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There is, we understand, in England a Barristers' Benevolent Association. An English contemporary mentions, however, some pathetic cases where its usefulness did not come into operation. One as to an aged member of the bar who died in a workhouse, and the other as to a younger man who never made his wants known, and who died in a hospital from disease attributed to privation. Circumstances like these draw attention to the fact that there is no such association, so far as we know, in the provinces of this Dominion. Would it not be proper that there should be? It may not be so often required in this country as in England, but even here we often hear of cases which should come within the attention and care of some such organization. Has any one a suggestion to make in this connection?

It is said that the oldest K.C. in Great Britain, in point of years, is Mr. Joseph Brown, who recently celebrated his 92nd birthday. Some twenty years ago, when a juvenile of seventy-two, he read a paper before the National Association for the Promotion of Social Science in reference to the jury laws, which was as remarkable for its research as for its vigorous language. He strongly urged a change in the law which required verdicts of juries to be unanimous, and cited Colonial precedents for the acceptance of a majority verdict, using these words:—"Oh benighted and sacrilegious colonies! What will become of you after abandoning the custom of your forefathers, the sacred number of twelve, and the starving of juries?" This is refreshing from a conservative Britisher. We think Mr. Brown must have been transplanted from one of these colonies. We quote some further observations of his in support of the change which he advocated. "Under the present system a single interested, stupid, or ignorant and perverse juryman has in many cases subdued the others to his will by the mere force of obstinancy and strength of stomach; and has thus entirely frustrated the whole object of the law, and set loose upon society the very worst of criminals. Why are we, in the end of

the nineteenth century, to continue a practice which has no other apology than that it has descended to us from our ancestors—that is to say, from some people who burnt witches and heretics and tried causes by battle, who pressed to death those who refused to plead, and starved jurymen who differed in opinion into a base surrender of their honest convictions."

STATUS OF COLONIAL BAR BEFORE THE PRIVY COUNCIL.

The English Bar Council was recently asked whether a colonial barrister, not a member of the English Bar, is entitled to practise in the Privy Council in any case coming from any colony, or only in a case coming from his own colony, and to this the reply was given: "They are not aware that any such case has arisen. It is doubtful whether the colonial barrister could demand the right to be heard in an appeal not coming from his own colony, but it is improbable that he would be refused." It would appear from this somewhat delphic utterance that the English Bar Council regards the Privy Council as primarily a merely English Court, in which the English Bar has an unquestioned right of audience in all cases coming before it; but the Council is obviously under the impression that colonial barristers stand on an entirely different footing, and have only a limited and restricted right of audience. For some purposes it is probably true that the Judicial Committee may be regarded as a merely local tribunal, *e.g.* as regards appeals from the English Ecclesiastical Courts, but in regard to its appellate jurisdiction in civil cases, it cannot, we think, be properly regarded as a merely local tribunal; it is on the contrary an Imperial tribunal in the fullest sense of the term, and as regards that part of its jurisdiction the various Bars of all parts of the Empire must, one would think, stand on the same footing, and every barrister who is entitled to be heard there at all, cannot upon any sound principle as regards civil appeals, be excluded from audience in any case in which he may be retained; no matter what particular part of the globe the case may come from.

We are somewhat surprised that the English Bar Council should suggest that any narrower view of the matter is even arguable. If a colonial barrister were to be restricted to appeals from his own particular colony, on the same principle the English barrister

should be restricted to appeals emanating from England. There is no more reason why any preference should be given in an Imperial tribunal to an English barrister than to a Canadian barrister, bot' are recognized barristers in the respective parts of the Empire in which they are called, and there is no more reason why, for instance, an Australian appeal, or a South African appeal, should be argued by an English barrister than by a Canadian.

CHARITABLE USES.

The law of charitable uses is sadly in need of being reduced to a little better order than it is in at present.

The Imperial statute, 9 Geo. 2, c. 36, has been repeatedly held to be in force in Ontario by a long series of decisions; but its provisions are assumed to have been very materially modified by R.S.O. c. 112, s. 8: see *Manning* v. *Robinson*, 29 Ont. R. 485; and *In re Brown*, *Brown* v. *Brown*, 32 Ont. R. 323. That section enacts that money charged or secured on land or other personal estate, arising from or connected with land shall not be deemed to be subject to the provisions of the statutes known as the Statutes of Mortmain or of Charitable Uses as respects the will of a person dying on or after the 14th day of April, 1892, or as respects any other grant or gift made after the said date.

This section is derived from the English Act, 54 & 55 Vict., c. 73, s. 3, where it appears as part of a definition of the word "land," and the references therein to the "Mortmain and Charitable Uses Act, 1888" is perfectly proper, but the adoption of similar language in the Ontario Act is certainly inartificial, and may perhaps be not so appropriate. The English "Mortmain and Charitable Uses Act, 1888" was, inter alia, a consolidation and revision, of 9 Geo. 2, c. 36, but in Ontario we have no statutes known officially as "the Statutes of Mortmain," except certain old English statutes passed long prior to the reign of George 2. 9 Geo. 2, c. 36, is entitled "an Act to restrain the disposition of lands whereby the same become unalienable" and is sometimes called the Mortmain Act, but the text writers do not seem to be agreed as to whether it should or should not be so called. Tudor in his Charitable Uses refers to it as commonly though inaccurately called "The Mortmain Act," whereas Bristowe, the editor of Tudor's book, thinks that it is proper to call

it "The Mortmain Act." However that may be colloquially, that is not its official designation, and it may be a question whether 9 Geo. 2, c. 36, is included in the statutes known as the "Statutes of Mortmain or of Charitable Uses" referred to in R.S.O. c 112, s. 8. If it should be held not to be included, then, of course, the decisions *In re Brown* and *Manning* v. *Robinson*, supra, would be erroneous. If it is, then in Ontario, as in England, all former decisions as to gifts of impure personality for charitable uses are virtually superseded. R.S.O. c. 112, s. 4, may possibly be thought to empower lands to be devised to corporations not authorized to hold lands in mortmain, but according to Mr. Bristowe's comment on the English Act, 54 & 55 Vict., c. 73, from which it is derived, the Act has not that effect. To conclude, we have at present an Act (9 Geo. 2, c. 36) forbidding the proceeds of land or impure personalty being devised for charitable uses, and then we have a section of R.S.O. c. 112, in effect declaring that impure personalty shall not be deemed within "the statutes of mortmain," but whether 9 Geo. 2, c. 36, comes within that definition is a matter not free from doubt. In addition we have a part of the law on this subject governed by Imperial statutes which have been made law here, and part by our own statutes, and it is needless to say that the time has arrived when the whole statute law on the subject should be brought within the compass of one Act.

THE TICKET OF LEAVE ACT.

In the recent Quebec case of *Regina* v. *Johnson*, Ouimet, J., places an interpretation upon certain provisions of the Dominion Ticket of Leave Act (62 & 63 Vict., c. 49) which, if generally adopted by the courts of this country, must have an important bearing upon the policy of the Crown in issuing licenses to convicts under the Act as it stands.

The facts upon which the case proceeded are briefly these: On the third day of January, 1896, Johnson, the convict, had been sentenced by the Court of Queen's Bench to undergo a five years' term of imprisonment for a certain offence. On the eighth day of March, 1900, while serving his term of imprisonment under such sentence, he was liberated by virtue of a license in writing issued by the Governor-General under the provisions of the first section of the Act above referred to. On the ninth of July following the

Governor-General revoked the said license, and Johnson was recommitted to the penitentiary by a Judge of the Sessions, "there to undergo the residue of his original sentence as if such license had not been granted," ostensibly under section 3 of the said Act.

No cause was assigned by the Crown for the revocation of the license. The prisoner applied to the Court of Queen's Bench for a writ of habeas corpus, and after argument thereof before Ouimet, J. (in Chambers), the learned judge ordered the prisoner to be released from custody, holding, in effect, that where a convict's license, or ticket of leave, is revoked by the Crown without cause assigned, the provisions of section 11 do not apply, and in the absence of the commission of some new indictable offence by the convict, or some violation of the terms of his license, it is not possible for him to be recommitted to prison to serve the time of his original term covered by the period during which he was liberated under license. In other words, in the learned judge's opinion, the time of the sentence must be held to have run continuously and notwithstanding his liberation under license, and that when the license was revoked the convict could only be recommitted for the balance of the unexpired term as computed from the date of the revocation of the license. We have had the privilege of reading the learned judge's notes of judgment, and we find that after discussing the grounds upon which the convict's license may be revoked under section 11 of the Act, and the penalties prescribed therein, he continues :—

"No such penalty is imposed by the Act in case the license is revoked by the Crown without any cause being assigned. The license under which he was allowed to be at large is simply cancelled and the result is that he may then be recommitted to complete his sentence in jail as if no license had ever been granted to him."

"In the one case, the law provides that as a penalty he has to put in again the time he was out of prison under license; in the other case no such penalty is provided by law. He is in the same position as if he had been taken out by process of law removed, for example, to testify before a tribunal."

"En résumé, I am of opinion that the revocation of the license by the Crown without assigning cause, under s. 1 of the Act leaves matters just as they are at the date of such revocation with no other effect than that the convict, instead of being left at

large to purge his sentence under the conditions of his ticket of leave, is brought back to the penitentiary for the same purpose. Through the good pleasure of the Crown he loses the restricted liberty that he owed to the same. But he has incurred no new penalty, such as the law enacts against those convicts who have been convicted of a new criminal offence or of any violation of the conditions of their license."

Now, with all deference to the opinion of the learned judge, we are inclined to think that, in virtue of the explicit meaning of the words of ss. 3 and 11 of the Act, the convict was properly recommitted to prison, "there to undergo the residue of his original sentence as if such license had not been granted." Section 11 says: "When any such license as aforesaid is forfeited by a conviction of an indictable offence or other conviction, or is revoked in pursuance of a summary conviction *or otherwise*, the person whose license is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for any offence in consequence of which his license is forfeited or revoked, *further undergo a term of imprisonment equal to the portion of the term to which he was sentenced that remained unexpired at the time his license was granted*, etc." By the employment of the very comprehensive phrase "or otherwise," the inference is irresistible that Parliament, in enacting s. 11, contemplated the revocation of the license for something else than the one cause specified; and construing this section with the obvious intendment of the whole statute, it would seem to be perfectly competent to the proper authority under the Act to recommit a convict, whose license is revoked by the Crown without cause, to serve out the balance of his term to be computed from the date of his liberation under the license and not from the date of its revocation.

