THE

Canada Law Journal

Vol. XXXI. APRIL 1, 1895. No. 6

AN English exchange tells us of the death of Mr. W. F. Finlason, who is described as one of the most interesting and attractive figures in modern legal life, a profoundly erudite lawyer and a prince among law reporters, possessing also great intellectual gifts. For a period of fifty years he acted as chief legal reporter of *The Times*, witnessing a great number of interesting changes in the administration of the law, and in the personnel of the Bench, acquiring, during this period, an enormous store of anecdotes, which he was wont to relate with great skill and effect. He contributed largely to legal literature, and was joint author of the Foster and Finlason Reports.

ONE of the many objections to the sensational tendency of modern journalism is its frequent interference in many ways with the administration of justice. Flagrant abuses of the power of the press occur from time to time, and are becoming more frequent and more glaring. This has been apparent in several cases of alleged murder during the past few months, notably in the Clara Ford and Hyams cases. We shall refer to one instance in connection with the latter. Two men were brought before the police magistrate of Toronto for the usual preliminary investigation. After a large number of witnesses had been examined, the magistrate decided that there was sufficient evidence to commit the prisoners for trial. The next day there appeared in a daily paper, in large letters, and conspicuous type, as a heading to the account of the proceedings in the Police Court, these words, "Wells was murdered," the obvious conclusion being that the men then charged were found guilty of murder. That, of course,

is just the question that will hereafter have to be tried; but, until found guilty, the prisoners are presumably innocent. It is manifestly a gross injustice to the prisoners to publish such a statement. It is bad enough for practically irresponsible reporters to put sensitive people to torture by publishing abroad matters with which the public have no concern, but it is grossly unfair to men on trial for their lives to make statements which are calculated to prejudice the public against them. It is contrary to British law and British fair play, and should not be permitted.

If sensational headings are a necessity to the existence of a newspaper, let them at least be reasonably accurate. In such cases as these it would be well to wait until the prisoner is either acquitted or found guilty, and then use letters an inch long, if thought necessary to sell the paper. We are not surprised at the indignant comment of the counsel for the defence in the case referred to, when asking for the discharge of one of the prisoners: "We were tried, we were convicted, and we were hanged by some of the newspapers of the city of Toronto before a particle of evidence had been given." It would be much better for the "fourth estate" if they left to the duly constituted authorities the rôle of judge, jury, and hangman.

It may be that there are but few people nowadays who accept as facts statements made in the sensational papers of the day, but amongst the unobservant there may still be some who think things must be true because they are in print. There is need, therefore, for the exercise of some supervision over newspaper fireworks.

THE public are informed that a painful surprise has happened to the city of Hamilton and the County of Wentworth, in that the County Treasurer has appropriated nearly $9,000 of the county funds to his own use. He is said to have admitted taking this amount in various sums at various times, and put it into his business as though it were his own money. "He had hoped to make the deficiency good, but had been unsuccessful in his business." We are also told that "the treasurer is very popular with the county councillors," and he having, with much candour and with proper feeling, "expressed his sorrow at the state of affairs" the county council decided not to deal harshly with him. In fact, they were so impressed with his misfortune

that they also decided, although they "regretted the difficulty and censured him for his want of judgment in the matter," to continue him in his position as treasurer. Feeling, however, the grave responsibility upon them as guardians of the public, they passed a resolution rendering it impossible for him in the future to misappropriate any larger sum at any one time than $3,000. It is gratifying to know, however, that the sureties of this officer have made good the stolen funds, and that "he will now devote himself to recouping his sureties for their loss."

Now, we desire to say that this tale, as it appears in a daily paper, almost in the above words, is not told as a joke. We presume it states the facts correctly. If it is intended as a satire upon our municipal system, we have no suggestion for any improvement; although, if it is intended either as a satire or a joke, it was not hard to connect it with the name of a real living county treasurer. Less than two months ago a customs official in Ottawa, and a wealthy man, who, out of pure carelessness and with no intent to misappropriate, did not promptly pay into the department a few hundred dollars of public money that had been paid to him, was forthwith arrested and sent to jail for a year. But, then, he was probably not "very popular" with the head of his department, and it was not necessary to keep him in his position "to recoup his sureties," for he paid up his deficiency himself.

We do not desire to say one harsh word about the very popular treasurer, but we would respectfully suggest to the members of the county council to consider whether (even if it were not necessary in the public interests to institute criminal proceedings) it was consistent with the duty which they owe to the public to condone so serious an offence by continuing the delinquent in office.

THE proceedings of the Bar associations in the various parts of the world inhabited by the great Anglo-Saxon race are always of more or less interest. We have before us the report of the Territorial Bar Association of Utah. This territory is now becoming a state, and the Bar there venture to give their opinion on various subjects of importance in its development into statehood. Amongst other subjects which engaged their attention relating to the administration of justice was whether the constitution

should contain any provision as to juries, and, if so, what? The gentleman to whom this subject was confided has written a very able and convincing paper, in which he takes up, firstly, the question of grand juries; and comes to the conclusion that they are not desirable. As to petit juries he was in favour of the omission from the constitution of any provision guaranteeing a right of trial by jury either in civil or criminal cases; though he recommended that there should be some way provided of giving assistance to the judge in the disposal of matters of fact by calling to his aid one or two intelligent, educated men in an advisory capacity. Another able paper was read on the selection, tenure, and compensation of the judiciary. The writer takes strong ground against the elective system, which, as he says, is practically unknown outside the United States. There it has admittedly worked badly. As the writer says: "No mere politician who owes his office to a party can be trusted to do exact and even-handed justice between the opposing litigants. We insist, with much reason, that our judges shall keep out of active politics while on the bench. It is not demanded, and is certainly not equally necessary, as to any other officer. Yet, strangely enough, we are not shocked by dragging the office itself into the whirlpool of party politics and allowing the candidates to engage in an unseemly, and often corrupt, struggle for its honours and emoluments. It would perhaps be an excellent thing could we enact and enforce the statute of Richard the Second, which declared, with much quaintness and some bluntness, that no person should be appointed by the appointing power to a justiceship 'that sueth either privately or openly to be put into the office, but only such as they shall judge to be best and most efficient.' Truly, a hard law for the chronic office-seeker, and one which would afford even scanty consolation for the technical individual, who, while objecting to any man seeking the office, saw no objection to placing himself where the office would have no difficulty in finding the man."

It will be remembered that the appointive system is in force in Massachusetts, with the result that that state has perhaps the ablest judiciary of any state in the Union. The writer also urges that the tenure of office should be during good behaviour and not for any short term; and that the compensation should be ample, not less than $5,000, at least, to the judges of Superior Courts.

THE DOCTRINE OF EJUSDEM GENERIS AS APPLIED TO THE CONSTRUCTION OF DOCUMENTS.

(Continued from p. 134.)

The application of the doctrine to general words of description in assignments for the benefit of creditors would seem to depend to some extent on whether the assignment is for the benefit of all creditors, or of some particular creditor or creditors. Where an assignment was for the general benefit of all creditors, general words purporting to assign "all other property" were allowed their unrestricted meaning, whereas, in an assignment for the benefit of a particular creditor, the like words received a restricted meaning. Thus, in *Ringer* v. *Cann*, 3 M. & W. 343, the lessee of a mill and premises at a rack rent, being insolvent, executed an assignment whereby, after reciting his insolvency and that he had agreed to assign "all his debts, personal estate, and effects of every description" to the assignees in trust for the benefit of his creditors, he conveyed and assigned to the assignees all and singular the stock in trade, implements, and utensils in trade, corn, grain, hay, horses, carts, and carriages, crops of every kind, as well sowed as not, household furniture, plate, china, linen effects, and personal estate of every description whatsoever of him the grantor in, upon, or about the dwelling-house, mill, outhouses, and premises situate at Hethersett then in his use or occupation or elsewhere soever (except the wearing apparel of himself and family), and also all debts, etc., "and also all bonds, bills, notes, and other securities for money, books of account, writings, and other papers, *and all other the personal estate and effects* of him" the grantor "whatsoever and whereso-ever, or of, in, or to which he was in anywise interested or entitled." The deed contained a trust for the assignees, among other things, to pay the rent in arrear for the mill premises, or accruing due until and up to the 6th April then next. It was claimed by the assignee that the lease of the mill passed under the general words of the assignment. Lord Abinger, C.B., said: "I think the distinction in all these cases is whether the object of the parties was to pass a limited interest or not; if it was, then the rule is that we are not to construe general words so as to enlarge the limited interest," but, being of opinion that the intention of the parties was that the leasehold should pass, there being a manifest intention expressed on the face of the deed to assign

the whole of the debtor's estate, the court held that the general words could not in that case be restricted, and that under the general words the leasehold passed to the assignees. But, in *Harrison* v. *Blackburn*, (1864) 17 C.B.N.S. 678, the assignment was for the benefit of a particular creditor, and there a restricted meaning was placed on similar general words. In that case the debtor, by deed which recited that he was indebted to the grantee in £60, assigned "all and every the household furniture stock in trade, and other household effects whatsoever, and all other goods and chattels and effects now being or which shall hereafter be in, upon or about the messuage or dwelling-house or premises occupied by the grantor, known as the Bull's Head, situate, etc., "and *all other the personal estate whatsoever* of, or to which the said (grantor) is now and from time to time and at all times hereafter (so long as any money shall remain due and payable) to the said (grantee) his executors, administrators, and assigns by virtue of these presents (*sic*), and all the estate right, title, interest, claim, and demand of the said (grantor) of, in, to, or upon the said several premises hereby assigned or intended so to be" absolutely. The deed contained a power to sell and dispose of "the same premises," and out of the proceeds to pay the £60 and expenses, and to render the surplus to the grantor.

