per* Duff, J. Cross v. Wallace, 47 S. C. R. 559.

In judicial proceedings fractions of a day are not regarded, but such proceedings take effect in law from the earliest period of the day upon which they originated and came into force. Converse v. Michie, 16 C. P. 167; Cole v. Porteous, 19 A. R. 111; Buskey v. Canadian Pacific Ry., *supra*.

**JUNIOR JUDGE.**—*V.* COUNTY JUDGE.

**JUNIOR ON THE PAY LIST.**—"Junior on the pay list" means "last added to the pay list," not junior in service in the diocese. Geoghegan v. Synod of Niagara, 5 O. W. R. 364; 6 O. W. R. 717.

**JURAT.**—*V.* AFFIDAVIT.

**JUST AND CONVENIENT.**—For some time after the Judicature Act was passed there was much uncertainty as to the effect of what is now sec. 17 of the Act (R. S. O. ch. 56) giving to the Court the right to grant an injunction when "just and convenient." The view that has ultimately prevailed is that the Court should only grant an injunction now when formerly the Court of Chancery would have done so. Neal v. Rogers (1910), 22 O. L. R. 588.

"The sanguine creditor, who has thought that it ought always to seem 'just and convenient' that his debt should be paid, has learned that the true meaning of this phrase, upon which he builded so much, is not to confer any new power upon the Court, but only to indicate that the old well-known jurisdiction might be exercised, as it always was, when justice and convenience so demanded. Harris v. Beauchamp (1894), 1 Q. B. 801; O'Donnell v. Faulkner (1901), 1 O. L. R. 21." Per Middleton, J., Manufacturers Lumber Co. v. Pigeon (1910), 22 O. L. R. 38.

In Keay v. City of Regina, 22 W. L. R. 185, Wetmore, C.J., said he was not prepared to lay down the rule as broadly as stated in Neal v. Rogers, and held that where there is a procedure which will serve the same purpose as an injunction, an injunction ought not to be granted.

The term "just and convenient" does not mean that the Court is to grant an injunction simply because the Court thinks it is convenient; it means that the Court should grant an injunction for the protection of rights, or for the prevention of injury, according to legal principles; that if a man is about to suffer a serious legal injury, and there is no pretence for inflicting that injury upon him, the Court ought to interfere. Bashford v. Bott, 12 W. L. R. 428.

**JUST AND EQUITABLE.**—On a petition by shareholders to wind up a company on the ground that it was "just and equitable that the corporation should be wound up" (Ontario Companies Act, R. S. O. ch. 178, sec. 199 (3)) suspicion that the company is being mismanaged is not sufficient. Profit or loss, prudence or imprudence, are matters with which the Court has nothing whatever to do. A winding-up petition cannot be resorted to merely because there is dissension within the company. Re Harris Maxwell Larder Lake Gold Mining Co., 1 O. W. N. 984.

Where it appeared that shares had been unlawfully issued at a varying discount; that the substratum was gone and that the company was unable to carry on business; that there was a question as to the liability of the company to the principal shareholder, who was in practical control of the company, it was held "just and equitable" that the company should be wound up. In re Florida Mining Co., 9 B. C. R. 108.

**JUST AND REASONABLE.**—Section 193 (3) of the Ontario Insurance Act, R. S. O. ch. 183, provides that any stipulation or term of the contract other than those stated in the Act, shall not be binding on the assured if held by a Court or a Judge to be not "just and reasonable."

Conditions dealing with the same subjects as those given by the statute, and being variations of the statutory conditions, should be tried by the standard afforded by the statute, and held not to be just and reasonable if they impose upon the assured terms more stringent or onerous or complicated than those attached by the statute to the same subject or incident. Ballagh v. Royal Mutual Fire Insc. Co., 5 A. R. 87; May v. Standard Fire Insc. Co., 5 A. R. 605.

The result of the more recent judgments is that every variation from or addition to a statutory condition is not to be held to be *prima facie* unjust and unreasonable, but that the justice and reasonableness of a variation or addition must be judged from the circumstances of the case in which it is sought to be

applied. Smith v. City of London Insc. Co., 14 A. R. 328; 15 S. C. R. 69; Eckhardt v. Lancashire Insc. Co., 27 A. R. 373; Strong v. Crown Fire Insc. Co. (1913), 29 O. L. R. 33; 48 S. C. R. 577.

A variation of a statutory condition reducing the time for the commencement of an action from one year to six months is not just and reasonable. Strong v. Crown Fire Insc. Co., *supra;* Merchants Fire Insc. Co. v. Equity Fire Insc. Co. (1905), 9 O. L. R. 241; Marshall v. Western Canada Fire Insc. Co., 18 W. L. R. 68.

A variation that any encumbrance by way of mortgage should be deemed material to be known to the company is too wide to be just and reasonable. The existence of a trifling encumbrance upon a valuable property is not, under ordinary circumstances, a material fact. Lount v. London Mutual Fire Insc. Co. (1905), 9 O. L. R. 549, 699.

Where an insurance company has its head office in the province it is not unjust or unreasonable to stipulate that notice of any change material to the risk must be given at the head office instead of to a local agent. *Ib.*

**JUST EXCUSE.**—To justify a magistrate in committing a witness under section 678 of the Criminal Code for refusing to answer a question it must appear not only that the witness refused without just excuse to answer, but that the question asked was in some way relevant to the charge. Re Ayotte, 9 C. C. C. 133.

**JUSTICE OR JUSTICES.**—"Justice" means a Justice of the Peace, and includes two or more Justices, if two or more Justices act or have jurisdiction, and also a Police Magistrate, a stipendiary magistrate and any person having the power or authority of two or more Justices of the Peace. Criminal Code sec. 2 (18).

In the Ontario Interpretation Act "Justice of the Peace" includes two or more Justices of the Peace or Magistrates assembled together or acting together. Sec. 29 (m).

The right of appeal under sec. 118 (b) of the Ontario Liquor License Act in cases where an order has been made by a "Justice or Justices" dismissing an information, does not include a Police Magistrate. R. v. Smith (1906), 11 O. L. R. 279; 10 C. C. C. 362.

The words "Justice who tried the case" in sec. 750 of the Criminal Code are to be construed, in cases where two Justices must sit, as referring to both Justices. And where jurisdiction to make a summary conviction is given to two Justices only a

notice of appeal from the conviction must be served on both Justices. R. v. Edelston, 17 C. C. C. 155.

The word "Justice" in sec. 1124 of the Criminal Code is to be construed in a different manner from the words "Justice of the Peace" in the corresponding section of the former Code (sec. 889 of the Code of 1892) by reason of the statutory definition given by the interpretation clause whereby Police Magistrates are included in its meaning, and also by reason of the transposition of former sec. 889 in the 1906 consolidation from the summary convictions part to the part called "Extraordinary Remedies," with the result that the present section 1124 as to amendment on *certiorari* applies not only to "summary convictions" but to convictions on "summary trials" under part XVI. of the Code. R. v. Crawford, 20 C. C. C. 49.

**KEEP IN REPAIR.**—*V.* REPAIR.

**KEEPING.**—A woman living alone in a house and receiving men for the purpose of prostitution with herself alone is not thereby "keeping" a bawdy-house within the meaning of sec. 228 of the Criminal Code. R. v. Young, 6 C. C. C. 42; 14 Man. R. 58; R. v. Osberg, 9 C. C. C. 180.

There may be a joint conviction against a husband and wife for keeping a house of ill-fame; the keeping has nothing to do with ownership but with the management of it. R. v. Warren, 16 O. R. 590.

"Keeping" implies a continuous offence. R. v. Keeping, 34 N. S. R. 442; 4 C. C. C. 494.

*V.* STORED OR KEPT.

**KEEPING FOR SALE.**—Where the members of a club appoint another to purchase liquor in bulk for them, each member reimbursing him monthly for the cost of liquor consumed, and the person so purchasing acquires the right of property in the liquors and keeps possession of the same, he may be convicted under the Nova Scotia Liquor License Act of "keeping for sale," although he makes no profit on the transaction. R. v. Cavicchi, 8 C. C. C. 78.

An information under a liquor law (P. E. Island) charging that liquor was "kept" by the accused in violation of the statute, sufficiently charges an offence of "keeping for sale" where that is the only "keeping" of liquor which the statute prohibits. Fanning v. Gough, 18 C. C. C. 66.

**KEEPING OPEN.**—A conviction for "keeping a barber-shop open" on Sunday, contrary to a municipal by-law, cannot be

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supported upon the mere admission of the accused, when called upon to plead, that he had shaved customers in his shop on the day named.

*Semble*, a barber who exercises his trade with the doors barred cannot be said to be "keeping open." Re Lambert, 4 C. C. C. 533.

**KEPT.**—Sec. 32 (e) of The Liquor License Act provides that "no more than one bar shall be *kept* in any house or premises licensed under this Act." It was held that the word "kept" in this section did not involve the idea of permanence or continued user, but meant *had in use*, and the maintenance of a separate bar for one day only was an infraction of the Act. R. v. Lewis, 41 L. C. J. 842, dissented from. R. v. Genz, 22 C. C. C. 110.

*V.* STORED.

**KEPT ALIVE.**—*V.* KEPT ON FOOT.

**KEPT ON FOOT.**—The term "kept on foot" in paragraph 2 of the affidavit to the Renewal statement, Form 1 of the Bills of Sale Act, R. S. O. ch. 135, means the same as "kept alive" in sec. 20 of the Manitoba Act. In Roper v. Scott, 16 Man. R. 594; 5 W. L. R. 341, the affidavit for renewal used the term "kept on foot" instead of "kept alive" and it was held there was no material difference between the terms.

**KNOWN.**—*V.* IF KNOWN.

**KNOWINGLY.**—Where an offence consists of "knowingly" violating the provisions of a statute, the omission of the word "knowingly" from both the information and the conviction is a matter of substance and not a mere matter of form, and the defect is not curable upon *certiorari* as an "irregularity, informality or insufficiency" under sec. 1124 of the Criminal Code. R. v. Hayes (1903), 5 O. L. R. 198; 6 C. C. C. 357.

So where the offence is "knowingly" without lawful justification or excuse selling or distributing obscene publications under sec. 207 of the Code, the prosecution must prove knowledge of the contents on the part of the accused—the onus is shifted from the accused to the prosecution. R. v. Beaver (1905), 9 O. L. R. 418; 9 C. C. C. 415; R. v. McDougall, 15 C. C. C. 466.

So where the charge was one of participating in smuggling operations. Section 216 of the Customs Act, R. S. C. ch. 48, makes it an offence being on a boat engaged in smuggling "if he has been knowingly concerned in such acts." These words constitute a condition precedent to the completion of the offence. R. v. McDonald, 16 C. C. C. 505.

License Commissioners who, with a knowledge of all the facts, issue a license contrary to the provisions of the Liquor License Act (New Brunswick) are guilty of "knowingly" issuing a license contrary to law, though there is no evidence of corrupt motive or criminal intent. Ex p. Blaine, 11 C. C. C. 193.

**LABOURERS, SERVANTS AND APPRENTICES.**—The Ontario Companies Act, R. S. O. ch. 178, sec. 98, provides that the directors of a company shall be jointly and severally liable to the "labourers, servants and apprentices" thereof for all debts not exceeding one year's wages, etc. The Dominion Companies Act, R. S. C. ch. 79, sec. 85, contains a similar provision but applies to "clerks, labourers, servants and apprentices," and is limited to six months' wages.

A person engaged to perform manual work, at a daily wage, and who is actually occupied in doing such work, is a labourer within the Dominion Act, although being a workman of superior capacity he is also entrusted with the supervision of other workmen, and to that extent fills the position of a "boss" or a foreman. Fee v. Turner, 13 Que. K. B. 435; 24 C. L. T. 402.

But a person employed as foreman of works, who hires and dismisses men, makes out the pay-rolls, receives and pays out money for wages, and does no manual labour, and in addition to being paid for his services $5 per day, is paid for the use of machinery and horses owned or hired by him, is not a labourer within the Ontario Act. Welch v. Ellis, 22 A. R. 255.

This collocation of words as indicating different classes of persons rendering inferior service is a very ancient one. The statute does not say "all servants" or even 'the servants" of the company shall have an action, but groups together "labourers, servants and apprentices." The object evidently was to protect, not the officers and agents and servants of a superior class, but the inferior and less important class. "The services referred to are menial or manual services. He who performs them must be of a class whose members usually look to the reward of a day's labour, or service, for immediate or present support; from whom the company does not expect credit, and to whom its future ability to pay is of no consequence; one who is responsible for no independent action, but who does a day's work, or a stated job, under the direction of a superior." Wakefield v. Fargo, 90 N. Y. 213.

The word "servant," therefore, cannot be taken in its larger sense. Its meaning must be restricted. "Apprentice" has its own meaning and cannot include a master workman. Taking "labourer" on the one hand and "apprentice" on the other, we are driven to conclude that the word "servant" was not intended to include the higher grades of employment, but is controlled by the

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word which precedes it. *Noscitur a sociis*, and it would violate this rule to hold that the intermediate or second class represented a higher grade than the class first named. *Per* Osler, J.A. Welch v. Ellis. *supra*.

The manager of a mining company is not a servant or labourer. Herman v. Wilson, 32 O. R. 60.

A scenic artist is not a "mechanic, labourer or other person who performs labour," etc., under the provisions of the former Mechanics' Lien Act, now embodied in sec. 4 of R. S. O. ch. 140. Garing v. Hunt, 27 O. R. 149.

A miner was paid one dollar per yard for narrow work and one dollar for every boom or bridge stick that was put in, and it was held that this method of pay did not affect his status—that he was not a contractor, but a labourer. Crew v. Dallas, 9 W. L. R. 598.

A sub-contractor for supplying materials and doing work (plastering or painting) is not a "labourer" within the Mechanics' Lien Act (B.C.). Fuller v. Turner, 23 W. L. R. 170.

*V.* CLERKS OR OTHER PERSONS.

**LANDLORD AND TENANT.**—*V.* TENANT.

**LANDS.**—Section 298 of the Railway Act, R. S. C. ch. 37, makes a railway company liable for damage caused to "crops, lands, fences, plantations or buildings" by a fire started by a locomotive. Standing bush is included in the word "lands," notwithstanding the occurrence of the word plantations in the section. Campbell v. Canadian Pacific Ry. (1909), 18 O. L. R. 466.

The portions of the streets occupied by a street railway company was held to be "land" within the meaning of the Assessment Act. The Toronto Railway Co. v. Fleming, 37 U. C. R. 116.

The word "land," where it occurs in the Noxious Weeds Act, R. S. O. ch. 253, does not include a street or highway. Osborne v. City of Kingston, 23 O. R. 382.

The interest of a mining claimant in an unpatented claim falls within the category of lands and is saleable under a *fi. fa.* Clarkson v. Wishart (1913), A. C. 828; rev. 27 O. L. R. 70.

The interest which a purchaser has in lands under an agreement of sale and purchase is not "lands"—it is a purely equitable interest and, as such, cannot be sold under a writ of execution against lands. Canadian Pacific Ry. v. Silzer, 14 W. R. 274 (Sask.).

**LANE.**—*Per* Falconbridge, C.J.: It was contended for the plaintiff that the use of the word "lane" in the grant of a right of way to the defendant imported a passage beween two fences.

I do not think that this contention is well founded. I do not find any legal definition of the word "lane." Mr. Justice Brayton says, in Hunter v. Mayor of Newport, 5 R. I., at p. 330: "The term 'lane' is not a legal term. It signifies simply a narrow way, which may be either public or private, and is oftener private than public." The Century Dictionary gives the following definition: "(1) A narrow way or passage; a path or passageway between enclosing lines as of buildings, bridges, fences, trees or persons; an extended valley. (2) A narrow and well-defined track: a fixed or defined line of passage, as a navigable opening between fields of ice, a fixed course at sea, etc.—i.e., ocean lane, a fixed route or course of navigation, etc." Ross v. McLaren, 2 O. W. N. 861.

Purchasers of lands comprised in a plan have a right to insist upon a lane shewn thereon being kept open for their use. If one person acquires the lane and all the lots served thereby, he may close the lane. Re Morton and St. Thomas, 6 A. R. 323.

**LAST DWELT.**—The Nova Scotia Probate Act provides that the Judge of the County where the deceased "last dwelt" shall have jurisdiction. In this Act, the words "last dwelt" are equivalent to "last resided" and mean the fixed abode of the deceased in contradistinction to a mere temporary locality of existence. Re Estate of Caroline Fraser, 33 C. L. J. 538.

**LAST MATERIAL.**—The words "last material" in sec. 22 (2) of the Mechanics' Lien Act, R. S. O. ch. 140, mean the last material furnished by the material man under the contract, where there is a distinct contract; and where he furnishes materials outside his contract, the time of registering his claim for lien in respect of materials supplied under the contract, begins to run from the time of the last delivery of material supplied under the contract, without regard to the time of delivery of material outside the contract. Rathbone v. Michael (1909), 19 O. L. R. 428.

It is not enough that the materials are furnished to be used upon the building—the lien attaches only in virtue of materials furnished to be used in the making, repairing, etc., the building. So that where more than thirty days elapse since the last delivery of material, and the material man delivers some articles of trifling value, such as bolts, to be used for temporary or experimental purposes only, these are not "last material" so as to preserve the right to file a lien. Brooks-Sanford Co. v. Theodore Tellier Construction Co. (1910), 22 O. L. R. 176.

In Clark v. Moore, 1 Alta. R. 49, it was held that the doing of work or supplying materials, even of a trivial character, should be taken into consideration in determining when a claimant has "ceased work" within the meaning of the Alberta Act.

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**LAST PAST.**—A conviction alleging an offence to have been committed "within the space of six months last past previous to the information" does not shew an offence within a period of six months before the laying of the information. R. v. Boutilier, 8 C. C. C. 82.

An information taken on 21st September, alleged the offence to have been committed between the 1st day of September "last past" and the 20th September, and it was held that the expression "last past," though ambiguous, did not vitiate the conviction, as the defendant had a good defence in law to anything beyond the three months. R. v. Butler, 32 C. L. J. 594.

**LAST REVISED ASSESSMENT ROLL.**—As to municipal elections, see R. ex rel. Clancy v. McIntosh, 46 U. C. R. 98.

The last revised assessment roll which governs the status of petitioners in proceedings under the Drainage Act is the roll in force at the time the petition is adopted by the council and referred to the engineer for enquiry and report, and not the roll in force at the time the by-law is finally passed. Challoner v. Township of Lobo (1901), 1 O. L. R. 156.

**LAST VOTERS' LIST.**—Municipal Act, 1913, sec. 91. The "last voters' list" to be used at an election is the certified list delivered to the Clerk of the Peace before the day of nomination —the nomination day being the beginning of the election. An election held on a list certified and delivered after the nomination day is void. R. ex rel. Black v. Cameron, 13 O. W. R. 553.

The last *de facto* list filed with the Clerk of the Peace is all that the clerk of the municipality is to concern himself with; and where an election has been held on such list, it is not open to attack because the provisions of the Act as to publication of notice of the sittings of the Court have been omitted. Re Ryan and Town of Alliston (1910), 21 O. L. R. 582; 22 O. L. R. 200.

**LAST VOYAGE.**—See The Inverness Railway and Coal Co. v. Jones, Q. R. 16 K. B. 16; 4 E. L. R. 1; 40 S. C. R. 45.

**LAW.**—By its Act of Incorporation the plaintiff company was empowered to purchase lands, and, under certain circumstances, these should be exempt from taxation "under any law, ordinance or by-law." *Held*, that the word "law" must be read in the sense of general law of the Province relating to assessment. Dominion Iron & Steel Co. v. City of Sidney, 37 N. S. R. 495.

V. Question of Law.

**LAW OF THE COURT.**—As meaning the practice of the Court. Melbourne v. City of Toronto, 13 P. R. 346.

**LAW OF THE PROVINCE.**—There is no "law of the Province" (Ontario) which prevents an infant from depositing money in and withdrawing it from the bank, even assuming that the statutory expression "law of the Province" (in sec. 95 (3) of the Bank Act, R. S. C. ch. 29) is not to be confined to an express statutory provision. Freeman v. Bank of Montreal (1912), 26 O. L. R. 451.

**LAWFUL EXCUSE.**—A present inability to provide necessaries is a "lawful excuse" within sections 242, 244, of the Criminal Code. An agreement between a husband and wife made at the time of marriage that they were to live apart and be supported as before marriage is evidence as tending to shew a "lawful excuse" although it may not in itself be a complete defence. R. v. Robinson, 1 C. C. C. 28; 28 O. R. 407.

A conscientious objection to medical treatment, because of a belief in the doctrine of Christian science, is not a "lawful excuse" for omitting to provide medical treatment. R. v. Lewis (1903), 6 O. L. R. 132; 7 C. C. C. 261.

Where a wife is supporting herself by immorality that is a lawful excuse. Anon. H.——v. H.——, 6 C. C. C. 163.

The refusal of a deserted wife to again live with her husband unless he puts up security in money not again to desert her is a lawful excuse. R. v. Wolfe, 13 C. C. C. 246.

Financial inability is a lawful excuse. R. v. Yuman, 17 C. C. C. 474; (1910) 22 O. L. R. 500.

As to "lawful excuse" under sec. 185 of the Criminal Code, see R. v. Robinson (1907), 14 O. L. R. 519; 12 C. C. C. 447.

**LAWFUL HEIRS.**—*V.* My Lawful Heirs.

**LAWFUL SEIZURE.**—An inn-keeper, who, having a lien on the baggage of a guest, locks it up for non-payment of the claim and so advises the guest, has the baggage under "lawful seizure and detention" within the meaning of sec. 349 of the Criminal Code, (now repealed). R. v. Hollingsworth, 2 C. C. C. 291.

The retaking of possession by a vendor under a contract for the conditional sale of chattels is not within the term "lawful distress or seizure" as used in sec. 169 of the Code, and an obstruction of the vendor's bailiff in regaining possession is not an offence under that section. R. v. Shand (1904), 7 O. L. R. 190; 8 C. C. C. 45.

V. Extra Judicial Seizure.

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**LAYING OUT.**—The expression "laying out" and "opening," are used in the Act Geo. III ch. 1, in an equivalent sense, and actual work on the ground is not required before the road becomes a public highway. "If we construe 'opening' to mean something different from 'laying out,' that is, removing timber, etc., and making it fit for travel, a road would not become a legal highway until after the work was done." Palmatier v. McKibbon, 21 A. R. 441.

A dedication of a road is equivalent to "laying out" of a road. Mytton v. Duck, 26 U. C. R. 61.

**LEASEHOLD PREMISES.**—*V.* PREMISES.

**LEGACY.**—"Legacy" and "bequest" are equivalent terms. But in strict common-law terminology "legacy" and "devise" do not mean the same thing and are not interchangeable, the former being restricted to testamentary gifts of personal property, while the latter is properly used only in relation to real estate. But where the intention of the testator is clear the mere use of the improper term will not defeat the intention. Re Booth and Merriam, 1 O. W. N. 646; Patterson v. Hueston, 40 N. S. R. 4.

"Legacy" includes annuity (Wilson v. Dalton, 22 Gr. 160; Woodside v. Logan, 15 Gr. 145), but not devise. Edwards v. Smith, 25 Gr. 159.

A bequest of the interest or income of a fund is not a "legacy given by way of annuity" within the meaning of sec. 15 of The Succession Duty Act, R. S. O. ch. 24, but simply a gift of interest or income. Bethune v. The King (1912), 26 O. L. R. 117.

**LEGACY DUTY.**—In England there is a definite meaning attached to the term "legacy duty;" but in Ontario there is only the one inheritance tax. The statute calls this "succession duty." It is a tax which has to be borne by the legatee unless the will contains some provision casting the burden upon the residuary estate. A bequest "free of legacy duty" means free of succession duty, as that is the only legacy duty known to Ontario law. Re Gwynne, 3 O. W. N. 1428.

**LEGAL ADOPTION.**—*V.* ADOPTION.

**LEGAL EXPENSES.**—See East Toronto Provincial Election, H. E. C. 70.

**LEGAL FRAUD.**—"Legal fraud" does not exist in a sense distinguishing it from dishonesty or moral wrongdoing. In Thompson v. Court Harmony A.O.F. (1910), 21 O. L. R. 305,

Boyd, C., quotes, with approval, Lord Bramwell's classical utterance, in Derry v. Peek: "'Legal fraud' is only used when some vague ground of action is to be resorted to, or, generally speaking, when the person using it will not take the trouble to find, or cannot find, what duty has been violated or right infringed, but thinks a claim is somehow made out."

V. FRAUD.

**LEGAL HEIRS.**—Insurance money was, by the certificate of membership in a fraternal society, made payable to the "legal heirs" of the assured, and it was held the "legal heirs" were the widow and children and not the executors. Re Hamilton and Canadian Order of Foresters (1909), 18 O. L. R. 121; Re Cochrane (1908), 16 O. L. R. 328.

A widower with two children had an insurance certificate payable to his legal heirs. He subsequently re-married and died without having altered the certificate, and it was held the two children took the whole fund to the exclusion of the wife. "It appears to me the words 'legal heirs' mean nothing more than the word 'heirs.'" Mearns v. A. O. U. W. 22 O. R. 34.

A policy or certificate payable to "legal heirs" does not create an irrevocable declaration in favour of the persons who would answer that description on the death of the assured as preferred beneficiaries. Re Farley (1905), 10 O. L. R. 540.

**LEGAL INSOLVENCY.**—*V.* INSOLVENCY.

**LEGAL TENDER MONEY.**—The words "payable in legal tender money" in a promissory note convey no meaning beyond or otherwise than would have been given to the note if they had been omitted. North-Western National Bank v. Jarvis, 2 Man. R. 53.

V. MONEY.

**LEGALLY QUALIFIED MEDICAL PRACTITIONER.**—In Ontario, means a person registered under The Ontario Medical Act. Int. Act, sec. 8 (23).

**LENDING.**—"Lending" money at a greater interest than is authorized by the Money Lenders Act, R. S. C. ch. 122, includes discounts made contrary to sec. 6 of the Act. R. v. Eaves, 21 C. C. C. 23.

**LESS THAN A YEAR.**—See R. v. Caton, 16 O. R. 11; R. v. Roche, 32 O. R. 20. See also title "Not less than."

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**LET.**—Not only the word "demise" but the word "let," or any equivalent words which constitute a lease, creates an implied covenant for quiet enjoyment. Bulmer v. The Queen, 3 Exch. C. R. 181; 23 S. C. R. 488.

**LEVIED.**—The word "levied" in sec. 70 of The Separate Schools Act, R. S. O. ch. 270, must be read as meaning "collected." Re Therriault and Town of Cochrane (1914), 30 O. L. R. 367.

V. SEIZURE.

**LIABLE FOR.**—Section 53 (s) of the Municipal Act provides that a person who, at the time of the election, is liable for any arrears of taxes to the corporation, shall not be eligible to be elected a member of the council. "Liable for" here means "obliged in law or equity to pay." Where there was sufficient money in the hands of the corporation treasurer belonging to the respondent to pay the arrears of taxes, and there was an express authority to pay the arrears out of the fund, it was held he was not "liable for" such arrears within the meaning of the statute. Rex ex rel. Band v. McVeitty, 6 O. W. N. 369.

**LIABLE TO PAY.**—Section 40 of the Solicitors Act, R. S. O. ch. 159, provides that where any person, not being chargeable as the principal party, "is liable to pay" or has paid any solicitor's bill, he is entitled to a taxation thereof.

Under this provision, residuary legatees may apply for taxation of a bill rendered to the executors for services to the estate; for they come within the section as being "liable to pay," i.e., by lessening the amount of the residuary estate. Re George A. Skinner, 13 P. R. 276; 447.

But an individual ratepayer is not, merely by reason of his having to contribute as a ratepayer, a party liable to pay. McGugan v. McGugan, 21 O. R. 289; 19 A. R. 56; 21 S. C. R. 267.

**LIABILITIES.**—The statute reducing the rate of legal interest from 6% to 5% contains the proviso "that the change in the rate of interest in this Act shall not apply to liabilities existing at the time of the passing" (9th July, 1900). Liabilities here means liabilities respecting the rate of interest. A mortgage was made in 1884 payable in 1889, bearing interest at 7%, with no provision for payment of interest after maturity. *Held*, after maturity, the interest payable as damages was 5% and not 6%. Plenderleith v. Parsons (1907), 14 O. L. R. 619.

"Plenderleith v. Parsons binds me as to the construction of the statute; but for that case, I should have understood 'liability' as referring to the debt, and not to the liability as to interest." Middleton, J. Kerr v. Colquhoun, 2 O. W. N. 521.

"Liabilities," in the Act, does not refer to the principal debt, but only to the obligation to pay interest as damages. British Canadian L. & A. Co. v. Farmer, 15 Man. R. 593.

**LICENSE YEAR.**—*V.* FUTURE LICENSE YEAR.

**LICENSING, REGULATING AND GOVERNING.**—Section 416 of the Mun. Act, 1913, which provides for "licensing, regulating and governing hawkers, pedlars and petty chapmen," does not authorize a by-law to prohibit these persons from carrying on their trades in certain streets of a municipality, no question of apprehended nuisance being raised. In re Virgo and the City of Toronto, 20 A. R. 435; 22 S. C. R. 447; 1896, A. C. 88.

**LIEN.**—A lien (answering to the *tacita hypotheca* of the civil law) is a right in one man to retain that which is in his possession belonging to another, until certain demands of the person in possession are satisfied. It is neither a *jus in re* nor a *jus ad rem;* it is not a right of property in the thing itself, nor a right of action for the thing itself.

The term is applied in various modes, but in all cases it signifies an obligation, tie or claim annexed to or attaching upon property, without satisfying which such property cannot be demanded by its owner. Tremeear, Conditional Sales, 134.

The right of an execution creditor under a *fi. fa.* against lands in the hands of the sheriff of the county in which the lands of the debtor are situate is a lien, and the money mentioned in the writ is money charged upon land. Neil v. Almond, 29 O. R. 63.

A cabman has a lien on the baggage of his passengers for his legal fare. McQuarrie v. Duggan, 44 N. S. R. 185. But the lien is lost if the passenger retakes the baggage into his personal control and possession before the carrier takes possession of it. Emerson v. Niagara Navigation Co. 2 O. R. 528.

Where the members of a firm have separate private accounts with the firm's bankers, and a balance is due the bankers from the firm, the bankers have no lien for such balance on the separate accounts. Richards v. Bank of British North America, 8 B. C. R. 143; 209.

A boarding-house keeper has a lien on all the goods brought on the premises by the boarder and not merely the goods brought for the purpose of his journey; and the lien extends to all the goods, no matter how great the value, as compared with the amount due. Newman v. Whitehead, 2 Sask. R. 11.

But the lien of a boarding-house keeper does not, like that of an inn-keeper, extend to goods brought on the premises by the boarder, but which are the property of third persons. Newcombe

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v. Anderson, 11 O. R. 665; Taylor v. O'Brien, Q. R. 24 S. C. 407; Harding v. Johnson, 18 Man. R. 625.

An auctioneer has no lien on maps left with him for the purpose of selling lands thereby. Blackburn v. McDonald, 6 C. P. 380.

A common carrier has a lien upon the goods carried. It attaches only to the specific goods in his possession and secures only the unpaid price for the carriage of these specific articles.

A workman has a lien for repairs, and the lien is not confined to the value of the work done by himself and his servants, but will include the repairs which the workman has let out to another person, and notwithstanding that the article repaired has been sent to such other person in a foreign country without the knowledge of the owner. Webber v. Cogswell, 2 S. C. R. 15.

There is no lien against the property of the Crown. The Queen v. Fraser, 2 R. & C. (N. S.) 431.

**LIMITING.**—*V.* RESTRICTING.

**LIQUOR.**—In ordinary acceptation I do not think the word "liquor" is understood to include non-intoxicating liquid. It conveys to the general public, I think, the idea of fluid with intoxicating properties in some degree. *Per* Snider, Co.J. R. v. St. John, 36 C. L. J. 30. The word "liquor" popularly means intoxicating liquor. As I read the interpretation clause of the statute, the word "liquor" when used in the Act (The Liquor License Act in force in 1886), not only comprehends intoxicating liquor, but is restricted to that meaning. Patterson, J.A. Northcot v. Brunker, 14 A. R. 364.

Beer containing alcohol in quantities varying from 2.27% to 4.71% is "liquor" within the meaning of the Nova Scotia Liquor License Act, where liquor is defined to mean and include all drinkable liquids containing alcohol. R. v. Bigelow, 41 N. S. R. 499.

Diluted lager beer shewing an average strength of 2.05% of alcohol, was held by McDougall, Co.J., to be intoxicating liquor within the Ontario Act. R. v. McLean, 3 C. C. C 323; see also R. v. Wooten, 34 C. L. J. 746.

"Liquors drunk in a tavern or alehouse," in the former Division Courts Act, sec. 69, mean liquors drunk in the tavern or alehouse of the vendor, and do not include liquors carried away by the purchaser and afterwards drunk in the purchaser's tavern or alehouse. Re M'Golrick v. Ryall, 26 O. R. 435.

The sale of a liquor called "temperance beer" containing so small a quantity of alcohol as not to be capable of producing intoxication when drunk in large quantities, does not violate the Quebec License Law. Collector of Revenue v. Demers, 22 C. C. C. 55.

**LIQUIDATED DAMAGES.** — V. Debt or Liquidated Damages; Claim for Damages.

**LIQUIDATOR.**—A liquidator is a person appointed to carry out the winding-up of a company. He is not a creditor of a purchaser for valuable consideration and cannot take advantage of the provisions of the Bills of Sale Act and other like statutes. Re Canadian Shipbuilding Co. (1912), 26 O. L. R. 564.

See, however, sec. 2 (b) of the present Bills of Sale Act, R. S. O. ch. 135, where the meaning of "creditors" has been extended to a "liquidator of a company in a winding-up proceeding under The Winding-Up Act of Canada."

**LIVE.**—A testator devised lands to his son in fee and afterwards provided: "My will is that my wife shall be allowed to live on the said property" during her life. This was held to give the wife a life estate. Fulton v. Cummings, 34 U. C. R. 331.

Where property was devised to a wife for life "and my daughter S. shall remain and live on said place" while unmarried, it was held the daughter had a right to occupy the land after the mother's death, while unmarried. Judge v. Splann, 22 O. R. 409.

**LIVE AND CARRY ON BUSINESS.**—Apart from any statutory enactment, a railway company does not "live and carry on business" at any other place than its head office, at which its business is managed. Aherns v. M'Gilligat, 23 C. P. 171; Westover v. Turner, 26 C. P. 510.

V. Carry on Business.

**LOCALITY.**—The word "locality" in sec. 254 (4) of the Railway Act cannot be applied to lands in an incorporated town or city. Cortese v. Canadian Pacific Ry., 7 W. L. R. 392.

The term "locality" in sec. 81 of The Militia Act, R. S. C. ch. 41, does not mean military district; it means the place nearest where the riot has occurred or is anticipated and where the senior officer resides. The Attorney-General of Canada v. The City of Sidney, 12 E. L. R. 448.

**LOCATION.**—A municipal council passed a by-law pursuant to 2 Geo. V. ch. 40, sec. 10 (now sec. 400 of the Mun. Act, 1913), prohibiting the "location" of garages on certain streets. Prior to the coming in force of the by-law, the defendant obtained a permit to erect a garage and started excavating. A motion for an injunction was refused. "The language here used is by no means free from difficulty and ambiguity. What is prohibited is not, as in sub-sec. (b), the 'location, erection and use of buildings' for the

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objectionable purpose, but the 'location' only; and, I think, it may fairly be said that what had been done previous to the enactment of the by-law constituted a complete location of the garage." City of Toronto v. Wheeler, 3 O. W. N. 1424.

This was followed by Kelly, J., where the site for the location of the building was staked out and the excavation made for the walls. City of Toronto v. Stewart, 4 O. W. N. 1027. And the Appellate Division subsequently approved of, and followed, the Wheeler case in City of Toronto v. Ford, 4 O. W. N. 1386.

"But where the defendant had merely obtained a permit to erect a building, but had done no act on the ground, this was held not to be a 'location,' and that the permit could not be regarded as an estoppel. 'Location,' in our day, is used with many meanings. I think, however, that in the statute and by-law under consideration, it is used only in the primary and etymological sense of 'the act of placing.' The mere design or intention which the defendant had of erecting an apartment house is not what is prohibited, but the actual placing of such a building. The by-law was enacted and in force before the defendant had done anything whatever in furtherance of her intention beyond obtaining the permit. What she had done previously was *alio intuitu;* and was, moreover, not the "location" in the sense in which the word is used in the by-law." City of Toronto v. Williams (1912), 27 O. L. R. 186.

"The word 'location' is one of common use in this country to designate the selection of a line of railway or a line of road, or the ascertainment of a parcel of wild land for the purpose of settlement, and used as we find it here it can possibly mean nothing else than the final selection of the line upon which the railway was afterwards to be laid down. To give it the other meaning, which has been suggested, namely, that it is used as convertible with 'construction or completion,' so far from being a just interpretation, would be doing nothing less than wresting it from the well-known and understood meaning which usage has attached to it." The Queen v. Farrell, 14 S. C. R. p. 426.

*V.* ESTABLISH: MAINTAIN.

**LOCATED AND MAINTAINED.**—An agreement by a railway company, in consideration of a bonus, that its shops will be "located and maintained," does not necessarily mean maintained for all time. Where, after the shops had been located and maintained ten or twelve years, the railway amalgamated with another railway, which removed the shops, it was held the shops had been "located and maintained" within the meaning of the agreement. City of Toronto v. The Ontario and Quebec Ry. Co. 22 O. R. 344.

*V.* MAINTAIN.

**LOCKOUT.**—Miners were working under a contract at ninety cents per car, and the employer, without any previous notice to the men, closed the mine. Two or three days afterwards, the men were told they could go to work at seventy cents, but they refused. Shortly afterwards, the employer engaged twelve or fifteen of the men out of twenty or twenty-five at $3 per day. *Held*, this constituted a "lock-out" within sec. 56 of the Industrial Disputes Investigation Act, (D) 6-7 Ed. VII. ch. 20. Re Harrison and Alberta Coal Mining Co. 10 W. L. R. 389.

**LOGS AND TIMBER.**—Deals, or other manufactured lumber, are not included in the term "logs and timber" in secs. 1 and 2 of the New Brunswick Woodmen's Lien Act. Baxter v. Kennedy, 35 N. B. R. 179.

*V.* LUMBER.

**LOOK AND LISTEN.**—See Misener v. Wabash R. R. Co., 12 O. L. R. 71; 38 S. C. R. 94; Myers v. Toronto R. W. Co. (1913), 30 O. L. R. 263.

**LOTTERY.**—*V.* MODE OF CHANCE.

**LOWEST PRICE.**—See Whicher v. National Trust Co. (1909), 19 O. L. R. 605; 22 O. L. R. 460; 1912, A. C. 377.

**LUGGAGE.**—*V.* BAGGAGE.

**LUMBER.**—In an action on the following memorandum: "Due to M. $100 payable in lumber," it was held that "lumber" being the general term used for different kinds of lumber, parol evidence was admissible to shew that it meant culls and joists. McAdie v. Sills, 24 C. P. 606.

Railway ties come within the description of "lumber" in an open policy on a cargo described as "lumber." Mowat v. The Bostin Marine Insc. Co., 33 N. B. R. 109; 26 S. C. R. 47, 51.

Sawn lumber is a product of the forest within the meaning of sec. 88 (1) of the Bank Act, and a bank may take securities thereon. Townsend v. Northern Crown Bank (1912), 26 O. L. R. 291; 49 S. C. R. 394.

**MACHINE.**—An overhead crane, operated by electrical power, used for the purpose of raising and moving from place to place heavy castings, is a machine or engine, and the rails upon which it runs a railway or tramway within the meaning of sec. 3 (e) of The Workmen's Compensation Act, R. S. O. ch. 146. McLaughlin v. Ontario Iron & Steel Co. (1910), 20 O. L. R. 335.

A machine for lifting and carrying heavy weights, running on rails only in the direction in which the rails extend, is an engine or machine. Dunlop v. Canada Foundry Co. (1913), 28 O. L. R. 140.

The defendant was constructing a railway and the plaintiff, in his employ, was operating a jack, which supported a steam-shovel, when hoisting the load. The steam-shovel rested on wheels on a side track, and changed its position from time to time on the rails, in order to carry on the work of excavation in connection with the railway construction. *Held*, to be an engine or machine. Dicarllo v. McLean, 4 O. W. N. 1444.

In a contract for supplying a passenger elevator, it was held, on the construction of the contract, the term "machine" was not interchangeable with "machinery." Fenson v. Bulman, 7 W. L. R. 134.

**MADE.**—Section 286 of the Mun. Act, 1913, requires an application to quash a by-law to be *made* within one year after the passing of the by-law. See also sec. 13 (9). Such an application is "made" within the meaning of the statute when the affidavits are filed and the notice of motion served; it is not necessary that the motion be brought on for hearing within the limited time. Re Shaw and City of St. Thomas, 18 P. R. 454.

"I am unable to distinguish between the 'making a complaint to the Court' and 'making an application to the Court,' where the object in each case is the same. The summary proceeding of a motion to the Court, whether it be to set aside an award or a by-law, stands in the place of an action brought for the same purpose, and that the service of a notice of motion is as clearly the commencement of the one proceeding as the issue of a writ of summons is of the other. See also R. v. McGauley, 12 P. R. 259." Per Street, J. Re Sweetman and the Township of Gosfield, 13 P. R. 293.

In Keen v. Edwards, 12 P. R. 625, the notice of motion was dated before, but not served until after, the expiration of the time limited for the application, and was held not to be in time.

Money was paid into Court by a sheriff pursuant to an interpleader order. Subsequently the County Court Judge made an order under the Creditors' Relief Act for a distribution of the money. *Semble*, this money had not been "made" under the execution. Reid v. Gowans, 13 A. R. 501.

**MAGISTRATE.**—In Ontario legislation "magistrate" means a Justice of the Peace, and includes two or more Justices of the Peace, or magistrates assembled or acting together. R. S. O. ch. 1, sec. 29 (r).

In Dominion legislation, "magistrate" means a Justice of the Peace. R. S. C. ch. 1, sec. 34 (15).

V. JUSTICE OR JUSTICES.

**MAIN BUILDING.**—See Ætna Insurance Co. v. Attorney-General of Ontario, 18 S. C. R. 707.

**MAIN CHANNEL.**—In my view the words in 14 and 15 Vic. ch. 5, sec. 11, "to the middle of the main channel of the river," mean nothing more than the middle of the river, or the middle of the bed or alveus of the river. . . . If, however, the words are to have a different meaning, and we must give some distinct ulterior meaning to the words "main channel," then I think, as the Legislature was dealing not with navigation, but with territorial and proprietary rights, and was dealing not with rivers, but with the land under the rivers, we must hold the words "main channel" to mean the widest channel, and not that which is deepest or most navigable. Armour, C.J. R. v. Corporation of Carleton, 1 O. R. 277.

V. CHANNEL.

**MAIN WALL.**— I think the main wall of the plaintiff's building is the wall which supports the superstructure and roof of his house." Holden v. Ryan, 3 O. W. N. p. 1585; 4 O. W. N. 668.

**MAINTENANCE.**—In criminal law "maintenance" consists in a person unlawfully taking in hand, or upholding quarrels and suits wherein he is not concerned, to the hindrance of common right. When, in addition to intermeddling unlawfully in maintaining the suit of another, the offender bargains, as a consideration for his doing so, for a portion of the proceeds of the litigation, the offence is called "champerty." 25 C. L. J. 385.

Parties to an action had been twice defeated and had intended abandoning an appeal to the Supreme Court when the respondents herein agreed to bear a share of the expense of appeal and to receive each a one-tenth of what might be recovered. This was held to be champertous notwithstanding the consanguinity and affinity of the parties; and that the laws relating to champerty were introduced into Lower Canada by the "Quebec Act, 1774," as part of the criminal law of England and as a law of public order. Meloche v. Deguire, Q. R. 12 Q. B. 298; 34 S. C. R. 24; 8 C. C. C. 89.

So a merely speculative purchase of a right to litigate will not be enforced by the courts, although in strictness, the transaction does not amount to maintenance. Muchall v. Banks, 10 Gr. 25; Little v. Hawkins, 19 Gr. 267.

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In Thomson v. Wishart, 19 Man. R. 340; 16 C. C. C. 446, the Court of Appeal for Manitoba held that sec. 12 of the Criminal Code, being in terms limited to such English law "in so far as it is applicable to the province of Manitoba," the now obsolete crimes of maintenance and champerty were not introduced, not being applicable to local conditions in that province. The Court said that the judgment in Melochie v. Deguire was mere *obiter dictum* as far as Manitoba is concerned, and that the decisions in Hopkins v. Smith, *infra*, and Briggs v. Fleutot, 10 B. C. R. 309 (deciding that the laws relating to maintenance and champerty, as they existed in England on 19th November, 1858, are in force in British Columbia), do not apply to the conditions of law in Manitoba. See a note to the decision in 8 C. C. C. p. 455.

In Hopkins v. Smith (1901), 1 O. L. R. 659, it was held that the laws relating to maintenance and champerty are in force in Ontario, and that in an action to recover damages for maintenance the defendant cannot, on an examination for discovery, be compelled to answer where the answers would tend to subject him to criminal proceedings. And see Colville v. Small (1910), 22 O. L. R. 33, 426.

Although the assignment of a bare right to litigate is illegal this does not apply to an assignment of a chose in action if there is no secret trust in favour of the assignor. An assignment of a judgment against a morgtagor gives the assignee a right to an account against the mortgagee for the surplus in his hands after a sale under the mortgage. Harper v. Culbert, 5 O. R. 152.

But if the assignee retains any interest in the claim assigned the transaction is champertous. Re Cannon, Oates v. Cannon, 13 O. R. 70.

An agreement whereby solicitors agree to conduct litigation at their own expense in consideration of a share of the sum recovered is champertous. O'Connor v. Gemmell, 29 O. R. 47; 26 A. R. 27.

Where part of the purchase money of property in litigation is to be deposited for costs of appeal, and to pay costs incurred or to be incurred in the litigation, such agreement is void for maintenance. Carr v. Tannahill, 30 U. C. R. 217.

**MAINTAIN.**—A property owner conveyed lands to the defendants under a stipulation that they would "maintain," on the site so granted, the City Hall. *Held*, that the word "maintain" did not prevent the defendants building a new City Hall on a different site approved of by the ratepayers. Smith v. Cooke (1891), A. C. 297, followed. Powell v. City of Vancouver, 8 D. L. R. 24.

*V.* Establish: Locate.

**MAJORITY IN VALUE.** — In estimating the "majority in value" of the creditors under 50 Vic. ch. 8, sec. 1 (5) Manitoba, Bain, J., held that the question of security held by any creditor could not be taken into account. "I think creditors must be taken to be such for the full amount of what the debtor owes them." Fraser v. Darroch, 9 C. L. T. 238; 6 Man. R. 61.

**MALICE.**—Malice in fact in its popular sense means spite, ill-will, malevolence. Malice in law, or implied malice, is wrongful conduct which violates a right. Legal malice does not generally impute malevolence. A lawful act is not converted by a malicious or bad motive into an illegal act, and if there has been no violation of right, malice of itself gives no cause of action although damage has resulted. 18 C. L. T. 157.

Can a corporation be guilty of malice? Questioned in Freeborn v. Singer Sewing Machine Co., 2 Man. R. 253.

V. Reasonable and Probable Cause.

**MAN.**—The words "man" and "woman" in sec. 298 of the Criminal Code, which defines the crime of rape, are to be taken in a general and generic sense as indicating all males and females of the human race, and not in a restricted sense as distinguished from boys and girls. A girl nine years of age was held to be a woman within the above section. R. v. Riopel, 2 C. C. C. 225.

V. Adult.

**MANAGEMENT AND WORKING.** — See Weallans v. The Michigan Central Ry. Co., 24 A. R. 297; 2 S. C. R. 309.

**MANAGER IN TRUST.**—The words "Manager in trust" appended to the signature of a bank manager, were construed to import that he held and transferred the shares in trust for his employees, the bank, and were not calculated to suggest that he stood in a fiduciary relation to some third person, so as to affect a transferee for value with constructive notice of such relationship. Duggan v. The London & Canadian Loan Co., 19 O. R. 272; 18 A. R. 481; 20 S. C. R. 481; 1893 A. C. 506.

**MANUFACTURER.**—*Quaere*: Whether a baker is a manufacturer within the meaning of sec. 200 of the Manitoba County Courts Act? Robinson v. Graham, 16 Man. R. 69; 3 W. L. R. 135.

**MANUFACTORY.**—A building used by the occupant as a dwelling house for himself and family, and a part of the dwelling used as a ladies' tailoring establishment—purchasing cloth and making it up into suits for customers, was held not to be a "manufactory"

within sec. 541 (a) of the Mun. Act, 1903, as enacted by 4 Edw. VII. ch. 22, sec. 19. "It is true that the word 'manufactory' or 'factory' has a dictionary meaning wide enough to cover the case; but I think that the word, as used by the Legislature, contemplates operations on a larger scale than this, and that the use of a room in a dwelling house by three or four persons as a sewing-room falls short of what is required." City of Toronto v. Foss (1912), 27 O. L. R. 264.

But a store occupied by a merchant tailor, the rear part being used as a tailoring department and the front as a retail sale department, fourteen persons being employed in the former, is a factory as defined in the Factories Act. R. ex rel. Burke v. Ferguson (1906), 13 O. L. R. 479.

Section 541 (a) of the Mun. Act, 1903, is now embodied in sec. 409 (2) of the Mun. Act, 1913, and the word "factories" substituted for "manufacturies." Factory probably means the same thing as manufactory. Burke v. Ferguson, supra, at p. 481.

**MANUFACTURING ESTABLISHMENT.** — A flouring mill, with its appendages and appurtenances proper, comes under the designation of "manufacturing establishment," but a general grain business does not. The Peoples Milling Co. v. The Council of Meaford, 10 O. R. 405.

The term "manufacturing establishment" must include land and everything necessary for the purpose of the business. Alexander v. Village of Huntsville, 24 O. R. 665.

**MARKED GOOD.**—*V.* GOOD.

**MARKET VALUE.**—See Re National Trust Co. and Canadian Pacific Ry. (1913), 29 O. L. R. 462.

**MATERIAL ALTERATION.**—*V.* ALTERATION.

**MATERIAL EVIDENCE.**—Sections 11, 12 and 13 of The Evidence Act, R. S. O. ch. 76, require "some other material evidence" in actions for breach of promise, against the estate of a deceased person, and by or against lunatics.

If there is any evidence adduced corroborating the evidence of the interested party in support of his claim or defence in any material particular, it must be submitted to the jury as sufficient corroboration in point of law, the weight to be attached to it in point of fact being a matter for their consideration. Parker v. Parker, 32 C. P. 113.

Some independent material evidence must be given, which corroborates, i.e., strengthens the evidence of the opposite or interested party. If the evidence offered is admissible, and if it supports the evidence of the party, it is corroborative evidence, and it is then for the Judge or jury to say what weight is to be attached to it. Radford v. McDonald, 18 A. R. 167.

The "other material evidence" may be direct or may consist of inferences or probabilities arising from other facts and circumstances tending to support the truth of the witness's statement. Green v. McLeod, 23 A. R. 676.

Evidence which is consistent with two views is not corroborative of either; so statements that are equally consistent with the absence as with the presence of any legal obligation. Tucker v. McMahon, 11 O. R. 718.

A mere scintilla of evidence is not sufficient. At the same time the corroborating evidence need not be sufficient in itself to establish the case. The direct testimony of a second witness is unnecessary; the corroboration may be afforded by circumstances. McDonald v. McDonald, 35 N. S. R. 205; 33 S. C. R. 145; Thompson v. Coulter, 34 S. C. R. 261.

As to corroborative evidence in actions for breach of promise of marriage, see Costello v. Hunter, 12 O. R. 333; Yarwood v. Hart, 16 O. R. 23; Grant v. Cornock, 16 O. R. 406; 16 A. R. 532.

A person interested as *cestui que trust* in a claim sued on in an action against the executors of a deceased person, may give the material evidence required by the statute. Batzold v. Upper (1902), 4 O. L. R. 116; Re Curry, Curry v. Curry, 32 O. R. 150.

The trial Judge is entitled to compare a disputed signature with a proved signature and act on his own conclusion as to their identity, and if he finds them identical this is "other material evidence." Thompson v. Thompson (1902), 4 O. L. R. 442.

Any evidence which is sufficient under the statute is also sufficient to prove a *donatio mortis causa*. In re Reid (1903), 6 O. L. R. 421.

The "some other material evidence" required by sec. 16 of The Canada Evidence Act, R. S. C. ch. 145, on taking the testimony of a child of tender years not under oath, need not be in respect of all material issues; it is sufficient if there is corroboration in some material respect that will strengthen the credibility of the main witness and justify the evidence being acted upon if it is believed and is sufficient. R. v. Pailleur (1909), 20 O. L. R. 207; 15 C. C. C. 339.

**MATTER.**—In the Judicature Act "matter" includes every proceeding in the Court not a cause. R. S. O. ch. 56, sec. 2 (n).

The term "matter in dispute" in sec. 40 of the Supreme Court Act, and Art. 68, sec. 3, of the Quebec Code of Procedure,

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does not include costs in the action. Labbrosse v. Langlois, 6 E. L. R. 111; 41 S. C. R. 43.

**MAY.**—By the Interpretation Acts the word "may" shall be construed as permissive. R. S. C. ch. 1, sec. 34 (24); R. S. O. ch. 1, sec. 29 (s).

It has more than once been pointed out that these clauses of the Interpretation Acts do not introduce any new rule, but are declaratory only of that established by judicial decision. Re Lincoln Election (1878), 2 A. R. 324, *per* Moss, C.J.A., at p. 341; In re Township of Nottawasaga and County of Simcoe (1902), 4 O. L. R. 1, 15. Webb v. Box (1909), 20 O. L. R. p. 222.

But where a statute confers an authority to do a judicial act upon the occurrence of certain circumstances, and for the benefit of a certain party, the exercise of the judicial authority so conferred is imperative and not discretionary. Sec. 880 (e) of the Criminal Code (now sec. 751 as amended by 8-9 Ed. VII., ch. 9), provides that the Court "may" order the fine and costs to be paid out of moneys deposited in Court on the appeal if the conviction is confirmed. The word "may" is here used to give an authority and not a discretion. Fenson v. New Westminster, 5 B. C. R. 624; 2 C. C. C. 52.

So where a statute makes a provision for the benefit of defendants and uses the word "may," the provision is compulsory. Atcheson v. Mann, 9 P. R. 473; Alsop Process Co. v. Cullen, 4 O. W. N. 114. These last two cases are decisions under the Patent Act, now R. S. C. ch. 69, sec. 31.

When the act to be done is for the benefit of others the word "may" simply confers a power or capacity to do it. It is facultative, not permissive, and does not necessarily imply an option to abstain from doing the act. Fonseca v. Schultz, 7 Man. R. 464; Darby v. City of Toronto, 17 O. R. 554.

When applied to the duties of judicial officers the word is construed as imperative. Cameron v. Wait, 3 A. R. 175.

The word "may" in sec. 825 of the Criminal Code is not imperative, and the Attorney-General is not bound to intervene and require the accused to be tried by a jury. R. v. Sperdakes, 9 E. L. R. 433.

R. S. Man. ch. 53, sec. 21, provided that the sheriff "may seize and sell" the property of the debtor. In an action against a sheriff for not seizing and selling it was contended that the statute was permissive only, but the Court held the power to seize was given, not for the benefit of the sheriff, but for that of the execution creditors, and it was the imperative duty of the sheriff

to act upon the power whenever a proper occasion for its exercise arose. Massey Manufacturing Co. v. Clement, 13 C. L. T. 319.

The word "may" in sec. 74 of the Public Schools Act, 1901, is not obligatory, but implies a discretion. Re McLeod and Tay School Trustees, 10 O. W. R. 649.

In an action for the double value of goods sold for rent, when no rent was due, under sec. 18 (2) of ch. 242, R. S. O. 1897, it was held that the word "may" gave the Court no discretion to reduce the demand to actual damages, notwithstanding the word "may" alone is used in the section in the place of "shall and may" in the original enactment. Webb v. Box (1909), 19 O. L. R. 540; 20 O. L. R. 220. In the new consolidation of the Landlord and Tenant Act, R. S. O. ch. 155, sec. 54, the right to recover double damage has been repealed, and the plaintiff's right now is to "recover full satisfaction."

In Matton v. The Queen, 5 Exch. C. R. 401, it was held that a provision in an Order in Council that a drawback "may be granted" should not be construed as an imperative direction; it not being a case in which the authority given by the use of the word "may" was coupled with a legal duty to exercise such authority.

The words "may convey" in the former Municipal Act (see sec. 641 of the Mun. Act, 1903) is compulsory; and it was held the corporation could not refuse a conveyance to the person entitled to it. Cameron v. Wait, 3 A. R. 175.

V. SHALL.

**MEALS.**—A British Columbia statute prohibiting the sale of liquor excepted from its provisions liquor supplied to guests with their meals. *Held*, that liquor served in the bar with a few biscuits and cheese was not served with a meal. The word "meal" in the statute applies to food that is eaten to satisfy the requirements of hunger. R. v. Sauer, 3 B. C. R. 308; 1 C. C. C. 317.

V. BOARD.

**MEANTIME.**—The words "in the meantime" in sec. 24 of the Mechanics and Wage-earners' Lien Act, R. S. O. ch. 140, do not mean "between the time of registering the claim and the expiry of the time limited;" but any proceeding taken during the existence of the lien (at all events) is taken "in the meantime."

"In the meantime," no doubt, has the primary signification "during or within the time which intervenes between one specified period or event and another." The original of "mean" is the same as that of "mesne," i.e., "medianus," late Latin for "in the middle," from "medius." In strictness there is in contemplation a *terminus a quo* as well as a *terminus ad quem*, a date or event with which the period begins as well as a date or event with

which it ends. But in no few instances the *terminus a quo* is not in mind at all, it is the *terminus ad quem* which is the only date, etc., in contemplation. In such a case, the words are equivalent to "before such and such an event, a date, a period." Eadie-Douglass v. Hitch & Co. (1912), 27 O. L. R. 257.

**MEDICINE.**—The best definition of the word "medicine" that I have been able to find is that in Murray's New Oxford Dictionary: "That department of knowledge and practice which is concerned with the cure, alleviation, and prevention of disease in human beings, and with the restoration and preservation of health. Also, in a more restricted sense, applied to that branch of this department which is the province of the physician, in the modern application of the term; the art of restoring and preserving the health of human beings by the administration of remedial substances and the regulation of diet, habits and conditions of life." The practice of medicine would be the practice of the art set out in the foregoing definition, especially in the latter part. *Per* Maclaren, J.A.: In re Ontario Medical Act (1906), 13 O. L. R. 515.

*V.* PRACTISE MEDICINE.

**MEETING OF ELECTORS.**—See East Middlesex (Prov.), 1 E. C. 250; North Ontario (Prov.), 1 E. C. 1; Prescott (Prov.), 1 E. C. 88; Muskoka and Parry Sound (Prov.), 1 E. C. 197; North Middlesex (Prov.), H. E. C. 376.

**MEMBER IN GOOD STANDING.**—A member of a fraternal society who is in arrear is not by that circumstance alone, and in the absence of some action taken against him, in or by his lodge, deprived of his status. Dale v. Weston Lodge, 24 A. R. 351,

**MEMORANDUM.**—The memorandum to satisfy the fifth section of the Statute of Frauds, R. S. O. ch. 102, must be signed by the party to be charged. Mingaye v. Corbett, 14 C. P. 557.

A letter repudiating the sale, if it contains a statement of the terms of the contract, may constitute a memorandum within the statute. Martin v. Haubner, 22 A. R. 468; 26 S. C. R. 142; Ockley v. Masson, 6 A. R. 108.

It must indicate the parties. White v. Tomalin, 19 O. R. 513. But evidence may be given to identify one of the parties named or described in the memorandum of the bargain, but not to supply information in that regard. White v. Tomalin, *supra;* Wilmot v. Stalker, 2 O. R. 78; Richard v. Stillwell, 8 O. R. 511.

And oral evidence may be given to construe the memorandum. Reid v. Smith, 2 O. R. 69; or to vary the writing. Wilson v. Windsor Foundry Co., 33 N. S. R. 22; 31 S. C. R. 381.

**MENACE.**—Criminal Code, sections 451, 452.

The word "menace" means a threat or threatening; the declaration or indication of a disposition or determination to inflict an evil; the indication of a probable evil or catastrophe to come.

Demanding money with menaces, if the money is actually due, or believed to be due, is not an offence within section 452. R. v. Johnson, 14 U. C. R. 569.

A letter expressing an intention to accuse the party to whom it is sent of some offence if certain goods are not delivered, is a menace. R. v. Collins, 1 C. C. C. 48.

In R. v. McDonald, 8 Man. R. 491, the Court (Killam, J., dis.), held that a letter sent by the prisoner to a tavern keeper threatening a prosecution for a breach of the Liquor License Act unless a sum of money was paid, was not an offence, because the threat was not one that would be likely to overcome a man of an ordinarily firm and prudent mind.

In a more recent case, Bain, J., said: "But in the recent case of Reg. v. Tomlinson, 1895, 1 Q. B. 706, the Court, I think, took a less restricted view of the meaning to be given to the word 'menace' in this section than had been taken in previous cases; and when a case arises again under section 403 (now 451) it may be desirable to reconsider the decision in R. v. McDonald." R. v. Gibbons, 12 Man. R. 154; 1 C. C. C. 340.

But the words used must be such as would naturally and reasonably operate upon the mind of an ordinary person and put compulsion upon him to do as suggested rather than pursue the course which he would otherwise have taken; a mere fraudulent scheme to get money on the pretence of using it to suppress evidence against the complainant is not sufficient in the absence of threat or menace. R. v. Hatch, 17 W. L. R. 238; 18 C. C. C. 125.

It is immaterial whether the accused is innocent or guilty of the offence imputed to him, if the prisoner intended to extort money from him by the accusation. R. v. Odell, 22 C. C. C. 39.

**MERCHANDISE.**—V. Goods, Wares and Merchandise.

**MERCHANT.**—A merchant is one who buys and sells commodities as a business and for profit; who has a place of sale and stock of goods; and it is generally a trader in a large way. The term "trader" is generally used in connection with a specialised mercantile business. The essential thing is the same in both cases, the purchase and sale of goods as a business. Although an

hotel-keeper and a restaurant-keeper do purchase goods, and do sell goods, this is not the essential thing. The services they render to their guests are in the nature of "work and labour" rather than of the "sale of goods." R. v. Wells (1911), 24 O. L. R. 77.

A restaurant-keeper who sells candies and other similar commodities apart from giving meals on the premises and so as to be taken away to be consumed elsewhere, is liable under the statute for carrying on business as a merchant. R. v. Weatheral, 11 O. W. R. 946; 18 C. C. C. 372.

But neither an hotel-keeper nor a restaurant-keeper is, as such, a merchant or tradesman within the Lord's Day Act. R. v. Wells, *supra*.

V. TRADESMAN.

**MERITS.**—A judgment given by a Divisional Court, upon an appeal from a summary conviction, whereby the conviction was quashed on the ground of the insufficiency of the information, is a decision "on the merits." Re McLeod v. Amiro (1912), 27 O. L. R. 232.

The term "merits of the case," applied to criminal proceedings, must mean the justice of the case in reference to the guilt or innocence of the prisoner of the offence with which he is charged; and then as to his defence on the merits being prejudiced by an amendment, this means a substantial and not a formal or technical defence to the charge. R. v. Cronin, 36 U. C. R. 342.

V. OUT OF COURT.

**MILL-RUN.** — "Mill-run," used by lumbermen, sometimes means the whole run of the mill in merchantable timber, including mill-culls. In this case the trial Judge found as a fact that the term, as used and accepted by the parties, included all merchantable timber except dead culls, citing Wonderly v. Holmes, 56 Mich. 412. Wood Bros. v. Gall Lumber Co., 1 O. W. N. 365; 503.

**MINERAL.**—In its common acceptation the term "mineral" may be said to include those parts of the earth which are capable of being mined or extracted from beneath the surface, and which have a commercial value. But, in its widest sense, minerals may be described as comprising all the substances which now form or which once formed a part of the solid body of the earth, both external and internal, and which are now destitute of or incapable of supporting animal or vegetable life. In this sense the word includes not only the various ores of the precious metals, but also coal, clay, marble, stone of various sorts, slate, salt, sand, natural gas and petroleum.

Mineral gas was held to be a "mineral" within the meaning of sec. 515 of the Mun. Act, R. S. O. 1887, which gave power to the municipality to sell or lease mineral rights under the highways.