As to the learned judge's view that the convict liberated under license is in the same position as a convict removed under process of law to testify before a tribunal, we have only to say that in the latter case the convict is not liberated at all.

Art. 955 of the Criminal Code, s. 7, relied upon by the learned judge is support of his interpretation of the Act, seems in our opinion, though we submit it with deference, rather to support the validity of the convict's recommitment for the balance of the unserved term. It enacts that: "The term of imprisonment in pursuance of any sentence shall, unless otherwise directed in the

sentence, commence on and from the day of the passing of such sentence; but no time during which the convict is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced." Of course the Criminal Code could not include liberation from imprisonment on license as an exception to the continuity of the effluxion of the term of imprisonment, because the Ticket of Leave Act was not then passed. But, on the other hand, the rule of Common Law is that a sentence must be fully served by the convict before his offence is purged, and the statute in question (62 & 63 Vict., c. 49) makes no exception, either expressly or impliedly to this rule. A ticket of leave is in no sense a pardon or commutation of a judicial sentence. And, again, a man cannot be said to be serving a term of imprisonment when he is not in custody: *Smith* v. *Commonwealth*, 59 Pa. St. 324.

It may be mentioned, by the way, that little benefit in the way of interpretation is to be derived from the English cases in this matter, because the provisions of the Imperial Act 27 & 28 Vict., c. 47, s. 9, are quite different from those of the Dominion Act. The words of s. 9, corresponding to those of s. 11 of our own Act above quoted, are as follows: "Where any license granted in the form set forth in the said Schedule (A.) is forfeited by the conviction of any indictable offence, or is revoked in pursuance of a summary conviction under this Act or any other Act of Parliament, the person whose license is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for the offence in consequence of which his license is forfeited or revoked, further undergo a term of penal servitude equal to the portion of his term of penal servitude that remained unexpired at the time his license being granted, etc." Here it will be noticed that provision is only made for revocation of the license in pursuance of a summary conviction; and the section wholly lacks the comprehensive words "or otherwise," to be found in s. 11 of our own Act.

The Ticket of Leave Act is, without doubt, a piece of legislation which finds its raison d'être in modern humanitarianism; but it is a loosening of one of the safe-guards of society, and should not be extended by benevolent interpretation beyond the plain intention of Parliament.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

MASTER AND SERVANT--FALSE IMPRISONMENT BY SERVANT—MASTER'S LIABILITY OF, FOR ACT OF SERVANT—IMPLIED AUTHORITY—MANAGER.

Hanson v. *Waller* (1901) 1 Q.B. 390, was an action to recover damages for an alleged false imprisonment which took place under the following circumstances. The plaintiff was delivering mineral water in the cellar of a public house which belonged to the defendant, but was under the management of one Mosely, who, under a mistaken belief that the plaintiff was stealing whiskey from the premises, gave him into custody, but on the plaintiff being brought to the station Mosely admitted he had been mistaken, and the plaintiff was at once discharged. The defendant visited the public house daily, but took no part in its management. The Judge of the County Court in which the action was brought, held that there was no evidence from which an implied authority to Mosely could be inferred, and he gave judgment for the defendant, and this decision was upheld by the Divisional Court (Kennedy and Darling, JJ.,), that Court being of opinion that the act was not necessary for the protection of the master's property as there was no evidence that whiskey had gone, or that any could be recovered by prompt arrest of the plaintiff, and that as the master visited the premises daily it was not necessary for Mosely to take such a step without first consulting him, and that under the circumstances there was no implied authority from the defendant to Mosely to cause the arrest.

FACTORIES' ACT—FACTORY—VENTILATION—DUST—NEGLECT TO COMPLY WITH DIRECTION OF INSPECTOR—EVIDENCE OF INJURY—FACTORY ACT, 1878 (41 & 42 VICT., C. 16), S. 36—(R.S.O. C. 256, SS. 15, 16).

In *Hoare* v. *Ritchie* (1901) 1 Q. B. 434, the defendants, the proprietors of a factory, had been notified by the Factory Inspector to provide a fan to carry off dust generated therein and liable to be inhaled by the workers—and, having neglected to comply with the direction, he was prosecuted for breach of the Act, and the question stated by the magistrate was whether upon

such a prosecution it is necessary to shew that the workers have in fact been injuriously affected by inhaling the dust. The Divisional Court (Bruce and Phillimore, JJ.) held that it was not necessary, but it was sufficient to warrant a conviction if it is proved that the dust is of such a character that it would in the long run be injurious to them even though there be no evidence that any have in fact been injured. See R.S.O. c. 256, ss. 15 (3), 16 (2).

NUNCUPATIVE WILL—VOLUNTEER SOLDIER—ACTIVE SERVICE—MINOR—WILLS ACT (1 VICT., C. 26) S. 11—(R.S.O. C. 128, S. 14).

In the goods of Hiscock (1901) P. 78, is a case of some moment in view of the South African war and the part taken by the Canadians therein, as there may be cases of a similar kind arising here. The question for decision was as to the validity of the will of a minor who was a private of an English volunteer battalion, who volunteered for service in South Africa. He was accepted and, pursuant to orders, went into barracks at Chichester, and, while there, made his will, being then under 21. He was subsequently ordered and went with his regiment to the seat of war and there died from wounds like many another brave fellow. The question, therefore, to be determined was: whether at the time the will was made he was "in actual military service"? Jeune, P.P.D., held that he was, and that his going into barracks was a first step to his subsequent embarkation for the seat of war, and, that as soon as he entered the barracks he entered upon "actual military service" within the meaning of the Act, though, of course, if no war had been going on, or in contemplation, his going into barracks would not have had that effect.

PARTNERSHIP—MORTGAGE BY PARTNER OF HIS SHARE IN PARTNERSHIP—DISSOLUTION—SALE OF SHARE TO CO-PARTNER.

In *Watts* v. *Driscoll* (1901) 1 Ch. 294, a partner mortgaged his share in the partnership to a third party with the knowledge of his co-partner, and afterwards, without the mortgagee's consent, agreed to a dissolution on the terms that he should sell his share to his co-partner for a sum which was less than the mortgage debt. The question Farwell, J., had to decide was whether the mortgagee was barred by the sale, and he held that he was not, and the Court of Appeal (Lord Alverstone, C.J., and Rigby and Williams, L.JJ.), affirmed his decision, holding that although the mortgagee was not

entitled during the continuance of the partnership to interfere in the affairs of the partnership, yet on the dissolution of the firm he was entitled to have the accounts then taken and the actual share of his mortgagor ascertained as from the date of the dissolution. The English Partnership Act, 1890 (53 & 54 Vict., c. 39), has sometimes been described as merely a codification of the pre-existing law of partnership, but on this particular point it appears to be somewhat more, for by s. 31 it has settled the rights of an assignee or mortgagor of a partner which previously were in doubt. The adoption in Ontario of the English Partnership Act has already been suggested in these notes, and the suggestion will no doubt be some day carried out; the sooner the better. The English Sale of Goods Act is another codifying Act which should also be adopted.

COSTS—SOLICITOR—TAXATION AT INSTANCE OF CESTUI QUE TRUST—BILL PAID BY TRUSTEES MORE THAN TWELVE MONTHS—SOLICITORS' ACT, 1843 (6 & 7 VICT., C. 73) SS. 37-41—(R.S.O. C. 174, SS. 45-49).

In re Wellborne (1901) 1 Ch. 312, Kekewich, J., upon the application of a cestui que trust, made an order for the taxation of a bill of costs rendered to a trustee by his solicitor more than twelve months after its payment by the trustee: (1900) 1 Ch. 55 (noted ante vol. 36, p. 492). On appeal from his order, however, the Court of Appeal (Lord Alverstone, C.J., and Rigby and Williams, L.JJ.) held that according to the settled practice of the Courts, s. 41, which excludes the right to tax except in case of special circumstances after the lapse of twelve months from the payment of the bill, applies to an application by a third party as well as to one by the party liable on the bill. We may observe that R.S.O. c. 174, s. 45, has been assumed and construed to be as wide as the English Act, s. 39: *Sanford* v. *Porter*, 16 Ont. 565; *Re Skinner*, 13 P.R. 276; but a comparison of the two Acts will show that while the English Act expressly enables a cestui que trust to obtain a taxation of his trustees' bill, R.S.O. c. 174, s. 45, is limited to the case of a third person liable to pay or who has paid the bill, though not chargeable therewith as principal. Whether a cestui que trust comes strictly within that category appears to be open to doubt. The point never seems to have been raised, and, if it should be, it might be contended that even if the application by a cestui que trust is not authorized by R.S.O. c. 1, , nevertheless s. 39 of the English Act is in force in Ontario under the Jud. Act, s. 28.

SOLICITOR—LIEN FOR COSTS—INFANT—COMPROMISE OF ACTION.

In re Wright, Wright v. *Sanderson* (1901) 1 Ch. 317, a solicitor for an infant in an action claimed a lien on a fund which had been brought into Court in the action, and pursuant to a compromise had been ordered to be paid out to trustees for the benefit of the infant. Kekewich, J., dismissed an application by the solicitor for a charging order on the fund, holding that the solicitor had no lien on the fund, but the Court of Appeal (Lord Alverstone, C.J., Rigby and Williams, L.JJ.), thought he was wrong and made an order declaring the solicitor entitled to a lien, the charging order not being asked for on the appeal, and it was held to be neither customary nor necessary that the judgment should declare the solicitor entitled to a lien, and that its omission to do so in no way prejudiced the solicitor's right.

COMPANY—MEMORANDUM OF ASSOCIATION—SALE OF BUSINESS—DEBENTURE HOLDERS—FLOATING CHARGE.

In re Borax Co., Foster v. *Borax Co.* (1901) 1 Ch. 326. After the decision of North, J. (1899) 2 Ch. 130 (noted ante vol. 35, p. 747), his order was appealed, and as a result of an arrangement come to on the appeal it was dropped on £16,800 being paid into Court to answer the claims of the plaintiff, if any. The action then proceeded to trial and Farwell, J., held that the plaintiff and other debenture holders had a prior charge on the sum so paid into Court. The Court of Appeal (Lord Alverstone, C.J., and Rigby and Williams, L.JJ.), however, came to the conclusion that inasmuch as the articles of association expressly empowered the company to sell the whole or any part of the business of the company, the sale was not ultra vires, and that by the sale the company did not cease to be a going concern, so that the debentures were still nothing but a floating security and as such they did not entitle the plaintiffs to interfere with what the company had done in the ordinary course of its business as defined by the memorandum of association. The decision of North, J., was disapproved and the judgment of Farwell, J., reversed, and the action was dismissed.