At the time of the execution of this deed the grantor was the owner of a lease of the "Bull's Head" for an unexpired term of years, and the question was whether, under the general words, the assignees were entitled to this lease. The Court of Common Pleas (Erle, C.J., and Byles and Keating, JJ.) held that it did not; *Ringer* v. *Cann*, *supra*, being distinguished on the ground that there the assignment was for the general benefit of all the creditors of the assignor, and the assignment would, therefore, naturally be an assignment of all the debtor possessed, whereas here it was an assignment for the benefit of a particular creditor, where no such presumption would arise: and, further, that in *Ringer* v. *Cann* there was an express provision for the payment of the rent, whereas in *Harrison* v. *Blackburn* there was no such provision. With regard to the last point, however, it may be well to notice that the provision for the payment of the rent in *Ringer* v. *Cann* only covered the rent up to the 6th April following the deed; and, as Parke, B., pointed out in that case, it merely enabled the trustees to pay the rent up to that date, whether they took possession or not.

Hopkinson v. *Lusk*, (1865) 34 Beav. 214, is an important illustration of the rule. In this case a trustee of a bank in whom was vested (*a*) a leasehold which was the absolute property of the bank, and (*b*) certain other leaseholds held by him as a security for a debt due to the bank, made a conveyance to a new trustee, specifically conveying property *(b)*, "and all other moneys, securities, *property and effects*, now vested" in him as trustee for the bank or on which they have any lien; and it was held by Lord Romilly, M.R., that property (*a*) did not pass by this deed. He said that the scope and object of the deed was to convey to the new trustee all the securities for debts due to the bank, and though the deed contained a recital of a request by the bank to the grantor to transfer "the trust property vested to him," yet that, although including all property, must have reference to what had gone before, and must mean all trust property vested in him for securing debts due to the bank, and did not include property to which the bank was absolutely entitled.

In *Johnson* v. *Edgeware Ry. Co.*, (1866) 35 Beav. 48c, the doctrine was applied to the construction of a lease whereby the landlord was empowered to resume possession of any part of the demised premises in case it should be required "for the purpose of building, planting, accommodation, *or otherwise*." The question was, did this stipulation enable the landlord to resume part of the demised premises required for a railway so as to defeat the tenant's right to compensation? and Lord Romilly, M.R., held that it did not. He said: "It cannot be denied that where a person speaks of three purposes, 'A, B, and C, or otherwise,' the latter words refer to something *ejusdem generis*, and can only be applicable to things of the same character as those previously specified, as in this case something of the same character as 'building, planting, or accommodation,' though not coming precisely within the exact definition of these words." The expropriation of the land for railway purposes, in his opinion, did not come within either of those terms.

Early in this century Lord Ellenborough laid it down that the doctrine was applicable to the construction of the general words usually found in policies of marine insurance. He declared the words "all other perils, losses, and misfortunes," etc., to comprehend and cover other cases of marine damage of the like kind with those which are specifically enumerated and

occasioned by similar causes: (1816) *Cullen* v. *Butler*, 5 M. &. S. 461, at p. 465.

A difficulty, however, not infrequently arises in determining whether or not the cause of the loss is a peril, loss, or misfortune, *ejusdem generis* with those specifically enumerated. In a late case before the House of Lords, *Thames and Marine Insurance Co.* v. *Hamilton*, (1887) 12 App. Cas. 484, a loss had been occasioned by the bursting of an air chamber of a donkey engine, caused by the negligent closing of a valve, and the question was whether the loss thus occasioned was covered by the policy. Their lordships came to the conclusion that, applying the doctrine of *ejusdem generis* to the construction of the words "other perils," they could only cover other perils *ejusdem generis* with "perils of the sea," and that the accident to the engine was not such a peril, and, therefore, not covered by the policy.

In *The Ashbury Railway Carriage Co.* v. *Riche*, (1875) L.R. 7 H.L. 653, the House of Lords applied this doctrine to the construction of the articles of association of a joint stock company. These articles described the objects of the company as follows: "To make and sell, or lend, or hire railway carriages and wagons, and all kinds of railway plant, fittings, machinery, and rolling stock; to carry on the business of mechanical engineers and *general contractors;* to purchase, lease, work and sell mines, minerals, land, and buildings; to purchase and sell as merchants timber, coal, metals, or other materials, and to buy and sell any such materials on commission as agents." The directors agreed to purchase a concession for making a railway in a foreign country, and afterwards they agreed to assign the concession to a foreign firm, which was to supply the materials and receive payments from the English company. The validity of this transaction being called in question, it was attempted to be supported as coming under the power to carry on business as *general contractors*, but these general words were held to be limited by the preceding words "mechanical engineers," and to apply only to contracts of that nature, and, therefore, the agreement to purchase the concession was held to be *ultra vires* of the company.

The application of the doctrine to the construction of wills has not always been uniform, and the later cases indicate a distinct departure from the principles on which some of the earlier cases proceeded.

This is due to what appears to be a change of policy, if we may so call it, adopted by the later generation of judges in regard to the heir-at-law. Formerly we find it was regarded as "a rule of law" that the heir should not be disinherited unless by plain and cogent inference arising from the words of the will. This idea that the heir-at-law was to be favoured can hardly be said to be founded on any very satisfactory reason. The moment it is conceded, as it must be, that a testator has the right to dispose of his estate as he pleases within certain defined limits, then the only legitimate method of construing his will is really to find out what it means, and, if there be no law against the disposition he has made, to give due effect to it, and the construction ought clearly not to be affected by any supposed preferential rights of either the heir-at-law or next of kin of the testator. Considerations of this kind have probably led to the gradual abandonment of the notion that the heir-at-law is to be favoured in the construction of a will, and what was at one time regarded as "a rule of law" has, by one of those curious revulsions of opinion among the judges which seem to be peculiar to the administration of English law, now come to be regarded as not only no "rule of law," but not even a rule of construction, and the tendency of the modern decisions has set altogether in the direction of avoiding as far as possible an intestacy.

In applying the doctrine of *ejusdem generis* to the construction of general words of gift in wills, it will be found, we think, that a good deal depends on the fact whether or not there is any residuary devise or bequest. Where there is no gift of residue, then general words preceding or following a particular devise or bequest are more likely to be construed as widely as possible; whereas, where there is a residuary gift, general words preceding and following particular devises or bequests are more likely to receive a restricted construction. But, as we have already said, the true object of the *ejusdem generis* doctrine being to carry out the true intention of the will, wherever it can be plainly collected from the will that the general words, even in the latter case, are intended to be unrestricted in their operation, they will be so construed.

Speaking of the doctrine, Wood, V.C., said: "I think the cases, which are very numerous on this subject, have some common principle upon which they all seem to have been decided,

and which is not difficult of application with reference to gifts in general words following a specific enumeration being confined to things *ejusdem generis*. I apprehend there was, on the one hand, a desire on the part of the court *to avoid intestacy where there was no bequest of the residue*, because unless you give general effect to the words, although they were preceded by the enumeration of the particulars, the testator might die intestate as to his residuary estate, and in that case the court conceives that the proper interpretation was to deal with the whole as being an imperfect enumeration in the first instance, followed by those larger words which were intended to carry the whole, so as to avoid an intestacy; and, on the other hand, where the intention was to deal with a particular portion of the estate, or with property referred to as being in a particular locality, then the necessity was no longer felt of giving full and complete effect to all those general words which followed the enumeration of the particulars": *Gibbs* v. *Laurence*, (1861) 30 L.J.Ch.N.S. 170. In that case it was held that a bequest of furniture, plate, linen, china, and pictures, and "all other goods, chattels, and effects which shall be in the house," at the time of the testator's death, did not include a sum of money then in the house, because in this case there was a residuary bequest and the doctrine *ejusdem generis* was applicable.

But a will whereby the testator gave "all my plate, linen furniture, and *other effects* that may be in my possession at the time of my death," was held by Sir George Jessel, M.R., to carry all the residuary personal estate. He said: "It is alleged that the words 'other effects' are to be cut down so as to mean that which is something like furniture, plate, or linen. But the answer is that the words ought to have their natural meaning given to them unless there is some contrary intention appearing in the will. The mere fact that the testator enumerates some items before the words 'other effects' does not alter the proper meaning of those words": (1876), *Hodgson* v. *Jex*, 2 Ch.D. 122. In that case there was no other residuary gift. See also *Chapman* v. *Chapman*, 4 Ch.D. 800, a similar decision by the same learned judge. To the same effect is the case of *Smyth* v. *Smyth*, (1878) 8 Ch.D. 561, where a testator gave by his will two legacies, and then gave "my sheep and all the rest residue, moneys, chattels, *and other effects*," to be equally divided between his four brothers,

and there was no other gift of residue; and it was held by Malins, V.C., that all the real as well as personal estate passed under those general words; see also *Attree* v. *Attree*, 11 Eq. 280; *Milsome* v. *Long*, 3 Jur. N.S. 1073. The decision in *Smyth* v. *Smyth* was opposed to the earlier case of *Doe* v. *Dring*, 2 M. & S. 448, which Malins, V.C., refers to in his judgment as "the decision of a very eminent judge, Lord Ellenborough; but, like all other judges at that period, he felt himself bound by the peremptory rule of law that the heir shall not be disinherited unless by plain and cogent inferences arising from the words of the will"; and see per Boyd, C., in *Hammill* v. *Hammill*, 9 O.R., at p. 533.

