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AMONG considerations known to the law as "illegal" is that of consenting to stifle a prosecution for a criminal offence. An agreement founded on such a consideration cannot be specifically enforced, as may be seen from the late case of *Windhill Local Board* v. *Vint*, 63 L.T.N.S., 366. There the defendants in the course of working a quarry obstructed a public highway. The plaintiffs indicted the defendants for committing a nuisance, but before the case was tried agreed to a compromise, whereby the defendants agreed to restore the highway within a limited time, and the plaintiffs agreed that the indictment during such time should lie in the office, and that upon the work being completed they would consent to a verdict of "not guilty" on the indictment. The highway not having been restored, the plaintiffs brought the action to enforce the specific performance of the compromise. Cotton, L.J., lays down that the reason of the illegality of such considerations is this, that the Court will not allow as legal any agreement which has the effect of withdrawing from the ordinary course of justice a prosecution *when the offence is an injury to the public.* It will be observed that he confines the rule to cases of injury to the public. *McClatchie* v. *Haslam.* 63 L.T.N.S., 376, however, was a case where the plaintiff had been induced to give a mortgage on her property to secure money misappropriated by her husband—in order to avert a prosecution of her husband for embezzlement. Although no agreement was made to stay the prosecution, and though no actual threat was used by the defendants, yet Kekewich, J., held that this being the sole motive in the plaintiff's mind for entering into the transaction, it was invalid and must be cancelled, which certainly seems going a long way.

THE recent decision of the English Court of Appeal in *Eddowes* v. *The Argentine Loan Co.*, 63 L.T.N.S., 364, appears somewhat to qualify the cases in our own courts of *Cunningham* v. *Lyster*, 13 Gr., 575, and *Clendennan* v. *Grant*, 10 P.R., 593, the principle of which has been followed in many other cases which are not reported. In *Cunningham* v. *Lyster* the Court of Chancery decided that an accommodation indorser was entitled to file a bill against the holder, and maker of the note, to compel the latter to pay it, and relief was granted by directing the maker to pay the amount of the note into Court, to be applied in payment of the note. In that case the plaintiff himself had not paid the note and *non constat* that

he would ever be called upon to do so. The bill merely alleged that the holder neglected and refused to proceed against the maker for its recovery. No objection appears to have been raised by the maker as to the plaintiff's right to bring the action. It was therefore virtually the case of a plaintiff enforcing a contract of indemnity before he had suffered damage, and the same was the case in *Clendennan* v. *Grant*. In the latter case, however, a suit had been brought against the surety, but he had not paid the debt. In *Eddowes* v. *The Argentine Loan Co.*, the contract was to indemnify a firm carrying on business in the Argentine Republic, against a certain claim. The claimants had recovered judgment in respect of this claim in England against the firm, but it had no assets in England, and before it could be enforced an action would have to be brought in the Argentine Republic. The plaintiff claimed that the surety should be ordered to pay off the English judgment—but the Court of Appeal held that the plaintiff thus far had not suffered any damage, and having no property in England was not in any danger of being damaged by the English judgment, and therefore they dismissed the action.

By the retirement of Lord Justice Cotton from the Bench in consequence of ill-health, the English Court of Appeal has lost one of its most conspicuous ornaments. At this distance we can only speak of the retired judge as he has put himself *en evidence* on the pages of the law reports. We cannot speak of those personal qualities apart from intellectual ability, which are so necessary to the satisfactory discharge of the judicial functions, and which can only be properly appreciated by actual experience of them. Judging from the reports, however, we cannot fail to recognize in the retired judge one who possesses a judicial grasp of the principles of law of the highest order, and his grasp of those principles is no less noteworthy than the facility with which he applied them. Few can read his clear exposition of facts, and notice the directness with which he was able at once to seize the crucial point of a case, without recognizing in him a master mind. In the possession of such men as James, Jessel, Cotton, and Brett, the English Court of Appeal has been singularly fortunate, and its decisions, as a rule, have commanded the highest respect. The graceful and entirely heartfelt eulogy passed on the retiring judge, both by Lord Esher, on behalf of the Court of Appeal, and by Sir Richard Webster, on behalf of the Bar, are pleasant reading to all who have the welfare of the profession at heart, and indicate not only the high esteem, but the warm affection with which the retiring judge was regarded. Such expressions of good will and appreciation men seldom live to hear themselves, it is generally only when they are dead and buried that their contemporaries give utterance to such sentiments. The cause of the learned Lord Justice's retirement is to be deplored, and it is to be hoped that a respite from the labors of the bench may enable him yet to enjoy many years of life. Mr. Justice Kay, we see, is promoted to the Court of Appeal, and Mr. Romer, Q.C., succeeds Mr. Justice Kay.

THE LAND TITLES ACT.

The pamphlet edition of the Land Titles Act, issued by the Ontario Government in 1887 having become exhausted, it was necessary to issue another, and the Master of Titles has availed himself of the occasion to incorporate with the main Act the provisions of subsequent Acts. In a little volume entitled, "The Land Titles Act as amended by subsequent Acts, with new rules and tariff of fees," these are inserted in their proper places, within brackets.

It has also been deemed advisable to consolidate the rules appended to the Act in the Revised Statutes and those of February, 1889, with a number of additional provisions, which the experience of the offices of Land Titles has shown to be required. This has accordingly been done in a body of new rules, seventy-nine in all, passed by the Lieut.-Governor in Council on 14th Nov. last, which supersede all former rules. These new rules, with a revised tariff and some additional forms, are published in this volume. Foot-notes are appended refering from the statutory provisions to the related rules and forms, and *vice versa*.

Among the most important of the new rules we notice the following: Rule 16 which gives the Master authority to require parties to proceed with their applications, under the penalty of their being treated as withdrawn. Rule 22 provides for the withdrawal of cautions. Rule 36 simplifies the method of placing a notice of a lease, or an agreement for a lease on the register. Rule 45 abolishes the restriction as to the number of persons who may be registered as owners of any parcel of land. A form of application for a notice to terminate a caution and one for the withdrawal of a caution are also given.

