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It is interesting at this time to note that the first "counsel learned in the law" of a British sovereign was a Queen's Counsel —Bacon having received this honour from Queen Elizabeth. It is also a matter of history that the silk robes worn by King's counsel or Queen's counsel owed their origin to the mourning costume adopted on the death of Queen Anne, as to which it has been said that "The bar went into mourning and have never since left that mourning off." That which was only a witty saying so far as Queen Anne was concerned will be the heart truth as to the great and beloved Queen whose irreparable loss the Bar of Canada mourns with the rest of the loyal subjects of the Crown.

The following graceful tribute to the memory of our Queen comes to us from a leading lawyer in New York. It is very pleasing and grateful to us all at this time. It is one of the many exhibitions of the love and reverence in which she was held by our Anglo-Saxon kinsmen of the great Republic whose forebears came from the same stock as ourselves:—"Will you accept my sincere sympathy with you all and all Britons in your sorrow at the death of the Queen. I realize that probably none but her subjects can quite understand what it means to lose both a Sovereign and an ideal; but I should like to bear witness that just because she was an ideal her sway extended far beyond the limits within which she was Sovereign, and the whole world mourns with the British Empire. You would be deeply impressed could you see here in New York the general evidences of sincere sorrow and the general display of half-masted flags on Government and private buildings. Personally I have felt the greatest solicitude during her critical illness and sorrow at her death, and I want you to be assured of my sympathy and of that of my countrymen universally, because I feel that it cannot but be acceptable to our kinsmen."

We publish in other places in this issue a variety of views as to the proposed changes in the constitution of the Courts and the administration of justice in Ontario. While we sympathize with those of the profession outside the City of Toronto who desire that so far as possible the legal work of a County should be done at the county town rather than in Toronto, we desire to urge upon them to consider very seriously whether the decentralization sought for and specially referred to in the memorandum of the Essex Law Association, would not in the end be highly injurious to Bench and Bar and to the best interests of the public.

As to the Division Courts, we are strongly of the opinion that they should not be interfered with, except for the purpose of reducing the Court fees. If necessary, have fewer Courts, and, therefore, fewer officers, with more work for each. There is no reason why the public should pay for the support of unnecessary officials. The difficulty is that as these are now appointed by the Government of the day instead of by the Judges, patronage would be lessened and this would be objected to by the politicians. Division Courts were intended to be and should remain as the poor man's Courts. An increase of jurisdiction would deprive them of that character and destroy their usefulness in that regard, without any compensating advantage. We are inclined to agree with one of the Law Associations in thinking that the above agitation for an increase of jurisdiction comes largely from the Division Court Clerks for their own purposes. And this carries us on to the further thought that if the profession had a rallying point, and were to combine to protect their rights as wisely and zealously as these and other organizations do there would be some chance for us; but unfortunately this is not the case.

The Hamilton Law Association in their answer to the Attorney-General makes what seems to us a very sensible suggestion, viz., that in view of the wide scope of the proposed amendment to the administration of the law a representative commission should be appointed to consider the whole question and to bring in a report to the Legislature. We have no doubt the Attorney-General will consider the matter very carefully, but there is no need of haste, and no one will be hurt if the matter lies over for

another year. A more mature consideration of the subject than can be given in the hurry of the present Session, especially when the Legislature is composed of only one chamber, is very desirable. The opinion of the profession has really not yet been fully obtained, and it is highly desirable that no change should be made until ample time has been given for discussion. Any legislation should have every chance of being of a reasonably permanent character; the everlasting tinkering with Acts of Parliament is a nuisance to all concerned, and is very much to be deprecated for a variety of reasons.

TRUSTS AND COMBINATIONS.

The tendency of the present day to convert all industrial concerns into joint stock companies, and subsequently to unite in one great combination all those engaged in any one particular trade, is something that deserves careful consideration from a legal as well as social point of view. Not that there is anything new in the principle upon which such concerns are based, or in the methods which have been adopted to prevent them. In the elementary form of *regrating* and *forestalling*, terms well known to the legal profession in early days, the germ of combination in restraint of trade may be found, and frequent enactments by the early English Parliaments were passed to control them—somewhat similar in principle, and equally useless in practice, to the law passed by our own parliament some years ago. But the trusts and combinations of the present day are of such magnitude, and attended with consequences so serious, that, in the United States, where the system has its rise, and where it has been most fully developed, very serious efforts have been made both by legislation and by proceedings in the courts, to meet the evils by which they are attended. It cannot be said that those efforts have been successful. The proverbial coach and six has been driven through the enactments, and the craft of the legal advisers of the trusts has been able to outwit the wisdom of the legislators, and evade the decisions of the bench. How important the subject is felt to be is shown by the numerous articles in legal journals in which it is discussed, and the numerous opinions which have been pronounced with regard to it.

In all these discussions, however, one important factor in the question is left out of consideration. That factor is the principle of protection without which these combinations would never have come into existence. It is not our province to enter into the merits or demerits of the system of protection, but there can be no question that one of the evils attending it is that by preventing outside competition it fosters the establishment of combinations by which competition from within is prevented and the largest possible profit secured. Our own experience, as well as that of the United States, gives abundant evidence of this, while, under the system of free trade, such combinations either do not exist or are harmless in their operation.

From the experience of the past, it seems doubtful whether any legislation can be effective in preventing such combinations as those now under consideration. It is, therefore, all the more necessary that we should carefully consider the points in which they injuriously affect the body politic, in view of the danger that if no remedy from legislation can be found, or no change in the fiscal system be adopted such as would prevent the evils complained of from arising, the whole fabric of trusts and combinations may not be swept away by a political convulsion, of which the immediate consequence would be the destruction of the capital which is now, by means of these combinations, creating a power dangerous to the State and oppressive to individuals.

It may not at first sight seem to be a matter of very much consequence whether a firm carries on its business under the name of "John Brown & Co.," or under the style of "The John Brown Co. (Limited)," but the effect of the change from the former to the latter must certainly be to weaken still further the personal tie which once existed between employers and employed. "John Brown" probably meant, and generally did mean, something to those who worked in his shop or his factory. There was more or less of human interest between John Brown and his men, and more or less of human sympathy; but the "John Brown Company," in which there may be no John Brown at all, is a mere abstraction—a mere corporation, in its very essence void of all human feeling, specially contrived for business, and business only, and freed from all considerations of sentiment. The "company" regards those who work for it just as it does its machinery of any other kind, out of which the maximum of gain is to be made at

the minimum of cost. The golden rule, the only rule by which intercourse between man and man, and therefore between employer and employed, can rightly be carried on—the rule of doing to others as we would they should do to us—has no recognition by a well-ordered company of this description. The employed, on the other hand, regard the company merely as a paymaster from whom the highest wages are to be got for the least amount of work. Hence, federation on the one side against unions on the other, followed by strikes and lockouts, with mutual losses and increase of ill-will, to say nothing of loss of trade, loss of employment, and loss of capital.

With the subsequent combination of a number of these concerns under one management, these evils are still further intensified, and, in addition, individual enterprise is kept down, no opening being left for its development, and all must submit to the yoke of the combination or be crushed out of existence. All control over vast industries employing thousands of men, and requiring millions of capital, is placed in the hands of one or two individuals, whose allegiance is to their shareholders only and whose only concern is the safety of their capital. Can anything be imagined more fatal to the healthy growth of any community?

While thus, on the one hand, we see capitalists combining ostensibly to limit production, control prices, and bring expenditure down to the lowest point, but really crushing competition, and, aided by a protective tariff, holding the consumers at their mercy; on the other, we find combinations of workmen which, if necessary as a means of self-defence, are equally destructive of personal independence and personal enterprise, reducing all to the dead level of mediocrity, and creating a tyranny which knows no law but that of absolute selfishness.

While the contest is thus going on between Capital and Labour, a contest is arising in another direction. A demand is being made that all industries in which the public are directly concerned, such as railways, telegraph and telephone lines, tramways, etc., shall be taken under State control, and carried on by the people for the people. Though chiefly supported on grounds of economy and on the established fact that such works can be so carried on at a reduced cost to the consumer and with profit to the ratepayer, this movement is really socialistic, is a direct attack upon capital, and opens the door to a vast field in which similar operations

could be carried on. There certainly can be no reason, if the Government can honestly and cheaply manage the carrying of letters, why they should not manage the telegraph and telephone lines; and, as in the operations of Government the question of profit does not arise, the public should benefit by the change.

There is no word of which the socialistic agitator can make so much use as that of "monopoly," and it is against all that can be brought under this name that the efforts of socialistic agitators are directed. And what are combinations such as we have been considering but monopolies? There are some concerns which, by their very nature, must be monopolies, and a strong plea can be made, free from any taint of socialism, for their being placed under State or municipal control. But monopolies, or, in other words, combinations, created for the controlling of trade and increasing the power of capital, destroying competition, and crushing independence of thought and action, come under another category, and it will be well for capitalists to beware lest the distinction we draw be lost sight of, and a combined attack upon all monopolies and combinations by trade unions and socialistic societies destroy the fabric which has been so carefully built up.

Should any of our readers have any suggestion as to legislation on this subject, the time is opportune for bringing it to the attention of one of the members of the profession sitting in the Legislature, who might think well to bring the matter up for discussion.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

SUCCESSION DUTY—INCIDENCE—WILL IN EXERCISE OF POWER OF APPOINTMENT —APPOINTED FUND —"TESTAMENTARY EXPENSES."

In re Treasure, Wild v. *Stanham* (1900) 2 Ch. 648, was a summary application to determine the fund out of which succession duty should be paid in respect of a fund appointed by a will in pursuance of a general power of appointment—the will also containing a direction to pay the "testatrix's testamentary

expenses" out of her residuary estate. Kekewich, J., held that the appointed fund did not vest in the executor qua executor, and the duty primâ facie was payable out of the appointed fund, but that the direction to pay "the testamentary expenses" out of the residuary estate displaced that primâ facie liability; and the succession duty payable in respect of the appointed fund must be deemed part of "the testamentary expenses," because its payment was, under the statute, essential to obtaining probate, and therefore was payable out of the residue.

