

THE
ONTARIO WEEKLY REPORTER.

(TO AND INCLUDING DECEMBER 31ST, 1902.)

VOL. I. TORONTO, DECEMBER 31, 1902. No. 45

BOYD, C. DECEMBER 22ND, 1902.

TRIAL.

LOCKHART v. LOCKHART.

Deed—Action to Set aside—Improvidence—Family Settlement—Costs.

Action to set aside a conveyance of all her land and goods in the county of Haldimand by the plaintiff, then seventy-eight years old, to her son and his children.

W. D. Swayzie, for plaintiff.

S. C. Macdonald, Dunnville, for defendant Norman M. Lockhart.

F. W. Harcourt, for infant defendants.

BOYD, C.:—It was not proved that the deed was read over to the plaintiff, and the circumstances surrounding the transaction disclosed improvidence on the plaintiff's part. There was no provision for maintenance, or at least no written agreement to manifest it, and no security for its performance. The house of the adult defendant was no home for the plaintiff, and having given away all her property she ought to be in a position to enforce greater comfort in her old age. The plaintiff's offer to be satisfied with the return of the lands and chattels without any mesne profits appears to be a proper solution of the controversy. The defendant had made no improvements worthy of serious consideration. Conveyance set aside, and land vested in plaintiff; chattels to be returned in specie. As the matter was in the nature of a general settlement of a family controversy, no costs.

DECEMBER 22ND, 1902.

DIVISIONAL COURT.

GRAINGER v. HAMILTON.

Seduction—Evidence—Action Brought for Daughter's Benefit—Judge's Charge—Credibility of Witnesses—Rejection of Evidence—No Substantial Miscarriage.

Appeal by defendant from judgment of FERGUSON, J., entered pursuant to the findings of the jury in favour of the

plaintiff in an action for seduction. The appeal was taken on the grounds that the defendant should have been allowed to cross-examine the plaintiff's daughter to shew that the nominal plaintiff had no interest in the action, but that it was brought for the daughter's benefit alone, and to shew the contents of certain letters written by her to a doctor and others, and to cross-examine plaintiff's wife to shew that plaintiff had been unduly intimate with other women subsequent to his marriage. Objection was also made to the charge.

G. F. Shepley, K.C., for defendant.

F. A. Anglin, K.C., for plaintiff.

BOYD, C.—The appeal must be dismissed. The attempt to prove that the action was brought colourably by the father and really by the girl, was not admissible, the issue not having been raised. The further evidence was also rightly rejected as being irrelevant on the present record. The Judge's remarks as to alibi were corrected and made sufficiently plain after objection raised, and were probably plainly enough put at the close of the main charge. There had been plenty of evidence to justify the verdict.

MEREDITH, J.—The evidence rejected was not admissible on the ground urged in support thereof at the trial, but was admissible as affecting the credibility of witnesses. No substantial wrong or miscarriage was, however, occasioned. The case was clearly one for the jury.

Appeal dismissed with costs.

DECEMBER 22ND, 1902.

DIVISIONAL COURT.

DUNLOP PNEUMATIC TIRE CO. v. RYCKMAN.

Pleading—Counterclaim—Exclusion of—Defendants to Counterclaim out of Jurisdiction—Foreign Trade Mark, Subject of Counterclaim—Hardship—Injustice.

Appeal by defendants the Dunlop Tire Co. from order of STREET, J. (ante 699), reversing order of the Master in Chambers and striking out certain paragraphs of the statement of defence and counterclaim of the appellants. The action was brought by the English company to restrain the appellants from exporting tires from America and competing with plaintiffs in other parts of the world. The defence of the Canadian company set up certain rights against the plain-

tiffs under agreements of 13th December, 1898, and 27th January, 1899, and also certain rights under the same agreements as extended by means of certain representations. By the counterclaim they alleged a breach of one of the agreements which they asked should be specifically performed, and set up a further claim based upon certain representations, asking, in that regard, a rectification of the agreements. They further alleged a conspiracy by plaintiffs with certain others, resident out of the jurisdiction, to defraud the defendants out of the beneficial use of the trade mark in Australia, relying on the agreements and the representation by which they were extended.

G. F. Shepley, K.C., for appellants.

A. B. Aylesworth, K.C., W. M. Douglas, K.C., and John Greer, for plaintiffs and defendants by counterclaim.

BOYD, C.—As to the last counterclaim, the only measure of relief was in damages, which it was nowhere alleged could not be recovered from the British company, and it was not needful for the ends of justice to bring in the new parties to the counterclaim, of which the inevitable effect would be to complicate an inquiry already promising to be cosmopolitan in its scope. Upon the well defined and separable litigation on equitable grounds for specific performance and rectification, the defendants were seeking to engraft the common law action for conspiracy against strangers to the record, and for the reasons given in *South African Republic v. La Compagnie Franco-Belge du Chemin de Fer du Nord*, [1897] 2 Ch. 487, such amalgamation should not be allowed. See *S. C.*, [1898] 1 Ch. 197. Order appealed from affirmed with costs, with leave to apply to amend the equitable claims as against the parties to the original record.

MEREDITH, J., concurred.

DECEMBER 22ND, 1902.

DIVISIONAL COURT.

HOLTBY v. FRENCH.

Mechanics' Liens—Defect in Building—Assent—Estoppel.

Appeal by defendant Edwin French from judgment of J. A. McAndrew, Official Referee, in action under *Mechanics' Lien Act*, finding plaintiffs entitled to recover \$679 for work done by them in the brick-work of a stable. The defence

urged was that the work had not been completed according to contract, because the east wall of the building was not plumb, but at a certain point projected towards the east, to the extent of about two inches. The referee gave judgment in favour of plaintiffs.

C. A. Masten, for appellant.

N. W. Rowell, K.C., for plaintiffs.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J.) was delivered by

STREET, J.—Though the evidence was involved and very conflicting, a perusal of it leads to the conclusion that the bulge was the result of something done by the defendant and his employees in putting up a heavy cross-beam. The bulge was discovered shortly after the beam had been put up, and the mischief might then have been set right for a trifling sum. The plaintiffs proposed gradually to bring the portion of the wall yet to be built into line with the bottom, and to this the defendant assented, so that he is now estopped from setting up his present contention. He had practically acceded to the plaintiffs' view of the cause of the defect.

After the completion of the contract he promised to pay the plaintiffs, and made no complaint on this subject until they had registered a lien.

Appeal dismissed with costs.

FALCONBRIDGE, C.J.

DECEMBER 23RD, 1902.

CHAMBERS.

HAY v. BINGHAM.

Defamation—Pleading—Statement of Claim—Setting out whole Newspaper Article—Parts not Referring to Plaintiff—Innuendo.

Appeal by plaintiff from order of local Master at Ottawa striking out paragraph 4 and part of paragraph 5 of the statement of claim in an action for libel and slander. The defendant was a candidate in the Liberal interest for the representation of the city of Ottawa in the Ontario Legislature at the general election in May, 1902, and the plaintiff was a supporter of the Conservative candidate at such election. Paragraph 4 stated that the defendant was defeated at the election, and on the following day, the 30th May, 1902, falsely and maliciously caused to be printed and published in the form of an interview in the issue of the "Free Press"

newspaper, of and concerning the plaintiff the words following: "Mr. Bingham on the Result." Then followed an account of an interview with Mr. Bingham, containing, among other things, these words: "Mr. R. G. Hay" (the plaintiff) "was another that came to me after it was known that I was a candidate. He wished me to indorse a note for him for \$1,000 to start an establishment on Bank street. I said to him that I would consider the matter, and remarked: 'Won't you be lonesome out of politics?' He said that he had gone out of politics. I afterwards declined to accede to his request, and he later on accused me of breach of loyalty, etc." The other portions of the interview were set out in the statement of claim, but did not refer to plaintiff. Paragraph 5 contained the innuendo, and the part struck out by the Master was a part which did not refer to any statement made with regard to plaintiff.

T. McVeity, Ottawa, for plaintiff.

Glyn Osler, Ottawa, for defendant.

FALCONBRIDGE, C.J.—Rules 268 and 275 have no relation to the setting out of the matter complained of in an action of defamation, because in that form of action the very words complained of must be set out by plaintiff: *Wright v. Clements*, 3 B. & Ad. at p. 506. It is not sufficient to give the substance or purport of the libel or slander with innuendoes: *Odgers*, 3rd ed., p. 553: the words must be set out verbatim. Generally speaking, it is not necessary to set out the whole of an article containing libellous passages, provided that nothing be omitted which qualifies or alters the same: *Odgers*, p. 534, and cases cited. The libel itself must be produced at the trial, and defendant is entitled to have the whole of it read. But a defendant cannot object to the whole article being set out in the statement of claim. The pleading does not offend against Rule 298, nor is it scandalous, nor does it tend to prejudice, embarrass, or delay the fair trial of the action. *Days v. Brundage*, 13 How. Pr. 221, *Millington v. Loring*, 6 Q. B. D. 190, 194, and *Whitney v. Moignard*, 24 Q. B. D. 630, referred to. The words of paragraph 5 struck out were properly struck out. They were not fairly pleaded as innuendo, and did not refer to plaintiff.

Appeal allowed as to the 4th and disallowed as to the 5th paragraph. Costs of appeal to be costs in the cause.

MACMAHON, J.

DECEMBER 23RD, 1902.

TRIAL.

MOORE v. BALCH.

*Limitation of Actions—Promissory Notes—Commencement of Statute
—Absence of Defendant from Province—Return.*

Action tried at Kingston without a jury. The plaintiff's claim was on three promissory notes made by defendant to him, the first being dated 10th May, 1889, payable one year after date, and the others 3rd March, 1892, payable at one and six months after date respectively. All three notes were made at Kingston, whence defendant went in September, 1893, to live at Syracuse, New York, where he lived thenceforward. During the summer of 1894 he was in Kingston for a week on a visit, and in the following year spent two weeks in the city and vicinity. The notes were proved to have been made by defendant, and at the trial the claim on the first was abandoned by plaintiff.

T. L. Snook, Kingston, for plaintiff.

John McIntyre, K.C., for defendant.

MACMAHON, J.—The second and third notes had matured before defendant's removal to Syracuse, and, since the plaintiff's cause of action accrued before the departure of the defendant, the statute began to run and was not suspended by his subsequent removal from the jurisdiction: *Homfray v. Scrope*, 13 Q. B. 509-512; *Rhodes v. Smethurst*, 6 M. & W. 351. In any event he returned to Kingston in 1894 and 1895, and there remained for a length of time amply sufficient for the holder of the notes to have brought action. The claim of the plaintiff was, therefore, barred long before this action was brought on 12th August, 1902.

FALCONBRIDGE, C.J.

DECEMBER 23RD, 1902.

TRIAL.

RYAN v. RYAN.

Waste—Cutting Timber—Injury to Reversion—Injunction—Damages.

The plaintiff's claim was against the defendant for damages for cutting wood upon land of which plaintiff's mother was life tenant and plaintiff himself reversioner.

T. Wells, Ingersoll, for plaintiff.

J. C. Hegler, K.C., and J. H. Hegler, Ingersoll, for defendant.

FALCONBRIDGE, C.J.—Although the evidence offered by plaintiff was too vague and inconclusive to warrant a finding, the evidence of defendant and his mother shewed that defendant had taken from the land of which plaintiff was reversioner, and converted to his own use, about five cords of rough wood annually for firewood. That he had replaced this by better wood from his own land did not help him, since the life tenant could not, without being impeachable of waste, sell or barter away any wood which she might use herself: *Saunders v. Breakie*, 5 O. R. 603. As defendant avowed his intention of continuing the practice, an injunction is granted against this particular mode of dealing with wood on and from the land of which plaintiff is reversioner. Damages assessed at \$25. Costs to plaintiff on County Court scale without set-off.

DECEMBER 23RD, 1902.

DIVISIONAL COURT.

BREESE v. CLARK.

District Court — Jurisdiction — Counterclaim — Work and Labour — Amount — Deterioration — Damages — Set-off — Costs.

Appeal by plaintiff from judgment of District Court of Muskoka whereby the claim of plaintiff for moneys due to him on a contract with plaintiff for sawing logs was found at \$209.59, but the defendant was allowed by way of set-off and counterclaim for bad sawing and deterioration of logs a sum of \$597, and whereby judgment was directed to be entered for defendant for the balance over plaintiff's claim. The appeal was taken on the ground that the amount allowed upon the counterclaim was in excess of the jurisdiction of the District Court, and on the facts.

E. E. A. DuVernet, for plaintiff.

R. U. McPherson, for defendant.

THE COURT (BOYD, C., MEREDITH, J.), held that it would be proper to reduce the amount to be allowed for bad sawing to \$150, and to treat this as a matter of mere defence, deducting it from the \$209.59 due plaintiff, thus arriving at a balance of \$59.59. On the counterclaim proper for deterioration of logs, the amount which on the whole evidence it would be proper to allow would be \$150, the amount allowed below having been beyond the jurisdiction. Deducting the \$59.59, there was left a balance in defendant's favour of \$90.41, for which sum judgment should be entered. Success having been divided, no costs of action or appeal to either party.

MEREDITH, J.

DECEMBER 24TH, 1902.

CHAMBERS.

RE BUTLER.

Will—Construction—Distribution of Estate—Income—Corpus.

Motion by executors upon an originating notice under Rule 938 for an order declaring the construction of the will of Peter Butler, by which all the residue of his property was devised upon trust to the executors to convert into money, and, after payment of an annuity, to pay the residue of the income annually in equal shares to his children Ephraim, Philip, George, Jane, Ann, and Sidney, during their lives. The will directed that the share of any of the said children dying without issue should be divided among "all my surviving children," and that the "share of interest of any of my children" who died leaving issue should be divided equally among the children of the deceased child until the final division. After the death of the last surviving of the six children mentioned by name, the corpus was directed to be divided into six parts and one part paid to the children of each of the said deceased children in equal shares. There was a seventh child of testator's not mentioned in the will except to be named as executor. He had died, leaving six children, and of the six children named as beneficiaries five were dead, four leaving issue, and one (Sidney) without issue.

W. E. Middleton, for the executors.

D. W. Saunders, for the assignees of George Butler.

D. L. McCarthy, for the representatives of Peter Butler.

F. W. Harcourt, for unborn children.

T. G. Meredith, K.C., for others interested.

MEREDITH, J.—The questions and the answers to them are as follows: 1. Are the children of Peter Butler entitled to share in Sidney's share of the income? They are so entitled. The will properly referred to the share of "any of the said children" being divided among all my surviving children, which prima facie included Peter, and this construction was assisted by the subsequent provision that the share of interest of "any of my children" (which again prima facie included Peter) dying leaving issue should until the period of distribution be divided among the children of that child. No violence was done to the words "share of interest" by holding them applicable not only to the main share of interest of one of the named six, but also to Peter's share of the share of one of the six dying without issue. To construe

the gift of the share of interest of a child dying without issue to the "surviving children" at the time of the payment would not be consistent with the intention of bounty to the grandchildren or the directions to pay the shares among the children share and share alike and to pay the share of a child leaving issue to his children.

2. How is Sidney's share of the corpus to be divided? There is an intestacy as to Sidney's share, the children of each child being the only beneficiaries of the corpus.

3. May the estate now be divided? Except as to Sidney's share, which must be retained until the death of the last surviving named child in order that Peter's children may share in the income therefrom, there is no reason why their proper shares of their parent's shares may not be paid to such of the grandchildren as are of full age.

Order to go upon any of the questions submitted. Costs of all parties out of the fund, those of the executors as between solicitor and client.

C. A.

DECEMBER 24TH, 1902.

MURPHY v. LAKE ERIE AND DETROIT RIVER
R. W. CO.

*Contract—Construction—Removal of Timber—Injunction—Refusal—
Appeal—Court Expressing no Opinion on Merits—Affirmance of
Refusal.*

Appeal by plaintiffs from order of LOUNT, J., in the Weekly Court, dismissing the plaintiffs' motion for an interim injunction to restrain the defendants from removing from Great Duck Island in Lake Huron, owned by plaintiffs, certain timber cut by defendants prior to 1st January, 1902. LOUNT, J., held that upon the true construction of the agreement between plaintiffs and defendants the cedar timber cut by the defendants before 1st January, 1902, but not removed at that date, belonged to defendants and might now be removed, notwithstanding the express provision for removal prior to 1st January, 1902, contained in the agreement.

F. A. Anglin, K.C., for the appellants, contended that, on the true interpretation of the offers contained in the letters of the plaintiff Murphy of 19th January, 1899, and 15th September, 1899, addressed to defendants, and by them accepted, the words "to be cut and removed . . . until 1st January, 1902," were words limiting and defining the quantity of

cedar timber sold by plaintiffs and bought by defendants; that by the agreement the removal of the timber was made a condition precedent to its becoming the property of defendants.

W. H. Blake, K.C., for defendants, opposed appeal, and relied on *McGregor v. McNeil*, 32 C. P. 538.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, J.J.A.) was delivered by

MOSS, C.J.O.—We think that in the present position of this case we should not now express a definite opinion upon the contract between the parties. The case is not ripe for final decision upon the construction of the agreement in question. The facts shewn are very meagre. It was quite open to the learned Judge whose order is under appeal to refuse an injunction on the sole ground of preponderance of convenience, and there is nothing before us on which we could say he erred in so disposing of the motion. . . . We desire to leave the case so that it may be dealt with at the trial entirely unembarrassed by any expression of opinion. . . . We think the proper order to be now made is to dismiss the appeal; the costs to be disposed of by the trial Judge.

DECEMBER 24TH, 1902.

C. A.

McGIBBON v. CHARLTON.

Contract—Delivery of Timber—Correspondence—Evidence—Non-completion of Contract.

Appeal by plaintiffs from judgment of LOUNT, J., dismissing with costs the action brought by appellants to recover damages sustained by them by reason of an alleged breach by respondents of their contract with appellants to deliver 200 M. feet of white pine and between 250 M. and 300 M. of Norway pine.

J. Cowan, Sarnia, for appellants.

H. L. Drayton and A. G. Slaght, for defendants.

THE COURT (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, J.J.A.) held that the Judge below was right in the conclusion that there was not sufficient evidence of the contract sued on, which was founded upon a correspondence, a perusal of which shewed that neither of the parties regarded their negotiations as having reached a conclusion.

Appeal dismissed with costs.

DECEMBER 24TH, 1902.

C. A.

ARMSTRONG v. TORONTO POLICE BENEFIT FUND.

Benefit Society—Pension—Vested Right—Alteration in Rules—Validity of,

Appeal by plaintiff from judgment of STREET, J. (30th April, 1901), declaring that the moneys paid into Court in this action by the defendants were sufficient to satisfy the plaintiff's claim. Plaintiff was a member of the Toronto Police Force from 15th March, 1872, till the time of his resignation on 15th May, 1900. Defendants were a friendly society organized 3rd December, 1881, to insure against death and to grant life-time benefits. Under rules 23 and 24 of the society, plaintiff claimed a pension for life of one-half of his pay.

In calculating the period of service, upon which the right to the pension depended, rule 23 of the society was relied on. It stated that members who were on the force prior to 1st January, 1882, were entitled to reckon two-thirds of the period of their service, anterior to that date. The rules of the society were amended in December, 1894, and by the amendment the period required to entitle a member to the pension claimed by plaintiff was increased from 20 to 25 years, and, consequently, defendants contended that plaintiff, having served only 24 years and 5 months, was not entitled to the pension claimed.

E. E. A. DuVernet and N. F. Davidson, for appellant.

A. B. Aylesworth, K.C., and D. T. Symons, for defendants.

THE COURT (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, J.J.A.) held that the amendments were valid and binding upon the plaintiff. There was no question of vested interests involved. The plaintiff had acquired no absolute right to a pension at the time of the amendment in 1894. His rights continued to be the same as those of all other members of the society until he acquired a vested right under the rules in force at the time, and the sum to which he had become entitled had been paid into Court.

Appeal dismissed with costs.

DECEMBER 24TH, 1902.

C. A.

CITY OF OTTAWA v. OTTAWA ELECTRIC R. W. CO.

*Street Railway—Agreement with Municipality—Specific Performance
—Bond—Injunction—Reference as to Damages—Transportation of
Freight—Resolution of Council—Statutes.*

Appeal by plaintiffs from judgment of BOYD, C. (17th June, 1901), after the trial of the action at Ottawa, directing a reference for the purpose of ascertaining what damages the plaintiffs had sustained by reason of the failure of defendants to build and put in operation the line of railway on Bell street, in the city of Ottawa, and in other respects dismissing the action, which was brought to compel specific performance of certain agreements between the plaintiffs and defendants, and for an injunction restraining defendants from carrying freight and running freight cars upon their line of railway on Sussex street, and on other lines in the city. The Chancellor held that the power to carry freight on the streets by electricity was an employment of new and additional power conferred by the statutes of Canada, 1892, and was to be brought into operation according to the provisions of the Ontario Street Railway Act, which were that it must have been sanctioned by a by-law of the municipality. But the provisions of the Street Railway Act did not apply to any company incorporated before the 1st February, 1883. The Ottawa City Passenger Railway Company (now incorporated with the plaintiffs) had from the first had power to transport freight on their lines by horse or animal power, and new facilities were given to it afterwards by the Dominion Parliament to carry freight by means of electricity. Then the Dominion Act of 1892 provided that the new power was to be exercised on such terms as the city council approved. Having regard to the earlier Act of 1868, sec. 2, the city council might, by resolution, permit the use of freight cars during the day time. Its approval of such use of the tracks for freight during the day was to be manifested by resolution, and the like approval for the carriage of freight at night might fairly be regarded as sufficient. The council had given their sanction by resolution to connect the lumber-yard of the Edwards Company with the track on Sussex street, and the city had also made connections at the other end of Sussex street. This had been the method of operating one part of this track on Sussex street since 1896, and, in the absence of any evidence that the resolution had been rescinded, or other act of disapproval equally notorious, the action failed on this

branch. On the branch of the case referring to the operation of cars on Bell street, the Chancellor held that it was not a case for specific performance, but directed a reference as to damages.

A. B. Aylesworth, K.C., and Taylor McVeity, Ottawa, for plaintiffs, appellants.

F. H. Chrysler, K.C., for defendants, supported the Chancellor's judgment on the Sussex street branch of the case, and on the other branch supported a cross-appeal from the part of the judgment directing a reference.

THE COURT (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, J.J.A.) held that in the face of the stipulations in the Act of Parliament giving defendants the right to use electricity, they could not ignore the provisions of the Street Railway Act. The resolution of the council giving the defendants leave to connect their lines with those of the Canadian Pacific and Canada Atlantic railway companies, and allowing the connection with the Edwards Company yard, did not give the defendants the rights contended for. The provisions of sec. 546 were imperative, and the power conferred upon the municipality must be strictly exercised: *Winter v. McKeown*, 22 U. C. R. 341, at p. 347; *Re Ostrom and Township of Sidney*, 15 A. R. 372.

The effect of sec. 17 of the Street Railway Act had been overlooked below. The defendants had failed to make out a valid permission and could not, therefore, carry freight on their lines through the city. On the claim for specific performance, the reasons given in *City of Kingston v. Kingston, etc.*, *Street R. W. Co.*, 25 A. R. 399, for refusing it, applied, and the plaintiffs could not enforce the bond against defendants, the city having given up its rights thereunder. Further, the city not having seriously followed up its claim for damages, and it being doubtful if any could be established, there should be no reference as to damages in this action.

Appeal allowed as to the freight, and defendants enjoined from transporting or carrying freight or running freight cars over their lines by electricity till the city's permission has been obtained. Appeal dismissed as to other branches. Cross-appeal allowed as respects the reference as to damages, to the extent indicated. Costs of action to plaintiffs. No costs of appeal or cross-appeal to either party.

DECEMBER 24TH, 1902.

C. A.

ONTARIO BANK v. POOLE.