Smyth v. *Smyth* was followed by the Divisional Court of the Chancery Division in *Hammill* v. *Hammill*, (1885) 9 O.R. 530, in which case a gift of the balance of personal property, consisting of notes and other securities for money . . . "also *any effects possessed* by me at the time of my decease," was held to pass land, acquired by the testatrix subsequent to the date of her will, to which she died entitled; the absence of any other residuary devise and the desire of the court to avoid a construction which would involve an intestacy furnishing the *ratio decidendi*; see also *Hall* v. *Hall*, (1892) 1 Ch. 361; 66 L.T.N.S. 206. In the same line as these cases is *Scott* v. *Scott*, (1871) 18 Gr. 66, where Mowat, V.C., held that a gift of "household furniture and *other personal effects*" passed the residuary personal estate, there being no other gift of the residue. We may note that the headnote of this case is not perfectly accurate, as it may lead to the impression that the clause was held to carry the residuary real estate also, which was not the case.

For the effect of the absence of any residuary gift upon the construction of general words following a particular clause or bequest, we may refer to *King* v. *George*, (1877) 4 Ch.D. 435; 5 Ch.D. 627, where a will was in question which was as follows: "I, S.G., do bequeath to A.K.G. *all that I have power over*, namely, plate, linen, china, pictures, jewellery, lace, the half of all valued to be given to H.G. The servants in the house who have been a year with me to receive £10 and clothes divided among them, also all the kitchen utensils." There was no other residuary gift. The Court of Appeal (James and Mellish, L.JJ., and Baggallay, J.A.) affirmed the judgment of Malins, V.C., who

held that the will passed all the personal estate. James, L.J., who delivered the judgment of the court, said: "I think the law is correctly laid down by the Vice-Chancellor when he says, 'I cannot help thinking that the doctrine has been settled that where a testator gives his property generally by the words "all my property," or "all my estate," or "all that I have power over," as in this case, where he uses words sufficient to pass everything, and then proceeds to enumerate particulars, it is now I think pretty well settled that an enumeration of particulars does not abridge or cut down the effect of the general words.'" In view of the cases already cited, we think he might have added, "unless they be followed by a gift of the residuary estate," the effect of which is seen in the two following cases.

Thus, in *Northey* v. *Paxton*, (1888) 60 L.T.N.S. 30, Kekewich, J., held that a will worded as follows: "I give to my nephew, W.P., all the household furniture *and effects* belonging to me in and about my country residence," followed by a residuary gift to A.N., had not the effect of passing jewellery found in the country residence to W.P., but that it went to A.N. under the residuary bequest. Similarly a gift of £100 to D., and certain books, wine, and plate, "*and all the rest of the furniture and effects*" at the house at which the testator resided, followed by a gift of the residuary estate to T., was held by North, J., not to have the effect of passing to D. £2,740 in bank notes, certain stock receipts, certificates of railway stock, and some jewellery, which were found in the testator's house, and which were held to pass under the residuary gift to T.: *Re Miller, Daniel* v. *Daniel*, (1889) 61 L.T.N.S. 365, because here again the doctrine of *ejusdem generis* was held applicable.

From the illustrations we have given, we think it must be conceded that the doctrine we have been discussing serves a useful purpose. While in its application to wills it may be doubtful whether it always carries out the intention of the testator, yet, both in that class of cases and in all others, the ostensible object of the rule is to construe the document according to its true intent, and it is one of those concessions which, in the interest of justice, it has been found necessary to make in consequence of the manifold infirmities of language in the expression of ideas.

G. S. HOLMESTED.

CURRENT ENGLISH CASES.

The Law Reports for February comprise (1895) 1 Q.B., pp. 169-346; (1895) P., pp. 5-70; and (1895) 1 Ch., pp. 117-235.

NUISANCE—EVIDENCE—CONTRIBUTORY NEGLIGENCE—BURDEN OF PROOF.

Fenna v. *Clare*, (1895) 1 Q.B. 199; 15 R. March 410, turns simply on a question as to the sufficiency of evidence. The action was brought by the plaintiff, a little girl between 5 and 6 years of age, to recover damages for an injury sustained by having fallen upon certain sharp spikes fixed on the top of a low wall eighteen inches high, abutting on the highway, and owned by defendant. No one witnessed how the accident occurred, but the evidence adduced on behalf of the plaintiff established that she was found on the highway near the wall with her arm bleeding from such a wound as might have been caused by her falling upon the spikes. No other evidence was offered in reference to the accident except that of a witness who shortly before the accident saw the plaintiff climbing up upon the wall, and told her to get down, which she did. The jury found that the spikes on the wall were a nuisance to the highway, and the question was whether there was any evidence to submit to the jury that the nuisance was the cause of the injury to the plaintiff while using the highway in a lawful manner. Pollock, B., and Grantham, J., held that there was

PRACTICE—EQUITABLE EXECUTION—RECEIVER—EQUITABLE REVERSIONARY INTEREST IN PERSONAL ESTATE.

In *Tyrrell* v. *Painton*, (1895) 1 Q.B. 202; 11 R. Feb. 107, the Court of Appeal (Lord Halsbury, Lindley, and Smith, L.JJ.) held that a receiver may be appointed, by way of equitable execution, of a debtor's reversionary interest in personal estate, following *Fuggle* v. *Bland*, 11 Q.B.D. 711. Lord Russell, C.J., had refused the motion because he was of opinion that the debtor's interest was in reality an interest in land which could be reached by *elegit*; but the Court of Appeal being of opinion that the interest of the debtor was, in fact, a reversionary interest in the proceeds of the sale of the land, granted the application.

PRACTICE—PAUPER—APPEAL BY PAUPER—SECURITY FOR COSTS.

Biggs v. *Dagnall*, (1895) 1 Q.B. 207, was an application by a defendant to compel the plaintiff, who had obtained the common order giving him leave to sue *in forma pauperis*, to give security

for costs of an appeal which he was prosecuting in a Divisional Court. Wills and Wright, JJ., following *Drennan* v. *Andrew*, L.R. 1 Ch. 300, held that where a person obtains leave to sue *in forma pauperis*, he is entitled to prosecute an appeal without giving security.

PRACTICE — PAYMENT INTO COURT — LIABILITY NOT DENIED — VERDICT FOR SMALLER AMOUNT THAN PAID IN—PAYMENT OUT OF EXCESS TO DEFENDANT—ORD. XXII., R. 5—(ONT. RULE 632).

Gray v. *Bartholomew*, (1895) 1 Q.B. 209; 14 R. Feb. 254, was an action to recover damages for slander. The defendant, without denying liability, paid into court £5 in satisfaction of the action. The plaintiff did not accept the money and proceeded to trial, and recovered one farthing damages. The judge at the trial gave judgment for the defendant with costs, and ordered that the £5 paid into court by him should be paid out to him, less one farthing. It was contended that there was no jurisdiction to make this order, but the Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) held that there was jurisdiction to make the order, and that it was rightly made.

MANDAMUS—QUARTER SESSIONS—MISTAKE IN LAW.

The Queen v. *Justices of London*, (1895) 1 Q.B. 214; 15 R. Feb. 347, was an application for a mandamus to compel justices of Quarter Sessions to hear and determine an application for an order for the payment of the costs of an appeal before them. The statute on which the application relied provided that, in case an appeal thereunder should be dismissed, the "court is hereby required to adjudge and order" that the appellants shall pay the costs to the justices. An appeal was brought under the Act and dismissed, but the justices refused to make an order for payment of the costs of the justices. By subsequent statutes other provisions had been made in regard to the costs of appeals, and all Acts inconsistent therewith were repealed. Pollock, B., and Grantham, J., were of opinion that the mandamus could not be granted because the justices had heard and decided the matter, and that even if they were wrong in point of law their decision could not be reviewed by means of a mandamus, because the justices in deciding that they had a discretion as to costs and refusing them were exercising a judicial and not a merely ministerial function.

ADULTERATION—SAMPLE—PURCHASE FOR ANALYSIS—CONDITION PRECEDENT TO PROSECUTION—SALE OF FOOD AND DRUGS ACT, 1875 (38 & 39 VICT., C. 63), SS. 13, 14—(R.S.C., C. 107, SS. 9, 10).

Smart v. *Watts*. (1895) 1 Q.B. 219; 15 R. Feb. 406, was a case stated by justices, and the question was whether, where a sample of goods is purchased for the purpose of analysis with a view to a prosecution for adulteration, the due observance of the proceedings laid down by the Act for procuring the analysis is a condition precedent to such prosecution (see R.S.C., c. 107, ss. 9, 10), or whether it could be dispensed with where there is a contemporaneous admission by the seller at the time of sale of the sample that the sale was an offence under the Act; and it was held by Wills and Wright, JJ., that, notwithstanding the admission, the analysis is a condition precedent to a prosecution, and the procedure laid down for obtaining the analysis must be strictly followed; and the defendant having been convicted, the conviction was quashed.

LANDLORD AND TENANT—LEASE—PROVISO FOR DETERMINATION BY NOTICE—NOTICE, SUFFICIENCY OF.

