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George Wells, K.C., has been appointed Judge of the County Court of Welland in the room of Judge Fitzgerald, resigned. The vacancy in the County Court judgeship of Lennox and Addington, caused by the death of his Honor Judge Wilkison, has been filled by the appointmer. of James Henry Madden of the town of Napanee, Barrister at Law. While we still hold to the opinion that it is undesirable to appoint County Judges from the local Bar, the selection of Mr. Madden is in itself so entirely satisfactory that but for the principle involved it would be quite unnecessary to refer to the matter.

The Bar Society of Nova Scotia met recently to pass a resolution to record "the deep feeling of sorrow and regret felt by its members at the sudden death of C. Sydney Harrington, K.C., a leading member of the Halifax Bar and a member of the Council of the Bar Society." Several judges and leading lawyers were present and referred in eulogistic terms to Mr. Harrington's career, and spoke of him as a learned and able advocate, a man of considerable literary attainments and an eloquent speaker, as well as one generally beloved by the profession.

At a recent meeting of the Board of Trade at New Westminster a resolution was passed to the effect that it was desirable to facilitate the more speedy and cheaper administration of justice in British Columbia by making a change in the constitution of its courts. The suggestion was to abolish the jurisdiction of the Supreme Court as a court of first instance, making it exclusively a Court of Appeal, also to abolish the County Courts, and then to establish a Superior Court with original jurisdiction in civil and criminal matters; further, to divide the Province into Judicial Districts to be presided over by a judge, who should reside permanently in the district for which he should be appointed. We cannot say that these suggestions seem to be in all respects desirable; but we shall be interested in hearing the views of the profession on the subject. The Board of Trade may possibly be right in desiring some change but we doubt whether it has been rightly advised as to the best means for attaining the desired result.

In a recent discussion in the House of Commons on judicial matters, the Minister of Justice announced his adherence to the principle "Once a puisne, always a puisne." We are glad of this statement, and are satisfied that it is his desire, as far as he personally can, to remove temptations in the way of promotions or appointments to judicial commissions. At the same time we are bound to express our regret that what we believe to be his views, have not had more weight; and, with many others, also deplore what we would venture respectfully to think has been, on the part of some judges, a want of sufficient appreciation of the result to the status of the Bench by the acceptance by them of positions outside their judicial duties, and especially where political issues might be involved. Another matter, which perhaps more affects the relation between the judges themselves, is that the absence of one judge on extra-judicial work throws an unfair burden on his brethren. This, moreover, is apt to delay litigation, and causes the not unnatural remark that more judges would not be required if they were all engaged in their legitimate duties. The simple business proposition is to pay judges handsomely for the very important work which properly belongs to their office, and let them do that and nothing else.

RETURNING OFFICERS AND ELECTION PETITIONS.

While it is not the province of this journal to deal with matters in any degree connected with party politics, there are questions affecting the working of the constitution, and therefore of interest to the whole body politic, to which we may properly refer.

It happens, sometimes, that what were intended for constitutional safeguards become, in the hands of the ingenious politician, constitutional abuses, and a means whereby, under the form of law, and by virtue of an Act of Parliament, he can do something to promote his own ends, and inflict corresponding injury upon his political opponents. Nor does the mischief end there; such practices tend to bring public affairs into disrepute, and deter men who have a regard for their own reputation from entering into them. An example of this is to be found in the way in which our present system of appointing returning officers has been made an instrument of party warfare, involving a direct violation of a great constitutional principle.

Under our present system, adopted for reasons which it is not necessary here to discuss, the government have the power of appointing as returning officers whom they will, without any limitation as to the time within which the appointment must be made. Consequently, by delaying the appointment of the returning officer, the election may be postponed indefinitely, and in this way elections have been postponed for months, and constituencies left unrepresented, pending some petty dispute as to the choice of a candidate in the interest of the party in power. This of course can only happen in the case of by-elections, but in the case of a general election we have the lesser abuse of the returning officers being in many cases extreme partizans, who have no experience in the discharge of a very onerous and difficult duty, but who are expected to do the best they can in the interest of their political friends.

How different, and how very much better is the practice in the United Kingdom. There the process of an election goes on automatically and the politicans cannot interfere. The high sheriffs of counties and mayors of boroughs are ex-officio returning officers. When a vancancy occurs in the representation of a constituency the Speaker at once directs the issue of a writ for a new election. The writ goes straight to the returning officer, who, within a certain number of days must make his return, and with the least possible delay the constituency is again represented. Compare this with our practice and with instances which have occurred under it. First, a partizan returning officer has to be found who must at once devote himself to a study of the election law of which he is, in all probability, totally ignorant. Then the party caucus must be held, and if there is any difficulty in the choice of a candidate nothing further must be done till that difficulty is settled.

The remedy for this clearly is to go back to the system of having ex-officio returning officers, trusting that they, being responsible men, will discharge their duty faithfully and fairly. Let the writs when issued go direct to them, and require them within a certain number of days to make their return, alike in by-elections and general elections. Thus we shall do away with the choice of partizan returning officers, and prevent the possibility of constituencies being disfranchised to suit the interest of the party machine.

Of even greater moment are the abuses which have arisen out of the system of trying contested elections. Created for the

purpose of putting an end to bribery and corruption that system has become, in the hands of the adroit politican, a means of concealing and protecting corrupt practices of every kind. A man knowing that his case will not bear investigation gets a petition filed against some one on the other side similarly situated. Ultimately some obliging agent comes between them, and the matter is amicably arranged by both petitions being withdrawn. This is called a "saw-off" and ends in the edifying farce of both the parties, with a great array of counsel, appearing before the election court and telling the two judges who have come to try the case that the petitioner has no evidence to offer in support of his charges. The fact that corruption had been practised may be notorious, but the judges have no power to proceed, and must accept the ridiculous position in which they have been placed.

A simple remedy for this and similar abuses under the election law would be not to allow the withdrawal of the deposit, but to require its forfeiture if the party by whom it was made did not go on with his suit. If this rule was put in force the only petitions filed would be those of a bona fide character upon which the parties prosecuting intended to proceed. As matters now stand the filing of a petition is not evidence that the election has been a corrupt one, any more than its withdrawal is a proof of innocence. Very probably the exact reverse has been the case.

W. E. O'BRIEN.

IS THE ENGLISH ARMY ACT APPLICABLE TO CIVILIANS IN CANADA?

In the case of *Holmes* v. *Temple*, tried in Quebec before Chauveau, J., in 1882, 8 Q.L.R. 351, the court decided that the English Army Act of 1881 has no application to Canada with respect to persons not connected with the active militia. In giving judgment the court said that the case involved the question "whether, since confederation, England can legislate for Canada in matters affecting the militia and defence of Canada, viz., whether any law passed by the Imperial Parliament respecting these matters can affect civilians or third parties," and the learned judge decided that the Army Act had no force in Canada with respect to citizens or persons not connected with the militia, i.e., civilians. An exactly opposite decision was come to in Ontario in the case of *The Queen*

v. *Ruddy*, decided by the police magistrate at Cornwall. The subject is of interest not only because of the divergent views expressed, but also and chiefly because it is another example of Imperial legislation affecting the colonies.

In examining the question it may be instructive to consider briefly the history of the Act in question and the causes of the origin, progress and development of military law, and the passage of the various acts and ordinances on the subject, culminating in the passage of the Army Act, 1881, and the Army (annual) Act, as until the close of the 17th century a distinct military code was unknown in England.

In the early periods of England's history military law only existed in time of actual war. When war broke out troops were raised as occasion required, and ordinances for their government, or as they were afterwards called, "articles of war" were issued by the Crown with the advice of the Constable, or of the peers and other experienced persons, or was enacted by the Commander in chief, in pursuance of an authority for that purpose given in his commission from the Crown. These ordinances or articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate upon the conclusion of peace. Military law in time of peace did not come into existence until the passing of the first Mutiny Act in 1689. The system of governing troops on active service by means of articles of war continued from the time of the Conquest until long after the passage of the annual Mutiny Act.

The first record of a special military code is to be found in a statute of Richard II. (1377-99) which recognized the "Court of a Marshal," instituted to deal with military matters not cognizable by the common law. The power of the marshal and his deputies was absolute and summary, extending to the death penalty, and there was no appeal, except to the Sovereign in person, though this was always objected to by Parliament.

The army continued to be governed by martial law in the reign of James I. and Charles I. and the latter in 1625 issued a commission to 35 officers and civilians for the government of troops, (guilty of offences civil and military), returned from Spain, and who were not disbanded.

At the Restoration in 1660, the army raised by Parliament during the civil war, was disbanded, but Charles II. obtained from

Parliament authority to maintain certain "Guards and Garrisons," and thus a standing army was in 1660 formed in England for the first time. These Guards and Garrisons, though sanctioned by Parliament, were paid by the Crown and governed under Royal Prerogative. The necessity for special powers for the maintenance of discipline and the punishment of offences became apparent, but the growth of an army being regarded with jealousy, Parliament was unwilling to confer any such powers on the Crown until it became absolutely necessary so to do, and throughout the reigns of the Stuarts the army was entirely under the Sovereign.

On the accession of William and Mary the maintenance of the army was sanctioned by Parliament. A bill for better regulation of the discipline of the army was introduced in 1689, and its passage through Parliament was somewhat hurried by reason of the mutiny of some Scotch regiments at Ipswich, who had been ordered to Holland, but who, refusing to go, had marched northward, declaring that James II. was their rightful king and that they would live or die by him.