*Promissory Note—Specific Purpose—Authority—Bank—Consideration
—Advances—Collateral Security—Negotiation.*

Appeal by plaintiffs from judgment of ROBERTSON, J., 1 O. W. R. 20, dismissing the action with costs. The action was brought upon a promissory note for \$1,500 made by James Poole, the defendant, in favour of the plaintiffs. It was one of a number of notes made by the shareholders of the Consolidated Pulp and Paper Company in connection with an advance sought from the plaintiffs for the purposes of the company. The defence was that the note was given for a specific purpose, known to the plaintiffs, and that the plaintiffs never made the advance and gave no consideration for the note. The trial Judge held that certain advances made by the plaintiffs to the company did not form a consideration for the note; that the note was never negotiated, and the plaintiffs were not holders in due course; that they held the note without consideration, and for a purpose other than the defendant intended when he signed it.

The appeal was heard by OSLER, MACLENNAN, MOSS, JJ.A.

J. H. Moss and C. A. Moss, for plaintiffs, contended that the uncontradicted evidence established that the note was delivered to them in consequence of, and as a substantial factor in, the making of an agreement between plaintiffs and the officers of the pulp company, which advances were actually made; that the delivery of the note to plaintiffs was an integral part of the consideration upon which the plaintiffs entered into the agreement, and the making of this agreement by plaintiffs was a sufficient consideration for the note; that the note was delivered to plaintiffs by the defendant's agent, having apparent authority in that behalf, and the plaintiffs became holders in due course, without notice of any limitations or conditions attached to it in its inception, and the plaintiffs were not affected thereby; that it was immaterial whether the note had been negotiated or not, but the plaintiffs were holders in due course.

F. E. Hodgins, K.C., and J. D. McMurrich, for defendant, contended that the note was used as it was without the authority of defendant, and that plaintiffs had notice.

Moss, C.J.O.—It is clear upon the evidence that the main and leading purpose of making the thirteen promissory notes

of which the defendant's was one, was that they might be employed to procure funds from the bank for the purposes of the company. There was special necessity at the time for an immediate advance to relieve the company from pressing liabilities upon which actions were threatened and imminent. It is true that amongst the makers themselves the form of the transaction was referred to as a discount of the notes, but that may be regarded as a mere form of speech. They were not considering the form so much as the substance, which was the obtaining of the advance. The form the transaction took could make very little difference to the makers. They were becoming liable on the notes in order that they might be used with the bank in procuring the needed funds. Whether the money was advanced directly on the notes or whether it was advanced in consequence of their having been given to be held as collateral security, was immaterial. The advances were made as much upon the faith of the notes as upon the other securities, and there was ample consideration to the makers. The appeal should be allowed.

MACLENNAN, J.A., gave reasons in writing for the same conclusion.

OSLER, J.A., concurred.

DECEMBER 24TH, 1902.

C. A.

AILLO v. FAUQUIER.

GALLIO v. FAUQUIER.

Master and Servant—Injury to Servant—Workmen's Compensation Act—Negligence of Foreman of Works—Questions for Jury—New Trial—Small Verdict.

Appeal by defendants, contractors on the Algoma Central Railway, from judgment of BRITTON, J., in action tried before him with a jury at Sault Ste. Marie, in favour of plaintiffs for \$375 and \$75 respectively. The plaintiffs were workmen on the railway, employed in rock blasting. Two charges had been set, and, as it was supposed, fired. Only one, however, had in fact exploded, and in working at the tamping of the unexploded charge the plaintiffs were injured. On returning to work after the blast the plaintiffs had suggested to their foreman that one charge had not gone off. He was, however, of a contrary opinion, and told them that if they refused to continue to work they would be dismissed from their employment. He then proceeded, assisted by the plaintiffs, to remove the tamping with a steel drill.

He was himself injured more seriously than either of the plaintiffs in the explosion which followed. The jury found that the foreman was negligent in using a steel drill, instead of a wooden tool; and upon their finding judgment was entered for plaintiffs.

The appeal was taken upon the grounds: (1) that plaintiffs knew and appreciated the risk, and entered upon the work determined to accept it; (2) that there was no evidence of any negligence on the foreman's part.

A. B. Aylesworth, K.C., for defendants, appellants.

Edward Martin, K.C., for plaintiffs.

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, J.J.A.) was delivered by

OSLER, J.A.—The verdicts in these cases are small, and unless there is no evidence to support them, or a clear case of misdirection or nondirection made out, we ought not to interfere—quite as much in the interest of defendants themselves as of the plaintiffs, as it is manifest that a new trial would be of little service to the former. . . . So far as there was danger incident to the doing of the work in a proper way, the evidence of plaintiffs themselves might tend to shew that they accepted it, though the jury might take the other view, if they believed their evidence that Crocco (the foreman) told them to do the work on the peril of being discharged. And if the case rested on this alone, it may be that we should have found ourselves compelled to grant a new trial, as the learned trial Judge, though asked to do so, did not put a question to the jury as to whether the plaintiffs were volentes in doing the work, assuming that it was done in a proper manner—the question of Crocco's negligence from that point of view being whether he knew, or took no pains to inform himself, whether the blast had exploded or not. But there is evidence that Crocco proceeded to withdraw the tamp in an improper and unusually dangerous manner, namely, by means of a heavy steel drill, an instrument which ought not to have been used for the purpose, and striking and pounding this drill in the hole. He ordered the plaintiffs to work with him with this instrument and in this manner. Of the special and increased danger which was thus caused it does not appear that plaintiffs were aware, and there was, therefore, a case proper to be submitted to the jury under sec. 3, sub-sec. 2, of the Workmen's Compensation Act, whether the plaintiffs had sustained injury by reason of the negligence of a person in the service of the employer who had superintendence intrusted to him, while in the exercise of such superintendence. The trial

Judge was not asked, and I think there was no ground for asking him, to submit any question as to plaintiffs having accepted the special risk of danger arising from that negligence, though, as I have said, it might have been otherwise had the case turned alone upon the question whether Crocco was negligent in not having satisfied himself whether the blast had or had not gone off.

Upon the whole, I think it is proper to dismiss the appeals. Costs follow.

DECEMBER 24TH, 1902.

C.A.

McCLURE v. TOWNSHIP OF BROOKE.

BRYCE v. TOWNSHIP OF BROOKE.

Drainage Referee—Official Referee—Reference.

Appeal by defendants from order of a Divisional Court, 1 O. W. R. 274, 4 O. L. R. 97, allowing an appeal by plaintiffs from an order of MEREDITH, C.J., dismissing plaintiffs' application for an order referring these actions to the Drainage Referee as an official referee. The statements of claim set forth certain demands which were the subject of proceedings before the Drainage Referee alone under the Municipal Drainage Act. Combined with these were demands and causes of action over which the Drainage Referee, as such, had no jurisdiction, and which were properly the subject of an action. After action brought, the plaintiffs took the proper steps to bring the former before the Drainage Referee in the manner prescribed by the Act, and then moved for an order to refer all the matters arising in the actions to the Drainage Referee, as an official referee, under sec. 29 of the Arbitration Act.

MEREDITH, C.J., held that the Drainage Referee was not an official referee within the meaning of the Act, but his decision was reversed by a Divisional Court, which referred the actions for trial to the Drainage Referee. Leave to appeal from the orders of the Divisional Court was given by the Court of Appeal (1 O. W. R. 324, 4 O. L. R. 102).

J. H. Moss, for appellants.

G. H. Watson, K.C., and N. Sinclair, for plaintiffs.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.) was delivered by

OSLER, J.A.—Judges of the County Court and certain specified officers . . . are by sec. 141 (1) of the Judica-

ture Act declared to be official referees for the trial of such questions as shall be directed to be tried by such referees.

The Drainage Referee is not one of these officers.

If other and additional official referees are required, and the President of the High Court so certifies, "the Lieutenant-Governor may from time to time appoint other and additional official referees accordingly:" sec. 141 (2).

The Drainage Referee has not been appointed an official referee under this clause.

A person, therefore, who is not an official referee ex officio, i.e., by virtue of and as incidental to the holding of some other office, can become such only by special appointment as official referee, and the only authority for making such appointment seems to be under sec. 141 (2).

By the Arbitration Act, R. S. O. ch. 62, sec. 28, subject to Rules of Court and to any right to have particular cases tried by a jury, the Court or Judge may refer any question arising in any cause or matter for inquiry and report to any official referee or to a special referee agreed on by the parties.

And by sec. 29 in certain specified cases the Court or Judge may refer the whole cause or matter or any question or issue of fact arising therein or any question of account to be tried before a special referee agreed on by the parties or before an official referee.

The reference, therefore, can be made only to a person who is such an officer, or by consent to a special referee agreed on by the parties.

By sec. 88 (1) of the Ontario Drainage Act, R. S. O. ch. 62, the Lieutenant-Governor in Council may from time to time appoint a referee for the purpose of the drainage laws.

The person so appointed shall be deemed to be an officer of the High Court, sec. 88 (2), and he shall hold office by the same tenure as an official referee under the Judicature Act.

The Drainage Referee, therefore, while an officer of the High Court and holding his office by the same tenure as an official referee, is an officer specially appointed for the administration of the drainage laws, and his powers as Drainage Referee are specified and defined in sec. 89, inter alia, sub-sec. (1). He shall have the powers of an official referee under the Judicature and Arbitration Acts, and of arbitrator under any former enactments relating to drainage works, and he is substituted for such arbitrator.

If, however, he is not one of those officers who is ex officio an official referee under sec. 141 (1) of the Judicature Act, and has not been appointed as such by the Lieutenant-Governor

under sec. 141 (2), I do not see how he can be regarded as an official referee under that Act, merely because he happens to be a different kind of referee and officer of the High Court under another Act, with special powers incidental to the exercise of his jurisdiction under that Act. Rule 12 of the Judicature Act, referred to in the judgment below, which provides that all officers of the High Court shall be auxiliary to one another for the purpose of promoting the convenient and speedy administration of business, does not seem to me to advance the argument in favour of the Drainage Referee being an official referee, because, whatever may be his powers as Drainage Referee, for the purpose of the Drainage Act, the sole question is whether he is an official referee within the meaning of the Judicature Act and Arbitration Act, to whom references may be made in invitum under the latter Act. I cannot agree with the Court below in holding that "an official referee is official only in the sense of being an officer of the Court." He is an official referee by virtue of an appointment to that office, or ex officio as being the holder of another specified office. All official referees are officers of the Court, but it does not follow that all referees who are officers of the Court are official referees. If it did, a special referee would, by virtue of sec. 30 (1) of the Arbitration Act, be an official referee.

Section 8, sub-sec. 22, of the Interpretation Act is also relied upon in the judgment below. I do not think it necessary to quote it, but it can have no application unless the Drainage Referee is ex officio or by appointment an official referee.

Then it is said that sec. 110 of the Drainage Act assumes that the Drainage Referee is an official referee to whom reference may be made under sub-sec. 2 of sec. 29 of the Arbitration Act. The answer to that, again, is, that his status must be found in some appointment direct or ex officio as such. The section (110) is not one dealing with his jurisdiction, but with appeals from his decisions, and (if this part of it is still in force now that sec. 94 of the Act has been repealed by 1 Edw. VII. ch. 30, sec. 5) it may embrace the case of a decision or report of the referee acting as special referee by consent of parties. It goes no further.

The jurisdiction of the Drainage Referee appears to me to be limited to the administration of proceedings under the Drainage Act. The powers conferred upon him are incident to that jurisdiction. The repeal of sec. 94 emphasizes this. As that section stood in the revised statutes there was express authority to refer just such a case as this to him. If, as I

think, he is not an official referee, that power no longer exists. I am therefore of opinion that the order of the Divisional Court is wrong and ought to be reversed and the judgment of Meredith, C.J., restored. Costs follow.

WINCHESTER, MASTER.

DECEMBER 26TH, 1902.

CHAMBERS.

MORRISON v. MITCHELL.

Trade Mark—Infringement—Statement of Claim—Particulars.

Application by defendants for further and better particulars.

C. A. Masten, for defendants.

Grayson Smith, for plaintiffs.

THE MASTER:—The action was brought for the alleged infringement of a trade mark, and by order made on 31st October, 1902, the plaintiffs were directed to furnish particulars of their statement of claim as follows:— (a) of the names and addresses of the persons to whom the defendants had sold goods marked with the trade mark in question; (b) of the acts of infringement; (c) of the character of the trade mark claimed; (d) of the acts of trespass on plaintiffs' goods, rights, and property. The particulars furnished began by stating that the particulars ordered were set forth as fully as practicable in the paper served, in the examinations for discovery, and in the examination of ten witnesses for defendants on commission, all of which were in possession of defendants' solicitors, and proceeded to state in compliance with (a) that these names and addresses appeared in the defendants' books, of which plaintiffs had no personal knowledge and defendants had. This statement is insufficient, in the absence of an affidavit that the particulars ordered are not at present within plaintiffs' knowledge. As to (b) the plaintiffs have furnished so-called particulars wider than the statement of claim, whereas dates and places should have been set out. As to (c) the form and manner of using and applying a fraudulent imitation of plaintiffs' alleged trade mark to secure the benefit of plaintiffs' property and reputation, should be stated. As to (d) the particulars furnished are sufficient.

Order accordingly. Costs to defendants in the cause.

BRITTON, J.

DECEMBER 26TH, 1902.

TRIAL.

MAJOR v. MCGREGOR.

Libel — Post-card — Words of Doubtful Signification — Innuendo — Necessity for Shewing Sense in which Words Understood.

Action for libel tried at Cornwall with a jury. The libel complained of was contained in a post-card sent by defendant to plaintiff through the post, carried home by plaintiff's father, who was unable to read, and by him handed to plaintiff's wife, who read it aloud to plaintiff. No other witness was called, who ever saw, or read, or heard read, the post-card. The plaintiff had told defendant that one Jack Sullivan should pay certain taxes, and defendant wrote to plaintiff on the post-card: "I saw Jack Sullivan this morning and he said make the S. B. pay it." The libel alleged was that the letters "S. B." were intended to convey an offensive epithet reflecting upon plaintiff's parentage.

G. I. Gogo, Cornwall, for plaintiff.

D. B. MacIennan, K.C., for defendant.

BRITTON, J.:—It is doubtful whether if the words suggested in plaintiff's innuendo were written out in full, they would be libellous. They are words of abuse, but are, as often used, absolutely meaningless, no one understanding them to really impute anything against the character of the mother, or as being a statement of a fact. But, even assuming the libellous character of the innuendo, if written in full, there was no libel here, the letters not being actionable in their natural signification, and plaintiff having failed to prove the innuendo, not having shewn that the letters were in fact understood in the sense alleged: *Macdonald v. Mail Printing Co.*, 32 O. R. 168, 169, 2 O. L. R. 278; *Huber v. Crookall*, 10 O. R. 475.

Action dismissed with costs.

DECEMBER 26TH, 1902.

DIVISIONAL COURT.

WALTON v. WELLAND VALE MFG. CO.

Master and Servant—Injury to Servant—Factory—Negligence—Findings of Jury — Finding of Judge — Consent — Notes of Evidence.

Motion by plaintiffs to set aside verdict and judgment for defendants in an action to recover damages for the death of the husband of the adult plaintiff and father of the infant

plaintiffs, tried before MEREDITH, C.J., and a jury at Hamilton, and for a new trial. The death was caused by injuries received in the defendants' bicycle factory, the deceased being in the employment of defendants as a workman therein. The plaintiffs alleged negligence on the part of defendants. The jury found that defendants were guilty of negligence in not seeing that pulleys of proper size were used for the grindstone, the breaking of which was the cause of the injuries, but also found that deceased had been negligent in not refusing to make use of the insufficient pulley provided by defendants. The trial Judge also made a further finding pursuant to a consent which he understood was given by counsel; and upon the findings dismissed the action.

J. W. Nesbitt, K.C., for plaintiffs.

P. D. Crerar, K.C., for defendants.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J.), was delivered by

STREET, J.:—As the notes of evidence do not shew any acceptance by plaintiffs' counsel of the suggestion that the Judge should make further findings, it will be safer to treat the case as depending upon the findings of the jury. The judgment upon the finding as to contributory negligence, read in the light of the evidence and charge, was right. Further, upon the uncontradicted evidence, no right in plaintiffs to recover appeared, and no question remained to leave to the jury. Their finding that defendants were negligent was founded upon a misconception of defendants' duty.

Appeal dismissed with costs.

Moss, C.J.O.

DECEMBER 26TH, 1902.

C.A.—CHAMBERS.

MCDONALD v. SULLIVAN.

Leave to Appeal—Attachment of Debts—Small Amount Involved.

Application by judgment debtors for leave to appeal from order of a Divisional Court, ante 784, reversing order of STREET, J., ante 723, and restoring order of Master in Chambers, ante 721, which made absolute an order of attachment and garnishing summons.

L. V. McBrady, K.C., for applicants.

W. A. Skeans, for judgment creditor.

Moss, C.J.O.:—No sufficient reasons are shewn for allowing the appeal, the amount in question, exclusive of costs, being only \$152. Justice seems to have been done by the Master's order.

Motion dismissed with costs.

FALCONBRIDGE, C.J.

DECEMBER 27TH, 1902.

TRIAL.

BODWELL v. McNIVEN.

Specific Performance—Contract for Sale of Land—Part Performance—Evidence of Acts Constituting.

Action for specific performance of a contract for the sale and purchase of land.

J. C. Hegler, K.C., and J. H. Hegler, Ingersoll, for plaintiff.

J. M. McEvoy, London, and J. L. Paterson, Ingersoll, for defendant.

FALCONBRIDGE, C.J.:—Possession is part performance both by and against the stranger and the owner: Fry on Specific Performance, 3rd ed., sec. 604. Upon the evidence, the character of the acts done was sufficient to constitute part performance. Usual judgment for plaintiff for specific performance with costs.

MEREDITH, C.J.

DECEMBER 29TH, 1902.

CHAMBERS.

ANTHONY v. BLAIN.

Pleading—Statement of Claim—Delivery of Amended Pleading—Time—Necessity for Leave or Consent—Rules 256, 300—Order Validating Delivery—Terms—Stay of Proceedings—Payment of Costs.

Appeal by plaintiff from order of local Judge at Brampton determining that an amended statement of claim delivered by the plaintiff (without leave having been obtained to amend and without defendant's consent) was irregularly delivered, contrary to Rule 300, but allowing the amended statement of claim to stand, and directing plaintiff to deliver particulars of certain paragraphs of it within ten days, and precluding him from giving evidence at the trial in support of the charges in respect of which particulars were ordered, in default of their being delivered as directed by the order, and also directing the plaintiff to pay the costs of the motion, together with the costs of the proceedings rendered unnecessary, and the costs thrown away by reason of plaintiff having delivered the amended statement of claim, extending the time for delivery of the statement of defence until six days after the delivery of the particulars and payment of the costs directed to be paid, and staying the proceedings in the action until the particulars should be delivered and the costs paid.

The action was for criminal conversation, and after delivery of the statement of claim an order for particulars was made and the time for delivering the defence was extended until the expiry of six days after the delivery of the particulars. Before this period had elapsed, and before any statement of defence had been delivered, and more than four weeks after the appearance, the plaintiff, without leave and without the defendant's consent, delivered an amended statement of claim, and the order appealed from was made on the motion of defendant to set aside the amended pleading for irregularity.

W. E. Middleton, for plaintiff.

W. R. Riddell, K.C., for defendant.

MEREDITH, C.J.:—I am of opinion that the local Judge correctly interpreted Rule 300, and that the delivery of the amended statement of claim was irregular. The Rule provides that "the plaintiff may, without leave, amend his statement of claim once before the expiration of the time limited for reply and before replying, or, where no defence is delivered, before the expiration of four weeks from the appearance of the defendant who last appears." The first branch of the Rule applies where a statement of defence has been delivered, and gives plaintiff the right to amend without leave within three weeks after defence unless he has delivered his reply. The time for delivering the reply is regulated by Rule 256, and it is to the provisions of that Rule that reference is made in the earlier part of Rule 300; but where no defence is delivered according to the provisions of the Rule, the plaintiff, to be entitled to avail himself of it, must amend his statement of claim within four weeks from the appearance of the defendant who last appears. The language of the Rule is explicit, and there is no escape from the conclusion that it operated to render the amended statement of claim irregular.

The terms imposed as the condition upon which the amended pleading was allowed to stand were, however, too onerous. It was not reasonable to provide that proceedings in the action should be stayed until the costs should be paid. The stay of proceedings in default of payment should have been limited to proceedings on the additional charges introduced into the statement of claim by the amendment, and it would not have been unreasonable to have provided that in case of default in payment of the costs within a named time the amendments should be stricken out. See, as to the question of staying proceedings for non-payment of costs, *Re Wickham*, 35 Ch. D. 272; *Graham v. Sutton Garden Co.*,

[1897] 2 Ch. 367. It was objected by defendant that plaintiff had, by delivering particulars of the amendment statement of claim pursuant to the order appealed against, precluded himself from appealing. This objection is not well founded. Mere compliance with the terms imposed in an order by the party to whom an indulgence is granted on terms, does not preclude him from moving against the order: *Anlaby v. Prætorius*, 20 Q. B. D. 764; *Hewson v. Macdonald*, 32 C. P. 407; *Duffy v. Donovan*, 14 P. R. 159.

Appeal allowed and paragraph 7 of the order to be stricken out, and the following substituted, that until payment of the costs further proceedings on the charges introduced by the amendment be stayed, or, at the defendant's option, that if these costs are not paid within one month after taxation, the amendments be struck out. Costs of appeal to be costs in the cause.

BRITTON, J.

DECEMBER 29TH, 1902.

WEEKLY COURT.

KING v. CITY OF TORONTO.

Municipal Corporation—Power of Council to Submit Question to Electors—Proposed Expenditure of Money for Sanitarium—Intention to Apply to Legislature—Vague and Unsatisfactory Question—Injunction.

Motion by plaintiff to continue an injunction restraining defendants from submitting, at the annual municipal election on the 5th January, 1903, to the electors of the city of Toronto qualified to vote on money by-laws, the question: "Are you in favour of the city contributing \$50,000 towards the establishment of a sanitarium for the treatment of residents of Toronto suffering from consumption?"

W. Nesbitt, K.C., and J. H. Denton, for plaintiff.

J. S. Fullerton, K.C., and W. C. Chisholm, for defendants.

BRITTON, J.:—There is nothing in the Municipal Act permitting the council to take a plebiscite, and there is no express prohibition against its doing so. If any advantage to the citizens at large could accrue from such answers as the electors may choose to give, the Court would be slow to interfere at this stage. The ballots have been printed, and, as there is to be a vote taken on a money by-law, very little, if

any, additional expense will be incurred. On the other hand, no actual harm will result from allowing the questions to be answered. The avowed purpose is to inform the Legislature of the result, and, if the answers are favourable, to use the result as an argument in attempting to obtain for the city the power, which it has not at present, of making the contribution of \$50,000, without submitting a by-law to the people. Many electors may be in favour of such a contribution upon definite conditions. The answers, to be of any value, would have to be made to several further questions, e.g., "Where is the sanitarium to be erected?" "At what cost?" "Is the sanitarium to be established by an individual or a company?" "Is the \$50,000 to be given in aid of such an institution when established, or is the sanitarium to be established by the city alone?" It will be time enough to answer the question when a carefully prepared by-law is submitted giving all necessary information and safe-guarding the grant. *Helm v. Town of Port Hope*, 22 Gr. 273, followed. *Davis v. City of Toronto*, 15 O. R. 33, distinguished. *Darby v. City of Toronto*, 17 O. R. 561, referred to.

Injunction continued till the trial. If plaintiff does not seek in the action any other relief, the motion may be turned into a motion for judgment, and judgment will be for plaintiff for a final injunction with costs.

FALCONBRIDGE, C.J.

DECEMBER 29TH, 1902.

TRIAL.

MATHEWS v. MATHEWS.

Partition—Expensive Proceedings—Leave to Proceed with Previous Action—Terms.

Action for partition, tried at Sandwich.

A. H. Clarke, K.C., for plaintiff and certain defendants.

D. R. Davis, Amherstburg, and F. H. A. Davis, Amherstburg, for the other defendants.

FALCONBRIDGE, C.J.:—The defendant Mary Mathews has not established her claim to the land by length of possession. But there are many other questions involved, and these expensive proceedings might easily have been avoided, there having been very little in dispute between the parties when the proceedings were initiated. On payment by plaintiff to

defendant Mary Mathews of two-thirds of her solicitor's bill in the former action (as per agreement), plaintiff will be entitled to go on with the proceedings for partition in the Master's office as from the 27th June, 1901, when the Master made his report or memorandum. Plaintiff may have this bill taxed at his own expense. No costs of this action.