Bury v. *Thompson*, (1895) 1 Q.B. 231; 15 R. Feb. 334, was an action for a declaratory judgment. The plaintiff was lessee under a lease for a term of twenty-one years from Christmas, 1887, which was subject to a proviso, "that if the lessee shall be desirous of determining this demise at the end of the seventh or fourteenth year of the said term, and of such his desire shall give to the lessor six calendar months' notice next before the expiration of such seventh or fourteenth year," the lease should determine. On 21st October, 1893, the plaintiff wrote to the defendant, the lessor: "I see that my seven years will be determined on December 25th, 1894. . . . . I understand the rent is £50 too high, and I shall not be able to stop unless some reduction is made. I give an early intimation of this, so that you may have ample time to consider what course you would like to adopt." Negotiations were then entered into with a view to reduction of rent, which continued until within six months of the termination of the first seven years of the lease, when the defendant refused any reduction. The plaintiff claimed a declaration that the lease was at an end; and Pollock, B., and Grantham, J., were of opinion that the notice of 21st October, 1893. was a sufficient notice under the proviso, and that the lease was at an end. The case

seems to conflict with the opinion of Lord Mansfield, C.J., in *Doe* v. *Jackson*, Doug. 175, which, we believe, has hitherto been considered good law, that where a notice to quit is given by a landlord, coupled with an option of a new agreement, *e.g.*, "or else that you agree to pay double rent," the notice is bad. By the *Law Times Journal* of 9th March last, however, we see that the decision has been affirmed by the Court of Appeal.

WEIGHTS AND MEASURES—FALSE OR UNJUST MEASURE—CHURN WITH GAUGE INDICATING MEASURE—MEASURE FOR USE FOR TRADE—WEIGHTS AND MEASURES ACT, 1878 (41 & 42 VICT., C. 49), S. 25—R S.C., C. 104, SS. 25, 29.

Harris v. *London County Council*, (1895) 1 Q.B. 240; 15 R. Feb. 336, was a case stated by magistrates. The appellant was convicted under s. 25 of the Weights and Measures Act 1878 (41 & 42 Vict., c. 49)—(R.S.C., c. 104, ss. 25, 29), of having false measures in his possession for use for trade. The evidence showed that he sold milk in his own churns, which were fitted with gauges indicating the number of gallons they contained. The purchaser, by his contract, was entitled to have the churns re-gauged whenever he thought necessary. The magistrate found that the churns were used by the appellant in his dealings both with the purchaser and the railway company which carried them as measures, and that two of the churns purporting to contain sixteen gallons contained, in fact, two pints less. The Divisional Court (Wills and Wright, JJ.) held that the conviction was right.

AGREEMENT TO REFER TO ARBITRATION—STAY OF PROCEEDINGS—NEGLECT TO APPOINT ARBITRATORS—MANDAMUS.

Norton v. *Counties Conservative Permanent Building Society*, (1895) 1 Q.B. 246; 14 R. Feb. 263, was an appeal from an order of Day, J., staying proceedings in the action on the ground that the parties had agreed to refer the matter in dispute to arbitration. The plaintiff was a member of the defendant building society, and by the rules of the society it was provided that all disputes between the society and the members thereof were to be settled by arbitration, and that five arbitrators should be elected by the board of directors; and that, in case of any dispute, the matters in difference should be decided by three of such arbitrators to be chosen by lot. No

arbitrators had before action been elected by the directors, but it was held by the Court of Appeal (Lindley and Smith, L.JJ.) that the defendants were entitled to have the proceedings stayed, that it was competent for the directors to elect the five arbitrators even after action brought (in which respect the decision of North, J., in *Christie* v. *Northern Benefit Building Society*, 43 Ch.D. 62, to the contrary, was dissented from); further, the Court of Appeal was of opinion that if they neglected to elect the arbitrators, the plaintiff's remedy, instead of bringing an action, was to apply for a mandamus to compel them to do so. The order of Day, J., was, therefore, sustained.

ARBITRATION—STAYING ARBITRATION—INJUNCTION—ACTION IMPEACHING AGREEMENT OF REFERENCE.

Kitts v. *Moore*, (1895) 1 Q.B. 253; 12 R. Jan. 133, is another decision of the Court of Appeal (Lindley and Smith, L.JJ.) on a cognate question to that decided in the preceding case. In this case the plaintiffs brought an action to impeach the validity of an instrument containing the agreement for reference, and applied for and obtained from Lord Russell, C.J., an injunction staying the arbitration until the trial, and the Court of Appeal affirmed the order.

PRINCIPAL AND AGENT—AGENT, PERSONAL LIABILITY OF—MONEY OBTAINED BY DURESS—PAYMENT BY PRINCIPAL AND AGENT BEFORE NOTICE OF DURESS—RECEIVER APPOINTED UNDER TRUST DEED.

Owen v. *Cronk*, (1895) 1 Q.B. 265; 14 R. Mar. 311, was an action to recover money paid under duress. The facts of the case were that a trading company had made a trust deed to secure debentures, and in this deed provision was made, in the event of default in payment of the debentures, that the trustees named in the deed might appoint a receiver of the property thereby charged; and it was provided that a receiver so appointed was to be deemed to be the agent of the company. Under this deed the defendant was appointed receiver, and he carried on the business in the company's name. He opened an account at a bank in the company's name, and to this account he paid all moneys received in the course of the business. The manager of the business, without the knowledge of the defendant, compelled the plaintiffs, by duress of their goods, to pay a sum which the plaintiffs alleged to be extortionate, and to recover which the

action was brought. On receipt of the money, and before any notice of the duress, the defendant paid the money into the account which he had opened at the bank. Two questions were involved: (1) Was the defendant, as regards the plaintiffs, to be deemed a principal or agent? (2) If an agent, was he, nevertheless, personally liable under the circumstances to refund the money? The Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) affirmed the judgment of Charles, J., on both points, holding that the defendant was only an agent of the company, and having paid the money over to the company without notice of the duress was under no personal liability to refund.

RECEIVER AND MANAGER APPOINTED BY COURT, LIABILITY OF, ON CONTRACTS—CONTRACT BY RECEIVER AND MANAGER, CONSTRUCTION OF.

In *Burt* v. *Bull*, (1895) 1 Q.B. 276; 14 R. Feb. 269, the action was brought upon a contract signed by the defendants as "receivers and managers" for goods required for the purposes of the business. The defendants had been appointed by the court, and contended that they were not personally liable on the contract, but the Court of Appeal (Lord Esher, M.R., Lopes and Rigby, L.JJ.) affirmed the judgment of Mathew, J., in favour of the plaintiff. The Court of Appeal lay it down that *prima facie* a receiver and manager appointed by the court, when ordering goods for the purpose of the business of which he is the receiver, assumes a personal liability therefor, looking to be indemnified out of the assets of the company; and tha the contract in this case, though expressed to be given for the company of which the defendants were receivers, and though the words "receivers and managers" were added by defendants to their signatures thereto, did not rebut the inference that the defendants were assuming a personal liability. Lord Esher thus states the legal status of a receiver in such cases: "The company cannot be liable, for he is not their agent, and the court clearly cannot be liable. Therefore any orders which he may give under such circumstances as manager must *prima facie* be taken to be orders given on his own responsibility or credit." This case shows the necessity of receivers not entering into contracts without the direct authority of the court, and securing in advance proper protection against incurring personal liability. Of course it is open to receivers so to contract as to relieve themselves from personal liability, but then it must be by express stipulation and not by mere inference.

TRADE NAME—NAME INDICATING MANUFACTURER—DESCRIPTION OF GOODS—IMITATION—TENDENCY TO DECEIVE.

Reddaway v. *Banham*, (1895) 1 Q.B. 286; 14 R. Mar. 205, was an action for an injunction to restrain the defendants from calling goods manufactured by them "camel-hair belting." The plaintiffs had for many years been sole manufacturers of a hair belting for machinery, which they had advertised and sold as "camel-hair belting," and their belting had become so well known under that designation that the term "camel-hair belting" was understood in the trade to be belting made by them. The defendants had commenced the manufacture of the same kind of belting, which they also advertised and sold as "camel-hair belting." The defendants claimed that their belting was made substantially of camel's hair, and that in describing it as such they were stating what was true, which they contended they were entitled to do. The action was tried before Collins, J., with a jury, and the jury found that "camel-hair belting" meant belting made by the plaintiffs—and not belting of a particular kind without reference to the maker—and that the defendants so described their goods as to lead purchasers to buy them as and for the belting of the plaintiffs, and that they passed off their goods as the goods of the plaintiffs so as to deceive purchasers, but for this latter finding there was no evidence except the use by defendants of the name of "camel-hair belting." Collins, J., upon these findings granted an injunction against the defendants. But, on appeal by the defendants, the Court of Appeal (Lord Esher, M.R., Lopes and Rigby, L.JJ.) reversed the judgment, and gave judgment dismissing the action. *Reddaway* v. *Bentham*, (1892) 2 Q.B. 639, was distinguished on the ground that there the court came to the conclusion that the name used was a fancy name, and not a true description of the goods.

MARRIED WOMAN—JUDGMENT AGAINST—DEATH OF HUSBAND.

In re Hewett, (1895) 1 Q.B. 328; 15 R. Mar. 352, Williams, J., decided that where a judgment has been recovered against a married woman during coverture, she does not, on the death of her husband, become personally liable so as to entitle the judgment creditor to issue a bankruptcy notice against her under such judgment.

BILL OF SALE—REGISTRATION—ASSIGNMENT BY BILL OF SALE OF BENEFIT OF HIRE AND PURCHASE AGREEMENT.

In re Isaacson, (1895) 1 Q.B. 333; 14 R. Feb. 245, by a bill of sale of a piano the assignor also assigned to the assignee the benefit of a hire and purchase agreement in reference to the same piano. The bill of sale not being registered it was contended that it was void *in toto;* but the Court of Appeal (Lord Esher, M.R., Lopes and Rigby, L.JJ.) held that the assignment of the hire and purchase agreement was severable from the assignment of the piano, and was valid, notwithstanding the bill of sale of the piano was void.