This danger was reported to both Houses of Parliament and doubtless facilitated the passing of the bill, which received the Royal assent on the 3rd April, 1689. This Bill was known as the first Mutiny Act. The Military Law thus established operated only on the standing army within England and Wales. Its power was gradually extended over Ireland in 1702, Scotland in 1707, the colonies 1788, and the army, irrespective of place, in 1803. The duration of the Mutiny Act passed in 1689 was first intended to last only seven months, but it was extended, and with a few intermissions has been passed annually ever since. In conjunction with the Mutiny Act the army was ruled for many years by the "Articles of War" (which came into existence at the Conquest) and issued under the Royal prerogative, but this prerogative was gradually encroached upon, or was finally replaced by a statutory power, in accordance with the Act, in 1803.

The army continued to be governed by the Mutiny Act and statutory articles until 1879, when the inconvenience of having a military code, contained partly in a statutory Act and partly in articles derived from that Act, led finally to a consolidation of the two in the "Army Discipline and Regulation Act," which was passed in the latter year. Two years later this was repealed and

re-enacted with some amendments in the Army Act, 1881, which is now in force.

The Army Act 1881, (which of itself has no force), is brought into operation annually by an Act of Parliament called "The Army (annual) Act," thus securing the constitutional principle of the control of Parliament over the discipline requisite for the government of the army.

It should be remembered that the Army Act is part of the Statute Law, and that all persons, irrespective of their being subject to military law, are bound to obey those provisions contained in it which are applicable to them, for instance, policemen are liable with respect to billetting or impressment of carriages. Innkeepers with respect to billetting, and all persons in reference to certain offences specified in the Act.

As to the application of Imperial legislation in Canada we are governed by the rules affecting the territorial effect of Imperial statutes in the British Colonies.

Hardcastle, on Statutes, 2nd ed., 1892, on pp. 446-449, says on this subject: "Theoretically the British Parliament can legislate for the whole empire, but it is never presumed to legislate except for the whole United Kingdom, unless apt words are inserted in the Act" (in the present instance this has been done and the Act 63 & 64 Vict., c. 5, must be read and construed as part of the Army Act). Acts which extend to all Her Majesty's Dominion override the inconsistent provisions of every prior Imperial or Colonial Act relating to any British possession. This is a clear constitutional rule and has been recognized in Canadian decisions: *Reg.* v. *College of Physicians and Surgeons*, 44 U.C.R. 564.

On page 425 the same writer says: "It has more than once been contended in Canada that the British North America Act, 1867, amounted to an abdication by the Imperial Parliament of all legislative authority in Canada in respect of the matters dealt with by that Act. But this contention appears to have been based on reasoning from the Constitution of the United States, and has been rejected by the Canadian courts. In 1879 it was contended that the Imperial Medical Acts of 1858 and 1868 were overridden by the British North America Act of 1867, and by the Ontario Act of 1874, passed in execution of the legislative authority given by the

Act of 1867. But it was held that the Imperial Acts overrode the Colonial Act and were not impliedly repealed by the Act of 1867." And on p. 449: "How far the Imperial Parliament should pass laws framed to operate directly in the colonies is a question of policy, more or less delicate, according to circumstances. No doubt has been suggested that if such laws are passed they must be held valid in colonial courts of law."

The above quotations may be supplemented from Maxwell on the Interpretation of Statutes, 2nd ed., pp. 168, 169, 170, and by Mr. Clements' work on the Canadian Constitution at pp. 55, 56. The case of *Reg.* v. *Schram and Anderson*, which arose in 1864, may be referred to as illustrating our want of appreciation of our subjection to the supremacy of the Imperial Parliament. In that case the defendants were charged under the Foreign Enlistment Act, 50 Geo. 3, c. 69 (Imp.) with having tried to procure inhabitants of Ontario to enlist in the American army. In spite of express words making the Act applicable to all parts of the empire, it was seriously argued that it was not in force in Canada, because we had, at the time it was passed, a local legislation. The judgment of the court was however that the Act was in force here in Canada.

Munro in his work on "The Constitution of Canada," at p. 266, thus refers to the case mentioned at the beginning of this article: "It is true that in *Holmes* v. *Temple* the judge of the Quebec Sessions held that 'Exclusive' meant 'exclusive of the Imperial Parliament,' and dismissed a prosecution for persuading a soldier to desert, brought under the Imperial Army Act of 1881, on the ground that the Dominion Parliament had 'exclusive' jurisdiction in matters relating to militia, military and naval service and defence, but the Ontario Court of Queen's Bench in another case (*Reg.* v. *College of Physicians and Surgeons of Ontario*, 44 U.C.Q.B. 564) laid down the true principle, viz.: that the word 'exclusive,' as applied to Dominion power of legislation in the Act meant exclusive of provincial legislatures. A similar view was expressed in *Smiles* v. *Bedford*, 1 Ont. App. 436, in regard to the Dominion power of legislating on copyright, which by section 91 of the Act of 1867 is placed within the exclusive jurisdiction of the Dominion Parliament, and yet was affected by Imperial Acts (38 & 39 Vict., c. 53, and 49 & 50 Vict., c. 33), passed after the Union. In Hassard's Canadian Constitutional History and Law, reference

is made on page 110 to sub-s. 7 of 91 of the B.N.A. Act," "militia, military and naval service and defence" and to the case of *Holmes* v. *Temple*: "The matters covered by this sub-section are the most important concerning which the Imperial authorities continue to exercise control over colonial legislation. It has been held (*Holmes* v. *Temple*) that the Dominion Parliament has exclusive jurisdiction over the matters covered by this sub-section, but the learned judge who decided this case did not hold as Mr. Clements states he apparently did, 'that the Imperial Parliament is deprived of jurisdiction to legislate respecting the militia and the navy.' It is submitted that this exclusive jurisdiction exists as against the Provincial Legislatures and not as against the Imperial Parliament and the judgment of Chauveau, J., is easily capable of this interpretation."

Assuming, therefore, that it is well established that this Act, while primarily dealing with the constitution and government of the British army, is applicable to the colonies, then there is much of it which is not limited to those serving under that Act. In many of the sections punishments are provided for either officers or persons who are subject to military law, but in many other parts of the Act it will be found that the offences mentioned are such as would be committed by persons not subject to military law. Examples of this may be found in sec. 98 dealing with enlistment: Sec. 109 dealing with billetting; secs. 116, 117 dealing with impressment of carriages; sec. 152 dealing with pretending to be a deserter; sec. 153 dealing with procuring soldiers to desert; and sec. 155 dealing with trafficing in commissions.

Applying the ordinary canons of construction, those who offend against the Act, whether officers or soldiers, or persons not subject to military law, become liable to the penalties laid down in the statute. Words of limitation are not to be read into the statute if it can be avoided: *Reg.* v. *Liverpool Justices*, 11 Q.B.D. 649; *Duke of Newcastle* v. *Norris*, L.R. 4 H.L. 661.

From the above considerations it would appear that the decision by the learned judge in the case of *Holmes* v. *Temple* cannot be maintained. If the Imperial Army Act is in force in Canada, and if it has created offences which are not mere military offences, nor offences by persons described as subject to military law, then it governs every inhabitant of Canada just as well as every inhabitant

of England. Sec. 168 of that Act enacts that all offences may be prosecuted before a court of summary jurisdiction in any colony before the same courts and in the same manner in which the like offences can be prosecuted. There can be little doubt that a magistrate in Canada may impose a fine for any offence against the provisions of this Act whether that breach is committed by an officer, soldier or civilian.

Ottawa. W. E. HODGINS.

One of our exchanges remarks that the Balkan crisis is likely to revive that almost insoluble problem of international morality, as to whether intervention in the internal affairs of one State by other States to prevent cruelty and wrong can properly be undertaken, as it is said that international public law proposes to deal only with the relation of States to each other. It must be remembered, however, that international law is not positive law, but merely "a body of rules accepted by civilized nations as binding and obligatory in their mutual dealings with each other." It is quite possible that the inhumanity of one nation might become so revolting as to necessitate a revision of these rules. The question of inhumanity must surely be one of degree, and it must surely be that the fiendish acts committed in Macedonia and Bulgaria by the unspeakable Turk, have arrived at such a pitch of horror as to warrant intervention to put a stop to acts which would seem to class the perpetrators with wild beasts or maniacs who must be restrained by force; and, if not controlled by their own Government must be dealt with by the "civilized nations" that are supposed to have the Continent of Europe in charge in the interests of the vaunted civilization of the twentieth century.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

CHARITABLE TRUST—FAILURE OF OBJECT OF CHARITABLE TRUST—CROWN AS DEFENDANT CANNOT IMPEACH CROWN GRANT FOR CHARITABLE PURPOSES —CY-PRÈS.

Wallis v. *New Zealand*, (1903) A.C. 173, is the case in which the observations of the Judicial Committee in giving judgment aroused the vie of the Chief Justice of New Zealand. The facts of the case have been already referred to very fully (see ante, p. 425) and it is only necessary here to say that the conclusion reached by the Privy Council (Lords Macnaghten and Lindley, and Sir Ford North and Sir A. Wilson) seems to have been the only one possible under the circumstances. A grant from the crown in 1850 was made to the plaintiff's predecessors for building a college for the benefit of certain natives of New Zealand. The natives moved away before the college could be built, and it became inadvisable to build it as was at first intended. The trustees then applied in this suit to the court to settle a new scheme for the application of the trust property. The Solicitor-General on behalf of the Crown intervened in the suit and claimed that the trust had failed and that the property reverted to the Crown. The Colonial Court of Appeal gave effect to this contention, and the Judicial Committee have reversed their decision and affirmed the judgment of the court below, settling a new scheme as prayed by the plaintiffs.

