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The free-handed way in which English journals deal with their judges, when an occasion for reproof appears to them to be desirable, is something which, if done here, would very much astonish our judges in this country. But possibly no such occasion ever arises in courteous Canada. Speaking of some disputes between judges and counsel in the Court in which Mr. Justice Hawkins presides, our namesake says that "his manner was unnecessarily provocative, and he had no justification for a certain charge that he made;" and the editor concludes by "hoping that Sir Henry Hawkins will follow the example of other judges, and will not again be led into conduct which is alike injurious to the administration of justice and derogatory to the dignity of the Bench and Bar." We may possibly sometimes think thoughts to this effect, even in Ontario, but it would probably not be considered very wise to put them in print.

Bills have been introduced in Congress in the United States to raise the salaries of District Judges from $5,000 to $6,000. The *American Law Review* remarks: "It has often been to us a matter of wonder that men of the ability and learning who have graced the Federal ermine, have condescended to retire from private life and give up lucrative practice for the small compensation and heavy responsibility incident to the position. Of course we appreciate—and be it said to their credit—that the honor and prestige which a life-long position on the bench imparts, are, to many lawyers, the great attraction. But the fact that we have been fortunate in the past in obtaining great and honest jurists for a small and niggardly compensation, is no guarantee that we will always be equally fortunate in the future." Just at present, owing to the dearth

of business for the profession, the judges in this country have much the best of it. All the same we shall be glad to see some government strong enough to take up and deal with the question of judicial salaries in some adequate manner.

We learn from the *Albany Law Journal* that the Supreme Court of Tennessee had recently to pass upon the novel question of the right of counsel to shed tears before a jury. The Court confessed itself unable to find any direct authority on the point, and concluded that no cast-iron rule should be laid down. "Tears have always been considered legitimate arguments before the jury, and we know of no power or jurisdiction in the trial judge to check them. It would appear to be one of the natural rights of counsel which no statute or constitution could take away. Indeed, if counsel have tears at command, it may be seriously questioned whether it is not his professional duty to shed them whenever proper occasion arises, and the trial judge would not feel constrained to interfere unless they are indulged in to such excess as to impede, embarrass, or delay the business before the Court. In this case the trial judge was not asked to check the tears, and it was, we think, a proper occasion for their use, and we cannot reverse for this reason." Our brethren to the south of us are, we apprehend, more emotional, and possibly more conversant with "ways that are dark and tricks that are vain," than the more stolid Canadian; and for this, probably, both judges and juries in the Dominion are devoutly thankful. Even the advent of lady barristers will not, we venture to say, work any change in this respect.

A correspondent in our last issue (p. 193) called attention to some proposed legislation in the Province of Nova Scotia on the subject of probate jurisdiction, and which incidentally affects the salaries of the county judges.

Whilst we must admit that it is rather hard on the county judges to give them extra work to do without remuneration, and probably take money out of their pockets,

we question whether the legislature is evading, as our correspondent suggests, the provisions of s. 100 of the B. N. A. Act. That provision seems to infer that if Nova Scotia wants Probate Courts they must pay their judges themselves; and there would seem to be nothing to prevent the legislature of that province from imposing extra work upon such judges, if they think proper. The provincial legislature seems to have full control of the matter, and to be acting within its rights. This, however, does not touch the question as to whether it is acting fairly by the county judges; in fact the contrary would seem to be the case. We have always advocated paying judges a proper salary, and by no stretch of imagination can it be said that many of them are overpaid at the present time. An item of difficulty arises in this matter from the fact that the County Courts in Nova Scotia are ambulatory. Not only does a judge have several counties under his jurisdiction for County Court and speedy trial purposes, but he holds the County Court in other towns besides the shire or county town, so that he would often be detained in outside places trying probate business. It is claimed by some that the Act is an attempt to get the Dominion, instead of the Local Government, by a side wind, to pay the probate judges.

MORTGAGEES AND THE STATUTE OF LIMITATIONS.

I desire to be allowed to refer once again to this subject, which has been already discussed in two articles appearing in this journal on pp. 93, 181. Whilst I am free to admit that Mr. McLaren has, in his paper published in the last issue of this journal, presented a very able argument against the position taken by me in the article to which he refers, yet I may perhaps be excused for saying that he has not quite succeeded in convincing me that I am wrong.

I agree with him that the question really turns on what is the true construction of the statute, and that that question should be governed by the consideration of what is the most just and consistent view to take, having regard to the general policy of the law.

As Lord Watson remarks in a recent case: "In a court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication:" (1897) A.C. p. 38.

With the ethical propriety of Statutes of Limitations we have, of course, nothing to do; it is enough to know that it is deemed to be in the general interest of the public that a period should be put to the time within which adverse claims to property in the possession of others may effectively be asserted.

The Real Property Limitation Act is undoubtedly designed to carry out this principle, and adopting Mr. McLaren's own basis of reasoning, it seems perfectly legitimate to say that a construction of the statute which will effectuate its admitted general policy, is prima facie preferable and more probably the true legal meaning of it, than one which may, in certain cases, practically abrogate that policy and admit of claims being asserted against persons in possession for an indefinite period. This, I submit, is not arguing in a circle.

While it may be conceded that a person wrongfully taking possession of another man's land is not to be regarded as an especial favorite of the law, and that he is not entitled to any more consideration than one who in good faith lends money upon the security of a mortgage, if indeed he is entitled to so much, still it is impossible to exclude from our consideration the fact that even to a mere wrongdoer so entering on the land of another, the general policy of the law in question is to extend its protection from suit, after a certain period has elapsed. So that there appears to me to be a prima facie presumption that in construing the provision which the statute makes in favor of mortgagees, we are not to read anything into it which can be construed into a practical abrogation of the general principle of the Act, but only a reasonable measure of protection in favor of mortgagees as against their mortgagors and all those claiming under them.

It would surely be entirely contrary to the general policy

of the law in question to allow the owner of the paper title to lie by and suffer another to occupy his land and make many and valuable improvements upon it, perhaps build a town or a city thereon, and then, at the end of a hundred years or more, to permit his descendants to recover possession of the land with all its improvements. Such a case may be said to be an extreme one, but if the construction which Mr. McLaren contends for is correct, it is a case that would be possible. The argument against that construction of the statute being correct, which might lead to such a result, seems to me on the score of convenience and policy overwhelming.

But Mr. McLaren suggests, though he does not actually assert, that the lender of money on mortgage of land is a sort of legal hot-house plant, and must be carefully protected from all those chilling blasts of law which purchasers or other dealers in land have to submit to; because, if it were otherwise, capital might be imperilled and the lending classes alarmed. The lending classes of the community are, no doubt, very important members of society in their way, but I am not prepared to admit that they are necessarily entitled to be exempted from taking those usual precautions in investing their money which are imposed on purchasers and other dealers in land. No great hardship is inflicted on mortgagees when investing money on mortgage of lands in the possession of a third party, by making it necessary for them to require evidence of an acknowledgment of the title of the mortgagor by the person in possession. If that can not be got they are not obliged to lend. I do not think the necessity for taking that precaution would appreciably alarm money lenders. Of the two propositions it seems to me infinitely more reasonable to assume that they should take that precaution, than to assume that no inquiry by them as to the possession is necessary, and that the mere acceptance of a mortgage from a mortgagor out of possession, is sufficient of itself to make a new starting point for the statute against a man in adverse possession who is no party to the mortgage.

Even if it were held that the provision in favor of mortgagees only applied as between mortgagees and their mort-

gagors and privies in estate, it is absurd to suppose that the ingenuity of the profession would not be equal to the emergency of devising adequate means for the protection of mortgagees. One method which occurs to me would be (1) to require the mortgagor upon the execution of the mortgage, if not then himself in occupation, to produce a declaration showing who the person is who is in occupation, and a written acknowledgment of title from such person; and (2) to insert in the mortgage a provision requiring the mortgagor to produce at stipulated intervals similar evidence, and in default authorizing the mortgagee to take possession. Some such method would, it seems to me, be an ample protection to mortgagees, and at the same time not reduce the Statute of Limitations to waste paper.

It is not suggested that a mortgagee should be required on accepting a mortgage to obtain actual possession, but merely satisfactory evidence that the title of his mortgagor is acknowledged by the person in actual possession, before he advances his money to a mortgagor out of possession. Few mortgages are taken, I apprehend, without inquiry as to the possession, and there is no hardship in requiring that inquiry to take the shape I have mentioned.

It does not appear to me that Mr. McLaren has successfully made out his first proposition. On the contrary, I think the utmost that he can be said to have established is that it was the intention and policy of the Legislature to afford a reasonable protection to mortgagees, which I admit. Neither do I think the second proposition is made out, and on the contrary I would say that as a matter of public policy it would be a mistake to construe the provision in reference to mortgages so as virtually to abrogate the Act. And as far as the third and fourth propositions are concerned, I would say that the "plain construction" of the statute is not the sound one, if it involves the construction Mr. McLaren contends for; and that the only way the statute can be construed consistently with its other provisions and its general policy, is by restricting the rights of mortgagees as I have suggested.

GEO. S. HOLMESTED.

CAUSERIE.

—"With critic judgment."
CHURCHILL: *The Rosciad.*

—"Some stray words
Of old familiar Latin met my ear."
CALDERON: *El Mágico Prodigioso.*

HYPER-CRITICISM IN THE PRIVY COUNCIL.—In his opinion in the *Indian Annuities Case* (decided in the Privy Council on 9th December, 1896), Lord Watson has shown himself, like Iago, to be "nothing, if not critical." By a clause common to the several statutes by which the Provinces of Ontario and Quebec and the Dominion of Canada referred certain important matters in dispute between them to arbitration, it was enacted that "the award shall be subject to appeal [on questions of law] to the Supreme Court, and thence to the Privy Council of England, in case their lordships are pleased to entertain the appeal." Now the merest tyro in the law knows that ultimate appeals from Colonial courts lie to the Sovereign, and are theoretically determined by Her Majesty on the advice of the Judicial Committee of the Privy Council; therefore the designation of the court of last resort in the clause above mentioned as the "Privy Council of England" is so clearly a verbal slip of the draftsman, that, on the principle of 'De minimis non curat lex,' it ought not to be considered worthy of serious notice. Not so with Lord Watson, however—

A lapsus, howsoever slim,
A grievous error is to him,
And it is something more!

