

The Ontario Weekly Notes

Vol. I.

TORONTO, AUGUST 31, 1910.

No. 47.

MEREDITH, C.J.C.P.

AUGUST 5TH, 1910.

RE EARL.

Life Insurance—Policy Made Payable to Wife of Assured—Declaration Indorsed on Policy—Effect of Will—Change of Beneficiary.

Motion by the executors, under Con. Rule 938, for the determination of a question arising on the will of Thomas Earl, dated the 7th July, 1908, viz., whether the will operated upon a policy of the Canadian Home Circles dated the 10th October, 1887, on the life of the deceased, which, by a declaration indorsed upon the policy, he had made payable to his wife, Elizabeth Anne Earl.

A. J. Russell Snow, K.C., for the executors and for Clara McCreary, Adelaide L. Smith, and Arthur Albert Earl.

J. Douglas, for Elizabeth Anne Earl.

MEREDITH, C.J.:—By the will the testator devised his estate, real and personal, to the trustees “to be sold and converted into cash and divided as follows: one third of the same (which includes the money that shall come from the Home Circles) to be invested for my present wife, and the interest arising therefrom paid her during her lifetime, and after her death the principal to be equally divided among my children, share and share alike. The other two thirds, after deducting \$300 for a monument to be erected to the memory of my former wife and myself, to be equally divided between my children, share and share alike.”

The only words which may have been intended to refer to the policy in question are those contained in the parenthesis, and I am bound by the decision of a Divisional Court in *In re Cochrane*, 16 O. L. R. 328, to hold that there is nothing in the will which

operates to change the beneficiary so as to make the fund distributable as the estate of the deceased is by the terms of his will to be divided.

There will, therefore, be a declaration that the policy does not pass and is not affected by the will, and the costs of the executors, which I fix at \$20, and of the widow, will be paid out of the fund.

MIDDLETON, J., IN CHAMBERS.

AUGUST 19TH, 1910.

RE CARR.

Will—Construction—Gift of Residue to Son on Attaining Twenty-five—Gift over in Event of Death before that Date—Gift of Income — Vested Estate Subject to be Divested — Infant—Allowance for Maintenance Made by Will—Increase of.

Motion by Homer Carr, an infant, and Catherine Carr, his mother, for the opinion, advice, and direction of the Court as to the construction of the will of the late Alexander C. Carr, the father of Homer and the husband of Catherine, and as to whether Homer Carr took under the will a vested estate in the property given to him; and also a motion by Catherine Carr for a larger allowance for the support and maintenance of Homer Carr.

W. C. Chisholm, K.C., for the applicants.

J. A. Paterson, K.C., for unborn children.

J. A. Macintosh, for the executors.

E. C. Cattanach, for the Official Guardian.

MIDDLETON, J.:—It is clear that the devise of real estate to one "when he shall attain the age of twenty-five years," without more, is contingent upon the devisee attaining that age. The words of contingency are in the gift itself, and, unless controlled by other portions of the will, must prevail: *In re Francis*, [1905] 2 Ch. 295. The same principles apply to a bequest of personalty.

It is equally clear that the context may shew that the testator used words which, standing alone, would import a future vesting and contingency, as indicating merely a future enjoyment of property immediately vested.

The wording of the will in question is peculiar and requires careful consideration. The material clauses are as follows:—

Second, I will and bequeath to my son Homer Carr the residue of my property, real and personal, absolutely when he shall have attained the age of twenty-five years.

Third, I direct that, in the event of the death of my said son Homer Carr before he has attained the aforesaid age, and leaving children of his own, then the property shall be divided equally among them, if more than one.

Fifth, I direct that the sum of \$60 of the income arising from rents be paid yearly by my executors for the support of my son Homer Carr until he is five years old and \$80 yearly thereafter until he is twenty-one years old.

Sixth, I direct that my executors shall pay to my son Homer Carr all the yearly income arising from my whole estate yearly after he shall be twenty-one years old until he shall be twenty-five years old, and upon such event to hand over to my said son the whole of the estate, real and personal, absolutely.

Seventh, in the event of the death of my son Homer before he shall be twenty-five years old without issue, then my property shall be divided as follows, that is to say:—

\$1,000 to Cornwall General Hospital.

\$1,000 to Thomas Carr, son of Hugh Carr, of Finch.

\$1,000 to Fred. L. Carr, of Fitch Bay, province of Quebec.

\$1,000 to James Lyle, brother of John Lyle, of Finch, and supposed to be living in United States.

The residue to be divided equally among my three brothers, Hugh Carr, of township of Finch, Jonathon Carr, of the town of Fitch Bay, in the province of Quebec, and Isaiah Carr, of the town of Smith's Falls, Ontario.

These clauses give Homer Carr a vested interest in the residuary estate, subject to be divested in the event of his death before he attains twenty-five.

I read the earlier part of the 2nd clause as being a complete gift to him, and the latter words of that clause as being equivalent to "to be his absolutely when he attains the age of twenty-five."

This construction is aided by the provision of clause 6. Upon Homer Carr attaining the age of twenty-five years, the estate is to be "handed over" to him. This shews that it was theretofore vested, and that what the testator intends shall then take place is a mere "handing over" of that which was the son's property, till then subject to be divested upon his death, and then his "absolutely."

Finding thus the key to the testator's meaning in the words of the will, it is not necessary to investigate the many cases cited on

the argument, but my impression is that there are two indications favouring vesting: (1) the gift over on death; (2) the gift of the income from twenty-one to twenty-five.

It was admitted on all hands that, if the estate was vested, the application for maintenance should be granted.

Upon the originating notice the order will declare the estate vested subject to be divested in the events mentioned in paragraphs 3 and 7.

Upon the application for maintenance the order will go as asked—for five years money to be paid half-yearly in advance—the 4th and 5th years' payments to be with the approval of the Official Guardian. This will be embodied in the same order.

Costs out of estate—executors' between solicitor and costs.

FALCONBRIDGE, C.J.K.B.

AUGUST 24TH, 1910.

REX v. TOWN OF SAULT STE. MARIE.

Military Law — Troops Called out to Quell Riot — Liability of Municipal Corporation for Expense—Requisition—Sufficiency—Authority of Officer Commanding District—Militia Act—Protection of Crown Property.

Action by the Crown and others to recover the costs, charges, and expenses incurred by calling out troops to quell a riot during a strike of the employees of the Lake Superior Corporation, in the town of Sault Ste. Marie, in September and October, 1903. The plaintiffs claimed \$7,293.28. The defendants disputed the regularity of the requisition and the necessity of any troops other than the local regiment, whose claims were paid by the defendants.

E. F. B. Johnston, K.C., and P. T. Rowland, for the plaintiffs.
J. L. O'Flynn, for the defendants.

FALCONBRIDGE, C.J.:—The requisition complied sufficiently with the requirements of the Militia Act then in force (R. S. C. 1906 ch. 41, sec. 34). It was signed by the Mayor, one of the District Court Judges, and the Stipendiary Magistrate, all of whom were ex officio Justices of the Peace. Vide R. S. O. 1897 ch. 54, sec. 13; R. S. O. 1897 ch. 109, secs. 7 and 39; the Municipal Act, 3 Edw. VII. ch. 19, secs. 473-5.

The substantial defence (if any there be) seems to have been foreshadowed in a letter from the then Deputy Adjutant-General

to the Adjutant-General, dated the 19th December, 1903. This letter is purely domestic and inter-departmental, but was produced with all other records by the plaintiffs.

The Deputy Adjutant-General says it would appear that the troops from Toronto "were sent by the acting D. O. C. M. D. No. 2 upon his own authority. 2. Presumably the local troops at the Sault were called out in accordance with the terms of the Militia Act, but there is nothing to shew that the provisions of the law were complied with as far as the Toronto troops were concerned. . . ."

This is the defence now set up. It does not commend itself to me as a matter of morals. When the requisition was signed, there were 1,200 to 1,500 riotous men at the works of the allied companies, with the prospect of the numbers being largely increased, as men were coming in from the outside work. Frantic telegrams were despatched by the Mayor, the commanding officer of the local regiment of militia, the members of the House of Commons and the Legislative Assembly, to the Minister of Militia, to his deputy, and to the D. O. C. at Toronto. The few men of the 97th (the local) regiment who could be mustered were on duty at various points for thirty-six hours when relieved by the R. C. R. The Mayor had stated in one of his telegrams that the local militia were not able to cope with the situation, and that 200 more troops were needed.

Under all the circumstances, I have not the slightest doubt but that the prompt action of the D. O. C. at Toronto (the late General, then Colonel, Buchan), in taking the whole of the available permanent force and ordering out 70 men from each of the three city regiments, saved the situation and prevented incalculable injury to property and probably personal injury and loss of life.

The defendants have paid the claims of the officers and men of the local regiments, and refuse payment for the troops brought from Toronto.

Again reverting to the domestic correspondence of the department, I think that Colonel Buchan took the correct view in his memorandum of the 5th January, 1904. "The troops," he says, "were sent from Toronto in consequence of the senior officer at the Sault being of the opinion that the troops at his disposal were inadequate, as reported to me by telegram. . . . The senior officer is authorized by the Act to call out 'such portion' of the militia, 'within or without the municipality,' as he considers necessary for the suppression of the disturbance. There is nothing

in the Act, that I am aware of, necessitating a second requisition from the civil authorities in cases where the troops at the disposal of the local officers are found to be inadequate . . .”

I give effect to this contention: see *Gordon v. City of Montreal*, Q. R. 24 S. C. 465; *Crewe-Read v. County of Cape Breton*, 14 S. C. R. 8.

There is another matter pleaded on the record, as set out in paragraphs 11, 12, 13, 14, 15, and 16 of the amended statement of defence. It is, in effect, that large public works, e.g., the ship canal, the swing bridge, and the electrical plant, are in the immediate vicinity of the scene of the rioting, and that the expense connected with protecting these works (which are said to have cost several millions of dollars) should be paid by His Majesty, out of the public moneys of the Dominion of Canada, and not by the defendants.

This I hold to be no defence in law. And it does not appeal to me on any ground, for it is interesting to consider what would have been the plight of the town and its citizens if the locks, the bridge, the electrical plant, and the works of the allied companies had been destroyed by one cataclysm.

The plaintiffs are entitled to judgment. I see no necessity for a reference—the claim was well proved, the only question raised being as to an item for cab-hire. These cabs were not instruments of haughty luxury—they were necessary for the calling out and getting together of the troops in the shortest possible time.

However, the defendants can, if they like, have a reference at their own risk and expense.

Judgment for the plaintiffs for \$7,293.28 and costs.

JOHNSTON V. MCKIBBON—FALCONBRIDGE, C.J.K.B.—AUG. 29.

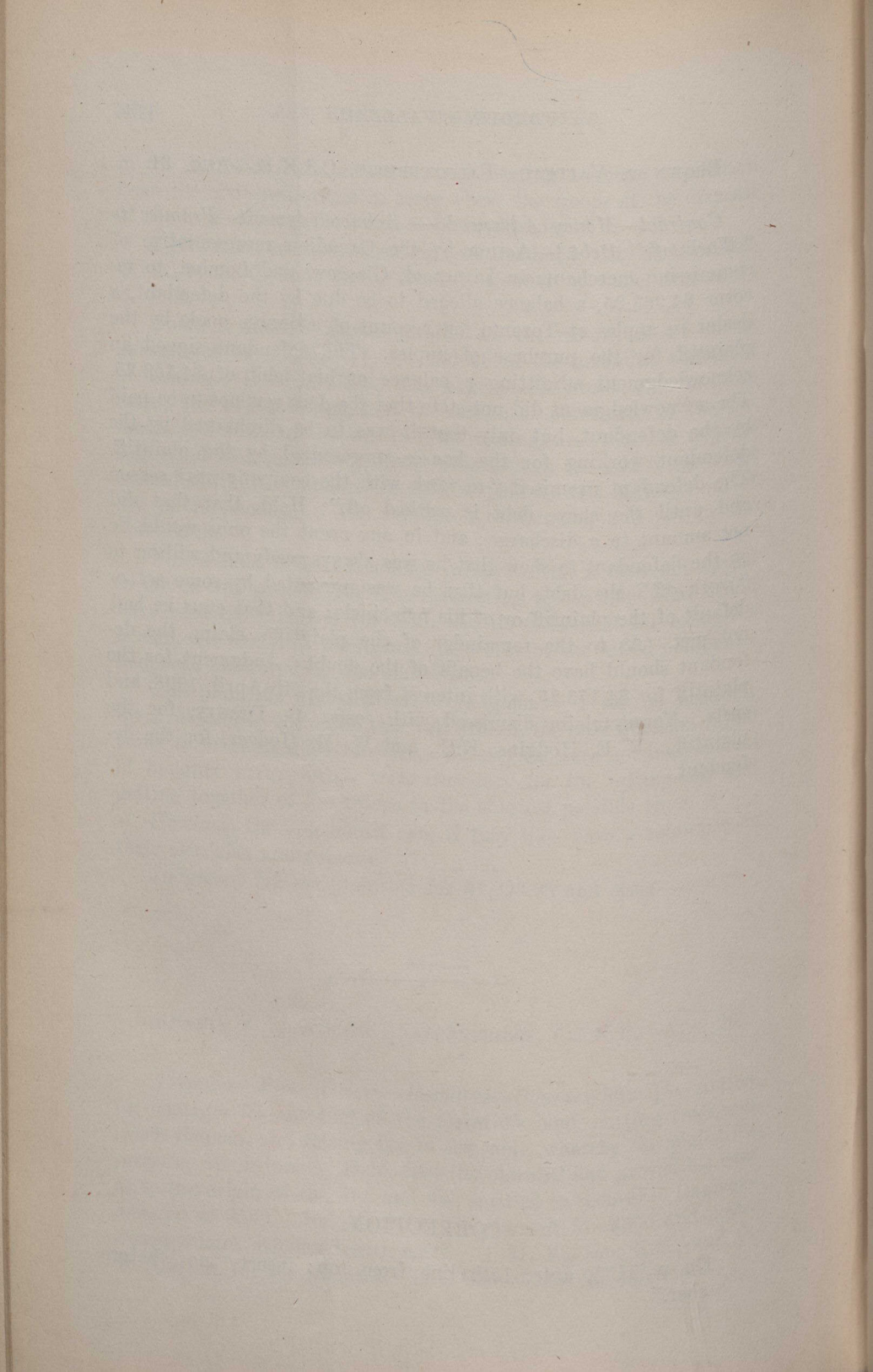
Trespass—Fire—Origin—Damages—Counterclaim.] — Action for damages for entering on the plaintiff's land, cutting trees and brush thereon, and setting fire to the same, whereby the plaintiff's property was injured. Held, that the plaintiff had proved his case as to the origin of the fire, and was entitled to recover. Damages assessed at \$500. Judgment for the plaintiff for \$500 and costs. Counterclaim dismissed with costs. G. H. Watson, K.C., and G. W. Hatton, for the plaintiff. D. O'Connell, for the defendant.

BROWN v. VALLEAU—FALCONBRIDGE, C.J.K.B.—AUG. 31.

Contract—Money Advanced — Acknowledgment—Promise to “Work off” Debt.]—Action by the Canadian representative of commission merchants in Liverpool, Glasgow, and London, to recover \$4,963.25, a balance alleged to be due by the defendant, a dealer in apples at Toronto, on account of advances made by the plaintiff for the purchase of apples. The defendant signed an acknowledgment admitting a balance at his debit of \$4,153.25. The acknowledgment did not state that the debt was not to be paid by the defendant, but only that it was to be discharged by the defendant working for the houses represented by the plaintiff. The defendant promised “to work with the company next season and until the above debt is worked off.” Held, that that did not amount to a discharge; and in any event the onus would lie on the defendant to shew that he was always ready and willing to “work off” the debt, but that he was prevented by some act or default of the plaintiff or of his principals; and that onus he had not met. As to the remainder of the plaintiff’s claim, the defendant should have the benefit of the doubt. Judgment for the plaintiff for \$4,153.25, with interest from the 7th April, 1908, and costs. Counterclaim dismissed with costs. G. Drewry, for the plaintiff. F. E. Hodgins, K.C., and W. H. Hodges, for the defendant.

CORRECTION.

On p. 1135, ante, 15th line from top: insert “no” before “higher.”



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BANKS AND BANKING.

1. Contract between Banks—Advances Made by one Bank to the other—Pledge or Sale of Assets—Bank Act, secs. 99-111—Application of — Construction and Validity of Contract — Claim Made in Winding-up of Bank — Powers of Bank — Authority of Directors. *Re Ontario Bank, Bank of Montreal's Claim*, 1 O. W. N. 668, 21 O. L. R. 1.—C.A.

2. Custom or Practice between Banks—Uncertified Cheque Initialled by Local Manager—Credit Given by another Bank on Strength of—Authority of Manager—Evidence—Undertaking of Local Manager—Acting on—Assignment of Chose in Action—Judicature Act, sec. 58 (5)—Absence of Notice—Amendment—Parties. *Scott v. Merchants Bank of Canada*, 1 O. W. N. 1110.—SUTHERLAND J.

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1. Pledge of Shares by Customer Buying on Margin—Re-pledge by Broker—Custom of Stock Exchange—Evidence—Amount Advanced to Broker not Exceeding Amount Due by Customer—Action for Conversion of Shares—Damages — Interest—Contract. *Clark v. Baillie*, 1 O. W. N. 125, 628, 19 O. L. R. 545, 20 O. L. R. 611.—C.A.

2. Purchase of Shares for Customer on Margin—Hypothecation—Conversion—Return of Moneys Paid for Margins after Conversion—Interest—Contract. *Hutchinson v. Jaffray & Cassels*, 1 O. W. N. 481, 700.—D.C.

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- Ainsworth v. Wilding, [1896] 1 Ch. 673, followed.]—See JUDGMENT, 1.
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- Beaton v. Intelligencer Printing and Publishing Co., 22 A. R. 97, distinguished.]—See DEFAMATION, 3.
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- Blackburn v. McCallum, 33 S. C. R. 65, followed.]—See WILL, 12.
- Brown's Estate, In re, [1893] 2 Ch. 300, followed.]—See MONEY LENT.
- Cavalier v. Pope, [1906] A. C. 428, followed.]—See LANDLORD AND TENANT, 3.
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- Gann v. Gregory, 3 D. M. & G. 777, followed.]—See WILL, 31.
- Gorringe v. Gorringe, [1896] 2 Ch. at p. 347, followed.]—See WILL, 27.
- Graham and Yardley, Re, 14 O. W. R. 30, followed.]—See LANDLORD AND TENANT, 7.
- Grant and Robertson, Re, 8 O. L. R. 297, followed.]—See LANDLORD AND TENANT, 7.
- Greystock and Township of Otonabee, In re, 12 U. C. R. 458, followed.]—See MUNICIPAL CORPORATIONS, 33.
- Hildreth v. McCormick Manufacturing Co., 10 Ex. C. R. 378, 39 S. C. R. 499, followed.]—See PATENT FOR INVENTION, 3.

- Hollis Hospital, Trustees of, and Hague's Contract, In re, [1899] 2 Ch. 540, followed.]—See DEED, 2.
- Kelly v. Davidson, 31 O. R. 521, 32 O. R. 8, 27 A. R. 657, referred to.]—See MASTER AND SERVANT, 6.
- Kingsley v. Dunn, 13 P. R. 300, followed.]—See JUDGMENT, 12.
- Lambton v. Parkinson, 35 W. R. 545, followed.]—See COSTS, 3.
- Law v. Llewellyn, [1906] 1 K. B. 498, followed.]—See DEFAMATION, 6.
- Lellis v. Lambert, 24 A. R. 653, followed.]—See HUSBAND AND WIFE, 1.
- McDougall Trusts, Re, 11 P. R. 494, applied and followed.]—See INFANT, 4.
- Mackenzie v. Maple Mountain Mining Co., 20 O. L. R. 615, distinguished.]—See COMPANY, 9.
- Mason v. Lindsay, 4 O. L. R. 365, followed.]—See SALE OF GOODS, 2.
- Moffat, In re, 15 O. L. R. 637, distinguished.]—See WILL, 27.
- Papayanni v. Coutpas, [1880] W. N. 109, followed.]—See JUDGMENT, 12.
- Regina v. Gavin, 30 N. S. R. 162, distinguished.]—See LIQUOR LICENSE ACT, 9.
- Regina v. Spooner, 32 O. R. 451, referred to.]—See LIQUOR LICENSE ACT, 9.
- Rex v. Lorenzo, 1 O. W. N. 179, distinguished.]—See CRIMINAL LAW, 11.
- Rex v. Van Norman, 19 O. L. R. 447, distinguished.]—See EVIDENCE, 9.
- Smith v. Prosser, [1907] 2 K. B. 735, followed.]—See PROMISSORY NOTES, 7.
- Smyth v. Stephenson, 17 P. R. 374, 376, followed.]—See COSTS, 11.
- Sovereign Bank v. McIntyre, 13 O. W. R. 509, reversed.]—See PROMISSORY NOTES, 2.

Spragge, Re, 13 O. W. R. 741, affirmed.]—See WILL, 8.

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See Sale of Goods, 3.

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CHARGE ON LAND.

Mortgage Paid by Tenant for Life—Absence of Evidence to Shew Intention to Exonerate Fee—Effect of Taking and Registering Discharge of Mortgage—Preservation of Lien or Charge—Statute of Limitations — Duty to Keep down Interest—Payment to Save Bar—Second Life Estate—Intervening Period — Receipt of Rents and Profits—Election — Permissive Waste—Voluntary Waste. *Currie v. Currie*, 1 O. W. N. 473, 20 O. L. R. 375.—OSLER, J.A.

See Will, 15, 30.

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CHATTEL MORTGAGE.

1. Action for Foreclosure—Judgment—Extension of Time for Redemption. *Mitchell v. Kowalsky*, 1 O. W. N. 95.—MASTER IN CHAMBERS.
2. *Affidavit of Bona Fides*—Mistake in Statement of Amount Advanced—Limitation of Security—Security under sec. 88 of Bank Act—Invalidity—Effect of—Status of Bank to Attack Chattel Mortgage — After-acquired Goods — Description of Premises—Assignment of Book Debts—Notice.]—In an ac-

tion against a bank for conversion of goods covered by a chattel mortgage to the plaintiffs, an incorporated company, it appeared that the affidavit of *bona fides* was made by the president of the plaintiffs, and stated that the mortgagor was justly and truly indebted to the mortgagee in the sum of \$5,000, instead of \$5,066.74, which was the amount stated in the mortgage. The mortgage was given in good faith, and was intended to secure \$5,066.74 actually advanced:—*Held*, that the mortgage was not invalidated by the mistake, but should be considered as so limited as to be a security for \$5,000 only.—It was not necessary to consider whether a document asserted by the bank to be a security under sec. 88 of the Bank Act was of any value in view of sec. 90 of the same Act; but *semble*, that, if it should be held to be in contravention of that section, the bank, as simple contract creditors of the mortgagor, would have no status to attack the plaintiffs' chattel mortgage.—*Held*, that the chattel mortgage covered the goods converted by the bank, being sufficiently worded to cover after-acquired goods, and the premises whereon the goods were or were to be brought being specifically described.—*Held*, also, that an assignment of book debts by the mortgagor to the bank, without notice of the assignment of the same to the company under the chattel mortgage, followed by notices to and collections from the debtors, vested the debts and the proceeds thereof in the bank against the claim of the company, who had given no notice to the debtors: *Judicature Act*, sec. 58 (5). *A. E. Thomas Limited v. Standard Bank of Canada*, 1 O. W. N. 379, 548.—D.C.

3. Validity—Execution in Blank—Authority to Fill up Blanks—*R. S. O. 1897 ch. 148*—Compliance with. *Wade v. Bell*, 1 O. W. N. 1052.—D.C.

See Assignments and Preferences, 2—Landlord and Tenant, 2—Trusts and Trustees, 5.

CHEQUE.

See Banks and Banking, 2—Criminal Law, 7—Partnership, 1.

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COMPANY.

1. Directors—Managing Director—Improper Dealings with Property—Mortgage. *Casler v. Grace Mining Co.*, 1 O. W. N. 499.—FALCONBRIDGE, C.J.K.B.
2. Directors—Payments Improperly Made — Liability—Account. *McAlpine v. Fleming*, 1 O. W. N. 548.—D.C.
3. Directors—Payment for Services—Resolutions of Shareholders — Sale of Plant to President — Rights of Minority Shareholders—Absence of Fraud—Legality of Transactions—Injunction. *Kuntz v. Silver Spring Creamery Co.*, 1 O. W. N. 695.—RIDDELL, J.
4. Electric Railway Company — Powers of Provisional Directors — Contract with Promoters of Rival Railway—Payment for Services—Electric Railway Act, sec. 44—Special Act, 1 Edw. VII. ch. 92 — Contract Made by Officers of Unorganised Company—Informal Adoption by Shareholders—Liability of Company. *Selkirk v. Windsor Essex and Lake Shore Rapid R. W. Co.*, 1 O. W. N. 355, 731, 20 O. L. R. 290, 21 O. L. R. 109.—D.C.

5. Electric Railway Company—Special Act—General Electric Railway Act—Contract—Sanction of Shareholders—Necessity for—Incomplete Contract—Liability of Directors. *Thomas v. Walker*, 1 O. W. N. 1094.—FALCONBRIDGE, C.J. K.B.
6. Guaranty—Powers of Trading Company—Authority of President—Seal—Signature—Abbreviation of Word “Limited”—*Statute of Frauds.*]—It was contended that a guaranty purporting to be given by an incorporated trading company, and signed “A. E. Thomas Ltd.—A. E. Thomas, Pres.”—the name of the company being “A. E. Thomas Limited”—did not bind the company, because it was beyond the power of the company to enter into such a guaranty, and because it was not under seal, and no authority was shewn in the president to sign it, and the company’s proper name was not affixed:—*Held*, that, the transaction being in good faith, and the bank to whom the guaranty was given having no notice of the by-laws of the company restricting the authority of the president and providing that the corporate seal should be attached to all such contracts, the bank were entitled to assume that the president had been duly clothed with the authority which he was assuming to exercise when he signed the guaranty; that the signature was sufficient to bind the company under the Statute of Frauds; and the bank were entitled to succeed in an action upon the guaranty. *Standard Bank of Canada v. A. E. Thomas Limited*, 1 O. W. N. 379, 548.—D.C.
7. Promoters—Sale of Businesses—Profits—Liability to Account for—Intention to Sell Shares to Others—Directors not Independent of Vendors—Want of Knowledge—President and Manager of Company Interested as Vendors. *Stratford Fuel Ice Cartage and Construction Co. v. Mooney*, 1 O. W. N. 914, 21 O. L. R. 426.—C.A.
8. Services of President—Remuneration—General By-law—Confirmation by Shareholders—Resolution Fixing Amount—Companies Act, 7 Edw. VII. ch. 34, sec. 88—Organisation of Company—Unsealed By-law—Evidence—Appeal. *Mackenzie v. Maple Mountain Mining Co.*, 1 O. W. N. 284, 630, 20 O. L. R. 170, 615.—C.A.
9. Services of President—Salary—Sanction of Shareholders—General Meeting—Ontario Companies Act, sec. 88—*Quantum Meruit*—Claim for Money Paid as Salary.]—Section 88 of the Ontario Companies Act, 7 Edw. VII. ch. 34,

should be given a broad and wholesome interpretation, and should be construed as wide enough to prevent a president and board of directors from voting to themselves or any one or more of themselves, any remuneration for any services rendered to the company, without the authority of the general meeting of the shareholders. *Birney v. Toronto Milk Co.*, 5 O. L. R. 1, 6, applied and followed.—There must, in the first place, be a directors' by-law, and this must be followed by "confirmation" at a general meeting, which implies some resolution or by-law passed at such meeting. It is not enough to shew that every shareholder of the company was at the time content to pay the salary—the statute must be lived up to.—Apart from statutory authority, a director cannot receive remuneration for his services out of the shareholders' money except with the sanction of a shareholders' meeting—and therefore remuneration for services rendered based upon a *quantum meruit* could not be allowed.—*Mackenzie v. Maple Mountain Mining Co.*, 20 O. L. R. 615, distinguished.—Finding of a Referee, upon a reference for the winding-up of a company, that E. had become liable or accountable for money of the company paid to him for salary as president, affirmed. *Re Queen City Plate Glass Co., Eastmure's Case*, 1 O. W. N. 863.—MIDDLETON, J.

10. *Shareholders—Rectification of Register—Ontario Companies Act, sec. 116—Fraud—"Sufficient Cause."*—By sec. 116 of the Ontario Companies Act power is given to the Court to make an order for the rectification of the register of shareholders of a corporation "if the name of any person is without sufficient cause entered in or omitted from" the register. H. applied for an order rectifying the register by removing his name therefrom as the holder of shares, alleging that he had been defrauded by those connected with the organisation of the company. Whatever complaint he had was based on what took place before the issue of the charter. By the charter he was declared to be a shareholder:—*Held*, that that was "sufficient cause" for his name appearing on the register, and it could not be removed on account of antecedent fraud. *Re J. A. French & Co. Limited*, 1 O. W. N. 864.—MIDDLETON, J.
11. *Shares—Agreement—Sale of Property to Company—Payment by Allotment of Shares—Action by Shareholders to Set aside—Directors—Control of Company—Secret Profits—Fraud on*

- Future Shareholders—Laches — Liability — Class Action — Costs—Lien—Salvage. *Bennett v. Havelock Electric Light Co.*, 1 O. W. N. 352, 751, 21 O. L. R. 120.—D.C.
12. Shares—Issue — Contract — Construction — Purchase of Inventions—Transfer of Shares to be Used as a Bonus to Purchasers of Preferred Shares—Colourable Transaction—Illegal Dealing with Shares—Double Contract—Declaration that one Part Ultra Vires—Status of Shareholders to Maintain Action—Evidence—Books of Company—Companies Act, secs. 113, 119—Transaction Declared Valid in Part in Favour of Non-appealing Defendant. *Lindsay v. Imperial Steel and Wire Co.*, 1 O. W. N. 347, 930, 21 O. L. R. 375.—D.C.
13. Shares—Subscription—Assignment of Amount Due by Subscriber—Security—Validity—Action by Assignee—Defence—Misrepresentations — Winding-up Order Made before Repudiation—Subscriber Escaping Liability as Contributory by Reason of Assignment—Approbation—Election. *Stephens v. Riddell*, 1 O. W. N. 993, 21 O. L. R. 484.—MEREDITH, C.J.C.P.
14. Shares — Subscription — Contract under Seal — Action for Relief from—Fraud and Misrepresentation by Agents—Non-existent Company—Parties—Sale of Mining Claims to Company at Excessive Price—Absence of Prospectus—Allotment of Shares—Calls. *Purse v. Gowganda Queen Mines Limited*, 1 O. W. N. 420, 1033.—C.A.
15. Shares — Subscription — Contract under Seal—Allotment — Special Agreement—Misrepresentations—Prospectus. *Gowganda Mines Limited v. Smith*, 1 O. W. N. 1071.—TEETZEL, J.
16. Shares—Transfer—Refusal of Directors to Allow—Dominion Companies Act, sec. 45—By-laws of Company—Approval of Directors. *Re Good and Jacob Y. Shantz Son & Co. Limited*, 1 O. W. N. 508, 770, 809, 21 O. L. R. 153.—D.C.
17. Shares—Transfer—Refusal to Record—Question as to Payment—Mandamus. *Warren Gzowski & Co. v. Peterson Lake Silver Cobalt Mining Co.*, 1 O. W. N. 211.—FALCONBRIDGE, C.J.K.B. (Chrs.)
18. Unsatisfied Judgment against—Action by Judgment Creditor against Shareholder—Unpaid Shares—Counterclaim against Company—Order Striking out—Ontario Companies Act, 7

Edw. VII. ch. 34, secs. 68, 69—Execution Returned Unsatisfied—Absence of Intention to Cause Sheriff to Seize—Defence—Set-off—Con. Rule 251—Claim Sounding in Damages—Dismissal of Action—Effect on Future Action. *Grills v. Farah*, 1 O. W. N. 978, 21 O. L. R. 457.—RIDDELL, J.