COMPANY - DEBENTURE — FLOATING CHARGE — SALE OF PART OF BUSINESS — INJUNCTION.

In re Vivian, Metropolitan Bank v. *Vivian* (1900) 2 Ch. 654. The plaintiffs were holders of debentures of the defendant company which were a floating charge on all the company's assets, and sued on behalf of themselves and all other debenture holders. The company carried on business in three different places, and had determined to sell the business carried on at one of the places. The plaintiff moved for an injunction to restrain the sale, or for the appointment of a receiver, no charge of want of bonâ fides was made against the defendants. Cozens-Hardy, J., refused the motion, holding that the plaintiff's charge did not attach to any specific assets, and did not prevent the company from dealing with any of its property or assets in the ordinary course of business; that although the business was carried on in three places, yet there was only one business, and a sale of part was within the company's powers, and not inconsistent with its carrying on of the business of the company in a proper manner.

PATENT - INFRINGEMENT OF PATENT — DELIVERING ABROAD PURSUANT TO CONTRACT MADE WITHIN JURISDICTION OF ARTICLE SUBJECT OF PATENT.

In *Saccharin Corp.* v. *Reitmeyer* (1900) 2 Ch. 659, Cozens-Hardy, J., decided that where an English merchant, pursuant to a contract made in England, purchases abroad and delivers abroad an article the subject of an English patent, that is not a making, using, exercising or vending the protected invention within the realm so as to make him liable for an infringement of the patent.

COMPANY—RECONSTRUCTION — APPLICATION FOR SHARES — WITHDRAWAL OF APPLICATION FOR SHARES BEFORE ALLOTMENT—WINDING UP—CONTRIBUTORY.

In re Metropolitan Fire Ins. Co. (1900) 2 Ch. 671, was an application by one Wallace to strike his name off the list of contributories of a company being wound up. The facts were briefly as follows:—The Commercial Fire Ins. Co. entered into a reconstruction or amalgamation agreement with the Metropolitan Fire Ins. Co. whereby the goodwill and business of the Commercial Co. were transferred to the Metropolitan Co., part of the consideration of the transfer being that every member of the Commercial Co. should, in respect of each share held by him therein, be entitled to a certain proportion of partly paid shares of the Metropolitan Co. The agreement provided that members in the Commercial Co. desiring to avail themselves of this provision were to send in their claims within twenty-one days. The liquidators of the Commercial Co. duly gave notice of the agreement to Webster and the number of shares in the Metropolitan Co. he was entitled to claim thereunder, and within the twenty-one days he sent in a claim for an allotment of his shares; before the allotment was made, or any acceptance of his offer, Webster withdrew his application. The Metropolitan Co. having been subsequently ordered to be wound up, the liquidator of the company placed Webster in the list of contributories in respect of the ten shares. Cozens-Hardy, J., granted the application holding that the application sent in by Webster was one that he was entitled to withdraw before acceptance, and was not an acceptance of a prior offer by the Metropolitan Co.

ADMINISTRATION—DEFICIENCY OF ASSETS—VOLUNTARY CREDITORS.

From *In re Whitaker, Whitaker* v. *Palmer* (1900) 2 Ch. 676, it appears that the English Judicature Act, 1875, s. 10—which provides that in the case of a deficiency of assets in the administration of the estate of a deceased person, the estate is to be administered in accordance with the English Bankruptcy Act, 1883—has had the effect of abrogating the former rule of equity, that voluntary creditors must be postponed to ordinary creditors, and entitles voluntary creditors now to be paid pari passu with other creditors. Probably the same result has been attained in Ontario by R.S.O. c. 129, s. 34.

PARTNERSHIP — PARTNERS' COVENANT AGAINST TRADING — GOODWILL — FIRM NAME—VENDOR AND PURCHASER—SALE OF SHOP WITH NAME OF VENDOR OVER DOOR.

Townsend v. *Jarman* (1900) 2 Ch. 698, is a case involving two or three points of interest. The plaintiff and defendant entered into partnership; the plaintiff covenanted that on leaving the firm he would not for twenty-one years carry on the same business as that of the firm within forty miles of Chard, where the firm's business was carried on. The business was principally carried on in a shop in Chard, owned by the defendant, and of which the firm were tenants. In 1895 the business was converted into a joint stock company entitled "Jarman & Co., Limited," to which the plaintiff and defendant sold all their interest and goodwill in the business; and the defendant at the same time sold the shop in Chard to the company, his name, "E. J. Jarman," still remaining thereon, and there was no covenant or agreement that the name should be removed. The company was wound up, and the shop, with the name of Jarman on it, together with the business and goodwill, were sold by the company to the plaintiff, but there was no special assignment of the trade name. The plaintiff then carried on business in the shop under the firm name of "Jarman & Co." The defendant opened a similar business in Chard under the style of "Jarman & Co," and afterwards of "Jarman & Jarman." The plaintiff claimed that the defendant was holding himself out as carrying on the original Chard business, and he claimed an injunction to restrain him from so doing. The defendant counter-claimed for an injunction to restrain the plaintiff from carrying on his business in Chard in breach of the covenant in the partnership articles above referred to; and also an injunction to restrain him from keeping the name of "E. J. Jarman" over his shop. Farwell, J., who tried the action, held, on the evidence, that there had been a holding out by the defendant that he was carrying on the business in succession to the original business at Chard, which entitled the plaintiff to an injunction; but he considered the defendant's counter-claim could not be maintained, because the benefit of the plaintiff's covenant not to trade was a part of the goodwill of the original partnership which had been sold first to the company, and afterwards by the company to the plaintiff himself, and consequently he alone was now entitled to the benefit of it; and as regards the name over the shop, he also held that the defendant

was entitled to no relief, because he had sold the shop with the name on it without any stipulation or agreement for its removal, and in the absence of an agreement to that effect a vendor has no equity to require the purchaser to remove the name.

With regard to the user of the firm name by the plaintiff, the learned Judge held that unless the name is expressly assigned to an assignee of the goodwill, the latter has no right to use it so as to expose any former member of the firm to liability; but he intimated that the use of a surname with the words "& Co.," *e.g.*, "Jarman & Co.," would not ordinarily expose any former partner trading under that style to liability, unless he had used it as his own name, otherwise than in connection with the firm.

TRUSTEE—BREACH OF TRUST—EXECUTOR—SOLICITOR—RELIEF OF TRUSTEE FROM LIABILITY—JUDICIAL TRUSTEES ACT, 1896 (59 & 60 VICT., C. 35) S. 3, SUB-S. 1—(R.S.O. C. 129, S. 32).

In re De Clifford, De Clifford v. *Quilter* (1900) 2 Ch. 707, is a case touching the right of trustees to relief from liability for breach of trust. In this case, as in the recent case of *Clark* v. *Bellamy*, 27 Ont. App. 435, executors relied on their solicitors, through whose misfeasance the breach of trust arose. During five years' administration of their testator's estate by the Court, the executors, who knew that large sums were necessary for the payment of debts, disbursements, and other expenses connected with the administration, paid various sums from time to time to their solicitors in reliance on their statements that these sums were in each case required for these purposes, and to which they were in fact in great part applied. Shortly before the close of the proceedings the solicitors became bankrupt, and a balance was found to be in their hands in excess of what was required and applied for the purposes of the estate; this balance was lost to the estate, and the question was whether under the circumstances the executors were entitled to be relieved from liability therefor under the Judicial Trustees Act, 1896 (59 & 60 Vict., c. 35) s. 3, sub-s. 1 (R.S.O. c. 129, s. 32). Farwell, J., was of opinion that they had acted honestly and reasonably, and were entitled to be relieved from personal liability.

WILL—POWER TO CHARGE FOR PROFESSIONAL SERVICES—"PROFESSIONAL OR OTHER CHARGES"—NON-PROFESSIONAL SERVICES.

In *Clarkson* v. *Robinson* (1900) 2 Ch. 722, the question involved was whether trustees who, under a will, had power to charge the estate with all usual "professional or other charges" for business done by them for the estate, could charge for services of a non-professional character rendered by them. Buckley, J., held that they could not. The Ontario Act empowering the Court to give compensation to trustees, makes this case probably of little interest in this Province. The construction the learned judge placed on the will, one may remark, appears to have been a very narrow one.

COMPANY—WINDING UP—DISTRESS BY LANDLORD.

In *Harpur's Cycle Fittings Co.* (1900) 2 Ch. 731, Wright, J., refused to restrain the landlord of a company in liquidation from distraining for overdue rent, on the ground that the assets of the company were mortgaged to debenture holders, and were insufficient for the payment of the debentures, and consequently he held that the liquidator had no right to intervene, and the fact that no receiver had been appointed at the instance of the debenture holders was held to be immaterial. Under the Dominion Winding-up Act, R.S.C. c. 129, s. 16, it would seem that a distress in such a case could not be proceeded with without the leave of the Court; the present case would probably be considered an authority upon the question of granting such leave.

SHIP—CHARTER PARTY—BALLAST—OBLIGATION TO FURNISH.

In *Weir* v. *Union Steamship Co.* (1900) A.C. 525, a very simple point was decided by the House of Lords (Lords Davey, Brampton and Robertson) on appeal from the English Court of Appeal, viz., that the providing of ballast is incident to the safe navigation of a ship, and the responsibility for providing it rests on the owners of a vessel chartered, unless by clear and unequivocal language it is assumed by the charterer; and that stipulations that the vessel is to be placed at the disposal of the charterers, and that the charterers are to have the sole use of it, and are to be at liberty to sub-let it, and that the freight is to be paid monthly until the vessel is returned to the owners, do not have that effect, unless it is clear that the charterers were to have absolute possession of the

ship. On the construction of the charter party in this case their lordships are of opinion that the owners were to be responsible for the navigation of the ship.

COPYRIGHT—NEWSPAPER REPORT OF SPEECH—COPYRIGHT ACT 1842 (5 & 6 VICT., C. 45) SS. 2, 3, 18.