It is an occasion for assuming ignorance absolutely Bœotian on the part of colonial legislators with respect to constitutional law. It is an opportunity not to be neglected by the ponderous mind for delivering a homily in reproof of such postulated ignorance. This is the voice of the chider, chiding never so wisely: "The concluding part of this enactment ignores the constitutional rule that an appeal lies to Her

Majesty, and not to this Board; and that no such jurisdiction can be conferred upon their lordships, who are merely the advisers of the Queen, by any legislation either of the Dominion or of the Provinces of Canada." Now we will not enlarge upon that which we have characterized as a simple slip of the draftsman beyond saying that Canadian legislation as a whole bears favorable comparison in point of correctness and congruity with the Acts inscribed upon the Imperial rotuli parliamentorum from the time of Edward I. to date. But concerning the view that by the provision in question the Federal and Provincial legislatures attempted to confer appellate jurisdiction upon Her Majesty in Council, we desire to say that to a mind not entirely nubilose it is quite erroneous. We venture to think that it is reasonably clear from the language used that the legislatures merely endeavored to indicate beyond all doubt that their intention was not to limit the appeal from the Board of Arbitrators to the Supreme Court of Canada (as it was quite competent for them to do), but that, if desired, an appeal to Her Majesty in Council might be had, by leave, as in ordinary cases where appeals are taken from the judgments of the Supreme Court. Obviously this provision was inserted in the three enactments ex abundanti cautelâ; and it should have so presented itself to Lord Watson. But he seems to have turned his eyes from the path that would have led him to this almost irresistible inference, and in going a-gunning after a poor little snipe of a verbal error he strays so far from the safe hunting-grounds of statutory construction that he loses sight of the finger-post upon which is inscribed the salutary rule that it ought not to be presumed that the Legislature intended to exceed its jurisdiction. It does not occur to us that there is really anything more to be said about the matter.

Dr. Johnson tells us that north of the Tweed there is a certain wild people of the Aryan branch of the genus homo who require to be caught early in order to be trained to perspicacity. We believe that Lord Watson is a scion of that race, and we sadly suspect that he is still feræ naturæ.

GROTIUS SCRIPSIT.—Mr. Edward C. Strutt recently wrote to the *Athenæum* from Rome, informing it that he had the good fortune to pick up, amongst a lot of old literary trumpery at a book-stall, an autograph letter of the celebrated Hugo Grotius to Isaac Vossius. Feeling that such of our readers as have given any attention to the study of International Law will be glad to read this missive from the hand of him who may well be styled the founder of the science, we subjoin the letter in its original Latin. Mr. Strutt says that the writing is very small and cramped, and occupies but a little space of a large double sheet of paper, folded in the usual manner and sealed with red wax. It will be observed that Grotius refers to the famous feuds that were then in progress between the literati of the time, mentioning amongst the belligerents his friend Salmasius, with whom our own Milton was shortly after to wage Homeric conflict over the lawfulness of the execution of Charles I. Indeed this epoch witnessed a veritable literary aceldama, where Titans did each other to death. It is pleasant to know that so great a jurist as Grotius was also reckoned as one of the acutest theologians and philosophers of his age. In common with Erasmus, he thought that the great schism of the sixteenth century might have been avoided if the dominant Church had reformed her own morals, and been lenient with diversities of opinion in matters which did not entrench upon the essentials of the primitive Christian faith. Critics of our own day rank him as one of the best modern writers of Latin verse; and his contemporary, Ménage, called him "a monster of erudition."

Here is Mr. Strutt's treasure-trove:

"CLARISSIME ET ERUDITISSIME DOMINE.—Gratias habeo pro parte ista libri de Americanis gentibus. Velim aliquis cui plus sit otii quam nunc est mihi meas coniecturas firmet aut adferat meliores. Certe quae Peruanis quum Sinensibus congruunt, plura sunt quam ut fortuito concursui tribuantur. Hoii liber multum hic legitur. Creditur in eo opere non Bezae tantum famam vindicasse, sed et gratificari voluisse D. Salmasio. Idem ille Hoius Petavium tractat indignis modis, is responsurum se negat ideo quod norit annua augeri ministris contra quos scribitur. Gernanes mire semper Heinsio favet. Quod Cloppenburgius mihi obiicit idem obiectum Erasmo fuit. Parabolae Evangelicae

pleraeque sunt apologi modestiores in quibus non ferae aut pecudes loquuntur sed homines. Apologos autem Latini vocant fabulas, ut Phaedrus, Gellius, alii. De scriptis vestris gaudeo meum consilium clar. vestrae probari. Livius Gron[illegible]i non dubito quin publice futurus sit utilis et gratus. Ad literas cl. vestras in quibus erat folium Anthologiae, responsum mihi per D. Appelbonium. Velim servari formam chartae quae est in Hobaeanis et in Excerptis de Tragœdiis et Comœdiis. Cetera omnia vestro arbitratui permitto. Deus claritudinem vestram cum optimis mihique venerandis parentibus diu sospitet.

Lutetiae xviii. Martii MDCXLV.

Clar. Vestrae Studiosissimus, H. GROTIUS."

* * *

CROWN BOUND BY RES JUDICATA.—Now that the Judge of the Exchequer Court has decided (*The Queen* v. *St. Louis*, ante p. 153) in the sixtieth year of Her Majesty's illustrious reign that the Crown is bound by the principle of res judicata, we feel that we should commemorate, in a becoming way, this latest milestone passed by the minor prerogatives on their march to the grave, so far as Canada is concerned. Therefore, with all due apologies to Mr. Silas Wegg and Professor Irving Browne, we will drop into poetry and say:

Victoria, reigning sixty years,
Hath witnessed changes legion;
And none more drastic, it appears,
Than in the Law's grim region.

Of less prerogatives so shorn
She pays for culpa lata!
Though pure estoppels she may scorn,
She can't res judicata.

CHARLES MORSE.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

PRACTICE—FORECLOSURE—RECEIVER—ACCOUNT.

In *Simmons* v. *Blandy*, (1897) 1 Ch. 19, the form of a judgment in a foreclosure action where a receiver has been appointed, was under discussion, from which it appears that in such a case the plaintiff is chargeable with the amount (if anything) paid into Court by the receiver, and such sum as should be in the receiver's hands at the date of the Master's report, and with such sum (if any) as the plaintiff submits to be charged with in respect of rents and profits to come into the receiver's hands prior to the final order.

CONTRACT FOR PUBLISHING BOOK—AUTHOR AND PUBLISHER—ASSIGNABILITY OF CONTRACT.

In *Griffith* v. *Tower Publishing Co.*, (1897) 1 Ch. 21, a motion for an injunction was made by the plaintiff to restrain the defendant company and the liquidator thereof from assigning the benefit of a contract entered into between the plaintiff and the company for the publication of a book of which the plaintiff was the author. Sterling, J., granted the injunction, holding that it is well settled that such contracts when made between private individuals are personal to the individuals entering into them, and therefore not assignable without the consent of the author, and that the same rule applies where such a contract is made between the author and an incorporated company.

AGREEMENT FOR LEASE—PAROL EVIDENCE, ADMISSIBILITY OF, TO SHOW THAT SIGNED DOCUMENT WAS NOT A CONCLUDED AGREEMENT—EVIDENCE.

Pattle v. *Hornibrook*, (1897) 1 Ch. 25, is a somewhat unusual case inasmuch as it establishes that parol evidence is admissible to show that although a person has signed a document purporting on its face to be a contract, yet that he nevertheless so signed it without the intention of contracting,

and that consequently that the document purporting to be a contract is no contract. The facts of the case were as follows. The plaintiff applied to the defendants' solicitor for a lease of certain premises; a written agreement was accordingly drawn up and signed by the plaintiff, and it was subsequently signed by the defendant also, but at the time the latter signed it he handed it to his solicitor and told him that he was not satisfied as to the plaintiff's responsibility, but was willing to accept her and two responsible persons as joint tenants, and this was communicated to the plaintiff, who nevertheless contended that as the plaintiff had signed the agreement the contract was complete and the action was brought to enforce it. Sterling, J., however, held that on the evidence there was no contract, and on the authority of *Pym* v. *Campbell*, 6 E. & B. 370, that parol evidence was admissible to show that there was no contract, notwithstanding the signature by the defendant of the agreement.

COMPANY—WINDING UP ORDER—"JUST AND EQUITABLE"—COMPANIES ACT, 1862, (25 & 26 VICT., C 89) S. 79, SUB-SEC. 5—(52 VICT., C. 32, S 4. (*e*) D.)

In re Brinsmead & Sons, (1897) 1 Ch. 45, was an application to wind up a joint stock company. The Court in England is empowered by the Companies Act, 1862, s. 79, sub-sec. 5, to grant the order where it is of opinion that it is just and convenient—a similar provision to that contained in the Dominion Act, 52 Vict., c. 32, s. 4, (*e*). The application was made by a shareholder, and it appeared that the company had been organized for the purpose of carrying on a business of piano manufacturers under the name of "T. Brinsmead & Sons," and that a large sum, £76,000, had been paid for the good will and right to use that name. It also appeared that an injunction had been granted restraining the company from using that name upon pianos manufactured by them, except it were coupled with a statement clearly distinguishing their pianos from the pianos of the firm of "John Brinsmead & Sons," to filch whose business the company had been organized. It also appeared that several shareholders were bringing actions against the company for having been fraudulently induced to become shareholders in the belief that the

company had been organized to carry on the business of "John Brinsmead & Sons." It was, however, shown that at a meeting of the shareholders a resolution against winding up the company had been passed, and that the company might carry on a valuable business without infringing the injunction. But Williams, J., was of opinion that the fact of £76,000 having been paid for the business, it was manifest that the use of the name and good will attaching to the business were considered by the vendors and purchasers of great value, and that as the name could not be used except in a way disadvantageous to the company, and as those who might claim to have been defrauded into becoming shareholders might be in a better position if the company were ordered to be wound up, he thought that it was under all the circumstances "just and equitable" to grant the order, which he did.