WINDING-UP ACT—(R.S.C. c. 129) ss. 15, 31—LIQUIDATORS—ACTION FOR DEBTS DUE COMPANY IN LIQUIDATION — ACTION BY LIQUIDATORS — AMENDMENT

Kent v. *La Communauté des Sœurs de Charité*, (1903) A.C. 220, though an appeal from Quebec may be briefly referred to as settling a point of practice under the Dominion Winding-up Act (R.S.C. c. 129), ss. 15, 31. The Judicial Committee of the Privy Council (Lords Macnaghten, Davey, Robertson and Lindley, and Sir A. Wilson) held that, under the Act, after a winding-up order

has been made, the company in liquidation retains its corporate powers, including the power to sue, although such powers must be exercised through the liquidators under the authority of the court, and that suits brought by the liquidator should be brought in the name of the company, or in his own name, according to the nature of the action. Where he acts as representative of contributors or creditors, he should sue in his own name; and where he is seeking to recover the debts or property of the company, he should sue in the company's name. In this case the liquidators had sued in their own name to recover a debt due by the company. No objection was taken by the pleadings to the constitution of the action, and it was not till after the trial that the objection was raised, when the Court below gave effect to the objection, and dismissed the action. The Judicial Committee however, though conceding the action was improperly constituted, nevertheless, held the defect to be a mere matter of procedure and therefore amendable, and the appeal was allowed, and leave to amend given, and the action remitted to the Court below.

EXECUTION—SEIZURE OF GOODS NOT THE PROPERTY OF THE EXECUTION DEBTOR—NO CLAIM MADE BY OWNER—SALE—TITLE OF PURCHASER UNDER EXECUTION.

Crane v. *Cremerod* (1903) 2 K.B. 37, although a decision under the English County Courts Act is nevertheless one, we apprehend, that applies to all sales under execution. Under an execution issued from the County Court the bailiff seized and sold property which was not the property of the debtor, no claim was made by the true owners, who were unaware of the seizure. The true owners brought the present action to recover the property from the purchaser at the bailiff's sale, and it was held both by the County Court, and the Divisional Court (Lord Alverstone, C.J., and Wills and Channell, J.J.) that the plaintiffs were entitled to succeed.

RAILWAY—PASSENGER—PASSENGER CONTINUING ON TRAIN AFTER GIVING UP TICKET AT STATION FOR WHICH IT WAS AVAILABLE—QUANTUM MERUIT.

In *London & North Western Ry. Co.* v. *Hinchcliffe* (1903) 2 K.B. 32, the plaintiff company sued for a railway fare under the following circumstances: The defendant purchased a ticket from Huddersfield to Staleybridge. The fare for that journey was 1s. 6d. He gave up his ticket on arriving at Staleybridge, but

remained on the train and continued his journey to Manchester. The through fare from Huddersfield to Manchester was 2s. 3d. The fare from Staleybridge to Manchester was 7d. The defendant tendered 7d., but the plaintiffs claimed 9d., being the difference between the 1s. 6d. and 2s. 3d. The County Court judge, before whom the action was tried, gave judgment in favour of the plaintiffs, and, on appeal, the Divisional Court (Lord Alverstone, C.J., and Wills and Channell, J.J.) affirmed his judgment, holding that the plaintiffs' claim being for a quantum meruit, the proper measure of damages was the difference between the fare actually paid and the through fare to the place actually travelled.

SEQUESTRATION—"SECURED CREDITOR."

In re Pollard (1903) 2 K.B., 41, although a decision in Bankruptcy, nevertheless deserves attention for the remarks it contains by Romer, L.J., as to the effect of a sequestration. He says: "I need scarcely point out that the seizure by the sequestrators does not convert the property seized into the property of the creditor. The next question is: Does the mere seizure of the sequestrators give the creditor a charge upon each part of the property of the debtor which has been seized? The answer must be clearly it does not."

In the result it was held by Wright, J., and his decision was affirmed by the Court of Appeal (Williams, Romer and Cozens-Hardy, L.JJ.) that a creditor who has obtained a sequestration under which a seizure has been made is not a 'secured creditor.'

CONTRACT—ILLEGALITY—LIFE INSURANCE—WAGERING POLICY—INSURABLE INTEREST—RECOVERY OF PREMIUMS PAID ON VOID POLICY—PARI DELICTO.

Harse v. *Pearl Life Assurance Co.* (1903) 2 K.B. 92, was an action brought to recover premiums paid by the plaintiff on a void policy of insurance. The defendants' agent represented in good faith to the plaintiff that an insurance effected by him on the life of his mother would be a good and valid insurance, and the plaintiff, relying on that representation, effected two insurances. The policies were, in fact, void for want of an insurable interest. The plaintiff sued to recover back the premiums paid by him on the policies. The County Court judge who tried the action held that the plaintiff could not recover because the parties were in pari delicto; but the Divisional Court (Lord Alverstone, C.J., and

Wills and Channell, JJ.) reversed his decision, being of the opinion that the plaintiff was entitled to assume that the defendants' agent had a knowledge of insurance law, and, therefore, the parties were not in pari delicto, and the premiums were consequently recoverable.

LIBEL—"FAIR COMMENT"—LITERARY WORK—CRITICISM—WITHDRAWAL OF CASE FROM JURY.

In *McQuire* v. *Western Morning News* (1903) 2 K.B. 100, the Court of Appeal (Collins, M.R., and Stirling and Mathew, L.JJ.) have reached a decision similar to that arrived at by the Court in *Macdonald* v. *The Mail*, 2 O.L.R. 278. The action was for libel. The alleged libel being contained in a criticism of a musical play written by the plaintiff. The case was tried by Ridley, J., who left it to the jury to say whether the criticism complained of was or was not a libel, and they found that it was, and assessed the damages at £100. This the Court of Appeal held to be wrong, because it was the duty of the judge to determine whether or not the criticism complained of was susceptible of a libellous interpretation, and, if in his judgment the criticism did not exceed "fair comment," there was nothing to leave to the jury. In their view of the case the verdict was against the weight of evidence. The Master of the Rolls discusses at some length what is meant by "fair comment," and it appearing that the criticism in question had not, on any reasonable view, exceeded "fair comment" the action was dismissed.

CONFLICT OF LAWS—AGREEMENT TO STIFLE FOREIGN PROSECUTION—AGREEMENT VALID WHERE MADE, BUT INVALID ACCORDING TO ENGLISH LAW.

Kaufman v. *Gerson* (1903) 2 K.B. 114, was an action brought to enforce a contract made in France in consideration of the plaintiff abstaining from prosecuting the defendant's husband for fraudulent misappropriation of moneys. According to the evidence, such a contract was valid in France. It was, however, contended that being one that if made in England would be invalid, it could not be enforced in England and *Hope* v. *Hope*, 8 D. M. & G. 731, was relied on by the defendant. Wright, J., however, held that as the contract was valid in France it might be enforced in England, unless the contract be contrary to morality or positive law.

FIXTURES—MORTGAGE OF BUILDING AND FIXTURES—HIRING AGREEMENT—CHAIRS SCREWED TO FLOOR OF PLACE OF ENTERTAINMENT—MORTGAGEE IN POSSESSION - RIGHT OF OWNER TO REMOVE.

Lyon v. *London City & Midland Bank* (1903) 2 K.B. 135, was an action brought to recover certain chairs let by the plaintiffs for hire, and screwed to the floor of certain premises which were used as a place of entertainment. The agreement for hire provided that the plaintiffs should be at liberty to remove the chairs in default of payment of the hire. After the agreement had been made and the chairs affixed, the hirer mortgaged the premises with the fixtures to the defendants, and the mortgage being in default the defendants had taken possession. The question, therefore, was, were the chairs, fixtures and did they as such pass to the defendants as mortgagees. These questions Joyce, J., answered in the negative. The chairs, he holds, did not cease to be chattels by being screwed to the floor, as they were so affixed for a temporary purpose and not for the permanent improvement of the freehold: the property in them never passed to the mortgagee, and he was never in a position to convey them to his mortgagees. Judgment was, therefore, given in favour of the plaintiff.

SALE OF GOODS—IMPLIED WARRANTY—FITNESS OF GOODS FOR PARTICULAR PURPOSE—SALE OF GOODS ACT, 1893 (56 & 57 VICT., C. 71) S. 14, SUB.-S. 1.

Priest v. *Last* (1903) 2 K.B. 148, is a case somewhat on the lines of *Clark* v. *Army and Navy Co-operation Society*, see ante p. 282. The facts were simple: The plaintiff, a draper, went to the defendant, a retail chemist, and asked for a hot water bottle. An article was shewn to him as such. He inquired whether it would stand boiling water, and the defendant told him it would stand hot water but not boiling water; the plaintiff then purchased it. Some days afterwards the bottle burst and the plaintiff's wife was in consequence scalded. The plaintiff sued for breach of an implied warranty that the article was fit for use as a hot water bottle. The jury found that the bottle when sold was not fit for use as a hot water bottle, and Walton, J., who tried the case, gave judgment for the plaintiff on the ground that the article was sold in the ordinary course of the defendant's trade, and the buyer relied on the defendant's skill and judgment, and there was an implied warranty on his part that it was reasonably fit for the purpose for which it was required; and his judgment was

affirmed by the Court of Appeal (Collins, M.R., and Stirling, and Mathew, L.JJ.) as being within s. 14, sub-s. 1 of the Sale of Goods Act, which Collins, M.R., considered a mere legislative affirmance of the pre-existing law.

LANDLORD AND TENANT—DISTRESS—SALE OF GOODS UNDER DISTRESS—PURCHASE BY LANDLORD OF GOODS DISTRAINED—2 W. & M. (1), c. 8, s. 2—(R.S.O. c. 342, s. 16).

In *Moore* v. *Singer* (1903) 2 K.B. 168, the plaintiffs were landlords of premises of which the rent was in arrear and for which they took in distress a sewing machine on the premises which had been let to the tenants on a hire purchase agreement subject to a provision that in default of payment of any instalment of the purchase money the defendants might take possession of the sewing machine. The machine was offered for sale under the distress and bought in by the plaintiffs' agent who let it to the tenant. The instalments under the defendants' agreement with the tenant being in arrear, they took possession of the machine, whereupon the plaintiffs sued them for conversion. The judge of the County Court gave judgment for the plaintiffs, but the Divisional Court (Lord Alverstone, C.J., and Wills, and Channell, JJ.) on appeal, set it aside and gave judgment, holding that the sale under the distress was null and void as the plaintiffs as landlords were incompetent to become the purchasers, and that the sale under 2 W. & M. (2) c. 5, s. 2, (R.S.O. c. 342, s. 16) must be to a third person.

