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The complaints of cases delayed and business blocked in the Ontario Courts are increasing in vehemence. Something should be done about it at once. The Government at Ottawa is in disrepute in this matter.

On the 7th of February war was begun between the Japs and the Russ over the question of ascendancy in Korea and Manchuria —a war that the land-greed of Russia made absolutely inevitable. There have been, up to the time of writing, no breaches of the settled rules of the laws of war; but trouble of this sort looms large on the international horizon. Notwithstanding adverse criticism by the French, Japan did not err in law by beginning hostilities without a formal declaration of war. The best modern authorities support this view. The splendid state of readiness and efficiency for the conflict on the part of Japan has caused those who have not followed the wonderful advancement in modernity of that country during the last quarter of a century, to marvel where hitherto they were prepared to doubt. That the Jap has an important part to play in the civilization of the future no thinker will deny. Although small in stature, his physique is that of which the best present day fighting stock is made, and his courage is conceded by all who have tested its mettle. Perhaps the finest qualities in the Japanese character are his freedom from dilettanteism and his faith in himself, the precise qualities in which most of the older civilizations of the world are lacking to-day. Sincerity and strength of purpose marked the conquerors of old, and Carlyle says that the deadliest of all unbeliefs is unbelief in ourselves. Just as the endemic religion, Sintuism, was able to largely assimilate the Buddhism which invaded the country in the sixth century, and just as this people have been able in a single generation to absorb the best features of an alien twentieth century civilization, so, with a like measure of success, we believe, they will force themselves forward to a conspicuous place in the councils of the world powers through the medium of the present war.

In our last issue we discussed at some length the expediency of prompt action being taken by those in authority toward removing all obstacles to the entrance of Newfoundland into the Canadian confederation. We are pleased to find that the views we gave expression to upon this subject have met with the appreciation of several of our subscribers whose judgment we value highly. One of them has been good enough to send us the following extract from a report of the United States Consul at St. Johns which illustrates to a startling degree the attempts that are at present being made by our cousins across the border to "Americanize" the island colony: "American capitalists are among the foremost in developing the wealth of Newfoundland. Of such interests I may mention the York Harbor Copper Mine, the Benoit Chrome Mine, the Valley Island and the Bay Vert Pyrites Mines. The York Harbor deposits are the richest copper beds in the world, and the present owners are spending $250,000 in their development. In the lumber industry the company, headed by Mr. H. M. Whitney, of Boston, has acquired several large properties in the colony and is operating them on a hitherto unequaled scale. Mr. George J. Barker, of Boston, has also acquired a large grant and is developing it extensively. An American syndicate is now negotiating for forest tracts on the west coast for charcoal manufacture as well as for ordinary lumbering. There is room for the sale of large quantities of American machinery for lumbering and pulp making. Harmsworth, the great London publisher, has secured a large forest area and is arranging for the establishment of a pulp and paper making plant to cost $2,500,000. The United States practically controls the trade in agricultural machinery, but now, when American capitalists are interesting themselves to such a large extent in the development of the industries of Newfoundland, is a good time for an aggressive campaign by American manufacturers for the general enlargement of their trade in the colony." The lesson for Canadians in the above extract is res ipsa loquitur—we shall not waste time in demonstrating the obvious. The project of rounding out Canada by the inclusion of Newfoundland within its boundaries was made the subject of a resolution moved by Lieut.-Colonel Ponton (seconded by Hon. Wm. Ross) and adopted unanimously by the Congress of Chambers of Commerce of the Empire held at Montreal in August last. This endorsation of the project by representatives from all parts of the empire emphasizes it as a matter of great imperial concern.

REPRIEVES IN MURDER CASES.

The writer of the article under this heading (ante p. 54) is indebted to the kindness of Hon. Mr. Justice Osler for a reference to an unreported Ontario case (*Reg.* v. *Young*), the facts of which yield a counterpart to the Cashel case there discussed.

The prisoners in the former case, uncle and nephew, were, on March 27, 1876, found guilty of the murder, near Caledonia, in the County of Haldimand, of a farmer named MacDonald ; and were sentenced to be hanged on June 21 following, Mr. Justice Morrison being the trial judge. On the evening of Sunday, May 28, through a bold attack upon the jailer, the younger man secured his keys, and the uncle being afterwards released by him, both effected their escape. They continued at large until midsummer, and were only retaken after a stout resistence.

Kenneth McKenzie, Q.C., for the Crown, moved before the full Court (Harrison, C.J., and Morrison, J.,) on August 27, for writs of habeas corpus and certiorari to bring up the prisoners from the jail at Cayuga, and the indictment against them, for the purpose of applying for a new sentence of death ; which, on return, made to the writs, was passed upon them. The nephew, in the end, was respited, and the uncle hanged. M. C. Cameron, Q.C., acted for the prisoners.