By the new tariff several changes are made, and we are glad to see they are in the line of lessening the fees. One of the most important of these is a reduction in the charge for examination of the title deeds. Under the former tariff this was fifty cents for each instrument examined when the property was worth $1000, and thirty cents when the value was under $1000. The charge is now thirty cents when the value is $2000, and twenty cents when it is under this amount. Certainly these fees are not extravagant. This change will considerably decrease the expense of bringing lands under the Act, but the decrease which would tell most is that which would be obtained by dispensing with advertisements in all ordinary cases. Private parties purchase without advertising, and we do not think the claims on the assurance fund would be alarmingly increased if the Master of Titles were authorized to adopt a like practice. We believe the advertising sometimes costs nearly as much as the charges in the Master's office. Certificates of ownership have been reduced from $2 to $1. On the other hand, the charges for registering long instruments have been increased. Where the document is not more than ten folios, the fee remains as heretofore, namely, $2 for registration, including searches as to title and for executions, when made at the time of registration, and also including the entry of a charge, or partial transfer, upon the land certificate. Where, however, the instrument with affidavits exceeds ten folios a charge of ten cents for each additional folio is now authorized. We suppose this change has been

made on account of the recent tendency to introduce long and special provisions into mortgages. The decisions on the Short Form Mortgage Act make some additions necessary, but the length of the mortgage forms used by some loan companies and a few private lenders is simply appalling. The fee of registering a transfer of a charge is reduced from $2 to $1. If more charges than one are transferred by the same instrument fifty cents is to be paid for each additional charge. As most transfers include one charge this is a very considerate reduction.

This publication, for which we are indebted to our most efficient and courteous Master of Titles, will be found extremely useful to the increasing number who have business in the Land Titles offices. The success which has attended this system in this country cannot be remarked upon without at the same time remembering how much of this success is due to the manner in which the Act has been administered by Mr. Scott.

COMMENTS ON CURRENT ENGLISH DECISIONS.

PRACTICE—CONSENT ORDER—WITHDRAWAL OF CONSENT.

In *Lewis's* v. *Lewis*, 45 Chy. D., 281, counsel for the plaintiff, assuming to carry out a compromise which had been agreed to by his client, consented to an order. Before the order was drawn up the plaintiff's solicitors discovered that the minutes of the order which had been consented to, did not properly carry out the agreement to which the plaintiff had assented, and an application was then made to withdraw the consent, which Kekewich, J., allowed to be done; holding that the case differed from *Matthews* v. *Munster*, 20 Q.B.D., 141, where the compromise had been agreed to by counsel by virtue of his inherent authority, and not in pursuance of instructions, as in this case, and as to which he was of opinion there had been a misunderstanding.

PRACTICE—DISCOVERY—DOCUMENTS OF TITLE—PRIVILEGE—AFFIDAVIT ON PRODUCTION, CONCLUSIVENESS OF.

Morris v. *Edwards*, 14 App. Cas., 309 (which is noted *ante* vol. 25, p. 520), although only a practice case, has nevertheless arrived at the House of Lords. Their lordships held (affirming the Court of Appeal) that the defendant's affidavit of documents was sufficient in stating that the documents objected to be produced related solely to his own title, and did not tend to prove or support the plaintiff's title, and it was unnecessary to allege that they did not impeach the defence; and also that a contentious affidavit was inadmissible to contradict the defendant's affidavit. This point ought now to be set at rest.

PRINCIPAL AND AGENT—AUTHORITY OF AGENT TO BORROW—LIABILITY OF PRINCIPAL WHERE AGENT EXCEEDS HIS AUTHORITY.

Montaignac v. *Shitta*, 15 App. Cas., 357, is a decision of the Privy Council on the law of principal and agent, the question being whether a principal was bound by the act of his agent where the agent had acted in excess of his authority. The action was brought to recover a loan made by the plaintiff to the defendants through their agent, and the defendants claimed that the agent had exceeded his authority in agreeing to the terms and rate of interest on which the money was

advanced. The agent had, under his power of attorney, implied power to borrow money for the purpose of carrying on his principal's business, and their lordships were of opinion that this implied power, under circumstances of emergency, must be deemed to include power to borrow on exceptional terms, outside the ordinary course of business, and that a lender was not bound to inquire whether the emergency had arisen or not, but was entitled to recover from the principal, sums advanced *bona fide* without notice that the agent was exceeding his authority.

PRACTICE—VERDICT IN PURSUANCE OF AWARD—COSTS—APPORTIONMENT OF COSTS.

In *O'Rourke* v. *The Commissioners of Railways*, 15 App. Cas., 371, the Privy Council, following *Duke of Buccleuch* v. *Metropolitan Board of Works*, 1 H.L.C, 418, held that where a case is referred to arbitration by a consent order, and the arbitrators are directed to return a general award on the whole declaration for a sum certain, and such award is thereby directed to be entered as a verdict whereon final judgment may be signed, and the costs of the action, reference, and award, are directed to abide the result—and an award is thereupon rendered for the plaintiffs for part of their claim, carrying costs—it is not open to the court to give the defendant judgment in respect of the residue of the sum claimed, and then direct the taxing-officer to ascertain, by the evidence of the arbitrators and others, what parts of the plaintiffs' claim the defendant had succeeded on, with a view to the apportionment of the costs, because evidence on that point would be inadmissible as tending to explain or contradict the award.

ABSOLUTE CONVEYANCE CLAIMED TO BE A MORTGAGE—EVIDENCE TO CONTRADICT DEED.