MAINTENANCE OF SUIT—ACTION FOR LIBEL—COMMON INTEREST.

In *Alabaster* v. *Harness*, (1895) 1 Q.B. 339; 14 R. Feb. 258, the Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) have affirmed the judgment of Hawkins, J., (1894) 2 Q.B. 897 (noted *ante* p. 49).

PROBATE—WILL REFERRING TO DOCUMENT NON-EXISTENT—CODICIL.

Durham v. *Northen*, (1895) P. 66, was a probate action in which the question was whether a document referred to in a will, but not then existing, could be incorporated in the probate by reason of a codicil having been executed after the document actually came into existence, and Jeune, P., held that it could not. The document in question purported to be instructions to the executors. The testator by his will had given an annuity of £3,000 to his widow, and directed certain funds to be set apart to secure the annuity which they would find "noted" by him. After his death a memo. was found containing the words, "The stocks to be set aside to pay my wife the £3,000 per annum," followed by a list of securities the total income of which was stated to be £3,000. The earliest date which could be assigned to this document was after the will, but before the codicils. The learned judge, while conceding that if the document had been referred to in the will as an existent document, it might, by the execution of the codicil, have been deemed to be incorporated in the will by treating the will as re-executed as of the date of the codicil; yet, as it was not so referred to, the case was governed by *In re Reid*, 38 L.J. (P. & M.) 1, and could not be deemed to be so incorporated.

PRACTICE—EVIDENCE—EXHIBIT TO AFFIDAVIT, RIGHT TO INSPECTION OF.

In re Hinchcliffe, (1895) 1 Ch. 117; 12 R. Jan. 123, the Court of Appeal (Lord Herschell, L.C., and Lindley and Smith, L.JJ.) have solemnly determined that when an exhibit is referred to in an affidavit any person entitled to inspect and take copies of the affidavit is also entitled to inspect and take a copy of the exhibit. The question arose as between the committee of a deceased lunatic and the executor of the lunatic. The committee, during the lifetime of the lunatic, had applied to the court for leave to take proceedings against a trustee in his name, and in support of the application filed an affidavit wherein the deponent referred to a case submitted to counsel and the opinion of counsel thereon. The executor applied to inspect and take a copy of these exhibits, which the committee refused to permit, claiming that the documents were privileged as being documents of title, and being the property of the committee, and not of the lunatic, but the Court of Appeal considered that the question of privilege could not arise, as, altogether irrespective of any such question, there was an absolute right in any party entitled to see the affidavit to see also and take a copy of the exhibits as part and parcel thereof; although, if the committee had not chosen to bring them before the court, he might then not have been compellable to produce them for the purposes of discovery.

PRACTICE—JURISDICTION OF JUDGE TO VARY PREVIOUS ORDER MADE BY HIM.

In *Preston Banking Co.* v. *Allsup*, (1895) 1 Ch. 141; 12 R. Feb. 147, an order had been made directing the receiver to pay the costs of an application made by him to the court. The receiver subsequently applied to the judge who had made this order to vary it by directing that the costs should be costs in the action, and staying all proceedings thereunder, on the ground that when the order was made a misrepresentation had been made as to the assets of the company of which the receiver was appointed. The Vice-Chancellor of Lancaster held he had no jurisdiction to alter the previous order, and the Court of Appeal (Lord Halsbury, and Lindley and Smith, L.JJ.) affirmed his decision, holding that where an order had been correctly drawn up there is no jurisdiction to alter it after it has been passed and entered by application to the judge who made it, or to any other judge. The only remedy is by appeal.

WATERCOURSE—UNDERGROUND SPRINGS—INTERFERENCE WITH FLOW OF WATER—MALA FIDES—INTENTION TO EXTORT MONEY.

In *Bradford* v. *Pickles*, (1895) 1 Ch. 145, we find that the Court of Appeal (Lord Herschell, L.C., and Lindley and Smith, L.JJ.) have been unable to agree with the judgment of North, J., (1894) 3 Ch. 53 (noted *ante* vol. 30, p. 716). In the view of the Court of Appeal the Act relied on by the plaintiffs had not the effect of prohibiting the defendant from doing anything he was legally entitled to do, independently of the Act; and the defendant had a legal right to interrupt the water percolating underground through his land to the plaintiff's springs, and the court held that it was immaterial that in doing so he was actuated by an intention of compelling the plaintiffs to purchase his land, or the right to secure an uninterrupted flow of water to their springs. Smith, L.J., points out that although the civil law deemed an act, otherwise lawful in itself, illegal if done with a malicious intent of injuring a neighbour, and that principle had been adopted in the law of Scotland, yet that it had never found a place in English law. The maxim *sic utere tuo*, etc., he appears to consider inapplicable, because an adjoining owner has no property in or right to subterranean percolating water until it arrives underneath his soil, and that therefore no property or right of his is injured by the abstraction or diversion of percolating water before it arrives under his land.

VENDOR AND PURCHASER—CONDITION LIMITING COMMENCEMENT OF TITLE—PRIOR TITLE NOT TO BE OBJECTED TO—OBJECTION TO PRIOR TITLE AS SHOWN ALIUNDE—APPLICATION BY PURCHASER FOR RETURN OF DEPOSIT—VENDORS AND PURCHASERS ACT, 1874 (37 & 38 VICT., C. 78)—(R.S.O., C. 112, S. 3).

In re National Provincial Bank v. *Marsh*, (1895) 1 Ch. 190, a purchaser applied under the Vendors and Purchasers Act (see R.S.O., c. 112, s. 3) for a return of his deposit. He had purchased under a condition of sale which stipulated that the title should commence with a conveyance dated in 1869, and that the prior title "shall not be required, investigated, or objected to." The purchaser refused to complete on the ground that he had discovered *aliunde* that the grantor of the deed of 1869 had only a life estate, and that consequently the vendors could not make a title in fee. North, J., held that the condition precluded the purchaser from objecting to the title of the grantor in the deed of 1869, and though possibly the court might refuse

to enforce specific performance of the contract, as to which the learned judge expressed some doubt, yet he was clear that the purchaser had no ground for claiming a return of his deposit, and he dismissed the application.

COSTS—TRUSTEE—CESTUI QUE TRUST—STATUTE OF LIMITATIONS—COSTS PAYABLE BY TRUSTEES TO THEIR SOLICITORS.

In *Budgett* v. *Budgett*, (1895) 1 Ch. 202; 13 R. Jan. 141, one of the principal questions was whether, upon the taxation of costs claimed by a trustee as against the trust estate, it was competent for the beneficiaries against the will of the trustees to insist on the disallowance of items in the bill which appeared to be barred by the Statute of Limitations, some of which had been paid by the trustees after they were barred, and others of which remained unpaid. Kekewich, J., was of opinion that the *cestui que trust* could not compel the trustees to set up the Statute of Limitations as against their own solicitor. He drew a distinction between the case of an executor or administrator and a trustee on the ground that in the case of a personal representative he is not paying his own debt, but the debt of the deceased, and the persons beneficially interested in his estate are entitled to require the statute to be set up as against such claims; whereas a trustee is personally liable to his solicitors for the costs incurred in the matter of the trust estate, and the debt is his own, and he is entitled to be indemnified against all honest claims which may be made against him in respect thereof, and cannot be compelled to set up the statute as a bar to such claims, against his will.

STATUTE OF LIMITATIONS, 1833 (3 & 4 W. 4, C. 27), S. 34—(R.S.O., C. 111, S. 23)—MORTGAGEE—EXTINGUISHMENT OF TITLE OF PRIOR MORTGAGEE—POSSESSION OF MORTGAGOR—VESTING OF LEGAL ESTATE—ACKOWLEDGMENT OF TITLE.

Kibble v. *Fairthorne*, (1895) 1 Ch. 219; 13 R. Jan. 215, is a somewhat important decision of Romer, J., of a point arising under the Statute of Limitations, 1833 (3 & 4 W. 4, c. 27), s. 34—(R.S.O., c. 111, s. 23). A mortgagor in possession, who had acquired title as against his mortgagees under the Statute of Limitations, made a second mortgage, which was in the form of a first mortgage. Subsequently the mortgagor gave an acknowledgment of the title of the first mortgagees. The second mortgagee then brought the present action, claiming a declara-

tion that his mortgage was prior to that of the first mortgagee, and for foreclosure. Romer, J., held that the effect of the Statute of Limitations was to extinguish the title of the first mortgagee, and that the legal estate vested in the mortgagor and by the second mortgage became vested in the plaintiff, and that the subsequent acknowledgment by the mortgagor of the first mortgagee's title did not affect the title acquired by the second mortgagee.

COMPANY—WINDING UP—CONTRIBUTORY—DIRECTORS—QUALIFICATION SHARES.

In re Issue Company, (1895) 1 Ch. 226; 13 R. Jan. 196, the frequently recurring question as to the liability of directors to be placed on the list of contributories in respect of qualification shares comes up again for discussion. In this case the articles provided that the qualification of each director should be the holding of 100 shares. Three persons were nominated and acted as directors; they took no step to apply for shares, nor were any allotted to them. The company having been ordered to be wound up, the liquidator placed these three persons on the list of contributories for 100 shares each, but, on appeal, Williams, J., ordered their names to be struck off, on the ground that the mere acceptance of office did not constitute an agreement to become a member; that, at most, it was a mere offer to take shares, which had never been accepted by the company.

Reviews and Notices of Books.