It might be pointed out, by the way, that, rather against some of the authorities, the removal of an indictment after judgment pronounced, as well as the grant of a habeas corpus ad subjiciendum, otherwise than at the solicitation of a prisoner, was thus authorized.

The law touching reprieves was in exactly the same position then as it is now, so that it will be seen that the Court's manner of disposing of the earlier case differs from the procedure followed by the Department of Justice in the latter case where the difficulty was sought to be overcome simply by a reprieve. It must be supposed that Hon. Edward Blake, Minister of Justice at that time, would have fallen back upon the reprieve, had recourse thereto been thought defensible. The two proceedings illustrate the difference between untying a knot and cutting it.

In view of what has taken place and of the uncertainty that seems to exist, it might be well for the law officers of the Crown to consider the propriety of an amendment to section 937 of the

Criminal Code, so as to prevent difficulty in the future. It might perhaps be sufficient to strike out the following words at the end of the section: "as are necessary for the consideration of the case by the Crown;" and possibly also to add after the words: "it becomes necessary to delay," the following: "or impossible to carry out;" and also to add after the words, "from time to time," the sentence: "before or after the time fixed therefor." The fact that two cases have already risen which have caused perplexity in this regard, is a sufficient reason for an amendment.

OUR RIGHTS IN HUDSON'S BAY.

The reported despatch by the Dominion Government of an expedition to establish British supremacy in Hudson's Bay, and the territory which surrounds it, may perhaps give rise to some important questions of international law and territorial rights. It therefore behooves us to walk warily, in all matters of that character, and, while firmly standing by unquestionable rights, not to assert claims which cannot be maintained.

Hudson's Bay, which ranks in point of extent with the Black Sea and Baltic, differs from those great inland seas so materially that no common rule of international law is applicable to all. No precedents for our guidance can be found in the solution of the many questions which have arisen with regard to them, nor is there, in any part of the world, a case precisely similar to ours. Our inland sea is peculiar in this—that while the shores that surround it are all in the possession of a single power, which is not the case with either the Black sea or the Baltic, yet the channel by which it is approached, varying in width from one hundred to sixty miles, differs entirely from the narrow passages to those other seas which can be controlled by the Powers occupying them.

By their original character the Hudson's Bay Company were granted the sole right to trade and commerce in all the waters lying within Hudson's Straits, including of course what is known as Hudson's Bay, and that sole right, whatever the validity of the grant may be, undoubtedly passed to Canada by the purchase of the Hudson's Bay territories and all pertaining thereto in the year 1869.

By the treaty of 1818 between Great Britain and the United States, which defined the rights of the Americans to fish off the

coasts of Labrador and Newfoundland, reference was made to the exclusive right of the Hudson's Bay Co. The waters inside of Hudson's Straits are not mentioned in the treaty. The natural inference from this would be that the Americans recognized the existence of those exclusive rights and are debarred from now calling them in question.

The several questions then which must be faced in dealing with this matter are, first: Had the British Government the right to treat the waters of Hudson's Bay as mare clausum, and therefore to confer upon the Hudson's Bay Company the sole trade and traffic of Hudson's Bay. If that can be established no further argument is necessary. Again by the treaty of 1818 did not the Americans recognize that right? If so, are they not precluded from now calling in question the sovereignty of Canada in these waters.

Taking the first point into consideration, the nearest approach that we can find to a parallel case is that of Conception Bay in Newfoundland—a sheet of water forty or fifty miles long, and over twenty miles wide at its mouth. In *Direct United States Cable Company* v. *Anglo-American Telegraph Company* 2 App. Cas. 394 (1877), it was held, on appeal to the Privy Council, that this bay was a British Bay, and a part of the territorial waters of Newfoundland, in opposition to the contention that the bay was part of the open sea, and not mare clausum.

In giving judgment Lord Blackburn said, at p. 419, "Passing from the common law of England to the general law of nations, we find a universal agreement that harbours, estuaries and bays land-locked belong to the territory of the nation which possesses the shores round them, but no agreement as to what is the rule to determine what is a bay for this purpose". Speaking of the test of occupation his lordship says that most writers refer to defensibility from the shore as the test, some suggesting a width of one cannon shot from shore to shore, or three miles; some a cannon shot from each shore or six miles; some an arbitrary distance of ten miles. All of these rules if adopted would exclude Conception Bay from the territory of Newfoundland, though he goes or to say the diplomatists of the United States in 1793 claimed a territorial jurisdiction over much more extensive bays. He further says: "It does not appear to their Lordships that jurists and text-

writers are agreed as to what are the rules to dimensions and configurations, which, apart from other considerations, would lead to the conclusion that a bay is or is not a part of the territory of the state possessing the adjoining coasts; and it has never, that they can find, been made the ground of any judicial determination."