19. Unsatisfied Judgment against, for Wages — Action against Directors—Ontario Companies Act, sec. 94—Action by Assignee of Servant—Equitable Assignment—Validity—Status of Assignment—Statute, Penal or Remedial. *Lee v. Friedman*, 1 O. W. N. 235, 20 O. L. R. 49.—D.C.
20. Unsatisfied Judgment against, for Wages—Action against Directors under sec. 94 of the Companies Act—Appropriation of Payments—Wages for Earlier Months Unpaid—Loan of Earnings—Wages Due more than a Year before Action—Interest. *George v. Strong*, 1 O. W. N. 350.—TEETZEL, J.
21. Winding-up—Action by Company in Liquidation—Breach of Contract—Non-delivery of Goods Contracted for—Time — Adoption of Contract by Liquidators—Failure to Tender or Secure Payment — Damages — Relief from Further Delivery under Contract by Non-payment for Part Delivered—Approval of Court to Action being Brought—Business Carried on by Liquidators—Right of Liquidators to Sue in Name of Company. *William Hamilton Manufacturing Co. v. Hamilton Steel and Iron Co.*, 1 O. W. N. 1075.—BRITTON, J.
22. Winding-up—Claim of Bank on Securities Assigned by Company—Notice of Assignment to Persons Liable on Securities —Absence of—Status of Liquidators to Object. *Re William Hamilton Manufacturing Co.*, 1 O. W. N. 61, 421.—D.C.
23. Winding-up—Contributories—“ Bonus Shares ”—Issue of, as Paid up, to Persons already Shareholders—Absence of Subscription and Allotment — Acceptance — Stock Certificates—No Money Paid or Value Given—Liability—Application of Moneys Paid by Town Corporation to Aid Company—By-law —Contract—Construction. *Re Cornwall Furniture Co.*, 1 O. W. N. 570, 20 O. L. R. 520.—C.A.
24. Winding-up—Contributories—Distribution of Shares as Fully Paid up among Existing Shareholders—Shares not Actually Paid up — Acceptance — Notice or Knowledge—Annual Re-

- turn to Government—Liability at Date of Winding-up Order. *Re Clinton Thresher Co.*, 1 O. W. N. 595, 20 O. L. R. 555.—BOYD, C.
25. Winding-up — Contributories — Dominion Companies Act — Application for Shares—Condition—Non-fulfilment—Absence of Allotment and Notice—Necessity for By-law—Constitution of Board of Directors. *Re Nutter Brewery Limited*, 1 O. W. N. 400.—CLUTE, J.
26. Winding-up—Contributories—Misrepresentations—Actions to Set aside Applications for and Allotments of Shares—Evidence — Incorporated Company Becoming Shareholder — Powers of Company—Manitoba Joint Stock Companies Act—Powers of Vice-President and Manager—Absence of By-law—Resolution. *Foley v. Barber, Montreuil v. Barber*, 1 O. W. N. 40, 1029.—C.A.
27. Winding-up—Contributory—Insurance Company—Holder of Unpaid Shares upon Acknowledged Trust—Liability—Ontario Insurance Act. *Re Standard Mutual Fire Insurance Co., Musson's Case*, 1 O. W. N. 974.—KAPPELE, OFFICIAL REFEREE.
28. *Winding-up—Contributory—Issue of Shares at Half Price—Liability of Subscriber for Balance—Acceptance of Certificate and Dividend—Estoppel.*]—C. subscribed for four shares of the capital stock of a company incorporated under the Ontario Companies Act, the par value of each share being \$50. The company issued to him a certificate for eight paid-up shares, upon his paying them \$200. He gave a receipt for the certificate and accepted a dividend based upon a holding of eight shares or \$400. In the winding-up of the company he contested his liability as a contributory to the extent of the \$200 actually unpaid upon the shares, but did not offer to return the dividend:—*Held*, that, as the company had no power to issue shares at a discount, the shares must be regarded as only half paid, and C. was estopped from denying that he was a member of the company in respect of the eight shares; and he was therefore properly made a contributory. *Re Niagara Falls Heating and Supply Co.*, 1 O. W. N. 439.—MULOCK, C.J.Ex.D.
29. Winding-up—Contributory — Shares — Allotment—Right to Repudiate—Voting on Shares—Director—Misfeasance. *Re*

Lake Ontario Navigation Co., Davis's Case, Hutchinson's Case, 1 O. W. N. 308, 20 O. L. R. 191.—C.A.

30. Winding-up—Moneys Paid to Creditor after Service of Notice of Motion for Winding-up Order—Action by Liquidator to Recover—Dominion Winding-up Act, sec. 99—Trust Moneys—Breach of Trust—Commencement of Winding-up—Secs. 20, 21 31, of Act. *Trusts and Guarantee Co. v. Munro*, 1 O. W. N. 52, 19 O. L. R. 480.—D.C.
31. Winding-up—Mortgage Made by Company when Insolvent—Action by Liquidator to Set aside—Existing Debt to Bank—Security—By-law — Authorisation — Ratification—Ontario Companies Act, 1907, secs. 73, 74, 78. *Hammond v. Bank of Ottawa*, 1 O. W. N. 519.—SUTHERLAND, J.
32. Winding-up— Motion by Creditors to Set aside Winding-up Order — Fraud—Prejudice—Interim Liquidator—Solicitor—Receiver—Application by Stranger for Leave to Intervene—Forum—Costs. *Re Standard Cobalt Co.*, 1 O. W. N. 875.—MIDDLETON, J.
33. Winding-up—Ontario Companies Act, secs. 177, 190, 191—Party to Action—Addition of Parties—Directors. *Allen v. Hamilton*, 1 O. W. N. 659.—MASTER IN CHAMBERS.
34. Winding-up—Petition—Evidence — Insolvency. *Re Peterborough Shovel and Tool Co.*, 1 O. W. N. 134.—MEREDITH, C.J.C.P. (Chrs.)
35. *Winding-up—Petition for—Grounds—“Just and Equitable” —Ontario Companies Act, 7 Edw. VII. ch. 34, sec. 199, sub-sec. 3—Mismanagement — Substratum — Dissension.*]—A petition by three shareholders to wind up the company under the Ontario Companies Act, 7 Edw. VII. ch. 34, sec. 199, sub-sec. 3, upon the ground that it was “just and equitable” that the corporation should be wound up, was dismissed, no case for a winding-up order being disclosed.—Any suspicion that the company is being mismanaged is insufficient.—The whole substratum of the company could not be said to be gone, the property acquired under the charter existing and there being a means of working it.—A winding-up petition cannot be resorted to merely because there is dissension within the company. *Re Harris Maxwell Larder Lake Gold Mining Co. Limited*, 1 O. W. N. 984.—MIDDLETON, J. (Chrs.)

36. *Winding-up—Preferred Claims of Lien-holders—Mechanics' Lien Act — Registration after Commencement of Winding-up.*]—The commencement of a mechanic's lien is coincident with the commencement of the work.—Liens claimed by different lien-holders were in respect of work done in building upon the lands of a company prior to the date of the service of a petition for the winding-up of the company, but some of the claims for liens were not registered until after that date, though all within 30 days after the commencement of the liens:—*Held*, that all the liens existed by force of the Mechanics' Lien Act prior to the service of the petition, and their efficacy and precedence were not disturbed by the subsequent winding-up proceedings; and the lien-holders had a valid claim attaching upon the land and to be paid in priority to ordinary creditors.—Section 84 of the Winding-up Act, R. S. C. 1906 ch. 144, does not apply to mechanics' liens.—The lien-holders had, therefore, preferential claims upon the assets of the company in liquidation. *Re Clinton Thresher Co.*, 1 O. W. N. 445.—BOYD, C.
37. *Winding-up—Reference—Sale of Land by Liquidator—Approval of Referee—Application to Court to Confirm Sale.*]—Where an order is made for the winding-up of a company under the Dominion Winding-up Act, R. S. C. 1906 ch. 144, the order, in the usual form, directs a Master or Referee to take all necessary proceedings for the winding-up of the company, and delegates to him all such powers conferred upon the Court by the Act as may be necessary for the winding-up; and under this order everything may be carried out by the Referee without referring to the Court except by way of appeal. Under sec. 34 (c), (d), of the Act, the liquidator may, with the approval of the Court, proceed to sell the real and personal estate, etc. When the liquidator makes a sale approved by the Referee, there is no need for an application to the Court to confirm the sale. *Re McCann Knox Milling Co.*, 1 O. W. N. 579.—BOYD, C. (Chrs.)
38. *Winding-up—Stay of Action—Dismissal.* *Duke v. Ulrey*, 1 O. W. N. 151.—MASTER IN CHAMBERS.

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2. Stay of one Action—Convenience—Practice. *Pullan v. Jones*, *Jones v. Pullan*, 1 O. W. N. 834.—MASTER IN CHAMBERS.

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2. Powers of Provincial Legislature—Authorising Municipal Corporations to Acquire and Distribute Electric Energy—B. N. A. Act, sec. 92 (8), (10) — Validation of Contracts with Hydro-Electric Power Commission — Stay of Pending Actions—Right of Court to Inquire into Validity of Statutes. *Beardmore v. City of Toronto*, 1 O. W. N. 278, 419, 1030, 20 O. L. R. 165, 21 O. L. R. 505.—C.A.

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2. Advertisement—Redemption of Bonds—Specific Performance —Mortgage Trust Deed—Breach of Trust—Trustees Acting “Honestly and Reasonably”—62 Vict. (2 ch. 15, sec. 1 (O.) *Whicher v. National Trust Co.*, 1 O. W. N. 130, 19 O. L. R. 605.—RIDDELL J.
3. Assignment of Shares—Completed Agreement—Breach—Damages—Reference. *Goodall v. Clarke*, 1 O. W. N. 95, 288.—D.C.
4. Author and Publisher—Historical Book Written to Order—Delivery of Manuscript—Payment of Price—Refusal to Publish—Right of Author to Return of Manuscript on Refund of Money—Implication of Term in Contract. *Le Sueur v. Morang & Co.*, 1 O. W. N. 632, 20 O. L. R. 594.—C.A.

5. Building Contract—Construction—Liability of Architects for Cost of Work beyond Sum Agreed upon—Changes in Specifications—Delay in Completion Caused by Changes—Counterclaim—Value of Extra Work—Evidence — Findings of Fact—Appeal. *Small v. Clafin*, 1 O. W. N. 556.—C.A.
6. Building Contract—Construction—Payment—Performance of Work—Satisfaction of Architect — Proof — Certificate — Changes in Specifications—Authority of Owner or Architect — “They” —Extras—Deductions—Arbitration — Progress Certificates—Evidence—Rejection—New Trial *Smallwood Brothers v. Powell*, 1 O. W. N. 1025.—C.A.
7. Building Contract—Penalty for Non-completion of Work by Certain Day—Contractor Delayed by Default of other Workmen—Work not Commenced until after Time for Completion —New Contract—Necessity for Proof of Damage by Delay. *Findlay v. Stevens*, 1 O. W. N. 399, 20 O. L. R. 331.—D.C.
8. Building of Railway—Payment to Contractor—Right to Deduct Moneys Paid as Compensation for Death of Person—Construction of Contract—Indemnity—“Prosecution of the said Work”—Payment Made by another Company. *Macdonald v. Walkerton and Lucknow R. W. Co.*, 1 O. W. N. 395, 967.—C.A.
9. Charitable Corporation — Absence of Seal and Writing — Partly Executed Contract — Powers of Corporation—Work and Labour—Recovery for Work Done—Quantum Meruit. *Campbell v. Community General Hospital Almshouse and Seminary of Learning of the Sisters of Charity, Ottawa*, 1 O. W. N. 387, 529, 20 O. L. R. 467.—D.C.
10. Company—Authority of Agent—Ratification. *McCarthy & Sons Co. v. W. C. McCarthy*, 1 O. W. N. 500.—D.C.
11. Construction — Conveyance of Lands — Undertaking to “Erect” Refining Works—Forfeiture of Lands upon Failure—Condition Fulfilled by Part Completion of Works—Election to Use Land for Purpose Contemplated—Option of Purchase of other Lands—Mining Agreement—Failure to Mine—Retention of Moneys Paid for Option. *Canadian Nickel Co. v. Ontario Nickel Co.*, 1 O. W. N. 638.—C.A.
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- tioned to Vendible Output. *Attorney-General for Ontario v. Canadian Niagara Power Co.*, 1 O. W. N. 127, 832.—RIDDELL, J.
13. Construction—Sale of Business—Covenant of Purchasers to Make Annual Payments—Covenant of Vendors not to Engage in Similar Business — Independent Covenants—Performance of Substantial Part of Contract. *Telford v. Sovereign Bank of Canada*, 1 O. W. N. 822.—TEETZEL, J.
14. Construction—Payments Made under Contract. *McKnight v. Robertson*, 1 O. W. N. 469, 679.—D.C.
15. Decoration of House—Payment for Work Done—Satisfaction of Architect—Condition Precedent—Discharge of Contractors—Waiver—New Contract—Findings of Fact — Appeal. *Thornton-Smith Co. v. Woodruff*, 1 O. W. N. 45.—C.A.
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18. Exchange of Lands—Improvements to Building—Work not Completed by Vendor and Taken over by Vendee—Allowance for Money Expended—Rents—Interest—Accounts—Reference—Report — Variance on Appeal. *Foster v. Radford*, 1 O. W. N. 572.—C.A.
19. Formation of Company—Oral Agreement between Corporators before Formation—By-laws — Unanimous Approval of Shareholders—Omission of Term in Written Agreement—Evidence—Statute of Frauds. *Berkinshaw v. Henderson*, 1 O. W. N. 97.—C.A.
20. Illegality—Stifling Prosecution—Evidence—Action for Principal upon Default of Payment of Interest at Time Fixed—Interest Paid before Action—Relief from Payment of Principal—Judicature Act, sec. 57—Action and Cross-action—Costs. *Town of North Bay v. Martin, Martin v. Town of North Bay*, 1 O. W. N. 1108.—SUTHERLAND, J.
21. Illegality—Transactions on Grain Market on Margin—No Actual Purchase or Delivery—Gambling—Criminal Code, sec.

- 231—Joint Transaction—Moneys Advanced — Refusal of Court to Aid Recovery—Transaction on Foreign Market—Dealing in Ontario. *Trench v. Brink*, 1 O. W. N. 789.—D.C.
22. Joint Liability—Promissory Note Given by one Person Liable—Unsatisfied Judgment on Note—Remedy against another Joint Contractor—Promise to Pay—Want of Knowledge of Judgment—Consideration—Partnership. *Hough Lithographing Co. v. Morley*, 1 O. W. N. 581, 20 O. L. R. 484.—D.C.
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29. Oral Promise—Evidence—Consideration. *Schuler v. McIntosh*, 1 O. W. N. 436.—SUTHERLAND, J.
30. Payment of Money—Condition—Non-fulfilment—Return of Money—Authority of Agent. *Carter v. Canadian Northern R. W. Co.*, 1 O. W. N. 892.—LATCHFORD, J.
31. Pledge of Shares of Company Stock—Right of Pledgee to Transfer of Shares and Issue of Certificate—Form of Transfer

- and Certificate—Reference to Terms of Contract. *Warren v. Bank of Montreal*, 1 O. W. N. 28.—MEREDITH, C.J.C.P.
32. Sale by Liquidator of Stock in Trade of Insolvent Manufacturing Company—Goods Included in Inventory not Delivered—"Subject to Shorts and Longs"—Breach of Contract—Damages—Measure of. *Dominion Linen Manufacturing Co. Limited v. Langley*, 1 O. W. N. 262.—MACMAHON, J.
33. Sale of Lumber—Breach—Damages—"Mill-run." *Wood Brothers v. Gall Lumber Co.*, 1 O. W. N. 365, 503.—D.C.
34. Sale of Patent Medicine—Untrue Representations by Vendor—Reliance on by Purchaser—Rescission of Contract—Return of Moneys Paid—Interest. *Hennessey Drug Stores Limited v. Imperial Drug Co.*, 1 O. W. N. 1127.—SUTHERLAND, J.
35. Services—Evidence. *McPhillips v. Independent Order of Foresters*, 1 O. W. N. 895.—BRITTON, J.
36. Services to Near Relation—Implied Right to Remuneration—Quantum Meruit—Statute of Limitations—Promise of Widower not to Remarry—Public Policy—Moneys Expended—Voluntary Expenditure—Absence of Request. *Bradley v. Bradley*, 1 O. W. N. 110, 19 O. L. R. 525.—D.C.
37. Setting aside—Misrepresentations. *Stewart v. Dickson*, 1 O. W. N. 1083.—SUTHERLAND, J.
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39. Subscription for Company Shares—Evidence that Subscription Obtained by False Representation—Corroboration—Refusal to Accredit Uncontradicted Evidence of Witnesses. *Traders Fire Insurance Co. v. Apps*, 1 O. W. N. 534.—RIDDELL, J.
40. Supply of Manufactured Articles—Defects—Damages. *Ontario Sewer Pipe Co. v. Macdonald*, 1 O. W. N. 699.—FALCONBRIDGE, C.J.K.B.
41. Supply of Material—Modification—Rate of Payment—Charged Conditions—Illegal Combination. *Lochrie v. Consumers Cordage Co.*, 1 O. W. N. 739.—BOYD, C.

42. Timber—Declaration—Injunction—Costs. *Sweeney v. Sissons*, 1 O. W. N. 500, 895.—D.C.
43. Trading Company—Sale of Shares, Business, Assets, Stock, and Goodwill—Construction—Previous Option—Assumption of Liabilities by Purchaser — Liabilities not Appearing on Books—Liabilities Incurred between Dates of Contract and Transfer—Debts—Salary of Manager—Quantum Meruit — Set-off of Certain Items. *Strong v. Vanallen*, 1 O. W. N. 539.—D.C.
44. Transfer of Assets of Partnership to Incorporated Company—Assumption of Liabilities—Right of Creditor of Partnership to Payment by Company—Promise to Pay Debts—Correspondence—Promissory Notes — Acceptance of Company as Debtor—Novation. *Stecker Co. v. Ontario Seed Co. Limited*, 1 O. W. N. 463, 20 O. L. R. 359.—D.C.
45. Transfer of Shares—Condition — Sale of Shares—Notice — Conversion—Damages. *Barber v. Wills and Kemerer*, 1 O. W. N. 332.—C.A.
46. Work and Labour—Building Boats — Acceptance. *Davis v. Clemson*, 1 O. W. N. 938.—BOYD, C.
47. Work and Labour—Independent Contractor—Liability of Employer for Wrong Done in Course of Executing Contract—Taking Soil from Neighbouring Land—Liability as between Contractor and Servant—Acts done in Ignorance—Innocent Trespass—Damages. *Power v. Magann*, 1 O. W. N. 686.—BRITTON J.
48. Work and Labour—Non-completion—Payment — Certificate of Engineer. *Smith v. Finkelstein*, 1 O. W. N. 528.—D.C.
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2. Apportionment of Costs—Company—Winding-up—Action Begun before Liquidation. *Morton Co. Limited v. Ontario Accident Insurance Co.* 1 O. W. N. 364.—LATCHFORD, J.
3. *Incidence—Payment by Successful Party.*]—Wide as is the power of the Court over costs, it has not jurisdiction to require a successful defendant to pay the costs of his unsuccessful adversary. *Re Foster and Great Western R. W. Co.*, 8 Q. B. D. 575, *Lambton v. Parkinson*, 35 W. R. 545, and *Andrew v. Gore*, [1902] 1 K. B. 625, followed. *Clisdell v. Lovell*, 1 O. W. N. 648.—D.C.
4. Mechanics' Liens—Action to Enforce Lien—Plaintiffs Allowed to Complete Work pendente Lite—Incidence of Costs—De-

duction of Defendants' Costs of Action and Appeal from Payment to be Made. *Crown Art Stained Glass Co. v. Cooper*, 1 O. W. N. 1047.—D.C.

5. *Scale of Costs—Action in High Court—Jurisdiction of County Court—Title to Land—County Courts Act, sec. 22—Foreign Lands—Fraudulent Representation as to Ownership—Pleading—Leave to Appeal.*]—In an action in the High Court to recover \$500, the amount of a promissory note made by the defendant, payable to the order of W., and indorsed to the plaintiff, the defendant, by his statement of defence, denied that the plaintiff was the holder of the note in due course, and alleged that he was induced to make it by the fraud of the plaintiff and W., the latter pretending to have an interest in lands in a foreign State which he was to transfer to the defendant in consideration of the note, but in reality having no interest and never having made a transfer to the defendant, all of which the plaintiff knew, etc.:—*Held*, that the title to land was not brought in question, within the meaning of sec. 22 of the County Courts Act, the lands referred to not being in Ontario; but, even if that were not so, the defence did not necessarily bring into question the title to the foreign land, and in fact no question of title was raised at the trial. Leave to appeal from an order of LATCHFORD, J., affirming a ruling of a local registrar that the costs of the action were taxable on the County Court scale, refused. *Dobner v. Hodgins*, 1 O. W. N. 12.—MEREDITH, C.J.C.P. (Chrs.)
6. *Scale of Costs—Amount Recovered—Investigation of Accounts Involving Large Sums—Jurisdiction of County Court—Con. Rule 1132—Set-off.* *Ross v. Townsend*, 1 O. W. N. 457.—TEETZEL, J.
7. *Scale of Costs—Jurisdiction of County Courts—Trespass to Land—County Courts Act, sec. 23 (1), (8).*]—In an action in the High Court for \$200 damages for obstructing the plaintiff's access from his land to a street and for a mandatory injunction requiring the defendant to remove the obstruction, the plaintiff obtained judgment restraining the defendant from continuing the obstruction, and ordering him to remove it and to pay the costs of the action:—*Held*, that the action came within clause 8 of sec. 23 of the County Courts Act, and, as the plaintiff's land was shewn to be of greater

value than \$200, the action was not within the jurisdiction of a County Court, and the plaintiff was entitled to his costs on the High Court scale. *Ross v. Vokes*, 1 O. W. N. 261.—MEREDITH, C.J.C.P. (Chrs.)

8. *Security for Costs—Actions against Magistrate and Constable—R. S. O. 1897 ch. 89, sec. 2—Defences to Actions—Want of Notice of Action—Merits.*]—In actions against a magistrate and constable for causing the arrest of the plaintiff under a conviction which was quashed and upon a warrant to arrest defective on its face:—*Held*, that the magistrate was throughout acting within his jurisdiction, and was *prima facie* entitled to the benefit of R. S. O. 1897 ch. 88, as was also the constable; they were, therefore, under R. S. O. 1897 ch. 89, entitled to apply for security for costs, and, having fulfilled the requirements of sec. 2, should have an order. It is a defence to shew that the proper notice has not been given alleging that the magistrate acted maliciously and without reasonable and probable cause. It is not the course of the Court to try the validity of the defence upon contested facts or disputed law prior to the trial. *Titchmarsh v. Graham*, *Titchmarsh v. McConnell*, 1 O. W. N. 27, 208.—BOYD, C. (Chrs.)
9. *Security for Costs—Bond—Condition—Defect—Motion, Costs of.* *Stow v. Currie*, 1 O. W. N. 525.—MASTER IN CHAMBERS.
10. *Security for Costs—Libel—Criminal Charge.* *Titchmarsh v. World Newspaper Co.*, 1 O. W. N. 455.—MASTER IN CHAMBERS.
11. *Security for Costs—Libel—Newspaper—Criminal Charge—Action Trivial or Frivolous—Typographical Error—Retraction—9 Edw. VII. ch. 40 sec. 12—Order of Master—Appeal to Judge—Further Appeal.*]—Upon a motion by the defendants for security for costs in an action against the publishers of a newspaper for libel, pursuant to the Libel and Slander Act, 9 Edw. VII. ch. 40, sec. 12, the words complained of referred to the plaintiff's conduct and conviction with T., "the notorious London promoter." Innuendo, that the plaintiff had been convicted of a criminal offence. It was said that "conviction" was a misprint for "connection."—*Held*, following *Smyth v. Stephenson*, 17 P. R. 374, 376, that the alleged libel involved a criminal charge; that the action could not be said to be trivial or frivolous; that there

- was doubt as to other circumstances, *e.g.*, whether a typographical error was equivalent to mistake or misapprehension of the facts, and whether the retractation was sufficient; and therefore the defendants were not entitled to security for costs.—*Held*, also, following *Robinson v. Mills*, 19 O. L. R. at p. 170, that an appeal lies to a Judge in Chambers from an order of the Master in Chambers refusing a motion for security.—*Quaere*, whether there is a further appeal. *Kelly v. Ross*, 1 O. W. N. 48.—FALCONBRIDGE, C.J.K.B. See also *S.C.*, 1 O. W. N. 116, where leave to appeal was refused.
12. Security for Costs.—Plaintiff Leaving Jurisdiction—Foreign Commission. *Cicchetto v. City of Guelph*, 1 O. W. N. 435.—MASTER IN CHAMBERS.
 13. Security for Costs—Plaintiff out of the Jurisdiction—Order for Increased Security—Jurisdiction of Master in Chambers—Application after Trial and Judgment—Appeal to Divisional Court—Stay of Proceedings—Discretion—Amount of Security—Past and Future Costs—Con. Rules 42 (d), 1204, 1208—Practice. *Stow v. Currie*, 1 O. W. N. 418, 458, 20 O. L. R. 353.—MASTER IN CHAMBERS.—MEREDITH, C.J.C.P. (Chrs.)
 14. Security for Costs—R. S. O. 1897 ch. 89, secs. 1, 2—Property in Jurisdiction. *Burns v. Longhrin*, 1 O. W. N. 805.—MASTER IN CHAMBERS.
 15. Security for Costs—Sufficiency of Surety—Value of Shares in Company—Cross-examination of Surety—Information as to Affairs of Company. *Sill v. Alexander*, 1 O. W. N. 622.—MASTER IN CHAMBERS.
 16. Summary Disposal of Costs of Action. *Robertson v. City of Toronto*, 1 O. W. N. 434.—MASTER IN CHAMBERS.
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1. Restraint of Trade—Breach—Evidence—Damages—Extent of Business Done—Profits—Reference — Scope of—Judgment. *Dewey and O'Heir Co. v. Dewey*, 1 O. W. N. 329.—C.A.
2. Restraint of Trade—Provision for Liquidated Damages—Construction as Penalty—Actual Damage for Breach of Covenant—Injunction—Costs. *Townsend v. Rumball*, 1 O. W. N. 47, 19 O. L. R. 433.—D.C.

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CRIMINAL LAW.

1. Abduction of Girl under 16—Conviction—Evidence to Sustain—Motion for Leave to Appeal. *Rex v. Yorkema*, 1 O. W. N. 743, 21 O. L. R. 193.—C.A.
2. Attempt to Commit Incest—Evidence of Children of Tender Years—Corroboration—Statement Made by Child—Evidence of—Indictable Offence. *Rex v. Pailleur*, 1 O. W. N. 303, 20 O. L. R. 207.—C.A.
3. Attempt to have Unlawful Carnal Knowledge of Child—Evidence of Child not Given on Oath—Criminal Code, sec. 1003—Corroboration—Sufficiency—Reasonable Evidence to Sustain Conviction. *Rex v. Bowes*, 1 O. W. N. 253, 20 O. L. R. 111.—C.A.
4. Certiorari — Application to Remove Order for Payment by Prosecutor of Costs of Unsuccessful Prosecution—Non-compliance with Rules of Court—Recognizance—Time—Criminal Code, secs. 576 (b), 1126—Rules of Supreme Court of Judicature for Ontario — Application to Prosecutor. *Re Martin and Garlow*, 1 O. W. N. 172, 360, 20 O. L. R. 295.—D.C.
5. Conspiracy—Trade Combination—Criminal Code, sec. 498—Restraint of Trade—Prevention of Competition—Evidence—Findings of Fact. *Rex v. Beckett et al.*, 1 O. W. N. 489, 20 O. L. R. 401.—FALCONBRIDGE, C.J.K.B.
6. Evidence—Testimony of Accomplice—Necessity for Corroboration. *Rex v. Frank*, 1 O. W. N. 744, 21 O. L. R. 196.—C.A.
7. Forgery—Evidence—Authority to Sign Cheque—Denial by Complainant—Magistrate—Stated Case. *Rex v. Walker*, 1 O. W. N. 908.—C.A.

8. Inducing Young Girl to be on Premises for Purpose of being Unlawfully and Carnally Known—Criminal Code, sec. 217—"Unlawfully." *Rex v. Karn*, 1 O. W. N. 247, 20 O. L. R. 91.—C.A.
9. Keeping Common Betting Place—Conviction—Evidence to Sustain—Evasion of Statute. *Rex v. Johnston*, *Rex v. McSweeney*, 1 O. W. N. 684.—C.A.
10. *Magistrate's Conviction—Defendant not Allowed Fair Opportunity to Make Defence—Refusal to Adjourn.*]—It is reasonable, if a defendant pleads not guilty before a magistrate and requires time for his defence and to produce his evidence, that he should get it. A magistrate's conviction for an offence against the Liquor License Act was quashed because the magistrate refused the defendant a short adjournment to procure evidence. *Rex v. Lorenzo*, 1 O. W. N. 170.—BRITTON, J. (Chrs.)
11. *Magistrate's Conviction—Defendant Allowed Fair Opportunity to Make Defence—Refusal to Adjourn.*]—A motion to quash a magistrate's conviction for an offence against the Liquor License Act was refused, the ground urged being that the defendant was deprived of a fair trial by not being allowed an adjournment for the purpose of producing necessary and named witnesses—but the evidence leading to the conclusion that there was a fair trial, and that any longer delay would not have assisted the defendant. *Rex v. Lorenzo*, 1 O. W. N. 179, distinguished. *Rex v. Luigi*, 1 O. W. N. 182.—BRITTON, J. (Chrs.)
12. Magistrate's Conviction—Inability of Accused to Conduct Defence by Reason of Insanity — Committal to Lunatic Asylum—Failure of Magistrate to Inquire as to Sanity—Invalidity of Conviction—Habeas Corpus—Discharge. *Rex v. Leys*, 1 O. W. N. 958.—C.A.
13. Magistrate's Conviction—Leave to Appeal—Stated Case. *Rex v. Garrett*, 1 O. W. N. 595.—C.A.
14. Magistrate's Conviction—Trespass—Enclosed Land—Sporting—Notice—7 Edw. VII. ch. 49, sec. 25 (O.)—*Rex v. Lansing*, 1 O. W. N. 186.—BRITTON, J. (Chrs.)
15. Magistrate's Conviction under Repealed Section of Railway Act, not Sustainable under sec. 283 of Criminal Code—

Differences in Nature of Offence and Mode of Punishment.
Rex v. Corrigan, 1 O. W. N. 248, 20 O. L. R. 99.—C.A.