OSLER, J.A.

DECEMBER 29TH, 1902.

C. A.—CHAMBERS.

BENTLEY v. MURPHY.

Leave to Appeal — Appeal as of Right on One Branch — Amount Involved—Divergence of Judicial Opinion.

Motion by plaintiffs for leave to appeal from order of a Divisional Court (ante 726) varying the judgment of BRITTON, J., (ante 273). The result of the order of the Divisional Court was that on the defendant Craig's appeal the judgment at the trial was reversed, and the action dismissed as against him altogether, and that on the plaintiffs' appeal the judgment refusing specific performance was affirmed, though on a different ground from that on which it was rested by the trial Judge.

L. G. McCarthy, K.C., for plaintiffs.

J. J. Foy, K.C., and T. Mulvey, K.C., for defendants.

OSLER, J.A.:—The plaintiffs need no leave to appeal from the order of the Divisional Court on the defendant Craig's appeal, and varying the judgment against the defendant Murphy, and this being so, and the subject matter of the action being a piece of property of the value of at least \$5,000, and considering the great divergence of judicial opinion in respect of the rights of the parties, and the way in which the ultimate judgment has been arrived at, the plaintiffs should have leave to appeal from the order dismissing their own appeal to the Divisional Court. This is a stronger case for granting leave than was made in *Kidd v. Harris*, 3 O. L. R. 277. Collateral objections, such as delay in the conduct of the action, are irrelevant. The plaintiffs must give security in \$400 for the costs of the appeal. Motion to quash appeal refused. Costs of all to be costs in the cause.

BRITTON, J.

DECEMBER 30TH, 1902.

TRIAL.

GROSSMAN v. CANADA CYCLE CO.

Copyright—Newspaper Printed in United States—Copyright in England—Application of Imperial Statutes—“First Publication.”

Action for damages for the infringement of the alleged copyright of plaintiffs in a journal called the “Cycling Gazette,” and in an article intitled “The Boosters’ Club” published in that gazette. The article was written for plaintiffs by one Charles W. Mears, was paid for by them, and was published by them at Cleveland, Ohio, in the issue of the Cycling Gazette dated 18th October, 1900. On the first page of that issue was printed the following notice: “Copyright applied for, 1900, by Emil Grossman and Bro. All rights reserved.” The plaintiffs claimed copyright, and alleged that on 29th August, 1901, their copyright in the Cycling Gazette and in its issue of 18th October, 1900, and in the article referred to, were duly registered at Stationers’ Hall, pursuant to 5 & 6 Vict. ch. 45 (Imp.). This registration was for the purpose of bringing the present action, as required by sec. 24 of that Act. At the time of registration the Cycling Gazette was published at New York. The defendants published the article in question on the 23rd March, 1901, at Toronto, in a paper called “The Assistant Manager”—a paper not issued regularly, but only to the trade and to agents in England. The defendants denied the registration of the alleged copyright, denied that the article was subject to copyright as against defendants, and said that, as plaintiffs were not British subjects, and as they resided outside the British dominions, the Imperial Act did not confer any copyright upon them. They further said that “The Assistant Manager” was issued gratis, and that in good faith this article was published therein; that its publication ceased in the spring of 1901; that plaintiffs sustained no damage by defendants’ publication; but, to cover any technical infringement, and without admitting any liability, they paid \$1 into Court.

C. D. Scott, for plaintiffs.

E. B. Ryckman and C. W. Kerr, for defendants.

BRITTON, J.:—If plaintiffs’ journal comes under the definition of “book” in 5 & 6 Vict. ch. 45, sec. 2, the plaintiffs are out of Court because of the enactment of 7 Vict. ch.

12, secs. 19, 20, which restricts copyright in any book first published outside of Her Majesty's dominions to such right as a person may have become entitled to under the last mentioned Act. The plaintiffs have brought their action on the assumption that 7 Vict. ch. 12 does not apply, and they seek to recover under 5 & 6 Vict. ch. 45. The "Cycling Gazette" is within the wording of secs. 18 and 19 of the last mentioned Act. Section 24 does not apply to cases within secs. 18 and 19, so any objection to form or particulars of registration at Stationers' Hall is not open to defendants: *Mayhew v. Maxwell*, 1 J. & H. 312; *Cox v. L. & W. Co.*, L. R. 9 Eq. 324. If sec. 24 does not apply to cases within secs. 18 and 19, then sec. 16 does not, so the statement of defence is sufficient to let in any matter of defence disclosed by the evidence: *Cooté v. Judd*, 23 Ch. D. 727. To entitle plaintiffs to British copyright, there must be "first publication" of the paper containing the article in question, in the United Kingdom. This plaintiffs have failed to establish. It is not in dispute that the plaintiffs' paper containing the article in question was actually printed and published in Cleveland, Ohio, on the 18th October, 1900. The only publication by plaintiffs in the United Kingdom was by posting numbers to subscribers in England, and particularly by posting to the plaintiffs' agent in London, England. Even if it be assumed that persons in England received the paper in due course of post, subscribers in the United States would be in possession of their copies days in advance. This is not a question of how far, as a matter of contract or for any purpose, the post office department of one country can be considered the agent for persons in another country to whom papers are addressed; it is purely a question of "first publication in England," or at least simultaneous publication in England and the United States. A paper printed and published in the United States and posted there to subscribers both in that country and in England cannot be held to be first published in England.

Judgment for defendants.

FALCONBRIDGE, C.J.

DECEMBER 30TH, 1902.

TRIAL.

CHEVALIER v. TREPANNIER.

Title to Land—Declaration — Pleading — Possession — Statute of Limitations—Tenancy by the Curtesy—Devolution of Estates Act—Improvements.

Action by the purchaser of the interests of six of the eleven children of a deceased intestate, owner of certain lands

in the township of Tilbury North, for a declaration that plaintiff is entitled to possession of the lands in common with other persons entitled, and for mesne profits. Defendant, husband of deceased intestate owner, alleged that he took possession of the land in 1856, and shortly after his marriage to deceased, when it was wild land, and improved it permanently, and that he (being an illiterate man) had the indenture under which plaintiff claims explained to the effect that he (defendant) was to be the grantee thereunder, and that he has always so believed, until recently. Defendant claimed at all events as tenant by the curtesy, but if otherwise determined then a lien on the lands to the extent that the value thereof has been enhanced by his improvements.

A. H. Clarke, K.C., for plaintiff.

Solomon White, Windsor, for defendant.

FALCONBRIDGE, C.J.:—The defendant has not pleaded the Real Property Limitation Act, and should not now be allowed to do so, even if it could avail him, against his deceased wife and his children, one of whom only became of age in 1899. He did not elect under the Devolution of Estates Act, sec. 4 (3), within six months after his wife's death, to take an interest as tenant by the curtesy, and so he is bound to take his distributive share. Defendant's claim for improvements may properly come to be considered when partition is sought by any of the persons entitled. This action is now practically one for the declaration of the rights of the parties thereto as between themselves, and as plaintiff, by his statement of claim and the prayer thereof, recognized no right at all of defendant, and as defendant claimed the whole property, it is not a case for costs. Defendant will be declared to be as against plaintiff entitled under sec. 5 of the Devolution of Estates Act to one-third of the property. The children are entitled to the remaining two-thirds, and plaintiff claims to be entitled to eight shares out of eleven, or eight-elevenths of the residue, but there can be no declaration as to this except as between plaintiff and defendant, because the persons whose interests plaintiff says he has acquired and the other heirs are not parties. By sec. 13 of the Act, the real estate seems to have been vested in the heirs of defendant's wife since December, 1892, being twelve months after the death of the intestate.

MEREDITH, J.

DECEMBER 31ST, 1902.

CHAMBERS.

RE PAGE.

Will—Construction—Fund for Payment of Debts, Funeral, and Testamentary Expenses—Specific Legacies.

Motion by executors of will of James Page, under Rule 938, for an order determining out of what fund mentioned in the will should be paid the debts, funeral, testamentary, and other expenses connected with the administration of the estate of the testator and incidental thereto. The proper determination of the question raised depended upon whether the gifts comprised in the 9th clause of the will were specific. It was admitted that the other gifts were specific, and that those of personalty exhausted the whole of that part of the estate. Clause 9 was in part as follows: "I give, devise, and bequeath unto my executors hereinafter named all the rest and residue of my real estate upon trust to permit my said wife to collect, use, and enjoy the rents arising therefrom for her own use for the period of one year from my decease, and until sales thereof shall be made as hereinafter specified, and at the expiration of one year from my decease or at the death of my wife, whichever event shall first happen, upon the further trust to sell and absolutely dispose of the same as soon as a fair price . . . can be obtained therefor, and out of the proceeds thereof I give and bequeath the following sums which I direct my executors . . . to pay over in the order in which the same are hereinafter named to the following institutions or charities. . . . After payment of said sums . . . I give and bequeath the balance remaining out of the proceeds of said sales . . . to be equally divided among . . . the children of my sister."

W. T. Evans, Hamilton, for executors and widow.

F. W. Harcourt, for infants.

E. F. Lazier, Hamilton, for Methodist societies interested under the will.

George S. Kerr, Hamilton, for other charities.

W. A. Logie, Hamilton, for other legatees.

MEREDITH, J.:—All gifts of real estate, including a residue, are necessarily specific; but in this case the land is not given to the beneficiaries, but to the executors to be sold

by them, and it is only out of the proceeds that certain legacies are to be paid, etc. These gifts are not specific. *Page v. Leapingwell*, 18 Ves. 463, and cases following it, distinguished. The debts and funeral and testamentary expenses should be paid out of the residue of the proceeds of the sale of the lands provided for in clause 9, which is really the residue of the testator's whole estate. The cases do not require that these debts and expenses shall be considered, in all the circumstances of the case, as charged upon and payable out of all the real estate given to the executors: *Bailey v. Bailey*, 12 Ch. D. 268; *In re Tanqueray-Williams and Landau*, 20 Ch. D. 476. The testator's intentions to be gathered from the whole will are in accord with these conclusions. The declaration affects debts and funeral and testamentary expenses only, not any expenses of the execution of the trusts of the will not comprised in the term "debts and funeral and testamentary expenses." Costs of all parties, those of the executors as between solicitor and client, to be paid out of the same residue.

Ontario Weekly Reporter

INDEX-DIGEST FOR VOL. I. (1902).

All the cases reported in Vol. I. of THE ONTARIO WEEKLY REPORTER, from the 1st of January to the 31st of December, 1902, are digested.

The digest includes all the cases decided at Osgoode Hall and other cases reported in THE ONTARIO WEEKLY REPORTER.

Where the case digested is reported in the Ontario Law Reports, a reference is added to the volume and page, thus :

Doe v. Roe, 8; 3 O. L. R. 6.

The figure "8" indicates the page of THE ONTARIO WEEKLY REPORTER.

ABANDONMENT.

See Assessment and Taxes, 1—Parliamentary Elections, 6—Trade Mark, 2.

ACCIDENT.

See Contract, 20.

ACCIDENT INSURANCE.

See Insurance, 1.

ACCOUNT.

Items—Chattel Mortgage: Pennington v. Honsinger, 270.

See Interest—Landlord and Tenant, 3—Mortgage, 8—Particulars—Partnership, 4—Pleading, 10—Specific Performance, 5.

ACQUIESCENCE.

See Landlord and Tenant, 5—Partition, 2.

ACQUITTAL.

See Malicious Arrest and Prosecution, 2.

ACTION.

1. Consolidation of Actions — Stay of Proceedings — Parties — Jury Notice: Murphy v. Brodie, 429, 681.

2. Discontinuance — Counterclaim — Cause of Action—Jurisdiction: Dominion Burglary Guarantee Co. v. Wood, 3 O. L. R. 365.

3. Dismissal of — Order—Undertaking—Default: Crown Corundum and Mica Co. v. Logan, 107, 174; 3 O. L. R. 434.

VOL. I. O. W. R. DIG.

See Discovery—Limitation of Actions—Lis Pendens—Mechanics' Liens, 1—Mortgage, 1-5 — Parties — Res Judicata—Solicitor, 1.

ADEMPTION.

See Will, 37.

ADMINISTRATION.

Claims of Creditors—Promissory Note—Interest—Corroboration — Open Account — Statute of Limitations — Work and Labour — Release of Claim: Halliday v. Rutherford, 816.

See Executors and Administrators, 2, 8.

ADMINISTRATION ORDER.

Summary Application for—Insolvent Estate—Creditors — Conduct of Proceedings—Discretion of Court: Re Yocom, Honsinger v. Hopkins, 85.

See Executors and Administrators, 7.

ADMINISTRATOR.

See Executors and Administrators.

ADMINISTRATOR AD LITEM.

Appointment of—Rules 194, 195, 196: Fairfield v. Ross, 631; 4 O. L. R. 534.

See Judgment, 3.

ADMINISTRATOR PENDENTE LITE.

See Will, 1.

ADMISSIONS.

See Discovery, 2—Executors and Administrators, 9.

ADVERTISEMENT.

See Will, 28.

AFFIDAVITS.

See Discovery—Judgment, 7—Municipal Elections, 1, 6—Parliamentary Elections, 4, 6—Parties, 3.

AGENT.

See Principal and Agent.

AGREEMENT.

See Contract.

ALIMONY.

See Infant, 4.

AMENDMENT.

See Discovery, 6—Infant, 6—Judgment, 1, 3—Municipal Elections, 2—Parliamentary Elections, 1, 15—Pleading, 6, 8, 9, 11—Railways, 10—Specific Performance, 1, 9.

ANIMALS.

See Pledge.

ANNUITY.

See Bankruptcy and Insolvency, 1—Executors and Administrators, 5—Pleading, 1—Will, 10, 20.

APPEAL TO COUNTY COURT
JUDGE.

See Assessment and Taxes, 1.

APPEAL TO COURT OF APPEAL.

1. Extension of Time—Laches—Security: *Brown v. McGregor*, 398.
2. Leave to Adduce Further Evidence: *Dodge v. Smith*, 803.
3. Leave to Appeal: *Rothschild v. Silverman*, 38; *Hutton v. Justin*, 64; *Wiedeman v. Guittard*, 110; *Re Employers' Liability Corporation and Excelsior Life Ins. Co.*, 192; *Evans v. Evans*, 233; *Larose v. Ottawa Trust and Deposit Co.*, 309; *McClure v. Township of Brooke*, *Bryce v. Township of Brooke*, 324; 4 O. L. R. 102; *Morrison v. Grand Trunk R. W. Co.*, 329; *People's Building and Loan Association v. Stanley*, 399; 4 O. L. R. 90; *Davis v. Hord*, 471; *Middleton v. Scott*, 632; *McAvity v. Morrison*, 632; *Pegg v. Hamilton*, 633; *Minerva Mfg. Co. v. Roche*, 722; *Bain v. Copp*, 804.
4. Leave to Appeal—Appeal as of Right on One Branch—Amount Involved—Divergence of Judicial Opinion: *Bentley v. Murphy*, 845.
5. Leave to Appeal—Attachment of Debts—Small Amount Involved: *McDonald v. Sullivan*, 840.
6. Leave to Appeal—Difficult Construction of Statute—Matter of Public Interest: *Re Cartwright School Trustees and Township of Cartwright*, 477; 4 O. L. R. 278; *Hunter v. Boyd*, 79.
7. Leave to Appeal—Important Question of Law—Construction of Statute—Small Amount in Controversy: *Mason v. Lindsay*, 583.
8. Leave to Appeal—Question of Costs—Conflict of Decisions—Statutes: *Ottawa Gas Co. v. City of Ottawa*, 697.
9. Leave to Appeal—Question of Substance—Joinder of Plaintiffs and Causes of Action: *Hinds v. Town of Barrie*, 775.
10. Leave to Appeal—Special Circumstances—Dispensing with Security: *Kidd v. Harris*, 141; 3 O. L. R. 277.
11. Leave to Appeal—Special Circumstances—Order Relating to Discovery: *McKenzie v. McLaughlin*, 80.
12. Leave to Issue Execution Pending Appeal—Special Circumstances: *Centaur Cycle Co. v. Hill*, 377, 401; 4 O. L. R. 92.
13. Motion to Quash Appeal of Third Party against Plaintiff—Useless Proceeding: *Gaby v. City of Toronto*, 635.
14. Reversal of Judgment on Questions of Fact: *Lewis v. Dempster*, 602.
15. Right of Appeal—Order under Ontario Winding-up Act—Final Order—Settlement of Appeal Case: *Re Equitable Savings, Loan, and Building Assn.*, 571; 4 O. L. R. 479.
16. Right of Appeal—Order of Judge of Appeal—“Court Appealed to or Judge Thereof”: *Centaur Cycle Co. v. Hill*, 401; 4 O. L. R. 92.
17. Right of Appeal—Surrogate Court Case—Divisional Court—Second Appeal: *Haynes v. Edmunds*, 340.

18 Security for Costs—Joint Appeal of Two Parties — Security by One — Payment into Court — Abandonment of Appeal—Motion for Payment out—Costs—Set-off—Increased Security — Limitation of Amount: Centaur Cycle Co. v. Hill, 639; 4 O. L. R. 493.

19. Settling Appeal. Case—Evidence on Various Issues — Construction of Contract — Limited Appeal: City of Hamilton v. Kramer-Irwin Rock Asphalt, etc., Co., 111.

20. Stay of Reference pending Appeal from Judgment Directing Reference: Monro v. Toronto R. W. Co., 813.

See Bail—Costs, 2, 17—Execution, 2.

APPEAL TO DIVISIONAL COURT.

1. From County Court — Interlocutory Order — Examination of Judgment Debtor and Transferee: Re Gault v. Carpenter, 404.

2. From County Court — Right of Appeal—New Trial: Leishman v. Garland, 22; 3 O. L. R. 241.

3. From Surrogate Court—Notice of Appeal—Bond — Erroneous Recitals—“Court of Appeal:” Taylor v. Delaney, 208; 3 O. L. R. 380.

4. Reversal of Order of Judge on Appeal from Report—Further Appeal: Pennington v. Honsinger, 270.

5. Setting down — Christmas Vacation: Hislop v. Joss, 9.

APPEAL TO HIGH COURT.

From Ruling of Master in Ordinary—Forum—Weekly Court or Divisional Court—Matter of Practice: Monro v. Toronto R. W. Co., 813.

APPEAL TO JUDGE OF COURT OF APPEAL.

See Parliamentary Elections, 14.

APPEAL TO JUDGE OF HIGH COURT.

Right of Appeal—Order of County Court Judge Quashing Quo Warranto Proceedings — Power to make Order: Rex ex rel. McFarlane v. Coulter, 636; 4 O. L. R. 520.

APPEAL TO SESSIONS.

See Certiorari.

APPEAL TO SUPREME COURT OF CANADA.

1. Leave to Appeal: McLaughlin v. Lake Erie and Detroit River R. W. Co., 428.

2 Right of Appeal—Amount in Controversy—Leave ex Cautela: Frankel v. Grand Trunk R. W. Co., 339, 396; 3 O. L. R. 703.

3. Time—Extension of—Grounds for Allowing—Negotiations for Settlement —Special Circumstances—Bona Fide Intention to Appeal: Smith v. Hunt, 798.

APPEARANCE

Limited Appearance — Submission to Judgment — Irregularity — Motion for Judgment: Padget v. Padget, 160.

See Partnership, 5—Writ of Summons, 4.

APPURTENANCES.

See Title to Land, 1.

ARBITRATION ACT.

See Referees.

ARBITRATION AND AWARD.

1. Clerical Error in Award — Reference back — Arbitration Act of Ontario —Railway Act of Canada: Re McAlpine and Lake Erie and Detroit River R. W. Co., 100; 3 O. L. R. 230.

2. Insurance Policy—Submission to Two Arbitrators — Appointment of Sole Arbitrator — Summary Proceeding—Discretion: Re Employers' Liability Assurance Corporation and Excelsior Life Ins. Co., 87; 3 O. L. R. 93.

3. Municipal Corporation — Purchase of Property — Voluntary Submission—Construction of Agreement—“Works and Property” — “Franchises and Goodwill” — Statutes — Ejusdem Generis Rule: Re City of Kingston and Kingston Light, Heat, and Power Co., 194; 3 O. L. R. 637.

4. Municipal Corporations — Railway—Appeal from Award — Costs—Closing of Street: Re Medler and City of Toronto, 545.

5. Taking down Evidence — Objection—Findings of Arbitrators — Errors—Setting aside Award — Costs—Uncertainty as to: Re Grimshaw and Grimshaw, 744.

See Contract, 9—Costs, 4—Insurance, 13—Landlord and Tenant, 4, 5, 10—Partition, 2—Schools, 3, 4, 5.

ARCHITECT.

See Contract, 7.

ARREST.

1. Intent to Quit Ontario—Intent to Defraud—Foreigner; Henry v. Ward, 222.
2. Motion to set aside ex Parte Order for Ca. Sa.—Concurrent Writ—Appeal—Discretion — Expiry of Original Writ—Invalid Arrest—Application for New Writ—Concealment of Facts: Merchants Bank of Canada v. Sussex, 572, 584; 4 O. L. R. 524.

ASSESSMENT AND TAXES.

1. Distress — "Owner" — Agreement for Purchase—Part Performance—Local Improvement Rates — Abandonment of Distress: Sawers v. City of Toronto, 656; 4 O. L. R. 624.
2. Equalization of Assessments—Appeal—County Judge—Delivery of Judgment—Time—Statute—Imperative or Directory: Re Township of Notawasaga and County of Simcoe, 278; 4 O. L. R. 1.
3. Exemptions—Trustees — Income: Re McMaster Estate, 98.
4. Local Improvements — Petition for—Majority of Owners—Value of Real Property — Buildings — Lands — Property of Municipality: Macdonell v. City of Toronto, 433; 4 O. L. R. 315.
5. Local Improvement Rates—Charge on Land—Distress — Invalid By-law—Validating Statute—Frontage Tax—Special Rate: McDonell v. City of Toronto, 494.
6. Local Improvements Rates—Sidewalk—Lessee of Land from Crown—Dedication of Private Way as Public Highway: Re Leach and City of Toronto, 661; 4 O. L. R. 614.
7. "Owner"—Agreement to Purchase—Possession—Lease—Estoppel: Lloyd v. Walker, 383; 4 O. L. R. 112.
8. Personal Property—Choses in Action—Property not Already Assessed—Court of Revision: Re Nasmith and City of Toronto, 238.

9. Personal Property — Exemptions — Trustees — Non-resident Beneficiaries—Income of Trust Estate: Re Macpherson and City of Toronto, Re Hamilton and City of Toronto, 234.

10. Personal Property Owned out of Province — Exemptions — Cash in Banks—Trustees: Re Leadley and City of Toronto, 239.

11. Sale for Taxes—Description of Land—Sufficiency of—Possession—Rights of Entry: McLellan v. Hooley, 215, 707.

12. Street Railway—Trolley Cars—Real Estate: Re Toronto R. W. Co. and City of Toronto, 441.

13. Tax Sale—Action to set aside—Prior Tax Sale—Purchase by Municipality—Lien — Redemption — Costs—Interest: Hime v. Town of Toronto Junction, 740.

14. Tax Sale — Existence of Arrears—Assessment Act, 1892: Ruttan v. Burk, 560.

15. Tax Sale — Validity — Uncertainty as to Land—Irregularities—Statute Curing—Advertisement: MacLellan v. Hooley, 215, 707.

16. Valuation of Property — Electric Companies — Rails, Poles, Wires—Wards — Franchise — Statute: Re City of Toronto Assessment Appeal, 261; 3 O. L. R. 620.

17. Valuation of Property—Gas Pipes—Natural Gas Company: Re United Gas and Oil Co. of Ontario and Township of Colchester South, 642.

See Landlord and Tenant, 1—Limitation of Actions—Municipal Corporations, 2, 21—Parties, 10—Survey.

ASSIGNMENT OF CHOSE IN ACTION.

See Chose in Action.

ASSIGNMENTS AND PREFERENCES.

See Bankruptcy and Insolvency.

ATTACHMENT OF DEBTS.