PRINCIPAL AND AGENT—CONTRACT BY AGENT WITHOUT AUTHORITY OF PRINCIPAL—AGENT, PERSONAL LIABILITY OF—KNOWLEDGE OF WANT OF AUTHORITY.

Halbot v. *Lens* (1901) 1 Ch. 344, was an action to compel the specific performance of a contract relating to a composition with

creditors. The contract in question was entered into by one Bernard C. Lens, and he purported to bind himself and one, Dr. Clarke, thereby, but it was established that at the time the contract was entered into the plaintiff was informed that Lens then had no authority to act for Dr. Clarke. Under these circumstances, Kekewich, J., held that neither Dr. Clarke nor the defendant, Lens, was bound, so far as Lens purported to act for Clarke, though he was liable so far as he purported to bind himself. Lens had also purported to bind his wife, and, as to her, there was no information that he had no authority, and it was held that he was personally liable in respect of the contract purported to be made on her behalf. To found such a right of action there must be misrepresentation of the fact of the right to represent the principal, and though such misrepresentation is made out, if no information to the contrary is given to the other contracting party, yet it is not made out where the agent expressly states, or it is known to the other contracting party, that the person assuming to act as agent has no authority from his assumed principal. At the same time the learned judge considered that the case of *Collen* v. *Wright*, 7 E. & B. 301; 8 E. & B. 647, had negatived the necessity of establishing that the misrepresentation was the result of some wrong or omission on the part of the agent as laid down in *Smout* v. *Ilbery*, 10 M. & W. 11.

CHARITABLE GIFT — SECRET TRUST — TRUST FOR BENEFIT OF PUBLIC BUT SO THAT THEY SHALL ACQUIRE NO RIGHTS.

In re Pitt-Rivers, Scott v. *Pitt-Rivers* (1901) 1 Ch. 352. Here the problem presented to Kekewich, J., was whether a devise of property consisting of pleasure ground and museum to a person in fee subject to a secret trust that the property should be held for the use and enjoyment of the public but so that the public should not acquire any right in it, was, notwithstanding the intimation that no public right should be created, a valid charitable trust enforceable by the Crown for the benefit of the public, and he held that it was.

COPYRIGHT — INFRINGEMENT — "PRINTED OR CAUSE TO BE PRINTED" — COPYRIGHT ACT, 1843 (5 & 6 VICT., C. 45), SS. 15, 20, 21.

Kelly's Directories v. *Gavin* (1901) 1 Ch. 374, was an action to restrain the infringement of a copyright. There were two defendants, Gavin and Lloyds. Gavin being about to get out a book,

arranged with Lloyds to print it, they undertaking also to procure certain information for the purpose of the publication. Owing to pressure of time Gavin procured part of the book to be printed by another printer, but the whole work when published appeared on title page to have been printed by Lloyds. The part printed by the other printer turned out to be an infringement of the plaintiff's copyright and the question was whether Lloyds had printed it or caused it to be printed within the meaning of the Act. Byrne, J., held that they had not, that there was no partnership between Gavin and Lloyds and therefore the latter were not responsible for the alleged infringement; as, however, they had permitted their name to appear as the printers, he refused them costs.

WILL—GIFT TO ILLEGITIMATE CHILDREN—PRESUMPTION—EVIDENCE OF INTENTION.

In re Mayo, Chester v. *Keirl* (1901) 1 Ch. 404, a testator by his will gave a part of his estate to "the *three* chrildren of one, Caroline Lewis, born prior to her marriage." The evidence shewed that Caroline Lewis had actually had four children prior to her marriage, but that the testator only knew of three, of whom he had acknowledged being the father. The fourth child claimed to be entitled to share in the bequest, but Farwell, J., held that she was not so entitled.

WILL—ANNUITY TO WIFE "SO LONG AS SHE REMAINS UNMARRIED."

In re Howard, Taylor v. *Howard* (1901) 1 Ch. 412, Farwell, J., held that where a testator by his will bequeathed a sum of £200 to be set apart and thereout £3 per month paid to his widow so long as she remained unmarried, that on the death of the widow unmarried, before the fund was exhausted, her personal representative was entitled to the balance of the fund.

PATENT—INFRINGEMENT—MANUFACTURED ARTICLE IMPORTED FROM ABROAD, IN WHICH PATENTED PROCESS USED.

In *Saccharin Co.* v. *Anglo Continental Chemical Works* (1901) 1 Ch. 414, the defendants had imported from abroad a manufactured article in which a material made by a process similar to that protected by the plaintiff's patent was used. The nature of this material was, however, chemically changed in the course of the manufacture, but notwithstanding that, Buckley, J., held that the

defendants were indirectly depriving the plaintiffs of the benefit of their invention, and had infringed this patent, and he granted an injunction as prayed by the plaintiffs.

COMPANY—WINDING UP—PETITIONING CREDITOR—DEBENTURE STOCKHOLDER.

In re Melbourne Brewery (1901) 1 Ch. 453, Wright, J., held that a debenture stockholder, whose debenture stock was not in default either as to principal or interest, was not competent to petition for a winding up of the company.

FUND IN COURT—PAYMENT OUT OF COURT TO WRONG PERSON—STOP ORDER, NEGLECT TO OBTAIN—SOLICITOR—COSTS.

In *Bath* v. *Bath* (1901) 1 Ch. 460, a person entitled to a fund in Court agreed to an order vesting all his estate in a trustee for the benefit of creditors. The trustee, having no knowledge of the fund, did not obtain a stop order, nor did he obtain an order for its payment to him. Some years afterwards, the debtor finding the fund still in the Court, applied, ex parte, and obtained an order for its payment, and there being no entry in the books of the Paymaster-General shewing that any other person was entitled to the fund, it was paid out to the debtor; the solicitor obtaining the payment was aware of the vesting order but did not disclose it. The trustee now petitioned the Court for an order against the debtor and his solicitor to compel them to refund the money, and in case the money could not be recovered from them, that he might be paid by the Government. The debtor and his solicitor contended that the fund in Court was not intended to pass by the vesting order to the trustee, but this point was found against them, and they were ordered to refund the money and pay all the costs, but Kekewich, J., held that the Paymaster-General was in no way in fault, and that no order could be made for payment by the Government.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

EXCHEQUER COURT.

Burbidge, J.] [Nov. 15, 1900.

BOSTON RUBBER SHOE COMPANY *v.* BOSTON RUBBER SHOE COMPANY, OF MONTREAL.

Trade mark—Infringement—Trade name—Statement of claim—Sufficiency of—Demurrer.

In an action for infringement of a trade-mark, it is a sufficient allegation that the trade-mark used by the defendants is the registered trade-mark of the plaintiff to charge in the statement of claim that registered trade-mark of the plaintiff and the mark used by the defendants are in their essential features the same.

It is not necessary in such statement of claim to allege that the imitation by the defendants of the plaintiffs' trade-mark is a fraudulent imitation.

It is not necessary to allege that the defendants used the mark with intent to deceive and to induce a belief that the goods on which their mark was used were made by the plaintiffs.

A. McGowan, K.C., for demurrer. *R. V. Sinclair*, contra.

Burbidge, J.] THE QUEEN *v.* O'BRYAN. [Nov. 15, 1900.

Subrogation—Essential of—Volunteer—Evidence.

1. The doctrine of subrogation is part of the law of the Province of Nova Scotia.

2. Subrogation arises either upon convention or by-law, but in the Province of Nova Scotia the creditor must be a party to the convention. It is not sufficient that it be with the debtor only.

3. Subrogation by operation of law is recognized not only by the civil law, but it has been adopted and followed by Courts administering the law of England.

4. It is an incident of the doctrine of subrogation that an obligation extinguished by a payment made by a third party is treated as still subsisting for his benefit.

5. Where one is entitled to be subrogated to the rights of a judgment creditor he is to be subrogated to all and not to part only of the latter's rights in such judgment.

6. In a proceeding in the Exchequer Court of Canada, if a conflict arises between the rules of evidence established by a provincial statute and those subsisting by virtue of a Dominion Statute, the latter will prevail.

Semble, a mere stranger, or volunteer, who pays the debt of another, without any assignment or agreement for subrogation, without being under any legal obligation to make the payment, and without being compelled to do so for the preservation of any rights or property of his own, cannot invoke the benefit of the doctrine of subrogation.

H. Mellish, for plaintiff. *R. L. Borden*, K.C., and *R. G. Code*, for defendants.

Burbidge J.] [Dec. 10, 1900.

REG. EX REL. ATTORNEY-GENERAL FOR THE DOMINION *v.* CONNOLLY.

Garnishee process—Crown seeking same—English Order 45, Rule 1—Practice.

Order 45 of the English Rules respecting garnishee process is not applicable to a proceeding by information by the Crown. The Crown's remedy is by Writ of Extent. Motion for garnishee order dismissed.

Glyn Osler, for motion.

Burbidge, J.] [Jan. 30.

BOSTON RUBBER SHOE COMPANY *v.* BOSTON RUBBER CO., OF MONTREAL.

Security for costs—Order for—Practice.

Under the present practice of the Court an order for security for costs may be given at any stage of the proceedings in a cause. *Wood* v. *The Queen*, 7 S.C.R. 634, referred to.

C. J. R. Bethune, for motion. *R. V. Sinclair*, contra.

Burbidge, J.] PAGET *v.* THE KING. [Feb, 7.

Action for return of monies paid by mistake—Legal process—Recovery—Demurrer.

The suppliant brought his petition of right to recover from the Crown the sum of $190.00, which he alleged he paid under mistake to the Crown in settlement of an information of intrusion in respect of certain lands occupied by him. He also claimed $500.00 for damages for the loss he alleged resulted to him on the sale of the said lands by reason of the proceedings taken against him by the Crown. Upon demurrer to the petition:—

Held, that the suppliant's petition disclosed no right of action against the Crown, and that the demurrer should be allowed. *Moore* v. *The Vestry of Fulham* (1894), 1 Q.B. 399, followed.

Chrysler, K.C., for demurrer. *Tripp*, contra.

