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A statute of the State of New York enacted at its last session makes it a misdemeanor to use the name, portrait, or picture of any living person for advertising without consent, and gives a remedy by action with damages for any infraction of this law. The damages for every known violation of this provision may be made exemplary. The reason for this enactment was, as perhaps our readers will remember, an unsuccessful attempt of a young lady to restrain the use of her portrait for advertising purposes. It is a very proper provision, and one which, as a contemporary remarks, is "a necessary check on the insolence of advertising brigands." A person certainly should have a copyright in his or her own face.

The celebrated but imaginary case of *Jarndyce* v. *Jarndyce* is almost paralleled by an actual suit which was commenced over twenty-one years ago in the state of New York by a brakesman who sustained severe and lasting injuries whilst in the discharge of his duties. He obtained a verdict of $4,000 against a railway company. This was, however, set aside as excessive. Two years afterwards he was even more successful, securing a second verdict for $4,900. This was also set aside. After three years' delay a fourth jury gave him $4,500. A fifth and sixth trial followed resulting in verdicts of $4,900, these being also set aside. He appeared last summer before a seventh jury and obtained a verdict of $4,500. The railway company again appealed; but at last the courts came to the conclusion to mind their own business and to let the verdict stand, but it was a tedious and expensive way of teaching the court the respective functions of judge and jury. The ill-natured might possibly say that railway influence is strong in that country; others might say that there are those who require to learn the lesson that it is well to accept a small settlement rather than fight a rich corporation.

It is rumoured that the Judges of the Supreme Court of Judicature for Ontario have under consideration some proposed amendments of the Rules. One of these we understand is designed to keep the Accountant's office open throughout the Long Vacation, or in other words, to abolish the present restrictions on the issue of

cheques from that office during the Long Vacation. Much may be said in favour of this. It is undoubtedly a hardship that suitors should have to wait until the end of the Long Vacation before they can get money out of Court; but as the right to get moneys out of Court depends on the Court making the necessary orders for determining the rights of the parties and directing to whom it is to be paid, it would obviously be a cruel mockery to order the Treasury door to be kept wide open and at the same time say in effect to suitors: You may have the pleasure of looking at your money, and when we come back from our two months' holiday we will make the necessary orders to enable you to get it. The necessary corollary of ordering the accountant's office to be kept open, is to provide at the same time for the continuous conduct of the business of the Courts during the Long Vacation. This could be done by abolishing the Long Vacation and the Judges and officers of the Court might get leave to take a few days' holiday now and then in the course of the year, as might suit their convenience, and at the same time not interfere with the continuous despatch of business. The enforced idleness of the Long Vacation, moreover, is distasteful to some practitioners, notably those who have little or nothing to do. The judges no doubt will take this view of the matter into their most serious consideration.

We notice in one of our exchanges the remarkable fact that in a certain county in the United States, "every resident signed a petition praying the Governer of the State not to interfere with the execution" of a death sentence on three men who had committed a most cold blooded murder, one which, as the writer remarks, was, "without any extenuating circumstance whatever, diabolical in conception and in execution. The trial was fairly conducted and the prisoners had the benefit of the services of astute and alert counsel. They were convicted, and the conviction was unanimously confirmed by the Court of Appeals". For some reason there was a wide spread belief that the sentence would never be executed. As the writer naturally remarks, "this is a curious state of affairs." Petitions for a pardon or for the commutation of a sentence are common enough, but a petition of the character above referred to indicates that there is sometimes more reason for lynch law than we in this country might suppose; for, happily, our lot is cast where the wheels of criminal justice are not impeded by what the

above writer hints at, "the desire to please a personal or political friend". In this case the Governor had previously granted two respites to the prisoners. The article concludes by a statement which ought to be unnecessary in any civilized community: "After conviction, and the affirmance of that conviction by the Court of last resort the Governor ought never to interfere except in the event of bona fide, newly discovered evidence, or some other equally cogent public reason rendering such action necessary in the interests of justice." The above shews a condition of things which cannot be described by a much milder word than, appalling.

THE rights of pedestrians crossing city streets were, as we see in *Law Notes*, vigorously affirmed in *Lahne* v. *Seaich*, 82 N.Y. Supp. 69, where the judge said: "The time is opportune to draw attention to the rule of law that upon crosswalks, at least, the rights of pedestrians are equal to rights of vehicles, and neither has a right of way over the other. The drivers of vehicles have assumed the right of way over pedestrians so long that it is an uncommon thing to see the rights of the latter respected by the former. Except at crossings where, at great public expense, the municipal authorities have found it necessary to station patrolmen, vehicles are generally driven over crosswalks and intersecting streets and around corners as the same speed as in the middle of the block; and pedestrians, whether men, women, or children, are often obliged to wait a long time, or to run by or dodge passing vehicles, in order to get across the street and proceed on their way. If the street-railway company should block the way of pedestrians with one car after another in such close proximity that they could not get across, every one would agree that this was an infringement of the rights of pedestrians which should not be tolerated. Pedestrians wait at a corner for one vehicle which is approaching to pass, and another after another follows in close succession, in utter disregard of the desire and right of pedestrians to cross the street. Any pedestrian has a right to cross at will, exercising ordinary care for his own safety, and having due regard to the rights of those travelling by vehicles; but a pedestrian whose business is urgent cannot wait indefinitely, and has a right to cross as best he can; and if, in asserting that right, he is run down by a vehicle proceeding in disregard of his rights, he should not be held guilty of contributory negligence, and the driver or owner of the vehicle should be held responsible for the damages."

THE LAND TITLES ACT.

One of the chief reasons why the Land Titles system has not been more generally adopted is the expense attendant upon bringing lands under it. An investigation of the title is, of course, requisite, and this of necessity must cost something, but hitherto disbursements for advertising have been a heavy addition to the cost. As private purchasers constantly accept conveyances without incurring this expense, by many it was considered unreasonable that the land titles office would not do the same. It must be remembered, however, that in private transactions there are as a rule two persons on the qui vive to see that the transaction is carried out properly, and that where a registration which confers an absolute title is being made ex parte one would expect more publicity to be given to the transaction than in the case of an ordinary loan or sale. Still the expenditure of from $15 to $20 for an advertisement which only appeared twice in the Gazette and once in each of two daily newspapers, hardly seemed a publicity commensurate with the cost, while it was felt that more frequent insertions would tend to make the expense prohibitory.

By an Act of last session the Land Titles Assurance Fund has been given the like protection as the courts give to a bona fide purchaser without notice of an adverse claim, and in view of this the provisions of the rules which required advertising have been repealed and the posting of a notice on the property and its service upon the occupants of adjoining properties substituted.

This Act also makes a considerable reduction in the assurance fees charged in respect to improved property. Where an absolute title is desired the charge was one-quarter per cent. upon the value of the property. It is now one-quarter per cent. upon the value of the land apart from the buildings or fixtures thereon, and one-tenth per cent. upon the value of the buildings and fixtures. Where only a possessory title is applied for, the charge is now half of these rates. The person seeking registration may instead of paying the assurance fees allow them to remain as a charge upon the land until he seeks to transfer or mortgage it, when they have to be paid, with accumulated interest at five per cent. compounded annually. Some owners may desire to take advantage of this provision. We understand its enactment was

urged by gentlemen who have been largely instrumental in the adoption of the Act here.

In London, England, where they seem, after the preliminary struggle, to proceed much more rapidly with radical measures than we do here, a large portion of the city is being brought under the Land Titles system, as there whenever property is dealt with in the territory where the Act is applicable its registration under the Act is compulsory. In consequence of this, registration is almost invariably made with a "possessory title." This, it must be remembered, is not a title by possession, with which it is often confounded, but is simply the registration of an owner who is in possession with such title as he happens to have. With us this would be simply the transfer of property, without any examination of title, from the Registry system to the Land Titles system, and anyone purchasing land registered with this kind of title must examine the title of the person who is first registered, as if it were not under the Land Titles Act. The subsequent claim of title would, however, be guaranteed.

The advocates of this system claim, and there seems to be considerable force in the claim, that if lands were largely registered in the Land Titles offices with a possessory title they might after the lapse of a comparatively short period, say ten years, be declared absolute, so that all the land in the Province might, without any great expense and without examination of title, be transferred to the new system. Very possibly this will be the result in England if the London experiment proves successful. In this country the registry system is so nearly perfect that the same incentive to adopt the new method does not exist, though it is undeniable that there is an immense waste of both labor and money in the repeated examination of a title which takes place on every new sale or loan, when this can be had, once for all, in the Land Titles office.

As the tariff of fees is not published with the rules in the Revised Statutes we imagine many in the profession are not familiar with the charges made for bringing land under the Act, so that it may be convenient to give them here.

Where an absolute title is required and the number of instruments to be examined exceeds ten the following is the scale of charges:

Where the value of property registered does not exceed					$1,000	$ 6.00
Where net value exceeds	$1,000	and does not exceed			2,000	9.00
"	"	2,000	"	"	4,000	12.00
"	"	4,000	"	"	10,000	20.00
"	"	10,000	"	"	20,000	25.00
"	"	20,000	"	"	40,000	30.00
"	"	40,000	"	"	50,000	40.00
"	"	50,000	.....	.....	.....	50.00

These items cover all the charges in the office for first registration, except when oral depositions are taken or there are adverse claims. Of course they do not include the applicants' disbursements for abstract of title, solicitors' fees, etc. Where only a possessory title is required the charges are almost nominal, the fee for a property worth $1,000 being $2.50, and for one worth $50,000 or over, $8.00.

STOPPING PAYMENT OF A CHEQUE.

A cheque is described as a bill of exchange drawn on a bank, payable on demand: Bills of Exchange Act 72. And yet, though a cheque has some of the characteristics of a bill of exchange it has peculiarities of its own which distinguish it from other bills of exchange. "Bill of exchange" may, therefore, be regarded as a generic term, and a "cheque" is, strictly speaking, merely a species of bill of exchange. For instance, the definition of a cheque limits it to orders on a bank, and by a "bank" is meant "an incorporated bank or savings bank": ib. s. 2 (*c*). Moreover, a cheque must be payable on demand; whereas other bills of exchange may be drawn on any person, and may be made payable, on demand, or at a fixed or determinable future time: ib. s. 3.