In most, if not all of the cases, the word "mineral" is used in connection with a context which throws some light upon the meaning and sense in which it is to be interpreted; for it appears to be a word which is capable of a very extended meaning when full scope may properly be given to it. For example, in the report of the Geological Survey of the State of Pennsylvania referred to in Dunham v. Kirkpatrick, 101 Penn. 41, the mineral products of the State are classified as follows: "Petroleum, coal, natural gas, building stone, flagstone, building-brick clay, fire clay, limestone, iron ore, mineral paint, and mineral water." In that case, however, the context of the deed in which the word "minerals" was used was held to control its meaning so as to prevent its extending to petroleum oil. Ontario Natural Gas Co. v. Smart, 19 O. R. 591; affd. *sub nom.* Ontario Natural Gas Co. v. Gosfield, 18 A. R. 626.

Mineral oils come within the reservation of "minerals" in the original grant from the Crown. Re Mackenzie & Mann and Foley, 10 W. L. R. 668.

*V.* Natural Gas.

**MISAPPROPRIATION.**—The word "misappropriation" does not necessarily convey the imputation of dishonesty. It may mean nothing more than that the person has spent some of the funds in a manner different from that directed by statute, or in some way contrary to duty. This might happen from obstinacy or an erroneous view of duty. It does not necessarily mean peculation, though it may mean that; and is fairly susceptible of such meaning, especially when the assertion is coupled with words of suspicion. Hanna v. De Blaquiere, 11 U. C. R. 310.

**MISCONDUCT.**—"Misconduct" to justify granting a new trial, may consist of attempts by a juror to dissuade a witness from giving evidence. Laughlin v. Harvey, 24 A. R. 438. A party to an action conversing with a juryman, and either personally, or by others in his interest, treating members of the jury. Stewart v. Woolman, 26 O. R. 714; Tiffany v. McNee, 24 O. R. 551.

As to appeals by counsel to the local prejudices of the jury, see Forwood v. City of Toronto, 22 O. R. p. 362; Sornberger v. Canadian Pacific Ry., 24 A. R. 263.

*V.* Serious and Wilful Misconduct.

**MISFEASANCE.**—Definitions of this word are not hard to find, but it is very difficult often to say whether the facts of a particular case bring it within the definition. Misfeasance is the performance of an act which might lawfully be done, in an improper manner, by which another person receives an injury; or the improper doing of an act which a person might lawfully do, or default in not doing a lawful act in a proper manner; or, having undertaken it, to do it as it should be done. It differs from malfeasance in this, that misfeasance is the wrongful and injurious exercise of lawful authority, or the doing of a lawful act in an unlawful manner, while malfeasance is doing an act which is positively unlawful or wrongful. Misfeasance may involve to some extent the idea of not doing, as when an agent while engaged in the performance of his undertaking does not do something which it was his duty to do under the circumstances, as for instance when he does not exercise that care which a due regard to the rights of others may require. Denton, Municipal Negligence, 16.

The following have been held to be cases of misfeasance: Placing heaps of gravel on a highway. Rowe v. Corporation of Leeds and Grenville, 13 C. P. 515; McGregor v. Harwich, 29 S. C. R. 443.

Where the plaintiff fell against a stone wall, built at the side of the highway and into a ditch, and was injured. Dickson v. Township of Haldimand, 2 O. W. R. 969; 3 O. W. R. 52.

A steam roller left standing on the highway by the defendants. Clemens v. Town of Berlin (1904), 7 O. L. R. 33.

Building a sidewalk with a dangerous grade. Driscoll v. St. John, 29 N. B. R. 150.

Building a sidewalk and crossing is such a manner that a person stepping off the sidewalk in the dark is likely to be injured. Smith v. Vancouver, 5 B. C. R. 491.

Misconduct will be treated as misfeasance and not nonfeasance if the injury arises from a combination of acts and omissions. Patterson v. City of Victoria, 5 B. C. R. 628.

V. NONFEASANCE.

**MISTAKE, DEFECT OR IMPERFECTION.**—These words in sec. 16 of the Act respecting Assignments and Preferences, R. S. O. ch. 134, do not apply to an assignment which is confined to personal property only. Such an assignment for the benefit of creditors is not within the Act, and cannot be amended by the County Judge under the above section. Blain v. Peaker, 18 O. R. 109.

**MISTAKE OR FRAUD.**—Section 71 of the Surrogate Courts Act, R. S. O. ch. 62, provides that where an executor, etc., has

filed his accounts, and the same have been approved of by the Judge, such approval shall be binding "except so far as mistake or fraud is shewn."

Where an executor sold land, and bought the same in through an agent at an auction sale, it was held that representing to the Surrogate Court that the alleged purchase price had been received as the sale price, was either a mistake or a fraud on the part of the executor. Shaw v. Tackaberry (1913), 29 O. L. R. 490.

**MISTAKE OF TITLE.**—Section 37 of the Conveyancing and Law of Property Act, R. S. O. ch. 109, provides that "Where a person makes lasting improvements on land, under the belief that the land is his own, he or his assigns shall be entitled to a lien upon the same," etc. The relief given by this section for such improvements is generally referred to as relief given for improvements made under "mistake of title."

The intention of the statute appears to be to make it a question in each case for the tribunal to determine whether the person claiming for the improvements made them under the *bona fide* belief that the land was his own. And this may be found in his favour, even though the mistake was one of title depending upon a question of law. Chandler v. Gibson (1901), 2 O. L. R. 442; Young v. Denike (1901), 2 O. L. R. 723.

Apart from the statute a purchaser of property making improvements on the property will not be disturbed in his possession, if the title prove bad, without payment for his improvements. The Court has power to grant relief to a purchaser to that extent. Kilborn v. Workman, 9 Gr. 255; Brunskill v. Clark, 9 Gr. 430; Gummerson v. Banting, 18 Gr. 517, Shanagan v. Shanagan, 7 O. R. 209.

Gummerson v. Banting was strongly disapproved of in Beatty v. Shaw, 14 A. R. 600, where a claim for improvements was not allowed.

"As I understand the section, it is not necessary, if it be an honest belief, that the belief be founded on reasonable grounds, though the reasonableness of it may, doubtless, be considered in arriving at a conclusion as to the existence of the belief.

"I do not wish to be understood as meaning that in every case, and in all circumstances, a person making improvements on the land of another, must be held not to have done so under the belief that the land was his own, merely because some one else has claimed the land as his; but the knowledge of the defendants that the plaintiffs disputed their right to the land on which the wall was built, in the circumstances of this case, is sufficient in itself to prevent the application of the statute in the defendant's favour." Parent v. Latimer, 2 O. W. N. 210; 1159.

A mistake arising from an unskilful survey made by a qualified land surveyor is within the Act. Plumb v. Steinoff, 2 O. R. 614; but not if the mistake happened owing to wrong instructions given to the surveyor. Moule v. Campbell, 8 U. C. R. 19.

*Semble*, the belief required by the statute must be a reasonable belief. Where a person purchased land knowing his vendor was a married woman and the property her husband's, and built a house on the land after being warned not to do so. *Held*, there was no claim for improvements. "I think I must assume that the Legislature only meant to protect the purchaser who could shew that in good faith, as a reasonable man, he made improvements on land he has reason to believe his own:" Hagarty, C.J., Smith v. Gibson, 25 C. P. 248.

Improvements made on Crown lands are not within the statute. Re Commissioners for the Queen Victoria Niagara Falls Park v. Cold, 22 A. R. 1.

A purchaser at a tax sale, which is set aside, is within the Act. Haisley v. Somers, 13 O. R. 600.

A mortgage of a person who makes improvements under mistake of title, although never in possession, is an "assign" within the Act. McKibbon v. Williams, 24 A. R. 123.

Where the action is for possession and the defendant claims a lien under the statute, his right thereto must be inquired into and adjudicated upon in the action. O'Connor v. Dunn, 37 U. C. R. 430.

Improvements made under a mistake of title are allowed more liberally than to a mortgagee who improves, knowing he is a mortgagee. Fawcett v. Burwell, 27 Gr. 445.

No occupation rent should be charged against one who has been in occupation of land under mistake of title, in respect of the increased value thereof arising from improvements which are not allowed him. McGregor v. McGregor, 5 O. R. 617.

Where an occupation rent is charged against one in possession under mistake of title at the full increased value (as it should be) then interest should be allowed on the actual costs of proper outlay for lasting improvements as an offset.

Where the person in possession has paid off legacies charged against the land, he will be allowed only the amount actually paid and interest thereon, not the full amount of the legacies where he has paid a less sum. Munsie v. Lindsay, 11 O. R. 520.

Compensation will not be allowed for improvements made pending the action. O'Grady v. McCaffray, 2 O. R. 309.

Clearing farm land is an improvement. Robinet v. Pickering, 44 U. C. R. 337; and so is the erection of a wall or a fence. Morton v. Lewis, 16 C. P. 485.

Repairs made by a tenant for life, however substantial and lasting, are not within the Statute. Re Smith Trusts, 4 O. R.

518. But a person in possession of lands jointly with a life-tenant, and remaining in possession after the death of the life-tenant under the belief that the land was her property on the death of the life-tenant, was held to be within the Statute. In this case, improvements made after the notice to give up possession were allowed, the notice not having been acted upon. Corbett v. Corbett (1906), 12 O. L. R. 268. See also O'Grady v. McCaffray, 2 O. R. 309.

**MODE OF CHANCE.**—"Mode of chance," as used in sec. 236 of the Criminal Code, is another term for lottery. A lottery is a distribution of money or prizes by lot or chance without the use of any skill. If obtaining the prize depends on skill or judgment it is not a "mode of chance," *e.g.*, guessing the number of beans in a glass jar: R. v. Dodds, 4 O. R. 390; or a jar containing buttons of different sizes: R. v. Jamieson, 7 O. R. 149; or an estimate of the number of votes to be cast at an election: R. v. Johnston, 7 C. C. C. 525; or guessing the number of cash sales in a certain store on a certain day: R. v. Fish, 11 C. C. C. 201; or the weight of a block of soap exhibited in a window: Durham v. St. Croix Soap Co., 33 C. L. J. 444.

The sale of a package of tea, to be selected from three packages, one of which contains a prize, is a selling or disposing of property by a "mode of chance." R. v. Freeman, 18 O. R. 524.

**MODERATE.**—Article 13 of the Imperial Regulations for Preventing Collisions at Sea, requires that: "Every ship, whether a sailing ship or a steam ship, shall in a fog, mist or falling snow, go at a moderate speed." In this article the word "moderate" is a relative term, and its construction must depend upon the circumstances of the particular case. The object of the article is not merely that vessels should go at a speed which will lessen the violence of a collision, but that they should go at a speed which will give as much time as possible for avoiding a collision when another ship suddenly comes in view at a short distance. It is a general principle that speed, such that another vessel cannot be avoided after she is seen, is unlawful. The Heather Belle, 3 Exch. C. R. 40.

**MODERN AND EFFICIENT.**—Section 264 of The Railway Act, R. S. C. ch. 37, which requires every company to provide all trains with "modern and efficient apparatus" for coupling and uncoupling cars, etc., is contravened by the use of a foreign car not so provided, if such car is used by a Canadian railway. A lever for opening and closing the knuckle of the coupler which is too

short to be operated from the side ladder with safety is not "modern and efficient apparatus." Stone v. Canadian Pacific Ry., 26 O. L. R. 121; 47 S. C. R. 634.

**MOIETY.**—The proper meaning of the word "moiety" is a half-part, but it is sometimes used in the sense of an equal part or share. It was so construed in Jordon v. Frogley, 5 O. W. R. 704, where a testator gave certain moneys "in equal moieties to my son William and three daughters, viz.: Ellen, Sarah and Fanny."

**MONEY.**—Money is a general, indefinite term for the measure and representative of value; currency; the circulating medium; cash.

"Money in the bank or funds" does not include money in a chest in the house, there being a residuary bequest in the will. Re Barry, 9 N. S. R. 463.

In Davidson v. Fraser, 23 A. R. 439, it was held that an unaccepted cheque of a third person was not a "payment of money" within the meaning of these words in sub-sec. 5 (b) of sec. 6 of the Assignments and Preferences Act, R. S. O. ch. 134, overruling Armstrong v. Hemstreet, 22 O. R. 336.

Where, on filing an election petition, the petitioner was required to "deposit with such clerk the sum of $500," it was held that, in the absence of express provision, that the deposit need not be made in gold or legal tender, and that a deposit made in bills of a chartered bank was sufficient. Prince v. Maloney, 2 Terr. L. R. 173.

An authority to take possession of "money or other property" does not include land. London Guarantee & Accident Co. v. George, 16 Man. R. 132; 3 W. L. R. 236.

**MONEY CHARGED UPON LAND.**—The Limitations Act, R. S. O. ch. 75, secs. 18, 24, 25. The money mentioned in a writ of *fi. fa.* against lands is money charged upon lands, and is money payable out of such lands, and the right of the execution creditor is in the character of a lien or charge upon the money. Neil v. McAlmond, 29 O. R. 63.

**MONEY DEMAND.**—A money demand is a claim for a fixed and liquidated amount of money, or for a sum which can be ascertained by mere calculation; in this sense distinguished from a claim which must be passed upon and ascertained by a jury called "damages."

The following have been held to be money demands within the meaning of sections 98, 100 of the Division Courts Act:

A claim for an account stated. Northern Ry. Co. v. Lister, 4 P. R. 120.

Interest recoverable by an express or implied contract. Ingles v. Wellington Hotel Co., 29 C. P. 387; McKenzie v. Harris, 10 U. C. L. J. 213.

Surplus money in the hands of a mortgagee after a sale. Legarie v. Canada L. & B. Co., 11 P. R. 512; Reddick v. Traders Bank, 22 O. R. 449.

A claim by one partner against his co-partner for a share of a sum of money received by him, though it may be necessary to take the partnership account. Allen v. Fairfax Cheese Co., 21 O. R. 598.

A claim for "moneys received by the defendant for the use of the plaintiff, being money obtained from the plaintiff by the defendant by false representations," is an action for a money demand. Re Mager v. The Canadian Tin Plate Decorating Co. (1903), 7 O. L. R. 25.

The following are not money demands: A claim for unliquidated damages. Bank of Toronto v. Burton, 4 P. R. 56; Boyd v. Haines, 5 P. R. 15.

Money held by an executor on the sale of the property of his testator: Soules v. Soules, 35 U. C. R. 334.

A claim for damages for breach of title. Kavanagh v. City of Kingston, 39 U. C. R. 415.

A claim for partly liquidated and partly unliquidated damages. Westlake v. Abbott, 4 U. C. L. J. 46.

V. Purely Money Demands.

**MONEY-LENDER.**—In the Dominion Act "money-lender" includes "any person who carries on the business of money-lending, or advertises, or announces himself, or holds himself out in any way, as carrying on that business, and who makes a practice of lending money at a higher rate than ten per centum per annum, but does not comprise registered pawnbrokers as such." R. S. C. ch. 122, sec. 2.

In the Ontario Act it means "a person whose business is that of money-lending or who carries on that business in connection with any other business, whether the money lent is his own or that of any other person, or who advertises or holds himself out as or who by any notice or sign indicates that he is a money-lender." R. S. O. ch. 175, sec. 2 (e).

"The methods adopted and the forms practised by which an incorporated company is made to appear to act as agent for the borrower for a liberal commission, the amount of which is first added to the loan and then deducted from the sum advanced, and for which security is taken, the company being represented in the procuring of the loan by the same person who at the same time is acting under a power of attorney from an individual personally

unknown to the attorney, but whose money he says he advances to the borrower, or the professed ignorance of the defendants of the nature of these dealings, cannot cloak the real transaction or the obvious design of exacting from the borrower a rate of interest upon the advance greatly exceeding that authorized by the Act." R. v. Smith and Luther, 1 O. W. N. 956; 17 C. C. C. 445.

If it is shewn there is a lending on credit by endorsing a promissory note for a consideration to be paid the endorser which is larger than the lawful interest upon a loan, and that this method of doing business in collusion with a third party, who discounted the note, is a method to evade the Act, the endorser is a money-lender within the Act. R. v. Kehr, 18 C. C. C. 57, 202.

A person is within the Act, if it is proved that he discounted promissory notes at a prohibited rate at various times, each less than $500 and so within the Act, although all for the same customer. R. v. Eaves, 21 C. C. C. 23; R. v. Morgan, 21 C. C. C. 225.

A private banker and general broker cannot evade the Act by claiming that the excessive interest was brokerage. R. v. Dube (1909), 18 O. L. R. 367.

The act applies to a loan made by way of chattel mortgage. Ward v. Dickenson, 3 O. W. N. 1153.

An agent for a non-resident money-lender, although paid by salary and not on commission, may be convicted as a money-lender under the Act and sec. 69 of the Criminal Code. R. v. Glyn, 19 Man. R. 63.

A money-lender must be a person who carries on that business, who advertises, announces or holds himself out as such, and who practises the lending of money at forbidden rates of interest. These characteristics or essential elements may co-exist, notwithstanding that all the loans proved to have been made were made to the same person. R. v. Morgan, 1913, R. L. 344.

**MONEYS DUE.**—In an assignment by a railway contractor of "all moneys due under my contract . . . as shewn by the estimates hereto annexed," it was held that the words "money due" were not used in the sense of presently payable, but extended to moneys owing though not presently payable. Re Bunyan and Canadian Pacific Ry., 5 O. W. R. 242.

**MONTH.**—In Dominion and Ontario legislation, "month" means a calendar month. Apart from legislation, in legal matters, a month means a lunar month, but, in commercial matters, it always means a calendar month. Under a life insurance policy providing for one month's grace, it was held to mean a calendar

month. The Manufacturers Life Insc. Co. v. Gordon, 20 A. R. 309. See also Nudell v. Williams, 15 C. P. 348.

A conviction awarding ninety days' imprisonment, where the statute authorized three months as a maximum, is bad, as such ninety days might possibly be more than three months. R. v. Gavin, 1 C. C. C. 59. So where the limit of punishment was one month, a sentence of thirty days, commencing in the month of February, is bad. R. v. Lee, 4 C. C. C. 416.

Where calls were to be made "at periods of not less than three months' interval," and one call was made on 10th August and another on 10th November, it was held an interval of three months had not elapsed. The Stadacona Fire and Life Insc. Co. v. Mackenzie, 29 C. P. 10.

A statute requiring notice of action to be given "one calendar month at least" means a clear month's notice, exclusive of the first and last days. Dempsey v. Doherty, 7 U. C. R. 313. A notice served on 28th March and writ issued on 29th April is sufficient. McIntosh v. Vansteenburg, 8 U. C. R. 248.

Under an agreement, dated 20th September, to pay money within one month, a tender on 21st October is sufficient. Barnes v. Boomer, 10 Gr. 532.

An engagement of an engineer at a salary of $3,000 a year, "payable monthly," is a contract for one year, and the words "payable monthly" are a mere indication of the manner in which the salary is to be paid. Silver v. Standard Gold Mines Co., 3 D. L. R. 103.

A hiring at "$25 a month for eight months" entitles the employee to payment at the end of each month. Mosseau v. Tone, 7 Terr. L. R. 369.

A by-law first published 13th December, 1912, and given its third reading on 13th January, 1913, was held to be "finally passed . . . after one month from the first publication." Re North Gower Local Option By-Law, 5 O. W. N. 249.

Where, under a building contract, the work was to be completed by "November 31st," the contract was read as meaning November 30th. McBean v. Kinnear, 23 O. R. 313.

There is no substantial variation between a conviction and a warrant of commitment where the former adjudged an imprisonment for two months and the latter "two calendar months." In view of the Interpretation Act, "two months" means in all proceedings under Dominion Statutes two calendar months. Re N. R. Neily, 9 E. L. R. 345.

**MONOPOLY.**—In modern commercial language a monopoly consists in the ownership or control of so large a part of the market supply or output of a given commodity as to stifle com-

petition, restrict the freedom of commerce, and give the monopolist control over prices.

A township by-law limiting the number of hotel licenses to one is bad, as creating a monopoly, contrary to the provisions of sec. 254 of the Mun. Act, 1913. Re McCracken and United Townships of Sherbourne, et al. (1911), 23 O. L. R. 81.

**MORE OR LESS.**—In a contract for the purchase of land for a gross sum, a description of the land by its boundaries, or the insertion of the words "more or less," or of equivalent words, will control a statement of the quantity of land, or the length of the boundary lines, so that neither party will be entitled to relief on account of a deficiency or surplus, unless in case of so great a difference as naturally raises the presumption of fraud or gross mistake in the essence of the contract.

A contract for the sale of a city lot described it as having a depth of 110 feet "more or less." The lot ran to a lane and was bounded by streets on two sides, so that the depth could be easily seen. The actual depth was 96 feet 6 inches. There being good faith, the words "more or less" controlled the description. Wilson Lumber Co. v. Simpson (1910), 22 O. L. R. 452; 23 O. L. R. 253.

Wilson v. Simpson was followed where a block of land was sold by definite metes and bounds and as containing "five acres, more or less." The price was for the block, and not by the acre, and after the purchase money had been partly paid, the purchaser ascertained that there was only a little more than four acres in the block. Hunter v. Kerr, 21 W. L. R. 823.

An agreement to sell a lot, with 24 feet 6 inches frontage, is satisfied by a conveyance of a lot 20 feet in width and a right of way over a lane nine feet wide, the purchaser knowing the circumstances. Bullen v. Wilkinson, 3 O. W. N. 859.

An agreement for sale called for a depth of 90 feet "more or less." The conveyance covered a lot with a depth of 75 feet only. The lot had an actual depth of 91.6 feet, and it was held the purchaser was entitled to the whole 91.6 feet. Wishart v. Bond, 4 O. W. N. 931.

The Court refused to make any reduction in the purchase price where the land was described as "the north half of lot 31, in the first concession, being 100 acres more or less," that being the description in the patent and the subsequent conveyances, although the lot contained by actual survey only 90.45 acres. Re Paterson and Canadian Explosives Ltd., 4 O. W. N. 1175.

Where the misdescription, although not proceeding from fraud, is in a material and substantial point, specific performance will not be ordered. Moorhouse v. Hewish, 22 A. R. 172, where the agreement described the lot as 130 feet deep, while it was only 117 feet deep.

Where a car of wheat said to contain "nine hundred bushels more or less" was shipped over defendants' railway, they were held liable in damages for non-delivery for 900 bushels only although the car actually contained 1,102 bushels. Tolmie v. Michigan Central Ry. Co. (1909), 19 O. L. R. 26.

Plaintiff sold to defendant all the hay in a barn, less 30 tons, and gave a receipt for $10 paid on account "of 75 tons of hay, more or less." There were 122 tons of hay in the barn, but the plaintiff delivered 75 tons, and contended this complied with the contract. It was held that "75 tons of hay, more or less," was a compendious way of saying "all the hay in the barn, except 30 tons." Embree v. McKee, 9 W. L. R. 404.

**MORE THAN 14 DAYS.**—In computing the time which must intervene between the conviction and the sittings of the Court hearing an appeal under sec. 750 of the Criminal Code, the term "more than 14 days before the sittings" means that 15 days at least must intervene. R. v. Johnston, 13 C. C. C. 179.

**MORTGAGEE IN POSSESSION.**—As between mortgagor and mortgagee, there is no hard and fast rule which prevents the mortgagee from taking possession of the mortgaged premises at a fair and reasonable rent agreed on. In such a case, this will ordinarily be the measure of liability, because the mortgagee is then in possession, not technically as a "mortgagee in possession," by virtue of his mortgage title, but under the special agreement. But a subsequent mortgagee is not bound by such agreement and may insist on a proper occupation rent being charged. Court v. Holland, 29 Gr. 19.

**MORTGAGES.**—Unpaid purchase money of land sold by the testator in his lifetime will not pass under a bequest of "all cash, negotiable notes and mortgages," if there were, at the time of his death, mortgages which would answer the description in the will. Re Ferguson Estate, 18 Man. R. 532; 10 W. L. R. 637.

**MORTGAGOR.**—Section 2 (*d*) of the Mortgages Act, R. S. O. ch. 112, defines "mortgagor" as including any person deriving title under the original mortgagor, or entitled to redeem a mortgage according to his estate, interest or right in the mortgaged property.

It includes an execution creditor. Commercial Bank v. Watson, 5 L. J. O. S. 163; Chamberlain v. Sovias, 28 Gr. 404; a wife entitled to an inchoate right of dower. Building and Loan Association v. Carswell, 8 P. R. 73; Ayerst v. McClean, 14 P. R. 15; Blong v. Fitzgerald, 15 P. R. 467; a surety for the mortgage money, Seidler v. Sheppard, 12 Gr. 456; Martin v. Hall, 25 Gr. 471; a tenant for years, Martin v. Miles, 5 O. R. 404; Collins v. Cunningham, 23 N. S. R. 350; 21 S. C. R. 139; and a morigagee of such tenant, McMaster v. Demmery, 12 Gr. 193.

But it does not include the wife of a purchaser of an equity of redemption during her husband's lifetime. Monk v. Benjamin, 13 P. R. 356; nor a person owning an undivided interest in land mortgaged to his co-owner. Nichol v. Allenby, 17 O. R. 275.

**MOVABLE EFFECTS.**—The term "movable effects of the community" in arts. 204, 205, Civil Code, is not limited to the furniture which furnishes the common domicile, but includes all the movable property which belongs to the community, of whatever nature it may be. Lachapelle v. Gagne, 8 Q. P. R. 18.

**MOVING TRAIN.**—Section 275 (4) of the Railway Act, as amended by 8-9 Ed. VII. ch. 32, sec. 13, prohibits a greater speed than ten miles an hour over any level-crossing in a city, town or village, and "if at such crossing an accident has happened by a moving train," etc. In this section, the moving train must be the actual and physical cause of an accident which occasions bodily injury. It does not apply to an accident by a horse taking fright at a moving train. Bell v. Grand Trunk Ry. (1913), 29 O. L. R. 247; 48 S. C. R. 561.

**MUNICIPAL COUNCIL.**—Means the municipal corporation and not the members of the council. Port Arthur v. Fort William, 25 A. R. 522.

**MUNICIPAL INSTITUTIONS.**—The term "Municipal institutions in the Province," in sec. 92 (8) of the B. N. A. Act, has been discussed in several cases. "It must have been in the contemplation of the Legislature that existing laws relating to municipal institutions should not be effected, and that the local legislatures should have power to alter and amend." Re Harris and The City of Hamilton, 44 U. C. R. 641.

In Attorney-General for Ontario v. Attorney-General for the Dominion (1896), A. C. 348, it was said that, according to its natural meaning, it simply gives provincial legislatures the right to create a legal body for the management of municipal affairs.

In incorporating a town, a provincial legislature may extend its limits to the centre of a navigable river. Central Vermont Ry. Co. v. St. Johns, 14 S. C. R. 288; 14 A. C. 590.

Police regulations regarding liquor traffic are within the term. Poulin v. Quebec, 9 S. C. R. 185; Hodge v. The Queen, 9 A. C. 117.

**MUNICIPAL TAXES.**—A by-law exempting defendants' property from "all municipal taxes," held not to include school taxes. City of Winnipeg v. Canadian Pacific Ry. 12 Man. R. 581. But this was reversed by the Supreme Court, which held that the exemption included all taxes. 30 S. C. R. 558. See, too, R. ex rel. Harding v. Bennett, 27 O. R. p. 318, where Street, J., says "exempt from taxation" means "exempt from payment of all taxes."

**MUNICIPALITY CONCERNED.** — A municipality in which there is any territory forming part of the union school section is "concerned" within the meaning of sec. 21 (2) of The Public Schools Act, R. S. O. ch. 266. Nichol School Trustees v. Maitland, 26 A. R. 506.

**MY CHILDREN.**—*V.* All My Children.

**MY FAMILY.**—*V.* Family.

**MY LAWFUL HEIRS.**—A testator gave property to his wife and only child for their joint lives and to the survivor for life and "at the decease of both to . . . my lawful heirs." The daughter survived the mother, and it was held she had not been excluded as one of the heirs and was entitled to the residue. The rule established is that "my lawful heirs" means the heirs at the time of the testator's death, unless a contrary view is apparent on the will, and the fact that full provision is made in the will for the person answering the description of heir at his death, makes no difference. Thompson v. Smith, 25 O. R. 652; 23 A. R. 29; 27 S. C. R. 628. See also In re Ferguson, Bennett v. Coatsworth, 24 A. R. 61; 28 S. C. R. 38, where the words used were "my own right heirs."

**MY LIFE INSURANCE.**—When a testator speaks of "my life insurance," he is not to be regarded as dealing with insurance which he has declared to be for the benefit of a preferred beneficiary. This, by the statute, has ceased to be his, and becomes a trust fund, over which he has a limited statutory power. In re Cochrane (1908), 16 O. L. R. 328.

A testator had $1,000 of life insurance payable to "my legal heirs," and by his will he gave his wife "my life insurance to be hers absolutely." "The policy payable to the 'legal heirs' must, in view of the interpretation section, be read as payable 'to the widow and children in equal shares,' and is, therefore, not subject to the will." Re Beam, 3 O. W. N. 138.

**NAME AND ADDRESS.**—Section 3 (5) of the Conditional Sales Act, R. S. O. ch. 136, exempts from the provisions of the Act requiring lien notes to be filed, manufactured goods, including pianos, etc., which "at the time possession is delivered, have the names and address of the seller or lender painted, printed, stamped or engraved thereon or plainly attached thereto."

Where the sellers were The Mason & Risch Piano Company, Limited, the words "Mason & Risch, Toronto," were held insufficient. Mason v. Lindsay (1902), 4 O. L. R. 365.

In Wettlauffer v. Scott, 29 A. R. 652, it was assumed, though the point was not discussed, that the use of the initials or recognized abbreviations of Christian names sufficed.

The plaintiffs' corporate name was "Toronto Furnace and Crematory Company, Limited," and they carried on business in Toronto. The words upon the furnace in question were "From Toronto Furnace and Crematory Co., Ltd., 70 and 72 King Street East." "In the present case, the address may be inferred from the name and street at the bottom, but it is not in fact given. As a matter of fact, this company has its head office in Toronto and, knowing that, the address is readily inferred from the words upon the plate; but the address is not in fact given, and, following the strict construction of the Act, which we are bound to do, as laid down in Mason v. Lindsay, I am of the opinion that the Act has not been complied with." Toronto Furnace & Crematory Co. v. Ewing, 1 O. W. N. 467.

The statute does not permit synonymous words to be used in lieu of the actual name of the manufacturer or seller, but requires a literal compliance with its provisions. In Ericson Tel. Co. v. Elk Lake Co. 3 O. W. N. 1309, the words on the machine were "L. M. Ericson Tel. Mfg. Co., Buffalo, N.Y.," while the name of the manufacturers was "The L. M. Ericson Manufacturing Company." It was held this was insufficient.

Sub-sec. 6 of the section provides that an error or inaccuracy in the name or address of the seller or lender which does not mislead, shall not prevent the application of sub-sec. 5.

**NAMELY.**—"Namely" imports interpretation, i.e., indicates what is included in the previous term; but "including" imports addition, i.e., indicates something not included. Re Harkness (1904), 8 O. L. R. 720.

**NARROW CHANNEL.**—It has never been laid down what constitutes a "narrow channel." There have been cases in which certain places have been held to be narrow channels, and in which definite decisions have been given on definite facts. The question must be decided upon the special circumstances in each case, and in determining it, the amount of shipping must be taken into consideration, the character of the shipping, the strength and nature of the tides and the configuration of the shores. Bryce v. Canadian Pacific Ry., 13 B. C. R. 96; 6 W. L. R. 53.

In The "Cuba" v. McMillan, 5 Exch. C. R. 135; 26 S. C. R. 651, a channel about four miles in length with a mean depth of about a mile and a quarter was held to be a narrow channel.

A harbour containing wharves and anchorage for ships on either side, or where ships and steam tugs are continually plying back and forth, is not a "narrow channel" within the meaning of the Sailing Rules. Lovitt v. The Ship "Calvin Austin," 9 Exch. C. R. 160.

The harbour of Sydney, C.B., is a narrow channel. The Santanderino, 3 Exch. C. R. 378.

**NARROW SEAS.**—A term applied to those seas which run between two coasts not far apart; *e.g.*, the English channel.

**NATURAL GAS.**—Natural gas is a mineral. Ontario Natural Gas Co. v. Gosfield, 19 O. R. 591; 18 A. R. 626.

But a reservation or exception in a conveyance of land by the Canada Company to a farmer, in 1867, of "all mines and quarries of metals or minerals and all springs of oil in or under the said land whether discovered or not," was held not to include natural gas; natural gas not being regarded as a mineral at the date of the grant. Farquharson v. Barnard (1910), 22 O. L. R. 319; 25 O. L. R. 93.

V. MINERALS.

**NAVIGABLE WATERS.**—The term "navigable waters" is not to be construed as including every inch or foot of shoal or shore water in the river, but as referring to water of such depth and situation as is, according to the reasonable course of navigation in the particular locality, practically navigable. Ratte v. Booth, 11 O. R. 491; 14 A. R. 419; 15 A. C. 188.

Navigable rivers, in the language of the civil law, are not merely rivers in which the tide flows and reflows, but rivers capable of being navigated in the common sense of the term. The rule of the common law as to flux and reflux of the tide being necessary to constitute a navigable river is not applicable to streams flowing into the great lakes. Gage v. Bates, 7 C. P. 116.

The law of Quebec is the same as that of England, viz., no waters can be deemed navigable unless they are actually capable of being navigated. An arm or inlet of a navigable river cannot be assumed to be navigable. Attorney-General of Quebec v. City of Hull, Q. R. 24 S. C. 59; 34 S. C. R. 603.

A river is navigable when, with the assistance of the tide, it can be navigated in a practical and profitable manner, notwithstanding that at low tides it may be impossible for vessels to enter the harbour. Bell v. Quebec, 5 A. C. 84; Attorney-General of Quebec v. Fraser, 37 S. C. R. 577.

Waters are not navigable because at extraordinary periods the waters of the lake are pressed up by strong winds at a particular spot so as to permit of scows passing over it. Ross v. Village of Portsmith, 17 C. P. 195.

Rivers may be navigable though not such as will bear boats or barges for the accommodation of travellers, if they are sufficient for the transportation of property, *e.g.*, for floating logs or timber. Rowe v. Titus, Allen's Rep. (N.B.) 329; Esson v. McMaster, 1 Kerr N. B. R. 501.

Rivers which are only floattables a buches perdues (floatable only for loose logs), are not "floattables" in the legal sense of the word, and, therefore, do not come within article 400 of the Civil Code (Quebec). Tanguay v. Canadian Electric Light Co., 40 S. C. R. 1. In such a river the presumption of the English law that the bed of the stream *ad medium filum aquæ* belongs to the riparian proprietor holds good under the law of Quebec. Maclaren v. Attorney-General for Quebec, 1914, A. C. 258.

Navigable rivers means navigable in their ordinary condition. Lafaivre v. Attorney-General, 14 Que. K. B. 115.

A navigable river is a public highway and anyone has a right to use it as such, having regard to the rights of others. Graham v. The Ship "E. Mayfield," 14 Exch. C. R. 331.

Provincial legislation cannot authorize interference with the right of navigation—that subject, under sec. 91 of the B. N. A. Act, being under the exclusive jurisdiction of the Parliament of Canada. The Queen v. Fisher, 2 Exch. C. R. 365; Ireson v. Holt, 5 O. W. N. 577; 30 O. L. R. 209.

The title to the bed of a non-tidal navigable river is presumed to be in the riparian owner *ad medium filum aquæ*. Keewatin Power Co. v. Kenora (1908), 16 O. L. R. 184; Patton v. Pioneer Navigation & Sand Co., 21 Man. R. 405.

The Queen v. Meyers, 3 C. P. 305, contains an exhaustive review of the English and American cases on rivers as public highways. See also Merritt v. City of Toronto (1912), 27 O. L. R. 1.

As to the rights of riparian owners of lands bordering on navigable waters, see Ratte v. Booth, *supra;* R. v. Port Perry and Port Whitby Ry. Co., 38 U. C. R. 431; Attorney-General v. Perry, 15 C. P. 329; Caldwell v. McLaren, 8 S. C. R. 435; 9 A. C. 392; Keewatin Power Co. v. Kenora (1908), 16 O. L. R. 184; Haggerty v. Latreille (1913), 29 O. L. R. 300.

*V.* Rivers.

**NEAR.**—"Near," as applied to space, can have no positive or precise meaning. It is a relative term, depending for its signification on the subject matter in relation to which it is used and the circumstances under which it becomes necessary to apply it to surrounding objects.

An indictment was quashed where it alleged a nuisance to be "near" a certain lot, and the evidence shewed it to be on the lot. R. v. Meyers, 3 C. P. 305.

*V.* At or Near.

**NEAREST OF KIN.**—In the absence of any controlling context, the persons entitled under the description "nearest of kin" in a will are the nearest blood relations of the testator at the time of his death in an ascending and descending scale. Brabant v. Lalonde, 26 O. R. 379.

"Next of kin" mean nearest in blood. A devise to "next of kin" means the next of kin at the death of the person whose next of kin are spoken of. Mays v. Carroll, 14 O. R. 699.

In its primary meaning "next of kin" does not include either husband or wife. When used *simpliciter* the term is to be construed strictly as meaning the next of kin in degree according to the civil law of computation and not the persons entitled according to the Statute of Distributions. Robertson v. Robertson, 7 E. L. R. (N. B.) 312.

**NEAREST RECURRING ANNIVERSARY.**—By a Statute the lessees of mining land were permitted to pay an annual rent in advance, and it provided that "such advance payments shall be construed to commence from the nearest recurring anniversary of the date of the lease." *Held* that the term "nearest recurring anniversary" is equivalent to the term "next, or next ensuing anniversary." Temple v. Attorney-General of Nova Scotia, 27 S. C. R. 355.

**NEARLY.**—*V.* As Nearly as May Be.

**NECESSARY.**—In an agreement for the sale of timber with a right to enter upon the vendor's lands to remove the timber not

interfering with the enjoyment of the vendor "save in so far as might be necessary." See Stephens v. Gordon, 19 A. R. 176; 22 S. C. R. 61.

A company obtaining a franchise from a municipality to supply it with all the water "necessary for the needs of the town," undertakes a supply of what is necessary for the ordinary use of the ratepayers, and not the water required to put out a fire breaking out in the town; and hence is not liable in damages for fire losses occurring as the result of an insufficient water supply. Quesnell v. Emard, 8 D. L. R. 537.

**NECESSARY ACCOMMODATION.**—*V.* ALL NECESSARY ACCOMMODATION.

**NECESSARIES—NECESSARIES OF LIFE.**—"Necessaries of life," within the meaning of secs. 241 and 242 of the Criminal Code, include medical attendance and medical remedies—such necessaries as tend to preserve life. R. v. Brooks, 9 B. C. R. 13; 5 C. C. C. 373; R. v. Lewis (1903), 6 O. L. R. 132; 7 C. C. C. 261.

In determining whether it is the duty of a parent in a particular case to furnish medicine or medical treatment for a child, all the surrounding circumstances must be taken into account. The financial means of the parent and the accessibility of the medicine or medical man are elements. *Semble*, medical aid, assistance and treatment by some one other than a legally qualified physician, may, in some cases, satisfy the requirements of the Code. R. v. Lewis, *supra;* R. v. Yuman, 17 C. C. C. 474.

"What is to be considered as necessaries must be determined by the circumstances of each particular case. I can hardly conceive that if a father knew or should have known that his child of tender years was out in the prairie in danger of being frozen to death, and he had the ability to succour it and omitted without lawful excuse to do so, he might properly be convicted under this section. To send aid to him under these circumstances might be just as necessary and just as much a parent's legal duty as to send for medical assistance in case of sickness." R. v. Sidney, 20 C. C. C. 376.

Where the relationship is that of master and servant, the master is not within sec. 241 of the Criminal Code, but is within sec. 243. R. v. Coventry, 3 C. C. C. 541.

There is no legal liability by a father to pay a debt contracted by his infant children, even though the debt be for necessaries. But if the father does any specific act from which it may be reasonably inferred that he has authorized his child to contract a debt, he may be liable. Hayman v. Heward, 18 C. P. 353.

In the case of a wife it is different. Her authority to pledge her husband's credit, during cohabitation, for such things as fall within the domestic department confided to her management, and are necessary and suitable to the style in which her husband lives, arises from the fact of the marital relationship. Scott v. Allen (1912), 26 O. L. R. 571.

If a husband turns his wife out of doors without any justifiable excuse, she goes to the world clothed with an implied credit for necessaries, and the question then is were the articles supplied really necessaries? Archibald v. Flynn, 32 U. C. R. 523.

Where a wife, already supplied with necessary clothing, purchased a quantity of silks, shawls, laces, etc., the Court set aside the verdict of a jury against the husband. Zealand v. Dewhurst, 23 C. P. 117.

An action to recover the price of furs $11, coat $10, fur-lined coat $13.50, and a long list of garments supplied to defendant's wife for herself and child. At the time of the purchase she was living apart from her husband without his consent. *Held*, the wife had no implied authority to pledge her husband's credit even for necessaries; and even if she had, the plaintiff had not proved that the goods supplied were necessaries, and he was bound to prove this affirmatively. Robinson v. Taylor (1894), 14 C. L. T. 147 (Man.).

A husband cannot recover from his wife's estate money disbursed for the expense of her funeral unless she has charged them by will upon her estate, or unless there is some statute making them a charge upon her separate estate. In re McMyn, 33 Ch. D. 575, not followed. Re Montgomery, Lumbers v. Montgomery, 20 Man. R. 44; 17 W. L. R. 77.

But in Re Gibbons, 31 O. R. 252, Rose, J., followed In re McMyn, and said: "I see no reason why, when a married woman dies seized of separate estate, that estate should not be charged with the burthen of her funeral expenses as well as where a man dies leaving an estate."

As applied to a ship, the term "necessaries" means such things as are fit and proper for the service in which the ship is engaged, and such as the owner, being a prudent man, would have ordered if present: *e.g.*, anchors, rigging, repairs, victuals.

Making alterations and additions to the structure and equipment of a fishing vessel in order to change her from a trawler so as to permit fishing from small boats, were held to be "necessaries" for the cost of which judgment may be given *in rem* in admiralty proceedings. Victoria Machinery Depot v. "The Canada," 25 W. L. R. 826.

**NECESSITY.**—V. Works of Necessity and Charity.

**NEGLECT.**—To "neglect" doing, is the omission to do some duty which the party is able to do. Neglect or refusal: see Vogel v. Grand Trunk Ry., 10 A. R. 162; 11 S. C. R. 612.

V. SERIOUS NEGLECT.

**NEGOTIABLE INSTRUMENTS.**—The expression "negotiable securities" or "negotiable instruments" is used in two senses. It is frequently used to describe any written security which may be transferred by indorsement and delivery, or by delivery alone, so as to vest in the holder the legal title, and thus enable him to sue on it in his own name. In a narrower and more technical sense it applies only to those instruments which, like bills of exchange, by indorsement or delivery before maturity, vest in the *bona fide* holder for value not only the rights of the transferor, but the right to claim the full amount for which the instrument is drawn. Maclaren, Banks and Banking, 97.

Railway debentures are negotiable instruments—the fact that they are under seal does not detract from their character as such. Bank of Toronto v. Cobourg, etc., Ry. Co., 7 O. R. 1.

Municipal debentures are negotiable and are valid in the hands of a *bona fide* holder for value without notice of a defect in title. Trust & Loan Co. v. City of Hamilton, 7 C. P. 98; Crawford v. Town of Cobourg, 21 U. C. R. 113; Anglin v. Township of Kingston, 16 U. C. R. 121; Pontiac v. Ross, 17 S. C. R. 406.

A letter of credit is not a negotiable instrument, especially if it is conditional. The Jacques-Cartier Bank v. The Queen, 25 S. C. R. 84.

The earlier Canadian cases did not consider bank deposit receipts (not payable to bearer or order) as negotiable instruments. Mander v. Royal Canadian Bank, 20 C. P. 125; Lee v. Bank of British North America, 30 C. P. 255. In Voyer v. Richer, 13 L. C. J. 213, the Quebec Courts *held* that even when payable to order it was not negotiable. On appeal the Privy Council affirmed the Quebec Courts on another ground and said there was high authority for the contention that the receipt was negotiable. Richer v. Voyer, L. R. 5 P. C. 461.

In Re Central Bank, 17 O. R. 574, the Court *held* that a deposit receipt payable to order is negotiable. "If you find an unconditional promise to pay a certain sum in money to a person, or his order, at a time which is sure to happen, then to such a document the law will attribute the property of negotiability as a promissory note."

Where the words "not transferable" were printed across the face of a deposit receipt it was *held* that although this prevented the instrument being negotiable, it did not prevent the depositer from assigning the claim against the bank for the money deposited.

*Quaere*: Is it possible for persons to so contract as to prevent a debt arising out of the transaction from being assignable by the creditor? Re Commercial Bank of Manitoba. Barkwell's Claim, 11 Man. R. 494.

**NEGOTIATION.**—A renewal of bills or notes is not a "negotiation" within the meaning of sec. 75 (now sec. 90) of the Bank Act, R. S. C. ch. 29. The bills or notes may be renewed but not the security. Halsted v. Bank of Hamilton, 27 O. R. 435; 28 A. R. 152; 28 S. C. R. 235.

The simple renewal of notes by a bank is not a negotiation so as to validate a warehouse receipt taken as collateral security. Dominion Bank v. Oliver, 17 O. R. 402.

The Act contemplates only cash advances made at the time the securities are required. Bank of Hamilton v. Shepherd, 21 A. R. 156.

An advance upon a new note to retire an overdue note is not a negotiation. Bank of British North America v. Clarkson, 19 C. P. 182. Nor an advance by one bank to pay an indebtedness to another bank, such other bank being insolvent to the knowledge of the former bank. Milloy v. Kerr, 43 U. C. R. 78; 3 A. R. 350; 8 S. C. R. 474.

**NEPHEWS—NIECES.**—"Nephews and nieces" mean *prima facie*, the children of brothers and sisters of the testator. If there is anything in the language of the will which shews that the testator has used the words in a more general sense the Court will give that construction to his words. Re Urquhart, 2 O. W. N. 451.

**NET PROCEEDS.**—See Grobe v. Doyle, 12 B. C. R. 191; 3 W. L. R. 285.

**NET PROFITS.**—Net profits are simply gross profits, less running expenses. Moneys earned in any year, but not received until later, must be taken as profits of the year in which they are earned. They are book debts, and so to be taken into account in arriving at the net profit for the year. Net profits are not limited to cash taken in and available as presently divisible assets. Tunstall v. McKechnie, 10 W. L. R. 372.

**NEVER INDEBTED.**—In an action to recover the value of a parcel, lost by an express company, on the common counts for goods had and received, the plea of "never indebted" puts in issue all material facts necessary to establish the plaintiff's cause of action. Martin v. The Northern Pacific Express Co., 10 Man. R. 595; 26 S. C. R. 135.

**NEW.** — As an element in numerous compound terms and phrases, "new" may denote novelty, or the condition of being previously unknown or of recent or fresh origin, but ordinarily it is a purely relative term and is employed in contrasting the date, origin or character of one thing with the corresponding attributes of another thing of the same kind or class.

A representation that an automobile is a "new car" is false if the car is one that has been sold and used and returned by the purchaser and made over. It may be that in a secondary sense, and according to the custom of the trade, the car might properly be described as a new car, but it is not in the ordinary sense of the word a "new" car. Addison v. Auto and Taxi Co., 5 O. W. N. 479; 30 O. L. R. 51.

**NEWSPAPER.**—In the Libel and Slander Act, R. S. O. ch. 71, "newspaper" means a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers, and includes a paper printed in order to be made public weekly or oftener, or at intervals not exceeding thirty-one days, and containing only, or principally, advertisements. Sec. 2.

As to the meaning of "newspaper" in the sections of the Criminal Code relating to defamatory libel, see sec. 2 (22) of the Code.

A printed paper issued daily by a mercantile agency to its subscribers, for the purpose of giving information required by the subscribers, is a "newspaper" and "printed for sale" within the meaning of sec. 2 of the Libel and Slander Act. Slattery v. R. G. Dun & Co., 18 P. R. 168.

A newspaper is a paper containing news, and literary, scientific, commercial and industrial matters, published and circulated periodically as a commercial enterprise and with the object of making money. Humphrey v. Success Co., 9 Que. P. R. 24.

**NEXT GENERAL MEETING.**—See Hendrie v. Grand Trunk Ry., 2 O. R. 441.

**NEXT IN HEIRSHIP.**—A testator gave his estate, after the death of his wife, to certain named persons, and added: "Should no heirs of any of the above be alive, that it go to the next in heirship." The words "next in heirship" were construed as meaning the heirs at law to the realty and the statutory next of kin to the personalty. Re Gardner (1902), 3 O. L. R. 343.

**NEXT OF KIN.**—V. NEAREST OF KIN.

**NEXT SITTINGS.**—The "next sittings of the Court" means the next sittings of the Court at which the issues can be tried, whether a jury or non-jury sitting. Shaw v. Crawford, 13 P. R. 219; Hogaboom v. Lunt, 14 P. R. 480; Chapman v. Smith, 32 C. P. 555.

**NIGHT.**—By the common law it was considered night when it was so dark that the countenance of a man could not be discerned. 1 Hale, P. C. 350.

In criminal law "night" or "night-time" means from nine o'clock in the afternoon to six o'clock in the forenoon; and "day" or "daytime" from six o'clock in the forenoon to nine o'clock in the afternoon. Criminal Code, sec. 2 (23).

**NOISY GAME.**—The Lord's Day Act, R. S. O. 1897, ch. 248, sec. 3, makes it unlawful for "any person on that day to play at skittles, ball, football, rackets, or any other noisy game." Golf is not a "noisy game" within this Act. "Ball," as used in sec. 3, does not indicate a class of games, but means a specific game known at the date of the passing of the statute as a game of ball, and the game of golf is not, therefore, included under such word. R. v. Carter, 31 C. L. J. 664.

**NONFEASANCE.**—Nonfeasance is the neglect or failure to do some act which ought to be done, and the word is generally used to denote a failure to perform a duty towards the public, whereby some individual sustained special damage, or the non-performance of some act which ought to be performed, as when the legislature requires a person to do a thing, its nonfeasance will subject the party to punishment, as for instance, when a statute requires the supervisors of the highway to repair such highway, the neglect to repair may be punished.

The difference between nonfeasance and misfeasance is, that one is a total omission to do an act which it is one's duty to do, and the other a culpable negligence in the execution of the act. Denton, Municipal Negligence, 16, 17.

The following have been held to be cases of nonfeasance and not misfeasance:

Digging a hole in a highway and not replacing the materials, whereby the plaintiff fell into the hole. Pearson v. County of York, 41 U. C. R. 378. (Compare Rowe v. Leeds & Grenville, 13 C. P. 515; Dickson v. Township of Haldimand, 2 O. W. R. 969; Keech v. Town of Smith's Falls (1907), 15 O. L. R. 300).

Removing snow from tracks and leaving it heaped up at the sides of the roadway. Barber v. Toronto Ry. Co., 17 P. R. 293; McCrea v. City of St. John, 36 N. B. R. 144.

Leaving obstructions on the highway for a sufficient time to justify a finding of negligence. Castor v. Township of Uxbridge, 39 U. C. R. 113; McGregor v. Harwich, 29 S. C. R. 443; Howse v. Southwold (1912), 27 O. L. R. p. 31.

Omitting to guard an opening in a sidewalk. Minns v. Village of Omemee (1904), 8 O. L. R. 508.

In Armour v. Town of Peterborough (1905), 10 O. L. R. 306, the plaintiff claimed damages by reason of the faulty construction of a cement sidewalk, alleging it was built on an incline with an exceedingly smooth surface, making it unsafe and dangerous to walk upon. The Master in Chambers said: "Non-repair seems to mean any omission of duty on the part of the municipality which makes the highway unsafe. Making a new walk or road defectively and leaving it in such an unsafe condition would seem to be non-repair within the words of the statute as interpreted by the cases." See, however, the criticism of this case in Denton, Municipal Negligence, pp. 21, 22. It seems wholly opposed to Driscoll v. St. John, 29 N. B. R. 150, and Smith v. Vancouver, 5 B. C. R. 491 (see under "Misfeasance.")

A depression or hole in the street caused by taking up an old board walk, and not filling up the space formerly occupied by the board walk. Brown v. City of Toronto, 2 O. W. N. 982; (1910), 21 O. L. R. 230; Anderson v. City of Toronto (1908), 15 O. L. R. 643.

V. NON-REPAIR.

**NON-REPAIR.**—"Non" is the general negativing prefix to be found in many words in common use both in law and literature, and in ordinary parlance—the word "non-repair" can, I think, mean only "the state of being out of repair," "the state of not being in repair." It is clear that such a state may be occasioned by the misfeasance of the municipality. Brown v. City of Toronto (1910), 21 O. L. R. 230.

In some cases, the word "non-repair" is used in contrast or quasi-contract with "obstruction," and the like, but in very many also the word has been considered to include obstructions. In Castor v. Township of Uxbridge, 39 U. C. R. 113, Harrison, C.J., says: "When a highway is in such a state from any cause, whether of nature or man, that it cannot be safely or conveniently used, it may in a large and liberal sense be said to be out of repair. Whether the defect be an excavation caused by nature or man, or an addition making an obstruction caused by nature or man, it may be equally unsafe and equally inconvenient to the public to

use the highway. The statute prescribes no standard of repair, and does not in any manner declare what is to be deemed non-repair."

In Gilchrist v. Township of Carder, 26 C. P. 1, overhanging trees likely to fall upon the highway were held to be in violation of the duty of the municipality to keep in repair; while in Rounds v. Town of Stratford, 25 C. P. 123, Hagarty, C.J., seems to doubt if leaving a waggon on the road is such. In the same case, in 26 C. P. 11, Gwynne, J., apparently distinguishes mere non-repair from "nuisances which may not amount to defect in repair."

In Foley v. Township of East Flamborough, 26 A. R. 51, Lister, J.A., said that any object in, upon or near by, the travelled path which might necessarily obstruct or hinder one in the use of the road is a defect or want of repair. In Atkinson v. City of Chatham, 26 A. R. 521, a telephone pole standing in a city street was held to constitute a violation of the statute. The judgment was reversed, 31 S. C. R. 61, but on other grounds.

A milkstand built on a highway by an adjoining proprietor and projecting slightly over the travelled way is such an obstruction as to constitute a want of repair; and municipal corporations are responsible for damages caused to travellers by obstructions placed upon the highway by wrongdoers, of which the corporation have or ought to have knowledge. Huffman v. Township of Bayham, 26 A. R. 514; Rice v. Town of Whitby, 25 A. R. 191; O'Neil v. Windham, 24 A. R. 341; McKelvin v. City of London, 22 O. R. 70.

The non-repair of streets, roads and sidewalks, by reason of which injuries may be sustained, is a condition of the street, road or sidewalk which may have arisen by either misfeasance or non-feasance on the part of the corporation. Britton, J.: Brown v. City of Toronto, *supra*.

*V.* NONFEASANCE: MISFEASANCE.

**NORTH-WEST PORTION.**—See Tucker v. Phillips, 24 U. C. R. 626.

**NORTH-WESTERLY QUARTER.** — A patent issued for the "north-westerly quarter" of a 200-acre lot, the side lines of which ran N. 45 degrees W., and S. 45 degrees E. *Held*, this covered fifty acres, extending half the depth and half the width of the whole lot, nor fifty acres extending one-fourth of the depth of the whole width. "The reasonable and usual understanding, when the quarter of a lot is referred to by the points of the compass, is that the whole lot is divided into four quarters, preserving the original form of the lot, but apportioning the quarters according to those points of the compass which will correspond with that expressed in the description." Davis v. McPherson, 33 U. C. R. 376.

**NOT COVERED.**—The amount of a cheque was placed to the credit of the payee, and, being on another bank, was sent to such bank for payment, but was not paid. The holder then wrote a letter to the payee, referring to the cheque, and said: "I am now advised it has not been covered." *Held,* the words "not covered" were equivalent to "not paid" or to 'unpaid," and being so construed was a sufficient legal notice of dishonour. The Queen v. the Bank of Montreal, 1 Exch. C. R. 154.

**NOT EXCEEDING THREE MONTHS WAGES.**—The Wages Act, R. S. O. ch. 143, sec. 3, Riddell, J.: "I should not have thought it necessary to write a judgment, had I not been informed by counsel that it has been, by Referees, etc., more than once ruled that the amount of the preference is to be found by taking the amount of the last three months' wages and deducting therefrom the amount of wages paid during the same time. This I think is an error: the assignee is to pay "the wages of all persons in the employment of the assignor . . . not exceeding three months' wages." In other words, the servant may venture to leave in the master's hands a balance of his wages, so long as that balance does not exceed three months' wages." McLarty v. Todd, 4 O. W. N. 172.

**NOT JUST AND REASONABLE.**—V. JUST AND REASONABLE: CO-INSURANCE.

**NOT LESS THAN.**—"Not less than" such a number of days, means so many clear days. A notice given on 27th June for the 27th July, is "not less than thirty days' notice." National Insurance Co. v. Egleson, 29 Gr. 406.

A statute gave power to impose a fine of "not less than $40." Harrison, C.J.: "What is meant by fining a man not less than $40? Does this mean he may be fined *any,* and, if any, what amount above $40? Whether we look at the imprisonment or the fine authorized by the section under which the conviction took place, it is impossible for us to decide with anything like certainty what is the appropriate punishment intended, and this being so we cannot amend." R. v. Black, 43 U. C. R. 180.

In R. v. Cameron, 15 O. R. 115, Rose, J., held a conviction good where the defendant was fined $60 under a statute which authorized a fine of "not less than $50." He said: "I feel I cannot say that "not less than" means what the words imply . . . nor can I say "not less than $50" has the same meaning as "not less or more than $50."

But in R. v. Smith, 16 O. R. 454, the Q. B. Divisional Court refused to follow R. v. Black. The words "not less than fifty

dollars," and "not less than one hundred dollars," may well be construed as "fifty dollars and no less," and "one hundred dollars and no less," and it appears to me they ought to be so construed." See also R. v. Porter, 20 N. S. R. 352; R. v. Rose, 22 N. B. R. 309.

The matter may now be considered settled by the judgment of the Supreme Court in Re Placide Richard, 38 S. C. R. 294; 12 C. C. C. 205, where the Court followed R. v. Smith, *supra*.

**NOT TRANSFERABLE.**—*V.* NEGOTIABLE INSTRUMENTS.

**NOTICE.**—*V.* ACTUAL NOTICE.

**NOTICE IN WRITING.**—The notice in writing referred to in sec. 12 (4) of the Mechanics' and Wage-Earners' Lien Act, R. S. O. ch. 140, is not required to be in any prescribed form. What would be deemed sufficient notice as a matter of business should suffice. Craig v. Cromwell, 32 O. R. 27; 27 A. R. 585.

A notice of appeal wholly typewritten is a "notice in writing" under sec. 750 of the Criminal Code. R. v. Bryson, 10 C. C. C. 398.

**NOTICE IN WRITING OF THE CLAIM.**—Where an action was brought against a municipal corporation for damages occasioned by a highway being out of repair, section 606 (3) of the Municipal Act, 1903, required notice in writing of the accident and the cause thereof "to be given to the corporation." This provision is now embodied in the Municipal Act, 1913, sec. 460 (4), and now reads: "Notice in writing of the claim and the injury complained of." There appears to be no decision shewing that "claim" in this connection, has any more extended meaning than "accident," or "the cause of action arising out of the accident."

The object of the Act is still the same—to enable the corporation to ascertain the facts while the evidence is available and fresh in the minds of the witnesses. City of Kingston v. Drennan, 27 S. C. R. 46.

It is not necessary to mention the exact locality. The notice should state the cause of the accident, that is, whether a hole in the walk, a defective plank, accumulation of ice, etc., the name of the street and the side of the street, and reasonable information as to locality to enable the corporation to investigate. McQuillan v. Town of St. Mary's, 31 O. R. 401.

A notice stated the cause of the accident occurred on May 7th instead of May 6th. The date was otherwise identified and the Court held the notice sufficient. *Per* Street, J.: "In my opinion, the notice so given should state the time and place of the accident with reasonable particularity." McInnis v. Township of Egremont (1903), 5 O. L. R. 713.

In a later case, Middleton, J., calls attention to the fact that the statute does not require time or place to be given in so many words, and says the Court should refrain from attempting to add anything to that which is required by the statute. Young v. Township of Bruce (1911), 24 O. L. R. 546. In the latter case the notice stated the accident to have occurred on the road between two named villages, and the evidence shewed that the Township officials knew the locality. The notice was held to be sufficient.

The Manitoba Act requires "notice of any such claim or action," and it was held that the statute should receive a liberal construction, and requirements not specifically stated and not necessarily implied should not be read into it. Iveson v. City of Winnipeg, 16 Man. R. 352.

As to what is "reasonable excuse" for failure to give notice, or insufficiency of the notice, see under "Reasonable Excuse."

**NOW.**—"Now" or "next" shall be construed as having reference to the time when the Act was presented for the Royal assent. Interpretation Acts: R. S. C. ch. 1, sec. 8 (18); R. S. O. ch. 1, sec. 8 (4)

In Crawford v. Duffield, 5 Man. R. 121, the words "now or hereafter in force" in a statute, were read as "which now or hereafter have been enacted or made and remain unrepealed."

A devise of "my property known as 'Walkerfield,' being the property I *now* reside upon," was held to cover land added to the property by the testator after the date of his will, and the word "now" did not shew a contrary intention within the Wills Act. Hatton v. Bertram, 13 O. R. 766.

A testator provided as follows: "I give to my sister the house and land with all household furniture and all the stock and trade *now* in house with all book accounts *now* due me." *Held*, that although the gifts of the chattel property were specific bequests, yet being specific bequests of that which is generic—of that which may be increased or diminished—the household furniture, stock-in-trade and book debts as they existed at the time of the testator's death, passed to the sister, and the use of the word "now" did not limit them as at the date of the will. In Re Holden (1903), 5 O. L. R. 156.

*Semble*, where a will bears no date the word "now" relates to the death of the testator. *Ib.*

**NOW PENDING.**—A guarantee referred to an arbitration "now pending." At the date of the guarantee the bond of submission was not signed, but was signed several days afterwards. *Held*, that the words "now pending" could be treated in the sense of "impending," as referring to an inchoate but not complete reference; to a state of things where the reference was agreed on, but

the formal submission not executed. Shaw v. Caughell, 10 U. C. R. 117.

**NOXIOUS OR OFFENSIVE BUSINESS.**—Keeping a house or private hospital for the treatment of consumptive patients does not constitute a "noxious or offensive trade or business" within sec. 84 of the Public Health Act. R. S. O. ch. 218. R. v. Playter (1901), 1 O. L. R. 360; 4 C. C. C. 338.

**NOXIOUS THING.**—A thing may be or become noxious by the quantity of it taken or administered, as well as by the quality of the article itself. An article which would be innoxious to a healthy person may be a noxious article to an unhealthy person. And in like manner an article which may not be noxious to a woman not pregnant, may be noxious to a woman who is pregnant. R. v. Stitt, 30 C. P. 30.

**NUISANCE.**—Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the comfortable enjoyment of life or property, or unlawfully obstructs the free use and enjoyment, in its customary manner, of any navigable river, lake or highway, is a nuisance.

A public nuisance is distinguished from a private nuisance only in this that the latter is an injury to the property of an individual, while a public nuisance is an injury to the property of all persons who come within the sphere of its operation: though it may be injurious to a greater or lesser degree as to different people within the area affected. Cairns v. Canada Refining & Smelting Co., 5 O. W. N. 423.

**OATH.**—Oath includes a solemn affirmation or declaration when made by a person allowed to affirm or declare. Interpretation Acts, Canada and Ont.

The essence of an oath is an appeal to a Supreme Being in whose existence the person taking the oath believes, and whom he also believes to be a rewarder of truth and avenger of falsehood, and the form of taking the oath is a mere outward act not essential to the oath.

A witness takes an oath, although without being asked if he has an objection to being sworn in the usual manner, but without objection to the form used, raises his right hand instead of kissing the Bible. R. v. Curry, 47 N. S. R. 176; 48 S. C. R. 532.

*V.* AFFIDAVIT; JURAT.

**OBITER DICTUM.**—A remark made, or opinion expressed, by a Judge in his decision upon a cause "by the way," that is, inci-

dentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument.

**OBLIGATION.**—The word "obligation" means that which constitutes legal duty, and which renders one liable to coercion for neglecting it—an act which binds a person to some performance. The word "obligation" in sec. 57 of the former Loan Corporations Act. R. S. O. 1897, ch. 205, applied to a savings bank account. Re Ging, 20 O. R. 1.