The Court, however, held that in this case it was not necessary to lay down a rule, for it seemed to them sufficient ground for their decision "that in point of fact, the British Government has for a long period exercised dominion over this bay, and that their claim has been acquiesced in by other nations, so as to shew that the bay has been for a long time occupied exclusively by Great Britain, a circumstance which in the tribunals of any country would be very important; and, moreover (which in a British tribunal is conclusive), the British legislature has by Acts of Parliament declared it to be part of the British territory and part of the country made subject to the Legislature of Newfoundland."

In the American case of *Manchester* v. *Massachusetts*, 139 U.S. 240, Mr. Justice Blatchford giving the judgment of the Supreme Court of the United States said:—"We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast; that bays wholly within its territory not exceeding two marine leagues in width at the mouth are within the limit;" and that included in this territorial jurisdiction is the right of control over fisheries &c. This also was the rule adopted by the Halifax Commission in 1877, and, as above stated, seems to be the first case cited.

It is obvious, however, that while this rule may be properly applicable to an ordinary coast line there are many cases in which its application would bring about results not in the contemplation of those by whom it has been laid down. It would, for instance, upset the judgment of the Privy Council, in the Conception Bay case. It would oust the British Government from the control which it has always exercised, and will always continue to exercise over the Narrow Seas. It would make open ocean not only of the Gulf of St. Lawrence, but of many miles of the estuary of the river St. Lawrence. It would prevent Russia from controlling the White Sea; and last, but not least in the present contention, would deprive the Government of the United States of their jurisdiction

over Delaware Bay, Chesapeake Bay, and similar waters. As the entrance to Hudson's Bay is about sixty miles in width at the narrowest point, the Bay by this rule would be open sea, and the Government of Canada could exercise no control over it beyond the three mile limit.

Evidently, therefore, there must be some other and wider principle upon which the the claim to jurisdiction over land-locked waters by the Power owning the coast surrounding them must be founded than the precise width of the entering channel.

In the Conception Bay case this was found in the undisputed sovereignty exercised for many years by the British Government. In a case arising from the seizure of a ship in Delaware Bay the the entrance to which is more than six miles in width, the United States Courts held the seizure to be illegal as the waters of the bay were neutral, the shores on both sides being part of the territory of the United States. Great as is the extent of Hudson's Bay it is as completely a "British Sea" as was the Black Sea a Turkish Sea before the Russians obtained a share in its coasts; and wide as is the channel leading into it, it is in no sense a highway of nations, or a road for commerce, as are the Dardanelles, the straits of Gibraltar, or the Sound leading to the Baltic. It is not so now, and nature forbids it ever becoming so. Closing the Hudson's straits would be no hindrance to commerce, or inconvenience to travel. It would be a matter of as purely domestic concern as would be the closing of the channels leading from Lake Huron to the Georgian Bay. The width of the straits, therefore, no more affects British rights in Hudson's Bay than does the width of the mouth of Chesapeake or Delaware Bays effect the rights which the Government of the United States claims in those by no means land-locked waters.

If upon grounds of public policy so clear as to command general assent a sheet of water such as Hudson's Bay ought to be under the exclusive power of the country possessing its shores, the fact of the width of the inlet would be of no consequence whether it was six miles or sixty. It might be for the public convenience that the Power absolutely controlling the whole coast and three miles of sea outside it—in whose hands would be the lighting, pilotage, harbours, and everything in connection with navigation, and without whose consent no vessel could land or seek for shelter—

should exercise a general control over the whole waters of the inland sea. Certainly it not only seems reasonable that such a right should exist, but also that it should carry with it the right to possess whatever in the shape of property was included within it.

On some such principle the United States contended for the control of Behring Sea, but there the theory was clearly inadmissible, as Russia equally shares with the United States the littoral of that sea.

W. E. O'BRIEN.

THE LAW OF MASTER AND SERVANT.

The law on this subject has advanced greatly since the days when Lord Abinger so merrily flouted the claims of the poor butcher boy against his master on account of injuries received in his service: *Priestly* v. *Fowler* (1837), 3 M. & W. 1. Public opinion has, by degrees, brought about a change in the judicial interpretation of the Common Law, and the legislature has, by various statutes, come to the relief of injured employees. This branch of the law is now a difficult and complicated one. The relations of capital and labour are always becoming more delicate and more strained; and there is probably no subject on which the practising lawyer is more frequently consulted at the present day than this, and none in which he finds the necessity greater of having a compendium of the law always ready to hand.