By s. 74 of the Bills of Exchange Act the duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by, (1) countermand of payment; (2) notice of the customer's death. In both of which respects a cheque would appear to differ from other bills of exchange. In *Trunkfield* v. *Proctor*, 2 O.L.R. 326, it was held by Falconbridge, C.J.K.B., that an order on a private banker for payment of money did not come within the statutory definition of "a cheque," but was a bill of exchange, and as such was not revoked by notice to the drawee of he death of the drawer, as would be the case if it had been a

cheque. This case was afterwards affirmed by the Divisional Court, but on other grounds as hereafter mentioned.

In Chalmers' Bills of Exchange (5th ed.,) p. 182, it is said that, apart from something special in the contract, it seems that a bill of exchange is not revoked by the death of the drawer ; but, strange to say, perhaps, this point cannot be said to have been conclusively settled. *Trunkfield* v. *Proctor*, supra, would appear to establish, as far as a single judge can do so, that the authority of a drawee of a bill of exchange (other than a cheque) to accept and pay, is not revoked by notice of the death of the drawer (and by analogy neither would be revoked by countermand to the drawer) ; but it will be noticed that though the Divisional Court agreed with Falconbridge, C.J.K.B., that the instrument there in question was a bill of exchange, yet they were unable to agree with him that there had been an effectual delivery of it to the payee, and they treated it, in effect, though a bill of exchange in form, as being in the nature of an equitable assignment, or declaration of trust, although s. 53 of the Bills of Exchange Act declares that a bill of exchange of itself does not operate as an assignment of funds in the hands of the drawee available for the payment thereof.

In a recent case in England arising out of a contract for the supply of refreshments at one of the Coronation reviews which was put off owing to His Majesty's illness, a cheque had been given in part payment of a sum payable under the contract which subsequently became impossible of performance. Payment of the cheque was stopped before it had been negotiated, and the payee then brought an action on the cheque, and it was held by Ridley, J., he could not recover ; that the stopping of the payment of the cheque remitted the parties to their original rights under the contract as if the cheque had never been given, and as the payee could not recover under the original contract neither could he recover on the cheque : *Elliott* v. *Crutchley* (1903), 2 K.B. 476. It will be noticed in this case that the rights of no third parties had intervened. If the cheque had been transferred to a bonâ fide holder for value the drawers would have remained liable to him on the cheque notwithstanding they had stopped its payment : *McLean* v. *Clydesdale Bank* (1883), 9 A.C. 95. That being the case, the language of Ridley, J., when he says that the effect of stopping payment of a cheque given in respect of a debt is "as though the cheque had never been given," and that "the debt remains in

such a case, as though there had been no cheque, and the party to whom it was sent is remitted to his original right on the consideration for the cheque," seems to be too general, and must be understood as not in any way implying that the rights of a bonâ fide transferee of the cheque for value could be prejudiced either by the death of the drawer, or by the stoppage of the payment of the cheque by him. It would, therefore, perhaps be more correct to say that, notwithstanding the stoppage of the payment of a cheque, the payee may nevertheless sue on it, but any defence which the drawer may have in respect to the consideration for which it was given is open to him, and, to that extent, it is as if the cheque had never been given. Because, assuming that a drawee of a bill of exchange, other than a cheque, continues liable thereon to the payee, though he (the drawer) may notify the drawee not to accept or pay it, and that the drawee's representatives are liable to the payee though the drawer die before acceptance or payment, there seems no reason why the same rule should not apply to a cheque. Countermand of payment, or notice of the death of the drawer of a cheque, operates as a revocation of the duty and authority of the drawee to pay the cheque under s. 74, but that section certainly does not in terms, nor does it by implication, exonerate the drawee from the liability to pay the bill if the drawee does not, which every drawer of a bill of exchange assumes. The revocation of the drawee's authority to pay does not make the cheque a nullity, because, as we have seen, a bonâ fide transferee thereof for value may recover against the drawer notwithstanding he may have stopped payment of it : *McLean* v. *Clydesdale Bank*, supra.

In *Cohen* v. *Hale*, 3 Q.B.D. 371, on which Ridley, J., relied, an order had been made attaching a debt ; at the time the order was made the garnishees had given a cheque for the amount of the debt, payment of which, however, they subsequently stopped ; and the question was whether the debt under the circumstances was attachable and the court held that it was, though if payment of the cheque had not been stopped, the debt would not have been attachable ; but as soon as the payment of the cheque was stopped it was as if the garnishees had never given it. This case, however, cannot be said to decide that the stopping payment of the cheque makes it a nullity, for although a garnishee could not, as against an attaching creditor, be heard to say he had paid the debt by giving a cheque therefor, when he had effectually revoked the pay-

ment by stopping payment of the cheque, it does not follow from that decision that the drawer of a cheque by stopping its payment can relieve himself from all liability thereon as against all persons.

The contention of the plaintiff in *Elliott* v. *Crutchley* was that he was entitled to recover on the cheque, because, if the payment had been made in cash instead of by cheque, he would have been entitled, according to the decision of the Divisional Court in *Blakely* v. *Muller* (1903) 88 L.T. 90, to have retained the money, and therefore he contended he was entitled to recover on the cheque, though he could not succeed on the contract in respect of which the cheque was given. The answer to that, however, would seem to be that the cheque was not a payment, but a contract to pay, that the stoppage of its payment by the drawers enabled them to set up that the consideration had failed by reason of the contract in respect of which it was given having become abortive. It is, however, somewhat difficult to reconcile that position with *Blakely* v. *Muller* which decides that the fact that the further performance of a contract becomes impossible from no default of either contracting party, does not render the contract void ab initio, but both parties are excused from further performance so that neither can recover from the other in respect of anything done in the partial performance of the contract. Can it be said that there was a total failure of consideration? Perhaps on the other hand it is an instance of a hard case making bad law.

TWO GREAT JUDGES.

The eminent British historian and publicist, Mr. James Bryce, has given us * interesting sketches of the lives of some distinguished men of the last half of the century just closed. His account of the career of Sir George Jessel, Master of the Rolls, and of Lord Chancellor Cairns will be of special interest to our readers.

Of Sir George Jessel who was born in 1824 and died in 1883, he says:—

"Jessel was only one among many instances England has lately seen of men of Jewish origin climbing to the highest distinction. But he was the first instance of a Jew, who, continuing to adhere to the creed of his forefathers, received a very high

*Studies in Contemporary Biography, The MacMillan Co., New York.

office ; for Mr. Disraeli, as every one knows, had been baptized as a boy, and always professed to be a Christian. Jessel's career was not marked by any remarkable incidents. He rose quickly to eminence at the bar, being in this aided by his birth ; for the Jews in London, as elsewhere, hold together. Although a decided Liberal, as the Jews mostly were until Lord Beaconsfield's foreign policy had begun to lead them into other paths, he had borne little part in politics till he took his seat in the House of Commons ; and when he spoke there, he obtained no great success. Lawyers in the British Parliament are under the double disadvantage of having had less leisure than most other members to study and follow political questions, and of having contracted a manner and style of speaking not suited to an assembly, which, though deliberative, is not deliberate, and which listens with impatience to a technical or forensic method of treating the topics which come before it. . . . He possessed a wonderfully quick, as well as powerful mind, which got to the kernel of a matter while other people were still hammering at the shell, and which applied legal principles just as swiftly and surely as it mastered a group of complicated facts. The Rolls Court used to present, while he presided over it a curious and interesting sight, which led young counsel, who had no business to do there, to frequent it for the mere sake of watching the judge. When the leading counsel for the plaintiff was opening his case, Jessel listened quietly for the first few minutes only, and then began to address questions to the counsel, at first so as to guide his remarks in a particular direction, then so as to stop his course altogether and turn his speech into a series of answers to the judge's interrogatories. When, by a short dialogue of this kind Jessel had possessed himself of the vital facts, he would turn to the leading counsel for the defendant and ask him whether he admitted such and such facts alleged by the plaintiff to be true. If these facts were admitted, the judge proceeded to indicate the view he was disposed to take of the law applicable to the facts, and, by a few more questions to the counsel on the one side or the other, as the case might be, elicited their respective legal grounds of contention. If the facts were not admitted, it of course became necessary to call the witnesses or read the affidavits ; processes which the vigorous impatience of the judge considerably shortened, for it was a dangerous thing to read to him any irrelevant or loosely drawn paragraph. But more

generally his searching questions, and the sort of pressure he applied so cut down the issues of fact that there was little or nothing left in controversy regarding which it was necessary to examine the evidence in detail, since the counsel felt that there was no use in putting before him a contention which they could not sustain under the fire of his criticism. Then Jessel proceeded to deliver his opinion and dispose of the case. The affair was from beginning to end far less an argument and counter-argument by counsel than an investigation directly conducted by the judge himself, in which the principal function of the counsel was to answer the judge's questions concisely and exactly, so that the latter might as soon as possible get to the bottom of the matter. His interruptions, unlike those of some judges, were neither inopportune nor superfluous. Thus business was despatched before him with unusual speed, and it became a maxim among barristers that, however low down in the cause-list at the Rolls your case might stand, it was never safe to be away from the court, so rapidly were cases "crumpled up" or "broken down" under the blows of this vigorous intellect. It was more surprising that the suitors, as well as the Bar and the public generally, acquiesced, after the first few months, in this way of doing business. Nothing breeds more discontent than haste and heedlessness in a judge, but Jessel's speed was not haste. He did as much justice in a day as others could do in a week; and those few, who, dissatisfied with these rapid methods, tried to reverse his decisions before the Court of Appeal, were very seldom successful.