**OBSCENE.**—Criminal Code, sec. 207. Whether words are obscene or not must, in many instances at least, depend not upon the words alone, but upon the words coupled with the circumstances under which they are published. R. v. Macdougall, 15 C. C. C. 466.

Section 207 is not aimed at merely libellous publications, nor at those couched in merely coarse, vulgur and offensive language. The word "obscene" has a great variety of meanings, but its meaning in this section is to be ascertained from the company in which it is found. Here it is used in the sense of conduct involving sexual immorality and indecency—offensive to modesty or decency—expressing or suggesting unchaste or lustful ideas. R. v. Beaver (1905), 9 O. L. R. 418; 9 C. C. C. 415.

To sustain a conviction for selling or exposing for sale obscene books, it must be shewn that they were so sold or exposed with the knowledge of the defendant, and that he knew of their obscene character. R. v. Britnell (1912), 26 O. L. R. 136; 20 C. C. C. 85.

A., a bookseller, publishes the work of a casuist, which contains amongst other things, obscene matter. The work is published in Latin, and appears from the circumstances of its publication to be intended for *bona fide* students of casuistry only. A. has not committed an offence. B. extracts the obscene matter from the work so published, translates it into English, and sells it as a pamphlet about the streets for the purpose of throwing odium upon casuists. B. has committed an offence. Burbridge—Dig. Cr. Law, 164.

**OBSTRUCT—OBSTRUCTION.**—The use of a bicycle on a sidewalk may be an obstruction within the provision of a by-law that no person shall by any vehicle encumber and obstruct the sidewalk. Wilson, J.: "It is true that both encumber and obstruct are terms that are generally applied to more permanent acts, but the greater or less degree of premanence, or continuance, or durability, can make no absolute difference in the nature of the act, nor can it

make any difference that these terms are commonly applied to fixed articles; they may equally apply to an animal or to a person, or to an inanimate thing in motion. A person may be obstructed in the performance of his duty, and I think that threats may constitute an obstruction." R. v. Plummer, 30 U. C. R. 41; R. v. Justin, 24 O. R. 327.

To obstruct is not necessarily to render impassable, and there may be obstruction although the whole width of the street is not occupied by the crowd; if any foot passenger attempting to use the street is hindered, delayed or impeded in his progress along the street. Re Bettsworth, 11 W. L. R. 649.

To support a prosecution for obstructing an officiating clergyman under sec. 199 of the Criminal Code it must be proved that he was at the time either the lawful incumbent of the church or officiating with the permission of the lawful authorities of the church. R. v. Wasyl Kapij, 15 Man. R. 110; 1 W. L. R. 130.

The words "any other obstruction" in sec. 1 of the Rivers and Streams Act, R. S. O. ch. 130, mean obstruction of a like kind as "felling trees," etc., previously mentioned, and do not comprehend the erection of a dam across a stream. Farquharson v. The Imperial Oil Co., 29 O. R. 206.

A remark made by a bystander in the presence of a policeman who is making an arrest for drunkenness, that the party is not drunk, does not constitute the offence of obstructing a peace officer. R. v. Cook, 11 C. C. C. 32.

A constable or officer is not prevented from or "obstructed" or delayed in entering the premises, within the meaning of sec. 986 of the Criminal Code, merely because in attempting to enter the premises he finds the door locked. The presumption that the premises is used as a common gaming house is created only when something active is done, amounting to wilful obstruction or prevention. R. v. Jung Lee, 5 O. W. N. 80.

As to obstructing navigation: See Hall v. Ewart, 33 U. C. R. 491; North-West Navigation Co. v. Walker, 3 Man. R. 25; 5 Man. R. 37; Brace v. Union Forwarding Co., 32 U. C. R. 43; Attorney-General v. Harrison, 12 Gr. 466; Ratte v. Booth, 14 A. R. 419; 15 A. C. 188.

**OCCUPANT.**—The word "occupant," in the Assessment Act, means some person other than the owner living upon the land, and imports visible occupation. Where the owner of twenty acres was a non-resident, and the person living on the adjoining farm cut the hay on the twenty acres and put it in the barn on the land, but did not reside thereon, it was held there was not such an occupation of the land as exempted the lot from being assessed as the land of a non-resident. Bank of Toronto v. Fanning, 17 Gr. 514.

The word "occupant," in sec. 3 of the Noxious Weeds Act, R. S. O. ch. 253, does not include the municipality or a municipal corporation. Osborne v. City of Kingston, 23 O. R. 382.

"Occupant," in sec. 49 of The Ontario Liquor License Act, means one having legal possession or control of the premises. It does not include a boarder who occupies only a portion of the premises. R. v. Irish, 18 O. L. R. 351; 14 C. C. C. 458.

A person may, in an application for fire insurance, truly state that he occupies a building, notwithstanding that his son and son-in-law live with him on the property. Chatillon v. The Canadian Mutual Fire Insc. Co., 27 C. P. 450.

Where lands under lease from the Crown, though not enclosed or fenced, are used by the lessee for pasturing sheep, the lessee is an "occupant" within the meaning of the Local Improvement Ordinance, C. O. 1898, ch. 73, sec. 15. Croskill v. Sarnia Ranching Co., 5 Terr. L. R. 181.

Is a captain of a vessel an "occupant" within the meaning of The Ontario Liquor License Act? Meredith, C.J., thought not. R. v. Meikleham, 6 O. W. R. p. 952. See, however, sec. 11 (2) of the Act, R. S. O. ch. 215, where he is made an "occupant."

**OCCUPATION.**—An application for life insurance provided that if the insured was injured in any "occupation" more hazardous than that given in the application, the amount of the insurance should be reduced. *Held*, the word "occupation" meant occupation or employment as a usual business, not as a casual act or series of casual acts in the intervals of ordinary employment. McNevin v. Canadian Railway Accident Co., 32 O. R. 284; 2 O. L. R. 521; 32 S. C. R. 194.

This case was distinguished where the words of the application were "temporarily or permanently engaged in any occupation" of a more hazardous nature. The applicant was insured as a traveller and was killed while making a trial trip as a brakesman. Stanford v. Imperial Guarantee Co., 13 O. W. R. 1171.

Occupation of buildings within the Assessment Act. See Ottawa Young Men's Christian Association v. City of Ottawa (1913), 29 O. L. R. 574.

**OCCUPIED LANDS.**—A locatee of the Crown is in possession of "occupied lands" under the former Railway Act, 46 Vic. ch. 24, sec. 24. Davis v. Canadian Pacific Ry., 12 A. R. 724. But not a squatter. Conway v. Canadian Pacific Ry., 12 A. R. 708.

A miner has the right to stake a quartz mineral claim upon ground that has previously been granted as a placer claim—and, *semble*, such ground is not "occupied ground" within the meaning of the Quartz Regulations. Smith v. Yukon Gold Co., 19 W. L. R. 68.

**OCCUPIER.**—In the Public Health Act, R. S. O. ch. 218, sec. 2 (j), "occupier" means the person in occupation or having the charge, management or control of any premises, whether on his own account or as an agent of any person.

An agent, within this section, means a person acting for the owner as trustee, or in some such capacity in connection with the construction of any building. It does not include a plumber doing work under a contract. R. v. Watson, 19 O. R. 646.

**OFFENCE.**—The word "offence," as used in sec. 454 of the Criminal Code, applies to offences against local, as well as against Dominion, Acts, and is not confined to offences against the Code. A threat to accuse another of the breach of a Provincial Liquor License Act, with intent to extort, comes within the Code. R. v. Dixon, 2 C. C. C. 589.

*V.* CRIME.

**OFFENSIVE.**—*V.* NOXIOUS OR OFFENSIVE BUSINESS.

**OFFERING GOODS FOR SALE.**—*V.* HAWKERS.

**OFFICIAL DOCUMENT.**—*V.* PUBLIC DOCUMENT.

**OFFICER.**—Municipal councillors are not officers, and a by-law providing for their remuneration as "officers" was quashed. In re Wright and Township of Cornwall, 9 U. C. R. 442; Daniels v. Township of Burford, 10 U. C. R. 478.

Neither is the Reeve, or the head of the council, an officer of the corporation. St. Vincent v. Grier, 13 Gr. 173.

But the head of a council may be examined for discovery, as "the chief executive officer of the corporation," but this does not extend to other members of the council. Davies v. Sovereign Bank (1906), 12 O. L. R. 557.

A park commissioner, being a legislative functionary, and not subject to the control of the municipal corporation, was held not an officer for examination. Anderson v. Vancouver, 14 B. C. R. 222.

The Chief of Police of a city is a public officer under the terms of Art. 88 C. P. (Que.), requiring notice of action to be served on a public officer, when sued for damages by reason of any act done by him in his official capacity. Asselin v. Davidson (1913), 19 R. de J. 248.

A stipendiary magistrate, *non obstante* his appointment by the Lieutenant-Governor in Council, is an "officer of the town" within the meaning of the Towns Incorporation Act, R. S. N. S. 1900, ch. 71. In Re Pelton, 12 E. L. R. 540.

The following have been held to be "officers" within Con. Rule (1913), 327 (2), allowing the examination of any "officer or servant" of a corporation for discovery.

An attorney appointed to represent a foreign company in Ontario in compliance with the Extra-Provincial Corporation Act. McNeil v. Lewis Bros. (1908), 16 O. L. R. 653.

A local manager of a bank. Clarkson v. Bank of Hamilton (1904), 9 O. L. R. 317.

The clerk of a local branch of a fraternal society, the dues being payable to such clerk. Readhead v. Canadian Order of Woodmen (1904), 9 O. L. R. 321.

The conductor of a train on which the plaintiff was a passenger when injured. Leitch v. Grand Trunk Ry., 12 P. R. 541; 617; 13 P. R. 369.

The station agent of a railway company. Ramsay v. Midland Ry. Co., 10 P. R. 48.

The conductor and motorman of a car in an action for injuries caused by the negligent operation of the car. Dawson v. London Street Ry. Co., 18 P. R. 223.

The roadmaster in charge of the section of the line where the deceased, a fireman, was killed while on duty. Casselman v. Ottawa, &c., Ry. Co., 18 P. R. 261.

The superintendent of the power and light department of the defendant, although employed by the Waterworks and Electric Light Commission, such Commission being merely a department of the municipal work. Young v. Town of Gravenhurst, 2 O. W. N. 118; 167.

Under a similar rule in Alberta, a railway "right of way" agent, when the effect of his engagement is to delegate to him a portion of the company's authority. Powell v. Edmonton, Y. & P. Ry. Co., 2 Alta. R. 339.

And a district sales agent of the plaintiffs, dealers in agricultural implements, although his duties were limited to finding purchasers, and he had no express authority to make a binding bargain. Nichols & Shepard Co. v. Skedanuk, 21 W. L. R. 401; 4 D. L. R. 450.

A water meter inspector of the city, where the action was for damage occasioned by the negligence of the waterworks department. Shaw v. City of Winnipeg, 19 Man. R. 551; 13 W. L. R. 706.

A conductor of a train, where the plaintiff was injured while performing work on the train under the conductor's orders. Gordanier v. Canadian Northern Ry. Co., 15 Man. R. 1.

A station agent. Eggleston v. Canadian Pacific Ry., 5 Terr. L. R. 503.

A director of a company was held an officer within the meaning of former Con. Rule 902, now Con. Rule (1913) 581, providing for the examination by a judgment creditor of "any officer of such corporation." Powell-Rees v. Anglo-Canadian Mortgage Co. (1912), 26 O. L. R. 490; 27 O. L. R. 274.

An electrician in defendant's employ at the power-house, where the plaintiff alleged the current was carelessly turned on, causing the injury. Dixon v. Winnipeg Street Ry. Co., 10 Man. R. 660.

A locomotive foreman and a locomotive superintendent of a railway company were held "officers of the corporation." Canada Atlantic Ry. v. Moxley, 15 S. C. R. 145.

The following have been held not to be officers:—

An engine-driver who was not in charge of the train. Morrison v. Grand Trunk Ry. (1902), 5 O. L. R. 38; Leitch v. Grand Trunk Ry., 13 P. R. 388.

A track-foreman, a switch-foreman and engine driver. Knight v. Grand Trunk Ry., 13 P. R. 386. (But see Leitch v. Grand Trunk Ry. (No. 2), 13 P. R. 467, where an engine driver, who, according to a railway rule, had all the responsibilities of a conductor, was held an officer.)

A foreman who had charge of the railway fences, where plaintiff's horses were killed by a train. Fowle v. Canadian Pacific Ry., 13 P. R. 413.

A section foreman, and the chief clerk in the office of the general superintendent. Eggleston v. Canadian Pacific Ry., 5 Terr. L. R. 503.

A sheriff's bailiff is not a public officer. He is not a general, but a special, agent of the sheriff who employs him, and cannot be treated as a peace officer within the meaning of the Criminal Code. Latta v. Owens, 30 C. L. J. 610; 10 Man. R. 153.

A local master is an "officer" within sec. 377 of The Mun. Act, 1913. Re Local Offices of the High Court, 12 O. L. R. 16.

A time-keeper is not such a "superior officer" that his employment by a corporation must be under seal. Gordon v. Toronto, Manitoba and N.-W. Land Co., 2 Man. R. 318.

A sheriff executing a *fi. fa.* at the suit of a private individual is not a public officer. McDonnell v. Robertson, 1 Terr. L. R. 438.

A municipal corporation is not responsible for the acts of an independent public officer whose duties are fixed by statute. Seymour v. Township of Maidstone, 24 A. R. 370; but, if the negligence is in respect of duties defined by a municipal by-law, as distinguished from statutory duties, the corporation may be responsible. Forsyth v. Caniff and Toronto, 20 O. R. 478; MacFie v. Hutchinson, 12 P. R. 167.

**OFFICER OR AGENT.**—The words "officer or agent" in sec. 12 (2) of The Bills of Sales Act, R. S. O. ch. 135, are confined in their application to an officer or agent who is not president, vice-president, manager, assistant manager, secretary or treasurer of the corporation, and Bank of Toronto v. McDougall, 15 C. P. 475; and Freehold Loan and Savings Co. v. Bank of Commerce, 44 U. C. R. 284, are still to be followed, notwithstanding the amendments to the Act. Universal Skirt Mfg. Co. v. Gormley (1907), 17 O. L. R. 114.

A clerk of a State Court of Criminal Jurisdiction in one of the United States is an "officer of a foreign state" within the meaning of The Extradition Act, R. S. C. ch. 155, sec. 17 (a). A State attorney for the county in which the charge was laid is also such an officer. R. v. Lewis, 9 C. C. C. 233.

A customs officer of the United States is an "agent" of the United States, within the Extradition Convention of 1889. United States v. Browne (No. 2), 11 C. C. C. 167.

**OFFICER OR PERSON FULFILLING ANY PUBLIC DUTY.**—The following have been held to be officers or persons fulfilling any public duty within the meaning of the former Act, R. S. O. 1897, ch. 88, sec. 1, requiring notice of action to be given.

A special constable sued for wrongful arrest. Sage v. Duffy, 11 U. C. R. 30.

A revenue officer. Wadsworth v. Morphy, 1 U. C. R. 190.

A person whose act is subsequently adopted by the Revenue officer. Wadsworth v. Morphy, 2 U. C. R. 120.

School trustees acting in the discharge of their duty, and a collector of school taxes. Spry v. Mumby, 11 C. P. 285.

Arbitrators. Kennedy v. Burness, 15 U. C. R. 473, 487; Hughes v. Pake, 25 U. C. R. 95.

Pound-keepers. Davis v. Williams, 13 C. P. 365.

Pathmasters. Stalker v. Township of Dunwich, 15 O. R. 343.

License Commissioners. Leeson v. License Commissioners of Dufferin, 19 O. R. 67. But see Haslem v. Schnarr, 30 O. R. 89, where Armour, C.J., held otherwise.

A tax collector. Howard v. Herrington, 20 A. R. 175.

The mayor of a city sued for refusing to sign an order. Moran v. Palmer, 13 C. P. 528.

An official assignee. Archibald v. Haldan, 30 U. C. R. 30.

The following have been held not to be within the Act:—

A registrar of deeds who improperly omits an instrument from an abstract. Harrison v. Brega, 20 U. C. R. 324; Ross v. McLay, 40 U. C. R. 83.

A sheriff acting under an execution. McWhirter v. Corbett, 4 C. P. 203; Creighton v. Sutherland, 18 P. R. 180.

A constable impounding cattle, that being no part of his duty. Ibbotson v. Henry, 8 O. R. 625.

A sheriff's bailiff is not a public officer or peace officer within sec. 2 (26) of the Criminal Code. Latta v. Owens, 10 Man. R. 153.

**OFFICIAL DOCUMENT.**—V. PUBLIC DOCUMENT.

**OFFSPRING.**—*Quaere*: In a devise to "offspring" does this mean "children" or "issue?" See Sweet v. Platt, 12 O. R. 229; McDonald v. Jones, 40 N. S. R. 235.

**OIL LEASE.**—An oil lease is something more than a mere license; it is a *profit a prendre*, an incorporeal right to be exercised in the land described. McLeod v. Lawson, 8 O. W. R. 213; McIntosh v. Leckie (1906), 13 O. L. R. 54.

The interest of a lessee under such a lease is an interest in land and is not liable to seizure and sale under execution as goods and chattels. Canadian Railway Accident Co. v. Williams (1910), 21 O. L. R. 472; United Fuel Supply Co. v. Volcanic Oil & Gas Co., 3 O. W. N. 93.

V. MINERALS.

**ON.**—"The word 'on' used in this connection ('buildings on residential streets') in its ordinary and natural meaning, signifies 'In the relation of . . . environing, or lying along or by;' and also 'in proximity to, close to, beside, near.'" Re Dinnick and McCallum (1912), 26 O. L. R. 551.

**ON ADVANCES.**—See The British America Assurance Co. v. Law, 21 S. C. R. 325.

**ON ALL DAYS EXCEPT SUNDAY.**—A right to operate a street railway "on all days except Sunday" does not prohibit the company from operating on Sunday—the restriction against so doing being only an implied one. The Attorney-General v. the Niagara Falls Tramway Co., 19 O. R. 624; 18 A. R. 453.

**ON ANY PUBLIC WORK.**—*Quaere*, whether the words "on any public work" in sec. 20 (c) of the Exchequer Court Act (R. S. C. ch. 140) may be taken to indicate the place where the act or omission that occasioned the injury occurred, and not in every case the place where the injury was actually sustained? The Alliance Assurance Co. v. The Queen, 6 Exch. C. R. 76; City of Quebec v. The Queen, 3 Exch. C. R. 164.

In the latter case the Judge of the Exchequer Court inclined to the view that damages might be claimed where the injury does not happen on the public work, that is, where by blasting on a public work some one was injured beyond the actual limit of the work. On appeal two of the Judges of the Supreme Court thought the jurisdiction of the Exchequer was limited to cases in which the injury actually occurs upon the public work. City of Quebec v. The Queen, 24 S. C. R. 420.

**ON CALL.**—Synonymous with "when demanded," "on demand," or "at any time called for." In each case the debt is payable immediately.

**ON DEMAND.**—The defendant guaranteed to pay a promissory note of another person "on demand." *Held,* the words "on demand" must mean on demand made on the guarantor. Davis v. Funston, 45 U. C. R. 369.

**ON VIEW.**—"On view" in sec. 55 of The Fisheries Act, R. S. C. ch. 45, is not limited to seeing nets or materials illegally used for fishing. If the party acting "on view" sees what, if testified to by him, would be sufficient to convict of the offence charged, that is sufficient. Mowatt v. McFee, 3 Pug. & Bur. 252 (N. B.); 5 S. C. R. 67.

**ONE MONTH.**—V. Month.

**OPEN, OBVIOUS, CONTINUOUS, ETC.**—V. Adverse Possession.

**OPENING A ROAD.**—"Laying out" and "opening a road," are used in 50 Geo. III., ch. 1, in an equivalent sense, and actual work on the ground is not required before the road becomes a public highway. Palmatier v. McKibbon, 21 A. R. 441.

**OPINION.**—The word "opinion" as used in sec. 1013 (3) of the Criminal Code, giving an appeal to the Supreme Court of Canada, "if any of the Judges dissent from the opinion of the majority," must be construed as meaning a "decision," or "judgment" of the Court of Appeal in criminal cases. Vian v. The Queen, Q. R. 7 Q. B. 362; 29 S. C. R. 90; 2 C. C. C. 540.

**OPINION EVIDENCE.**—V. Experts.

**OPINION OF THE COURT.**—By sec. 29 of The Arbitration Act, R. S. O. ch. 65, an arbitrator may state any question of law

arising in the course of the reference for the "opinion of the Court." "The opinion of the Court" is a "decision," though not a binding adjudication as to the rights of the parties or a decision amounting to a judgment or order; it is a "final decision," because it is the end of the proceeding and cannot be reviewed by an appellate Court. Re Geddes and Cochrane (1901), 2 O. L. R. 145.

"Decision" in sec. 39 of the Water Clauses Consolidated Act, 1907 (B. C.), means the final disposition of the whole case. Bole v. Roe, 7 W. L. R. 160.

**OPPORTUNITY TO CROSS-EXAMINE.**—V. FULL OPPORTUNITY TO CROSS-EXAMINE.

**OPPOSITE PARTY.**—The words "opposite party" in sec. 196 of the Railway Act, R. S. C. ch. 37, must be read so as to include both mortgagor and mortgagee, and both must concur in the appointment of an arbitrator to determine the compensation to be paid for mortgaged lands required for railway purposes. Re Toronto, Hamilton & Buffalo Ry. Co. and Burke, 27 O. R. 690; In re Canadian Pacific Ry. and Batter, 13 Man. R. 200.

Where an assignee of a chose in action is suing the executors of a deceased debtor, the assignor is not "an opposite or interested" party within the meaning of sec. 12 of the Evidence Act, R. S. O. ch. 76. But, *semble*, if the assignor retains any beneficial interest in the chose in action. Watson v. Severn, 6 A. R. 559.

**OPTION.**—See United Fuel Supply Co. v. Volcanic Oil and Gas Co., 3 O. W. N. 93, as to "first right or option."

As to options, in general, see editorial in 16 C. L. T. 218.

**OR.**—In order to carry out the evident intention of the parties, or to avoid an absurdity of a mistake, the word "or" has frequently been read as "and."

Where a testator devises an estate so as to give the control of the fee simple to A., but if he dies under age, *or* without issue, then over, the word "or" must be read "and." Forsyth v. Galt, 21 C. P. 408. And see Forsyth v. Quackenbush, 10 U. C. R. 148; Farrell v. Farrell, 26 U. C. R. 652.

On a devise to a "surviving daughter or her heirs," "or" was read "and." Re Edgerley and Hotrum, 4 O. W. N. 1434.

A devise of real estate to A. and his heirs, and in case of death under twenty-one, *or* without issue, over, the word "or" was construed as "and." Re Chandler and Holmes, 5 O. W. R. 647.

BIBLIOTHEQUE

An offer for the sale of land was accepted by C. for "myself *or* assigns." To avoid holding the contract void for uncertainty the word "or" was read as "and." Clergue ats. Vivian, 41 S. C. R. 607; 16 O. L. R. 372.

Section 81 (18) of the Registry Act, R. S. C. ch. 124, provides that a plan shall not be registered unless it is approved of "by the municipal council *or* the order of the Judge." The owner is not precluded from applying to the Judge after the Council has refused to approve the plan. Re Royston Park and Town of Steelton (1913), 28 O. L. R. 629.

**OR OTHER MUNICIPAL AUTHORITY.**—See Trustees of R. C. Separate School v. Township of Arthur, 21 O. R. 60.

**OR OTHERWISE.**—A testator by his will gave $20,000 for a hospital "so soon as a like sum should be procured by the corporation by a tax on the citizens, or from private donations, or otherwise."—$6,000 was raised by private donations, and the Provincial Government gave the $14,000. *Held*, that the words "or otherwise 'meant' from any source." Paulin v. Town of Windsor, 36 N. S. R. 441.

**OR OTHERWISE IN FORCE.**—See St. Phillips Church, and the Glasgow & London Insc. Co., 17 O. R. 95.

**OR PRACTICE.**—The words "or practice" in The Manitoba Act, are not to be construed as equivalent to "custom having the force of law." They were intended to preserve every legal right or privilege, and every benefit and advantage in the nature of a right or privilege, with respect to denominational schools, which any class of persons practically enjoyed at the time of the union. Barrett v. City of Winnipeg, 7 Man. R. 273; 19 S. C. R. 374; 1892, A. C. 445.

**OR WHICH HAVE SUCH EFFECT.**—The words "or which have such effect" in R. S. O. 1887, ch. 124, sec. 2, relate only to the preceeding clause dealing with the preference of one creditor over others, and not to the whole of the antecedent part of the section. Molsons Bank v. Halter, 16 A. R. 323; 18 S. C. R. 88.

The same meaning was given to similar words in the Manitoba Act, 49 Vic. ch. 45, sec. 2. Stephens v. McArthur, 6 Man. R. 496; 19 S. C. R. 446.

The Ontario Act, as altered, is now found in sec. 5 (3), ch. 134, R. S. O., the Assignments and Preferences Act.

**ORDAINED.**—Where a subscriber for one share of stock was debited in the company's stock ledger with one share, was placed on the shareholder's list, and was drawn upon for the first payment and paid the draft, it was *held* this was a mode of allotment "ordained" by the directors within the meaning of sec. 26 of the Companies Act, R. S. O. 1897, ch. 191. Hill's Case (1905), 10 O. L. R. 501.

**ORDER.**—A statute giving an appeal from a "conviction or order" does not include an order made by a magistrate dismissing a complaint, but means an order of conviction. In re Murphy and Cornish, 8 P. R. 420; R. v. the Toronto Public School Board, 31 O. R. 457. (But see now sec. 749 of the Criminal Code).

A search warrant is not an "order" within the meaning of a statute (R. S. N. S. 1900, ch. 40) under which convictions and orders must be quashed before an action is brought in respect of their enforcement. Johnston v. McDougall, 17 C. C. C. 58.

A final report in an action is neither an order or a certificate. Wagner v. O'Donnell, 14 P. R. 254.

An order setting aside a default judgment and allowing the defendant in to defend on terms, is an interlocutory order only, and not an "order in its nature final." O'Donnell v. Guinane, 28 O. R. 389.

**ORDINARY EXPENDITURE.**—An outlay which was not contemplated when the municipal estimates were prepared, and for which no provision, either special or as a possible contingency, was made in the estimates for the year, cannot possibly be deemed part of the "ordinary expenditure" for the year without disarranging the whole financial scheme provided by the estimates. Holmes v. Town of Goderich (1902), 5 O. L. R. 33.

Ordinary expenditure covers salaries of officers, ordinary repairs and works of that kind which must be provided for year by year, as distinguished from that which is to last for many years, *e.g.* erecting an engine house, or constructing extensive sewer works. Potts v. the Village of Dunnville, 38 U. C. R. 96.

On this principle the expenditures for the following purposes have been held not to fall within the term "ordinary expenditure":

Erecting a town hall. McMaster v. Town of Newmarket, 11 C. P. 398.

Constructing a drain and macadamizing a street at a cost of $4,000. Cross v. City of Ottawa, 23 U. C. R. 288.

Grading and ditching 1¼ miles of road. Wright v. County of Grey, 2 C. P. 479.

Building a bridge across a river. Oliver v. City of Ottawa, 20 A. R. 529; Scott v. Town of Peterborough, 19 U. C. R. 469.

The amount payable by a city as its share of the expense of maintaining persons in the county jail is ordinary expenditure, as much as the salaries of the officers who have charge of them. County of Wentworth v. City of Hamilton, 34 U. C. R. 585.

**ORDINARY RESIDENCE.**—*V.* RESIDENCE.

**ORDINARY TRAFFIC.**—The meaning of "ordinary traffic" depends upon many circumstances, such as the nature of the surrounding country and the custom of the people. Thus it has been *held* that a traction engine weighing nine tons was ordinary traffic in Manitoba. Curle v. Brandon, 15 Man. R. 122; 1 W. L. R. 176; 24 C. L. T. 279; and a tram car. City of Victoria v. Patterson, 1899, A. C. 615.

In Goodison Thresher Co. v. Township of McNab (1909), 19 O. L. R. 188, Garrow, J.A., thought that a threshing engine, weighing seven tons, when being used on a highway as a traction engine, was not ordinary traffic. See p. 210.

**ORDINARY WEAR AND TEAR.**—*V.* WEAR AND TEAR.

**OTHER—OTHER PROPERTY.**—Where specific words are followed by generic words the latter are to be construed in their primary and wide meaning. Under the words "sale or other disposal" in the Liquor License Act, a gift of liquor is a disposal, and the word "other" does not limit it to a disposal in the nature of a sale. R. v. Walsh, 1 C. C. C. 109; 29 O. R. 36.

It is immaterial whether the generic term precedes or follows the specific terms which are used. R. v. France, 1 C. C. C. 321.

A statute gave the Governor-in-Council power to refer certain specified subjects "or any other matter" to the Supreme Court for consideration, and it was held that such "other matter" must be *ejusdem generis* with the subjects specified. In re the Jurisdiction of a Province to Legislate Respecting Sunday, 35 S. C. R. 581. (See now sec. 60 of the Supreme Court Act).

The charter of the city of Halifax provides that "every insurance company or association, accident and guarantee company shall pay an annual license fee. . . . Every other company, corporation, association or agency doing business in the city of Halifax shall pay," etc. *Held*, that the words "every other company" were not subject to the *ejusdem generis* rule but applied to any company doing business in the city. Halifax v. McLaughlin, 39 N. S. R. 403; 39 S. C. R. 174.

The words "shop, saloon, tavern, auctioneer and other licenses," in sec. 92 (9) of the B. N. A. Act, include a brewer's license. R. v. Taylor, 36 U. C. R. 183. R. v. Taylor was questioned in Severn v. The Queen, 2 S. C. R. 70, but the latter case

must now be considered as overruled. Brewers' and Maltsters' Association v. Attorney-General for Ontario (1897), A. C. 231, where the Privy Council said: "They do not doubt that general words may be restrained to things of the same kind as those particularized, but they are unable to see what is the genus which would include 'shop, saloon, tavern and auctioneers' licenses,' and which would exclude brewers' and distillers' licenses."

The prisoner was charged with receiving stolen property under an Act where the words were "receiving any money, valuable security or other property." Anglin, J., said: "It is a universal rule of construction that all words of a written instrument shall, if possible, be given some effect, so that none will be void, or superfluous or redundant. Wherefore words must not be so restricted as to deprive them of all meaning. If the particular words preceding exhaust the type, the general words must receive a wider interpretation: Fenwick v. Schmalz (1868), L. R. 3 C. P. 313. But can it be said that "money" and "valuable security" comprise the entire genus or type to which they belong?" The Court *held* that a pair of shoes were not "other property"—that "other property" must be taken to mean other property of the type of the specific words. In re Cohen (1904), 8 O. L. R. 143.

An agreement authorized the plaintiffs "to take possession of any money or other property," and it was held these words did not include land, the rule of *ejusdem generis* being applicable. London Guarantee & Accident Co. v. George, 16 Man. R. 132; 3 W. L. R. 236.

**OTHER AND EXTRINSIC EVIDENCE.**—Sec. 62 (d) of the Division Courts Act provides that an amount shall not be ascertained, within the meaning of that section, "where it is necessary for the plaintiff to give other and extrinsic evidence beyond the production of a document and proof of the signature to it."

"Once the production of the document and proof of its execution establish the liability of the defendant to the owner thereof and ascertain the amount of such liability without the necessity of other and extrinsic evidence to establish either, I think there is nothing in the statute or in any of the cases decided upon it which suggests that evidence to establish the plaintiff's title would be 'other and extrinsic evidence" in contemplation of the statute." Renaud v. Thibert (1912), 27 O. L. R. 57.

**OTHER DEALINGS.**—See Northern Crown Bank v. Herbert, 22 Que. K. B. 374; 13 D. L. R. 304.

**OTHER DISPOSAL.**—Treating or giving liquor to friends in a private room of his hotel is covered by the words "other dis-

posal" in the Liquor License Act. R. v. Walsh, 29 O. R. 36; 1 C. C. C. 109.

**OTHER MATERIAL EVIDENCE.**—*V.* MATERIAL EVIDENCE.

**OTHER PERSONS.**—Sec. 70 of the Winding-up Act, R. S. C. ch. 144, gives a special privilege to "clerks or other persons" as to salary or wages due. In this Act "other persons" must be interpreted as meaning persons of a companionable class—of the servant and not of the executive or master class. A managing-director of a company is not a "clerk," and is not within the words "other person." Re Ritchie-Hearn Co., 6 O. W. R. 474.

A commercial traveller is within the term. "This decision is not at all in conflict with that of the late Master in Ordinary in Ritchie-Hearn Co., so far as that decision holds that the "other persons" must be of the servant and not of the executive or master class. The earlier part of the judgment must be read and applied with caution lest it would exclude office boys, charwomen, and the like." Re Morlock & Cline, Ltd. (1911), 23 O. L. R. 165.

The words "or other persons whatsoever" in sec. 1 of the Lord's Day Act, are to be construed as referring to persons *ejusdem generis* with "merchants, tradesmen," etc. They do not include a person operating street cars on Sunday. Attorney-General for Ontario v. Hamilton Street Ry. Co., 27 O. R. 49; 24 A. R. 170. Nor a cab driver. R. v. Somers, 24 O. R. 244. Nor a man driving a cab in the service of a cab owner. R. v. Budway, 8 C. L. T. 269. Nor a farmer engaged in farm work. R. v. Hamren, 7 C. C. C. 188.

**OTHERWISE.**—An order of reference gave either party the right to appeal "by reason of evidence improperly received or rejected or otherwise." The word "otherwise" was given an *ejusdem generis* interpretation as meaning "by reason of any other improper evidence." Rawlinson v. Wells, 13 C. L. T. 120.

The word "otherwise" in sec. 237 of the Railway Act, 1903, does not mean the same, but a something different from that preceding it. The words "at large upon a highway or otherwise," mean at large upon a highway, or at large in any other place. Carruthers v. Canadian Pacific Ry., 16 Man. R. 323; 39 S. C. R. 251.

"Otherwise" means "otherwise at large" and not otherwise at large in a place *ejusdem generis* with a highway. Daigle v. Temiscouata Ry. Co., 37 N. B. R. 219.

A testator devised "my insurance funds" to a daughter. *Held*, this did not identify the policy of insurance "by number or otherwise," although he had but one policy. In Re Cochrane (1908), 16 O. L. R. 328. See also Re Cheesborough, 30 O. R. 639.

A testator gave $20,000 for a hospital "so soon as a like sum is procured by the corporation by a tax on the citizens, or from private donations, or otherwise." $6,000 was raised by private donations and the Provincial Government gave the $14,000. *Held*, the words "or otherwise" meant from "any source." Paulin v. Town of Windsor, 36 N. S. R. 441.

The term "words or otherwise" in sec. 414 of the Criminal Code, defining the crime of false pretences, is broad enough to cover an act. Giving a cheque on a bank is a representation that it will be paid on presentation; or if the drawer has funds in the bank, that he will not withdraw them before presentation. R. v. Garten (1913), 29 O. L. R. 56.

**OTHERWISE ORDAINED.**—V. ORDAINED.

**OUTBUILDING.**—A barn is an outbuilding within the fair meaning of the word as ordinarily used. Thompson v. Jose, 10 O. W. R. 173.

**OUTGOINGS.**—Interest paid by a bank on deposits—Expense account. See Re Bank of Hamilton, 12 B. C. R. 207.

**OUTLET.**—A proper outlet under The Ditches and Watercourses Act, R. S. O. ch. 260, is one which enables the water to be discharged without injuriously affecting the lands of another. Riparian owners on a natural stream may use such stream as a natural outlet for draining their land in the agricultural use of such land, although by so doing they flood lands below them, but they have no legal right to use such stream as an outlet for a ditch made under the above Act, if the result of such user is to injure other lands. McGillivray v. Township of Lochiel (1904), 8 O. L. R. 446.

"Sufficient outlet" means the discharge of water at a point where it will do no injury to lands or roads. The Municipal Drainage Act, R. S. O. ch. 198, sec. 2 (m).

**OUT OF COURT.**—A trial was postponed upon payment of costs within ten days and if the costs were not so paid "the action be and the same is hereby dismissed." The costs were not paid, and on a motion to extend the time for payment it was contended that the action was "out of Court," and there was no power to enlarge the time. Moss, C.J.O.: "It is not correct to say that the action was out of Court. The result of the various decisions, some of which, however, do not seem to be quite in accord with the general trend, appears to be that in a case like the present the action is not, by reason of the lapse of time for performing the condition, out of Court for all purposes. It is out of Court to the

extent of disabling the plaintiff from taking any step in the action other than towards procuring an extension of time for performance of the condition, or, failing that, for an extension of time for appealing from the order. The order made at the trial was not, in any sense, a dismissal of the action upon the merits, though the effect would be the same in case of non-compliance with the condition." Strati v. Toronto Construction Co. (1910), 22 O. L. R. 211, 215.

**OUT OF MY ESTATE.**—A direction in a will that debts and expenses be paid "out of my estate" charges such payments primarily on the personal estate, and, in case of a deficiency, *pro rata* on the real estate devised. In re Moody (1906), 12 O. L. R. 10.

**OVERTAKING SHIP.**—Where two ships are in such a position, and on such courses, and at such distances, that, if it were night, the hinder ship could not see any part of the side lights of the forward ship, and the hinder ship is going faster than the other, the former is to be considered as an "overtaking ship" within the meaning of Rule 20 of the Collision Rules in force before July, 1897, and must keep out of the way of the latter. The Inchmaree Steamship Co. v. The S.S. "Astrid," 6 Exch. C. R. 178.

See Magdellen Islands S. S. Co. v. The "Diana," 3 E. L. R. 158.

**OVERDUE.**—A negotiable instrument, or other evidence of debt, is overdue when the day of its maturity is past and it remains unpaid.

A promissory note payable on demand and indorsed to the plaintiff on the date thereof was held not overdue when negotiated so as to affect the plaintiff as holder with defects of title of which he had no noice. Northern Crown Bank v. International Electric Co. (1910), 22 O. L. R. 339.

Where interest is made payable periodically during the currency of a note, payable at a certain date, the note does not become overdue merely by default in payment of an instalment of interest. Union Investment Co. v. Wells, 39 S. C. R. 625. Moore v. Scott, 16 Man. R. 492, and Jennings v. Napanee Brush Co., 4 C. L. T. 595, not followed.

**OWING OR ACCRUING.**—*V.* Debts Owing or Accruing.

**OWN.**—*V.* As His Own Property.

**OWN PURPOSES.**—A right, by agreement, for each party to use "for his own purposes" so much water, means any lawful

use to which such water may reasonably be put in a business owned and conducted by the party himself, as distinguished from a grant or lease of the right to use such water to a third party. Caledonia Milling Co. v. Shirra Milling Co. (1905), 9 O. L. R. 213.

**OWNER.**—The general Interpretation Acts do now define "owner," but the word is defined by the interpretation clauses of many Acts, dealing with a great many different subjects, *e.g.* the Mechanics and Wage Earners Lien Act, the Land Titles Act (where it is confined to owner in fee simple), the Local Improvement Act, the Public Health Act, the Dog Tax Act, the Ditches and Watercourses Act, the Municipal Act, the Assessment Act, the Factory Act, the Railway Act.

Where a judicial definition has been given to the word "owner," as it appears in any of these Acts, care must be taken before applying the decision to the same word, as it appears in some other Act, to compare the different interpretation sections.

Apart from statutory definition the word "owner" has no definite legal meaning, but may be applied to various interests which parties have in buildings, and in that way is an equivocal term. The plaintiff owned two buildings erected on leasehold land and in his application for insurance described himself as owner, and it was held the answer was not untrue. Hopkins v. Provincial Insurance Co., 18 C. P. 74.

So in an application for insurance a person may truly state he is the owner of property although it is subject to a vendor's lien. Chatillion v. Mutual Fire Insc. Co., 27 C. P. 450.

In the language of everyday use, owner is usually understood to mean the person who has acquired the right of possession in a chattel or property, even though it be subject to a lien or mortgage, and not the person who holds or is entitled to the benefit of such lien or mortgage. The vendors of a motor car, who retain a lien on the car and the title and ownership thereof, are not the "owners" within sec. 19 of the Motor Vehicles Act, R. S. O. ch. 207. Wynne v. Dalby, 4 O. W. N. 1330; (1913), 29 O. L. R. 62; 30 O. L. R. 67.

A purchaser who has gone into possession of land under an agreement to purchase is an owner within sec. 109, sub-sec. 1 (3) of the Assessment Act, R. S. O. ch. 195. Sawers v. City of Toronto (1901), 2 O. L. R. 717; 4 O. L. R. 624. But such a person is not an owner within the Municipal Elections Act (B.C.) and entitled to vote. Perry v. Morley, 16 B. C. R. 91; 16 W. L. R. 691.

A mortgagee in possession would be an owner under the Assessment Act; but a person in possession as agent for the mortgagee with an agreement to purchase as soon as the mortgagee

should obtain a final order of foreclosure, the purchase being contingent on such order being obtained, is not an owner. Lloyd v. Walker (1902), 4 O. L. R. 112.

Under an Assessment Act redemption money was to be paid by the owner; *semble*, this would include a person in possession claiming title as purchaser. McDougall v. McMillan, 25 C. P. 75.

A municipal corporation is an owner within the Ditches and Watercourses Act in respect of the highways, and may institute proceedings as such owner. In re McLellan and Township of Chinguacousy, 27 A. R. 355.

But municipal corporations are not owners or occupants of the highways within the Noxious Weeds Act, R. S. O. ch. 253. Osborne v. City of Kingston, 23 O. R. 382.

Owner, within the meaning of the Ditches and Watercourses Act (sec. 26 (2)) means the owner for the time being, though different from the owner at the time of initiation of the proceedings under the Act. Wicke v. Township of Ellice (1906), 11 O. L. R. 422.

A lessee of land with an option to purchase is not an owner who can initiate proceedings under this Act. Logan v. Township of McKillop, 25 A. R. 498; 29 S. C. R. 702; Yorke v. Township of Osgoode, 21 A. R. 168; 24 S. C. R. 282. But see now sec. 3 (j), where owner includes a lessee for a term not less than five years with an option to purchase.

A pre-emptor of Crown lands, under the provisions of the British Columbia "Land Act," is an "owner" within sec. 298 (3) of the Railway Act, and is entitled to maintain an action for damages to timber growing upon his pre-empted lands. Kerr v. Canadian Pacific Ry., 12 D. L. R. 425; 49 S. C. R. 33.

Under the Mechanics and Wage Earners Lien Act, to constitute an "owner" there must be something in the nature of direct dealing between the contractor and the person whose interest is sought to be charged. Mere knowledge of, or consent to, the work being done is not enough. Gearing v. Robinson, 27 A. R. 364.

A tenant with a right to purchase is not within the Act. Graham v. Williams, 8 O. R. 478; 9 O. R. 458.

Nor a lessor where the lease provides that certain repairs shall be done by the lessee and the cost thereof deducted from the rent. Garing v. Hunt, 27 O. R. 149.

An agreement to purchase land, under which buildings are to be erected thereon by the vendor, and which has been acted on by the parties, may constitute a purchaser an "owner" under this Act, although the agreement is not binding under the Statute of Frauds. Reggin v. Manes, 22 O. R. 443. But it was held not to do so in Anderson v. Goodall, 7 B. C. R. 404; British Columbia T. & T. Co. v. Leberry, 22 C. L. T. 273.

As to the meaning of "owner" under the Saskatchewan Mechanics Lien Act, see Galvin-Walston Lumber Co. v. McKinnon, 16 W. L. R. 310. Under the Alberta Act, see Scratch v. Anderson, 16 W. L. R. 145.

"The owner of every building" referred to in sec. 41 of the Factory, Shop and Office Buildings Act, R. S. O. ch. 229, means the owner of the building, who may or may not be also the employer. The duties of supplying privies, etc., relates to the substantial structural condition of the premises and are not imposed upon a tenant. R. ex rel. Burke v. Ferguson (1906), 13 O. L. R. 479.

A bare trustee is not the "owner of the land or the person empowered to convey" within the meaning of sec. 218 of the Railway Act, R. S. C. ch. 37; and notice under that section must be served on the *cestuis que trust*. Re James Bay Ry. Co. v. Worrell (1905), 10 O. L. R. 740.

In expropriation proceedings under the Railway Act the company cannot, even in case of defective title, ignore the person who actually occupies the land as owner, and proceed as if his interest had been invalidated by legal process on the part of the real owner. Stewart v. Ottawa & N. Y. Ry. Co., 30 O. R. 599.

See the conflicting opinions as to the meaning of the word "owner" in sections 183, 192 and 218 of the Railway Act. Sanders v. Edmonton D. & B. C. Ry., 25 W. L. R. 540.

A mortgagee of land is an "owner" within the meaning of sec. 492 of the Municipal Act, 1913, and is entitled to insist upon a right to have an unopened road allowance sold to him as mortgagee. Brown v. Bushey, 25 O. R. 612.

The word "owner" in sec. 5 of the Imperial Admiralty Act, 1861, means "registered owner," or a person entitled to be registered as owner, and not a *pro hac vice* owner. The Rochester Co. v. "The Garden City," 7 Exch. C. R. 34; 94. *Held* not to mean "registered owner" as related to a right to be on the voters' list. Re Kaslo Municipal Voters' List, 12 B. C. R. 362.

In a municipal by-law requiring the "owner or occupant" to guard wells when not in use, it was held that the word "owner" must be read "owner in occupation," and would not apply to an equitable owner in fee of lands in possession of a tenant. Love v. Machray, 22 Man. R. 52; 1 D. L. R. 674.

"Owner" has no strict legal or technical meaning in a statute or by-law, and unless the context otherwise indicates, it is generally used in its popular sense. R. v. Swalwell, 12 O. R. 391.

The word "owner" following the signature to a letter written by the defendant inviting negotiations for a charter party does not in itself constitute a representation that he is the registered owner of the vessel so as to sustain a charge of obtaining goods by false pretences. R. v. Harty, 31 N. S. R. 272; 2 C. C. C. 103.

**OWNER FOR THE TIME BEING.**—These words in sec. 213 of the Merchants Shipping Act, 1854, mean the owner of the ship at the time of action brought, even though the then owner acquired ownership after the wages in question were earned. The Queen v. S.S. "Troop," 29 S. C. R. 662.

**OWNER OR AGENT.**—The Public Health Act, sec. 2 (k). See R. v. Watson, 19 O. R. 646.

V. AGENT.

**OWNER'S RISK.**—Where a contract provides that property is at "owner's risk" the transaction ought not to be considered a sale, but only a bailment—even where the property, *e.g.* grain, is mixed with other grain of the same kind. Clark v. McClellan, 23 O. R. 465.

The words "owner's risk" protect the bailee from all liabilities except wilful misconduct. The words may be controlled by the addition of other words, *e.g.* against fire. In such a case the only risk the bailor assumes is loss against fire. Dixon v. Richelieu Navigation Co., 15 A. R. 647; 18 S. C. R. 704. This case was applied and followed in British Columbia Canning Co. v. McGregor (1913), 26 W. L. R. 18.

As a pure question of construction the use of the words "at owner's risk" does not free a carrier of goods from all liability for negligence. Fitzgerald v. Grand Trunk Ry., 4 A. R. 601.

As to the meaning of the words "at owner's risk" in sec. 345 of the Railway Act (D) see Swale v. Canadian Pacific Ry. (1913), 29 O. L. R. 634.

**PAID.**—The amount of a cheque was placed to the credit of the payee, and, being on another bank, was sent to such bank for payment, but was not paid. The holder then wrote the payee advising him that the cheque "has not been covered." It was held that the words "not covered" were equivalent to "not paid" or to "unpaid," and being so construed was a sufficient legal notice of dishonour. The Queen v. The Bank of Montreal, 1 Exch. C. R. 154.

**PAR.**—In commercial law "par" means equal; an equality existing between the nominal or face value of a bill of exchange, share of stock, etc., and its actual selling value. When the values are thus equal, the instrument or share is said to be "at par."

The words "payable at par at the Bank of Montreal," printed on the face of cheques, used by a customer with the knowledge of the bank, mean that the named bank will make no charge for cashing the cheque, but it does not imply that there will be funds to meet the cheque. The Rose-Belford Printing Co. v. Bank of Montreal, 12 O. R. 544.

FACULTÉ DE DROIT

**PARENT AND CHILD.**—In the case of a gift from a parent to a child there is no rule which requires the child, in the absence of evidence shewing improvidence or undue influence, to support the deed by evidence which might be necessary in the case of a gift from a child to a parent. There is no presumption of undue influence. Wycott v. Hartman, 14 Gr. 219; Armstrong v. Armstrong, 14 Gr. 529; Luton v. Saunders, 14 Gr 537; Trusts and Guarantee Co. v. Hart, *supra.*

But where from old age and decayed faculties, or from his inferior capacity, education and opportunities, the father is dependent on the son and under his influence, there must, to support a gift, be evidence of due deliberation, explanation and advice. McConnell v. McConnell, 15 Gr. 20; Kinsella v. Pask (1913), 28 O. L. R. 393; Moore v. Stygall, 6 O. W. N. 126.

Where in old age the parent comes under the sway of his children, and is liable to be influenced by them, the exercise of undue influence may be presumed if they procure an advantage from him. Lavin v. Lavin, 27 Gr. 567; 7 A. R. 197; Irwin v. Young, 28 Gr. 511; Beeman v. Knapp, 13 Gr. 398; Watson v. Watson, 23 Gr. 70; Johnston v. Johnston, 17 Gr. 493; 19 Gr. 133.

But the Courts view with great jealousy transactions between a father and son, by which the father derives an advantage at the son's expense before the son has been emancipated from his father's influence. McGregor v. Rapelje, 17 Gr. 38; 18 Gr. 446. Or where the person taking the benefit stands *in loco parentis.* McGouigal v. Storey, 14 Gr. 94.

Gifts *inter vivos* from parent to child were upheld in Empey v. Fick, 13 O. L. R. 178; (1907), 15 O. L. R. 19; Taylor v. Yeandle (1913), 27 O. L. R. 531; Trusts and Guarantee Co. v. Hart, *supra;* and set aside in Mason v. Seney, 11 Gr. 447; Donaldson v. Donaldson, 12 Gr. 431 (a case of a will); Kinsella v. Pask, *supra;* Moore v. Stygall, 6 O. W. N. 126.

**PARSONAGE.**—Under a former Assessment Act the parsonage occupied by a clergyman was exempt from taxation. *Held,* that this did not apply to the dwelling owned and occupied by a superannuated clergyman not in charge of a congregation. In re Pearson, 7 C. L. T. 48; In re Reverend S. M., 22 C. L. J. 341. The judgment of McDougall, Co.J., in Re Assessment Case, 22 C. L. J. 158, not followed.

In City of Montreal v. Meldola de Sola (1907), Que. R. 32 S. C. 257, it was *held* that a "parsonage," to be exempt, must be a house set apart by a church or congregation for the residence of its priest or minister, and accepted and occupied by him as such.

**PARTIES ADVERSELY INTERESTED.**—On an appeal from the decision of the Mining Recorder, under sec. 133 of the Mines

Act, R. S. O. ch. 32, a copy of the notice of appeal must be served upon "all parties adversely interested." Parties who, alleging the discovery of valuable ore, have staked out a claim and filed an application, are "parties adversely interested" as against one who has previously staked out a similar claim on the same property and filed his application. In re Petrakos (1907), 13 O. L. R. 650.

Unless an intending appellant has himself some interest or claims some interest in the property, there can be no "parties adversely interested." Re Cashman and Cobalt & James Mines, 10 O. W. R. 658.

**PARTIES CONCERNED.**—V. ALL PARTIES CONCERNED.

**PARTIES WHO SHALL BE LIVING.**—The expression (in a will) "parties who shall be living at the time of the winding-up of my estate," is not applicable to a corporation, *e.g.* a hospital; but it is applicable to a class, such as "the poor" of a town, or locality. Re Miles, 8 O. W. R. 817.

**PARTLY HEARD.**—See Dunn v. The Queen, 4 Exch. C. R. 68.

**PARTNERSHIP.**—As to what constitutes a partnership within the British Columbia Master and Servant Act, see Disher v. Donkin, 18 B. C. R. 230; 49 S. C. R. 60.

**PARTY AFFECTED.**—A mortgagee of a demised premises, who has served notice upon the tenants to pay the rent to him, is "a party affected" by an *ex parte* order obtained by a judgment creditor of the mortgagor attaching the rent within former Con. Rule 536. Parker v. McIlwain, 16 P. R. 555; 17 P. R. 84.

A person served with a third party notice at the instance of a defendant, and who is, at the trial of the action, held bound to indemnify the defendant, is a "party affected by the appeal," within the meaning of former Rules 799 (2) and 811. Eckensweiller v. Coyle, 18 P. R. 423; Stavert v. McMillan, 3 O. W. N. 267.

**PARTY AGGRIEVED.**—The Statute 5 and 6 W. & M. ch. 11, provides that a defendant prosecuting a writ of *certiorari* shall, if convicted, pay the costs of the prosecutor, "if he be the party aggrieved." A township council prosecuting an indictment for obstructing a highway was held to be a "party aggrieved" within the statute. R. v. Cooper, 40 U. C. R. 294.

**PARTY APPLYING.**—The words "party applying" in sec. 1015 of the Criminal Code were held to refer to the application

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authorized by sec. 1014 (3) of the Code to be made during the trial by the prosecution or the accused. R. v. Toto, 8 C. C. C. 410. Mr. Tremeear questions the correctness of this judgment. See 8 C. C. C. p. 414.

**PARTY CONCERNED.**—Persons buying lots according to a registered plan do not *ipso facto* become "parties concerned" within section 110 of The Land Titles Act (ch. 126 R. S. O.), in every street shewn upon it. Whether they are "concerned" or not is a question of fact. In re McIlmurray and Jenkins, 22 A. R. 398.

A plan prepared and registered by two adjoining owners may be amended upon the application of either owner as far as his land is concerned without the consent of the other owner, but that other owner is a "party concerned" within sec. 110 of The Registry Act, R. S. O. 1897, ch. 136 (see now sec. 86, R. S. O. ch. 124), and entitled to notice of the application. In re Ontario Silver Co. and Bartle (1901), 1 O. L. R. 140.

In both of the above Acts, as revised, the term "persons concerned" has been substituted for "party concerned."

**PARTY INTERESTED.**—The term "party interested" in a statute giving any "party interested" a right of appeal from a judgment means one who was a party to the proceeding before the judgment appealed from. In re Smith, 9 B. C. R. 327.

**PARTY WALL.**—The question whether a wall is a party wall or not can only arise where a wall separating adjoining lands belonging to different owners is claimed by them as tenants in common. External walls are not party walls, nor are the internal partition walls of a building which all belongs to the same owner. R. v. Copp, 17 O. R. 738.

A part owner of a party wall has a right to heighten that wall within certain limits, but no right to use it other than a party wall, e.g., to make a window in the wall. Sproule v. Stratford, 1 O. R. 335.

The owners of a party wall are not tenants in common of the wall. James v. Clement, 13 O. R. p. 122.

**PASSED.**—The word "passed" when used in a Municipal Act referring to the passing of by-laws by the council means the final motion of the council in enacting the by-law and has no reference to any signing or sealing of the same. In re Local Improvement District, No. 189, 4 S. L. R. 522.

It is not necessary that signing or sealing of a by-law be done at the council meeting—instances in which this is done are probably rather the exception than the rule. The signature of the presiding officer, and sealing afterwards, is sufficient. Township of Brock v. Toronto and Nipissing Ry. Co., 17 G. 425; McLellan v. Municipality of Assiniboia, 5 Man. 127; Re Robertson and Township of Colborne, 4 O. W. N. 274.

V. FINALLY PASSED.

**PASSENGER.**—The word "passenger" has been variously defined, and it is difficult to frame a definition that would be of general application. It usually means one who travels or is carried in a vessel, coach, railway or street car, or other public conveyance, entered by fare or contract, express or implied. The precise time at which the traveller becomes a passenger or ceases to be such depends upon the facts of the particular case. If the carrier owns or controls the station, platform or other premises where the journey begins or terminates, the relation of carrier and passenger may begin sooner and terminate later than in the case of a train or street car, where the carrier has no control over the place of departure or arrival.

Where a passenger on a street car steps off the car to the highway, he ceases to be a passenger. If, then, in order to avoid danger from a passing vehicle, he attempts to get on the car again, and, in so doing, he is injured, he is not a passenger. Wallace v. Employers' Liability Accident Assurance Co. (1911), 25 O. L. R. 80; 26 O. L. R. 10.

A person who is injured while getting into a public conveyance after he has got upon the step or platform, but before the vehicle has begun to move, is "riding as a passenger" on a public conveyance. Powis v. Ontario Accident Insc. Co. (1901), 1 O. L. R. 54.

The word "riding" in an accident policy is equivalent to "travelling." *Ib.*

A resident of Canada, returning from a visit abroad, is not a "passenger" or an immigrant, who is subject to the provisions of The Immigration Act, R. S. C. ch. 93. See secs. 2 (h) and 18. In re Chin Chee, 11 B. C. R. 400; 2 W. L. R. 237.

**PASTURE.**—"Pasture" means feeding cattle or other live stock on the land—consuming hay upon the farm is within the fair meaning of pasture. Where a farm had been rented for "pasturing purposes," it was held not to be a breach of the tenant's contract to raise and cut a crop of hay, if such hay was feed on the farm. The words "for pasturing purposes" do not require that the grass should be severed only by the teeth of the feeding beasts. Bradley v. McClure (1908), 18 O. L. R. 503.

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**PAY.**—On a sale of land the vendor agreed to "forfeit" $1,000 if the land was not resold within a certain time. *Held*, the word "forfeit" did not import a penalty, but was equivalent to "pay." Crippen v. Hitchner, 18 W. L. R. 259.

The word "pay" used in a will does not necessarily mean payment in money, but may refer to a division or allotment of the share of the devisee or legatee. The use of the words "pay" and "pay and apply," although used in connection with realty, were held not to work a conversion of the realty into personalty. McDonell v. McDonell, 24 O. R. 468.

**PAYABLE AT PAR.**—The words "payable at par at the Bank of Montreal" printed on the face of cheques used by a customer, with the knowledge of the bank, mean that the named bank will make no charge for cashing the cheque, but it does not imply that there will be funds to meet the cheque. The Rose-Belford Printing Co. v. Bank of Montreal, 12 O. R. 544.

**PAYABLE MONTHLY.**—An engagement of an engineer at a salary of $3,000 a year, "payable monthly," is a contract for one year, and the words "payable monthly" are a mere indication of the manner in which the salary is to be paid. Silver v. Standard Gold Mines Co., 3 D. L. R. 103.

A hiring at "$25 a month for eight months" entitles the employee to payment at the end of each month. Mosseau v. Tone, 7 Terr. L. R. 369.

**PAYABLE TO MY ORDER.**—An agreement that A. shall give B. the notes of a third party "payable to my order" does not, absolutely and necessarily, by the mere force of the words, import that A. must endorse the notes, so as to make himself responsible. McCarthy v. Vine, 22 C. P. 458.

**PAYMENT.**—A payment is a sum expressly applicable in reduction of the particular demand on which it is made; that demand is, therefore, reduced by the extent of the payment. To constitute a payment, the transaction must have the assent of both parties, and for such a payment no action is maintainable; while a set-off is a separate and independent demand which one party has against the other, and in respect of which he is as much a creditor of the other, as the other is of him, and for which he can as well maintain a separate action as his creditor can for his demand. In re Miron v. McCabe, 4 P. R. 171. The judgment in Re Hall v. Curtain, 28 U. C. R. 533, overruling In re Miron v. McCabe, does not affect the accuracy of the above definition. Osterhout v. Fox (1907), 14 O. L. R. 604.

Payment may be in money or money's worth. Wilkens v. Casey, 7 T. R. 713; Truax v. Dixon, 17 O. R. 366. Or by the mere transfer of figures in an account, without any money passing. Beatty v. Maxwell, 1 P. R. 85; Nightengale v. Bank of Montreal, 26 C. P. 74. Or by accepting an order. Jennings v. Willis, 22 O. R. 439.

Where the defendant was indebted to the plaintiff on a covenant, and had paid $69 to a creditor of the plaintiff at the plaintiff's request, but the payment was in no way connected with the covenant, it was held, in an action on the covenant, that the $69 was properly allowed as a set-off and not as a payment. Osterhout v. Fox, *supra*.

A plaintiff having a claim against which the defendant may, if he pleases, set up a set-off, must sue in the Superior Court; for he cannot compel the defendant to set up his claim by way of set-off, and he cannot by voluntarily admitting a right to set-off, confer jurisdiction upon the inferior Court. Caldwell v. Hughes, 4 O. W. N. 1192; and a reduction by set-off below the jurisdiction of the superior Court does not deprive the plaintiff of a right to costs on the higher scale. Everly v. Dunkley, 5 O. W. N. 65.

The word "payments" in sec. 12 of The Mechanics' and Wage Earners' Lien Act covers the giving of a bill or promissory note; or payments made by the owner at the instance or by the direction of the contractor to those who supply materials to him, or *tripartite* agreements and payments to third parties. Jennings v. Willis, 22 O. R. 439. Also payments made by the owner or contractor to sub-contractors in order to obtain the delivery of goods or to get work done; but not payments made to the assignee of the contractor. McBean v. Kinnear, 23 O. R. 313.

The transfer of a cheque of a third party is not a payment of money. It is the transfer of a security which does not become payment until presented and honoured by the bank. Davidson v. Fraser, 23 A. R. 439, overruling Armstrong v. Hemstreet, 22 O. R. 336. But a payment by a purchaser with his own cheque is a "payment of money" within the Assignments and Preferences Act. Gordon v. Union Bank, 26 A. R. 155.

*V.* Payment in Full: Tender.

**PAYMENT IN CASH.**—A company was formed to take over the defendant's business, and each of the defendants received shares at par value for his interest in the business. *Held*, this was a "payment in cash" within the meaning of sec. 50 of the Companies Act (B.C.), and as the purchase price was fair, the shares were fully paid up. Tanner v. Cowan, 9 B. C. R. 301.

*V.* Cash Payments.

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**PECULIAR CIRCUMSTANCES.** — The "peculiar circumstances," referred to in sec. 29 (2) of The Dower Act, R. S. O. ch. 70, means practically insuperable difficulties in the way of assigning dower by metes and bounds. The fact that two-thirds of a dwelling-house stood upon the land, the remaining third being upon the adjoining land which was not dowable, was held not to constitute "peculiar circumstances." McIntyre v. Crocker, 23 O. R. 369.

**PECUNIARY.**—Relating to or consisting of money.

*A pecuniary consideration* is a consideration for an act or forbearance which consists either in money presently passing or in money to be paid in the future.

*Pecuniary damages* are such as can be estimated in and compensated by money; not merely the loss of money or saleable property or rights, but all such loss, deprivation, or injury as can be made the subject of calculation and of recompense in money.

*A pecuniary legacy* is a bequest of a sum of money, or of an annuity. It may or may not specify the fund from which it is to be drawn. It is not the less a pecuniary legacy if it comprises the specific pieces of money in a designated receptacle, as a chest or a purse.

*A pecuniary loss* is a loss of money, or of something by which money, or something of money value, may be acquired. Black.

**PEDLAR.**—Municipal Act, 1913, sec. 415 (1). A pedlar is one who travels about selling small wares which he carries with him. A sewing machine agent, who, in addition to keeping a shop, goes about from house to house with a sample machine soliciting orders, is not a pedlar. R. v. Phillips, 7 C. C. C. 131 (S. Ct. N. B.).

A person who engages a room at a hotel and there solicits orders for clothing to be made up from samples of cloth exhibited, and to be forwarded to the customer when made up, is not a pedlar. R. v. St. Pierre, 4 O. L. R. 76; 5 C. C. C. 364.

*V.* HAWKER.

**PENAL.**—Penal laws are those which prohibit an act and impose a penalty for the commission of it; penal statutes, those which impose penalties or punishments for an offence committed.

By a statute of the State of New York, any officer signing a report containing a false representation becomes liable for the debts of the corporation. An action for a penalty under this statute, brought in Ontario, is not "penal" in the sense used in international law and may be enforced in this Province. Huntingdon v. Attrill (1893), A. C. 150; reversing 17 O. R. 245; 18 A. R. 136.

A proceeding, in order to come within the scope of the rule that the Courts of no country execute the penal laws of another, must be in the nature of a suit in favour of the State whose law has been infringed, and not in a suit at the instance of a private party in his own interest.