The Law Reports for February comprise: (1897) 1 Q.B., pp. 129-247; (1897) P. pp. 17-59; (1897) 1 Ch. pp. 61-195; and (1897) A.C. pp. 1-144.

BANKER—CHEQUE—FORGED INDORSEMENT—"CUSTOMER"—CONVERSION—BILLS OF EXCHANGE ACT, 1882, (45 & 46 VICT., C 61) SS. 24, 60, 79, SUB-SECS. 2, 80, 82—(53 VICT., C. 33 (D.), SS. 24, 79, 81).

Lacave v. *Credit Lyonnais*, (1897) 1 Q.B. 148, is a case in which Collins, J., followed *Kleinwort* v. *Comptoir National*, (1894) 2 Q.B. 157, (noted ante vol. 30, p. 561.) In this case the defendants carried on a banking business in London and Paris; a cheque was drawn on the London house in favor of the plaintiffs and specially indorsed by them to a firm in London, to whom it was sent for collection. It was lost in the course of transmission and fell into the hands of a stranger, who forged the indorsement of the London firm to whose order it was payable, and then presented it at the defendants' Paris house, where it was paid to a person who had no account with that branch; and it was then forwarded by post to the defendants' London branch, where the amount was credited to the Paris house. The cheque when it reached the defendants in London was crossed generally. The plain-

tiffs claimed to recover the amount of the cheque from the defendants on the ground of a conversion of the cheque by them in England. The defendants claimed that they were protected by s. 60 of the Bills of Exchange Act, 1882, which provides that "where a bill payable to order on demand is drawn on a banker and the banker on whom it is drawn pays the bill in good faith in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority"—a provision, we may remark, which does not appear in the Dominion Act (see, however, s. 59). They also claimed to be protected from liability by ss. 80, 82, which are similar to ss. 79, 81, of the Dominion Bills of Exchange Act, but Collins, J., held that the Paris branch and the London branch were not two, but practically one and the same bank, and that in any case s. 82 did not apply, because the man who presented the cheque to the Paris branch was not a customer of that branch according to *Matthews* v. *Brown*, 10 R. 266, and though he does not in terms say so, it would seem that he considered s. 80 afforded the defendants no protection, because the payment of the cheque was not made to a banker, but in effect to the person presenting it at the Paris branch: and though the transaction was carried out between the two branches through the medium of the post, he held that as soon as the cheque arrived in England it was governed by the English law, and the presentation of it at the defendants' London office amounted to a conversion which rendered the defendants liable to the plaintiffs for the full amount of cheque; and he gave judgment accordingly.

CRIMINAL LAW—PROSECUTION—CONSENT IN WRITING TO INSTITUTION OF PROSECUTION.

Thorpe v. *Priestnall*, (1897) 1 Q.B. 159, is an instance of the strictness with which a law affecting the liberty of the subject must be carried out. By an Act of Parliament it was pro-

vided that no prosecution should be instituted under a certain Act without the consent in writing of a police officer. The officer gave a verbal consent to the institution of a prosecution against the defendant, and an information was laid; after it was laid and the summons issued, he gave his consent in writing. The defendant having been convicted, now moved to quash the conviction on the ground that the consent in writing had not been given before the institution of the prosecution. Wills and Wright, JJ., held that the objection was well taken, and quashed the conviction accordingly.

STATUTE—CONSTRUCTION—PROPERTY—PATENT OF INVENTION—"PROPERTY LOCALLY SITUATE"—EJUSDEM GENERIS.

In *Smelting Co.* v. *Commissioners of Inland Revenue*, (1897) 1 Q.B. 175, an appeal was brought from the judgment of Pollock, B., and Bruce, J., upon a special case stated by the Commissioners of Inland Revenue. By an Act of Parliament a stamp duty was imposed on agreements for the sale of any estate or interest in any property "except lands, tenements, hereditaments or heritages, or property, locally situated out of the United Kingdom." An agreement was made in England for the sale of a share in a patent of invention granted by the Government of New South Wales and a sole license to use it in a district of that colony. The question was whether the agreement was liable to duty. The Court of Appeal (Lord Esher, M.R., Lopes and Rigby, L.JJ.,) affirmed the judgment, holding that the duty was payable. Lord Esher, M.R., and Lopes, L J., thought the doctrine of ejusdem generis applied to the construction of the Act, and that the words "property locally situated," etc., were controlled by the preceding words, lands, tenements, etc., and it was only property of that class which came within the exception; but as Rigby, L.J., disagreed with that view, the Master of the Rolls preferred to rest his judgment on the ground that the property in question could not, from its nature, be said to be locally situated anywhere, and therefore could not come within the exception, and with this view Rigby, L.J., agreed.

PRACTICE—DISCOVERY—ACTION IN FORMA PAUPERIS—CASE LAID BY PAUPER BEFORE COUNSEL—PRIVILEGE.

Sloane v. *Britain Steamship Co.*, (1897) 1 Q.B. 185, involves a point of practice arising in an action in which the plaintiff was suing in forma pauperis, a proceeding for which, we may note, no provision is made in the Ontario Rules. The defendant claimed the right to inspect a case laid before counsel, in order to obtain his opinion for the purpose of obtaining leave to sue in forma pauperis, and also the opinion given thereon. The Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.), held that the case and opinion were privileged from production, notwithstanding that they had been made exhibits to the affidavit, used for the purpose of obtaining leave to sue in forma pauperis, because such documents were necessary to be produced for the information of the Court, and not for the benefit of the opposite party, and therefore *Re Hinchcliffe*, (1895) 1 Ch. 117 (noted ante, vol. 31, p. 203), was said not to apply; but it seems a little hard to say why the same line of reasoning should not have also protected the documents in question in *Re Hinchcliffe*, except it be that in the present case, the case and opinion had to be produced under compulsion of the Rules, whereas in *Re Hincheliffe* they were voluntarily produced as exhibits to an affidavit.

SALE OF GOODS—CONTRACT—"SALE OR RETURN"—PLEDGE OF GOODS BY VENDEE.

Kirkham v. *Attenborough*, (1897) 1 Q.B. 201, although a decision under the English Sale of goods Act, 1893 (56 & 57 Vict., c. 71), is nevertheless deserving of attention here, as the Act in question appears to be merely a codification of the common law. The point in controversy arose under the following circumstances: The plaintiff had delivered to one Winter a quantity of jewellery on sale or return, in other words he was to be the purchaser, but subject to an option on his part to return the goods. He pledged them with a pawnbroker, and the plaintiff brought the present action against the latter for the recovery of the goods. The statute above referred to provides that "when goods are delivered to the buyer on approval, or 'on sale or return,' or other similar

terms, the property therein passes to the buyer: (*a*) When he signifies his approval or acceptance to the seller, or does any other act adopting the transaction." The language used seems certainly open to the adverse criticism which Lord Esher passes upon it, but as he explains "the transaction" referred to must necessarily be not the original transaction of delivering the goods on sale or return, but that part of the transaction which makes the buyer the purchaser of the goods. The Court of Appeal (Lord Esher, M.R., Lopes and Rigby, L.JJ.), were agreed that the pledging of the goods was such an act as was consistent only with Winter being the purchaser, that the property in the goods had consequently passed to him, and the plaintiffs were therefore not entitled to recover them from the pawnbroker.

CRIMINAL LAW—FALSE PRETENCES—EVIDENCE—OPINION OF WITNESS AS TO MEANING OF LETTER WRITTEN BY PRISONER.

In *The Queen* v. *King*, (1897) 1 Q.B. 214, a case was stated by justices for the opinion of the Court on the following points: A prisoner was indicted for obtaining goods by false pretences. At the trial a letter, whereby the alleged false pretence was made, was shown to the prosecutor, and he was asked what opinion he formed of it—and the question as to this point of the case was whether or not such evidence was admissible. After the prisoner had been convicted of obtaining the goods in question by false pretences, at the same sessions he was found guilty on another indictment, for stealing the same goods, and the question was whether this second conviction under the circumstances was valid. The Court (Hawkins, Cave, Grantham, Lawrance and Wright, JJ.), answered the first question in the affirmative. Wright, J., however, is careful to point out that the evidence is only admissible for the purpose of showing how the letter was actually understood by the prosecutor, and not as evidence that it was so meant by the prisoner. The second point submitted was answered in the negative, and the conviction for larceny quashed.

INSURANCE—INDEMNITY—SUBROGATION—RIGHT OF INSURER TO BENEFIT OF CONTRACT ENTERED INTO BY ASSURED—LANDLORD AND TENANT.

West of England Fire Insurance Co. v. *Isaacs*, (1897) 1 Q.B. 226, is the decision of the Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.), affirming the judgment of Collins, J., (1896) 2 Q.B. 377 (noted ante, vol. 32, p. 705). The facts of the case were stated very fully in our former note; it may suffice therefore to say that the principle is affirmed that an insurer is not only entitled to recover from the assured the value of any benefit which he has actually received from other persons by way of compensation for the loss insured against, but is also entitled to recover the full value of any rights or remedies of the assured against third parties which the assured has relinquished, and to which, but for such relinquishment, the insurer would be entitled to be subrogated. In the present case it may be remembered the claim which had been relinquished was a right which the insured had as a tenant to compel his landlord to expend insurance moneys received by him in the repair of the insured premises.

MASTER AND SERVANT—NEGLIGENCE OF SERVANT—LIABILITY OF MASTER—EFFECTIVE CAUSE OF DAMAGE.