In *Walter* v. *Lane* (1900) A.C. 539, the House of Lords (Lord Halsbury, L.C., and Lords Davey, James, Brampton, and Robertson) have overruled the Court of Appeal's decision (1899) 2 Ch. 749 (noted ante, vol. 36, p. 93), Lord Robertson dissenting. The question in controversy being whether a newspaper report of a public speech could be the subject of a copyright under the Copyright Act 1842 (5 & 6 Vict., c. 45). The Court of Appeal negatived the claim, but the Lords have held that such a report may be the subject of a copyright, and have restored the judgment of North J., restraining infringement of the copyright and made the injunction perpetual. As Lord Brampton puts it, the oral speech is not a "book" or the subject of copyright; it only becomes a "book" when the report is made, and the book is the subject of copyright. Lord Robertson's dissent was based on the ground that an accurate reporter of a speech cannot be deemed its author within the meaning of the Copyright Act.

PRINCIPAL AND AGENT—AUTHORITY OF AGENT—CONSIDERATION MONEY FROM AGENT—DISHONOUR OF CHEQUE—SPECIAL DAMAGE.

Fleming v. *Bank of New Zealand* (1900) A.C. 577. This was an action to recover damages against the defendants for dishonouring the plaintiff's cheque. By an agreement made with the plaintiff's agent the defendants agreed to honour the cheque in question, in consideration of a store warrant being deposited with them, in lieu of the cash which the plaintiff had instructed his agent to pay to the credit of the plaintiff's account. The store warrant belonged to the plaintiff, and was pledged to the agent, and was deposited by the agent and accepted by the Bank with full knowledge of the circumstances. The Bank contended that the deposit of the store warrant in lieu of cash was beyond the authority of the agent, and there was, therefore, no consideration for the defendants' promise. The jury at the trial found that the agent had no authority to substitute the warrant for cash, and the

Court of Appeal of New Zealand held that the plaintiff was not entitled to recover, and even if he was there should be a new trial because evidence of special damage (*i.e.*, of loss of custom and credit from particular individuals) had been admitted at the trial, although none was alleged in the statement of claim. The Judicial Committee of the Privy Council (Lords Davey, Robertson, and Lindley and Sir H. De Villiers and Sir F. North) agreed with the Court below that there must be a new trial on the question of evidence, but were of opinion that on the main ground the plaintiff should recover, because the substitution of the store warrant for cash was not an excess of the agent's authority, but even if it was there was consideration for the Bank's promise, because the deposit of the store warrant conferred on the Bank some right, interest, profit, or benefit, within the legal meaning of "consideration," and, in the circumstances, it was estopped from saying that the consideration did not come from the plaintiff and a new trial was ordered unless plaintiff agreed to accept £500 damages in lieu of £2,000 assessed by the jury.

CONTRACT—CONSTRUCTION—PROMISE FAVOURABLY TO CONSIDER A PROPOSAL.

In *Montreal Gas Co.* v. *Vasey* (1900) A.C. 595, the respondent sought to establish as a binding contract a promise made by the appellants that if satisfied with the respondent as a customer they would "favourably consider" any application by him to renew a subsisting contract between them, at its expiration. Strange to say the Superior Court for Lower Canada came to the conclusion that this amounted to an agreement to renew the contract, if the respondent was a satisfactory customer. Oral evidence to explain the document was admitted at the trial; this the Judicial Committee (Lords Hobhouse, Macnaghten and Lindley and Sir R. Couch and Sir H. Strong) held was improper, and, upon the proper construction of the document, it was held not to constitute any promise to renew the contract in question, but a mere promise to deliberate on the question, with an assurance that the customer might expect favourable consideration.

LOST WILL—EVIDENCE—PRESUMPTION OF DESTRUCTION OF WILL BY TESTATOR —PRESUMPTION AGAINST FRAUD.

Allan v. *Morrison* (1900) A.C. 604, was an action to establish a lost will. A draft of the will was produced. It was admitted

that the will had been duly executed, but it could not be found after the testator's death. The Courts of New Zealand held that the onus of rebutting the presumption that the testator had destroyed the will animo revocandi was upon the plaintiff who sought to establish the will, and that he had failed to discharge it. The plaintiff appealed, and contended that the will having been proved to have been duly executed, the onus is then on those who allege it was destroyed animo revocandi to prove it. The will was traced to the testator's possession, but on his death the envelope in which it had been kept was found in a tin box, but the will had disappeared. Evidence was given that a few days before his death the safe in which it was kept was opened by an attendant, who left the room, and who subsequently was summoned to shut it again, and that at that time the testator was there and had a fire in the room. The Judicial Committee (Lords Davey, Robertson and Lindley and Sir H. De Villiers and Sir F. North) were of the opinion that the judgment of the Court below was right and dismissed the appeal.

PARTNERSHIP—DISSOLUTION OF FIRM—ACTION AGAINST PARTNERS—RULE 648A—(ONT. RULE 222).

In re Wenham (1900) 2 Q.B. 698, although a bankruptcy case is one that deserves a brief notice, inasmuch as the Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.) incidentally affirm the practice that under Rule 648a (Ont. Rule 222) a firm may be sued in its firm name notwithstanding it had been dissolved prior to the commencement of the action.

ORDER, ACTION ON—RULE 602—(R.S.O. c. 80, s. 10).

In *Furber* v. *Taylor* (1900) 2 Q.B. 719, the Court of Appeal (Smith and Williams, L.JJ.) held that although under Rule 602 (R.S.O. c. 80, s. 10), which provides that an order may be enforced in the same way as a judgment, an action is maintainable upon an order of the High Court: see *Godfrey* v. *George*, (1886) 1 Q.B. 48 (noted ante, vol. 32, p. 106); *Pritchett* v. *English and Colonial Syndicate*, (1899) 2 Q.B. 428 (noted ante, vol. 35, p. 683), yet, in the absence of such a Rule or statutory provision in regard to orders of the County Court, an action on a County Court order is not maintainable, and it can only be enforced by application to the

Court. R.S.O. c. 80, s. 10, however, applies to orders of County Courts as well as to orders of the High Court.

CRIMINAL LAW—FALSE PRETENCES—EVIDENCE—GUILTY KNOWLEDGE—ACTS IN RESPECT OF WHICH DEFENDANT HAD BEEN PREVIOUSLY ACQUITTED.

The Queen v. *Ollis* (1900) 2 Q.B. 758, was a prosecution for obtaining money by falsely pretending that three cheques which the accused gave to the prosecutors were good and valid orders for the payment of money. The accused had been previously acquitted on a similar charge on the prosecution of another person, and the question submitted to the Court for Crown Cases Reserved was whether the facts connected with the charge on which the accused had been acquitted could be given in evidence to shew that he had no reasonable ground for believing that there would be funds to meet the cheques on which he obtained the money from the prosecutors in the present case. The Court (Lord Russell, C.J., and Mathew, Grantham, Wright, Darling, Channell, Bruce, and Ridley, JJ.) held that the evidence was admissible; Bruce and Ridley, JJ., dissented, on the ground that a cheque is not like a coin, which is either inherently good or bad, but is a thing which may be good or bad according to circumstances which might vary from day to day; and that, therefore, the passing of a cheque for which there were no funds on one day, would not be evidence that a cheque passed on another day was also bad to the knowledge of the person passing it. The majority of the Court, however, adopted the broader view that the fact that the accused had on another day passed a cheque which had been dishonoured, was a circumstance to shew a course of conduct on the part of the accused, and that the passing of the cheques in question was not a matter of forgetfulness, but that they were bad to his knowledge.

MARRIED WOMAN—CONTRACT OF MARRIED WOMAN—PROPERTY LIABLE TO EXECUTION AGAINST MARRIED WOMAN—RESTRAINT UPON ANTICIPATION—MARRIED WOMEN'S PROPERTY ACT, 1893 (56 & 57 VICT., c. 63) s. 1—(R.S.O. c. 163, s. 4).

Barnett v. *Howard* (1900) 2 Q.B. 784, was an action against a married woman in which judgment had been recovered against the defendant in the form settled in *Scott* v. *Morley*, with such variation as was necessary to make it conform to the Married Women's Property Act of 1893. That Act, s. 1, provides that the

contract of the married woman made thereafter binds her separate property which she may at that time or thereafter possess or be entitled to, and shall also be enforceable against all property she may become entitled to aft. she becomes discovert; but by a proviso to the section, nothing therein contained is to render available to satisfy any such contract any separate property which "*at that time* or thereafter she is restrained from anticipating." The defendant at the time she entered into the contract for which the judgment was recovered, was entitled to a fund under a will which she was restrained from anticipating. This restraint had, after judgment, ceased by her subsequently becoming discovert. The defendant then obtained an attaching order against this fund, which was set aside by Bucknill, J., and from his decision the plaintiff appealed, but the Court of Appeal (Smith and Williams, L.JJ.) upheld his decision, and held that the proviso exonerated property which *at the time of the contract* was subject to a restraint against anticipation, and that such property remained exempt from liability to satisfy the contract, even after the restraint had ceased. In R.S.O. c. 163, s. 4, the proviso is differently worded, and it is possible under it a different conclusion might be arrived at.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—PURCHASE BY TRUSTEE OF SETTLED ESTATE—TENANT FOR LIFE, ENTRY BY—PURCHASE MONEY, INTEREST ON, PAYMENT OF.

In *Ecclesiastical Commissioners* v. *Pinney* (1900) 2 Ch. 736, the Court of Appeal (Lord Alverstone, M.R., and Rigby and Collins, L.JJ.) have affirmed the judgment of Byrne, J., (1899) 2 Ch. 729 (noted ante, vol. 36, p. 91). The case was for specific performance of a contract for the sale of lands. The contract had been made in 1873 between the vicar of a parish with the assent of the ecclesiastical commissioners, and the trustees of a settled estate; the tenant for life under the settlement, with the approval of the trustees, had gone into possession and paid the interest on the purchase money ever since the purchase in 1873; it appeared, however, that the trustees of the settlement had not funds to meet the purchase money at the time of the contract, and it being uncertain what the land would be worth when they would be in a position to pay for it, the contract was held to be a speculative one, and not authorized by the trust, and consequently the trustees had no right to an indemnity out of the trust estate, and therefore

the vendors could have no right of subrogation. The result therefore was that the vendors had no remedy against the owners of the settled estate, and their only right was a lien for their purchase money upon the land sold, as Byrne, J., had held.