Burbidge, J.] ARCHIBALD STEWART *v.* THE KING. [Feb. 26.

Contract for public work—Delay in executing same—Notice by engineer—Withdrawing work from contractor—Damages—Plant—Interest.

Petition of right.—There may be a question as to whether *Walker* v. *London, &c., R. Co.*, L.R. 1 C.P.D. 518, should be accepted as establishing a general proposition that if in contracts creating a forfeiture for not proceeding with work at the rate required, a time is fixed for its completion, the forfeiture cannot be enforced on the ground of delay after that date.

But at all events, any notice given after such date to determine the contract, and enforce the forfeiture, must give the contractor a reasonable time in which to complete the work, and the contractor must, with reference to such reasonable time for completion, make default or delay in diligently continuing to execute or advance the work to the satisfaction of the engineer. The engineer is to decide, having regard to a time that in the opinion of the court is reasonable, and the contractor is to have notice of his decision.

Where there is a breach of contract the damages are to be measured as near as may be by the profits the contractor would have made by completing the contract in a reasonable time.

In this case the contractor claimed for loss of profits in respect of certain extra work not covered by the contract: *Held*, that inasmuch as it was not possible to say either that the engineer would have directed it to be done by him had the work remained in the suppliant's hands, or that in case the engineer had done so, that he would have fixed a price for it from which a profit would have been derived, it could not be taken into consideration.

Where in such a case the Crown dispossessed the contractor of his plant and used for the purposes of the completion of the work, the contractor was held entitled to recover the value of such plant as a going concern, that is, its value to anyone situated as the contractor himself was at the time of the taking of the plant.

Where the contractor was not allowed interest upon the value of such plant, it was held that he was not to be charged with interest upon the balance of the purchase price of a portion of the plant which, with his consent, the Crown had subsequently paid.

Hogg, K.C., and *Glyn Osler*, for suppliant. *S. H. Blake*, K.C., *W. A. H. Kerr* and *W. H. Lawlor*, for respondent.

[ON APPEAL FROM TORONTO ADMIRALTY DISTRICT.]

Burbidge, J.] [April 2.

ROCHESTER & PITTSBURG COAL AND IRON CO. *v.* THE SHIP "GARDEN CITY."

Necessaries supplied to ship—Owner domiciled in Canada—Jurisdiction.

Held, (affirming the judgment of MCDOUGALL, Loc. J.,) that no action

will lie on the Admiralty side of the Exchequer Court against a ship for necessaries when the owner of the ship at the time of the institution of the action is domiciled in Canada.

W. M. German, K.C., for appellants. *J. A. Wright* and *A. L. Colville*, for respondents.

Burbidge, J.] TRAIL *v.* THE QUEEN. [April 2.

Expropriation—Will—Construction—Gift over in the event of death—Life estate—Interest on compensation money.

Petition of right.—A testratrix made the following disposition of a certain portion of her estate:—"I give, devise and bequeath unto my niece, M. W. of H., spinster, daughter of my eldest sister M., all that dwelling house and lot of land now occupied by me (describing it), together with all and singular the appurtenances thereunto belonging, and all fixtures, furniture, bedding and clothing, and all sum and sums of money and other things that may be remaining and found in my said dwelling house at the time of my decease, and all debts due me, save except as hereinafter mentioned to have and to hold the said dwelling house, lot of land and premises aforesaid unto her my said niece, M. W., her heirs, executors, administrators and assigns, forever; but in case she should die without leaving lawful issue, than to my nieces hereinafter mentioned, and their children being females." Following this there was residuary gift or bequest to "the daughters of my sisters M. and H., and to the daughters or daughter of my late brother J., and to their children if any being daughters":—

Held, that there was nothing in the will to indicate any intention on the part of the testratrix that the gift over should not take effect unless in her lifetime her niece, M. W., died without leaving lawful issue; but, on the contrary, it was to be inferred from the terms of the will that it was the intention of the testratrix that in the case of the death at any time of the said M. W. without leaving lawful issue, the other neices, to whom she left the residue of her estate should take the property. *Cowen* v. *Allen*, 26 S.C.R. 292; *Fraser* v. *Fraser*, 26 S. C. R. 316; *Olivant* v. *Wright*, 1 Ch. D. 348, referred to.

The property in question had been expropriated by the Crown for the purposes of a public work.

Held, that the suppliant, M. T., the devisee under the will, sub-nomine M. W., was in any event entitled to a life interest in the compensation money and that she might be paid the interest thereon during the pendancy of proceedings to determine the respective rights of all parties interested therein.

C. H. Cahan, for suppliants. *H. Mellish*, for respondent.

Burbidge, J.] [Apr. 9.

QU'APPELLE, ETC., RAILROAD AND STEAMBOAT COMPANY *v.* THE KING.

Contract for grant of public domain—Breach of—Remedy—Jurisdiction—Declaration of right.

Petition of right.—The Exchequer Court of Canada has jurisdiction in respect of a claim arising out of a contract to grant a portion of the public domain made under the authority of an Act of Parliament, and such a claim may be prosecuted by a petition of right.

Where the Court has jurisdiction in rebject of the subject-matter of a petition of right, the petition is not open to objection on the ground that a merely declaratory judgment or order is sought thereby. If on the other hand, there is no jurisdiction, no such declaration should be made. *Clark* v. *The Queen*, 1 Ex. C. R. 182, considered.

C. Robinson, K.C., for suppliants. *S. H. Blake*, K.C., and *E. L. Newcombe*, K.C., for respondent.

LETOURNEUX *v.* THE QUEEN.

Damages to land—Public work—50-51 Vict., c. 16, s. 16 (d)—Liability.

Petition of right.—It is the owner of the land at the time a public work is constructed that is entitled to damages for lands for, or injuriously affected by, such construction, and not his successor on title.

Held, in view of the opinions in *City of Quebec* v. *The Queen*, 24 S.C.R. 420, that where the injury to property does not occur on a public work the suppliant has no remedy under 50 and 51 Vict., c. 16, s. 16 (d), which provides that the Exchequer Court shall have jurisdiction in respect of "every claim against the Crown arising out of any death or injury to the person or to property on any public work, resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

Where in the division of his land the owner dedicates a portion to the public for a street or highway, a part of which is subsequently taken by the Crown for a public work, the owner is not entitled to compensation for the part so taken.

Stebbing v. *Metropolitan Board of Works*, L.R. 6 Q.B. 37, and *Paint* v. *The Queen*, 2 Ex. C. R. 149, 18 S.C.R. 718, followed.

Marichal, for suppliant. *Globensky* and *Hutchinson*, K.C., for respondent.

Province of Ontario.

COURT OF APPEAL.

Practice.] IN RE WEATHERALL. [April 22.

Appeal—Leave—Order for payment of costs—Discretion of High Court—Habeas corpus—Adjournment of application—Terms.

Motion by M. Weatherall, the paternal grandmother of an infant of twelve years of age, for leave to appeal from an order of Divisional Court affirming an order of ROBERTSON, J., in Chambers, imposing upon the applicant the payment of a sum for costs, as a term of granting an adjournment and leave to proceed with her application for the custody of the infant.

On Feb. 4, 1901, on the application of M. Weatherall, a writ of habeas corpus ad subjiciendum was issued out of the High Court, and pursuant thereto one Ashton, principal of the Mohawk Institute, where the child was, produced her on Feb. 15, and filed certain affidavits, in Chambers. The applicant applied for an adjournment, and the judge adjourned the application until Feb. 25, on condition that the applicant should pay to Ashton $22—$10 counsel fee, and $12 expenses of producing the child in court—on or before Feb. 19, and in default of payment, that the proceeding be dismissed with costs. The applicant did not pay the $22, and appealed to a Divisional Court on the following grounds:—1. That Ashton, not having a solicitor, incurred no costs, and could not be allowed or obtain such against her. The material in support of this ground was not before the Judge in Chambers. 2. That the applicant was entitled as of right to an enlargement for the purpose of cross-examination upon, or otherwise answering the affidavits filed by Ashton, and served only on Feb. 14. 3. That the applicant had a right to an enlargement to cross-examine upon the truth of the return to the writ.

The Divisional Court heard the appeal on March 1, and directed that upon payment of $10, in addition to the $22, the application should be heard as though no default in payment had been made, and this application was thereafter made for leave to appeal.

Held, that leave to appeal should be refused.

Per ARMOUR, C.J.O.: The conclusion to be derived from *In re Dodds*, 2 DeG. & J. 510, and other cases, shews that the Judge in Chambers had jurisdiction to order the applicant to pay the expenses of the respondent in having the body of the infant before the Court. There is nothing to militate against this conclusion, because there is no provision as to expenses in R.S.O. c. 83, for that Act was passed, as is shewn by its preamble, merely for the purpose of extending the remedy by habeas corpus. The

same want of jurisdiction to order payment of costs which existed when *In re Dodds* was decided, does not now exist, for, by s. 119 of the Judicature Act, the costs of all proceedings in the Supreme Court of Judicature are in the discretion of the court or judge; and this provision has been held to extend to proceedings by habeas corpus: *Regina* v. *Jones*, [1894] 2 Q.B. 382. But, even when the *Dodds'* case was decided, the court or a judge had power to impose the term of payment of costs, as the price of an indulgence granted: *Regina* v. *Hart*, 45 U.C.R. 1.

Per OSLER, J.A.: The application for the writ being a proceeding in the High Court branch of the Supreme Court of Judicature, there was jurisdiction to dispose of the costs under s. 119 of the Judicature Act, and an order made thereunder, in the exercise of discretion, is not appealable. The Court may, as in the *Dodds'* case, make an order for payment of expenses as a condition precedent, but this has not been the practice here. The question of costs should have been raised and determined below; it is not a question to be tried on affidavits by this court. The granting of leave being a matter of discretion, it would not be reasonable to grant it here, as the question is one of costs, upon the payment of which the case can be heard on the merits. Motion refused with costs.

J. W. McCullough, for applicant. *Heyd*, K.C., for respondent.

HIGH COURT OF JUSTICE.

Armour, C.J., Falconbridge, J., Street, J.] [Dec. 21, 1899.

CHRISTIN *v.* CHRISTIN.

Chattel mortgage—Renewal—Statement—Affidavit—Payments—Principal—Interest.