Engleheart v. *Farrant*, (1897) 1 Q.B. 240, is an instance of the difficulties which beset the practitioner where he has to advise upon a case in which damages are claimed for an act of negligence. The facts of the case were simple. A servant was employed to drive a cart for the purpose of delivering parcels. He was accompanied on his rounds by a boy who was expressly forbidden to drive, and whose duty was from time to time to take the parcels from the cart to the houses for which they were intended. The driver left the cart and went into a house, and while he was absent the boy of his own motion drove the cart a short distance with the intention of turning it, and in doing so he came into collision with the plaintiff's carriage, and for the damages thus occasioned the action was brought against the master. The Court of Appeal (Lord Esher, M.R., and Lopes and Rigby,

L.JJ.) came to the conclusion that the driver's leaving the cart was the effective cause of the damage; and that the defendant was liable—but in arriving at this conclusion they had virtually to overrule another decision of the Court of Appeal (Lord Esher, M.R., Bowen and Kay, L.JJ.) in *Mann* v. *Ward*, 8 Times L.R. 699. Formerly when the Courts pronounced bad law the judicious reporter not unfrequently consigned it to the limbo where all things are forgotten, but unfortunately in modern times cases which might well be buried are kept in remembrance by the assiduous efforts of reporters to report all cases, whether the law be good or bad. It is curious to notice how learned judges meet these obnoxious shades of their former mistakes. They doubt whether the case is "fully reported," but they do not apparently take any trouble to search the record of the proceedings in order to point out any facts omitted. Lopes, L.J., says: "It is impossible to reconcile the various decisions with regard to negligence; and the reason is that fact and law are so mixed up in them that they are frequently decisions on the facts rather than on the law, and the variety of facts involved is infinite." The attempt to make out that the decision in *Mann* v. *Ward* was a decision on a question of fact, seems lame. The facts as they appear by the report were that a driver of a cab got drunk and was asleep inside his cab, another drunken man got on the cab and drove it and caused damage to the plaintiff, and the question appears to have been was there such negligence on the part of the driver as to make the owner of the cab liable, and in that case the Court of Appeal held in the negative.

PRACTICE—SERVICE OF WRIT — FOREIGN CORPORATION—AGENT, SERVICE ON—CLERK, SERVICE ON—ORD. IX. R. 8—(ONT. RULE 267).

The Princesse Clementine, (1897) P. 18, was an admiralty action, in which a point of practice was involved, touching the service of a writ of summons. The defendants were a foreign corporation, and had their name on the door of the office of their agents in London, and issued cards and advertisements directing inquiries to be made to them there

by the public respecting the carriage of goods by their steamers. The rent of the office was paid by the agents, and the clerks, including the manager, were the servants of the agents. The writ was served on the managing clerk in the agents' office, and the defendants entered a conditional appearance and moved to set aside the service of the writ, and Barnes, J., held that the service effected was not on "a clerk . . . of such corporation," within the meaning of Ord. ix., r. 8 (Ont. Rule 267), and he therefore set it aside, but without costs, as the defendants had held themselves out to have an office in London.

PROBATE—CONDITIONAL WILL -WILL OF SOLDIER IN ACTIVE SERVICE—(R.S.O., c. 109, s. 14).

In re Spratt (1897), P. 28, an application was made for the probate of a will made by a soldier in active service, in 1864, and the only question raised was whether or not the will was to be deemed a conditional will. The testator at the time of the making of the will was engaged in military service in New Zealand, and the will was in the form of a letter to his sister. After stating that there were chances of more being killed, he went on to say that in case he might not have opportunity of saying what he wished done with any little money he possessed in case of an accident, "I wish to make everything over to you. In the first place there is money at Cox's, over £100 in New South Wales Bank, New Zealand. Keep this till I ask for it. Your affectionate brother, C. Spratt." He survived 32 years without ever having demanded the letter back, or revoking the testamentary disposition contained in the letter. It was contended that it was to take effect conditionally on his dying during the war he was then engaged in. The President held the will a good will under the 11th section of the Wills Act (see R.S.O., c. 109, s. 14)—and that as there was no expression of any period to be found in the document, within which alone it was to be operative, it could not be deemed to have been conditional, and it was accordingly admitted to probate.

REPORTS AND NOTES OF CASES

Province of Ontario.

COURT OF APPEAL.

From STREET, J.] [March 2.

WASHINGTON *v.* GRAND TRUNK RAILWAY COMPANY.

Railways—Negligence—Packing of railway frogs—Workmen's Compensation for Injuries Act—55 Vict., c. 30, s. 5, sub-secs. 2, 3 (O.) Statutes—Construction—Division into sections—51 Vict., c. 29, s. 262, sub-secs. 3, 4 (D.)

Sub-sec. 3, of s. 262 of the Railway Act, 51 Vict., c. 29 (D.), provides that the spaces behind and in front of every railway frog shall be filled with packing. Sub-sec. 4 of the same section provides that the spaces between any wing rail and any railway frog, and between any guard rail and track rail shall be filled with packing, and this sub-section ends with a proviso that the Railway Committee may allow "such filling" to be left out during the winter months.

Held, that this proviso applied to both sub-sections and that permission having been given by the Railway Committee to frogs being left unpacked, the defendants were not liable for an accident resulting from that cause.

The provisions of sub-secs. 2, 3 of s. 5 of the Workmen's Compensation for Injuries Act, 55 Vict., c. 30 (O.), as to packing railway frogs, are not binding upon railways under the legislative control of the Dominion.

Judgment of STREET, J., reversed.

McCarthy, Q.C., for the appellants.

G. Lynch-Staunton, for the respondent.

From Divisional Court.] [March 2.

ROSE *v.* MCLEAN PUBLISHING CO.

Trade name—Geographical designation—"The Canadian Bookseller and Library Journal"—"The Canada Bookseller and Stationer."

The use of a geographical name in a secondary sense as part of the title identifying a mercantile journal and not as merely descriptive of the place where the journal is published, will be protected.

The use of the name *The Canada Bookseller and Stationer* was restrained as conflicting with the name *The Canadian Bookseller and Library Journal.*

Judgment of a Divisional Court, 27 O.R. 325, reversed, Maclennan, J.A., dissenting.

G. Kappele, and *J. Bicknell*, for the appellants.

Robinson, Q.C., and *LeVesconte*, for the respondents.

From BOYD, C.] [March 2.

VAN TASSELL *v.* FREDERICK.

Will—Construction—Estate—Defeasible fee—"Die without issue."

This was an appeal by the plaintiff from the judgment of BOYD, C., reported 27 O. 646, and was argued before BURTON, OSLER and MACLENNAN, JJ.A., on the 26th of January, 1897.

Appeal was dismissed with costs, MACLENNAN, J.A., dissenting, the majority of the Court agreeing with the judgment appealed from.

Moss, Q.C., for the appellant.

Armour, Q.C., for the respondents, The Hastings Loan Company.

O'Flynn, for the respondent, Frederick.

From ROBERTSON, J.] [March 2.

CAMPBELL *v.* MORRISON.

Indemnity—Mortgage—Purchase subject to mortgage—Assignment of right to payment.

The equitable obligation of a purchaser of land subject to a mortgage may be assigned by the vendor to the mortgagee, who may maintain an action thereon against the purchaser for recovery of the mortgage moneys.

Judgment of ROBERTSON, J., affirmed, BURTON, J.A., dissenting.

Moss, Q.C., and *Boland*, for the appellant.

J. H. Clark, for the respondent.

From ROSE, J.] [March 2.

ATTORNEY-GENERAL *v.* HAMILTON STREET RAILWAY COMPANY.

Sunday—Street railway—Lord's Day Act—R.S.O. c. 203. s. 1.

A company incorporated for the purpose of operating street cars does not come within the Lord's Day Act, R.S.O. c. 203, s. 1.

Judgment of ROSE, J., 27 O.R. 49, affirmed.

Moss, Q.C., and *A. E. O'Meara*, for the appellant.

Martin, Q C., and *D'Arcy Martin*, for the respondents.

From MEREDITH, C.J.] [March 2.

HALSTED *v.* BANK OF HAMILTON.

Banks—Bank Act—53 Vict., c. 31, ss. 74, 75—Security form C—"Negotiation"—Bankruptcy and insolvency—Assignments and preferences.

This was an appeal by the defendants from the judgment of MEREDITH, C.J., reported 27 O.R. 435, and was argued before BURTON, OSLER, and MACLENNAN. JJ.A., on the 6th of October, 1896.

The Court dismissed the appeal with costs, holding that the case was governed by *Bank of Hamilton* v. *Sheppard*, 21 A.R. 156.

J. J. Scott, for the appellants.

Gibbons, Q.C., for the respondent.

From FALCONBRIDGE, J.] [March 2.

TRUSTS CORPORATION OF ONTARIO *v.* RIDER.

Chose in action—Parol assignment—R.S.O. c. 122, s. 7.

A parol assignment of a chose in action is valid.

Judgment of FALCONBRIDGE, J., 27 O.R. 593, affirmed.

Anglin, for the appellants.

D. Urquhart, for the respondent.

From FERGUSON, J.] [March 2.

NOVERRE *v.* CITY OF TORONTO.

Municipal corporations— Negligence — Way—Invitation — Land adjoining highway.

This was an appeal by the plaintiff from the judgment of FERGUSON, J., reported 27 O.R. 651, and was argued before BURTON, OSLER, and MACLENNAN, JJ.A., on the 29th of January, 1897.

Appeal dismissed with costs, the Court agreeing with the judgment below.

Laidlaw, Q.C., and *J. Bicknell*, for the appellant.

Fullerton, Q.C., and *Chisholm*, for the respondents.

From STREET, J.] [March 2.

BLAKELEY *v.* GOULD.

Insolvency—Assignments and preferences—Transfer of unearned profits.

An assignment by way of security of the profit expected to be made out of a contract to do work does not come within the Act respecting assignments and Preferences, and cannot be set aside under that Act.

Judgment of STREET, J., affirmed.

Robinson, Q.C., and *W. N. Ferguson*, for the appellant.