PRACTICE—EVIDENCE—AFFIDAVIT—INFORMATION AND BELIEF, NOT STATING GROUNDS—IRREGULARITY—COSTS—RULE 523—(ONT. RULE 519).

In re Young Manufacturing Co. (1900) 2 Ch. 753, the Court of Appeal (Lord Alverstone, M.R., and Rigby and Williams, L.JJ.) in allowing an appeal made some observations on the affidavit evidence which had been used, and laid down the rule that affidavits on information and belief, but not stating the grounds, were not only irregular but worthless, and ought not to be looked at unless corroborated by affidavits in which the deponent speaks from his own knowledge, and Williams and Rigby, L.JJ., agreed that the costs of such affidavits should be disallowed both between party and party and solicitor and client.

WILL—CONSTRUCTION—EVIDENCE DEHORS THE WILL.

In re Grainger, Dawson v. *Higgins* (1900) 2 Ch. 756, the construction of a will was in question. The testator, after directing payment of his debts and funeral and testamentary expenses, bequeathed a specific legacy of £2000, and a number of other pecuniary legacies, and an annuity of £60, and he then concluded his will: "All the residue and remainder of the sum [of £13,187 lent on two specified mortgages], after payment of my just debts and funeral expenses, and the expense of proving this, my will, I give and bequeath to" three persons, canons regular of the Lateran. The estate, exclusive of the two mortgage debts, was insufficient to pay all the pecuniary legacies; and the question therefore arose whether the three canons were entitled to the whole balance of the mortgage debts after deducting the debts and funeral and testamentary expenses, or whether the mortgage debts were also liable for the payment of the pecuniary legacies. Stirling, J., thought the pecuniary legacies were not payable out of the mortgage debts, and Rigby, L.J., agreed with him. The other members of the Court of Appeal (Lord Alverstone, M.R., and Collins, L.J.), however, disagreed with this conclusion, and held that the mortgage debts were liable to pay the pecuniary legacies, which they held to be specific and primarily payable out of this fund, and that it was

only the balance of the mortgage debts, after payment of debts, funeral and testamentary expenses and legacies, that went to the three canons. The majority of the Court of Appeal thought the evidence of the testator's solicitor as to the state of the testator's estate at the time the will was made, was admissible for the purpose of arriving at its meaning. Rigby, L.J., on the other hand thought that it was inadmissible, and that the will ought to have been construed without reference to any extrinsic evidence. The Court of Appeal also held that though the three canons would be entitled to be recouped out of the undisposed of personalty, any part of the debts funeral and testamentary expenses paid out of the mortgage debts, they were not entitled to throw any part of the general pecuniary legacies upon the undisposed of personalty.

DONATIO MORTIS CAUSA—NUNCUPATIVE WILL.

Solicitor to the Treasury v. *Lewis* (1900) 2 Ch. 812, was an action brought to determine whether or not a valid donatio mortis causa had been made by a deceased person, of whom the plaintiff was legal personal representative, of a certain part of her property to the defendant. The deceased was an old lady living alone, and shortly before her death, and in the anticipation thereof, she expressed a desire to give him all her property upon certain conditions, which by her directions he set down in writing. This document purported to give the defendant all the property she might have at her death subject to his settling up her affairs, seeing to her burial, and making certain payments to specified charities. She then delivered to the defendant a deposit note and share certificate, saying: "Take charge of them If I get better you will bring them back; if not you will know what to do with them." She subsequently told him where to find gold and notes, but gave no further directions as to them. On her death, five days after, the defendant communicated the facts to the Crown authorities, and the plaintiff obtained letters of administration to her estate. It was argued for the defendant that there was a fixed intention on the part of the deceased not to make a will, and that the gift of the deposit note and shares was made in anticipation of death, and was a good donatio mortis causa. On the part of the plaintiff it was contended that it was simply an attempt to make a nuncupative will, and to allow the gift to prevail would

be enabling anyone to drive a coach and pair through the Wills Act. Stirling, J., who tried the action, thought that the expressed intention of the deceased to give the defendant "all her personal property at the time of my death," militated against the transaction amounting to a donatio mortis causa, because it implied that she intended to retain a power of disposition over all of her property during her life; that the document drawn up was clearly of a testamentary character, and he, therefore, held that there was no valid donatio mortis causa of the deposit note or the shares.

ARBITRATOR—DISQUALIFICATION—BIAS.

In *Bright* v. *River Plate Co.* (1900) 2 Ch. 835, a contract provided that all matters in difference should be referred to arbitration to a specified member of the Bar. The matter in difference arose in reference to certain transactions in which a firm of solicitors was concerned, with whom the barrister named as arbitrator had had intimate personal professional relations, and misconduct of a member of the firm of solicitors was alleged. Under these circumstances it was contended that the arbitrator was disqualified by possible bias, and an application was made by one of the parties to the arbitration to stay proceedings therein on this ground. No actual bias or unfairness on the part of the arbitrator was alleged, and Cozens-Hardy, J., held that in the case of a named arbitrator mere suspicion that there might be bias did not warrant his granting the application.

COMPANY - WINDING UP—AFFIDAVIT IN SUPPORT OF PETITION TO WIND UP—IRREGULARITY.

In re Charterland Stores Co. (1900) 2 Ch. 870, an application was made to wind up a Joint Stock Company. The petition was prevented by an individual creditor. The affidavit in support of the petition was made by the petitioning creditor's business manager. By the winding up rules it is provided that, except in case of a company petitioning, the affidavit in support of a petition to wind up must be made by the petitioner or by one of the petitioners if more than one. Wright, J., held the affidavit of the manager could not be held to be sufficient, and that it was not a more irregularity or formal defect which under another rule of the Court is not to invalidate proceedings. The petition was therefore ordered to stand to enable the petitioner to file a proper affidavit.

Correspondence.

PROPOSED CHANGES IN ONTARIO COURTS.

To the Editor of THE CANADA LAW JOURNAL.

DEAR SIR,—I agree with "Constant Reader" in your Feb. 1st issue, that it is very inadvisable to allow solicitors to make agreements with clients for a fixed sum. No doubt it is sometimes done now, but there is such risk about it that it is not very often. If however, it is legalized, I firmly believe it will prove most demoralizing.

Why cannot our Local Legislature allow things to rest even for one single session? If the new Attorney-General wants to do the public a benefit, let him turn his attention to the heavy Division Court fees to clerks and bailiffs. The increase in those fees made some years ago should be knocked off. To the poor litigants, the fees in Division Courts as they now stand, are more burdensome in proportion than the costs in the High Court and County Court are to those whose transactions and interests bring them into the latter courts.

Giving police magistrates jurisdiction in small civil cases, say up to $60, would prevent a great waste of time and costs, now occurring in the Division Courts. The delays of two and three months in Division Courts are responsible for much dissatisfaction with Division Court procedure. The agitation is in the wrong place. I firmly believe that what is wanted is promptness in collection matters, a court sitting constantly, or at intervals of a week or two, instead of the bi- or tri-monthly sittings of the Division Courts.

An increase in the jurisdiction of Division Courts must be injurious. The judge has barely time to try the present cases, and the confusion and delays that would arise in the courts when a claim for say $300 or $400 is tried in a Division Court, occupying the whole day perhaps, would be enormous. The end would be, that another court below the Division Courts would have to be established.

As to Division Court fees, why should a clerk and bailiff get nearly three times in proportion as much on a claim of $100 as he does on one of $20? Solicitors are not paid on such a sliding scale. The clerk does the same work on a $25 claim as on a $100 claim, and should get the same fees.

Yours truly,

ANOTHER READER.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.] BUGBEE *v.* CLERGUE. [Nov. 13, 1900.

CLERGUE *v.* HUMPHREY.

Action on foreign judgment—Original consideration—Ontario Judicature Act—Promoter of company—Loan to—Personal liability.

Under the Ontario Judicature Act, as before it, the declaration in an action on a foreign judgment may include counts claiming to recover on the original consideration.

A promoter of a joint stock company borrowed money for the purposes of the company giving his own note as security. The lender was informed at the time of the manner in which the loan was to be, and was, applied.

Held, that as the company did not exist at the time of the loan it could not be the principal debtor nor the borrower a mere guarantor. The latter was, therefore, primarily liable for repayment of the loan.

Judgment of the Court of Appeal (*Bugbee* v. *Clergue*, 27 O. A. R. 96; 36 C. L. J. 126), affirmed. Appeal dismissed with costs.

Riddell, Q.C., for appellant. *Wyld* and *Osler*, for respondent.

Ont.] CHATHAM *v.* BELL TELEPHONE CO. [Nov. 13, 1900.

Negligence—Proximate cause—Telephone pole—Third party—Costs.

A pole, to which the trial judge attributed the accident complained of, was planted in a public street by the telephone company by permission of the corporation, outside of the portion of the highway appropriated by by-law for the use of horses and carriages. The plaintiffs were driving in a vehicle when their horses became unmanageable, ran away at great speed and, the carriage coming in collision with the pole, injuries were sustained by the plaintiffs in respect of which they brought the action for damages against the city. The city impleaded the telephone company as a third party and the judgment appealed from affirmed a verdict in favour of the plaintiffs and the judgment entered thereon against the city for damages, which the third party was ordered to pay.

Held, reversing the Court of Appeal for Ontario, that the pole had been lawfully planted by the third party and did not constitute a nuisance

of which persons using the highway could complain; that it was clear that the accident was not caused by the pole, but by the uncontrollable speed at which the horses were running away, and consequently that the plaintiffs were not entitled to recover damages for the injuries complained of in their action; and further, that the telephone company had been improperly impleaded and should therefore be reimbursed by the city for all costs incurred in consequence of having been so made a third party in the action. Appeal allowed with costs.

Wilson, Q.C., for Bell Telephone Co. *Aylesworth*, Q.C., and *Douglas*, Q.C., for City of Chatham. *Atkinson*, Q.C., for respondent.

N.S.] KENT *v.* ELLIS. [Dec. 7, 1900.

Pleading—Conversion—Defect in plaintiff's title.