Barton v. *Bank of New South Wales*, 15 App. Cas., 379, was an appeal to the Privy Council in a case in which the plaintiff claimed that a deed, though absolute in form, was intended to be a mortgage. The circumstances of the case were that William Barton, who died in 1881, had in 1869 borrowed from the defendants £600, and had deposited, as security for the loan, the title deeds of three parcels of land. In 1874 the debt and interest being then £723 odd, he executed an absolute conveyance of the three parcels to the defendants, in which the fact of the loan was recited, the amount due, and that the deed was made in satisfaction of £400 of the debt. What was attempted to be relied on as showing that the deed was intended to be a mortgage was a correspondence which had subsequently taken place between the parties, in which some equivocal expressions had been used, and some entries in the defendant's books of account, and the neglect to credit the £400 to the borrower's credit; but these, in the opinion of their lordships, were wholly insufficient to establish the plaintiff's contention, especially as the explanation of the bank's omission to credit the £400 had been excluded, on an objection taken by the plaintiff.

STOPPAGE IN TRANSITU—DELIVERY TO CARRIER—DURATION OF TRANSITUS.

In *Lyons* v. *Hoffnung*, 15 App. Cas., 391, the Judicial Committee has added the weight of its authority in support of the soundness of the rule of law laid down by the Court of Appeal in *Bethell* v. *Clark*, 20 Q.B.D., 615 (see *ante* vol. 24, p. 293). In that case Lord Esher, M.R., stated the rule to be, that "when the goods have not been delivered to the purchaser, or to any agent of his to hold for

him otherwise than as a carrier, but are still in the hands of the carrier as such and for the purposes of transit, then, although such carrier was the purchaser's agent to accept delivery so as to pass the property, nevertheless the goods are *in transitu* and may be stopped." This is to be understood as limited to the case of goods delivered to a carrier for the purpose of being carried to a place *indicated at the time of sale,* and does not extend to cases where the goods are delivered to a carrier or agent, not for the purpose of being carried to a destination indicated at the time of sale, but to be held subject to the orders of the buyer; in which case the transit would, as far as the vendor is concerned, end with the delivery to the agent.

STATUTORY BODY, LIABILITY OF FOR NON-FEASANCE—DAMAGES.

In *The Sanitary Commissioners of Gibraltar* v. *Orfila,* 15 App. Cas., 400, the question is discussed as to the extent to which statutory bodies are liable for nonfeasance. The Judicial Committee, following the principles laid down by the House of Lords in *Mersey Docks* v. *Gibbs,* L.R., 1 H.L., 93, determined that the liability of such bodies is governed by the statute which creates them; that the powers conferred when executed at all must be executed with due care; and in the absence of a contrary intention appearing by the statute creating them, such bodies and their funds are rendered subject to the same liabilities as the general law would impose on a private person doing the same thing. But in the case of mere non-feasance no claim for reparation will lie, except at the instance of a person who can show that the statute under which the body is created imposed a duty towards himself, which they negligently failed to perform. The injury complained of in the present case arose from the fall of an overhanging road, consequent upon the giving way of its retaining wall, which the corporation was under a statutory duty to maintain merely for the purposes of road conservancy, and it appeared that the result was due to the original defects in the structure of the wall, and that the corporation was not negligently ignorant thereof, and not guilty of misfeasance; and it was held that, according to the true construction of the ordinance constituting the corporation, it was vested with administrative powers subject to the control of the Government, and that there was no intention to render it responsible to the plaintiffs for the injury complained of.

COLLISION—DAMAGES—DEMURRAGE.

In *The City of Peking* v. *Compagnie des Messageries,* 15 App. Cas., 438, was an action to recover damages for a collision. The plaintiffs claimed to recover damage for the period their vessel was detained, owing to the collision; and it was held by the Privy Council that such claim could only be maintained for actual expenses incurred for the detained vessel, such as lodging, maintenance, and wages, of the crew; but not for the profits which the injured vessel might have earned, where, as in this case, another vessel, belonging to the same owners, had, at the defendants' expense and indemnity for loss occasioned by the substitution, been doing the work the injured vessel would have done if not disabled. From this it would appear that where loss of profits are claimed by reason of demurrage, there must be an actual loss, and the mere detention unaccompanied by any actual loss does not afford any ground for such a claim.

Notes on Exchanges and Legal Scrap Book.

DETECTION OF MURDER BY MICRO-PHOTOGRAPHY.—During last month the ever-courteous Sir John Thompson, Minister of Justice, granted an audience to Dr. Richard Wicksteed, of the Law Department of the House of Commons, and Mr. H. N. Topley, Photographer to the Department of the Interior. The object of the interviewers was to ask the Minister to authorize the purchase of Photomicrographic apparatus for the public service of Canada. Dr. Wicksteed said that his attention as a jurist had been attracted by the account, in *The British Journal of Photography*, of the successful reproduction of the image on the retina of the eye of an insect, by photographic experts, at Vienna. Reports of similar feats had been published previously, but apparently these reports were fables. If evidence were procurable from the photographed image of the last object seen by murdered persons,—say for instance the girls at Cumberland,—what invaluable evidence it would be. He also drew attention to an article on the detection of forgery by similar apparatus, published in THE CANADA LAW JOURNAL of the 15th November *(ante* p. 557). The Minister then read the notes from Vienna appearing in *The British Journal of Photography*, which runs as follows:—