An appeal by the execution creditor from an order of the Judge presiding in the 1st Division Court in the County of Carleton dismissing a motion by the appellant to set aside the verdict in favour of the claimant in interpleader, and for a new trial.

The goods seized by the execution creditor were claimed under a chattel mortgage for $5,000 made to the claimant by the execution debtor, June 27, 1896, and since annually renewed.

The objection taken by the execution creditor to the validity of the instrument was that the renewals were not sufficient, in that (1) they were not signed by the mortgagee, and (2) were not upon their face sufficiently explicit in regard to payments made.

On the back of each statement was an affidavit, signed by the mortgagee and sworn by him, referring to the statement upon which it was indorsed.

Held, following *Barber* v. *Maughan*, 42 U.C.R. 134, that this might be read as part of the statement, and being so read shewed the statement to be that of the mortgagee, which was all that the statute required: R.S.O. 1897, c. 148, s. 18.

The statement of payments made in 1896 and 1897 did not set forth in detail the date and amount of each payment made, but only the total sum, thus: "Cash received from July of 1896 to June of 1897, $30 per month, making in all $330." The statement set forth that these sums were those which had been paid upon account of the interest upon the mortgage, and "that no payments have been made upon the said mortgage." This was followed by a cash statement in this form:—

1896		
June	Principal money - - - - - -	$5,000
	Interest for 1 year, 7 per cent. - -	350
		$5, 350
1897		
June	Less cash for interest paid as above -	330
		$5,020

And this was the amount sworn to as being unpaid.

Held, that the meaning was clear—the intention being to state that no payments on principal had been made; and the requirements of the statute had been sufficiently complied with.

W. E. Middleton, for appellant. No one appeared for respondent.

Meredith, C.J.] [Jan. 2.

CITY OF OTTAWA *v.* OTTAWA STREET RAILWAY COMPANY.

Street Railways—Contract to construct—Prevention by effect of legislation—Unlawful occupation—Duty of Municipality—Bond—Substitution agreement—Discharge of obligation.

Specific performance of an agreement by a street railway company with a municipal corporation to construct, equip and operate a line of rails along certain streets in the municipality, cannot be enforced, nor can damages be awarded for non-performance of the contract, if the construction of the street railway has been rendered impossible through the action of the railway committee, the privy council refusing to sanction a crossing, or by reason of the occupation of the street by another railway company, whether with or without lawful authority; the duty of the municipality in the case of unlawful occupation being to restore the street to a condition to permit of the construction.

When the obligor in a bond agrees, if required by the obligee, to perform certain work, and subsequently by agreement between the successors in law of the obligor and the obligee, an absolute obligation to do

the work is substituted, the effect of the later agreement is to discharge the obligation created by the bond.

T. McVicty, for plaintiffs. *Ferguson*, K.C., and *Wallace Nesbitt*, K.C., for defendants.

MacMahon, J.] PALMER *v.* JONES. [Jan. 5.

Easement—Street—Right of ingress and egress—Covenant of indemnity—Breach of—Statute of limitations—R.S.O. 1897 c. 133, s. 41.

By 52 Vict., c. 53 (O.), an agreement entered into between the Crown on behalf of the University of Toronto and the City of Toronto, for the purpose of restoring a lease for 999 years of a block of land made to the City for a public park, which had been declared forfeited, was validated, under the circumstances set out in the report, and a street, which constituted one of the avenues under the lease, made a public street; but such dedication was not of itself to confer on adjacent property owners any right of ingress or egress thereto; and any owner, who had not, prior to said agreement, acquired rights of access, was required to pay such sum therefor as might be awarded under arbitration proceedings, or settled between the parties. The plaintiff subsequently purchased from the defendant lands on said street, the deed containing a covenant by the defendant to indemnify plaintiff against the payment of any money, and all loss, costs or damages he might be obliged to pay for access to said street. The plaintiff's right of access being objected to by the University, and use of the same forbidden, a settlement was effected by plaintiff agreeing to pay a named sum, part of which was paid down and an undertaking given to pay the balance by yearly instalments:

Held, that the dedication of the street was a limited one, and that the plaintiff was entitled to recover the amount he agreed to pay, and that his remedy was not limited to what he had actually paid.

Held also, assuming that the predecessors in title had, for nearly thirty years before the passing of the Act, enjoyed access to and from the avenue, that no right had been acquired under the statute of limitations, for the effect of the 52 Vict., c. 53 (O.), was to create a new beginning for the statute; and also by s. 41 of R.S.O. c. 133 the statute could not commence to run until three years after the expiration of the original lease to the city.

Paterson, K.C., and *Donald MacDonald*, for plaintiffs. *Du Vernet* and *J. E. Jones*, for defendants.

Divisional Court.] [Jan. 20.

ROSS *v.* CORPORATION OF EAST NISSOURI.

Municipal Corporations—Townships—By-law permitting cattle to graze on highways—Validity of—License fee to cover expense of tags, etc.—Divisional Court—Right of appeal to.

A by-law passed by a township council, under s. 546 (2) R.S.O. 1897 c. 223, prohibiting the running at large of cattle, horses, sheep, swine or geese, and for impounding those contravening the by-law, was amended by a by-law subsequently passed, whereby milch cows, heifers and steers under two years were permitted to graze on the public highways of the township, on payment of an annual fee of $2.00 for each animal, such animal to have securely fastened thereon a tag bearing a registered number, furnished by the clerk at the township's expense, the township also furnishing a book to contain such registered numbers; all moneys received to be the common property of the township. The by-law also contained a provision for the appointment of inspectors.

Held, by ROSE, J., and by the Divisional Court, that the amending by-law was valid; that the sum named as a license fee was not excessive, and was merely for the purpose of meeting the expenses of carrying out the by-law, and not for raising a revenue; and that the permission to graze on the highways was not ultra vires of the corporation.

Re Fennell and Corporation of Guelph (1865), 24 U.C.R. 238, considered and distinguished.

An appeal from the decision of a Judge in Court refusing to quash a by-law, lies either to the Divisional Court or the Court of Appeal; but the appellant must elect his tribunal, and can have only one appeal.

J. M. Jackson, K.C., for appellants. *Aylesworth*, K.C., for respondents.

Divisional Court.] REGINA *v.* PLAYTER. [Jan. 21.

Nuisance—Public Health Act—Hospital for consumptives—Conviction for keeping—Ejusdem generis—Legislative grouping of sections.

Section 72 of the Public Health Act, R.S.O. 1897 c. 248, which prohibits, under a penalty, the establishment, without the consent of the municipality, of "any offensive trade, that is to say, the trade of blood boiling or bone boiling," or, setting out a number of similar trades, "or any other noxious or offensive trade, business or manufacture, or such as may become offensive," etc., does not apply to a house or hospital for consumptive patients; for not only is it excluded under the doctrine of ejusdem generis, but also by virtue of the legislative grouping of the Act, s. 72 being under the subdivision dealing with nuisances, while

infectious diseases and hospitals are dealt with in a distinct subdivision, commencing with s. 81. Conviction quashed.

J. S. T. Thompson, for applicant. *Ritchie*, K.C., and *Ballantyne*, contra.

Divisional Court.] [Jan. 28.

FOXTON *v.* HAMILTON STEEL COMPANY.

Contract—Sale of minerals—Place of delivery—Warranty—Breach—Deficiency of per centage—Damages.

Under a contract the plaintiff was to deliver to the defendants "300 tons of phosphate, from 60 to 70 per cent," at $6.00 per ton, to be shipped f.o.b. cars at a named railway station, from whence it was to be conveyed by rail to the works of the defendants. In a large portion of the rock delivered there was a deficiency of seven per cent. of "apatite," which is pure phosphate, but the defendants received and used it at their works. In an action to recover the balance of the contract price:—

Held: 1. The plaintiff must be held to have warranted that the rock would contain the per centage of apatite called for by the contract.

2. The defendants having received and used the rock, were liable for the value of the apatite which it contained, to be ascertained at the railway station for delivery, and not where it was used, and there being no evidence of further loss, the damages sustained by the defendants were seven per cent. of the freight paid by them for forwarding the rock by rail to their works, to be deducted from the amount of the plaintiff's claim in the action.

Lynch-Staunton, K.C., for plaintiff. *E. D. Armour*, K.C., for defendants.

Meredith, J.] [March 11.

MCMORRIN *v.* CANADIAN PACIFIC RAILWAY COMPANY.

Railways—Carriage of goods—Loss by fire—Negligence or omission of the Railway Company or its servants—Just and reasonable condition.

Although the statute law of Canada prevents a Railway Company from relieving itself from liability for damage caused by fire arising from any negligence or omission of it or its servants, still such a condition, when the damage arises otherwise than from any negligence or omission of the company or its servants is valid, and there is no law in Canada that such a condition shall be just and reasonable.

The goods arrived on April 21. Notice of their arrival was given to the owner on the same day, and they were destroyed on the 26th.

Held, on the evidence that the notice was sufficient, and that the owner had a reasonable time within which to move them, and not having done so, the defendant company was not liable.

I. MacCraken and *G. F. Henderson*, for plaintiff. *W. H. Curle*, for defendants.

Robertson, J.] [March 12.

WINTERBOTTOM *v.* POLICE COMMISSIONERS OF THE CITY OF LONDON.

Police Commissioners—Patrol waggon—Constable—Servant—Municipal Act—R.S.O. 1897 c. 223, s. 481—62 Vict., c. 26, s. 28 (O.).

A constable in charge of a patrol waggon is not a servant of a Board of Commissioners of Police, constituted under s. 481 of the Municipal Act, R.S.O. 1897 c. 223, as amended by 62 Vict., c. 26, s. 28 (O.), so as to make them liable for his negligence in performance of his duties.

J. Hellmuth, for plaintiff. *T. G. Meredith*, for defendants.

Lount, J.] FARLEY *v.* PEDLAR. [April 19.

Interpleader—Practice—Issue—Party plaintiff—Sheriff remaining in possession—Place of trial—Security for costs—Execution creditor—Insolvency.

Where the claimant is in possession of the goods at the time of seizure, the execution creditor is made plaintiff in the interpleader issue directed on the sheriff's application. And this rule applies where the claimant is the wife of the execution debtor, and the goods are seized upon the premises in which a business is carried on by her, in which she is assisted by him, but in which he has no interest.

Where the goods seized were manufactured materials, the product of a going concern, a direction in the interpleader order that the sheriff should continue in possession until the final disposition of the issue was upheld against the contention of the execution creditor that the sheriff should be directed to sell the goods, or the claimant to pay into Court or give security for the appraised value.