16. Murder—Conviction—Nondirection—Intoxication of Prisoner—Inability to Appreciate Nature and Result of Acts—Manslaughter—New Trial. *Rex v. Blythe*, 1 O. W. N. 17, 33, 19 O. L. R. 386.—C.A.
17. Murder—Evidence—Finding of Weapons in Prisoner's Possession—Judge's Charge—Circumstances Justifying Finding of Manslaughter—Provocation—Self-defence—Judge Giving Jury his Version of Facts—Intention—Intoxication—Remarks of Judge to Jury as to Agreeing within a Short Time and as to Recommendation to Mercy. *Rex v. Ventricini*, 1 O. W. N. 961.—C.A.
18. Murder—Evidence—Judge's Charge—Misdirection—Nondirection—Insanity—Onus—Testimony of Experts—Circumstances Tending to Reduce Crime to Manslaughter—Recalling Jury—Remarks of Judge—Tendency to Hurry Jury—Recommendation to Mercy—Executive Clemency. *Rex v. Henderson*, 1 O. W. N. 1021.—C.A.
19. [Murder—Evidence—Statements of Prisoner—Admission or Confession—Admissibility—Person in Authority—Threats or Inducements—Warning or Caution—Criminal Code, secs. 684, 685. *Rex v. Steffoff*, 1 O. W. N. 250, 20 O. L. R. 103.—C.A.
20. Murder—Refusal of Trial Judge to State Case for Court of Appeal—Motion for Leave to Appeal—Objections to Evidence—Leading Questions, not Objected to—Judge's Charge—Provocation—Intoxication—Manslaughter—Refusal to Postpone Trial. *Rex v. Spinelli*, 1 O. W. N. 187, 245.—C.A.
21. Perjury—Failure to Shew Proceedings in which Perjury Alleged to have been Committed—Preliminary Inquiry before Magistrate—Necessity for Proof of Information—Objection Taken at Close of Crown's Case—Withdrawal of Case from Jury. *Rex v. Farrell*, 1 O. W. N. 301, 20 O. L. R. 182.—C.A.
22. Sale of Intoxicating Liquors within Prohibited Area—Royal Proclamation—Criminal Code, sec. 150—6 & 7 Edw. VII. ch. 9—Magistrate's Conviction Based on Confession—Admission of Having Cider for Sale—Absence of Proof of Intoxicating

- Character—Defective Information—Territorial Jurisdiction of Magistrate. *Rex v. Palangio*, 1 O. W. N. 26.—BOYD, C. (Chrs.)
23. Sale of Mineral Ore by Unauthorised Person—Criminal Code, sec. 424 (b)—Evidence of Sale—Fixed Price—Payment for Metal in Ore. *Rex v. Barber*, 1 O. W. N. 960.—C.A.
24. Stated Case—Magistrate—Summary Conviction under Provincial Act—Forum—Court of Appeal or High Court. *Rex v. Henry*, 1 O. W. N. 567, 20 O. L. R. 494.—C.A.
25. *Stated Case—Police Magistrate—Forum—R. S. O. 1897 ch. 90, sec. 8—1 Edw. VII. ch. 13, sec. 2.*]—The effect of the amendment of R. S. O. 1897 ch. 90, sec. 8, by 1 Edw. VII. ch. 13, sec. 2, is to make secs. 761 to 769 of the Criminal Code applicable to proceedings before justices under Ontario statutes. Therefore, a Police Magistrate, convicting of an offence against an Ontario statute, has power to state a case for determination by a Judge of the High Court. *Rex v. Harvey*, 1 O. W. N. 1002.—MIDDLETON, J. (Chrs.)
26. Summary Trial—Election before Magistrate—Right to Trial by Jury—Foreigner. *Rex v. Sciarrone*, 1 O. W. N. 416.—MEREDITH, C.J.C.P. (Chrs.)
27. Theft—Conviction—Police Magistrate—Warrant of Commitment—Defect—Habeas Corpus—Substituted Warrant—Powers of Judge—Criminal Code, secs. 1120-1132—Summary Trial—Election—Right of Re-election—Code, sec. 828—Certiorari in Aid—Right of Crown—Refusal of Postponement of Trial—"With Hard Labour"—Words Stricken out of Conviction—Prison Regulations—Jurisdiction of Magistrate—Code, secs. 778, 782, 783. *Rex v. Macdonald*, 1 O. W. N. 681, 21 O. L. R. 38.—C.A.
28. Theft of Fowl—Penalty—Criminal Code, sec. 370—Imprisonment—Excessive Term—Appeal—Stated Case—"Such Sentence as ought to have been Passed"—Criminal Code, sec. 1018—Discharge of Prisoner. *Rex v. Williams*, 1 O. W. N. 954, 21 O. L. R. 467.—C.A.
29. Usury—Conviction—Money Lenders Act, R. S. C. 1906 ch. 122—Evidence—Evasion of Statute—Leave to Appeal Refused. *Rex v. Smith and Luther*, 1 O. W. N. 956.—C.A.

30. Vagrancy—Criminal Code, sec. 238 (1)—Gaming—Betting.
Rex v. Ellis, 1 O. W. N. 306, 20 O. L. R. 218.—C.A.

See Appeal, 18—Liquor License Act—Medicine and Surgery—
Municipal Corporations, 12, 34.

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See Mortgage, 7.

CROSS-EXAMINATION ON AFFIDAVIT.

See Judgment, 18.

CROWN.

See Criminal Law, 27—Military Law—Municipal Corporations,
27—Quieting Titles Act.

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See Malicious Prosecution, 1—Municipal Corporations, 7 —
Parties, 2.

CROWN PATENT.

Revocation—False Representation as to Performance of Settle-
ment Duties—Part of Land Cleared—Evidence—Affidavit—
Report—Crown Misled by False Statement. *Attorney-Gen-
eral For Ontario v. Devlin*, 1 O. W. N. 554.—C.A.

See Free Grants and Homesteads Act—Highway, 7—Mines and
Minerals, 6.

CRUELTY.

See Husband and Wife, 2, 3, 4.

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See Banks and Banking, 2—Broker, 1.

DAM.

See Water and Watercourses.

DAMAGES.

1. Assessment by Jury—Damages for Personal Injuries—Dam-
ages for Loss of Future Profits—Severance by Jury—Evi-
dence—Appeal—Verdict Reduced by Amount Allowed for
Loss of Profits. *Wright v. Toronto R. W. Co.*, 1 O. W. N.
568, 20 O. L. R. 498.—C.A.

2. Breach of Contract—Conversion and Sale of Shares of no
Market Value—Bona Fides in Selling at Best Price Obtain-
able—Higher Price Realised at Subsequent Sale—Exceptional

Circumstances — Measure of Damages — Estimate as if by Jury. *Goodall v. Clarke*, 1 O. W. N. 1131, 21 O. L. R. 614.—D.C.

3. Contract—Report—Appeal. *American Street Lamp and Supply Co. v. Ontario Pipe Line Co.*, 1 O. W. N. 858.—FALCONBRIDGE, C.J.K.B.
 4. Covenant — Breach — Restraint of Trade. *Anderson v. Ross*, 1 O. W. N. 394.—RIDDELL, J.
 5. *Fraud and Misrepresentation—Sale of Creameries—Measure of Damages.*]—A Master was directed to ascertain and state what damages, if any, the plaintiffs had sustained by reason of the fraud referred to in the pleadings. The fraud was in respect of two creameries which, the plaintiffs alleged, they were induced to purchase relying upon representations of the defendant as to the output, expenses, and profits of the creameries for 1904-5, which were, as they alleged, false and fraudulent. The purchase-price was \$4,830. The Master found that the value of one creamery was \$367.50 and of the other \$532.50, and allowed as damages the difference between the aggregate of these two sums and the purchase-money, viz., \$3,930, with interest, and also allowed as damages \$3,440.14, which he ascertained to be the loss sustained by the plaintiffs in the operation of the creameries after the purchase:—*Held*, that the true measure of damages was the difference between the purchase-price and the actual value at the time of purchase; and that the report, in so far as it allowed damages for the loss sustained by the plaintiffs in the operation of the creameries, must be set aside. *Lamont v. Wenger*, 1 O. W. N. 177.—MEREDITH, C.J.C.P.
 6. Reference—Report—Appeal—Further Directions—Costs. *Lang v. Williams*, 1 O. W. N. 1052.—FALCONBRIDGE, C.J.K.B.
 7. Wrongful Distress—Seizure of Goods—Replevin—Measure of Damages. *Lee v. Ianson*, 1 O. W. N. 586.—LATCHFORD, J.
- See Broker, 1—Company, 18, 21—Contract, 3, 7, 32, 33, 40, 45, 47—Covenant—Deed, 6—Defamation, 3, 4—Fatal Accidents Act—Fraud and Misrepresentation, 2, 4, 5—Highway, 1—Landlord and Tenant, 4, 6, 9—Master and Servant, 8, 12—Mechanics' Liens, 1—Municipal Corporations, 8, 29, 30—Negligence, 3, 10—Particulars, 4—Parties, 10—Patent for Inven-

tion, 2—Railway, 14, 19, 22—Sale of Goods, 6—Set-off — Trespass, 2—Vendor and Purchaser, 1, 6, 9, 11—Water and Watercourses.

DAYS OF GRACE.

See Insurance, 8.

DEATH.

1. Presumption—Declaration—Evidence. *Re Goble*, 1 O. W. N. 624.—FALCONBRIDGE, C.J.K.B. (Chrs.)
2. Presumption — Jurisdiction — Surrogate Court—Absentee — Money in Court—Payment out. *Re Coots*, 1 O. W. N. 807.—MIDDLETON, J.
3. Presumption—Jurisdiction — Surrogate Court—Absentee. *Re Dwyer*, 1 O. W. N. 889.—SUTHERLAND, J. (Chrs.)

See Innkeeper—Insurance—Master and Servant—Quieting Titles Act—Railway—Reference—Succession Duty—Will.

DEBENTURES.

See Municipal Corporations, 2.

DECEIT.

See Fraud and Misrepresentation.

DECLARATION.

See Death.

DECLARATION OF TRUST.

See Trusts and Trustees.

DECLARATORY JUDGMENT.

See Mines and Minerals, 6.

DEDICATION.

See Highway, 2, 10—Mines and Minerals, 6—Way, 1.

DEED.

1. Construction—"Children"—Absence of Particular Estate — Title by Possession—Statute of Limitations—Provisions of Will—Presumption from Knowledge of. *Burch v. Flummerfelt*, 1 O. W. N. 133.—FALCONBRIDGE, C.J.K.B.
2. Construction—Condition Subsequent—Invalidity—Contingent Reversionary Interest.]—In 1837 land was conveyed by B.'s

deed to a city corporation. The grant was to the corporation for a public market, and the *habendum* was to the corporation and their successors "in trust for the use and purpose of establishing, keeping, and maintaining a public market . . . subject nevertheless to such rules and regulations," etc., with a proviso that if the corporation should at any time thereafter alienate the land, or use it otherwise than for a public market, the deed should be void, and the land revert to B., his heirs and assigns:—*Held*, following *In re Trustees of Hollis Hospital and Hague's Contract*, [1899] 2 Ch. 540, that the proviso was an express common law condition subsequent, and that it was obnoxious to the rule against perpetuities, which rule is applicable to such a condition, and was therefore void. *Aliter*, if it were possible to treat the conveyance as granting the land to the corporation as long as it should be used as a public market. That was not, however, the form or effect of the conveyance. *Re St. Patrick's Market*, 1 O. W. N. 92.—MEREDITH, C.J.C.P.

3. Construction—"Oil Lease"—Lease or License—Dominion Petroleum Bounty Act, 1904—Right of Lessor to Share in Bounty—"Producer." *Smith v. Elginfield Oil and Gas Developing Co.*, 1 O. W. N. 147, 944.—C.A.
 4. Construction—"Oil Lease"—Lease or License—Dominion Petroleum Bounty Act, 1904—Right of Lessor to Share in Bounty—"Producer." *Thompson v. Talbot Oil and Gas Co.*, 1 O. W. N. 152.—D.C.
 5. Rectification—Husband and Wife—Agreement by Husband to Convey Wife's Land—Conveyance by Husband—Wife Joining to Bar Dower—Estoppel—Specific Performance—Statute of Frauds—Damages—Breach of Covenant—Costs. *Lacroix v. Longtin*, 1 O. W. N. 342, 839.—D.C.
- See Contract, 11—Fraudulent Conveyance—Free Grants and Homesteads Act, 2—Gift, 1—Land Titles Act—Trusts and Trustees, 2.

DEFAMATION.

1. Libel—Discovery—Person Libelled not Named—Examination of Defendant—Questions as to Person Intended—Defence of Privilege—Malice. *Morley v. Patrick*, 1 O. W. N. 811, 21 O. L. R. 240.—D.C.

2. Libel—Pleading—Statement of Claim—Innuendo—Newspaper—Notice of Action. *Titchmarsh v. World Newspaper Co.*, 1 O. W. N. 454—MASTER IN CHAMBERS.
3. *Libel—Pleading—Statement of Defence—Newspaper—Mistake—Other Statements about Plaintiff not Complained of—Averment of Truth—Mitigation of Damages.*—In an action for libel, the words complained of were the concluding words of a newspaper article referring to the plaintiff and speaking of his conduct and conviction with H., “the notorious London promoter.” It was said that the word “conviction” was a misprint for “connection.” The defendants pleaded that the article was one of considerable length, and contained many statements concerning the plaintiff, all of which, except that expressly complained of in this action, were true in substance and in fact, and but for the mistake the whole of the article would have been true in substance and in fact, and such mistake was made without any malicious motive or intent. The Master in Chambers ordered this paragraph to be struck out with leave to the defendants to amend by substituting such allegations as might be proper to set out the alleged mistake:—*Held*, that the order was right, and the pleading bad whether regarded as in mitigation of damages or in any other view. *Beaton v. Intelligencer Printing and Publishing Co.*, 22 A. R. 97, distinguished. *Kelly v. Ross*, 1 O. W. N. 142.—RIDDELL, J. (Chrs.)
4. Libel — Pleading — Statement of Defence — Amendment — Privilege—Mitigation of Damages — Reputation—Notice — Con. Rule 488. *Kelly v. Ross*, 1 O. W. N. 221.—MASTER IN CHAMBERS.
5. *Libel—Slander—Newspaper—Pleading—Security for Costs—Application for—Necessary Material—Defence—Bona Fides—Public Benefit.*—The defendants were the publishers of a newspaper, in which an article appeared, headed “A Girl’s Confession,” stating that “a young lady of Walkerton claims she had a hand in the shooting of the Chinaman.” The “young lady” was not named in the article, but was spoken as a constant visitor at the Chinaman’s laundry and on intimate terms with the Chinaman, and it was said that her visits became “odorous.” The plaintiff, a young girl, alleging that the article referred to her, sued for defamation. In the 5th paragraph of her statement of claim she set out the article with an innuendo that she had been guilty of at-

tempt to murder and was an immoral person. By the 6th paragraph she alleged that her name was given to a detective by the defendants as the person referred to in the article:—*Held*, that paragraph 6 did not aid claim for libel, but was in itself a count for slander, and could not be struck out, nor could the defendants have security for costs in respect of that paragraph, as the Act 9 Edw. VII. ch. 40, sec. 12, sub-sec. 2, does not apply to slander by the publishers of a newspaper.—The statute is one passed for the benefit of a class, and those invoking it must comply strictly with the practice. An affidavit made by one of the defendants, not filed upon the original motion, was not allowed to be read upon an appeal.—Upon a motion for security for costs the defendants must shew the nature of the defence. When they allege good faith, they must shew the facts surrounding the publication, as that their good faith may be ascertained. It is not enough for the defendants to say that there was reasonable ground for their belief that the publication was for the public benefit—they must say why they thought so. *Greenhow v. Wesley*, 1 O. W. N. 996, 1001.—MIDDLETON, J. (Chrs.)

6. *Slander—Pleading—Statement of Claim—Innuendo—Words Charging Criminal Offence—Disobedience of Subpœna—Police Magistrate—Words Uttered in Exercise of Functions—Reasonable Cause of Action—Failure to Disclose—Con. Rule 261.*—The statement of claim in an action of slander was struck out, under Con. Rule 261, as disclosing no reasonable cause of action, where the words alleged were spoken by the defendant, a police magistrate, to the plaintiff, who had been subpœnaed as a witness for the defendant upon a charge of perjury preferred by the plaintiff before the magistrate, and were, “You cannot get your expenses, you ran away”—it being manifest that this was a continuation of the proceeding before the magistrate. The words used did not import that the plaintiff had committed a crime. *Law v. Llewellyn*, [1906] 1 K. B. 498, followed.—*Seem*, that serving the prosecutor with a subpœna was an unwarrantable proceeding under the Criminal Code. The proceeding was not under sec. 788 of the Code, but was regulated by secs. 671-673—the witness should be summoned, not subpœnaed. *Titchmarsh v. Crawford*, 1 O. W. N. 587.—BOYD, C.

7. *Slander—Pleading—Statement of Defence—Privilege—Belief in Truth—Particulars—Grounds of Belief—Apology—Agreement to Accept—Mitigation of Damages.*—In an action for

slander, an order for particulars of a defence of privilege on the ground that the defendant spoke the words *bona fide* believing them to be true, was upheld, the particulars sought being of the grounds of belief. Review of the authorities.—Where there is a defence of apology, there is no need for the defendant to add words qualifying the written apology which he has pleaded. The statute 9 Edw. VII. ch. 40, sec. 4, does not warrant pleading an apology *per se*—the defence is one of accord and satisfaction or agreement to accept an apology. *Harrison v. Madill*, 1 O. W. N. 583.—BOYD, C. (Chrs.)

See Appeal, 20—Costs, 10, 11—Liquor License Act, 11—Parties, 5—Pleading, 7.

DEFAULT JUDGMENT.

See Judgment, 2, 3.

DEPOSIT.

See Vendor and Purchaser, 5.

DEPOSITIONS.

See Evidence, 1.

DEVISE.

See Will.

DEVOLUTION OF ESTATES ACT.

1. Action by Judgment Creditor against Heirs-at-Law of Intestate to Make Lands of Intestate Available for Payment of Debt—Lands Vesting in Heirs—Administration not Sought—Right of Action—Bar by Statute of Limitations—Possession under Parol Gift—Acts of Ownership—Uncultivated Land. *Beer v. Williams*, 1 O. W. N. 702, 20 O. L. R. 49.—BRITTON, J.
2. Application under sec. 25 (b) for Approval of Lease—Practice—Forum—"High Court or a Judge thereof." *Re Montgomery*, 1 O. W. N. 999.—MEREDITH, C.J.C.P. (Chrs.)

DIRECTORS.

See Banks and Banking, 1—Company—Injunction, 1—Judgment, 15—Promissory Notes, 5.

DISCHARGE OF MORTGAGE.

See Charge on Land.

DISCLAIMER.

See Municipal Elections.

DISCONTINUANCE OF ACTION.

See Parties, 4.

DISCOUNT.

See Partnership, 1—Promissory Notes.

DISCOVERY.

1. Examination of Defendant—Action to Set aside Will—Undue Influence. *Cook v. Winegarden*, 1 O. W. N. 75.—MASTER IN CHAMBERS.
2. Examination of Foreign Party—Interpreter—Ruling of Examiner. *Drouillard v. Drouillard*, 1 O. W. N. 136.—MASTER IN CHAMBERS.
3. Examination of Officer of Defendant Companies—Questions—Relevancy—Duty of Officer to Procure Information. *Ontario Pipe Line Co. v. Dominion Power and Transmission Co.*, 1 O. W. N. 807.—RIDDELL, J. (Chrs.)
4. Examination of Officer of Plaintiff Bank—Pleadings—Relevancy of Questions—Foreign Commission. *Sovereign Bank v. Frost*, 1 O. W. N. 938.—MIDDLETON, J. (Chrs.)
5. Examination of Servant of Defendant Company—Second Examination—Rule 439 (a) (2)—Costs. *Caswell v. Toronto R. W. Co.*, 1 O. W. N. 856.—MASTER IN CHAMBERS.
6. Production of Documents — Action on Foreign Judgment—Fraud—Absence of Particulars. *Great West Life Assurance Co. v. Shields*, 1 O. W. N. 855.—MASTER IN CHAMBERS.
7. Production of Documents—Affidavit on Production—Claim of Privilege—Insufficiency—Fraud. *Greene v. Black*, 1 O. W. N. 60.—MASTER IN CHAMBERS.
8. Production of Documents—Better Affidavit—Reference to Proceedings in another Action. *Kemerer v. Wills*, 1 O. W. N. 208.—MASTER IN CHAMBERS.
9. Production of Documents—Privilege. *Scott v. Union Bank*, 1 O. W. N. 135.—MASTER IN CHAMBERS.
10. Production of Documents—Relevancy. *Smith v. Fox*, 1 O. W. N. 658.—MASTER IN CHAMBERS.

See Defamation, 1—Evidence, 1—Particulars.

DISCOVERY OF FRESH EVIDENCE.

See New Trial, 1.

DISMISSAL OF ACTION.

1. *Default—Costs of Day—Motion to Extend Time after Expiry—Con. Rule 352—Appeal—Costs.*]—Where the defendants' costs of the day were ordered to be paid by the plaintiff on or before a certain day, as a condition of granting the plaintiff a postponement of the trial, and, in default of payment, the action was to stand dismissed.—*Held*, that, after the time for payment had expired, the time could not be extended, the action standing dismissed. This is not upon the theory that the action is "dead." Upon the expiry of the time limited for doing an act, the Court has, under Con. Rule 352, power to extend the time, but this power cannot be exercised if some action has been taken based upon the default, unless the Judge applied to has power to undo that subsequent act. Where the trial Judge has dismissed an action, only an appellate Court can interfere with his order.—A motion by the plaintiff to extend the time for paying the costs was refused, but without costs, as greater liberality in practice is desirable. *Strati v. Toronto Construction Co.*, 1 O. W. N. 877.—MIDDLETON, J.

The time was afterwards extended by a Divisional Court allowing an appeal from the order or judgment at the trial. *Strati v. Toronto Construction Co.*, 1 O. W. N. 1000.—D.C.

2. Want of Prosecution—Con. Rule 434—Costs. *Brown v. Gilbreath*, 1 O. W. N. 783.—RIDDELL, J.

See Company, 38—Lis Pendens—Mechanics' Liens, 3.

DISMISSAL OF SERVANT.

See Master and Servant, 1, 2.

DISTRESS.

See Damages, 7—Landlord and Tenant, 2, 4, 9.

DISTRIBUTION OF ESTATES.

See Will.

DISTRICT COURTS.

See Appeal, 10.

DITCHES AND WATERCOURSES.

See Municipal Corporations, 8, 30.

DIVISION COURTS.

1. *Demand for Trial by Jury—Motion for Judgment—Division Courts Act, sec. 116—Jurisdiction—Prohibition.*]—A general enactment is governed by a particular one. Section 116 of the Division Courts Act, allowing a plaintiff to move for summary judgment, prevails over the section under which a party who demands a jury has an absolute right to trial by jury. And a judgment under sec. 116 was *held* to have been properly granted after the defendant had demanded a jury and the case had come on for trial with a jury and had been postponed; and prohibition was refused. *Re Tatham v. Atkinson*, 1 O. W. N. 183.—FALCONBRIDGE, C.J.K.B. (Chrs.)
2. Jurisdiction—Promissory Note for more than \$100—Item in Larger Account—Merger in Mortgage—Matters of Defence—Division Courts Act, sec. 72 (1) (*d*)—4 Edw. VII. ch. 12, sec. 1—Mandamus. *Re Green v. Crawford*, 1 O. W. N. 688, 21 O. L. R. 36.—MEREDITH, C.J.C.P. (Chrs.)
3. Jurisdiction—Splitting Cause of Action—Money Lent—Separate Loans—R. S. O. 1897 ch. 60, sec. 79. *Re McKay v. Clare*, 1 O. W. N. 432, 20 O. L. R. 344.—BOYD, C. (Chrs.)

DIVISIONAL COURT.

See Appeal — Costs, 13—Evidence, 6 — Habeas Corpus—Liquor License Act, 7, 8—Trusts and Trustees, 8.

DOMESTIC TRIBUNALS.

See Benefit Society.

DOMICILE.

See Bills of Exchange—Husband and Wife, 12—Judgment, 5.

DOWER.

See Deed, 6—Free Grants and Homesteads Act—Husband and Wife, 11, 13—Will, 3.

DRAINAGE.

See Appeal, 19—Municipal Corporations, 9, 10, 30—Railway, 22.

DRAINAGE REFEREE.

Jurisdiction—Claim of Engineer—Services Preliminary to Drainage Construction Work—Drainage Act, sec. 93—Prohibition—Costs.]—A Drainage Referee has no jurisdiction, under sec. 93 of the Municipal Drainage Act, as amended by 1 Edw. VII. ch. 30, sec. 4, or otherwise, to entertain a claim by an engineer against a municipality for payment for services not actually rendered in the construction, improvement, or maintenance of a drainage work; and prohibition was granted to prevent a Referee from proceeding to try a claim of an engineer in respect of examining the area proposed to be drained, preparing plans, specifications, etc. Costs of the motion for prohibition were given against the engineer. *Re Moore v. Township of March*, 1 O. W. N. 206.—LATCHFORD, J.

EASEMENT.

Conveyance of Lots according to Registered Plan—Park Reserve and Entrance Marked on Plan—Obstruction by Purchaser of Lots—Right of Purchaser of other Lots to Removal—Statute of Limitations—Equitable Title—Registry Laws. *Inde v. Starr*, 1 O. W. N. 62, 909, 19 O. L. R. 471, 21 O. L. R. 407.—C.A.

See Highway, 1—Railway, 22—Water and Watercourses.

EJECTMENT.

See Assessment and Taxes, 6.

ELECTION.

See Assignments and Preferences, 1—Charge on Land—Company, 13—Contract, 11, 27—Criminal Law, 26, 27—Money Lent—Partnership, 4.

ELECTIONS.

See Municipal Elections.

ELECTRIC COMPANY.

See Highway, 9.

ELECTRIC LIGHT COMPANY.

See Pleading, 8.

ELECTRIC RAILWAY COMPANY.

See Company, 4, 5.

ELECTRICITY.

See Contract, 12—Municipal Corporations, 5.

EMPLOYERS' LIABILITY INSURANCE.

See Insurance, 3.

ENCROACHMENT.

See Highway, 7.

ENGINEER.

See Appeal, 19—Author—Contract, 48 — Drainage Referee—
Municipal Corporations, 9.

EQUALIZATION OF ASSESSMENTS.

See Assessment and Taxes, 2.

EQUITABLE ASSIGNMENT.

See Company, 19—Master and Servant, 13.

EQUITABLE DISCRETION.

See Judgment, 4.

EQUITABLE EXECUTION.

See Receiver.

EQUITABLE INTEREST IN LAND.

See Municipal Corporations, 26.

EQUITABLE RELIEF.

See Infant, 3.

EQUITABLE TITLE.

See Easement.

ESCHEAT.

See Quieting Titles Act.

ESTATE.

See Deed, 1, 2—Will.

ESTOPPEL.

Res Judicata—Trespass—Title to Land—Judgment as to Part of Land—Identity of Issues.]—It is not the recovery, but the matter alleged by the party upon which the recovery proceeds, which creates the estoppel.—In an action in the High Court for trespass to land, it appeared that an issue as to the title to a part of the land had been tried by the Exchequer Court of Canada upon a record to which the plaintiff and defendant in the High Court action were parties, and found

in favour of the now plaintiff by a judgment affirmed by the Supreme Court of Canada:—*Held*, that, as the inquiry into the title to part of the land necessarily involved an inquiry into and adjudication upon the facts on which the title to the whole parcel depended, the defendant was estopped thereby. *Tait v. Snetzinger*, 1 O. W. N. 193.—C.A.

See Company, 28—Deed, 5, 6—Infant, 3—Insurance, 3—Judgment, 15—Municipal Corporations, 18—Partnership, 4, 5—Pleading, 17—Promissory Notes, 2—Quieting Titles Act.

EVICTIION.

See Landlord and Tenant, 5, 6.

EVIDENCE.

1. Examination of Plaintiff for Discovery—Death of Plaintiff—Continuation of Action by Executor—Tender of Depositions of Deceased as Evidence on Behalf of Executor. *Johnson v. Birkett*, 1 O. W. N. 917, 21 O. L. R. 319.—RIDDELL, J.
2. Foreign Commission. *Ontario Sewer Pipe Co. v. Macdonald*, 1 O. W. N. 185.—MASTER IN CHAMBERS.
3. Foreign Commission—Examination of Defendant—Fugitive from Justice. — Extradition. *Colonial Development Co. v. Mitchell*, 1 O. W. N. 134.—MASTER IN CHAMBERS.
4. Foreign Commission—Postponement of Trial. *Harris v. Wishart*, 1 O. W. N. 503.—MASTER IN CHAMBERS.
5. *Foreign Commission—Time for Return—Practice—Suppression of Evidence—Solicitor—Commissioner—Con. Rules 512, 522.*—The time for the return of a foreign commission is the date on or before which it must be executed and despatched by the commissioner—not the date at which it must reach the central office.—An application to suppress the depositions taken upon a foreign commission, upon the ground that a partner of the commissioner appeared before him on the taking of the evidence as solicitor for one of the parties, was refused, without prejudice to objection at the trial. *Jackson v. Hughes*, 1 O. W. N. 478.—MASTER IN CHAMBERS.
6. Fresh Evidence Admitted by Divisional Court on Appeal—Mechanics' Liens—Preservation of Lien for Materials—Last Materials Delivered Charged by Mistake as "Extras"—Ma-

- terials Actually Delivered under Contract—Mistake of Book-keeper—Alteration of Judgment Pronounced, before being Drawn up—Con. Rule 498—Rule as to Admission of Fresh Evidence. *Rathbone v. Michael*, 1 O. W. N. 573, 20 O. L. R. 503.—C.A.
7. Fresh Evidence on Appeal. *Robinson v. Robinson*, 1 O. W. N. 185.—D.C.
8. *Motion to Quash Municipal By-law—Affidavits of Applicant and Another—Evidence in Answer — Admissibility—Relevancy—Public Health — Motion to Commit — Costs.*]—A Chinese laundryman carrying on business in a city moved to quash a by-law of the city council imposing a license fee of \$50 on laundrymen and prohibiting them from carrying on their business in a building having an inside door communicating with rooms used for eating or sleeping. The applicant and another Chinese laundryman made affidavits in support of the motion, in which they stated that they would not be able to continue in business if they had to pay the fee and live away from the laundry. The city corporation, in answer to the motion, proposed to shew, by the examination of the manager of an express company, what moneys the applicant and others had remitted to China, so as to contradict the affidavits as to the profits of the business. The manager refused to answer questions or produce the books and records of the company; and upon motion to commit him for contempt in so refusing:—*Held*, that, even if the evidence would be admissible on the issue raised by the affidavits, it would have so slight a bearing upon the question of the validity of the by-law as to be practically a negligible quantity. The real complaint was not against the \$50 license fee, but against the provision of the by-law rendering it necessary for laundrymen to live elsewhere than in their laundries. This was a provision to safeguard the public health, and the question of profits and continuing in business had practically no bearing upon it. And an appeal from an order refusing to commit the manager was dismissed, but without costs. *Re Pang Sing and City of Chatham*, 1 O. W. N. 238, 1003.—D.C.
9. *Witnesses—Credibility—Finding of Fact.*]—A trial tribunal has not the right, simply because it disbelieves a witness or set of witnesses, to find as proved the opposite of what is sworn to. *Rex v. Van Norman*, 19 O. L. R. 447, distinguished. *Gilbert v. Brown*, 1 O. W. N. 652.—D.C.

See Arbitration and Award—Boundary—Charge on Land—Company, 12, 26, 34—Contract, 6, 16, 19, 20, 26, 29, 35, 38, 39—Costs, 12—Covenant, 1—Criminal Law, 1, 2, 3, 5, 6, 7, 9, 17, 18, 19, 20, 21, 23, 29—Crown Patent—Damages, 1—Death, 1—Discovery — Fraud and Misrepresentation, 5—Fraudulent Conveyance, 1—Gift, 1, 2—Guaranty, 1—Highway, 5, 7—Husband and Wife, 2, 3, 4—Innkeeper—Insurance, 11—Judgment, 11—Liquor License Act, 5, 7, 13—Lunatic, 2, 4—Malicious Prosecution, 1—Master and Servant, 4, 9, 13—Mines and Minerals, 5—Mortgage, 1—Municipal Corporations, 9, 11, 12, 15, 34—Negligence, 2, 5, 6, 11—New Trial, 1, 2—Partnership, 5—Patent for Invention, 1, 2, 3—Pleading, 16—Principal and Agent, 1, 5, 6, 7, 10—Promissory Notes, 5, 10—Railway, 9, 10, 11, 12, 14, 16, 19, 21, 22—Sale of Goods, 5, 6, 7—Settlement of Action—Solitor, 2—Trusts and Trustees, 3, 4, 5, 7—Way, 2—Will, 32.

EXAMINATION OF JUDGMENT DEBTOR.

See Judgment Debtor.

EXAMINATION OF PARTIES.

See Defamation, 1—Discovery—Evidence, 1—Parties, 6.

EXCESSIVE DISTRESS.

See Landlord and Tenant, 9.

EXCHANGE OF LANDS.

See Contract, 17, 18—Fraud and Misrepresentation, 2—Vendor and Purchaser, 1.

EXECUTED CONTRACT.

See Municipal Corporations, 1.

EXECUTION.

1. Fi. Fa. Lands—Issue to Determine Ownership. *Lambert v. Dillon*, 1 O. W. N. 433.—FALCONBRIDGE, C.J.K.B.
2. Sale of Interests in "Oil Leases."—Goods or Lands—Construction of Leases — Incorporeal Hereditaments—Profit à Prendre. *Canadian Railway Accident Co. v. Williams*, 1 O. W. N. 991, 21 O. L. R. 472.—MEREDITH, C.J.C.P.