The Law of Compensation. Under the Lands Clauses Consolidation Acts, the Railway Clauses Consolidation Acts, the Public Health Act, 1875, the Housing of the Working Classes Act, 1890, the Metropolis Local Management Act, and other Acts. With a full collection of forms and precedents. By Eyre Lloyd, of the Inner Temple, Barrister-at-Law. Sixth edition, by W. J. Brooks, of the Inner Temple, Barrister-at-Law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1895.

The first edition of this standard work was published in 1867. The sixth edition is now before us. Numerous decisions of considerable importance have been given upon the law of compensation and the practice in compensation cases since that time,

which have been incorporated in the present edition. Portions of the book have been entirely rewritten, where there have been such substantial alterations as to require that course. As a standard work on the subject, Mr. Lloyd's book is well known and appreciated. The author gives a complete set of forms under the English Acts and specimens of bills of costs which, though doubtless of much practical utility in England, are of no interest here, except to make one wish that our judges were half as liberal as their brethren in England. A 6/8 attendance, instead of 50c. as in this country, makes a considerable difference in a bill of costs, to say nothing of other fees in like proportion.

The work is issued by the well-known publishers, Stevens & Haynes, which in itself is a guarantee not merely of the excellence of the book itself, but of the mechanical execution. Being, as we say, so well known, it is unnecessary for us to indulge in any detailed criticism.

Notes and Selections.

ACCIDENT INSURANCE—DEATH IN A FIGHT.—The Supreme Court of Missouri decided in *Lovelace* v. *Travellers' Protective Association*, 28 S.W. Rep. 877, that in determining the meaning of term "accident," as used in an accident policy, the natural and reasonable import of the whole contract must be taken into consideration. It appeared here that the policy contained the words "$4,000 shall be paid in case of death by accident," and "shall be entitled, in case of his death from natural causes, to $100"; and the insured having met his death in a fight in which he voluntarily engaged, it was held that the beneficiary under the policy was entitled to recover as for death by accident. —*Central Law Journal.*

JUDICIAL WORK IN ENGLAND AND UNITED STATES.—It is said that there are more judges in the courts of the State of New York alone than in all Great Britain, and yet the judicial work lags in that state so much that they are soon to have a considerable number of new justices added to the Supreme Court. The same condition of things may be said to exist, to a greater or less

extent, in all of the states. The American practice of writing long opinions in almost every case, a vice which few of our appellate courts are free from, is probably the chief reason for this condition of litigation, as well as for the fact that the reports of the appellate courts in this country do not, as a rule, compare favourably with those of the higher courts in England. The review of the year 1894, in the *London Law Times*, contains such expressions as these: "At the close of 1894 all the judicial business done in the House of Lords has been disposed of," and, referring to the Court of Appeal, the judges "have not allowed the sittings of the court to be interrupted for a single hour. The result is that there are absolutely no arrears of business at the close of 1894." In no appellate court, we dare say, of this country has such a record been made at the close of any year, except, perhaps, in some of the United States Courts of Appeal, and they have not been in existence long enough to accumulate arrears of business. Most of our courts are months behindhand, and in almost every appellate court there are large arrears of cases undisposed of. The trial dockets are large, and the inevitable delay in litigation continues to be a source of annoyance to litigants. The addition of new courts and judges in many of the states has afforded some relief, but it will not be permanent unless the judges can be persuaded to desist from wasting so much time in writing uselessly long opinions. In this regard we commend the decisions of the Supreme Judicial Court of Massachusetts, which are models of brevity and wisdom. And there are a few other courts about whose opinions the same thing might occasionally be said, but such belong to a hopeless minority.—*Central Law Journal.*

DIARY FOR APRIL.

1. Monday.....County Court and Surrogate Sittings.
4. Thursday.....New Legislative Buildings at Toronto opened, 1893.
5. Friday.....Canada discovered, 1499.
7. Sunday.....*6th Sunday in Lent.* Great fire in Toronto, 1847.
8. Monday.....County Court non-jury Sittings in York. Hudson Bay Company founded, 1692.
12. Friday.....Good Friday.
14. Sunday.....*Easter Sunday.*
15. Monday.....Easter Monday. President Lincoln assassinated, 1865.
17. Wednesday.....Hon. Alexander Mackenzie died, 1892.
18. Thursday..... First newspaper in America, 1704.
19. Friday.....Lord Beaconsfield died, 1881.
21. Sunday.....*1st Sunday after Easter.*
22. Monday.....Call, last day for notice for Easter Term.
23. Tuesday.....St. George.
24. Wednesday.....Earl Cathcart, Gov. Gen., 1846.
25. Thursday.....St. Mark.
26. Friday.....Battle of Fish Creek, 1885.
27. Saturday.....Toronto captured (Battle of York), 1813.
28. Sunday.....*2nd Sunday after Easter.*

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

OSLER, J.A.] [March 11.

IN RE WILLIAMS.

Executors and administrators—Trusts and trustees—Just allowances—Costs of unsuccessful litigation—Advice of court.

Where the administrators of the estate of a deceased assignee for creditors defended in good faith an action brought by his successor in the trust to recover damages for breach of trust committed by the intestate, and, being unsuccessful, were obliged to pay the plaintiff's costs and those of their own solicitors they were held entitled to credit for these payments in passing their accounts

Where it is plain that a dispute can be settled only by litigation, it is not necessary for a trustee to ask the advice of the court before defending.

Judgment of the Surrogate Court of Grey reversed.

E. D. Armour, Q.C., and *E. T. Malone* for the appellants.

W. H. Wright and *N. W. Rowell* for the respondents.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Feb. 23.

ARGLE *v.* MCMATH.

Landlord and tenant—Fixtures—Short Forms Act, R.S.O., c. 106—Covenants—Forfeiture—Assignment for benefit of creditors—R.S.O., c. 143, s. 11—Notice—Re-entry—Election—Removal of fixtures—Time—Interference—Remedy.

The term "fixtures," as used in the extended form of the covenants to repair and leave the premises in good repair in a lease made pursuant to the Short Forms Act, R.S.O., c. 106, includes only irremovable fixtures, which are such things as may be affixed to (*e.g.*, doors and windows) or placed on (*e.g.*, rail fences) the freehold by the tenant, the property in which passes to the landlord immediately upon their being so affixed or placed, and in which the tenant at the same time ceases to have any property; and does not include removable fixtures, which are such things as may be affixed to the freehold for the purposes of trade or of domestic convenience or ornament, a qualified property in which remains in the tenant, or such things as may be affixed to the freehold for merely a temporary purpose, or for the more complete enjoyment and use of them as chattels, the absolute property in which remains in the tenant.

The provisions of s. 11 of R.S.O., c. 143, do not extend to a forfeiture of the term under a stipulation in the lease that if the lessees should make any assignment for the benefit of creditors the term should immediately become forfeited, and such forfeiture is, therefore, enforceable without notice served upon the lessees.

Where the lessor has elected to re-enter for a forfeiture, the lessee has the right, while he remains in possession, to remove fixture put up by him for the purposes of his trade, and has a reasonable time after such election within which to do so.

And where he attempts to do so within a reasonable time, and is prevented by the lessor, the latter is liable to an action for the value.

Judgment of BOYD, C., reversed.

Shepley, Q.C., for the plaintiff.

William Macdonald for the defendant.

Div'l Court.] [March 9

WYTHE *v.* MANUFACTURERS' ACCIDENT INSURANCE CO.

Contract—Employer's liability policy—Condition—Construction—Defence of actions brought by employees.

In an action upon an employer's liability policy, whereby the defendants agreed to pay the plaintiff all sums up to a certain limit and full costs of suit, if any in respect of which the plaintiff should become liable to his employees for

injuries received whilst in his service, subject to the condition, amongst others, that "if any proceedings be taken to enforce any claim, the company shall have the absolute conduct and control of defending the same throughout in the name and on behalf of the employer, retaining or employing their own solicitors and counsel therefor"—

Held, that the plaintiff was not entitled, in the face of such a stipulation, to claim from the defendants the amount of a judgment obtained against him by an employee in an action defended by the plaintiff through his own solicitor and counsel, leaving the defendants to show as a defence, or by way of counter-claim, that they could have done better by defending it themselves; nor was an offer by the plaintiff, at a time when the action was at issue and on the peremptory list for trial the following day, to hand over the defence to the defendants' solicitors a sufficient compliance with the condition.

W. Cassels, Q.C., for the plaintiff.

W. Nesbitt and *J. H. Denton* for the defence.

ARMOUR, C.J.] [March 11.

IN RE BALL *v.* BELL.

Prohibition—Division Court—Mortgage—Contract or obligation to indemnify against—Action for interest only—Dividing cause of action—R.S.O. c. 51, s. 77.

Where the plaintiff conveyed land to the defendant subject to a mortgage, and after maturity of the mortgage paid the mortgagee two gales of interest accruing since maturity, which he sought to recover from the defendant by action in a Division Court,

Held, that the contract or obligation of the defendant to indemnify the plaintiff was an entire one; the breach was either the not paying the mortgage when it fell due, or not indemnifying the plaintiff against it, and it was an entire breach; the contract or obligation and the breach constituted one cause of action; the plaintiff had, therefore, divided his cause of action, contrary to s. 77 of the Division Courts Act, R.S.O., c. 51, and prohibition should be awarded.

N. F. Davidson for the plaintiff.

S. W. McKeown for the defendant.

Chancery Division.

Div'l Court.] [Feb. 21.

GREEN *v.* TORONTO RAILWAY CO.

Negligence—Street railway company.—Right of way—Duty to sound the gong.