In an action claiming damages for the conversion of goods, the plaintiff must prove an unquestionable title in himself, and if it appears that such title is based on a contract the defendant may successfully urge that such contract is void under the Statute of Frauds, though no such defence is pleaded.

It is only when the action is between the parties to the contract which one of them seeks to enforce against the other, that the defendant must plead the Statute of Frauds if he wishes to avail himself of it.

Judgment of the Supreme Court of Nova Scotia (32 N.S. Reports 459) affirmed. Appeal dismissed with costs.

Newcombe, Q.C., and *Sedgewick*, for appellant. *Code*, for respondent.

B. C.] SUN LIFE ASSURANCE CO. *v.* ELLIOTT. [Dec. 7, 1900.

Voluntary conveyance of land—13 Eliz., c. 5—Solvent vendor—Action by mortgagee.

A voluntary conveyance of land is void under 13 Eliz., c. 5, as tending to hinder and delay creditors, though the vendor was solvent when it was made, if it results in denuding him of all his property and so rendering him insolvent thereafter.

A morgagee whose security is admittedly insufficient may bring an action to set aside such conveyance and that without first realizing his security.

Judgment of the Supreme Court of British Columbia (7 B.C. Reports 189) reversed, GWYNNE J. dissenting. Appeal allowed with costs.

Aylesworth, Q.C., and *Wilson*, Q.C., for appellant. *Dockrill*, for respondent.

B. C.] UNION COLLIERY CO. *v.* THE QUEEN. [Dec. 7, 1900.

Criminal law—Indictment against corporation—Endangering human life—Crim. Code s. 213—Manslaughter.

Under sec. 213 of the Criminal Code a corporation may be indicted for omitting without lawful excuse, to perform the duty of avoiding danger to human life from anything in its charge or under its control.

The fact that the consequence of the omission to perform such duty might have justified an indictment for manslaughter in the case of an individual is not a ground for quashing the indictment.

As sec. 213 provides no punishment for the offence, a corporation indicted under it is liable to the common law punishment of a fine. Appeal dismissed.

Aylesworth, Q.C., for appellant. *C. Robinson*, Q.C., for respondent.

Ont.] ECKHART *v.* LANCASHIRE INS. CO. [Nov. 13, 1900.

Insurance, fire—Form of policy—"Co-insurance" clause—Statutory conditions—Variations—R.S.O. (1887) c. 167.

A policy of fire insurance issued on 2nd January, 1896, contained the clause known as the "Co-insurance clause" (requiring the insured to keep the property covered by other policies to at least 75% of its value), printed under the heading "Variations in Conditions" as prescribed by secs. 115 and 116 R.S.O. c. 167.

Held, affirming the judgment of the Court of Appeal (27 O.A.R. 373; 36 C.L.J. 421) which affirmed the judgment at the trial (29 O.R. 695), that whether or not the alteration introduced into the policy was of the nature of a variation of any particular statutory condition or in addition to statutory conditions, the clause was neither unjust or unreasonable and that it formed part of the contract of insurance to the same extent as the statutory conditions indorsed on the policy would have been if the alteration had been printed therein. Appeal dismissed with costs.

Lash, Q.C., for appellant. *Creelman*, Q.C., and *MacInnes*, for respondent.

Province of Ontario.

HIGH COURT OF JUSTICE.

Boyd, C., Ferguson J., Robertson, J.] [Dec. 12, 1900.

KREUTZIGER *v.* BROX.

Costs—Division Court jurisdiction—Balance due on contract signed by defendant—Extrinsic evidence.

In an action in the County Court for $37.50 balance due on a building contract of $475, signed by the defendant, where extrinsic evidence was required to shew performance of the contract by the plaintiff and for an open account for $27.35 in which the defendant was allowed $25 for defective work and material.

Held, that the Division Court had no jurisdiction and that the plaintiff was entitled to his costs on the County Court scale. Judgment of the County Court of Waterloo reversed.

J. C. Haight, for plaintiff. *W. M. Reade*, for defendant.

Falconbridge, C.J. and Street J.] [Dec. 18, 1890.

REGINA *v.* SPOONER.

Criminal law—Keeper of house of ill fame—Conviction—Certiorari—Prisoner in custody—Habeas Corpus—Pleading guilty—Summary conviction clauses of Code—Trial on the merits.

The offence of being a keeper of a house of ill fame is an indictable offence and it may be tried either before a jury in the ordinary way or before a police magistrate under the summary trials clauses or before a justice of the peace under the summary conviction clauses of the Code. On an application to quash a conviction where the prisoner was in custody when the matter came up in certiorari:

Held, that a writ of habeas corpus is necessary.

A prisoner was convicted by a police magistrate after pleading guilty to the charge that she did "unlawfully appear the keeper of a house of ill fame," and sentenced to be imprisoned for one year in the Andrew Mercer reformatory.

Held, that the conviction might be treated as having been made under the summary conviction clauses of the Code although the sentence exceeded the power of the magistrate, and that such conviction might be supported and the sentence amended under these clauses.

Held, also, that when a prisoner charged before a magistrate with appearing the keeper of a house of ill fame had pleaded guilty to such

charge there was a trial on the merits and that such a person was to be deemed guilty of the offence of keeping a house of ill fame.

Robinette and *J. M. Godfrey*, for motion. *Cartwright* Q.C., Deputy Atty.-Gen., contra.

Boyd, C., Ferguson, J., Robertson, J.] [Dec. 18, 1900.

SNETZIGER *v.* LEITCH.

Lease — Use of hay, etc., on the premises by feeding — Right of landlord as against execution creditor of tenant.

Plaintiff leased a farm as a dairy farm and thirteen cows by lease in writing in which was contained the following clause: "All the hay, straw and corn stalks raised on the . . . farm to be fed to the said cows on the said . . . farm."

Held, that while the property in hay produced on the farm may be legally in the tenant, yet his contract is so to use it that it shall be fed to the cattle and consumed on the premises, he is not to have the beneficial use of it, and cannot by his contract take it off the farm, and his judgment or execution creditor has not such power under cover of an execution; and an injunction restraining a bailiff and purchaser at a bailiffs' sale from removing it was granted.

Judgment of the County Court from the united Counties of Cornwall, Dundas and Glengarry reversed.

Robert Smith, for plaintiff. *Leitch*, Q.C., for defendant Leitch. *Gogo*, for other defendants.

Falconbridge, C.J., Street, J.] [Jan. 2.

RE LENTED *v.* CONGDON.

CANADIAN ORDER OF CHOSEN FRIENDS, GARNISHEES.

Division Court—Garnishee—No garnishable debt—Jurisdiction—Friendly garnishee—Conferring jurisdiction—Costs.

Where an action is entered under s. 190 of the Division Courts Act, in the Division where the garnishee resides, the primary debtor residing in another and disputing the jurisdiction of the Court—there is jurisdiction to give judgment against the primary debtor even where the action is dismissed as against the garnishee.

Semble, if a primary creditor for the purpose of obtaining a judgment against the primary debtor in a Court of his own choosing, names a friend as garnishee the judge might properly take that into consideration under his power over costs under s. 213 of R.S.O. c. 60.

Judgment of the First Division Court of Wentworth reversed.

Nason, for the appeal. *James Bicknell*, contra.

Falconbridge, C.J., Street, J.] [Jan. 28.

HEISE *v.* SHANKS.

Appeal to High Court — Division Court case — Certified copy of proceedings—Filing in time—Notice of appeal—Extension of time for—Excuse for delay.

Motion by the primary creditor to quash an appeal by the primary debtor and the claimant from an order of a Divisional Court made on the 25th August, 1900, refusing a new trial.

On Aug. 29, 1900, the clerk of the Division Court certified a copy of the proceedings, and on the 4th September, 1900, the certified copy was filed with the proper officer of the High Court.

On Oct. 12, 1900, upon the application of the primary debtor and the claimant, an order was made by the County Court Judge in the Division Court extending the time for filing the certified copy of the proceedings until the 20th October, 1900. The same order dismissed the application to extend the time for setting the cause down for hearing in appeal.

On Oct. 17, 1900, the primary debtor and the claimant obtained from the clerk of the Division Court another certified copy of the proceedings in the Division Court, and filed it with the proper officer of the High Court, and gave the primary creditor notice of their having done so and of their appeal for the November sittings of the Divisional Court, a sittings having taken place in October.

No affidavits were filed explaining the fact of the two sets of certified copies of the proceedings having been filed, nor accounting for the delay in giving the notice of appeal.

S. B. Woods, for the motion to quash. *J. W. McCullough*, contra.

Per CURIAM.—The filing of a certified copy of the proceedings on Sept. 4, 1900, in the absence of some statement to the contrary, we must presume to have been the act of the present appellants, who have filed no affidavit denying that they did it. Having filed the certified copy, they should have given notice for the October sittings, but failed to do so. Then they obtained from the Judge below an order extending the time for filing the certified copy. This was inoperative, because the certified copy had already been filed, and it was evidently an effort to obtain in a circuitous way an order extending the time for giving their notice of appeal, an order which the Judge below had no power to make. We have given the appellants ample time to file affidavits explaining away their difficulties, if possible, after pointing out those difficulties upon the argument, but they have not availed themselves of the opportunity to do so. The motion to quash the appeal must, therefore, be allowed with costs.

Boyd, C., Robertson, J.] SULLIVAN *v.* ALLEN. [Feb 4.

Arrest—Discharge—Order for—Terms—Restraining action—Costs—Discretion.

Appeal by the defendant from an order of the judge of the County Court of Oxford for the arrest of defendant, and from such part of a subsequent order discharging the defendant from custody as refused him costs and restrained him from bringing any action in respect to his arrest under the first order.

Held, that the judge had power to make the order to discharge from custody, and to impose terms of bringing no action, as well as withholding costs, under the ample discretionary powers vested in him by Rule 1047; and this exercise of discretion should not be disturbed, for the order to arrest was made upon materials which satisfied him (R.S.O. c. 80, s. 1), and, though the facts and circumstances were by subsequent affidavits differently represented so as to induce him to order a discharge from custody, the original materials (had they not been answered) would have justified his order to arrest. Appeal dismissed without costs.