See Appeal, 9, 22—Company, 18, 19, 20—Contract, 38—Injunction, 2—Partnership, 3—Sheriff—Trusts and Trustees, 4.

EXECUTORS AND ADMINISTRATORS.

See Administration Order—Bills of Exchange—Devolution of Estates Act—Evidence, 1—Gift, 1, 2—Interpleader, 1—Payment—Succession Duty—Venue, 2—Will.

EXEMPTIONS.

See Assessment and Taxes, 3, 4—Railway, 3.

EXONERATION.

See Charge on Land.

EXPENDITURE.

See Contract, 17—Municipal Corporations, 28.

EXPERT TESTIMONY.

See Lunatic, 2, 4.

EXPRESS COMPANY.

See Railway, 3.

EXPROPRIATION.

See Municipal Corporations, 11—Railway, 7.

EXTRADITION.

See Evidence, 3.

FACTORIES.

See Assessment and Taxes, 4—Municipal Corporations, 3.

FACTORIES ACT.

See Insurance, 3—Master and Servant, 8.

FALSE IMPRISONMENT.

See Parties, 2—Trespass, 1.

FALSE REPRESENTATIONS.

See Crown Patent.

FARM CROSSING.

See Railway, 8.

FATAL ACCIDENTS ACT.

1. Apportionment of Amount of Judgment for Damages—Persons Entitled to Share—Workmen's Compensation Act—Payment into Court. *Christea v. Crown Reserve Mining Co.*, 1 O. W. N. 1126.—SUTHERLAND, J.
2. Death of Child of Four Years by Negligence of Defendants—Pecuniary Loss of Parent—Reasonable Expectation of Bene-

fit—Damages. *McKeown v. Toronto R. W. Co.*, 1 O. W. N. 3, 19 O. L. R. 361.—C.A.

See Negligence, 3.

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See Execution.

FIRE.

See Innkeeper—Landlord and Tenant, 1—Railway, 9—Trespass, 2.

FIRE INSURANCE.

See Insurance, 4.

FIREARMS.

See Negligence, 9.

FORECLOSURE.

See Chattel Mortgage, 1—Judgment, 4.

FOREIGN ADMINISTRATOR.

See Bills of Exchange.

FOREIGN COMMISSION.

See Costs, 12—Discovery, 4—Evidence, 2-5.

FOREIGN JUDGMENT.

See Discovery, 6—Judgment, 5, 6, 10—Stay of Proceedings.

FOREIGN LANDS.

See Costs, 5.

FOREIGN PARTY TO ACTION.

See Discovery, 2.

FOREIGNER.

See Criminal Law, 26.

FORFEITURE.

See Contract, 11, 27—Insurance, 6—Mines and Minerals, 2.

FORGERY.

See Criminal Law, 7—Malicious Prosecution, 3.

FORUM.

See Criminal Law, 24, 25 — Devolution of Estates Act, 2 — Venue, 5.

FRAUD AND MISREPRESENTATION.

1. Amendment. *Heatherley v. Knight*, 1 O. W. N. 396.—D.C.

2. Exchange of Properties — Misstatement as to Existence of Stable—Knowledge—Reliance on Statement — Damages — Costs. *McCabe v. Bell*, 1 O. W. N. 523.—D.C.
3. Promissory Notes—Contract—Breach of Warranty—Finding of Jury. *Agar v. Hogate*, 1 O. W. N. 970.—C.A.
4. Sale of Farm—Damages. *Clemens v. Compton*, 1 O. W. N. 659.—FALCONBRIDGE, C.J.K.B.
5. Sale of Fruit Farm—Misstatement of Vendor as to Number of Trees—Absence of Actual Fraud—Executed Contract—Rescission—Damages for Deceit—Evidence—Failure to Shew Contract Induced by Statements of Vendor. *Borrett v. Guesner*, 1 O. W. N. 231.—D.C.

See Benefit Society—Company, 3, 10, 11, 13, 14, 15, 26, 32 — Contract, 34, 37—Costs, 5—Damages, 5—Discovery, 6, 7—Free Grants and Homesteads Act, 1—Gift, 1—Infant, 3—Municipal Corporations, 31—Promissory Notes, 7, 11, 12—Trusts and Trustees, 1—Vendor and Purchaser, 4, 9.

FRAUDULENT CONVEYANCE.

1. Action to Set aside—New Trial—Evidence—Burden of Proof. *Canada Carriage Co. v. Lea*, 1 O. W. N. 71.—D.C.
2. Transfer of Property by Husband to Wife—Prosperous Financial Condition of Husband at Time of Transfer—Intention to Enter into Hazardous Business—Fear of Future Creditors—R. S. O. 1897 ch. 334—Fraudulent Intent. *Alexandra Oil and Development Co. v. Cook*, 1 O. W. N. 22.—D.C.

See Husband and Wife, 13.

FREE GRANTS AND HOMESTEADS ACT.

1. Agreement by Locatee to Sell Free Grant Land—Wife not Executing Agreement, though a Party to Negotiations—R. S. O. 1897 ch. 29, sec. 20—Enforcement of Agreement—Misrepresentations—Failure of Proof. *Asselin v. Aubain*, 1 O. W. N. 986.—RIDDELL, J.
2. Crown Grant—Reservation of Mines and Minerals—Sale by Patentee of Mineral Rights—8 Edw. VII. ch. 17, sec. 4, subsec. 3—Cancellation of Reservation—Construction—R. S. O. 1897 ch. 29, sec. 20—Wife of Patentee not Joining in Conveyance of Mineral Rights—Subsequent Conveyance of Land

with Bar of Dower — Appeal — Defendant Succeeding on Ground not Urged at Trial—Costs. *Austin v. Riley*, 1 O. W. N. 1049.—D.C.

FREEHOLDERS.

See Municipal Corporations, 26.

FRESH EVIDENCE.

See Evidence, 6, 7—New Trial, 1—Trusts and Trustees, 7.

FURTHER DIRECTIONS.

See Damages, 6—Judgment, 7.

GAMING.

See Contract, 21—Criminal Law, 30.

GAS COMPANY.

See Highway, 4—Parties, 1.

GIFT.

1. *Conveyance of Land — Deed — Action by Administrators of Donor to Set aside—Lack of Independent Advice—Absence of Power of Revocation—Evidence—Execution by Marksman—Witnesses—Fraud—Effect of Registration.*] — Action by the administrators of M. to set aside a conveyance of land by M. to the defendant, upon the grounds that it was prepared at the instance of the defendant and executed by M. without independent advice and without full and proper explanation; that it was not in fact his deed; and was procured by undue influence and fraud. There was no evidence of direct influence or of fraud, but M. was an old man, who could neither read nor write, and the evidence left it doubtful whether M. knew that he was putting his mark to a deed, and not to a will (for which he had given instructions) and whether the deed was ever read over or explained to him or not. There was no power of revocation. The conveyance was in effect a gift to the defendant:—*Held*, that the onus was upon the defendant to establish the perfect fairness of the transaction, and that the donor clearly understood what he was doing, and that onus had not been satisfied. The plaintiffs were, therefore, entitled to have the conveyance set aside and the registration thereof cancelled.—The registration is *prima facie* evidence of the execution as a fact, not that the grantor understood the same.—A strong inference against

the defendant ought to be drawn from the fact that he did not see fit to put in the box the witnesses who could have explained what took place when M. put his mark to the deed. *Trusts and Guarantee Co. v. Cook*, 1 O. W. N. 265. — CLUTE, J.

2. Money in Bank — Transfer to Joint Credit of Donor and Daughter—Death of Donor—Right of Daughter as Survivor—Claim of Executor of Donor—Issue—Evidence—Corroboration—R. S. O. 1897 ch. 73, sec. 10—Judgment Disposing of Issue—Con. Rule 1114—Costs. *Schwent v. Roetter*, 1 O. W. N. 749, 21 O. L. R. 112.—RIDDELL, J.

See Devolution of Estates Act, 1—Insurance, 5—Interpleader, 1—Will.

GOOD FRIDAY.

See Municipal Corporations, 22.

GOODWILL.

See Contract, 43.

GOVERNMENT RETURNS.

See Company, 24.

GRAIN TRANSACTIONS.

See Contract, 21.

GROSS NEGLIGENCE.

See Highway, 6—Railway, 13.

GUARANTY.

1. Consideration—Belief in Validity of Claim—Forbearance to Sue—Evidence. *Drewry v. Percival*, 1 O. W. N. 72, 19 O. L. R. 463.—D.C.

See also *S.C.*, 1 O. W. N. 564, 20 O. L. R. 489.—C.A.

2. Construction—Limitation to one Year—Release of Sureties—Extension of Time Given to Principal—Proof or Inference of Binding Agreement to Extend Period of Credit. *Pittsburg-Westmoreland Coal Co. v. Jamieson*, 1 O. W. N. 1102.—SUTHERLAND, J.

See Appeal, 14 — Company, 6 — Contract, 38 — Promissory Notes, 1.

HABEAS CORPUS.

Refusal—Appeal—Divisional Court—Jurisdiction. *Rex v. Akers*, 1 O. W. N. 585, 672; *Rex v. Graves*, 1 O. W. N. 973, 21 O. L. R. 329.

See Appeal, 18—Criminal Law, 12, 27—Liquor License Act, 4, 7.

HAWKERS.

See Municipal Corporations, 12, 34.

HIGH COURT OF JUSTICE.

See Appeal—Criminal Law, 24.

HIGHWAY.

1. Closing of Portion—By-law of Township—Original Road Allowance—Necessity for Confirmation by County Council—Highway Running along Bank of River—Necessity for Approval of Lieutenant-Governor in Council—Municipal Act, 1903, secs. 629, 632, 637, 660—Agreement—Right of Way over Portion of Road Closed—Deprivation of Access to Highway—Existence of Another Convenient Way — Damages—Compensation—Remedy by Arbitration. *Hanley v. Township of Brantford*, 1 O. W. N. 1121.—SUTHERLAND, J.
2. Dedication—Municipal By-law. *Township of Hay v. Bissonnette*, 1 O. W. N. 287.—D.C.
3. Nonrepair—Action by Ratepayer—Liability of Municipality to Repair. *Bouttete v. Township of Tilbury North*, 1 O. W. N. 623.—RIDDELL, J.
4. Nonrepair—Iron Pipe Left at Side of Road—Vehicle Upset and Occupants Thrown against Pipe—Upset not Caused by Condition of Road—Negligence—Contributory Negligence—Overcrowded Vehicle—Municipal Corporations — Gas Company—Liability. *Everitt v. Township of Raleigh*, 1 O. W. N. 717, 21 O. L. R. 91.—BOYD, C.
5. Nonrepair—Snow and Ice on Sidewalk—Dangerous Condition—Knowledge of Servants of Municipal Corporation—Weather Conditions—Evidence. *Bell v. City of Hamilton*, 1 O. W. N. 644, 784.—D.C.
6. Nonrepair—Snow and Ice on Sidewalk—Injury to Pedestrian—Municipal Corporation—Gross Negligence. *Joncas v. City of Ottawa*, 1 O. W. N. 737.—BRITTON, J.

7. Obstruction—Encroachment—Reservation in Crown Patents—Evidence—Surveys—Field-notes—Road Allowance Following Sinuosities of River—Injunction — Suspension — Time to Abate Nuisance. *Village of Lakefield v. Brown*, 1 O. W. N. 589.—D.C.
8. *Obstruction—Injury to Pedestrian — Liability of Municipal Corporation—Relief over against Third Party—Indemnity—Contractor or Servant.*] — The plaintiff was injured while walking at night upon the sidewalk of a street in a city by tripping over two pieces of scantling placed upon the sidewalk to protect a bit of cement 10 feet square, which had been put down to repair the sidewalk. A lighted lantern had been left at the spot, but it had gone out before the plaintiff came there. The plaintiff sued the municipal corporation for his injuries, and the corporation brought in P. as a third party, under sec. 609 of the Municipal Act. P. had been instructed by the defendants' engineer to repair the sidewalk; there was no written contract; he was in the habit of doing repairs for the defendants; he carried on the business of putting down cement walks and roads; he had his own plant, materials, and men, and paid his men for the work they did:—*Held*, upon the evidence, that the defendants were liable to the plaintiff for his injury, and that P. was liable over to the defendants. P. was a contractor and not a servant. *Reid v. City of Toronto*, 1 O. W. N. 450, 699.—D.C.
9. *Right of Company to Place Poles and Wires on Public Road—Statutory Authorisation—R. S. O. 1897 ch. 200—Municipal Corporation—Injunction—Mala Fides.*]—The plaintiffs alleged that the defendants, without leave or license, entered upon a highway in the township and erected and maintained a number of poles and strung wires thereon for the purpose of transmitting electricity from one town to another; and the plaintiffs claimed damages for the trespass, and asked for the removal of the poles and wires. The defendants were incorporated under the Ontario Companies Act to acquire and carry on the electric light and power plant operated at New Liskeard, etc.:—*Held*, that R. S. O. 1897 ch. 200 did not apply to a company having such broad and general powers as were contained in the charter of the defendants. The defendants were in the same position as any other company for commercial purposes. They had no right upon the streets or highways without having received legislative sanction, either directly, or indirectly through the action of properly auth-

orised municipal bodies.—It was alleged that the plaintiffs were taking these proceedings *mala fide* and in order to compel the payment of an extortionate rental:—*Held*, that the Court had no concern with the motives of the plaintiffs; when they came to the Court, they were entitled to their legal rights, no matter what motive induced them to assert such rights. *Township of Bucke v. New Liskeard Light Heat and Power Co.*, 1 O. W. N. 123.—D.C.

10. Way Substituted for Original Road Allowance—Payment—Presumption—Lapse of Time—By-law Establishing Deviation Road—User by Public—Dedication—Acquiescence. *McLean v. Township of Howland*, 1 O. W. N. 1036.—C.A.

See Injunction, 3—Municipal Corporations, 1, 4, 13, 29—Negligence, 3, 7—Particulars, 4—Parties, 1—Railway, 13—Street Railways, 1, 2—Trial, 1—Way.

HOLDING OUT.

See Partnership, 4, 5.

HOLIDAY.

See Municipal Corporations, 22.

HOMESTEAD.

See Free Grants and Homesteads Act.

HUSBAND AND WIFE.

1. *Alienation of Husband's Affections — Cause of Action.*]—An appeal by the plaintiff from an order of MAGEE, J., at the trial, striking out paragraph 2 of the statement of claim, which charged the defendant with enticing the plaintiff's husband from her, was dismissed, following *Lellis v. Lambert*, 24 A. R. 653. *Weston v. Perry*, 1 O. W. N. 155.—C.A.
2. Alimony—Cruelty—Evidence. *D. v. D.*, 1 O. W. N. 456.—MULOCK, C.J.Ex.D.
3. Alimony—Cruelty—Evidence—Quantum of Allowance. *Bugg v. Bugg*, 1 O. W. N. 939.—SUTHERLAND, J.
4. Alimony—Cruelty—Unfounded Suspicions—Injury to Health—Apprehension of Danger to Life—Evidence. *Cowie v. Cowie*, 1 O. W. N. 635.—C.A.
5. Alimony—Dismissal of Action—Costs. *Chesterfield v. Chesterfield*, 1 O. W. N. 298.—BRITTON, J.

6. Alimony—Interim Order—Amount — Income of Husband—Disbursements. *Bugg v. Bugg*, 1 O. W. N. 210.—MASTER IN CHAMBERS.
7. Alimony—Interim Order — Disbursements. *McCully v. McCully*, 1 O. W. N. 95, 187.—FALCONBRIDGE, C.J.K.B. (Chrs.)
8. Alimony—Interim Order — Disbursements — Agreement for Separation. *Beatty v. Beatty*, 1 O. W. N. 243.—MASTER IN CHAMBERS.
9. *Alimony—Wife Leaving Husband—Conditional Refusal to Return—Costs—Disbursements.*]—In an action for alimony it appeared that the plaintiff had voluntarily left the house where the defendant was living with his mother, and that she refused to return to him unless he guaranteed her a money allowance, which he said he was not in a position to do and refused to do. He had repeatedly offered in good faith to make a home for her if she would return unconditionally:—*Held*, that it could not be said that he was living apart from her without her consent; that, while insisting upon a guaranty, she could not be said to be calling upon him to resume marital relations; and that there was no ground for awarding alimony.—*Held*, also, that the plaintiff, although there was no ground for the action, was entitled to have the cash disbursements of her solicitor paid by the defendant. *Forster v. Forster*, 1 O. W. N. 93, 419.—D.C.
10. Alimony—Wife Living in Husband's House and being Supplied with Food—Refusal of Husband to Supply Clothing—Remedy. *Price v. Price*, 1 O. W. N. 977, 21 O. L. R. 454.—RIDDELL, J.
11. Marriage Contract—Quebec Law—Sum of Money Payable to Wife after Death of Husband—Right of Wife to Rank as Creditor upon Insolvent Estate of Deceased Husband—Construction of Contract—Onerous or Gratuitous—Consideration Renunciation of Dower — Insolvency — Intent to Defraud. *O'Reilly v. O'Reilly*, 1 O. W. N. 741, 21 O. L. R. 201.—C.A.
12. Marriage Settlement—Construction—Power of Appointment — Exercise by Will—General Devise and Bequest—Quebec Law—Domicile—Settlement Executed in Ontario. *Re Ross*, 1 O. W. N. 837.—LATCHFORD, J.
13. *Transactions between—Bona Fides—Sale of Husband's Lands to Defeat Creditors — Payment to Wife out of Purchase-*

money—Moneys Advanced to Wife—Unjust Preference — Amendment—Supposed Right to Dower—Payment to Obtain Bar—Following Notes or Proceeds—Rights of Creditors of Husband.]—In 1906 the plaintiff recovered judgment against the defendant J. C. for \$525 and costs. The defendant J. C. disposed of his farm and chattels to H., almost immediately after the trial of the action in which the judgment was recovered, for \$2,400 over and above the mortgages upon the farm, and \$993 for the chattels, leaving J. C. without property except the purchase-money. An action against J. C. and H. to set aside the sales was dismissed. The defendant E. C., the wife of J. C., joined in the deed to H. to bar her dower, and E. C. received from H. part of the purchase-price, three notes of \$200 each and one of \$100. The plaintiff brought this action against J. C. and E. C., alleging that E. C. received notes for \$700 from H., that this was done to defeat the plaintiff, and was in pursuance of a corrupt compact, and that E. C. gave no consideration for the notes; the prayer was that the notes should be applied to meet the plaintiff's claim. The trial Judge found that E. C. advanced to her husband, in 1902 or 1903, \$300; that she toiled hard upon the farm; that all parties believed that she had dower in the farm (although the mortgages were created before her marriage to J. C.); and that she positively refused to sign the deed to H. unless her claims were recognised; and that the making of notes for \$700 by H. to E. C. was in reality a payment to her of \$400 for barring her dower and a payment by J. C., through H., of \$300 which he owed his wife; that, of the \$300, \$200 was not an unjust preference, as it went to relieve a mortgage on the land, leaving \$100 which might be impeached under R. S. O. 1897 ch. 147, sec. 2 (2); but this action was not framed on the ground of fraudulent or unjust preference; and an amendment was refused:—*Held*, by a Divisional Court, on appeal, that an amendment was properly refused, but the judgment in this action should be without prejudice to a new action.—*Held*, also, following *Forrest v. Laycock*, 18 Gr. 611, that where a wife in good faith claims to be entitled to dower, and refuses to join in a conveyance without a reasonable compensation being made to her, a payment made to her by the purchaser to induce her to join in the conveyance is valid against the creditors of the husband.—*Judgment of Boyd, C.*, 1 O. W. N. 121, affirmed. *McDonald v. Curran*, 1 O. W. N. 389.—D.C.

See Deed, 6—Fraudulent Conveyance, 2—Free Grants and Homesteads Act—Insurance, 10—Parties, 4—Principal and Agent, 7—Sale of Goods, 1.

HYDRO-ELECTRIC POWER COMMISSION.

See Constitutional Law—Municipal Corporations, 6—Statutes.

HYPOTHECATION.

See Broker.

ILLEGAL DISTRESS.

See Damages, 7—Landlord and Tenant, 4, 9.

ILLEGITIMATE CHILDREN.

See Will, 6.

IMPRISONMENT.

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IMPROVEMENTS.

See Landlord and Tenant, 6—Mortgage, 7—Vendor and Purchaser, 4, 6—Will, 10.

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INDEMNITY.

See Contract, 8—Highway, 8—Insurance, 3—Parties, 9, 11—Promissory Notes, 11—Railway, 6.

INDEPENDENT ADVICE.

See Master and Servant, 4.

INDEPENDENT CONTRACTOR.

See Contract, 47—Highway, 8—Negligence, 2.

INDEPENDENT COVENANTS.

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INDIANS.

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INDUCING CHILD TO FORNIFICATE.

See Criminal Law, 8.

INFANT.

1. Action Brought in Name of Next Friend—Compromise—Payment of Sum to Solicitors—Neglect to Obtain Approval of

Court—Retention by Solicitors of Part for Costs—Payment of Part to Next Friend for Services—Ratification of Settlement by Infant at Majority — Claim against Solicitors and Next Friend—Payment into Court—Delivery and Taxation of Bill of Costs—Claim of Next Friend to be Subject of Action — Interest — Adjustment of Rights. *Vano v. Canadian Coloured Cotton Mills Co.*, 1 O. W. N. 763, 21 O. L. R. 144.—RIDDELL, J.

2. Allowance for Past Maintenance—Exceptional Circumstances. *Re Whitelaw*, 1 O. W. N. 851.—MIDDLETON, J. (Chrs.)
3. Contract—Fraudulent Representation as to Age—Benefit Obtained dehors the Contract — Equitable Relief — Estoppel. *Jewell v. Broad*, 1 O. W. N. 289, 20 O. L. R. 176.—D.C.
4. *Money in Court—Payment out to Testamentary Guardian — Will.*]—The amount of a legacy to an infant was paid into Court. The will directed that the amount of the legacy should be kept out at interest until the infant became of age and that it should be paid to the infant's father, who was "to be his guardian and to keep this money at interest:"—*Held*, that the money should not have been paid into Court, and, no danger of its misapplication being apprehended, that it should be paid out to the testamentary guardian. *Re McDougall Trusts*, 11 P. R. 494, applied and followed. *Re Dowling*, 1 O. W. N. 225.—TEETZEL, J. (Chrs.)

See Criminal Law, 1, 2, 3, 8—Fatal Accidents Act, 2—Insurance, 3—Liquor License Act, 12—Negligence, 3, 9—Will, 5, 23, 25.

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1. Contract—Sale of Shares—Company—Directors. *McComb v. Beck*, 1 O. W. N. 623.—SUTHERLAND, J.
2. Debtor Disposing of Property—Status of Creditor—No Judgment or Execution. *Lamont v. Wenger*, 1 O. W. N. 209.—FALCONBRIDGE, C.J.K.B.
3. Interim Order—Continuation—Highway. *Village of Colborne v. Giroux*, 1 O. W. N. 1083.—SUTHERLAND, J.
4. Interim Order—Contract—Timber. *Northern Lumber Co. v. Milne*, 1 O. W. N. 1099.—SUTHERLAND, J.

See Company, 3—Contract, 42—Covenant, 2—Highway, 7, 9—
Mines and Minerals, 2, 6—Municipal Corporations, 5, 29, 30
—Patent for Invention, 1, 3—Railway, 22—Receiver—Water
and Watercourses.

INNKEEPER.

Neglect to Provide Fire Escape in Bedroom—R. S. O. 1897 ch.
264, sec. 3—Death of Guest in Fire—Evidence as to Cause of
Death—Liability—Statutory Duty—Penalty. *Hagle v. La-*
plante, 1 O. W. N. 413, 20 O. L. R. 339.—MULOCK, C.J.Ex.D.

See *S.C.*, 1 O. W. N. 701.

See Municipal Corporations, 35.

INSANITY.

See Criminal Law, 12, 18—Insurance, 7—Lunatic.

INSOLVENCY.

See Assignments and Preferences — Company — Husband and
Wife, 11, 13—Landlord and Tenant, 1.

INSURANCE.

1. Accident Insurance—Disability—Payment of Claim for Short
Period—"Receipt in Full"—Release—Injuries Subsequently
Developing—Claim for Permanent Disability—Terms of Pol-
icy—Liability Confined to one Claim for one Accident. *Kent*
v. Ocean Accident and Guarantee Corporation, 1 O. W. N.
324, 20 O. L. R. 226.—C.A.
2. Accident Insurance—Locomotive Engineer — "Total and Per-
manent Loss of Sight"—Practical Loss of Sight—Construc-
tion of Rules of Benefit Society. *Copeland v. Locomotive*
Engineers Mutual Life and Accident Insurance Association
of Cleveland, Ohio, 1 O. W. N. 1089.—D.C.
3. Employers' Liability Insurance—Judgment Recovered by Work-
man against Employer—Indemnity—Condition—Employment
of Child under Fourteen—Knowledge of Employer—Evidence
—Factories Act—Workmen's Compensation for Injuries Act—
Estoppel. *Morton Co. Limited v. Ontario Accident Insurance*
Co., 1 O. W. N. 199.—LATCHFORD, J.
4. Fire Insurance—Builder's Risk—Building "in Course of Con-
struction." *Dodge v. York Fire Insurance Co.*, 1 O. W. N.
1098.—FALCONBRIDGE, C.J.K.B.

5. Life Insurance—Assignment of Policy to Stranger—Delivery—Gift—Intention—Revocation—Insurance Act, R. S. O. 1897 ch. 203, sec. 151, sub-secs. 3, 4, 5—Absolute Assignment not to be Construed as Designation of Beneficiary. *Wilson v. Hicks*, 1 O. W. N. 439, 1138, 21 O. L. R. 623.—D.C.
6. Life Insurance—Beneficiary Certificate—Condition—Compliance with Rules of Society — Change of Occupation — Failure to Notify Insurers—Amendment of Rules—Forfeiture of Benefits.]—In 1905 W. became a member of the defendant society, beneficiary department, and received a beneficiary certificate, which directed payment of \$1,000, in case of his death, to his wife, the plaintiff. He was then a carter, but later became a brakesman, without notice to the defendants, and was killed in a collision while a brakesman. In his application he agreed that compliance on his part with all the laws, regulations, and requirements enacted or which might thereafter be enacted by the society was the express condition upon which he was to be entitled to participate in the beneficiary fund, and this was recited in the certificate, and W. accepted the condition and agreed, for himself and those claiming through him and under the certificate, to be bound by it. The constitution, as enacted in 1908, separated holders of certificates into classes, a carter being in the ordinary class and a brakesman in the hazardous; it provided also that if a member changed his class he should notify the society, and his rating would be increased, and provided, in default of notice, for forfeiture of all benefits; and that, in case of death during the continuance of the forfeiture, the beneficiary should not be entitled to any benefit, notwithstanding continued payment of the ordinary class rates. W. changed his occupation, but did not notify the defendants, and went on until his death paying the lower rate:—*Held*, that the constitution of 1908 applied, and the defendants were not liable at all. *Wilson v. Sons of England Benefit Society*, 1 O. W. N. 144.—RIDDELL, J.
7. Life Insurance — Benefit Society — Beneficiary Member—Total Disability through Insanity—Failure to Pay Dues—Failure to Comply with Rules of Society—Total Disability Fund. *McCuaig v. Independent Order of Foresters*, 1 O. W. N. 166, 19 O. L. R. 613.—D.C.
8. Life Insurance — Payment of Premium — Default — Days of Grace—Extension by Conduct—Waiver. *Whitehorn v. Can-*

adian Guardian Life Insurance Co., 1 O. W. N. 114, 19 O. L. R. 535.—D.C.

9. Life Insurance — Policies Payable to Children of Assured—Change by Direction in Will—Appointment of Trustee to Receive Insurance Moneys—Validity of Payment to Trustee—Breach of Trust—Costs. *Dicks v. Sun Life Assurance Co.*, 1 O. W. N. 178, 461, 20 O. L. R. 369.—D.C.
 10. Life Insurance—Policy Payable to Wife of Assured—Declaration Indorsed on Policy—Effect of Will—Change of Beneficiary. *Re Earl*, 1 O. W. N. 1141.—MEREDITH, C.J.C.P.
 11. Life Insurance—Presumption of Death of Insured—Evidence—Proofs of Death—Insufficiency—Evidence on which Presumption Declared Obtained after Action—Premature Action—Return of Premiums—Pleading—Amendment—Statute of Limitations—Action not Commenced within 18 Months after Death—Ontario Insurance Act. *Somerville v. Aetna Life Insurance Co. of Hartford*, 1 O. W. N. 852, 21 O. L. R. 276.—MAGEE, J.
- See Benefit Society—Company, 27—Contract, 24—Landlord and Tenant, 1—Mechanics' Liens, 2—Mortgage, 7—Principal and Agent, 11—Promissory Notes, 6.

INTEREST.

See Broker, 1, 2—Charge on Land—Company, 20—Contract, 17, 18, 20, 34—Infant, 1—Mortgage, 3, 6, 7—Municipal Corporations, 11—Railway, 7—Will, 27, 28.

INTERNATIONAL LAW.

See Judgment, 5.

INTERPLEADER.

1. Money Deposited in Bank—Claim under Gift from Depositor—Survivorship — Claim by Executor of Depositor — Order for Trial of Issue—Security for Costs. *Roetter v. Canadian Bank of Commerce*, 1 O. W. N. 211.—MASTER IN CHAMBERS.
2. Money in Court — Intervening Claimants — Status — Issue. *Crane v. Moore*, *Eames v. McConnell*, 1 O. W. N. 471.—MASTER IN CHAMBERS.
3. Payment into Court—Discharge—Costs. *Fraser v. Grand Trunk R. W. Co.*, 1 O. W. N. 469, 659.—D.C.

4. Stakeholder—Payment into Court—Stay of Action. *Crane v. Moore, Eames v. McConnell*, 1 O. W. N. 417.—MASTER IN CHAMBERS.

See Partnership, 3.

INTERPRETATION ACT.

See Municipal Corporations, 21.

INTERPRETER.

See Discovery, 2.

INTOXICATING LIQUORS.

See Criminal Law, 22—Liquor License Act—Municipal Corporations, 14-23, 33—Venue, 1.

INTOXICATION.

See Criminal Law, 16, 17, 20.

JOINDER OF PARTIES.

See Parties.

JOINT CONTRACTORS.

See Contract, 22.

JOINT NEGLIGENCE.

See Master and Servant, 6—Negligence, 10.

JOINT TENANTS.

See Will, 10.

JUDGMENT.

1. *Amendment after Passing and Entry—Practice.*]—The judgment at the trial, as pronounced, declared that a partnership existed between the plaintiff and defendant, but in drawing up the judgment the partnership was in terms limited to a certain block of land, which was not intended:—*Held*, that the judgment should be amended, after passing and entry, so as to conform to the judgment as pronounced. *Ainsworth v. Wilding*, [1896] 1 Ch. 673, followed. *Mitchell v. Sparling*, 1 O. W. N. 297.—RIDDELL, J.
2. Default Judgment—Motion to Set aside. *George v. Strong*, 1 O. W. N. 208.—MASTER IN CHAMBERS.
3. Default Judgment—Motion to Set aside—Discretion—Appeal. *Marks v. Michigan Sulphide Fibre Co.*, 1 O. W. N. 208.—MEREDITH, C.J.C.P. (Chrs.)