"In dealing with facts, Jessel has never had a superior, and in our days, perhaps, no rival. He knew all the ways of the financial and commercial world. In his treatment of points of law, every one admitted and admired both an extraordinary knowledge and mastery of reported cases, and an extremely acute and exact appreciation of principles, a complete power of extracting them from past cases and fitting them to the case in hand. He had a memory which forgot nothing, and which, indeed, wearied him by refusing to forget trivial things. When he delivered an elaborate judgment it was his delight to run through a long series of cases, classifying and distinguishing them. His strength made him bold; he went further than most judges in readiness to carry a principle somewhat beyond any decided case, and to overrule an authority which he did not respect. The fault charged on him

was his tendency, perhaps characteristic of the Hebrew mind, to take a somewhat hard and dry view of a legal principle, overlooking its more delicate shades, and, in the interpretation of statutes or documents, to adhere too strictly to the letter, overlooking the spirit. An eminent lawyer said, 'If all judges had been like Jessel, there might have been no equity.' In that respect many deemed him inferior to Lord Cairns, the greatest judge among his contemporaries, who united to an almost equally wide and accurate knowledge of the law a grasp of principles even more broad and philosophical than Jessel's was. Be this as it may, the judgments of the Master of the Rolls, which fill so many pages of the recent English Law Reports, are among the best that have ever gone to build up the fabric of the English law. Except on two occasions, when he reserved judgment at the request of his colleagues in the Court of Appeal, they were delivered on the spur of the moment, after the conclusion of the arguments, or of so much of the arguments as he allowed counsel to deliver; but they have all the merits of carefully-considered utterances, so clear and direct in their style, so concisely as well as cogently are the authorities discussed and the grounds of decision stated. The bold and sweeping character which often belongs to them makes them more instructive as well as more agreeable reading than the judgments of most modern judges, whose commonest fault is a timidity which tries to escape, by dwelling on the details of the particular case, from the enunciation of a definite general principle. Positive and definite Jessel always was. As he put it himself:—'I may be wrong, but I never have any doubts."

To this picture of Jessel one cannot help discerning a likeness in many respects of some of our own judges. Abilities and achievements so remarkable we are compelled to admire, but it would be unsafe to recommend for imitation, in all respects, the methods in which they were exhibited. A better model of judicial excellence is to be found, according to Mr. Bryce, in Lord Cairns, whom he regards as the greatest judge of the Victorian epoch and perhaps of the nineteenth century, and one of the five or six most brilliant luminaries that have ever adorned the English bench. We quote the following paragraphs:—

"Hugh McCalmont Cairns, afterwards Earl Cairns (born 1819, died 1885), was one of three remarkable Scoto-Irishmen whom the north-east corner of Ulster gave to the United Kingdom in one

generation, and each of whom was foremost in the career he entered (Lord Lawrence and Lord Kelvin being the other two.) In the House of Commons, though at first diffident and nervous, he soon proved himself a powerful as well as ready speaker, and would doubtless have remained in an assembly where he was rendering such valuable services to his party but for the weakness of his lungs and throat, which had threatened his life since boyhood. He therefore accepted, in 1867, the office of Lord Justice of Appeal, with a seat in the House of Lords, and next year was made Lord Chancellor by Mr. Disraeli, then Prime Minister, who dismissed Lord Chelmsford, then Chancellor, in order to have the benefit of Cairns' help as a colleague. Disraeli subsequently caused him to be raised to an earldom. After Lord Derby's death Cairns led the Tory party in the House of Lords for a time, but his very pronounced low-church proclivities, coupled perhaps with a certain jealousy felt toward him as a newcomer, prevented him from becoming popular there, so that ultimately the leadership of that House settled itself in the hands of Lord Salisbury, a statesman not superior to Cairns in political judgment or argumentative power, but without the disadvantage of being a lawyer, possessing a wider range of political experience, and in closer sympathy with the feelings and habits of the titled order.

For political success Cairns had several qualities of the utmost value—a stately presence, a clear head, a resolute will, and splendid oratorical gifts. He was not an imaginative speaker, nor fitted to touch the emotions; but he had a matchless power of statement, and a no less matchless closeness and cogency in argument. In the field of law, where passion has no place, and even imagination must be content to move with clipped wings along the ground, the merits of Lord Cairns' intellect shewed to the best advantage. At the Chancery Bar he was one of a trio who had not been surpassed, if ever equalled, during the nineteenth century, and whom none of our now practising advocates rivals. The other two were afterwards Lord Justice Rolt, and Roundell Palmer, afterwards Lord Chancellor Selborne. All were admirable lawyers, but of the three Rolt excelled in his spirited presentation of a case and in the lively vigor of his arguments. Palmer was conspicuous for exhaustive ingenuity, and for a subtlety which sometimes led him away into reasonings too fine for the court to follow. Cairns was broad, massive,

convincing, with a robust urgency of logic which seemed to grasp and fix you, so that while he spoke you could fancy no conclusion possible save that toward which he moved. His habit was to seize upon what he deemed the central and vital point of the case, throwing the whole force of his argument upon that one point, and holding the judge's mind fast to it. In hearing a cause he was singularly patient, rarely interrupting counsel, and then only to put some pertinent question. His figure was so still, his countenance so impassive, that people sometimes doubted whether he was really attending to all that was urged at the bar. But when the time came for him to deliver judgment, which in the House of Lords is done in the form of a speech to the House in the moving or supporting a motion that is to become the judgment of the tribunal, it was seen how fully he had apprehended the case in all its bearings. His deliverances were never lengthy, but were very exhaustive. They went straight to the vital principles on which the question turned, stated these in the most luminous way, and applied them with unerring exactitude to the particular facts. It is as a storehouse of fundamental doctrines that his judgments are so valuable. They disclose less knowledge of case-law than do those of some other judges; but Cairns was not one of the men who love cases for their own sake, and he never cared to draw upon, still less to display, more learning than was needed for the matter in hand. It was in the grasp of the principles involved, in the breadth of view which enabled him to see these principles in their relation to one another, in the precision of the logic which drew conclusions from the principles, in the perfectly lucid language in which the principles were expounded and applied, that his strength lay. Herein he surpassed the most eminent of contemporary judges, the then Master of the Rolls, for while Jessel had perhaps a quicker mind than Cairns, he had not so wide a mind nor one so thoroughly philosophical in the methods by which it moved."

INJURIES FROM ELECTRICITY IN HIGHWAYS.

"The difficulties surrounding the subject arise from the fact that the nature of this force is but partially comprehended; the impossibility in many instances of discovering its presence; the suddenness with which an apparently safe position may instantly be

changed into a death trap, by the breaking of a wire, the destruction of the insulating material, or the induction of a current from some unexpected source. Because of the utter impossibility of anticipating every freak which this subtle fluid may perform, the courts have generally held that companies employing electricity upon public streets are not insurers against all accidents therefrom. It becomes necessary, therefore, to determine in what classes of cases liability may be imposed upon corporations or individuals who utilize electricity upon or along public thoroughfares, in respect to injuries from such use. We lay out of the discussion all cases involving injuries to employees, as well as accidents to persons or property from electric wires upon buildings; injuries (not due to electric shock) resulting from contact with fallen wires; and electralysis of gas and water pipes.

The simplest case which has come before the courts is that in which a corporation maintains a heavily charged uninsulated electrical wire near to a highway, and within a easy reach of travellers. Where such exists, there is a prima facie case of negligence; and it has been held that where a person is found dead at the foot of the pole on which such wire is suspended, with a fresh burn upon his hand and his body otherwise in a sound condition, there is a sufficient case for the consideration of the jury. This liability, however, does not follow from the mere fact that a live wire is left exposed. If it is so far removed from the line of travel that the owner could not reasonably foresee contact between it and one who uses the highway, there is no responsibility for accidents. Thus, where an uninsulated wire was placed upon an awning in front of a building, the awning being 16 feet above the street and evidently not intended as a place of resort, and the deceased went upon it to assist his father (who had been shocked while attempting to raise the wires so as to allow the passage of a house he was moving along the street), and in doing so the deceased was killed by the electrical current, the owner of the wires was held not answerable for the occurrence.

A further extension of the liability has been made where the owner of the wire abandons it under circumstances which render it possible it will be removed by a third party and placed in a dangerous proximity to the highway. Where a telephone company ran its wires over the poles of an electrical railway company, and afterwards discontinued the use of a certain wire, coiling it and

placing it on the bracket attached to a pole of the railway company, and subsequently the latter took down the pole and hung the coil on the telephone company's post, where it was highly charged with electricity from the railway company's wires, causing injury to a traveller, the telephone company was held liable for negligence in failing to anticipate the acts of the railway company. The court say: "This responsibility is based on the principle that if the defendant, instead of removing its wire, chose to hang it upon the electric pole where it had no right to be, it was bound to look after it, and that, if the defendant had done so, it would have discovered the removal of the same, and its condition, so that the injury might have been avoided, and consequently that the company must be taken to have foreseen as likely to happen or possibly to follow the consequences which resulted from its omission to remove the wire when it was disconnected from the telephone."

A more complex situation arises where a heavily charged wire is maintained at a safe distance from passers-by, but it breaks and falls, thereby coming in contact with a traveller. Where, under these circumstances, a live electric light wire was lying in an alley, and a fireman inadvertently touched it and was killed, the electric light company was held liable, in not sufficiently protecting from injury persons who were lawfully in the alley. So where the act or negligence charged is the insecure fastening of the wires, there is a liability imposed for injuries from fallen wires; and a failure to inspect the lines will be adequate proof of such negligence.