An interpleader issue should ordinarily be tried in the county where the goods are seized; but where the sheriff is to remain in possession of the goods of a going concern, a speedy trial is so important that, for the purpose of securing it, the issue may be sent to another county, having regard to considerations of expense and convenience.

Under the discretionary powers given by Rule 1122, the execution creditor, being in insolvent circumstances, may be ordered to give security for the sheriff's costs.

W. H. Blake, for sheriff. *H. T. Beck*, for execution creditor. *Ritchie*, K.C., for claimant.

Ermatinger, Co. J., Local Judge.] [April 7.

NEIL *v.* NORMAN.

Libel — Security for costs — R.S.O. c. 68, s. 10 — Libel contained in a newspaper.

Motion by defendant for security for costs. The plaintiff admitted that he had no property to answer costs. The defendan. swore to the truth of the statement published. The defendant lived at the village of Union and was the correspondent there of the *St. Thomas Daily Times* newspaper in which the article complained of appeared. The plaintiff's name was not mentioned in the correspondence, but was supplied by the editor in the part of the article apparently written in the newspaper office. The defendant was alone sued.

Held, that the defendant came within the protection of R.S.O. c. 68, s. 10, and was entitled to security for costs.

The learned judge, in giving judgment, said: "The question as to what class of defendants is entitled to the benefit of the section is an important one. The language of the section is broad enough to cover any defendant 'in an action for libel contained in a newspaper,' yet to hold that it is applicable to the case of any and every defendant who has used a newspaper as the means of publication of a libel would certainly lead to some anomalies, as pointed out and illustrated in the case of *Powell* v. *Ruskin*, 35 C.L.J. 241. The Act was, as stated by the Chancellor in *Bennett* v. *Empire Co.*, 16 P.R. p. 69, intended 'to protect newspapers.' But the newspaper is not in itself a legal entity. To protect it, someone else must be protected. Is it the proprietor who supplies the capital (whether as a company or as an individual), or the publisher who owns the plant, or the editor who supplies brain power, or the reporters and correspondents who gather the news—who is intended to be protected? It seems to me that it is each and all of these, as each and all are necessary to the success of the newspaper as a public informant. The plaintiff's statement of claim sets forth that 'the defendant is now, and has been for some years, the correspondent of the *St. Thomas Daily Times*, a newspaper,' etc. As such he may fairly be regarded as one of the newspaper staff, and so performing a quasi public duty. As such I think he is as much entitled to the benefit of the section, and to be secured against loss in case he makes good his defence, as would the proprietor, publisher or editor, were any of them defendants. In so holding, I do not desire to be understood as deciding that an advertiser, or even a casual voluntary correspondent or contributor who makes use of the newspaper to disseminate what may turn out to be a libel, may claim the benefit of the section. Indeed, Judge Barron's decision contains much to commend it to my mind. His remarks

are, however, restricted to those who have nothing whatever to do with newspapers, and are, therefore, inapplicable to this defendant."

J. M. Glenn, K.C., for the motion. *H. B. Travers*, contra.

[The above judgment has, we understand, been reversed by ROBERTSON, J.; but on what grounds we have not been informed. We should have thought that it correctly interpreted the statute.—EDS. *C. L. J.*]

FIRST DIVISION COURT, COUNTY OF YORK.

Morson, Co. J.] ABELL *v.* CAMPBELL. [April 22.

Sale of Goods—Property in—Possession of—Liability of purchaser after re-sale by vendor.

A contract made upon the sale of an engine and belting delivered to the purchaser provided that the property was not to pass to him until the promissory notes given for the purchase price had been paid, and, further, that if any default in payment were made, "then the whole amount of the unpaid purchase money and of all obligations given therefor, is at once to become due and payable, and vendor may resume possession and sell the goods towards paying the amount remaining unpaid thereon." Default was made in payment, possession resumed, the goods sold, and this action brought to recover the balance thereafter remaining unpaid.

Held, following *Sawyer* v. *Pringle*, 18 O.A.R. 218, and *Arnold* v. *Playter*, 22 O.R. 608, that the purchaser was not liable for the unpaid balance.

After default the purchaser wrote to vendors as follows:—"Will you take my engine and belting back by me loading it on the cars, and sell the same and apply the proceeds, less the expenses, towards paying my indebtedness to you on said engine and drive belt?"

Held, that this did not create a novation, making the vendors the agents of the purchaser to sell the machine, because it was already theirs. What the purchaser thereby did was in effect to ask the vendors to elect to enforce their rights under the contract to re-sell, instead of looking to him for the price; nor could such a request operate by estoppel, because the vendors had the right to re-sell.

A. W. Holmested, for plaintiffs. *F. C. Cooke*, for defendant. *Shirley Denison*, for garnishees.

Province of Nova Scotia.

SUPREME COURT.

In re King.

Habeas corpus—Costs of conveyance to gaol—Liquor License Act—Place of confinement.

A warrant held bad for indefiniteness in not stating where the prisoner was to be confined.

A warrant on a third conviction under the Liquor License Act held bad as it included a specific sum for the conveyance of the prisoner to the gaol.

[Liverpool, N.S., March 27th.—Forbes, Co. J.

In this matter the petitioner presents a petition under the Act relating to the liberty of the subject, c. 181, R.S.N.S., and obtained an order nisi which was served on the gaoler and liquour license inspector to shew cause why the defendant was detained in prison. The gaoler in his return shewed a warrant by a stipendiary magistrate for a third offence under the Liquor License Act, c. 100 of R.S N.S.

C. W. Lane, counsel for the prisoner, moved to quash the warrant and discharge the prisoner.

Forbes, Co. J.—The defendant is held under a warrant for a third offence and it appears from the warrant that the defendant was convicted on the 15th of January, 1900, for a second offence, and for a third offence he was convicted on the 19th of February, 1900, of having sold between the 12th and 25th of January previous, and it is quite possible he was twice convicted for the same offence. This point would be well taken were it not that the warrant returned shews that the second conviction of the 15th January was for an offence committed on January 1st, therefore I cannot assume that he was again convicted of the same offence on February 19th, 1900.

Another ground argued was that the warrant was bad because it does not shew where the prisoner was to be confined for the space of ninety days. The warrant says: "At the termination of the space of two months, last above mentioned to continue to imprison the said J. W. King, and keep him at hard labour, etc." A warrant must be certain and definite. At first I supposed the point was not tenable, because the warrant had in a previous clause directed the gaoler, "to receive the said King" into the said common gaol and there to imprison him for two months, and the defective clause might be read with or declared a part of the last named clause, but

on examination, I find the clause imposes a separate and distinct punishment for non-payment of a penalty, and really does not come into effect till the end of the first two months. Therefore the gaoler could under the present warrant at the end of two months, "continue to imprison" the defendant at any place he saw fit, and not in the common gaol.

Paley says, p. 337: "The commitment must be to the common gaol of the county for which the justices shall be acting." Again, "The warrant is sufficient if it describe the prison by its situation or some other definite description." In *Regina* v. *Smith*, 2 Str. 934: "The warrant is bad if it only orders in general terms that the defendant be carried to prison." In *Regina* v. *Nesbit*, 2 D. & L. 529: The commitment was held bad, because it authorized the police to keep the defendant in their custody till next session. I must therefore hold the warrant defective.

But the chief point on which the warrant is bad is that the warrant specially directs that the "costs and charges of conveying him to the said cammon gaol amounting to $1.00, shall be sooner paid, etc.," and are to be collected in addition to the penalty of $80.00, and costs of conviction. And I must hold that it is illegal to collect that sum or any sum for conveyance to gaol under a warrant based on a conviction for a third offence under c. 100 R.S.N.S., the Liquor License Act, for the following reasons:

The only authority for collecting that charge is by virtue of s. 135, which says, "if the costs of conveying the defendant to gaol are not sooner paid then imprison the defendant," and by sub-s. 2 of s. 135, it is enacted as follows: "Nothing in that sec. (*i.e.* 135) shall apply to cases where any term of imprisonment is imposed as a punishment in the first instance," that is that s. 135 cannot apply where a third conviction has been made and the punishment of imprisonment for such third offence has been imposed.

Under s. 115, which makes the "Summary Convictions Act" apply to c. 100, the justice correctly imposes the costs of conviction, but that would not include by any straining of the sections the "costs of conveying to gaol," as the latter costs and charge is not incurred until the conviction is made up and a minute made and served, and a refusal to pay the fine must follow. I could not treat that clause in the warrant as "mere surplusage," as was done in the *Queen* v. *Doherty*, 32 N.S.R.; because here the sum is fixed and certain, and the defendant must pay it before being released if he chose to pay up rather than remain in custody. In the *Queen* v. *Doherty*, the court held if "no costs of commitment were allowed by law then the gaoler would demand none," hence the words were held "mere surplusage." I therefore hold the warrant bad, and will grant an an order releasing the defendant with the usual clauses of protection to the gaoler and justice.

Full Court.] [Feb. 4.

THE INSURANCE CO. OF NORTH AMERICA *v.* BORDEN.

Action to recover money paid by mistake—Improper joinder of parties—New trial—Costs—Practice and procedure.

The defendant M. brought an action against each of three Marine Insurance Companies on three policies of insurance, two being policies on the hull of defendant's vessel, and the third a policy on freight. Two of the actions were defended by one solicitor and the third by another solicitor. Before the trial an agreement in writing, headed in the three causes, was entered into between the solicitors for the respective parties, by which it was agreed that the three causes, so far as the trial before the jury was concerned, should be tried together, but that evidence relevant to the issues in either of said actions should be considered as taken in that action, etc. At the conclusion of the trial a separate order was taken in each action for judgment for plaintiff with costs. Notices of motion for a new trial headed in each of the three causes was given. The appeals were heard together, and M. having succeeded, a separate order was made in each case dismissing the application with costs. Three notices of appeal to the Supreme Court of Canada were then given—one in each action. No consolidation of the appeals was ordered in that court, but all were heard together and judgment was given allowing the appeal on payment by the plaintiff companies of costs of the former trial within thirty days after taxation, the appeals, otherwise, to stand dismissed with costs. There being some uncertainty as to the exact terms of the judgment in the Supreme Court of Canada, as to what was decided as to costs and as to the time for payment, plaintiffs' solicitors paid to B. the amount claimed by M.'s solicitors as payable under the judgment, but did so under protest and reserving the right to require payment of any part of the amount paid, on the ground that they had already paid more than they were required to do. In an action brought on behalf of the three companies jointly to recover back the money paid, as having been paid by mistake,

Held, per GRAHAM, E.J., MCDONALD, C.J. and TOWNSHEND, J. concurring, that the claims made against the three companies and their supposed liability being several, and the money to pay the claims having been contributed severally and paid on their account severally in mistake as to part the implied promise to pay back that part to the companies was several and the title to the moneys in the possession of defendants was several and they could not be joined as plaintiffs, and that for these reasons the judgment appealed from must be reversed.