4. Foreclosure—Action to Set aside — Irregularities — Waiver by Delay—Purchaser—Trustee under Marriage Settlement—Redemption — Improvement in Value of Property — Lapse of Time—Equitable Discretion of Court. *Hazel v. Wilkes*, 1 O. W. N. 1096.—TEETZEL, J.
5. *Foreign Judgment—Action on—Defence—Jurisdiction—Domicile—Judgment of Court of Canadian Province—International Law.*]—In an action upon a judgment for the recovery of money obtained by the plaintiff in 1908 in the Supreme Court of British Columbia the defence was that that Court had no jurisdiction in respect of the subject-matter of the action in which the judgment was obtained, as the defendants were not at any time resident or domiciled in British Columbia, and they did not appear or consent to jurisdiction; that the cause of action did not arise in British Columbia; and that the action was barred by the Statute of Limitations in force in Ontario, where the defendants resided. The plaintiff first recovered judgment in British Columbia in 1889, and the judgment of 1908 was upon the same cause of action, for money lent:—*Held*, that the plaintiff was in no better position than if the action was upon the judgment recovered in 1889 or upon the original cause of action; the binding effect of the judgment sued upon depended on the rules of international law; and, the defendants not having been domiciled or resident in British Columbia when served with the writ of summons, the judgment must be treated as a nullity. *Brennan v. Cameron*, 1 O. W. N. 430.—D.C.
6. Foreign judgment—Action on—Regularity of Judgment—Submission to Jurisdiction—Defences to Original Cause of Action not Open. *Metropolitan Trust and Savings Bank v. Osborne*, 1 O. W. N. 785.—C.A.
7. Further Directions—Scope of—Action for Possession of Land—Declaration that Defendant Entitled to Specific Performance of Agreement to Convey Land in Question—Costs. *Hislop v. Lester*, 1 O. W. N. 197.—D.C.
8. Reference for Trial—Report—Motion for Judgment—Practice—Costs. *Upper Ontario Steamboat Co. v. Cahill*, 1 O. W. N. 679.—MEREDITH, C.J.C.P.
9. Summary Judgment — Con. Rule 603—Account — Reference—Counterclaim. *Gunns Limited v. Cochrane*, 1 O. W. N. 419.—MASTER IN CHAMBERS.

10. Summary Judgment — Con. Rule 603 — Action on Foreign Judgment—Defence. *Johnston v. Occidental Syndicate*, 1 O. W. N. 367.—MASTER IN CHAMBERS.
11. Summary Judgment—Con. Rule 603—Action on Promissory Notes—Defence—Conflict of Evidence—Complicated Transactions — Unconditional Leave to Defend. *Northern Crown Bank v. Yearsley*, 1 O. W. N. 655.—BOYD, C. (Chrs.)
12. *Summary Judgment—Con. Rule 603—Affidavit in Answer—Cross-examination—Enlargement of Motion—Con. Rule 490—Discretion—Appeal.*—An application under Con. Rule 603 for judgment is a summary application, and should be given effect to only in a plain case. Upon such an application it is incumbent upon the defendant, by affidavit or otherwise, to satisfy the Judge hearing the application that he has a good defence to the action on the merits, or has disclosed such facts as may be deemed sufficient to entitle him to defend.—And where a Local Judge, in the exercise of his discretion, has given leave to defend, an appeal will not in general be allowed: *Papayanni v. Coutpas*, [1880] W. N. 109.—But the question whether a Judge has or has not a discretion to grant or refuse an enlargement of the motion for the purpose of allowing the plaintiff to cross-examine the defendant upon his affidavit is one of sufficient importance to justify an appeal.—Under Con. Rule 490 a Judge has no discretion, but must grant the enlargement. *Kingsley v. Dunn*, 13 P. R. 300, and *Townsend v. Hunter*, 3 C. L. T. 310, followed.—An appeal from an order of a Local Judge refusing an enlargement, and giving the defendant leave to defend, was allowed, and the motion referred back to the Local Judge to dispose of it after cross-examination of the defendant. *Morrison v. Wright*, 1 O. W. N. 727.—SUTHERLAND, J. (Chrs.)
13. Summary Judgment—Con. Rule 603—Affidavits in Support of Motion—Solicitors—Information and Belief. *Great West Life Assurance Co. v. Shields*, 1 O. W. N. 393.—MASTER IN CHAMBERS.
14. Summary Judgment—Con. Rule 603—Defence not Raised on First Affidavit—Leave to Use Second—Costs. *McPhillips v. Stevenson*, 1 O. W. N. 940.—MASTER IN CHAMBERS.
15. Summary Judgment — Con. Rule 603 — Lease—Company—Directors—Estoppel—Leave to Defend as to Part of Claim.

- Eckhardt v. Henderson Roller Bearing Co.*, 1 O. W. N. 859, 894.—MEREDITH, C.J.C.P. (Chrs.)
16. Summary Judgment—Con. Rule 603—Mortgage Covenant—Defence—Mortgage Given to Stifle Prosecution. *Williams v. Kehr*, 1 O. W. N. 210.—MASTER IN CHAMBERS.
17. Summary Judgment — Con. Rule 603 — Promissory Notes—Leave to Defend. *Niles v. Chrysler*, 1 O. W. N. 895, 940.—BOYD, C. (Chrs.)
18. Summary Judgment—Con. Rule 603—Motion for—Affidavit in Reply—Refusal to Allow Cross-examination on—Appeal—Case Remitted to Court below—County Courts Act, sec. 54. *Farmers Bank v. Big Cities Realty and Agency Co.*, 1 O. W. N. 397.—D.C.
19. Summary Judgment—Con. Rule 603—Partnership—Amendment—Parties. *White v. Lorne*, 1 O. W. N. 134.—BRITTON, J. (Chrs.)
20. Summary Judgment—Con. Rule 603—Possession of Land—Defence—Agreement for Occupation. *Gillies v. Mansell*, 1 O. W. N. 152.—MASTER IN CHAMBERS.
21. Summary Judgment — Con. Rule 603 — Promissory Note—Action on—Defence—Unconditional Leave to Defend. *Dominion Bank v. Toronto Mica Co.*, 1 O. W. N. 893.—MASTER IN CHAMBERS.
22. Summary Judgment—Con. Rule 603—Special Indorsement of Writ of Summons—Defence. *Stokes v. Reynolds*, 1 O. W. N. 1051, 1099.—SUTHERLAND, J.
23. Summary Judgment—Con. Rule 603—Unconditional Leave to Defend. *McPherson v. McGuire*, 1 O. W. N. 210.—FALCONBRIDGE, C.J.K.B. (Chrs.)
24. Summary Judgment — Con. Rule 616 — Appeal — Leave to Amend and Counterclaim—Terms—Variation on Further Appeal—Costs. *Auerbach v. Hamilton*, 1 O. W. N. 109, 19 O. L. R. 570.—C.A.
25. Terms of Judgment—Release—Claim for Chattels. *Hanna v. Hanna*, 1 O. W. N. 393.—FALCONBRIDGE, C.J.K.B.

See Appeal, 23—Assessment and Taxes, 4—Company, 18, 19, 20—Chattel Mortgage, 1—Contract, 22—Covenant, 1—Discovery, 6—Division Courts, 1—Estoppel—Evidence, 6—Injunction, 2—Insurance, 3—Master's Report—Money Lent—Mortgage, 2, 5—Parties, 3—Partnership, 4—Pleading, 3—Stay of Proceedings—Street Railways, 6—Vendor and Purchaser, 4.

JUDGMENT DEBTOR.

Examination—Concealment of Property—Unsatisfactory Answers—Committal—Leave to Apply for Discharge. *Campbell v. Ellman*, 1 O. W. N. 998.—MIDDLETON, J. (Chrs.)

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

See Appeal, 2, 22, 23.

JUDICIAL SALE.

Report on Sale—Application to Set aside—Inadequacy of Price—Irregularities—Rights of Purchaser. *Cousins v. Cousins*, 1 O. W. N. 995.—BRITTON, J.

See Lunatic, 5.

JURISDICTION.

See Appeal, 16, 18, 21—Benefit Society—Costs, 5, 6, 7, 13—Criminal Law, 22, 27—Death 2, 3—Division Courts—Drainage Referee—Habeas Corpus—Judgment, 5, 6—Landlord and Tenant, 7—Liquor License Act, 3, 4, 11—Local Judge—Mines and Minerals, 7—Municipal Corporations, 8—Parties, 3—Payment into Court—Railway, 7—Settled Estates Act, 2—Street Railways, 9—Trusts and Trustees, 8—Will, 31—Writ of Summons.

JURY.

See Appeal, 3—Criminal Law, 16, 17, 18, 21, 26—Damages, 1—Division Courts, 1—Fraud and Misrepresentation, 3—Lunatic, 2—Malicious Prosecution—Master and Servant, 5, 9, 12—Negligence, 2, 5—New Trial, 2—Principal and Agent, 1—Railway—Street Railways—Way, 1.

JURY NOTICE.

See Appeal, 14—Trial.

JUSTICES OF THE PEACE.

See Costs, 8—Criminal Law—Liquor License Act, 3, 4, 10—Municipal Corporations, 12.

KEEPING COMMON BETTING PLACE.

See Criminal Law, 9.

LACHES.

See Company, 11—Trusts and Trustees, 6—Water and Water-courses.

LAND TITLES ACT.

Registration—Construction of Deed—Division Line—Intention of Parties. *Re Casci and Hill*, 1 O. W. N. 1083.—SUTHERLAND, J. (Chrs.)

See Vendor and Purchaser, 4.

LANDLORD AND TENANT.

1. Assignment for Benefit of Creditors—Preferential Lien—Landlord and Tenant Act, R. S. O. 1897 ch. 170, sec. 34—Destruction of Tenant's Goods by Fire after Assignment—Substitution of Insurance Moneys for Goods in Hands of Assignee. *Miller v. Tew*, 1 O. W. N. 269, 20 O. L. R. 77.—D.C.
2. Distress—Removal of Goods by Bailiff—Agreement to Store for Tenant—Abandonment of Distress—Rights of Chattel Mortgagee. *Gosnell v. McTamney*, 1 O. W. N. 832.—D. C.
3. *Duty of Landlord to Repair—Covenant in Lease—Stranger Injured by Reason of Nonrepair—Notice—Possession by Tenant—Constructive Possession by Landlord.*—The plaintiff was injured, when a guest in a hotel owned by the defendant, owing to the floor of a verandah being out of repair and in a dangerous condition. The hotel was occupied by W. under a lease from the defendant, which contained a covenant on the part of the lessee to repair, "except outside repairs," and that the lessee will repair according to notice:—*Held*, that the exception in the lease as to outside repairs had not the effect of a covenant on the part of the defendant to make outside repairs; but, even if the lease had contained an express covenant on the part of the defendant to make outside repairs, and he was in default in making them, after notice of the want of repair, before the plaintiff was injured, the plaintiff was not entitled to recover, he being a stranger to the covenant, and the covenant not having the effect of putting the defendant in constructive possession of the premises. *Cavalier v. Pope*, [1906] A. C. 428, followed. *Marcille v. Donnelly*, 1 O. W. N. 195.—MEREDITH, C.J.C.P.

4. Illegal Distress—R. S. O. 1897 ch. 342, sec. 18 (2)—Damages—Double Value of Goods—Costs—Counterclaim—Set-off. *Webb v. Box*, 1 O. W. N. 112, 317, 19 O. L. R. 540, 20 O. L. R. 220.—D. C.—C. A.
5. Landlord Undertaking to Procure Sub-tenant—Vacant Premises—Temporary Letting by Landlord—Acts not Amounting to Evidence—Lease not Terminated. *Mickleborough v. Strathy*, 1 O. W. N. 846, 21 O. L. R. 259.—TEETZEL, J.
6. Lease—Repudiation by Tenant—Reletting by Landlord not an Eviction—Treating Contract as Terminated—Damages—Computation—Rent—Taxes—Improvements. *Fitzgerald v. Mandas*, 1 O. W. N. 878, 21 O. L. R. 312.—RIDDELL, J.
7. *Overholding Tenants Act—Termination of Tenancy—Demand of Possession—Necessity for—Jurisdiction of County Court Judge—Determination of Disputed Question of Fact.*] — An order made by a District Court Judge under the Overholding Tenants Act for the issue of a writ for the delivery of possession of demised premises by the tenant to the landlord, was removed into the High Court, and set aside by a Divisional Court, because of the absence of a demand of possession after the tenancy was determined, which was necessary to give jurisdiction under the Act, following *Re Grant and Robertson*, 8 O. L. R. 297.—A County or District Court Judge has jurisdiction under the Act to determine questions of fact, and when the facts are determined by him in favour of the landlord, the case comes under the true intent and meaning of sec. 3. *Re Graham and Yardley*, 14 O. W. R. 30, followed. *Re Fee and Adams*, 1 O. W. N. 812.—D. C.
8. Possession after Expiry of Lease—Rent—Treaty for New Lease—Tenancy at Will. *St. George Mansions v. King*, 1 O. W. N. 501.—D. C.
9. Provision in Lease for Rebate—Distress for Rent Reserved without Making Rebate—Tenant's Remedy — Replevin — Action on Covenant — Pleading — Excessive Distress — Statute of Marlbridge—Damages—Counterclaim for Rent—Terms of Letting—Costs. *Hessey v. Quinn*, 1 O. W. N. 515, 1039, 20 O. L. R. 442, 21 O. L. R. 519.—D. C.
10. Unsanitary Condition of Dwelling-house—Right of Tenant to Repudiate Tenancy—Remedying Defects—Findings of Fact

of Trial Judge—Reversal on Appeal. *Gordon v. Goodwin*, 1
O. W. N. 391, 20 O. L. R. 327.—D. C.

See Judgment, 15, 20—Negligence, 13.

LEASE.

See Deed, 3, 4—Devolution of Estates Act, 2—Judgment, 15—
Landlord and Tenant—Mines and Minerals, 2—Mortgage, 9.

LEAVE AND LICENSE.

See Pleading, 4.

LEAVE TO APPEAL.

See Appeal.

LEGACY.

See Venue, 2—Will.

LEGAL FRAUD.

See Benefit Society.

LIBEL.

See Appeal, 20 — Costs, 10, 11—Defamation — Liquor License
Act, 11—Parties, 5—Pleading, 7.

LICENSE.

See Contract, 12—Deed, 3, 4—Liquor License Act—Mines and
Minerals—Municipal Corporations, 12, 34—Pleading, 17.

LICENSE COMMISSIONERS.

See Venue, 1.

LICENSE INSPECTOR.

See Liquor License Act, 9, 11.

LICENSEE.

See Negligence, 2—Railway, 12, 13.

LIEN.

See Charge on Land—Company, 11, 36—Costs, 4—Landlord and
Tenant, 1—Mechanics' Liens—Mortgage, 7 — Vendor and
Purchaser, 4, 6.

LIEUTENANT-GOVERNOR IN COUNCIL.

See Highway, 1—Statutes.

LIFE ESTATE.

See Charge on Land—Will.

LIFE INSURANCE.

See Insurance, 5-11.

LIMITATION OF ACTIONS.

Real Property Limitation Act—Title to Land—Action to Establish.
Forrest v. Turnbull, 1 O. W. N. 150.—D. C.

See Charge on Land—Contract, 36 — Deed, 1 — Devolution of Estates Act, 1—Easement — Insurance, 11 — Quieting Titles Act—Railway, 8—Water and Watercourses—Will, 10, 30.

LIQUIDATED DAMAGES.

See Covenant, 2—Municipal Corporations, 3.

LIQUIDATOR.

See Company, 21, 22, 37—Contract, 32.

LIQUOR LICENSE ACT.

1. Conviction—Amendment—Sec. 105. *Rex v. Leonard*, 1 O. W. N. 415.—CLUTE, J. (Chrs.)
2. Conviction—Importation of Ale into Local Option District—Sale—Agent—Ale Shipped by Brewers from outside the District. *Rex v. Montgomery*, 1 O. W. N. 30.—BOYD, C. (Chrs.)
3. Conviction—Imprisonment—Period of Detention — Blank in Summons—Direction as to Payment of Costs—Sufficiency—Information Taken by Police Magistrate—Summons Returnable before himself or other Justices—Jurisdiction—Request of Police Magistrate — R. S. O. 1897 ch. 87, sec. 22.]—A motion by the defendant for a *habeas corpus*, with a view to an application for discharge from custody under a warrant of commitment issued pursuant to a conviction for an offence against the Liquor License Act, was refused, and the various grounds urged in support of the application were discussed by BOYD, C. The writ was subsequently granted by a Divisional Court. *Rex v. Akers*, 1 O. W. N. 585, 672.—D.C. (For the explanation of the action of the Divisional Court, see *Rex v. Graves*, 1 O. W. N. 973, 21 O. L. R. 329. See also *Rex v. Ackers*, 1 O. W. N. 780, 21 O. L. R. 187.)
4. Conviction—Jurisdiction of Justices of the Peace—Information Laid before and Summons Issued by Police Magistrate—Oral Request to Justices to Act—Jurisdiction not Appearing on

- Face of Conviction—Warrant of Commitment—Imprisonment—Habeas Corpus—Amendment of Conviction under sec. 105—Other Defects in Warrant—Costs of Conveying to Gaol. *Rex v. Ackers*, 1 O. W. N. 780, 21 O. L. R. 187.—D.C.
5. Conviction—Keeping for Sale—Chinese Wines—Evidence. *Rex v. Sam Lee Hing*, 1 O. W. N. 806.—MIDDLETON, J. (Chrs.)
6. Conviction—Motion to Quash—Remedy by Appeal—Refusal of Magistrate to Adjourn. *Rex v. Major*, 1 O. W. N. 223.—FALCONBRIDGE, C.J.K.B. (Chrs.)
7. Conviction—Warrant of Commitment—Interlineation—Previous Conviction—Police Magistrate—Evidence—“Unlawful Sale”—Charges for Conveying to Gaol—Amendment of Conviction—Habeas Corpus—Motion for Discharge—Appeal. *Rex v. Graves*, 1 O. W. N. 787, 973, 21 O. L. R. 329.—D.C.
8. Conviction for Second Offence—Amendment of sec. 72 after First Conviction—Change in Penalty for First Offence—Interpretation of Statutes—Refusal of Judge to Discharge Defendant—Right of Appeal to Divisional Court—Rule 777—Proof of Previous Conviction—Procedure at Trial before Police Magistrate—Failure to Comply with R. S. O. 1897 ch. 245, sec. 101. *Rex v. Teasdale*, 1 O. W. N. 398, 486, 20 O. L. R. 382.—D.C.
9. *Convictions for First and Second Offences—Quashing of First—Amendment of Second—Scope of sec. 101 (5)—New Conviction—Form—Penalty—Costs—Sec. 86—Criminal Code, sec. 735—Discretion of Magistrates—License Inspector—Prosecutor—Sec. 94—Term of Imprisonment—“Thirty Days”—“One Month”—Amendment—Criminal Code, sec. 146.]—*The defendant was convicted of a first offence of selling liquor without a license, and also of a second offence. The first conviction was quashed for illegality, and that left the other conviction in effect one for a first offence:—*Held*, that, under sec. 101 (5) of the Liquor License Act, R. S. O. 1897 ch. 245, the second conviction could be amended so as to make it appropriate to a first offence; that sub-section is not limited to cases where the quashed conviction has been made by a County Court Judge on appeal; the language is wide enough to cover every case where a first conviction has been legally avoided.—*Held*, also, on a motion to quash the second conviction as amended, that the manner of making the amendment was only a matter of form, and it was no objection that the magistrates had drawn

up a new conviction, instead of amending the old one, both being returned.—*Held*, also, that, it was no objection that the magistrates had imposed a penalty of \$45 and costs, though that was the same penalty as for the assumed second conviction. By sec. 86, the penalty for a first offence is not less than \$20 “besides costs,” and not more than \$50 “besides costs.” By that costs are accessory to the penalty, and the power to give costs is not withheld, though sec. 101(5) speaks only of “penalty or punishment.” It could not be said that \$45 was not an appropriate penalty for the offence; and by the Criminal Code, sec. 735, the magistrates, in their discretion, had power to order the payment of costs.—*Held*, also, that it was no objection that the information was laid by the license inspector for a district other than that in which the sale was made; by sec. 94 of the Act, any person may be the prosecutor.—*Held*, also, that the imposition of “thirty days” imprisonment in case of default in payment of fine and costs, instead of one month, as provided by sec. 86, was not fatal to the conviction, the error being amendable under 2 Edw. VII. ch. 12, sec. 15 (O.), introducing the provisions of the Criminal Code, 1892, sec. 889 of which is applicable to an excess in punishment. *Regina v. Spooner*, 32 O. R. 451, referred to. *Regina v. Gavin*, 30 N. S. R. 162, distinguished. *Rex v. Rudolph*, 1 O. W. N. 1057.—BOYD, C. (Chrs.)

10. Information for two Offences on same Day—Conviction on one Charge—Evidence—Minute of Justices—Informant not Residing in County. *Rex v. Dunkley*, 1 O. W. N. 861.—MIDDLETON, J. (Chrs.)
11. License Inspector — Notice not to Supply Intoxicating Liquor to Plaintiff—Liquor License Act, sec. 125—Information by Person not within Statute—Unwarrantable Notice—Defamation—Injury to Business—Liability for Innocent Act—Notice of Action—R. S. O. 1897 ch. 88—“Unlawfully”—“Maliciously”—Public Officer Exceeding Jurisdiction. *Piggott v. French*, 1 O. W. N. 715, 21 O. L. R. 87.—BOYD, C. *
12. Magistrate’s Conviction for Selling Liquor to Minor—7 Edw. VII. ch. 46, sec. 8—Appeal to County Court Judge—Trial de Novo—Absence of Evidence that Person Supplied Apparently a Minor—Knowledge of Accused—Conviction Quashed. *Rex v. Farrell*, 1 O. W. N. 1045, 21 O. L. R. 540.—D.C.

13. *Municipal By-law Limiting Number of Licenses — Time of Operation — Repeal of Former By-law—Restriction—Evidence —Shop Licenses—Delay in Attack.*]—A township by-law passed on the 11th January, 1909, enacted “that the number of licenses for the sale of spirituous liquors be limited to three:”—*Held*, that the restriction began to operate for the next license year, beginning on the 1st May ensuing, and so on until it was altered or repealed.—The by-law previously in force, passed in 1890, restricted the tavern licenses to seven:—*Held*, that it was not necessary to repeal the previous by-law in terms; the new by-law being inconsistent, had the effect of repealing the old one.—It was objected, that the by-law was vague because it did not specify that it applied to taverns only; but it appeared by evidence given at the trial of an action to declare the by-law void that there were no licenses other than tavern licenses in the township:—*Held*, that the by-law was warranted by sec. 20 of the Liquor License Act, R. S. O. 1897 ch. 245, and could not have been enacted under sec. 32; *id certum est quod certum reddi potest.*—Delay in attacking the by-law commented on. *Bourgon v. Township of Cumberland*, 1 O. W. N. 1012.—BOYD, C.
- See Appeal, 18—Municipal Corporations, 14-23, 33—Venue, 1.

LIS PENDENS.

Failure to Prosecute Action—Writ of Summons not Served and not Renewed—Dismissal of Action. *Lyon v. Marks*, 1 O. W. N. 836.—MASTER IN CHAMBERS.

LOCAL BOARD OF HEALTH.

See Public Health Act.

LOCAL IMPROVEMENTS.

See Municipal Corporations, 13.

LOCAL JUDGE.

1. Jurisdiction—Provisional Judicial District—Creation of New District—Rules 45, 47, 48, 76—Appeal to Judge of High Court in Chambers. *Mackenzie Mann Co. v. Scott*, 1 O. W. N. 446.—SUTHERLAND, J. (Chrs.)
2. Jurisdiction—Solicitors not Residing in County—Agreement. *Sproal v. Sproal*, 1 O. W. N. 135.—FALCONBRIDGE, C.J.K.B. (Chrs.)

See Parties, 3—Writ of Summons, 5.

LOCAL MASTER.

See Administration Order—Reference.

LOCAL OPTION.

See Liquor License Act, 2—Municipal Corporations, 14-23.

LOCK-UP.

See Municipal Corporations, 27.

LORD CAMPBELL'S ACT.

See Fatal Accidents Act.

LORD'S DAY ACT.

See Municipal Corporations, 35.

LOSS OF PROFITS.

See Municipal Corporations, 4.

LUNATIC.

1. Action Brought in Name of Alleged Lunatic, by Next Friend—Motion by Nominal Plaintiff to Dismiss Action—Action to Declare Marriage Ceremony Void—Inquiry as to Mental Condition of Plaintiff—Issues Directed to be Tried—Parties—Statutory Inquiry—Stay of Action—Undertaking by Next Friend to Proceed for Declaration of Lunacy. *Fraser v. Robertson*, 1 O. W. N. 800, 843, 894.—D.C.
2. *Application for Declaration of Lunacy—Conflict of Evidence—Expert Testimony—Number of Witnesses—Evidence Act, sec. 10—Issue—Lunacy Act, secs. 6, 7—Jury—Costs.*]—Upon an application under sub-sec. 1 of sec. 6 and sub-secs. 1 and 5 of sec. 7 of the Lunacy Act, 9 Edw. VII. ch. 37, for an order declaring F. to be a lunatic, the Court, the evidence being conflicting, directed an issue to try the alleged lunacy.—Section 10 of the Evidence Act, 9 Edw. VII. ch. 43, applies to the calling and examination of witnesses at a trial; upon an application such as this, any number of affidavits of medical experts might be received.—Under sub-sec. 2 of sec. 7 of the Lunacy Act, it was ordered that the issue should be tried without a jury, unless the alleged lunatic should demand a jury in the manner mentioned in sec. 8, and the trial Judge should so order.—Costs of the application to be disposed of by the trial Judge. *Re Fraser*, 1 O. W. N. 1105.—SUTHERLAND, J. (Chrs.)

3. Committee—Bond—Action to Recover Debt. *Re Hortop*, 1 O. W. N. 399.—MIDDLETON, J. (Chrs.)
 4. Order Declaring Lunacy—Petition to Supersede—Evidence—Supplementing — Practice — Appointment of Expert. *Re Robinson*, 1 O. W. N. 893.—MIDDLETON, J. (Chrs.)
 5. Sale of Land—Confirmation—9 Edw. VII. ch. 37, sec. 16 (a). *Re Beard*, 1 O. W. N. 807.—MIDDLETON, J.
- See Criminal Law, 12—Insurance, 7—Will, 26.

MAINTENANCE.

See Infant, 2—Mortgage, 9—Will, 23, 25.

MAINTENANCE OF BRIDGE.

See Municipal Corporations, 24.

MALICE.

See Defamation.

MALICIOUS PROSECUTION.

1. Defendants not Responsible for Prosecution—Nonsuit—Malicious Issue and Execution of Search Warrant—Advice and Direction of Solicitor and Crown Attorney—All Facts not Laid before Advisers—Conflict of Evidence—Question for Jury—New Trial. *Willinsky v. Anderson*, 1 O. W. N. 13, 19 O. L. R. 437.—D.C.
2. Issue and Enforcement of Search Warrant—Favourable Termination of Proceedings—Reasonable and Probable Cause—Jury—Misdirection—Nondirection—New Trial—Malice—Indirect Motive—Counterclaim—Order for Payment of Money—Acceptance—Liability. *Richards v. Joynt*, 1 O. W. N. 1065.—D.C.
3. Separate Prosecutions for Forgery and Theft—Reasonable and Probable Cause—Undisputed Facts—Question for Judge, not for Jury—Determination by Court on Appeal. *Ford v. Canadian Express Co.*, 1 O. W. N. 119, 1117, 21 O. L. R. 585.—D.C.

MANAGING DIRECTOR.

See Company, 1.

MANDAMUS.

See Assessment and Taxes, 4—Company, 17—Division Courts, 2—Municipal Corporations, 2—Public Health Act.

MANSLAUGHTER.

See Criminal Law, 16, 17, 18, 20.

MANUFACTURING COMPANY.

See Municipal Corporations, 3.

MANUSCRIPT.

See Contract, 4.

MARRIAGE.

See Contract, 36—Lunatic, 1—Will, 29.

MARRIAGE CONTRACT.

See Husband and Wife, 11, 12—Judgment, 4.

MASTER AND SERVANT.

1. Contract of Hiring — Wrongful Dismissal — Engagement for One Year — Payment of Wages Weekly — Yearly Hiring — Scale of Costs—County Courts Act, 10 Edw. VII. ch. 30. *Noble v. Gunn Limited*, 1 O. W. N. 884.—RIDDELL, J.
2. Dismissal of Servant—Justification—Confidential Relationship — Domestic Duties—Immoral Conduct of Servant. *Denham v. Patrick*, 1 O. W. N. 452, 20 O. L. R. 347.—D.C.
3. Injury to Servant—Negligence—Dangerous Machine—Knowledge of Master. *Bennie v. Verrall*, 1 O. W. N. 222.—TEETZEL, J.
4. Injury to Servant—Negligence—Lump of Coal Falling from Tender of Train—Res Ipsa Loquitur—Evidence—Findings of Trial Judge—Release—Invalidity—Absence of Independent Advice—Misunderstanding. *O'Brien v. Michigan Central R. Co.*, 1 O. W. N. 345, 19 O. L. R. 345.—C.A.
5. Injury to Servant—Negligence—Tramway—Workmen's Compensation for Injuries Act—Persons Intrusted with Superintendence — Findings of Jury — Insufficiency — New Trial. *McLeod v. Canadian Stewart Co.*, 1 O. W. N. 951.—C.A.
6. *Injury to Servant—Workmen's Compensation Act—Negligence of Foreman—Unsafe Condition of Gangway—Act of Stranger—Joint Negligence—Contributory Negligence.*]—A gangway constructed by the defendant W., the contractor for the brick work of a building, was a safe and sufficient way for W.'s workmen going to and from their work in the building, but the

carpenters working in the building made an addition to it for the purpose of widening it, and the addition was left there. The plaintiff, one of the bricklayers employed by W., was walking up the gangway, on the day after the addition was made, to go to work, when it gave way, and he was injured. The plaintiff brought this action against R., the contractor for the carpenter work, and W., his employer, to recover damages for his injuries. There was nothing in the condition of the gangway to indicate that the use of any part of it would be attended with danger, nor was there anything to indicate to the plaintiff that the addition was not intended to form part of the gangway and to be used by W.'s workmen. The plaintiff testified that he did not know that any addition had been made:—*Held*, upon the evidence, that L., W.'s foreman, was intrusted by W. with the duty of seeing that the gangway was proper; that it was the duty of W. not only to provide a safe and sufficient gangway but to see that the one provided was maintained in a safe and sufficient condition; that duty was delegated by W. to L., who knew that the addition had been made, and it was his duty to see that the gangway had not been rendered unsafe by what was done, and he neglected that duty; that the gangway was rendered unsafe by the act of R.'s man, and therefore the injury was caused by L.'s negligence in the performance of the duty with which he was intrusted by W. of seeing that the condition of the ways, etc., was proper: R. S. O. 1897 ch. 160, sec. 6, cl. 1. *Kelly v. Davidson*, 31 O. R. 521, 32 O. R. 8, 27 A. R. 657, referred to.—*Held*, also, that the plaintiff was not guilty of contributory negligence.—*Held*, also, that, although the unsafe condition in which the gangway was left was due to the negligence of R.'s men, the plaintiff could not recover against R.; there was no joint negligence by R. and W. *Christie v. Richardson*, 1 O. W. N. 689.—MEREDITH, C.J.C.P.

7. Injury to Servant—Workmen's Compensation Act, sec. 3 (5)—Negligence of Fellow-Servant—"Person Having the Charge or Control of an Engine or Machine upon a Railway." *McLaughlin v. Ontario Iron and Steel Co.*, 1 O. W. N. 408, 20 O. L. R. 335.—MEREDITH, C.J.C.P.
8. Injury to and Death of Servant—Negligence—Contributory Negligence — Factories Act — Damages. *Doherty v. Macdonell*, 1 O. W. N. 368.—D.C.