In its ordinary acceptation, the word "penal" may embrace penalties for infractions of general law which do not constitute offences against the State; it may, for many legal purposes, be applied with perfect propriety to penalties created by contract; and it, therefore, when taken by itself, fails to mark that distinction between civil rights and criminal wrongs which is the very essence of the international rule. *Ib.*

V. PENALTY.

**PENALTY.**—The word "penalty" may be used in a statute in its wider sense as equivalent to punishment. Hodge v. The Queen, 9 A. C. 117.

Its primary meaning includes punishment by imprisonment, as well as punishment by fine. R. v. Gavin, 30 N. S. R. 162; 1 C. C. C. 59.

In sections 737 and 738 of the Criminal Code, the meaning of the word "penalty" is restricted to a pecuniary punishment, because of its association with the words "paid" and "recovered." R. v. Johnston, 11 C. C. C. 6.

The word "penalty," as used in the different sections of The Ontario Liquor License Act, was much discussed in R. v. Leach, *et al* (1908), 17 O. L. R. 643, and it was held that imprisonment is a penalty. "No reason exists to take the word 'penalty' out of its ordinary meaning, 'suffering in person or property as a punishment annexed by law or judicial decision to a violation of law.'"

Where the parties to a contract have agreed that, in case of one of the parties doing or omitting to do some one thing, he shall pay a sum of money to the other as damages, as a general rule, such sum is to be regarded by the Court as liquidated damages, and not as a penalty; but, where the parties have agreed that the one is to pay and the other to be paid a sum of money in respect of the doing or failure to do any of a number of different things of very different degrees of importance, such sum is to be treated as a penalty. Townsend v. Toronto, Hamilton & Buffalo Ry. Co., 28 O. R. p. 197. And the fact that the parties expressly state in their contract that the sum named is liquidated damages, and not a penalty, will not prevent the Court deciding that it is a penalty. Townsend v. Rumball (1909), 19 O. L. R. 433.

*Semble*, where the sum to be paid is, with regard to the matter in respect of which it is agreed to be paid, so large as to make the damages so absurd that the Court would be compelled to arrive

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at the conclusion that it was to be paid, not as liquidated damages, but as a penalty. Townsend v. Toronto H. & B. Ry. Co., *supra*.

Where a contract contains a condition for the payment of a sum of money as liquidated damages for the breach of stipulations of varied importance, none of which is for the payment of an ascertained sum of money, the general rule is that the sum named is not to be treated as a penalty, but as liquidated damages. Schrader v. Lillis, 10 O. R. 358; followed in Edwards v. Moore, 1 E. L. R. 422. And see Townsend v. Rumball (1909), 19 O. L. R. 435, and McManus v. Rothschild (1911), 25 O. L. R. 138.

In deciding this question, the Judge must take into consideration the intention of the parties, as evidenced by their language, and the circumstances of the case taken as a whole, and viewed as at the time the contract was made. And where the parties by the contract state that the amount is to be considered "as liquidated damages, and not as a penalty," these words are not to be left out of account altogether—they must go somewhere to shew that the parties intended that these sums should be liquidated damages and not penalties. St. Catharines Improvement Co. v. Rutherford, 6 O. W. N. 87, 568.

In an agreement for the sale and purchase of property, any clause forfeiting an interest in the property for non-payment of money is penal, and relief will be granted on payment of the money, with interest, as compensation for the delay. Boyd v. Richards (1913), 29 O. L. R. 119; Kilmer v. British Columbia Orchards, 17 B. C. R. 230; (1913), A. C. 319. In Boyd v. Richards, Middleton, J., refused to follow Labelle v. O'Connor (1908), 15 O. L. R. 519.

The double value given to a tenant as damages by 2 W. & M. ch. 5, sec. 4, is not such a penalty against which the Courts can relieve—or such as they should relieve against. "I tried to invoke the equitable power in a case of very great hardship (Johnson v. Dominion of Canada Guarantee Co., 17 O. L. R. 462, 483), whereby a penal provision in a policy of insurance would have been frustrated, but the Court of Appeal said that so to use the relieving power would be taking prodigious liberty with a contract." Boyd, C. Webb v. Box (1909), 19 O. L. R. p. 544.

**PENDING.**—Pending means begun but not yet completed; in process of settlement or adjustment. Thus, an action is said to be pending from its inception until final judgment is rendered.

An action or suit is pending as soon as it is commenced by writ or other process, and remains so until its conclusion. An arbitration is pending as soon as it has been actually commenced, but it is not commenced until arbitrators are appointed. An

arbitrator is not appointed until he has both been named in the order and has accepted office as such. Re Taylor and Canadian Northern Ry. Co., 23 W. L. R. 645.

A prosecution is pending within the meaning of sec. 997 of the Criminal Code, when an information is laid charging an indictable offence. The information constitutes the commencement of the criminal prosecution. R. v. Verral, 16 P. R. 445; 17 P. R. 61.

V. NOW PENDING.

**PENTICE.**—V. SUITABLE PENTICE.

**PER ANNUM.**—V. YEAR.

**PEREMPTORY.**—The words "peremptory" or "peremptorily" do not always mean "absolutely final," there being a discretion in the Court, under special circumstances, to say whether they shall have that meaning or not. Where tenders were asked for, the purchase of property to be received by a certain date when the sale was to be "peremptorily closed," it was held the Referee had a discretion to extend the time. Re Alger and The Sarnia Oil Co., 21 O. R. 440; 19 A. R. 446.

**PERFORMED IN PART.**—Work is not "performed in part" within the meaning of article 1076, C. C., where the owner cannot have useful occupation of the portion completed. McDonald v. Hutchins, Q. R. 12, K. B. 499.

**PERILS OF THE SEA.**—Owing to the lateness of the season a vessel, on her voyage, could not get into a bay, and she remained frozen in the ice all winter, and had to cancel her charter-party. *Held*, reversing the judgment of the Supreme Court of New Brunswick, 24 N. B. R. 421, that the loss occasioned by the detention from ice was not a loss by "perils of the sea" covered by an ordinary marine policy. The Great Western Insc. Co. v. Jordan, 14 S. C. R. 734; Cameron's S. C. Cases, 86.

A loss by barratry is not a loss by "perils of the sea." O'Connor v. The Merchants' Marine Insc. Co., 20 N. B. R. 514; 16 S. C. R. 331.

**PERMANENT IMPROVEMENTS.**—The term "permanent improvements" is simple enough, but it is not self-explanatory, and evidence is admissible to explain the meaning of the words in an agreement to pay for such improvements.

Filling in with earth on water lots is in the nature of permanent improvements. Dalton v. City of Toronto (1906), 12 O. L. R. 582.

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Clearing land for farming purposes is a permanent improvement. Robinet v. Pickering, 14 U. C. R. 337.

V. Improvement: Mistake of Title.

**PERMANENTLY INJURED.**—The words "permanently injured" in sec. 242 of the Criminal Code have no technical meaning, and in every case it is a question of fact whether the facts proved are such as that the health of the wife is likely, by reason of these acts, to be permanently injured. R. v. Bowman, 3 C. C. C. 410; R. v. McIntyre, 3 C. C. C. 413.

In R. v. Coventry, 3 C. C. C. 541, the Court held that, where a child's toes were so badly frozen as to require amputation, it should not, without expert evidence upon the effect of the loss of the toes, infer that the child's health had been or was likely to be permanently injured.

**PERMIT.**—Section 49 of The Liquor License Act, R. S. O. ch. 215, provides that the occupant of unlicensed premises shall not "permit" any liquor, whether sold by him or not, to be consumed on the premises. "The word "permit" is here used as indicating authorization, either expressly or tacitly, proceeding from the occupant personally, and involves moral guilt, a *mens rea*. R. v. Irish (1909), 18 O. L. R. 351; 14 C. C. C. 458.

A statute provided that fire set out shall be guarded by three adult persons. This means that the three persons shall guard the fire, so as to prevent it escaping, and, if they do not do so, they "permit" it to escape. Armour v. Marshall, 15 W. L. R. 173. See McCartney v. Miller, 2 W. L. R. 87; Owen v. Dingwall, 14 W. L. R. 730.

Starting a fire by negligence, e.g., by dropping a lighted cigar, is permitting it to escape. Mosley v. Ketchum, 3 Sask. R. 29; 12 W. L. R. 721.

If a person does not properly watch a fire started by him, and see that it does not spread, and it escapes, he thereby permits it to escape, within the meaning of sec. 2 of The Prairie Fires Ordinance, ch. 87, C. O. 1898. Roberts v. Morrow, 2 Sask. R. 15; McCartney v. Miller, 7 Terr. L. R. 367.

V. Allow.

**PERSON.**—The word "person" includes any body corporate or politic, or party, and the heirs, executors or other legal representatives of such person, to whom the context can apply according to law. Int. Acts, Canada and Ontario. See also sec. 2 (13) of the Criminal Code.

Notwithstanding the extended meaning given by the Interpretation Acts to the word "person," the decisions shew a number of instances where the context does not apply.

The proceedings of the Criminal Code as to summary convictions do not apply to corporations—as regards charges of a criminal nature, a corporation is not a "person." Re Chapman and City of London, 19 O. R. 33; Ex p. Woodstock Electric Light Co., 4 C. C. C. 107; R. v. T. Eaton Co., 2 C. C. C. C. 252.

But see R. v. Toronto Railway Co., 2 C. C. C. C. 471, where a Divisional Court held the contrary.

A corporation is not a "private person" within the meaning of sec. 135 (6) of The Ontario Companies Act, R. S. O. ch. 178, and cannot, for the purpose of recovering penalties under that Act, be a common informer. Guy Major Co. v. Canadian Flaxhills, Limited, 3 O. W. N. 1058.

A corporation is not a person within the meaning of The Wages Act (British Columbia), and so entitled to claim a preference. West v. McEachern, 32 C. L. J. 208.

"Person," in sec. 520 of the Criminal Code, includes a corporation. R. v. Master Plumbers' Association (1907), 14 O. L. R. 295.

In British Columbia, it was held that, unless specially provided, the word "person" does not include firm. In re Wah Yun & Co., 11 B. C. R. 154. In Walker v. Lamoreaux, Q. R. 21 S. C. 492, it was doubted whether a partnership in a collective name constituted a "person."

A woman is not a "person," within the meaning of the Legal Professions Act, British Columbia, and may not be called to the Bar. Re Mabel French, 17 B. C. R. 1; 19 W. L. R. 847; 1 D. L. R. 80; nor in New Brunswick. Re French, 37 N. B. R. 359.

A servant of a railway company is a "person," within sec. 427 (2) of The Railway Act, R. S. C. ch. 37. Le May v. Canadian Pacific Ry., 18 O. R. 314; 17 A. R. 293.

The word "persons" within sec. 36 of The Separate Schools Act, R. S. O. 1897, ch. 294, is to be read as "individuals." Grattan v. Ottawa Separate School Trustees (1904), 9 O. L. R. 433.

The Provincial Treasurer was held to be a "person" within the meaning of sec. 9 of The Succession Duties Act, R. S. O. 1897, and so had a right to appeal from a valuation of an estate. In re Estate of George Roach (1905), 10 O. L. R. 208.

An Indian is a "person" within sec. 47 of The Medical Act, and may be convicted of practising medicine for hire. R. v. Hill (1907), 15 O. L. R. 406.

A municipal by-law enacted that "no person" shall cause any excavation to be made in the streets without proper permission. It was held that the word "person" did not include a member of the council acting within his administrative rights in opening a man-hole. Therrin v. Town of St. Paul, Q. R. 33 S. C. 248.

V. ANY PERSON.

**PERSON AFFECTED.**—A person charged with receiving stolen goods is a "person affected" by the record of the prosecution and conviction of the parties from whom he is charged to have received the goods, and is entitled to inspection of the record under sec 11, ch. 324, R. S. O. 1897. Re Chambers (1904), 8 O. L. R. 111; 8 C. C. C. 245.

**PERSON AGGRIEVED.**—The Inspection and Sale Act, R. S. C. ch. 85, sec. 19, provides for every inspector giving security by bond available to "all persons aggrieved" by any breach of the conditions thereof. A person making a purchase, relying on an inspection made by an inspector under the Act, such inspection being faulty, is a "person aggrieved" within the Act. Verratt v. McAulay, 5 O. R. 313.

A "person aggrieved" and a "person injured" are sometimes used as having the same meaning. Atkins v. Ptolemy, 5 O. R. p. 368.

A defeated candidate in a municipal election bringing an action against a deputy returning officer for breaches of the sections of the Municipal Act relating to elections is not a "person aggrieved," there being no allegations that such breaches affected the result of the election (see now sec. 143 of the Mun. Act, 1913). Atkins v. Ptolemy, *supra*.

But in an action against a returning officer, who refused to delay his return after receiving notice of a recount of ballots, a defeated candidate was held to be a "person aggrieved," because prevented from exercising his legal right to have a recount. Hays v. Armstrong, 7 O. R. 621.

Where a prosecution under a special Act may be brought only by a "person aggrieved," it must be shewn that the informant is a person who has sustained a legal loss or liability by reason of the alleged offence. R. v. Frankforth, 8 C. C. C. 57. See also R. v. Brook, 7 C. C. C. 216, and note p. 218.

**PERSON CHARGED.**—The "person charged," referred to in sec. 4 of The Evidence Act, R. S. C. ch. 145, means the person on trial, the person given in charge to the jury—"the prisoner at the bar, whom they have in charge," and probably extends to one

or two or more prisoners who are tried jointly. It does not extend to one of two prisoners jointly indicted, but tried separately. R. v. Blais (1906), 11 O. L. R. 345; 10 C. C. C. 354.

**PERSON CLAIMING RIGHT THERETO.**—The Limitations Act, R. S. O. ch. 75, sec. 34. The owner of a servient tenement who takes water by an artificial stream from the dominant tenement, takes it with notice that the stream is created for the convenience of the dominant tenement, and may be diverted at any time, and is not a "person claiming right thereto" within the above Act. Oliver v. Lockie, 26 O. R. 28.

**PERSON CONCERNED.**—Persons buying lots according to a registered plan do not *ipso facto* become "persons concerned" within sec. 110 of The Land Titles Act, in every street shewn upon it; whether they are "concerned" or not is a question of fact. In re McIlmurray and Jenkins, 22 A. R. 398.

A plan prepared and registered by two adjoining owners may be amended upon the application of either owner as far as his own land is concerned without the consent of the other owner, but that other owner is a "person concerned" within sec. 86 of The Registry Act R. S. O. ch. 124, and is entitled to notice of the application. In re Ontario Silver Co. and Bartle (1901), 1 O. L. R. 140.

**PERSON FULFILLING PUBLIC DUTY.**—See Geller v. Laughrin (1911), 24 O. L. R. 18.

**PERSON INTERESTED.**—The municipality in which the highway crossed by a railway is situated is a "person interested" within the sections of the Railway Act authorizing the Railway Committee to apportion the cost between the company and "any person interested." City of Toronto v. Grand Trunk Ry., 37 S. C. R. 232.

And though the crossing is not immediately within the bounds of the municipality. County of Carleton v. City of Ottawa, 41 S. C. R. 552.

The municipal corporation of a city which is one of the movers in an application to the Railway Committee for an order authorizing the construction of a subway under a railway to connect a city street with a country road is a "person interested." In re Grand Trunk Ry. and City of Kingston, 8 Exch. C. R. 349.

**PERSON LIABLE TO PAY.**—An individual ratepayer of a school section is not, merely by reason of his having to contribute as a ratepayer to the payment of a solicitor's bill of costs, a "person liable to pay" such bill, and so entitled to an order for

the taxation thereof within sec. 40 of The Solicitors' Act, R. S. O. ch. 159. McGugan v. McGugan, 19 A. R. 56; 21 S. C. R. 267.

But a residuary legatee is a "person liable to pay" within the Act, because the payment lessens the amount of the residuary estate. Re George Skinner, 13 P. R. 276; 447.

**PERSON WHO HAS CHARGE OR CONTROL.**—A motorman of an electric street car is a "person who has the charge or control" thereof within the meaning of sub-sec. 5 of sec. 2 of the Workmen's Compensation for Injuries Act, R. S. O. ch. 160. Snell v. Toronto Railway Co., 27 A. R. 161; 31 S. C. R. 241.

A person having charge of an overhead crane, operated by electrical power, and used for the purpose of raising and moving from place to place heavy castings, is within the section. McLaughlin v. Ontario Iron & Steel Co. (1910), 20 O. L. R. 335.

The question is not one merely of superintendence in the ordinary sense, nor of physical control of the mere mechanism of the engine or machine, but rather the question, who, in the course of his duties and employment, had at the time the direction and control of its movements? Martin v. Grand Trunk Ry. (1912), 27 O. L. R. p. 171.

Where an engineer on a locomotive engine was, for the purpose of yard shunting, taking his directions from one M., a yard helper, it was held that M. was the "person in charge or control." Martin v. Grand Trunk Ry., *supra*.

So where the direction was given to the engineer by a brakesman. Summerson v. Grand Trunk Ry., 4 O. W. N. 1082; Allan v. Grand Trunk Ry., 4 O. W. N. 325.

**PERSONAL ACTIONS.**—The term "personal actions" in sec. 22 (b) of The County Courts Act, and sec. 62 (a) of The Division Courts Act, means common law actions. McGugan v. McGugan, 21 O. R. 289.

At common law personal actions meant such actions as a man can bring for debt or other chattels, or damages to them, or damages for injury to his person. They comprise debt, covenant, detinue, trespass, replevin and trespass on the case, including all cases of wrong, where the injury is not immediate or direct, but purely consequential or indirect. Hawkes v. Richardson, 9 U. C. R. 229.

An action for a declaration of right to rank on an insolvent estate is not a personal action. Whidden v. Jackson, 18 A. R. 439.

Nor is an action to recover back money on the ground that the instrument, by fraud, is not the true agreement. Crayston v. Massey-Harris Co., 12 Man. R. 95.

A claim in detinue is a personal action. Lucas v. Elliott, 9 U. C. L. J. 147.

An action for the value of a horse employed by the defendant and by him improperly worked when the horse was sick, and so causing its death, is an action for breach of contract, and not a personal action. O'Brien v. Irving, 7 P. R. 308.

**PERSONAL BAGGAGE.**—*V.* BAGGAGE—PERSONAL LUGGAGE.

**PERSONAL EARNINGS.**—See Conger v. Kennedy, 26 S. C. R. 397.

V. PROPRIETORY INTEREST.

**PERSONAL EFFECTS.**—A testator gave to his wife "all my furniture, books, plate and other personal effects." The estate consisted of household furniture, a policy of life insurance and a mortgage on real estate. It was held that the mortgage passed under the words "other personal effects." The words are wide enough, having regard to the large meaning of the word "effects," to include a mortgage or other chose in action, and here it was not restricted to things *ejusdem generis*, the words occurring in a residuary gift. Re Way (1903), 6 O. L. R. 614.

**PERSONAL LUGGAGE.**—Great difficulty has been experienced from time to time in defining what is meant by "personal luggage"—it is not confined to mere wearing apparel, or things for use on a journey, and, in one work of authority, it is laid down thus: "All articles which it is usual for persons travelling to carry with them, whether from necessity, convenience, or amusement (such as a gun or fishing tackle), fall within the term 'baggage.'" Burton, J.A. Dixon v. Richelieu Navigation Co., 15 A. R. p. 653.

V. BAGGAGE.

**PERSONAL PROPERTY.**—Commercial paper, such as notes and cheques on other banks, held by a branch of a chartered bank, held to be personal property and liable to assessment as such. Union Bank of Canada v. Town of Macleod, 4 Terr. L. R. 407.

Electric street cars are personal property. Toronto Ry. Co. v. City of Toronto (1904), A. C. 809, where Kirkpatrick v. Cornwall Electric Ry. Co. (1901), 2 O. L. R. 113, was not followed.

**PERSONAL REPRESENTATIVES.**—The words "personal representatives" will, in the absence of other controlling words, be taken to mean persons claiming as executors or administrators. If, however, there is an indication of intention that the "representatives" are to take beneficially, and not in any fiduciary capacity, the words can hardly be referred to executors or

administrators, and they generally mean statutory next of kin, including a widow. Re Read, 12 O. W. R. 1009. And see Burkitt v. Tozer, 17 O. R. 587; Re Daubeney, 1 O. W. R. 773.

**PERSONAL SERVICE.**—A notice of motion to attach a party to an action must be served personally, unless some sufficient reason is shewn for dispensing therewith. Proudfoot, J. Smith v. Marrin, 29th Sept., 1884 (unreported).

Merely shewing a writ to the defendant is not enough. Erwin v. Powley, 2 U. C. R. 270.

It is not necessary that the service be made directly by the officer. Where service was made by mistake on the son of the defendant, and a few days afterwards the son handed the copy of the writ to the defendant, it was held to be personal service. Provincial Insurance Co. v. Shaw, 19 U. C. R. 360.

But where the father was served by mistake for the son, and the father caused an appearance to be entered, the judgment was set aside, because the defendant had no notice or knowledge of the proceedings. Sutherland v. Dumble, 14 C. P. 156.

An acceptance of service by a solicitor waives irregularities. Otis v. Rossin, 2 P. R. 48; and a defective service is cured by appearance. Dominion Coal Co. v. Kingswell S. S. Co., 30 N. S. R. 397.

Service on a county treasurer was held to be personal service on the county. Watts v. Beemer, 8 C. L. J. 255.

**PIG-IRON.**—Among iron masters "pig-iron" has come to mean the iron product of the blast furnaces in a liquid as well as in a solid form. Iron, when used in a liquid or molten form for the manufacture of steel, is "pig-iron" within the meaning of 60-61 Vic. ch. 6. The Dominion Iron & Steel Co. v. The King, 8 Exch. C. R. 107.

**PLACE.**—"Place" is a word of very indefinite meaning. It is applied to any locality, however large or however small. It may be used to designate a country, a county, a municipality, or a very small portion of a municipality. The extent of the locality designated by it must generally be determined by the connection in which it is used.

In order to constitute a "place" within sec. 227 of the Criminal Code, there must be a measure of fixity, localization, and exclusive right of user. R. v. Moylett (1907), 15 O. L. R. 348; 13 C. C. C. 279.

But a box or booth used by a bookmaker within the racing enclosure and rented by him from the owners of the race course is an "office or place" within the Act. R. v. Saunders (1906), 12 O. L. R. 615; 38 S. C. R. 382; 12 C. C. C. 33, 174.

Where bets are made by a barber in his barber shop, but as to some of the incidents the customers were taken out of the shop to the public street with the obvious purpose of bringing the transaction within R. v. Moylett, the conviction was affirmed. R. v. Johnston, 16 C. C. C. 379. See now the amendment to sec. 222 of the Code by 9-10 Ed. VII. ch. 10, sec. 1 (2), whereby "place" is made to include "any place, whether enclosed or not, and whether it is used permanently or temporarily, and whether there is or is not exclusive right of user."

Under R. S. N. S. ch. 94, sec. 53, a married woman carrying on business is required to file a certificate shewing, among other things, "the place" where she proposes carrying on business. *Held,* the words "the place" mean the locality in the municipality where the business is to be carried on, and where the place is changed, a new certificate must be filed. Pearce v. Archibald, 37 C. L. J. 128.

In a will, a proviso that the testator's daughter should "remain and live on said place," the word "place" was held to refer to the whole farm. Judge v. Splann, 22 O. R. 409.

A former High School Act contained a provision as to the "place of holding any high school," and it was held the word "place" referred to the city, town or village where the school was situated, and not the site of the school. Moffatt v. Carleton Place Board of Education, 5 A. R. 197, disapproving of Malcolm v. Malcolm, 15 Gr. 13.

A livery stable is a "place" within the Liquor License Act (N. B.). Ex p. Rogers, 37 N. B. R. 374.

In speaking of the delivery of a cheque and the bank upon which it is drawn, as being "in the same place," the words "same place" appear to be used in the ordinary meaning as meaning the town or city, especially where it is a distinct business or financial entity. Bank of British North America v. Haslip, 30 O. L. R. 299; 6 O. W. N. 466.

*V.* Public Place: Any Place.

**PLACE OF BUSINESS.**—See Phœnix Insce Co. v. Kingston, 7 O. R. 343; The City of Kingston v. Canada Life Assurance Co., 18 O. R. 18; 19 O. R. 453.

**PLAINTIFF.**—In the Ontario Judicature Act, "plaintiff" includes a person asking any relief otherwise than by way of counterclaim as a defendant against any other person by any form of proceeding. Sec. 2 (r).

Claim by a defendant against a co-defendant. Walmsley v. Griffith, 11 P. R. 139; Molsons' Bank v. Sawyer, 19 P. R. 316.

Plaintiff by counter-claim. Irwin v. Turner, 16 P. R. 349.

FACULTÉ DE DROIT

**PLANT.**—In Ashfield v. Edgell, 21 O. R. 195, MacMahon, J., adopts the definition of "plant" in Ogilvie's Scientific Dictionary, as "the fixtures, tools, apparatus, etc., necessary to carrying on any trade or mechanical business. The locomotive carriages, vans, trucks, constitute the plant of a railway."

Horses would likely be a necessary part of a contractor's plant in connection with earth excavation, for hauling short distances, or to use with scrapers, unless the cutting was deep, when steam machinery would be used. Middleton v. Flanagan, 25 O. R. 417. In this case, it was held that horses were not a part of the plant.

"Plant," in its ordinary sense, indicates whatever apparatus is used by a business man in carrying on his business; all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. *Ib.*, p. 422.

The word "plant," in a mortgage of a mill, was held not to include office furniture or a horse and carriage, used occasionally for errands in connection with the mill, or material kept on hand for repairs to machinery; but was held to include scows kept for lightering the output of the mill from its wharf to steamers, and such stores as axes, shovels and files, and other articles complete in themselves, used in carrying on the mill business. Eastern Trust Co. v. Cushing Sulphite Fibre Co., 3 N. B. Eq. 378; 2 E. L. R. 28.

Patterns were held not to be "plant" within a mortgage of an electro-plating factory, "with all the plant and machinery." McCosh v. Barton (1901), 1 O. L. R. 229; 2 O. L. R. 77.

**PLANT AND APPLIANCES.**—See Re City of Toronto Assessment (1903), 6 O. L. R. 187; 22 C. L. T. 390.

**PLANTATIONS.**—The word "plantations," in section 298 of The Railway Act, means something planted out by the hand of man; a standing, i.e., a growing bush is something planted by the hand of nature. Campbell v. Canadian Pacific Ry. (1909), 18 O. L. R. 466.

**PLEADING.**—Includes a petition or summons, the statement in writing of the claim or demand of the plaintiff, of the defence of a defendant thereto, and the reply of a plaintiff to a counterclaim of a defendant. Jud. Act 2 (q).

**PLEDGE.**—A pledge in law is where the owner of personal property agrees with another person that it shall be held by the latter as security for payment of a debt or the performance of an obligation. A deposit by a bank of its own bank notes to its own

credit with a trust company, subject to withdrawal by cheque and without any agreement for the return to the bank of the notes so deposited is not a "pledge, assignment or hypothecation" within sec. 139 of The Bank Act. R. v. Warren, 17 C. C. C. 504.

The word "pledge," in sec. 176 (3) of the Bills of Exchange Act, is inapplicable to an agreement respecting the passing of property upon a sale of chattels. Prescott v. Garland, 34 N. B. R. 291.

Where a document in the form of a promissory note is followed by the usual provisions contained in "lien notes," these provisions cannot be treated as a "pledge of collateral security," etc., under the above section. Bank of Hamilton v. Gillies, 19 C. L. T. 236.

The word "pledge," in sec. 98 of The Winding-Up Act, R. S. C. ch. 144, may be taken to include a mortgage. Canadian Bank of Commerce v. Smith, 17 W. L. R. 135.

**POKER.**—A game of poker with incidental betting, not conducted in a place declared to be a common gaming-house under sec. 226 of the Criminal Code, is not illegal. Rose v. Collison, 16 C. C. C. 359. It is not of itself an unlawful game. R. v. Shaw, 4 Man. R. 404.

The contrary seems to have been assumed in R. v. James (1903), 6 O. L. R. 35; and in R. v. Laird, 6 O. L. R. 180. Euchre was held to be a game of chance.

**POLICE OFFICE.**—Municipal Act, 1913, sec. 353.

"It is contemplated there shall be some fixed, well-ascertained place, room or building, where local justice shall be administered, and where the magistrate shall be found at stated times to meet complaints, to hear grievances, and to dispose of business brought before him as a justice of the peace. . . . I cannot doubt, looking at the history of legislation and the actual words used, that the Legislature calls for only one public place or station in order to satisfy the statute that a 'police office' shall be established. It is not needful that this be a separate building; the allocation of a suitable room or chamber in any building belonging to the municipality will suffice." Boyd, C. Mitchell v. Town of Pembroke, 31 O. R. 348.

**POLICE VILLAGE.**—Municipal Act, 1913, secs. 502-535.

A police village is not a separate corporation. Under the above sections, the scheme is one by which a limited territory is set apart, and the trustees are empowered to raise indirectly, through the townships, by way of local assessment, sums required for certain local improvements. The township corporation, and not the trustees of the police village, were held liable for damages resulting from an accident arising from lack of repair of a sidewalk. Smith v. Township of Bertie (1913), 28 O. L. R. 330.

FACULTÉ DE DROIT

A police village is a "village" within the meaning of sec. 275 of The Railway Act. Zufelt v. Canadian Pacific Ry. (1911), 23 O. L. R. 602.

*V.* VILLAGE.

**POLICIES IN CANADA.**—*V.* CANADIAN POLICIES.

**POLICY.**—*V.* INTERIM RECEIPT—RENEWED.

**POOR RELATIONS.**—A gift, by will, to "poor relations" was held to mean heirs-at-law. "The word 'poor' is too vague and uncertain to have any meaning attached to it, and must, therefore, be rejected. The word 'relations,' standing alone, must be restricted to some particular class, for if it were to be construed generally as meaning all relatives, it would be impossible ever to carry out the directions of the will. The line must, therefore, be drawn somewhere, and can only be drawn so as to exclude all those whom the law, in the case of an intestacy, recognizes as the proper class among whom to divide the property of a deceased person, who dies intestate, namely, his heirs." Per Strong, C.J. Ross v. Ross, 25 S. C. R. 307; Q. R. 2 Q. B. 413.

But a gift by will to "the three oldest and poorest people," in a named municipality, was held to be sufficiently certain to be carried out and valid. Law v. Acton, 14 Man. R. 246.

**POPULATION ACTUALLY RESIDENT.**—See Re Bell Liquor Appeal (B.C.), 7 W. L. R. 250.

**PORT.**—A port is a place where a vessel can lie in a position of more or less shelter when loading or discharging cargoes. The natural configuration of the land is often an important element in determining what are the limits of a port. All the waters within given boundaries which possess the common character of safety and protection would be generally admitted to be within its ambit. Where, however, a port is one of several situate on the same river, the natural configuration of the land is not of the same importance and does not afford the same guidance.

Where there is a known and recognized user of protected waters for purposes of security of a known commercial purpose other than the loading and discharge of cargoes, the limits of a port may be considered (according to the subject matter of the contract) as intended to be extended to include such protected waters. St. Paul Fire & Marine Insc. Co. v. Troop, 33 N. B. R. 105; 26 S. C. R. 5.

**PORTION OF THE ROAD.**—The words "portion of the road on which work has been performed," in sec. 667 of the Manitoba

Municipal Act, mean that section or part of the road allowance as the municipality by its improvements has adopted as a completed road, and not the exact part of the road upon which the work has been performed. Couch v. Municipality of Louise, 5 W. L. R. 482; 16 Man. R. 656.

**POSSESSION.**—A mortgagee of land served notice of exercising power of sale. Subsequently he sent one M. to the farm to look after the crops then being harvested. The mortgagor was never told that M. was taking possession under the mortgage. *Held*, this did not constitute a taking of possession under the mortgage and the defendants were not liable for seizing and taking away the crops under a chattel mortgage. Harrison v. Carberry Elevator Co., 7 W. L. R. 535.

V. Actual Change of Possession: Adverse Possession.

**POSSESSIONS.**—The words "His Majesty's Possessions out of Ontario," in sec. 43 of The Evidence Act, R. S. O. ch. 76, includes England.

The word "possessions" is an expression more generally used in Acts of Parliament when the plain and expressed intention is to confine it to British possessions abroad, that is, out of the United Kingdom, but where that is the case, the word "abroad" is usually added. Coltman v. Brown, 16 U. C. R. 133.

A will read "I hereby bequeath to my husband all my earthly goods and possessions." *Per* Teetzel, J. Unless the word "possessions," by reason of its being conjoined with the words "all my earthly goods" is to be limited to possessions of a similar character, it is as comprehensive in its application to everything she owned, as if she had used the word "estate" or "property." The language is not such that to ascertain the meaning in which the testatrix intended to use the word "possessions," the *ejusdem generis* rule of construction can apply; and, therefore, the unqualified ordinary meaning must be given to the word, and it, as I have said, is abundantly comprehensive to include everything she owned, both real and personal. Re Booth and Merriam, 1 O. W. N. 646.

**POSSIBLE.**—The word "possible" may be compatible with the expression "improbable" or "extremely unlikely."

In answer to the question "Could the plaintiff, by the exercise of reasonable care and diligence, have avoided the accident?" the jury answered "We believe that it could have been possible." It was held by the Supreme Court this did not amount to a finding of negligence on the part of the plaintiff as a proximate cause of accident which would disentitle him to a verdict: it amounted to no more than if the jury had said "perhaps it might have been possible." Rowan v. Toronto Railway Co., 29 S. C. R. 717.

FACULTÉ DE DROIT

**POSSIBILITY.**—By sec. 2 (a) of The Wills Act, R. S. O. ch. 120, "land" includes, among other things, "any possibility." The word "possibility" here includes a right of entry for condition broken, and is more extensive than the latter phrase, and might be the subject of a devise, and is covered by the general name land. In re Melville, 11 O. R. 626.

**POST LETTER.**—A letter is a "post letter," within secs. 364, 365 of the Criminal Code, although directed to a fictitious or non-existent address. Mayer v. Vaughan, 5 C. C. C. 392; 6 C. C. C. 68.

A decoy letter upon which postage has been paid, written by a post office inspector and delivered by him to the proper sorting officer for distribution, is a "post letter." R. v. Ryan (1905), 9 O. L. R. 137; 9 C. C. C. 347.

**POSTMASTER.**—A sub-postmaster appointed by the Postmaster-General to the charge of a sub-post-office in a city is not a "postmaster" within the meaning of sec. 12 of The Ontario Elections Act, R. S. O. ch. 8, and is not liable to the penalty imposed by that section, if he votes at an election for the Legislative Assembly. Lancaster v. Shaw (1906), 12 O. L. R. 66; reversing 10 O. L. R. 604.

**PRACTICALLY.**—Where a parcel of land was offered for sale at $2,400, an offer of purchase at $15 per acre (which, in fact, amounted to less than $2,400), adding, "this is practically the price quoted," was held not an offer of $2,400. The word "practically" meant no more than "very nearly." Meivre v. Steine, 2 O. L. R. 106.

**PRACTICE.**—Practice means the form and manner of conducting and carrying on suits, actions or prosecutions at law or in equity, civil or criminal, through their various stages, from the commencement to the final judgment and execution, according to the principles and rules laid down by the several Courts.

The former Surrogate Court Act enacted that, unless otherwise provided, the "practice" shall be according to the Court of Probate in England. *Held*, the word "practice" did not include costs, so as to introduce the tariff of the English Court. Re Osler, a solicitor, 7 P. R. 80.

The word "practice," in The Manitoba Act, is not to be construed as equivalent to "custom having the force of law." It was intended to preserve every legal right or privilege, and every benefit and advantage in the nature of a right or privilege, with respect to denominational schools, which any class of persons

practically enjoyed at the time of the union. Barrett v. City of Winnipeg, 7 Man. R. 273; 19 S. C. R. 374; 1892, A. C. 445.

**PRACTICE OF THE CHURCH.**—See McRae v. McLeod, 26 Gr. 255.

**PRACTISE AS A SOLICITOR.**—The Solicitors Act, R. S. O. ch. 159, secs. 24, 25.

A solicitor does not "practise" by allowing his name to be held out to the world as a member of a firm of solicitors, by words, advertisement, etc., where he is not, in fact, a member of the firm. The word "practising" has its ordinary legal meaning, that is, acting in the Courts as a solicitor for some other person in some proceeding or action therein; by taking on behalf of a client some of the regular steps of procedure in an action or some other judicial proceeding. Re Hon. William MacDougall and The Law Society of Upper Canada, 13 O. R. 204; 15 A. R. 150; 18 S. C. R. 203.

*Semble*: If the firm's name had been used in the formal proceedings, e.g., an appearance entered in the name of the firm, that might have been regarded as an exercise of professional functions by every one of the members, whose names appeared on the files of the Court. Per Strong, C.J.

An isolated instance, as issuing a writ in a County Court, is "practising" within the Act, and a solicitor is not relieved by the fact that he is interested in the subject matter of the litigation. Re S. R. Clarke, 32 O. R. 237; City of Victoria v. Belyea, 12 B. C. R. 112. The contrary seems to be the rule in cases under the Medical Act. See "Practise Medicine" and in Re Hall, 8 O. R. 408. Rose, J., refers to an English case, R. v. Horton, 8 Q. B. D. 434, where one act of a solicitor was held not to be evidence of practising.

**PRACTISE MEDICINE.**—By sec. 47 of The Ontario Medical Health Act, R. S. O. ch. 161, it is not lawful for an unregistered person "to practise medicine, surgery or midwifery for hire, gain, or hope of reward."

To practise a calling does not mean to exercise it upon an isolated occasion, but exercise it frequently, customarily or habitually—bare proof of an individual act would not of itself amount to practising. R. v. Whelan, 4 C. C. C. 277; R. v. Lee, 4 C. C. C. p. 419.

In R. v. Hall, 8 O. R. p. 408, Rose, J., said no particular number of cases is necessary. See also In re Ontario Medical Health Act (1906), 13 O. L. R. at p. 513, per Garrow, J.A.

But a continuous attendance for two weeks may constitute "practising." R. v. Raffenberg, 15 C. C. C. 295; R. v. Whelan, 4 C. C. C. 282.

FACULTÉ DE DROIT

A druggist "practises medicine," if he assumes to discover the nature of the disease by enquiring from the purchaser as to the symptoms and advises the remedy he sells; but if the purchaser merely tells the druggist his complaint, the druggist may legally inform him what remedies he has and advise as to the best remedy. R. v. Howarth, 24 O. R. 561; 1 C. C. C. 14.

Selling a patent medicine, after enquiries by the seller into the nature of the complaint and its symptoms, is practising medicine, if the selection of the remedy is made by the seller. R. v. Barnfield, 3 C. C. C. 161.

Undertaking to cure cancer by friction and application of a certain oil, imported by the defendant by the gross, for a remuneration of $3 a visit, and prescribing other medicines, held to be practising medicine. R. v. Hall, 8 O. R. 407.

But merely attending sick persons, without prescribing or administering medicine, although paid for the visits, is not practising. R. v. Stewart, 17 O. R. 4.

Osteopathy is not within the Act. R. v. Henderson, 1 O. W. N. 543. So a professed diagnosis of an ailment, followed by a manual manipulation of the patient, as a means of curing disease, is not practising medicine. R. v. Vallean, 3 C. C. C. 435.

An oculist examining the eyes of his customer, and prescribing suitable glasses, is not practising medicine. It would be if he had, on such examination, found disease and prescribed a treatment, either medicinal or mechanical, to remedy the disease. R. v. Harvey, 1 O. W. N. 1002; In re Ontario Medical Health Act (1906), 13 O. L. R. pp. 513, 514.

Electro-therapeutics, consisting in treating diseases by means of electricity, is a branch of medicine; but massage, although a branch of therapeutics, is merely skilled manipulation by external pressure of the muscles and tissues, and is not a branch of medicine. Bergman v. Bond, 14 Man. R. 503.

Practising midwifery only is not practising medicine or surgery under The Medical Profession Ordinance, N.W.T., which does not contain the word "midwifery." R. v. Rondeau, 5 Terr. L. R. 478; 9 C. C. C. 523.

Section 49 was discussed at great length in Re Ontario Medical Health Act, *supra*, by the Court of Appeal, but the judgment is most indecisive. So far as any affirmative expression was given, the judgment in R. v. Stewart was approved of.

A conviction under this Act must specify the act or acts which constituted the alleged practising. Using the words of the statute only is insufficient. R. v. Coulson, 24 O. R. 246; 1 C. C. C. 114; R. v. Spain, 18 O. R. 385.

An unenfranchised treaty Indian is a "person" and may be convicted under the Act. R. v. Hill (1907), 15 O. L. R. 407.

**PRECATORY TRUST.**—V. WISH: DESIRE.

**PREFERENCE.**—Preference imports something done voluntarily—*ex mero motu*—not in the ordinary course of business, and without pressure or demand on the part of the creditor. Beattie v. Wenger, 24 A. R. 72; McLean v. Garland, 13 S. C. R. p. 376; Stephens v. McArthur, 19 S. C. R. 446; 6 Man. R. 496.

**PREFERENTIAL LIEN.**—The term "the preferential lien of the landlord" in sec. 38 of The Landlord and Tenant Act, R. S. O. ch. 155, has the same meaning that it had under the Insolvent Acts; and the landlord is entitled to be paid, as a preferred creditor, out of the goods upon the premises at the time of the assignment which are subject to distress, although there is no actual distress. Lazier v. Henderson, 29 O. R. 673; Tew v. Toronto Savings & Loan Co., 30 O. R. 76.

It signifies that the landlord is entitled to be paid out of the proceeds of the goods on the premises, which, but for the assignment, would have been liable to distress to the extent of one year's arrears. Miller v. Tew (1909), 20 O. L. R. 77. But the landlord is not entitled to a lien upon the insurance moneys paid to the assignee on a policy of insurance on such goods. *Ib.*

See also Mason v. Hamilton, 22 C. P. 190, 411; Re McCracken, 4 A. R. 486; Langley v. Meir, 25 A. R. 372; Linton v. Imperial Hotel Co., 16 A. R. 337.

**PREJUDICE.**—V. INTEREST—WITHOUT PREJUDICE.

**PREMISES.**—In conveyancing or in pleading the expression "premises" means that which is put before—that which precedes. In common parlance, it is used to signify land, with its appurtenances; but its usual and appropriate meaning in a conveyance is the thing demised or granted by the deed.

In The Public Health Act, R. S. O. ch. 218, sec. 2 (l), it has a very extended meaning and includes any land or any building, public or private, sailing, steam or other vessel, any vehicle, steam, electric or street railway car for the conveyance of passengers or freight, any tent, van, or other structure of any kind, any mine, stream, lake, drain, ditch or place, open, covered or enclosed, public or private, natural or artificial, and whether maintained under statutory authority or not.

In the ordinary acceptation of the term, "the premises" means the ground immediately surrounding a house. In its loose or colloquial sense, it is used as meaning or comprising land, houses and other matters.

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Where a testator gave his wife "the sum of $200 yearly, or the use of the premises she now lives in," it was held the word "premises" was not confined to the dwelling-house, but included the whole one hundred acre farm. Martin v. Martin (1904), 8 O. L. R. 462.

In a mortgage of leasehold property, the words "leasehold premises" were held not to mean lands or property, but referred to the previous recitals. Jamieson v. London & Guarantee Loan Co., 27 S. C. R. 435; rev. 23 A. R. 602.

In a policy of marine insurance, the term "premises hereby insured" means the insured's interest in the vessel, and is not affected by other insurance on the vessel or cargo. Chapman v. The Provident Washington Insc. Co., 4 C. L. T. 295 (S. Ct. N. B.).

**PRESENT VALUE OF THE WORK DONE.**—See Montreal & European Short Line Ry. Co. v. The Queen, 2 Exch. C. R. 159.

**PRESIDE.**—An Act required that the Reeve of the municipality should "preside" at the meeting, when voting took place, and it was held that this did not require the continual presence of the Reeve in the chair or even in the building, when the voting was being carried on. In re McLean v. The Township of Bruce, 25 U. C. R. 619.

**PRESUMPTION.**—A presumption is raised either by the law or the Judge. That which is raised by the law, or is established as proved, admits nothing to the contrary, and cannot be repealed. The one presumption is called *juris et de jure*, and the other *juris*. That presumption which is raised by the Judge is usually called a *presumptio hominis*, and always admits of proof to the contrary. Campbell v. Barrie, 31 U. C. R. 279.

The word "presumed" in sec. 5 (3) of The Assignments and Preferences Act, R. S. O. ch. 134, does not create an irrebuttable presumption, but merely shifts the onus of proof. Lawson v. McGeoch, 20 A. R. 464; 22 O. R. 474. And this even in the absence of the words "*prima facie*." Craig v. McKay (1906), 12 O. L. R. 121.

The same construction was placed on the word "presumed" in sec. 68 (now sec. 95) of the Winding-Up Act, R. S. C. ch. 144 Kirby v. The Rathbun Co., 32 O. R. 9.

**PREVIOUSLY CHASTE CHARACTER.**—Criminal Code, secs. 211, 212.

The words "previously chaste character," in the above sections of the Code, do not mean "previously chaste reputation," but

point to those acts and disposition of mind which constitute an unmarried woman's virtue or morals. R. v. Lougheed, 8 C. C. C. 184.

Where illicit intercourse between the parties continues for more than a year on continued promises of marriage, the woman cannot be said to be of "previously chaste character." *Ib.*

So where there was illicit intercourse between the parties on several occasions in 1910, when the man left the locality, and returned in March, 1911, when the intercourse was resumed, it was held the woman was not of "previously chaste character." R. v. Comeau, 19 C. C. C. 350; 11 E. L. R. 37.

But the term does not necessarily imply that the female shall be *virgo intacta*. A woman may have been guilty of an act of sexual intercourse and subsequently become of chaste character and be the subject of seduction. But there must be at all events between the two acts of seduction such conduct and behaviour as to imply reform and self-rehabilitation in chastity. *Ib.*

**PRICE.**—"Price" means pecuniary consideration. A contract of barter for commodities is legally distinct from a contract of sale for a money consideration. R. v. Langley, 31 O. R. p. 300.

The term "price to be paid the contractor" in the former Mechanics' Lien Act, meant the original contract price. In re Sear and Wood, 23 O. R. 474, no longer applicable to the present Act owing to changes in the statute.

**PRINTED FOR SALE.**—The words "printed for sale" in sec. 2 of The Libel and Slander Act, R. S. O. ch. 71, includes a printed paper issued daily by the conductors of a mercantile agency to persons who are subscribers to the agency, where the subscription to the agency includes the price of the paper. The words are used in contradistinction to sheets that are printed for gratuitous circulation, as hand-bills. Slattery v. R. G. Dun & Co., 18 P. R. 168.

**PRINTING.**—Printing and publishing a book from stereotype plates imported into Canada is a sufficient "printing" within the meaning of the Copyright Act, R. S. C. ch. 80, although no typographical work is done in Canada. Frowde v. Parrish, 27 O. R. 526; 23 A. R. 728.

**PRIOR MORTGAGE.**—The term "prior mortgage" in sec. 8 (3) of the Mechanics' and Wage Earners' Lien Act, R. S. O. ch. 140, refers to priority in point of time and not registration. It means a mortgage existing as a fact before the lien arises, although registered subsequently. Cook v. Belshaw, 23 O. R. 545.

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**PRIOR USER.**—"Prior user," under The Trade Mark and Design Act, R. S. C. ch. 71, means user before adoption by the registrant, not before registration. Smith v. Fair, 14 O. R. 729.

Prior user can be given in evidence to invalidate a trade mark. Partlo v. Todd, 12 O. R. 171; 14 A. R. 444; 17 S. C. R. 196; McCall v. Theal, 28 Gr. 48.

**PRISON.**—Prison includes any penitentiary, common gaol, public or reformatory prison, lock-up, guard room or other place in which persons charged with the commission of offences are usually kept or detained in custody. Criminal Code, sec. 2 (30).

Where a person has been committed to an insane asylum after an acquittal of a crime on the ground of insanity, the asylum is a "prison" within sec. 192 of the Criminal Code. R. v. Trapnell, (1910), 22 O. L. R. 219; 17 C. C. C. 346.

A Dominion Act establishing a Boys' Industrial Home as a prison is not *ultra vires*. Ex p. the Attorney-General, In re Goodspeed, 36 N. B. R. 91.

**PRISONER.**—See Curry v. Turner, 3 P. R. 144.

*V.* ARREST.

**PRIVATE PERSON.**—A corporation is not a "private person" suing on his own behalf, within the meaning of sec. 135 (6) of the Ontario Companies Act, R. S. O. ch. 178, and cannot, for the purpose of recovering penalties, be a common informer. Guy Major Co. v. Canadian Flaxhills, Limited, 3 O. W. N. 1058.

**PRIVATE PROSECUTOR.**—*V.* PROSECUTOR.

**PRIVILEGE.**—An equity of redemption in lands is not a "privilege" within the meaning of that word in sec. 421 of the Criminal Code. That section covers the case of any "sale, grant, mortgage, hypothec, privilege or incumbrance," but an equity of redemption, in Ontario, is not embraced in any of these words. It would come within the words "right or interest." R. v. McDevitt (1910), 22 O. L. R. 490; 17 C. C. C. 331.

The "privilege" mentioned in Art. 2383 of the Civil Code applies not to the one who has made the last repairs to the ship, but to the one who has repaired her for the last voyage. St Aubin v. S.S. "Canada," 13 Exch. C. R. 463.

**PRIVITY AND CONSENT.**—Mere knowledge that work is being done on the property is not "privity and consent" within the

meaning of the term in sec. 2 (*c*) of the Mechanics' and Wage-Earners' Lien Act. Something more is required than the landlord's quiescence or acquiescence while the building is being erected. The privity and assent must be in pursuance of an agreement. Graham v. Williams, 8 O. R. 478; 9 O. R. 458.

There must be a request, either express or implied, from the person whose interest is to be charged, in order to create the "privity and consent." Gearing v. Robinson, 27 A. R. 364.

**PRIZE FIGHT.**—Prize fight means an encounter or fight with fists or hands, between two persons who have met for such purpose by previous arrangement made by or for them. Crim. Code, sec. 2 (3).

The fight must be for a prize or a stake. Steele v. Maber, 6 C. C. C. p. 450. See also note to R. v. Littlejohn, 8 C. C. C. p. 217. *Per contra*, 17 C. C. C. p. 255, *per* Snider, C.J., and R. v. Pelkey, *post*.

A boxing or sparring match—if it is an honest and friendly contest with gloves, fairly conducted—does not fall within the definition. R. v. Littlejohn, 8 C. C. C. 212.

If, however, the parties meet intending to fight until one gives in from exhaustion or from injury received, it is a fight, whether or not with gloves. R. v. Wildfong, 17 C. C. C. 251. In this case a boxing exhibition of ten rounds, with six-ounce gloves, where there was no prize, but one of the contestants received a sum of money, was held not to be a prize fight. See also R. v. Fitzgerald, 19 C. C. C. 145.

In the above definition "encounter" and "fight" are synonymous. R. v. Fitzgerald, *supra*.

The absence or presence of a prize has no significance whatever. Nor is it essential that the fight should be pre-arranged or that the participants intend to fight, or do fight, until one is exhausted. "Encounter or fight" do not mean "either an encounter or fight," but rather an "encounter of the nature of a fight or that could be designated as a fight." R. v. Pelkey, 24 W. L. R. 804; 21 C. C. C. 387.

**PROCEEDING.**—"Proceeding" means in all cases the performance of an act, and is wholly distinct from any consideration of an abstract right. It is an act necessary to be done in order to attain a given end; it is the prescribed mode of action for carrying into effect a legal right, and so far from involving any consideration or determination of the right pre-supposes its existence. Neil v. Almond, 29 O. R. p. 69.

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"Legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is, or may be, given; and includes an arbitration. It does not include the act of taking possession on the part of a lessor by his bailiff. Re Tucker and Armour, 4 W. L. R. 394.

A proceeding, within the meaning of 8 Edw. VII., ch. 12, secs. 1, 2 (Man.) must be one in the nature of an action, "a proceeding in which a lis is initiated." It does not mean a motion or step in a cause which has already been commenced. The words "actions or proceedings" in sec. 2 have the same meaning as they have in sec. 1, viz., an action or something in the nature of an action, *e.g.*, an application for prohibition or to set aside an award. "Proceeding" does not include an application for an interlocutory injunction. Traders' Bank v. Wright, 8 W. L. R. 747.

Taking steps to sell lands under a writ of *fi. fa.* is a proceeding. Neil v. Almond, 29 O. R. 69.

An appeal from an order dismissing a motion to set aside an award is a proceeding in Court, but is not a "proceeding for the same cause" within the meaning of former Con. Rule 1243. Caughell v. Brower, 17 P. R. 438.

An advertisement for the sale of land is a proceeding within the words "no further proceeding" in section 29 of the Mortgages Act, R. S. O. ch. 112. Smith v. Brown, 20 O. R. 165.

A writ of revivor or suggestion entered upon the roll. Casper v. Keachie, 41 U. C. R. 599.

An interpleader issue to determine the rights of the claimant as against a chattel mortgagee, is a proceeding within sec. 13 (3) of the Assignments and Preferences Act. Cole v. Porteous, 19 A. R. 111. Under a similar provision in the Nova Scotia Act a levy by the sheriff on the mortgaged goods was held an "action or proceeding" taken to set aside the mortgage. The Shediac Boot and Shoe Co. v. Buchanan, 35 N. S. R. 511.

A third-party notice is a proceeding. Montgomery v. Saginaw Lumber Co. (1906), 12 O. L. R. 144.

An application for a writ of prohibition to restrain an Extradition Commissioner from holding an inquiry upon a demand for extradition for larceny is a "proceeding arising out of a criminal charge" within sec. 36 of the Supreme Court Act. Re Gaynor and Greene, 10 C. C. C. 21.

An application for an injunction made pending an appeal is a "further proceeding" within Con. Rule 829 (now 498). Embree v. McCurdy, 9 O. W. R. 961; 14 O. L. R. 284.

An exercise of a power of sale under a mortgage is a "proceeding" within R. S. O. 1897, ch. 133, sec. 23 (see now the

Limitations Act, R. S. O. ch. 75, secs. 2 (a) and 24). McDonald v. Grundy (1904), 8 O. L. R. 113.

A motion to change a venue is not a proceeding in the Court. Bingham v. Mackenzie, 10 P. R. 406.

Under the former practice it was held that a transcript from a Division Court to the County Court was not a proceeding. Paxton v. Jones, 19 A. R. 163.

The ruling by a magistrate as to the admissibility of evidence is not a proceeding within section 1014 of the Criminal Code. R. v. Dominion Bowling and Athletic Club, 15 C. C. C. 105. See also Meloche v. Reaume, 34 U. C. R. 606; Ross v. Farewell, 5 C. P. 101.

A defence filed by a lien-holder within the period mentioned in the Mechanics Lien Act is not a proceeding "to realize the claim." McNamara v. Kirkland, 18 A. R. 271.

Filing a caveat against the proof of a will is not a proceeding to set aside a will. Re McDevitt, 5 O. W. N. 333.

A motion to restrain a mortgagee from selling lands mortgaged by a company which was being liquidated under a winding-up order was refused on the ground that the sale proceeding was not a "proceeding" within secs. 22, 23 of the Dominion Winding-up Act. Re British Columbia Tie Co., 9 W. L. R. 495.

An examination ordered by a Judge to be taken before the Registrar of the Court ceases to be a "judicial proceeding" as defined by sec. 171 (2) of the Criminal Code, when the Registrar, after administering the oath, leaves the room and the examination is proceeded with in his absence. R. v. Rulofson, 9 W. L. R. 197.

The word "proceeding" in the Real Property Limitations Act, (R. S. Man. 1902, sec. 24), applies to proceedings to recover money charged upon or payable out of land, even though such proceedings are not in the nature of an action or suit. Royce v. Municipality of Macdonald, 12 W. L. R. 347.

A prosecution of the accused on a charge of unlawfully resisting an official trustee of a school district in making a distress is a proceeding within sec. 2 of the Canada Evidence Act. R. v. Rapay, 5 Terr. L. R. 367.

**PROCEEDS.**—A testator directed his trustees to sell his lands and invest the proceeds, and that the "proceeds" of the investment should be paid to named persons. It was held that the word "proceeds" should be construed as income, that being the obvious intention. Re Ley, 21 W. L. R. 757; 5 D. L. R. 1.

In a similar case in Nova Scotia the Supreme Court placed a similar construction on the word "proceeds." Chubbock v. Murray, 30 N. S. R. 23; 33 C. L. J. 538.

FACULTÉ DE DROIT

The gift of the "proceeds of a farm" for life, gives an estate for life in the farm where there is a devise over. Brennan v. Brennan, 6 O. S. 92; Moore v. Power, 8 C. P. 109; Casselman v. Hersey, 32 U. C. R. 333.

Where the vendors of a machine retake possession thereof and sell it under a contract authorizing them to sell on time "crediting the net proceeds of such re-sale," "proceeds" do not include notes taken from the purchaser and not yet due. "The mere fact that the purchaser has given a promise to pay cannot be considered proceeds." Canadian Port Huron Co. v. Fairchild, 14 W. L. R. 525.

V. All the Proceeds.

**PROCESS.**—"Process" is the mandate of a Court to its officer commanding him to perform certain services within his official cognizance. In its broader sense, it comprehends the whole proceeding after the original writ and therefore embraces all mandates of the Court which may be necessary to carry on an action, and to execute the judgment of the Court.

An order made by a Judge for commitment of a party to an action for default of attendance on an examination as a judgment debtor, is "process" within sec. 2 of the Ontario Habeas Corpus Act, R. S. O. ch. 84. Re Anderson v. Vanstone, 16 P. R. 243.

**PROCURE.**—In criminal law to "procure" is to initiate a proceeding to cause a thing to be done, to bring about, effect or cause.

A conviction for procuring a revolver with intent, etc., is bad, as "procure" does not mean personal use and handling of the weapon. R. v. Mines, 25 O. R. 577; 1 C. C. C. 217.

**PRODUCTS OF THE FOREST.**—"Products of the forest" in sec. 88 the Bank Act, R. S. C. ch. 29, covers sawn lumber. The Act is not intended to limit the use of the word "products" to things in a state of nature, but to include those to which some labour has been applied. Townsend v. Northern Crown Bank (1912), 26 O. L. R. 291; 27 O. L. R. 479; 28 O. L. R. 521; 49 S. C. R. 394. The judgment in Molsons Bank v. Beaudry, Q. R. 11 K. B. 212, was not followed.

**PROFIT—PROFITS.**—The word "profit" or "profits" is not wholly unambiguous. The primary meaning is benefit or advantage, and that meaning is found very frequently indeed. There is no single definition of the word "profits" which will fit all cases. Galbraith v. McDougall, 4 O. W. N. p. 923.

Profits are the net gains or earnings; and the terms "gross" and "net" profits may be properly applied where out of the whole profits certain payments or deductions are to be made, and what remains only to be treated as profits to be divided, "divisible" profits or surplus, as ordinarily termed by insurance companies. Bain v. Aetna Life Insc. Co., 21 O. R. 233.

The word "profits" in sec. 6 of the Limitations Act, R. S. O. ch. 75, is not restricted to a periodical return from the land, though that is its most ordinary signification. In its wider sense it means any advantage, any accession of good from labour or exertion. Where an owner of land permitted another to occupy it upon an agreement that the occupant should make improvements in lieu of rent, it was held that the improvements so made were "profits" within the statute. Workman v. Robb, 7 A. R. 389.

So where the owner put his cattle on land, the pasture which the cattle ate was held to be "profits." Dennie v. Frame, 29 O. R. 586.

The word "profits" as used in sec. 2 (b) of the Married Woman's Property Act (Man.) covers gains arising from a combination of skill or work with the earning property or capital, as well as those arising only from investments without such combination. Douglas v. Fraser, 17 Man. R. 439; 40 S. C. R. 384.

**PROLIXITY.**—In pleading "prolixity" means and includes diffuse, extended and immaterial allegations. It may also include a paragraph or a pleading that conveys no clearly intelligible meaning. Maclean v. Kingdon Printing Co., 9 W. L. R. 370.

**PROMISE OF MARRIAGE.**—*V.* MATERIAL EVIDENCE—UNDER PROMISE OF MARRIAGE.

**PRONOUNCED.**—Where an opinion or decision is not pronounced in open Court, it cannot be said to be pronounced or delivered until the parties are notified of it. Fawkes v. Swayzie, 31 O. R. 256; approved of in Maxon v. Irwin (1907), 15 O. L. R. 81, and Allan v. Place, 15 O. L. R. 148.

**PROPELLED.**—See Cumberland Railway & Coal Co. v. St. John Pilot Commissioners, 1 E. L. R. 397.

**PROPER OUTLET.**—*V.* OUTLET.

**PROPERTY.**—In The Conveyancing and Law of Property Act, R. S. O. ch. 109, the term "property" includes real and personal property, and any debt, and anything in action, and any other right or interest. Sec. 2 (g).

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For the extensive meaning given to "property" in criminal law see sec. 2 (32) of the Criminal Code.

"Property" is the most comprehensive of all terms which can be used inasmuch as it is indicative and descriptive of every possible interest which the party can have. In construing wills only a very clear context, leaving no room to doubt the testator's intention to restrict its meaning, is permitted to deprive this word of its comprehensiveness. In re Cohen (1904), 8 O. L. R. p. 150; 8 C. C. C. 251.

"Property" in sec. 236 of the Criminal Code as to lotteries, is not confined to any specific article. It will constitute an offence where the winner obtains only the privilege of choosing from certain prizes offered. R. v. Lorrain, 28 O. R. 123; 2 C. C. C. 144.

The term "money and property" in the Married Women's Property Act (Man.) are *ejusdem generis* with "wages and earnings." Douglas v. Fraser, 6 W. L. R. 244; 7 W. L. R. 584; 17 Man. R. 439.

In an assignment under the Assignments Act (Man.) it was held that the word "property" would not cover a mere right of action for damages in an action of deceit. McGregor v. Campbell, 19 Man. R. 38; 11 W. L. R. 153. And see McCormack v. Toronto Railway Co. (1906), 13 O. L. R. 656, where a claim for damages for personal injuries was held not assignable.

By agreement the city had an option of purchasing "the works, plant, appliances and property of the company used for light, heat and power purposes." *Held*, the word "property" meant only the tangible and not intangible property, such as the franchise or goodwill of the company. Re Kingston Arbitration (1902), 3 O. L. R. 637; 5 O. L. R. 348.

Standing timber was held not to be property within the meaning of sec. 166 of the Ontario Insurance Act, R. S. O. 1897. Canadian Pacific Ry. v. Ottawa Fire Insc. Co. (1905), 9 O. L. R. 493; 11 O. L. R. 465. See now sec. 191, R. S. O. ch. 183.

A right, under a will, to maintenance and support to be had on the testator's farm, and to be in lieu of dower, is not "property" that can be sold, mortgaged or conveyed. Inspector of Prisons v. Macdonald, 2 O. W. N. 289.

Nor could such an interest be sold under execution, or reached by equitable execution. Fisken v. Brooke, 4 A. R. 8, overruling Buchanan v. Brooke, 24 Gr. 585.

A judgment debt is "property" within the meaning of Con. Rule 1129 (now Con. Rule, 1913, No. 689). Orford v. Fleming, 18 C. L. T. 142.

The contingent right of a railway to exercise its franchise after the term limited by the agreement is not "property" to be

valued by arbitrators. In re Toronto and Toronto Street Ry. Co., 20 A. R. 125; (1893) A. C. 511.

Where a provincial Act of Parliament legislates with reference to property, there is, in the absence of any clear context, a reference exclusively to property governed by provincial law. Re Renfrew, 29 O. R. 565.

"Property" or "estate" includes land. Cameron v. Harper, 21 S. C. R. 273; Hargan v. Britzginger, 16 O. R. 28.

The word "property" in its natural sense, and apart from any context, means the totality of all that a testator owns, whatever its nature and wherever its situation. Cotton v. The King, 45 S. C. R. 469; 1914, A. C., p. 188.

**PROPRIETARY CLUB.**—A proprietary club, within the meaning of the Municipal Act, is a club the members of which, or some of them, are not shareholders of the club, or in some similar manner interested in its property. Mun. Act, 1913, sec. 420 (1).

An incorporated club, all the members of which are shareholders, and no person other than members permitted to use the club premises, is not a "proprietary club" within the above Act. R. v. Dominion Bowling and Athletic Club (1909), 19 O. L. R. 107; 15 C. C. C. 105.

**PROPRIETARY INTEREST.**—The wages, earnings, money and property gained by a married woman in any employment, trade or occupation in which she is engaged or which she carries on, and in which her husband has no "proprietary interest" is her separate property. The Married Women's Property Act, R. S. O. ch. 149, sec. 7.