Held, that if plaintiffs elected to have a new trial and amended by striking out all of the plaintiffs except one to be selected, and to retax the costs of the trial severally against each company they ought to have leave

to do so on payment of the costs of appeal and trial and consequent on the amendment; otherwise the action to be dismissed with costs.

WEATHERBE, J. dissented on the ground that the proceedings were anomalous and not provided for by the practice, and, that according to the literal meaning of the judgment of the Supreme Court of Canada only one trial was contemplated or provided for, on payment of the costs of the former trial, and that in this view the payment made by the solicitors for the plaintiff companies was necessarily a joint one.

C. S. Harrington, K. C., *W. B. A. Ritchie*, K. C., and *W. C. McDonald*, for appellants. *R. E. Harris*, K.C., for respondents.

Full Court.] REX *v.* WHITE. [April 13.

Criminal Law — Offence of stealing in or from a railway station or building — Code, s. 351 — Conviction for stealing "in and from" held good — Habeas corpus.

On application to discharge defendant upon a writ of habeas corpus it appeared that the defendant was tried before the Stipendiary Magistrate for the city of Halifax under the provisions of the code relating to summary trials, and was convicted of the offence of stealing a quantity of whiskey of the value of nine dollars "in and from a certain railway building, to wit a certain building," and was adjudged for his said offence to be imprisoned in the city prison in the said city of Halifax, for the space of nine months. Under the code, s. 351, everyone is guilty of an indictable offence and liable to fourteen years imprisonment who steals anything in or from any railway station or building, etc.

Held, per RITCHIE, TOWNSHEND and MEAGHER, JJ., that there was but one crime charged, and that the place of detention was a proper place within the meaning of the law.

Per WEATHERBE, J. and GRAHAM, E.J., dissenting, that the conviction was bad and the defendant was entitled to be discharged. Also that the words "in" and "from" not being synonymous there were two crimes charged in the alternative, and the case was clearly within the authorities relied upon by the defendant's counsel: *R.* v. *Gibson*, 29 O.R. 660; *Cotterill* v. *Lempriere*, 24 Q.B.D. 637; *Roger* v. *Richards* (1892), 1 Q.B. 555; Archbold's Crim. Prac. (new ed.), 487, 488.

Held, also, that the curative sections of the code (ss. 612, 629, 734, 846, 889 and 907), were not applicable to proceedings like the present.

Per GRAHAM, E.J., that the conviction was one that could be reviewed upon certiorari, and if so that defendant could be discharged upon habeas corpus.

F. F. Mathers, for Crown. *J. J. Power*, for prisoner.

Province of Manitoba.

KING'S BENCH.

Bain, J.] IN RE PROVENCHER ELECTION (DOMINION). [April 4.

Election petition—Preliminary objections—Proof of status of petitioner as voter—Dominion Controverted Elections Act—Franchise Act, 1898—Dominion Elections Act, 1900.

On the trial of the preliminary objection that the petitioners were not persons entitled to vote at the election in question, they testified that they had actually voted and put in a certificate of the Clerk of the Crown in Chancery verifying a list of voters attached as a true copy of a "list of voters, 1899, for polling district No. 3, of St. Boniface, in the Electoral District of Provencher," which copy contained the names of the petitioners and was authenticated by the ordinary imprint of the Queen's Printer.

Held, that, under the provisions of The Franchise Act, 1898, and The Dominion Elections Act, 1900, it is not necessary now, as it was under the Acts in force when the *Richelieu Case*, 21 S.C.R. 168, and the *Winnipeg* and *Macdonald Cases*, 27 S.C.R. 201, were decided, to prove that the names of the petitioners were on the list of voters which was actually used by the deputy returning officer at the particular polling division; but it will be sufficient to show that their names were on the original list transmitted under s. 16 of The Franchise Act, 1898, by the custodian thereof after a final revision to the Clerk of the Crown in Chancery, as this is declared by sub-s. 2, of s. 16, to be "the original and legal list of voters for the polling division for which the list of which it is a copy was prepared," and s. 10 of the same Act makes every copy of this original and legal list printed by the Queen's Printer and bearing his imprint an authenic copy for all purposes; and that the evidence submitted was sufficient.

Held, also, that, if it was still necessary to prove that the names of the petitioners were on the list actually used by the deputy returning officer at the polling, the certificate of the Clerk of the Crown in Chancery relied on would not have been sufficient because it was only made sufficient by the provisions of s. 32 of The Electoral Franchise Act, and s. 114 of The Dominion Election Act in force prior to 1898, and these have not been repeated in the subsequent legislation which repeated those statutes, and which contain nothing that would permit such a certificate to be received in evidence.

Howell, K.C., and *Cameron*, for petitioners. *J. S. Tupper*, K.C. for respondent.

Bain, J.] BANK OF HAMILTON *v.* DONALDSON. [April 12.

Bank Act, ss. 64 & 68—Sale of Goods Act, 1896, s. 11, s. 12 sub-s. 1—Contract of sale—Consideration—Liability to one person for price of goods bought from another who is the true owner.

M. & I., being indebted to the plaintiffs, gave a bill of sale to their manager of a number of horses expressly to secure their indebtedness to the bank and empowering the manager to sell the horses. The instrument further provided that it was taken only by way of additional security for the debt. After the execution of the transfer it was agreed between I. and the manager that they were to work together to dispose of the horses, and I. was to look after the sales, to pay the proceeds to the bank, and to make any notes received on sales of the horses payable to the bank. Then I. sold some of the horses by auction and others by private sale through a man named McRae, who had them in charge for him. Defendant bought twelve of the horses giving the promissory notes sued on for the price, which were made payable to the plaintiffs as agreed. After the purchase, defendant arranged with McRae that the latter should keep the twelve horses for a while for him, and promised to pay for their pasturage. McRae took charge of them accordingly, but defendant never came for the horses, and the greater number of them having died, he resisted the demand for payment of the notes:—

Held, 1. The contract of sale of the horses to defendant was completely carried out; that the property in them passed to him and that he was liable for the price agreed on, as it could not be said that the consideration for the notes had entirely failed.

2. The bank could recover under s. 11, sub-s. (c), and s. 12, sub-s. 1, of The Sale of Goods Act, 1896, notwithstanding that the horses were never the property of the bank.

3. The security taken by the manager of the bank from M. & J. was authorized by s. 68 of The Bank Act and was not forbidden by s. 64 of that Act, as the sale of the horses was not made by the bank but by their manager, jointly with I., who continued to have an interest in them.

Henderson and *Matheson*, for plaintiffs. *A. D. Cameron*, for defendant.

Richards, J.] CODVILLE *v.* PEARCE. [April 12.

Exemptions—Homestead—Judgments Act, R.S.M. c. 80, s. 12.

The plaintiff claimed a right to have two village lots owned by defendant sold to satisfy a judgment of which he had registered a certificate. Defendant occupied as his dwelling the upper floor of a two storey building on one of the lots, the ground floor having been built for use as a store. There was a stairway inside the building connecting the two floors, also two stairways

from the outside to the dwelling, one from the rear of the building, and the other built on the adjoining lot, and reached from the street in front of both lots. There was a drive shed and a well on the other lot, the well being used to supply water for defendant's use, and the two lots were occupied as one property. The statute provides in effect that if the value of the residence or house of any person does not exceed $1,500, it shall not be sold under a judgment; and that, if the value, over and above incumbrances does exceed that sum, though the property may be sold, that amount in money shall be reserved for the defendant, and shall be free from all attachment, garnishee or other proceedings. The judge at the trial found that the value of the property was $3,000, and that there was a mortgage upon it for an amount exceeding $2,000.

Plaintiff claimed that the store part of the property, not being in use by the defendant, could be severed from the residence part and sold separately and the mortgage apportioned between them, as was done in *Warne* v. *Houseley*, 3 M.R. 547.

Held, that *Warne* v. *Houseley*, was distinguishable because there the residential portion of the property and the store part stood side by side on different parts of the same piece of land, and could be severed by dividing the land along the line between them, and, following *Bertrand* v. *Magnussen*, 10 M.R. 490, that the property as a whole was free from sale under the judgment.

Action dismissed with costs.

Howell, K.C., and *Mathers*, for plaintiff. *Crawford*, K.C., and *Grundy* for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.] COURTNAY *v.* CANADIAN DEVELOPMENT CO. [March 5.

Contract—Scow taken in tow by steamer contrary to orders of owners of steamer—Liability of owners—New trial.

Appeal to the full court of the Supreme Court of British Columbia (pursuant to 62 & 63 Vict., c. 11, s. 7) from a judgment of DUGAS, J., in the Territorial Court of the Yukon.

Defendants' steamer which previously had been employed carrying freight and passengers between White Horse and Dawson, had gone out of commission on 23rd September, 1898, and on that day and while on her way down Lake Lebarge to winter quarters, she took in tow the plaintiffs' scow loaded with goods. After proceeding some way the weather became

bad, and in endeavouring to get into shelter the scow foundered and the whole cargo was lost.

In an action for damages against the owners of the steamer, evidence was tendered by the owners that those in charge of the steamer had been particularly warned not to do any towing, but this evidence (being objected to by plaintiffs) was ruled out. At the trial DUGAS, J., held that the defendants were common carriers and therefore liable.

Held, by the Full Court on appeal (reversing DUGAS, J.), that the appeal should be allowed with costs, and that the plaintiffs could have a new trial upon payment of the costs of the first trial.

Duff, K.C., for appellants. *Sir C. H. Tupper*, K.C., and *Peters*, K.C., for respondents.

Full Court.] GELINAS *v.* CLARK. [March 5.

Mining law—Location—Abandonment—Defects in title cured by certificates of work.