9. Injury to and Death of Servant—Negligence—Defect in Way—Absence of Direct Evidence as to Cause of Injury—Findings of Jury — Inference — Causal Connection — Contributory Negligence. *McKeand v. Canadian Pacific R. W. Co.*, 1 O. W. N. 1059.—D.C.
10. Injury to and Death of Servant—Negligence—Railway—Non-suit. *Brennan v. Grand Trunk R. W. Co.*, 1 O. W. N. 365, 501.—D.C.
11. Injury to and Death of Servant—Negligence—Servant not Acting in Course of Duty—Voluntary Incurring of Risk—No Duty Owing by Master—Contributory Negligence. *Kimball v. Butler*, 1 O. W. N. 373,—C.A.
12. *Injury to and Death of Servant—Negligence of Fellow Servant—Workmen's Compensation Act—Railway—Defective System—Common Law Liability—Findings of Jury—Evidence—Amount of Compensation.*] — The plaintiff's husband was engine-driver on a train of the defendants which, shortly after leaving Brantford station, collided with a pilot-engine which had gone out from Brantford yard a short time before; he was killed in the collision. By the defendants' rules, the pilot-engine was under the direction of M., the yard foreman at Brantford, and it was admittedly owing to his neglect that the accident occurred. The jury found that the system in use on the defendants' railway in respect to the pilot-engine was not a reasonably safe and adequate one, but was defective and exposed their employees to unnecessary danger, and that the pilot-engine, when away from the Brantford yard, should have been under the control of the train despatcher at London, and not under that of M.; that the adoption and use of this defective system was due to the negligence of the defendants' superintendent, G., and their yardmaster, M., and that the accident would not have happened but for the defect in the system; that the defendants' railway was managed and the rules for its operation made by competent officials; and that the deceased did not voluntarily undertake the risk. The jury assessed the damages at \$8,250 at common law, and at \$3,300 under the Workmen's Compensation Act:—*Held*, that judgment was properly entered for the plaintiff for \$3,300, there being evidence to justify a verdict for that amount under the Workmen's Compensation Act; and no evidence to sustain a verdict based on common law negligence or a defective system.—*Per* MACLAREN, J.A., that, it being admitted that the acci-

dent could not have occurred but for the negligence of M., the jury were not justified, on the evidence, or without evidence, in attributing it to a more remote cause. If M. had obeyed the rule, the accident could not have happened. The jury were not entitled to speculate and say that it was negligence in the defendants not to have adopted at Brantford the practice of handling the pilot-engine in use at London. The verdict as to defective system was directly contrary to the only competent evidence before them on the point, and their findings could not stand. *Fralick v. Grand Trunk R. W. Co.*, 1 O. W. N. 309.—C.A.

13. Wages—Contract in Writing—Alleged Change in Amount—Onus — Conflicting Testimony — Counterclaim — Trover—Equitable Assignment—Acceptance of Offer. *McCabe v. National Manufacturing Co.*, 1 O. W. N. 607.—RIDDELL, J.

See Company, 19—Contract, 47—Mines and Minerals, 1—Negligence, 12, 13—Railway, 10, 11.

MASTER'S OFFICE.

See Mortgage, 8.

MASTER'S REPORT.

Appeal—Judgment—Costs. *Stanley v. Mennie*, 1 O. W. N. 890.—MAGEE, J.

See Appeal, 16.

MASTER IN CHAMBERS.

See Costs, 13—Writ of Summons, 5.

MEASURE OF DAMAGES.

See Damages.

MECHANICS' LIENS.

1. Building Contract—Claim of Contractor—Additional Work—Value of—Consent—Non-completion of Work—Damages for Delay—Inclemency of Weather—Extension of Time—Architect—Negligence. *Hutchinson v. Rogers*, 1 O. W. N. 89.—D.C.
2. Building Contract—Progress Estimates—Architect's Certificate—Condition Precedent—Right Arising after Action—Insurance Premiums—Delay in Completing Work—Extent of Lien—Amount Due under Contract—Percentage Withheld—Lien

not Presently Enforceable—Disposition of Surplus Proceeds of Sale. *Kelly Bros. & Co. v. Tourist Hotel Co.*, 1 O. W. N. 337, 20 O. L. R. 267.—D.C.

3. Municipal Lands and Buildings—Right of Lien—Summary Dismissal of Action by County Court Judge—Appeal—Remittal for Trial. *General Contracting Co. v. City of Ottawa*, 1 O. W. N. 911.—C.A.
4. Preservation of Lien—Time—Last Delivery of Materials—Bolts Used for Experimental Purposes—Effect of Taking and Discounting Promissory Note — Mechanics' Lien Act, sec. 28. *Brooks-Sanford Co. v. Theodore Telier Construction Co.*, 1 O. W. N. 385, 20 O. L. R. 303.—D.C.
5. *Summary Proceeding to Enforce Lien—Contemporaneous Personal Action.*]—The plaintiffs began a summary proceeding against the defendants under the Mechanics' Lien Act to enforce their lien, and also began an action against the same defendants to recover the sum of money in respect of which the lien was sought to be enforced. An application to stay the action was refused: sec. 28 of the Mechanics' Lien Act. *Hamilton Bridge Works Co. v. General Contracting Co.*, 1 O. W. N. 34.—THE MASTER IN CHAMBERS.

See Company, 36—Costs, 4—Evidence, 6.

MEDICAL OFFICER.

See Benefit Society.

MEDICINE AND SURGERY.

1. "Practising Medicine"—Ontario Medical Act, sec. 49—*Oculist Examining Eyes and Furnishing Glasses.*]—Whatever meaning may be attributed to the words "practising medicine," in the Ontario Medical Act, R. S. O. 1897 ch. 176, sec. 49, they cannot be so enlarged by judicial interpretation as to prohibit an oculist from examining the eyes of his customer and "prescribing" suitable glasses. Magistrate's conviction quashed. *Rex v. Harvey*, 1 O. W. N. 1002.—MIDDLETON, J. (Chrs.)
2. "Practising Medicine" — Ontario Medical Act, sec. 49 — Osteopathy—Treatment — Conviction — Evidence. *Rex v. Henderson*, 1 O. W. N. 543.—MORSON, JUN. Co. C.J., YORK.

See Public Health Act.

MERGER.

See Division Courts, 2.

MESNE PROFITS.

See Assessment and Taxes, 6.

MILITARY LAW.

Troops Called out to Quell Riot—Liability of Municipal Corporation for Expense — Requisition — Sufficiency—Authority of Officer Commanding District — Militia Act — Protection of Crown Property. *Rex v. Town of Sault Ste. Marie*, 1 O. W. N. 1144.—FALCONBRIDGE, C.J.K.B.

MILL PRIVILEGES.

See Water and Watercourses.

MINES AND MINERALS.

1. Claim of Discovery not Recorded in Due Time—Refusal of Mining Recorder to Receive—Claim already Recorded—Restaking — Abandonment — Claim Resting on Original Discovery—Benefit of Discovery made by Employee—Supplies of Employer Used in Work—Assistance from Employees after Hours. *Re Wright and Coleman Development Co.*, 1 O. W. N. 1129.—D.C.
2. Lease—Mutual Mistake in Description of Property—Rectification—Mining Companies—Lease of Part of Location by one to the other—Common Officers of Companies—Agreement on Behalf of Companies—Validity, in Absence of Fraud—Strip of Land in Dispute—Injunction—Way of Necessity—Forfeiture—Violation of Provisions of Lease—Acquiescence — Account of Ore Mined and Royalties. *Peterson Lake Silver Cobalt Mining Co. v. Nova Scotia Silver Cobalt Mining Co.*, 1 O. W. N. 619.—TEETZEL, J.
3. Mining Agreement—Cancellation by Mining Recorder without Notice — Appeal to Mining Commissioner—New Trial. *Re Smith and Millar*, 1 O. W. N. 545.—D.C.
4. Mining Claim — Dispute — Status of Disputant—Licensee — Decision of Commissioner—Right of Appeal—Mining Act of Ontario—Discovery—Abandonment. *Re Smith and Hill*, 1 O. W. N. 98, 19 O. L. R. 577.—C.A.

5. Mining Commissioner—Appeal—Evidence—Status of Appellants—Recovery of Minerals—Validity of Claims. *Re Spurr and Murphy*, 1 O. W. N. 287.—D.C.
6. Patentees of Mining Rights — Owners of Surface Rights — Roadway from Mines—Right of User—Right to Search for Minerals — Townsite — Streets and Lots—Plan—Survey — Dedication — Sale of Town Lots — Discovery of Minerals — Order in Council—Statutes—Substituted Way—Priority of Claim—Declaration of Rights—Injunction. *Coniagas Mines Limited v. Town of Cobalt, Coniagas Mines Limited v. Jacobson*, 1 O. W. N. 625, 20 O. L. R. 622.—C.A.
7. *Working Conditions — Certificate of Record — Appeal from Decision of Mining Commissioner — Jurisdiction — Mining Act, 1908, sec. 78 (4).*]—No appeal lies from the decision of the Mining Commissioner for Ontario confirming the validity of a certificate of record issued by a Mining Recorder, the Commissioner's decision being final, whether or not any inspection or investigation has been made by him before giving his decision: Mining Act of Ontario, 8 Edw. VII. ch. 21, sec. 78 (4). *Re Perkins and Dowling*, 1 O. W. N. 290.—D.C.

See Appeal, 17—Assessment and Taxes, 1, 5—Contract, 1, 11, 28—Criminal Law, 23—Free Grants and Homesteads Act, 2 Parties, 8, 11—Principal and Agent, 5, 7—Release.

MINING COMMISSIONER.

See Appeal, 17.

MINING ENGINEER.

See Author.

MISDIRECTION.

See Criminal Law, 17, 18, 20—Malicious Prosecution, 2—Street Railways, 3.

MISFEASANCE.

See Company, 29—Trial, 1.

MISNOMER.

See Municipal Corporations, 22.

MISTAKE.

Payment—Mistake of Fact—Voluntary Payment. *Gordon v. J. I. Case Thresher Machine Co.*, 1 O. W. N. 299.—MACMAHON, J.

See Chattel Mortgage, 2—Defamation, 3—Mines and Minerals, 2 — Municipal Corporations, 3 — Parties, 4 — Promissory Notes, 3—Vendor and Purchaser, 3, 7.

MONEY IN COURT.

See Bills of Exchange—Death, 2—Infant, 4—Interpleader, 2—Payment into Court.

MONEY LENDERS ACT.

See Criminal Law, 29.

MONEY LENT.

Advance by Bank "on Call"—Action for Amount—Pleading—Failure to Allege Call — Collateral Securities — Alternative Claim—Judgment—Election—Reference.]—Upon a motion by the plaintiffs for judgment upon the statement of claim in default of defence in an action to recover a sum of money advanced, repayable "on call," with interest:—*Held*, that the making of a call was not a condition precedent to bringing an action—there being a present debt and a promise to pay on demand. *In re Brown's Estate*, [1893] 2 Ch. 300, followed.—Judgment was also granted in respect of an alternative claim made by the plaintiffs, with leave to the defendant to elect to accept an offer made by the plaintiffs. *Imperial Bank of Canada v. Holman*, 1 O. W. N. 593.—MEREDITH, C.J.C.P.

See Division Courts, 3.

MONOPOLY.

See Municipal Corporations, 33.

MORTGAGE.

1. Account—Receipts—Evidence. *Colonial Investment and Loan Co. v. Spooner*, 1 O. W. N. 136.—RIDDELL, J. (Chrs.)
2. Action by Mortgagee against Mortgagor for Possession of Mortgaged Premises—Motion for Summary Judgment—Conveyance of Equity of Redemption — Payment of Mortgage Money on Assignment of Mortgage—R. S. O. 1897 ch. 121, sec. 2. *Syms v. McGregor*, 1 O. W. N. 94.—MASTER IN CHAMBERS.
3. Assignment—Re-assignment — Covenant for Payment—Right of Action of Assignee — Mortgagee Joined as Co-plaintiff—

- Trustee and Cestuis que Trust—Proviso for Re-payment—Rate of Interest post Diem—Credits—Costs. *Pringle v. Hutson*, 1 O. W. N. 153, 19 O. L. R. 652.—C.A.
4. Collateral Security—Exercise of Power of Sale — Demand—Validity of Sale—Title—Vendor and Purchaser. *Re Sovereign Bank and Keilty*, 1 O. W. N. 456, 783.—D.C.
 5. Covenant—Judgment—Amendment—Costs. *Woods v. Alford*, 1 O. W. N. 434, 455.—MEREDITH, C.J.C.P. (Chrs.)
 6. Interest post Diem—Compound Interest—Construction of Covenants—Items of Mortgage Account—Costs. *Saskatchewan Land and Homestead Co. v. Leadlay*, 1 O. W. N. 228.—TEETZEL, J.
 7. Redemption — Expenditures of Mortgagees by Agent or Purchaser in Possession—Allowance for Crops in the Ground—Insurance Premiums—Taking Possession, Expenses of—Lien on Mill Machinery—Payment in Settlement—Permanent Improvements Made by Agent—Interest—Costs. *Federal Life Assurance Co. v. Siddall*, 1 O. W. N. 234, 796.—D.C.
 8. Reference in Action—Party Added in Master's Office—Notice to Incumbrancers — Issue of Fact—Order and Notice Set aside. *Colonial Loan and Investment Co. v. McKinley*, 1 O. W. N. 658.—FALCONBRIDGE, C.J.K.B.
 9. Security for Maintenance—Lease of Farm. *Dymont v. Howell*, 1 O. W. N. 679.—BRITTON, J.

See Charge on Land—Company, 1, 31—Contract, 2—Division Courts, 2—Judgment, 4, 16—Municipal Corporations, 3—Quieting Titles Act — Settled Estates Act, 1—Trusts and Trustees, 1—Vendor and Purchaser, 1.

MOTION FOR JUDGMENT.

See Judgment, 8.

MUNICIPAL CORPORATIONS.

1. Agreement between Municipalities as to Building and Maintenance of Road—Enforcement—Agreement not Legally Binding—Resolution—Absence of By-law and Seal—Payment of Money—Executed Contract — Recovery of Money Paid as upon Failure of Consideration. *Township of East Gwillimbury v. Township of King*, 1 O. W. N. 577, 20 O. L. R. 510.—C.A.

2. Aid to Railway Company by Portion of Municipality — Purchase of Shares—Issue of Debentures—By-law—Approval of Voters—Refusal of Council to Pass—Mandamus—Municipal Act, 1903, secs. 385, 696. *Re Township of Blenheim*, 1 O. W. N. 363.—BOYD, C. (Chrs.)
3. Bonus to Manufacturing Company—By-law—Contract—Variation by Settlement of Action—Mortgage — Mistake—Reformation—Company — Authorisation — Ratification—Provision for Payment of Fixed Sum if Certain Number of Persons not Employed in Factory—Exception—“Unforeseen and Unavoidable Causes” — Conditions of Trade — Penalty or Liquidated Damages. *Village of New Hamburg v. New Hamburg Manufacturing Co.*, 1 O. W. N. 495.—FALCONBRIDGE, C.J.K.B.
4. Closing of Part of Village Street — Injury to Property not Abutting on Street—Diversion of Traffic from Hotel—Municipal Act, sec. 447—Property “Injuriouslly Affected”—Compensation—Injury not Differing from that Done to General Public—Loss of Trade Profits—Injury to Value of Property. *Re Taylor and Village of Belle River*, 1 O. W. N. 609.—MULOCK, C.J.Ex.D.
5. Contract for Transfer of Water Power and Right to Supply Electricity to Company — By-law of Town — Invalidity—Necessity for Submission to Ratepayers — Municipal Act, 1903, sec. 565—9 Edw. VII. ch. 75, sec. 2 (1)—Public Utility—Prior Contract—Injunction. *Abbott v. Town of Trenton*, 1 O. W. N. 218.—MULOCK, C.J.Ex.D.
6. Contract with Hydro-Electric Power Commission—Powers of Council—Submission of Question to Electors—Invalidity—Necessity for Existing By-law—Statutes. *Horrigan v. City of Port Arthur*, 1 O. W. N. 169, 216.—D.C.
7. County of Essex—Office of Crown Attorney and Clerk of the Peace—Provision for, in City of Windsor—Duty of County Council. *Rodd v. County of Essex*, 1 O. W. N. 162, 19 O. L. R. 659.—C.A.
8. Ditches and Watercourses—Construction of Road Ditches by Corporation—Liability for Flooding Lands in Neighbourhood —Ditches and Watercourses Act—Award of Township Engineer—Jurisdiction—Damages. *Mandley v. Township of Monck*, 1 O. W. N. 271.—D.C.

9. *Drainage—Assessment for Outlet—Drainage Area—Benefit—Report of Engineer—Evidence—Appeal.*]—The proceedings were begun by a petition to the council of the township of M. praying that, in order to drain a described area in that township, the C. river, which flows through a number of townships, might be deepened and improved. The petition was referred to a civil engineer, who prepared a report, plan, specifications, and an assessment of lands in several townships, which, in his opinion, would be benefited by the proposed work. The corporation of H. township appealed unsuccessfully to the Drainage Referee, and then to the Court of Appeal, contending that the lands in H., being comparatively high, had already a sufficient outlet and would not use the proposed new outlet:—*Held*, that the mere size of the area is of little consequence in considering whether or not the assessment is lawful. Drainage water must not go merely to an outlet by means of which it satisfactorily escapes from the lands which are being drained, but to a “sufficient outlet,” which, as defined in sec. 2, sub-sec. 10, of the Municipal Drainage Act, means the “safe discharge of water at a point where it will do no injury to lands and roads.” It is not sufficient, in order to escape from liability, simply to shew that the first discharge was into a “swale, ravine, creek, or watercourse:” sec. 3, sub-sec. 4. There must appear to be a reasonable connection between the source of the injurious water and the outlet, and, that being established, the legal right to assess under the statute, however large the area, follows. And, upon the facts of this case, the assessment was right and should not be disturbed. *Re Township of Huntley and Township of March*, 1 O. W. N. 190.—C.A.
10. Drainage Scheme—Municipal Drainage Act, sec. 75—Petition—Necessity for—Alteration of Outlets—Original Assessments, Interference with—Necessity for By-law—Compliance with sec. 5—Consent of Railway Company—Dominion Railway Act, secs. 250, 251. *Re Township of Dover and Township of Chatham*, 1 O. W. N. 327.—C.A.
11. Expropriation of Land—Waterworks—Compensation—Municipal Act, 1903—R. S. O. 1897 ch. 235—Arbitration and Award—Constitution of Board of Arbitrators—Irregularity—Waiver—Appearance of Parties and Taking Part in Arbitration Proceedings—Amount Allowed—Evidence—Percentage for Compulsory Taking—View by Arbitrators—Disre-

- garding Evidence as to Value—Appeal—Increase in Amount—Interest. *Re Herriman and Town of Owen Sound*, 1 O. W. N. 759.—BRITTON, J.
12. Hawkers and Pedlars—County By-law Requiring License—Magistrate's Conviction for Breach—Municipal Act, 1903, sec. 583 (14)—Bona Fide Servant or Employee of Manufacturer—Burden of Proof—Finding of Magistrate—Uncontradicted Evidence—Review on Motion to Quash Conviction—Sale to Retail Trader—"Hawkers"—Evidence Disclosing only one Sale—Going from Place to Place—Validity of By-law—License Fees Specified for Certain Classes of Persons—Proviso in Respect of Towns in County—Penalty—Division of—Reward for Securing Conviction—Costs. *Rex v. Van Norman*, 1 O. W. N. 35, 19 O. L. R. 447.—RIDDELL, J. (Chrs.)
13. Local Improvements—By-law Assessing Rates on Land Fronting on Street for Payment for New Pavement—Notice to Owner—Defect—No Time Mentioned—By-law Quashed pro Tanto. *Re Hodgins and City of Toronto*, 1 O. W. N. 31.—RIDDELL, J.
14. *Local Option By-law—Repealing By-law—Submission to Electors—Voting on—Form of Ballot—Directions to Voters—Action to Declare Voting Invalid—Change in Limits of Municipality.*—A local option by-law was passed by the defendants' council in January, 1906. In December, 1908, a repealing by-law was introduced and given two readings, and submitted to the electors in January, 1909. The form of ballot used was that prescribed by 8 Edw. VII. ch. 54, sec. 10, amending sec. 141 of the Liquor License Act. This amendment changed the ballot from "For the By-law" or "Against the By-law" to "For Local Option" or "Against Local Option." The directions for the guidance of voters were changed to meet the requirements of the new form of ballot, though this was not in terms provided for by the amending enactment:—*Held*, that the change made in the directions was lawful.—*Held*, also, that the plaintiff could not, upon the facts, maintain this action, which was brought to have it declared that the repealing by-law had not been properly voted upon, and so to clear the way for the passing of another repealing by-law (this one having been defeated at the polls by a majority "for Local Option"); for it was not shewn that any ratepayer desired to have another by-law submitted,

or that the council desired or intended to submit one.—*Held*, also, that a change in the territorial limits of the municipality by county by-laws did not affect the voting upon the repealing by-law. *Ward v. Town of Owen Sound*, 1 O. W. N. 512.—D.C.

15. Local Option By-law—Submission to Electors—Scrutiny of Votes Cast—Ballots Marked for Illiterate or Incapable Voters—Inquiry into—Rejection of Evidence—Powers of County Court Judge—Municipal Act, sec. 369. *Re Strathroy Local Option By-law*, 1 O. W. N. 465.—SUTHERLAND, J.
16. Local Option By-law—Submission to Electors—Scrutiny of Ballot Papers by County Court Judge—Scope of Inquiry—Right to Vote of Persons who Voted—Voters' Lists Act, 1907, sec. 24—Finality of Lists—Persons Becoming Disentitled by Change of Residence—Prohibition. *Re Orangeville Local Option By-law*, 1 O. W. N. 536, 20 O. L. R. 476.—MEREDITH, C.J.C.P.
17. Local Option By-law—Submission to Electors—Manner of Taking Vote—Votes of Illiterate Persons and Persons Physically Incapacitated—Neglect of Deputy Returning Officers to Comply with the Provisions of sec. 171 of Municipal Act—Irregularities—Application of Saving Clause, sec. 204. *Re Prangley and Town of Strathroy*, 1 O. W. N. 706, 21 O. L. R. 54.—SUTHERLAND, J.
18. Local Option By-law—Submission to Electors—Voting—Declaration by Clerk of Result—Scrutiny by County Court Judge—Motion to Quash By-law—Inquiry into Validity of Votes—Going behind Findings of County Court Judge—Illiterate Voters—Blind Voter—Ballots Marked by Deputy Returning Officer—Absence of Declarations—Absence of Agents—Secrecy of Voting—Aged Voters Accompanied by Friends—Unmarked Ballot Placed in Box—Ballot Marked in Public—Change of Residence by Voters—Voters Struck off by County Court Judge—Scope of Inquiry on Scrutiny—Ballots Cast Exceeding Number Issued—Ballots Exposed to Public View after Count—Clerk Acting as Deputy Returning Officer—Municipal Act, sec. 204—Application of, to Cure Irregularities—Acquiescence of Applicant—Estoppel. *Re Ellis and Town of Renfrew*, 1 O. W. N. 710, 21 O. L. R. 74.—RIDDELL, J.

19. Local Option By-law — Submission to Electors — Voting — Persons Voting without Right — Result as to Three-fifths Majority not Affected—Notices not Properly Posted—Municipal Act, sec. 338 (2)—Application of Curative Clause, sec. 204—Publication in Newspaper not in Municipality—Quashing By-law—Costs. *Re Begg and Township of Dunwich*, 1 O. W. N. 719, 20 O. L. R. 94.—RIDDELL, J.
20. Local Option By-law—Submission to Electors—Voting—Voters Deprived of Votes by Improper Tender of Oath—Majority not Affected—Third Reading of By-law—Prevention of Scrutiny. *Re Copeman and Village of Dundalk*, 1 O. W. N. 624, 805.—D.C.
21. Local Option By-law—Submission to Electors — Voting—Form of Ballot—Departure from Statute — Interpretation Act, sec. 7 (35). *Re Giles and Town of Almonte*, 1 O. W. N. 698, 920, 21 O. L. R. 362.—D.C.
22. Local Option By-law—Submission to Electors—Voting—Vote of Town Clerk—9 Edw. VII. ch. 73, sec. 9—Passing by Council—Special Meeting—Good Friday—Printing of Voters' List Done by Town Clerk—Contract with Corporation—Scrutineer—Appointment—Sufficiency — Right to Vote in Subdivision where Appointed to Act—Deputy Returning Officer—Qualification as Voter—Finality of Voters' List—Inability to Mark Ballot—Declaration—Voter Named in List—Qualification not Given—Misnomer of Voter—Right to Vote of Person Intended—Voter's Christian Name not Given—Votes of Illiterates—Names Entered in Poll Books before Day of Voting—Unauthorised Persons Present when Electors Voting—Appointment of Agents—Time for—Municipal Act, secs. 341, 342—Irregularities—Application of sec. 204 to Save By-law. *Re Schumacher and Town of Chesley*, 1 O. W. N. 1041, 21 O. L. R. 522.—D.C.
23. Local Option By-law—Submission to Electors—Voters' List—Complaint against List Prepared by Clerk by Person not a Voter—Notice of Holding Court for Revision—Non-publication—De Facto Certified Voters' List—Ontario Voters' Lists Act, secs. 17 (4), 21, 24—Municipal Act, 1903, sec. 148. *Re Ryan and Town of Alliston*, 1 O. W. N. 1116, 21 O. L. R. 582.—MEREDITH, C.J.C.P.
24. Maintenance of Bridge—Duty of County Council — Bridge Crossing Stream Forming Boundary between Local Municipality

palities—Assumption of Bridge by County—Enforcement of Obligation to Repair—Decision of County Council—Review by County Court Judge—Municipal Act, 1903, secs. 613-618. *Re Township of Pembroke and County of Renfrew*, 1 O. W. N. 927, 21 O. L. R. 366.—D.C.

25. *Money By-law—Voting on—Voters' List—Last Revised Assessment Roll—Court of Revision—Time for Sitting—Assessment Act, secs. 61, 65—Municipal Act, sec. 348—Curative Clause, sec. 204.*]—Upon a motion to quash a money by-law of a township, it was objected that the voting thereon by the electors was not according to a voters' list based upon the last revised assessment roll, as required by sec. 348 of the Municipal Act, 1903. The assessment roll for 1909 was duly returned to the township clerk on the 30th April, the Court of Revision sat on the 18th May, and the voting took place on the 21st May. Section 65 of the Assessment Act provides for notices of appeal against the assessment roll being given within fourteen days after the return of the roll. The last day for appealing was, therefore, the 14th May. The Assessment Act, sec. 61, provides that the first sitting of the Court of Revision shall not be held until after ten days from the expiration of the time within which notices of appeal may be given:—*Held*, therefore, that the Court could not legally sit before the 24th May, and that the assessment roll which it purported to revise on the 18th was not the last revised assessment roll at the time of the voting, and therefore the by-law was not approved by the electors.—*Held*, also, that the curative provisions of sec. 204 of the Municipal Act could not be applied in support of the by-law. *Re Dale and Township of Blanchard*, 1 O. W. N. 65.—TEETZEL, J.
26. *Money By-law—Voting on—Voters' List—Assessment Roll—Municipal Act, 1903, secs. 348, 349—Amending Acts—Proper List not Used—Inquiry into Right to Vote of Persons Named in List—"Freeholders"—Municipal Act, sec. 353—Equitable Interests in Land—Disallowance of Votes—Quashing By-law. Re Dale and Township of Blanchard*, 1 O. W. N. 729, 1018, 21 O. L. R. 497.—D.C.
27. *Negligence—"Lock-up"—Lack of Proper Heating—Injury to Prisoner—Duties of Constable—Caretaker—Responsibility of Municipal Corporation Acting as Deputy of the Crown—Respondent Superior. Nettleton v. Town of Prescott*, 1 O. W. N. 1055, 21 O. L. R. 561.—D.C.

28. Ordinary Expenditure—Rate — By-law — Irregular Method Adopted by Council—Absence of Injury to Ratepayers—Motion to Quash—Costs. *Re Cartwright and Town of Napanee*, 1 O. W. N. 502.—D.C.
29. Repair of Highway—Construction of Watercourses—Flooding Land Adjoining Highway—Absence of By-law — Diverting Water from Highway not under Control of Corporation—Right of Action—Remedy by Arbitration—Damages—Injury to Land—Injunction. *McMulkin v. County of Oxford*, 1 O. W. N. 410, 747.—D.C.
30. Road-ditch—Overflowing Adjacent Lands—Liability of Corporations—Tile Drains of Private Owners Discharging into Ditch—Permission—Presumption—Ability to Prevent Connection—Injunction—Damages. *Vanderberg v. Townships of Markham and Vaughan*, 1 O. W. N. 441.—D.C.
31. Sale of Corporation Lands—Action by Ratepayer to Set aside —Sale at Less than Value Placed upon it by Assessor—Fair Value—Absence of Fraud. *Robertson v. City of Toronto*, 1 O. W. N. 259.—MEREDITH, C.J.C.P.
32. School Building — By-law Authorising Borrowing of Money for Erection of—Site of School House — Determination by School Board—Foundation for By-law—Application of School Board. *Re McGloghlon and Town of Dresden*, 1 O. W. N. 74.—MEREDITH, C.J.C.P.
33. *Tavern Licenses—Township By-law Limiting to One—Monopoly—Bona Fides.*]—The effect of sec. 20 of the Liquor License Act, when read with sec. 330 of the Consolidated Municipal Act, is that no township can pass a by-law providing that the number of licenses shall be limited to one; the result of the by-law is in effect to create a monopoly. By-law quashed with costs. *In re Barclay and Township of Darlington*, 12 U. C. R. 86, and *In re Greystock and Township of Otonabee*, *ib.* 458, followed. *Re McCracken and Township of Sherborne*, 1 O. W. N. 1091.—SUTHERLAND, J.
34. Transient Traders—By-law — Municipal Act, sec. 583—Absence of Evidence that Premises Occupied for Temporary Period—Conviction—Quashing—Costs—Terms. *Rex v. Preston Co-operative Association*, 1 O. W. N. 983.—MIDDLETON, J. (Chrs.)

35. Victualling Houses—By-law Regulating—Sunday Closing—Powers of Council — Municipal Act, 1903, sec. 583 (34)—Reasonable Restrictions—Licensed Hotels—Duty of Innkeepers to Provide Entertainment for Travellers — Motive—Enforcement of Lord's Day Act. *Re Karry and City of Chatham*, 1 O. W. N. 291, 1053, 20 O. L. R. 178, 21 O. L. R. 566.—C.A.

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1. Breaking of Railing in Gallery of Rink—Injury to Spectator—Liability of Owners—Insufficient Strength of Railing—Employment of Competent Architect — Warranty of Safety. *Stewart v. Cobalt Curling and Skating Association*, 1 O. W. N. 203, 19 O. L. R. 657.—D.C.
2. Collapse of Building during Alterations—Injury to Person in Neighbouring Building—Findings of Jury—Res Ipsa Loquitur—Independent Contractor—Evidence—Licensee. *Earl v. Reid*, 1 O. W. N. 1067, 1101, 21 O. L. R. 545.—D.C.
3. Dangerous Place—Highway in City—Injury to and Death of Infant of Tender Years—Construction of Wall by Railway Company—Agreement with City Corporation — Liability—Fatal Accidents Act—Reasonable Expectation of Pecuniary Benefit by Parents—Damages. *Hurd v. City of Hamilton*, 1 O. W. N. 881.—BRITTON, J.

4. Fall of Structure Erected on Plaintiffs' Premises by Defendants—Insufficient Foundation—Liability for Injury to Premises—Contributory Negligence—Contract—Illegality—Findings of Trial Judge. *Hees Son & Co. v. Ontario Wind Engine and Pump Co.*, 1 O. W. N. 320.—C.A.
5. *Injury to Person—Careless Driving—Findings of Jury—Evidence—Judge's Charge—Appeal.*]—In an action for damages for personal injuries to the plaintiff by reason, as he alleged, of the defendant's servant, driving the defendant's horse and carriage in a street in a city, negligently running into the plaintiff and causing the injury, the finding of the jury was, substantially, that, when the plaintiff was in such a position that it was dangerous to him to do so, the defendant's servant whipped the horse, accelerating its speed, so as to cause the collision, and that he was negligent in doing so, because he ought to have seen the plaintiff, and, foreseeing the result, have abstained from accelerating the speed until the plaintiff had passed on. There was evidence upon which reasonable men might find that the plaintiff's injury arose from his own negligence, or from that of the defendant's servant, or that it happened without negligence being reasonably attributable to either of them; but the case was not so put to the jury; they were impressed with the view of the trial Judge that it depended upon the accuracy of the testimony of the witnesses on the one side or the other. No objections of a substantial character were, in these respects, made to the charge; and the jury found for the plaintiff upon evidence which could not have been properly withdrawn from them:—*Held*, that, though the finding was contrary to a good deal of the testimony, it was in accord with some of it, and the weight of the evidence was for the jury; there was, therefore, no ground upon which to interfere with the verdict; and the defendant's appeal from the judgment at the trial entered thereon was dismissed. *Leslie v. McKeown*, 1 O. W. N. 106.—C.A.
6. Injury to Person—Evidence—Findings of Trial Judge—Misapprehension—Appeal. *McKervey v. Butler Bros. Hoff Co.*, 1 O. W. N. 366.—D.C.
7. Injury to Person on Highway—Horses Left Unattended Running away and Causing Injury—Finding of Trial Judge—Appeal. *Ryan v. McIntosh*, 1 O. W. N. 229, 20 O. L. R. 31.—D.C.