1. Division Court — Cheque — Payment Stopped—Garnishee — Payment into Court: Wilder v. Wolf, 481; 4 O. L. R. 451.

2. Rent — To whom Due—Heirs of Deceased Landlord—Executors — Devolution of Estates Act: Reilly v. McDonald, 721, 723; McDonald v. Sullivan, 784, 840.
- See Bankruptcy and Insolvency, 5—
Division Courts, 8—Pleading, 11.

ATTACHMENT OF GOODS.

Seizure—Interest of Partner in Grain—
Possession: Clemens v. Bartlett, 342.

ATTORNEY-GENERAL.

See Malicious Arrest and Prosecution,
2.

AWARD.

See Arbitration and Award.

BAIL.

Powers of Judge of Court of Appeal—
Pending Appeal — Extradition: Re
Watts, 133; 3 O. L. R. 279.

See Criminal Law, 6.

BAILMENT.

Warehouseman — Negligence — Loss by
Heating of Goods Stored—Measure
of Damages: Dunn v. Prescott Ele-
vator Co., 75, 404; 4 O. L. R. 103.

See Pledge—Railways, 2.

BALLOTS.

See Municipal Elections, 6 — Parlia-
mentary Elections, 9-14.

BANKRUPTCY AND INSOLVENCY.

1. Assignment for Creditors — Right to Rank on Estate—Annuity—Growing Payments—Contingent Debts: Carswell v. Langley, 107; 3 O. L. R. 261.
2. Mortgage by Insolvent Wife to Husband — Preference — Presumption — Rebuttal: McNeil v. Dawson, 24.
3. Preference — Chattel Mortgage—Attack on — Time—Presumption—Satisfaction of Onus—Good Faith—Notice—Knowledge: Keenan v. Richardson, 333.
4. Preference — Transfer by Insolvent Debtor—Attacking—Time — Division Court—Attachment of Debts—Collateral Inquiry—Pressure: Morphy v. Colwell, 146; 3 O. L. R. 314.

5. Preference—Assignee for Creditors—
Further Directions: Law Society of
Upper Canada v. Hutchison, 558.

6. Preference — Payment in Ordinary
Course of Business — Power of At-
torney: Goulet v. Greening, 550.

7. Sale of Estate by Assignee for Credi-
tors—Covenant of Purchaser to Pay
Creditors — Enforcement—Privity
—Trust: Dominion Radiator Co. v.
Bull, 672.

See Administration Order—Contract,
19—Division Courts, 6—Execution,
4—Executors and Administrators, 7
—Fraudulent Conveyance — Insur-
ance, 11—Landlord and Tenant, 9.

BANKS AND BANKING.

See Bills of Exchange and Promissory
Notes, 5—Chose in Action — Dis-
covery, 3—Gift, 1 — Lunatic—Ma-
licious Arrest and Prosecution, 3.

BAWDY HOUSE

See Criminal Law, 7.

BENEFIT SOCIETY.

Pension — Vested Right—Alteration in
Rules — Validity of: Armstrong v.
Toronto Police Benefit Fund, 829.

See Insurance, 2, 16.

BETTING.

See Criminal Law, 4.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. Agreement not to Negotiate—Notice:
Murray v. Wurtele, 298.
2. Holder in Due Course—Effect of In-
dorsement—Evidence: Wiedeman v.
Guittard, 110.
3. Notice of Dishonour—Sufficiency of—
Husband and Wife—Agency: Coun-
sell v. Livingston, 444; 4 O. L. R.
340.
4. Notice of Dishonour—Presentment—
Demand Prior to Action—Power of
Attorney: Patriarche v. Krammerer,
425.
5. Notice of Specific Purpose—Collateral
Security—Bank — Consideration—
Holder in Due Course—"Negotiate":
Ontario Bank v. Poole, 20, 832.

6. Oral Agreement Contemporaneous with Note—Evidence of—Consideration—Contradictory Written Documents — New Trial—Objection to Evidence not Taken at Trial—Discretion of Court: Conley v. Ashley, 104.

7. Power of Agent for Collection to Compromise—Striking out Claim for Wages: Guenot v. Girardot, 638.

8. Ratification of Forgery—Notice—No Repudiation — Estoppel: Dominion Bank v. Ewing, 654.

See Administration—Contract, 3 — Divison Courts, 1, 5—Evidence, 3—Limitation of Actions, 2 — Mortgage, 1—Partnership, 1.

BILLS OF SALE AND CHATTEL MORTGAGES.

1. Chattel Mortgage — Prior Agreement for — Fatal Defect in Mortgage: Fisher v. Bradshaw, 282; 4 O. L. R. 162.

2. Chattel Mortgage — Renewal—Change of Possession — Parent and Child—Execution Creditor: Goodyear v. Goodyear, 405.

3. Chattel Mortgage — Seizure under—Breach of Trust—Damages: Watts v. Sale, 681.

4. Chattel Mortgage—Seizure under without Default — Possession of Goods till Default—Absence of Re-demise Clause — Collateral Security—Covenant to Keep up Stock—Arrears—Interest — Issue of Writ of Summons — Condition against Selling—Damages: Stevens v. Daly, 621.

See Account — Bankruptcy and Insolvency, 3—County Courts, 2—Pledge.

BOARD OF HEALTH.

See Public Health.

BOND.

See Executors and Administrators, 2—Railways, 1—Street Railways, 5.

BONUS.

See Municipal Corporations, 1.

BOUNDARIES.

See Schools, 3—Trespass, 2—Way, 16.

BRIBERY.

See Parliamentary Elections, 7.

BRIDGE.

See Municipal Corporations, 24—Way, 8, 12.

BROKER.

See Contract, 5.

BUILDING CONTRACT.

See Contract, 6, 7, 8, 9.

BUILDING SOCIETY.

Shares—Advance on — Trust—Notice—Mortgage — Consolidation — Evidence—Examination for Discovery: Birkbeck Loan Co. v. Johnston, 163; 3 O. L. R. 497.

BY-LAWS.

See Assessment and Taxes, 5—Company, 2 — Municipal Corporations, 1-12, 16, 17, 19—Parties, 7—Survey—Way, 17.

CALLS.

See Company, 7.

CAPIAS.

See Arrest, 2.

CARRIERS.

See Railways.

CAUSE OF ACTION.

See Action, 2—Appeal to Court of Appeal, 9 — Municipal Corporations, 18—Parties, 2, 4 — Writ of Summons, 4.

CERTIORARI.

Motion for—Previous Appeal to Sessions — Dismissal on Preliminary Objection: Brothers v. Alford, 31.

See Landlord and Tenant, 8—Municipal Corporations, 9.

CHARGE ON LAND.

See Will, 40.

CHARTERPARTY.

See Ship, 1.

CHATTEL MORTGAGES.

See Bills of Sale and Chattel Mortgages.

CHEQUE.

See Attachment of Debts.

CHOSE IN ACTION.

Assignment of Notice of—Partnership—Interest of Partner—Sheriff—Execution—Banks: Rennie v. Quebec Bank, 286; 3 O. L. R. 541.

See Assessment and Taxes, 8 — Contract, 17—Will, 26.

CHURCH.

Trustees—Allotment of Pews — Rent—Punishment of Persons Disturbing Public Worship: Carleton Place Methodist Church Trustees v. Keyes, 10; 3 O. L. R. 165.

See Will, 21, 33.

CLERK OF THE PEACE.

See Malicious Arrest and Prosecution, 2.

COLLATERAL SECURITIES.

See Bills of Sale and Chattel Mortgages, 4—Deed, 1—Railways, 1.

COMMISSION.

See Master and Servant, 1—Principal and Agent, 1, 4—Solicitor, 3.

COMPANY.

1. Electric Light Company — Nuisance—Vibration — Injunction — Damages: Hopkin v. Hamilton Electric Light and Cataract Power Co., 486; 4 O. L. R. 258.
2. Hiring of Manager—By-law—Contract — Seal — Director as Manager — Shareholders: Birney v. Toronto Milk Co., 736.
3. Mining Company — Directors—Power to Sell Lands—Irregularity—Shareholders—Directors — Qualification—Injunction Restraining Sale: Ritchie v. Vermilion Mining Co., 624; 4 O. L. R. 588.
4. Shares — Lien on — Amount Due to Company: Walkerton Binder Twine Co. v. Higgins, 403.
5. Shares — Subscription—Agreement—Prospectus—Delay in Carrying out Objects of Company—Repudiation—Judgment—Estoppel—Res Judicata: Patterson v. Turner, 82; 3 O. L. R. 373.

6. Shares—Subscription — Misrepresentation—Agent—Settlement of Action —Threats: McCallam v. Sun Savings and Loan Co., 226.

7. Shares — Subscription — Preference Shares — Validity of — Contract by Deed—Issue and Allotment—Necessity for — Calls — Resolutions and Letters—Sufficiency of: Nelson Coke and Gas Co. v. Pellatt, 595; 4 O. L. R. 481.

8. Voluntary Winding-up — Distribution of Surplus Assets — Shareholders—Ordinary and Preferred — Shares—Fully and Partly Paid—By-laws and Resolutions — Profits: Morrow v. Peterborough Water Co., 512; 4 O. L. R. 324.

9. Winding-up—Claim against Assets—Breach of Contract—Damages: Re Publishers' Syndicate, 725.

10. Winding-up—Contributory — Snares —Allotment: Re Publishers' Syndicate, Hart's Case, 508.

11. Winding-up—Contributory — Shares —Condition—Allotment—Notice: Re Publishers' Syndicate. Mallory's Case, 142; 3 O. L. R. 552.

12. Winding-up — Contributory — Subscription for shares—Extrinsic Evidence — Placing Shares — Commission—Payment for Shares—Contract —Consideration — Transfer of Assets: Re Co-operative Cycle and Motor Co., 778.

13. Winding-up—Jurisdiction of Master in Ordinary — Valuing Securities—Liquidator: Re Brampton Gas Co., 543; 4 O. L. R. 509.

14. Winding-up—Terms of Order—Execution Creditor—Priorities: Re Prescott Elevator Co., 161.

See Appeal to Court of Appeal, 15—Arbitration and Award, 3—Assessment and Taxes, 12, 16, 17—Building Society—Constitutional Law, 1 — Conversion, 1 — Estoppel, 3 — Fraud and Misrepresentation, 2, 3—Municipal Corporations, 14 — Particulars, 3 — Parties, 11—Partnership, 5—Principal and Agent, 2—Specific Performance, 9.

CONDITIONAL SALE.

See Sale of Goods, 2, 3.

CONSOLIDATION OF ACTIONS.

See Action, 1—Solicitor, 4.

CONSPIRACY.

See Criminal Law, 8—Pleading, 10.

CONSTABLE.

See Costs, 13—Malicious Arrest and Prosecution, 1.

CONSTITUTIONAL LAW.

1. Incorporation of Companies—Dominion Objects—Interference with Property and Civil Rights in Province—Telephone—Poles and Wires—Streets—Municipal Corporations—Consent—Statutes: City of Toronto v. Bell Telephone Co. of Canada, 192; 3 O. L. R. 465.
2. Powers of Provincial Legislature—Act to Prevent Profanation of Lord's Day—Work—Necessity—Conveying Travellers: Re Lord's Day Act of Ontario, 312.

See Municipal Corporations, 8.

CONTEMPT OF COURT.

See Criminal Law, 3.

CONTRACT.

1. Board and Lodging—Bequest in Lieu of Payment—Lapse: Larose v. Ottawa Trust and Deposit Co., 210, 309.
2. Breach—Damages—Time—Essence of—Waiver: McRae v. S. J. Wilson Co., 380.
3. Breach—Non-payment of Note—Refusal to Perform—Rescission: Graham v. Bourque, 138, 358.
4. Breach—Subsequent Letter—Satisfaction—Waiver—Evidence: Heal v. Sramotor Co., 175, 466.
5. Broker—Profits on Stock Transactions—Evidence of Agreement—Security—Redemption: Sherlock v. Wallace, 54.
6. Building Contract—Balance—Counterclaim—Evidence: Breakenridge v. Mason, 529.
7. Building Contract—Breach—Dismissal of Contractor—Architect's Notice of—Time—Sunday: Anderson v. Chandler, 417.
8. Building Contract—Breach—Negligent Work—Responsibility. Hagar v. Hagar, 78.
9. Building Contract—Material Supplied not Covered by Contract—Damages—Arbitration—Bias—Lien: Piggott v. Toronto Rubber Shoe Mfg. Co., 541.
10. Condition—Non-performance—Delivery of Deed in Escrow—Option—Trust: Harris v. Bank of British North America, 76, 285.
11. Construction—Evidence to Aid—Reformation after Breach: Pritchard v. Fick, 815.
12. Construction—Removal of Timber—Injunction—Refusal—Appeal—Merits—Affirmance: Murphy v. Lake Erie and Detroit River R. W. Co., 827.
13. Correspondence—Proposal—Acceptance—"Final Arrangements": Baston v. Toronto Fruit Vinegar Co., 301; 4 O. L. R. 20.
14. Delivery of Timber—Correspondence—Evidence—Non-completion of Contract: McGibbon v. Charlton, 828.
15. Division of Profits—Partnership—Question of Fact—Onus—Appeal: Rat Portage Lumber Co. v. Kendall, 528.
16. Fraud in Reducing to Writing—Foreigner—Void Agreement—Sale of Standing Timber—Interest in Land—Execution by Wife—Construction of Contract: Lasjinski v. Campbell, 114.
17. Furnishing and Erecting Monument—Dispute as to Design—Performance of Work—Assignment of Contract—Action by Assignee—Appeal—Reversal of Judgment on Questions of Fact: Lewis v. Dempster, 602.
18. Novation—Consideration—Collateral Promise—Oral Evidence to Alter Writing—Costs: Webb v. Ottawa Car Co., 90.
19. Printing of Reports—Assignment by Printers of Claim for Payment—Subsequent Assignment for Creditors—Sale of Claim by Assignee—Rights of Vendee—Judgment—Set-off. Langley v. Law Society of Upper Canada, 718.
20. Unforeseen Accident—Breach—Damages—Electric Lighting: Ottawa Electric Co. v. City of Ottawa, 508.

See Appeal to Court of Appeal, 19—Arbitration and Award, 2, 3—Bills of Exchange and Promissory Notes—Bills of Sale and Chattel Mortgages—Company—Deed, 7 — Division Courts, 5 — Guaranty—Indemnity—Infant, 2—Insurance—Landlord and Tenant—Master and Servant—Mechanics' Lien—Municipal Corporations, 2, 13, 14, 24 — Partnership—Patent for Invention, 1—Pleading, 4—Principal and Agent—Railways—Sale of Goods—Ship — Specific Performance — Writ of Summons, 2, 3.

CONTRACT OF HIRING.

See Master and Servant, 1-4.

CONTRIBUTION.

See Sale of Goods, 7.

CONVERSION.

1. President of Company—Detention of Books—Terms of Giving up: Strathroy Petroleum Co. v. Lindsay, 356.
2. Trespass—Trees—Damages: Parent v. Cook, 366.

See Pleading, 7.

CONVICTION.

See Costs, 6—Criminal Law — Fraud and Misrepresentation, 1 — Municipal Corporations, 5, 9.

COPYRIGHT.

1. Book—Infringement—5 & 6 Vict. ch. 45 (Imp.) — Injunction—Damages: Oman v. Copp-Clark Co., 542.
2. Book—Infringement — Importation of Foreign Reprints—Title—License — Customs—Notice: Black v. Imperial Book Co., 743.
3. Newspaper Printed in United States—Copyright in England—Application of Imperial Statutes—"First Publication:" Grossman v. Canada Cycle Co., 846.
4. Works of Fine Art—Imperial Acts—Colonies: Graves v. Gorrie, 259; 3 O. L. R. 697.

CORRUPT PRACTICES.

See Parliamentary Elections, 7, 8.

COSTS.

1. Added Defendants—Unnecessary Parties: Gurney v. Tilden, 207.

2. Appeal on Merits where only Costs Involved: Holmes v. Town of Goderich, 814.
3. Appeal to Court of Appeal—Parties—Added Plaintiff: Murray v. Wurtele, 353.
4. Arbitration under Railway Act—Taxation by Judge: *Re* Parks and Lake Erie and Detroit River R. W. Co., *Re* McAlpine and Lake Erie and Detroit River R. W. Co., 484.
5. Partition Proceedings—Taxed Costs—Special Circumstances: McLaughlin v. McLaughlin, 378, 424.
6. Quashing Conviction — Criminal Matter—Jurisdiction: Rex v. Bennett, 360; 4 O. L. R. 205.
7. Receiver—Partnership — Advance by Partner—Priority: Merritt v. Nissen, 456.
8. Right of Party to Costs against Opposite Party—No Liability to Solicitor—Corporation Solicitor Paid by Salary—Change in By-law of Corporation: Ottawa Gas Co. v. City of Ottawa, 647, 697; 4 O. L. R. 656.
9. Scale of — Jurisdiction of County Court — Ascertainment of Amount Claimed: Minerva Mfg. Co. v. Roche, 530, 722.
10. Security for—Petition by Parents for Custody of Infant—Petitioners out of Jurisdiction — Respondents Admitting Rights of Petitioners: *Re* Pinkney, 694, 715.
11. Security for—Plaintiff out of Jurisdiction — Property within Jurisdiction—Shares in Mining Company — Evidence of Value: Howland v. Patterson, 653.
12. Security for—Praecipe Order — Application for Increased Amount — Election—Costs: Standard Trading Co. v. Seybold, 724, 753.
13. Security for—Public Officer — Police Constable: Lewis v. Dalby, 3 O. L. R. 301.
14. Security for—Residence of Plaintiff out of Ontario — Ordinary Residence: Nesbit v. Galna, 218; 3 O. L. R. 429.
15. Taxation—Apportionment — Issues in Slander Action—Set-off: Davis v. Hord, 418, 471; 4 O. L. R. 466.

16. Taxation—Evidence—Brief of, Used by Opposite Counsel: Pennington v. Honsinger, 507.
17. Third Party—Indemnity—Extent of Liability — Court of Appeal—Time for Disposing of Costs—Several Appeals: Gaby v. City of Toronto, 711.
18. Trial—Motion for Judgment: Lachance v. Lachance, 518.

See Appeal to Court of Appeal, 18—Arbitration and Award, 4, 5—Assessment and Taxes, 13—Contract, 18—Creditors' Relief Act—Deed, 9—Discovery, 1 — District Courts—Division Courts, 7 — Dower, 5 — Evidence, 1—Execution, 2, 3, 4—Executors and Administrators, 3, 7—Gift, 2—Interest—Judgment, 1—Lunatic—Mistake — Mortgage, 4—Parties, 11—Partnership, 3—Pleading, 6—Principal and Agent, 2—Public Health—Sale of Goods, 1—Solicitor—Specific Performance, 2, 5—Trusts and Trustees, 3—Water and Watercourses, 1—Will, 3, 26, 42, 43—Work and Labour.

COUNTERCLAIM.

See Action, 2—Contract, 6 — District Courts — Pleading, 2-4 — Sale of Goods, 1, 5, 7—Work and Labour.

COUNTY COURT JUDGE.

See Assessment and Taxes, 2.

COUNTY COURTS.

1. Jurisdiction—Consent — Prohibition: Re Greenwood v. Buster, 225.
2. Jurisdiction — Subject-matter — Setting aside Chattel Mortgage—Claim of Judgment Creditor: Re Thomson v. Stone, 509; 4 O. L. R. 333, 585.

See Appeal to Divisional Court, 1, 2—Costs, 9.

COURT OF APPEAL.

See Appeal to Court of Appeal—Appeal to Divisional Court, 3—Bail—Execution, 2—Judgment, 1, 3.

COURT OF REVISION.

See Assessment and Taxes, 6.

COURTS.

See Appeal to Court of Appeal—Appeal to Divisional Court—Appeal to Supreme Court of Canada — County Courts—District Courts—Division Courts—High Court of Justice.

COVENANT.

1. Restraint of Trade—Breach—Waiver — Injunction — Damages — Reference: Berry v. Days, 809.
2. Restraint of Trade—Carrying on Business—Advertising — Breach: Johnston v. Macfarlane, 287.

See Bankruptcy and Insolvency, 7 — Bills of Sale and Chattel Mortgages, 4—Division Courts, 2—Easement, 1—Landlord and Tenant — Mechanics' Liens, 2—Mortgage, 1, 2, 5—Sale of Goods, 7—Vendor and Purchaser, 3—Will, 24.

CREDITORS.

See Bankruptcy and Insolvency — Insurance, 9—Partition, 3.

CREDITORS' RELIEF ACT

Several Executions—Sale under Second Execution—Costs — Advertisement: McGuinness v. McGuinness, 23; 3 O. L. R. 78.

CRIMINAL LAW.

1. Evidence—Deposition Taken at Preliminary Inquiry — Admissibility at Trial — Incomplete Cross-examination — Waiver: Rex v. Trevanne, 587; 4 O. L. R. 475.
2. Evidence — Prisoner's testimony — Cross-examination—Contradiction — Previous Conviction: Rex v. Daoust, 344; 3 O. L. R. 653.
3. Extradition — Parent Stealing His Child—Foreign Law—Divorce—Collusion — Contempt of Court: Re Watts, 129, 133; 3 O. L. R. 279, 368.
4. Gaming—Common Betting House—Incorporated Association—Race Track: Rex v. Hanrahan, 346; 3 O. L. R. 659.
5. Incest—Evidence — Destroyed Letters — Inferences — Misdirection — Substantial Miscarriage — New Trial: Rex v. Godson, 250.
6. Incitement to Give False Evidence—Misdemeanour—Single Justice of the Peace—Jurisdiction—Grand Jury — Variance—Bail—Recognition — Estreat: Rex v. Cole, 117; 3 O. L. R. 389.
7. Keeping House of Ill-fame—Conviction—Evidence: Rex v. Martin, 429.

8. Murder—Constructive Offence — Conspiracy—Charge to Jury—Verdict—Mistrial: *Rex v. Rice*, 394; 4 O. L. R. 223.
9. Obstruction of Highway—Conviction for — Weight of Evidence — New Trial—Direction to Jury—Proof of Original Survey — Onus: *Rex v. Moyer*, 780.
10. Summary Conviction — Motion for Rule Nisi to Quash — Untenable Grounds — Like Motions in Other Cases — Rule Granted on Terms: *Rex v. McGinnes*, 812.
11. Summary Conviction—Ontario Act—Criminal Code—Information—Time for Laying: *Rex v. McKinnon*, 199; 3 O. L. R. 508.
12. Summary Trial without Consent of Prisoner—Conviction — Discharge from Gaol—Second Prosecution: *Rex v. Kennedy*, 31.
13. Theft—Juvenile Offender — Magistrate's Conviction — Place of Imprisonment—Duration of Sentence—Discharge—Order for Further Detention: *Rex v. Hayward*, 799.

See Bail—Costs, 6—Fraud and Misrepresentation, 1—High Court of Justice, 1—Mandamus.

CROWN.

See Assessment and Taxes, 6—Way, 16.

CUSTOMS DUTIES.

See Copyright.

DAM.

See Water and Watercourses, 2, 4.

DAMAGES.

See Bailment—Bills of Sale and Chattel Mortgages, 3, 4—Company, 1, 9—Contract, 2, 9, 20—Conversion, 2—Copyright—Covenant, 1—Defamation, 3 — Discovery, 9 — District Courts—Division Courts, 2, 3—Infant, 2, 6—Master and Servant, 3, 7, 19—Municipal Corporations, 17—Principal and Agent, 3, 4, 5—Railways, 2, 8, 10—Sale of Goods, 1, 6, 7, 9—Ship—Specific Performance, 2, 11—Street Railways, 2, 4, 5—Trade Mark, 4—Trespass, 1 — Waste — Water and Watercourses, 4, 5 — Way, 3, 4—Work and Labour.

DEATH.

See Judgment, 3—Master and Servant, 5, 6, 14.

DECEIT.

See Fraud and Misrepresentation, 2.

DECLARATORY JUDGMENT.

See Division Courts, 6—Pleading, 5—Title to Land, 3.

DEDICATION.

See Mortgage, 6.

DEED.