ADMINISTRATION — WILL — DOMICILED FOREIGNER — GRANT TO FOREIGN ADMINISTRATORS—PRACTICE.

In the goods of Meatyard (1903) P. 125, deals with a point of probate practice. The deceased was domiciled in Belgium, where he died leaving a will in Belgian form, and he also left a will in English form appointing executors. Administration was granted by the Belgian courts and the foreign administrators then applied for administration with the English will annexed. This was opposed by persons named as executors of the English will. Jeune, P., held that the foreign administrators were entitled to administration, in preference to the persons named as executors in the English will as it was the duty of the court to follow the law of the testator's domicile.

WILL AND CODICILS—INCORPORATION.

Eyre v. *Eyre* (1903) P. 131, was a probate suit arising out of the testamentary papers left by a deceased person. There was first a will made in 1894 and a holograph codicil in 1898, both duly executed and attested. In 1902 a codicil was drawn up by a confidential clerk of the testator, who assumed erroneously that the will previously executed was in the terms of an incomplete draft, dated 1897, handed to him by the deceased. This codicil was duly executed and attested. The testator saying, "This is a codicil to my last will." There were some terms in this codicil which applied to a will in terms of the draft of 1897 which would be inapplicable to the will and codicil of 1894 and 1898. There was no evidence that the testator had ever in fact executed a will in the terms of the draft of 1897, although the testator affirmed that he had. Bucknill, J., who tried the case, decided that the draft of 1897 must be rejected and that the will of 1894 and the codicils of 1898 and 1902 were alone to be admitted to probate.

CUSTODY OF CHILD—PATERNITY—EVIDENCE.

Gordon v. *Gordon* (1903) P. 141, is a somewhat notorious divorce case in which the custody of the child of the marriage was in question. The divorced wife swore that the child was the child of herself and her paramour, although born in wedlock; but Jeune, J., held that sexual intercourse between man and wife must be presumed, and nothing except evidence that the husband did not have such intercourse at the period of conception can bastardize a child born in wedlock.

HEARING CAUSE IN CAMERA.

D. v. *D.* (1903) P. 144, was a divorce case in which the evidence was of a filthy character, and the question was raised how far the court had jurisdiction to hear the case in camera. After argument Jeune, P., determined that the court had jurisdiction so to order wherever the interests of justice appeared to require that course, and he accordingly made the required direction in this case.

MORTGAGE—CLOG ON REDEMPTION—OPTION TO PURCHASE MORTGAGED PROPERTY.

In *Jarrah Timber Corporation* v. *Samuel* (1903) 2 Ch. 1, the Court of Appeal (Collins, M.R., and Romer, and Cozens-Hardy, L.JJ.) have affirmed the decision of Kekewich, J., (1902)

2 Ch. 479, (noted ante, *vol.*, p. 27). This case is one of several which of late years have been before the courts touching the validity of collateral agreements between mortgagor and mortgagee, in some of which there appeared to be a tendency to fritter away the well established rule of equity, that a mortgagee may not validly stipulate with his mortgagor at the time of effecting the loan for collateral advantages in addition to the repayment of the loan and interest. In this case the mortgage was of debenture stock of a limited company, and at the time the loan was effected it was also agreed that the mortgagor should have the option of purchasing the whole or any part of the stock at 40 per cent. of the par value at any time within twelve months. Kekewich, J., held this to be a clog on the right of redemption and therefor void, following *Noakes* v. *Rice* (1902) A.C. 24 (noted ante, vol. 38, p. 335), and the Court of Appeal, as already mentioned, affirmed his decision. In doing so they "distinguish" *Carritt* v. *Bradley* (1901), 2 K.B. 550, in which the court assumed to relax the rule. But we notice that that case has been since extinguished by the House of Lords: See 88 L.T. 633, where it was reversed.

EQUITABLE ASSIGNMENT OF FUND IN COURT—PRIORITY—STOP-ORDER—NOTICE—FUND IN COURT.

Montefiore v. *Guedalla*, (1903) 2 Ch. 26, is a case in which there was a contest as to a fund in Court. The fund in question, subject to a life estate, was the property of a Jewish lady married in Morroco in 1865, and was affected by a document executed on the marriage called a "Ketubah," under which the children of the marriage took an interest in the fund. No notice of this instrument was ever given to the trustees of the fund. The wife died in 1878, and her husband took out letters of administration to her estate in England, and, in 1885, as her administrator, he assigned the fund in question for value to an English society which had no notice of the "Ketubah," and obtained a stop order against the fund in court, the tenant for life being still alive. In 1898 the tenant for life died and the present application was then made by the assignees for the payment of the fund to them, which was resisted on behalf of the children of the marriage. Byrne, J., decided in favour of the children, but the Court of Appeal (Collins, M.R., and Romer, and Cozens-Hardy, L.JJ.) came to a

different conclusion, and held that the husband had acquired a legal title to the fund and that the society having acquired that title without notice and having obtained a stop order were entitled to priority over the parties claiming under the Ketubah. This point, however, was not taken before Byrne, J.

Correspondence.

To the Editor, CANADA LAW JOURNAL:—

SIR,—I take the liberty of disagreeing with that august authority, the Lord Chief Justice of England, in his condemnation of that word "practically." "Practically all" means so nearly all that what is left is too little and insignificant to be considered and appreciated; and the old legal maxim *de minimis non curat lex* makes it a peculiarly apposite and expressive legal phrase, and it cannot be construed to mean "not all" in any fair legal sense.

A. L. Y.

[His Lordship would not probably quarrel with the above. He was referring, doubtless, to the use of the word in other senses, such as suggested in the note referred to. ED. C. L. J.].

To the Editor, CANADA LAW JOURNAL:—

SIR,—The writer and possibly others among your many readers would be interested in some expression of opinion as to the discreditable state of affairs connected with election trials and the practice of "sawing off" petitions. There should be some legislation to put an end to this abuse of the process of the Courts.

SUBSCRIBER.

[We publish in our editorial columns an article on the above subject which makes some valuable suggestions. It is from the pen of one who being an independent politician, as also a lawyer, is well qualified to deal with such matters. ED. C. L. J.]

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

From Lount, J.] ANDERSON *v.* ELGIE [June 29.

Dower—Equity of redemption—Conveyance by husband alone—Discharge of mortgage—Effect of.

On the 8th Feby. 1881, the owner of land subject to a mortgage, dated Jan. 29. 1879, in which his wife had joined to bar dower, made a second mortgage in which his wife did not join. A portion of the moneys advanced upon the second mortgage were applied in payment of the first mortgage, and the first mortgagees executed a discharge, which was registered March 5, 1881. On Sept 30, 1881, the owner executed a conveyance of the land to the plaintiff; the grantor's wife joining therein to bar dower. Neither the plaintiff nor his grantor paid the principal money due under the subsisting mortgage, and the mortgagees, in the exercise of the power of sale, on Feb. 27, 1892, contracted to sell the land to the defendant, who had ever since been in possession as purchaser. The plaintiff's grantor died on Sept. 19, 1901, leaving his wife surviving him, and the plaintiff, claiming as assignee of the wife's right to dower by virtue of the conveyance of Sept. 30, 1881, brought this action for dower on Sept. 11, 1902.

Held, 1. As the law stood on Jan 29, 1879, the wife. having joined in the mortgage of that date and thereby barred her dower, could become entitled to dower out of the equity of redemption only in event of her husband dying beneficially entitled; and, as long as the mortgage subsisted, her husband could by a subsequent conveyance defeat her dower in the equity, which he effectively did by the second mortgage; and this was not affected by 42 Vict. c. 22 (O.), which became law on March 11, 1879.

2. The second mortgage having been executed and delivered for some weeks before the execution or the discharge of the first, the effect of the registration thereof was not to revest the premises in the mortgagor but in the second mortgagees.

Judgment of LOUNT, J., reversed.

Bayly, K.C., for appellant. *J. Bicknell*, K.C. for respondent

From Robertson, J.] McLAUGHLIN *v.* MAYHEW. [June 29.

Vendor and purchaser—Oral contract for sale and purchase of land—Specific performance—Statute of frauds—Part Performance—Possession—Note or memorandum—Delivery of deed in escrow.

Specific performance of an oral contract for the sale and purchase of land was adjudged at the suit of the vendee, who had gone into possession of the land on the faith of the contract and openly and continuously for some time remained in visible possession by his tenants, to the knowledge of the vendors and without objection on their part. It was considered that, under the circumstances, possession should be assumed to have been taken with the assent of the vendors, and the possession was of such a character as to exclude the operation of the Statute of Frauds.

Quaere, whether a conveyance of land defectively executed and delivered in escrow and retained in the vendor's own possession, to be handed to the vendee on payment of the purchase money, can be regarded as a note or memorandum in writing of a previous parol contract between the parties for a sale of the land on the terms mentioned in the deed.

Judgment of ROBERTSON, J., affirmed.

Lynch-Staunton, K.C., for appellant. *W. H. Blake*, K.C. for respondent.

HIGH COURT OF JUSTICE.

Boyd, C., Ferguson, J., MacMahon, J.] [June 11.

IN RE DENISON.

REX v. CASE.

Mandamus—Police magistrate—Sentence—Ontario Liquor Act, 1902—Voting on—Personation—Information—Deputy returning officer—Prosecutor—Applicant for mandamus—Status.