Generally, the question is whether the electrical company whose wires have fallen has used due diligence in removing them or in rendering them harmless, after it has received or should have received notice of their fall; for it has been remarked that the owner of the fallen wire cannot escape liability by keeping himself in ignorance as to the condition of his lines. "The negligence of the defendant," a South Carolina court declares, "might have consisted in its failure to know the facts connected with the breaking of the wire. In other words the defendant might have been negligently ignorant. . . . The defendant was bound to exercise due diligence to receive information as to the condition of its wires, and its failure to use proper diligence in this respect would constitute negligence." In all such cases the inquiry respecting undue delay in replacing the wires is for the jury, and even the fact that the owner had not a sufficient force to enable it to repair

immediately, is not conclusive against the electrical company, but must be passed upon by the jury in the light of all other circumstances in the case; as, for example, the prevalence of a violent storm, the time of day or night when the wires fell, the number which fell and their distance from each other. If, under all the facts in the case, the company has used the highest degree of care and diligence practicable under the circumstances, and in despite thereof and solely because of some latent and unknown defect not discoverable by reasonable examination, the wire breaks and falls, there is no liability on the part of the owner of the wire."

A more difficult question is raised where there are two wires involved, one (harmless in itself) suspended near another which is charged with a heavy current, the former breaking and falling upon the latter, thus conveying its deadly current to the ground. Where this occurs, the courts have very generally held the owner ot the broken wire responsible, if the accident can be traced to his neglect. Thus, where the defendant's agents left the defendant's wire hanging down over an electric light wire, and the plaintiff was injured by contact with the former, its owner was held liable." And a telegraph company was held to answer in damages because it negligently allowed its wires to rot, to the extent that they readily broke and fell upon electric light wires, causing injury to travellers along the highway. In another case, a guy wire, used by an electric light company, and which was entirely harmless, broke and hung in contact with the feed wire of an electric railway company. A traveller along the highway grasped the end of the guy wire, as it hung over the sidewalk, and was killed. The electric light company was held liable for his death. In an action for injuries to the horses of the plaintiff coming in contact with a small and weak telephone wire which had been insecurely suspended near a trolley wire, and which broke and fell to the highway, it was held the telephone company was liable, for it had failed to secure its wire properly, id it was guilty of further negligence in allowing the wire to remain hanging in contact with the trolley wire, and threatening injury to the public.

The two cases last cited announce another and most important doctrine, which is, that not only may the company be liable whose wire has negligently been permitted to fall, but an action lies against the company across whose wire the line of the other has fallen, though the fall was in nowise due to the carelessness of the

second company. The ground for this rule is that the owner of the lower wire should not attempt to operate its business with a dangerous wire in contact with its own and hanging in the highway; and furthermore, it should anticipate the possible fall of superior wires, and guard its own lines therefrom by proper appliances. If the fall of the upper wire is due to the carelessness of the owner of the lower, the reason for the liability is evident; the negligent act is the proximate cause of the injury. So where the servants of a street car company allow the trolley pole to fly up against an overhanging telephone wire, breaking it and causing it to fall upon the trolley, the railway company is liable if it continue to operate its lines without attempting to remove the fallen wire, which is now threatening danger to the public because of its contact with the trolley.

But the theory under which liability is fixed, in most instances, upon the owner of the lower and heavily charged wire is, that it has assumed to use a highly dangerous agency and it should take due precautions to prevent the injury to travellers, whether the dangerous condition is produced by itself, as in the cases last referred to, by a stranger or by the act of God. Hence, where a violent storm threw down telephone wires (which are usually charged with feeble currents) upon trolley wires of a street railway company, and the latter knew of the condition of its lines in time to remove the danger, but nevertheless continued to run its cars without clearing away the obstructions, it was held liable for the death of a horse which was driven against one of the depending wires. Likewise during a terrific storm, the defendant's electric light wire grounded and lay for about three and one-half hours in this condition. The deceased, seeing the wire, which was not charged with electricty, seized it and attempted to throw it off the sidewalk; but in so doing snapped it against a live wire and received a fatal electric shock. The defendant company was held to answer for negligence. In another instance, the span wire of the defendant railway company broke and swung around to the point where the plaintiff was standing. Coming in contact with his head, it burned out his eye and delivered a powerful electric shock. The defendant railway was held liable in not sufficiently guarding its trolley from the fall of other wires upon it; and a telephone company was held answerable in damages where one of its insulated wires which ran parallel to the curb of a public street and was

strung along the poles of an electric street car line, was rubbed by a private wire belonging to a third party until the insulation was worn off, and the private wire came in contact with a traveller and killed him. In a well reasoned case, decided by an Arkansas court, the doctrine governing the above cases is stated to be, that every man must use his own property in such a manner as not to interfere with and injure his neighbour. The court drew an analogy between the case at bar, where a telephone wire sagged and broke, thus coming in contact with the defendant company's trolley, and cases in which the owner of a ferocious animal fails to keep it upon its own premises, and to those in which the owner of reservoirs, located upon his land, does not prevent their bursting and discharging their contents on another's property. The court say: "This duty (of the defendant company) is not limited to keeping their own wires out of the streets or other public highways, but extends to the prevention of the escape of the dangerous force in their service through any wires brought in contact with their own, and its transmission thereby to any one using the streets. Only in this way can the public receive that protection due it while exercising its rights in the highway in and over which electric wires are suspended." In one jurisdiction a limitation has been placed upon the duty of the owner of heavily charged wires, which is, that unless such owner might reasonably have foreseen the contact between his and other lines, there is no liability.

A distinct class of cases is presented where the breaking of the wires would not, of itself, be accompanied with danger, but because of an act of God (as, a severe thunder storm) the wires become highly charged with electricity and inflict damage to persons on the highway. In an action by a traveller who was injured by an electric shock while riding along a public highway on a dark evening, by coming in contact with a telephone wire of the defendant which for several weeks had been allowed to hang over the road, within so short a distance of the ground that travellers would necessarily come against it, he was permitted to recover from the telephone company, where it was admitted that the wires were highly charged with electricity, owing to a thunder storm then raging. The defendant's negligence was deemed the proximate cause of the injury.

An interesting question has recently been litigated, involving the responsibility of the company which furnishes the electrical

fluid, although it has no other connection with the company which uses it and does not own the wires employed. In the case referred to, the plaintiff's intestate was injured by coming in contact with a naked wire, used by an electric street railway, but charged by the defendant company to enable the railway to run its cars. A guy wire had broken loose and, because it was not properly insulated, had caused the decedent's death. It was held that the defendant gas company was liable, for it furnished a fluid which it knew was highly dangerous to life and limb, the supply was wholly under its control, and it was bound to take care commensurate with the danger. The court rightly distinguishes the case of a power company supplying electricity to a railway, from sales of storage batteries charged with electricity, powder or other dangerous substances, where complete control is transferred to the buyer.

Thus far we have considered the liability of those whose acts or omissions contribute directly to the injury complained of. The courts have shewn an inclination to extend the liability to the municipality itself, which has permitted its streets to become dangerous by the exposure of live wires. The city has been held answerable where it allowed a telephone wire to remain across and near to a sidewalk, to the damage of a pedestrian; and a similar result was reached in the instance of a municipality which failed to use more than ordinary care to inspect overhead wires located in close proximity to electric light wires, and liable to come in contact with pedestrians. The fact that the company operating the wires was also liable was considered insufficient to exonerate the borough. Under a statute rendering the city liable for defects in public highways, the municipality was subjected to damages, where a child ran against a live electric wire, which was hanging over the sidewalk.

The law as developed in the foregoing cases has dealt with the escape of electricity from wires which are broken or not insulated; but the same results have been reached where the escape has occurred from defective appliances other than wires. If the current is sent along the rails of a street railway and the joints are not properly connected, whereby an escape of the electrical fluid follows, the railway company is held responsible to one who suffers injury; as it is, also, in the instance of a passenger on an electric street railway who is shocked by escaping electricity while passing from a forward car to a trailer.

Upon the general subject of liability for accidents in highways from electricity, the courts have shown great unanimity; but upon the exact degree of care to be exercised by those who employ this dangerous agent, they are by no means harmonious. Two divergent views have been adopted by various courts, one of them holding the company which makes use of electricity answerable in any event, whether there is actual negligence or not; the other holding it responsible only for want of reasonable care. One of the earliest decisions upon the subject employs language indicating that the electrical company is virtually an insurer: "The law requires that they should use every way to protect and save the public from loss and injury; they must use every means, regardless of expense, to protect and make safe the public citizens passing over the streets of the city, who are not aware of danger." By another court it was said, the electrical company owed it to the plaintiff "that his lawful use of the street should be substantially as safe as it was before the telegraph and railway plants had so occupied. It was their plain duty not only to properly erect their plants, but to maintain them in such condition as not to endanger the public." In still more positive terms it was declared that "It was a matter of the plainest duty for the defendant to see that the streets and alleys of the city along which, by permission, it was suffered to place its overhead wires for its own private gain, were at all times maintained in the same condition as to safety from the danger of electricity as they were before its overhead use thereof had begun, and a most imperative duty was placed upon the defendant in assuming the overhead use of the public alley, with its wires, to see that persons passing along and using the alley were not injured thereby;" and in a recent discussion of this subject the court state that the electrical company must use "the utmost care," to avoid injuring others.

The great current of decisions, however, is to the effect that only reasonable care is required, according to the varying circumstances of different cases. Thus in the case of *Cook* v *Wilmington Elec. Co.*, 9 Houst. (Dela.) 306, the court, after laying down the rule of liability in the broadest terms, qualify it by saying, "They (the electrical companies) must use due care and ordinary diligence;" and the Court of Appeals of Kentucky, in a decision which uses much stronger expressions, finally imposes a duty "to use the care commensurate with the danger."