"It does not very often happen to us to have to record a greater triumph in the application of photography to scientific purposes than has recently been chronicled from Vienna. Professors Dr. J. M. Eder, Ritter von Reisinger, and Dr. Sigmund Exner have succeeded—and thoroughly too—in photographing the visual image on the retina of a beetle. The apparatus employed was the large micro-photographic installation by Zeiss, and the beetle, whose devotion to the advancement of science cost him his life, was a male of the species *Lampyris splendidula*, the females having eyes that are far less perfect in construction. The eye was cut out, the pigment removed from the back, and immersed on a plate of mica in a solution of glycerine diluted until its index of refraction equalled that of the blood of the beetle. The object of the experiment was not only to obtain a photograph of the retina, but also to enable an opinion of the sharpness of sight of the beetle to be formed. One of the windows of the chemical lecture theatre of the Photographic Institute overlooks the neighbouring house tops, giving an excellent view of the Schottenfield church and church tower. The windows were shut, and on one of the panes was pasted the letter R cut out in paper, and against this window the eye of the deceased fly was directed, and the resulting retinal image was fixed upon an Angerer bromide plate by means of a Zeiss apochromatic, and a projection eye-piece. Collotype reproductions of the negative have been supplied to the readers of the *Photographische Correspondenz*, and enable an accurate idea to be formed of what the beetle actually sees. In it the panels of the window are distinctly and clearly visible, as is also the letter R. The distant church appeared as of less importance in the beetle's eye, but was nevertheless distinctly visible. How it occurs that the eye of the insect, with its hundred facets, succeeds in producing upon the retina so clear and distinct a single image, still remains as wonderful as before; but, as the first permanent and indisputable record of what a beetle actually sees, we venture to think that this successful experiment of Messrs. Eder, Reisinger, and Exner is likely to become classical."

Mr. Topley then explained the photographic details of the process. He said, further, that almost every Department at Washington possessed apparatus such as he now applied for—of this he was personally cognizant, having studied for some months in that city the refinements of photography. He wished to make

his department as complete as possible. Such a photomicrographic apparatus would cost about $250.00. It would be invaluable to the Departments of Justice, the Interior, the Geological survey, the Customs, Inland Revenue, and Secretary of State. Sir John Thompson appeared deeply interested in the subject, and authorized the purchase of the apparatus.

Reviews and Notices of Books

The Bills of Exchange Act, 1890, *being a Codification of the Law-Merchant Respecting Bills of Exchange, Cheques, and Promissory Notes, with Explanatory Notes and Illustrations from Canadian, English, and American Decisions.* By Thomas Hodgins, M.A., one of Her Majesty's Counsel. Toronto: Rowsell & Hutchison, 1890.

Mr. Hodgins has deserved well of the profession by the promptitude with which he has brought out his work on the Bills of Exchange Act passed in the last session of the Dominion Parliament. The passing of this Act marks a new point of departure in the law of Bills and Notes which had, heretofore, rested mainly, though of course not exclusively, on the mercantile usage as interpreted by judicial decisions. The new Act, while making some important changes, as, for instance, the introduction of the system of crossed cheques, is chiefly remarkable as being practically a codification of the existing law on its subject. It is, of course, too much to hope that the tangled and thorny wilderness of "case-law" has been entirely levelled and cleared by this one trenchant stroke of the legislative axe, but there is no room for doubt that it has done considerable execution in this way, and that a decided step had been taken towards the goal indicated in our author's happily chosen Ciceronian motto, and the happy era when "one and the same law will prevail amongst all nations and at all times."

Mr. Hodgins' book begins by an interesting and instructive introduction, in which he traces the origin and history of the various kinds of negotiable securities, and indicates their leading characteristics, and the principal variations which are incident to their use in different countries. Then follows the Act itself, accompanied by an ample apparatus of notes and illustrations, designed to bring out with all necessary fullness the meaning of the text, and to explain its bearing and application by a copious citation of English and American authorities, as well as the decisions of our own courts. Great labor has evidently been bestowed upon the work, which, we are satisfied, will be found of the greatest assistance to the profession when called on to deal with the constantly recurring questions coming up in practice under the Act.

It could scarcely be expected that a work so extensive, involving so much patient labor, and produced with such rapidity, should be free from errors, and we feel it incumbent upon us to refer to a few points in which the author's views seem open to question. We had intended to call attention to what we consider an error on p. 57 (fourth line from the top), where the book, as we had it, stated

that a "bill payable on presentation" would include a "bill payable on sight," and that such bills (*i.e.*, bills payable on sight), "are not entitled to 'days of grace.'" We learn, however, that the author has corrected this error in a small list of *corrigenda*, which has just been issued, so that his statement is now to the effect that sight bills "may be" entitled to days of grace. We think, however, that a stronger statement still would be justifiable, viz., that *such bills are* so entitled. Then again on p. 129 (note 3 to sec. 30), the author refers to the present statutory provisions against usury in Ontario and Quebec as being set out in R.S.C., c. 127, s.s. 10 and 11, not noting the fact that these provisions have been repealed by 53 Vict. (Dom.), cap. 34, sec. 2. This, however, is explained by the fact that the statutes of 53 Vict., were not issued till about the time the work came from the press, and so the effect of cap. 34 escaped notice. On p. 56, the case of *Howland* v. *Jennings*, 11 U.C.C.P. 272, is quoted as an authority for the proposition that "interest is recoverable on a note at the rate specified in it till payment," but that case has been distinctly overruled by the much later one of *Dalby* v *Humphrey*, 37 U.C.R., 514, in which it was held that in such cases interest after the day named for payment is in the nature of damages, and the rate is in the discretion of the Court or jury. Errors are unavoidable in any work of equal extent and composed under similar conditions to the volume before us; they will no doubt be corrected in future editions of Mr. Hodgins' book, and do not seriously impair its value as a full, painstaking, and generally accurate statement and elucidation of the important branch of law with which it deals. The index is good, and we notice that the author gives a convenient separation in the table of cases cited, giving them under the country to which they belong. We cannot speak with unstinted praise of the proof-reader's work. Dante would, with difficulty, recognize his compatriots under the guise of "Gibelius" (p. 3); the title of "indefeasable" (p. 1) to its penultimate vowel does not appear to us "indefeasible;" there is an unfortunate vacillation between "juridical" and "juridicial" on p. 61, and "transfered" and "transferer" on p. 131 are, like the succulent oyster, all the worse for dropping an "r." It may be objected that to such matters the maxim *de minimis* applies, but if the law cares not for such things, a critic, even in a law journal, cannot wholly disregard them. If this book were not likely to be a standard work on the subject of bills and notes in this country we might not perhaps have been so particular in pointing out these minor matters.