W. N. Miller, Q.C., for the respondent, Gould.

Aylesworth, Q.C., for the respondent, Robertson.

Worrell, Q.C., for the respondents, The Bank of Montreal.

From FALCONBRIDGE, J.] [March 2.

DOYLE *v.* NAGLE.

Will—Construction—Falsa demonstratio—Lot described by wrong number.

A testator who was the owner of the south-west quarter of lot twelve in the fourth concession, and of lot twelve in the fifth concession of a township, and of no other real estate, after providing for payment of his debts and funeral expenses by his executors, declared that "the residue of my estate which shall not be required for such purpose I give, devise and bequeath as follows," and then devised "the south-westerly quarter of lot eleven, concession four," to one son, and lot twelve in the fifth concession to another.

Held, that the word "eleven" might be rejected as falsa demonstratio and the devise read as if it were "the residue of my real estate in the fourth concession."

Doe Lowry v. *Grant*, 7 U.C.R. 125, applied and considered.

Judgment of FALCONBRIDGE, J., affirmed.

Scanlan, and *D. Ross*, for the appellants.

Hood, for the respondent.

From Divisional Court.] [March 2.

ALDRICH *v.* CANADA PERMANENT LOAN COMPANY.

Mortgage—Sale—Negligence—Sale of two lots in one parcel.

A mortgagee who sells in one parcel a farm and a shop in a village nearly three-quarters of a mile away, not in any way used together, is liable for the difference between the amount realized and the amount that would have been realized had the farm and shop been sold separately.

Judgment of the Divisional Court, 27 O.R. 548, affirmed, BURTON, J.A., dissenting.

W. Cassels, Q.C., and *G. A. McKenzie*, for the appellants.

C. Macdonald, for the respondent.

From BOYD, C.] [March 11.

ELLIS *v.* TOWN OF TORONTO JUNCTION.

Municipal corporations—Police magistrate—Salary—R.S.O. c. 72, ss. 5, 28.

This was an appeal by the plaintiff from the judgment of BOYD, C., reported 28 O.R. 55, and was argued before BURTON, OSLER, and MACLENNAN, JJ.A.

At the conclusion of the argument the appeal was dismissed with costs, the Court agreeing with the reasoning of the judgment appealed from.

Raney, for the appellant.

Going, for the respondents.

COURT OF APPEAL.

(SECOND DIVISION.)

MEREDITH, C.J., ROSE, J., MACMAHON, J. [March 1.

BOWIE *v.* GILMOUR.

Action for price of goods sold—Illegal object of sale—Sale of liquor to unlicensed dealer.

Action to recover price of ale sold to the defendant, a dealer in liquor, by the plaintiffs, who were duly licensed brewers. After the order was booked, and at the same interview, the plaintiffs were informed by the purchasing agent of the defendant that the defendant had no license to sell. The defendant pleaded that the ale was supplied to her for the purpose of its being sold by her in contravention of the Ontario Liquor License Act.

Held, that the delivery of the ale having taken place with the knowledge of the illegal purpose to which the defendants intended to apply it, and having been made for the purpose of enabling her to carry out that object, the plaintiffs could not recover.

Moss, Q.C., and *Mactavish*, Q.C., for defendant appellant.

Buell, for the plaintiffs.

HIGH COURT OF JUSTICE.

ARMOUR, C.J., FALCONBRIDGE, J., STREET, J. [Dec. 29, 1896.

BOULTBEE *v.* GZOWSKI ET AL.

Sales of shares—Brokers—Undisclosed principal—Indemnity—Assignment of right to—By-laws of corporation—Cause of action—Statute of Limitations—Marginal note transfer.

Plaintiff being owner of shares in a bank, sold and transferred them to C., who on the stock exchange sold them to G., nothing being said as to whether G. was acting as a principal or agent. G. having paid the purchase money under the practice of brokers, C. signed a transfer with the purchaser's name in blank and initialed a marginal note giving G. the control and disposal of same. G. initialed a marginal note giving H. (who was the real purchaser and his undisclosed principal) control, and he filled in his own name in the transfer as purchaser and accepted the same. Within a month from plaintiff's transfer the bank was ordered to be wound up, and in the liquidation proceedings plaintiff was made a contributory and had to pay the double liability.

Plaintiff brought an action for indemnity against C. and recovered judgment, obtained an assignment of all C.'s rights and then brought an action against G.

Held, 1. That the obligation to indemnify arises not from the transfer but from the fact of the purchase: that an agent dealing in his own name though really acting for an undisclosed principal, assumes the liability of a principal: that the transfer being executed in a form designed to enable G. to pass the shares to H. would not free G.

Walker v. *Bartlett*, 18 C.B. 845, and *Kellock* v. *Enthoven*, L.R. 9 Q.B., 241, referred to.

2. That following *Mewburn* v. *Mackelcan*, 19 A.R., 729, that the recovery of the judgment against C. without payment of it gave him a cause of action against the person to whom he was entitled to look for indemnity, which under *British Canadian Loan Co.* v. *Tear*, 23 O.R. 664, might be assigned by C. and enforced by his assignee.

3. That the authority of the Legislature is essential to authorize a corporation to pass any by-laws ousting its members from their right of recourse to the Courts of the province for the settlement of disputes arising therein. *Essery* v. *Court Pride of the Dominion*, 2 O.R. 596, cited.

4. That following *Sutherland* v. *Webster*, 21 A.R. 228, and *Eddowes* v. *The Argentine Loan, etc., Co.*, 63 L.T.N.S. 364, that the mere existence of a liability to indemnify plaintiff which might never be enforced, gave no right of action to C., and that therefore the Statute of Limitations did not begin to run until the recovery of the judgment against him.

5. That a liability to be called on as a contributory gave plaintiff no right of action against the person liable to indemnify him, nor is such right

accelerated by R.S.C. c. 129, s. 46, and that the statute did not begin to run against him until the liquidators were entitled to immediate payment.

Judgment of MEREDITH, J., reversed.

H. J. Scott, Q.C., and *R. Boultbee*, for the appeal.

Moss, Q.C., and *McGregor Young*, contra.

STREET, J.] [Jan. 23.

IN RE CURRY, CURRY *v.* CURRY.

Account—Master's office—Verification—Affidavit—Vouchers—Cross-examination—Notice—Re-opening account.

The person bringing into the Master's office an account, verified by affidavit, is obliged to vouch the payment of the amounts included in it, and is liable to cross-examination upon his affidavit, notice being first given him of the items upon which it is proposed that he shall be cross-examined.

Where no such notice was given, the executor was not cross-examined, although ample opportunity was offered for the purpose, and the accounts were in no way objected to until the reference had been closed so far as the evidence was concerned; the Master properly considered that the affidavit verifying the accounts under Rule 63, and the vouchers, had sufficiently proved the accounts.

Wormsley v. *Sturt*, 22 Beav. 398; *Re Lord*, L.R. 2 Eq. 605; *McArthur* v. *Dudgeon*, L.R. 15 Eq. 102; *Meachan* v. *Cooper*, L.R. 16 Eq. 102; *Bates* v. *Eley*, 1 Ch. D. 473, followed.

Upon an application to re-open an account of $55,129.54, comprised in upwards of 1,600 items of disbursements, one or two items were pointed out as appearing prima facie to be of such a character as might have been objected to.

Held, not sufficient to justify opening up the whole account, especially in view of the other facts of the case.

McCarthy, Q.C., and *O. E. Fleming*, for the appellants.

S. H. Blake, Q.C., and *R. F. Sutherland*, for the respondents.

FALCONBRIDGE, J.] [Feb. 6.

REGINA EX REL. PILON *v.* LALONDE.

Municipal elections—Quo warranto—Hearing before judge at local weekly Court—Jurisdiction—Convenience.

Motion under the Municipal Act in the nature of a quo warranto complaining of the undue election and usurpation of the offices of councillors for the incorporated village of Casselman, by David Lalonde and Gibert Laflèche.

The motion came on for hearing at the Ottawa Weekly Court, on the 2nd February, 1897.

M. G. Gorman, for the respondent, Lalonde, objected to the jurisdiction of the Judge.

Belcourt, for the relator, contra.

FALCONBRIDGE, J.: I am of the opinion that apart from the provisions of s. 95 of the Judicature Act, 1895, I have jurisdiction, and am bound to hear and determine this matter.

The relator obtained from Mr. Justice MacMahon an order on reading the notice of motion herein, the affidavit filed, and the recognizance of the relator and his sureties, the same being allowed as sufficient, that the relator should be at liberty to serve the said notice of motion on Lalonde and Laflèche. The notice of motion was accordingly served, being made returnable before the presiding Judge at the Weekly Sittings at the Court House in Ottawa, on Tuesday, the 2nd inst.

There was a presiding Judge on the day and at place named, hearing other business which had been set down for that day. The relator could have gone to the Master in Chambers, but the statute, s. 187 of the Consolidated Municipal Act of 1892, gives him the right to have his case tried by a Judge of the High Court, and a Judge being found at the place and on the day named, that Judge is, I think, properly seized of the case. Ubi judex, ibi curia.

The convenience of this procedure is obvious.

Objection overruled.

ARMOUR, C.J., FALCONBRIDGE, J., STREET, J. [Feb. 8.

REGINA *v.* MACHEKEQUONABE.

Criminal law—Pagan Indian—Evil spirit—Manslaughter.

A pagan Indian who believed in an evil spirit in human shape called Wendigo, shot and killed another Indian under the impression that he was the Wendigo.

Held, properly convicted of manslaughter. Judgment of Rose, J., affirmed.

Jno. Cartwright, Q.C., for the Crown.

J. K. Kerr, Q.C., for the prisoner.

MACMAHON, J. [Feb. 9.

BUNNELL *v.* SHILLING.

Life insurance—Policy—Change of beneficiary—Vested interest—Foreign contract—Foreign law.