Watson, K.C., for defendant. *J. Bicknell*, for plaintiff.

Street, J.] FAHEY *v.* JEPHCOTT. [Feb. 8.

Master and servant—Injury to servant—"Young girl"—Machinery—Factories Act, R.S.O. c. 256, s. 14 (3)—Breach of—Negligence—Necessity for proving.

The plaintiff, a girl fifteen years old, was employed by the defendant in his factory, her work being to feed and run a machine for stamping cardboard. In removing the stamped and putting in the unstamped material it was necessary for her to place her hands for an instant between the stationary and the moving parts of the machine. After having had a good deal of preliminary practice and instruction and doing a considerable amount of work with the machine upon several different days without accident or apparent difficulty or fatigue, her left hand was one day caught between the two plates at the top of the machine on the right hand side, and so badly crushed that it was necessary to amputate it. She was unable at the trial to state how her left hand came to be in the position in which it was when it was caught, nor to give any explanation whatever of the accident, and no one saw it happen. Her father, with whom she lived, denied any knowledge that she had been put to work at the machine in question. The defendant knew of her employment at this machine, but stated that he did not consider it a breach of s. 14 of the Factories Act, R.S.O. c. 256, providing that "a child or young girl shall not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion." By s. 2, sub-s. 6, "young girl" means a girl of fourteen and under eighteen.

Held, that, assuming for the purposes of this action that the employment of the plaintiff upon this machine was a breach of the Factories Act, it was still necessary to shew that the defendant was guilty of negligence in some respect directly connected with and which caused the accident, and, no such evidence being forthcoming, the action must be dismissed.

Roberts v. *Taylor*, 31 O.R. 10, followed. *Groves* v. *Wimbourne* (1898), 2 Q.B. 402, distinguished.

Waldron, for plaintiff. *Dewart*, K.C., and *Drake*, for defendant.

Street, J.] CARSON *v.* VILLAGE OF WESTON. [Feb. 8.

Railway Company—Bridge over highway—Height above highway—Level of highway raised by road company—Liability for injury—Railway Act, 51 Vict., c. 29, s. 185 (D.)—Voluntary incurring of risk.

The plaintiff was driving a load of hay on a public highway within the limits of the village of Weston, sitting on top of his load. The Grand Trunk Railway, at a point within the village, is carried over the highway by an iron bridge, and the plaintiff, while driving along the highway under the bridge, was struck on the head by the girders and knocked off the load and injured. At the time of the accident the distance from the surface of the highway to the bottom of the girders was from eleven feet, nine inches, to eleven feet, eleven inches. The bridge was built in 1856 by the railway company, and had not since been lowered. At that time the highway belonged to a road company, and was a plank road. Later the road company put a quantity of gravel upon the top of the plank road and converted it into a gravel road. About 1896 it passed into the hands of the village corporation, and had since been repaired by them. Excavations in the road under the bridge and for a distance on each side of it shewed that from eighteen to twenty-one inches of gravel had been placed upon top of the plank road.

By s. 185 of the Railway Act, 51 Vict., c. 29 (D.), "The span of the arch of every bridge . . . carrying the railway over . . . any highway shall at all times be and be continued . . . of a height from the surface of such highway to the centre of such arch of not less than twelve feet; and the descent of the highway passing under such bridge shall not exceed one foot in twenty."

Held, that this section must be construed as compelling the railway company to construct their bridges in the first place so as to leave the required space below them to the highway and to maintain them at, at least, that height from the original surface of the highway, and not as obliging them to conform from time to time to new conditions created by the persons having control of the highway.

Gray v. *Danburg*, 54 Conn. 574, specially referred to.

Held, also, upon the evidence, that the descent of the highway passing under the bridge was not greater than one foot in twenty; and, besides, the grade of the descent had no connection with the accident.

Quære, whether the plaintiff could have succeeded in any event against the railway company, he having deliberately incurred the risk of the squeeze, which he foresaw, instead of stopping his horses and putting himself into a place free from danger, as he might easily have done.

Du Vernet, for plaintiff. *Walter Cassels*, K.C., for the Grand Trunk R. W. Co.

Armour, C.J.O., Falconbridge, C.J.] [Feb. 11.

WILSON *v.* SHAVER.

Sale of goods—Contract—Unascertained future goods—Delivery—Payment—Appropriation to contracts—Acts of purchaser.

By an agreement in writing dated the 23rd January, 1897, between the defendant and the plaintiff, the defendant sold and made over and agreed to deliver to the plaintiff certain specified quantities of cord firewood of specified kinds, to be cut, drawn, and delivered at a specified place, and there piled, in consideration of certain specified prices, which the plaintiff undertook to pay to the defendant as follows: "The sum of $1.50 per cord as the same was delivered at said (specified place) in manner aforesaid and at the end of each month from the date thereof, but upon which payment the plaintiff would be entitled to stamp the same with his own stamp." The $1.50 per cord was to be upon an estimated measurement, and the plaintiff was to pay the balance on or before the 1st May, 1897, upon final measurement. Subsequently in the month of March it was agreed that the defendant should deliver the wood at the place mentioned unassorted into its different kinds, that he should load it upon the cars at an agreed price, assorting it in loading, and should accept as final the plaintiff's measurement at the place to which the wood was to be shipped. Before the 1st May, 1897, the plaintiff had made advances to the defendant on account of the wood to the extent of $2,000, and on or about that date, having been previously informed by the defendant that he had got all the wood out, he went to where the wood was piled, and, with the assistance of the defendant's clerk, who pointed it out, measured the piles of wood, and estimated them to contain 714 cords, and marked each pile, and stamped all the wood with the plaintiff's own stamp. On the 5th May the plaintiff wrote to the defendant and told him that the estimate was only 714 cords, and that the defendant had been overpaid about $400. Thereafter a part of the wood was shipped to the plaintiff as he required it, and on the 5th October, 1897, the residue was destroyed by fire.

Held, that this was a sale by description of unascertained future goods, and 714 cords of the wood described in the contract were delivered at the

place at which by the contract they were to be delivered, and in the state in which by the agreement of March they were to be delivered, and the plaintiff, by measuring, estimating, marking, and stamping them with his own stamp, assented to the delivery of them in the state in which they were delivered, and unconditionally appropriated these 714 cords to the contract, and the property therein thereupon passed to the plaintiff, as was the intention of the parties; and the provisions of the agreement of March did not prevent the property passing; and the plaintiff must bear the loss of the wood which was destroyed by fire.

W. H. Blake, for defendant. *F. A. Magee*, for plaintiff.

Falconbridge, C.J., Lount, J.] [Feb. 16.

LAIRD *v.* KING.

Writ of summons—Renewal—Service—Rule 132.

The decision of BOYD, C., ante p. 34, affirmed on appeal for the same reasons.

H. E. Caston, for plaintiff. *H. L. Drayton*, for defendant.

Meredith, C.J., MacMahon, J., Lount, J.] [Feb. 18.

DODGE *v.* SMITH.

Pleading—Real Property Limitation Act—Section of statute relied on—Appeals in matters of practice—Increasing costs.

An appeal by the defendant from an order of FALCONBRIDGE, C.J., in Chambers, dismissing the defendant's appeal from an order of the Master in Chambers requiring the defendant to give particulars of paragraph 10 of the statement of defence, stating the Act and section of such Act under which the defendant asserted that the plaintiffs were barred.

Action to restrain the defendant from trespassing upon mining lands and for damages. Paragraph 10 of the defence was: "the plaintiffs' alleged claim was and is barred by the Real Property Limitation Act, and all the right and title, if any, which the plaintiffs ever had to the said land or to the said mines, minerals and ores, were extinguished by virtue of the said Act."

The Chief Justice in Chambers, with some doubt, followed *Pullen* v. *Snelus*, 40 L.T. N.S. 363, and held that the plaintiffs were entitled to know which section of the Act the defendants relied on.

Grayson Smith, for the defendant, contended that it was sufficient to follow the form in Bullen & Leake, 5th ed., p. 921, and simply plead the statute.

No one for the plaintiff.

MEREDITH, C.J.,—Perhaps we should not have made the order in the first instance, but appeals of this kind should not be encouraged. The language of Lord Davey in *Hulbert* v. *Cathcar* (1896) A. C. at p. 476, is exactly applicable here: "If we were to encourage appeals from an order of a Master or Judge in Chambers on a question such as this, we should be leading to the multiplication of idle appeals on mere questions of practice which ought to be settled one way or the other by the judge before whom they first come, and to the piling up of perfectly useless costs." In this case the defendant, not content with one appeal, brings a second appeal to this court. All he has to do is to write a few words referring to the section or sections on which he relies, and, instead of doing so, he appeals twice, thus piling up perfectly useless cost.

Appeal dismissed with costs to the plaintiffs in any event.

Falconbridge, C. J.] LICK *v.* RIVERS [Feb. 18.

Discovery—Examination of plaintiff resident abroad—Place of examination—Order—Discretion.

The plaintiff resides at Cleveland, in the State of Ohio, and the defendant and the solicitors for both parties in the County of Oxford, Ontario, where also the cause of action arose.

Held, that the local judge for that county had jurisdiction under Rule 477 to make an order upon the application of the defendant, requiring the plaintiff to attend for examination for discovery at Windsor, Ontario; that it was unnecessary for the defendant to shew special circumstances to obtain such an order; that it was a proper exercise of discretion to name Windsor as a place "just and convenient" for the purpose; and that the local judge properly took judicial notice of the geographical situation of Windsor.

H. L. Drayton, for plaintiff. *F. A. Anglin*, for defendant.

Meredith, C.J., MacMahon, J., Lount, J.] [Feb. 19.

SMITH *v.* PORT COLBORNE BAPTIST CHURCH TRUSTEES.

Division Court appeal—Notice of—Grounds—Necessity for stating—Amendment—New notice—Time.

An appeal by the defendants from an order of the judge of the County Court of Welland pronounced Jan. 8, 1901, refusing a new trial of an action in the 6th Divisional Court in that county wherein judgment had been given for the plaintiff. The plaintiff objected that the appeal did not lie because the defendants had not given notice of the grounds of the appeal to the plaintiffs, as required by s. 158 of Division Courts Act, R.S.O. c. 60.