1. Absolute Conveyance of land—Collateral Security—Redemption—Waiver—Counsel—Mistake at Trial: *Sherlock v. Wallace*, 393.
2. Conveyance of Land—Setting aside—Undue Influence—Parent and Child—Fraud—Consideration: *Vandusen v. Young*, 55.
3. Conveyance of Land—Undue Influence—Full Disclosure: *Christian v. Poulin*, 275.
4. Construction — Gravel — Subsequent Deposit: *Mann v. Grand Trunk R. W. Co.*, 230.
5. Delivery — Retention by Grantor — Possession by Grantee—Evidence—Improvements—Executor and Trustee—Breach of Trust: *Humphries v. Aggett*, 33.

6. Reformation—Mistake: *Girardot v. Curry*, 21.

7. Reformation — Mortgage — Non-conformity with Contract for—Mistake: *Richardson v. West*, 670.

8. Security—Conveyance of Lands—Cutting down to Mortgage — Improvidence — Fraud: *Holmes v. Russell*, 655.

9. Setting aside—Improvidence—Family Settlement — Costs: *Lockhart v. Lockhart*, 819.

See Company, 7 — Contract, 10 — Estoppel, 1—Fraudulent Conveyance—Specific Performance, 8—Vendor and Purchaser, 3, 5.

DEFAMATION.

1. Dictated Letter—Proof of Publication—Privilege: *Peterbaugh v. Gold Medal Co.*, 250.

2. Occasion Privileged—Master and Servant: *Gildner v. Busse*, 167; 3 O. L. R. 561.

3. Occasion Privileged—Proof of Malice Social or Moral Duty—Functions of Judge and Jury—Excessive Damages: *Clunis v. Sloan*, 27.
 4. Onus—Words not Defamatory per se—Innuendo: *Lossing v. Wrigglesworth*, 460.
 5. Pleading—Defence—Fair Comment—Embarrassing Pleading—Particulars: *Crow's Nest Pass Co. v. Bell*, 679; 4 O. L. R. 660.
 6. Pleading—Defence—Stating Facts and Circumstances without Justifying—Embarrassment: *Caldwell v. Buchanan*, 682.
 7. Pleading—Statement of Claim—Setting out Whole Newspaper Article—Parts not Referring to Plaintiff—Innuendo: *Hay v. Bingham*, 822.
 8. Post-card—Words of Doubtful Signification—Innuendo—Sense in which Words Understood: *Major v. McGregor*, 839.
 9. Verdict for Defendant notwithstanding Proof of Defamatory Words—New Trial—Aggravation of Damages—Evidence—Pleading: *Milligan v. Jamieson*, 4 O. L. R. 650.
- See Costs, 15—Discovery, 9—Injunction, 2—Jury Notice, 1.

DEPOSIT.

See Parliamentary Elections, 2.

DETINUE.

See Conversion.

DEVOLUTION OF ESTATES ACT.

See Attachment of Debts, 2—Dower, 1—Title to Land, 3.

DIRECTORS.

See Company.

DISABILITY INSURANCE.

See Insurance, 2.

DISCONTINUANCE.

See Action, 2.

DISCOVERY.

1. Affidavit of Documents—Materiality of Documents—Examination of Parties—Scope of—Consequential Discovery—Discretion—Contents of Documents—Recollection—Costs of Lengthy Examination: *Evans v. Jaffray*, 29, 158; 3 O. L. R. 327.
2. Affidavit of Documents—Possession—Admissions on Examination for Discovery—Re-examination after Examination Closed: *Standard Trading Co. v. Seybold*, 650.
3. Examination of Officer of Corporation—Railway—Engine-driver: *Morrison v. Grand Trunk R. W. Co.*, 180, 263, 329, 758; 4 O. L. R. 43.
4. Examination of Officers of Bank—Local Manager—Teller: *Bartlett v. Canadian Bank of Commerce*, 68, 162.
5. Examination of Parties—Attendance—Refusal to answer questions—Subpœna: *Cooke v. Wilson*, 3 O. L. R. 299.
6. Examination of Parties—Amendment: *McKenzie v. McLaughlin*, 80.
7. Examination of Parties—Default of Attendance—Motion to Dismiss Action—Proof of Default—Affidavit of Solicitor—Cross-examination—Ex Parte Certificate of Examiner: *Johnston v. Ryckman*, 720.
8. Examination of Parties—Production of Documents—Patent Action—Forfeiture—Non-performance of Condition on which Patent Granted—Affidavit: *Parramore v. Boston Mfg. Co.*, 716; 4 O. L. R. 627.
9. Examination of Parties—Relevancy of Questions—Defamation—Privilege—Mitigation of Damages: *McKenzie v. McLaughlin*, 58.
10. Production—Correspondence after Action Begun—Information for Defence—Privilege—Examination for Discovery—Undertaking to Produce: *Shoe Co. v. Wilkinson*, 591.
11. Production—Privilege—Information and Documents Obtained before Action: *London Life Ins. Co. v. Molsons Bank*, 457.
12. Production—Privilege—Letters—Solicitor and Client—Affidavit—Requirements of: *Clergue v. McKay*, 178, 241; 3 O. L. R. 478; *Platt v. Buck*, 4 O. L. R. 421.

See Appeal to Court of Appeal, 11—Building Society—Infant, 8—Particulars—Pleading, 9.

DISMISSAL OF ACTION.

See Action, 3.

DISTRESS.

See Assessment and Taxes, 5—Landlord and Tenant, 3.

DISTRIBUTION OF ESTATES.

See Executors and Administrators, 5—Insurance, 15—Will, 9, 14, 16, 23, 28.

DISTRICT COURTS.

Jurisdiction—Counterclaim — Work and Labour—Amount — Deterioration — Damages—Set-off—Costs: Breese v. Clarke, 825.

DITCHES.

See Municipal Corporations, 17.

DITCHES AND WATERCOURSES ACT.

See Water and Watercourses, 3.

DIVISION COURTS.

1. Jurisdiction — Ascertainment of Amount—Promissory Notes—Breach of Undertaking: McCormick Harvesting Machine Co. v. Warnica, 3 O. L. R. 427.
2. Jurisdiction — Lease — Covenant to leave in Repair—Breach—Damages — Prohibition—Transfer to High Court: Re Powell v. Dancyger, 63.
3. Jurisdiction—Splitting Cause of Action —Mortgage—Interest post Diem — Damages: Re Phillips v. Hanna, 245; 3 O. L. R. 508.
4. Jurisdiction—Whole cause of Action—Prohibition: Re Doolittle v. Electrical Maintenance and Construction Co., 202; 3 O. L. R. 460.
5. Jurisdiction — Territory — Action on two Promissory Notes—"Contract" —Prohibition—Omission to Record Evidence: Union Bank of Canada v. Cunningham, 432.
6. Jurisdiction—Action for Declaration of Right to Rank on Insolvent Estate — Prohibition: Re Bergman v. Armstrong, 799; 4 O. L. R. 717.
7. Jurisdiction—Amount Involved — Action for Tort—Prohibition—Costs of Motion for: Re Brandon v. Galloyay, 677.
8. Jurisdiction—Attachment of Debts — Wages of Debtor — Married Man—Proof of Being—Error in Ruling as to Evidence—Prohibition: Re Rochon v. Wellington, 805.

See Attachment of Debts—Bankruptcy and Insolvency, 4 — Parent and Child—ites Judicata—Specific Performance, 2.

DIVISIONAL COURTS.

See Appeal to Court of Appeal, 17—Appeal to Divisional Court—Appeal to High Court—High Court of Justice—Will, 32.

DIVORCE.

See Criminal Law, 3.

DOCUMENTS.

See Discovery.

DOMICILE.

See Lunatic.

DONATIO MORTIS CAUSA.

See Gift, 1, 2.

DOWER.

1. Assignment by Infant Devisee—Executor—Devolution of Estates Act—Lease by Husband: Allan v. Kever, 439; 1 O. L. R. 309.
 2. Election—Distributive Share of Estate: Re Pettit, 464; 4 O. L. R. 506.
 3. Equity of Redemption—Conveyance by Husband to Defeat: Fitzgerald v. Fitzgerald, 17.
 4. Fraud of Mortgagor—Assignment — Mistake — Subrogation — Merger: Anderson v. Elgie, 550, 638.
 5. Reference — Report — Judgment — Costs—Sale of Land: Lachance v. Lachance, 778.
- See Execution, 1 — Vendor and Purchaser, 5—Will, 10.

DRAINAGE.

See Municipal Corporations, 17, 18.

DRAINAGE REFEREE.

See Referees.

DRAINS.

See Water and Watercourses.

DURESS.

See Company, 6.

EASEMENT.

1. Dominant and Servient Tenements—Covenant by Original Grantor—Discharge of Snow and Water: Hall v. Alexander, 204; 3 O. L. R. 482.
 2. Right of Way—Repairs—Dominant and Servient Tenements—Water—Right to Flow of—Injunction: Burrell v. Lott, 181.
- See Water and Watercourses, 1—Way, 14, 15.

ELECTION.

See Costs, 12—Dower, 2—Execution, 1 Parties, 4—Pleading, 9 — Vendor and Purchaser, 5—Will, 10.

ELECTIONS.

See Municipal Elections—Parliamentary Elections.

ELECTRIC COMPANIES.

See Assessment and Taxes—Company—Municipal Corporations, 12, 15 — Street Railways.

EQUITY OF REDEMPTION.

See Dower, 3—Execution, 1.

ESTATE.

See Insurance, 12—Will, 11, 17, 18.

ESTOPPEL.

1. By Deed—Mines and Minerals—Reservation in Deed: Dodge v. Smith, 46; 3 O. L. R. 305.
2. Fraud — Patent for Mining Land — Registration — Mortgage — Notice: Barr v. Bird, 30.
3. Rent—Claim for, by President of Company — Annual Statement: Lindsay v. Strathroy Petroleum Co., 355.

See Assessment and Taxes, 7—Bills of Exchange and Promissory Notes, 8 — Company, 5—Insurance, 5, 7 — Mechanics' Lien, 6 — Res Judicata — Schools, 5.

ESTREAT.

See Criminal Law, 6.

EVIDENCE.

1. Admissibility—Production of Book—Refusal of Trial Judge to Allow — Substantial Wrong — New Trial — Costs: Matthews v. Moody, 47.

2. Corroboration—Action against Administrator — Interest — Cestui que Trust: Batzold v. Upper, 381; 4 O. L. R. 116.

3. Corroboration—Action against Executors—Promissory Note—Comparison of Signature: Thompson v. Thompson, 431; 4 O. L. R. 442.

4. Corroboration — Claim against Estate of Deceased Person—Statute of Limitations: Wilson v. Howe, 272.

5. Corroboration — Partition of Land — Proof of Identity: Fuller v. Grant, 452.

6. Parol Evidence to Establish Trust—Admission of: Hull v. Allen, 151, 782.

See Appeal to Court of Appeal, 2 — Arbitration and Award, 5—Bills of Exchange and Promissory Notes, 6 — Building Society—Company, 12—Contract, 11, 14, 18—Criminal Law, 1, 2, 5, 6, 7, 9—Deed, 5—Defamation, 1, 3, 4—Discovery—Division Courts, 5—Executors and Administrators, 9—Gift, 1, 2, 3, 4—Insurance, 1, 2 — Malicious Arrest and Prosecution, 2—Master and Servant, 14, 16—Medical Practitioner—Mortgage, 5—Municipal Elections, 1, 6, 7 — Parliamentary Elections, 11—Particulars—Patent for Invention, 2, 3—Seduction—Specific Performance, 2—Street Railways, 2—Vendor and Purchaser, 1, 2—Will, 1, 2, 37, 41.

EXAMINATION OF PARTIES

See Discovery—Judgment Debtor.

EXCHEQUER COURT.

See Industrial Design—Patent for Invention, 4.

EXECUTION.

1. Equity of Redemption—Dower—Election — Right to Estate in Land — Assign — Tenant in Common: Canadian Bank of Commerce v. Rolston, 351; 4 O. L. R. 106.

2. For Costs of Application for Leave to Appeal—Court of Appeal — Power over Costs—High Court — Issue of Execution out of: People's Building and Loan Assn. v. Stanley, 469, 572; 4 O. L. R. 247, 377.

3. Judge's Order for Costs — Direction for Set-off—Service of Allocatur — Issue of Execution—Production of Original Order or Office Copy: People's Building and Loan Assn. v. Stanley, 692; 4 O. L. R. 644.
4. Sale of Land under—Assignment for Benefit of Creditors — Priorities — Costs: Elliott v. Hamilton, 105; 4 O. L. R. 555.

See Appeal to Court of Appeal, 12 — Attachment of Goods—Bills of Sale and Chattel Mortgages, 2 — Chose in Action—Company, 14—Creditors' Relief Act—Judgment Debtor, 4—Landlord and Tenant, 11 — Liquor License Act, 1—Trade Mark, 3.

EXECUTORS AND ADMINISTRATORS.

1. Action by Executors for Debt Due to Testator — Onus — Corroboration: Thompson v. Coulter, 205.
2. Administration of Estate—Payment of Voluntary Debts — Bond—Consideration—Assignment of Securities — Value: Re Summers, 523.
3. Bill of Costs — Service to Testator—Proceedings for Taxation—Application by Residuary Legatee—Assets — Indemnity: Foley v. Trusts and Guarantee Co., 526.
4. Compensation of Executor—Negligence — Breaches of Trust: McClenaghan v. Perkins, 191, 752.
5. Distribution of Estate—Will—Annuities — Setting apart Securities—Redemption of Annuity—Consent—Rule 938—Jurisdiction under — Trusts: Re McIntyre, McIntyre v. London and Western Trusts Co., 56; 3 O. L. R. 212.
6. Maintenance — Infant—Custody—Advice: Re Cornell, 56.
7. Removal of Executor—Insolvency — Misconduct—Administration Order—Undertaking — Costs: Godbold v. Godbold, 233, 357.
8. Surrogate Courts—Grant of Administration—Nominee of Next of Kin — Revocation: Carr v. O'Rourke, 331; 3 O. L. R. 632.
9. Trust—Breaches of — Negligence — Claim by Executor against Estate—Corroboration — Payment in Lifetime of Testator—Admission—Compensation—Devise in Lieu of—Construction of Will: McClenaghan v. Perkins, 191, 752.

See Administration Order—Administrator ad Litem — Attachment of Debts, 2—Deed, 5 — Dower, 1—Evidence, 2, 3, 4—Gift, 2—Infant, 1—Insurance, 18 — Mistake—Mortgage, 2, 3—Partition, 1—Pleading, 1—Trusts and Trustees — Vendor and Purchaser, 5—Will, 8, 12, 16, 17, 24, 28, 30, 35, 36, 40.

EXEMPTIONS.

See Assessment and Taxes, 3, 9, 10—Landlord and Tenant, 1.

EXPERTS.

See Judgment, 5.

EXPROPRIATION.

See Municipal Corporations, 22.

EXTRADITION.

See Bail—Criminal Law, 3.

FACTORIES ACT.

See Master and Servant.

FACTORY.

See Fixtures—Master and Servant, 15, 16—Municipal Corporations, 1.

FAIR COMMENT.

See Defamation, 5.

FALSE EVIDENCE.

See Criminal Law, 6.

FAMILY ARRANGEMENTS.

See Deed, 9.

FATAL ACCIDENTS ACT.

See Master and Servant.

FENCES.

See Way, 17.

FIRE INSURANCE.

See Insurance, 2-8.

FIXTURES.

1. Shop Fittings—Gas Fittings—Vendor and Purchaser: Stack v. T. Eaton Co., 511; 4 O. L. R. 385.
2. Machinery in Factory — Rights of Mortgagee—Intention: Schiedell v. Burrows, 793.

FORECLOSURE.

See Trusts and Trustees, 2.

FOREIGN COMMITTEE.

See Lunatic.

FOREIGN COMPANY.

See Insurance, 11, 19—Partnership, 5—Specific Performance, 9—Writ of Summons, 5.

FOREIGN JUDGMENT.

See Judgment, 4.

FOREIGN LAW.

See Criminal Law, 3.

FOREIGN PATENT.

See Patent for Invention, 2.

FOREIGNER.

See Arrest—Contract, 16.

FORFEITURE.

See Discovery, 8—Landlord and Tenant, 9—Mechanics' Liens, 3.

FORGERY.

See Bills of Exchange and Promissory Notes, 8.

FRAUD AND MISREPRESENTATION.

1. Conviction for — Fruit Marks Act — Possession of Fruit for Sale—Packages—"Faced or Shewn Surface;" *Rex v. James*, 520; 4 O. L. R. 537.
 2. Sale of Shares—Action for Deceit—Cause of Purchase: *Clark v. Gray*, 370.
 3. Sale of Shares — Fraud of Agent — Notice to Company—Right to Recover Money Paid: *Stokes v. Continental Life Ins. Co.*, 640.
- See Arrest—Company, 6—Contract, 16—Deed, 2, 8—Dower, 4—Estoppel, 2—Landlord and Tenant, 11—Mortgage, 9—Specific Performance, 1—Trade Mark, 4—Will, 42.

FRAUDULENT CONVEYANCE.

1. Creditor—Right of, to Attack—Mortgage—Simple Contract Creditor: *Thomas v. Calder*, 26.

2. Husband and Wife—Intent—Consideration: *McDonald v. Hennessy*, 559.

3. Injunction—Receiver—Money in Custodia Legis: *Bank of Ottawa v. McLeod*, 565.

FREE LIBRARY.

See Municipal Corporations, 11.

FRIENDLY SOCIETY.

See Insurance, 14.

FRUIT MARKS ACT.

See Fraud and Misrepresentation, 1.

FURTHER DIRECTIONS.

See Bankruptcy and Insolvency, 5.

GAMING.

See Criminal Law, 4.

GARNISHEE.

See Attachment of Debts.

GAS COMPANY.

See Assessment and Taxes, 17—Way, 7.

GIFT.

1. Donatio Mortis Causa — Bank Deposit in Names of Donor and Donee — Survivorship—Evidence: *St. Jean v. Danis*, 790.
2. Donatio Mortis Causa—Solicitor — Lack of Independent Advice—Action against Administrator — Want of Corroboration—Burden of Proof — Costs: *Davis v. Walker*, 3, 745.
3. Parent and Child—Bounty or Bargain — Undue Influence—Mental Competence: *Thorndyke v. Thorndyke*, 11.
4. Parent and Child—Business Relationship — Undue Influence — Onus: *Fisher v. Fisher*, 442.

See Will.

GOODWILL.

See Liquor License Act, 1.

GRAND JURY.

See Criminal Law, 6.

GUARANTY.

1. Consideration—Novation—Statute of Frauds: Bailey v. Gillies, 325; 4 O. L. R. 182.
2. Written Statement — Mercantile Agency — Creditor not Privy to — Statute of Frauds—Sale of Goods: Harris v. Stevens, 109.

See Principal and Agent, 5—Solicitor, 2—Work and Labour.

HIGH COURT OF JUSTICE.

1. Application for Mandamus to Justice of the Peace—Forum—Civil Proceedings — Single Judge—Divisional Court: Re Glenn, Rex v. Meehan, 136; 3 O. L. R. 361.
2. Divisional Court — Composition of—Two or three Judges: Minns v. Village of Omemece, 90.

See Appeal to High Court—Appeal to Judge of High Court — Division Courts, 2—Execution, 2—Mechanics' Liens, 1.

HIRE RECEIPT.

See Sale of Goods, 2.

HUSBAND AND WIFE.

See Bills of Exchange and Promissory Notes, 3 — Bankruptcy and Insolvency, 2—Dower—Fraudulent Conveyance, 2—Infant, 4—Insurance, 14—Pleading, 3.

IMPRISONMENT.

See Judgment Debtor.

IMPROVEMENTS.

See Deed, 5—Specific Performance, 5—Title to Land, 3.

INCEST.

See Criminal Law, 5.

INDEMNITY.

Contract—Construction of Works for Municipal Corporation—Liability for Injuries to Persons—Provisions of Contract—Agreement with Another Contractor — Want of Privy — Costs of Defending Action—Third Party: Gaby v. City of Toronto, 606.

See Costs, 17—Executors and Administrators, 3—Infant, 2, 7.

VOL. I. O. W. R. DIG.

INDUSTRIAL DESIGN.

Infringement — Imitation — Injunction — Jurisdiction of Exchequer Court: Findlay v. Ottawa Furnace and Foundry Co., 323; 7 Ex. C. R. 340.

INFANT.

1. Advancement on Account of Legacy—Executor: Re Currie, 9.
 2. Contract—Indemnity — Voidable or void—Ratification — Damages—Interest: Beam v. Beatty, Bunting v. Beatty, 54, 616; 3 O. L. R. 345; 4 O. L. R. 554.
 3. Custody of—Father or Mother: Re Smith, 55.
 4. Custody of—Father or Mother—Action for Alimony—Access by Father: Re Gibson, 58.
 5. Custody of—Parent—Other Relatives — Evidence: Re Gillem, 37.
 6. Lease by—Repudiation — Partition—Amendment — Parties — Damages: Munro v. Toronto R. W. Co., 25, 316; 4 O. L. R. 36.
 7. Liability to Indemnity—Next Friend—Improvident Litigation — Ratification: Macnee v. Rose, 173.
 8. Party to Action—Right of Opposite Party to Examine for Discovery—Discretion of Examiner: Flett v. Coulter, 775; 4 O. L. R. 714.
- See Costs, 10—Dower, 1 — Executors and Administrators, 6—Insurance, 10, 15—Master and Servant, 8, 9—Negligence, 1, 4—Parent and Child — Will, 38.

INFORMATION.

See Criminal Law, 8—Mandamus.

INJUNCTION.

1. Interim Injunction — Completion of Elevator—Delivery of Possession — Right of Parties: Jamieson v. MacKenzie, Mann, & Co., 555.
2. Repetition of Slander—Public Entertainment — Pretended Supernatural Revelations—Imputation of Murder — Pending Inquest: Quirk v. Dudley, 637; 4 O. L. R. 532.
3. Undertaking to Speed Trial—Breach of: Clarry v. Brodie, 387.

See Company, 1, 3—Contract, 12 —
Copyright — Covenant, 1 — Ease-
ment, 2 — Fraudulent Conveyance,
3—Industrial Design — Liquor Li-
cense Act, 2—Municipal Corpora-
tions, 10, 13, 14, 15—Parties, 11—
Pleading, 4—Schools, 5 — Street
Railways, 5 — Tenant for Life —
Timber and Trees, 2—Trade Mark,
2, 3, 4—Waste—Water and Water-
courses, 5—Way, 13, 17.

INQUEST.

See Injunction, 2.

INSOLVENCY.

See Bankruptcy and Insolvency—Execu-
tors and Administrators, 7.

INSPECTOR OF PRISONS AND
PUBLIC CHARITIES.

See Lunatic, 3.

INSURANCE.