The meaning of the expression "proprietary interest" is not defined. It is not employed in any technical or limited sense. It signifies simply "interest as an owner," or "legal right or title." Where a married woman rents a farm and employs her husband to work it, he has no "proprietary interest" in the crops. Cooney v. Sheppard, 23 A. R. 4, where the difference between the Ontario and Manitoba Acts is pointed out.

This section puts it beyond question that earnings are separate estate. Robertson v. Laroque, 18 O. R. 469.

A woman who owns a farm may employ her husband to work it and the profits will be her separate estate. Baby v. Ross, 14 P. R. 440; Moose Mountain Co. v. Hunter, 3 Sask. R. 89; 13 W. L. R. 561.

But the husband has a "proprietary interest" in the wife's earnings in connection with his property by letting lodgings and supplying meals to lodgers. Young v. Ward, 24 A. R. 147, reversing 27 O. R. 423.

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Where the wife carries on a farming business and owns the stock, the fact that at one time the husband gave a chattel mortgage on the stock with her consent does not estop the wife from shewing the real ownership. Simpson v. Dominion Bank, 19 Man. R. 246.

Land conveyed by a husband to his wife, the husband being then solvent, is her separate estate, and neither the land nor the proceeds can be taken in execution for the husband's debts. Douglas v. Fraser, 17 Man. R. 439; 40 S. C. R. 384; Trotter v. Chambers, 2 O. R. 515.

**PROPRIETOR.**—Within the meaning of The Railway Act, see Brown v. Grand Trunk Ry., 24 U. C. R. 350; Conway v. Canadian Pacific Ry., 7 O. R. 673; 12 A. R. 708. Within the meaning of the Builders and Workmen's Act (Man.) see Bryson v. Municipality of Rosser, 10 W. L. R. 317; 18 Man. R. 658.

**PRO RATA.**—Pro rata has no other meaning than "in proportion." Where the residue of an estate is directed to be divided *pro rata* among prior legatees they take such residue in proportion to the amount of their prior legacies. Kennedy v. Protestant Orphans' Home, 25 O. R. 235.

**PROSECUTE.**—*V.* Effectually Prosecute.

**PROSECUTION.**—The "prosecution" of a person charged with an offence commences with the sworn information, and includes proceedings before a justice of the peace as well as before a higher court. R. v. Meyer, 11 P. R. 477.

An inquiry by the Medical Council of the Ontario College of Physicians and Surgeons into a charge of professional misconduct, is not a prosecution within the meaning of sec. 56 of the Ontario Medical Act. Re Stinson and College of Physicians, 22 O. L. R. 627; 18 C. C. C. 396.

**PROSECUTOR.**—As applied to the Province of Ontario the expression "prosecutor" means the Crown where the prosecution is conducted at the trial by the law officers of the Crown or the Crown Attorney, and means private prosecutor where the prosecution is conducted by or on his behalf. R. v. Fraser, 5 O. W. N. 938.

**PROSPECTUS.**—In The Ontario Companies Act, R. S. O. ch. 178, "prospectus" means any notice, circular, advertisement or other invitation offering for subscription or purchase any shares, debentures, debenture stock or other securities of a company, or

published or issued for the purpose of being used to promote or aid in the subscription or purchase of such shares, debentures, debenture stock or securities. Sec. 99 (b).

An advertisement giving particulars about the organization of an incorporated company, the mining lands owned by and the operations of the company, and stating that shares were for sale at a named price, is a "prospectus" within the meaning of the above section. R. v. Garvin (1909), 18 O. L. R. 49; 14 C. C. C. 283.

**PROTEST.**—As applied to mining lands; see Graves v. McDonnell, 3 W. L. R. 329.

**PROTESTANT CHARITABLE INSTITUTIONS.**—A residue of an estate was given to "Protestant charitable institutions." *Per* Armour, C.J.: "The word 'Protestant,' as here used, is, in my opinion, referable as well to the objects of the charitable institutions as to their government. And I call 'Protestant charitable institutions' such charitable institutions as are managed and controlled exclusively by Protestants and are designed for the bestowal of charity upon Protestants alone." *Held*, the House of Refuge for the poor of a county was not within the gift. Manning v. Robinson, 29 O. R. 483.

**PROVIDED.**—The word "provided" though an appropriate word to constitute a common law condition, does not invariably and of necessity do so; on the contrary, it may give way to the intent of the party as gathered from an examination of the whole instrument and be taken as expressing a limitation on trust.

Where a patent of lands contained the clause "provided always and this grant is subject to the following conditions." *Held*, these words did not create a condition annexed to the estate granted, but a trust was created as if the words used had been "upon the following trusts." Kennedy v. City of Toronto, 12 O. R. 211.

"Provided," in a statute, was held to constitute a condition precedent to the exercise of a borrowing power: to be synonymous with "if," "when," and "as soon as." Hart v. City of Halifax, 35 N. S. R. 1.

**PROVINCIAL FRONTIER.**—The words "Provincial frontier" in 20 Vic., ch. 7, refer to the Provincial frontier opposite the United States, and not to the boundary line of division between Upper Canada and Lower Canada. Smith v. Ratte, 13 Gr. 696.

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**PROVINCIAL OBJECTS.**—The term "Provincial objects" in the B. N. A. Act, sec. 92 (11) refers to local objects which are common to all provinces in their collective or Dominion quality. Clarke v. Union Fire Insc. Co., 10 P. R. 313; 6 O. R. 223.

The word "Provincial" in sub-sec. 14 of sec. 92, is to be read in its political, and not in its geographical sense. Keefer v. Todd, 7 C. L. T. 98.

The question is very fully discussed, and several conflicting opinions expressed, in the recent judgment in the matter of the Incorporation of Companies in Canada, 48 S. C. R. 331.

**PUBLIC DOCUMENT.**—Section 26 of The Evidence Act, R. S. O. ch. 76, provides for the proof of "any official or public document" by a certified copy.

A fence viewer's award is a public document within the statute. Warren v. Deslippes, 33 U. C. R. 59.

Entries found in corporation books are not admissible in evidence, but only entries which are of a public nature. The corporation books are not public books for all purposes. *Ib.* 63.

A register of votes at a Parliamentary election, made under a statute, was held to be a public document. *Ib.* 65.

Where a document in the possession of the Crown is of such an age that upon production it would prove itself, a certified copy by the Clerk of the Executive Council is within the Act. A petition to the Crown for a grant of land was held a "public document." Montgomery v. Graham, 31 U. C. R. 57.

A copy of a book within the statute certified by "A. Russell, Acting Surveyor-General," the original of which was proved to be in the Department of the Interior, in the Lands Office, at Ottawa, was held not sufficient evidence without proof that A. Russell was the officer in whose custody the original had been entrusted. McKilligan v. Machar, 3 Man. R. 418.

**PUBLIC HARBOURS.**—By sec. 108 and the 3rd schedule of the B. N. A. Act, "public harbours" are the property of Canada. This includes not only public works but also all that forms part of the harbour. Provincial legislation assuming to grant water lots in any such harbour is invalid. Attorney-General for Canada v. Attorney-General for Ontario (1898), A. C. 700.

It does not follow that because the foreshore on the margin of a harbour is Crown property, it necessarily forms a part of the harbour. It may or may not do so, according to circumstances. If, for example, it had actually been used for harbour purposes, such as anchoring ships or landing goods, it would, no doubt, form a part of the harbour. *Ib.* 712; Holman v. Green, 6 S. C. R. 707.

The Dominion may grant the foreshores to a railway company. Vancouver v. Canadian Pacific Ry., 23 S. C. R. 1; 2 B. C. R. 306.

The term "public harbours" means harbours which the public have the right to use, and is not confined to artificial harbours constructed by an outlay of money. Holman v. Green, *supra*.

A small bay in Lake Simcoe, at which there was a wharf, where, with the permission of the owner, vessels used to call, but no mooring ground and little shelter, was held not to be a public harbour. McDonald v. Lake Simcoe Ice Co., 29 O. R. 247; 26 A. R. 411.

"The essential quality of a harbour is shelter for vessels and craft navigating the sea or the lakes. It is a place where they may lie in safety from storm and tempest. I cannot think Parliament meant to include in this expression every little bay where the owner of the adjacent shore had erected a wharf as a place of call for passing vessels." *Ib.* 422, *per* Maclennan, J.A.

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**PUBLIC HOSPITAL.**—The words "public hospital" as used in sec. 5 (5) of the Assessment Act, are not technical; they have acquired by judicial decisions no precise legal meaning; they are words of common use, and to be interpreted as they are commonly understood. They are not used as indicative of a hospital under public, in the sense of Governmental or municipal control, but rather to designate a hospital that is public in the sense of its being open to all, although the patients pay for accommodation.

A hospital, the property of private individuals, who received the profits derived from it, but was open to the general public on terms and subject to the supervision of the Government, was *held* to be a "public hospital" and entitled to exemption from taxation. Struthers v. Town of Sudbury, 30 O. R. 116; 27 A. R. 217.

**PUBLIC LANDS.**—See Attorney-General of British Columbia v. Attorney-General of Canada, 14 S. C. R. 345; 14 A. C. (1889), 295.

**PUBLIC PLACE.**—A public place means a place to which the public have access only upon payment for admission, *e.g.*, a theatre. Ex p. Ashley, 8 C. C. C. 328.

A restaurant, open to the public, is not a public place within the meaning of sec. 238 (f) of the Criminal Code. R. v. Mercier, 6 C. C. C. 44.

But a licensed saloon and billiard hall was *held* to be a public place within the Code. R. v. Kearney, 6 W. L. R. 140; 12 C. C. C. 349.

An hotel is not a public place within the meaning of sec. 141 of the Liquor License Act, providing that in a municipality where local option is in force it is an offence for a person to be found intoxicated "upon a street or in any public place." R. v. Cook (1912), 27 O. L. R. 406.

Putting up three out of four notices in one village in a large township, and the fourth notice within a mile of the same village, where there are other villages in the township where they could be put up, is not a compliance with a statute requiring a copy of the by-law to be put up at "four or more of the most public places." Re Mace and County of Frontenac, 42 U. C. R. 70.

**PUBLIC SECURITIES.**—A direction by a testator to invest his estate in "public securities" is not complied with by investing in municipal debentures. Public securities must be construed as meaning Government securities. Ewart v. Gordon, 13 Gr. 40.

**PUBLIC WORK.**—Section 20 (c) of the Exchequer Court Act, R. S. C. ch. 140, gives the Exchequer Court jurisdiction in "every claim against the Crown arising out of any death or injury . . . . on any public work."

A rifle range under the control of the Department of Militia is not a "public work" within the Act. Larose v. The King, 6 Exch. C. R. 425; 31 S. C. R. 206.

A portion of the Grand Trunk railway, over which the Government had running rights with the Intercolonial Railway, constitutes such portion a public work. The King ats. Lefrancois, 40 S. C. R. 431; 5 E. L. R. 268.

The words "on any public work" are descriptive of locality, and to make the Crown liable for injury to property such property must be situated on the work when injured. Chamberlain v. The King, 7 E. L. R. 349; 42 S. C. R. 350.

A navigable river, although under the control of the Government, is not a public work. Paul v. The King, 38 S. C. R. 126.

A post office building is a public work, as well as railways and canals and such other public undertakings in Canada as in older countries are usually left to private enterprises. Leprohon v. The Queen, 4 Exch. C. R. 100.

**PUBLICATION.**—An award is "published" (for the purpose of regulating the time of or an application to set it aside) when the parties have notice that it may be had on payment of the charges. It is not needful that they should have notice of the contents. Redick v. Skelton, 18 O. R. 100.

When "publication" relates to the completion of the award, so far as the arbitrator is concerned, it means the execution of

the award in the presence of a witness, or by any other act of shewing the final mind of the arbitrator, upon which he becomes *functus officio*. Huyck v. Wilson, 18 P. R. 44.

In the local improvement sections of the Municipal Act, R. S. O. ch. 193, sec. 2 (s) "publication" and "published" mean insertion in a newspaper published in the municipality, or if none, then in a newspaper published in the county.

**PURCHASER.**—In the Conveyancing and Law of Property Act, R. S. O. ch. 109, "purchaser" includes a lessee, a mortgagee, and an intending purchaser, or other person, who, for valuable consideration takes or deals for any property, and "purchase" has a corresponding meaning.

A judgment creditor is not a purchaser within the meaning of the Statute 27 Elizabeth, ch. 4. Goodwin v. Williams, 5 Gr. 539; Gillespie v. Van Egmont, 6 Gr. 533.

A pre-existing debt is a sufficient consideration to bring a purchaser within the definition of a "purchaser for value," and to entitle him to the protection afforded to such purchasers. Williams v. Leonard, 16 P. R. 544; 17 P. R. 73; 26 S. C. R. 406; Swift v. Tyson, 16 Peters, 1.

**PURELY MONEY DEMAND.**—A claim for a loss under a policy of fire insurance is a "purely money demand." Bank of Hamilton v. Western Assurance Co., 38 U. C. R. 609. Or a claim on an interim receipt. Kelly v. Isolated Risk Insc. Co., 26 C. P. 299.

A claim by one partner against a co-partner for contribution is not a purely money demand. Hope v. Ferris, 30 C. P. 520; or a claim against an executor for a legacy where assets are not admitted. Soules v. Soules, 35 U. C. R. 334; or a claim for damages for breach of a covenant for title. Kavanagh v. City of Kingston, 39 U. C. R. 415; or to reform a lease and for damages for breach of covenant. Gowanlock v. Mans, 9 P. R. 270.

**PURPORT.**—The purport of a document is the ordinary construction of the document, according to customary mode of using language. R. v. Hamilton, 12 Man. R. 354; 2 C. C. C. 390.

V. According to the Tenor.

**PURPOSES.**—The plaintiffs by their Act of incorporation were exempt from taxation so long as their premises were "occupied by and used for the *purposes* of the association." *Held*, that using a part of the buildings for sleeping accommodation for the members was within the word "purposes." "I see no reason for holding that the phrase 'for the purposes' means the same as 'in the furtherance of the object,' or 'for the work.' There is no case

that I can find which restricts the meaning of 'purposes;' while such cases as Inveraity v. County Council of Forfarshire (1904), 41 Sc. L. R. 434, affirmed in (1906) A. C. 354, shew how far the meaning of the word may extend. In the ordinary acceptation of the word, anything done for or by a corporation in the interest of the corporation is done for the purposes of the corporation; and I do not think the meaning here is more restricted." Riddell, J. Ottawa Y. M. C. A. v. City of Ottawa (1910), 20 O. L. R. 567.

V. USE AND OCCUPATION.

**PURSUANT TO THIS ACT.**—V. ANYTHING DONE UNDER THIS ACT.

**QUALITY.**—V. GOOD CONDITION.

**QUART.**—Whether there was or was not a sale of less than one quart of liquor within the meaning of the Liquor License Act depends upon the intention of the parties, and the circumstances of the particular case. Where a person brought a three-gallon keg to the defendant's hotel and bought less than a quart, which was put into the keg, and this repeated until the keg was filled, it was held to be a sale of three gallons and not of a quart at a time. R. v. Lamphier (1908), 17 O. L. R. 244.

Where two persons went into a hotel and asked for four bottles of beer and were told, "I can't sell you four, I can sell you one each." They bought one each, went out and came back and each bought a bottle as before. *Held* there were two sales, but "it was sailing close to the wind." R. v. Trainer, 2 O. W. N. 398; see also R. v. Cunerty, 2 C. C. C. 325.

**QUARTER.**—A patent issued for the "north westerly quarter" of a 200 acre lot, the side lines of which ran N. 45° W., and S. 45° E. *Held*, this covered fifty acres, extending half the depth and half the width of the whole lot, not fifty acres extending one-fourth of the depth of the whole width. "The reasonable and usual understanding, when the quarter of a lot is referred to by the points of the compass, is that the whole lot is divided into four quarters, preserving the original form of the lot, but apportioning the quarters according to those points of the compass which will correspond with that expressed in the description." Davis v. McPherson, 33 U. C. R. 376.

**QUARANTINE.**—The right of a widow to "quarantine" is thus stated in an old authority: Quarantine is where a man dyeth seized of a manor-place and other lands, whereof the wife ought to be endowed; then the woman may abide in the manor-place and

there live of the store and profits thereof the space of forty days, within which time her dower shall be assigned. In re Bennett, 11 C. L. T. 305. See also sec. 2 of The Dower Act. R. S. O. ch. 70.

It is a right to reside in the dwelling house concurrently with the heir, and to receive her reasonable maintenance during forty days after her husband's death; but she is not entitled to possess any portion of the premises beyond the dwelling-house. Callaghan v. Callaghan, 1 C. P. 348.

Quarantine is not merely a personal right. The widow is entitled to have a reasonable and proper attendance and companionship. But if the widow marry within the forty days she loses her quarantine. Lucas v. Knox, 3 O. R. 453.

On the administration of an estate the widow claimed to be relieved from accounting for certain quantities of wheat, potatoes, pork, apples, pickles, preserves and firewood—all of the value of $31.58—used by her for her maintenance on the farm of the testator during the forty days, and it was *held* she was not chargeable therewith. In re Bennett, *supra*.

The term is also used to designate a period of time (theoretically forty days) during which a vessel, coming from a place where a contagious disease is prevalent, is detained by authority in the harbour of her port, or at a station near it, without being permitted to land or discharge passengers or crew.

**QUESTION OF LAW.**—The order in which counsel are entitled to address the jury at the close of the evidence is not a "question of law" proper to be reserved for the opinion of a Court of Appeal under sec. 489 of the Criminal Code. R. v. Connolly, 1 C. C. C. 468; 22 O. R. 220.

Whether a prisoner should or should not have been tried by a special jury after such jury had been struck by the Crown, is a "question of law." R. v. Kerr, 26 C. P. 214.

**QUESTIONS INVOLVED IN THE ACTION.**—See Adams v. the Watson Mfg. Co., 15 O. R. 218; 16 A. R. 2.

**RACE.**—"Race" and "origin" are not synonymous. Where a statute authorized the regulation of the immigration of persons of the "Asiatic race" by orders-in-Council, such an order purporting to regulate the immigration of persons of "Asiatic origin" was held to be ultra vires, the latter term being wide enough to include persons of the British race born in Asia. Re Thirty-nine Hindus, 26 W. L. R. 319 (B.C.)

**RAFTS.**—The word "rafts" in sec. 398 (25) of the Mun. Act, 1913, includes lumber and sawlogs coming into a harbour. Bogart v. Town of Belleville, 6 C. P. 425.

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**RAILWAY.**—A temporary railway laid down by a contractor for construction work is a "railway" within sec. 3 (e) of the Workmen's Compensation for Injuries Act, R. S. O. ch. 146. Dicarllo v. McLean, 4 O. W. N. 1444.

The Act applies to railways operated under the Railway Act of the Dominion. Canada Southern Ry. Co. v. Jackson, 17 S. C. R. 316.

A hoist for lifting and carrying heavy weights and running on rails is an engine or machine upon a railway or tramway. Dunlop v. Canada Foundry Co. (1912), 28 O. L. R. 140; and see McLaughlin v. Ontario Iron & Steel Co. (1910), 20 O. L. R. 335.

A policy insured lumber against loss by fire and contained a warranty "that no railway passes through the lot," and it was held that a railway partly constructed and hauling freight only was a "railway" within the meaning of the warranty. Guimond v. The Fidelity Phoenix Fire Insc. Co., 47 S. C. R. 216.

It was held that the word "railway" as used in item 173 of the Tariff Act of 1887 did not include street railways. Toronto Ry. Co. v. The Queen, 4 Exch. C. R. 262; 25 S. C. R. 24.

**RAILWAY STATION.**—In a contract "railway station" means a station house, an erection of some kind, a place for the taking up and letting down of passengers. Carroll v. Casemore, 20 Gr. 16.

**REAL ESTATE.**—The words "real estate" do not, as a general thing, include leasehold—nor do they include the beneficial interest which a mortgagee has—nor do they include land which a testator has by agreement contracted to sell although the purchase money remains unpaid at the time of his death. Re Snetsinger, 3 O. W. N. 1569.

It does not cover a mortgage representing the price of land sold by a testator in his lifetime. Re Dods (1901), 1 O. L. R. 7.

The former Insolvent Act made provision for selling "the real estate" of the insolvent. *Held*, that a mortgage on real estate was not real estate but a security for a debt. In re Parsons, 4 A. R. 179.

**REAL MATTER IN DISPUTE.**—See Tinning v. Bingham, 16 P. R. 110.

**REASON TO BELIEVE.**—V. Good Reason to Believe.

**REASONABLE.**—As applied to municipal by-laws: see Re McCracken and United Townships of Sherborne, et al. (1911), 23 O. L. R. at p. 100. As applied to restraint of trade, see Allen v. Murphy, 23 O. L. R. 467.

V. Just and Reasonable: as Soon as Possible.

**REASONABLE AND PROBABLE CAUSE.**—Reasonable and probable cause is an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.

There must be:

(1) An honest belief of the accuser in the guilt of the accused;

(2) Such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion;

(3) Such last-mentioned belief must be based upon reasonable grounds;

(4) The circumstances so believed and relied on by the accuser must be such as amount to reasonable grounds for belief in the guilt of the accused. McGill v. Walton, 15 O. R. 389; Longdon v. Bilsky (1910), 22 O. L. R. 4.

Where the accuser has placed all the facts before counsel and has acted upon his advice, this affords reasonable cause. Longdon v. Bilsky, *supra*.

It is the existence of such facts and circumstances as would excite in the mind of a reasonable man a belief of guilt. Webber v. McLeod, 16 O. R. 609; Hetu v. Dixville, Q. R. 16 K. B. 333; 40 S. C. R. 128.

Proof of innocence alone does not make out a *prima facie* case of want of reasonable and probable cause. It must be innocence accompanied by such circumstances as raise the presumption that there was a want of reasonable cause. Hamilton v. Cousineau, 19 A. R. p. 228.

Though reasonable and probable cause may exist at the initiation of a prosecution if the prosecutor subsequently acquires knowledge of the innocence of the accused and still persists, there will be want of reasonable and probable cause. Fancourt v. Heaven (1909), 18 O. L. R. 492.

**REASONABLE DOUBT.**—"What is a reasonable doubt? Is it not a doubt resting in the mind of a reasonable man, a doubt of a reasoning mind, a doubt of the reason? If it is, then the reason has not been convinced, and the fact has not been proven." *Per* Rose, J. United States Express Co. v. Donohoe, 14 O. R. p. 356.

A reasonable doubt is not a mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is "that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that

condition that they cannot feel an abiding conviction, to a moral certainty, of the charge." R. v. Fouquet, 10 C. C. C. p. 268.

The failure of the judge, *ex moro motu*, to direct the jury to give the prisoner the benefit of any reasonable doubt is not good ground for interfering with the verdict. R. v. Riendeau, 3 C. C. C. 293; R. v. Fouquet, 10 C. C. C. 255.

**REASONABLE EXCUSE.**—Section 460 of the Municipal Act, 1913, requires "notice of the claim and of the injury complained of" to be served, in an action against corporations for damages occasioned by a highway being out of repair. By sub-sec. 5, notice is dispensed with if the Court or Judge before whom the action is tried is of the opinion there is "reasonable excuse" for the want of or insufficiency of the notice.

There is a similar provision in the Workmen's Compensation for Injuries Act, and the decisions under this Act have been applied to cases arising under the Municipal Act, although the provisions of the Workmen's Compensation Act probably admit of more elastic administration than does the above section of the Municipal Act.

What may constitute "reasonable excuse" for not giving notice, or giving an insufficient notice, is not defined, and must depend very much upon the circumstances of the particular case. The notoriety of the accident is one element, and the knowledge of the employer, or the municipal officials, of the accident and of a claim being made is another. Armstrong v. The Canada Atlantic Ry. Co. (1902), 4 O. L. R. 560.

A verbal notice would be insufficient, and mere knowledge of the employer of the accident, from any source, is, standing alone, not enough to excuse the want of notice. Where there is actual knowledge or verbal notice, it is an element of the excuse, but something more is required. Nor is the fact of the accident by itself a reasonable excuse for not giving notice, if it is not accompanied by some disabling circumstance, mental or physical. Ignorance of the law is no excuse. O'Connor v. City of Hamilton (1905), 10 O. L. R. 529; Egan v. Township of Saltfleet (1913), 4 O. W. N. 1384; (1913), 29 O. L. R. 116.

But where the accident so disables the plaintiff that he is incapable of considering the situation, except as a sufferer, and the corporation is not prejudiced, that is a "reasonable excuse." Morrison v. City of Toronto (1906), 12 O. L. R. 333; Anderson v. City of Toronto (1908), 15 O. L. R. 643; Lever v. McArthur, 9 B. C. R. 417.

And where the defendants had immediate knowledge of the accident and the injuries of the plaintiff, and were from time to time informing his parents, who were claiming compensation, that

the insurance company had the matter in hand and could do nothing until the plaintiff was dismissed by the medical authorities, this was held a "reasonable excuse." In this case, the Apellate Division seems to have been influenced by the findings of the trial Judge that the defendants deliberately protracted the negotiations for a settlement until the time had expired, and that their conduct was a waiver of the notice. Gower v. Glen Woollen Mills, Ltd. (1913), 28 O. L. R. 193.

But where the defendant had ample time after his recovery to give notice and failed to do so, there was no "reasonable excuse," although the trial Judge found the defendants were not prejudiced. Egan v. Township of Saltfleet (1913), 29 O. L. R. 116.

The notice need not be signed by the claimant—a notice by a solicitor is sufficient. Curle v. Brandon, 15 Man. R. 122; 1 W. L. R. 176; Young v. Township of Bruce (1911), 24 O. L. R. 546.

In City of Kingston v. Drennan, 27 S. C. R. 46, Sedgewick, J., said an Appellate Court would not review the discretion of a trial Judge as to "reasonable cause," but in O'Connor v. City of Hamilton, 8 O. L. R. 391, a Divisional Court did so and reversed the judgment of the trial Judge.

V. NOTICE OF THE ACCIDENT.

**REASONABLE EXPENSES.**—See County of Cape Breton v. McKay, 21 N. S. R. 472; 18 S. C. R. 639.

**REASONABLE PORTION.**—A testator devised his farm to his wife during widowhood, "but, if she should be delivered of a son, I will and bequeath to him the farm, and that my wife and daughters should get a 'reasonable portion' from the farm (or out of the proceeds), if the farm should be sold." A posthumous son was born, and the farm was sold in partition proceedings. Fitzgerald, V.-C. (P. E. Island): "In deciding what would be a 'reasonable portion' to each, I can, I think, but be guided by the Statute of Distributions. I know of no other rule, nor can I put any particular meaning on the word 'reasonable.' If an equal division is reasonable in an intestacy, I presume it would be where no special directions are given." Lacey v. Harrington, 8 E. L. R. 125.

**REASONABLE PRICE.**—The term "reasonable price" in sec. 38 of The Patent Act, R. S. C. ch. 69, means a reasonable price in money. Copeland-Chatterson Co. v. Hatton, 10 Exch. C. R. 224.

**REASONABLE TIME.**—The Creditors' Relief Act, R. S. O. ch. 81, sec. 6, requires a sheriff who levies money under an execution to forthwith make an entry thereof in the proper book. The word forthwith means without delay, and even if equivalent to "within

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a reasonable time," a delay of fifteen days after the sale is not reasonable. Maxwell v. Scarfe, 18 O. R. 529.

Where the effect of an agreement for the sale of land was to give the purchaser a reasonable time to pay the purchase money, it was held that two weeks, in the circumstances of this case, was a reasonable time. Oldfield v. Dickson, 18 O. R. 188.

In the case of a carrier, reasonable time means a time within which the carrier can deliver, using all reasonable exertions. Adams v. Yeager, 10 A. R. p. 493.

On a charge of rape, it was held that where seven days had elapsed between the date of the offence and the time of the girl making the complaint, the evidence of the complaint was admissible. R. v. Riendeau, 10 C. C. C. 293. See, however, R. v. Ingrey, 64 J. P. 106.

Where, in a contract, no time is specified for carrying out the contract, the law implies a reasonable time, having regard to all the circumstances. Where the work to be done requires considerable time, a reasonable time is allowed for commencement. Johnson v. Dunn, 11 B. C. R. 372.

An order was given for a binder in October and not accepted until the following August. *Held*, not a reasonable time. Patterson v. Delorme, 7 Man. R. 594.

Under the Bills of Exchange Act, the obligation of the holder of a cheque to the endorser is to present it for payment "within a reasonable time after the endorsement." The reasonable time is a fact to be determined, having regard to the usages of trade with reference to similar bills, and the facts of the particular case. See sec. 86. Because a cheque is intended for payment and not for circulation, the time allowed for presentation will not be enlarged by transfer or successive transfers. A cheque that might have been presented, in due course, on 30th September, and not presented until 3rd October, was held not to be presented within a reasonable time. Harris Abattoir Co. v. Maybee & Wilson, 5 O. W. N. 896.

A cheque dated 1st October and presented on the 4th, the bank being in the city where the cheque was drawn, held not presented within a reasonable time. Bank of British North America v. Haslip, 5 O. W. N. 684; 30 O. L. R. 299.

A promise, founded on good consideration, to give a "reasonable time" for payment for an indebtedness is not too indefinite. Smith v. Clink, 3 Terr. L. R. 229.

For a valuable collection of American authorities, see article in 20 C. L. J. 203.

See also Carvill v. Schofield, 9 S. C. R. 370; Bulmer v. Brumwell, 13 A. R. 411.

**REASONABLE WEAR AND TEAR.**—The term "reasonable wear and tear" cannot be extended to mean a total loss. In the case of a charter party of a vessel, the loss of an anchor and chain is not within the term. Anglin v. Henderson, 21 U. C. R. 27.

A lease of chattels contained a covenant to restore them "at the expiration of the term in as good order as they are, reasonable wear and tear only excepted." It was held that the exception referred to the order and condition of the goods, so as to exclude bad repair, breakages, etc., not arising from reasonable wear and tear, but did not amount to a guarantee of the continued existence of the goods, and the goods having been destroyed by fire without the lessee's default, he was not liable. Chamberlain v. Trenouth, 23 C. P. 497.

**RE-ASSIGNED.**—See Parsons v. Crabb, 31 U. C. R. 435, 457.

**REBUILT.**—In an agreement to sell "one rebuilt engine" it was held that a "rebuilt engine" is a second-hand engine, which has been made as good as possible, and practically as good as new —that it is not a particular species of engine. New Hamburg Mfg. Co. v. Webb (1911), 23 O. L. R. 44.

**RECEIVED ON TERMS.**—Where the person receiving the money holds it on terms arranged between himself and a third party to whom the money belongs requiring him to account for or pay the same to such third party, such money is "received on terms requiring him to account for and pay the same" within sec. 355 of the Criminal Code, although no terms had been imposed by the party from whom the money was received. R. v. Unger, 5 C. C. C. 270.

Under the above section, it is necessary that the money when received must be the property of the person whose property it is alleged to be in the indictment. Where a railway conductor accepts a lower sum than the proper fare, it is not money "received on terms requiring him to account" for it, because it was his duty to collect fares and not bribes. R. v. Thompson, 21 C. C. C. 80, disapproving of R. v. McLennan, 10 C. C. C. 1. See now 8-9 Edw. VII. (D), ch. 33.

**RECOGNIZE.**—M. agreed to convey certain lands to A. and to return the purchase money, if the Crown Lands Department would not "recognize" his assignment. The Court held that the word "recognize" in this connection meant "acknowledge." Arthur v. Monck, 21 C. P. 76.

**RECORD.**—V. Courts of Record.

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**RECOVER.**—The word "recover" in sec. 3 (3) of The Mercantile Law Amendment Act, R. S. O. ch. 133, does not mean "recover a judgment for," but "recover" in the sense of actually receive. Bank of Hamilton v. Kramer, Irwin Co., 3 O. W. N. p. 75.

Plaintiff sued for $333 and the defendant pleaded a tender of $300 and paid this amount into Court. On the trial, plaintiff had judgment for $320. *Held*, that the plaintiff had only recovered $20 by the judgment—that he could have accepted the $300 tendered without compromising his future claim for more. McLean v. Dove, 7 W. L. R. 365. And see Johansen v. Elliott, 7 W. L. R. 785, where the plaintiff claimed $5.50 per day and the defendant admitted owing $5 per day and paid that amount into Court. "Turn and twist it in any way you will, I cannot see that at the trial there was a dispute about any greater sum than" the fifty cents a day.

If the money had been paid into Court without a previous tender, then the plaintiff "recovers" the amount of his judgment irrespective of the amount paid into Court. Johnston v Haddon, 8 W. L. R. 526.

**REGULATE.**—The power given by the Municipal Act enabling councils to pass by-laws "regulating" certain trades and callings covers a by-law closing eating houses between 1 a.m. and 6 p.m. In re Campbell and The City of Stratford (1907), 14 O. L. R. 184.

The regulation must be reasonable. R. v. Belmont, 35 U. C. R. 298; R. v. Martin, 21 A. R. 145.

A power to regulate does not give the power to prohibit. In re Barclay and Township of Darlington, 12 U. C. R. 86; or even to prohibit carrying on the trade in certain streets or localities. Virgo v. City of Toronto, 20 A. R. 435; 22 S. C. R. 447; 1896, A. C. 88; nor to exclude certain persons from a class. Merritt v. City of Toronto, 25 O. R. 256; 22 A. R. 295; R. v. Levy, 30 O. R. 403.

Nor does a power to "regulate and govern" auctioneers give a power to prohibit them from carrying on their business on a market. Bollander v. City of Ottawa, 30 O. R. 7; 27 A. R. 335; Re Rex v. Sparks, 23 W. L. R. 613.

Regulating Trade and Commerce, B. N. A. Act, sec. 91 (3). See Parsons v. Citizens' Insc. Co., 4 S. C. R. 215; 7 A. C. 96; Hodge v. The Queen, 9 A. C. 117; Mayor of Fredericton v. The Queen, 3 S. C. R. 505.

**RE-INSURE.**—An insurance company, having both a cash and a mutual branch, cannot re-insure a risk in the other branch. The Beaver Insc. Co. v. Trimble, 23 C. P. 252.

**RELATIVES.**—*V.* Poor Relatives.

**RELEASE.**—The word "release" in a lease of a farm, drawn by an unprofessional conveyancer, was held to mean a renewal lease. Dawson v. Graham, 41 U. C. R. 532.

**RELIANCE ON.**—*V.* Wish.

**RELIGIOUS DENOMINATIONS.**—"The Reorganized Church of Jesus Christ of Latter Day Saints" is a "religious denomination" within the meaning of sec. 2 (a) of The Marriage Act, R. S. O. ch. 148, and a duly ordained priest thereof is authorized to solemnize the ceremony of marriage. R. v. Dickout, 24 O. R. 250.

An independent church which is not affiliated with any religious denomination and which has no rights or ceremonies for the appointment or ordination of a minister, is not a religious denomination. R. v. Brown (1908), 17 O. L. R. 197; 14 C. C. C. 87.

**REMAIN IN.**—A clause in a will read: "It is understood that R. S. and his family shall have the right to remain in their present dwelling-house free from rent, but subject to such other conditions as my executors may impose." *Held*, the words "remain in" meant nothing more than a temporary right of possession. Farquharson v. Farquharson, 11 E. L. R. 201.

**REMAINING DUE.**—Where mortgage money was payable in eight equal instalments, "with interest on the principal sum *remaining due* at each payment," the words "remaining due" were read as "remaining unpaid." "That a sum may be *debitum in praesenti*, though *solvendum in futuro* is very clear, and it was in this sense that the word "due" was used in the instrument." Hall v. Brown, 15 U. C. R. 419.

**REMAINING SONS.**—A will provided that a certain fund should be "divided among all my remaining sons." *Held*, the term "remaining sons" did not mean surviving sons," but sons surviving in person or *in stirpes*, a son or sons dying without issue capable of taking under the earlier provisions of the will. "Remaining is not, I think, as strong an expression as "surviving" . . . and though involving the idea of survivorship, means surviving in person or *in stirpe*." Re Totten, 8 O. W. R. 543.

"Remaining children" read as "surviving children." Re Garner, 3 O. W. R. 584.

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**REMISE, RELEASE AND QUIT CLAIM.**—The words "remise, release and quit claim" may operate as a grant; and will operate as a bargain and sale. Pearson v. Mulholland, 17 O. R. 502, overruling Acre v. Livingstone, 24 U. C. R. 282.

**REMOVE.**—*V.* ATTEMPT TO REMOVE.

**RENEWABLE FOREVER.**—An *habendum* in a lease was for certain lives "and renewable for ever," and it was held that these words, in conjunction with other covenants, gave a right to renewal in perpetuity. Clench v. Pernette, 26 N. S. R. 410; 24 S. C. R. 385.

**RENEWED.**—The term "renewed" or "renewal" has a well understood meaning with reference to fire insurance policies. These are contracts of indemnity against loss for a definite period which are extended or renewed for a further period upon payment of a further premium. So also in the case of a guarantee or insurance against dishonesty. In all such cases, the renewal is a new contract upon a new consideration which was entirely optional between the parties. Such a transaction differs essentially from that of keeping up a policy of life insurance by payment of a periodical payment, the right of which is fixed by the contract; and such a contract cannot be said to be "renewed" by such periodical payments. Long v. A. O. U. W., 25 A. R. 147.

See also Village of London West v. London Guarantee and Accident Co., 26 O. R. 520.

**RENT—RENTS.**—In The Limitations Act, "rent" includes all annuities and periodical sums of money charged upon or payable out of land. R. S. O. ch. 75, sec. 2 (d).

Rent must be a profit, but there is no occasion for it to be a sum of money. It may be payable in goods, services or manual operations. Nowery v. Connolly, 29 U. C. R. 39. It may be payable one-half in cash and one-half in work. Jones v. Montgomery, 21 C. P. 157. Or it may be paid by a specified portion of the crop. Richardson v. Trinder, 11 C. P. 130; Dick v. Winkler, 12 Man. R. 624; 19 C. L. T. 330.

The payment of taxes is not equivalent to the payment of rent within the meaning of the above Act. Finch v. Gilroy, 16 A. R. 484; unless there is an agreement to pay as rent an amount equal to the taxes. Davis v. McKinnon, 31 U. C. R. 564; Finch v. Gilroy, p. 493.

A gift by will of "all rents and benefits" from certain property is equivalent to a devise of the land. Re Thomas (1901), 2 O. L. R. 660.

Rent accruing due is an incorporeal hereditament, but rent which has accrued due is a mere chose in action. Brown v. Gallagher, 6 O. W. N. 296.

**REPAIR.**—The word "repair" as used in the Municipal Act, is a relative term, and to determine whether a particular road is or is not in repair, within the meaning of the Act, regard must be had to the locality, whether in a city, town, village or township, the user made of the road, and the means of the municipality, having regard to its other requirements. Foley v. Township of East Flamborough, 29 O. R. p. 141.

"Keep in repair" does not mean to restore some existing thing to the state in which it was before falling into disrepair, but that the corporation shall keep the highways in such a condition of reparation as the reasonable demands of the traffic shall from time to time require—an efficient state of repair, having regard to all the surrounding circumstances. Plant v. Township of Normanby (1905), 10 O. L. R. 16.

It has been said that such a state of repair as would exempt a corporation from repair on an indictment for a nuisance would also exempt it from liability in a civil action. Gwynne, J., in Ringland v. City of Toronto, 23 C. P. pp. 99, 100; Galt, J., Burns v. City of Toronto, 42 U. C. R. 560; Hagarty, C.J., Boyle v. Dundas, 25 C. P. p. 424; Drennan v. Kingston, 23 A. R. 412. See, however, Harrison, C.J., in Burns v. Toronto, and Osler, J.A., in Drennan v. Kingston.

When a highway is in such a state from any cause, whether of nature or man, that it cannot be safely or conveniently used, it may, in a large and liberal sense, be said to be out of repair. Castor v. Township of Uxbridge, 39 U. C. R. 113.

Roach v. Village of Port Colborne (1913), 29 O. L. R. 69, is the latest case dealing with non-repair. There it was held that a pipe, forming part of a cement walk, and protruding above it ten inches, was a defect and the walk out of repair.

Re-building is not repair within the meaning of sec. 558 of the Mun. Act, 1903 (see now sec. 495 of the Mun. Act, 1913). Weston v. County of Middlesex, 5 O. W. N. 616; 30 O. L. R. 21.

*Semble*, Electric light danger is not a matter within the purview of the Municipal Institutions in the clauses relating to the liability to repair roads and bridges. Glynn v. City of Niagara Falls (1913), 29 O. L. R. 517; 6 O. W. N. 2.

See Taylor v. Gage (1913), 30 O. L. R. 75.

**REPLY.**—V. RIGHT OF REPLY.

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**REPRESENTATIVES.**—A bequest to the "representatives" of a person is ambiguous, as it may apply either to executors or administrators, who represent him legally, or to the next of kin according to the Statute of Distributions, who represent him beneficially. The weight of decision is that the word standing alone is to be read as indicating executors or administrators. Very slight expressions, however, in the context have turned the meaning in the other direction. Where a testator used the words "executor" and "executrix" several times, and made a residuary bequest and devise to "the heirs and representatives of M. B.," it was held these words meant next of kin and not legal representatives. Burkett v. Tozer, 17 O. R. 587.

**REPORT.**—A report is the formal statement in writing made to the Court by a master, referee or other official, as the result of his inquiries into some matter referred to him by the Court.

A report is neither an order or a certificate. Wagner v. O'Donnell, 14 P. R. 254.

**REPUTED.**—The Nova Scotia Liquor License Act empowers a policeman to enter at any time any place where liquor is "reputed to be sold," or where he believes it is kept for sale. It was held these words afford no protection to a policeman who invades a private house at an unreasonable hour without a well-founded and honest belief that the law has been violated. White v. Beckham, 14 C. L. T. 475.

**RESERVED BID.**—An undertaking by the party having the conduct of the action to bid up to a certain sum is not equivalent to a reserved bid, and will not be accepted by the Court in lieu thereof. Leckie v. Marshall, 4 O. W. N. 913.

A purchaser at a sale under the direction of the Court who has no knowledge of an irregularity in fixing the reserve bid cannot be affected thereby, and the sale cannot be rescinded because in fixing the reserve bid, the value of a portion of the property was not considered. Re Jelly, The Provincial Trusts Co. v. Gamon, 2 O. L. R. 72.

**RESIDE.**—In dealing with the word "reside" in a statute, it must be construed in accordance with the object and intent of the Act. A person may for some purposes have more than one residence, but, as a rule, "reside" denotes the place where an individual eats, drinks and sleeps, or where his family or his servants eat, drink and sleep. Where the petitioner's farm was partly in township A. and partly in township B., he was held to reside

in A., where the dwelling-house was situated. In re North Renfrew (1904), 7 O. L. R. 204; Re Sturmer and Beaverton (1911), 24 O. L. R. 65. See under "Resident."

A man may reside in one place and his wife and family in another. Cartwright v. Hinds, 3 O. R. 384.

A corporation resides at the place where its head office is situated, where the seal is kept, the board of directors meet, and the principal business of the corporation is carried on. Westover v. Grand Trunk Ry., 26 C. P. 510; Ahrens v. M'Gilligat, 23 C. P. 171. But that is not the only test of its residence, and for the purpose of conferring jurisdiction on the Courts, it may reside elsewhere than at its head office. Thus it was held that the High Court in Ontario had jurisdiction to try an action for negligence which occurred in British Columbia and the defendants' head office being in Montreal. Tytler v. Canadian Pacific Ry., 29 O. R. 654; 26 A. R. 467. A different rule prevails in New Brunswick. The Bank of Nova Scotia v. McKinnon, 12 C. L. T. 178.

Where there is a mere agency in this Province, where the residence and business are the residence and business of the agent, not of the corporation, the corporation cannot be said to reside in Ontario. Boswell v. Piper, 17 P. R. 257; Parker v. O'Dette, 16 P. R. 69; County of Wentworth v. Smith, 15 P. R. 372.

Where a foreign corporation having only a constructive residence through agents acting in its business interests, and licensed so to do in a comparatively small and transient way, such a condition of affairs does not imply "residence" as contemplated by the practice as to security for costs. Ashland Co. v. Armstrong (1906), 11 O. L. R. 414.

The appellant lived at B. when he was appointed Attorney-General, and removed his family to Halifax. He retained his dwelling-house at B., with the intention of visiting and occupying it from time to time. It was held he could not be assessed for income at B. In re Assessment Act, 12 E. L. R. 157.

H. was appointed Sheriff of York Co. (N.B.). He continued to reside on his farm with his family, and, while attending his duties as Sheriff at Fredericton, he boarded at the county gaol. He swore he never intended to change his domicile. The Sheriff of York is compelled by law to reside at Fredericton, and H. was assessed there for income. It was held he had a legal residence at Fredericton. Ex p. Howe, 12 E. L. R. 510.

**RESIDE ABROAD.**—*V.* ABROAD.

**RESIDENCE—ORDINARY RESIDENCE.**—A man may have more than one residence, but, as a general rule, he cannot have two domiciles. Cartwright v. Hinds, 3 O. R. 595; Wanzer Lamp Co. v. Woods, 13 P. R. 514.

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The domicile of the husband is that of the wife. Macdonald v. Macdonald, 5 C. L. J. 66.

A man's residence is the place or country where he is, in fact, habitually present. "Ordinary residence" means something more than mere temporary residence in a place, although exactly what amount of residence in the place amounts to "ordinary residence" is a matter which scarcely admits of exact definition. Denier v. Marks, 18 P. R. 467.

"Ordinary residence" may receive the same interpretation as "residence" has received in settlement and election cases; although for the purpose of the jurisdiction of the Court a temporary residence within the territory of the forum is sometimes a fact to be considered in determining what is called the "forensic domicile." Residence is the place where one habitually sleeps—where a man establishes his abode, and makes the seat of his property. And he must have a fixed purpose of remaining at that place, which cannot be referred to an occasional absence of either pleasure or business. There must be the *animus residendi*. Wanzer Lamp Co. v. Woods, 13 P. R. 511.

In order to constitute a residence, a party must possess at least a sleeping apartment, but an uninterrupted abiding at such dwelling is not requisite. Absence, no matter how long, if there be liberty of returning whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence. But, if he has debarred himself of the liberty of returning for a period, however short, or has abandoned his intention of returning, he cannot any longer be said to have a legal residence there. Re Sturmer and Beaverton (1911), 24 O. L. R. 65.

"Residence" is a word of flexible import, and has a great variety of meanings, according to the subject-matter and the objects and purposes of the Legislature. McCuaig v. Hinds, 11 W. L. R. 652.

The provision of the Voters' List Act requiring voters to have "resided continuously" in the Electoral District for a specified time, does not mean a residence *de die in diem*, but that they should not have acquired a new residence; and a temporary absence in another Province doing harvesting work does not affect their residence. Re Voters' Lists, Township of Seymour, 2 Ont. E. C. 69.

**RESIDENT.**—The term "resident" or "resident inhabitant" is differently construed in Courts of justice according to the purposes for which inquiry is made into the meaning of the term. The sense in which it should be used is controlled by reference to the object. The description of a mortgagor in a chattel mortgage is at most only *prima facie* evidence of his residence. Mellish v. VanNorman, 13 U. C. R. 151.

In the Assessment Act, the word "resident" is applied to the case of the owner of land assessed, who is living upon it; the word "occupant" to the case of some person other than the owner living upon the land. Both words import actual visible occupation. Bank of Toronto v. Fanning, 17 Gr. 514.

Where by the condition of a shipping bill, a railway excepted themselves from liability, if the consignee was a resident beyond the place where the goods were consigned, it was held that the object of the contract was to provide that the consignee should be there at the time of the arrival of the goods, and a temporary residence was sufficient. La Pointe v. Grand Trunk Ry., 26 U. C. R. 479.

In Re Fitzmartin and Newburgh (1911), 24 O. L. R. 102, it was said that where a farm was in two municipalities, but the buildings wholly in one, that the occupant might, for voters' lists purposes, be said to be a resident of the other municipality. This dicta is not in accordance with the judgment in Re North Renfrew (1904), 7 O. L. R. 204, where under the same circumstance, Moss, C.J.O., held that "resides" means where the person eats, drinks, and sleeps. See also R. ex rel. Thompson v. Dinnin, 3 Terr. L. R. 112, where a person owned a farm comprising a half section, divided by a road. His residence was on a part of the farm not within the school section and it was held he was not a resident of the school section.

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**RESIDUARY BEQUEST.** — The term "residuary bequest" implies that something has been taken out of the personal estate by the testator and that the bequest applies only to a balance as distinguished from the whole.

The provision in sec. 6 of the Devolution of Estates Act, R. S. O. ch. 119, providing that "the real and personal property of a deceased person comprised in any residuary devise or bequest shall . . . be applicable . . . to the payment of his debts," does not apply where there is not both real and personal property comprised in the residuary gift. In re Moody Estate (1906), 12 O. L. R. 10.

A "residue" of personal estate means the personal estate which remains after payment of the testator's debts, funeral and testamentary expenses, and the costs of the administration of the estate, including the costs of an administration suit—but not succession duty. Kennedy v. Protestant Orphans' Home, 25 O. R. 235.

A gift of residue "to the amount of $800," is a gift of $800 only. Re Browne, 5 O. W. N. 466; In re Nelson, 14 Gr. 199.

**RESISTING OFFICERS.**—Criminal Code, sec. 169; Division Courts Act, sec. 218.

These sections do not apply where the officer making the seizure leaves the goods in the possession of the debtor and takes from him an agreement to deliver them up when called for. When the bailiff subsequently attempts to get possession of the goods he is acting under the agreement and not under the process of the Court. Re Carley, 18 C. L. T. 26.

Nor where the bailiff is retaking possession of goods under the provisions of a conditional sales agreement. He is not, under these circumstances, an officer of the Court. R. v. Shand (1904), 7 O. L. R. 190.

**RESPECTIVE.**—See Re Smith, 6 O. W. R. 45.

**REST.**—Synonymous with "residue," *i.e.*, what remains. Re Achterberg, 5 O. W. N. 755.

In a gift by implication to "the rest of my surviving children" the word surviving has reference to the time when the fund becomes divisible, not to the death of the testator. Re McCubbin, 6 O. W. R. 771.

**RESTAURANT.**—A restaurant is a place where refreshments and meals are provided to order, especially not one connected with an hotel—the dining-room of an hotel conducted on the European plan—an eating house or cafe.

The restaurant keeper may supply meals and refreshments. The refreshments may be either food or drink or both—and he may sell cigars as an incident to a meal; but it is the essence of his calling that what he sells is sold for consumption on the premises. He may on week days have an ancillary or collateral business as a merchant and trader, and sell as merchandise, candy, cigars, etc.; but, as to this, he is a merchant or trader and must obey the Sunday laws, which apply to all merchants and traders. But the Provincial Lords Day Act, C. S. U. C. ch. 104, sec. 1, does not apply to a restaurant-keeper as such: he is not a "merchant or tradesman" of the employee class. R. v. Wells (1911), 24 O. L. R. 77; 18 C. C. C. 377.

A restaurant-keeper, who on a Sunday, sells candies, etc. (apart from meals) to be taken away and consumed elsewhere than on the premises is liable for carrying on trade as a merchant. The mere fact that he has a municipal license as a restaurant-keeper does not necessarily make him a restaurant-keeper; that is a question of fact. R. v. Weatherall, 18 C. C. C. 372.

A restaurant open to the public is not a "public place" within the meaning of sec. 238 (f) of the Criminal Code. R. v. Mercier, 6 C. C. C. 44.

**RESTRAIN OR INJURE TRADE.**—Section 498 (*b*) of the Criminal Code makes it an offence for any one to conspire, combine, agree or arrange with any person, railway, steamship, steamboat or transportation company "to restrain or injure trade or commerce," etc.

This sub-section includes, at most, only combinations for the direct purpose of preventing or materially reducing trade or commerce in a general sense with reference to a commodity or certain commodities, or for purposes designed or likely to produce that effect. Gibbons v. Metcalfe, 15 Man. R. 560.

It does not include a lock-out agreement made by an employers' association following a demand for higher wages. Lefebvre v. Knott, 13 C. C. C. 223.

It refers to undue restraints of trade such as malicious restraints or those not justified by any personal interest for the protection of which the trade arrangement is made. R. v. Gage, 13 C. C. C. 515, 428; R. v. Beckett, 15 C. C. C. 408.

The refusal of a trades union to admit an applicant to membership is not within the Act. R. v. Doy, 17 C. C. C. 403.

For decisions on the other and allied sub-sections, see R. v. Master Plumbers' Association (1907), 14 O. L. R. 295; Hately v. Elliott (1905), 9 O. L. R. 185; R. v. Elliott, 9 O. L. R. 649; Wampole v. Karn (1906), 11 O. L. R. 619; R. v. McMichael, 18 C. C. C. 185.

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**RESTRAINT.**—"Restraint" does not mean only corporeal confinement or the fear of bodily harm. Taking away the will of the person by threats or by improper means of any kind not willingly assented to by the person, but brought about by the exercise of authority or fear, or apprehension of loss of any kind, must be a restraint. *Per* Wilson, C.J. Muskoka, H. E. C. 458.

**RESTRICTING.**—The words "restricting or limiting" in sec. 340 of the Railway Act, R. S. C. ch. 37, meet the case of a partial exemption from liability; and the word impairing was intended to cover the case of a total exemption from liability. Heller v. Grand Trunk Ry. (1911), 25 O. L. R. 117, 488.

**RESULTING TRUST.**—A resulting trust is a trust which arises by operation of law whenever the legal estate in property is transferred without its being intended that the beneficial interest therein shall pass along with the legal estate to the transferee.

A resulting trust may arise from payment of a part of the purchase money, but it must be an aliquot portion of the purchase money, and be of an aliquot part of the whole interest in the property. Sanderson v. McKercher, 13 A. R. 561.

Where, however, it is impossible to determine the proportions in which there has been contribution to price it is impossible that there can be any trust by operation of law, for the Court cannot determine the interest. Wilde v. Wilde, 20 Gr. 521; 536.

The trust must result, if at all, at the instant the deed is taken and the legal estate vested in the grantee. If, however, there is evidence to shew that the party asserting the trust at the time came under an absolute obligation to pay the purchase money, or an ascertained proportion thereof, a resulting trust will arise. Sanderson v. McKercher, 15 S. C. R. 298; 13 A. R. 561.

The consideration paid by the trustee need not be in money. Williams v. Jenkins, 18 Gr. 539.

**RESULT OF THE ELECTION.**—See Re Welland Election Case, 1 E. C. 383.

**RETAINER.**—The word "retainer" has more than one meaning, *e.g.*, it may mean the act of employing a solicitor or counsel, or it may mean the document by which such employment is evidenced; or it may mean the preliminary fee given to secure the services of the solicitor or counsel to induce him to act for the client.

A client may give his solicitor or counsel a preliminary fee in this sense—if so, it is a present—it does not at all diminish the fees properly chargeable and taxable against the client, and does not appear in the bill. A promise to pay a retainer fee is not enforceable in law. Re Solicitor (1910), 21 O. L. R. 255; 22 O. L. R. 30.

The word "retainer" is also used to denote the right of an executor to retain his own debt out of the assets come to his hands in preference to all other creditors of the same class. This right has been abolished in Ontario.

The word is still used to describe the right of an executor to retain out of the share of a beneficiary a debt due by such beneficiary to the estate. "The right is not one of 'set-off' or 'retainer' in the proper sense of these terms, but it is, viewed from the side of the beneficiary, his right to receive payment of the legacy, having regard to the amount of the debt due the testator's estate, and viewed on the side of the executor, his right to be paid the debt out of the fund in hand." Tillie v. Springer, 21 O. R. p. 588.

For the authorities on a solicitor's retainer, see article in 36 C. L. J. 651, and Re Solicitor, 3 W. L. R. 536.

**RETIRED JUDGE.**—Division Courts Act, sec. 224. A "retired Judge" is a person who has filled the office of Judge of a County

Court, and who at his own request has been relieved from the discharge of his duties, in contradistinction to one who has against his will been dismissed. He may resume legal practice, embark in commercial ventures, take Holy Orders or enter Parliament, without losing his status as a retired Judge. Macdonnell v. Blake, 17 A. R. 312.

**REVERSION.**—Where a testator gave one-half of his estate to his father "with reversion to my brother on decease of my father," it was held that the word "reversion" did not mean what was left, but meant that the estate given to the father for life should revert to the brother on the event named—that it should go over to the brother. Osterhout v. Osterhout (1904), 8 O. L. R. 685.

**REVERT IN THE SAME WAY.**—*Held*, to mean shall follow in like manner. Jardine v. Wilson, 32 U. C. R. 498.

**REVISED ASSESSMENT ROLL.**—*V.* LAST REVISED ASSESSMENT ROLL.

**RIDING.**—A person is "riding as a passenger" on a public conveyance as soon as he attempts to get on a street car or other public conveyance although the car has not begun to move. Where an accident policy used the words "riding as a passenger in a public conveyance" the word "riding" was held to be equivalent to "travelling." Powis v. Ontario Accident Insc. Co. (1901); 1 O. L. R. 54.

But where the passenger's journey is finished and he has alighted from the car, he is not "riding" on the car because he attempts to get on it for some reason unconnected with his journey, *e.g.* to escape a passing automobile. Wallace v. Employers' Liability Corporation (1911), 25 O. L. R. 80; 26 O. L. R. 10.

**RIGHT.**—*V.* COLOUR OF RIGHT.

**RIGHT, FRANCHISE OR PRIVILEGE.**—An agreement and by-law whereby a municipal corporation consent to a railway company constructing a tramway along specified roads and, upon certain conditions, operating the same for forty years, do not amount to a charter bestowing a "right, franchise or privilege" within the meaning of sec. 64 of the Municipal Clauses Act, 1896 (B. C.). British Columbia Electric Ry. Co. v. Stewart (1913), A. C. 816.

**RIGHT HEIRS.**—The words "right heirs" signify primarily those who would take real estate as upon an intestacy. Tylee v. Deal, 19 Gr. 601; Farrell v. Cameron, 29 Gr. 313.

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Where there was a direction to divide a fund from the sale of real and personal estate equally among "my own right heirs," the term "right heirs" was held to mean those who would take real estate as upon an intestacy and not next of kin. Coatsworth v. Carson, 24 O. R. 185. And see Re Ferguson, Bennett v. Coatsworth, 25 O. R. 591.

**RIGHT OF REPLY.**—The "right of reply" permitted by sec. 944 of the Criminal Code to Crown Counsel, is the right to again address the jury at the close of the evidence, and before the address of the defendant's counsel, where the defence offers no evidence. *Per* Taylor, C.J. (Man.) R. v. Le Blanc, 6 C. C. C. 348.

This does not seem to be a correct statement of the law if it means that the Crown Counsel may again address the jury before the counsel for the accused. A Crown Counsel has the right of reply although no witnesses are called for the defence. R. v. Martin (1905), 9 O. L. R. 218; 9 C. C. C. 371; R. v. King, 9 C. C. C. 426.

**RIGHT TO PURCHASE.**—V. OPTION.

**RIGHTEOUSNESS.**—In Clark v. Loftus (1912), 26 O. L. R. 215, Meredith, J.A., discusses Lord Hatherley's well-known reference to the unrighteousness of a transaction where a person has obtained a gift by will under suspicious circumstances. He said that "righteousness," as applied to proof in such cases, means no more than that the document propounded is really the will of the testator; that it is the duty of those asking the Court to pronounce in favour of the will, to prove affirmatively that the testator knew and approved its contents; to import into the word any such meaning as that it must be proved that the will is a fair or just one, or such as a reasonable man ought to make, is entirely wrong.

**RIGHTS IN FUTURE.**—Supreme Court Act, R. S. C. ch. 139. The words "rights in future" in sec. 46 (b) are governed by the preceding words of the clause and do not include an instalment of an annuity or of a monthly allowance payable under a will. Rodier v. Lapiere, 21 S. C. R. 69; Macdonald v. Galivan, 28 S. C. R. 258; or future rights which are merely pecuniary in their nature and do not affect rights to or in real property or rights analogous to interests in real property. Raphael v. Maclaren, 27 S. C. R. 319.

An assessment on land which would have the effect of increasing the burden of assessment for future expropriations of lands was held to be within the Act. Stevenson v. Montreal, 27 S. C. R. 187.

The right of a married woman to an annuity in case she becomes a widow is not a right in future. O'Dell v. Gregory, 24 S. C. R. 661.

An opposition to a writ of possession issued in execution of a judgment allowing a right of way over the opposant's land does not raise a question of title to land nor bind future rights. Cully v. Ferdais, 30 S. C. R. 330.

**RIGHTS.**—In an assignment under the Assignments Act (Man.) it was held that a mere right of action for damages in an action in deceit did not pass to the assignee. The word as used in the Act refers to some right in connection with property, and such right must be then vested in him or capable of becoming vested upon the happening of some event. McGregor v. Campbell, 19 Man. R. 38; 11 W. L. R. 153. And see McCormack v. Toronto Ry. Co. (1907), 13 O. L. R. 656, where it was held a claim for damages for personal injuries was not assignable.

**RIPARIAN OWNER.**—One whose lands are separated from navigable water by marshy ground is not a riparian owner in respect of the navigable water. Merritt v. City of Toronto (1912), 27 O. L. R. 1.

Strictly speaking "riparian owner" applies only to a person owning lands on a river or flowing water, but it is commonly used in respect of any navigable water. Rickey v. City of Toronto, 5 O. W. N. 892.

A grant of land extending to a river but "exclusive of the waters of the river" would appear to operate as a reservation of the bed of the river. Kirchoffer v. Stanbury, 25 Gr. 413.

**RIVERS.**—Rivers are said to be public or private, navigable or non-navigable. The question whether a river is a public navigable river appears to be a question of fact rather than a question of law. R. v. Meyers, 3 C. P. 305; Gage v. Bates, 7 C. P. 116.

So whether a stream is a river is a question of fact. McHardy v. Townships of Ellice & Downie, 37 U. C. R. 580.

The words "stream" and "water-course" may be looked upon as synonymous, but certainly not the words "creek" and "river." Every stream may be said to be a water-course and every water-course may be said to be a stream of water. But every river cannot with propriety be said to be a creek, or every creek a river. A river, in popular language, is an inland current of water formed by the confluence of brooks, small streams, etc. A brook is a name given to rivers of the smallest description, and if the waters be increased by those of another brook, the name of brook is changed to that of rivulet. When several rivulets unite and so

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produce a considerable stream of water, this watercourse takes the name of river.

In McHardy v. Townships of Ellice and Downie, 37 U. C. R. 580; 39 U. C. R. 546, a stream called Black Creek, of from 30 to 40 feet wide with clearly defined banks, was declared not to be a river within the meaning of the term as used in the Municipal Act. This was reversed in the Court of Appeal, 1 A. R. 628, where it was said that the words "stream" and "river" seem to be used in our statutes as synonymous terms. This case was followed in Township of North Dorchester v. County of Middlesex, 16 O. R. 658, where Ferguson, J., held that streams 67 feet and 32 feet wide were rivers within the Municipal Act, and a creek nine feet wide was not a river.

V. Navigable Rivers: Bank: Top of Bank.

**ROBBERY.**—Robbery is theft accompanied with violence or threats of violence to any person or property used to extort the property stolen, or to prevent or overcome resistance to its being stolen. Criminal Code, sec. 445.

The person upon or against whom a robbery is committed must be a natural person—a corporation cannot be robbed in any legal sense. Therefore a statement that the defendant "had robbed the city of $25 a year" does not impute a crime. Ward v. McBride (1911), 24 O. L. R. 555.

**ROLLING STOCK, PLANT AND APPLIANCES.**—See Toronto Ry. Co. v. City of Toronto (1903), 6 O. L. R. 187.

V. Train.

**RUN AT LARGE.**—V. At Large.

**SABBATH-DAY.**—V. Sunday.

**SAFE AND PRACTICABLE.**—A sailing rule provided that in narrow channels every steam vessel shall when it "is safe and practicable" keep to that side of the fare-way or mid-channel which lies on the starboard side of such vessel. *Held* that the term "safe and practicable" must be taken to imply that the vessel is only obliged to take this course when she can do so without danger of collision. Lovitt v. The Ship "Calvin Austin," 9 Exch. C. R. 160. See also Bryce v. Canadian Pacific Ry., 6 W. L. R. at p. 59.

**SAFELY CARRIED.**—See May v. Ontario & Quebec Ry. Co., 10 O. R. 70.

**SALE.**—"Sale" may properly be used as meaning an agreement for sale, even if it be not implemented by conveyance. Mackenzie v. Champion, 12 S. C. R. 649.

In a statute, "sale" has been interpreted as meaning "conveyance." Donovan v. Hogan, 15 A. R. 432; Sutherland v. Sutherland, 3 O. W. N. 1368.