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 9. Sale of Air-gun to Boy under 16—Injury to Person from Use by Boy—Liability of Vendor—Criminal Code, sec. 119. *Fowell v. Grafton*, 1 O. W. N. 647, 20 O. L. R. 639.—BRITTON, J.
 10. Street Railways—Damages—Joint Negligence of Two Defendants—Costs. *McBain v. Toronto R. W. Co.*, 1 O. W. N. 185, 395.—D.C.
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 12. Unsafe Condition of Sand Pit—Injury to Person—Knowledge of Danger—Assumption of Risk—Master and Servant—Duty of Master—Owner of Premises — Duty to Person Lawfully Entering. *Arnold v. Stothers*, 1 O. W. N. 829.—D.C.
 13. Unsafe Premises—Injury to Servant of Lessee—Liability of Lessee—Liability of Landlord—Occupier of Premises—Right to Enter to Complete Work. *Gregson v. Henderson Roller Bearing Co.*, 1 O. W. N. 615, 20 O. L. R. 584.—D.C.
- See Fatal Accidents Act, 2—Highway—Innkeeper—Master and Servant—Mechanics' Liens, 1—Municipal Corporations, 27—New Trial, 2—Partnership, 1, 6—Principal and Agent, 11—Railway—Street Railways—Way, 1.

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2. *Verdict for defendants—Setting aside—Restoration by Court of Appeal—Negligence—Evidence—Question for Jury.*—In an action against the owners of a rink to recover damages for the death of a man who was repairing an electric light in the rink when a boy skated against the ladder on which the man was standing and caused him to fall, whereby he sustained injury from which he died, the jury found in favour

of the defendants, although there was some evidence of negligence on their part:—*Held*, not a case for a new trial. The question was wholly one of fact. The charge was not objected to in any particular dealing with the legal position of the defendants in respect of their duty to persons lawfully on their property; and it was open to the jury to find that the defendants were not negligent in omitting to keep intruding skaters off the rink. The unsuccessful party in such a case must be able to point to something like a mistrial or perverse or unwarrantable conduct on the part of the jury, in order to attack a verdict for his opponent. Order of a Divisional Court setting aside the verdict and directing a new trial reversed, and judgment at the trial in favour of the defendants restored. *Paquette v. Rideau Skating Club*, 1 O. W. N. 108.—C.A.

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 2. Statement of Claim — Better Particulars — Contract. *Macdonell v. Temiskaming and Northern Ontario Railway Commission*, 1 O. W. N. 831.—MASTER IN CHAMBERS.
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9. Third Parties—Claim for Indemnity—Trial of Issue. *Robin-son v. Canadian Pacific R. W. Co.*, 1 O. W. N. 50.—MASTER IN CHAMBERS.
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11. Third Parties — Partnership — Sale of Mining Claims—Indemnity—Third Party Notice Set aside. *Oakley v. Silver*, 1 O. W. N. 272.

See Banks and Banking, 2—Company, 14, 33—Judgment, 19—Lunatic, 1—Mortgage, 3, 8—Negligence, 8—Pleading, 7—Promissory Notes, 9—Public Health Act.

PARTNERSHIP.

1. Cheque Payable to Firm—Indorsement and Deposit by Partner in Bank to Credit of another Firm—Liability of Bank to Partner Deprived of Proceeds of Cheque—Discount of Cheque—Absence of Negligence—Bona Fides. *Ross v. Chandler*, 1 O. W. N. 104, 19 O. L. R. 584.—C.A.
2. Dissolution—Liabilities — Discharge of Retiring Partner—Acceptance of New Firm as Debtors—Conduct of Creditors — Novation—Findings of Fact—Appeal. *Cluff v. Norris*, 1 O. W. N. 54, 19 O. L. R. 457.—D.C.
3. Execution against Partner — Seizure of Goods — Ownership—Partnership Agreement—Interpleader. *McMillan v. Thorp*, 1 O. W. N. 96.
4. Holding out—Estoppel—Joint Liability—Judgment against one Partner—Election. *F. J. Castle Co. Limited v. Baird*, 1 O. W. N. 403, 527.—D.C.
5. Holding out—Estoppel — Representation of Authority — Evidence—Liability of Person Permitting Name to be Used—Publicity — Knowledge — Scope of Business. *Dominion Express Co. v. Maughan*, 1 O. W. N. 383, 1031, 20 O. L. R. 310, 21 O. L. R. 510.—C.A.
6. Syndicate Operating Engine for Threshing—Injury to Property of Member by Operation of Engine—Defective Condition—Negligence of Servant of Syndicate—Contract or Tort—Regulation of Syndicate as to Threshing for Members—Right of Member to Recover against Syndicate and Co-members—Judicature Act and Rules — Contribution — Costs. *Bigelow v. Powers*, 1 O. W. N. 599, 20 O. L. R. 559.—MAGEE, J.

See Assignments and Preferences, 1—Contract, 1, 22, 44—Judgment, 19—Parties, 11—Promissory Notes, 8—Release—Writ of Summons, 2.

PARTY WALL.

Contract—Construction—Breach—Addition to Wall—Openings.]

—In an action to compel the defendants to remove a wall:—*Held*, that if the wall, which had been added to or built upon the original party wall, could be called an external wall, there was the right to put windows in it; if the extension or addition had the character of a party wall and was to be so designated, the windows were a derogation from that method of construction. By the contract between the parties, the original wall might be afterwards built upon and added to by a further party wall, which might be used by the party who did not build it as a party wall. But, whether he elected to use it or not, the addition to the party wall was, in the contemplation of the parties, to retain its character as a party wall; and to attach any other character to it by constructing it with openings or windows was in violation of the contract. *Sproule v. Stratford*, 1 O. R. 335, followed. *Brennan v. Ross*, 1 O. W. N. 1014.—BOYD, C.

PASSENGERS.

See Railway—Street Railways.

PAST MAINTENANCE.

See Infant, 2.

PATENT FOR INVENTION.

1. Infringement — Interim Injunction — Conflict of Evidence—
Technical Evidence. *Duryea v. Kaufman*, 1 O. W. N. 1127.—
SUTHERLAND, J.
2. Infringement — Novelty—Utility—Burden of Proof—Findings
of Fact—Appeal—Simplicity of Invention—Former Patent—
Failure to Keep on Foot—Disclosure of Invention—Failure to
Manufacture—Patent Act, sec. 38—Failure to Mark Articles
—Patent Act, sec. 55—Penalty under sec. 69—Damages—
Costs. *Overend v. Burrow Stewart and Milne Co.*, 1 O. W. N.
156, 19 O. L. R. 642.—C.A.
3. *Sale of Patented Article—Restriction as to Price—Patent Act,
sec. 38—Condition on Purchase—Injunction—Evidence.]*—
Section 38 of the Patent Act means that the patentee is to
manufacture the subject of his invention in Canada and in
such a manner that any person who desires to use it may buy
or obtain an unconditional title to it at a reasonable price.
When once the sale is made, the purchaser holds the article as

his absolute property by an unconditional title; and that is fatal to any attempt to impose conditions extending beyond the first purchaser. *Hildreth v. McCormick Manufacturing Co.*, 10 Ex. C. R. 378, 39 S. C. R. 499, followed. And, unless the purchaser knows of the condition at the time of the purchase and buys subject to the condition, he has the benefit of the implied license to use free from condition.—*Held*, upon a motion to continue an interim injunction restraining the defendants from selling a patented article at a lower price than that imposed upon the original purchaser from the patentee, that the proof failed as to the terms upon which those who first sold to the defendants had acquired or sold the goods, and there was proof that no stipulation was made on the purchase of the goods by the defendants.—The injunction should not be continued; such stringent relief should not be given except in a case clear in point of law and only doubtful on the facts. *Gillette v. Rea*, 1 O. W. N. 448.—BOYD, C.

See Pleading, 17.

PAYMENT.

Dispute as to fact—Action against Executrix. *Garnett v. Garnett*, 1 O. W. N. 859.—CLUTE, J.

See Company, 2, 17, 20—Contract, 6, 8, 12, 14, 15, 41, 48—Highway, 10 — Mistake — Mortgage, 3, 7 — Municipal Corporations, 1.

PAYMENT FOR SERVICES TO COMPANY.

See Company, 3, 4, 8, 9.

PAYMENT INTO COURT.

Moneys of Plaintiff in Hands of Defendant—Alleged Mental Incapacity of Plaintiff—Con. Rule 419—Inquiry as to Mental Condition—Jurisdiction—Residence abroad. *Curran v. Col-lard*, 1 O. W. N. 835.—MASTER IN CHAMBERS.

See Administration Order—Fatal Accidents Act, 1—Infant, 1—Interpleader, 3, 4—Will, 5.

PAYMENT OUT OF COURT.

See Bills of Exchange—Death, 2—Infant, 4.

PEDLARS.

See Municipal Corporations, 12, 34.

1 O. W. N. 62.—D.C.

PENALTY.

See Contract, 7—Covenant, 2—Criminal Law, 28—Innkeeper—Liquor License Act, 8, 9—Municipal Corporations, 3, 12—Patent for Invention, 2.

PERJURY.

See Criminal Law, 21.

PERMANENT DISABILITY.

See Insurance, 1, 2, 7.

PERSONA DESIGNATA.

See Appeal, 19.

PETITION.

See Municipal Corporations, 10—Settled Estates Act, 1—Vendor and Purchaser, 10.

PETROLEUM BOUNTY ACT.

See Deed, 3, 4.

PHYSICIAN.

See Medicine and Surgery—Public Health Act.

PLACE OF TRIAL.

See Venue.

PLAN.

See Easement—Mines and Minerals, 6—Vendor and Purchaser, 12.

PLEADING.

1. Counterclaim—Consistency — Convenience — Amendment — Practice. *Farquhar v. Royce*, 1 O. W. N. 680.—MASTER IN CHAMBERS.
2. Counterclaim—Exclusion. *Canadian Pacific R. W. Co. v. City of Port Arthur*, 1 O. W. N. 187.—MASTER IN CHAMBERS.
3. Counterclaim—Order Striking out — Practice — Convenience—Cause of Action—Con. Rules 254, 261—Prayer for General Relief—Set-off—Stay of Proceedings on Judgment for Plain-

- tiff pending Trial of Counterclaim—Terms—Costs. *Thompson v. Big Cities Realty and Agency Co.*, 1 O. W. N. 933, 21 O. L. R. 394.—D. C.
4. Reply—Embarrassment — Irrelevancy — Trespass—Defence of Leave and License — Statutory Powers — Provincial Rights. *Felker v. McGuigan Construction Co.*, 1 O. W. N. 224, 244.—MEREDITH, C.J.C.P. (Chrs.)
 5. Statement of Claim—Amendment—Rule 300. *Duryea v. Kaufman*, 1 O. W. N. 806.—MASTER IN CHAMBERS.
 6. Statement of Claim—Anticipating Defence—Alternative Cause of Action — Particulars. *Macdonell v. Temiskaming and Northern Ontario Railway Commission*, 1 O. W. N. 471, 480.—BRITTON, J. (Chrs.)
 7. Statement of Claim—Conspiracy—Defamation—Joinder of Defendants and Causes of Action—Particulars. *Devaney v. World Newspaper Co.*, 1 O. W. N. 547.—MASTER IN CHAMBERS.
 8. Statement of Claim—Disclosing no Reasonable Cause of Action — Con. Rule 261—Reference to By-law and Contract—Pleading Contradicted by Documents Referred to—Municipal Corporation — Contract with Company for Supply of Electric Light, etc.—By-law—Powers of Council—Assent of Electors — Statutes. *Hogan v. City of Brantford*, 1 O. W. N. 226.—LATCHFORD, J.
 9. Statement of Claim — Embarrassment — Want of Precision. *Rachar v. McDowell*, 1 O. W. N. 244.—MASTER IN CHAMBERS.
 10. Statement of Claim—Late Delivery—Validating Order. *Stidwell v. Township of North Dorchester*, 1 O. W. N. 51.—MASTER IN CHAMBERS.
 11. Statement of Claim—Omission to Serve—Leave to Proceed—Terms — Security for Costs — Payment of Costs. *Shunk v. Gentles*, 1 O. W. N. 737.—MASTER IN CHAMBERS.
 12. Statement of Defence—Amendment—Release—Settlement of Action—Costs—Con. Rules 294, 312. *Moffat v. Gladstone Mines Limited*, 1 O. W. N. 223, 272.—MEREDITH, C.J.C.P. (Chrs.)
 13. Statement of Defence—Leave to Deliver after Noted Default—Costs. *General Construction Co. v. Noffke*, 1 O. W. N. 454.—MASTER IN CHAMBERS.

14. Statement of Defence—Motion to Strike out as Embarrassing—Specific Performance of Contract for Sale of Land. *Taylor v. Barwell*, 1 O. W. N. 444.—MASTER IN CHAMBERS.
15. Statement of Defence—Promissory Note—Parental Influence. *Stavert v. Macdonald*, *Stavert v. Barton*, 1 O. W. N. 860.—MASTER IN CHAMBERS.
16. Statement of Defence — Res Judicata — Pleading Evidence. *Conmee v. Ames*, 1 O. W. N. 470, 480.—BRITTON, J. (Chrs.)
17. Statement of Defence and Counterclaim — Inconsistency—Breach of Contract — Infringement of Patent — Invalidity—License—Rules of Pleading—Estoppel. *Duryea v. Kaufman*, 1 O. W. N. 738, 773.—RIDDELL, J. (Chrs.)

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See Banks and Banking, 1—Broker, 1, 2—Contract, 31—Promissory Notes, 3, 9.

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See Criminal Law, 25, 27—Defamation, 6—Liquor License Act, 3, 4, 7, 8, 12.

POSTPONEMENT OF TRIAL.

See Evidence, 4—Parties, 1.

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POWER OF APPOINTMENT.

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POWER OF SALE.

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POWERS OF PROVINCIAL LEGISLATURE.

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See Administration Order — Appeal — Company, 18—Consolidation of Actions—Costs—Defamation—Devolution of Estates Act, 2—Discovery—Dismissal of Action—Division Courts—Evidence — Execution — Husband and Wife—Infant—Interpleader—Judgment—Judgment Debtor—Lis Pendens—Lunatic—Mechanics' Liens, 5—New Trial—Particulars—Parties, 1—Payment into Court — Pleading — Receiver — Reference—Settled Estates Act—Settlement of Action—Sheriff—Solicitor—Stay of Proceedings—Trial—Venue—Writ of Summons.

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PRESUMPTION.

See Death, 1, 2, 3—Deed, 1 — Highway, 10 — Insurance, 11—Municipal Corporations, 30—Quieting Titles Act—Will, 33.

PRINCIPAL AND AGENT.

1. Agent for Sale of Goods—Duty of Agent—Failure to Inform Principal of Market Conditions—Sale at Low Price—Evidence as to Higher Price Obtainable—Conflict of Testimony—Findings of Jury—Weight of Evidence. *Malcolm v. Dominion Fruit Exchange*, 1 O. W. N. 591.—D.C.
2. Agent's Commission on Advertising Secured for Principal—Contract of Agency—Construction—Advertising—"Originat-

- ing in his Territory"—Defining Clause—"Final Contract"—
 "Insertion Order." *Gledhill v. Telegram Printing Co.*, 1 O.
 W. N. 161.—C.A.
3. Agent's Commission on Sale of Land—Purchaser not Procured
 by Agent. *Willis v. Colville*, 1 O. W. N. 212.—MACMAHON, J.
 4. Agent's Commission on Sale of Land—Quantum. *Waddington
 v. Humberstone*, 1 O. W. N. 698.—D.C.
 5. Agent's Commission on Sale of Mining Property—Quantum—
 Evidence. *Van Every v. Fortier*, 1 O. W. N. 209.—D.C.
 6. Authority of Agent to Pledge Credit of Company—Evidence—
 Onus. *Davidson v. St. Anthony Gold Mining Co.*, 1 O. W. N.
 525.—SUTHERLAND, J.
 7. Authority of Husband to Act for Wife—Evidence of Agency—
 Discovery of Mining Claims — Remuneration for Services.
Rasch v. Heckler, 1 O. W. N. 288.—D.C.
 8. Contract—Failure to Prove Agency—Sale of Goods—Ratifica-
 tion—Costs. *Marks v. Michigan Sulphite Fibre Co.*, 1 O. W.
 N. 834.—FALCONBRIDGE, C.J.K.B.
 9. Contract Entered into by Agent for Purchase of Goods—At-
 tempt by Vendor to Make Principal Liable for Price—Evi-
 dence of Agency—Construction of Contract between Principal
 and Agent. *Gilbert v. Brown*, 1 O. W. N. 652.—D.C.
 10. Moneys Intrusted to Agent for Purchase of Stock—Purchase of
 Stock by Agent on his own Behalf—Intention to Appropriate
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 formation Given to Principal—Scale of Costs—10 Edw. VII.
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 319.—RIDDELL, J.
 11. Negligence of Agent — Fire Insurance — Agent not Securing
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 surance Company—Failure to Establish Agency. *Beaudry v.
 Rudd*, 1 O. W. N. 326.—C.A.
 12. Option Secured by Age—Payment for Services—Commission
 —Condition—Quantum Meruit. *Cahill v. Timmins*, 1 O. W.
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chaser, 9.

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tions, 16.

PROMISSORY NOTES.

1. Action on—Liability of Maker—Guarantor. *Setchfield v. Evans*,
1 O. W. N. 62.—D.C.
2. Action on, by Bank—Defence—Failure of Consideration—Onus
—Purchase of Shares—Absence of Allotment—Receipt of Divi-

- dends—Estoppel.*]—The plaintiffs sued the defendant upon a promissory note, the only consideration for which was an alleged purchase and allotment of shares of the capital stock of the plaintiffs:—*Held*, upon the evidence, that the defendant had received no shares, and the plaintiffs had not done what was necessary to make him the owner and holder of ten shares for which he had agreed to pay. Although the onus of shewing want of consideration was on the defendant, and though he did receive and use certain dividend warrants, the receipt of these did not estop him from shewing the true facts. The plaintiffs' position was not altered to their detriment or to a degree that the return of the dividends would not fully restore. The defendant stood in the position of one who never received any consideration for the note sued upon.—Order of a Divisional Court, 13 O. W. R. 509, affirming the judgment of MAGEE, J., reversed; MEREDITH, J.A., dissenting. *Sovereign Bank v. McIntyre*, 1 O. W. N. 254.—C.A.
3. Collateral Security — Pledge of Shares to Bank — Transfer by Bank by Mistake into Name of Stranger—Control Retained by Bank—Liability on Note. *Northern Crown Bank v. Yearsley*, 1 O. W. N. 924.—RIDDELL, J.
 4. Company — Signature—Abbreviations—"Limited"—Powers of Officers — Intra Vires. *Thompson v. Big Cities Realty and Agency Co.*, 1 O. W. N. 933, 21 O. L. R. 394.—D.C.
 5. Consideration—Transfer of Bank Shares—Illegal Trafficking by Bank in its own Shares—Directors—Bond—Notes Given to Repair Wrongdoing—Holder in Due Course—Acquisition of Several Notes after Maturity — Notice of Illegality as to Others—Evidence — Onus — Costs. *Stavert v. McMillan*, 1 O. W. N. 825, 21 O. L. R. 245.—BOYD, C.
 6. Failure of Consideration—Note Given for First Premium for Life Insurance—Policy not Corresponding with that Applied for—Payment of Part of Premium without Prejudice. *Pearlman v. Sutcliffe*, 1 O. W. N. 376.—D.C.
 7. *Incomplete Instrument—Delivery—Holder in Due Course—Bills of Exchange Act, secs. 31, 32—Fraud—Suspicion—Duty to Inquire.*]—The defendant gave his agent, one T., a printed document in the form of a promissory note signed by him (the defendant) with blanks left for the amount, etc., to be used for a specific purpose in a certain event. T. filled it up for \$1,000

and indorsed it to the plaintiffs (bankers) as collateral security for his own debt. The defendant never intended or authorised the paper sued on to be filled up as a promissory note; the circumstances never arose upon which only T. was authorised to fill up the note; what was done by T. was without authority and in fraud of the defendant; the paper never in fact by the defendant's authority became a promissory note:—*Held*, upon these facts, that the plaintiffs were not entitled to recover upon the note: Bills of Exchange Act, secs. 31, 32. *Smith v. Prosser*, [1907] 2 K. B. 735, followed.—*Held*, also, upon the evidence, that the plaintiffs had a suspicion of the fraudulent holding of T., and were guilty of negligence in not making inquiry as to the validity of the alleged note. *Ray v. Willson*, 1 O. W. N. 1005.—CLUTE, J.

8. Liability—Partnership. *Parrott v. McLean*, 1 O. W. N. 435.—D.C.
9. Liability of Accommodation Makers—Pledge after Maturity to Bank by Payee as Collateral Security for Indebtedness—Right of Bank to Recover to Extent of Amount Due by Payee—Trustee for Payee for Balance—Bills of Exchange Act, secs. 54, 70 — Parties — Further Litigation. *Merchants Bank v. Thompson*, 1 O. W. N. 1015.—BOYD, C.
10. Liability of Indorser — Release of Security—Discharge of Indorser—Evidence. *Wade v. Livingstone*, 1 O. W. N. 375.—C.A.
11. Procurement of Signatures of Makers by Fraud—Discount by Bank—Payment Made on Account by Perpetrator of Fraud before Maturity — Holders in Due Course — Acquisition by Plaintiffs from Bank—Liability of Makers Confined to Balance Paid to Bank by Plaintiff—Notice of Fraud—Circumstances Putting Plaintiffs on Inquiry—Liability of Payee to Indemnify Makers—Costs. *Graham v. Driver*, 1 O. W. N. 767.—TEETZEL, J.
12. Signature to Blank Form—Delivery to Agent for Specific Purpose—Fraud of Agent—Filling up Blanks and Negotiating Note—Holder in Due Course — Payment of Note by Maker's Bankers—Right of Maker to Recover—Bills of Exchange Act, secs. 31, 32, 56, 57. *Hubbert v. Home Bank of Canada*, 1 O. W. N. 405, 542, 701, 20 O. L. R. 651.—D.C.

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Employment of Physician by Local Board of Health to Attend
Smallpox Patients — Remuneration — Absence of Contract—
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bility of Patients to Pay—No Proof of—Remedy by Manda-
mus. *Ross v. Township of London*, 1 O. W. N. 612, 20 O. L.
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Salary of Teacher—Absence of Written Agreement—Public Schools
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East Nissouri S.S. No. 3 Public School Board, 1 O. W. N. 696,
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Certificate of Title Free from Mortgage—Mortgagee not Heard of for Long Period—Presumption of Death—Absence of Claim by Mortgagee or Heirs—Claim of Crown by Escheat—Statute of Limitations—Claim not Proved—Certificate free from Claim—Crown Grant after Mortgage and Presumption of Death—Estoppel. *Re Raycraft*, 1 O. W. N. 509, 20 O. L. R. 437.—BRITTON, J.

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1. Animal Killed on Track—Agreement for Use of Siding — Construction—Protection of Railway from Animals—Negligence—Leaving Gate Open—Duty of Railway Company—Implication of Terms in Contract. *Woodburn Milling Co. v. Grand Trunk R. W. Co.*, 1 O. W. N. 10, 19 O. L. R. 276.—D.C.
2. Animals Killed on Track—Swing-gate—Defective Posts — Fault of Company—Gate Becoming Unfastened—Findings of Jury—Railway Act, secs. 254, 295—Statutory Obligation. *Dolsen v. Canadian Pacific R. W. Co.*, 1 O. W. N. 1061.—D.C.
3. Carriage of Goods—Destruction — Liability — Tort—Special Contract between Express Company and Shipper—Exemption — Application for Benefit of Railway Company—Contract between Express Company and Railway Company. *Allen v. Canadian Pacific R. W. Co.*, 1 O. W. N. 84, 897, 19 O. L. R. 510, 21 O. L. R. 416.—C.A.
4. Carriage of Goods—Failure to Deliver—Refusal of Connecting Carrier to Complete Carriage—Return of Goods and Money Paid for Freight—Contract—Shipping Bill—Conditions Relieving Railway Company—Common Carriers—Arrangement

- with Transport Company—Remedy in Tort—Railway Act, sec. 284. *Laurie v. Canadian Northern R. W. Co.*, 1 O. W. N. 777, 21 O. L. R. 178.—D.C.
5. Carriage of Goods—Negligence—Delay in Delivery—Shipping Bill—Condition—Notice to Agent—Failure to Give—Misprint in Condition—"Or Delivered" Read as "Are Delivered." *Newman v. Grand Trunk R. W. Co.*, 1 O. W. N. 345, 705, 20 O. L. R. 285, 21 O. L. R. 72.—D.C.
6. Carriage of Live Stock — Contract — Approval by Board of Railway Commissioners—Injury to Persons in Charge Traveling Free—Neglect of Servants of Railway Company to Obtain Assent to Terms of Contract—Liability—Indemnity from Owners and Shippers—Duty to Inform Persons in Charge—Implied Obligation. *Goldstein v. Canadian Pacific R. W. Co.*, *Robinson v. Canadian Pacific R. W. Co.*, 1 O. W. N. 1086, 21 O. L. R. 575.—TEETZEL, J.
7. Expropriation of Land—Other Lands Injurious Affected—Dominion Railway Act — Compensation — Arbitration and Award—Expenses of Arbitration—Appeal—Duty of Appellate Court—Value of Lands—Compensation for Injury — Amounts not Separated in Award—Reduction of Amount Awarded—Interference with Working of Farm—Expense of Construction of New Way—Costs of Maintenance—Interest on Amount Awarded — Jurisdiction of Arbitrators. *Re Davies and James Bay R. W. Co.*, 1 O. W. N. 550, 20 O. L. R. 534.—C.A.
8. Farm Crossing—Overhead Bridge—Destruction by Company without Authority from Board of Railway Commissioners—Neglect to Provide Crossing for Short Period—Construction of Level Crossing—Order of Board for Construction of Overhead Bridge—Damages for Delay—Injury to Land Owner—Inconvenience — Injury Caused by Construction of New Bridge — Remedy — Statute of Limitations—Railway Act, sec. 306. *Kelly v. Grand Trunk R. W. Co.*, 1 O. W. N. 24, 211.—D.C.
9. Fire from Engine — Destruction of Property — Evidence — Conjecture as to Cause of Fire—Findings of Trial Judge — Reversal on Appeal — Misapprehension of Evidence—Inference. *Beal v. Michigan Central R. R. Co.*, 1 O. W. N. 80, 19 O. L. R. 502.—D.C.

10. Injury to Brakesman—Switch-stand at Side of Track—Body of Brakesman Protruding from Side of Train—Negligence—Dangerous Position of Stand—Source of Danger—Absence of Competent Evidence—New Trial. *Leitch v. Pere Marquette R. W. Co.*, 1 O. W. N. 562.—C.A.
11. Injury to and Death of Brakesman — Accident in Railway Yard—Making up Train—Negligence—Alleged Insufficiency of Men for Operation—Finding of Jury—No Evidence to Support—Negating of other Grounds of Negligence. *Canty v. Canadian Pacific R. W. Co.*, 1 O. W. N. 661.—C.A.
12. *Injury to Licensee—Evidence—Absence of Negligence—Extent of Duty Owed to Licensee—Attempt to Jump on Moving Train—Concealed Danger—Active Negligence.*]—The plaintiff was a labourer in the employment of contractors for the grading of a portion of a railway being constructed by the defendants, and was in charge of a machine which was being carried by the defendants on a flat car forming part of a train used in grading operations. At a station the plaintiff got down from the car and stood upon the platform, the train standing still. When it started again, he attempted to jump on, the train being in motion, but came in contact with a baggage truck on the platform, and was injured. He was not invited to alight, nor to jump on again:—*Held*, in an action to recover damages for the plaintiff's injuries, that the rule of evidence *res ipso loquitur* did not apply; the plaintiff was bound to give reasonable evidence of the nature and extent of the duty owed to him by the defendants and the facts which constituted the breach of such duty; the position of the plaintiff was that of a mere licensee; the duty of the owner of the premises towards him was confined to two things, that he should not be exposed to a trap or other concealed danger, and that the owner should not be guilty of acts of active negligence; in other respects the licensee must at his own risk use the premises as he finds them; and in this case there was no trap—the accident happening in broad daylight—and no active negligence; and a nonsuit was affirmed. *Perdue v. Canadian Pacific R. W. Co.*, 1 O. W. N. 665.—C.A.
13. Injury to Licensee or Trespasser on Train Run into by Car of another Railway—Liability for Gross Negligence—Highway — Findings of Jury—Reversal of Judgment of Trial

- Judge — Judgment for Plaintiff instead of New Trial. *Barnett v. Grand Trunk R. W. Co.*, 1 O. W. N. 491, 20 O. L. R. 390.—D.C.
14. Injury to Passenger—Breaking of Rail—Negligence—Findings of Jury—Expert Evidence—Statute Limiting Number of Witnesses — Objection by Counsel — Remarks of Trial Judge—Prejudice—New Trial—Excessive Damages—Inspection of Road. *Galusha v. Grand Trunk R. W. Co.*, 1 O. W. N. 559.—C.A.
15. Injury to Passenger—Fall from Vestibule of Car—Proximate Cause—Voluntary Act—Negligence. *Thonger v. Canadian Pacific R. W. Co.*, 1 O. W. N. 725.—MEREDITH, C.J.C.P.
16. Injury to Passenger Alighting from Train—Absence of Invitation—Evidence. *Walker v. Canadian Pacific R. W. Co.*, 1 O. W. N. 633.—C.A.
17. Injury to Passenger Alighting from Train—Defective Step—Negligence—Jury. *Hoskin v. Michigan Central R. R. Co.*, 1 O. W. N. 503.—D.C.
18. *Injury to Person Crossing Tracks—Negligence—Contributory Negligence—Findings of Jury.*]—The plaintiff, in attempting to cross the defendants' tracks at a busy level crossing in a city, where there were five tracks, with gates and a watchman, came into contact with a locomotive of the defendants, and was injured. The jury found that the gates were down when the plaintiff attempted to cross, except the arm over the south-east sidewalk; that the defendants were guilty of negligence in not having the arm over the south-east sidewalk; that the plaintiff was guilty of negligence because she should have used more precautions to protect herself; that the accident would not have happened but for her negligence; that the driver of the engine could not, after he became aware of the plaintiff's danger, by the exercise of reasonable care have prevented the accident; that the driver, if he had exercised reasonable care, ought to have sooner seen the danger to the plaintiff, and he could by the exercise of reasonable care, have prevented the accident, if he had acted more promptly:—*Held*, that, upon these findings, the judgment should have been entered for the defendants. Judgment of MEREDITH, C.J.C.P., reversed.—*Per* OSLER, J.A., that the negligence of both parties was concurrent and con-

- tinuous down to the moment of the accident. The proximate cause of the injury was the negligence as well of the plaintiff as of the defendants. Where that is the case, the plaintiff is not entitled to recover—in *pari delicto potior est conditio defendentis*. *Fewings v. Grand Trunk R. W. Co.*, 1 O. W. N. 1.—C.A.
19. Injury to Person Crossing Track—Negligence—Evidence—Lowering of Gates — Conflict — Findings of Jury—Damages—Quantum. *Mackison v. Grand Trunk R. W. Co.*, 1 O. W. N. 903.—C.A.
20. Injury to and Death of Persons Crossing Track—Negligence Findings of Jury—Statutory Warning—Absence of Signboard—Evidence—Cause of Accident—Contributory Negligence. *Crouch v. Pere Marquette R. W. Co.*, 1 O. W. N. 637.—C.A.
21. Injury to and Death of Person Crossing Track—Leved Highway Crossing—Open Gates—Absence of Watchman—Negligence — Evidence — Findings of Jury. *Fraser v. Grand Trunk R. W. Co.*, 1 O. W. N. 322.—C.A.
22. Right of Way through Farm — Construction of Drain — Injury by Flooding to Lands Adjoining Right of Way—Evidence—Railway Act, R. S. C. 1906 ch. 37, sec. 250—Application to Future Construction of Railways—Accumulation of Water on Railway Lands—Injury to Adjoining Lands—Common Law Liability — Damages — Injunction — Continuing Cause of Action. *Woods v. Canadian Pacific R. W. Co.*, 1 O. W. N. 872.—D.C.