1. Accident—"Accidental" death—Onus
—rinding of jury—Notice and parti-
culars of death—Waiver: Fowlie v.
Ocean Accident and Guarantee Co.,
252; 4 O. L. R. 146.
2. Disability—Benevolent Society—Certi-
ficate—Proof of Age—Waiver—Sur-
render—Domestic Forum—By-laws:
Doidge v. Dominion Council of Royal
Templars of Temperance, 485; 4
O. L. R. 423.
3. Fire—Application—Diagram of Build-
ings—Omission from—Agent: Ball
v. Farmers' Central Mutual Fire
Ins. Co., 168.
4. Fire—Notice to Company Terminat-
ing Contract—Registered Letter —
Wrong Address: Skillings v. Royal
Ins. Co., 411; 4 O. L. R. 123.
5. Fire—Proofs of Loss—Delay—Condi-
tions of Policy — Estoppel—Own-
ership of Property: Baker v. Royal
Ins. Co., 294.
6. Fire—Renewal Premiums — Non-pay-
ment—Non-existence of Contract—
Delivery of Receipt—Meaning of:
Doherty v. Millers' and Manufac-
turers' Ins. Co., 457; 4 O. L. R.
303.
7. Fire—Conditions—Prior Insurance—
Subsequent Insurance — Substituted
Insurance — Assent — Estoppel —
Findings of Jury: Mutchmor v. Wa-
terloo Mutual Fire Ins. Co., 667; 4
O. L. R. 606.
8. Fire—Contract—Authority of Agent:
Walkerville Match Co. v. Scottish
Union and National Ins. Co., 647.
9. Life—Assignment of Policy — Insur-
able Interest—Creditor: Decker v.
Cliff, 354, 419.
10. Life—Certificate—Change of Bene-
ficiary—Will—Infant Children of
Deceased: Re Snyder, 461; 4 O. L.
R. 320.
11. Life—Insolvent Foreign Company—
Deposit — Surplus — Interest: Re
Covenant Mutual Life Assn. of
Illinois, 392.
12. Left—Preferred Beneficiary—Will —
Trust—Estate: Re Duncombe, 153;
3 O. L. R. 510.
13. Life—Action on Policy—Condition as
to Arbitration—Public Policy—Ap-
plication to Stay Proceedings:
Nolan v. Ocean Accident and Guar-
antee Corporation, 777.
14. Life—Disposition of Proceeds of
Policy—Friendly Society—Claimants
—Two Wives both Living—"Dep-
endent"—Judgment ex Æquo et
Bono: Crosby v. Ball, 545; 4 O. L.
R. 496.
15. Life—Infant en Ventre Sa Mère—
Period of Distribution—Trustee Re-
lief Act: Re Lethbridge, 553.
16. Life—Mutual Benefit Society —Con-
tract Uberrimae Fidei—Untrue Re-
presentations in Application —
Agency: Ryan v. Catholic Order
of Foresters, 547.
17. Life—Policy in Favour of Mother—
Advance by Mother on Faith of—
Subsequent Marriage of Insured —
Apportionment in Favour of Wife—
Claim by Mother as Beneficiary for
Value: Re Excelsior Life Ins. Co.
and De Geer, 702, 771.
18. Life—Policy on Life of one Person
for Benefit of Another—Assignment
—Death of Assured—Claim by Ad-
ministrator: Bain v. Copp, 796, 784,
804.
19. Life—Validity of Policy — Lien
against Transferred Policy—Accept-
ance of Premium—Evidence of Con-
tract—Foreign Companies—License
to do Business in Canada: Spooner
v. Mutual Reserve Fund Life As-
sociation, 566, 583.

See Arbitration and Award, 2—Benefit Society—Principal and Agent, 3—Writ of Summons, 1.

INTEREST.

1. Charging Accounting Party with — Further Directions—Costs: Earle v. Burland, 527.

2. Claim for Price of Goods Sold—Interest not claimed in Writ of Summons — Report — Appeal—Items—Costs: Kelly v. Smith, 732.

See Assessment and Taxes, 13—Bills of Sale and Chattel Mortgages, 4—Division Courts, 3—Evidence, 2—Infant, 2—Insurance, 11—Landlord and Tenant, 1, 4—Mortgage, 2, 7—Partnership, 2—Will, 40.

INTERPLEADER.

See Particulars.

INTOXICATING LIQUORS.

See Liquor License Act—Municipal Corporations, 6.

INVENTION.

See Patent for Invention.

INVESTMENT.

See Solicitor, 2.

JUDGMENT.

1. Certificate of — Court of Appeal — Power to Amend after Issue—Mistake — Costs: Whipple v. Ontario Box Co., 36.

2. Consent—Sale of Railway—Petition to Open up—Conflicting Claims to Represent Railway Company — Issue Directed: Toronto General Trusts Corporation v. Central Ontario R. W. Co., 713.

3. Death of Plaintiff after hearing — Court of Appeal—Certificate—Date — Amendment — Administrator ad litem: Gunn v. Harper, 366; 3 O. L. R. 693.

4. Foreign Judgment—Action on Pleading—Defence on Merits: Anderson Produce Co. v. Nesbitt, 818.

5. Reference by Consent to Experts — Misunderstanding of Counsel as to Purpose of Reference—Opening up Judgment: Beaudry v. Gallien, 793.

6. Summary Judgment — Payment into Court—Payment out without Prejudice: Dominion Paving and Contracting Co. v. Magann, 226.

7. Summary Judgment—Rule 603—Liability of Defendants—Finding of Fact on Correspondence, Affidavits, and Depositions: Globe Printing Co. v. Sutherland, 589.

See Appearance—Assessment and Taxes, 2 — Company, 5 — Contract, 19 — Costs, 18—Dower 5,—Lunatic, 3 — Railways, 1—Specific Performance, 13.

JUDGMENT DEBTOR.

1. Examination—Insufficient Answers — Further Examination: Ivey v. Moffat, 519.

2. Examination — Making away with property—Committal: Hunt v. Robins, 80.

3. Examination of — Unsatisfactory Answers — Preference — Committal: Hepburn v. Vanhorne, 506.

4. Transferee of — Examination — Third Mortgage—"Exigible under Execution"—Receiver: Canadian Mining, etc., Co. v. Wheeler, 193; 3 O. L. R. 210.

See Appeal to Divisional Court, 1.

JURY.

Special Jury—Notice of Striking—Time —Holiday: Holman v. Times Printing Co., 7.

See Criminal Law, 7, 9—Defamation, 3—Insurance, 1, 7 — Malicious Arrest and Prosecution, 4—Master and Servant, 7, 9, 10, 13, 18—Negligence, 22—Street Railways, 4, 7.

JURY NOTICE.

1. Necessity for—Action for Libel: Puterbaugh v. Gold Medal Mfg. Co., 3 O. L. R. 259.

2. Striking out—Jurisdiction of Judge in Chambers: People's Building and Loan Assn. v. Stanley, 399; 4 O. L. R. 90; Shantz v. Town of Berlin, 4 O. L. R. 730.

See Action, 1.

JUSTICE OF THE PEACE.

See Criminal Law, 5—High Court of Justice, 1 — Malicious Arrest and Prosecution, 1.

LACHES.

See Appeal to Court of Appeal, 1—Insurance, 5—Specific Performance, 1, 6, 7—Trade Mark, 4.

LANDLORD AND TENANT.

1. Agreement for Lease — Covenants — Taxes—Local Improvement Rates—Re-entry — Repair — Interest—Exemptions: Re Canadian Pacific R. W. Co. and City of Toronto, 385; 4 O. L. R. 134.
 2. Agreement for Lease — Incomplete Contract—Nature of Tenancy—Possession: Grant v. McPherson, 240.
 3. Excessive Distress — Irregularities—Waiver — Sale for Full Value—Account of Proceeds: Piché v. Montgomery, 325.
 4. Lease—Purchase of Buildings by Lessor at End of Term—Arbitration—Valuation — Interest — Possession: Toronto General Trusts Corporation v. White, 198, 760; 3 O. L. R. 519.
 5. Lease—Renewal—Arbitration or Valuation—Irregularities — Acquiescence—Waiver: Gray v. McMath, 445.
 6. Lease — Renewal — Covenant—Construction of — Increased Rent — Average for Renewal Term: Re Geddes and Cochrane, 15; 3 O. L. R. 75.
 7. Overholding Tenants Act—Order for possession — Review — Evidence—Breach of Covenant in Lease—Notice Specifying: Re Snure and Davis, 379; 4 O. L. R. 82.
 8. Overholding Tenants Act—Right to Terminate Lease—Notice to Quit—Difficult Questions of Law—Refusal of Certiorari: Re Clark and Kellett, 577.
 9. Relief against Forfeiture of Lease—Insolvency—Mistake in Telegram: Smith v. Wade, 549.
 10. Renewal of Lease—Arbitration—Lessee — Naming Arbitrator under Protest—Sole Arbitrator: Farley v. Sanson, 738.
 11. Rescission of Lease — Action for—Fraud — Improvidence—Execution — Sunday: Duprat v. Daniel, 561.
- See Assessment and Taxes, 7—Attachment of Debts, 2—Division Courts, 2—Infant, 6 Limitation of Actions —Mechanics' Liens, 2—Specific Performance, 10.

LEASE.

See Assessment and Taxes, 7—Division Courts, 2—Infant, 6—Landlord and Tenant — Mechanics' Liens, 2 — Specific Performance, 10, 11.

LEAVE TO APPEAL.

See Appeal to Court of Appeal, 3-11—Appeal to Supreme Court of Canada, 1—Execution, 2.

LEGACY.

See Infant, 1—Will.

LEGISLATURE.

See Constitutional Law.

LIBEL.

See Defamation.

LICENSE.

See Copyright—Insurance, 19—Liquor License Act—Partnership, 5—Patent for Invention, 1.

LIEN.

See Assessment and Taxes, 13—Company, 4—Contract, 9—Insurance, 19—Mechanics' Liens—Solicitor, 1—Timber and Trees, 2—Trusts and Trustees, 2.

LIFE INSURANCE.

See Insurance, 9-19.

LIMITATION OF ACTIONS.

1. Land—Real Property Limitation Act — Son in Possession of Father's Land—Assessment as Tenant—Tenancy at Will—Settlement in Ignorance of Rights: McCowan v. Armstrong, 28; 3 O. L. R. 100.
 2. Promissory Notes—Commencement of Statute—Absence of Defendant from Province—Return: Moore v. Balch, 824.
- See Evidence, 4—Medical Practitioner —Mortgage, 8—Specific Performance, 5—Title to Land, 2, 3—Way, 5, 14—Will, 40.

LIQUOR LICENSE ACT.

1. License and Goodwill—Will—Devise —Renewal of License—Interest of Devisee—Execution against: Taylor v. Macfarlane, 283; 4 O. L. R. 239.

2. Transfer of License to new Premises—Notice—Report of Inspector—Injunction: Stephens v. O'Connor, 241.

LIS PENDENS.

Vacating—Application of Plaintiff: McGillivray v. Williams, 510; 4 O. L. R. 454.

LIVERY STABLE KEEPER.

See Municipal Corporations, 5.

LOCAL IMPROVEMENTS.

See Assessment and Taxes, 1, 4, 5, 6—Landlord and Tenant, 1.

LOCAL OPTION.

See Municipal Corporations, 6.

LORD'S DAY ACT.

See Constitutional Law, 2.

LUNATIC.

1. Domicil — Residence Abroad—Money in Bank in Ontario—Right of Foreign Committee to—Change of Domicil—Private International Law—Costs: Falls v. Bank of Montreal, 538.
2. Funds in Hands of Committee—Payment into Court—Reference — Report of Master—Revision of Costs: Re Norris, Re Drope, 817.
3. Plaintiff Becoming Insane after Judgment—Proposed Appeal — Appointment of Next Friend—Inspector of Prisons and Public Charities: Holness v. Russell, 774.

MAINTENANCE.

See Executors and Administrators, 6—Will, 29.

MALICIOUS ARREST AND PROSECUTION.

1. Constable—Good Faith — Warrant—Notice of Action—Fine—Municipal Corporation — Resolution — Ultra Vires—Members of Council—Justice of the Peace: Gaul v. Township of Ellice, 119; 3 O. L. R. 438.
2. Evidence—Record of Acquittal—Fiat of Attorney-General—Mandamus — Clerk of the Peace: Rex v. Scully 452; 4 O. L. R. 394.

3. Reasonable and Probable Cause — Bank—Customer — Warehouse Receipts — Nonsuit: Pearen v. Merchants Bank of Canada, 277.

4. Reasonable and Probable Cause—Functions of Judge and Jury — Trial: Peters v. Whyte, 26.

MALPRACTICE.

See Medical Practitioner.

MANDAMUS.

Police Magistrate — Jurisdiction—Information — Criminal Offence—Municipal Election—Offence at: Re Rex v. Mehan, 248; 3 O. L. R. 567.

See High Court of Justice, 1—Malicious Arrest and Prosecution, 2—Public Health—Schools, 4.

MASTER AND SERVANT.

1. Contract of Hiring—Rescission—Continuance in Employment—Abandonment—Part Payment of Commission: Banfield v. Hamilton Brass Co., 293.
2. Contract of Servant not to Engage in Particular Business—Wrongful Dismissal of Servant—Subsequent Engaging in same Business: Ryerson v. Murdock, 466.
3. Dismissal of Servant — Subsequent Employment—Damages: Mashley v. Gould Bicycle Co., 566; 4 O. L. R. 350.
4. Dismissal of Servant—Wrongful Dismissal—Contract of Hiring—Construction—Statute of Frauds: Glenn v. Rudd, 116; 3 O. L. R. 422.
5. Injury to Servant Causing Death — Negligence of Master—Mine—Defective Machinery — Contributory Negligence—Fatal Accidents Act — Death of Widow of Servant after Action: Adams v. Culligan, Howe v. Culligan, 38.
6. Injury to Servant — Death—Mine—Negligence — Onus—Waiver—Disobedience of Servant: Anderson v. Mikado Gold Mining Co., 276; 3 O. L. R. 581.
7. Injury to servant—Dangerous Machinery — Precautions — Negligence of Fellow Workmen—Jury—Damages: Myers v. Sault Ste. Marie Pulp and Paper Co., 280; 3 O. L. R. 600.

8. Injury to Servant—Infant—Machinery—Negligence of Foreman: Holman v. Times Printing Co., 338, 756.
9. Injury to Servant—Moving Machinery—Guard — Factories Act—Negligence—Infant—Jury: Moore v. J. D. Moore Co., 290; 4 O. L. R. 167.
10. Injury to Servant—Negligence of Foreman—Jury: Bowman v. Imperial Cotton Co., 450.
11. Injury to Servant—Negligence of Master—Dangerous Employment — Volunteer: Blanquist v. Hogan, 15.
12. Injury to Servant — Negligence of Master — Foreman — Secretary of Company — Knowledge—Evidence: Wilson v. Botsford-Jenks Co. 101.
13. Injury to Servant—Negligence of Master—Question for Jury — Res Ipsa Loquitur: Brotherson v. Corry, 34.
14. Injury to Servant—Death — Workmen's Compensation Act — Notice of Injury—Excuse for Want of—Evidence—Statement of Deceased—Negligence—Cause of Injury—Jury: Armstrong v. Canada Atlantic R. W. Co., 612; 4 O. L. R. 560.
15. Injury to Servant—Factory—Elevator—Defects—Safeguards — Signals—Negligence — Findings of Jury: Leeder v. Toronto Biscuit Co., 687.
16. Injury to Servant—Factory—Negligence—Findings of Jury — Finding of Judge—Consent—Notes of Evidence: Walton v. Welland Vale Mfg. Co., 839.
17. Injury to Servant—Workmen's Compensation Act—Negligence of Foreman of Works—Questions for Jury —New Trial—Small Verdict: Aillo v. Fauquier, Gallio v. Fauquier, 833.
18. Injury to Servant—Workmen's Compensation Act—Railway Contractors —Sub-contractors—Question of Liability—Ruling of Trial Judge—Questions for Jury—New Trial: Bertudato v. Fauquier, 802.
19. Liability of Master for Act of Servant—Trespass to Person—Owner of House—Unnecessary Force — Solicitor—Damages: Burke v. Burke, 127, 419.

See Defamation, 2—Negligence, 1.

MASTER IN ORDINARY.

See Appeal to High Court—Company, 13.

MECHANICS' LIENS.

1. Action Begun by Statement of Claim —Service of, out of Ontario — Statutes and Rules — Powers of High Court: Pennington v. Morley, 246; 3 O. L. R. 514.
2. "Owner" — Lease — Covenant by Lessee to Erect Buildings: Webb v. Gage, 327.
3. Plant Supplied by Contractor—Forfeiture to Owner—Lien not Attaching: Birkett v. Brewder, 62.
4. Registered Owner—Contract with — Transfer of Property after Registration of Lien—Previous Agreement—Notice—Parties: Fraser v. Griffiths, 141.
5. Work Done upon Houses of Several Owners—Interest of Each—Proportionate Amount—Appeal from Judgment of Master: Booth v. Booth, 49; 3 O. L. R. 294.
6. Work and Labour—Defect in Building — Assent — Estoppel: Holtby v. French, 821.

MEDICAL HEALTH OFFICER.

See Public Health.

MEDICAL PRACTITIONER.

Malpractice — Limitation of Actions — Want of Care — Onus: Town v. Archer, 391; 4 O. L. R. 383.

MERCANTILE AGENCY.

See Guaranty, 2.

MERGER.

See Dower, 4.

MINES AND MINERALS.

See Company, 3—Estoppel 1, 2—Master and Servant, 5, 6—Specific Performance, 9.

MISREPRESENTATIONS.

See Fraud and Misrepresentation.

MISTAKE.

Money overpaid on Mortgage—Ignorance of Facts—Executor—Costs: McDermott v. Hickling, 19, 768.

See Deed, 1, 6, 7—Dower, 4—Judgment, 1—Landlord and Tenant, 9—Municipal Elections, 2—Pleading, 8.

MONEY.

See Fraudulent Conveyance, 3.

MONEY IN COURT.

See Lunatic, 2—Parliamentary Elections, 6.

MORTGAGE.

1. Action on Covenant—Defence of Payment — Promissory Notes. Pegg v. Hamilton, 418, 633.

2. Action on Covenant—Interest—Board in Lieu of—Settlement—Administrator: Rockett v. Rockett, 309.

3. Action to Enforce by Sale—Parties—Mortgagees — Separate Advances—Mortgagor—Administrator: Fox v. Klein, 172.

4. Costs of Mortgage—Unnecessary Proceedings—Tender—Waiver: Middleton v. Scott, 536, 632; 4 O. L. R. 459.

5. Covenant—Release—Right of way—Action on by Mortgagee after Release—Further Evidence: Re Thuresson, McKenzie v. Thuresson, 4; 3 O. L. R. 271.

6. Covenant—Release of Part of Land—Right of Way—Dedication — Adjoining Owners: Re Thuresson, McKenzie v. Thuresson, 437.

7. Default of Payment of Interest—Possession: Coté v. Meloche, 802.

8. Mortgagee in Possession—Statute of Limitations—Payment by Rents and Profits — Account — Reference: Chambers v. McCombs, 689.

9. Pretended Sale under Power—Fraud—Purchasers for Value without Notice — Knowledge of Agent—Interest to Conceal—Redemption — Compensation: Smith v. Hunt, 598, 798; 4 O. L. R. 653.

See Bankruptcy and Insolvency, 2—Building Society—Deed, 7, 8—Division Courts, 3—Dower, 4—Estoppel, 2—Fixtures — Fraudulent Conveyance — Judgment Debtor, 4 — Mistake — Partition, 3—Pleading, 10—Tenant for Life — Will, 5, 8, 24, 35, 36.

MUNICIPAL CORPORATIONS.

1. Bonus — Factory — Removal of—By-law—Intention to Remove: Re Village of Markham and Town of Aurora, 289; 3 O. L. R. 609.

2. By-law—Contract for Lighting — Reduction of Price—Execution of Contract — Part Performance—Tax By-law; Citizens Telephone and Electric Light Co. v. Town of Rat Portage, 42; Town of Rat Portage v. Citizens Electric Co. of Rat Portage, 44.

3. By-law—Fireworks—Discretion as to Enforcement — Injury to Person—Nonfeasance: Brown v. City of Hamilton, 271; 4 O. L. R. 249.

4. By-law — Invalidity of —Payment of Money under — Recovery from Corporation: Cushen v. City of Hamilton, 441; 4 O. L. R. 265.

5. By-law — Livery stable keeper—Damage to Vehicle—Refusal of Hirer to pay for—Conviction—Fine: Brothers v. Alford, 31.

6. By-law—Intoxicating Liquors—Local Option—Posting in Public Places—Directions to Voters—Omissions—Curative Clause of Statute—Motion to Quash—Status of Elector to Oppose: Re Salter and Township of Beckwith, 266; 4 O. L. R. 51.

7. By-law—Ordinary Current Expenditure—Borrowing Money to Use as Security for Appeal in Previous Action—Appeal for Costs—Status of Plaintiff: Holmes v. Town of Goderich, 367, 814.

8. By-law—Prevention of Fires—Storing Combustible Material—Statutes — Construction — Ejusdem Generis Rule — Constitutional Law—Provincial Legislation — Dominion Legislation — Petroleum Inspection Act: Rex v. McGregor, 358; 4 O. L. R. 198.

9. By-law — Transient traders—Conviction—Certiorari—Right taken away by Statute: Rex v. St. Pierre, 365; 4 O. L. R. 76.

10. By-law—Vehicles standing on Highway — Agreement with Railway Companies—Injunction — Quashing By-law—Public Interest: Canadian Pacific R. W. Co. v. City of Toronto, 255.

11. By-law—Aid to Free Library—Necessity for Submission to Popular Vote — Special Rate—Construction of Statute. Hunt v. Town of Palmerston, 791.

12. By-law—Diversion of Road—Interest of Individuals—Contrary to Public Interests: Re Pelot and Township of Dover, 792.

13. Contract — Specifications — Injunction: Allen v. City of Toronto, 518.
14. Contracts with Electric Light Companies—Use of Streets—Poles and Wires — Proximity — Rival Companies — Injunction: Ottawa Electric Co. v. Consumers' Electric Co., 154.
15. Council—Power to Submit Questions to Electors—Proposed Expenditure for Sanitarium—Injunction: King v. City of Toronto, 843.
16. Council—Resolution of—Trimming of Trees in Streets—Towns and Villages—Powers of Council—Necessity for By-law: Re Allen and Town of Napanee, 634; 4 O. L. R. 582.
17. Ditch—Construction of — Absence of By-law—Flooding Lands—Liability for Damages: Lawrence v. Town of Owen Sound, 559.
18. Drainage—Flooding Private Lands—Culvert — Increase in Rapidity of Flow of Water—Cause of Action: Swayzie v. Township of Montague, 742.
19. Highway—Laying Gas Pipes under—Permission of Council—Resolution—By-law: Bowerman v. Town of Amherstburg, 16.
20. Highway—Raising Level of—Injury to Adjoining Land—Backing Water on—Culvert—Inappreciable Injury: Turner v. Township of York, 723.
21. Liability for Acts of Treasurer—Power to Pledge Credit—Advertising Tax Sale: Canadian Bank of Commerce v. Town of Toronto Junction, 74; 3 O. L. R. 309.
22. Purchase of Electric Light Plant—Compulsory Expropriation: Iroquois Electric Light Co. v. Village of Iroquois, 306.
23. Railway Embankment—Damages to adjacent Property—Water — Liability of Corporation: Slinn v. City of Ottawa, 269.
24. Undertaking to Repair and Maintain Bridge—Contract with Ratepayers—Enforcement — Remedy by Indictment: Thompson v. Township of Yarmouth, 556.
- See Arbitration and Award, 4—Assessment and Taxes — Constitutional Law, 1—Costs, 8—Indemnity—Malicious Arrest and Prosecution, 1—

Negligence, 1—Parties, 7, 10—Railways, 4, 8—Schools, 1, 2—Street Railways, 5—Survey—Timber and Trees, 1—Way, 1-12, 16, 17.

MUNICIPAL ELECTIONS.

1. Contested Election — Cross-Examination on Affidavits—Discretion: Rex ex rel. Ross v. Taylor, 265.
2. Contested Election—Notice of Motion — Mistake in Return Day—Amendment: Rex ex rel. Roberts v. Ponsford, 223, 286; 3 O. L. R. 410.
3. Contested Election — Irregularities—Saying Clause: Rex ex rel. Ross v. Taylor, 582.
4. Contested Election — Irregularities at Polls — Aldermen of City—Election by General Vote — Voters Voting more than Once—Affecting Result: Rex ex rel. Roberts v. Ponsford, 590, 645.
5. Contested Election—Order Quashing—Quo Warranto Proceedings—Right of Appeal—Power to Make Order: Rex ex rel. McFarlane v. Coulter, 636; 4 O. L. R. 520.
6. Tampering with Ballots—Evidence of Voters as to Voting — Affidavits—Supplementary Oral Testimony — Cross-examination — Discretion — Irregularities: Rex ex rel. Ivison v. Irwin, 371; 4 O. L. R. 192.
7. Voter Voting more than Once—Majority—Presumption—Proof: Rex ex rel. Tolmie v. Campbell, 268; 4 O. L. R. 25.

See Mandamus.

MURDER.

See Criminal Law, 8—Injunction, 2.

NEGLIGENCE.

1. Injury to Person—Municipal Corporation—Work on Roads — Pafmaster—Relationship of Master and Servant—Infant. Bock v. Township of Wilmot, 415.
2. Injury to Person—Unsafe Premises—Unheard of Nature of Accident—Findings of Jury: Fallis v. Gartshore-Thompson Pipe Foundry Co., 348; 4 O. L. R. 176.
3. Injury to Volunteer—Machinery—Defects—Duty—Delegation: Pimperton v. McKenzie, 335.