Under a statute providing that no "sale of land for taxes shall be impeached," etc., it was held that "sale" was not confined to a sale completed by conveyance. Schultz v. City of Winnipeg, 6 Man. R. 269.

Where an owner told a real estate agent: "If you bring me a purchaser I will sell," and the agent found a purchaser who signed an agreement to purchase, it was held the agent was entitled to his commission although the purchaser subsequently refused to carry out his agreement. Smith v. Barff (1912), 27 O. L. R. 276.

A sale of land is not effected until there has been a binding acceptance by the purchaser of the vendor's offer. Domina v. Guillemand, 23 W. L. R. 41. See also Kennerley v. Hextall, 23 W. L. R. 205.

Whether the contract amounts to a sale or a mortgage is discussed in Moore v. Sibbald, 29 U. C. R. 487. "When the defendant says by the writing: 'I give $20 to Moore for the colt I have in my possession,' that is a purchase. When he says: 'But I promise to give back the colt to Moore if he will pay the same with 12 per cent. interest on or before the first day of May, 1866,' that is a contract for re-sale upon these terms."

A power of sale in a mortgage is not properly exercised by the mortgagee accepting other property in exchange, instead of a sale for money, unless, perhaps, in a case where it is clear there is no value in the equity of redemption. Winters v. McKinstry, 14 Man. R. 294, distinguishing Smith v. Spears, 22 O. R. 286.

The plaintiffs installed an engine and appliances to operate a lighting plant in defendant's theatre and sued for the price. *Held*, that the transaction was not a sale of goods, but a supply of work and materials. Allis-Chalmers v. Walker, 15 W. L. R. 357.

A sale of growing timber is not within the Bills of Sale Act. Steinhoff v. McRae, 13 O. R. 546. Nor is a sale of goods in the hands of a warehouseman, who becomes the agent of the transferee, and agrees to hold the goods for him. Jones v. Henderson, 3 Man. R. 433.

**SALE OR OTHER DISPOSAL.**—In the term "sale or other disposal" used in sec. 51 of the Liquor License Act, R. S. O. ch. 215, the word "disposal" is not used in a strictly technical but in a liberal sense. When liquor was bought and paid for on Saturday but not delivered to the purchaser until Sunday, it was

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held that the delivery on Sunday was a "disposal" of the liquor. R. v. Clark (1912), 27 O. L. R. 525; 20 C. C. C. 486.

It covers a gift of liquor; and where a hotel keeper treated two of his friends in his hotel on Sunday it was held he was properly convicted. R. v. Walsh, 29 O. R. 36; 1 C. C. C. 109; R. v. Hodgins, 12 O. R. 367.

Where a statute allows the supplying of liquor with meals during prohibited hours, it does not cover a sale where the food supplied is used merely as an excuse to supply the liquor. R. v. Sauer, 3 B. C. R. 305; 1 C. C. C. 317.

Bringing liquor into a city where the Canada Temperance Act is in force is an unlawful "disposal" of it. Ex p. Mitchell, 16 C. C. C. 205 (N. B.)

**SALVAGE.**—"Salvage" is a reward for success in perils undertaken. The seizure of property by an execution creditor under his execution cannot be regarded as salvage. Sykes v. Soper (1913), 29 O. L. R. 193.

In maritime law salvage is a compensation allowed to persons by whose assistance a ship or its cargo has been saved, in whole or in part, from impending danger, or recovered from actual loss, in cases of shipwreck, derelict, or recapture.

**SAME TIME.**—A testator made a disposition of his property "in case both my wife and myself should by accident or otherwise be deprived of life at the same time." The wife predeceased the husband by sixteen days. *Held*, the testator and his wife were not deprived of life at the "same time." Henning v. Maclean (1902), 4 O. L. R. 666; 33 S. C. R. 305.

**SANDBANK.**—See Empire Limestone Co. v. Carroll, 5 O. W. N. 708.

**SATISFACTORY.**—The term "if the matter thereof is deemed satisfactory," now found in sec. 53 of the Fraudulent Debtors' Arrest Act, R. S. O. ch. 83—referring to the examination of the debtor—means, if he fully and credibly gives the information called for by *viva voce* questions. Satisfactory relates to the allegations the debtor has made in his affidavit, and does not relate to the disposition he may have made of his property. Peoples Loan and Deposit Co. v. Dale, 18 P. R. 338.

It is a condition precedent to a conviction under sec. 238 (k) of the Criminal Code that the accused be asked to give a "satisfactory account" of himself or herself. R. v. Leveeque, 30 U. C. R. 509; Arscott v. Lilley, 11 O. R. 153; R. v. Regan, 14 C. C. C. 106.

**SATISFACTORY ANSWERS.**—Con. Rule (1913) 587, provides for the committal of a judgment debtor who, on examination, "does not make satisfactory answers." The term has been the subject of many conflicting decisions.

In Graham v. Devlin, 13 P. R. 245, and Miller v. Macdonald, 14 P. R. 499, it was said that the test is, are the answers sufficient to satisfy the mind of a reasonable person that a full and true disclosure has been made.

In Hobbs v. Scott 23 U. C. R. 619, it was said answers are not unsatisfactory because they do not account for the debtor's assets in a proper manner; but in Crooks v. Stroud, 10 P. R. 131, Wilson, C.J., *held* that a statement by the debtor that he had lost his money in gambling was not giving a satisfactory answer.

In Foster v. Van Wormer, 12 P. R. 597, Boyd, C., expressed the view that Crooks v. Stroud had gone too far, and was opposed to the holding of the Court in Hobbs v. Scott.

In Lemon v. Lemon 6 P. R. 184, it was said that the debtor must have contumaciously refused to answer, or so equivocated as to render his answer no answer at all.

In Merrill v. McFarren, 1 C. L. T. 133, Galt, J., *held* that an admission by a judgment debtor of money in his possession and a refusal to hand it over was not a "satisfactory answer," and the same view was expressed by Wilson, C.J., in Metropolitan Loan Co. v. Mara, 8 P. R. 355.

The Manitoba King's Bench rule 755 is, in effect, the same as the Ontario Rule. In Bateman v. Svenson, 18 Man. R. 493; 10 W. L. R. 361, the plaintiff had recovered a judgment for $5,000. The defendant, on examination, admitted she had $16,000 in cash and $1,500 worth of diamonds on her person, and when asked if she would pay the judgment out of this money, refused to answer. Mathers, J., committed her for 12 months. On appeal Richards and Phippen, JJ.A., differed from Mathers, J., holding that the examination was for discovery only and that "satisfactory" only means "full and truthful." Howell, C.J.A., and Perdue, J.A., agreed with Mathers, J. There was an appeal to the Supreme Court but it was held no appeal lay. 42 S. C. R. 146.

The last word on the subject is Charlebois v. Martin, 4 O. W. N. 412, where Middleton, J., says that the rule as it now stands is for the purpose of discovery; and when discovery is refused, or where as the result of the discovery a fraudulent disposition of the property is disclosed, then imprisonment follows as a means of punishing contempt.

**SCAB.**—The term "scab," as applied to one who takes the place of a striking workman, is one of opprobrium, meaning a very

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mean, low man, or one to be despised; and to call another a "scab" or a "born scab" on a public street, is a violation of a municipal by-law prohibiting the use of abusive and insulting language. R. v. Elderman, 19 C. C. C. 445; 9 E. L. R. 459.

**SCAFFOLDING.**—Section 6 of The Building Trades Protection Act, R. S. O. ch. 228, imposes an absolute duty on building employers not to use scaffolding which is unsafe, unsuitable or improper, etc. Planks, resting on cross-pieces, nailed at one end, were held to be scaffolding within the Act. Hunt v. Webb (1913), 28 O. L. R. 589.

**SCHOOL RATES.**—The term "school rates," now found in sec. 397 (13) of the Mun. Act, 1913, includes the annual amount required to pay for the debentures issued under a by-law passed for the purchase of a school house site and the erection of a school house. Foster v. Village of Hintonburg, 28 O. R. 221.

**SCHOOL ROLLS.**—See Free v. McHugh, 21 C. P. 13.

**SCRIVENER.**—In England the word "scrivener" means a writer, scribe, conveyancer; one whose occupation is to draw contracts, deeds and mortgages, and prepare other species of written instruments. In Ontario the business which, in England, is called "scrivener's business" is part of the ordinary business of a solicitor. Thompson v. Robinson, 15 O. R. 662.

**SCRUTINY.**—A "scrutiny" of ballots cast on a municipal by-law is something different from and more comprehensive than a simple recount. The extent of it is to be measured by what can be done on inspection of the ballot papers and the ascertainment of what votes are void *ex facie*.

While a scrutiny of votes involves a scrutiny of ballots, as well as the qualification of the voters, an authority to scrutinise the ballot papers does not also involve an authority to scrutinise or ascertain the qualification of the voters who marked those ballot papers. In Re Saltfleet (1908), 16 O. L. R. 293.

A motion to quash a local option by-law is a scrutiny within the meaning of sec. 24 of the Voters' List Act, 7 Edw. VII. Re Mitchell and Campbellford, 16 O. L. R. 578.

A County Court Judge holding a scrutiny of the ballot papers cast on a vote on a municipal by-law may go behind the voters' lists and inquire if a tenant whose name is placed thereon has the residential qualifications entitling him to vote. Re West Lorne Scrutiny, 26 O. L. R. 339; 17 S. C. R. 451.

Certifying the result of a scrutiny is a judicial not a ministerial act. Re Aurora Scrutiny, 28 O. L. R. 475; Re Saltfleet, *supra*.

See Chapman v. Rand, 11 S. C. R. 312.

**SEAL.**—A corporation may adopt any seal. In 1886 the Municipality of Kildonan was altered to "The Rural Municipality of Kildonan." It continued to use the old seal and in 1887 executed a deed under the old seal, and it was held to be sufficiently executed. McRae v. Corbett, 6 Man. R. 426.

A circular impression in ink with the name of the municipality, was held a good seal. Miles v. Richmond, 28 U. C. R. 333; Re Croome and Brantford, 6 O. R. 188; Foster v. Geddes, 14 U. C. R. 239.

But the Court drew the line where a black mark appeared opposite the signature, and it was shewn in evidence this had been made with a poker. Clement v. Donaldson, 9 U. C. R. 299.

In deeds executed by individuals neither wax, wafer or other adhesive substance is now required. A circular scroll, made by the party signing, and the word "seal" inscribed therein was held sufficient in Re Bell and Black, 1 O. R. 125.

Where slits were made in the parchment and a ribbon passed through so as to appear at intervals in the face of the instrument, the end of the ribbon being permanently affixed, and the signature set opposite; *held* sufficiently executed. Hamilton v. Dennis, 12 Gr. 325.

**SEAMAN.**—The word "seaman" is usually employed to designate those of the servant class and to exclude the officers of a ship. See sec. 126 (d) of the Canada Shipping Act, R. S. C. ch. 113.

A deckhand working on a tug was held to be a "seaman." In re Tug "Robb," 17 C. L. J. 66. A captain or master of a boat is a "seaman" within the provisions respecting wages in the Canada Shipping Act. The Tug Maytham, 18 C. L. J. 285.

In the absence of a contract to pay him wages a musician is not a "seaman" within the meaning of the Merchant Shipping Act, and therefore is not entitled to a maritime lien for his services. McElhaney v. The Ship Flora, 6 Exch. C. R. 129.

The Shipping Act applies to fishermen engaged in deep sea fishing, and such a fisherman is a seaman within sec. 91. R. v. Wilneff, 1 E. L. R. 168.

**SECTION.**—When applied to an Act of Parliament the word "section" has no technical meaning, nor indeed any very clearly defined meaning. It is usually applied to the numbered paragraphs of an Act, but it may refer, if the context requires it, to

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any distinct enactment of which there may be several included under one number. Dain v. Gossage, 6 P. R. 103.

**SECURE.**—The word "secure" is not always used in its strictly etymological sense; and procuring within thirty days a customer who ultimately and within a reasonable time purchases, may well be called "securing" such purchaser. Meikle v. McRae, 3 O. W. N. 206.

**SECURITIES—SECURITIES FOR MONEY.**—The term "securities for money" in sec. 20 of the Executions Act, R. S. O. ch. 80, includes a fire insurance policy after loss. Bank of Montreal v. McTavish, 13 Gr. 395; and a money bond for the conveyance of land. R. v. Potter, 10 C. P. 39; but not a security which has been assigned by the debtor as collateral security. Rumohr v. Marx, 3 O. R. 167; or books of account. McNaughton v. Webster, 6 U. C. L. J. 17.

A fully paid-up life insurance policy which a judgment debtor has assigned, reserving to himself the cash surrender values of the bonus additions, is a security for money. The Canadian Mutual Loan Co. v. Nisbet, 31 O. R. 562.

In the absence of something in the will modifying the bequest, a gift of "securities" will pass stock in the funds, a vendor's lien, bills of exchange and promissory notes. Re J. H. (1911), 25 O. L. R. p. 135.

A will directed the executors to invest moneys "in reasonably safe income producing securities." Riddell, J.: There can be no doubt that the words "security," "securities," "security for money," "securities for money," are used colloquially and in business transactions in a much extended sense. I cannot see, indeed, that the appeal to Murray's New English Dictionary is of advantage to the applicants, the definition relied on being "A document held by a creditor as guarantee of his right to payment. Hence, any particular kind of stock, shares, or other form of investment guaranteed by such documents." This does not mean that any kind of stock or shares is a security for money—but only that the name is extended in its meaning to such stock, shares, etc., as are secured by what is in reality a "security." But while "securities" does not, strictly speaking, cover shares in joint stock companies, it does in its widest sense. Re J. H. *supra*.

A power to invest the moneys of the estate in such securities as the executors think proper, means such securities as bonds, lands or something to be answerable for it. Worts v. Worts, 18 O. R. 332.

In Manitoba it was held that a judgment is a security for money. Howland v. Codd, 9 Man. R. 435.

See Re Mackenzie (1913), 30 O. L. R. 173.

**SEIZURE.**—A seizure is not, properly speaking, a levy; a seizure does not become a levy until the goods seized have been turned into money by a sale. Ross v. Grange, 25 U. C. R. 396; or by the compulsion of the seizure the debtor has paid the debt. Buchanan v. Frank, 15 C. P. 196.

Where a bailiff merely took an inventory of the goods, leaving no one in possession, it was held they were not in *custodia legis*. Hart v. Reynolds, 13 C. P. 501; May v. Standard Fire Insc. Co., 5 A. R. 605. So where the sheriff's bailiff went to the debtor's shop and told him of the writ, but did nothing more, thinking he could make more by allowing the debtor to go on with his business. Foster v. Glass, 26 U. C. R. 277.

And where the bailiff made a seizure, but left the goods in possession of the debtor upon receiving a receipt for the same and undertaking to deliver them up when demanded, it was held the goods were not in *custodia legis* so as to prevent a landlord from distraining. McIntyre v. Stata, 4 C. P. 248; Craig v. Craig, 7 P. R. 209.

In an action for illegal seizure it was held that the wrongful re-taking horses, against plaintiff's will, under a lien note, was a seizure. Peterson v. Johnston, 17 W. L. R. 596.

But such a re-taking is not a seizure within the meaning of the Criminal Code. R. v. Shand (1904), 7 O. L. R. 190.

A sheriff's bailiff went to the defendant's farm and found wheat in stook. He made out and signed a notice of seizure and handed it to defendant's wife, in the absence of the defendant. He left the farm and did nothing farther. *Held* a good seizure. At the time of the seizure there were growing oats on the land and subsequently the defendant called at the sheriff's office and orally admitted a seizure, to save expense. The sheriff took a bond from defendant for the forthcoming of the oats when required. *Held*, this did not constitute a seizure. Dodd v. Vail, 23 W. L. R. 62, 903.

A sheriff cannot sit in his office and by a purely intellectual operation make a seizure of goods miles away. Brook v. Booker, Q. R. 17 K. B. 193; 41 S. C. R. 331.

If an hotel keeper locks up a guest's room containing his baggage, for the non-payment of board, and notifies the guest thereof and demands payment, he thereby places the baggage under "lawful seizure and detention." R. v. Hollingsworth, 2 C. C. C. 391.

In Quebec in order to constitute a valid seizure of movable property there must be something done by competent authority which has the effect of dispossessing the person proceeded against of the property; and notice thereof must be given, and inventory made and a guardian appointed. Where these formalities have

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not been observed there can be no valid seizure. City of Montreal v. Layton, 47 S. C. R. 514; 1 D. L. R. 160; Q. R. 39 S. C. 520.

**SELL OR DISPOSE.**—A power in a will to "sell or dispose" of real estate does not give the executors authority to exchange the lands of the testator for other lands. In re Confederation Life Association v. Clarkson (1903), 6 O. L. R. 606.

The words "sell and absolutely dispose of" in sec. 14 of Schedule B. to the Short Forms of Mortgage Act, gives a mortgagee the right to exchange the mortgaged property for other lands. Smith v. Spears, 22 O. R. 286. The contrary was held under the Manitoba Act where Smith v. Spears is explained and distinguished. Winters v. McKinstry, 14 Man. R. 294.

A promissory note contained a proviso: "Should I sell or dispose of my real estate this note becomes due and payable." It was held that a mortgage for $1,000 (the value of the property does not appear) was within the proviso. Deering v. Hayden, 3 Man. R. 219.

Where a statute prohibits the selling of an article, except under certain conditions, an employer is, as a rule, liable for a sale made by his employee. R. v. Russell (1913), 29 O. L. R. 367.

**SELL AND ABSOLUTELY DISPOSE.** — V. Absolutely Dispose.

**SELL OR GIVE.**—See South Ontario Election, H. E. C. 20.

**SELLING DRUGS.**—V. Drugs and Medicines.

**SELLING MY PROPERTY.**—An agreement to pay a commission for "selling my property" means the agent is entitled to the commission when he has secured a purchaser who signs a contract for purchase acceptable to the owner, even though the purchaser subsequently fails to carry out the agreement. Smith v. Barff (1912), 27 O. L. R. 276.

**SEMINARY OF LEARNING.**—See Re City of Ottawa and Grey Nuns (1913), 29 O. L. R. 568.

**SENDS.**—The word "sends" in sec. 136 (2) of The Post Office Act, R. S. C. ch. 66, as applying to prohibited competition with the postal service, is not limited to delivery to the person to whom the letter is addressed. A person "sends" a letter within the meaning of the Act when he starts the letter on its destination. R. v. Baxter, 18 C. C. C. 340.

**SENIOR OFFICER.**—See Attorney-General of Canada v. The City of Sydney, 12 E. L. R. 448; 49 S. C. R. 148.

**SEPARATE ESTATE.**—Separate estate is real or personal property, including choses in action and chattels real, held by a married woman, or by trustees for her separate use, free from all marital rights of the husband and over which he has no control or right of interference or disposition. Bicknell & Kappele, Prac. Stats. 779.

In every case where, before the Married Women's Property Act, a gift by the husband to a trustee for the wife would be good as against creditors, it is now good if made direct to the wife. Where a husband bought pictures and brought them home and gave them to his wife as a gift, it was held they were her separate estate. Shuttleworth v. McGillivray (1903), 5 O. L. R. 536.

As against creditors, when husband and wife are living together, the unsupported evidence of the wife is not sufficient to prove such a gift. Thompson v. Doyle, 16 C. L. T. 286.

In Re Lea Estates, 11 B. C. R. 324, Duff, J., held that the husband is liable for the funeral expenses of his deceased wife and cannot claim to be indemnified therefor out of her separate estate. In Re Gibbons, 31 O. R. 252, Rose, J., held the contrary, saying: "I see no reason why, when a married woman dies seized of separate estate, that estate should not be charged with the burthen of her funeral expenses, as well as when a man dies leaving an estate."

V. Proprietory Interest.

**SEQUESTRATION.**—The word "sequestration" as used in sec. 23 of the Winding-Up Act, R. S. C. ch. 144, means a sequestration to recover payment of a judgment already obtained. The arrest of a vessel by the Admiralty Court is a sequestration. The Richelieu and Ontario Navigation Co. v. The S. S. "Imperial," 12 Exch. C. R. 243.

In practice, "sequestration" signifies a writ authorizing the taking into custody of the law of the real and personal estate of a defendant who is in contempt, and holding the same until he shall comply.

**SERIES OF TRANSACTIONS.**—Con. Rule (1913) 66. Where the only connection by relation between the several transactions or occurrences, upon which the separate rights to relief are alleged to arise, is the motive or design imputed to the defendants, this is not sufficient to constitute the transaction a "series" within the above Rule, so as to join them in one action. Mason v. Grand Trunk Ry. (1904), 8 O. L. R. 28.

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**SERIOUS AND WILFUL MISCONDUCT.**—Misconduct is not serious within the meaning of the term "serious and wilful misconduct" in the Workmen's Compensation Act (B.C.) merely because the result is serious in the particular case; the misconduct must be serious in itself. Hill v. Granby Consolidated Mines, 12 B. C. R. 118; 4 W. L. R. 104.

The mere fact that a workman misrepresented his age, even though, if he had told the truth about his age, he would not have been employed, is not "serious and wilful misconduct." Re Darnley and Canadian Pacific Ry., 9 W. L. R. 20.

Using a lift or elevator, in deliberate breach of a rule and warning, which exposed him to danger, is "serious and wilful misconduct." Granick v. British Columbia Sugar Refining Co., 10 W. L. R. 256.

V. SERIOUS NEGLECT.

**SERIOUS DISEASE OR COMPLAINT.**—A policy of life insurance contained a condition avoiding it if the insured, before its date, had been attended by a physician for "any serious disease or complaint." *Held*, that acute bronchitis, of such a character as to be mistaken and treated as chronic bronchitis, was a "serious complaint." Leonard v. Metropolitan Life Insc. Co., 44 N. S. R. 420.

**SERIOUS NEGLECT.**—Serious neglect means something more than contributory negligence. "Neglect" points to the failure to do some specific act which, in the circumstances, ordinary prudence requires the injured person to do, or the doing of some specific thing which, in the circumstances, ordinary prudence requires the injured person to refrain from doing; and its sense is, perhaps, in that respect, more restricted than the meaning which should, in the like circumstances, be attributed to the word "negligence."

"Serious neglect" does not necessarily import the quality of deliberation—nor can it be construed by the consequences of any act. A man may be told not to walk on the grass. He does so, slips up and breaks his leg. The consequences are serious, but the misconduct is not so.

Any neglect is "serious" within the meaning of the Workmen's Compensation Act (B.C.), which, in the view of reasonable persons in a position to judge, exposes any body (including the person guilty of it) to the risk of serious injury. Hill v. Granby Consolidated Mines, 12 B. C. R. 118; 4 W. L. R. 104.

**SERVANT.**—To constitute a person a "servant" within the meaning of sec. 359 (a) of the Criminal Code he must be under the control of and bound to obey his alleged master—there must have been an employment as a servant. Ferris v. Irwin, 10 C. P. 116.

Where the accused, without any authority of the owner, sold a horse and received the payment therefor, it was held he was not a servant, although he had previously endeavoured to dispose of the same horse for the owner at his request. R. v. Topple, 3 R. & C. (N.S.) 566.

By the Indian Act, R. S. C. ch. 81, sec. 135, everyone who, by himself, his clerk, servant, or agent, sells liquor to an Indian commits an offence. It was held that the word "servant" in this Act did not include a hotel cook. R. v. Gee, 5 C. C. C. 148.

In Clerk v. Provincial Steel Co., 4 O. W. N. 991, it was held that a selling agent who was paid by a commission on sales made through him was a servant within the meaning of Con. Rule 1250 (now 327), and so liable to examination for discovery. "Servant" means, especially in law, one employed to render service or assistance in some trade or vocation, but without authority to act as agent in place of the employer."

Where questions arise as to the liability of an employer for the torts of a person alleged to be a servant, the question is not so much whether the employer is the paymaster, but whether he has the power of directing and compelling the work. Saunders v. City of Toronto, 26 A. R. 265, reversing 29 O. R. 273.

Police constables are not servants of the corporation, and a municipality is not liable for their acts. McCleave v. City of Moncton, 32 S. C. R. 106.

A constable in charge of a patrol wagon is not a servant of a Board of Commissioners of Police constituted under sections 354-7 of the Municipal Act, so as to make them liable for his negligence in the performance of his duties. Winterbottom v. Board of Police of the City of London (1901), 1 O. L. R. 549.

A pathmaster is a servant of the municipal corporation. Stalker v. Township of Dunwich, 15 O. R. 342.

Where members of a municipal council are appointed a committee to perform work for the council they are servants of the corporation while in the performance of the work. Biggar v. Township of Crowland (1906), 13 O. L. R. 164; as well as persons employed by them to do the work. McDonald v. Dickenson, 24 A. R. 31.

A fireman, one of a regularly constituted fire department, is a servant of a corporation. Hesketh v. City of Toronto, 25 A. R. 449. So is a tax collector. McSorley v. City of St. John, 20 N. B. R. 479; 6 S. C. R. 531.

A foreman of works who hires and dismisses men, makes out pay-rolls, receives and pays out money for wages and does no manual labour, is not a "labourer, servant or apprentice" within the meaning of sec. 98 of the Ontario Companies Act, R. S. O. ch. 178. "The word 'servant' cannot be taken in its larger sense. Its meaning must be restricted. Apprentice has its own meaning and cannot include a master workman. Taking labourer on the

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one side and apprentice on the other we are driven to conclude that the word servant was not intended to include the higher grades of employment, but is controlled by the words which precede it." Welch v. Ellis, 22 A. R. 255.

**SERVICE.**—V. PERSONAL SERVICE.

**SET ASIDE.**—The power to "set aside or discharge" an order implies the power to vary the order. A Judge sitting in Court has power to vary an order which he has made in Chambers. Re Grand Trunk Pacific Ry. Co. and Marsan, 3 Alta. R. 65.

**SET-OFF.**—V. PAYMENT.

**SETTLED UPON HERSELF.** — The words "settled upon herself" have a well known testamentary signification. For instance, the form of settlement involved is shewn by Loch v. Bagley (1867), L. R. 4 Eq. 122, where the direction was to "settle" the daughters' shares "upon themselves strictly." That was extended by the Court to mean that the property should be so dealt with that the income of the share should for the joint lives of wife and husband be paid to her for life without power of anticipation; that, if she should die in the lifetime of her husband, then her share should go as she should by will appoint, and, in default of appointment, to her next of kin exclusively of her husband; and that if she should survive her husband, then the share should belong to her absolutely. *Held*, also these words imply there should be a trustee and a proper conveyance to him. Per Boyd, C., Re Hamilton (1912), 27 O. L. R. 445.

**SHALL.**—In the Interpretation Acts (Can. and Ont.) the word "shall" is to be construed as imperative unless the context otherwise requires.

It has more than once been pointed out that these clauses of the Interpretation Acts do not introduce any new rule, but are declaratory only of that established by judicial decisions. Re Lincoln Election, 2 A. R. 324, per Moss, C.J.A., at p. 341; In re Township of Nottawasaga and County of Simcoe, 4 O. L. R. 1, 15; Webb v. Box (1909), 19 O. L. R. 540; 20 O. L. R. 220.

Prima facie the presumption, as well under the Interpretation Acts as without them, is that the word "shall" is imperative. It is for the party opposing such a meaning to demonstrate that it is directory only. Trenton v. Dyer, 21 A. R. 379; 24 S. C. R. 474, where it was held that the provisions of the Assessment Act requiring the Clerk to deliver the collector's roll on or before 1st October, was imperative.

The provision of sec. 48 of The Municipal Drainage Act, R. S. O. ch. 198, that the Judge "shall deliver judgment not later

than thirty days after the hearing" was held to be imperative, and the Judge *functus officio* after the expiration of the thirty days. Re Rowland and McCallum (1910), 22 O. L. R. 418. A similar decision was arrived at in Re Nottawasaga and County of Simcoe, *supra*, under a provision of the Assessment Act providing that the judgment of the Court "shall not be deferred beyond the 1st day of August"; and in Re McFarlane v. Miller, 26 O. R. 516, under the Ditches and Watercourses Act, it was held a similar provision was not imperative. See also In re Ronald and Village of Brussels, 9 P. R. 232.

In Re Rowland and McCallum, *supra*, Boyd, C., said: "It appears to me to be a wholesome rule to bring about some certainty in the present flux of judicial opinion." McFarlane v. Miller and Ronald v. Brussels may, therefore, be considered as overruled.

The word "shall" in sec. 10 of the Pounds Act, R. S. O. ch. 247, held not imperative. Collins v. Ballard, 20 C. L. J. 308.

The word "shall" in sec. 115 of The Canada Temperance Act (now sec. 128, ch. 152, R. S. C.) is imperative. Ex p. Edwards, 12 C. L. T. 48 (S. Ct. N. B.)

The provision of sec. 876 of the Criminal Code, requiring the foreman of the grand jury to initial upon the indictment the names of the witnesses sworn is directory only. R. v. Townsend, 28 N. S. R. 468; R. v. Buchanan, 12 Man. R. 190; 1 C. C. C. 442.

The words "it shall be lawful" are potential, and never (in themselves) significant of any obligation. They confer a faculty or power, and they do not of themselves do more. But there may be something in the nature of the thing empowered to be done, something in the object for which it is done, something in the condition under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so. Hinds v. Law Society of Upper Canada, 17 O. R. p. 309.

**SHALL IN NO CASE BE RESPONSIBLE.**—See Robertson v. Grand Trunk Ry. Co., 24 S. C. R. 611; 21 A. R. 204; 24 O. R. 75.

**SHALL NO LONGER APPLY.**—See R. v. Swalwell, 12 O. R. 391.

**SHALL REMAIN STANDING.**—See Christie v. Cooley, 4 O. W. R. 79; 6 O. W. R. 214.

**SHAREHOLDER.**—A shareholder in a company need not be the actual holder of a stock certificate. Under a provision of the

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Manitoba Joint Stock Companies Act, 1905, "not less than one-fifth in value of the shareholders" may apply for the appointment of an inspector. *Held*, that two men who owned shares, standing in the name of a trust company as bare trustees, were "shareholders" within the meaning of the enactment. Re Kootenay Valley Fruit Lands Co., 18 W. L. R. 145.

A subscription for stock with a request to have the stock allotted, does not constitute the subscriber a shareholder in the absence of any recognition by the company of his position as a shareholder. In re the Zoological & Acclimatization Society, 16 A. R. 543, reversing 17 O. R. 331.

But a man may become a shareholder without signing the stock book or without any written agreement to take shares. The company may waive all that. Re Sprouted Food Co., 6 O. W. R. 514.

Shareholders interpreted to mean bondholders for voting purposes. Hendrie v. Grand Trunk Ry. Co., 2 O. R. 441.

**SHIP.**—"Ship" includes every description of vessel used in navigation not propelled by oars. Section 2 (c) Canada Shipping Act, R. S. C. ch. 113.

"Ship" is a general term, and in the law it is equivalent to vessel. It is defined as "a locomotive machine adapted to transportation over rivers, seas and oceans." In popular language ships are of different kinds, barques, brigs, schooners, sloops, cutters. The word includes everything floating in or upon the water, built in a peculiar form, and used for a particular purpose. The "Knapp Roller Boat" was held to be a ship within the above Act. Turbine Steamship Co. v. The Knapp Roller Boat, 12 O. W. R. 723.

A raft is not a ship against which, for the purpose of enforcing a lien in favour of a person not in possession, any proceedings can be taken in the Admiralty Court. Pigeon River Lumber Co. v. Mooring, 13 O. W. R. 190.

A dredge requiring to be towed from place to place for its work is not a "vessel." The Nithsdale, 15 C. L. J. 268.

The term "every ship which navigates" in sec. 475 of the Canada Shipping Act, means a ship which has in itself some power or means of moving through the waters it navigates, and not a ship that has no such power or means, and which must be moved or propelled or navigated by another vessel. Corporation of Pilots of the Harbour of Quebec v. The "Grandee," 22 C. L. T. 428; 8 Exch. C. R. 54, 79. See also Cumberland Railway & Coal Co. v. St. John Pilot Commissioners, 1 E. L. R. 397.

A ship employed on a sealing voyage from Halifax to the Newfoundland seal fisheries and back, calling on her outward voyage at Louisburg for coal and at Newfoundland for men and supplies and again at Newfoundland to sell her catch, is not an "exempted

ship" within the meaning of sec. 477 of the Canada Shipping Act. Farquhar v. McAlpine, 35 N. S. R. 478.

It is doubtful if a ship is a "house, shop, room or other place" within the Liquor License Act. R. v. Meikleham, 6 O. W. R. p. 952.

See, however, the Act as amended.

A fishing vessel of eighty tons burthen is a "Canadian home trade ship" within the meaning of that term in sec. 126 (c) of the Canada Shipping Act, and a fisherman engaged on board such vessel is a seaman. R. v. Wilneff, 1 E. L. R. 168, 267.

A ship engaged in maritime transport service between Quebec and Anticosti does not come under the designation "foreign-going ship" in the Imperial Merchant Shipping Act, 1894. Belanger v. Gagnon, Q. R. 14 K. B. 340.

**SHOP.**—The broad meaning of shop is a building appropriated to the selling of wares at retail; and a building in which making or repairing of an article or articles is carried on, or in which any industry is pursued; e.g., machine-shop, repair-shop, barber's shop. A building for the purpose of storing machinery, furniture, etc., for safe keeping is not a shop within sec. 409 (2) of the Mun. Act, 1913. Re Hobbs and City of Toronto, 4 O. W. N. 31.

Carrying on the business of a ladies' tailor in one of two rooms of a dwelling house, with three or four assistants, does not constitute the dwelling-house a shop. City of Toronto v. Foss (1912), 27 O. L. R. 264; 612.

**SHORE.**—"Along the shore" of a non-tidal river, or of a navigable inland lake, is now well understood to mean along the edge of the water at its lowest mark, both in this country and in the United States. That may be called the American use of the word "shore," which in England is reserved for the ocean, and has there a more limited meaning. Still, since Throop v. Cobourg & Peterborough Ry. Co., 5 C. P., at pp. 531 and 549, that definition may be considered as not only colloquially, but legally, accepted. The shore is the space between high and low water marks. Stover v. Lavoia, 8 O. W. R. 398; 9 O. W. R. 117.

A boundary that goes to the shore of a freshwater and non-tidal lake carries to the edge of the water in its natural condition at low-water mark. Re Sinclair, 12 O. W. R. 138.

**SHORE LINE.**—See Mowat v. North Victoria, 9 B. C. R. 205.

**SIDEWALK.**—For the purpose of fixing a municipal corporation with liability for negligence, a crossing may be regarded as a part of the adjoining sidewalk. Drennan v. City of Kingston, 23 A. R. 406; 27 S. C. R. 46.

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And where a municipality allows street railways to stop at a given point to let down and take up passengers, and itself excavates in the snow for the convenience of the passengers, such acts constitute an invitation by the municipality to the public to cross the street at that point, even in the absence of any paved crossing, and constitutes an obligation to treat that particular part of the street as a sidewalk, during the winter at least, and make it safe for foot passengers. Ling v. Montreal (1913), 19 R. de J. 241.

A municipality is not legally bound to provide sidewalks, but if they do provide them, they invite persons to use them, and make them part of the public street, and are bound to repair them. Boyle v. Town of Dundas, 25 C. P. 420.

But, *semble*, they are under no obligation to repair the approaches from the street to private property constructed by the owner of the property. Hopkins v. Town of Owen Sound, 27 O. R. 43.

Municipalities are not insurers of the safety of persons using their sidewalks. Bleakley v. Prescott, 12 A. R. 637; reversing 7 O. R. 261.

**SIGNED.**—In Becher v. Woods, 16 C. P. 29, it was held that the word "signed," before the lessor's name to a lease, raised no presumption that the document was a copy and not the original. In this case, the lessor was a marksman.

**SIMILAR BUSINESS.**—V. Business Carried on.

**SISTER.**—The term "sister of the deceased" in sec. 2 (4) of the Succession Duty Amendment Act, 1899 (B.C.) does not include a half-sister. In re Oliver, 8 B. C. R. 91.

**SITUATED.**—Personal property brought into a school district for a mere temporary purpose, is not "situated" within the district within the meaning of sec. 98 of the School Ordinance, R. O. 1888, ch. 59, so as to be liable for assessment. McKenzie v. Trustees of Little Cut Arm District, 3 Terr. L. R. 156.

But property is "situated" where it is usually kept, and the district in which the owner resides is *prima facie* the district in which it is assessable. Graham v. Trustees Broadview School District, 3 Terr. L. R. 200.

It was held that the word "situate" in the expression "property situate within this Province," in the Manitoba Succession Duty Act, 1893, did not cover bank stock owned by the deceased in banks having their head office outside the Province; nor money on deposit outside of the Province. In re Campbell's Estate, 14 C. L. T. 433.

For the purposes of the Chattel Mortgage Act, horses are "situated" at their owner's residence and domicil. Roff v. Krecker, 8 Man. R. 230; 12 C. L. T. 341.

**SKILLED LABOUR.**—Riveters imported from a foreign country for the operation of a new steel car manufacturing establishment, were held to be "skilled labour" within sec. 9 of the Alien Labour Act, R. S. C. ch. 97. R. v. Disney, 14 C. C. C. 152.

**SMALL BREAD.**—The Bread Sales Act, R. S. O. ch. 224, sec. 4 (2). See Re Bread Sales Act (1911), 23 O. L. R. 238.

**SODOMY.**—All unnatural carnal copulations, whether with man or beast, seem to come under the notion of sodomy, which was felony by the ancient common law. In an action for slander, calling the defendant a "sodomite" sufficiently imputes the charge of an indictable offence. Anonymous, 29 U. C. R. 456.

**SOLE—SEPARATE.**—See Dame v. Slater, 21 O. R. 375.

**SOLELY.**—The word "solely" was held to be as comprehensive in meaning as the expression "directly and independently of all other causes," in an accident insurance policy. "The word 'solely' eliminates all other causes, and that is all that is contended for in respect of the other expression." Young v. Maryland Casualty Co., 14 B. C. R. 146; 10 W. L. R. 8.

**SOLD.**—By the Charter of the Canadian Pacific Railway Company, the lands of the company in the North-West Territories are exempted from taxation "until they are either sold or occupied." It was held that lands which the company had agreed to sell, and as to which the conditions of sale had not been fulfilled, are not "sold." Cornwallis v. Canadian Pacific Ry., 19 S. C. R. 702.

There must be a completed sale followed by a conveyance—the title must have passed out of the Railway Company. Rex v. Canadian Pacific Ry. (1911), A. C. 328; Canadian Pacific Ry. v. Burnett, 5 Man. R. 395.

In an agreement for sale of timber, it was to be paid for as the lumber and shingles were sold. *Held*, that the word "sold" did not cover lumber and shingles included in a lien or chattel mortgage given by the purchaser to a bank. Bell v. Robertson, 17 W. L. R. 412.

**SOLD TO ARRIVE.**—In mercantile phraseology "sold to arrive" means sold to arrive by a particular ship, which is named in the contract; or as about being shipped at a named port in some particular manner. Fleury v. Copeland, 46 U. C. R. 36.

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**SOLEMN DECLARATION.**—Where a declarant signs a statutory declaration and the magistrate asks him: "Do you declare it is true?" to which the declarant replies: "I do," the declaration has not been made in the terms of the Canada Evidence Act, and a conviction for perjury cannot be sustained thereunder. It must be shewn that the officer receiving the declaration, or the declarant, made use of the words to the effect that the declaration was in the nature of an oath. R. v. Phillips, 14 C. C. C. 239.

**SOLID BRICK HOUSES.**—*V.* BRICK HOUSES.

**SOME OTHER MATERIAL EVIDENCE.**—*V.* MATERIAL EVIDENCE.

**SOON AS POSSIBLE.**—*V.* AS SOON AS POSSIBLE.

**SPECIAL CASE.**—See Draper v. Dadenhurst, 14 P. R. 376.

**SPECIAL CHARGES.**—A policy of marine insurance read "Insured against absolute total loss of vessels and animals, but to pay general average and special charges." The term "special charges" is equivalent to "particular charges," and includes expenses for salvage preservation and sale of the object insured. The word "special" merely distinguishes an expense incurred in a particular interest from an expense incurred in a general interest which latter gives rise to general average contribution. "Special charges" cover all expenses occasioned by a peril insured against when they have been necessarily incurred in consequence of such peril. Baden v. Western Assurance Co., 22 Que. S. C. 374.

**SPECIAL CIRCUMSTANCES.**—Taxation of a solicitor's bill of costs may be had within twelve months after payment "if the special circumstances of the case, in the opinion of the Court or Judge, appears to require the taxation." The Solicitors' Act, R. S. O. ch. 159, sec. 42.

The earlier cases requiring the client to shew "gross charges amounting to fraud," or something improper in the conduct of the proceedings, or in the obtaining of payment, have been considerably relaxed, and it is now settled that each case must stand upon its own circumstances. "The Court cannot lay down a hard and fast rule not imposed by the Act; it must judge in each case whether there are special circumstances, such as make it right and reasonable that the bill should be taxed." Re Butterfield, a Solicitor, 14 P. R. 149.

The largeness of the bills, blunders in making them out, charges requiring special explanations to justify them, are special circumstances. Re Walker, Walker v. Rochester, 10 P. R. 400.

The continuation of the relationship of solicitor and client is not of itself a special circumstance. Read v. Cotton, 3 P. R. 118; but it is a factor to be considered. Re Butterfield, *supra*.

Inadvertence to make charges for "days employed in going to and returning from Ottawa" is not a special circumstance justifying an order for leave to deliver a supplemental bill. Re O'Donohoe, a Solicitor, 14 P. R. 571; 15 P. R. 93.

Where material evidence has patently not been considered by the Court sought to be appealed from, that fact may be treated as a "special circumstance" within the meaning of sec. 71 of the Supreme Court Act, R. S. C. ch. 139. Fisher v. Jukes, 17 W. L. R. 43.

**SPECIAL PROPERTY OR INTEREST.**—The term "special property or interest" in sec. 347 of the Criminal Code applies to the rights of mere pledgees or bailees where the terms of the bailment are such that the legal property in the goods has not passed to the bailee; it does not apply to the title of a mortgagee under a chattel mortgage. R. v. Ripplinger, 14 C. C. C. 111; 9 W. L. R. 605.

An applicant for a railway car does not acquire a "special property or interest" in the car until such car has been assigned to him. R. v. McElroy, 11 C. C. C. 34.

**SPEED.**—*V.* Greater Speed.

**SPIRITS.**—Spirits is a name applied to inflammable liquors produced by distillation. Old Tom gin is spirits within the meaning of the Inland Revenue Act. Winning v. Gow, 32 U. C. R. 528.

**STAFF.**—The "staff" of a corporation or business concern means the employees. It does not include the manager of the concern, but may include the secretary. Earle v. Burland, 27 A. R. 540; 1902, A. C. 83.

**STANDARD.**—"Standard" is a common English word having reference to the character and quality of the goods in connection with which it is used and having no reference to anything else, is not an apt or appropriate term to distinguish the goods of one trader from those of another, and is not a valid trademark. Standard Ideal Co. v. Standard Sanitary Mfg. Co., 20 Que. K. B. 109; (1911), A. C. 78.

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**STAND ASIDE.**—Synonymous with "stand by." A direction to a juror to "stand by" at the instance of the Crown, is in substance a deferred challenge for cause, and cannot be made after the juror has, by direction of the Clerk of Assize, taken the book to be sworn. R. v. Barsalou, 4 C. C. C. 343.

The Crown cannot, without shewing cause for challenge, direct a juror to stand aside a second time. Morin v. The Queen, 18 S. C. R. 407; overruling R. v. Lacombe, 13 L. C. Jur. 259.

**STANDING.**—See Christie v. Cooley, 4 O. W. R. 79; 6 O. W. R. 213.

**STATE OF NATURE.**—The term "state of nature" in sec. 6 (4) of The Limitations Act, R. S. O. ch. 75, is used in contradistinction to the preceding expression "residing upon or cultivating," and unless the patentee of wild lands, or some one claiming under him, has resided upon the lands or has cultivated or improved it or actually used it, the limitations period applies. Stovel v. Gregory, 21 A. R. 137.

**STATION.**—A station is a building or buildings for the taking up and letting down of passengers, and also for the deposit of goods. Both in the United States and Canada, "depot" and "station" are synonymous terms. Goyeau v. Great Western Ry. Co., 25 Gr. 62.

The absence of a station house, where shelter should be provided, may give a right of action where the plaintiff is injured by exposure to cold while waiting for a train. Morrison v. Pere Marquette R. R. Co. (1912), 27 O. L. R. 271; 551.

See also Anderson v. Grand Trunk Ry., 27 O. R. 441; 24 A. R. 672, as to an accident to a passenger getting off a train and being injured while crossing a track to reach the highway.

**STATIONERY AND FURNITURE.**—V. Furniture.

**STATUTORY DECLARATION.**—V. Solemn Declaration.

**STEAM BARGE.**—See Steinhoff v. Royal Canadian Insc. Co., 42 U. C. R. 307.

**STEP IN THE PROCEEDINGS.**—A "step in the proceedings" means something in the nature of an application to the Court, and not mere talk between solicitors, or solicitors' clerks, nor the writing of letters, but the taking of some step, such as issuing a summons, or something which is in the technical sense a step in the proceedings. Obtaining an *ex parte* order to amend a writ

of summons was held to be a "step in the proceedings." Goldstein v. Vancouver Timber and Trading Co., 12 W. L. R. 154.

**STOCK.**—In a bequest of "horses, stock and farming utensils" the word "stock" includes hay and other crops on the farm, as well as live stock. Wetmore v. Ketchum, 10 N. B. R. 408.

The word "stock" as used in a chattel mortgage covering a hardware stock, office fixtures, etc., may be wide enough to cover a cash register in the store at the time, but, in the present case, it was held that the word referred to the goods in the store and did not cover the cash register. The Dominion Register Co. v. Hall, 12 E. L. R. 494.

A testator gave "the house and land, with all household furniture and all the stock and trade now in the house and out of the house, with all book accounts now due me." *Held*, that money on deposit and notes given in settlement of book debts, a quantity of cordwood on the premises, two horses, harness and vehicles, were embraced in the gift of the "stock and trade." In re Holden (1903), 5 O. L. R. 156.

Stock means a fund, the money or goods employed in trade: the property which a merchant, a tradesman or a company has invested in any business, including merchandise, money and credits; more particularly the goods which a merchant or a commercial house keeps on hand for the supply of customers. *Ib.*

**STOCK DIVIDEND.**—A "stock dividend" is stock distributed to those already holding stock by way of dividend upon their then holdings. It is not a new investment in any sense; it is a mode of distributing accumulated profits in the shape of new stock, which, *pro tanto*, reduces the value of the stock held. Re Fulford, 5 O. W. N. 125.

**STOPPED UP.**—A highway is legally "stopped up" when a by-law for that purpose is passed, though there may be no physical obstruction to the use of the road. Johnston v. Reesor, 10 U. C. R. 101.

**STORE.**—The word "store" in sec. 409 (2) of the Mun. Act, 1913, is equivalent to "shop." Carrying on the business of a ladies' tailor in one or two rooms of a dwelling-house does not constitute a store. The word contemplates operations on a larger scale than merely purchasing a comparatively small quantity of material for ladies' dresses and making it up to order. City of Toronto v. Foss (1912), 27 O. L. R. 264, 612.

A building for storing furniture, machinery, etc., for safe keeping is not a store. Re Hobbs and City of Toronto, 4 O. W. N. 31.

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Where premises were rented as a boot and shoe store, it was held no breach of a covenant to use them as a store, to carry on a shoe-shining business. Nor was it a breach of the covenant to allow a real estate agent to put his cards in the window and allow him to use a part of the store to meet his clients. Re Just and Stewart, 24 W. L. R. 433.

A farmer left a quantity of wheat with a miller taking a receipt in these words: "Received from W. *in store* 296 bush. wheat, fire excepted, price to be set on or before 1st August next." *Held,* the words "in store" did not indicate a sale. Isaac v. Andrews, 28 C. P. 40. It was competent for the plaintiff to have proved there was a sale notwithstanding the words "in store." Ib. p. 44. See McBride v. Silverthorne, 11 U. C. R. 545.

**STORED OR KEPT.**—The term "stored or kept" in the statutory conditions of the Ontario Insurance Act, R. S. O. ch. 183, sec. 194, sub-sec. 5 (f) are indicative of duration and permanence, and oil kept on a steam-boat for lubricating purposes is not "stored or kept" within that condition. Mitchell v. City of London Fire Insc. Co., 12 O. R. 706; 15 A. R. 262.

"What is the meaning of the words 'stored or kept' in collocation and in the connection in which they are found? They are common English words, with no very precise or exact signification. They have a somewhat kindred meaning and cover very much the same ground. The expression, as used in the statutory condition, seems to point to the presence of a quantity not inconsiderable, or at any rate not trifling, in amount, or to import a notion of warehousing or depositing for safe custody or keeping in stock for trading purposes. It is difficult, if not impossible, to give an accurate definition of the meaning, but if one takes a concrete case, it is not very difficult to say whether a particular thing is 'stored or kept' within the meaning of the condition. No one would probably say that a person who had a reasonable quantity of tea in his house for domestic use was 'storing or keeping' tea there, or (to take the instance of benzine, which is one of the prescribed articles), no one would say that a person who had a small bottle of benzine for removing grease spots or cleaning purposes of that sort was 'storing or keeping' benzine. . . . Some meaning must be given to the words 'stored or kept.' Their Lordships think these words must have their ordinary meaning. So construing them the small quantity of gasoline which was in the store for the purpose of consumption was not being 'stored or kept' within the meaning of the statutory condition." Thompson v. Equity Fire Insc. Co. (1910), A. C. 592; reversing 41 S. C. R. 491, and affirming 17 O. L. R. 214.

See also Patterson v. Central Canada Fire Insc. Co., 20 Man. R. 295; 16 W. L. R. 647, where the facts were the same and the judgment of the Privy Council was followed.

**STONE OR ORE.**—On a demurrer to a replication it was held that phosphate rock was not stone or ore within the meaning of a condition in a marine policy that the vessel was not to load more than the register tonnage with stone, ores, etc. Delaware Mutual Insc. Co. v. Chapman, 19 N. B. R. 28; Cassels Dig. S. C. R. 387.

**STREAM.**—The principles applicable to streams of running water, which are *publici juris*, do not extend to the flow of mere surface water spreading over land. McGillivray v. Millin, 27 U. C. R. 62; Crewson v. Grand Trunk Ry., 27 U. C. R. 68.

As to right to obstruct such streams. Whelan v. McLachlan, 16 C. P. 102.

As to the distinction between streams and rivers, see Township of North Dorchester v. County of Middlesex, 16 O. R. 658, and the title "Rivers."

**STREET.**—In The Public Health Act "street" includes any highway, and any public bridge, and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not. R. S. O. ch. 218, sec. 2 (o).

In The Motor Vehicles Act, R. S. O. ch. 207, sec. 2 (a), "highway" includes a public park, parkway and driveway.

In the Dominion Railway Act, it means a public highway, which is so of right. Sec. 2 (a); and in the Ontario Railway Act, it includes any public road, street, lane or other public way or communication. R. S. O. ch. 185, sec. 2 (h).

The term "street," in its ordinary legal signification, includes all parts of the way, the roadway, the gutters, and the sidewalks. The owner of land abutting on a street has a right of access to his land, and may maintain an action for an obstruction which cuts off his right of access. R. v. Fulmer, 14 C. L. T. 25.

A street forming a boundary line between two counties is not a portion of either county, so as to extend a by-law of either county to such street; and a conviction against the defendant for peddling goods on such boundary line without a license was quashed. R. v. Hamilton, 5 O. W. N. 58.

A highway is a piece of land over which all members of the public are entitled to pass and repass; and, conversely, every piece of land which is subject to such public right of passage is a highway or a part of the highway. Rideout v. Howlett, 12 E. L. R. 527.

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**STRESS OF WEATHER.**—See Richard S. S. Co. v. China Mutual Insc. Co., 4 E. L. R. 269.

**STRUCTURE.**—A threshing separator is not a "structure" within sec. 511 of the Criminal Code. Mortimer v. Fisher, 23 W. L. R. 905.

**SUBJECT TO ALL USUAL TERMS.**—See Citizens Insc. Co. v. Parsons (1881), 7 A. C. 96; 4 S. C. R. 215.

**SUBJECT TO APPROVAL.**—See Mason & Risch Piano Co. v. Thompson, 3 O. W. R. 540.

**SUBJECT TO BE PRODUCED.**—The words "subject to be produced thereafter in evidence in any Court" in sec. 46 (3) of The Surveys Act, R. S. O. ch. 166, were before the Court in Manary v. Dash (1864), 23 U. C. R. 580. Draper, C.J., for the Court, said: "We have felt some doubt in determining what effect is to be given to the words 'subject to be produced, etc.,' and we are not aware they have received a judicial construction. We are not prepared to construe them so as to make affidavits taken before a surveyor when employed in a particular survey evidence upon any other disputed line or question of survey arising at a different time and between different parties, or making them admissible without any reference to the general rules of law relating to evidence.

**SUBJECT TO DOWER.**—See Cope v. Cope, 26 O. R. 441.

**SUBJECT TO THE FOLLOWING STIPULATIONS.**—A lease made "subject to the following stipulations," followed by a number of clauses, one of which was that the lessee should not assign without consent. *Held*, that the words "subject," etc., had not the effect of making the succeeding clauses conditions, so as to cause a forfeiture for their breach. McIntosh v. Samo, 24 C. P. 625.

**SUBMISSION.** — "Submission" and "reference" mean the same thing, and the costs of the submission include all the costs of the reference. Ellwood v. County of Middlesex, 19 U. C. R. 25.

A written submission is not a parol submission merely because the arbitrator is appointed by parol. In re Cruickshanks and Corby, 30 C. P. 466.

**SUBSEQUENT PROCEEDINGS.**—The words "subsequent proceedings," in Con. Rule (1913) 102, are confined to proceedings by the plaintiff, and an individual member of a defendant firm

may appear and plead in his own name. Langman v. Hudson, 14 P. R. 215.

**SUBSEQUENT COSTS.**—On a summary conviction and a commitment to jail, in default of paying a fine, "subsequent costs" include costs of arrest and commitment and conveying to jail. R. v. Dubuc, 15 C. C. C. 353.

**SUBSEQUENT PURCHASER.**—A mortgagee of a ship who takes possession under his mortgage before the institution of an action *in rem* for the recovery of a claim which constitutes a maritime lien, is not a subsequent purchaser within the meaning of sec. 22 (a) of the Admiralty Act, R. S. C. ch. 141 (formerly sec. 14 of the Maritime Court Act). Sylvester v. The Ship "Gordon Gauthier," 4 Exch. C. R. 354.

The words "subsequent purchaser" in sec. 7 of The Bills of Sale Act, R. S. O. ch. 135, refer to those whose purchases are accompanied by an immediate delivery and followed by an actual and continued change of possession, or who have complied with the provisions of the Act. Martinson v. Parkinson, 20 O. R. 720; 19 A. R. 188.

In the sections of the Act relating to removal of goods from one county to another, "subsequent purchaser" means one who purchased after the period allowed for re-filing. Hulbert v. Peterson, 36 S. C. R. 324; Galbraith v. Scott, 16 Man. R. 594.

Notice of a prior invalid mortgage will not prevent a subsequent *bona fide* purchaser or mortgagee obtaining a good title. Moffatt v. Coulson, 19 U. C. R. 341.

**SUBSTANTIAL.**—A testator gave his trustees power to sell real estate "unproductive of a substantial net profit." Anglin, J.: The term is distinctly relative. Thus a man who might in one locality be deemed "substantial" householder, would in another be regarded as by no means answering this description. What may be a substantial net profit from one class of investment, may be wholly inadequate from another. The character and surroundings of the property; its prospective, as well as its present, value; its safety as a security for the *corpus*—these and similar features must be considered in determining whether in each case the net return is, or is not, a substantial net profit. . . . Substantial damages as contradistinguished from nominal damages are defined as "an amount worth having."

In this case, it was held that a net return of two and one-half per cent. upon the saleable value was not a "substantial net profit." Re M., 6 O. W. R. 938.

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**SUBSTANTIAL PERFORMANCE.**—There is substantial performance of a contract where a variation from the specifications is unintentional and unimportant, and one by which the structure is not injured; where the defects can be remedied by the owner without great expenditure, and there was an evident intention to fulfil the contract. The defect must not, however, run through the whole, or be such that the object of the owner to have a specified amount of work done in a particular way is not accomplished.

In a contract to build a motor boat, the Court seemed to recognize the doctrine of "substantial performance" and gave the plaintiff judgment, notwithstanding some admitted defects in workmanship and material. Sydney Boat and Motor Co. v. Gillis, 7 E. L. R. 75.

In Sherlock v. Powell, 26 A. R. 407, the Court said the doctrine of substantial performance "has never been adopted by the Courts of this country;" and, in McDonald v. Simons, 15 W. L. R. 218, Clement, J., said the doctrine has no place in British Columbia jurisprudence. These cases refer to the text of Hudson on Building Contracts, 2nd ed., p. 201, but the author there draws a distinction between a defect in performance, consisting of bad work, or work varying from the specification, which would have to be removed and replaced in order to render it exact, and a mere trivial omission, such as the locks on the door, which could be easily added at a small cost. He adds that it is suggested that the Courts will strive against any interpretation which will constitute literal and entire performance a condition precedent to payment.

See Toronto Radiator Mfg. Co. v. Alexander, 2 Terr. L. R. 120, where the question of "substantial performance" of a contract and of the waiver of a special contract and the substitution of a new contract to pay according to a *quantum meruit* are discussed.

The doctrine appears to have been accepted by the Chancellor, and not disapproved of by the Court of Appeal, in King v. Low (1901), 2 O. L. R. 234.

**SUBSTANTIAL WRONG.**—Section 28 of The Judicature Act, R. S. O. ch. 56 (formerly Con. Rule 785), provides that a new trial shall not be granted on the grounds of misdirection or the improper admission or rejection of evidence, etc., "unless some substantial wrong or miscarriage has been thereby occasioned."

Where inadmissible, evidence was received after objection and commented on by the Judge to the jury as being important, it was held "substantial wrong." Bank of Commerce v. Isaacs, 16 O. R. 450.

Improper reception of evidence, coupled with grossly excessive damages, was held "substantial wrong." C. v. D. (1904), 8 O. L. R. 308; 12 O. L. R. 24.

In Lougheed v. Collingwood Ship Building Co. (1908), 16 O. L. R. 64, the improper admission of evidence alone was held to be within the Act. That was a case of a claim for personal injuries, and the plaintiff was improperly allowed to prove that the defendant was indemnified by a guarantee company.

Section 1019 of the Criminal Code provides that no conviction shall be set aside or new trial granted for the improper admission or rejection of evidence, or misdirection, or because of something improperly done, unless "some substantial wrong" was thereby occasioned.

The admission of improper evidence is not of itself "substantial wrong," where there is other evidence ample to warrant the conviction. R. v. Tutty, 9 C. C. C. 544; R. v. Higgins, 7 C. C. C. 68; 36 N. B. R. 18. R. v. Harkness (1905), 10 O. L. R. 555; 10 C. C. C. 199; R. v. Woods, 2 C. C. C. 159; R. v. Sunfield, 13 C. C. C. 1.

But an Appellate Court has a discretion to grant a new trial, if the illegal evidence or other irregularities are not so trivial that it cannot be assumed, the jury was not influenced by it. Allen v. The King, 16 B. C. R. 9; 44 S. C. R. 331; 18 C. C. C. 1.

An omission to properly direct a jury on an important question of law is a substantial wrong, even if such discretion is not asked for by the accused. (R. v. Fick, 16 C. P. 379 disapproved.) R. v. Theriault, 2 C. C. C. 444; R. v. Walker, 16 C. C. C. 77.

The improper admission, at the trial, of the deposition of a deceased witness, taken before a magistrate at the preliminary hearing, was held to be substantial wrong. R. v. Hamilton, 2 C. C. C. 390.

So the improper admission of an alleged confession, although subsequently withdrawn and the jury told to disregard it. R. v. Sonyer, 2 C. C. C. 501; and the improper admission of an incompetent witness if the evidence of such witness is material or might have an influence with the jury is within the Act. R. v. Allen, 22 C. C. C. 124.

Comment by the Crown Counsel on failure of the accused to testify is substantial wrong. R. v. Coleman, 2 C. C. C. 523; R. v. Charles King, 9 C. C. C. 426; or of the failure of the prisoner's wife to testify. R. v. Corby, 1 C. C. C. 457.

Where a Crown Counsel, in opening a prosecution for murder, produced blood-stained clothing and told the jury it was human blood and the clothes belonged to the prisoner, but produced no evidence to prove these statements, held a substantial wrong. R. v. Walker, 16 C. C. C. 77.

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Where a conviction is made without the legal proof required by law of an essential part of a crime, such defect is substantial wrong. R. v. Drummond (1905), 10 O. L. R. 546; 10 C. C. C. 340.

**SUBSTITUTE.**—"Substitute" is to put or place a person or thing in the stead or place of some other person or thing. Substitute does not necessarily imply that the act of substitution of one person or thing, for another person or thing, must be at the same time. A person or thing may be removed at one time, and another person or thing substituted for it upon the next day, or the next month, or the next year. R. v. Swalwell, 12 O. R. p. 395.

**SUCCESSION DUTY.**—There is in England a definite meaning attached to the expression "legacy duty;" but in Ontario there is only the one inheritance tax. The statute calls this "succession duty." It is a duty imposed upon all property devolving upon death; and it is a tax which has to be borne by the legatee, unless the will contains some provision casting the burden upon the residuary estate.

Where a testatrix, domiciled in Ontario, and speaking with reference to a bequest of property within Ontario, directs that it shall be free from "legacy duty," this means "succession duty," which is the only legacy duty known to Ontario law. Re Gwynne, 3 O. W. N. 1428.

Money on deposit in a branch of a bank in the Province where the deceased resided is liable to succession duty, although the head office of the bank is not within the Province. The King v. Lovitt, 1 E. L. R. 513.

**SUCCESSIVE.**—V. Three Successive Weeks.

**SUCH APPROPRIATION.**—The words "such appropriation" in the Act incorporating the Water Commissioners (35 Vic. ch. 80, sec. 4), apply to the taking of the land, as well as a diversion or appropriation of water. In re Collins and Water Commissioners of Ottawa, 42 U. C. R. 378.

**SUCH TRIAL.**—The words "such trial" in sec. 39 of the Dominion Controverted Elections Act, R. S. C. ch. 7, refer to a trial at which the respondent's presence has been declared to be necessary, and where no such declaration is made, the time of the session of Parliament is not excluded from the six months within which the trial is to be commenced. Algoma Election, 1 E. C. 448.

**SUFFERED TO BE OR REMAIN.**—A son who lived with his father in a house occupied by the father and his family is a person "suffered to be or remain" on the premises within the meaning of sec. 111 of the Nova Scotia Liquor License Act. R. v. Conrod, 35 N. S. R. 79; 5 C. C. C. 414.

**SUFFICIENT CAUSE.**—By sec. 121 of the Ontario Companies Act, power is given to the Court to rectify the companies' books, "if the name of any person is without sufficient cause entered in or omitted from" the register of shareholders.

The fact that by the charter a person is declared to be a shareholder is sufficient cause for his name appearing on the list. In re Haggart Bros. Mfg. Co., 19 A. R. 582.

Fraudulent representations made to a person, whose name appears in the charter, by a person connected with the organization of the company prior to the issue of the charter, is not sufficient cause. Re J. A. Frech & Co., Ltd., 1 O. W. N. 864. See also Bennett v. Empire Printing and Publishing Co., 15 P. R. 430.

**SUITABLE PENTICE.**—A trap-door, if kept shut, is a "suitable pentice" within the meaning of the Mining Act, but when open is no pentice at all. Siven v. Temiskaming Mining Co. (1911), 25 O. L. R. 524.

**SUM IN DISPUTE.**—Section 125 of the Division Courts Act gives a right of appeal in an action or garnishee proceeding where "the sum in dispute" exceeds $100, exclusive of costs.

The "sum in dispute" means the amount claimed in the particulars sued on, not that amount less the sum recovered at the trial. Petrie v. Machan, 28 O. R. 504.

The fact that such sum, with interest subsequently accrued, exceeds $100 does not give a right of appeal. The subsequent interest is given by statute as the result of the judgment, and is not in dispute. Foster v. Emary, 14 P. R. 1.

The term "sum in dispute" is not equivalent to "amount in controversy," which means the sum recovered in the action. Hunt v. Taplin, 24 S. C. R. 36.

*Semble*, if the amount sued for embraces two causes of action, each less than $100, and the plaintiff recovers on one claim only, the sum in dispute is then less than $100. Petrie v. Machan, *supra*.