The phraseology of the courts in limiting the degree of care required is various. Thus, it is said that the electrical company is under the duty of seeing that its wires are in a "reasonably safe and sound condition;" that it is due to the citizen that electric companies that are permitted to use, for their own purposes, the streets of a city or town, shall be required to exercise the utmost degree of care in the construction, inspection and repair of their wires and poles, to the end that travellers along the highway may not be injured by their appliances. The danger is great, and care and watchfulness must be commensurate;" that the companies must use "reasonable care," but this will depend upon the "present state of the science and the present knowledge of the most practical and effectual means and methods of guarding against such perils as are incident to its use; that the company must employ "every reasonable precaution to protect the public, while using those streets, against injury from electricity;" that those who utilize electricity must use the "highest degree of care and diligence practicable under the circumstances;" that the "law required . . . the highest degree of care which skill and foresight can attain, consistent with the practical conduct of its business under the known methods and the present state of the particular art." The rule and its reason are thus clearly announced by the Supreme Court of Arkansas: "Subjecting the dangerous element of electricity to their control and using it for their own purposes, by means of wires suspended over the streets, it is their duty to maintain it in such a manner as to protect such persons against injury by it, to the extent they can do so by the exercise of reasonable care and diligence. . . . The care varies with the danger which will be incurred by negligence. In cases where the wires carry a strong and dangerous current of electricity, and the result of negligence might be exposure to death or most serious accidents, the highest degree of care is required. This is especially true of electric railway wires suspended over the streets of populous cities or towns. Here the danger is great, and care exercised must be commensurate with it. But this duty does not make them insurers against accidents, for they are not responsible for accidents which a reasonable man, in the exercise of the greatest prudence, would not under the circumstance have guarded against.

Whether such reasonable care has been exercised is usually a question for the jury. In one instance, however, an attempt has

been made to frame a rigid rule of law, requiring the electrical company to guard its wires from contact with other lines, and holding it negligence per se if it does not do so. This has elsewhere been repudiated as a test of negligence, the courts saying, "I find no evidence that such guard wires are either necessary or usual in the construction of single trolley lines for propelling street cars;" and holding that the true test is: "Ought men of ordinary intelligence and prudence engaged in operating the street railway in question to have reasonably expected that the telephone wire in question would be likely to come in contact with its trolley wire at the place in question, and occasion injury to persons lawfully using the highway crossed by said telephone wire?"

While the courts have thus required only the exercise of reasonable care upon the part of the company, they have also held, that it is prima facie liable for negligence where the accident was apparently due to the escape of the electric current and injury occurred to a traveller lawfully upon the public highway. The presumption thus raised by an application of the maxim res ipsa loquitur is prima facie only and may be rebutted by proof that the defendant company was actually in the performance of due care under all the circumstances of the case.

Finally, courts have been called upon to say what will constitute contributory negligence on the part of those who come in contact with live wires in highways. If the contact is involuntary and accidental, no such objection to recovery can arise; and even though it be voluntary, this will not preclude recovery, unless it appear that the party injured knew of the dangerous character of the wire, or might reasonably have inferred the fact from seeing the emission of sparks from it, or the burning of objects which it touched."—*Central Law Journal*, of St. Louis, Vol. 56, p. 485.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

DEVISE—PERPETUITY—REMOTENESS — CONTINGENT REMAINDER — CHILD EN VENTRE SA MERE DEEMED TO BE IN ESSE.

In re Wilmer, Moore v. *Wingfield* (1903) 2 Ch. 411, the decision of Buckley, J. (1903) 1 Ch. 874 (noted ante p. 517) has been affirmed by the Court of Appeal (Williams, Romer, and Stirling, L.JJ.) and the law may now be said to be settled, so far as the Court of Appeal can settle it, that for the purpose of the rule against perpetuties a child en ventre sa mere at a testator's death, is, when born, to be presumed to have been in esse at the testator's death, and this presumption is not one which can be rejected if it is for the child's interest, but is invariable and must prevail no matter whether it is for the child's benefit or not. In the present case it would have been for the child's benefit that he should not be presumed to have been in esse at the testator's death, as in that case certain limitations in the will would have been void for remoteness, which would have resulted to the benefit of the child, but that fact is held not to affect the presumption.

ADMINISTRATION—ANNUITIES IN POSSESSION—ANNUITIES IN REMAINDER—POWER TO MORTGAGE CORPUS TO RAISE ANNUITIES—DEFICIENT ESTATE—APPORTIONMENT—HOTCHPOT.

In re Metcalf, Metcalf v. *Blencowe* (1903) 2 Ch. 424, raised what Farwell, J., calls a curious point. A testator by his will gave an annuity to his wife for her life of £400, and subject thereto he gave an annuity of £50 to his son and £450 to a Mrs. Southgate for life with remainder to her children, and power was given to the trustees of the will to raise the annuities by mortgage of his real estate in case the income was insufficient. For five years after the testator's death the three annuities presently payable were paid partly out of income and partly out of money raised by mortgage. It was then found that the estate was deficient and henceforth only the annuity of the widow was paid until October, 1902. She died in 1903. Mrs. Southgate having also died the annuitants entitled in remainder contended that the moneys paid

to the other annuitants (other than the widow) during the five years succeeding the testator's death ought to be brought into hotchpot, and that the annuities should abate proportionately with those in remainder, but Farwell, J., held that as the income of the estate during the first five years could never have been applicable to the payment of the annuities in remainder, the annuitants in possession could not be required to bring the payments of income into hotchpot, and that as the power to raise the annuities out of the corpus would have entitled the trustees to exhaust the whole estate in payment of the annuities immediately payable therefore, the sum paid out of capital need not be brought into hotchpot either. He therefore declared that the amount due on the annuities which were immediately payable was the amount which had actually accrued due and was unpaid up to the time of the death of the annuitants, and refused any direction as to hotchpot.

MUNICIPALITY — BUILDING LINE — 'WRITTEN CONSENT' — BREACH OF STATUTORY PROVISION—PENALTY—SPECIAL DAMAGE TO INDIVIDUAL.

In *Mullis* v. *Hubbard* (1903) 2 Ch. 431, the plaintiff sought to recover damages from the defendant on the ground that he had erected buildings beyond the front main wall of the building on either side thereof in breach of a statute prohibiting such building without the consent of the municipal authority under a penalty of 4 s. for every day the offence is continued after written notice from the municipal authority. It appeared that the defendant had submitted his plans to the municipal body in accordance with their by-laws. They were considered by a committee of the municipal body and then stamped "approved" by the chairman of the committee. At a subsequent meeting of the general council of the municipal body a resolution was passed approving of the plans, and at the next general meeting the minutes of the previous meeting were read and confirmed and signed by the chairman. Farwell, J., held that the plaintiff had no right of action on the ground that the statute constituted one compound offence, consisting of building without consent and continuing the building after notice, for which a penalty was imposed, to be exacted by the municipal authority, and therefore it gave no cause of action to a private individual to whom special damage was occasioned. Moreover, that what had taken place constituted a sufficient 'consent in writing' of the municipality authority.

CONTRACT—PERFORMANCE PREVENTED BY ACCIDENT—CHEQUE GIVEN IN PART PAYMENT—PAYMENT OF CHEQUE STOPPED—RIGHTS OF HOLDER OF CHEQUE AFTER PAYMENT STOPPED.

Elliott v. *Crutchley* (1903) 2 K.B. 476, was one of the numerous actions arising out of contracts rendered abortive by His Majesty's critical illness at the time first fixed for his coronation. In this case the plaintiff was a caterer and contracted with the defendants to supply refreshments for a large party attending the naval review. Under the contract £300 was to be paid the Monday previous to the review day, but it was stipulated by the defendants that if the review were cancelled before any expense was incurred by the plaintiff there should be no liability on the defendants' part. A cheque for the £300 was sent to the plaintiff on the 23rd June. On the following day the review was cancelled in consequence of the king's illness. No expense had been incurred by the plaintiff except the purchase of some extra knives and forks. The defendants stopped payment of the cheque. The plaintiff claimed to recover the amount of it. Ridley, J., who tried the action, held that the stopping of payment of the cheque had the effect of remitting the parties to their rights under the contract as if the cheque had never been given, and as no expense had been incurred except an addition to the plaintiff's stock in trade, the defendants were not liable for anything.

VENDOR AND PURCHASER—SALE OF LEASEHOLD SUBJECT TO ONEROUS COVENANTS—DUTY OF VENDOR TO DISCLOSE ONEROUS COVENANTS—CONSTRUCTIVE NOTICE.

Molyneux v. *Hawtrey* (1903) 2 K.B. 487, was an action brought by a vendor of leasehold premises for breach of contract on the part of the defendant, who refused to carry out the purchase. The premises were subject to certain unusual and onerous covenants which it was conceded it was the duty of the vendor to disclose to the purchaser, and the question at issue was whether or not he had done so. The facts relied on by the plaintiff were, that while the proposed contract was in course of negotiation a lease of adjoining premises, which was said to be in similar terms to that under which the premises in question were held, was produced by the vendor to the purchaser's solicitor for his inspection, but that owing to having other engagements the solicitor could not and did not examine it, and said there would be time for that when the parties had come to terms. No further steps were taken by the

vendor to inform the purchaser of the existence of unusual and onerous covenants, and Wright, J., held that the vendor had not discharged the onus that was on him of making them known to the purchaser, and the Court of Appeal (Collins, M.R., and Mathew and Cozens-Hardy, L.JJ.) affirmed his decision.

LETTERS OF ADMINISTRATION — "SPECIAL CIRCUMSTANCES"—GRANT TO OTHER THAN NEXT OF KIN—ABSENTEE—PROBATE ACT 1857 (20 & 21 VICT. C. 77) S. 73—(R.S.O. C. 59, S. 59).

Re Chapman (1903) P. 192, was an application for letters of administration by a person other than the next of kin under s. 73 of the Probate Act (see R.S.O. c. 59, s. 59), without citing the person who would, if alive, be primarily the person entitled to the grant. This person had left his family in 1883, and had not since been heard of; before that he had been in the habit of going away from his home for uncertain periods and returning when his funds were exhausted. The applicant and the wife of the absentee both swore that they believed him to be dead. Jeune, P.P.D., granted the application, following *Re Callicot* (1899) P. 189, and *Re Reed* (1874) 29 L.T. 932.