It is, therefore, with much pleasure that we draw attention to the monumental work of Mr. Labatt on this subject*; two portly volumes of which, containing 2639 pages, have been published; the third yet to come. The two volumes now ready are, however, complete in themselves, containing a full table of contents, an analytical index and a complete table of cases. The work is in truth more like an encyclopedia of the law on this subject than a commentary such as it modestly professes to be, the statute and case law of all Anglo-Saxon jurisdictions being summed up in it.

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* Commentaries on the law of Master and Servant by C. B. Labatt, B.A. (Cantab.), in three volumes: Vols. I and II, Employer's Liability; Vol. III, Relation, Hiring and Discharge, Compensation, Strikes, etc. Canadian Edition. Lawyers' Co-operative Publishing Co., Rochester, N. Y. Canada Law Book Co Toronto, Canada.

To the Ontario lawyer the publication of this great work will prove an inestimable boon. We have no modern book dealing with our own statute (R.S.O., c. 160). Mr. G. S. Holmested's treatise on was published in 1893; but many important amendments have been made to the statute since then, and numerous cases interpreting its provisions have come before the courts.

The present English Act of 1897 is materially different from our own, so that modern English text books and cases are likely to mislead the unwary practitioner who consults them. Hence the publication of the present work is very opportune and we can heartily recommend it as a valuable, if not indispensable, addition to the library of the practising lawyer.

The reader is warned by the author that, as a general rule, no cases are cited which are of a later date than those collected in the volumes of the General and American Digests which were published in the spring of 1902. This disarms criticism as to the absence of cases, and may be the reason for the non-appearance of *McHugh* v. *G.T.R.* (1900) 32 O.R. 234 (*a*); (1901) 2 O.L.R. 600, upon the effect of the maxim, "actio personalis moritur cum personâ"; and of *Roberts* v. *Taylor* (1899) 31 O.R. 10, and *Fahey* v. *Jephcott* (1901) 2 O.L.R. 449, on the effect of disregard of statutory directions. But this hardly explains the absence of any reference to the important case of *Cameron* v. *Nystrom* (1893) A.C. 308 (*b*), on the subject of common employment.

While this method of dealing with cases has advantages, it is not one to be imitated, unless the starting point for the reader's independent investigation is brought up much closer to the date of publication of the book than is the case in the present instance, where a book published in 1904 does not, except in regard to the English Workmen's Act of 1897, which is made an exception to the

(*a*) It may be noted that this case merely illustrates the application of the Fatal Accidents Act. The plaintiff was, as it happened, a servant; but this fact is not perhaps a defferentiating element in such a sense that it must be deemed improper to omit the case in a work dealing with the relation of the master and servant. The effect of damage acts of this description is adverted to generally in ss. 716, 844; but the topic as a whole was doubtless regarded by the author as being outside the scope of the treatise.—Ed. C.L.J.

(*b*) This was an action brought against a person who was not the master of the plaintiff. The reader will find the general rule applicable under such circumstances referred to in ss. 490, 491. In note 2 to that section it is stated that such cases are discussed in the third volume, and the reason for this arrangement is also stated.—Ed. C.L.J.

general scheme, contain cases decided within two or more years prior to the date of publication.

The general plan of the work may be briefly outlined as follows: The text of the treatise is printed in bold and legible type, while the numerous authorities illustrating it are placed in foot notes. These notes contain not merely the names of cases, but very frequently full extracts from the judgments; a very useful feature. The reader, who may have only a limited library, is thus put in possession of the gist of the authorities upon which the author relies. In some instances a vigorous criticism accompanies the citation; see for examples *Webster* v. *Foley*, 21 S.C.R. 580, at p. 1983, etc., and *Sim* v. *Dominion Fish Company*, 2 O.L.R. 69, at p. 1975. Reference is made to all the reports, official and otherwise, in which cases may be found.

The first 33 chapters are devoted to a discussion of the general principles (apart from statute) governing the liability of a master for injuries to a servant. The questions as to what degree of care a master is bound to exercise for the protection of his servant, and what kind of instrumentalities he is bound to furnish are carefully considered and the cases bearing on them are fully discussed.

Chapter seven contains an interesting consideration of the moot point as to how far a servant's knowledge or ignorance of the risks involved in the employment affects the master's liability.