By a contract between the insured and her husband, in consideration of his agreeing not to apportion amongst his children any part of the moneys to arise from an insurance policy upon his life, of which she was the named beneficiary, she agreed that a policy to be issued upon her life should be made payable to him as beneficiary. This agreement was carried out, and the husband for five years paid the premiums upon his wife's policy.

Held, that a vested interest in the policy passed to him, and the beneficiary could not be changed without his consent, even where the policy had lapsed and a new policy been issued in lieu of it, by agreement between the insurers and the insured.

Held, also, that although the application for insurance was made and the policy delivered in Ontario, the insured and the insurers having agreed that the place of contract should be in New York, and that the contract should be

construed according to the law of that State, if the change in the beneficiary was validly made according to the law of that State, the husband was not entitled to the insurance moneys, notwithstanding that the insurers had not intervened and were raising no question as to whether the law of Ontario or that of New York should govern ; but, applying the law of New York, that the change was not validly made.

Watson, Q.C., and *Latchford*, for the plaintiff.

Wyld, for the defendants.

MEREDITH, C.J.] [Feb. 11.

BUILDING AND LOAN ASSOCIATION *v.* MCKENZIE.

Mortgage—Leasehold—Acquisition of reversion—Liability for payment of mortgage—Estoppel.

Where the assignee of a term subject to a mortgage thereof becomes the owner of the fee by purchase, the reversion in the lands is bound in his hands for the payment of such mortgage, without repayment to him of the purchase money ; and where he has obtained the conveyance of the reversion upon the representation that he is the assignee of the term, he is estopped from saying that he acquired it otherwise than as the conveyance to him shows.

H. J. Scott, Q.C., for the plaintiffs.

Laidlaw, Q.C., and *D. W. Saunders*, for the defendant.

FERGUSON, J.] [Feb. 15.

HILL *v.* HICKS AND THOMPSON.

Prohibition—Division Court Act—Action against bailiff for wrongful seizure—Joinder of execution creditor—R.S.O., c. 51, ss. 81, 89.

The action was brought against the bailiff of a Division Court in the County of Carleton in a Court of an adjoining county, as permitted by s. 89 of the Division Court Act, for wrongful seizure of a mare belonging to the plaintiff. However, the party on whose execution the bailiff had made the seizure was joined as a co-defendant, and neither of the defendants resided in the Division in which the action was brought, nor did the cause of action arise there.

Held, on motion for prohibition, that the Court had no jurisdiction to entertain the action, notwithstanding s. 81 of the Act, although if the bailiff had been sued alone the proceedings would have been regular.

W. H. Blake, for the motion.

J. E. Jones, contra.

ARMOUR, C.J., STREET, J., FALCONBRIDGE, J. [Feb. 17.

MOORE *v.* GILLIES.

Over-holding Tenants Act—Dispute as to nature of the tenancy—Color of right—Jurisdiction—R.S.O., c. 154—58 Vict., c. 13, s. 23, O.

Held that since the amendment of the Over-holding Tenants' Act, R.S.O., c. 144, by 58 Vict., c. 13, s. 23, by striking out of the Act the words " without

color of right," the Judge of the County Court tries the right, and finds whether the tenant wrongfully holds. And so in this action where the dispute was in reference to the tenancy, the landlord claiming it to be a monthly holding, and the tenant a yearly tenancy.

Held, that the County Court Judge had jurisdiction.

McKechnie, for tenant.

Justin, for landlord.

MEREDITH, C.J.] [Feb. 26.

IN RE SOLICITORS.

Solicitor—Agreement with client—Construction—Taxation of costs—Solicitors' fees—Counsel fees.

An appeal by the solicitors from the report of the local registrar at St. Thomas upon taxation of the solicitors' bill of costs of an action, at the instance of their client. The solicitors had agreed with the client that they would not charge him "solicitors' fees," but only disbursements. At the trial of the action one of the solicitors, being also a barrister, acted as counsel, and another barrister, not one of the firm, appeared as second counsel, but took no part in the trial. There was no affidavit that the second counsel had been paid a fee by the solicitors. The local officer refused to tax any counsel fee.

J. M. Clark, for the solicitors, contended that counsel fees were not covered by the words "solicitors' fee," and were properly taxable, notwithstanding the agreement.

Defries, for the client, was not called upon.

MEREDITH, C.J., held that the agreement must be construed as the client naturally understood it, *i.e.*, not making any technical distinction between solicitor's fees and fees of counsel; and dismissed the appeal with costs.

FERGUSON, J.] [March 3.

HOGABOOM *v.* MACCULLOCH.

Amendment—Statement of claim—Writ of summons—Service out of jurisdiction—Adding new claim—Limitation of actions—Terms.

Where a writ of summons in an action for a specified cause has been issued and served upon defendants out of the jurisdiction, with a statement of claim, pursuant to an order under Rule 271 (1309), and the defendants have appeared, an order may properly be made allowing the plaintiffs to amend the statement of claim by adding a new claim for an entirely different cause of action, provided that it is a claim in respect of which leave to serve process out of the jurisdiction might have been obtained.

Holland v. *Leslie*, (1894), 2 Q.B. 346, 450, followed.

Held, also, that the plaintiffs should, in respect of the Statute of Limitations running against their added claim, be placed in the same position as if their action for the added claim had been brought at the date of the amendment.

W. N. Ferguson, for the plaintiffs.

N. F. Davidson, for the defendants.

GENERAL SESSIONS OF THE PEACE.

COUNTY OF MIDDLESEX.

REG. *v.* MCINTOSH.

52 Vict., c. 43 (D.)—Cheese factories—Supply of inferior milk—Intent.

Held, that under 52 Vict., c. 43 (D.), the physical condition of the milk supplied is the test, irrespective of the intent.

[LONDON, Feb. 16—ELLIOT, Co. J.

Two justices of the peace fined the appellant, Donald MacIntosh, $5 and costs for supplying inferior milk to the West Williams Cheese Factory, under the provisions of the Dominion Act, 52 Vict., c. 43, styled "An Act to provide against frauds in the supplying of milk to cheese manufacturers."

From this conviction an appeal was taken to the Quarter Sessions.

T. M. Meredith for the appellant.

M. D. [illegible], for the respondent.

The facts fully appear in the judgment of

ELLIOT, CO. J. This cheese factory, like many others, is conducted on the co-operative principle. Each member or patron supplies his daily quantity of milk, and periodically the profits are distributed according to the quantity of milk supplied by each. This system renders it most important that each individual thus sharing in the general profit should furnish milk undeteriorated by adulteration, or by adding water, or by the abstraction or retention of the cream or fatty matter so essential in the manufacture of cheese.

In this case, the cheese maker had found the milk supplied by the appellant to be inferior and had spoken and written to him on the subject. Subsequently, with the concurrence of the president of the factory, the Inspector of the Dairymen's Association was called in; the milk supplied by the appellant on the 8th July last was submitted to the test of the lactometer and Baxter's tester, with the result that it showed 1.90 of cream or fatty matter, whereas the average is 3.40 or 3.50. Probably this average may be subject to some difference of opinion. But I think there can be doubt that the milk thus supplied was much below the average in quality.

By s. 7 of the Act, it is sufficient prima facie to establish the liability of a party that he has supplied milk to the factory which is substantially inferior in quality to pure milk, "provided the test is made by means of a lactometer or cream gauge or some other proper and adequate test, and is made by a competent person." The conclusion I arrive at is that prima facie the appellant having supplied what the statute terms deteriorated milk, is liable to the fine.

The evidence on behalf of the appellant is that the cows were milked by his wife and a boy, and that the milk was sent to the factory in its purity, as it came from the cows. I must say there is an aspect of trustworthiness about the witnesses which tends to support their statements, and were it not for what I conceive to be the requirements of the statute, I should be reluctant to decide contrary to their evidence.

The contention on the part of the appellant is that by s. 5 of the Act the conviction is improper, because if the milk was deteriorated this was unknown

to the appellant. The language of the 5th section is as follows, "Any person who by himself or by any other person to his knowledge violates any of the provisions of the preceding sections of the Act he shall, for each such offence, upon conviction thereof, etc. etc."

If it is meant by this language that in order to obtain a conviction it must be shown that the supplier knew of the inferior quality of his milk, then the Act would be next to nullity, beeause the supplier could set up ignorance on his part, even though the party milking had negligently allowed the richest part of the milk to be retained by the cow. I think the language of this 5th section means not only that a party supplying the deteriorated milk directly by himself is liable, but that he is also equally liable if he furnish it by his servant or by any person on his behalf.

I think this view is supported by the language used in s. 3 of the Act, where it is said that no person shall "knowingly" supply sour milk; and by s. 4, which says, no one shall supply milk which he "knows" is taken from a diseased cow.

Had the language used in s. 7 in the same plain, broad sense, incriminated only those who "knowingly" supplied deteriorated milk, I doubt whether this conviction would stand.

In the case of *Dyke* v. *Gower* (1892), 1 Q.B. 220, relating to the English Act respecting the adulteration of milk, it was held that the physical condition of the milk, irrespective of the intent, was sufficient upon which to found a conviction. Lord Coleridge, C.J., said, "This Act was passed with the object not of punishing the seller, but of protecting the buyer, and of insuring, so far as it is possible, the result that a person who buys an article of a particular description should get a genuine article, and one which contains the proper quantity of the different elements an article of that description ought to contain."

This language is very applicable to this case, where it is of vital importance that every one sharing in the profits should obtain no advantage by furnishing an inferior article.

The appellant also raised some objections to the test. But s. 7 provides what instruments should be used, and in that respect the statute was complied with, and no question has been raised as to the competence of the tester.

In the result this conviction is affirmed in all its particulars, and the appellant must pay the costs incident to this appeal.

Province of Nova Scotia.

SUPREME COURT.

EX PARTE DALEY.

Habeas Corpus—Evidence—Canada Temperance Act.

This was a prosecution under the Canada Temperance Act on the information of the inspector, against George Palmer. One Charles Daley was sworn as a witness, and stated that "he bought liquor on a certain day, but not from Palmer, or on Palmer's premises." With the intention of connecting Palmer with the sale, the question was asked, "From whom did you get it?" Witness refused to answer, on the ground that the question was irrelevant, and was committed to gaol for contempt of Court, under s. 585 of the Criminal code.