See Company, 4—Contract, 8—Costs, 1—Criminal Law, 15—Master and Servant, 4, 7, 10, 12—Municipal Corporations, 2, 10—Negligence, 3—Sheriff—Street Railways.

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Kelly v. Journal Printing Co., 1 O. W. N. 136.—BRITTON, J.

See Company, 32—Set-off—Sheriff.

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1. Bill of Sale—Goods Brought into Stock to Replace Others Sold—Authority of Husband of Vendor as Agent—Trover—Value of Goods. *Semmens v. Harvey*, 1 O. W. N. 1099.—D.C.

See Company, 21—Contract, 33, 34—Principal and Agent, 1, 8, 9.

2. *Conditional Sale—Manufactured Article—Address of Manufacturer—Insufficiency—Conditional Sales Act, sec. 1.*]—The Conditional Sales Act, R. S. O. 1897 ch. 149, provides (sec. 1) that “the manufactured article shall have the name and address of the manufacturer painted, printed, stamped or engraved thereon or otherwise plainly attached thereto.” The plaintiffs sold a furnace, under a conditional sale contract. The furnace had a plate attached to it, upon which were stamped the name of the plaintiffs, of which “Toronto” formed part, and their address, “70 and 72 King street east”—the word “Toronto” or the words “City of Toronto” not following, as they should have, to constitute a proper address:—*Held*, not a compliance with the statute as to the address, although the address might easily be gathered from the name, street, and number; and an action based upon the conditional sale contract was properly dismissed. *Mason v. Lindsay*, 4 O. L. R. 365, followed. *Toronto Furnace Crematory Co. v. Ewing*, 1 O. W. N. 467.—D.C.
3. Diseased Animal—Caveat Emptor—Examination and Inspection—Implied Warranty. *Blondin v. Seguin*, 1 O. W. N. 220.—LIDDELL, Co.C.J.
4. Injury in Transit—Loss, whether Falling on Vendor or Purchaser—Delivery to Carrier F. O. B.—Bills of Lading—Property not Passing till Payment. *Graham v. Laird Co.*, 1 O. W. N. 204, 20 O. L. R. 11.—D.C.

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1. Mortgage—Repairs and Alterations — Petition—Costs. *Re Bridgman*, 1 O. W. N. 468.—SUTHERLAND, J.
2. *Sale of Land—Jurisdiction—Powers under secs. 14, 16—Consent—Special Circumstances.*—A testator devised land to trustees upon trust to pay part of the income to his wife, and upon his youngest child attaining the age of 25 to sell and dispose of the whole estate, and to divide the proceeds among his children, and if any child should die before the period

appointed for distribution, his or her share to be divided between his or her surviving children, if any, and, if none, between the testator's surviving children. The testator left surviving him the five children named in his will, and all were alive in April, 1910, but the youngest would not attain the age of 25 until August, 1910. The trustees petitioned (in April, 1910) under the Settled Estates Act for authority to sell part of the land, and the five children were all desirous that the application should be granted:—*Held*, that the Court had no jurisdiction under sec. 14 to authorise the sale; but, in the special circumstances of the case, and having regard to the fact that all the persons presently entitled were desirous, and would become absolutely entitled in August, and there was, therefore, but little chance of the children of any of them becoming entitled, the Court might properly determine that the case was brought within sec. 16; and under it the proposed sale was authorised accordingly. *Re Graham*, 1 O. W. N. 674.—MEREDITH, C.J.C.P.

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Poundage—Con. Rule 1190 (2)—Execution — Railway Lands—Equity of Redemption — Settlement — Satisfaction — Receiver.]—Writs of *fi. fa.* lands were placed in a sheriff's hands in 1893 to levy the amounts of judgments recovered in actions for interest on first mortgage bonds of a railway company. The sheriff advertised for sale the equity of redemp-

tion in the railway lands, and the day of sale was adjourned 33 times. The railway extended through parts of three counties. In 1902 the bonds matured, and proceedings were taken to sell the railway. Judgment to that effect was pronounced in March, 1903. On the 14th October, 1902, a receiver was appointed, who was continued through all the subsequent proceedings. In 1906 the Master, upon a reference in the sale proceedings, reported that the mortgage bonds formed a first charge on and covered all the property belonging to the railway company. Early in 1907 the sheriff was notified to do nothing upon the executions, and the writs were all withdrawn in August, 1907. In September, 1906, a settlement was made by which all the bonds and coupons were bought by R. The executions were kept in the sheriff's hands till a satisfactory arrangement was made with R. The judgments were satisfied by the result of the settlement, and the execution plaintiffs were paid before the writs were withdrawn:—*Held*, that a settlement was arrived at, pending the executions, which was an equitable satisfaction of the judgments and executions; but, as upon a sale nothing could have been realised, because a mere part of the road (that part in the sheriff's bailiwick) could not be sold, and because the equity had no value, there was no basis upon which the Court could say that any sum should be given as representing poundage. Con. Rule 1190 (2) is intended for the benefit of the sheriff when a settlement has been arrived at under pressure of an execution, which, if enforced, would be productive of beneficial results for the execution creditor; the settlement was induced not because of the writs being in the sheriff's hands, but for other more cogent reasons.—The possession of the receiver in 1902 would effectually prevent the enforcement of any writ of execution. *Re Hope and Central Ontario R. W. Co.*, 1 O. W. N. 437.—BOYD, C. (Chrs.)

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1. Bill of Costs—Præcipe Order for Taxation—Disputed Retainer—Special Circumstances—Mode of Trial. *Re Solicitor*, 1 O. W. N. 51.—D.C.
2. Claim for Costs—Company—Contract—Assumption of Liabilities by New Company—Retainer—Evidence—Conflict—Credibility of Witnesses—Corroboration—Finding of Trial Judge—Appeal. *Staunton v. Kerr*, 1 O. W. N. 244, 497.—D.C.
3. Retention of Client's Money—Order for Delivery of Bill of Costs—Disobedience—Attachment—Settlement—Receipt in Full—Promise of Retainer—Agreement with Client—Costs. *Re Solicitor*, 1 O. W. N. 837, 21 O. L. R. 255.—MIDDLETON, J.

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- R. S. O. 1897 ch. 51 (Judicature Act), secs. 50, 74, 75, 76, 77—See APPEAL, 10.
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- R. S. O. 1897 ch. 55, sec. 23 (1), (8)—See COSTS, 7.
- R. S. O. 1897 ch. 55, secs. 23 (10), 36—See VENUE, 2.
- R. S. O. 1897 ch. 60, (Division Courts Act), sec. 72 (1) (d)—See DIVISION COURTS, 2.
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- R. S. O. 1897 ch. 71 (Settled Estates Act)—See SETTLED ESTATES ACT.
- R. S. O. 1897 ch. 73 (Evidence Act), sec. 10—See GIFT, 2.
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- R. S. O. 1897 ch. 235 (Municipal Waterworks Act)—See MUNICIPAL CORPORATIONS, 11.
- R. S. O. 1897 ch. 245 (Liquor License Act), sec. 20—See LIQUOR LICENSE ACT, 13—MUNICIPAL CORPORATIONS, 33.
- R. S. O. 1897 ch. 245, secs. 72, 101—See LIQUOR LICENSE ACT, 8.
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- 1 Edw. VII. ch. 30 (O.) (Amending Municipal Drainage Act), sec. 4—See DRAINAGE REFEREE.
- 1 Edw. VII. ch. 39 (O.) (Public Schools Act), sec. 81 (1)—See PUBLIC SCHOOLS.
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1. Private Lane or Place—Dedication — Acceptance by Municipality—Sidewalk Placed and Repaired by Former Owner—Defect in—Injury to Person Using Sidewalk—Liability of Owner — Negligence — Contributory Negligence — Private Liability—Notice of Defect—Constructive Notice—Time — Findings of Jury. *Rushton v. Galley*, 1 O. W. N. 754, 21 O. L. R. 135.—D.C.

See also *S.C.*, 1 O. W. N. 972.

2. Private Way—Evidence—Obstructions. *White v. Keegan*, 1 O. W. N. 394.—BRITTON, J.

See Highway—Mines and Minerals, 2, 6—Railway, 22.

WILL.

1. Construction—Bequest for Perpetual Care of Grave—Validity — Bequest of Residue to Executors — Precatory Trust — Charitable Object Unspecified — Bequest Void for Uncertainty. *Re Cronin*, 1 O. W. N. 677.—BRITTON, J.

2. Construction—Bequest of “*All my Earthly Goods and Possessions*”—*Land Passing under—Title—Vendor and Purchaser.*]—*Held*, upon an application under the Vendors and Purchasers Act, that land of a testatrix passed to her husband under her will, reading, “I hereby bequeath to my husband . . . all my earthly goods and possessions.” *Re Booth and Merriam*, 1 O. W. N. 646.—TEETZEL, J.

3. Construction—Bequest of Annuity to Widow—Claim to Dower in Lands of Deceased—Implication—Intention. *Re McDonell, McDonell v. Shankie*, 1 O. W. N. 813.—MIDDLETON, J.
4. Construction—Bequest of Property afterwards Disposed of by Testator in Lifetime—Gift of Money—"During her Life"—Life Interest in Company Shares—Property not Specifically Dealt with—Intestacy—Charitable gifts—"Missions"—Church not Specifically Named. *Re Campbell*, 1 O. W. N. 865.—MIDDLETON, J.
5. Construction—Bequest of Residue to Children—Substitution of Grandchildren in Event of Death of Child before Period of Distribution—Estate not Vested in Child—Advance to Child—Grandchild Representing Child—Share Subject to Abatement in Respect of Advance—Moneys of Infant—Payment to Surrogate Guardian—Payment into Court. *Re Carter*, 1 O. W. N. 275, 20 O. L. R. 127.—BOYD, C.
6. Construction—Bequest to "Children"—Previous Mention by Name of Illegitimate Children—Exclusion of Legitimate Children—Inference from Wording of Will and Circumstances Existing at Time of Making. *Lobb v. Lobb*, 1 O. W. N. 848, 21 O. L. R. 262.—MULOCK, C.J.Ex.D.
7. Construction—Bequest to Wife—"Benefit" of Property during Widowhood—Estate in Land—Use of Personal Property—Corpus—Income.]—The testator bequeathed to his wife all the furniture and everything in the house at his death, and proceeded: "I also will that my wife do have the benefit of all my real and personal property particular all monies as long as she remains my widow; and in the event of her having any of my money at the time of her death, the same shall be divided amongst my children or their heirs equally." The estate consisted of land, furniture, cash, and a mortgage for \$2,500, to become due in annual payments of \$100 each, without interest, on which \$2,300 was owing:—*Held*, that, as to the land, the widow took a fee simple, subject to be divested upon her marrying again, in which case there would be an intestacy. In respect of the personal property, she had the right to use it as she required—if any were consumed during the widowhood it was gone. In the case of the money, whether secured by mortgage or not, she had the right to

spend it as she required. She would therefore be entitled to receive the instalments of the mortgage as paid. *Re Story*, 1 O. W. N. 141.—RIDDELL, J.

8. *Construction—Devise—Church Societies—Sale of Lands Devised, pursuant to Statute—Ademption or Extinguishment of Devise—Operation as to Proceeds of Sale — Interpretation of Statute—Lands Unsold at Death of Testator — Trusts — Power of Sale—Distribution of Proceeds.*]—Upon an appeal from the judgment of MEREDITH, C.J.C.P., 13 O. W. R. 741, determining certain questions arising upon the wills of J. B. S. and W. S., the devise made by W. S. of the Blenheim lands was not attacked as void under the Statutes of Mortmain; but the question upon the appeal was whether the terms of the private Act of the Ontario legislature enabling the trustees under the will of J. B. S. to sell the lands and hold the proceeds, and the sales made pursuant thereto, had the effect of cutting these dispositions out of the will of W. S.:—*Held*, that, upon the proper interpretation of the Act, the proceeds of the sales were not to be regarded otherwise than the lands would be if they still remained as realty in the hands of the trustees.—Judgment of MEREDITH, C.J., affirmed. *Re Spragge*, 1 O. W. N. 318.—C.A.
9. *Construction—Devise—Death of Devisee—Vested Estate — Contingency — Subsequent Divesting — Power of Appointment.*]—Testatrix gave the residue of her estate to trustees upon trust, after payment of debts, etc., to pay the income to her husband, during his life, and after his death to pay to her step-son or his issue such sum not exceeding \$1,000 as her husband should by deed appoint (but he not to be bound to appoint), and, in default of appointment and so far as any appointment should not extend, in trust for J. G. when she should attain 21, providing that if J. G. should die in the lifetime of the testatrix or in the lifetime of her husband, leaving a child or children who should survive testatrix or her husband and attain 21 (or, in the case of a daughter, Mary), then such children should take the share of J. G., with power to the trustees to advance for maintenance. The will was dated in 1889: the testatrix died in January, 1890; J. G. died in 1900, without issue; and the testatrix's husband died in March, 1907:—*Held*, that, J. G. not being a child or issue of the testatrix, sec. 36 of the Wills Act did not apply.—*Held*, also, that there was no valid execution of the power in favour of the step-son.—*Held*, also, that the insertion of

the proviso as to the death of J. G. in the lifetime of the husband did not depreciate the effect of the proviso as to the death of J. G. in the lifetime of the testatrix. There was nothing to control the clear effect of the earlier provision by which the estate in remainder was vested in J. G. upon her attaining 21; and the result, in the events which had happened, was that the earlier provision was left to its operation. *McNeil v. Stewart*, 1 O. W. N. 19.—C.A.

10. Construction — Devise — Estates for Life — “Family” — Tenants in Common—Joint Tenants—Statute of Limitations —Remainder—Legacies—Improvements—Costs. *McKinnon v. Spence*, 1 O. W. N. 240, 20 O. L. R. 57.—D.C.
11. Construction — Devise—Life Estate—“Balance or Remaining Portion of Estate”—Remainder—Title by Possession — Vendor and Purchaser. *Re Nicol and Reardon*, 1 O. W. N. 757.—RIDDELL, J.
12. *Construction — Devise — Tenants in Common—Restrictions upon Incumbering and Alienation — Time.*]—Testator gave land to two grandchildren J. and N., “to have and to hold unto them, their heirs and assigns, as tenants in common forever, without power to incumber the same during the lifetime of J. and N., but with the power of disposing of the interest of one to the other, but to no other person. N. bought J.’s share:—*Held*, upon a petition by N. under the Quieting Titles Act, that the restriction forbidding incumbering was valid, and applied to the land when in the sole ownership of N.; but the restriction upon alienation except from one to the other was legally inoperative, for the effect of forbidding disposing of property to all the world except one individual is a general restraint, which is invalid, and, that being so, any limitation as to time does not make it valid. *Attwater v. Attwater*, 18 Beav. 330, and *Blackburn v. McCallum*, 33 S. C. R. 65, followed. *Re Buckley*, 1 O. W. N. 427.—BOYD, C.
13. Construction — Devise — Vested or Contingent Estate. *Re Becksted*, 1 O. W. N. 424.—LATCHFORD, J.
14. Construction—Devise of Dwelling — Lands Enjoyed with — Addition of Buildings after Date of Will—Con. Rule 938—Scope. *Re Stokes*, 1 O. W. N. 982, 21 O. L. R. 464.—BOYD, C.

15. Construction—Devise of Farm—Life Estate—Annuity Payable by Devisee—Charge Limited to Life of Devisee. *Re Padget*, 1 O. W. N. 202.—CLUTE, J.
16. Construction—Devise of Realty in Trust for Joint Enjoyment of two Beneficiaries—Condition that one “Remains Unmarried”—Event of Death not Provided for—Survivorship—Life Estate—Bequest of Contents of House Jointly—Sale by Order of Court—Disposition of Proceeds and Income from—Jewellery, whether Included—Sale of Realty—Disposition of Income. *Re Perrie*, 1 O. W. N. 733, 21 O. L. R. 100.—RIDDELL, J.
17. Construction—Devise to Wife during Widowhood with Devise over in the Event of Remarriage — Gift over Taking Effect on Death without Remarriage — Vested Remainder under Gift over—Distribution of Shares of Remainderman Dying Intestate. *Re Branton*, 1 O. W. N. 656, 20 O. L. R. 642.—MEREDITH, C.J.C.P.
18. Construction—Distribution of Estate—Period of Distribution—Death of Children of Testator—Vested Estates. *Re Knox*, 1 O. W. N. 720.—RIDDELL, J.
19. Construction—Distribution of Estate—Period of Distribution—Payment of Income to Widow. *Re Gurney*, 1 O. W. N. 723.—RIDDELL, J.
20. *Construction—Distribution of Residuary Estate*—“Principal of this Money”—*Division per Stirpes*.]—The testatrix, after giving certain specific legacies, gave a house and furniture to S., adding that S. was not to refuse D. a shelter in that house during her (S.’s) lifetime. To S. she also gave the interest in the proceeds of one-third of her remaining estate, and to D. she gave the interest on two-thirds of the proceeds of her estate. The will then proceeded: “I further stipulate that interest mentioned shall be paid in yearly sums to D. and S. After their death or the death of either of them the principal of this money shall be divided between the members of the M. family who would be my natural heirs. The principal shall be placed on deposit . . . and interest drawn therefrom by cheque.” S. having died, and D. surviving:—*Held*, that the gift to S. and D. was not of an aliquot part to each of the interest upon the whole of the residuary estate, but to each the whole of the interest upon an aliquot part of the estate—there

were thus two principals formed, not one only; and so at the death of S. her principal was to be divided among the members of the family; D.'s principal going on to produce interest for him.—*Held*, also, that the division among the M. family should be *per stirpes*. *Re Bint*, 1 O. W. N. 285.—RIDDELL, J.

21. *Construction—Division of Residue among Children—Discretion of Executors as to Participation by One—Vested Interest—Repugnancy.*]—Testator gave to his son M. \$1,000 if the majority of his executors “in their judgment see proper.” The residue of his estate he then (paragraph 8) gave to his executors to pay the income to his wife for life, and after her death to divide the corpus among his children share and share alike. By the next clause (9) it was left to the discretion of the executors whether the son M. should or should not participate in the division of the residue. It was contended that an absolute vested interest in an undivided share was given to M., and that clause 9 was in effect an attempt to interfere with the incidents of such a gift, and repugnant to the gift and void:—*Held*, that, if the provisions of clause 9 were to be considered repugnant to those of 8, the rule *cum duo inter se pugnancia ultimum satum est*; but there was no such repugnancy nor any reason for setting up artificial barriers against the carrying out of the plainly expressed intention of the testator; and therefore, a majority of the executors having determined not to give M. the \$1,000 and to exclude him from participation in the residue, it was declared that he was not entitled to take anything. *Bain v. Mearns*, 25 Gr. 450, followed. *Re Virtue*, 1 O. W. N. 23.—MEREDITH, C.J.C.P.
22. *Construction—Enumeration of Properties without Specific Disposition—Previous Direction for Payment of Debts—Subsequent Residuary Bequest.* *Re Conger*, 1 O. W. N. 57, 19 O. L. R. 499.—MEREDITH, C.J.C.P.
23. *Construction—Gift of Residue to Son on Attaining Twenty-five—Gift over in Event of Death before that Date—Gift of Income—Vested Estate Subject to be Divested—Infant—Allowance for Maintenance Made by Will—Increase of.* *Re Carr*, 1 O. W. N. 1142.—MIDDLETON, J. (Chrs.)
24. *Construction—Legacy—Death of Legatee—Bequest Falling into Residue—General Bequest of Chattels Construed as Including whole Residue.* *Re Dredge*, 1 O. W. N. 28.—MIDDLETON, J.

25. Construction — Meaningless Clause — Supplying Words “to Pay” — Legacy Charged on Lands Specifically Devised — Demonstrative Legacy — Proceeds of Sale of Chattels — Income of Farm — Maintenance of Children — Residuary Estate. *Re Schellenberger*, 1 O. W. N. 844. — MIDDLETON, J.
26. *Construction—Provision for Lunatic—“Permanently Cured” —“May be Placed in her Possession” —Executors—Discretion —Administration Order.*]—Testator gave all his estate to his executors, for the sole and only benefit of his adopted daughter, and directed that, if she remained in the asylum, the amount should be invested for her benefit and the interest paid to her if necessary; if at any time she “should be dismissed from the asylum and be pronounced permanently cured, the entire amount may be placed at once in her possession. If not pronounced permanently cured . . . the interest only be paid her, or such additional amount as my executors deem advisable.” At the time of the making of the will she was out on probation, and was dismissed therefrom shortly before the death of the testator as cured. She had not been “pronounced permanently cured:”—*Held*, that she was “permanently cured” within the meaning of the will, but that the executors were not bound to hand over the whole estate to her; they were at liberty, according to the intention expressed by the use of the word “may,” to retain the estate in their hands and apply the income and corpus, in their discretion, for her benefit; and an administration order was refused. *Re Bennett, Bennett v. Philp*, 1 O. W. N. 213. — BRITTON, J. (Chrs.)
27. *Construction — Residuary Bequest to Children — Right of Grandchildren to Deceased Parents’ Shares—Gift to Persons Designated—Condition—Payment of Interest—Method of Computation — Responsibility of Executors.*]—The testator, dying in 1909, left a will, made in 1896, by which he gave certain portions of his real estate to six of his seven children, mentioning them by name. He also mentioned by name his remaining child, M., saying that he had given him a deed of a farm. The devise of the homestead farm to his son N. was upon condition of payment to the executors of \$2,900 in ten annual instalments, with interest at four per cent.; and there were similar conditions with regard to some of the other devises. The devise of a farm to a daughter M. was for her life and after her death to her husband for his life and after the death of both to her children or their heirs, to be equally

divided among them, share and share alike. The residue of the estate was to be divided equally between all his children, share and share alike, and the share of the daughter M. was to be equally divided between her children, they to pay the interest thereon at the rate of four per cent. per annum unto their mother, and the executors to pay her the interest of her share so long as it remained in their hands, if they should think she needed it for maintenance. The seven children were all alive at the date of the will, but four of them died before the testator, each leaving a child or children; the other three survived:—*Held*, that the gift to the children of the testator was not to them as a class, and that the children of those who predeceased the testator were entitled to take their parents' shares. The gift was to children as persons designated, and sec. 36 of the Wills Act applied. *In re Moffatt*, 15 O. L. R. 637, and earlier cases, distinguished. Method of construction adopted in *Gorringe v. Gorringe*, [1896] 2 Ch. at p. 347, adopted. *Wisden v. Wisden*, 2 Sm. & G. 396, followed.—2. That the interest payable by the son N. was to be paid annually upon the whole amount from time to time remaining unpaid.—3. That the executors, while the residuary estate remained in their hands, might exercise their discretion as to payment of interest on the daughter M.'s share. After payment to the children of the daughter M., they were not liable for payment of interest to her. *Re Bau- man*, 1 O. W. N. 293, 493.—D.C.

28. Construction—Trust Fund Set apart and Invested—Interest to be Paid to Cestui que Trust—Accretion to Capital by Profit on Investment—Benefit of Remainderman. *Re Watkins*, 1 O. W. N. 334, 20 O. L. R. 262.—MEREDITH, C.J.C.P.
29. Widow—Validity of Marriage — Undue Influence — Testamentary Capacity—Costs. *Brown v. Warnock*, 1 O. W. N. 343.—C.A.
30. Devise—Legacies Charged on Land—Executors—Statute of Limitations—Vendor and Purchaser—Requisitions on Title—Waiver by Taking Possession. *Re Mulholland and Morris*, 1 O. W. N. 214, 20 O. L. R. 27.—BRITTON, J.
31. *Questions Submitted to High Court—Documents Admitted to Probate—Jurisdiction—Surrogate Court—Revocation of Probate—Residuary Clause—Construction—Money in Bank.*—The letters probate issued by a Surrogate Court conclusively determine what documents constitute the last will and testa

ment of a deceased person. *Gann v. Gregory*, 3 D. M. & G. 777, and *In re Cuff*, [1892] 2 Ch. 229, followed. Questions submitted to the High Court, upon an originating notice, as to what documents constituted the will of a deceased person, were not answered.—*Seemle*, that there is some doubt as to the jurisdiction of the High Court under sec. 38 of the Ontario Judicature Act; a question whether a clause was properly included in letters probate as part of a will should be raised by proceedings in the Surrogate Court for revocation of the letters.—By one clause of the will the testator directed that his farm stock, implements, chattels, and effects should be sold by his executors, and the proceeds should form part of the residue of his estate, and also that all notes or mortgages held by him should be converted into cash, and the whole divided into eight equal parts and distributed as provided in the will:—*Held*, that this clause disposed of the whole residue, including cash in bank, though not specified. *Re Smith*. 1 O. W. N. 815.—MIDDLETON, J.

32. *Testamentary Capacity—Senile Dementia—Absence of Undue Influence—Onus—Principal Beneficiary Concerned in Preparation of Will—Costs.*—The plaintiffs, who were beneficiaries under a will made by an aged woman in 1901, sought to set aside a subsequent will made in January, 1909, alleging that the testatrix was suffering from senile dementia, and was incapable of making the will, and also alleging fraud and undue influence. The residuary legatee, whose conduct was attacked, was not related to the deceased, but was a neighbour, who had been intimate with and very kind to the deceased. The will attacked was prepared by a solicitor who was the brother of the residuary legatee, upon instructions given by the latter:—*Held*, upon the evidence, that at the time of the execution of the will the testatrix was not suffering from senile dementia, and was capable of making a will, and there was no influence, undue or otherwise, exercised over her.—*Held*, also, as regards the preparation of the will and the age and feeble condition of the testatrix, that the residuary legatee had satisfied the onus cast upon her of shewing the righteousness of the transaction; but, as her conduct in not calling in an independent person to prepare the will or to read and explain it to the testatrix was reprehensible; she was deprived of costs. *Malcolm v. Ferguson*, 1 O. W. N. 77.—CLUTE, J.

33. Two Testamentary Writings of Different Dates—Issue of Letters of Administration with both Annexed—Revocation—Intention—Residuary Clause—Presumption against Intestacy. *Re Molson, Ward v. Stevenson*, 1 O. W. N. 1038, 21 O. L. R. 289.—D.C.

See Deed, 1—Discovery, 1—Husband and Wife, 12—Infant, 4—Insurance, 9, 10—Venue, 2.

WINDING-UP.

See Banks and Banking, 1—Company.

WITNESSES.

See Evidence, 9—Gift, 1—Lunatic, 2—Railway, 14—Solicitor, 2—Venue.

WORDS.

- “All my earthly goods and possessions”—See WILL, 2.
 “About”—See SALE OF GOODS, 6.
 “Balance or remaining portion of estate”—See WILL, 11.
 “Benefit”—See WILL, 7.
 “Bonus shares”—See COMPANY, 23.
 “Children”—See DEED, 1—WILL, 6.
 “Deemed to be abandoned”—See APPEAL, 17.
 “During her life”—See WILL, 4.
 “Electrical horse power”—See CONTRACT, 12.
 “Erect”—See CONTRACT, 11.
 “Extras”—See EVIDENCE, 6.
 “Family”—See WILL, 10.
 “Final contract”—See PRINCIPAL AND AGENT, 2.
 “Honestly and reasonably”—See CONTRACT, 2 — TRUSTS AND TRUSTEES, 5.
 “In course of construction”—See INSURANCE, 4.
 “Injurious affected”—See MUNICIPAL CORPORATIONS, 4.
 “Insertion order”—See PRINCIPAL AND AGENT, 2.
 “Maliciously”—See LIQUOR LICENSE ACT, 11.
 “May be placed in her possession”—See WILL, 26.
 “Mill-run”—See CONTRACT, 33.
 “Oil Lease”—See DEED, 3, 4—EXECUTION, 2.
 “Or delivered”—See RAILWAY, 5.
 “Originating in his territory”—See PRINCIPAL AND AGENT, 2.
 “Permanently cured”—See WILL, 26.
 “Practising medicine”—See MEDICINE AND SURGERY.

- “Principal of this money”—See WILL, 20.
 “Producer”—See DEED, 3, 4.
 “Prosecution of the said work”—See CONTRACT, 8.
 “Remains unmarried”—See WILL, 16.
 “South part”—See VENDOR AND PURCHASER, 2.
 “Subject to shorts and longs”—See CONTRACT, 32.
 “They”—See CONTRACT, 6.
 “To pay”—See WILL, 25.
 “Unforeseen and unavoidable causes”—See MUNICIPAL CORPORATIONS, 3.
 “Unlawful sale”—See LIQUOR LICENSE ACT, 7.
 “Unlawfully”—See CRIMINAL LAW, 8—LIQUOR LICENSE ACT, 11.
 “Unmarried”—See WILL, 16.
 “Work off”—See CONTRACT, 25.

WORK AND LABOUR.

See Contract, 5-9, 17, 18, 46, 47, 48—Mechanics' Liens.

WORKMEN'S COMPENSATION FOR INJURIES ACT.

See Fatal Accidents Act, 1—Insurance, 3—Master and Servant, 5, 6, 7, 12.

WRIT OF SUMMONS.

1. Conditional Appearance—Rule 173—Refusal of Leave—Discretion—Appeal—Defendant Residing out of Ontario—Service out of Ontario—Con. Rule 162—Place of Making Contract—Jurisdiction. *Standard Construction Co. v. Wallberg*, 1 O. W. N. 527, 608, 676, 20 O. L. R. 646.—D.C.
2. Defendants Resident out of Ontario—Carrying on Business in Ontario—Partnership—Service on Person in Ontario—Con. Rules 222, 223. *Ryckman v. Randolph*, 1 O. W. N. 150, 171, 201, 20 O. L. R. 1.—CLUTE, J. (Chrs.)
3. Service out of Jurisdiction—Con. Rule 162 (e), (h)—Place of Contract—Place where Payment to be Made—Assets in Ontario—Garnishable Debt—Conditional Appearance. *Kemmerer v. Watterson*, 1 O. W. N. 433, 521, 20 O. L. R. 451.—MEREDITH, C.J.C.P. (Chrs.)
4. *Service out of Jurisdiction — Order for—Place not Stated—Practice—Time for Defence—Con. Rules 162, 164, 246.*—An order giving the plaintiff leave to issue a writ of summons for service out of Ontario on the defendant, “who is at pre-

sent residing at Vancouver," and ordering that service of the writ and statement of claim on the defendant be good and sufficient service of them on him, should be construed as an order giving liberty to serve the writ and statement of claim out of Ontario; and service is properly made at Vancouver.—Under Con. Rule 246, the defendant is entitled to eight days from the expiration of the time for appearance in which to deliver his statement of defence; and therefore a clause in the order which required the defendant to deliver his statement of defence within the time limited for appearance, was struck out. *Armstrong v. Proctor, Kenner v. Proctor, McCallum v. Proctor*, 1 O. W. N. 82.—MEREDITH, C.J.C.P. (Chrs.)

5. Service out of Jurisdiction with Statement of Claim—Time for Delivering Statement of Defence—Ex Parte Order of Local Judge—Power of Master in Chambers to Vary—Con. Rule 358—Time for Moving—Extension — Costs—Appeal. *McCammond v. Govenlock*, 1 O. W. N. 819.—SUTHERLAND, J. (Chrs.)
6. Substituted Service—Practice—Sheriff. *Colville v. Small*, 1 O. W. N. 857.—MIDDLETON, J. (Chrs.)

See Judgment, 22—Lis Pendens.

WRONGFUL DISMISSAL.

See Master and Servant, 1, 2.

YOUNG MEN'S CHRISTIAN ASSOCIATION.

See Assessment and Taxes, 3.