4. Playing Dangerous Game on Highway — Infant—Contributory Negligence: *Coburn v. Hardwick*, 733.

See Bailment—Contract, 8—Executors and Administrators, 4, 9—Master and Servant, 5-18—Principal and Agent, 3—Railways, 3 5-9—Street Railways—Way, 1-12.

NEW TRIAL.

Absence of Material Witness — Taking Chances at Trial: *MacLellan v. Hovey*, 707.

See Appeal to Divisional Court, 2—Bills of Exchange and Promissory Notes, 6—Criminal Law, 5, 9—Evidence, 1—Master and Servant, 17, 18—Street Railways, 2.

NEXT FRIEND.

See Infant, 7—Lunatic, 3.

NEWSPAPER.

See Copyright—Defamation, 7.

NONSUIT.

See Malicious Arrest and Prosecution, 3.

NOTICE.

See Bills of Exchange and Promissory Notes, 8—Company, 11—Fraud and Misrepresentation, 3—Mortgage, 9.

NOTICE OF ACTION.

See Malicious Arrest and Prosecution, 1.

NOTICE OF INJURY.

See Master and Servant, 14.

NOTICE OF MOTION.

See Municipal Elections, 2.

NOTICE TO QUIT.

See Landlord and Tenant, 8.

NOVATION.

See Contract, 18—Guarantee, 1.

NUISANCE.

See Company, 1.

OBSTRUCTION OF HIGHWAY.

See Criminal Law, 9.

OFFICIAL REFEREE.

See Referees.

ORDER IN COUNCIL.

See Survey.

OVERHOLDING TENANTS ACT.

See Landlord and Tenant, 7, 8.

OWNER.

See Mechanics' Liens.

PARENT AND CHILD.

Liability of Parent for Child's Tort—Infant—Knowledge — Division Courts Act: *McCann v. Slater*, 132.

See Bills of Sale and Chattel Mortgages, 2—Costs, 10—Criminal Law, 3—Deed, 2—Gift, 3, 4—Infant, 3-5.

PARLIAMENTARY ELECTIONS.

1. Controverted Election Petition — Clerical Error—Service—Formal Objection — Amendment: *Re Centre Bruce Provincial Election, Stewart v. Clark*, 503; *O. L. R.* 263.
2. Controverted Election Petition — Deposit—Rival Claimants—Issue. *Re North Waterloo Election*, 86.
3. Controverted Election Petition — Status of Petitioner—Statement—Sufficiency — Defeated Candidate: *Re Stormont Provincial Election, McLaughlin v. McCart*, 504.
4. Controverted Election Petition — Affidavit of Bona Fides—Commissioner—Agent for Solicitor: *Re Lennox Provincial Election, Perry v. Carscallen*, 730; 4 *O. L. R.* 647.
5. Controverted Election Petition — Misdescription of Electoral District: *Re Lincoln Provincial Election, McKinnon v. Jessop*, 564; 4 *O. L. R.* 456.
6. Controverted Election Petition — Deposit — Payment Out—Petition Abandoned before Service—Grounds of Abandonment—Affidavits Denying Collusion: *Re West Wellington Provincial Election, Patterson v. Tucker*, 629.
7. Corrupt Practices—Bribery by Respondent—Bribery by Agents—Evidence—Hiring Vehicles — Payment for Vehicles on Polling Day: *Re Lennox Provincial Election, Perry v. Carscallen*, 810.

8. Corrupt Practices—Hiring Vehicles—Statutory Declarations of Proposed Witnesses—Saving Clause—"Trifling Extent"—Personal Charges against Respondent—Disagreement of Judges: Re South Oxford Provincial Election, 795.
9. Recount of Votes—Ballots—Crosses—Name of Candidate—Words—Intention: Re North Grey Provincial Election, Boyd v. McKay, 474; 4 O. L. R. 286.
10. Recount of Votes—Ballots—Irregular Marking—Initials of D. R. O.: Re Muskoka Provincial Election, Mahaffy v. Bridgland, 487; 4 O. L. R. 253.
11. Recount of Votes—Ballots—Marks—Crosses—Writing—Evidence: Re Halton Provincial Election, Nixon v. Barber, 501; 4 O. L. R. 345.
12. Recount of Votes—Ballots not Objected to before D. R. O.—Form of Ballots—Crosses—Circular Marks—Words—Initials—Indefinite Marks: Re Lennox Provincial Election, Carscadden v. Madole, 472; 4 O. L. R. 378.
13. Recount of Votes—Ballots—Numbers of Candidates torn off: Re Prince Edward Provincial Election, Williams v. Currie, 468; 4 O. L. R. 255.
14. Recount of Votes—Notice of Appeal—Solicitor—Cross-appeal—Result of—Re-opening Original Appeal: Re North Grey Provincial Election, McKay v. Boyd, 483, O. L. R. 286.
15. Voters' Lists—Notice of Complaint—Statement of Grounds—Signing by Complainant—Amendment: Re Carleton Place Voters' Lists, 105; 3 O. L. R. 223.
- See Pleading, 9.
4. Statement of Claim—Trade Mark—Infringement. Morrison v. Mitchell, 709.
- See Defamation, 5—Discovery, 10—Pleading, 10.

PARTIES.

1. Action Brought in Name of "C. & Co."—Sole Plaintiff,—Rules of Court: Cummings v. Ryan, 149.
2. Adding Parties—Joinder of Causes of Action—Relief over—Third Party; Langley v. Law Society of Upper Canada, 143; 3 O. L. R. 245.
3. Adding Plaintiffs—Consent—Verification by Affidavit—Identity of Names: Webling v. Fick, 203.
4. Adding Plaintiffs—Distinct Causes of Action—Election to Proceed with One: Plummer v. Sholdice, 789.
5. Representation of Classes—Appointment of Solicitor—Rule 200: Ward v. Benson, 24; 3 O. L. R. 199.
6. Striking out—Improper Joinder—Matter of Substance: Morang v. Rose, 3 O. L. R. 354.
7. Summary Application to Quash Municipal By-law—Countermand—Motion to Add or Substitute New Applicant: Re Ritz and Village of New Hamburg, 574, 690; 4 O. L. R. 639.
8. Third Party—Notice—Time—Enlarging: Parent v. Cook, 3 O. L. R. 350.
9. Third Party—Settlement of Action: Wheeler v. Town of Cornwall, 4 O. L. R. 120.
10. Third Party—Action to Set aside Tax Sale—Claim by Purchaser to Relief over against Municipality: Farmers' Loan and Savings Co. v. Hickey, 695.
11. Unincorporated Voluntary Association—Motion to Strike Out Name—Injunction—Trial—Pleading—Costs: Metallic Roofing Co. v. Local Union No. 30 Amalgamated Sheet Metal Workers' International Assn., 573, 644.
- See Action 1—Appeal to Court of Appeal, 9, 13—Costs, 1, 3, 17—Discovery—Indemnity—Infant, 6, 8—Mechanics' Liens, 4—Mortgage, 3—Parliamentary Elections, 3—Pleading, 3—Will, 1—Writ of Summons, 4.

PARTICULARS.

1. Further Particulars—Interpleader Issue—Credits—Settled Account: Tawse v. Seguin, 14, 56.
2. Statement of Defence—Material on Application for—Issue Joined: Uda v. Algoma Central R. W. Co., 246.
3. Statement of Claim—Action to Set aside Resolution of Shareholders of Company—Allegation of Non-compliance with Companies Acts—Submission to Court: Maclean v. Wood, 703.

PARTITION.

1. Right to—Executor—Devisees: *Re Asselstine*, 178.
 2. Sale—Oral Agreement — Statute of Frauds — Part Performance — Acquiescence—Arbitration or Valuation—Notice: *Joyce v. Joyce*, 479.
 3. Tenant by the Curtesy—Mortgagees—Judgment Creditor of Owner of Interest: *Bank of Hamilton v. Hurd*, 456.
 4. Tenants in Common—Expensive Proceedings—Leave to Proceed with Former Action—Terms: *Mathews v. Mathews*, 844.
- See Costs, 5—Evidence, 5—Infant, 6.

PARTNERSHIP.

1. Authority of Partner — Bill of Exchange—Notice: *Bank of Ottawa v. Lewis*, 71.
2. Contract—Interest—Liability of Partner — Holding out: *Deering v. Beatty*, 363.
3. Co-partner — Offer to Sell Share to — Acceptance—Specific Performance — Improvidence — Security—Costs: *Pilgrim v. Cummer*, 531.
4. Judgment — Settlement—Accounting: *West v. Benjamin*, 212.
5. Practice—Appearance as for—Foreign Corporation Carrying on Business without License: *Duthrie v. McDermott*, 776.

See Attachment of Goods—Chose in Action — Contract, 15—Costs, 7—Ship, 2.

PATENT FOR INVENTION.

1. Contract — License — Alteration in Article—Consideration: *MacLaughlin v. Lake Erie and Detroit River R. W. Co.*, 266, 428; 3 O. L. R. 706.
2. Infringement—Foreign patent—Application for Canadian Patent—Time—Evidence: *Milner v. Kay*, 200.
3. Infringement—Novelty—Onus: *Lang v. McAllister*, 455.
4. Infringement—Action for—Motion to Stay — Proposal to Proceed in Exchequer Court to Avoid Patent: *Parramore v. Boston Mfg. Co.*, 643, 4 O. L. R. 627.

See Discovery, 8—Pleading, 4.

PATHMASTER.

See Negligence, 1.

PAYMENT.

See Bankruptcy and Insolvency, 6—Company, 12—Mortgage, 1, 18 — Municipal Corporations, 4—Sale of Goods, 7, 10.

PAYMENT INTO COURT.

See Attachment of Debts—Judgment, 3—Lunatic, 2—Pleading, 8.

PAYMENT OUT OF COURT.

See Parliamentary Elections, 6.

PENALTY.

See Pleading, 9.

PENSION.

See Benefit Society.

PERPETUITY.

See Will, 21.

PLEADING.

1. Counterclaim by Executor for Estate — Claim by Arrears of Annuity — Release—Striking out Counterclaim: *Hume v. Hume*, 156, 187.
2. Counterclaim—Striking out—Defendants to Counterclaim out of Jurisdiction—Foreign Trade Mark, Subject of Counterclaim — Hardship—Injustice: *Dunlop Pneumatic Tire Co. v. Ryckman*, 699, 820.
3. Counterclaim — Striking out—Parties — Action by Execution Creditor of Husband to Declare Wife Trustee for Husband—Counterclaim by Husband for Debt Assigned to him: *Ennis v. Reade*, 652.
4. Counterclaim—Striking out — Patent for Invention — Trade Mark—Contract for Right to—Breach of—Injunction: *McAvity v. Morrison*, 552, 632.
5. Statement of Claim — Declaratory Judgment — Statements of Reasons for Seeking Relief—Embarrassment — Pleading to Claim—Waiver: *Harris v. Harris*, 684, 734.
6. Statement of Claim — Delivery of Amended Pleading—Time—Leave—Consent—Order Validating—Terms — Stay of Proceedings—Payment of Costs: *Anthony v. Blain*, 841.

7. Statement of Claim — Alternative Claim—Sale or Conversion—Doubtful Facts. *Leader v. Siddall*, 337.
 8. Statement of Claim — Amendment — Diligence in Moving — Mistake — Money paid into Court: *Chevalier v. Ross*, 12, 115; 3 O. L. R. 219.
 9. Statement of Claim — Amendment — Election—Penalty — Writ of Summons — Discovery — Dominion Elections Act: *Rose v. Croden*, 170; 3 O. L. R. 383.
 10. Statement of Claim—Particulars — Mortgage—Sale under Power—Conspiracy—Account: *Huffman v. Hull* 242.
 11. Statement of Defence — Leave to Amend—Adding Defence—Attaching Order: *Gearing v. McGee*, 213.
- See Defamation, 5, 6, 7—Judgment, 4—Particulars—Railways, 10—Sale of Goods, 1, 5, 7, 8 — Specific Performance, 2, 9—Title to Land, 3—Trade Mark, 5.

PLEDGE.

Bailment of Animal—Pasturage—Subsequent Advances — Distinction between Pledge and Chattel Mortgage: *Kelly v. Pollock* 735.

POLICE MAGISTRATE.

See Mandamus.

POWER OF ATTORNEY.

See Bankruptcy and Insolvency, 6.

PRACTICE.

See Action — Administration Order — Administration ad Litem — Appeal to Court of Appeal — Appeal to Divisional Court—Appeal to High Court — Appeal to Supreme Court of Canada—Appearance — Arbitration and Award, 1 — Arrest — Bail — Building Society — Certiorari — Company, 14 — Costs — County Courts—Courts—Creditors' Relief Act — Discovery—Division Courts—Evidence—Execution, 2—Executors and Administrators, 7—Infant—Injunction — Judgment — Judgment Debtor—Jury—Jury Notice—Lis Pendens — Lunatic—Mechanics' Liens, 1 — Mortgage, 4—Municipal Elections, 1, 2, 5, 6—Parliamentary Elections, 1-6, 14—Particulars — Parties—Pleading—Referees — Settled Estates Act — Solicitor, 1—Venue—Writ of Summons.

PREFERENCE.

See Bankruptcy and Insolvency.

PRESCRIPTION.

See Limitation of Actions,—Water and Watercourses, 5—Way, 14.

PRESSURE.

See Bankruptcy and Insolvency.

PRESUMPTION.

See Bankruptcy and Insolvency—Municipal Elections, 7.

PRINCIPAL AND AGENT.

1. Commission on Sale of Land — Re-opening Negotiations — Agent's Advertising Expenses: *Thompson v. King*, 119.
2. Company—Liability of — Holding out of Person as General Manager — Costs: *Davis v. Rideau Lake Navigation Co.*, 229.
3. Contract of Agent — Negligent Performance—Fire Insurance — Damages. *Baxter v. Jones*, 554; 4 O. L. R. 541.
4. Purchase of Goods by Agent — Commission—Damages: *Henry v. Ward*, 652.
5. Undisclosed Principal — Action by Agent—Breach of Contract—Construction of Roof — Guarantee—Representation as to Ownership—Addition of Principal as Party—Recovery—Damages: *Abbott v. Atlantic Refining Co.*, 701; 4 O. L. R. 701.

See Bills of Exchange and Promissory Notes, 3, 4—Company, 6 — Insurance, 3, 16—Master and Servant, 1 — Solicitor, 3 — Specific Performance, 1, 3—Writ of Summons, 1.

PRINCIPAL AND SURETY.

See Guaranty.

PRIVATE INTERNATIONAL LAW.

See Lunatic.

PRIVILEGE.

See Defamation, 1, 2, 3—Discovery.

PRODUCTION OF DOCUMENTS.

See Discovery.

PROHIBITION.

See County Courts, 1—Division Courts.

PROMISSORY NOTES.

See Bills of Exchange and Promissory Notes—Contract, 3.

PROVINCIAL LEGISLATURES.

See Constitutional Law.

PUBLIC HEALTH.

Contagious Disease — Service of Physician—Remuneration—Action to Recover—Board of Health—Medical Health Officer — Liability—Mandamus—Costs: Bibby v. Davis, 189.

PUBLIC SCHOOLS.

See Schools.

PUBLICATION.

See Defamation, 1.

RAILWAYS.

1. Bonds—Collateral Security—Injury—Judgment — Reference: Knickerbocker Trust Co. of New York v. Brockville, Westport, and Sault Ste. Marie R. W. Co., 311.
2. Carriage of Goods—Non-delivery — Place—Refusal to Accept—End of Transitus — Bailies — Damages: Frankel v. Grand Trunk R. W. Co., 254, 339, 396.
3. Carriage of Goods—Misdelivery—New Contract — Breach — Negligence: Armstrong v. Michigan Central R. W. Co., 714.
4. Highway Crossing—Compensation to Municipality—Private Ownership — Construction—"at or near" City—Power to take through County: Montreal and Ottawa R. W. Co. v. City of Ottawa, 349; 4 O. L. R. 56; Canada Atlantic R. W. Co. v. City of Ottawa, 377; 4 O. L. R. 75.
5. Injury to Passenger—Alighting from Moving Car — Contributory Negligence. Keith v. Ottawa and New York R. W. Co., 104, 749; 3 O. L. R. 265.
6. Injury to Person Crossing Tracks—Negligence — Proximate Cause — Right to Lay Tracks: Bonville v. Grand Trunk R. W. Co., 304.

7. Injury to Person Crossing Tracks—Negligence — Contributory Negligence—Findings of Jury: Lennox v. Grand Trunk R. W. Co., 771.

8. Injury to Person—Negligence of Servants — Crossing — Non-repair of Highway—Municipal Corporation—Damages—Loss of Consortium: Holden v. Township of Yarmouth, 557.

9. Passenger—Special Contract—Conditions—Failure to Perform—Ejection from Train: Taylor v. Grand Trunk R. W. Co., 447; 4 O. L. R. 357.

10. Pleading—Amendment — Damages—Removal of Workshops—Statutes—Town of Whitby v. Grand Trunk R. W. Co., 292; 3 O. L. R. 536.

See Arbitration and Award, 1, 4—Costs, 4—Discovery, 3 — Judgment, 2 — Municipal Corporations, 10 16 — Street Railways—Way, 14, 17.

RATES.

See Assessment and Taxes.

RATIFICATION.

See Bills of Exchange and Promissory Notes, 8—Infant, 2, 7—Ship, 2.

REAL PROPERTY LIMITATION ACT.

See Limitation of Actions.

RECEIPT.

See Insurance, 6.

RECEIVER.

See Costs, 7—Fraudulent Conveyance, 3—Judgment Debtor, 4.

RECORD OF ACQUITTAL.

See Malicious Arrest and Prosecution, 2.

RECOUNT.

See Parliamentary Elections, 9-14.

REDEMPTION.

See Assessment and Taxes, 13—Deed, 1—Mortgage, 9.

REFEREES.

Drainage Referee—Official Referee—Arbitration Act: McClure v. Township of Brooke, Bryce v. Township of Brooke, 274, 324, 835; 4 O. L. R. 97.

See Sale of Goods, 1.

REFERENCE.

Stay of, pending Appeal from Judgment Directing Reference: *Monro v. Toronto R. W. Co.*, 813.

See Covenant, 1—Dower, 5—Judgment, 5—Lunatic, 2—Mortgage, 8—Railways, 1—Specific Performance, 13—Street Railways, 5—Will, 26.

REFORMATION.

See Contract, 11—Deed, 6, 7.

REGISTRY LAWS.

See Estoppel, 2.

RELEASE.

See Mortgage, 5, 6—Pleading, 1.

RELIEF OVER.

See Parties, 10—Way, 7.

REPORT.

See Appeal to Divisional Court, 4—Dower, 5—Interest, 2—Lunatic, 2—Will, 26.

RES JUDICATA.

Division Court Action—Settlement before Trial—No Bar to Subsequent Action. *Williams v. Cook*, 133.

See Company, 5—Schools, 5—Will, 32—Writ of Summons, 5.

RESCISSION OF LEASE.

See Landlord and Tenant, 11.

RESIDENCE.

See Lunatic.

RESTRAINT OF TRADE.

See Covenant.

RESTRAINT OF ALIENATION.

See Will, 31, 32.

REVENUE.

Succession Duty—Provisions of Will—Future Estates—Future Enjoyment—Duty not Presently Payable: *Attorney-General v. Toronto General Trusts Corporation*, 807.

See Copyright—Will, 35.

REVERSION.

See Waste.

REVOCATION.

See Executors and Administrators, 8—Will, 1.

RIGHT OF WAY.

See Easement, 2—Mortgage, 5, 6.

RIVERS AND STREAMS.

See Water and Watercourses.

RULE NISI.

See Criminal Law, 10.

RULES OF COURT.

See Mechanics' Liens, 1—Parties, 1.

SALE OF GOODS.

1. Action for Price—Counterclaim for Damages—Report of Referee—Varying on Appeal—Further Directions—Costs: *Centaur Cycle Co. v. Hill*, 229.
2. Conditional Sale—Hire Receipt—Removal of Goods: *Sharkey v. Williams*, 135, 419.
3. Conditional Sale—Name of Vendor—Option to Purchase: *Mason v. Lindsay*, 561, 583; 4 O. L. R. 36.
4. Contract—Breach—Warranty—Defect: *Williams v. Cook*, 133.
5. Counterclaim—Onus: *Rat Portage Lumber Co. v. Kendall*, 197.
6. Entire Contract—Property not Passing—Action for Price—Deduction for Defects—Damages: *Cromnton and Knowles Loom Works v. Hoffman*, 717.
7. Payment for—Covenant—Action on—Counterclaim for Non-delivery of Part—Nominal Damages: *Delahey v. Reid*, 522.
8. Property not Passing—Breach of Warranty—Counterclaim—Pleading: *Marks v. Waterous Engine Works Co.*, 148.
9. Refusal of Vendor to Deliver until Payment—Breach of Contract—Damages—Reference: *Phelps v. McLachlin*, 806.
10. Unascertained Goods—Contract—Appropriation—Passing of Property—Acceptance and Part Payment: *Southampton Lumber Co. v. Austin*, 548.

11. Warranty—Breach — Remedy—Contribution: Ferguson v. Arkell, 190.

See Guaranty, 2—Interest, 2—Pleading, 7.

SALE OF LAND.

See Company, 3—Dower, 5—Execution, 4—Partition, 2—Principal and Agent, 1—Specific Performance—Timber and Trees, 2—Vendor and Purchaser.

SCALE OF COSTS.

See Costs, 7.

SCHOOLS.

1. Public Schools —Expenditure — Annual Estimates—Powers and Duties of Municipal Council and School Board: Re Toronto Public School Board and City of Toronto, 443; 4 O. L. R. 468.
2. Public Schools—Model School—Town Separate from County—Liability of County: Toronto Junction Public School Board v. County of York, 216; 3 O. L. R. 416.
3. Public School Sections—Alteration of Boundaries—Reference — Award — Union instead of Alteration: Re Southwold School Section, 32; 3 O. L. R. 81.
4. Public School Site—Change of—Meeting of Ratepayers—Arbitration—Invalid Award—Mandamus: Re Cartwright School Trustees and Township of Cartwright, 387, 477; 4 O. L. R. 272, 278.
5. Public School Site—Change of—Trustees — Adoption by Ratepayers—Meeting — Resolution — Minutes—Evidence dehors — Inspector—Arbitration—Award — Injunction — Estoppel—Res Judicata—Reverting to Former Site after Change—Resolution of Ratepayers — Poll—Qualification of Voters—Scrutiny: McLean v. Robertson, 578.

SEAL.

See Company, 2.

SECURITY FOR COSTS.

See Appeal to Court of Appeal, 1, 10, 18—Costs, 10-14.

SEDUCTION.

Evidence — Action Brought for Daughter's Benefit—Judge's Charge—Credibility of Witnesses — Rejection of Evidence—Miscarriage: Grainger v. Hamilton, 819.

SERVICE OF PAPERS.

See Execution, 3—Mechanics' Liens, 1—Parliamentary Elections, 1—Writ of Summons.

SERVITUDE.

See Easement.

SESSIONS.

See Certiorari.

SET-OFF.

See Appeal to Court of Appeal, 18—Contract, 19—Costs, 15 — District Courts—Execution, 3 — Work and Labour.

SETTLED ESTATES ACT.

Leave to Petition under—Status of Applicants: Re Asselstine, 178.

SETTLEMENT OF ACTION.

See Parties, 9—Res Judicata — Solicitor, 1.

SHARES.

See Building Society — Company, 4-8, 10-12—Contract, 5 — Fraud and Misrepresentation, 2, 3—Particulars, 3.

SHERIFF.

See Chose in Action—Trade Mark, 3.

SHIP.

1. Charterparty — Breach — Time — "Load," Meaning of—Measure of Damages: Midland Navigation Co. v. Dominion Elevator Co., 593.
2. Contract to Sell—Co-owners—Partnership—Authority of One-Co-owner to Bind the Other—Ratification—Specific Performance — Damages: Bentley v. Murphy, 273, 726, 845.

SLANDER.

See Defamation—Injunction, 2.

SOLICITOR.