Semble, that, so soon as a certified copy of the proceedings is filed, the appeal is properly lodged, and the court may have power to amend as to the other matters specified in the section.

But it was not necessary to decide that question here, because the appeal was set down for the sittings beginning on the 4th February, and it was not necessary to set it down for an earlier sittings than that beginning on the 4th March. The difficulty would therefore be met by postponing the consideration of this appeal until the March sitting, thus giving the appellants an opportunity to give a new notice for that sittings, stating therein their grounds of appeal. Ordered that the case should stand over accordingly.

L. C. Raymond, for appellants. *Cowper*, for respondent.

Falconbridge, C.J.] CLARKE *v.* TRASK. [Feb. 20.

Trial—Failure to complete—Reservation of judgment—Death of judge—New trial.

Motion by the plaintiffs for directions as to further proceedings in the action. The evidence was taken and the argument heard before ROSE, J., who died before giving judgment.

Held, having regard to the disposition which was made of several cases standing for judgment before O'CONNOR, J., at the time of his death in 1887, that the ordinary course would be to adopt the suggestion of the plaintiffs and set the case down for argument before a Divisional Court on the evidence already taken, but that there is no power to make such an order, either in court or chambers, except on consent. *Wellbanks* v. *Conger*, 12 P. R. 354, is quite different, because in that case there has been a trial by jury, whose verdict was duly indorsed on the record.

The defendant not consenting, no order can be made, and the cause must go down to trial again.

Bain, for plaintiffs. *J. H. Moss*, for defendant.

Meredith, C.J., MacMahon, J., Lount, J.] [Feb. 20.

POWIS *v.* ONTARIO ACCIDENT INS. CO.

Accident insurance—"Riding" in public conveyance—Construction of policy.

An action upon an accident insurance policy. The plaintiff claimed that he was entitled to double the sum to which he would ordinarily be entitled under the policy because the injury of which he complained was received "when riding as a passenger on a public conveyance" according to a clause in the policy. As a matter of fact the accident happened while the plaintiff was getting on the step or platform of a tram-car before it had begun to move. The defendants appealed from the judgment of the County

Court of Wentworth in favour of the plaintiff, upon the ground that he was not "riding" on the car at the time.

Held, that the word "riding" as here used was equivalent to "travelling," and that the plaintiff was "travelling when the accident happened. *Northup* v. *Railway Passengers Assurance Co.*, 2 Lansing at p. 168, *Theobald* v. *Railway Passengers Assurance Co.*, 10 Ex. at p. 57, and *Champlin* v. *Railway Passengers Assurance Co.*, 6 Lansing at p. 71, specially referred to.

If "riding" implies motion, a person is not "riding" whenever the car stops.

Appeal dismissed with costs.

John Greer, for defendants *J. J. Scott*, K.C., for plaintiff.

Province of Nova Scotia.

SUPREME COURT.

Full Court] RELIANCE SAVINGS & LOAN CO. *v.* CURRY. [Jan. 12.

Loan company—Claim for balance due on mortgage after foreclosure and sale—Substituted service.

A mortgage made by defendant to the plaintiff company to secure payment of the sum of $500 contained a covenant that defendant would pay or cause to be paid the said mortgage money, to wit $500 with interest.

On sale under order for foreclosure and sale the mortgaged property realized only $110, and the plaintiff company applied for an order for judgment against defendant with costs for the balance due on the mortgage after deducting the proceeds of the sale.

Defendant did not appear to the action, and as he was a seafaring man and it was impossible to effect personal service, the notice of motion for order for judgment was served by filing with the prothonotary pursuant to O. 65, s. 4.

Held, that plaintiff was entitled to the order applied for.

W. E. Roscoe, Q.C., for plaintiff.

Full Court.] HENNESSY *v.* FARQUHAR. [Jan. 17.

Justice of the peace—Action against, for causing plaintiff's arrest under warrant—Question of jurisdiction—Defective notice.

Plaintiff caused to be served upon defendant, a justice of the peace, notice of action claiming damages for maliciously and without reasonable and probable cause causing plaintiff to be arrested and confined in the common jail under a warrant issued in a civil action brought and tried before

defendant in which one C. was plaintiff and the present plaintiff defendant, said warrant having been issued without authority and after the debt for which said suit was brought and said warrant issued was paid and satisfied to the satisfaction of the plaintiff by giving new securities therefor. Plaintiff's statement of claim was framed on the theory that the justice had jurisdiction but that he acted maliciously and without reasonable and probable cause; there was no count or paragraph against the justice founded on want or excess of jurisdiction.

Per GRAHAM, E. J., MEAGHER, J., concurring.

Held, 1. It was not necessary under the circumstances to consider whether the justice exceeded his jurisdiction or not.

2. The warrant having been properly issued, and the only question being as to whether or not it could be enforced after the debt was paid, that this question was not covered by the notice, and that the action must be dismissed: R.S.N.S. (5th series) c. 101, s. 12.

Per WEATHERBE, J.—The jury having found that defendant acted in good faith and that he had reasonable and probable cause for directing the arrest of plaintiff, and was not actuated by malice, plaintiff could not succeed.

Quære, whether after the warrant was issued plaintiff could adjust the debt by giving new securities.

Per RITCHIE, J.—The plaintiff could not succeed, the notice of action being defective.

Quære, whether plaintiff could not have succeeded if trespass had been alleged.

C. S. Harrington, Q.C., for appellant. *W. E. Roscoe*, Q.C., and *H. M. Christie*, for respondent.

Full Court.] WALLACE *v.* HARRINGTON. [Feb. 4.

Mortgage—Foreclosure by assignee Subsequent advances—Barristers and Solicitors Act 1899, N.S. Act 1899, c. 27, ss. 27, 31, 32 Failure of solicitor to take out certificate—Right of client to recover costs from opposite party.

H. assigned to plaintiff a mortgage held by him of certain property of which F. was owner subject to the mortgage to H.

The assignment, to which F. was a party, and which was made at his request, contained among other things an agreement on his part that any future advances which he might require, if made by the assignee, "should also be a lien or charge upon the property."

After the death of F. foreclosure proceedings were commenced by W., who, in addition to the amount secured by the mortgage, made a claim for subsequent advances.

The defendant H. was appointed to represent the heirs of F. in the proceedings, but, subsequently, C. F., who claimed to be one of the legal

representatives of F. was permitted to appear, and entered an appearance by her attorney.

Plaintiff's claim was sent to a referee to ascertain and report the amount due, and after a hearing at which C. F. was represented the referee reported as due the sum of $808.45, including $338.96 for subsequent advances.

On application to MEAGHER, J. at Chambers for order for foreclosure and sale the learned judge made an order in which he reduced the amount of plaintiff's claim to $435.25, with interest to the date of the sale, and deprived plaintiff of costs on the ground that her solicitor had failed to take out a certificate as required by the Barristers and Solicitors Act 1899, N.S. Acts 1899, c. 27, s. 27.

On appeal: *Held*, 1. The learned judge had authority to open up the question as to the correctness of the referee's report, but was wrong in his conclusion, the recital in the assignment being sufficient as between the parties to make the subsequent advances a charge upon the property, and there being sufficient evidence to support the finding that the advances claimed were actually made.

2. Plaintiff was entitled to recover interest up to the date of payment by the sheriff, and not, as allowed, only to the date of sale.

3. The procedure to enforce compliance with the provisions of the Barristers and Solicitors Act being by fine and suspension under ss. 31 and 32 of the act, and there being no provision enacting in express terms that attorneys who fail to take out certificates as required shall be debarred from recovering their costs, or that parties employing such attorneys shall be debarred from recovering, there is nothing to prevent plaintiff from recovering her attorney's costs from the opposite party to the suit.

T. J. Wallace, for appellant. *J. J. Power*, for respondent.

Full Court. | SMITH *v.* CANADIAN PACIFIC RAILWAY CO. [Feb. 4.

Railway company—Negligence in manner of running train—New trial—Ordinary incident in railway travelling.

Plaintiff was a passenger by a night train on the defendant company's railway between Montreal and Toronto. After retiring to the berth assigned to her—an upper one—she endeavored to make some change in the manner in which the berth was made up. She next tried to reach the other end of the berth from the inside, but, just as she leaned to the inside of the car, there was a violent lurch and jerk which threw her right into the middle of the passage way on her back, inflicting severe injuries.

On the trial of the action brought by plaintiff to recover damages for the injuries sustained by her, the learned trial judge withdrew the case from the jury for the reasons (1) that there was no evidence of negligence on the part of the defendant, and (2) that the plaintiff's evidence was consistent with the view that her own efforts to better her condition, in her fear arising from the motion of the car, resulted in the accident.

Held, that there being doubt as to the proper inference to be deduced from the facts in proof, there being two reasonable but different views that might be taken, the case was improperly withdrawn from the jury and plaintiff was entitled to an order for a new trial with costs.

Held, that apart from the question of plaintiff's negligence in attempting to turn in her berth, or the occasion for making such a change, there was evidence for the jury of negligence on the part of the defendant.

Semble, that a train should not be managed in such a way, whether by excessive speed in going around curves or otherwise, that a passenger should be thrown from the berth by the swaying and lurching, this being not at all an ordinary incident in railway travelling.

A. Drysdale, K.C., and *J. B. Kenny*, for appeal. *R. E. Harris*, K.C., contra.

Book Review.

Atlas and Epitome of Diseases Caused by Accidents. By Dr. Ed. Golebieweki of Berlin, Germany: Philadelphia, W. B. Saunders & Co., 1900.