At the voting upon the Ontario Liquor Act, 1902, the defendant presented himself at a polling place and asked for a ballot in the name of another person, whereupon, before the defendant had left the polling place one Stewart laid an information before the deputy-returning officer charging the defendant with personation, and on this information the deputy issued his warrant, under which the defendant was arrested and brought before a police magistrate. The deputy then laid an information against the defendant for personation, and defendant was tried by the magistrate, convicted and sentenced.

Held, affirming the decision of BRITTON, J., in the Weekly Court, that having regard to the provisions of R.S.O. 1897, c. 10, (made applicable by s.s. (5) of s. 91 of the Ontario Liquor Act, 1902), the information which gave the magistrate jurisdiction was that laid by Stewart; and the deputy-

returning officer had no status to apply for a mandamus to the magistrate to impose a different sentence.

Per BRITTON, J., a mandamus could not be granted for that purpose.

A. Mills and *Raney*, for applicant. *Haverson*, K.C., for defendant.

Boyd, C., Ferguson, J., MacMahon, J.] [June 17.

REX *v.* COULTER.

Criminal law—Procuring personation of voter—Procuring person to vote, knowing that he has no right.

The defendant was convicted of having unlawfully induced and procured another person to vote at a certain polling place on a certain day upon the question of bringing into force the Ontario Liquor Act, 1902, well knowing that such other person had no right to vote at the said time and place upon the said question.

Held, that the conviction was justified under s. 168 of the Ontario Election Act, R.S.O. 1897, c. 9 (made applicable by s. 91 of the Liquor Act) although the evidence showed that the defendant's offence consisted in inducing one R., who was himself a voter, but had no vote at the polling place mentioned, to personate a voter at such polling place. Sec. 167 (1) makes the counselling or procuring of personation a corrupt practice, but does not provide a punishment; and s. 168 is in terms wide enough to cover the offence.

Haverson, K.C., for the defendant. *Cartwright*, K.C., for the Crown.

Boyd, C., Ferguson, J., MacMahon, J.,] [June 22.

REX *v.* MYERS.

Municipal corporations—By-law—Transient traders—Conviction—Penalty—Costs—Distress—Imprisonment—Uncertainty as to time and place—Amendment—"Butcher."

Upon a motion to quash the conviction of the defendant, a transient trader, for offering meat for sale in quantities less than the quarter carcase, without having paid a license fee, contrary to a by-law of a village:—

Held, 1. It was not necessary that the by-law or conviction should contain the words "for temporary purposes" and "assessment roll for the *then* municipal year", as they relate to the regulation of transient traders under clause 30 of s. 583 of Municipal Act, R.S.O., 1897, c. 223, which refers to the payment of a license fee before beginning operations; nor was it necessary to refer to or negative the provisions 58 v. c. 42, s. 22 (o.) making the term "transient trader" applicable to one who has resided less than three months in the municipality before beginning business, the evidence showing brief visits periodically and regularly to sell meat for a given time at a particular place in the village.

2. The objection that the penalty of $1.00 was not apportioned under s. 708 failed, because the application was otherwise provided for by the by-law.

3. The objection that the conviction and by-law were in excess of the statute because power of distress was given for both penalty and costs, and because of the commitment, in default of payment, to the common goal, was not well taken, having regard to the powers given by s. 702, sub. ss. 2, 3.

4. The uncertainty of the offence in the conviction as to date, place, and meat sold, should be cured by amendment, upon the facts in evidence under 2 Edw. VII, c. 12, s. 15 (o.)

5. Although ss. 580, 581 deal specifically with the sale of meat, a transient trader, under s. 583, might include a butcher or dealer in meat.

McCullough, for defendant. *Middleton* and *Fitch*, for magistrate and complainant.

BOYD, C.] ATTORNEY-GENERAL *v.* CITY OF TORONTO. [June 24.

Municipal corporations—Establishment of park—By-Law—Dedication of land held by corporation in fee—Subsequent leases for building purposes—Injunction—Private plaintiff—Interest.

A by-law was passed by the defendant corporation in 1880 purporting to establish a park on the "Island," which was granted to the corporation by the Crown in fee in 1867, and certain lots were designated therein which, "with such other lands as may hereafter be obtained from lessees or otherwise, "were to form a park. Other lands were in 1887 directed to be taken and expropriated in order to enlarge the "Island Park," but no general plan or scheme for park improvements was considered till 1901, when a special committee was appointed to elaborate a plan. The defendant corporation from 1880 till 1901, acted on the belief that there was power to deal with the land designated as park land by leasing it imposing and collecting rent and taxes, approving of the laying out of new streets on registered plans, and otherwise exercising the control of owners.

The park scheme was not abandoned, but the details and the area were modified from time to time by successive councils.

Held, that the corporation had not exceeded their powers in so dealing with the land designated. The doctrine of irrevocable dedication is no applicable to the case of a park which is established out of land belonging to the corporation as owners in fee. The fact of corporate action being embodied in a by-law implies its revocability.

Held, also that S., who was joined as a plaintiff, claiming under a lease made prior to the park scheme, and renewed in 1895, after registration of plans made in 1883 and 1890, which shewed that the corporation had sanctioned the subdivision of the lands in question into building lots, had

not such an interest, by reason of a special grievance, as would entitle her to have the corporation restrained from granting to the defendant L a building lease of part of the lands in question.

J. T. Small, for the plaintiffs. *Fullerton*, K. C., and *Chisholm*, for the defendant corporation. *Frank Denton*, K. C., for the defendant Lemon.

Ferguson, J , MacMahon, J.] [July 18.

MCGILLIVRAY *v.* MUIR.

Justice of the peace—Penalty—Excessive fee—Information for indictable offence—Pleading—Amendment.

An information having been laid by the plaintiffs before the defendant, a justice of the peace, for an indictable offence under ss. 210 (2) and 215 of the Criminal Code, over which the defendant had no summary jurisdiction as a justice;

Held, that he was not entitled to any fee whatever, and that the plaintiffs, while they were entitled to recover by action the amount of the fee which they paid could not maintain an action under s. 3 of R.S.O. 1897, c. 95, or under s. 902, sub-s. 6, of the Criminal Code, to recover a penalty from the defendant for receiving a larger amount of fees as justice of the peace than he was entitled to.

Bowman v. Blyth, 7 E. & B. 26, applied and followed.

It was alleged by the statement of claim that the defendant wrongfully, illegally, and maliciously, and without reasonable or probable cause, demanded from the plaintiffs the sum of , contrary to the Ontario Act. At the trial the plaintiffs were allowed to amend by substituting "wilfully" for "maliciously and without reasonable or probable cause;" and by making an alternative claim under s. 902, s.-s. 6, of the Criminal Code.

Held, that the amendments were properly made.

Idington, K.C., for plaintiffs. *T. Dixon*, for defendant.

Boyd, C., Ferguson, J., MacMahon, J.] [July 18.

REX *v.* LAIRD.

Intoxicating liquors—Liquor License Act—Powers of license commissioners—Resolution prohibiting game of chance on licensed premises—"Euchre"—Knowledge of licensee—Conviction—Form—Distress—Imprisonment—Costs.

A board of license commissioners, under the authority of the Liquor License Act, R.S.O. 1897, c. 245, s. 4, s.-s. 4, passed a resolution "that no gambling or any game of chance whatever for gain or amusement or for any other purpose whatever shall be played about any licensed tavern or other house of public entertainment . . . or on the premises.

Held, MACMAHON, J., dissenting, that the powers of the commissioners under s. 4 were not restricted by s. 81, and that the resolution was within their powers.

Four persons played "euchre" for amusement in a room behind the bar of the defendant's hotel, the cards used being the property of one of the players, a boarder in the hotel.

Held, 1. "Euchre" is a game of chance, and that the defendant was properly convicted of an infraction of the resolution by reason of the game having been played in his premises, though without his knowledge.

2. Sec. 100 of the Act should be read into the resolution providing for the recovery of the fine imposed upon a conviction and that the direction of the conviction for recovery by distress and in default of distress imprisonment was authorized.

3. Where the license inspector attends court as prosecutor he is to be allowed certain expenses by way of costs, as provided in s. 117, and there was nothing wrong in the amount ($4.20) allowed for costs in this case. If it were wrong, it was severable, and could not affect the conviction.

Cartwright, K.C., for license inspector. *T. A. Gibson*, for defendant.

Ferguson, J.] CHARLETON *v.* BROOKE. [July 23.

Donatio mortis causa—Moneys and notes in cash box and trunk—Delivery of keys.

The defendant's father, a man of ninety-eight years of age who had been living in her house, was taken suddenly ill, retired to his room and lay down on his bed, and while she was endeavoring to make him comfortable he handed her a small wallet containing three keys and said "All the money and notes I have got are yours". One of the keys was that of a trunk in his room and another of a cash box in which the money and notes were in the trunk. There was evidence that he had a foreboding that it would be his last illness and that he intended to give his property to the defendant. She retained the keys until his death. In an action by his administrators for the money and notes.

Held, that there was a good donatio mortis causa.

In re Mustapha., Mustapha v. *Wedlock* (1891) 8 Times L. R. 160 followed.

Glen, K. C. and *Leach* for plaintiffs. *Macbeth*, K. C. for defendant.

Trial—Meredith, C.J.C.P.] [July 27.

CROSSETT *v.* HAYCOCK.

Husband and wife—Bar of dower—Infant wife—Purchaser for value.

Action to recover dower in lands of which the plaintiff's husband had been owner in fee simple, but which he had conveyed away in his lifetime, the plaintiff joining and barring her dower. The plaintiff contended that as she was an infant when she joined in the deed, the bar of dower did not bind her. The grantee in the deed was the son of the plaintiff's husband by a former wife, and it appeared that the land had been conveyed to him in pursuance of an agreement between him and his father, that if he would work the land with his father for the next ensuing season, which he accordingly did, the father would convey the land to him.