1. Costs—Collusive Settlement of Action—Notice of Lien: *McCauley v. Butler*, 72, 343.
 2. Investment of Money — Liability to Client—Guaranty: *Lewis v. Ellis*, 356.
 3. Right of Commission on Sale—Disclosure of Agency: *McCullough v. Hull*, 451.
 4. Solicitor's Costs—Consolidation of Actions: *Re Wickett*, 554.
- See Costs, 8—Discovery, 7, 12—Gift, 1, 2—Master and Servant, 19—Parliamentary Elections, 4, 14—Parties, 5—Specific Performance, 2—Trusts and Trustees, 1, 3.

SPECIFIC PERFORMANCE.

1. Agent—Fraud — Amendment—Delay: *Aitcheson v. McKelvey*, 51, 355.
2. Contract for Sale of Land—Alteration of Written Offer—Onus—Damages—Pleading — Division Court — Claim within Jurisdiction of—Costs—Solicitor: *Prittie v. Loughton*, 185.
3. Contract for Sale of Land — Correspondence — Statute of Frauds — Agent: *White v. Malcolm*, 302.
4. Contract for Sale of Land—Possession: *Abbott v. Gustin*, 482.
5. Contract for Sale of Land—Possession—Waiver — Improvements—Account—Title by Possession — Costs: *Rankin v. Sterling*, 243; 3 O. L. R. 646.
6. Contract for Sale of Land—Shortage — Statement of Vendor — Lacnes: *Reilly v. McDonald*, 196.
7. Contract for Sale of Land—Time—Essence of—Delay—Waiver: *Long v. Eby*, 420.
8. Contract for Sale of Land—Verbal Contract — Possession — Part Payment—Conveyance: *McLaughlin v. Mayhew*, 308.
9. Contract to Incorporate Company — Sale of Mining Land — Foreign Incorporation — Pleading — Amendment: *Clark v. Walsh*, 228.
10. Lease—Possession — Verbal Agreement for Purchase—Acts Referable to Agreement: *Howard v. Quigley*, 96.

11. Lease—Undertaking to Build—Non-performance in Lifetime of Lessor — Devise to Lessee—Damages: *Re Murray*, 576; 4 O. L. R. 418.
12. Part Performance of Contract for Sale of Land — Evidence of Acts Constituting: *Bodwell v. McNiven*, 841.
13. Timber Limits—Contract for Sale of — Correspondence—Completed Contract — Statute of Frauds — Misunderstanding—Title — Judgment — Reference: *Benton v. Playfair*, 599.

See Partnership, 3—Ship—Street Railways, 5.

STATEMENT OF CLAIM.

See Mechanics' Liens, 1—Pleading, 5-10 Trade Mark, 5.

STATEMENT OF DEFENCE.

See Pleading, 11.

STATUTE OF FRAUDS.

See Guaranty, 1, 2—Master and Servant, 4—Partition, 2—Specific Performance, 3, 13—Will, 31.

STATUTE OF LIMITATIONS.

See Limitation of Actions.

STATUTES.

See Appeal to Court of Appeal, 6, 7, 8—Arbitration and Award, 3—Assessment and Taxes, 2, 5, 16—Constitutional Law — Copyright—Mechanics' Liens, 1—Municipal Corporations, 8, 9, 11 — Railways, 10 — Street Railways, 5 — Timber and Trees, 1—Trusts and Trustees, 1—Will, 33.

STAY OF PROCEEDINGS.

See Action, 1—Appeal to Court of Appeal, 20—Insurance, 13 — Patent for Invention, 4—Pleading, 6.

STREAMS.

See Water and Watercourses.

STREET RAILWAYS.

1. Injury to Passenger—Scope of Conductor's Authority: *Dawdy v. Hamilton, Grimsby, and Beamsville Electric R. W. Co.*, 364, 781.

2. Injury to Person—Negligence—Accident — Evidence — Misdirection — Damages—New trial: *Witty v. London Street R. W. Co.*, 288.
 3. Injury to Person — Negligence—Collision — Contributory Negligence — Proximate Cause: *O'Hearn v. Town of Port Arthur*, 373; 4 O. L. R. 209.
 4. Injury to Person—Negligence—Duty — Jury—Damages — Reduction of: *Ford v. Metropolitan R. W. Co.*, 318; 4 O. L. R. 29.
 5. Municipality—Agreement with — Specific Performance — Bond—Injunction — Reference as to Damages — Transportation of Freight—Resolution of Council—Statutes, City of Ottawa v. Ottawa Electric R. W. Co., 830.
- See Assignment and Taxes, 12, 16 — Way, 12.

SUBPENA.

See Discovery, 5.

SUBROGATION.

See Dower, 4—Tenant for Life.

SUCCESSION DUTY.

See Revenue.

SUMMARY CONVICTION.

See Criminal Law.

SUMMARY JUDGMENT.

See Judgment, 6, 7.

SUMMARY TRIAL.

See Criminal Law.

SUNDAY.

See Constitutional Law, 2—Contract, 7 —Landlord and Tenant, 11.

SUPREME COURT OF CANADA.

See Appeal to Supreme Court of Canada.

SURGEON.

See Medical Practitioner.

SURROGATE COURTS.

See Appeal to Court of Appeal, 17—Appeal to Divisional Court, 3—Executors and Administrators, 8.

SURVEY.

Village Lots—Authorization—Statutory Requirements — Order in Council — Resolutions of Municipal Council — By-law — Cost of Survey — Assessment for: *Sutton v. Village of Port Carling*, 67; 3 O. L. R. 445.

See Criminal Law, 9—Way, 16.

SURVIVORSHIP.

See Gift, 1.

TAX SALE.

See Assessment and Taxes, 11, 13, 14, 15—Municipal Corporations, 21.

TAXATION OF COSTS.

See Costs, 15, 16—Executors and Administrators, 3.

TAG SALE.

See Assessment and Taxes, 13, 14, 15 —Parties, 10.

TAXES.

See Assessment and Taxes.

TELEPHONE.

See Constitutional Law, 1.

TENANT BY THE CURTESY.

See Partition, 3—Title to Land, 3.

TENANT FOR LIFE.

Waste — Cutting Timber — Remainderman—Injunction — Mortgage—Subrogation: *Whitesell v. Reece*, 516.

TENANTS IN COMMON.

See Execution, 1—Partition, 4.

TENDER.

See Mortgage, 4.

THEFT.

See Criminal Law, 13.

THIRD PARTIES.

See Indemnity—Parties, 2, 8, 9, 10.

TIMBER AND TREES.

1. Growing Trees — Highway — "Left Standing" — Municipal Corporation — Statutes: *Wolf v. Kehoe*, 78.

2. Sale of Standing Timber—Interest in Land—Vendor's Lien — Injunction: *Ford v. Hodgson*, 121; 3 O. L. R. 526.

See Contract, 12, 14, 16—Conversion, 2 — Municipal Corporations, 16 — Specific Performance, 13 — Tenant for Life—Trespass, 1—Waste.

TIME.

See Appeal to Court of Appeal, 1—Appeal to Supreme Court of Canada, 3 — Assessment and Taxes, 1 — Bankruptcy and Insolvency, 3, 4—Contract, 2, 7—Costs, 17—Criminal Law, 11—Jury — Malicious Arrest and Prosecution, 1 — Parties, 8—Patent for Invention, 2—Pleading, 6 —Ship, 1—Specific Performance, 7.

TITLE TO LAND.

1. Registered Title — Appurtenances: *Greisman v. Fine*, 479.
2. Registered Title—Real Property Limitation Act; Central Canada L. & S. Co. v. Porter, 482.
3. Statute of Limitations—Declaration—Pleading—Possession—Tenancy by the Curtesy—Devolution of Estates Act—Improvements: *Chevalier v. Trepannier*, 847.

See Vendor and Purchaser, 4.

TOLLS.

See Water and Watercourses, 4.

TORT.

See Division Courts, 7.

TRADE MARK.

1. Infringement—Trade Union—User by Non-members: *Robinson v. McLeod*, 83.
2. Proper Subject of—Words of Description—Right of User—Injunction—Abandonment: *Gillett v. Lumsden*, 488; 4 O. L. R. 300.
3. Purchaser from Sheriff under Execution — Right to Restrain Infringement: *Gegg v. Bassett*, 3 O. L. R. 263.
4. Registration — Descriptive Letters—Secondary Meaning — Proof of Acquisition of — Fraud—Deception — Infringement — Delay and Acquiescence—Injunction—Damages — Inquiry: *Provident Chemical Works v. Canada Chemical Mfg. Co.*, 618; 4 O. L. R. 545.

5. Statement of Claim — Particulars—Infringement: *Morrison v. Mitchell*, 838.

See Industrial Design—Particulars, 4—Pleading, 2, 4.

TRADE NAME.

Infringement — “Caledonia Water” — Geographical Designation: *Grand Hotel Co. of Caledonia Springs v. Wilson, Grand Hotel Co. of Caledonia Springs v. Tune*, 785.

TRADE UNION.

See Trade Mark, 1.

TRANSIENT TRADERS.

See Municipal Corporations, 9.

TREES.

See Timber and Trees.

TRESPASS.

1. Entry on Land — Cutting Timber — Measure of Damages — Distinction between Trespass and Trover: *Union Bank of Canada v. Rideau Lumber Co.*, 764; 4 O. L. R. 721.
2. To Land — Boundaries — Middle of Stream: *Wason v. Douglas*, 552.

See Conversion, 2—Master and Servant, 13—Vendor and Purchaser, 1.

TRIAL.

See Costs, 18—Criminal Law—Deed, 1 — Evidence, 1—Injunction, 3—Jury — Jury Notice — Malicious Arrest and Prosecution, 2-4—New Trial — Parties, 11—Street Railways, 2, 4 — Venue.

TROVER.

See Conversion—Trespass, 1.

TRUSTEE RELIEF ACT.

See Insurance, 15.

TRUSTS AND TRUSTEES.

1. Liability for Default of Co-trustee — Active Trustee—Request of Testator — Solicitor—Technical Breach—Excuse—Statute: *Dover v. Denne*, 297; 3 O. L. R. 664.
2. Lien—Abortive Sale — Foreclosure—Purchase by Trustee: *Hutton v. Justin*, 64.

3. Remuneration of Trustee—Quantum of Allowance — Capital—Income—Solicitor-trustee — Profit Costs: Re Williams, 534; 4 O. L. R. 501.

4. Right of Beneficiary to Enforce Trust: Morse v. Morse, 500.

See Assessment and Taxes, 3, 9, 10—Bankruptcy and Insolvency, 7 — Bills of Sale and Chattel Mortgages, 3—Building Society—Church—Contract, 10—Deed, 5—Evidence, 2, 6—Executors and Administrators—Insurance, 12—Pleading, 3—Schools, 5—Will, 12, 14, 21, 44.

UNDERTAKING.

See Action, 3—Division Courts 1—Executors and Administrators, 7—Injunction, 3 — Municipal Corporations, 24 — Specific Performance, 11.

UNDUE INFLUENCE.

See Deed, 2, 3—Gift, 3, 4—Will, 2, 41.

VACATION.

See Appeal to Divisional Court, 5.

VALUATION.

See Landlord and Tenant, 4, 5—Partition, 2.

VEHICLES.

See Municipal Corporations, 5, 10.

VENDOR AND PURCHASER.

1. Action for Purchase Money—Evidence—Trespass to Goods: Grear v. Mayhew, 529.

2. Action for Purchase Money—Evidence—Weight of — Corroboration: Murray v. Empire L. & S. Co., 310.

3. Delivery of Conveyance — Covenant for Possession—Enforcement: Ham v. Pillar, 259.

4. Doubtful Title—Forcing on Purchaser: Re Campbell and Horwood, 139.

5. Sale of Land Devised by Will — Charge of Debts—Powers of Executors—Devises — Widow—Dower—Parties to Conveyance — Election: Re Bradburn and Turner, 152; 3 O. L. R. 351.

See Fixtures—Specific Performance — Timber and Trees, 2.

VENUE.

1. Agreement as to before Action: Dulmage v. White, 4 O. L. R. 121.

2. Change of—Speedy Trial—Postponement of Sittings—Second Application by Plaintiffs for Change: Whelihan v. Hunter, 788.

VOTERS' LISTS.

See Parliamentary Elections, 10.

WAGES.

See Division Courts, 8.

WAIVER.

See Contract, 2, 4—Covenant, 1—Criminal Law, 1—Deed, 1—Insurance, 1, 2—Landlord and Tenant, 3, 5—Master and Servant, 6—Mortgage, 4—Pleading, 5—Specific Performance, 5, 7.

WAREHOUSEMAN.

See Bailment.

WAREHOUSE RECEIPTS.

See Malicious Arrest and Prosecution, 3.

WARRANTY.

See Principal and Agent, 5 — Sale of Goods, 4, 8, 11.

WASTE.

Cutting Timber—Injury to Reversion — Injunction — Damages: Ryan v. Ryan, 824.

See Tenant for Life.

WATER AND WATERCOURSES.

1. Change in Course of Stream — Accretion—Reliction—Easement—Possessory Title: Massey-Harris Co. v. Elliott, 65.

2. Dam—Diversion of Waters—Riparian Proprietor—Order of Judge—Notice: McCready v. Gananoque Water Power Co., 438.

3. Ditches and Watercourses Act—Construction of Ditch — Deepening — Jurisdiction of Engineer: Lamphier v. Stafford, 329.

4. Injury to Land by Flooding—Damages—Summary Procedure—Costs—Dam—Owners—Tolls—Users. *Neely v. Peters*, 499; 4 O. L. R. 293.
5. Obstruction of Stream—Prescription—Mandatory Injunction—Damages: *Saunby v. London Water Commissioners*, 567.

See Easement, 2—Municipal Corporations, 23—Trespass, 2.

WAY.

1. Non-repair—Injury to Person—Death Caused by — Municipal Corporation—Negligence—Proximate Cause — Contributory Negligence: *Gaby v. City of Toronto*, 440.
2. Non-repair—Injury to Person — Ice and Snow—Municipal Corporation—Gross Negligence: *Mann v. City of St. Thomas*, 480.
3. Non-repair—Injury to Person—Knowledge of Municipal Corporation — Causa Causans—Findings of Trial Judge—Appeal — Excessive Damages: *Luton v. Township of Yar-mouth*, 40.
4. Non-repair—Injury to Person—Knowledge of Municipal Corporation — Negligence—Damages: *McGarr v. Town of Prescott*, 53, 439; 4 O. L. R. 280.
5. Non-repair—Injury to Person—Liability of Municipal Corporation — Nonfeasance — Limitation of Actions: *Minns v. Village of Omeme*, 362.
6. Non-repair—Injury to Person—Municipal Corporation — Carriageway — Footway — Finding of Fact—Interference on Appeal: *Belling v. City of Hamilton*, 124; 3 O. L. R. 318.
7. Non-repair—Injury to Person—Municipal Corporation—Gas Company — Relief Over: *McIntyre v. Town of Lindsay*, 492; 4 O. L. R. 448.
8. Non-repair—Injury to Person—Municipal Corporation — Negligence — Bridge—Traction Engine: *Pattison v. Township of Wainfleet*, 407.
9. Non-repair—Injury to Person—Sidewalk—Snow and Ice — Municipal Corporation: *Madill v. Township of Caledon*, 299; 3 O. L. R. 555.
10. Non-repair—Injury to Person—Sidewalk—Snow and Ice — Municipal Corporation — Gross Negligence: *Stevens v. City of Chatham*, 199.
11. Non-repair—Injury to Person—Accumulation of Snow — Liability of Township Corporation: *Hogg v. Township of Brooke*, 568.
12. Non-repair — Injury to Property — Guard at Approach to Bridge—Negligence — Municipal Corporation — Street Railway: *Summers v. County of York*, 137.
13. Private Way—Building—Mandatory Injunction: *Scott v. Barron*, 558.
14. Private Way—Easement—Prescription—Railway Lands—User not Incompatible with Requirements of Railway: *Grand Trunk R. W. Co. v. Valliear*, 695.
15. Private Way — Easement—Implied Grant—Intention: *Styles v. Towers*, 533.
16. Public Highway between Townships — Existence and Location of — Boundary Line—Records of Crown Lands Department—Surveys—Field Notes: *Township of Lochiel v. Township of East Hawkesbury*, 664.
17. Road Allowance—Obstruction—Railway—Fences — Municipal Corporation—By-law — Injunction — Jurisdiction: *Township of Gloucester v. Canada Atlantic R. W. Co.*, 63, 485; 3 O. L. R. 85, 4 O. L. R. 262.

See Arbitration and Award, 4—Assessment and Taxes, 6—Constitutional Law, 1—Criminal Law, 9 — Easement, 2—Mortgage, 5, 6—Municipal Corporation, 10, 12, 14, 19, 20 — Negligence, 4 — Railways—Timber and Trees, 1.

WILL.

1. Action to Establish—Loss of Original — Proof of Copy—Evidence of Revocation—Parties—Administrator pendente Lite: *Stewart v. Walker*, 489.
2. Action to Set aside — Application for Probate—Withdrawal of Caveat — Burden of Proof — Testamentary Capacity—Undue Influence: *Northmore v. Abbott*, 231.
3. Action to Set aside—Costs—Separate Defence: *Slaven v. Slaven*, 410.

4. Construction—Absolute Interest—Gift—Intestacy: Re Chapman, 434; 4 O. L. R. 130.
5. Construction—Bequest — “Chattels”—Mortgage: Re McMillan, 471; 4 O. L. R. 415.
6. Construction — Bequest for Life to Widow—Use in Specie of Furniture—Income: Valteau v. Valteau, 65.
7. Construction—Bequest of Interest on Payments by Devisees—Sale in Lifetime of Testator of Land Devised—Failure of Bequest. Heffernan v. McNab, 165.
8. Construction—Conversion — Mortgage—Intestacy — Residuary Legatee—Executors: Re Moore, 50.
9. Construction—Distribution of Estate “Heirs” — “Next in Heirship” — Period of Ascertainment: Re Gardner, 157; 3 O. L. R. 343.
10. Construction — Election — Dower — Annuitant — Lapse — Intestacy — “Balance.” Re Newborn Toronto General Trusts Corporation v. Newborn, 122.
11. Construction—Estate Tail: Re McAllister, 230.
12. Construction—Executors—Power to Sell—Real Estate Undisposed of — Intestacy—Trust: Re Campbell and Horwood, 139, 396.
13. Construction—Executory Devise — Period of Vesting—Majority—Death of Life Tenant — Double Event: Evans v. Evans, 69, 233.
14. Construction — Legacies — Period of Vesting—Distribution—Realty and Personality — sale — Direction to Trustees: Smith v. Mason, 478.
15. Construction — Legacy — Interest—Accumulation — Limitation — Condition — “Against:” White v. McLagan, 59.
16. Construction — Legacy — Period of Vesting — Direction to Distribute Estate — Discretion of Executors: Re Burch, 436.
17. Construction—Legacy—Support and Maintenance — Absolute Gift—Life Interest—Discretion of Executors: Re Evans, 92; 3 O. L. R. 401.
18. Construction—Life Estate: Re Padget and Curren, 427.
19. Construction — Alternative Disposition—Death of Testator and Wife “at the Same Time”—Lapse of Sixteen Days between Deaths—intestacy: Henning v. Maclean, 657; 4 O. L. R. 666.
20. Construction — Annuities — Setting apart Fund for—Deficiency of income — Encroaching on Principal—Rights of Residuary Legatees: Re McKenzie, 739; 4 O. L. R. 707.
21. Construction — Bequest for Use of Church—Trust—Mixed Fund—Perpetuity. Re Johnston, Chambers v. Johnston, 806.
22. Construction—Conflicting bequests of Personality — Reconciling—Ejusdem Generis Rule — Residuary Bequests: Re Pink, 772; 4 O. L. R. 718.
23. Construction—Distribution of Estate — Income—Corpus: Re Butler 826.
24. Construction — Executors — Mortgage—Covenant for Payment—Possession: Haight v. Dangerfield, 551.
25. Construction—Fund for Payment of Debts, etc.—Specific Legacies: Re Page, 849.
26. Construction—Gift—Intention to Include Choses in Action—Reference — Appeal from Report—Looking at Original Will—Costs: Thorne v. Parsons, 608; 4 O. L. R. 682.
27. Construction—Legacies — Conditions — Defeasance — Payment before Period Mentioned in Will: Re Shore, 586.
28. Construction—“Personal Representatives”—Executors or Next of Kin —Part Intestacy—Rights of Widow —Advertisement for Creditors. Re Daubeny, 773.
29. Construction—Provision for Maintenance of Person — Alternative Provision: Leduc v. Booth, 800.
- 29(a). Construction — Devise to Wife Subject to Condition of Making a Will in Favour of Children: in re Turner, 4 O. L. R. 578.
30. Death without Issue—Executory Devise—Power of Sale—Executors—Representatives of: Re Fitzsimmons, 220.

31. Devise—Description of Land—Statute of Frauds—Identifying Land—Restraint on Alienation—Invalidity—Repugnancy: Re Corbett and Hartin, 744.
32. Devise—Restraint on Alienation—Validity—Case Stated—Reference to Divisional Court—Res Judicata: Re Phelan, 741.
33. Devise in Trust for Church after Expiry of Life Estate—Time of Making Will—Statutes: Re Naylor, 809.
34. Direction to Pay Debts out of Estate—Specific Devise of Personalty—Residuary Devise of Money and Securities: Re Anderson, 217.
35. Executors—Legacy Duty—Discretion—Residue—Crediting Legacy on Mortgagor—Predecease of Legatee—Lapse. Re Holland, 73; 3 O. L. R. 406.
36. Executors—Power to Mortgage or Sell Land—Directions of Will: Re Crawford, 470; 4 O. L. R. 313.
37. Legacy—Ademption—Evidence: Tuckett-Lawry v. Lamoureux, 295; 3 O. L. R. 577.
38. Legacy—Infant—Payment at Majority—Interest: Re Perrin, 209.
39. Legacy—Mixed Fund—Interest—Majority: Re Scadding, 467, 683; 4 O. L. R. 632.
40. Legacy—Charge on Land—Interest—Legatee also Administrator with Will Annexed—Statute of Limitations: Re Yates, 630; 4 O. L. R. 580.
41. Testamentary Capacity—Undue Influence—Onus: Purdy v. Purdy, 449.
42. Testamentary Capacity—Unsustained Charges of Fraud—Costs: Taylor v. Delaney, 409.
43. Testamentary Capacity—Senile Dementia—Insane Delusions—Comprehension of Terms of Will—Attack on Will by Person Accepting Benefit—Costs: McGarrigle v. Simpson, 685.
44. Trustees—Advances—Division of Estate—Discretion: Hospital for Sick Children v. Chute, 321; O. L. R. 590.

See Contract, 1—Dower, 1, 2—Executors and Administrators—Infant, 1—Insurance, 10, 12—Liquor License Act, 1—Partition, 1—Revenue—Vendor and Purchaser, 5.

WINDING-UP.

See Company, 8-14.

WITNESSES.

See New Trial—Seduction.

WORK AND LABOUR.

Agent—Joint Liability—Guaranty—Damages for Unskilful Work—Set-off or Counterclaim—Costs: Kelso v. Thompson, 176.

See Contract, 17—District Courts—Mechanics' Liens.

WORKMEN'S COMPENSATION ACT.

See Master and Servant.

WRIT OF SUMMONS.

1. Service on Insurance Company—Power of Attorney—Removal of Office from Province: Armstrong v. Lancashire Fire Ins. Co., 3 O. L. R. 395.
2. Service out of Jurisdiction—Contract—Breach within Ontario—Traveller: Lovell v. Coles, 3 O. L. R. 291.
3. Service out of Jurisdiction—Contract—Place of Performance—Quebec Law—Discretion: Phillips v. Malone, 200; 3 O. L. R. 492.
4. Service out of Jurisdiction—Order for Leave to Issue Writ—Fixing Time for Appearance—Parties—Separate Causes of Action—Joinder of: Jones v. Bissonette, 13; 3 O. L. R. 54.
5. Service out of Jurisdiction—Foreign Company—Transfer of Assets in Ontario to Ontario Company—Action to Set aside—Conditional Appearance—Res Judicata: Mackay v. Colonial Investment and Loan Co., 569, 592, 646; 4 O. L. R. 571.

See Bills of Sale and Chattel Mortgages, 4—Interest, 2—Pleading, 9.

74

7