**SUMMARY WAY.**—In an action on a solicitor's bill it was agreed that the disputed matters be referred "in a summary way

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to . . . under R. S. O. ch. 174 (the former Solicitors' Act) for decision." *Held*, that by "summary way" the parties meant that the reference was to be without ceremony or delay, and the words following did not provide for an appeal. Sale v. Lake Erie & Detroit Ry., 32 O. R. 159.

**SUNDAY.**—"Sunday" is not synonymous with "Sabbath-day." Sunday is the name of the day: Sabbath is the name of the institution. Sunday is the Sabbath of the Christians. Re Cribben and City of Toronto, 21 O. R. 325.

At common law Sunday is a *dies non juridicus*, and all judicial proceedings on that day are therefore void. Section 961 of the Criminal Code provides that the taking of a verdict or other proceedings of the Court on a Sunday shall not be invalid. This section deals only with matters before a jury, and not with a preliminary inquiry before a magistrate, which is a judicial proceeding and cannot legally be done on a Sunday. R. v. Cavelier, 1 C. C. C. 134; R. v. Murray, 28 O. R. 549; 1 C. C. C. 452.

An arrest on a Sunday on a warrant of commitment in default of payment of a fine is void. Ex p. Frecker, 33 C. L. J. 248. But in Re McGillivray, 13 C. C. C. 113, the Supreme Court of Nova Scotia held that a warrant of arrest to answer a charge for an offence punishable on summary conviction may be issued and executed on a Sunday. Weatherbe, C.J., dissenting, and Townshend, J., holding that the proceedings before the magistrate were not judicial acts.

Driving a cab on Sunday is not an offence under the Lord's Day Act. R. v. Somers, 24 O. R. 244; 1 C. C. C. 46.

In computing demurrage days Sunday is to be reckoned as one of the days to be allowed for. Gibson v. Michael's Bay Lumber Co., 7 O. R. 746.

As to the respective powers of the Parliament of Canada and the provinces, see Attorney-General for Ontario v. Hamilton Street Ry. Co. (1903), A. C. 524; Re Sunday Observance Laws, 35 S. C. R. 581. In R. v. Marsh, 21 C. C. C. 413, the Supreme Court of New Brunswick held that the Provincial Lord's Day Act was *ultra vires* and quashed a conviction against a restaurant keeper for selling meals on Sunday.

A farmer is not within the Lord's Day Act. R. v. Hamren, 7 C. C. C. 188; Hespler v. Shaw, 16 U. C. R. 104; Hamren v. Mott, 5 Terr. L. R. 400. A newsdealer who sells newspapers is within the Act. R. v. Anderson, 10 C. C. C. 144; and a vendor of ice cream where not supplied in the *bona fide* exercise of the business of keeping an eating house. R. v. Stinson, 10 C. C. C. 16; R. v. Wetheral, 18 C. C. C. 372; and a restaurant keeper selling cigars, unless they are sold as incident to the meals and to be consumed

on the premises. R. v. Wells, 18 C. C. C. 377; (1911) 24 O. L. R. 77.

**SUPERINTENDENCE.**—There is no implied right of "superintendence" within the meaning of sec. 2 (j) of the Workmen's Compensation for Injuries Act, R. S. O. ch. 146, merely from the length of service or skill, and the employer is not liable where one workman, presuming on greater length of service or skill, gives directions. Garland v. City of Toronto, 23 A. R. 238.

Where the defendants supplied a man to drive men to and from the place of employment, and the plaintiff (one of such men), was thrown from the waggon and injured, it was held that the teamster did not have "superintendence" within the meaning of the Act. Demers v. Nova Scotia Silver Cobalt Mining Co., 3 O. W. N. 1206.

**SUPERSEDE.**—The word "supersede" when used in a codicil with reference to a gift contained in a will, does not necessarily mean that the whole gift is set aside or abandoned. The term may be used in its original and etymological meaning of "to sit above, be superior to, precede, or have priority over." Re Smith, 5 O. W. N. 501, reversing 4 O. W. N. 1115.

**SUPERSTRUCTURES.**—Lamps, hangers and transformers of an electric light company, though easily transferable from one place to another, are "superstructures" upon the street within the meaning of sec. 47 (c) of the Assessment Act, R. S. O. ch. 195. Toronto Ry. Co. v. City of Toronto (1903), 6 O. L. R. 187.

Under the Ordinance respecting the Assessment of Railways, the round-houses, station or office buildings, section houses, employees' dwellings, freight sheds, and other buildings of the like nature were held not to come within the term "superstructures." In re Canadian Pacific Ry. and Town of Macleod, 5 Terr. L. R. 192.

**SURFACE WATER.**—Surface water does not cease to be "surface water" within the meaning of sec. 3, sub-sec. 6 of The Municipal Drainage Act, R. S. O. ch. 198, the moment it reaches a drain, which is but one part of a system of drains constructed for the purpose of taking care of such surface water. If any part of such proves insufficient, the water not so taken care of continues to be surface water within the meaning of the subsection. Township of Sandwich South v. Township of Maidstone, 6 O. W. N. 538.

**SURPLUS WATER.**—See Caledonia Milling Co. v. Shira Milling Co. (1905), 9 O. L. R. 213.

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**SURPRISE.**—When the evidence produced by one side is such as from the nature of the circumstances could not have been reasonably expected by the other side, and there is reason to believe that this evidence, if foreseen, might have been contradicted or explained, the Court may grant a new trial on the ground of surprise.

"Surprise" may consist of the absence of counsel. Martin v. Corbett, 7 U. C. R. 169; of the absence of a material witness, if the proper precautions have been taken to secure his presence. Robertson v. Ross, 2 C. P. 193; of false or mistaken evidence. Chadd v. Meagher, 24 C. P. 54.

But a party cannot, in the absence of witnesses, take his chances of a verdict and then complain of surprise. Kitchen v. Murray, 16 C. P. 69.

Where a solicitor was called as a witness and voluntarily gave evidence violating professional confidence, it was deemed a surprise on the client. Livingstone v. Gartshore, 23 U. C. R. 166.

But it is no ground of surprise that a prisoner "had no knowledge of the evidence to be produced against him." R. v. Slavin, 17 C. P. 205; or that a party abstained from proof under the idea that the opposite party had no real intention of putting him to such proof. Andrew v. Stuart, 6 A. R. 495.

**SURVIVING CHILDREN.**—In a gift by implication to "the rest of my surviving children," the word "surviving" has reference to the time when the fund becomes divisible, not to the death of the testator. Re McCubbin, 6 O. W. R. 771. See also In re Miller, 2 O. W. N. 782; Re Garner, 3 O. W. R. 584.

Where a testator gave the whole of his property to his wife during widowhood, subject to payment of some specific legacies, and then directed the remainder of his property to be "divided among my surviving children," the word surviving was held to refer to the period of distribution. Re Elliott, 2 O. W. N. 936.

See also Saunders v. Bradley (1903), 6 O. L. R. 250.

**SURVIVOR.**—A devise of real estate to two sons without words of limitation, "and in case either of my sons should die without issue of their bodies, then his share to go to the remaining survivor," the word "survivor" was held to mean "longest liver," not "other." Asbridge v. Asbridge, 22 O. R. 146.

A testator devised real estate to his wife for life with remainder to A., B., and C., or the survivors or survivor of them. *Held*, that "survivors" meant the survivors at the death of the widow and not of the testator. Peebles v. Kyle, 4 Gr. 334; Eastern Trust Co. v. Fraser (1913), 13 E. L. R. 137.

Survivorship on failure of issue. See In re Charles McIntosh, 13 Gr. 309.

**SWORN.**—By the Interpretation Act "swear" and "sworn" respectively include "affirm solemnly" and "affirmed solemnly," and it is no objection to an affidavit that the jurat states that it was "sworn," whereas the deponents affirmed. Dyck v. Greaning, 17 Man. R. 158.

**TAKE CARE OF.**—In a devise of property, with the added words: "And the said G. D. is to *take care of* her father during his lifetime," the words "take care of" are not equivalent to "support," or "provide for," or "educate him," and do not impose on the devisee a precatory trust so as to enable the father to enforce it by action. Re Pringle, 3 O. W. N. 231.

**TAKEN.**—The former statute against usury, 51 Geo. III. ch. 9, provided that all contracts should be void where usurious interest is "reserved and taken." *Per* Robinson, C.J.: The word "taken" is not necessarily equivalent to "paid," and as used in this clause, may be understood, I think, to mean a contract by which it is agreed that such illegal interest shall be taken. . . . A man is said to take six per cent. interest for money when he lends it upon security at that rate; and so, a merchant is said to take a certain price for his goods when he sells them at that price, whether on credit or for cash. Boag v. Lewis, 1 U. C. R. 357.

Where land is expropriated by a municipal corporation under authority of the Municipal Act, such land is "taken" from the date of the passing of the by-law of expropriation, and interest is payable from that date. Re MacPherson and City of Toronto, 26 O. R. 559; Re Davies and James Bay Ry. Co. (1910), 20 O. L. R. 534.

Where lands are taken for railway purposes they are "taken" from the date of the warrants of possession, and not from the time the landowner knows he has to give up the land. In re Clarke and Toronto, Grey & Bruce Ry. Co. (1909), 18 O. L. R. 628, following Re Canadian Northern Ry. Co. and Robinson, 17 Man. R. 396, and dissenting from Re Cavanagh and Canada Atlantic Ry. Co. (1907), 14 O. L. R. 523.

The word "taken" in sec. 302 of the Railway Act, R. S. C. ch. 37, is synonymous with "apprehended." R. v. Hughes, 2 C. C. C. 332.

**TAKING POSSESSION.**—V. POSSESSION.

**TAX—TAXES.**—A taxing Act is to be strictly construed. Halifax v. McLaughlin Carriage Co., 1 E. L. R. 59; Re Rattenbury and Town of Clinton, 4 O. W. N. p. 1607.

The word "taxes" is generally interpreted as referable to the usual yearly levies for the public purposes of the municipality.

Special frontage rates for sewers were held to be within the term "taxes" in an agreement for sale. Re Graydon v. Hammill, 20 O. R. 199; Armstrong v. Auger, 21 O. R. 98. And in Re Taylor and Martyn (1907), 14 O. L. R. 132, on an agreement to sell land discharged from all encumbrances, local improvement rates were held not apportionable as "taxes, rates and assessments," and the vendor was required to remove such rates.

But now by sec. 53 of the Local Improvement Sections of the Municipal Act, R. S. O. ch. 193, the special rates for local improvements shall not, as between vendor and purchaser, be deemed an incumbrance.

Every contribution to a public purpose imposed by superior authority is a "tax" and nothing less. An exemption from municipal taxes extends to taxes imposed for special purposes, *e.g.* the construction of a drain in front of the exempted property. Les Ecclesiastiques, etc., v. the City of Montreal, 16 S. C. R. 399; 14 A. C. 660.

The same result was reached where the defendants were given a "total exemption from taxation" except for water rates, and the plaintiffs attempted to collect a special assessment for the cost of a public sewer. City of Halifax v. Nova Scotia Car Works, 11 E. L. R. 208; 45 N. S. R. 552; 47 S. C. R. 406.

A by-law exempting defendants from "all municipal taxes, rates and levies and assessments of every nature and kind" includes school rates. City of Winnipeg v. Canadian Pacific Ry., 12 Man. R. 581; 30 S. C. R. 558.

"Direct taxation," within the meaning of sec. 92 of the B. N. A. Act, is a tax which is demanded from the very persons whom it is intended should pay it and upon whom the burden of the tax at the time fixed for payment is placed as the ultimate incidence of the taxing scheme; conversely, if the tax is demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another, the taxation is indirect. Cotton v. The King, 45 S. C. R. 469; 1914, A. C. 176, where the Quebec Succession Duties Act of 1906 was held to be *ultra vires*.

V. MUNICIPAL TAXES: ARREARS.

**TAXABLE COSTS OF DEFENCE.**—The term "Taxable costs of defence" in Con. Rule (1913), 649, does not mean costs as between solicitor and client. Talbot v. Poole, 15 P. R. 274.

**TAXABLE INHABITANTS.**—The School Act, 13-14 Vic. ch. 48, gave the right to vote for school trustees to all "the taxable inhabitants." It was held that the term "taxable inhabitants"

did not include persons who were rated only for statute labour and were not householders. R. ex rel. McNamara v. Christie, 9 U. C. R. 682.

**TEMPEST.**—*V.* Accidents by Fire and Tempest.

**TEMPORARILY DOMICILED.**—A foreigner coming to Canada for successive seasons on fishing trips and occupying for a few weeks only in each year a building he has erected as a fishing camp is not a person "temporarily domiciled" in Canada under the Fisheries Act. R. v. Townsend, 5 C. C. C. 143; 21 C. L. T. 569.

**TENANT.**—Under the ordinary covenant that the lessee will allow an incoming tenant to plough the land after harvest, a purchaser of the farm is a "tenant" within the meaning of the covenant. Newell v. Magee, 30 O. R. 550.

A verbal agreement for a lease does not create the relation of landlord and tenant unless the intended lessee actually enters into possession. Bank of Upper Canada v. Tarrant, 19 U. C. R. 423.

But entry into possession and sowing a crop upon a verbal understanding that he shall have the products thereof, will create a tenancy although no definite time for occupation is fixed. Mulherne v. Fortune, 8 C. P. 434.

An agreement to work land on shares, where the person doing the work is not placed in possession of any distinct portion of the farm, does not constitute him a tenant. Oberlin v. McGregor, 26 C. P. 460.

Nor does an agreement to labor on the farm, and receive for his wages a share of the crop, constitute the labourer a tenant. Dacksteder v. Baird, 5 U. C. R. 591.

A sub-tenant is not a "tenant" within the meaning of R. S. Sask., ch. 51, sec. 4. Anderson v. Scott, 22 W. L. R. 876.

**TENDER.**—By the Currency Act, R. S. C. ch. 25, sec. 10, copper or bronze coins to the amount of twenty-five cents, and silver coins to the amount of $10 are legal tender. Any amount beyond $10 must be made in gold or Dominion notes.

But a tender of the notes of a chartered bank will be good if not objected to on that ground. Conn v. The Merchants Bank of Canada, 30 C. P. 380.

To constitute a legal tender the money must not only be present, but it must be produced and seen, with this exception, that the party to whom the tender is made, may, by his conduct, relieve the debtor from the necessity of producing it by saying that it need not be produced, for that he will not take the money if it be. Matheson v. Kelly, 24 C. P. 598.

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A mere statement of readiness to pay is not a tender. Thomson v. Hamilton, 5 O. S. 111; Garforth v. Cairns, 9 C. L. J. 212.

There must be an actual production and offer of the money unless the creditor waives the production of the money by rejecting it unequivocally. Reynolds v. Allan, 10 U. C. R. 350.

The tender must be unconditional—if coupled with a condition it is bad. Peers v. Allan, 19 Gr. 98.

But a demand for a receipt for the money paid is not a condition; a person tendering money is entitled to a receipt. Lockridge v. Lacey, 30 U. C. R. 494. But the receipt must be merely an acknowledgment of the amount paid and not involve an admission besides the receipt—such as a receipt in full, or in settlement, or of all demands, etc. *Ib.*, p. 501.

A tender under protest is good. Peers v. Allan, 19 Gr. 98. A letter by the defendant's solicitor to the plaintiff's solicitor, before action, offering to pay the plaintiff's demand, is not a good tender. Garforth v. Cairns, 9 C. L. J. 212.

**TENOR.**—*V.* ACCORDING TO THE TENOR.

**TERMINATION OF PROCEEDINGS.**—*V.* ACQUITTED.

**TERMINUS.**—See Goyeau v. Great Western Ry. Co., 25 Gr. 65. *V.* STATION: DEPOT.

**TERRITORY.**—See City of Hamilton v. Township of Barton, 18 O. R. 199; 17 A. R. 346; 20 S. C. R. 173; In re Branch Lines Canadian Pacific Ry., 36 S. C. R. 42.

**TESTAMENTARY EXPENSES.**—*V.* DEBTS AND TESTAMENTARY EXPENSES.

**THE COURT.**—See Welbanks v. Conger, 12 P. R. 354; Dominion Bag Co. v. The Queen, 4 Exch. C. R. 311.

**THE MERITS OF THE CASE.**—The term "the merits of the case," as regards the guilt or innocence of the prisoner, means the justice of the case as regards his guilt or innocence; and his "defence on such merits" means a substantial, and not a technical defence. R. v. Cronin, 36 U. C. R. 342.

**THEATRICAL PERFORMANCE.**—A moving picture show on Sunday, at which an admission is charged, is not a "theatrical performance" within the Quebec Sunday Observance Act. R. v. Charron, 15 C. C. C. 241. But see R. v. Ouimet, 14 C. C. C. 136, where Cross, J., held the contrary.

**THEFT.**—Theft, as defined in sec. 347 of the Criminal Code, is more comprehensive than the common law offence of larceny, and may be committed even where the thing stolen does not come into the possession of the accused person, *e.g.*, where money is procured by fraud to be paid by a bank to another bank for the accused, or even where the defrauded bank has merely been charged with such money in a clearing house adjustment of banker's debits and credits and balances. R. v. Lagrace (1913), 19 R. de J. 278.

The words "capable of being stolen" in sec. 397 do not imply that the thing removed or concealed is capable of being stolen by the accused, but includes anything which comes within the definition given in sec. 344 of things capable of being stolen. R. v. Goldstaub, 10 Man. R. 497; 5 C. C. C. 357.

**THEN.**—In a proviso in a will that "in the event of the death, or the inability or refusal to act of either of said trustees, *then* my surviving brothers shall," etc., the word "then" does not refer to time, but is the equivalent of "in that case." Saunders v. Bradley (1903), 6 O. L. R. p. 253.

The same meaning was given to the word where property was given to two daughters, "and in case of the death of either of them *then* to be equally divided" among others. Re Hunsley, 2 O. W. N. 32.

So where the word "then" introduces the ultimate devise it is not an adverb of time, but merely equivalent to the term "in that case." Brabant v. Lalonde, 26 O. R. 379.

But in a gift to a class without referring to their claiming as under an intestacy the word "then" occurs as an adverb of time, referring to the death of the tenant for life or other event fixed as the period of distribution. Mays v. Carroll, 14 O. R. 699.

**THEN SURVIVING.**—See Haight v. Dangerfield (1903), 5 O. L. R. 274.

**THEREFROM.**—Plaintiff agreed to deliver to defendant 2,000 bushels of wheat, and defendant agreed to deliver to defendant "within a reasonable time *therefrom*," 500 barrels of flour. It was held that the word "therefrom" referred to the preceding words "reasonable time" and must be read "thereafter" and not "out of." Tilt v. Silverthorne, 11 U. C. R. 619.

**THIS OFFICE.**—V. At this Office.

**THREAT.**—V. Menace.

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**THREE SUCCESSIVE WEEKS.**—The provision of sec. 263 (5) of the Mun. Act, 1913, requiring a proposed by-law to be published in a newspaper "once a week for three successive weeks," means a publication once in each of three successive periods of seven days, beginning on the first day of publication. A publication on Friday the 14th, Tuesday the 18th, and Tuesday the 25th, is not a compliance with the statute because the first two publications were in the first seven days. Re Rickey and the Township of Marlborough (1907), 14 O. L. R. 587. See also In re Armour and Township of Onondaga, 14 O. L. R. 606.

Sale on 3rd March and advertisement on 15th, 22nd and 28th February; held not advertised "at least three weeks in succession." Farmers & Traders Loan Co. v. Conklin, 1 Man. R. 181.

**THROUGH YOU.**—On a sale of land made "by or through you." See McBrayne v. Imperial Loan Co. (1913), 28 O. L. R. 653.

**TILL.**—*V.* UNTIL.

**TIMBER.**—*Semble*, the word "timber" has no technical trade meaning. Swift v. David, 18 W. L. R. 360.

Where there is a devise of land, with a provision that the "timber" thereon shall not form part of the property devised, but form a part of the residuary estate, timber is confined to trees which are not ornamental or shade trees, and which are capable of being sold for manufacture into lumber. It will not cover mere brush, which is not of merchantable value, nor will it authorize the destruction of trees which have a value apart from their value as lumber by reason of their use for ornamental and shade purposes. Re Fletcher, 6 O. W. N. 235.

**TIME.**—In Ontario where an expression of time occurs in any Act or Rule of Court, by-law, deed or other instrument, it means standard time unless otherwise specifically stated. R. S. O. ch. 132, sec. 2.

Where a statute directs proceedings to be done at a certain time and the period does not seem essential, the law will be regarded as directory, and the proceedings held valid although the statute has not been strictly complied with. Applied where notice was not given within 48 hours as required by sec. 10 of the Pounds Act, R. S. O. ch. 247. Collins v. Ballard, 20 C. L. J. 308. But see under word "shall."

Acts of the Legislature and judicial proceedings take effect in law from the earliest period of the day upon which they originated and came into force. Buskey v. Canadian Pacific Ry. (1905), 11 O. L. R. 1.

In Converse v. Michie, 16 C. P. 167, this rule of construction was applied so as to cut out an execution creditor whose *fi. fa.* had been lodged in the sheriff's hands on a day on which an Act to amend the Insolvent Act was passed and before the Act was actually assented to.

So in Cole v. Porteous, 19 A. R. 111, a chattel mortgage was held invalid by reason of an amendment to the Assignments and Preferences Act, although the mortgage was filed at 11 a.m. and the Act assented to at 3 p.m. the same day.

A judgment is a judicial proceeding, and a judgment signed at 11 a.m. is valid, although the defendant had died at 9.30 a.m. the same day. Converse v. Michie, 17 C. P. at p. 173.

Although the fraction of a day is never taken into consideration in determining the operation of a statute (Mitchell v. Dobson, 3 C. L. J. 185), yet in order to determine the rights of parties, as between themselves, under writs the Court will look to the fraction of a day. Beekman v. Jarvis, 3 U. C. R. 280.

In Admiralty cases the Court will be guided by the civic time in use in the town where the Court sits. Vermont Steamship Co. v. The Abby Palmer, 10 B. C. R. 381; 8 Exch. C. R. 470.

But where a mortgage sale was ordered to be held at 12 o'clock noon, and was held at 12 o'clock local time, instead of standard time, it was held irregular. Great West Life Assurance Co. v. Hill, 2 Sask. R. 158.

In contracts where the time commences from a fixed date, that day is not included; but when it commences from a period or space of time it is the beginning and not the end of the period which is the commencement of the term; *e.g.*, a contract "to count from next autumn" is construed as meaning from the commencement of the autumn. Fish & Game Club v. Edwards, Q. R. 29 S. C. 175; 18 Que. K. B. 9.

The general rule is that wherever, in cases not governed by particular customs of trade, the parties oblige themselves to the performance of duties within a certain number of days, they have until the last minute of the last day to perform their obligation. Where an option to purchase was for thirty days, and was signed at 4 p.m., it was held it did not expire at 4 p.m. on the last day. The thirty days did not consist of thirty consecutive periods of 24 hours. Beer v. Lea (1913), 29 O. L. R. 255.

In matters of procedure the word "forthwith" usually means 24 hours. When a statute enacts that an act is to be done "forthwith" it means with all reasonable celerity. Morton v. Bank of Montreal, 18 C. L. T. 157.

The word "forthwith" in sec. 6 of the Creditors Relief Act means "without any delay." Even if equivalent to "within a

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reasonable time" a delay of fifteen days in making the entry was held unreasonable. Maxwell v. Scarfe, 18 O. R. 529.

As to the meaning of the word "now" when used in a will in the description of property, see Re Holden (1903), 5 O. L. R. 156, where it was held not to refer to the date of the will.

"At least five days' notice" means five clear days. R. v. Dolliver Mountain Mining & Milling Co., 10 C. C. C. 405; Canadian Canning Co. v. Fagan, 12 B. C. R. 23.

Where a writ is returnable "within thirty days," the day of its issue is excluded. Clark v. Garrett, 28 C. P. 75; Scott v. Dickson, 1 P. R. 366.

The expression "more than fourteen days before the sittings," in sec. 750 of the Criminal Code, means fourteen clear days. "More than" is equivalent to "not less than," and therefore requires the exclusion of the terminal days. R. v. Johnston, 13 C. C. C. 179.

"Not less than eight days after service" mean the same thing as "at least eight days." Sams v. City of Toronto, 9 U. C. R. 181.

Where in a summons issued there is an inconsistency between the day of the week and the day of the month, the day of the month governs. A summons called upon the defendant to appear on "Thursday the 8th day of February," whereas the 8th day of February was on Tuesday. He did not appear and was convicted, and the Court held the conviction proper. Ex p. Tompkins, 2 E. L. R. 1.

In a Statute the meaning of the word "week" must depend largely upon the context. It is used to mean a period of time commencing with Sunday and ending with Saturday night, and also as a period of seven days' duration without reference to the time such period commences. In re Rickey and Township of Marlborough (1907), 14 O. L. R. 587, the Divisional Court held that it did not mean a Biblical or calendar week in cases under sec. 263 (5) of the Mun. Act, 1913, but that "three successive weeks" meant three periods of seven days each.

In these sections—relating to the publication of by-laws—"week" includes Sundays and holidays, and not 21 days less the Sundays and holidays. In re Armour and Township of Onondaga, 14 O. L. R. 606.

In the Interpretation Act "month" means a calendar month; and "year" a calendar year.

Where the limit of punishment is one month a sentence of thirty days, commencing 5th February, is bad, as it exceeds a calendar month. R. v. Lee, 4 C. C. C. 416. So a conviction for ninety days is bad where the limit of punishment is three months, as ninety days may be more than three months. R. v. Gavin, 1 C. C. C. 59.

Where a notice of action was served on 28th March, and writ issued on 29th April, it was held a month's notice, there being 31 clear days. McIntosh v. Vansteenburgh, 8 U. C. R. 248.

An agreement to complete a contract by "November 31st" will be construed to mean November 30th. McBean v. Kinnear, 23 O. R. 313.

A statute requiring a proposed by-law to be published "at least one month" before the vote is taken means at least one publication in each week of the month before the vote is taken. Hall v. Rural Municipality of South Norfolk, 8 Man. R. 430.

"Within the space of six months last past previous to this information" is not equivalent to "within the past six months." R. v. Boutilier, 8 C. C. C. 82; R. v. Wambolt, 14 C. C. C. 160.

V. At the same time: Commence work: For the time being: Immediate notice: Reasonable time: Shall.

**TIME BEING.**—V. For the Time Being.

**TIME CERTAIN.**—Where, under a contract, payments were to be made on monthly estimates, it was held the claim was not a debt or sum payable at a "time certain" within the meaning of 3-4 Wm. IV. ch. 42, sec. 28. Sinclair v. Preston, 13 Man. R. 228.

A note payable at a stated time, with a proviso that it is payable on demand if the maker sells or disposes of his lands, was held payable at a time certain. Elliott v. Beech, 3 Man. R. 213.

**TITLE—TITLE TO LAND.**—The word "title" in sec. 37 of the Supreme Court Act, R. S. C. ch. 139, means a vested right or title, something to which the right is already acquired, though the enjoyment may be postponed. O'Dell v. Gregory, 24 S. C. R. 661.

The title to the land or the right to the title must be in dispute. The fact that a question of the right of servitude arises is not sufficient. Wineberg v. Hampson, 19 S. C. R. 369.

By sec. 61 of the Division Courts Act the Court has no jurisdiction in an action "where the right or title to any corporeal or incorporeal hereditaments . . . comes in question." By sec. 22 (*c*) of the County Courts Act, the County and District Courts have jurisdiction in actions for trespass or injury to land where the sum claimed does not exceed $500, "unless the title to land is in question," and in that case also where the value of the land does not exceed $500, and the sum claimed does not exceed that amount.

The word "title" in the County Courts Act (the original of our clause excluding the jurisdiction of Division Courts where the title of any hereditament comes in question) has been interpreted to include not only the right to what exists, but also the

question of its existence. Re Moberly v. Town of Collingwood, 25 O. R. 625.

The jurisdiction of the Court is ousted where the title of land comes incidentally in question. Trainor v. Holcombe, 7 U. C. R. 548.

Where the question is whether chattels in dispute are a part of the freehold or not. Portman v. Patterson, 21 U. C. R. 237.

But whether it is or is not a part of the freehold would seem to be a question of fact to be tried. Re Bushell v. Moss, 11 P. R. 252.

A right to obstruct a street brings the title to land in question. R. v. Taylor, 8 U. C. R. 257.

So does a claim by a tenant to remove a building erected by him on the land, i.e., the title to the building ousts the jurisdiction of the Court. Lucas v. McFee, 12 O. W. R. 939.

In an action for rent the defendant alleged that the rent belonged to a third party to whom he had paid it, and it was held the Court has no jurisdiction. Fair v. McCrow, 31 U. C. R. 599; but a defence setting up an agreement to pay the rent by making improvements does not raise a question of title. Re Whitling v. Sharples, 9 C. L. T. 141. But a question as to the duration of the tenancy does. Armstrong v. McGourty, 22 N. B. R. 29.

Rent payable under a lease of land is an incorporeal hereditament, and, if disputed, ousts the jurisdiction of the Court. Kennedy v. McDonnell (1901), 1 O. L. R. 250.

A claim by a municipality for damages for removing sand and gravel from an alleged highway or allowance for roads, if disputed, raises a question of title to land. Municipality of Louise v. Canadian Pacific Ry., 14 Man. R. 1.

The existence of a *bona fide* dispute as to whether or not a tenancy has been created has been repeatedly held to involve the question of title to land. Purser v. Bradburne, 7 P. R. 18; Coulson v. O'Connell, 29 C. P. 341; Worman v. Brady, 12 P. R. 618.

An action for use and occupation does not necessarily involve a question of title—nor can the question arise because raised by the pleadings. Re Crawford v. Seney, 17 O. R. 74.

The ownership of a rail fence, put by mistake on another's land, does not raise a question of title. Re Bradshaw v. Duffy, 4 P. R. 50.

Nor the terms of a tenancy. Re English v. Mulholland, 9 P. R. 145.

A claim by a landlord for damages to the freehold does not raise a question of title. Re Powell v. Dancyger, 1 O. W. R. 63.

Where the jurisdiction is disputed the Judge must inquire into the matter, and ascertain whether the liability of the defendant

is contingent upon a question of title. Re South Norfolk v. Warren, 12 C. L. T. 512; 8 Man. R. 481.

And in an interpleader action the Judge must entertain the application even though the inquiry may involve the title to land. Munsie v. McKinley, 15 C. P. 50.

A bare assertion of the defendant in a Division Court action that the right or title to any corporeal or incorporeal hereditament comes in question is not sufficient to oust the jurisdiction of the Court. The Judge has jurisdiction to inquire into so much of the case as is necessary to satisfy himself on the point, and if there are disputed facts, or a question as to the proper inference from undisputed facts, that is enough to raise the question of title. If the facts can lead to but one conclusion, and that against the defendant, then there is no such *bona fide* dispute as to title as will oust the jurisdiction of the Court. Moberly v. Town of Collingwood, 25 O. R. 625.

**TO.**—There is no inflexible rule that the words "from" and "to," when used in relation to points in space, or points of time, are to be taken exclusively.

A right to build a road from the town of Sandwich to the town of Windsor, was held not to give a right to enter the latter town. Dougall v. The Sandwich & Windsor Road Co., 12 U. C. R. 59. But the Court refused to follow that decision in In re Bronson v. The City of Ottawa, 1 O. R. 415, and held that a right to build a railway "from" a municipality "to" a municipality gave the right to enter these municipalities.

The word "to," used in reference to a limit of time, has the same meaning as "until." The word "until" is ambiguous, and may be considered to be either inclusive or exclusive of the day mentioned, according to the subject matter and true intent of the document in which it is used. Where on a sale of wheat the purchaser was to give the vendor the benefit of any rise in the market "to 1st May," it was held this did not include the 1st day of May. McCuaig v. Phillips, 10 Man. R. 694; 16 C. L. T. 15.

In Haggart v. Kernahan, 17 U. C. R. 341, it was held that the description "from lots 1 to 13" excluded both lots 1 and 13. Here the words were descriptive of land lying between two certain points.

In Quail v. Beatty, 24 W. L. R. 242, the agreement for sale described the land as "lots 1 to 4," and it was held it covered lots 1, 2, 3 and 4.

**TO ARRIVE.**—A contract for the sale of goods "to arrive" does not constitute a conditional contract rendering the vendor liable only on the condition of the arrival of the goods, except perhaps where the goods are either in transit in a named vessel or about

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to be shipped at a named port in some particular manner. Fleury v. Copeland, 46 U. C. R. 36.

**TO BE BENEFITED.** — See Re Stephens and Township of Moore, 25 O. R. 600.

**TO OR FOR THE BENEFIT.**—A devise of real estate to a Bishop in trust for the use of his diocese is not a devise "to or for the benefit of any charitable use" within the meaning of sec. 10 of The Mortmain and Charitable Uses Act. R. S. O. ch. 103. Re McCauley, 28 O. R. 610.

**TOBACCO.**—*V.* MEDICINE—RESTAURANT-KEEPER.

**TOOLS.**—The word "tools," in the ordinary acceptation and use of the word, in most cases will readily indicate what the parties meant, such as the tools of a carpenter, or a smith. Where not so indicated, whether certain articles are or are not tools is a question for the jury. Filschie v. Hogg, 35 U. C. R. 94.

Section 3 (*f*) of the Execution Act, R. S. O. ch. 80, exempts from execution tools and implements ordinarily used in the debtor's occupation, to the value of $100. Such tools are no longer exempt when the debtor changes his occupation to one in which the tools are not ordinarily used. Wright v. Hollingshead, 23 A. R. 1.

A horse is an implement of trade. Davidson v. Reynolds, 16 C. P. 140; McMartin v. Hurlburt, 2 A. R. 146.

**TOP OF THE BANK.**—A conveyance of land "to the top of the bank of a river" does not convey land *ad medium filum aquæ*, but to the top of the bank only. *Robertson* v. *Watson*, 27 C. P. 579.

**TORT.**—The term "tort" has been defined as a wrong independent of contract. The word itself is the French equivalent for the English "wrong," and as put, in the large, by Pollock: "Our law of torts, with all its irregularities, has for its main purpose nothing else than the development of this precept, 'Thou shalt do no hurt to thy neighbour.'"

Torts admit of various methods of redress—there is the criminal tort, which is vindicated by means of a public prosecution; and there is the case of tort to person or property, which is adequately redressed by the appropriate civil remedy at law; and there is, again, the case of special torts, in which, owing to the insufficiency of the merely legal remedy, the equitable jurisdiction of the Court attaches by way of injunction or otherwise. *Per* Boyd, C. Clarkson v. Dupre, 16 P. R. 521, where it was held that an action to set aside a transfer of goods as a fraudulent preference is substantially one in trover, and so a tort. See also McFarlane v. Murphy, 21 Gr. 80.

In torts the principle of agency does not apply; each wrongdoer is a principal. Ontario Industrial Co. v. Lindsay, 4 O. R. 473.

As to release of one of several joint tort-feasors, see Grand Trunk Ry. v. McMillan, 16 S. C. R. 543; or a judgment against one as a bar to an action against the others. Sloan v. Creasor, 22 U. C. R. 127.

A plaintiff suing for tort is not a creditor within the Assignments and Preferences Act. Ashley v. Brown, 17 A. R. 500; Gurofski v. Harris, 27 O. R. 201.

An action against a solicitor, for the direct breach of a positive contract to do a specific act, is in contract: but if the action is for the breach of a general duty, arising out of the retainer, to bring sufficient care and skill to the performance of the contract, it is in tort. Burke v. Shaver (1913), 29 O. L. R. 365.

**TOTAL DISABILITY.**—Where a life insurance policy contains a provision for payment of the sum insured, or any proportion thereof, in case of "total disability," the term may cover total disability arising from old age, as well as from illness or accident. "Total disability may be temporary or it may be permanent; it may arise from various causes, such as illness, old age, or accident; and there may be total disability to do some things and not others." Dodds v. Canadian Mutual Aid Association, 19 O. R. 70.

**TOWN HALL.**—Municipal Act, 1913, sec. 126. "Town hall" is a general expression, and includes any hall owned, or, perhaps, rented by any municipal corporation or body, and used for the public purposes of the corporation. A declaration made at any other hall is irregular, but may not effect the result of the election. Rex ex rel. Armour v. Peddie (1907), 14 O. L. R. 339.

**TRACKS.**—The term "tracks" in sec. 105 (2) of the Ontario Railway Act, R. S. O. ch. 185, is to be given its widest and not its narrowest meaning, and means, as applied to a railway, laid on a highway, that part of it which is occupied by the railway. Re City of Toronto and Toronto and Suburban Ry. Co., 4 O. W. N. 1379.

**TRADE AND COMMERCE.**—B. N. A. Act, sec. 92 (2). In Parsons v. The Citizens Insurance Co., 4 S. C. R. 215, 7 A. C. 96, the validity of a statutory contract under a Provincial Act in another province came in question, and an interpretation was placed on the term "trade and commerce," in the above section, by the Privy Council, as follows: The words "regulation of trade and commerce," in their unlimited sense, are sufficiently wide, if uncontrolled by the context and other parts of the Act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign governments requiring the

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sanction of parliament, down to minute rules for regulating particular trades. But a consideration of the Act shews that the words were not used in this unlimited sense. In the first place the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of the legislature, when conferring this power on the dominion parliament. If the words had been intended to have the full scope of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in sec. 91 would have been unnecessary; as, 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency.

Construing therefore the words "regulation of trade and commerce" by the various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of parliament, regulation of trade in matters of inter-provincial concern, and it may be that they would include general regulation of trade affecting the whole dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the dominion parliament in this direction. It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province, and therefore that its legislative authority does not in the present case conflict or compete with the power over property, and civil rights assigned to the legislature of Ontario by No. 13 of sec. 92.

**TRADER.**—The distinction between what constitutes a man a trader and makes him liable to be put into bankruptcy, as such, when carrying on business, and what does not so make him a trader, is sometimes very slight. Thus two men may be carrying on the business of brick makers, selling in the same market, and making the same kind of bricks, yet if one owns the soil from which he makes the bricks he is not a trader; but if he buys the clay and makes the bricks, then he buys and sells and becomes a trader. So the publisher of a newspaper does buy paper, and after expending labor and materials on it sells the paper as a finished newspaper. Pinkerton v. Ross, 33 U. C. R. 508.

A pedlar of fruits and vegetables, although he may occasionally buy and sell horses, is not a dealer trading in horses within the meaning of Art. 1489 C. C. Vezina v. Brosseau, Q. R. 30 S. C. 493.

In Quebec a person who operated a factory in which he manufactured cheese and butter, out of materials belonging to farmers, and who sold the product in his own name, receiving a commission

thereon, was held to be a trader. Blanchette v. Levesque, 5 D. L. R. 481, Q. R. 41 S. C. 477.

But in Vermette v. Vermette, Que. R. 30 S. C. 533, it was held that one who follows a trade, (e.g., leather dressing) consisting in work upon goods belonging to others, and which he does not buy for the purpose of reselling, is not a trader.

A baker was held not to be a trader within a Manitoba Act respecting the rateable distribution of assets among creditors, merely because, as incidental to his baking business, he bought and sold candies, cakes and confectionery to a small extent. Robinson v. Graham, 16 Man. R. 69, 3 W. L. R. 135.

A manufacturer of clothing, who sells the manufactured goods in quantities to be resold by his vendees, is a wholesale trader: "A trader, whether wholesale or retail, is one who sells to gain his living by such buying and selling, not to gain a profit on one isolated transaction. R. v. Pearson, 1 C. C. C. 337.

An executor who disposes of his testator's stock-in-trade for the purpose of winding-up his estate is not a trader. *Ib.* p. 339.

The business of a real estate agent or broker is not that of a tradesman. Paisley v. Nelmes, 9 C. C. C. 413.

A newsdealer is a "tradesman" within the meaning of the Lord's Day Act, C. S. U. C. ch. 104. R. v. Anderson, 10 C. C. C. 144.

"Trade" in sec. 254 of the Mun. Act, 1913, means one engaging in traffic or in business transactions of bargain and sale for profit or for subsistence. Selling liquor is a trade; tavern-keeping is a calling, an occupation. Re McCracken and Township of Sherborne (1911), 23 O. L. R. p. 91.

*V.* Merchant and Tradesman.

**TRADING COMPANY.**—A trading corporation is a commercial corporation engaged in buying and selling. The word "trading" is much narrower in scope than "business," as applied to corporations, and though a trading corporation is a business corporation, there are many business corporations which are not trading corporations.

For the purposes of the exception to the general rule that contracts of corporations must be under the corporate seal, the meaning of the term "trading company" is not confined to companies with the object of barter, and a building company is a "trading company" within the meaning of the exception. Brandon Construction Co. v. Saskatoon School Board, 5 D. L. R. 754; 21 W. L. R. 949.

Contracts of indemnity made by insurance companies cannot be considered as trading contracts, nor were insurance companies, or individuals or associations making insurance contracts, held

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to be "traders" under the English bankruptcy laws. Citizens Insurance Co. v. Parsons, 7 A. C. p. 111.

**TRADING PURPOSES.**—The business of printing and publishing a newspaper constitutes the partners employed in it a partnership "for trading purposes" within the meaning of sec. 2 of the Partnership Registration Act, R. S. O. ch. 159. Pinkerton v. Ross, 33 U. C. R. 508. But the Act does not apply to a firm or partnership doing a real estate business. Paisley v. Nelmes, 9 C. C. C. 413.

The use of a three suite dwelling-house for the purposes for which it is designed would be the use for residential purposes, and not for the purpose of business or trade; and *semble*, the same rule would apply if it was a large building which is to be used as thirty or forty separate residential flats. Re Robertson and Defoe (1911), 25 O. L. R. 286.

**TRAFFIC.**—The word "traffic" in sec. 2 (31) of the Railway Act, R. S. C. ch. 37, means the traffic of passengers, goods and rolling stock. See Heller v. Grand Trunk Ry. (1912), 25 O. L. R. 488.

The word "traffic" in sec. 317 includes passengers; and railway companies are bound to treat alike every hack driver or busman who may be waiting at the platform to receive passengers. Purcell v. Grand Trunk Pacific Ry., 21 W. L. R. 638.

**TRAIN.**—By the Dominion Railway Act (sec. 2, sub-sec. 32) "train" includes any engine, locomotive, or other rolling stock; under the Ontario Railway Act, sec. 2 (*x*) it includes any engine, motor car or other rolling stock.

"Train," within the meaning of sec. 3 (*e*) of the Workmen's Compensation for Injuries Act, R. S. O. ch. 146, means something to be drawn, and does not include a hand-car. But rolling-stock is broad enough to include a hand-car. Vaccaro v. Kingston and Pembroke Ry. Co., 11 O. W. R. 836.

A locomotive engine by itself, or anything that is being drawn along a railway track or is in course of being drawn upon a railway by that engine is included in a "train." Casey v. Canadian Pacific Ry., 15 O. R. 574; McCord v. Cammell (1896), A. C. 57.

A number of railway cars which are connected and are forced backward by the concussion made in coupling, before getting under way in a forward direction, will constitute a "train." Helson v. Morrisey Fernie & Michel Ry. Co., 17 B. C. R. 65, 19 W. L. R. 835.

An engine with tender, moving reversely, is a "train of cars" within the former Railway Act. Hollinger v. Canadian Pacific Ry., 21 O. R. 705; 20 A. R. 244. See now secs. 274, 275, 276 of the Railway Act (D.), where the word "train" has been substituted for "train of cars."

In Harris v. The King, 9 Exch. C. R. 206, the Judge of the Exchequer Court refused to follow Hollinger v. Canadian Pacific Railway.

An engine returning to the yard after pushing a train up a grade is a "train." Frailick v. Grand Trunk Ry., 43 S. C. R. 494.

But the word "train" in secs. 274, 276 of the Act does not apply to an engine engaged in shunting and never being in the course of its work more than eighty rods from any level crossing which it crosses. Grand Trunk Ry. v. McAlpine (1913), A. C. 838.

**TRANSACTION.**—Assessment Act (B.C.). See Re Bank of Montreal Assessment, 11 W. L. R. 214.

**TRANSCRIPT.**—*V.* ACCORDING TO THE TENOR.

**TRANSFER.**—The term "transfer" in Con. Rule (1913), No. 582, providing for an examination of any person to whom a debtor has made a transfer of his property, is not limited to the transfer of the title to the property, but applies also to the transfer of the possession of the property. Gowans v. Barnett, 12 P. R. 330.

It does not cover an assignment for the general benefit of creditors, and an assignee under such an assignment cannot be examined under the Rule. British Canadian Loan & Investment Co. v. Britnell, 13 P. R. 310; but see Bank of Commerce v. Wall, 11 C. L. T. 201, where Street, J., decided otherwise.

Where a debtor transferred property to the mortgagee of his wife, thereby reducing her indebtedness, an order for the examination of the wife was directed. Croft v. Croft, 17 P. R. 452.

A chattel mortgage is a "transfer" of property within this Rule. Blakely v. Blease, 12 P. R. 565.

In sec. 41 of the former Bills of Sale Act providing for agreements of sale or transfer of merchandise where the title did not pass until payment, it was held that the word "transfer" was used in a limited sense, namely, in reference to a transaction in the nature of a sale. Langley v. Karnert (1904), 9 O. L. R. 164; 36 S. C. R. 397.

A lien, by which the holder of rights of homestead assumed to "incumber, charge and create a lien," was held to be a "transfer" within the meaning of sec. 142 of the Dominion Lands Act, R. S. C. ch. 55. American-Abell Engine Co. v. McMillan, 11 W. L. R. 185; 42 S. C. R. 377. So also is a mortgage. Sawyer-Massey Co. v. Dagg, 18 W. L. R. 612.

**TRANSFERABLE.**—*V.* NEGOTIABLE INSTRUMENT.

**TRANSIENT TRADER.**—"Transient traders" shall include any person commencing business who has not resided continuously

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in the municipality for at least three months next preceding the time of his commencing such business. Mun. Act, 1913, sec. 420, sub-sec. 7 (*b*).

The words "who occupy premises" in sec. 582 (30) of the former Municipal Act are now omitted, and the decisions in R. v. Caton, 16 O. R. 11, and R. v. Appelbe, 30 O. R. 623, are no longer applicable.

A person carrying on the business of a sewing machine agent is not a transient trader. R. v. Banks, 1 C. C. C. 370.

Where goods are consigned to be sold on commission, and they are sold in the shop or premises of the commission merchant, and by him or on his behalf, the owner of the goods is not a transient trader within the Act merely because he accompanies the goods and assists in the sale. R. v. Cuthbert, 45 U. C. R. 19.

A person living at an hotel and taking orders there for clothing to be made in a place outside of the municipality, out of materials shewn in samples, is not a transient trader. R. v. St. Pierre (1902), 4 O. L. R. 76; 5 C. C. C. 365.

*V.* HAWKER—PEDLAR—TRADER.

**TRANSMIT.**—See The Electric Despatch Company of Toronto v. The Bell Telephone Co., 17 O. R. 495; 17 A. R. 292; 20 S. C. R. 83.

**TRAP-NET.**—A fishing net having the usual accessories of a trap-net, except that it has not a twine floor or bottom, is none the less a "trap-net" within the meaning of sec. 47 (7) of the Fisheries Act, R. S. C. ch. 45. R. v. Chandler, 6 C. C. C. 308.

See also Chandler v. Webber, 8 E. L. R. 241.

**TRAVELLER.**—Persons being carried by steamboat from Toronto to the Island were held not to be "travellers" within the meaning of the term in the Lord's Day Act. R. v. Tinning, 11 U. C. R. 636.

But in Attorney-General v. Hamilton Street Ry., 27 O. R. 49; 24 A. R. 170, the Court did not follow that case, and held that persons travelling on street cars from point to point in a city are travellers.

A steamboat owner advertised an excursion on Sunday from Buffalo, N.Y., by rail to Niagara, and thence by steamer to Toronto and return. *Held*, the passengers were travellers within the Act—that there is no distinction in such a case between travellers for pleasure and for business. R. v. Daggett, 1 O. R. 537. In this case the Court held that the cases decided under the English Act to

regulate the sale of beer, etc., are applicable in Ontario, and many of the cases are considered.

V. COMMERCIAL TRAVELLER—INN.

**TRIAL.**—By sec. 1014 (3) of the Criminal Code either party may "during the trial" apply to have a question which has arisen reserved for the Court of Appeal. For the purposes of this provision the "trial" ends with the verdict. Ead v. The King, 4 E. L. R. 345; 40 S. C. R. 272.

The trend of decisions appears to be to give the word a liberal construction. In Morin v. The Queen, 18 S. C. R. 407, Patterson, J., quotes with approval the remarks of Rolfe, B., in R. v. Martin, 2 C. & K. 952, wherein he stated "I think the word 'trial' (in 11-12 Vic. ch. 78), ought to have a very liberal construction, and I think it applies to any proceeding in the Court below." Cited with approval in R. v. Lynn, 19 C. C. C. 129.

*Semble*, where an action has been tried by one Judge and a reference directed, and further directions reserved, the "trial Judge" means the Judge who hears the case on further directions. Buchanan v. City of Winnipeg, 17 W. L. R. 631; 21 Man. R. 101, 714.

**TRIFLING EXTENT—TRIFLING NATURE.** — See Welland Election, 1 E. C. 383; Hamilton Election, 1 E. C. 495.

**TRIVIAL OR FRIVOLOUS.**—By sec. 12 of the Libel and Slander Act, R. S. O. ch. 71, in an action of libel contained in a newspaper, security for costs may be ordered on the defendant shewing, among other things, that the "grounds of the action are "trivial or frivolous."

An action cannot be considered "trivial or frivolous" merely because a good defence is sworn to and not controverted by the plaintiff's affidavit. Macdonald v. World Newspaper Co., 16 P. R. 324.

If the alleged libel may involve the charge of conviction for a crime it is not "trivial or frivolous." Kelly v. Ross, 1 O. W. N. 48; Greenhow v. Wesley, 1 O. W. N. 1001.

The defendant instead of deposing that the grounds of the action were trivial or frivolous, swore that the words used by him were "innocent and harmless," and it was held this was equivalent to "trivial and frivolous." Robinson v. Mills (1909), 19 O. L. R. 162.

**TRUE COPY.**—The following variances between the original document and the copy alleged to be a "true copy," were held to be immaterial: "person" instead of "persons"; "places" instead of "place"; "John A. McDonell" instead of "John A. McDonald"; "cause" instead of "caused." Re Lorne Election, 4 Man. R. 275.

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"Copy" and "copies" are used in sec. 109 of the Dominion Elections Act, R. S. C. ch. 6, in the sense of "duplicate" and "duplicates." R. v. Duggan, 4 W. L. R. 481.

In the printed copy of an election petition served upon the respondent, a clerk had, by mistake, run a pen through the concluding paragraph, and it was held that though the copy served was not a true copy, yet as the defect was a purely formal one and could not possibly have misled the respondent, it was not fatal. In Re Centre Bruce Provincial Election (1902), 4 O. L. R. 263.

**TRUE VALUE.**—The "true value" of a mortgage under sec. 176 of the British Columbia Land Registry Act, R. S. B. C. 1911, ch. 127, does not necessarily mean the nominal amount secured by the mortgage. Re Royal Trust Co., 5 D. L. R. 628; 22 W. L. R. 5.

**TRUST.**—As to the distinction between a "use" and a trust, see Gamble v. Rees, 6 U. C. R. at pp. 405, 406.

*V.* Resulting Trust—Precatory Trust.

**TRUSTEE FOR HIS HEIRS.**—See Re McAllister (1911), 24 O. L. R. 1.

**TWO-THIRDS IN VALUE.**—The former Companies Act required the votes of "two-thirds in value of the shareholders" to carry a by-law for borrowing money. *Held*, the two-thirds was to be computed on the face value of the number of shares held, and not upon the amount paid upon such shares. Purdom v. Ontario Loan & Debenture Co., 22 O. R. 597. As the section now appears in the Ontario Companies Act, R. S. O. ch. 178, sec. 79, it reads "not less than two-thirds of the issued capital stock."

**ULTIMATE NEGLIGENCE.**—Since the House of Lords decided Radley v. London & North Western R. W. Co. (1876), 1 A. C. 754, it must, in our Courts, be deemed an incontrovertible proposition that, notwithstanding proven contributory negligence of the plaintiff, "if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him." As a convenient and concise term to express negligence of this description, it is called "ultimate negligence."

A finding of contributory negligence, involving the proposition that the plaintiff's negligence was proximate and efficient in its character, is logically no more incompatible with or exclusive of a finding of "ultimate" negligence on the part of the defendants than is the finding of primary negligence of the defendants, which likewise involves the proposition that such primary negligence was a proximate and efficient cause, incompatible with or exclusive of a

finding of contributory negligence on the part of the plaintiff. London Street R. W. Co. v. Brown (1901), 31 S. C. R. 642; 2 O. L. R. 53; *per* Anglin, J., Brenner v. Toronto Railway Co. (1907), 13 O. L. R. 423. See Herron v. Toronto Railway Co. (1913), 28 O. L. R. 59.

**UNABLE TO PAY HIS DEBTS IN FULL.**—"I reserved judgment to consider whether any different or greater meaning was to be given to the words "unable to pay his debts in full," than to "insolvent circumstances." After hearing argument yesterday in this Division in Clarkson v. Sterling (14 O. R. 460), I have come to the conclusion that both expressions refer to the same financial condition; that is, to a condition in which a debtor is placed when he has not sufficient property subject to execution to pay all his debts if sold under legal process at a sale fairly and reasonably conducted. The Dominion Bank v. Cowan, 14 O. R. 465.

The same meaning was given to the term in Clarkson v. Sterling, *supra*, affirmed on appeal, 15 A. R. 234.

V. INSOLVENT.

**UNCONDITIONAL ORDER TO PAY.**—A cheque marked "cheque conditional deposit," being intended, as the drawer explained, to be conditional on his obtaining a certain contract, is not an "unconditional order to pay" within the meaning of sec. 17 of the Bills of Exchange Act, and therefore not a cheque within the meaning of sec. 165 of the Act. Hately v. Elliott (1905), 9 O. L. R. 185.

**UNCONTROLLABLE IMPULSE.**—As an excuse for the commission of an act otherwise criminal, "uncontrollable impulse" means an impulse towards its commission of such fixity and intensity that it cannot be resisted by the person subject to it, in the enfeebled condition of his will and moral sense resulting from derangement or mania.

In this country "uncontrollable impulse" to do a criminal act, although the accused is mentally defective but cognizant of the nature and quality of the act, is no defence in law. R. v. Creighton, 14 C. C. C. 350.

**UNDER.**—Persons let into possession of premises by a house agent, appointed by assignees of a tenant, for the purpose of shewing the house to prospective lessees, are not in occupation "under" the assignees within the meaning of the term in sec. 31 (3) of the Landlord and Tenant Act, R. S. O. ch. 155. Farwell v. Jamieson, 27 O. R. 141; 23 A. R. 517; 26 S. C. R. 588.

**UNDER HIS SIGNATURE.**—The term "under his signature" in sec. 103 of the Bills of Exchange Act, does not mean that the

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name of the place or address must be written by the party's own hand; it may be written by another person if that other person had in any manner any kind of authority from the party to write it. Hay v. Burke, 16 A. R. 463.

Nor does it mean "below his signature," but means that the address shall be written so that the signature covers it. Banque Jacques Cartier v. Gagnon (1894), Q. R. 5 S. C. 499.

**UNDER PROMISE OF MARRIAGE.**—By sec. 212 of the Criminal Code every one above 21 years of age who "under promise of marriage," seduces and has illicit connection with any unmarried female, etc., commits an offence.

In R. v. Walker, 5 C. C. C. 465; 1 Terr. L. R. 482, the Supreme Court of the North-West Territories held that to constitute the offence it must be shewn that the seduction was accomplished by means of the promise. This was disapproved of by the Supreme Court of Nova Scotia in R. v. Romans, 13 C. C. C. 68, where it was held that the seduction is "under promise of marriage" whether it follows immediately after the promise or afterwards during the engagement if it can be inferred that the subsistence of the promise induced the girl's consent. The promise of marriage must be an absolute and not a conditional promise only to be performed in the event of pregnancy happening. R. v. Comeau, 19 C. C. C. 350.

**UNDERTAKES.**—The term "undertakes to tell fortunes," in sec. 443 of the Criminal Code, equally with the words "pretending or professing to tell fortunes" in the Imperial Act, 5 Geo. IV. ch. 83, import that deception is practised by doing so, and that the person undertaking to tell fortunes represents that he has the power to do so. R. v. Marcott, 4 C. C. C. 437.

So where it was expressly stipulated that the prediction was to be only a delineation made pursuant to rules laid down in published works on palmistry, it was held the accused did not "undertake to tell fortunes." R. v. Chilcott, 6 C. C. C. 27.

The statute 2 Geo. II. ch. 5, is in force in Ontario, and the mere undertaking to tell fortunes constitutes an offence thereunder. R. v. Milford, 20 O. R. 306.

**UNDERTAKING.**—"Undertaking" is frequently used in the special sense of a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the Court or the opposite party.

In railway parlance, the "undertaking" has been defined to mean the completed work from which returns of money or earnings arise, and a charge upon the undertaking means that these earnings are destined for the satisfaction of the charge. Phelps v. St. Catharines & Niagara Central Ry., 18 O. R. 581.

**UNDUE.**—*V.* UNDULY.

**UNDUE INFLUENCE.**—In regard to the making of a will, conveyance, and other such matters, undue influence is persuasion carried to the point of overpowering the will, or such a control over the person in question as prevents him from acting intelligently, understandingly and voluntarily, and in effect destroys his free agency, and constrains him to do what he would not have done if such control had not been exercised.

Influence to be "undue," so as to vitiate a gift, is of two classes according as the gift is:

1. *Inter vivos;*

2. Testamentary.

1. In many cases of gifts *inter vivos*, the Court, from the relations existing between the parties to the transaction, infers the probability of undue influence having been exerted. These are cases of guardian and ward; solicitor and client; spiritual instructor and penitent; medical advisor and patient.

The rule is not confined to these relationships, but extends to any relationship, by means of which one person is able to exercise a dominion over another. In every such case the donee must prove that the donor voluntarily and deliberately performed the act, knowing its nature and effect. Finn v. St. Vincent de Paul Hospital (1910), 22 O. L. R. 381; McCaffrey v. McCaffrey, 18 A. R. 599; Trusts and Guarantee Co. v. Hart (1901), 2 O. L. R. 251; 32 S. C. R. 553; Dawson v. Dawson, 12 Gr. 278.

Undue influence by the donee's solicitor is the same thing as undue influence by the donee himself, and deeds of gift in favour of third persons, however innocent, cannot be maintained if procured by undue influence on the part of another. Dewar v. Sparling, 18 Gr. 633.

The Courts have intentionally declined to define within any exact limit either what is undue influence, or what is to be considered a fiduciary relation between the grantor and grantee. In one case the fact that the plaintiff conveyed to her grand nephew the whole of her property on his verbal promise to provide for her for the rest of her life was accepted as the best evidence of confidential relationship and influence. Widdifield v. Simons, 1 O. R. 483.

The question is one which must in each case depend on its own peculiar circumstances. Threats made to a wife of criminal proceedings against her husband unless she gave a deed of property to secure the husband's debt was held undue influence. Sheard v. Laird, 15 A. R. 339.

In cases of gifts *inter vivos*, it is considered that the natural influence which relations inducing confidence involve, exerted by those

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who profess it to obtain a benefit for themselves, is an undue influence. McCaffrey v. McCaffrey, 18 A. R. 599.

*PRINCIPAL AND AGENT.*—Where the relationship of principal and agent exists, and the habitual confidence reposed in the agent gives him a commanding influence, there is a confidential relationship. Disher v. Clarris, 25 O. R. 493.

And, except in the case of solicitor and client, the general rule is that a gift *inter vivos* from principal to agent is valid if the agent proves there was no undue influence on his part. Something more must be shewn than the mere fact that the donee was the agent of the donor. Re White, Kerstan v. Tane, 22 Gr. 547; Trusts and Guarantee Co. v. Hart (1901), 2 O. L. R. p. 260.

*SOLICITOR AND CLIENT.*—There is nothing *ipso facto* in the relationship of solicitor and client which makes it impossible for a solicitor to receive a gift from his client; but the relation is an ingredient in estimating the extent of the actual or probable influence exercised over the donor. Taylor v. Yeandle (1912), 27 O. L. R. 531.

But it is impossible to rebut the presumption of undue influence if the gift is made while the confidential relationship exists, unless the donor had competent advice. Trusts and Guarantee Co. v. Hart, 32 S. C. R. p. 558.

The most recent decision on a gift to a solicitor by will is Loftus v. Harris (1914), 5 O. W. N. 771, 30 O. L. R. 479, where the Court says: "There is no such rule as that, in case of substantial benefit to the party drawing the will or procuring it to be drawn, it is essential that the testator should have an independent solicitor or other advisor. It might be expedient to take this precaution, as it will facilitate proof, but it is not a *sine qua non*."

*HUSBAND AND WIFE.*—In McCaffrey v. McCaffrey, 18 A. R. 599, the doctrine of confidential relationship was applied, and a deed of a large portion of his property by a husband to his wife set aside. See also Hopkins v. Hopkins, 27 A. R. 658.

Mere influence by a wife over the mind of her husband is not sufficient to invalidate a will in her favour. Waterhouse v. Lee, 10 Gr. 176.

Where a wife pledges her separate estate to secure a debt owing by her husband, the mere fact that she acted without independent advice does not amount to undue influence. Bank of Montreal v. Stuart (1911), A. C. 120; overruling Cox v. Adams, 35 S. C. R. 393; Euclid Avenue Trusts Corp. v. Hobs (1911), 23 O. L. R. 377; 24 O. L. R. 447.

*OTHER CASES.*—Where the plaintiff, an infant, was living with the defendant as his mistress, and she handed him certain

sums of money which he invested in property in his own name, the Court presumed undue influence on the part of the defendant. Desulniers v. Johnston, 15 W. L. R. 20; 20 Man. 64.

The case is very strong against a transaction between a tavern-keeper and a drinking lodger. Clarkson v. Kitson, 4 Gr. 244; Hume v. Cook, 16 Gr. 84.

In all cases where the confidential relationship exists, the burden of proof lies on the recipient of the bounty, and his evidence alone is not sufficient to rebut the presumption; the gift must be established by separate and independent evidence. Mason v. Seney, 11 Gr. 447; Lavin v. Lavin, 27 Gr. p. 571; Taylor v. Yeandle (1912), 27 O. L. R. 531.

Undue influence may be presumed in cases of sales at gross undervalue, without competent advice. Elgie v. Campbell, 12 Gr. 132; Mason v. Seney, *supra;* Watson v. Watson, 23 Gr. 70. Or in cases of improvident bargains where the parties are very unequal as regards means, intelligence and otherwise, and the vendor has had no independent and competent advice. Fallon v. Keenan, 12 Gr. 388; Brady v. Keenan, 14 Gr. 214; Edinburgh Life Assurance Co. v. Allen, 18 Gr. 425; even if no confidential relation exists between the parties if undue influence has been exerted, the transaction cannot stand. Waters v. Donnelly, 9 O. R. 391.

2. The rules of equity in relation to gifts *inter vivos* by which fraud is presumed when they are obtained by persons in confidential relation to the donors are not applicable to gifts by will. The influence of a person standing in a fiduciary relation to the testator may lawfully be exerted to obtain a devise or a legacy, so long as the testator thoroughly understands what he is doing, and is a free agent; and the burden of proof of undue influence lies upon those who assert it. To be undue influence, in the eyes of the law, there must be, to sum it up in one word, coercion. It is only when the testator's will is coerced into doing that which he does not desire to do, that it is undue influence. But if the person who obtains the benefit takes part in the actual drawing of the will, the onus is cast upon him of shewing the righteousness of the transaction. Collins v. Kilroy (1901), 1 O. L. R. 503, where a gift to a spiritual advisor was upheld. See also Kaulbach v. Archbold, 31 S. C. R. 387; Clark v. Loftus (1912), 26 O. L. R. 204; Lamoreux v. Craig, 49 S. C. R. 305.

In Freeman v. Freeman, 19 O. R. p. 155, MacMahon, J., defines "coercion," in this connection, as "importunity which could not be resisted; that it was done merely for the sake of peace, so that the motive was tantamount to force and fear."

An improper and untruthful suggestion to a testator as to the conduct of his wife was held undue influence. Mayrand v. Dussault, 38 S. C. R. 460.

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Undue influence at elections is where anyone interferes with the free exercise of a voter's franchise by violence, intimidation, restraint, or otherwise.

A clergyman has no right, in the pulpit or out, by threatening any damage, temporal or spiritual, to restrain the liberty of a voter so as to compel or frighten him in voting or abstaining from voting otherwise than as he freely wills. If he does, in the eyes of the law, this is undue influence.