In view of the importance and value of the work, we are tempted to regret also that the publishers did not use larger type in the notes. The work is so valuable and so full of meat that it is entitled to larger display. It is much more exhaustive than a cursory glance would indicate. There are some 1370 cases cited, and we should judge they have also been carefully examined, as we notice that in very many cases the head notes have been carefully condensed, showing that no labor has been spared by the learned author. We trust he will soon be called upon for a second edition, which, doubtless, will be free from blemishes incident to necessarily hurried preparation and prompt production, and which will more suitably and conveniently present the mass of information collected in its pages.

A Handbook for Magistrates in relation to Summary Convictions and Orders and Indictable Offences. By Hon. Thomas H. McGuire, one of the Justices of the Supreme Court of the N.W. Territories. Carswell & Co., Toronto, 1890.

This little work, in 100 pp., was written, as the learned author explains in his preface, as a plain and simple guide to Magistrates in their duties under the Acts relating to Summary Convictions and Indictable Offences.

After a brief introduction, indicating the source of the authority of a Justice of the Peace, the volume is divided into two parts; Part I. dealing with summary matters, and Part II. with indictable offences.

Part I., amongst other matters, points out how jurisdiction is conferred; gives practical instructions for preparing the information; indicates the number of Justices necessary; what may be done by one alone; defines when a summons or a warrant should be issued to secure the attendance of the defendant; treats of evidence, how witnesses may be compelled to attend, who are competent, the number required, rules for taking it, cross-examination, and lays down the procedure if defendant fails to appear; whilst Part II. gives equally minute instructions in regard to the procedure where the Magistrate's duty is limited to an inquiry whether the person charged before them should be required to stand his trial before some higher tribunal.

It will be seen from the above outline that the matter treated of is of great practical importance. A perusal of the book justifies the statement that it will be found very useful not only to Justices themselves, but to members of the legal profession. In a narrow compass a large amount of information is afforded.

The author's chief merit is perspicuity. Wherever possible, a synopsis is given of the law upon any point, in tabular form. As an instance of his method, at p. 20 under the head of "Number of Witnesses" he says: "As a rule one witness is sufficient, but in the following cases such evidence must be corroborated by other legal evidence: (1) Perjury; (2) Seduction, R.S.C., ch. 157, s. 6; (3) Forgery, if the witness is the person interested in respect of the forged document, ch. 174, s. 218; (4) Procuring feigned marriages, ch. 161, s. 2; (5) Treason, requiring two witnesses; (6) Where young children are permitted to give evidence without being sworn, ch. 37, s. 13 (1890)."

At the beginning of the work a number of charts or maps are prefixed, conveying information as to modes of procedure at a glance.

The language used throughout the volume is as free from technical expressions as possible, and as Magistrates rarely have the Reports accessible, there are but few references to authorities.

The work would seem to fill a long felt want, and will doubtless find a ready sale as soon as its value becomes generally known.

DIARY FOR DECEMBER.

1. Mon..... Princess of Wales born, 1844.
2. Tues.....General Sessions and County Court Sittings for Trial in York.
4. Thur.....Chancery Division High Court of Justice sits.
6. Sat........Michaelmas Term and High Court of Justice sitting ends.
7. Sun.......*2nd Sunday in Advent.* Sir W. Campbell, 6th C.J. of Q.B., 1825.
9. Tues.....General Sessions and County Court Sittings for Trial, except in York.
14. Sun.......*3rd Sunday in Advent.* Prince Albert died, 1861.
17. Wed.....First Lower Canadian Parliament met, 1792.
18. Thur.....Slavery abolished in the United States, 1862.
21. Sun.......*4th Sunday in Advent.* St. Thomas. Shortest day.
24. Wed.....Christmas Vacation begins.
25. Thur.....Christmas Day. Sir M. Hale died, 1676, æt. 67.
26. Fri........St. Stephen.
27. Sat........J. G. Spragge, 3rd Chan., 1869.
28. Sun.......*1st Sunday after Christmas.* Innocents' Day.
30. Tues.....Holt, C.J., born, 1642.

Reports.

ONTARIO.

EXTRADITION CASE.

IN RE PARKER.

Extradition—Discharge under Habeas Corpus—Re-arrest—Jurisdiction of County Judge.

The prisoner, accused of forgery in the United States, fled to Ontario, and was committed for extradition by a County judge, but was discharged on *habeas corpus* for a defect in the proceedings. On a new information before another County judge it was objected that the judge of another county had no jurisdiction and could not interfere, and that as the prisoner had already been discharged on another warrant, he could not be re-arrested.

Held, 1. That the jurisdiction of a County judge is under R.S.O., cap. 142, s. 5, co-extensive with that of a judge of the Superior Court.

2. That as the County judge (before whom the prisoner was lately brought) was acting under the Extradition Act he was not barred by a previous discharge under a *habeas corpus*.

[St. Thomas, Aug. 26, 1890.

In this case the prisoner was a fugitive from justice from the State of Kansas, the charge against him being that of forgery. He was found in the county of Middlesex, and was committed for extradition by the Junior Judge of that county; but, on account of some defect in the proceedings (see 19 Ont. Rep. 612), he was discharged upon *habeas corpus.* A new information was then formulated upon the same facts and submitted to the Senior and Junior Judges of the County of Middlesex, who, however, declined to issue another warrant, thinking they were barred by the provisions of the *habeas corpus* Act, 31 Car., cap. 2. The same information was subsequently produced before the judge of the county of Elgin, and a warrant applied for, which was granted.