Daley applied for a release under a habeas corpus, and it was argued before LANDRY, J.

Held, that the question was relevant.

T. W. Butler, for the prisoner.

McCulley, for the inspector.

EX PARTE FRECKER.

Habeas Corpus—Arrest on Sunday void.

On Sunday, January 10th, Archibald Frecker was arrested on a warrant of commitment issued by the Parish court commissioner for the Parish of Chatham in the County of Northumberland, in default of payment of fine for violation of the Canada Temperance Act, and was sent to gaol.

Held, that the arrest being on Sunday, was void, and that prisoner must be forthwith discharged from custody. The order was made exempting the gaoler from liability.

A. I. Trueman, for the prisoner.

L. A. Currey, for the Inspector.

Province of New Brunswick.

SUPREME COURT.

BARKER, J.
In Equity.

[Feb. 16.

GUNTER *v.* WILLIAMS ET AL., AND THE NEW YORK LIFE INSURANCE CO.

Life policy—Wife named as beneficiary—Assignment.

The female plaintiff was named in a policy of insurance on the life of her husband as the sole beneficiary. The policy was taken out in 1887. The husband getting into difficulties assigned the policy to Williams, et al., by an instrument, dated December 31st, 1892, to which the plaintiff was a party. The husband dying in 1896, the plaintiff claimed the benefit of the policy, setting up that her consent to the assignment was procured by fraud.

Held, that even if there had been fraud it was immaterial, as the husband could assign the policy alone, and the Act, 58 Vict., c. 25, did not apply, as the assignment was made before the Act came in force.

Pugsley, Q.C., for plaintiff.

Jordan, Q.C., and *McCready*, for defendant.

Van Wart, Q.C., for company.

Province of Manitoba.

QUEEN'S BENCH.

Full Court.] Feb. 27.

DIXON *v.* WINNIPEG ELECTRIC STREET RAILWAY CO.

Workmen's Compensation for Injuries Act—Retrospective legislation—Limitation of actions—Notice of injury.

Appeal from the judgment of BAIN, J., noted vol. 32, page 527, dismissed with costs.

Howell, Q.C , for plaintiff.

Munson, Q.C., for defendant.

Full Court.] [Feb. 27.

PROCTOR *v.* PARKER.

Judgment— ounty Court—Queen's Bench Act, 1895, Rules 804-6—Sale of land under judgment.

Held, in this case that the provisions of Rules 804-6, of the Queen's Bench Act, 1895, do not authorize proceedings to be taken in a summary way under them, for the purpose of realizing a registered judgment of a County Court by sale of land, such rules being applicable only to judgments in the Queen's Bench.

Culver, Q.C , for plaintiff.

Elliot, for defendant.

Full Court.] [Feb. 27.

REGINA *v.* ZICKRICK.

Prohibition—Liquor License Act, s. 174—Certiorari—Procedendo—Second summons on original information after conviction quashed—Return of information to justices.

This was an appeal to Full Court from the judgment of Mr. Justice Bain, noted ante p. 91, where the facts are fully stated, except that the information and conviction had been filed in Queen's Bench by certiorari before the original application to quash the conviction, and that after the quashing of the conviction the information had been returned to the Justice by order of the Judge, relying upon section 895 of the Criminal Code, 1892.

Held, that there was no authority for the return of the information to the convicting justice after the quashing of the conviction, and that the section of

the Criminal Code referred to only applies in cases where before that section procedendo would have issued to send back a record ; that the information was, therefore not properly before the justice when he issued the second summons thereon, and that a writ of prohibition should be issued.

As a general rule, if a record is filed in a Superior Court upon a certiorari it cannot be sent back or removed : 2 Hawk, Pl. c. 27, §. 63, and a procedendo will only be issued in two cases ; first, where a cause removed from an inferior to a superior Court by certiorari, or otherwise, is sent down again to the same Court, to be proceeded with there, after it has appeared that the defendant had not good cause for removing it. Second, where it appears from the return that the Court above could not administer the same justice to the parties as the Court below, and there would be a failure of justice if the record was not sent back : Tidd's Practice, 410 ; Paley on Convictions, 382. See also *Palmer* v. *Forsyth*, 4 B. & C. 401 ; *King* v. *Kenworthy*, 1 B. & C. 711 ; and *King* v. *Neville*, 2 B. & Ad. 299.

Appeal allowed and prohibition granted without costs.

Maclean, for the Crown.

Wade, for the defendant.

BANK OF BRITISH NORTH AMERICA *v.* MCINTOSH.

Growing crops, mortgage of—Bills of Sale Act, ss. 3, 4—57 Vict., c. 1, s. 2, (M.)—Mortgage of crops to be grown—Equitable security.

Appeal from the County Court of Brandon.

The contest in this case was between the plaintiffs, execution creditors, and Massey-Harris Co., claiming under a chattel mortgage made in 1893, by which the defendant agreed that all the crops of grain which the mortgagor might from time to time grow on the land, until the whole principal and interest secured by the mortgage should be paid, should be included in the mortgage, and that the mortgagor would from time to time, upon request, execute such further mortgage or mortgages of such crops, to the intent that such crops should be effectually held as a security for the payment of the debt thereby secured.

Defendant had also given the claimant subsequent mortgages in 1895 and 1896, covering crops to be grown on the same land, and expressly reserving the rights, remedies and powers, legal or equitable, held by the mortgagee under any existing mortgage.

The plaintiffs' execution was not placed in the sheriff's hands until after the mortgage of 1893, and under it the defendant's crops grown in 1896 had been seized.

Held, that while the instrument of 1893 could give no title at law by itself, yet a Court of Equity would enforce the agreement to give the further security, and, considering that done which ought to be done, would attribute the title to the mortgagee, and restrain others from interfering with the property to his injury, and that such a title can be asserted in an interpleader issue against an execution creditor, and that s. 4 of the Bills of Sale Act, R.S.M. c. 10, had not the effect of doing away with the equitable principle referred to, which existed independently of the statute.

Held, also, following *Clifford* v. *Logan*, 9 M.R. 423, that an instrument creating only an equitable charge of this nature upon property not at the time in existence, did not before the Act 57 Vict., c. 1, s. 2 (M.), come within s. 3 of the Bills of Sale Act, so as to require registration to make it operative as against an execution creditor, and that the Act of 1894 repealing s. 4 of the Bills of Sale Act, and substituting a new sub-section, did not affect a prior existing instrument.

Judgment of the County Court in favor of the claimant affirmed, and appeal dismissed with costs.

W. A. Macdonald, Q.C., for plaintiffs.

Culver, Q.C., for claimant.

Full Court.] [Feb. 27.

IN RE COMMERCIAL BANK OF MANITOBA, BARKWELL'S CLAIM.

Negotiable instrument—Deposit receipt—"Not transferable"—Chose in action—Assignment of debt—Winding up.

In this case the bank had issued a deposit receipt for £300, bearing interest at 5 per cent. per annum and payable in one year. Across the face of the instrument were printed the words "not transferable." After the commencement of the winding-up proceedings, and before the making of the order, the depositor indorsed the receipt in writing, directing payment of the money to the claimant, who applied to be placed on the list of creditors of the bank.

The application was opposed by the liquidators on the ground that the deposit receipt was not assignable, and that they might have a claim against the original depositor, who was a shareholder of the bank, in respect of the double liability on his shares.

Held, reversing the judgment of BAIN, J., that although the instrument could not be transferred by indorsement, yet the debt owing by the bank might be assigned to the claimant by the use of apt words in that behalf: *Gathercole* v. *Smith*, 17 Ch. D. 1, distinguished.

The question whether the wording of the indorsement on the receipt was a sufficient assignment of the chose in action was not decided by the Court, and an order was made remitting the application to Chambers for proof of the claim without costs of the appeal.

Tupper, Q.C., for the liquidators.

Wilson, for claimant.

Province of British Columbia.

ADMIRALTY DISTRICT.

EXCHEQUER COURT.

THE QUEEN *v.* SHIP "AINOKO."

Maritime law—Behring Sea Award Act, 1894—Contravention—Ignorance of locality on part of master—Effect of.

Under the Behring Sea Award Act, 1894, it is the duty of a master to be quite certain of his position before he attempts to seal. If he is found contravening the Act, it is no excuse to say that he could not ascertain his position by reason of the unfavorable condition of the weather.

[VICTORIA, Dec. 7, 1896—DRAKE, J.

The facts fully appear in the judgment.

Pooley, Q.C., for the Crown.

Helmcken, for the ship.

DRAKE, Dep. Loc. Judge: This is an application to condemn the above vessel for breach of the provisions of the Behring Sea regulations incorporated in c. 2 of the Imperial Act, 1894.

The provision which it is alleged has been violated is the 1st article, which forbids the citizens of the United States and Great Britain respectively killing or pursuing at any time and in any manner fur seals within a zone of sixty miles the around Pribiloff Islands in Behring Sea.

The vessel in question was seized by the U.S. vessel "Perry" on the 5th August, 1896, about 7.40 p.m., land time, in latitude 55° 57' N., longitude 170° 30 West, a point 14 miles within the zone.

Capt. Heater, the master of the schooner, states that he got no observation after the 1st August, On the 2nd August he was boarded by the U.S. cruiser "Rush," and then positions were exchanged and he found his so nearly identical with that of the "Rush" that he was satisfied with the accuracy of his observations. On the 3rd he went south S.E. and then tacked to the westward, the wind increasing. On the 4th there was a strong gale from the south with thick fog and high seas, wind S. by E. On the 5th at midnight it was calm with light airs from S.W.—the boats were off at 5 a.m. and returned at 6 p.m. with 128 seals. At the time the "Ainoko" was first sighted by the "Perry" she was coming southerly and westerly about six miles off. This would bring her out of the zone apparently at the nearest point. The wind was very light, according to the log, and according to Captain Heater he had directed his boats to seal south and west, as he intended to follow in that direction. According to the position given by the U.S. navigating officer, he must have been some considerable way within the prohibited limit at the time the boats were put over, and they gradually sealed outwards. A fresh killed seal was on the deck when the vessel was seized. I therefore find as a fact that the "Ainoko" was sealing and killed seals during this day within the prohibited zone.