The Trilby mineral claim lapsed by abandonment in July, 1896. Before lapse the same ground was located as the Old Jim by the defendant's predecessor in title, and certificates of work were recorded in respect of it in 1897, 1898 and 1899. In February, 1899, the plaintiffs located the same ground as the Herald Fraction claim.

Held, affirming SPINK., Co.J., (MARTIN, J., dissenting), that the defects in defendant's title were cured by the recording of the certificates of work.

Unless objection is taken to the jurisdiction of the Court below at the trial, it will not be considered in appeal.

At the trial evidence tendered by defendant as to abandonment of the Trilby claim by its locator, was rejected.

MARTIN, J., on appeal. As the abandonment was not pleaded, the rejection of the evidence was proper. In mining cases especially, the parties should know beforehand the case they have to meet.

Davis, K.C., for appellants. *L. G. McPhillips*, K.C., for respondent.

Full Court.] [March 8.

B.C. LAND AND INVESTMENT AGENCY *v.* CUM YOW.

Practice—Writ of summons—Special endorsement—Claim for principal and interest under mortgage—Order III., rule 6 and order XIV., rule 1.

Appeal from an order of IRVING, J., giving the plaintiffs leave to sign final judgment under Order XIV. The statement of claim endorsed on the writ was: "The plaintiff's claim is under covenants contained in a deed,

dated the first day of February, 1897, against the defendant, Won Alexander Cum Yow, for $407.15 principal and interest etc."

Held, by the Full Court allowing the appeal, that an endorsement of a claim for principal and interest under a covenant in a mortgage, in order to be a good special endorsement, must allege that the moneys are due under the covenant.

A. D. Taylor, for appellants. *Wilson*, K.C., contra.

Book Review.

The Law Relating to Executors and Administrators in the Province of Ontario, by R. E. KINGSFORD, M.A., L.L.B., Barrister, Toronto: The CARSWELL CO., Limited, 1900.

The author does not, of course, pretend that this work will take the place of such a book as Williams on Executors; but he points out that the English law has largely been superseded here by local legislation especially in matters affecting the devolution of estates, succession duties, investments by trustees, etc., so that a text book from an Ontario point of view is necessary. The author has been largely successful in his efforts in that direction.

The reader will be at once struck with a peculiarity in the make-up of the book, which is explained by the statement of the author that he had in view "a contribution towards a codification of the law," and to that end has collated the statute law and the common law as it affects various subjects, and thrown it into the form of propositions, which are numbered consecutively. As to the propositions based on case law, he selects a leading case appending it to the paragraph for which it is the authority. As to a number of the paragraphs, however, no authority is cited, and as to these we presume is it because no authority is necessary. The work, in this connection seems to be well and carefully done and on a scientific basis. An appendix gives some rules and orders of the Courts appropriate to the subject matter of the book, with various statutes and other regulations, also extracts from a lecture on executorship accounts and specimen accounts of an estate; all of which go to make up a very useful addition to the lawyers' library in the Province of Ontario.

We understand that Mr. Kingsford has added a postscript to the text of his volume. This addendum contains some of the Ontario Legislation of 1900 which was received too late for the issue of the bound volume. It also contains the amendments to the Succession Duties Act just assented to. In order to make plain the effect of these amendments they have been inserted in their proper place and the whole of the Act is reprinted with these amendments inserted in italics.

DOMINION GOVERNMENT AID TO LAW ASSOCIATIONS.

A deputation waited upon the Minister of Justice and the Solicitor-General last month to urge upon the Government the claims for Law Associations in the Province for some recognition at the hands of the Dominion Government.

The deputation was introduced by Mr. J. A. Gemmill; and Mr. W. F. Burton, of the Hamilton bar, laid the views of the deputation before the Ministers. He sketched for the ministers the history of the various Law Associations and the sources from which they derived their annual income, giving the history of the various applications which had been made to the Ontario Government for assistance, and which had been given upon the broad principle that "the gods help those who help themselves," and that the government considered it proper to furnish to the judges at assize towns the tools wherewith to facilitate the carrying on of the administration of justice.

It was admitted by the Minister of Justice that the Government made a grant to the law libraries of the North-West, and also to supplement the Supreme Court library; and it was urged by Colonel Macdonald, representing the Guelph Law Association, and others, that the Dominion Government might very properly do something in the way of supplementing the grant which the Ontario Government makes annually in this direction, but which is not sufficient to fully equip the libraries and make them as up-to-date as the trustees in many places would desire.

There was a large deputation of the Ottawa bar present, who strongly urged upon the Government the importance of giving effect to the request made, and it was suggested that the Dominion Government might properly make a grant to be expended for the purpose of supplying works on Criminal or Election law, which came peculiarly within the province of the Federal Government.

Mr. Mills and Mr. Fitzgerald appeared to evince much interest in the matter, and promised to consult with other members of the Government as to what measure of assistance might be given, and it is hoped that the Government may see its way to supplement the Provincial law associations by practical aid to the Associations which are doing useful and valuable work throughout the Province.

The result of a recent deputation to the Provincial Government in connection with the appropriation made by the Legislature in this direction has had a very satisfactory result in settling the principle upon which the money is to be divided, and the Attorney-General has very properly given effect to the contention urged before him, that the amount of the original grant should be divided equally among all the Associations in existence, and that the increased grant made by the Legislature should be divided upon a per capita basis. This is a very fair and equitable settlement of the matter

and enables each association to approximate what amount of the Government aid may be looked for each year, and at the same time while no injustice is done to the smaller and consequently weaker associations, regard is had for the larger associations which are doing a greater amount of work and serving a larger area and greater number of people.

UNITED STATES DECISIONS.

CARRIERS.—Conditions indorsed on an employee's pass, by which he assumes the risks from negligence of the carrier or otherwise, are held in *Whitney* v. *New York, N. H. & H. R. Co.* (C. C. A. 1st C.), 50 L. R. A. 615, to be invalid on grounds of public policy, where he is travelling for his own convenience, not going to or from work, and the pass is one of the considerations of his employment.

The measure of a carrier's liability for failure promptly to deliver goods which had been received with knowledge of the shipper's contract to deliver them on a specified date or incur a forfeiture is held, in *Illinois Central R. Co.* v. *Southern Seating and Cabinet Co.* (Tenn.), 50 L.R.A. 729, to be the loss sustained by the shipper under the penalty clause of his contract.

LORD CAMPBELL'S ACT.—A voluntary settlement by an injured person with the party causing the injury is held, in *Southern Bell Teleph. & Teleg. Co.* v. *Cassin*, (Ga.), 50 L.R.A. 694, to preclude an action for his death by his wife or child under a statute giving a remedy for the homicide of a husband or father.

NUISANCES.—The owner of a property abutting on a city street near a street railway turntable is held, in *Louisville R. Co.* v. *Foster* (Ky.), 50 L.R.A. 813, to have no right to compensation for injury to his property by the street railway turntable and the noises, smells, and disturbances reasonably incidental to the operation of the street railway and borne by the public generally, but is allowed to recover for any substantial injury caused by such noises, smells, and disturbances as are not fairly incidental to the operation of such railway or borne by the property owners generally along the line.

PAYMENT TO AGENT.—Payment of a mortgage to a sub-agent who did not have possession of the mortgage or notes secured by it or any express authority to make the collection, although he had previously collected interest thereon, and started a foreclosure suit for default, is held, in *Kohl* v. *Beach* (Wis.), 50 L.R.A. 600, not binding on the mortgagee, who held possession of the securities.

RAILWAY LAW.—The unauthorized act of a mere volunteer or trespasser in raising railroad gates at a crossing to permit a team to pass, without the knowledge of the regular gatemen, who had lowered them, and in lowering them before the team had crossed the tracks, is held, in *Haines*

v. *Atlantic City R. Co.* (N.J.), 50 L.R.A. 862, not to render the company liable for an injury thus caused to the driver of the team.

TRADEMARK.—The name "perfection" as the name of a mattress is held, in *Kyle* v. *Perfection Mattress Co.* (Ala.), 50 L.R.A. 628, to be a valid trademark as a fanciful name.

ELECTRICAL LAW.—Failure to insulate electric light wires over a street at and above the point where they are fastened to a wooden awning is held, in *Brush Electric Light & Power Co.* v. *Lefevre* (Tex.), 49 L.R.A. 771, not to create any liability for the death of a person who got upon the awning and attempted to raise the wires in order to permit a house to be moved under them.

NEGLIGENCE.—Going into a trench in a city street, filled with deadly gas, to rescue a boy who has been overcome therein by the gas while after a ball, is held, in *Corbin* v. *Philadelphia* (Pa.), 49 L.R.A. 715, not to be such negligence as will relieve the city from liability for the death of the person who attempts the rescue of the boy. This case is annotated by the authorities on voluntarily incurring danger to save the life of another person.

COMPANY LAW.—The power of a president of a corporation to bind it by contracts which, as appears by the note to *Waite* v. *Nashua Armory Association* (N.H.), 14 L.R.A. 356, exists by implication only so far as the custom or course of business of the company creates it, is held, in *Wells, Fargo & Co.* v. *Enright* (Cal.), 49 L.R.A. 647, to exist in the president of a bank with respect to a contract waiving the defense of the statute of limitations, where he was the general manager and allowed to act according to his judgment, under a by-law giving him general supervision of the business.

BICYCLE LAW.—On the subject of bicycle law, which was fully treated in a note in 47 L.R.A. 289, the case of *Foote* v. *American Product Co.* (Pa.), 49 L.R.A. 764, holds that a bicycle rider turning a corner on the right side of the street in accordance with a rule fixed by the ordinance, is not required to keep out of the way of a heavily laden waggon which he meets, unless some apparent necessity is shewn therefor.

BILLS AND NOTES.—The doctrine that the word "trustee" added to the name of the payee of a note does not destroy its negotiability is declared in the case of *Central State Bank* v. *Spurlin* (Iowa), 49 L.R.A. 661, and this is in harmony with the other authorities, as shewn by the note to *Fox* v. *Citizens' Banking & T. Co.* (*Tenn.*), 35 L.R.A. 678.

FRAUDS.—A penal ordinance prohibiting any coloured netting or other material that has a tendency to conceal the true colour or quality of the goods to be used for covering packages of fruit is held, in *Frost* v. *Chicago* (Ill.), 49 L.R.A. 657, to be a vexatious and unreasonable interference with and restriction upon the rights of dealers in fruit, and therefore void when based only on the general police powers of the city.