On the prisoner being brought before the judge of the county of Elgin the same charge as had previously been made was investigated upon fresh evidence, and the defect in the former evidence supplied. Objection was taken on behalf of the prisoner to the jurisdiction of the County judge, on the ground that the case belonged to the county of Middlesex, in which the prisoner was found, and that he had already been charged with the same crime upon the same facts, with the exception that the promissory note, the alleged forged instrument, was now produced; and, amongst a number of other grounds, it was urged that under the *habeas corpus* Act a man could not be arrested after discharge thereunder.

McKillop for the State of Kansas.

R. M. Meredith for the prisoner.

HUGHES, Co. J.:—

The extradition judge is the only authority in this province to inaugurate proceedings under the treaty. His acts are ancillary to the proper and legal exercise of jurisdiction over the accused, and the offences alleged against him by the foreign tribunal alone competent to deal with him; so that whatever acts, whether judicial or magisterial here are necessary, are ancillary to and in aid of the court in the country where the alleged offence was committed, and whence the accused has fled, for without his intervention the foreign tribunal would be shorn of its power to do justice in the case.

In view of the objection to my jurisdiction in this matter, I must observe: (1) That under the fifth section of the Act it is co-extensive with that of the judges of the superior courts of and limited only by the bounds of the Province—and not by those of the county of Elgin, and every county judge has, for the purposes of the Act, all powers and jurisdiction of any judge or magistrate of the Province. (2) That it is not a bar to my acting in the case that the prisoner has been discharged by *habeas corpus* since I issued the warrant against him under the Extradition Act.

I am unable to suppose that if this had been an accusation of murder, committed in the State of Kansas, instead of forgery, the provisions of the treaty would be set aside or governed or controlled by our local or domestic laws, affecting the liberty of the subject, merely because

the accused had been discharged, either by an extradition judge or upon a writ of *habeas corpus*, for some or any defect in the proceedings in this country; either that the person who issued the first warrant had no jurisdiction or that there was some defect in the preliminary proof or proceedings, or that the warrant or order upon which he stood committed was invalid, or that the person had purged away the offence or crime by a failure in proof upon the preliminary enquiry, or that the discharge upon the *habeas corpus* is a bar to any subsequent arrest.

The principle contended for by counsel here, "*Nemo bis vexari pro una et eadem causa*," can only be held to have application where there has been a trial, and a final conviction or acquittal upon that trial; or where there has been an accusation in one form of indictment and disposed of by a legal termination, and the person accused by another form on the same facts, or where a statute provides a bar to further proceedings.

My acting in this capacity under the treaty and the Extradition Act, is simply and purely ancillary—in aid of the foreign court to which jurisdiction of trying this prisoner, and pronouncing upon the crimes alleged against him belongs—there is no power to try either the offence or the offender here, and a murderer or a convict for any crime named in or covered by the treaty (according to my judgment) does not purge his crime by a discharge upon *habeas corpus*. It would be contrary to the polity of the governments who are parties to the treaty, and of international law. We might harbor malefactors to any extent if such were held to be the case, contrary to the comity and object of the treaty. I hold that the treaty, being of international arrangement and concern, must be upheld and carried out to all reasonable intendment, and that it overrides all previously existing domestic laws to the contrary.

Although it is true the practice under the treaty is governed by our mode of conducting preliminary enquiries, as a matter of procedure, still the principle which applies to cases submitted to a grand jury in this country, where, if a bill of indictment be ignored in a charge for a criminal offence—upon which a prisoner is confined in gaol—there is nothing, although he be discharged from custody, in the fact of ignoring the bill, to prevent the accusation being taken up, on a subsequent occasion, by another grand jury, at some future sittings of a court of competent jurisdiction, and of a bill of indictment being found for the same offence. The ignoring of the bill on the first indictment and the discharge of the accused from gaol, is no bar to the second accusation, nor would it purge the offence in any way.

The statute of Charles does not apply to a person accused of a crime committed in a foreign country—it only applies to cases of commitment on a criminal charge for an offence against the domestic law of this country. Nothing could justify the arrest of a foreigner—who has sought an asylum here, as a fugitive from foreign justice for a criminal offence alleged to have been committed abroad—in the absence of a treaty justifying such a proceeding—in *Rex* v. *Mackintosh*, 1 Stra., 308, it was held that the statute of Charles did not apply to a person committed for treason done in Scotland, because the courts will not act under the statute in the case of a person charged with a crime committed abroad.

Under the existing treaty with the United States, and the Extradition Act, the judges who perform judicial acts ancillary to the tribunals of the United States within the convention must be treated as should those tribunals themselves, in order to promote the purposes for which those tribunals exist, their acts are in the interest of promoting civilization by the detection, prevention, and punishment of crime, and to hold that the former discharge upon *habeas corpus* by a single judge would be to oust the foreign tribunal of its jurisdiction over the offence; or to suppose that the domestic law of this province would allow a fugitive from a foreign land, who has sought an asylum here, to purge his offence committed in the foreign land, no matter how heinous it might be, would be to turn the treaty into a failure and a delusion, and as said by KENT, C.J., "The statute never intended such a destruction of principle as to entrust to a judge, in vacation, the power to control the judgment or check the jurisdiction of a court of record," and it is not the policy of the high contracting parties to the existing treaty, that the criminals of either country should be covert or couchant in the country of the other.

I therefore find that the prisoner, John Wesley Parker, is a fugitive from justice from Coffee County in the State of Kansas, accused there of the crimes hereinbefore enumerated and referred

to, with intent to defraud, as set forth in the information filed with me, and I must therefore order him to be held for such crimes so committed, and issue my warrant for his committal to the common gaol of the county of Elgin (being the nearest convenient prison) there to remain until surrendered to the State of Kansas, or to the United States of America, or discharged according to law.

And here, as my further duty under the 12th Section of the Extradition Act is, I inform the prisoner that he will not be surrendered until after the expiration of fifteen days, and that he has the right to apply for a writ of *habeas corpus*.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Full Ct.] [Nov. 26.