CHARTER PARTY—"NEGLIGENCE OF SERVANTS"

The Torryban (1903) P. 194. A charter party exempted the ship owner from liability for loss or damage arising from the usual perils "and all other accidents even though caused by negligence, fault, or error of judgment on the part of the pilot, captain, sailors, or other servants of the owner, in the management or navigation of the vessel, or otherwise." In the course of discharging the cargo, which was of sugar, the stevedore's men employed by the ship recklessly used hooks which tore the bags in which the sugar was contained, and carelessly allowed the bags to be cut, whereby a quantity of the sugar dropped out and was lost. The Court of Appeal (Collins, M.R., and Mathew, and Cozens-Hardy, L.JJ.,) affirmed the judgment of Phillimore, J. (1903) P. 35, holding that the negligence in question was within the exemption.

ACT OF PARLIAMENT—CONSTRUCTION—SUBSEQUENT ACT, EFFECT OF, ON PRIOR STATUTE.

In re Bolton Estates, Russell v. *Meyrick* (1903) 2 Ch. 461. By 27 Hen. 8, certain estates were limited in tail subject to a proviso that no tenant in tail should do anything to the disheritance of his heirs, "but only for the jointure of a wife." At this time, apart from custom, there was no power to devise by will. In 1901 a

tenant in tail, in assumed exercise of a statutory power, appointed the entailed estate for life by way of jointure. It was contended that as no power to devise by will existed until 32 Hen. 8, c. 1, the attempted jointure by will was void, and Joyce, J., so held, but the Court of Appeal (Williams, Romer, and Cozens-Hardy, L.JJ.), reversed his decision, adopting a dictum in *Vernon's* case, 4 Rep. 4a, "although land was not devisable until 32 Hen. 8, yet it is frequent in our books that an Act made of late time shall be taken within the equity of an Act made long before."

WILL—CONSTRUCTION—APPOINTMENT TO USES OF EXISTING SETTLEMENT OR "SUCH AS ARE CAPABLE OF TAKING EFFECT."

In re Finch and Chew (1903) 2 Ch. 486, was an application under the Vendors and Purchasers Act to determine a question arising under a will made in the exercise of a power of appointment. By the will in question the testatrix appointed the lands in question to the uses of an antecedent instrument "or such of them as are capable of taking effect." Some of the trusts declared by the prior instrument were in favour of cestuis que trust who were not objects of the power, or were trusts inoperative by reason of the rule against perpetuities being infringed; and Kekerwich, J., held that these uses or trusts must be treated as excluded from the appointment, as being "incapable of taking effect," which expression was not to be confined to trusts failing by reason of the death of parties or other intervening circumstances, but included those which the law prevented from taking effect.

VOLUNTARY SETTLEMENT—REFUSAL OF TRUSTEE TO ACT—DISCLAIMER BY GRANTEE—REVESTING OF LEGAL ESTATE IN SETTLOR—VALIDITY OF SETTLEMENT—MORTGAGE OF SETTLED PROPERTY—MARSHALLING ASSETS—PRIORITY OF CESTUI QUE TRUST—ESTOPPEL.

Mallott v. *Wilson* (1903) 2 Ch. 494, is an instance of the equity doctrine that a trust shall not fail for want of a trustee. In this case one M. J. Fielden made a voluntary settlement of property, real and personal, in favour of his wife and any child or children he might have, without any power of revocation. W. Carr, to whom the property was granted in trust, refused to accept the distrust and disclaimed all interest. The settlor subsequently executed a mortgage on part of the settled property. He also executed another voluntary settlement of the property covered by the prior settlement upon different trusts. The settlor having died, his executors paid off the mortgage. In the administration

of his estate there was a conflict between those entitled under the first and those entitled under the second settlement. Byrne, J., held that the first settlement did not fail because of the disclaimer of the trustee, but that when the trust property revested in the settlor by reason of such disclaimer it was subject to the trusts of the settlement; that the beneficiaries under the first settlement were therefore entitled to the settled property, and that they were entitled to have the assets marshalled and the mortgage paid off out of the unsettled assets of the deceased settlor. One of the cestui que trust under the first settlement had accepted the trusts of, and had executed the second voluntary settlement, but this was held not to estop him from claiming under the first settlement.

COVENANT—BUILDING RESTRICTIONS—ONE HOUSE—DOUBLE TENEMENT HOUSE.

In *Ilford Park* v. *Jacobs* (1903) 2 Ch. 522, the plaintiffs claimed to restrain the defendants from committing a breach of a restrictive covenant as to a building. By the covenant in question the defendant was bound to erect no more than one house on any lot. The defendant was proposing to erect a structure which was in fact a double tenement house, consisting of a ground floor tenement and a first floor tenement above. They were to be quite distinct tenements and to have no communication with each other. Eady, J., held that the building constituted two houses and was a breach of the covenant, and granted a perpetual injunction in favour of the plaintiff.

SOLICITOR—SOLICITOR AND CLIENT—THIRD PARTY—BILL OF COSTS PAYABLE BY TRUSTEES—TAXATION OF TRUSTEES' COSTS BY BENEFICIARIES—TAXATION—PROSPECTIVE COSTS — SOLICITORS' ACT 1843 (6 & 7 VICT. C. 73) S. 39 — (R.S.O. C. 174, S. 45.)

In re Miles (1903) 2 Ch. 518. Trustees having employed a solicitor in the distribution of an estate, certain of the beneficiaries obtained an order for the taxation of the solicitor's bill of costs under s. 39 of the Solicitors' Act (see R.S.O. c. 174, s 45). On the taxation the Master disallowed (inter alia) costs which he thought ought to be borne by the respective beneficiaries, such as letters to and attendance on the several beneficiaries in reference to the proposed distribution and costs relating to particular shares on the ground that these costs were payable out of the beneficiaries' shares and not out of the estates generally. He also disallowed the prospective costs of completing the final distribution of the trust estate. The trustees' solicitor appealed and Eady, J.,

allowed the appeal, holding that the taxation should have been as between the trustees and their solicitor, and whatever costs were properly payable by the trustees should have been allowed them irrespective of the ultimate incidence of such costs. He also held that the prospective costs of completing the final distribution of the estate might also be properly allowed upon such taxation, though such prospective costs would not be properly taxable on a partial or interim distribution.

"IT is gratifying that the common-sense interpretation placed by the First Division upon the term "accident" as used in the Workmen's Compensation Act has now received the approbation of the House of Lords in *Fenton* v. *J. Thorley and Co.* (7th Aug. 1903). The term came up for construction in Scotland in two cases which are reported consecutively in the current volume of the Session Cases. The first is that of *Stewart* v. *Wilsons and Clyde Coal Company Limited* (1902, 5 F. 120), where a workman was injured through straining his back in replacing a derailed hutch. The court refused to be led aside by metaphysical disputations on the doctrines of chance and casuality, and held that the workman had suffered from an "accident" which entitled him to compensation under the Act. "If such an occurrence as this cannot be described in ordinary language as an accident," says Lord Kinnear, "I do not know how otherwise to describe it." Somewhat similarly in the other case of *Golder* v. *Caledonian Railway Company* (1902) 5 F. 102, where a workman was injured through jumping off a bogey in the course of his employment, compensation was awarded, although it was proved that the shock which he sustained would probably not have proved fatal had he not been suffering from disease at the time. Here, of course, it was argued, though unsuccessfully, that death was due, not to the "fortuitous" element of accident, but to the disease. Nevertheless the court held that he had sustained an "injury by accident" within the meaning of the Act. With the decision in *Stewart's* case Lord Macnaghten expressed himself as in entire agreement, and Lord Robertson's observation seems to apply with equal pertinence to each of these three cases: "No one out of a law court would ever hesitate to say that this man met with an *accident*." The Act plainly intended that the term "accident" should be understood in its ordinary acceptation, and the House of Lords has now ensured that it shall be so understood."—*Law Times, Eng.*

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

From Britton, J.] REX *v.* CARLISLE. [Oct. 26.

Constitutional law—Ontario Liquor Act, 1902—Intra vires—Voting on by electors—Delegation of legislative power—Corrupt practices—Appointment of judge to conduct trial—Jurisdiction—Place of trial—Jury—Conviction—Sentence—Imprisonment—Penalty—Costs—Form of conviction—Habeas corpus—Warrant of commitment.

The subject matter of the Ontario Liquor Act, 1902, is one with regard to which the Legislature is competent to enact a law or laws. *Attorney-General for Ontario* v. *Attorney-General for Dominion* (1896) A.C. 348, and *Attorney-General of Manitoba* v. *Manitoba License Holders' Association*, (1902) A.C. 73, followed.

The Legislature, in enacting the Liquor Act, did not exceed or fail to properly exercise, its powers.

Legislation which provides a law, but leaves the time and manner of its taking effect to be determined by the vote of the electors, is not a delegation of legislative power to them.

Russell v. *The Queen*, 7 App. Cas. 829, *The Queen* v. *Burah*, 3 App. Cas. 889, and *City of Fredericton* v. *The Queen*, 3 S.C.R. 505, followed.

By s. 91 (4), providing that the President of the High Court shall designate a County or District Judge to conduct the trial of persons accused of corrupt practices at the taking of the vote under Part I., the Legislature did not assume the power of appointing judges, and did not exceed its powers in providing that a County or District Judge designated should exercise jurisdiction outside of his own county or district; and a judge so designated may try the accused without a jury.

The provisions of sub-ss. (2) and (3) of s. 91 are amplifications of the provisions of the Ontario Election Act which are incorporated in the Liquor Act; and the judge in this case did not exceed his powers in sentencing the accused, whom he found guilty of personation, to one year's imprisonment in addition to the payment of a penalty of $400 and costs.

The jurisdiction is to try at any place in Ontario, and it appearing in the order of conviction that the trial was held under the Act and that the offence was committed at the city of Toronto, and the prisoner being sentenced to be imprisoned in the common gaol of the county of York at the city of Toronto, the order shewed jurisdiction, although it did not specify the place of trial.