A car of the defendants' railway was coming along the down-grade in the Queen street subway. The plaintiff was engaged as a servant of the city of Toronto in sweeping the roadbed. The motorman did not sound the gong and ran into the plaintiff.

Held, that the judgment in favour of the plaintiff at the trial should be affirmed.

Although the defendant company had the right of way, that did not extend to the right of running along the streets of a city at such a rate that the motormen had not got full control of the car, or so as to endanger human life or property. The jury might rightly find that the not sounding the gong or giving any warning to the plaintiff, who was in a place of danger, of the approach of the car was actionable negligence on the part of the defendant.

See *Moran* v. *Hamilton Street Railway*, C.P.D., June 12th, 1894, not yet reported.

Bicknell for the defendants.

Smyth for the plaintiff.

Div'l Court.] [Feb. 21.

KEATING *v.* GRAHAM.

Action for goods sold—Mistake of vendor as to identity of vendee—Fraud—Vacating judgment against supposed vendee—Commencing action against true vendee.

Action for price of goods sold to defendants, known as The Polson Lenders.

On June 23rd, 1892, The Polson Iron Works Company wrote to order the goods in question from the plaintiff, and, after some correspondence, finally, on July 14th, 1892, F. B. Polson wrote, as managing director of the said company, giving the final order, and on the following day the plaintiff replied, undertaking to fulfil it. Meanwhile, on July 8th, 1892, the said company had given up possession of their works to The Polson Lenders, and of all their plant and material, under an agreement whereby they were not to be liable for the debts of the business, nor to have thereafter substantially any benefit from them, F. B. Polson remaining as their manager. The plaintiff, knowing nothing of this, on August 5th, 1892, shipped the goods to Toronto, and The Polson Lenders used them in their business. On September 1st, 1892, the plaintiff still being ignorant of what had taken place, took a promissory note from The Polson Iron Works Company for the price of the goods, payable in four months, and, it being dishonoured at maturity, brought an action against the said company, and in default of defence on February 13th, 1893, signed judgment against the said company.

Meanwhile, on February 8th, 1893, a winding-up order had been made against the said company under the Dominion Winding-up Act. As soon as the plaintiff heard of this he applied for and obtained an order dated June 5th, 1893, vacating his judgment. Moreover, having discovered the facts of the case, he commenced this action for the price of the goods.

Held, that the plaintiff was entitled to judgment.

Per ROBERTSON, J.: The plaintiff was entitled to say: "I thought I was dealing with The Polson Iron Works Company. My information was by written correspondence. I supposed I was selling to that company, and the name of that company was used by one who had the authority of these defendants to order and buy goods from him. That was really a fraud on me. The goods were used by the defendants. I, therefore, repudiate the promissory note transaction, and fall back on the undisclosed principals who received goods from me and got the benefit of them."

Per MEREDITH, J.: This is not the case of a purchase by an agent in his own name for an undisclosed principal. The purchase was made by the defendant Polson in reality for himself and his co-defendants. They received and used the goods for their own benefit. And even if it cannot be said that the defendant Polson lawfully might and did buy the goods for the defendants, it is clear that they cannot repudiate his unauthorized act and yet retain the benefit of it. They would be bound to reject or return the goods if they wished to escape payment for them. There is no pretence that they bought them from the company. And though the plaintiff sued the company and proved his claim against them in the winding-up proceedings, he did so without knowledge of the facts, and in the reasonable belief that the company was really purchasers in the ordinary way of business; and it would be a good replication to a plea of judgment recovered that the judgment in question had been reversed or set aside.

Moss, Q.C., for the defendants.

Walter Read for the plaintiff.

Div'l Court.] [March 2.

COOK *v.* TATE.

Line fences—Proper mode of construction—Trespass—Fence-viewers—R.S.O., c. 219, s. 3.

Action for trespass.

The Line Fences Act, R.S.O., c.219, s. 3, provides that "owners of occupied adjoining land shall make, keep up, and repair a just proportion of the fence which marks the boundary between them."

Held, per FERGUSON, J., affirming the decision of ARMOUR, C.J., the trial judge, that such fence should be so placed that, when completed, the vertical centre of the boards should coincide with the line or limit between the lands of the parties, the board wall being the fence which really separates the land of one party from the land of the other; and in the absence of any agreement, or of any statute or by-law governing the case, each owner is bound to build the board wall and maintain it, as best he may or can, by appliances placed in or upon his own land, if appliances are necessary, and he is not at liberty to place his posts or other appliances on the land of the adjoining owner without leave or license so to do.

Held, per BOYD, C., *contra*, that the fence may be placed partly on the land of each owner, and it should be, consistent with local usage and custom and fitness of situation, placed as far as possible equally on the lands of each; and if the line making the boundary line be between the posts on one side of the fence, and the scantling and boards on the other, so that there is practical equality in the amount of space, on the one hand, occupied by the posts, and, on the other, by the continuous boards, and if that method is sanctioned by local usage, neither owner has legal ground for complaint.

Semble, per BOYD, C. (FERGUSON, J., *dissentiente*), that such a controversy as this, involving merely "a matter of proportion," is, under the above statute, for the fence-viewers to determine.

Denton for the plaintiff.

Davis for the defendant.

ARMOUR, C.J.] [Feb. 12.

IN RE GRANT.

Life insurance—R.S.O., c. 136, s. 6 (1)—51 Vict., c. 22, s. 3—53 Vict., c. 39, s. 6—Wives and children—Policy—Will—Variance—Apportionment.

Under s. 6 (1) of the Act to secure to wives and children the benefit of life insurance, R.S.O., c. 136, as amended by 51 Vict., c. 22, s. 5, and 53 Vict., c. 39, s. 6, the insured has no power to declare by his will that others than those for whose benefit he has effected the policy or declared it to be shall be entitled to the insurance money, nor to apportion it among others than those for whose benefit he has effected the policy or declared it to be.

J. J. Warren for the executors.

H. Cassels for the widow.

F. W. Harcourt for the infants.

MACMAHON, J.] [March 9.

IN RE MIMICO SEWER PIPE AND BRICK MANUFACTURING CO.

PEARSON'S CASE.

Company—Director—Solicitor—Right to costs—Contributory—Set-off.

Where a director, who was also president of a company, was appointed by the board of directors, and acted as solicitor for the company,

Held, in winding-up proceedings, that he was entitled to profit costs in respect of causes in court conducted by him as solicitor for the company, but not in respect of business done out of court, and was entitled to set off the amount of such costs against the amount of his liability as a shareholder.

Decision of the Master in Ordinary reversed.

Cradock v. *Piper*, 1 Macn. & G. 664, followed.

J. H. Denton for James Pearson.

Frank Denton for the liquidator.

Common Pleas Division.

MEREDITH, C.J., and ROSE, J.] [March 2.

REGINA *v.* MCGREGOR.

Justice of the peace—Territorial jurisdiction—Summary conviction—Warrant—Evidence—Criminal Code, s. 889—Costs of warrant—Criminal Code, ss. 559, 843—Exclusion of evidence—Criminal Code, s. 850—Liquor License Act, R.S.O., c. 194, s. 112, s-s. 2—Sale by wife—Presumption—Rebuttal—Criminal Code, s. 13.

Upon a motion for a rule *nisi* to quash a summary conviction of the defendant by a stipendiary magistrate for selling liquor without license;

Held, that although the conviction did not show on its face that the offence was committed at a place within the territorial jurisdiction of the magistrate,

yet as the warrant for the defendant's apprehension, which was returned upon certiorari, showed the complaint to be that the defendant sold liquor at a place within the magistrate's jurisdiction, and it was to be inferred that the evidence returned was directed to that complaint, sufficient appeared to satisfy the court that an offence of the nature described in the conviction was committed over which the magistrate had jurisdiction, and therefore the conviction should not, having regard to s. 889 of the Criminal Code, 1892, be held invalid.

Regina v. *Young*, 5 O.R. 184*a*, distinguished.

Held, also, that, by the combined effect of ss. 559 and 843 of the Code, it was discretionary with the magistrate to issue either a summons or a warrant as he might deem best; and therefore it was not a valid objection to the conviction that the magistrate included in the costs which the defendant was ordered to pay, the costs of arresting and bringing her before the magistrate under the warrant.

Upon the defendant tendering herself as a witness on her own behalf, the magistrate stated that, in view of the evidence adduced by the prosecutor, a denial by the defendant on oath would not alter his opinion of her guilt, upon which her counsel did not further press for her examination; but her husband was examined and gave evidence denying the sale of the liquor.

Held, that there was no denial of the right of the defendant, under s. 850 of the Code, to make her full answer and defence.

The defendant was a married woman, and the sale of the liquor took place in the presence of her husband; but the evidence showed that she was the more active party, and she was the occupant of the premises on which the sale took place.

Held, having regard to R.S.O., c. 194, s. 112, s-s. 2, that, even if the presumption that the sale was made through the compulsion of the husband had not been removed by s. 13 of the Code, it would have been rebutted by the circumstances.

Regina v. *Williams*, 42 U.C.R. 462, distinguished.

Du Vernet for the defendant.

Practice.

OSLER, J.A.] [Feb. 6.

AGRICULTURAL INSURANCE CO. *v.* SARGENT.

Appeal—Supreme Court of Canada—Security—Execution, stay of—Money in court—Payment out—R.S.C., c. 135, ss. 46, 47 (e), 48.

The plaintiffs appealed to the Court of Appeal from a judgment of the High Court dismissing their action with costs, and gave the security required by section 71 of the Judicature Act, by paying $400 into court; they also gave the security required by Rule 804 (4) in order to stay the execution of the judgment below for costs, by paying $322.14 into court. Their appeal was dismissed with costs. Desiring to appeal to the Supreme Court of Canada, they paid $500 more into court, and this was allowed by a judge of the Court of Appeal as security for the costs of the further appeal.