REGINA *v.* RAY.

Criminal law—Bigamy—Proof of first marriage.

Upon an indictment for bigamy, the first marriage must be strictly proved as a marriage *de jure.*

Evidence of a confession by the prisoner of his first marriage, is not evidence upon which he can be convicted.

J. R. Cartwright, Q.C., for the Crown.

Lyman Lee, for the prisoner.

[Nov. 26

REGINA *v.* DAY.

Criminal law—Statements of prisoner to detectives—Admissibility of evidence.

During the trial of the prisoner for murder, questions arose as to the admissibility in evidence of statements made by the prisoner to certain detectives, in answer to questions put to him by the detectives, the prisoner being at the time in the custody of the detectives.

Held, upon a case reserved, that the statements were admissible in evidence.

J. R. Cartwright, Q.C.. for the Crown.

Lennan for the prisoner.

Div'l Ct.] [Nov. 17.

MARTIN *v.* MCMULLEN.

Guaranty—Construction of—Limited suretyship for a floating balance—Payment of part of debt—Right to rank upon insolvent estate of principal debtor.

The plaintiff's testator gave the defendants a guaranty in the following terms: "In consideration of the goods sold by you on credit to M., and of any further goods which you may sell to M. upon credit during the next twelve months from date, I hereby undertake to guarantee you against all loss in respect of such goods so sold or to be sold, provided I shall not be called on in any event to pay a greater amount than $2,500."

The whole debt owing to the defendants by M., at the expiration of the period limited by the guaranty was $5,556. M. made an assignment for the benefit of his creditors. The plaintiff paid the defendants $2,500, and claimed to rank upon the estate of M. in respect thereof.

Held, STREET, J., dissenting, that the guaranty was a limited suretyship for a floating balance, and was to be construed as applicable to a part only of the debt, co-extensive with the amount of the guaranty; and the plaintiff was entitled to a dividend from the estate of M. in respect of the $2,500 paid.

Judgment of STREET, J., 19 O.R. 230, reversed.

McCarthy, Q.C., for the plaintiff.

Gibbons, Q.C., for the defendants.

Div'l Ct.] [Nov. 17

MECHIAM *v.* HORNE.

Canada Temperance Act—Incorporation into, of ss. 62, 64, 66, 67, of R.S.C., c. 178—Distress, dispensing with—Imprisonment for costs of commitment and conveying to gaol—Warrant of commitment—Excess of jurisdiction—Police Magistrate—Summary conviction drawn up after Act ceased to be in force—Nullity—Conviction not quashed—Evidence of sufficient distress—Nonsuit.

The defendant was the salaried police magistrate for the County of Ontario, in which the Canada Temperance Act was in force prior to the 11th May, 1889, when the Order-in-Council declaring it in force was revoked.

On the 11th January, 1889, the plaintiff was convicted before the defendant of a second offence against the Act, and adjudged to pay a fine of $100 and $12.05 costs.

On the 20th March, 1889, the defendant issued a warrant of commitment, reciting the plaintiff's conviction before him and the imposition of the fine and costs; declaring that the plaintiff had no goods and chattels, and directing her committal to gaol for sixty days, "unless the said several sums and all the costs and charges of the said distress and of the commitment and conveying of the said Nellie Mechiam to the said common gaol, amounting to the further sum of seventy-five cents, and

shall be sooner paid unto you."

At the trial of an action for the arrest and imprisonment of the plaintiff under this commitment a conviction of the plaintiff was put in dated 11th January, 1889, but which was not drawn up till February, 1890. The conviction adjudged that the penalty and costs according to the adjudication, and if these sums were not paid forthwith, then, inasmuch as it had been made to appear that the plaintiff had no goods or chattels whereon to levy by distress, that she should be imprisoned for sixty days, unless these sums and the costs and charges of conveying to gaol should be sooner paid.

The conviction had not been quashed.

It appeared, by the examination of the defendant, that the seventy-five cents in the warrant was charged for the warrant, and that the blank was left for the constable to fill in the costs of conveying to gaol. The constable, however, did not fill in the costs, but endorsed a memorandum of them on the back of the warrant, making them $13.40.

Held, that the result of ss. 62, 64, 66, and 67, of R.S.C., c. 178, which are incorporated into the Canada Temperance Act, R.S.C., c. 106, by virtue of s. 107, is to enable the convicting magistrate to order the levy by distress of the penalty and costs, to dispense with such levy where he thinks it would be useless or ruinous, and to order the defendant to be imprisoned for a term not exceeding three months, unless the penalty and costs and also the costs and charges of the commitment and conveying to gaol are sooner paid.

Reg. v. *Doyle*, 12 O.R. 347, followed.

2. That although the warrant and commitment went beyond the conviction by directing a detention for the costs of the commitment, as well as of conveying to gaol, yet as the only sum for which the gaoler could lawfully have detained the plaintiff was the sum of seventy-five cents mentioned in the warrant, and the costs of conveying to gaol greatly exceeded that sum, there was no excess in the warrant.

3. That, as the only evidence given at the trial with regard to the defendant's appointment as police magistrate was quite consistent with his being in office at a salary under an appointment which did not expire with the Canada Temperance Act, it could not be said that the conviction drawn up in February, 1890, was a nullity.

4. That if the plaintiff was detained on account of the charges of the constable indorsed on the warrant, it was not the act of the defendant, for he never gave any authority to the constable to require the gaoler to detain the plaintiff for any sum not inserted in the warrant.

5. That as the conviction stated that it had been made to appear to the magistrate that there was no sufficient distress, and the conviction had not been quashed, evidence would not have been admissible to shew that there was sufficient distress.

6. That the commitment having been authorized by a lawful conviction, which had not been quashed, the plaintiff was properly non-suited.

Du Vernet for the plaintiff.

Farewell, Q.C., for the defendant.

STREET, J.] [Oct. 17

CARR *v.* CORFIELD.