Held, that the grantee was a purchaser for value of the land, and that therefore by virtue of s. 5 of the Married Woman's Real Estate Act, R.S.O. 1897, c. 165, the infancy of the plaintiff when she barred her dower was of no consequence.

Riddell, K.C., and *Sinclair*, for plaintiff. *Maybee*, for defendant.

Falconbridge, C.J., Street, J., Britton, J.] [July 27.

SMALL *v.* HYTTENRAUCH.

Parties to action—Representation.

Con. Rule 200 provides that "In an action where there are numerous parties having the same interest one or more such parties may sue or be sued, or may be authorized by the court to defend on behalf of or for the benefit of all parties interested." The plaintiff in this action complained that the members of the London Musical Protective Association at meetings of the whole association, and by the executive committee of the association, had agreed with one another to order one Cresswell, a member of the association, and his orchestra to break a contract existing between them and the plaintiff to play in the plaintiff's opera house; and asked for an injunction to restrain them from carrying out this design. He made defendants, as representing the association, the president and three other members of the association who appeared to have taken a specially active part in the matter in question.

Held, that the case was brought within the above rule and the plaintiff was entitled to an order that the above defendants might be sued and authorized to defend on behalf of all the members of the London Musical Protective Association other than Cresswell and the members of his orchestra.

J. H. Moss, for plaintiff. *O'Donoghue*, for individual defendants except Joseph Weber.

Trial—Meredith, C.J.C.P.] [July 27.

FARMERS' LOAN *v.* PATCHETT.

Assignment of mortgage—Covenant by assignor for payment of mortgage—Discharge of part of land mortgaged—Principal and surety—Release of assignor.

The defendant when assigning a mortgage to the plaintiffs upon a certain lot of lands covenanted with the plaintiffs that the mortgagee would duly pay the mortgage money. The plaintiff afterwards without the consent of the defendant discharged the south-half of the lot from the mortgage in consideration of a payment of half the principal money with interest.

Held, that as the defendant occupied the position of surety for the performance by the mortgagor of his covenant to pay the mortgage money, the release by the plaintiff of the south-half of the lot without his consent was such an alteration of the contract guaranteed as to release him from his liability, although the amount paid as consideration for the release may have been the full value of the part released, and the security of the mortgages may have been not lessened, or in any way impaired.

Douglas, K.C., for plaintiff. *Irving*, for defendant Coleman.

Trial—Meredith, C.J.C.P.] [July 27.

BOURQUE *v.* CITY OF OTTAWA.

Municipal corporations—Contract to construct sewers—Interference by reason of other city sewers—Liability of municipality.

The plaintiff entered into a contract with the city of Ottawa to construct certain sewers. In the course of his work the contents of certain city sewers, which existed in the streets in which the plaintiff was required to build the sewers he had contracted to construct, the existence of which was not known to and was not disclosed to him, flowed into the trenches dug by him and impeded and delayed him in the work and caused him additional expense in doing it.

Held, that the plaintiff was entitled to recover from the defendants the loss he had thus sustained, for the defendants owed him a duty to do nothing to prevent or interfere with his doing the work he had contracted to do, and in discharging through the sewers under their control upon his work the sewage and other matter, which they carried, they committed a breach of duty for which they were answerable to him in damages.

Belcourt, K.C., for plaintiff. *McVeity*, for defendants.

Trial—Meredith, C.J.C.P.] SAUNDERS *v.* BRADLEY. [July 27.

Will—Appointment of new trustees—Construction—Survivorship.

A testator appointed his two brothers executors and trustees of his will and provided that in the event of the death, inability or refusal to act of either of them, "then my surviving brothers and sisters or a majority of them shall by an instrument in writing . . . . . appoint a new trustee," etc. The testator died in 1899, and probate was granted to the two brothers, one of whom died the same year. In 1900 by instrument in writing a majority of the brothers and sisters of the testator then living (one other brother having also died in 1899, after the testator,) appointed the plaintiff a trustee in place of the deceased executor.

Held, that the appointment was valid. The power to appoint a new trustee became operative in case either of the events provided for happened, whether in the lifetime of the testator or after his death, and it was the survivors of the brothers and sisters at the time of exercising the power, or a majority of them, who had the power to appoint.

Aylesworth, K.C., and *Kittermaster*, for plaintiff. *Riddell*, K.C., and *Dawson* for defendant.

Meredith, J.] IN RE ASSELIN AND CLEGHORN. [July 31.

Receiver—Equitable execution—Property to be reached—Book debts—Shares in foreign company—Insurance policy.

The provision in s. 58, s.s. 9, of the Judicature Act, R.S.O. 1897 c. 51, that a receiver may be appointed in all cases in which it shall appear to be just or convenient that such order should be made, was intended merely to expressly confer upon all the Courts that jurisdiction which, under the designation of equitable execution, had, before the fusion of law and equity, been exercised by the Court of Chancery alone.

Held, that a judgment creditor was not entitled to have a receiver appointed to receive all debts due to the judgment debtor, to receive and sell certain shares of the stock in a foreign company said to be owned by the debtor and to receive the interest of the debtor in a certain policy of insurance on the life of another, assigned to the debtor.

W. J. Elliott, for judgment creditor. *W. N. Tilley*, for judgment debtor.

Trial—Falconbridge, C.J.K.B.] [Sept. 1.

IDINGTON *v.* DOUGLAS.

Landlord and tenant—Expiry of lease—Continuance of possession by tenant—Special agreement—Tenancy at will.

The reservation or payment of rent in aliquot proportions of a year, is no doubt the leading circumstance which turns tenancies for uncertain terms, into tenancies from year to year. But this payment does not create

the tenancy. It is only evidence from which the court or jury may find the fact. And circumstances may be shewn to repeal the implication.

Held, therefore, in this case where the landlord, before he accepted any rent after expiry, the lease expressly told the tenant that he would not consent to any tenancy from year to year, so as to require any notice of termination to be given, but that they should remain in the same position as they were on expiry of the lease, to which the tenant assented, the rent however to be the same as that reserved in the lease, and to be paid in like manner, —the parties were not tenants from year to year, but tenants at will.

R. S. Robertson, for plaintiff. *Maybee*, K.C., and *McPherson*, K.C., for defendant.

Trial—Ferguson, J.] BRIDGE *v.* JOHNSTON. [Sept 9.

Indian lands—Assignment of timber—Interest in land—Registration—Conditional assignment—Priorities—Actual notice.

The owner of unpatented Indian lands administered by the Department of Indian Affairs for Canada, under the provisions of the Indian Act, R. S. C. c. 43, made a sale of certain timber thereon and executed an assignment or transfer to the vendee, by which the vendor agreed to sell and the vendee to purchase all the timber of a certain specified kind upon the land described, for a named price, payable as set out, and by which the vendee was "to have five years from the date hereof to cut and remove the said timber, having the right to make roads and go in and out of the said property during the said term."

Held, that the interest assigned was an interest in land, and not a mere chattel interest.

Summers v. *Cook*, 28 Gr. 179, and *Ford* v. *Hodgson*, 3 O. L. R. 526, followed.

Held, also, that the assignment was not an unconditional assignment within the meaning of s. 43 of the Indian Act, and was incapable of being registered in the manner prescribed by the Act, and therefore did not require registration to preserve its priority, and was entitled to priority over a subsequent registered assignment.

Harrison v. *Armour*, 11 Gr. 303, followed.

Semble, that, although there is no provision in the Indian Act as to "actual notice," the law laid down in *Agra Bank* v. *Barry*, L. R. 7 H. L. at pp. 157, 158, would apply if the subsequent assignee had at the time of registration such notice of the prior assignment.

David Robertson, for the plaintiff. *C. S. Cameron*, for the defendant.

Meredith, C.J., Maclaren, J.A.] RE O'SHEA. [Sept. 14.

Will—Construction—Direction to keep and maintain.

A testator directed his two sons to keep their two sisters until they married, in a suitable manner free of expense, and that so long as the sisters, or either of them, kept house for their brothers, they or she, were to have control of the poultry, eggs, butter, etc., and all monies thence derived, for their own use and benefit. He devised his farm, on which he was residing at his death, to the sons, who were compelled to sell it, as it was heavily encumbered.

Held, that all the sons were bound to do, was to offer to support and maintain the sisters, free of expense, in a suitable manner, either on the farm devised, or in the home of either of them, but, that they were not bound to allow the sisters to reside wherever the latter wished, and to pay the cost of their maintenance.

Hall, for Susannah O'Shea. *Edmison*, K.C., for executors.

FOURTH DIVISION COURT, COUNTY OF LANARK.

Senkler, Co. J.] [July 15.

MUTUAL LIFE ASSURANCE CO., Primary Creditor.
McLAUGHLIN Primary Debtor.
CANADIAN PACIFIC R.W. CO., Garnishee.

Bills and notes—Alteration.

The plaintiff's claim was on a note made by the defendant payable to the plaintiffs at three months after date. When produced in court the words "Extended to Nov. 28th, '02" were found written in the lower left hand corner of the note with the initials W.H.R. below. These added words were in the handwriting of Mr. Riddell, the secretary of the plaintiff company. The defendant denied all knowledge of or assent to the extension.

Held, that the words added were more than a mere memorandum giving time for payment, and must be read into the note, and had the effect of changing the note from one at three months to one at four months, and being thus a material alteration the note became void in the hands of the plaintiffs as against the defendants. The following authorities were referred to in the judgment: *Warrington* v. *Early*, 2 E. & B. 763; *Gardiner* v. *Walsh*, 5 E. & B. 83; *Banque Provinciale* v. *Arnoldi*, ante p. 597, 2 O.L.R. 624; Bills of Exchange Act (1890) s. 63.]

Lavall, for primary creditor. *Shirley Denison*, for primary debtor.