Captain Heater's defence is tha. he was unwittingly carried by a northerly current and a south-east gale into the zone, nd according to his reckoning

he was 17 miles outside. He had calculated his course by dead reckoning, allowing two points for lee way.

It is remarkable that the "Perry" was able to take and did get observations on the 3rd, 4th and 5th of August, but Captain Heater said the fog prevented him. He also states that he was not aware of a northerly current setting up towards the islands, but it appears to be generally known to sealers that there was such a current. He had been sealing round the islands before on the north side and had met northerly currents then, but he says he had not sealed south of the islands.

His remuneration was $50 a month as master and 50 cents a skin. This inducement to make as large a catch as possible may possibly have had something to do with his inability to take observations.

A good deal of stress was laid on an error in the chronometer both of the "Ainoko" and the "Perry." This error in no way caused the mistake in the reckoning of the position of the schooner, because no observations were taken after the 1st of August, and the chronometer is not used in estimating dead reckoning.

The error in the case of the "Perry's" chronometer made a difference of five miles, but still left the "Ainoko" 14 miles within the prohibited ground, and instead of the seizure taking place in longitude 170° 25', it took place in longitude 170° 30' West, a difference of 31 miles between the schooner's actual position and the position he thought she was in.

It is the duty of the master to be quite certain of his position before he attempts to seal. It is no excuse to say that the state of the weather was such that he could not ascertain his position. The mere fact of being within the zone is not an offence; it is killing, capturing or pursuing seals in the zone that creates the offence.

If the excuses of inadvertence and inability to obtain an observation are allowed the regulations could never be enforced. They are passed for the purpose of preventing all sealing within the defined radius, and vessels offending will not be relieved from the penalties imposed by the Act by any such excuses. I therefore declare the "Ainoko" and her equipment forfeited, but in case of payment of the sum of £400 and costs within 30 days, she can be discharged.

Judgment accordingly.

North-West Territories.

SUPREME COURT.

RICHARDSON, J.] [Feb. 16.

IN RE F. H. MARTIN.

Criminal law—Extradition—Larceny—False pretences.

The accused was charged in the State of Minnesota with having committed grand larceny in the second degree, in that he obtained cattle from one Hance, by means of a cheque issued on a bank, in which the accused had neither an account nor credit, which cheque was accepted on the representation that there were funds to meet it. On obtaining the cattle the accused dis-

posed of them and fled to the Territories with the proceeds. He was arrested on a warrant issued in the Territories charging him with having obtained goods under false pretences.

An objection was taken to the regularity of the proceedings on the ground that grand larceny was no offence in Canada, and therefore did not come within the term "extraditable offence." Further it was objected that Article 1 of the Imperial Order of 1890 did not cover obtaining goods by false pretences.

On these objections *In re Hall*, 8 A.R. 31, and *In re Martin*, 26 O.R. 163, and 22 A.R. 386, were cited on behalf of the accused, and for the State R.S.C. c. 142, s. 2, sub-sec. b, *In re Murphy*, 26 O.R., per MEREDITH, C.J., 176, and *In re Bellencontre* (1891), 2 Q.B. 122.

Held, that though the offences were known in the State of Minnesota and in Canada by different names, nevertheless the same facts constituted and the same evidence would prove a crime in each country, and the name was immaterial.

Held, also, that as provided by s. 2 of the Extradition Act, sub-sec. b, obtaining property under false pretences being described in schedule 1 of said Act, and further being described in s. 3 of Article 1 of the Imperial Order-in-Council of 1890, the same constituted an extraditable offence, and the accused was committed.

Norman Mackenzie, for the State.

T. C. Johnstone, for the accused.

United States

NOTES OF RECENT DECISIONS.

ELECTRIC WIRES.—The duty of insulating electric light wires, running on the outside of a building is held in *Griffin* v. *United Electric Light Co.* (Mass.) 32 L.R.A. 400, to be due to every person who for purposes of business is rightfully upon the premises. With this case is a note collecting the authorities as to negligence in respect to electric wires in or upon buildings.

INSURANCE AGAINST INSOLVENCY.—Indemnity to merchants against loss by insolvency of customers is held, in *Shakman* v. *United States Credit System Co.* (Wis.), 32 L.R.A. 383, to constitute insurance.

Injury to an employee of a telegraph company caused by accidental contact of the telegraph wires with electric light wires attached to the same poles, was held, in *Western Union Teleg. Co.* v. *McMullen* (N.J.), 32 L.R.A. 351, to raise questions for the jury as to the negligence of the employer and of the employee. The annotation to the case reviews the authorities on liability of an electric company to its employees for injury caused by an electric shock.

Payment of a claim for injuries to an employee is held in *Hoven* v. *West Superior Iron & Steel Co.* (Wis.), 32 L.R.A. 388, to be not necessary as a condition precedent to recovery of insurance to the employer for what he "shall become liable" to employees.

RAILWAY NEGLIGENCE.—The use of salt on railroad switches to keep them free from ice, whereby cattle are attracted to the switch and killed by trains, is held, in *Kirk* v. *Norfolk & W. R. Co.* (W. Va.), 32 L.R.A. 416, be lawful, and not to constitute negligence, when such use of salt is shown to be necessary to protect the lives of passengers and others on trains.

Book Reviews.

Confederation Law of Canada, by GERALD JOHN WHEELER, M.A., LL.B., of Lincoln's Inn, Barrister-at-law. Canada Law Journal Company, Toronto, agents for Canada.

This new work is most complete in its arrangement, and covers all Imperial legislation affecting Canada. The British North America Act of course claims the most attention, and it and the decisions under it have been fully annotated, and the more important judgments quoted in full. The volume, which covers 1,200 pages, will be found a necessity by all interested in Canadian constitutional questions.

The Law of Electricity, by SIMON GREENLEAF CROSSWELL, late of the law department of the Thomson-Houston and General Electric Companies. Boston: Little, Brown & Co. Toronto: Canada Law Journal Co.

This valuable work of 800 pages supplies the want of a text book on telegraph, telephone, electric railway and electri lighting cases, which are continually increasing. Canadian and English cases are included, and the work is confidenty recommended to the profession.

Manual of Evidence in Civil Cases, by R. E. KINGSFORD, M.A., LL.B., of Toronto, Barrister, second edition, Toronto: the Goodwin Law Book & Publishing Co. Ltd., 1897.

As claimed by the author, the best evidence of the utility of this book is, as the author remarks, the fact that a second edition is called for. In a small work such as this, there is, of course, no possibility of going into the subject at all exhaustively. The intention has been simply to provide a compact statement of the proof required in each action, and to cite the essential cases which are apposite. An appendix contains the Evidence Act and its amendments, and a collection of some more recent cases. Whatever Mr. Kingsford does is done with accuracy and research and in a scholarly style.

Elements of the Law of Contracts, by E. A. HARRIMAN, Professor of Law in the North-western University Law School Boston, 1896: Little, Brown & Co. Toronto: Canada Law Journal Co.

This concise work of 300 pages is planned somewhat on the style of "Anson," and is essentially a student's text book. The sub-division of the subject is made easier by treating voidable contracts under the head of Rescission, and by classifying together impossibility of performance and construction of contracts. The effect is good and the whole work bears evidence of careful and scholarly composition.

EXCHEQUER COURT OF CANADA.

By general order special sittings of this Court for the trial of cases, etc., will be holden at the following times and places, provided that same case or matter is entered for trial at least ten days before the day appointed for the sittings.

City of Ottawa .....Monday, March 29th.
City of Toronto .....Tuesday, April 6th.
City of Montreal.....Tuesday, April 13th.
City of Quebec .....Tuesday, April 20th.
City of Ottawa .....Monday, April 26th.
City of St. John .....Thursday, May 20th.
City of Halifax .....Tuesday, May 25th.
City of Ottawa .....Monday, June 7th.

Flotsam and Jetsam.

MARRIED WOMEN.—What are the turnings and doublings of the hare to those of a married woman with a pack of creditors after her? Now it is no property, and no contractural capacity, now restraint on anticipation, now acting as agent of her husband. The married woman in *In re Dagnall* (40 Sol. J. 731) struck out a new line which certainly exhibited genius of a high order. She had carried on business separately from her husband. She had contracted debts. She could not pay her debts. So to solve her difficulties she simply dropped her business and then she said, "Now I am not a married woman carrying on business within the meaning of the Married Women's Property Act, 1882. I did carry it on once, but I don't now, and I can't be made a bankrupt." It would have been unfortunate if this simple device had been allowed to defeat the Act, but the reasoning which the Court used to dislodge the lady from her position, viz., that a trader must be deemed to be carrying on a business so long as any debts incurred in it remain unpaid, is certainly artificial. The doctrine at all events has twice been disclaimed by the Court of Appeal under the Bankruptcy Act, 1869, though it found favor under earlier Bankruptcy Acts, but in dealing with the provoking Protean evasions and subterfuges of the married woman perhaps the Court contracts a little of her unscrupulousness. She must really elect soon whether she will take the benefits and burdens of independence or of dependence. She cannot have both much longer.—*Law Quarterly.*

ERRATA.—The article on the subject of Queen's Counsel, which appeared in our last issue, was on the cover of the JOURNAL by mistake attributed to Geo. S. Holmested, Q.C. This was a two-fold mistake, as Mr. Holmested reminds us that he is not a Q.C.; and for the article in question the Editor was responsible.

A typographical error crept in (owing to the difficulty of deciphering manuscript) on p. 193, 15th line, where "three towns" is printed instead of "shire town," and in 17th line, where "district" for "distinct."