This most valuable work is translated, with editorial notes and additions, by Pearce Bailey, M.D., the well known neurologist of New York. It is a book of nearly 600 pages, profusely illustrated with 40 colored plates and 143 text-illustrations. The whole field of accident is covered, and the subject is treated with a conciseness and clearness hitherto practically unknown in medical literature as viewed from a layman's stand-point. The medico-legal aspect is fully set forth, and whilst the purely scientific phase of the subject is comprehensively dealt with, the information given in regard to symptoms generally, as well as the facts in authenticated and individual cases, must prove of utmost value to counsel and solicitor in the preparation and conduct of actions for damages occasioned by accident. How injuries to various organs and parts of the body are caused, the evidences thereof, the functional disabilities resulting from accident injuries, how the organs other than those injured are affected, and what may be expected from certain classes of accident, are all so fully and clearly dealt with, and in such a plain manner, that a lawyer, with the aid of a little knowledge of anatomy, can have no difficulty in arriving at an intelligent comprehension of almost any case coming within this branch of litigation.

The colored lithographic plates are kept single, but show most distinctly the point under discussion in the text. More especially is this the case with respect to injuries to the back, legs, arms and hands. These plates are copied from original water-colors done from life.

The work cannot be too highly recommended. It will doubtless supersede many works on the same subject, in the active practice of nisi prius counsel, and it must prove extremely valuable to the surgeon called upon to testify in civil as well as in criminal cases.

PROPOSED CHANGES IN THE COURTS OF ONTARIO.

The Essex Law Association in answer to the circular of the Attorney-General makes the following recommendations:—

1. Division Courts should have jurisdiction in all actions, matters and proceedings where the amount claimed, or the value of the subject matter involved, does not exceed $200.00, exclusive of interest. These Courts should have power to grant all relief, legal or equitable, which may be afforded by the High Court, except in actions of slander, libel, false arrest and imprisonment, malicious prosecution, criminal conversation, seduction and breach of promise of marriage. Counsel fees should be allowed as between party and party when the amount recovered is $50.00 or upwards, increasing according to a fixed scale.

2. The County Court and General Sessions should be merged in the High Court of Justice. County Court Judges to be Local Judges of the High Court for their respective counties. Such Local Judges to have exclusive jurisdiction in all actions, matters and proceedings brought in, or transferred to, the counties for which they are such Judges.

3. All actions, matters and proceedings in which the jurisdiction of the Division Court is excluded, should be brought, or instituted, in the High Court of Justice. Such actions, matters and proceedings should be tried, and all motions and applications therein be disposed of by the Local Judge for the County in which such actions are brought, or to which they are transferred. Such Local Judges should have power to grant all relief, legal or equitable, with respect to any matters arising in such actions, etc.

4. A resident Official Guardian should be appointed for each County with full power with respect to all infancy matters arising in his County.

5. Moneys should be payable into, or out of Court upon order of the Local Judge, in all matters depending in his County.

6. Two fixed sittings with a jury should be held each year in each County, each sitting to be continued until all the cases entered be disposed of, and be presided over by the Local Judge.

7. Non-jury cases to be tried as they may be made ready.

8. All Rules of Court should be passed upon and adopted by the Legislature before coming into force.

9. An appeal should lie from all judgments or orders, interlocutory or final, and should be determined upon legal principles.

10. All taxations, and the questions arising thereon, should be disposed of by the Local Taxing Officer, subject to appeal, and without reference to the Taxing Officer at Toronto.

11. Costs should follow the event.

12. Liberty should be given to the parties to make an agreement fixing remuneration in advance, but subject to the agreement being operative only upon approval by the Local Judge before the business be begun, otherwise the tariff to apply.

Reasons in support of the conclusions above arrived at are set forth at length, but want of space prevents us giving them in full. The memorandum concludes as follows:—

And we may say in closing that the members of the Essex Law Association are unanimous in their desire to have the present vicious system of centralizing legal business at Toronto abolished. They see no good reason why business which arises in their county should not be, in the first instance, disposed of in that county; and they think the time is

opportune for doing away with the present system and substituting a better and more convenient and less expensive one in its place.

The following is the memorandum sent by the Lindsay Law Association :—

1. We are of opinion that there is no general demand for the increase of the jurisdiction of Division Courts, and that the jurisdiction should not be increased. The only request, therefor, is that worked up by the Division Court Clerks Association for personal purposes. We are also of opinion that the costs in Division Courts are excessive, the disbursements in most cases being as much as or more than for similar services in the County Court. It may be urged that the earnings of Division Court Clerks and Baliffs are small. This is not the case in towns and large centres, and in outlying districts we are of opinion that there are too many Courts and that a reduction would be in the interest of the public. Better officers could be got, they would have more work and be more experienced, and a reduction in fees could well be made.

2. We are of opinion that there is a demand for a reduction in and limit to the costs in the County, and High Courts, which we think in justice to the public and profession might be fairly met by providing for an outside limit of costs which the losing party may be ordered to pay, based on a scale according to the amount involved, say from 10 to 25 per cent. of the amount involved, somewhat on the principle of The Mechanic's Lien Act.

3. That in our opinion costs are greatly increased by interlocutory motions and that the costs thereof should be limited; that there should be no examinations for discovery in County Court cases, except for special reasons, in which case the costs should not exceed $10.00 and that the cost of copies for examinations in any Court should not exceed 5 cents a folio for three copies, and 1 cent a folio for each additional copy.

4. That in our opinion the County Court should be merged with the High Court, and that County Judges should be Local Judges of the High Court with full jurisdiction in all matters of practice and procedure (except trials) in all cases in the County (subject to appeal), and that they should have power to try cases to double the present jurisdiction of the County Court, or a jurisdiction increased within certain reasonable limits, and the right to try all cases where the other side does not object; that there should be sliding scales of costs according to the amount involved; or if the fusion of the Courts is not practicable then we are of opinion that the jurisdiction of the County Court should be doubled.

5. That in our opinion the idea of having one jury for both High Court and County Courts is a good one, and there should be two or more sittings annually in each County, as might be necessary, according to the amount of business in the particular County.

6. That in our opinion solicitors should be allowed to make any contracts they may please with their clients; that the same should not be subject to the revision of any Taxing Officer or Judge, that it should be subject only to be set aside the same as any other contract between private individuals; that it would be unfair to allow any other person to judge of the risk and hazard after the result is known. The only limitations there should be are that the contract should be in writing, and that the client should have the right to cancel the same before anything happens materially changing the prospect of success, upon paying the regular tariff of charges.

7. We are also of opinion that there would be a decided advantage in merging the Surrogate Court in the High Court of Justice, the jurisdiction to be exercised by the Local Judges, and a special Judge assigned for the work in Toronto; the application for Probate or Letters of Administration to give the Court jurisdiction over the estate. All matters of construction could be settled by an inexpensive motion. Claims against estates could be disposed of by the Judge after the manner of the Master's office; infants' interests could be protected by the Court. No further proceedings to be necessarily taken in any estate than the nature of the case requires.

The reply of the Hamilton Law Association was as follows:

In view of the wide scope of the proposed amendments to the administration of the law, a representative Commission should be appointed to consider the whole question, and to bring in a Report to the Legislature.

If, however, such a Commission should not be appointed, the views of the Association as to the suggestions of the Attorney-General are expressed in the following resolutions:-

1. That, in the opinion of this meeting, the jurisdiction of the Division Court should include all cases up to $100, and in case of claims ascertained by the signature of the defendant, then up to $200, the defendant in every case stating his grounds of defence in the dispute notice, and the Judge having the right to allow a fee to the successful party, together with court costs and witness fees.

2. That the Jurisdiction of the County Courts should not be increased.

3. That solicitors and clients should be allowed by agreement to fix the costs to be paid in any suit or matter, and that this agreement should not be subject to revision by the Taxing Officer, or any other Officer at Toronto or elsewhere, and should only be liable to be set aside or vacated on the ground of actual fraud, the solicitor and client being treated as standing upon the same footing—the one as well able to take care of himself as the other. Where no bargain is made, the present tariff should regulate costs, and in all cases where infants or others under disabilities are concerned, special provision should be made.

4. That the new Act should provide that the powers relating to the selling of lands under the Devolution of Estates Act should be exercised by the County Judge instead of the Official Guardian, and that as far as possible all business orginating in the County should be dealt with and disposed of within the County.

5. That it is advisable to abolish all party and party costs in the County Court and High Court except certain fixed fees to the successful party (according to the stage to which the suit is carried) and the Court fees payable by stamp, and the actual disbursements to witnesses. (Reference may be made to the Civil Code of the State of New York.)

6. That the Association does not favor the idea of having joint sittings of the High and County Courts, but considers it advisable that the Sittings should remain as they now are.

Flotsam and Local Items.

OSGOODE HALL, TORONTO.

TORONTO, FEB. 15th, 1901.

To the Editor of THE CANADA LAW JOURNAL.

DEAR SIRS: Although you have often called attention to, and others have remarked, times without number, upon the niggardly telephone accommodation at Osgoode Hall, the Benchers have not thought proper to do anything about it. The want of a reasonable and proper service is a great nuisance to those whose duties call them thither. Long and tedious journeys have to be made from one end of the building to the other to the great inconvenience of busy and weary men. Valuable time is lost and business retarded. Are the Benchers not aware that we are now living in the twentieth century?

CITY BARRISTER

[We presume the Benchers must know that much dissatisfaction has existed for a long time as to the matter referred to. Surprise has often been expressed that nothing has been done.]—ED. C. L. J.

The following legislative gem from 34 & 35 Henry VIII., c. 9, is worth noting. It provides that "although the most part of the persons of the said craft of surgeons have small cunning, yet they will take great sums of money and do little therefor, and by reason thereof they do often impair and hurt their patients rather than do them good, in consideration whereof, and for the ease, comfort, succour, help, relief and health of the King's poor subjects, inhabitants of this realm now pained or diseased, or that hereafter shall be pained or diseased." In order to meet this difficulty the Act goes on to provide (in hæc verba):—"That at all times from henceforth it shall be lefull to every psone being the King's subject, having knowledge and experience of the nature of herbs, rotes, and waters, or of the operacon of the same by speculacun or practyse within any part of the realm of England, or within any other of the King's dominions to practise, use and mynistre in and to any outward sore, uncoom wounde, appostem acons, outward swelling or disease, any herbe or herbes oyntement, bathes, pultes and emplasters, according to theyre cooning experience and knowledge in any of the diseases, sores and maladies aforesaid, and all other like to the same, or drinks for stone ste au gurye or agrees without sute vesacon trouble penaltie or losse of theyre goods.