COURT OF GENERAL SESSIONS, COUNTY OF HALDIMAND.

Snider, Co. J.] COLLINS *v.* HORNING. [June 20.

Agricultural fairs—Exhibition prizes—Horse racing — Classification — Fraudulent entry—Ontario statute respecting—Validity of—Amendment of conviction on appeal—Costs of conveying to gaol—R.S.O. 1897, c. 254—R.S.O. 1897, c. 90, s. 4—2 Edw. VII. (Ont.), c. 12, s. 15.

Appeal from a conviction by a Justice of the Peace under c. 254, R.S.O., being an Act to prevent the fraudulent entry of horses at exhibitions.

Held, 1. The Ontario statute respecting the fraudulent entry of horses at exhibitions is one regulating the rights between individuals by preventing unfair competition, and is intra vires of the provincial legislature.

2. The statute applies whether or not the horse entered at the exhibition has a previous "record" of speed or not, and a classification of the horses by their age is within the Act.

3. Where the costs and charges of conveying to gaol are imposed in case of non-payment of the fine under the Ontario Summary Conviction Act, the amount thereof must be stated in the conviction; but a conviction improper in that respect may be amended under 2 Edw. VII. (Ont.) c. 12, s. 15, upon an appeal, by striking out the award of such costs.

Du Vernet for appellant. *Arrell* for respondent.

Province of New Brunswick.

SUPREME COURT.

Barker, J.] ROBERTSON *v.* KERR. [Aug. 18.

Practice—Re-opening decree.

Defendant K., an auctioneer, advertised at the instance of the defendant M. certain land for sale at public auction claimed by the plaintiff and M. This suit was brought for an injunction restraining the sale, and for a declaration of title, an interim injunction was granted. An ejectment action was also brought by the plaintiff against M. in respect of the same and, and judgement therein was given for the plaintiff. The defendant appeared by the same solicitor and joined in their answer in this suit. At the hearing a decree was made against the defendants with costs. K. now applied for a re-hearing to vary the decree so far as it ordered him to pay costs, alleging that since putting in his answer he had had nothing to do with the conduct of the suit, believing himself to be but a nominal defendant, and his co-defendant to be responsible for the defence.

The application was refused.

Allen, K.C., for applicant.

Barker, J.] LEMIN *v.* LEMIN. [Aug. 18.

Will—Codicil—Annuity payable out of legacy—Revocation—Lapse—Date of distribution.

Testator by his will gave to his trustees $6,000 in trust to pay an annuity from the interest or corpus thereof of $300 to his son R. during his life, and upon his death to pay it to R's. children P., S. and M. ½, ¼ and ¼ of said principal, respectively. In a subsequent clause it was provided that in the case of the death of R. any or either of said children should be under the age of twenty-five years the trustees should pay to their mother while such children should be under that age an annuity of $300 from said principal "to which such child or children will be entitled on the decease of their father" for the maintenance of such child or children respectively while he or she should be under that age. A codicil revoked the annuity to R. Testator was survived by R. and R's. children, all being under the age of twenty-five years at testator's death, but S. was now of that age.

Held, that the codicil did not revoke the gift to R's. children, that each child on attaining the age of twenty-five years was entitled to be paid his or her share, and that it was not the meaning of the will that the fund should be kept entact until the youngest of the children should attain that age.

Bowyer Smith, for trustees. *Skinner*, K.C. for father. *Earle*, K.C., for residuary legatees. *Pugsley*, A.G., for children.

Barker, J.] MCLELLAN *v.* TURNER [Aug. 18.

Injunction—Dissolution before hearing—Assessment of damages.

Where an ex parte injunction was dissolved before the hearing of the suit which was for a declaration of title to land, the Court postponed assessing damages upon plaintiff's undertaking given on obtaining the injunction, to the hearing of the suit.

Teed, K.C., for defendant. *Earle*, K.C., for plaintiff.

Barker, J.] BURDEN *v.* HOWARD (No. 2.) [Aug. 11.

Discovery—Affidavit—Copy of document.

Under 53 Vict., c. 4, s. 60, and Form 10, an affidavit of discovery should negative possession of copy of document.

Teed, K.C., for platntiff. *Jordan*, K.C., for defendant.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] BAULD *v.* REID. [April 11.

Married Womans Property Act—Liability of husband for debts contracted before marriage—Evidence—Burden of proof.

The Married Womans Property Act. R.S. (1900) c. 112, s. 25, makes a husband liable for the debts of his wife contracted by her before marriage "to the extent of all property whatsoever belonging to the wife which he has acquired or become entitled to from or through his wife after deducting therefrom any payments made by him" in respect to any such debts etc. In an action against the defendant R. for goods supplied to his wife before marriage evidence was given by the plaintiff's solicitor to shew that on the examination of the wife before a commissioner the defendant R. was present and stated among other things that he had received from his wife three promissory note for amounts and due at dates which he mentioned.

Held, 1. The evidence was not admissible, the best evidence being that taken down by the Commissioner and which he was required to return to the Court.

2. There was nothing in the evidence to bring the notes referred to within the language "property belonging to the wife" which the defendant had "acquired or become entitled to" through the wife, or to discharge the burden resting upon plaintiff to shew acquisition or title by or in the husband.

Semble, where money was received and payments made by the husband that plaintiff would have to shew a balance remaining in his hands and that he could not put in one side of the transaction without the other.

O'Connor for appeal. *Milner* contra.

Full Court.] SELIG *v.* NOWE. [April 11.

Costs—Discretion of trial judge refusing not reviewed.

In an action claiming damages for an alleged interference with a fishing berth judgment was given in favour of defendant but he was deprived of costs on the ground that both defendant and plaintiff acted throughout as if they thought the fishing berth in controversy was in Lunenburg County; that it had up to the time of action been under the charge and control of Lunenburg officers; that defendant attempted to take it up according to the custom of fishermen followed in that County; that he attended before the fishery officers of that County when they attempted to settle the dispute

between himself and plaintiff, and did not question their jurisdiction; and that the defence that the berth was not in Lunenburg but in Queen's County was not pleaded, nor the objection taken until the trial.

Held, WEATHERBE, J. dissenting, dismissing defendant's appeal with costs, that this was not a case in which the discretion of the trial judge should be reviewed.

McLean, K.C., for appellant. *Roberts* for respondent.

Province of Manitoba.

KING'S BENCH.

Full Court.] HENRY v. BEATTIE. [July 6.

Negligence—Agent employed to effect insurance against fire—Liability of for neglecting to do so.

Appeal from decision of Richards, J., noted ante, p. 43.

Appeal allowed with costs: judgment for plaintiff set aside and action dismissed without costs.

Per Cur. The case made by the statement of claims was not proved. The evidence went no farther than to shew that the defendant was to forward the application to the Loan Company, which was expected to apply for the insurance, and the statement of claim should not at this stage be awarded to meet that case.

D. A. Macdonald, for plaintiff. *F. G. Taylor*, for defendant.

Full Court.] RE CATHER. [July 11.

Mortgagor and mortgagee—Power of sale—Qualification of language of short form by providing for sale without notice in addition to power of sale after notice.

This was an appeal from the decision of a District Registrar under R.S.M. 1902, c. 148, refusing to register Thomas Cather as the owner of the land in question.

Cather was the purchaser at a sale made under the power of sale in a certain mortgage of the property without notice to the mortgagor.

The mortgage contained the following proviso:—"Provided that the company, on default of payment for one calendar month, may, on one week's notice, enter on and lease or sell the said lands. The company may lease or sell as aforesaid without entering into possession of the lands. Should default be made for two months a sale or lease may be made hereunder without notice. When, under the terms hereof, a notice is

necessary such notice may be effectually given either by leaving the same with a grown up person on the said lands if occupied, or by placing it thereon if unoccupied, or at the option of the company by publishing the same once in some newspaper published in the Province of Manitoba . . . and that the purchaser at any sale hereunder shall not be bound to see to the propriety or regularity thereof, and that no want of notice or of publication when required hereby shall invalidate any sale hereunder."

The District Registrar contended that the insertion of the word "calendar" in the short form prevented the mortgagee from getting the benefit of the long form No. 13 given in Schedule 2 of The Short Forms Act, R.S.M. 1902, c. 157, and that the mortgage did not contain a sufficently clear provision enabling the mortgagee to sell and convey the whole estate in the land without giving any notice to the mortgagor of the intention to sell.

Held, that the insertion of the word "calendar" was a qualification of the short form such as is provided for by section 9 of the Act, and that the proviso above quoted was sufficient to warrant a sale after two months' default without any notice, and that Cather was entitled to be registered as owner of the land unless there was some other objection to his claim.

Appeal allowed and order made accordingly.

C. P. Wilson, for District Registrar. *Aikins*, K.C., and *Loftus*, for applicant.

Killam, C. J.] ANDERSON *v.* LICENSE COMMISSIONERS. [July 29.

Liquor License Act—Local option by-law—Changes in boundaries and name of municipality after passing of by-law—Mandamus—By-law good in part and bad in part.

Motion for a mandamus requiring the License Commissioners for District No. 1 to rehear and reconsider the application of Thomas Anderson for a hotel license to sell spirituous liquors in the unincorporated village of Napinka. This village is in the territory which in 1890 constituted the rural municipality of Brenda, and on the application coming before the commissions they refused to grant the license on the sole ground that a local option by-law passed on 5th March, 1890, by the council of the said municipality under the Liquor License Act then in force, was heard before them and prevented the granting of such license.