It was immaterial that the order of conviction was instituted in the High Court of Justice, and that it did not shew the informer's name, the County Crown Attorney of the County of York being shewn to be the prosecutor. Nor was it material that the date of the offence was not shewn, the time for conviction not being limited by statute.

The prisoner was in custody under an order for his imprisonment for one year. In addition to this he was ordered to pay a penalty of $400 and costs within thirty days, and in default to imprisonment for three months unless sooner paid,

Held, that upon habeas corpus proceedings within the year, the objections that the costs were not ascertained or stated in the order, and that the warrant of commitment erroneously stated that the time for payment of the penalty and costs had expired, could not be considered; but the right should be reserved to the prisoner to apply again for his discharge at the expiration of the year.

The amount of the costs should have been fixed by the judge and inserted in the order, instead of being left to be ascertained by a taxing officer.

Order of BRITTON, J., affirmed; OSLER, J.A., dissenting.

Tremeear, for prisoner. *Cartwright*, K.C., for Crown.

HIGH COURT OF JUSTICE.

Divisional Court.] STRUTHERS *v.* CANADIAN COPPER CO. [Sept. 14.

Company—Medical attendance for men—"Hospital Fund"—Implied contract.

A fund called "The Hospital Fund" was held by a mining company for the purpose of providing medicine and medical attendance for those of the men who required it, medical men being attached to the work, whose duty it was to attend the men and provide the necessary medicines.

Held, that no obligation was imposed on the company to pay out of this fund for the services of any physician whom the men might choose to employ.

Wallace Nesbitt, K.C., for appellants. *Aylesworth*, K.C., for respondent.

Boyd, C., Ferguson, J.] [Sept. 22.

TODD *v.* TOWN OF MEAFORD.

Railways—Agreement to purchase land—Taking possession—Non-payment of purchase money — Land-owners' remedy — Arbitration—Action—Expected profits—Measure of damage—63 Vict., ch. 77 (O.) 51; c. 29, s. 131 (D.).

In carrying out the agreement provided for in the above statute the purchasing agents of the defendants agreed with the plaintiff for the

purchase of and possession by a railway company of the portion of the plaintiff's land required by the company but did not fix the price. The company having, pursuant to s. 131 of the Railway Act, 51 Vict., c. 29 (D.), deposited a profile plan and book of reference of the land required in the County Registry office which was approved by the railway committee shewing the plaintiff's land, entered and completed the work. The purchase money not having been agreed upon or paid plaintiff brought an action against the town and railway company for damages to the land and with interference with his business.

Held, that the defendants were not liable and that the plaintiff's remedy against the railway company was by arbitration proceedings under the Railway Act and not by action.

Per FALCONBRIDGE, C.J.K.B. (at the trial): Expected increased profits from enlargement of plaintiff's buildings and plant are too speculative and uncertain to form a true measure of damage.

Judgment of FALCONBRIDGE, C.J., varied.

Watson, K.C., and *Grayson Smith*, for plaintiff's appeal. *Clute*, K.C., for Town of Meaford; and *Shepley*, K.C., for railway company, contra.

Falconbridge, C.J.K.B.] [Sept. 23.

IN RE BLACK EAGLE MINING CO.

Sheriff's fees—Poundage—Money paid before sale—Possession money.

Where a sheriff made a seizure under writs of fieri facias of property of the judgment debtor and a few hours before the sale the judgment debtor came to the sheriff and paid the full amount of the judgment debts,

Held, that the sheriff was entitled to poundage on the full amount of the judgment debts, and not merely on the value of the property seized.

Held, also, that under the circumstances of this case $2.25 per day was not too much to allow for possession money.

Douglas, K.C., for sheriff. *Newell*, K.C., for judgment debtors.

Falconbridge, C.J.] KINGSTON *v.* SALVATION ARMY. [Oct. 7.

Parties—Unincorporated association—Salvation Army.

The Salvation Army is an unincorporated religious society, and an action cannot be maintained against it for torts committed by its officers.

The judgment in this action on the motion to set aside the writ, reported 5 O.L.R. 585, considered and not followed.

D'Arcy Tate, for plaintiff. *A. Hoskin* and *Lynch-Staunton*, K.C. for defendants.

Street, J.] POSTLETHWAITE *v.* MCWHINNEY. [Oct. 13.

Jurisdiction—Service out of jurisdiction—Parties—Injunction—Con. Rule 162.

An order allowing service of a writ out of the jurisdiction cannot be supported under clause (f) of Con. Rule 162 unless the injunction can properly be asked as against the defendant out of the jurisdiction sought to be served.

In proceeding under clause (g) of Con. Rule 162 the defendant within the jurisdiction should be served with the writ and then an order applied for for leave to serve the defendant resident out of the jurisdiction with a concurrent writ, and failure to proceed in this way is not such an irregularity merely as can be condoned.

Collins v. *North British and Mercantile Ins. Co.* (1894) 3 ch. 228, followed. *Livingstone* v. *Sibbald* (1893), 15 P.R. 315, *McKay* v. *Colonial Investment and Loan Co.* (1902), 4 O.L.R. 571, and *Re Jones* v. *Bissonnette* (1902), 3 O.L.R. 54, considered.

S. B. Woods, for defendant. *Beaumont*, for plaintiff.

Osler, J.A.] STANDARD TRADING CO. *v.* SEYBOLD. [Oct. 17.

Costs—Security for—Granting additional—Practice.

While the practice as to granting additional security for costs has been relaxed in favour of the granting of such security, the plaintiff, however, must not be checked at every stage of the action by security being ordered dollar for dollar for all costs incurred, or which might be incurred without regard to the conduct of the parties.

On the commencement of an action security to the amount of $200 was ordered. After the action had proceeded $300 further security was ordered; and, on a commission to take evidence being issued, a further sum of $100. On the action coming on for trial the defendant was granted leave to amend his pleadings, and on the plaintiff stating that he was not ready to proceed on the amended record the trial was postponed, the costs of the day being made costs in the cause to the successful party. The defendant then obtained an order from the local master directing $600 further security to be given.

On an appeal to a judge the order was set aside on the ground that the application for such additional security should have been to the judge at the trial at the time the postponement was asked for.

J. T. C. Thompson, for appellants. *Bethune*, for respondents.

Street, J.] IN RE REID. [Oct. 30.

Gift—Donatio mortis causa—Savings bank deposit—Delivery of pass book—Evidence—Corroboration.

The money at the credit of a savings bank depositor may pass as a donatio mortis causa by the delivery of the savings bank book by the

depositor to the donee with apt words of gift, the deposit being subject to the condition that no part of it can be withdrawn without the production of the book.

Any evidence which is sufficient to prove any fact against the estate of a deceased person is sufficient to prove a donatio mortis causa; that is, any evidence which is believed and is corroborated as required by the statute may be acted upon.

Spotton, for executors. *W. H. Blake*, K.C., for claimant.

Master in Chambers.] TAYLOR *v.* TAYLOR. [Oct. 31.

Writ of summons—Service—Substitutional service—Solicitor.

After instructions to a solicitor to accept service of a writ of summons had been revoked, an order was obtained by the plaintiff for substitutional service of the writ upon him:

Held, that he had no locus standi to move to set aside the order.

An error in the report of *Young* v. *Dominion Construction Co.* (1900), 19 P.R. 139, pointed out.

W. J. Elliott, for solicitor. *H. D. Gamble*, for plaintiff.

Boyd, C., MacMahon, J., Teetzel, J.] [Oct. 31.

STANDARD LIFE *v.* TWEED.

Municipal corporation—Debentures—Defective by-law—Remedial enactments—3 Ed. 7, c. 18, s. 93.

A municipal by-law, issued in 1892, on which debentures were issued, provided for payment of the interest, but failed to provide for payment of the principal. The statute, 3 Ed. 7, c. 18, s. 93 enacts that "where in the case of any by-law heretofore or hereafter passed, the interest for one year or more on the debentures issued under such by-law and the principal for the matured debentures (if any) has or shall have been paid by the Municipality, the by-law and the debentures issued thereunder remaining unpaid shall be valid and binding."

Held, that the effect of this is to make one payment of interest validate the debenture in respect to which it is paid; and that accordingly the debentures here in question fell within the scope of this remedial enactment.

Bruce, K.C., and *L. McCarthy*, for plaintiff. *Craig* and *Mills* for defendant.

Meredith, C.J., MacMahon, J., Teetzel, J.] [Nov. 2.

COOK *v.* DODDS.

Executor de son tort—Payment by—Statute of Limitations—Bills of Exchange Act—Dominion and Provincial legislation—Joint contract.

A payment or acknowledgment by an executor de son tort cannot be relied on to prevent the statute of limitations from operating as a bar,

where the action in which it is set up is brought against the lawful personal representative of the deceased. But where the executor de son tort has made payments of interest in respect to a promissory note, within six months before action commenced, and the holder of the note brings action against her to make her answerable to the extent of the goods of the deceased come to her hands, it is not open to the defendant, for the purpose of preventing a payment giving a new start to the statute of limitations (which effect it would have if made by the lawful representative), to rely on his having been a wrongdoer and not the true representative. As between himself and the plaintiff, as respects payments made by the executor de son tort and their effect, the latter is to be treated as the true representative of the deceased.

The Bills of Exchange Act does not deal with the consequences which are to flow from the character which according to its provisions is attached to the promise which a bill or note contains, and therefore these consequences fall to be determined according to the law of the province in which the liability is sought to be enforced.

Proudfoot, K.C., for plaintiff. *Middleton*, for defendant.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] ATTORNEY-GENERAL *v.* CITY OF HALIFAX. [April 11.

Municipal corporation—Resolution rescinding contract—Power of court to enjoin—Intervention of Attorney-General—Relator—Consideration—Mutual promises.