The sermons and threats by certain parish priests of the County of Charlevoix were held to amount to undue influence sufficient to void the election. Brassard v. Langevin, 1 S. C. R. 145.

Detaining a person against his will so as to prevent him going to the poll is undue influence. North Ontario, H. E. C. 785.

An appeal by a candidate to his business, or his employment of capital in promoting the prosperity of his constituency, if honestly made, is not undue influence. West Peterboro, H. E. C. 274.

An agent telling a voter that if he took the oath "he would look after him" was held not to be undue influence. Halton, H. E. C. 283.

An appeal by a candidate to the electors to support him because he would have the patronage of the constituency in respect of appointments and appropriations is not undue influence. Undue influence, in this connection, means something in the nature of physical force used or threatened upon or against some person, or a threat made of loss or damage to the voter. Muskoka, H. E. C. 458.

**UNDULY.**—A combination of coal dealers who bound themselves not to sell below certain prices, and agreed to pay a fine for a breach of the agreement, is a combination, etc., to "unduly prevent competition" within the meaning of sec. 498 of the Criminal Code. Hately v. Elliott (1905), 9 O. L. R. 185.

All agreements which prevent or lessen competition are not within the above section; the mischief aimed at is the undue and abusive lessening of competition which operates to the oppression of individuals or is injurious to the public. A contract between dealers fixing prices to be paid by them for trade articles was held to be within the statute. Weidman v. Shragge, 20 Man. R. 178; 21 W. L. R. 717; 46 S. C. R. 1. See also R. v. Gage, 6 W. L. R. 19; 7 W. L. R. 564; R. v. Clarke, 9 W. L. R. 243.

**UNENGAGED.**—A by-law prohibited cabs standing on the street while "waiting for hire or engagement or while unengaged." A livery stable keeper made an agreement with an hotel to keep at

all times three cabs in attendance at the hotel ready for the immediate use of the guests. It was held that in keeping cabs in attendance pursuant to this agreement the cab owner was not guilty of a breach of the by-law, that while the cabs were standing at the hotel door they were not "unengaged" within its meaning because they could not be engaged by any one other than the guests of the hotel. R. v. Maher (1905), 10 O. L. R. 102; 10 C. C. C. 25.

**UNITED KINGDOM.**—Means the United Kingdom of Great Britain and Ireland. Interpretation Acts.

**UNLAWFUL: UNLAWFULLY.**—"Unlawful" and "illegal" are frequently used as synonymous terms, but, in the proper sense of the word, "unlawful" as applied to promises, agreements, considerations and the like, denotes that they are ineffectual in law, because they involve acts which, although not illegal, i.e., positively forbidden, are disapproved of by the law, and are, therefore, not recognized as the ground of legal rights, either because they are immoral or because they are against public policy. It is on this ground that contracts in restraint of marriage or of trade are generally void.

An unlawful act is one contrary to law, common or statutory, and a defence by statute that the defendant "lawfully acted by virtue of his office" is sustained only where the act in question was done "lawfully," so far as the other party is concerned. Markay v. Sloat, 11 E. L. R. 295; 6 D. L. R. 827. See R. v. Connolly, 25 O. R. 151; 1 C. C. C. 488; R. v. Clark, 2 O. R. 523.

A thing may be unlawful, in the sense that the law will not aid it, and yet that the law will not immediately punish it. If that only were unlawful to which a penalty is attached, the consequence would be that, inasmuch as no penalty is provided by law for prostitution, a contract having prostitution for its object would be valid in a Court of law. R. v. Karn (1910), 20 O. L. R. 91; 15 C. C. C. p. 304.

The word "unlawful" or "unlawfully" is not defined in the Criminal Code, and is not always used in the same sense. It is frequently used as synonymous with "illicit," or as being simply "not lawful," or "not authorized, or permitted by law." "Unlawfully" comprises things criminal in character; but it also comprises many things not lawless in a criminal sense. In sec. 217 of the Code, it means not lawful or sanctioned by law. R. v. Karn, *supra*.

The words "unlawfully did steal" mean and include everything necessary to constitute the offence of theft, as defined by the Criminal Code. R. v. George, 35 N. S. R. 42.

As to the effect of omitting the word "unlawfully" in a conviction where the word appears in the Code, see R. v. Fife, 17 O. R. 710.

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**UNLESS THE CONTRARY IS SHEWN.**—Every contract entered into by a married woman prior to 17th April, 1897, is deemed to be entered into by her with respect to and bind her separate property, "unless the contrary is shewn." Married Women's Property Act, R. S. O. ch. 149, sec. 4 (4).

The words "unless the contrary is shewn" are to be interpreted thus: "Unless the separate property be of such a nature that the presumption cannot arise." The question is one of fact to ascertain whether the separate property is such as she could and might reasonably have contracted credit upon. Sweetland v. Neville, 21 O. R. 412. See also Mulcahy v. Collins, 25 O. R. 241.

"Unless" is an apt word to introduce an exception. It unloosens what follows it from what precedes it. Bell v. Grand Trunk Ry., 48 S. C. R. p. 574.

**UNMARRIED.**—A series of cases, most of which are collected by Mr. Justice Swinfen Eady in Re Collyer, 24 Times L. R. 117, shew that the ordinary meaning of the word "unmarried" is "without ever having been married." The context may indicate that the word is used in such a sense as to include a widow or widower, and slight indications in some cases have been regarded as enough to shew that the testator did not use the term in a primary sense. Re Ryan, 2 O. W. N. 29.

**UNOCCUPIED.**—*V.* UNTENANTED.

**UNPATENTED LANDS.**—The term "unpatented lands" in sec. 31 of the Municipal Assessment Act (Man.) is used in the special sense of lands vested in the Crown, in which a purchaser takes merely such interest as the Crown or its officers may be willing to recognize in the particular case. Minto v. Morrice, 22 Man. R. 391; 4 D. L. R. 435.

**UNPROFESSIONAL CONDUCT.**—Where the law of the land requires professional men to carry on the practice of their profession in a certain way, it is "unprofessional conduct" to carry it on otherwise. Re College of Dental Surgeons and Moody, 10 W. L. R. 525.

**UNSATISFACTORY ANSWERS.**—*V.* SATISFACTORY ANSWERS.

**UNSETTLED ACCOUNT.**—The term "unsettled account" in sec. 62 (c) of The Division Courts Act means an account, the amount of which has not been adjusted, determined or admitted by some act of the parties, such as by the giving of a note, a mutual stating or balancing of the account, or fixing the amount due. In re Hall and Curtin, 28 U. C. R. 533, overruling Miron v. McCabe, 4 P. R. 171.

Where it does not appear on the face of the proceedings that the amount is unsettled, prohibition may be refused after judgment. Re Lott and Cameron, 29 O. R. 70.

See also Robb v. Murray, 16 A. R. 503; Read v. Wedge, 20 U. C. R. 456; Re Higginbottom v. Moore, 21 U. C. R. 326; Re Judge of Northumberland and Durham, 19 C. P. 299.

It is competent, and indeed necessary, for the Judge to inquire into and decide the facts which may determine the question of jurisdiction, and when he has decided in favour of jurisdiction, the Court will not interfere by reviewing his decision, except under very exceptional circumstances. Loppky v. Hofley, 12 Man. R. 335.

**UNTENANTED.**—A condition in an insurance policy was that "if the premises insured become untenanted or vacant," etc. It was held that "untenanted" meant "unoccupied—not inhabited," and the condition imports habitual, actual residence in the house and the incidental care and supervision arising therefrom in protecting the property insured. Constructive residence, e.g., occupation by furniture, is not sufficient. Boardman v. North Waterloo Insc. Co., 31 O. R. 525.

A condition voiding the policy, if the premises became "vacant or unoccupied," does not apply to buildings in course of construction, but to buildings that are finished or ready for occupation. Dodge v. York Fire Insc. Co., 2 O. W. N. 571.

**UNTIL.**—The word "until" is ambiguous, and may be considered to be either inclusive or exclusive of the day mentioned, according to the subject matter and true intent of the document in which it is used. Where, on a sale of wheat, the plaintiff was to have the benefit of any rise in the market price "to 1st May," it was held the word "to" was equivalent to "until," and did not include 1st May. McCuaig v. Phillips, 16 C. L. T. 15; 10 Man. 694.

When a party has "until" a certain date to do a thing, it must, as a general rule, be done before that date. Richard S. S. Co. v. China Mutual Insc. Co., 4 E. L. R. p. 271.

**UNTIL PAID.**—The words "until paid," in sec. 87 (5) of the Public Schools Act, R. S. O. ch. 266, providing that, if a teacher is not paid in full, his salary shall continue "until paid," mean until actual payment, i.e., not until action brought, but for the time between the writ and the judgment. Gliddon v. Yarmouth Public School (1908), 17 O. L. R. 343. In McPherson v. Usborne (1901), 1 O. L. R. 261, no claim was made to salary after the writ issued.

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**UNTIL PAYMENT IN FULL.**—Where by a contract interest is payable at a certain rate "until payment in full," these words relate only to the currency of the contract. After the time fixed by the contract, interest is payable as damages only. Powell v. Peck, 12 O. R. 492; 15 A. R. 138.

The same rule is applied in actions for redemption. Grant v. The People's Loan & Deposit Co., 17 A. R. 85; 18 S. C. R. 262; and on promissory notes. St. John v. Rykert, 10 S. C. R. 278.

**UNUSED.**—A testator gave all his estate to his wife for life "and from and after her death, I give, devise and bequeath the residue of my said estate as left unused by my said wife unto my children."

"The words 'left unused' are synonymous with the words 'whatever remains of' in Constable v. Bull, 22 L. J. Ch. 182, cited in Bibbens v. Potter, 10 Ch. D. 733, and with the words 'what shall be left' in Surnam v. Surnam, 5 Madd. 123." In Re Elliott, 7 E. L. R. 308.

**UPON PAYMENT OF COSTS.**—The words "upon payment of costs" may be regarded as words of agreement or words of condition only, according to the facts of the particular case. Brega v. Hodgson, 4 P. R. 47.

Where the words occurred in an order staying proceedings, they were held words of agreement, and not mere words of condition. Stuart v. Branton, 9 P. R. 566.

**UPPER CANADA.**—In Ontario legislation Upper Canada means all that part of Canada which formerly constituted the Province of Upper Canada; and Lower Canada all that part of Canada which formerly constituted the Province of Lower Canada.

**USE.**—Uses and trusts are not so much different things as different aspects of the same subject. A use regards principally the beneficial interest; a trust regards principally the nominal ownership. The usage of the two terms is, however, widely different. The word "use" is employed to denote either an estate vested since the Statute of Uses, and by force of that statute, or to denote such an estate created before that statute as, had it been created since, would have become a legal estate by force of the statute. The word "trust" is employed since that statute to denote the relation between the party invested with the legal estate (whether by force of that statute or independently of it) and the party beneficially entitled, who has hitherto been said to have the equitable estate.

As to the further distinction between a "use" and a "trust" see Gamble v. Rees, 6 U. C. R. 396.

As a verb "use" is synonymous with "employ." To employ one's horses and wagons in hauling coal for hire is to "use" them for the same purpose. R. v. Boyd, 18 O. R. 485.

**USE AND WORKING.**—See Wealleans v. Canada Southern R. W. Co., 21 A. R. 297; the Michigan Central Ry. Co., ats Wealleans, 24 S. C. R. 309.

**USE OF THE CORPORATION.**—The term "for the use of the corporation" in the Mun. Act, R. S. O. 1887, sec. 479, does not mean "for the benefit of," and it was held that a town had no authority to purchase land to be presented to the Government as a site for a post office. Jones v. Town of Port Arthur, 16 O. R. 474. The section is now found in sec. 322 of the Mun. Act, 1913, and reads "for the purposes of the corporation."

**USED ON THE RAILWAY.**—Section 256 Railway Act, R. S. C. ch. 37.

The cars of a foreign railway company, forming a part of a train of a Canadian railway company, are "used" by the Canadian railway company within the above section. Atcheson v. Grand Trunk Ry. (1900), 1 O. L. R. 168. Leave to appeal was refused by the Supreme Court. Coutlee's Dig. 1193.

**USED OR EMPLOYED.**—The term "used or employed," in the Imperial Act respecting Seal Fishery, is not confined to the particular use and employment of the ship on the occasion of her seizure but extends to the whole voyage which she is then prosecuting. The Queen v. The Ship "Oscar and Hattie," 3 Exch. C. R. 241; 23 S. C. R. 396.

**USING.**—"Using" applied to land cannot mean wasting, consuming, or exhausting by employment, as, *e.g.*, to use flour, beer or water for food or drink. It means holding or occupying. Re Davis and City of Toronto, 21 O. R. 243.

**USUAL CUSTOM.**—In applying the term "usual custom" to Canadian affairs it means something less than the immemorial custom of England. In a new country it is satisfied if we find there is an approved and well recognized method of farming leases in a given locality which fixes the rule by long-continued usage. Re Watson's Trusts, 21 O. R. 528.

The words "the usual custom of the district" can hardly have reference to a "custom" in its technical sense: a local common law custom. *Ib.* 530. See Grand Hotel Co. v. Cross, 44 U. C. R. 153.

In an action to recover damages under a charter party the words "usual custom of the wood trade" were held to mean a custom which is well known to persons generally who are engaged

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in that business, and not a local usage of which contractors have no knowledge. Lovitt v. Snowball, 15 C. L. T. 298.

V. CUSTOM.

**USUAL EXPENSES.**—V. EXPENSES.

**USUAL STAY.**—Where the "usual stay" is granted at the close of the trial it means that the successful party may sign judgment, but may neither issue execution nor register a certificate of judgment until after the lapse of the time allowed for appealing from the judgment. Johnston v. Henry, 21 Man. R. 700; 17 W. L. R. 327.

**USUALLY PERFORMED.**—Statute labour cannot be said to have been "usually performed" on a road where the only evidence shews it has been performed on such road for two years. R. v. Plunkett, 21 U. C. R. 536.

"Usually performed" means that the usual statute labour of the locality has been done upon the road from year to year. R. v. Hall, 17 C. P. 282.

**VACANT.**—A condition voiding a fire insurance policy if the premises became "vacant or unoccupied" does not apply to buildings insured while in course of construction, but only to buildings that are finished or ready for occupation. Dodge v. York Fire Insc. Co., 2 O. W. N. 571.

A dwelling house may be vacant although there is a constructive residence, *e.g.* occupation by furniture. The condition imports habitual actual residence in the house and the incidental care and supervision arising therefrom in protecting the property insured. Boardman v. North Waterloo Insc. Co., 31 O. R. 525.

**VAGRANT.**—A vagrant is described as a wandering, idle person; a strolling or sturdy beggar. A general term, including in law, the classes of idle and disorderly persons, rogues and vagabonds, and vagabonds and incorrigible rogues.

The word is given a very wide and extensive meaning by sec. 238 of the Criminal Code. Before a person can be convicted of being a vagrant of the class (a) under this section he must have acquired in some degree a character which brings him within it, as an idle person who having no visible means of maintaining himself, i.e. not "paying his way," or being apparently able to do so, yet lives without employment. R. v. Bassett, 10 P. R. 386.

A person cannot be convicted as a vagrant of the class (e) (supporting himself by gaming or crime) by shewing he has "no peaceable profession." There must be positive evidence. R. v. Organ, 11 P. R. 497. Nor by shewing that he makes his living, for the most part, by betting on horse races in the street. Gaming

and betting on horse races are different things. R. v. Ellis (1909), 20 O. L. R. 218. See also R. v. Collette (1905), 10 O. L. R. 718; R. v. Herman, 8 Man. R. 330.

But where the accused had for six months left off working at his trade, and his only means of livelihood since was running a gambling resort, it was held he was properly convicted of vagrancy under clause (e). R. v. Kolotyla, 21 Man. R. 197; 19 C. C. C. 25.

In R. v. Kearney, 12 C. C. C. 349, the defendant was convicted under clause (f) as a vagrant, because being drunk he caused a disturbance in a public place.

In cases of vagrancy the information and conviction must specify the grounds constituting the accused a vagrant. It is not sufficient to accuse or convict him of being a "vagrant." R. v. Daly, 12 P. R. 411; R. v. McCormack, 7 C. C. C. 135.

V. VISIBLE MEANS OF SUPPORT.

**VALID IN CANADA.**—A contract to procure fire insurance in some office "valid in Canada" means in some insurance company licensed to do business in Canada. Barrett v. Elliott, 10 B. C. R. 461.

**VALUABLE CONSIDERATION.**—The distinction between a *good* and a *valuable* consideration is that the former consists of blood, or of natural love and affection; as when a man grants an estate to a near relative from motives of generosity, prudence and natural duty; and the latter consists of such a consideration as money, marriage which is to follow, or the like, which the law esteems an equivalent given for the grant.

"A valuable consideration is money or any other thing that bears a known value, or marriage; or some other benefit to the person making the promise, however slight, or to a third person, by the act of the promisee; or any loss, trouble, detriment or inconvenience to, or charge or liability upon, the promisee, however slight, for the sake or at the instance of the promisor, though without any benefit to the promisor; or the suspension or forbearance of legal proceedings, the prevention of litigation or the settlement of disputes." Barron & O'Brien on Chattel Mortgages.

The discharge of a pre-existing debt is a valuable consideration within section 7 of the Bills of Sale Act. Williams v. Leonard, 17 P. R. 73; 26 S. C. R. 406; Swift v. Tyson, 16 Peters, 1.

A surrender of the right to cut timber on the lands of another is a valuable consideration within the meaning of the bribery clauses in the Election Act. North Victoria, H. E. C. 252.

Also the promise to the wife of a voter of a "nice present" if she would influence her husband. Halton, H. E. C. 283.

**VALUABLE SECURITY.**—A lien or note is a "valuable security" within the meaning of sec. 406 of the Criminal Code. R. v. Wagner, 5 Terr. L. R. 119; 6 C. C. C. 113.

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The document need not be a valuable security at the time the signature is obtained by the false pretence. R. v. Burke, 24 O. R. 64.

An unstamped cheque has been held not to be a valuable security, and there was a difference of opinion as to whether a policy of insurance is a valuable security. An I. O. U. is probably not a valuable security. *Per* Anglin, J., in Re Cohen (1904), 8 O. L. R. pp. 149, 150; 8 C. C. C. 251.

The section means a valuable security to the person who parts with it. R. v. Brady, 26 U. C. R. 13.

**VALUE.**—"Value" is a relative term. The value of a thing means the quality of some other thing, or things in general which it exchanges for. The temporary or market value of a thing depends on the demand and supply. The word "value" when used without adjunct, always means in political economy, value in exchange. When applied, without qualification, to property of any description, it necessarily means the price which it will command in the market. Re Tevit and Canadian Northern Ry. Co., 25 W. L. R. 188.

In expropriation cases the value of the property expropriated to the person from whom it is taken is the general rule. In Montreal and European Short Line Ry. v. The Queen, 2 Exch. C. R. 159.

In assessment law the cost of buildings, less a proper allowance for wear and tear, and other deterioration, is not necessarily the value for assessment purposes. The value of the lands and buildings is the price it will bring at the time it is offered for sale. Squire, qui tam, v. Wilson, 15 C. P. 284.

As to the value of hotel property as affected by local option by-laws, see Re Rattenbury and Town of Clinton, 4 O. W. N. 1607.

In re Outlook Townsite Co. and Kennedy, 25 W. L. R. 308, it was held that the provision of the Assessment Act, R. S. Sask. 1909, ch. 85, sec. 302, that "land shall be assessed at its fair actual value" does not mean cash value.

The former Companies Act required the votes of "two-thirds in value" of the shareholders to carry a by-law for borrowing money. *Held*, the two-thirds was to be computed on the face value of the number of shares held, and not upon the amount paid upon such shares. Purdom v. Ontario Loan & Debenture Co., 22 O. R. 597.

**VALUED POLICY.**—A policy is called "valued," when the parties, having agreed upon the value of the interest insured, in order to save the necessity of further proof have inserted the valuation in the policy, in the nature of liquidated damages.

**VARY.**—The power to "set aside or discharge" an order implies the power to vary. Re Grand Trunk Pacific Ry. Co. and Marsan, 3 Alta. R. 65.

**VEHICLE.**—By sec. 2 of The Highway Travel Act, R. S. O. ch. 206, "vehicle" includes a vehicle drawn by one or more horses, or other animals, a traction engine and a motor vehicle.

In R. v. Plummer, 30 U. C. R. 41, a velocipede was held to be a vehicle within a provision of a by-law prohibiting the use of vehicles on a sidewalk; and in R. v. Justin, 24 O. R. 327, a bicycle was held to be a vehicle within a similar by-law.

**VENDOR.**—The word "vendor" is not a sufficient description of the party selling to satisfy the requirements of the Statute of Frauds. On behalf of the vendor, or on behalf of the seller, merely means on behalf of somebody unnamed. It is no description of anybody.

Where a written agreement for sale of land contained the following condition: "The vendor shall have the option of a reserved bid which is now placed in the hands of the auctioneer," and which reserved bid was worded as follows: "Re sale of Allen Wilmot's farm; reserved bid, $105 per acre." *Held*, that reading the above words together, they did not sufficiently identify the vendor. Wilmot v. Stalker, 2 O. R. 78.

**VERANDAH.**—A verandah is an integral part of the dwelling-house and not a porch or projection attached to it. Williams v. Town of Cornwall, 32 O. R. 255.

**VERDICT.**—"Verdict," is the word applicable to the findings of a jury. The decision of a Judge is called a "finding" or a "finding of fact." In R. v. Murray (1912), 27 O. L. R. 382, the Court held that the other words of sec. 1021 of the Criminal Code being general, an implied limitation cannot be rested on the word "verdict" alone, and a new trial may be granted, although the "verdict" is that of a Judge and not of a jury. The head note to the report of this case in 20 C. C. C. 197 is misleading.

**VERY RIGHT AND JUSTICE OF THE CASE.**—See Patterson v. Central Canada Savings & Loan Co., 17 P. R. 470.

**VESSEL.**—The word "vessel" is more comprehensive than "ship."

*V.* SHIP.

**VESTED.**—The word "vested," in sec. 433 of the Mun. Act, 1913, providing that the soil and freehold of every highway shall

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be vested in the corporation, is not used in the sense of "vested in estate;" it apparently means "under the control of." Re Knight and Townships of Medora and Wood, 11 O. R. 138; 14 A. R. 112.

**VIA DIRECT LINE.**—A condition on a railway ticket as to travelling "via direct line" was rejected as meaningless, each of three possible routes being circuitous, though one was shorter in point of mileage than the others. Dancey v. Grand Trunk Ry., 19 A. R. 664; 20 O. R. 603.

**VILLAGE.**—Section 275 of the Railway Act, R. S. C. ch. 37, regulates the rate of speed of trains passing through "any city, town or village." The word "village" includes a police village, that is, an unincorporated village, organized for certain limited purposes under the Municipal Act. The word is here used in its popular or ordinary sense, and means something larger than a hamlet and smaller than a town. Zuvelt v. Canadian Pacific Ry., 23 O. L. R. 602.

Where there is no incorporation, it is not easy to say what is meant by village. It has been defined as "any small assemblage of houses for dwellings or business, or both, whether they are situated upon regularly laid out streets or not," and this is the modern colloquial use in England and the use in Ontario. St. Marys & Weston Ontario R. W. Co. v. Township of West Zorra, 2 O. W. N. 455.

*V.* Police Village.

**VISIBLE MEANS OF MAINTAINING HIMSELF.**—The words "visible means of maintaining himself," in sec. 238 (a) of the Criminal Code, mean visible lawful means of support. Where the accused had in his possession, at the time of his arrest, $28 secured by begging, and having no other employment, this was held not visible means of maintaining himself within the Act. R. v. Munroe (1911), 25 O. L. R. 223.

Where the only evidence as to the accused's mode of life was to the effect that he associated with gamblers and "followed the race track" for a living, and he had $27 in his possession when arrested, the conviction was quashed. R. v. Sheehan, 14 C. C. C. 119.

A son living with his parents and idling away his time in places of public resort does not come within the Act. R. v. Riley, 2 C. C. C. 128.

"A person who for 14 or 15 years has never been known by any one who knows him, to do any honest work, and who does

not do any work that another witness says he knows of, although he says he knows the defendant, and who also says he sees the defendant going about the streets doing nothing, in company with thieves and reputed thieves, and has been twice in the Central Prison as a convict, is shewn sufficiently to be an idle person not having any visible means of maintaining himself." R. v. Organ, 11 P. R. 497.

V. VAGRANT.

**VOLUNTARILY.**—In consideration of marriage a woman promised her intended husband to make him her sole heir. In pursuance of this ante-nuptial contract, she, after marriage, signed a writing stating "I voluntarily promised before and after marriage that I would make him my sole heir—by virtue of this contract, he is my sole heir." The wife died, having by will disposed of her estate to the exclusion of her husband. It was held that the word "voluntarily" in the acknowledgment meant "of her own free will" and the will was not binding on the husband. Raser v. McQuade, 11 B. C. R. 161.

**VOLUNTARY.**—The proper interpretation to be put upon the term "voluntary exposure to unnecessary danger" is voluntary exposure to a danger which it is unnecessary for any one to expose himself to under the circumstances. McNevin v. Canadian Railway Accident Insc. Co. (1901), 2 O. L. R. 521; 32 S. C. R. 194

"Voluntary" conveys the idea of an act of volition. It means "knowingly," "wilful," and not that he is going knowingly to perform an act which for others might be dangerous, but knowingly, rashly and conscious of danger to himself, recklessly taking the risk, wanton or grossly imprudent exposure. S. C. 32 S. C. R. 199. See also Neill v. Travellers' Insc. Co., 7 A. R. 570; 12 S. C. R. 55.

**VOTERS' LISTS.**—V. LAST VOTERS' LISTS.

**VOYAGE.**—In maritime law "voyage" means the passing of a vessel from one place, port or country to another. The term is held to include the enterprise entered upon, and not merely the route.

In a fishing contract "season" and "voyage" are not synonymous terms. Each sailing from the home port to the fishing grounds and return to port is a complete voyage. Wentzell v. Winacht, 3 E. L. R. 94.

**WAGER.**—A wager is a contract by which two or more parties agree that a certain sum of money or other thing shall be paid

or delivered to one of them on the happening of an uncertain event or upon the ascertainment of a fact which is in dispute between them.

A plaintiff cannot recover upon a claim for the amount of a bet made and won in Ontario on the result of a parliamentary election in the Dominion. Harris v. Elliott (1913), 28 O. L. R. 349.

If the money has been paid to the winner of the bet, the loser cannot recover, both parties being *in pari delicto* and the illegal act having been performed. Walsh v. Trebilcock, 23 S. C. R. 695, reversing 21 A. R. 55.

**WAGES.**—Wages are the personal earnings of labourers and artisans. The profit made and makeable by other people is not wages. The distinction between personal earnings and earnings in which some profit may be involved is sometimes difficult to define. Where the word appears in an Act dealing with a class, the object of the Act will effect the interpretation to be given to the term.

In Coupez v. Lear, 20 Man. R. 238; 15 W. L. R. 354, it was held that the earnings under a contract to haul gravel at $5.50 per team a day, one team being driven by the owner and the other by a hired man, were not wages within the Manitoba Act respecting assignments of wages or salaries to be earned in future. "Whatever definition one gives to the word 'wages,' a portion of what the plaintiff here gets is profit made and makeable by the employment of the people under him. If a portion is that, the whole is not wages."

But in Re Western Coal Co., Limited, 25 W. L. R. 26, the earnings of men employed to haul coal, using their own teams, under no obligation to haul any specific quantity or work any limited time, were held to be wages within the Companies Winding-Up Ordinance (Alberta).

In the former case, the object of the Act was to prevent the assignment of future earned wages and so protect the wage earner against his own improvidence; in the latter case, the object was to protect the earnings of the wage earner in case of the insolvency of the employer.

Under an Act prohibiting the garnishment of wages of seamen, it was held that the profits of a fisherman employed for a voyage or a season are not attachable. Swinehammer v. Sawler, 27 N. S. R. 448; Rex v. Wilneff, 1 E. L. R. 168.

In the Mechanics' and Wage-Earners' Lien Act, wages mean money earned by a mechanic or labourer for work done, whether by the day or other time or as piece work. R. S. O. ch. 140, sec. 2 (g).

In the Wages Act, it means and includes wages and salary, whether the employment in respect of which the same is payable is by time or by the job or piece or otherwise. R. S. O. ch. 143, sec. 2.

As against an assignee for the general benefit of creditors a wage-earner has a preferential claim "not exceeding three months' wages." This does not mean the balance of the last three months' wages, but "the wages . . . not exceeding three months' wages." In other words, the servant may leave in the master's hands a balance of his wages, so long as that balance does not exceed three months' wages. McLarty v. Todd, 4 O. W. N. 172.

A married woman owned a water lot on which was built a weir. Under an execution against her husband, who had been for some time an absconding debtor, the sheriff seized a quantity of fish taken in this weir. *Held*, that these fish, taken by the plaintiff, or by persons employed by her, were her "earnings," and that the words "wages and earnings," in the statute (Nova Scotia) covered the result of the wife's labour and industry, as well as something acquired under a contract for services. Bohaker v. Morse, 8 C. L. T. 398.

**WAGON.**—Where a debtor was not possessed of an ordinary farm wagon, but owned two buggies, one of these buggies was held to be exempt from seizure as a "waggon," and the debtor had his choice of the buggies. Ashcroft v. Hopkins, 2 Alta. R. 253.

**WALL.**—*V.* Party Wall.

**WAR VESSEL.**—See The Ship "Minnie" and Her Majesty The Queen, 23 S. C. R. 478.

**WAREHOUSEMAN.**—Where goods are delivered to a railway company marked and addressed for immediate shipment, they are received as carriers; but, if they are delivered at a warehouse in bulk, to be shipped when a car-load is ready, the position of the railway company is that of a warehouseman. Milloy v. Grand Trunk Ry., 23 O. R. 454; 21 A. R. 404.

A cellar in a brewery where beer is stored is a "warehouse" within that term in the Liquor License Act, R. v. Halliday, 21 A. R. 42. And see Re Monteith, 10 O. R. 529.

**WARNING.**—The warning referred to in sec. 276 of the Railway Act, R. S. C. ch. 37, is intended to be such as ought to be apprehended by a person of ordinary faculties in a reasonably sound, active and alert condition, and the time given to avoid the danger should be reasonable and sufficient to enable a person of

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that description to avoid it. Grand Trunk Ry. v. McAlpine, 1913, A. C. 838.

**WARRANT AND DEFEND.**—See Green v. Watson, 10 A. R. 113.

**WASTE.**—The term "waste" has no fixed definition; the true meaning seems to be, that the act complained of as waste must be one that occasions injury to the inheritance; and that many acts which would unquestionably be "waste" under one set of circumstances will not be so under another. It is an expression necessarily bearing upon an actual injury to the estate of the reversioner, by diminishing the value, increasing the burden, or impairing the evidence of title. Drake v. Wigle, 24 C. P. 405, where it was held it is not waste in a tenant for life to cut down timber on wild land for the sole purpose of bringing it under cultivation, providing the inheritance is not damaged thereby, and it is done in conformity with the rules of good husbandry.

The test is, has there been any injury to the reversion? Toronto Harbour Commissioners v. Royal Canadian Yacht Club, 5 O. W. N. 136; 29 O. L. R. 391.

Tapping trees for sugar making is waste, if it has the effect of destroying the trees or of shortening their life. Campbell v. Shields, 44 U. C. R. 449.

Clearing land to render it more fit for cultivation is not waste; and a tenant who cuts timber or removes stones, for the purpose of such clearing, is entitled to the property in the timber and stones. Lewis v. Godson, 15 O. R. 252; Weller v. Burnham, 11 U. C. R. 90.

In the absence of a covenant to repair, a lessee is not liable for permissive waste, and an accidental fire is permissive, not voluntary waste. Wolfe v. McGuire, 28 O. R. 45.

The same rule applies to a tenant for life. Patterson v. Central Canada L. & S. Co., 20 O. R. 134.

In Morris v. Cairncross (1907), 14 O. L. R. 544, Boyd, C., followed the last case, but Meredith, C.J., in delivering the judgment of the Divisional Court, expressed a contrary opinion. In a subsequent case, tried before Osler, J.A., he followed Patterson v. Central Canada L. & S. Co., and said "this particular point is left open" by the judgment of the Divisional Court in Morris v. Cairncross. Currie v. Currie (1910), 20 O. L. R. 375.

Sowing seed containing noxious weeds is waste, but the spread of weeds from natural causes, or by the action of cattle, or the failure to keep down weeds by summer fallowing or picking is no evidence of waste, but only of ill-husbandry. Patterson v. Central Canada, *supra*, p. 137.

But a life tenant is liable for voluntary waste. Clow v. Clow, 4 O. R. 355; Taylor v. Taylor, 5 O. S. 501; Weller v. Burnham, 11 U. C. R. 90.

All the niceties of the ancient learning as to waste which obtain in England are not to be transferred without discrimination to a new and comparatively unsettled country like Ontario. Cutting timber for repairs is not waste; and where the timber on the land was unsuitable for repairs and the tenant for life sold sufficient timber to pay for the timber required for repairs, it was held this was not waste if reasonably and properly cut. Hixon v. Reaverley (1904), 9 O. L. R. 6.

A mere alteration by a tenant for the purpose of making the building suitable for the trade carried on is not waste. Sullivan v. Dore, 5 O. W. N. 70; Holderness v. Lang, 11 O. R. 1.

Reasonable wear and tear is a necessary incident arising out of the use of property and is not waste. Morris v. Cairncross (1907), 14 O. L. R. 544.

**WATER-COURSE.**—*V.* Rivers.

**WATER-MARK.**—*V.* High Water-mark.

**WATER'S EDGE.**—The law is well settled that in streams and rivers which are not navigable a description of land which extends to the water's edge, or to the bank, carries the grant or conveyance to the thread of the stream; and that the description continuing along the water's edge, or along the bank, will extend along the middle or thread of the stream, unless there are words which clearly exclude whatever may be between the water's edge, or the bank, and the *medium filum aquae*. Kains v. Turville, 32 U. C. R. 17.

But a grant by the Crown to the water's edge of a navigable river conveys no title to the bed of the river. MacLaren v. Attorney-General of Quebec, 46 S. C. R. 656; Q. R. 21 K. B. 42.

Where two properties or municipalities are divided by a river or highway the limit of each is, *prima facie*, the centre of the river or road. In re McDonough, 30 U. C. R. 288.

A grant of land "extending to the river" will comprehend *ad medium filum aquae*, whether the subject of the grant is farm land or a water lot. Kirchhoffer v. Stanbury, 25 Gr. 413.

A grant of land to within one chain of a river, means within one chain of the edge of the river, not to the top of the bank. Stanton v. Windeat, 1 U. C. R. 30.

A conveyance of land "to the water's edge at low water mark" does not carry the grant *ad medium filum aquae*. Colman v. Robertson, 30 C. P. 609.

When land is bounded by a navigable river, the waters of which are non-tidal, it extends to the lowest mark reached by the gradual diminution of the water during the summer months. Churet v. Pilon, 31 Que. S. C. 165.

See the Trent Valley Canal, 12 O. R. 153.

**WAY-GOING CROPS.**—V. EMBLEMENTS.

**WAYS, WORKS, ETC.**—The Workmen's Compensation for Injuries Act, R. S. O. ch. 146, sec. 3, provides for compensation to a workman where injury is caused by reason of any defect in the condition or arrangement of the "ways, works, machinery, plant, buildings or premises connected with, intended for, or used in the business of the employer."

A "way" is a place used by the workmen in the performance of their duty in passing from one part of the premises to another. Caldwell v. Mills, 24 O. R. 462.

A place where it is not necessary for the workman to go in the performance of his duty is not a "way." Findlay v. Miscampbell, 20 O. R. 29; Headford v. McClary Mfg. Co., 23 O. R. 335; 21 A. R. 164; 24 S. C. R. 291; Tooke v. Bergeron, Q. R. 9 S. C. 506; 27 S. C. R. 567.

The plaintiff must shew a reasonable and practicable necessity to pass over the dangerous way. British Columbia Mills Co. v. Scott, 24 S. C. R. 702.

A cleat nailed on a roof being shingled is a "work" within the meaning of the term in the Act. Markle v. Donaldson (1904), 8 O. L. R. 682.

A plank, not intended to be used to walk upon, but used for that purpose under instructions, was held a "way." Caldwell v. Mills, 24 O. R. 462.

A public street, used by the employer in connection with his business, is not a "way." Stride v. the Diamond Glass Co., 26 O. R. 270. See Headford v. McClary Mfg. Co., 21 A. R. 164; 24 S. C. R. 291.

**WEAR AND TEAR.**—Natural wear and tear means deterioration or depreciation in value by ordinary and reasonable use of the subject matter.

Wear and tear is a necessary incident arising out of the use of the property in a reasonable manner; and no detriment to demised premises resulting from the use of them in a reasonable and proper manner, having regard to the class of structure, is to be regarded as waste. Morris v. Cairncross (1906), 14 O. L. R. 544; 7 O. W. R. 834.

A covenant by a tenant "to give up the house in the same condition and repairs" excludes the term "reasonable wear and tear." Bornstien v. Weinberg (1912), 27 O. L. R. 536.

Ordinary wear and tear, to a wharf, from the action of the water, more or less injurious according to the state of the weather, falls within the exception in the term "reasonable wear and tear." Thistle v. Union Forwarding & Ry. Co., 29 C. P. p. 82.

**WEARING APPAREL.**—Wearing apparel consists of that which is worn. Clothing actually appropriated thereto was held to be apparel. See Wenskey v. Canadian Development Co., 8 B. C. R. 190; 21 C. L. T. 601.

**WEEK.**—An adjournment for one week is an adjournment for seven days after the day on which the adjournment is made, and gives the whole of the seventh day. R. v. Collins, 14 O. R. 613.

Where a statute requires a by-law to be published for four consecutive weeks the weeks are not to be computed from the first day of the week in which the first publication takes place. In re Coe and Pickering, 24 U. C. R. 439.

Where a statute required a company to express dissent "within two weeks after the receipt" of notice, it was held the two weeks must be reckoned exclusive of the day on which the notice was received. McCrea v. Waterloo Mutual Fire Insc. Co., 26 C. P. 431.

There is abundance of authority that the day is to be construed exclusively wherever anything is to be done in a certain time after a given event or time. Edgar v. Magee, 1 O. R. 287; Hanns v. Johnston, 3 O. R. 100.

A replication filed on 9th October is filed "three weeks before" 30th October. Wilson v. Black, 6 P. R. 130.

In construing the word "week" in dealing with a statute requiring three weeks' publication of a by-law, it must be taken in its ordinary acceptance which would include Sundays and holidays. In re Armour and Township of Onondaga (1907), 14 O. L. R. 606. See also In re Duncan and Midland (1907), 16 O. L. R. 132, where many cases decided on other statutes are dealt with, and In re Armour approved of.

By sec. 3 (6) of the Inn-keepers Act, R. S. O. ch. 173, an inn-keeper has a right to sell property of his guest on which his lien attaches "on giving two weeks' notice." A notice published in a newspaper on the 5th and 13th December of a sale held on the 15th December, was held not to be two weeks' notice. Martin v. Howard, 4 O. W. N. 1266.

*V.* TIME.

**WEEKLY PAPER.**—A publication once a week for four successive weeks in a daily paper is not a publication for four weeks

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in a "weekly paper." Re Trustees of the East Presbyterian Church and McKay, 16 O. R. 30.

**WELL-BEING.**—*Semble*, the term "well-being" in the preamble of an Act providing for the "safety, health and well-being" of operatives in factories, includes moral as well as physical well-being. Rex ex rel. Burke v. Ferguson (1906), 13 O. L. R. p. 484.

**WHERESOEVER.**—See Re Bigamy sections of the Criminal Code, 27 S. C. R. 461; 1 C. C. C. 172.

**WHICH FINALLY DISPOSES OF.**—C. R. (1913), 507. V. FINAL ORDER.

**WHICH HAS SUCH EFFECT.**—V. OR WHICH HAS SUCH EFFECT.

**WHOLE OF THE COUNTY.**—V. COUNTY.

**WHOLESALE.**—The ordinary meaning of "wholesale merchant is one who deals with the trade, who buys to sell again, while the retail trader deals direct with the customer. R. v. Pearson, 1 C. C. C. 337, where it was held that a manufacturer of clothing who sells to the trade is a wholesale trader within the meaning of the term in a municipal by-law.

A person buying lumber in carload quantities, storing it in his yard and partly disposing of it in small quantities to the public and partly used by him in his own business of a builder, was held to be a "wholesale purchaser" within the meaning of sec. 88 of the Bank Act. R. S. C. ch. 29. Townsend v. Northern Crown Bank (1912), 26 O. L. R. 291; 27 O. L. R. 479; 49 S. C. R. 394.

Such a person may not have been a "wholesale dealer" although a "wholesale purchaser." S. C. (1913), 28 O. L. R. 521.

**WHOLLY.**—In re Taylor and Village of Belle River (1909), 18 O. L. R. 330, it was held that the word "wholly" in sec. 337 (1) of the Mun. Act, 1903, had no reference to the locality of the road, but to the jurisdiction of the council over it. This section is now embodied in sec. 472 of the Mun. Act, 1913, and the word "wholly" admitted.

**WIFE.**—A bequest to a woman whom the testator refers to as "my wife" may be good, although the person intended is not, and another woman is the legal wife of the testator. All the surrounding circumstances may be given in evidence to shew whom

the testator intended to benefit. Marks v. Marks, 13 B. C. R. 161; 6 W. L. R. 329; 40 S. C. R. 210; Reeves v. Reeves (1908), 16 O. L. R. 588.

The Quebec law, founded as it is upon the Roman civil law, is different. Russell v. Lefrancois, 8 S. C. R. 335.

As to the meaning of "wife" in a life insurance policy, and sec. 178 of the Ontario Insurance Act, R. S. O. ch. 183, see Re Lloyd and A. O. U. W., 5 O. W. N. 5; (1913), 29 O. L. R. 312; Re Bottomley and A. O. U. W., 5 O. W. N. 83.

The decision in Re Sons of Scotland Benevolent Association and Davidson, 2 O. W. N. 200, is no longer applicable, the present section 178 (3) expressly extending to a case where the insurance is declared to be for the benefit of the wife only.

In Re Kloepfer, 5 O. W. N. 133, it is said that the wife to be benefited is the wife at the time of the death, even though the wife at the time of the insurance is mentioned by name; and this is the effect of the judgment in Re Lloyd, *supra*, and followed in Lambertus v. Lambertus, 5 O. W. N. 420.

**WILFUL.**—"Wilful" is a word of familiar use in every branch of law, and although in some branches of the law it may have a special meaning, it generally implies nothing blameable, but merely that the person of whose action or default the expression is used, is a free agent, and that what he has done arises from the spontaneous action of his will. It means that he knows what he is doing and is a free agent. A returning officer at a municipal election who refuses a ballot to a person whose name is on the voter's list, and who is willing to take the oath, is guilty of a "wilful" act. Wilson v. Manes, 28 O. R. 419; 26 A. R. 398.

To deprive an unlawful act of wilfulness, there must be an ignorance or mistake of fact, not ignorance or error in point of law. Young v. Smith, 4 S. C. R. p. 504.

The word "wilful" is not synonymous with "unlawful." An act may be unlawful and yet not wilful. Ex p. O'Shaughnessy, 8 C. C. C. p. 139. But in Aikens v. Simpson, 18 C. C. C. 99; 19 C. C. C. 325, the Supreme Court of Nova Scotia held that a Justice of the Peace who receives more than his legal fees and retains them after notice of the excess, is guilty of "wilfully" receiving the fees.

To constitute a wilful refusal or neglect on the part of a husband to maintain his family, under sec. 238 of the Criminal Code, he must be under a legal obligation to do so. R. v. Leclair, 2 C. C. C. 297.

A deputy returning officer refusing to allow a voter to vote at an election was held to be guilty of a "wilful misfeasance or wilful act of omission" within the meaning of sec. 194 of the former

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Election Act. See now sec. 199 of the Ontario Elections Act, R. S. O. ch. 8. Walton v. Appjoin, 5 O. R. 65.

"Wilful misfeasance" involves the doing of something which the actor knows will cause harm, or in the doing of which he is so reckless of consequences that he goes his own way obstinately or wilfully no matters who suffers. Johnson v. Allen, 26 O. R. 550.

As applied to a trespass, the term means a deliberate trespass by a person who commits it intentionally with a knowledge that he has no right whatever to do the act. Flemming v. McNeill Co., 23 C. L. T. 312. As to the measure of damages in cases of wilful trespass, see Union Bank of Canada v. Rideau Lumber Co., 4 O. L. R. 721, and Fleming v. McNeill Co., *supra*.

**WILFULLY.**—The term "wilfully receives," in sec. 1134 of the Criminal Code, means "purposely," or "intentionally," knowing he had no right to receive the fees. McGillivray v. Muir (1903), 6 O. L. R. 154; 7 C. C. C. 360. Or retaining the fees after he knows he had no right to receive the excess. Aikens v. Simpson, 18 C. C. C. 99; 19 C. C. C. 325.

A conviction for "unlawfully" committing an act does not sufficiently charge that the act was done "wilfully." Ex p. O'Shaughnessy, 8 C. C. C. 136; R. v. Tupper, 11 C. C. C. 199.

In a charge of wilfully making a false return under the Bank Act, it must be shewn that the party signing the statement misrepresented the facts. R. v. Lovitt, 13 C. C. C. 15; R. v. Browne, 14 C. C. C. 247.

Legal malice is essential to the offence of "wilful destruction or damage" of property under sec. 510 of the Criminal Code. R. v. Kroesing, 16 C. C. C. 312.

"Fraudulently making a false return" is not synonymous with "wilfully making a false return." R. v. Nesbitt (1913), 28 O. L. R. 91.

Inciting a mob to rescue a prisoner from a police officer is evidence of "wilfully" obstructing a police officer. R. v. McDonald, 16 B. C. R. 191; 18 C. C. C. 251.

**WILFULLY REFUSES.**—The term "wilfully refuses," in sec. 238 (b) of the Criminal Code, making it an offence for a man to wilfully refuse to maintain his family, implies that the accused must be under a legal obligation to do so. R. v. Leclair, 2 C. C. C. 297.

To constitute a wilful refusal to maintain his wife there must be an absence of any reasonable ground for believing the refusal to be lawful. Anonymous Case—H. v. H., 6 C. C. C. 163.

**WILFULLY VOTING.**—The term "wilfully voting" in the former Elections Act, means voting with the knowledge he has no right to vote. Smith v. Carey (1903), 5 O. L. R. 203; South Perth, 2 Ont. E. C. 30, 33.

**WISH.**—It has been long seitled, that words of recommendation, request, entreaty, wish, or expectation, addressed to a devisee or legatee, will make him a trustee for the person or persons in whose favour such expressions are used; provided the testator has pointed out, with sufficient clearness and certainty, both the subject matter and the object or objects of the intended trust.

With regard to the general question of precatory trusts (i.e. where the terms used do not expressly point to an absolute enjoyment by the donee himself), the Courts seem to be sensible that they have gone far enough in investing with the efficacy of a trust loose expressions of this nature, which, it is probable, are rarely intended to have such an operation. Accordingly we find, of late, a more strict and uniform requisition of definiteness in regard to both the subject-matter and objects of the intended trust, than can be traced in some of the earlier and a few of the more modern adjudications. Jarman on Wills, 5th ed., 356, 361.

In Re Kelly and Gibson, 6 O. W. N. 173, Middleton, J., said the whole modern tendency was against the creation of a precatory trust; and where by the will of the testator he gave all his real and personal property "to my wife to be used by her for the best advantage as she considers best for herself and our infant son Joseph," he held this was an absolute gift to the wife.

A testator gave his estate to his daughter and then added: "I wish and desire that my daughter shall make a competent provision for" one B. It was held that the words "wish and desire" were not precatory merely, but directory—that when used by a person having a right to control, they are equivalent to a direction when unaccompanied by any words tending to limit the expression to a mere recommendation, "I take it to be the law still, that words of a testator intimating a request, wish or desire, are sufficient, when they are so plain and unequivocal as in this case, to create a trust, provided there be certainty of the gift and of the object to be benefited." Baby v. Miller, 1 E. & A. 218.

So where a testator said: "I wish all my money that my daughter may inherit from me be settled upon herself:" the words were held to create a trust—to carry an obligatory import. Re Hamilton (1912), 27 O. L. R. 445; 28 O. L. R. 534.

But an absolute gift is not to be cut down to a life interest merely by an expression of the testator's wish that the donee shall by will or otherwise, dispose of the property in favour of individuals or families indicated by the testator. A wish or desire so expressed is no more than a suggestion, to be accepted or not

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by the donee, but not amounting to a mandate or obligatory trust. A gift to a wife with the added clause: "I also wish if you die soon after me that you will leave all you are possessed of to my people and your people equally," was held a mere suggestion. Johnson v. Farney (1913), 29 O. L. R. 223.

Where a testator said: "In the carrying out of this will I rely wholly on the sense of justice, as well as of the kindness of heart, of my beloved wife," it was held these words did not create a trust. Re Stanton, 4 O. W. N. 504.

"It is my wish and desire that my wife shall make a will dividing the estate hereby devised among my said children," were held not to create a trust. Bank of Montreal v. Bower, 17 O. R. 548; 18 O. R. 226.

Nor does a gift to a wife "trusting she will make such disposition thereof as shall be just and proper among my children." Nelles v. Elliot, 25 Gr. 329.

It will be noticed that in the last two cases there was certainty in the objects to be benefited; the want of clearness and certainty was in the subject matter of the gift.

In Moross v. McAllister, 26 U. C. R. 368, Draper, C.J., intimated that the word "desires" is equivalent to "wills," and in Findlay v. Fellows, 14 Gr. 66, it was held that a devise to a wife "requesting her to will the same to my children," created a trust. It is doubtful if these cases can now be safely followed. See the remarks in Bank of Montreal v. Bower and Johnson v. Farney, *supra*, indicating that the strictness of the earlier cases have been departed from.

Where a testator used the words "I direct (*je veux*) that after the death of my wife all . . . to be divided between," etc., it was held that the words translated "I direct" could not be construed as words of mere desire. Re Simon, 14 W. L. R. 56.

See Articles on Precatory Trusts, 10 C. L. T. 145; 15 C. L. T. 239.

**WITH COSTS.**—Where an injunction is dissolved, on the ground of concealment of the true state of facts, "with costs," it means "with costs payable forthwith." Walton v. Henry, 13 P. R. 390.

**WITHIN.**—"If the time limited by any Act for any proceeding or for the doing of anything under its provisions, expires or falls upon a holiday, the time so limited shall extend to, and such thing may be done on the day next following which is not a holiday." R. S. O. ch. 1, sec. 28 (h). The Dominion Interpretation Act contains a similar provision.

The cases shew that, apart from any such statutory provision, when Sunday is the last day for the party to do an act, and the

time is fixed by statute, Sunday is a part of the specified time, and a further day is not given to the party because he does not do the act or cannot do it upon the Sunday. But where the act is to be done by the Court and the Court is closed upon a Sunday or other holiday, the party has until the next following day on which the Court can act. McLean v. Pinkerton, 7 A. R. 490.

Where a statute required an execution to be returnable "within thirty days," a writ issued on 24th April was held to be in force on 24th May—the day of issue being excluded. Clarke v. Garrett, 28 C. P. 75.

A covenant to pay "within one year" gives the debtor a right to pay the amount due at any time within the year. Angevine v. Smith, 14 C. L. T. 476. (S. Ct. N. S.)

**WITHIN ONTARIO.**—Con. Rule 590 (1913), provides for the attachment of debts where it is shewn "that some person within Ontario is indebted to the judgment debtor." Section 148 of the Division Courts Act contains a similar provision.

A foreign corporation is not "within Ontario." Canada Cotton Co. v. Parmalee, 13 P. R. 308; Westover v. Turner, 26 C. P. 510.

But where a foreign corporation is substantially carrying on their business at an office in Ontario, it will be considered "within Ontario." Banks having their head offices in Montreal but with branches in Ontario were deemed resident "within Ontario." County of Wentworth v. Smith, 15 P. R. 372.

In Parker v. Odette, 16 P. R. 69, a Divisional Court held that the decision in County of Wentworth v. Smith did not apply to a corporation incorporated in Michigan and not shewn to carry on one of the principal parts of its business in Ontario.

An English insurance company, having an attorney and chief agency in Ontario, was held not to be "within Ontario" within this Rule. Boswell v. Piper, 17 P. R. 257.

The Prince Edward Island Statute, 44 Vic. ch. 4, sec. 4, is similar to the foregoing rule. Under this statute it was held that a foreign insurance company was "within the province" and doing business therein by an authorized agent, where a local agent who had authority to solicit applications and forward them to the head office for approval, was served with garnishee summons. Seaman v. Seaman, 25 C. L. T. Occ. N. 109.

Residence within Ontario, within the meaning of Con. Rule (1913), 373, as to security for costs, is not implied where a foreign corporation has only a constructive residence through agents acting in its business interests, and licensed so to do in a comparatively small and transient way. Ashland v. Armstrong (1906), 11 O. L. R. 414.

V. Carrying on Business.

**WITHOUT HEIRS.**—A devise to a daughter "and in the event of her decease without heirs," then over, the words "without heirs" mean "without children lawfully begotten," or "without heirs of the body." In re Maybee (1904), 8 O. L. R. 601.

**WITHOUT INTEREST IF PAID WHEN DUE.**—A covenant in a mortgage provided for payment of principal on fixed days "without interest if paid when due." It was held no interest was payable until the due dates. Reid v. Wilson, 18 C. L. J. 58.

**WITHOUT ISSUE.**—The words "without issue" do not import a definite failure of issue. Ashbridge v. Ashbridge, 22 O. R. 146; Martin v. Chandler, 26 O. R. 81.

**WITHOUT PREJUDICE.**—"Without prejudice," means that the party making the offer is not to receive any advantage from the proposition any more than the party rejecting it. Where an offer is made by letter "without prejudice," neither the letter or the answer to it is allowed to be given in evidence, although the answer is not expressed to be without prejudice. Clark v. Grand Trunk Ry., 29 U. C. R. 136.

A letter containing an offer, written "without prejudice," means "I make you an offer; if you do not accept it this letter is not to be used against me." But when the offer is accepted the privilege is removed. If the terms proposed in the letter are accepted a complete contract is established, and the letter, although written without prejudice, may be used to evidence the contract. Omnium Securities Co. v. Richardson, 7 O. R. 182; Latimer v. Park, 2 O. W. N. 1399.

Where a settlement has been concluded by means of letters marked "without prejudice" the letters may be given in evidence to prove a binding contract. "For if the negotiations have failed the terms of the negotiations fail too; while if a contract has been perfected, the qualifying words are no longer operative." Vardon v. Vardon, 6 O. R. 719.

Offers made without prejudice are inadmissible on grounds of public policy, although the pendency of such negotiations, as a matter of fact, may be looked at. County of York v. Toronto Gravel Road Co., 3 O. R. 584.

Although not generally admissible in evidence, such letters may be read on the question of costs in order to shew such an offer as rendered the further prosecution of the action unnecessary. Boyd v. Simpson, 26 Gr. 278.

Where a letter written without prejudice was admitted as evidence at the trial, a new trial was granted. Piric v. Wyld, 11 O. R. 422. But where no objection is made at the trial to the

reception of such a letter, the objection to its admissibility cannot subsequently be relied on as a ground for a new trial. Hartney v. North British Insc. Co., 13 O. R. 581; McLennan v. Gordon, 5 O. W. R. 98.

And where the verdict can be supported on the other evidence adduced, the Court has a discretion to refuse a new trial where such letters have been improperly received. Burns v. Kerr, 13 U. C. R. 468.

A person cannot write a libellous or blackmailing letter and prevent its being used in evidence against him by putting in the words "without prejudice." Or where the letters embody threats if the offer is not accepted, it is in the interest of justice that such tactics should be exposed, and no privilege protects. Underwood v. Cox (1912), 26 O. L. R. 303.

As to the effect of a solicitor delivering up books and papers under an order made for their production "without prejudice" to his lien. See Re Boston Wood Rim Co., 5 O. W. R. 149.

See 31 C. L. J. 627 for a collection of English cases.

**WITHOUT RECOURSE.**—The words "without recourse," used in making a qualified indorsement of a negotiable instrument, signify that the indorser means to save himself from liability to subsequent holders, and is a notification that, if payment is refused by the person primarily liable, recourse cannot be had to him. Black.

**WITHOUT RESERVE.**—When a sale by auction is announced "without reserve" this means that the vendor shall not bid nor any one on his behalf, and that the property shall be sold to the highest bidder, whether the sum bid be equivalent to the real value or not. But when a sale is advertised by tender (not saying to be sold to the highest bidder) it is a proclamation that the owners are ready to chaffer for the sale, and to receive offers for the purchase. It is a mere attempt to ascertain whether an offer can be obtained which the seller is willing to accept. Re Alger and Sarnia Oil Co., 21 O. R. 440.

**WOMAN.**—The word "woman," in sec. 298 of the Criminal Code, which defines the crime of rape, is to be taken in a general or generic sense as indicating all females, and not in a restricted sense as distinguished from girls. R. v. Riopel, 2 C. C. C. 225.

**WOODMAN.**—A person owning a team of horses, and hiring them out to be used in logging operations, the team being driven by a man employed by the person who hires them, is not a "woodman" within the meaning of the Woodmen's Lien for

Wages Act (B. C.). Muller v. Shibley, 13 B. C. R. 343; 8 W. L. R. 42.

**WORDS OR OTHERWISE.**—The term "words or otherwise," in sec. 404 of the Criminal Code, defining the crime of false pretences, is broad enough to cover an act. Giving a cheque to a bank is a representation that it will be paid on presentation; or, if the drawer has funds in the bank, that he will not withdraw them before presentation. R. v. Garten (1913), 29 O. L. R. 56.

**WORLDLY ESTATE.**—In a will, the term "worldly estate" includes not only the corpus of the property, but the whole of the testator's interest therein, and will pass the fee. Town v. Borden, 1 O. R. 327.

**WORKING EXPENDITURE.**—See Charlebois v. Great North-West Central R. W. Co., 16 C. L. T. 233.

**WORKMAN.**—A barber is a workman within the Lord's Day Act. R. v. Taylor, 19 C. L. J. 362.

A salesman is not a workman within the meaning of the term as used in the Workmen's Compensation for Injuries Act (Man.). To entitle a workman to the benefit of the Act the labour performed must be manual. Hewitt v. Hudson's Bay Co., 20 Man. R. 126.

A contractor with a company to do certain specified work, in the performance of which the company cannot exercise any control over him, is not a workman within the Alberta Workmen's Compensation Act, 1908. Re Reid and Leith Collieries, 21 W. L. R. 689.

**WORKS.**—V. Ways, Works, etc.

**WORKS OF NECESSITY AND CHARITY.**—The exception of "works of necessity and charity" in the Lord's Day Act, is the necessity of the person who works, and not of him who compels the work. A merchant or tradesman may in some case of necessity be compelled to practise his calling, but that must be his necessity, and not the desire or need of the purchaser. A cigar is not a "necessity" within the meaning of the exception. R. v. Wells (1911), 24 O. L. R. 77.

Shaving by a barber in the ordinary course of his business is not a work of necessity or charity. R. v. Taylor, 19 C. L. J. 362.

Unloading a cargo on Sunday for the purpose of hastening the voyage, thereby making it more profitable, is not a work of necessity. Green v. Canadian Pacific Ry., 18 W. L. R. 608.

V. Emergency.

**WORKS OR OPERATIONS OF THE COMPANY.**—See Sayers v. British Columbia Electric Ry. Co., 18 W. L. R. 152.

**WORKSHOPS.**—See Town of Whitby v. Grand Trunk Ry. (1902), 3 O. L. R. 536.

**WORTH.**—Where by the terms of a lease the lessor was, at the end of the term, to pay the lessee what the improvements were "worth," the term was held to mean such a fair and reasonable market value thereof as would result if it were the case of the bringing together of a willing buyer and a prudent seller. Dalton v. City of Toronto (1906), 12 O. L. R. 582.

**WRECK.**—Within the meaning of the Criminal Code "wreck" includes the cargo, stores, and tackle of any vessel and all parts of a vessel separated therefrom, and also the property of shipwrecked persons. Sec. 2 (41).

In maritime law a ship becomes a wreck when, in consequence of injuries received, she is absolutely unnavigable, or unable to pursue her voyage, without repairs exceeding the half of her value. Black.

**WRITING.**—In the Criminal Code "writing" includes any mode in which, and any material on which, words or figures, whether at length or abridged, are written, printed or otherwise expressed, or any map or plan is inscribed. Sec. 2 (42).

In Ontario legislation "writing," written," or any term of like import, shall include words printed, painted, engraved, lithographed, photographed or represented or reproduced by any other mode in a visible form. R. S. O. ch. 1, sec. 29 (hh).

The Dominion Interpretation Act contains a similar provision. R. S. C. ch. 1, sec. 34 (31).

A notice of appeal wholly typewritten is a "notice in writing" under sec. 750 (b) of the Criminal Code. R. v. Bryson, 10 C. C. C. 398.

**WRITTEN AGREEMENT.**—An application to construct waterworks, and a resolution of the town council founded thereon, constitute a "contract in writing," and a "written agreement" within the meaning of article 1033 a. of the C. C. of Civil Procedure. LaVille de Chicoutimi v. Legare, Q. R. 5 Q. B. 542; 27 S. C. R. 329.

**WRITTEN CONSENT.**—The "written consent," mentioned in sec. 5 of the Alien Labour Act, R. S. C. ch. 97, should, at least, contain a general statement of the offence alleged to have been

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committed, not necessarily in the technical form which would be required in an information or conviction, but mentioning the name of the person in respect of whom the offence is alleged to have been committed, and the time and place, with sufficient certainty to identify the particular offence intended to be charged. R. v. Breckenridge (1905), 10 O. L. R. 459.

A consent in the words, "I hereby consent to proceedings being taken against J. for breach of the Alien Labour Act in hiring K. against the terms of the said Act—Dec. 20th, 1910," is insufficient. R. v. Johnson, 2 O. W. N. 1011.

**WRITTEN ORDER.**—Plans prepared and furnished by an architect shewing additional work to be done by the contractors was held to be a "written order" within the meaning of a clause in a building contract providing that the contractor was to do such work on the "written order" of the architect. Munro v. Town of Westville, 36 N. S. L. 313.

**WRITTEN PROMISE.**—Section 90 of the Bank Act, provides that a bank shall not acquire or hold any warehouse receipt or bill of lading, or any such security as aforesaid, to secure the payment of any bill, note, debt, or liability, unless such note, etc., is negotiated or contracted "upon the written promise or agreement that such warehouse receipt or bill of lading or security should be given to the bank."

A company wrote the following letter to a bank: "Our Mr. Clark called upon you some time ago in reference to opening an account in your bank. We would require a line of from $10,000 to $12,000, secured by warehouse receipts upon creamery butter, to be stored with the Toronto Cold Storage Company, or Canada Cold Storage Company, Montreal. Also a line of $2,000 upon our own note, secured by our general account assets as shewn you in our statement."

*Held*, this letter was a "written promise" within the above section of the Bank Act. Toronto Cream and Butter Co. v. Crown Bank of Canada, 10 O. W. R. 363; 11 O. W. R. 776.

**YEAR.**—The word "year," in sec. 15 (2), of the Public Schools Act, R. S. O. ch. 266, means calendar year, commencing 1st January and ending 31st December. In re Trustees S. S. No. 5 Asphodel, 24 O. R. 682.

The word "year" in the Liquor License Act, limiting the number of licenses for the ensuing year, means calendar year, not license year. Re Goulden and City of Ottawa, 28 O. R. 387. See the varying judgments of the Judges in Re Hassard and City of Toronto (1908), 16 O. L. R. 500.

A warranty given on the sale of a machine was limited to "this year," and this was held to mean the current calendar year, and not "at the close of a year from the date of delivery." Reeves v. Ozias, 15 W. L. R. 641.

In a contract for hiring for services, where it was stated the person was hired at the rate of $600 per annum, the words "per annum" do not determine the length of the employment; they merely determine the basis upon which remuneration is to be paid. Couture v. Montreal (1913), 19 R. de J. 458.

*V.* TIME.

**YEARLY.**—The term "yearly for the following fourteen years," in a policy of life insurance, means yearly from the time provided by law for payment of the first instalment. Gill v. Great West Life Assurance Co., 2 O. W. N. 777.

**YEARLY PROPORTIONS.**—A promissory note made payable "in yearly proportions" gives at least two years for payment. McQueen v. McQueen, 9 U. C. R. 536.

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