On the argument for the mandamus counsel for Anderson contended that the said by-law was bad or had ceased to have any effect on the following grounds: (1). That in addition to providing that the municipality should not receive any money for licenses, it went further and purported to enact that no license should be granted by the commissioners within the limits of the municipality, which prohibition was not authorized by the statute. (2). That the by-law lost its force and became inoperative when

on 31st March, 1890, the Act, 53 Vict., c. 52, was passed, superseding the former division of the Province into municipalities and allotting the territory of the former municipality of Brenda between two others named Winchester and Arthur. (3). That by several subsequent legislation changes of name and boundaries the village of Napinka had become part of the new rural municipality of Brenda created in 1896, and that these changes had the effect of nullifying the by-law if it could be held to have been in force after the change made by the statute of 1890.

Section 81 of that statute provided that "In case in any of the territory changed as to its municipal situation by the provisions of this Act a by-law under s. 51 of 52 Vict. (the Liquor License Act) is in force at the time of the coming into force of this Act, such by-law shall continue to affect such territory the same as if this Act had not been passed."

Held, 1. As to the first objection the by-laws though containing an unauthorized provision was valid as to the good part.

2. Under the statutory provisions above quoted the by-law in question was still in force as regards the village of Napinka, notwithstanding the changes referred to. *Doyle* v. *Dufferin*, 8 M. R. 286, followed.

Perdue, for applicant. *Andrews*, for license commissioners.

Richards, J.] DUNSFORD *v.* WEBSTER. [Aug 21.

Landlord and tenant—Rent payable in kind—Implied covenants in lease—Liability for failure to raise crops on leased farm.

In April, 1898, the plaintiff leased by deed to defendant's husband a half section of land for five years at a rental of one-third of the crop grown on the premises yearly. The lease was on a printed form of a farm lease and contained covenants by the lessee that he would during the term cultivate such part of the land as was then or should thereafter be brought under cultivation in a good husbandlike and proper manner, and would plough said land in each year four inches deep and crop the same during the term in a proper farmerlike manner. Afterwards a new lease of the same land was made by deed, ante-dated so as to bear the same date as the first one, substituting the defendant as lessee instead of her husband. This was done, as found by the trial judge, at the request of the defendant's husband who had reason to fear the action of a creditor in case the lease remained in his name, and it was intended that the new lease should be a duplicate of the other in all respects except as to the name of the lessee. The new lease, by mistake of the solicitor who prepared it, was written on a form of "statutory lease," not containing the special clauses applicable to farm land. It provided for the same rental as the other lease,

payable in the same way and at the same times, and contained the same covenant to plough four inches deep in each year of the term written into it, but no express covenants to cultivate or crop the land. By the end of 1901 the cultivated portion of the farm was 117 acres, but in 1902 the defendant only ploughed and cultivated four acres out of the 117, and weeds grew up all over the rest. The plaintiff's claim was for damages for breach of covenants to cultivate crop and plough in 1902, which he contended should be held to be implied in the lease to defendant under the circumstances.

Held, following *McIntyre* v. *Belcher*, 14 C. B. N. S. 654; *The Moorcock*, 14 P. D. 68, and *Hamlyn* v. *Wood* (1891), 2 Q. B. 491, that such covenants should be implied in the lease to defendant and that she was liable for the estimated value of one-third of the crop that would probably have been produced on the 117 acres if it had been cropped in that year, and for the deterioration in value of the land on account of defendant having allowed it to grow up with weeds.

The main, if not the entire, object of both parties in entering into the second lease, as well as the first, was the getting from the lessee's cultivation and cropping of the land a yearly crop from which each would derive profit. If the defendant's contention were correct, she could have omitted to crop and cultivate in other years as well. It should be assumed that the second lease was not made with the intention that defendant should be in a position to render it profitless to the plaintiff. The covenant to plough four inches deep in each year seems to mean that she would plough for the purpose of cultivation and cropping, and the provision for payment of one-third of the crop each year by way of rent would imply that a crop was to be grown in each year of the term.

The plaintiff, in his statement of claim, asked for a reformation of the lease by including the covenants to cultivate and crop that were in the first lease, but abandoned that claim on the argument.

Verdict for $591.76 with costs.

Howell, K.C., and *Mathers*, for plaintiff. *C. P. Wilson* and *Metcalfe*, for defendant.

Richards, J.] BANK OF BRITISH NORTH AMERICA *v.* BOSOURJT. [Aug. 21.

Interest—Cheques as payment—Rate of interest recoverable by bank when rate exceeding seven per cent. stipulated for.

The bank was proceeding for sale of certain Manitoba lands mortgaged to it by defendant to secure advances made to him at Dawson by its branch there upon which he had agreed to pay interest, first at 24 per cent. and afterwards at 18 per cent. per annum.

Held, 1. Cheques on the Dawson branch for the amount of interest at those rates up to 31st January, 1902, and charged to defendants' overdrawn account then should be considered as payment of that interest, as defendant afterwards deposited money sufficient to change the overdrawn account into a credit balance, and the defendant could not recover such interest or any part of it although it was in excess of the seven per cent. rate which the Bank Act permits the bank to charge.

2. The bank was not entitled, under ss. 80, 81 of The Bank Act, to sue for and recover seven per cent. interest after January 31, 1902, but could only recover interest at the legal rate of five per cent. per annum on the principal then due.

Tupper, K.C., and *Minty*, for plaintiff. *Haggart*, K.C., and *Whitla* for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.] GUNN *v.* LEROI. [June 16.

Master and servant—Employers' Liability Act—Dangerous place Duty to warn workmen.

Appeal by defendants from judgment of IRVING, J., in favour of plaintiff. G. had been working in the defendants' mine on the floors immediately below the 600 foot level, and on the night of the accident when he was going to work he was told by the shift whom he was relieving that the place was in pretty bad shape and to look out for it. He proceeded to make an examination, but while thus engaged the mine superintendent directed him to do some blasting, and while doing it a slide occurred and he was injured. The principal evidences of the likelihood of a slide were two floors beneath the 600 foot level, and of which the superintendent was aware and G. not aware. The jury found that the superintendant was negligent in as much as he did not advise G. of the probable danger.

Held, in an action under the Employers' Liability Act, that the defendants were liable.

Where a workman is put to work in a place where there is an imminent danger of a kind not necessarily involved in the employment and of which he is not aware, but of which the employer is aware, it is the employers' duty to warn the workman of the danger.

Davis, K.C., for appellants. *MacNeill*, K.C., for respondent.

Full Court.] IN RE DOBERER ARBITRATION. [June 16.

Arbitration—Setting aside award—Misconduct of arbitrator—Waiver.

Appeal from judgment of IRVING, J., setting aside an award on the ground of misconduct by an arbitrator. A party to an arbitration does not waive his right to object to an award on the ground of misconduct on the part of an arbitrator by failing to object as soon as he becomes suspicious and before the award is made; he is entitled to wait until he gets such evidence as will justify him in impeaching the award.

Where two out of three arbitrators go on and hold a meeting and make an award at a time when the third arbitrator cannot attend it amounts to an exclusion of the third arbitrator and the award is invalid. A party by attending at such a meeting and not objecting (although he knew of the third arbitrator's inability to attend) does not waive his right to object afterwards.

Per HUNTER, C.J.: It is not necessary that there should be absolute proof of misconduct before an award will be set aside on that ground: it is enough if there is a reasonable doubt raised in the judicial mind that all was not fair in the conduct of one or more of the arbitrators.

Sir C. H. Tupper, K.C., and *W. M. Griffin*, for appellant. *J. H. Senkler*, for respondent.

Bole, Co. J.] REX v. SOUTH. [July.

Criminal law—Indecent assault—Child's testimony—Evidence as to similar acts not charged—Corroboration.

The defendant was tried for indecent assault upon a child under the age of fourteen. The child was examined on the "voir dire" and not sworn. On refusing to answer the Crown prosecutor had the trial adjourned. On the re-opening of the trial on the second day the child still absolutely refused to speak. Counsel for the Crown on being asked if he had any other evidence, offered two witnesses in corroboration of the child's evidence as told to them by the child, and also evidence of similar acts with others by the prisoner.

Held, following *Queen* v. *Cole*, 1 Phil. Ev. 508, that evidence not in support of the charges laid in the indictment, but referring to charges not laid, could not be received as corroborative evidence; and following *Rex* v. *Kingham*, 66 L.J.P. 393, evidence as to what the child told others could not be received. There being no other evidence for the prosecution the prisoner was acquitted.

Livingston, for the Crown. *Sir C. H. Tupper*, K.C., for prisoner.

Book Reviews.

A Manual of Medical Jurisprudence, Insanity and Toxicology, by Henry C. Chapman, M.D., 3rd ed. Philadelphia, New York, London: W. B. Saunders & Co., 1903.

The origin of this manual was a course of lectures on Medical Jurisprudence delivered by the author to the students of Jefferson Medical College some ten years ago. The subject, of course, is very large, but the work of the author is limited to the consideration of those parts of the subject which the experience of the author, as Coroners' physician for the City of Philadelphia for many years, led him to regard as the most important for practical purposes. The second edition has been carefully revised and more fully illustrated. Price $1.75.

A Text Book of Legal Medicine and Toxicology, by Frederick Peterson, M.D., of New York, and Walter S. Haines, M.D., of Chicago. Vol. I., Philadelphia, New York and London: W. B. Saunders & Co., 1903.

This is a much more important and ambitious work than the manual above referred to. The two volumes together will contain about 1,500 pages. The contents of the first volume would seem to indicate that nothing that can be said on the subject will be omitted. It would be impossible to give in detail even the headings of this learned and valuable work. It will, when completed, be a mine of information to all who seek information on the subjects which are therein treated. To give some idea of the completeness of this work it may be mentioned that no less than sixteen of the most learned physicians and professors in the United States are contributors thereto. Valuable beyond all question to the medical man it will be even more helpful to lawyers whose business requires a knowledge of the matters so exhaustively discussed in this work. The illustrations are of the fullest and most complete character. It may safely be said that the object of the editors, which is "to give to the medical and legal profession a fairly comprehensive survey of legal medicine and toxicology in modern compass," has been attained.