The Attorney-General, on the relation of M., a ratepayer of the city of Halifax, applied to a judge at chambers for an injunction to restrain the defendants, the City Council of the city of Halifax, from carrying into effect a resolution seeking to rescind a previous resolution accepting an offer made by C. to furnish a sum of money for the purpose of establishing a free public library building for the city on condition that the city would provide a specified sum of money for its maintenance and would provide a free site for the building. An interim injunction was granted from which defendants appealed.

Held, per TOWNSHEND, J., that the City Council in passing the rescinding resolution was acting within the scope of its corporate powers, and that, assuming there was a breach of contract, no one except the other party to the contract could legally complain of its action or adopt remedies for the enforcement of the contract.

Also, that no case had been made out to justify the intervention of the Attorney-General.

Per MEAGHER, J. (without discussing the position of the relator or the Attorney-General), that the question was one that was eminently proper for the consideration of the City Council.

Per GRAHAM, E.J., McDONALD, C.J., concurring, affirming the judgment appealed from, and dismissing the appeal, that the corporation having accepted the offer was bound by its terms, and that the passing of the rescinding resolution was a breach of contract which the court had power to restrain, the council being agents or trustees of the citizens in securing the gift. Also that the Attorney-General could sue either with or without a relator.

Also that the contract made by the offer and acceptance was supported by good consideration, viz., the mutual promises.

Ritchie, K.C., in support of appeal. *Russell*, K.C., and *Harrington*, K.C., contra.

Full Court.] REX *v.* BARRETT. [April 11.

Criminal law—Procedure to escheat recognizance—Condition—Notice—Code ss. 916-922—Crown Rules 86-87.

A recognizance was entered into by defendant and his surety before the Stipendiary Magistrate conditioned to keep the peace and to appear before the magistrate on a day named. Defendant failed to appear and the recognizance was estreated without notice to defendant or to his surety.

Held, per GRAHAM, E.J., McDONALD, C.J., concurring, following *Reg. v. Creelman*, 25 N.S.R. 404, that notice was necessary and that the order estreating the recognizance was improperly made.

Held, per TOWNSHEND, J., and MEAGHER, J., following the dissenting opinion in *Reg. v. Creelman*.

R. v. Brooke, 11 T.L.R. 163, referred to and distinguished.

Crown Rules 84, 86 and 87, and Code ss. 916-922 discussed.

Mellish, in support of motion. *Longley*, K.C., Atty.-Gen., contra.

Province of British Columbia.

SUPREME COURT.

Full Court.] HUTCHINS *v.* BRITISH COLUMBIA COPPER CO. [Jan. 19.

County Court—Practice—Setting aside judgment and granting new trial.

Appeal from an order of LEARY, Co. J., setting aside judgment and granting a new trial on the ground that the verdict of the jury was against the weight of evidence.

Held, that a County Court Judge has no power to grant a new trial merely because he is dissatisfied with the verdict; he is to be guided in

granting a new trial by the same principles as the full court. Appeal allowed.

Davis, K.C., for appellant. *McPhillips*, K.C., for respondents.

Full Court.] McLEOD *v.* CROW'S NEST PASS COAL CO. [April 8.

Practice—Test action—Substitution of another action as test action.

Appeal from an order of WALKEM, J., refusing to substitute another action for an action already ordered to be tried as a test action, after one of a number of actions brought by different plaintiffs against the same defendants in respect of causes of action which were identical has been ordered to be tried as a test action. Twenty-nine actions were brought by different persons against defendants for damages caused by the death of relatives in an explosion in the defendants' coal mine, and on plaintiffs' application an order for a test action was made, the order providing that defendants if dissatisfied with the result of the test action might apply to have the other action proceeded with, and that they might apply to have any of the actions forthwith proceeded with if there existed any special ground of defence applicable to it, and not raised in the test action. After obtaining the order plaintiffs' solicitor discovered that on account of the particular place in the mine at which McLeod was killed a separate defence not applicable to the other cases might apply, and an application was made for the substitution of another action as the test action.

Held, (reversing WALKEM, J., who held that there was no jurisdiction to substitute another action) that the object of the order which was provisional in its nature was to have a fair test action, and as the one chosen would not be a fair one another should be chosen. Appeal allowed.

Taylor, K.C., for appellants. *Davis*, K.C., for respondents.

Full Court.] [April 22.

ATTORNEY-GENERAL FOR BRITISH COLUMBIA EX REL. CITY OF VANCOUVER *v.* CANADIAN PACIFIC R.W. CO.

Practice—Cause of action—Crown—Foreshore—Order XIX., v. 27 and Order XXV., rr. 2 and 4.

Appeal from an order of DRAKE, J. In an action for damages and an injunction, the plaintiff alleged in the statement of claim that the defendant company had wrongfully erected an embankment on the foreshore of Burrard Inlet and thereby obstructed the outfall of sewers to the damage and annoyance of the people of Vancouver;

Held, on an application to strike out the pleading as embarrassing and as disclosing no cause of action, that the pleading was good.

In such an action it is not necessary for the plaintiff to allege ownership in the foreshore.

Semble, a combined application may be made under Order XIX. r. 27 and Order XXV. r. 4, to strike out a statement of claim on the ground that it is embarrassing and disclosed no reasonable cause of action, and such procedure is not limited to cases which are plain and obvious. Appeal dismissed, MARTIN, J., dissenting.

Davis, K.C., for the appeal. *Wilson*, K.C., contra.

Martin, J.] REX *v.* HAYES. [Oct. 2.

Criminal law—Grand jury—Constitution of—Cr. Code, s. 656—Jurors' Act and Amendment Act, 1899, s. 2.

Motion to quash an indictment found by a grand jury at the Victoria Criminal Assizes. It appeared that the sheriff when about to summon, pursuant to section 48 of the Jurors' Act, one of the jurors drafted to serve on the grand jury, ascertained that the juror was demented, and after inquiring from the jurors' medical attendant the sheriff concluded not to summon him.

Duff, K.C., *Peters*, K.C., and *G. E. Powell*, K.C., for accused. Thirteen grand jurors have not been returned as required by s. 2 of the Jurors' Act Amendment Act, 1899, and the indictment should be quashed. See Churchill, 128.

Davis, K.C., and *Harold Robertson*, for the Crown. Under s. 656 of the Code the accused must shew that he has suffered or may suffer prejudice: *Reg.* v. *Poirier* (1898) 7 Que. Q.B. 483; *Reg.* v. *Bolyea* (1854) 2 N.S. 220; Taschereau, 752.

Duff, K.C., in reply: Sec. 656 applies only to the constitution of the grand jury; here the jury has never been constituted at all and there is no jury on which this curative section could operate.

Per curiam: This is not really an objection to the constitution of the grand jury within the meaning of s. 656 because there is no such body in existence till the sheriff has summoned that number, i.e., thirteen, which the statute (Jurors' Act, s. 48; Jurors' Act Amendment Act, 1899, s. 2) imperatively directed him to summon and return; the twelve he did summon, and who now appear for a collection of individuals unknown to the law and have no "constitution" in a legal sense that an objection could operate on, and consequently their proceedings are absolutely void ab initio. The fact that in the opinion of the sheriff it was useless to summon the missing juror because he had become demented is no answer, for if it were possible to summon him, as it admittedly was, he should have been summoned; it would be a dangerous precedent to substitute the discretion of the sheriff for the positive requirement of a statute which aims at excluding all discretion. For the purpose of criminal procedure in this province a grand jury is "constituted" after the thirteen have been summoned by the sheriff and a sufficient number of those (i.e. seven under our Act) so summoned have appeared and taken their places in the box ready to be sworn to discharge the duties of their office.

Book Reviews.

The Law Quarterly Review (October). Editor, SIR FREDERICK POLLOCK, Bart., D.C.L., LLD. Stevens & Sons, 119 Chancery Lane, London.

This, the leading quarterly review of England, contains several articles which will be read with interest in this country:—The right of Club Trustees to indemnity, this being a criticism on *Wise* v. *Perpetual Trustee Co.* (1903) A.C. 139; The Organization of Justice in France (Part II.), written by Mr. Walton, of McGill University, Montreal; A judge's life in India; The doctrine of Res Gestæ in the law of evidence, a valuable contribution to the learning on that subject by S. L. Phipson, one well qualified to write thereon; and, English law reporting, this being the paper read by the Editor at the American Bar Association.

The Law of Meetings. By GEORGE A. BLACKWELL, LL.B., Barrister-at Law. Third edition, Butterworth & Co., 12 Bell Yard, Temple Bar, London, W.C., 1903.

This little book of 122 pages gives a concise statement of the law respecting the conduct and control of meetings in general with some information on certain meetings in particular, which are not of much interest in this country. The general observations, however, in the first part of the book will be found very useful by anyone who has occasion to act as chairman of a meeting or who is otherwise responsible for its conduct.

I have a new stenographer—she came to work to-day,
She told me that she wrote the Graham system.
Two hundred words a minute seemed to her, she said like play.
And word for word at that—she never missed 'em!
I gave her some dictation—a letter to a man,
And this, as I remember it, was how the letter ran:

"Dear Sir,—I have your favor, and in reply would state
That I accept the offer in yours of recent date.
I wish to say, however, that under no condition
Can I afford to think of your free lance proposition.
I shall begin to-morrow to turn the matter out;
The copy will be ready by Aug 10, about.
Material of this nature should not be rushed unduly.
Thanking you for your favor, I am, yours very truly."

She took it down in shorthand with apparent ease and grace,
She didn't call me back, all in a flurry.
Thought I, "At last I have a girl worth keeping round the place;"
Then said, "Now write it out—you needn't hurry."
The Remington she tackled—now and then she struck a key,
And after thirty minutes this is what she handed me:

"Deer sir, I have the Feever, and in a Pile i Sit
And I expect the Offer as you Have reasoned it.
I wish to see however That under any condition
Can I for to Think of a free lunch preposishun?
I Shal be in tomorrow To., turn the mother out
The cap will be red and Will costt, $10, about.
Mateeriul of this nation should not rust N. Dooley
Thinking you have the Feever I am yours very Truely,"

Milwaukee Sentinel.