Held, that execution was stayed upon the judgments of the High Court and Court of Appeal until the decision of the Supreme Court.

Construction of ss. 46, 47 (*e*), and 48 of the Supreme and Exchequer Courts Act, R.S.C., c. 135.

Semble, that payment out of the moneys in court to the defendant of his costs of the High Court and Court of Appeal, upon the undertaking of his solicitors to repay, in the event of the further appeal succeeding, could not properly be ordered.

Kelly v. *Imperial Loan Co.*, 10 P.R. 499, commented on.

Pattullo for plaintiffs.

Masten for defendant.

Chy. Div'l Court.] [Feb. 21.

GORDON *v.* ARMSTRONG.

Security for costs—Nominal plaintiff—Action to establish right of way—Mortgagor and mortgagee—Parties.

Where an action is brought to establish a right of way over lands adjoining those of which the plaintiff is the owner, subject to a mortgage, and, having regard to the value of the property, the amount of the mortgage, and other circumstances, the lands may be said to be really the mortgagee's, and the action substantially his, the defendant is entitled to security for costs if the plaintiff be without substance.

Held, *per* MACMAHON, J., in Chambers, that the mortgagee was not a necessary party to the action.

But *semble*, *per* MEREDITH, J., in the Divisional Court, that he was a proper party, and should have been added.

F. J. Travers for the plaintiff.

Ritchie, Q.C., for the defendant.

F. E. Hodgins for the mortgagee.

Chy. Div'l Court.] [March 2.

MERIDEN BRITANNIA CO. *v.* BRADEN.

Costs—Separate defences—Indemnity against costs—Taxation against opposite party.

Costs are not to be needlessly incurred; only such as are reasonably incurred with regard to the necessities of the case should be allowed.

Where there is no liability on the part of a party for costs, none can be allowed him from his opponent.

And where one defendant agreed to save another harmless from the costs of an action, in the written retainer of the latter to his solicitors it was provided that the costs should be charged to the former; and no reason for defending by separate solicitors appeared, unless it was the hope of getting two sets of costs from the plaintiffs;

Held, that the indemnified defendant was not entitled to costs against the plaintiffs.

Jarvis v. *Great Western R.W. Co.*, 8 C.P. 280, and *Stevenson* v. *City of Kingston*, 31 C.P. 333, followed.

Decision of BOYD, C., 16 P.R. 346, reversed.

J. W. Nesbitt, Q.C., for the plaintiffs.

C. D. Scott for the defendant Scott.

Chy. Div'l Court.] [March 2.

CAMPBELL *v.* ELGIE.

Stay of proceedings—Costs of former action unpaid—Security for costs—Rules 3, 1243.

The practice by which, when the defendant's costs of a former action for the same, or substantially the same, cause were unpaid, the defendant was entitled to have the later action stayed until they should be paid is now superseded by the effect of Rule 3, the defendant's only remedy being to apply under Rule 1243 for security for costs in the second action.

W. E. Middleton for the plaintiff.

Kilmer for the defendant Elgie.

BOYD, C.] [March 12.

MCCARTHY *v.* TOWNSHIP OF VESPRA.

Pleading—Striking out defence—Notice of action—Municipal corporation—R.S.O., c. 73.

A municipal corporation is not entitled to notice of action under the Act to protect Justices of the Peace and others from Vexatious Actions, R.S.O., c. 73.

Hodgins v. *Counties of Huron and Bruce*, 3 E. & A. 169, followed.

Defence of want of such notice struck out upon summary application.

Pepler, Q.C., for the plaintiff.

Creswicke for the defendant.

BOYD, C.] [March 16.

BANK OF HAMILTON *v.* GEORGE.

Pleading—Striking out—Rule 1322 (387)—Action on promissory note—Defences.

Upon a summary application under Rule 1322 (387) to strike out defences on the ground that they disclose "no reasonable answer," the court is not to look upon the matter with the same strictness as upon demurrer; a party should not be lightly deprived of a ground of substantial defence by the summary process of a judgment in chambers.

And in an action upon a promissory note, defences of payment, estoppel by conduct, and a claim for equitable protection arising out of agreement, were allowed to remain on the record.

C. D. Scott for the plaintiffs.

J. W. McCullough for the defendants.

BOYD, C.] [March 16.

HOGABOOM *v.* GILLIES.

Interpleader issue—"Action"—Rule 641 (c)—Leave to discontinue—Costs.

An interpleader proceeding is not an action; and Rule 641 (*c*), which enables the court to "order the action to be discontinued," does not apply to interpleader issues.

Hamlyn v. *Betteley*, 6 Q.B.D. 63, and *Re Dyson*, 65 L.T. 488, followed.

Semble, that the execution creditor can abandon the seizure or the prosecution of the issue, but only on the terms of answering all costs.

C. Millar for the execution creditor.

J. A. Macdonald for the claimant.

FERGUSON, J.] [March 22.

THIBAUDEAU *v.* HERBERT.

Security for costs—Order for—Setting aside—Admission of debt—Rule 1251.

Where there was an admission by the defendant of the debt sued for, and the writ of summons was specially indorsed so as to enable the plaintiffs to move for judgment under Rule 739, an order for security for costs obtained by the defendant on *præcipe*, after appearance, the plaintiffs being out of the jurisdiction, was set aside, notwithstanding that the plaintiffs might have paid $50 into court under Rule 1251 and proceeded to move for judgment.

Doer v. *Rand*, 10 P.R. 165, followed.

Payne v. *Newberry*, 13 P.R. 354, not followed.

N. McCrimmon for the plaintiffs

I. H. Spence for the defendant.

MANITOBA.

COURT OF QUEEN'S BENCH.

BAIN, J.] [March 8.

ROBERTSON *v.* WRENN.

Bill of sale—Defective description—Change of possession—Knowledge of, by creditor.

This was an interpleader to try the title of certain chattels claimed by the plaintiff under a chattel mortgage made by one Bell to the plaintiff's husband, and by him assigned to the plaintiff. The defendant claimed the goods under an execution against the goods of Bell and the plaintiff's husband, F. W. Robertson.

Robertson and Bell had been carrying on a livery business in partnership, and on the 27th of January, 1894, Robertson sold and assigned his interest in the horses and other chattels used in the business to Bell, and gave him a bill of sale of everything for $2,425, and on the same day Bell gave to Robertson

a chattel mortgage covering the same horses and chattels to secure the purchase money.

At the trial before the County Court Judge, he held that the description of the chattels in the bill of sale was so defective that it could not be upheld against the creditors, as there was no immediate delivery and change of possession.

The defendant, however, had been an employee of Bell and Robertson, and at the time of the purchase by Bell of Robertson's interest in the business, knew of the sale, and continued to work for Bell in the business, and although, as far as the general public knew, there was no apparent change of possession, yet the defendant knew there had been an actual change of possession, and admitted that after that he worked for Bell only, and looked to him only for his wages.

Held, that if a particular creditor is aware that there has been a sale and an actual and continued change of possession following it, he cannot be prejudiced by the fact that a written bill of sale or mortgage has not been filed: *Danford* v. *Danford*, 8 A.R. 518; and that the sale was valid against the defendant, even if the description in the bill of sale was not sufficient under the statute.

The verdict for defendant in the County Court set aside and verdict entered for the plaintiff with costs.

Wilson and *Sutherland* for plaintiff.

Anderson for defendant.

Appointments to Office.

ADMIRALTY JUDGES.

British Columbia.

The Honourable Theodore Davie, Chief Justice of the Supreme Court of the Province of British Columbia, to be a Local Judge in Admiralty of the Exchequer Court in and for the District of British Columbia.

HIGH COURT JUDGES.

District of Nipissing.

Joseph Alphonse Valin, Esquire, District Judge of the Provisional District of Nipissing, in the Province of Ontario, to be a Local Judge of the High Court of Justice for Ontario.

COUNTY COURT JUDGES.

District of Nipissing.

Joseph Alphonse Valin, of the City of Ottawa, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-Law, to be District Judge of the Provisional Judicial District of Nipissing.

SHERIFFS.

District of Nipissing.

Henry Charles Varin, of the Township of Bonfield, in the Provisional Judicial District of Nipissing, to be Sheriff of the Provisional Judicial District.

DIVISION COURT CLERKS.

County of Bruce.

James Somerville, of the Village of Lucknow, in the County of Bruce, to be Clerk of the Eleventh Division Court of that County.

John Alexander Beaton, of the Village of Chesley, in the County of Bruce, to be Clerk of the Twelfth Division Court of that County.

DIVISION COURT BAILIFFS.

County of Bruce.

William James Little, of the Village of Lucknow, in the County of Bruce, to be Bailiff of the Eleventh Division Court of that County.

James Elihu Cass, of the Village of Chesley, in the County of Bruce, to be Bailiff of the Twelfth Division Court of that County.

United Counties of Prescott and Russell.

Eugent Parent, of the Village of Casselman, in the County of Russell, to be a Bailiff of the Eleventh Division Court of such United Counties.

COMMISSIONERS FOR TAKING AFFIDAVITS.

Colony of New South Wales (Australia).

Frederick William Walker, of Sydney, in the Colony of New South Wales, Esquire, to be a Commissioner to administer oaths and to take and receive affidavits, declarations, and affirmations in the Colony of New South Wales to be used in the Supreme Court and in the Exchequer Court of Canada.