Voluntary conveyance—Action to set aside—Fraudulent intent—Defeating creditors.

Fraudulent intention is a material element in an action to set aside a conveyance as being voluntary and fraudulent against creditors, and where it does not exist the action cannot succeed.

The fact that the result of a conveyance is to defeat creditors is not necessarily evidence that the intention of the grantor in making it was fraudulent.

Where another and a sufficient motive and reason for the conveyance was shewn, the action was dismissed.

Clute, Q.C., for the plaintiff.

Alcorn for the defendant Corfield.

Watson, Q.C., for the infant defendants.

Practice.

MacMahon, J.] [Nov. 26.

Ross *v.* Bucke.

Pleading—Rules 384, 388, 389—Pleading and demurring without filing affidavit and without leave—Separate causes of action—Frivolous demurrer.

Where a statement of claim sets up in different paragraphs more than one cause of action, the defendant may, under Rule 384, plead to one and demur to another without filing the affidavit mentioned in Rule 388, or obtaining leave under Rule 389.

A demurrer to a claim for wrongful dismissal, which does not allege a hiring by the day, or week, or month, or otherwise, cannot be said to be frivolous.

D. Armour for the plaintiff.

M. G. Cameron for the defendants.

Ferguson, J.] [Nov. 15.

Williams *v.* Township of Raleigh.

Consolidation of actions—Identity of issues—Application by common defendant in several actions.

Where the issues in several actions are not the same, there cannot be a consolidation of them.

Where several actions were brought against a municipal corporation by different plaintiffs for injuries to their respective lands occasioned by the alleged negligent construction by the defendants of several drains without providing a proper outlet for the waters brought down by such drains;

Held, that it was necessary for each plaintiff to prove that the negligent conduct of the defendants resulted in an injury to his own particular land; and, therefore, the issues in several actions were not the same; and this quite apart from the fact that, in any case, there would have to be separate assessments of damages.

Quære: Whether a common defendant can obtain a consolidation order against the will of the several plaintiffs.

Atkinson, Q.C., *J. M. Clark*, and *J. A. Walker*, for the plaintiffs.

M. Wilson, Q.C., for the defendants.

Street, J.] [Nov. 29.

Knight *v.* Town of Ridgetown.

Notice of trial—Service by plaintiff on two defendants—Set aside on application of one—No notice to the other—Costs of the day.

Where there were two defendants and notice of trial was given by the plaintiff to both, and set aside upon the application of one, without notice to, or knowledge of, the other, who attended, with his witnesses, at the time and place named in the notice:

Held, that the defendant who moved against the notice of trial, was not bound to give the other defendant notice of the motion; that it was the duty of the plaintiff, if he desired to protect himself, to notify that defendant that the notice had been set aside, and therefore the plaintiff should pay the costs of the day.

Langton, Q.C., for the plaintiff.

Hoyles, Q.C., for the defendants, the Town of Ridgetown.

D. W. Saunders for the defendants, the C.S. R.W. Co.

Boyd, C.] [Nov. 17.

In re Macdonald and Sullivan.

Land Titles Act—R.S.O., c. 116, ss. 61, 62, 63—Caution—Cessation of—Security by registered owner.

Under s. 61 of the Land Titles Act, R.S.O., c. 116, a caution was registered against dealings by the registered owner, the cautioner claiming that the registered owner held as trustee for another, against whose lands the cautioner had an execution. An action had been brought for a declaration to that effect. The Master of Titles made an order that entry of the cessation of the caution should be made upon the registered owner, giving security for the amount claimed by the cautioner; that payment should be made according to the result of the pending action; and that until such entry should be made the caution was to continue to have effect.

Held, that the scheme of the Act contemplates such a course of proceeding, although it is not specifically provided for by ss. 62 and 63; and that, under the circumstances, the order was the simplest and most effective that could be made in the interests of all parties.

W. M. Douglas for the registered owner.

W. R. Smyth for the cautioner.

ROSE, J.] [Nov. 19.

McBRIDE *v.* CARROLL.

Notice of trial—Mistake in date—Sufficiency of—Jury notice—Time—R.S.O., c. 44, s. 78, s.s. (2)—Non-jury sittings.

The plaintiffs on the 31st October, 1890, served notice of trial in these words: "Take notice of trial of this action at Osgoode Hall, at the Chancery Sittings, for the 17th day of October, 1890." A sittings of the High Court for trials, to be held by a Judge of the Chancery Division, at Osgoode Hall, had been fixed for the 17th November, 1890.

Held, that the notice was sufficient; for it gave such notice as imparted knowledge.

The sittings of the 17th November was not a jury sittings. On the 10th November, 1890, the defendant served a jury notice.

Held, that this notice was bad; for it was not served at least eight days before the sittings at which the action was to be tried, as required by R.S.O., c. 44. s. 78, s.s. (2).

A. Hoskin, Q.C., for the plaintiffs.

Neville for the defendant.

BOYD, C.] [Nov. 18.

CAMERON *v.* HEIGHS.

Married woman—Summary judgment—Separate estate—Untaxed bill of costs—Interest—Costs—Taxation—Retainer.

Summary proceedings upon specially endorsed writs do not apply where, the defendant being a married woman, the judgment can be only of a proprietary nature.

In the absence of a special agreement, interest cannot be recovered upon an untaxed bill of costs.

Where a solicitor sued a married woman and her husband upon an untaxed bill of costs, and, in default of appearance, signed judgment against both defendants personally for the amount of the bill with interest:

Held, that the judgment was irregular and might have been set aside with costs if the defendants had applied promptly; and, under the circumstances, the judgment was amended by limiting it as to the married woman to her separate estate, by disallowing interest, and by directing that the amount should abide the result of taxation, with leave to the husband to dispute the retainer.

C. W. Kerr for the plaintiff.

G. W. Bruce for the defendants.

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