The cases on this point are by no means consistent. Mr. Labatt criticises the opposing theories in an instructive manner. The doctrine, "first announced in all its repulsive nakedness by the late Lord Bramwell," that no negligence is predicable of the master where the servant knows and appreciates the risk to which he is exposed, the inevitable conclusion of which is that "as to any servant who understands the conditions and the risks arising therefrom, a master may, without being affected with legal culpability, carry on his business with instrumentalities that are defective and in bad repair, and by methods which are abnormally dangerous," is justly characterised as being economic rather than juristic and as inconsistent with a true conception of public policy, and "repugnant to the unsophisticated mind of the average layman." In a note to sec. 62, p. 156, the author refers to "one of the most amusing instances on record of the inability of some reporters to estimate the comparative importance of decisions."

Mr. Labatt has the courage of his opinions, and is not content to merely balance decisions pro and con, but handles without gloves those which appear to him to be erroneous, and discusses in an instructing and interesting manner the different view points which the courts have adopted, whether economic or juristic. This not only adds to the interest but also to the value of the work for the practitioner. When conflicting cases are marshalled and discussed in the able method found in the present work, the task of a counsel attempting to prepare a brief, is very considerably lightened. The discussion appended to this chapter (VII) is an excellent illustration of the author's mode of treatment.

In the subsequent chapters the master's duties towards his servants are taken up, the duty in regard to employment, to the system of conducting the business, to instruct and warn the servant are carefully dealt with. The doctrines of contributory negligence and of volenti non fit injuria are exhaustively considered.

The defence of Common Employment claims several chapters. In short there is no aspect of the servant's rights and the master's liabilities (apart from the statute) which is not fully and logically dealt with. It seems impossible to suggest a more complete treatment of the subject than has been carried out here with admirable skill.

Chapters 34 to 41 deal with the statutes on the subject of the liabilities of employers which have been enacted in the various countries in which the common law forms the basis of jurisprudence, including the English Act of 1897. We thus have, what is both unique and interesting, a collection of all statutes passed on this subject in the English speaking world. The cases decided in regard to these statutes are fully collected and analyzed; as far as the writer has been able to make a test, this part of the work seems to have been carefully and accurately attended to.

Next come chapters dealing with "Causation," "Evidence," "Parties," "Pleading and Practice," "Conflict of Laws," and "Employers' Liability under the Civil Law and systems founded thereon"; in the latter special prominence being given to decisions in the Province of Quebec.

Writing from the point of view merely of an Ontario practitioner we venture to suggest that Canada and its Provinces should not merge their individuality in the index (which by the

way is not the work of the author) and are just as much entitled to be referred to by their names in the index as Dakota, Utah, etc., to which are given a "local habitation and a name." To find the Ontario statute reference must be had to the general heading of "Statutory Liability" (p. 2532); there under the sub-head of "English Employers' Liability Act of 1880, and the American, Canadian, and Australian Statutes modelled thereon" (p. 2533), we find a reference to "Ontario and the other Canadian Provinces." If the third volume is to be accompanied by an index covering the whole work, this defect might be cured. It is to be observed also that only fifteen sections of the Ontario Act, the most important ones to be sure, are given; the remaining sections are omitted as dealing "merely with details of local practice." It is no doubt for a similar reason that the statute 62 Vict. (2) c. 18, which permits claims for compensation to be tried by arbitration has been omitted.

No doubt both of these omissions are justified by the necessity for having some limit to the size of the work.

In any general index it would be an advantage to have a reference to the Fatal Accidents Act, and to the maxim actio personalis moritur cum personâ. We draw attention to these slight defects not in any carping spirit, nor with any desire to detract from the great excellence of the treatise, but in the hopes that a way may be found in the third volume to remove them.

Volume III. is to treat of Relation, Hiring and Discharge, Compensation, Strikes, etc. We look forward with interest to the completion of the work.

The bare outline above given of the contents of these volumes shews how complete and exhaustive the treatise will be, and justifies the statement that the name of Encyclopedia would not have been inappropriate. This work may well be classed as one of the great law books of the day; and though we may in a sense claim it as a Canadian contribution to legal literature, inasmuch as Mr. Labatt at present resides here, it is not confined in its usefulness to any one country. It covers the whole field of law, affecting the rights and liabilities of Master and Servant in all countries, the legal systems of which have been founded on the common law of England.

N. W. HOYLES.

SLAUGHTER OF THE INNOCENTS.

The cult of so-called Christian Science (though where either Christianity or science comes in, we fail to see) has been receiving free advertisement of a very malodorous character. As well in Canada as in England and the United States it has come to the front as a sect which, as the result of some of its teachings, is occasionally almost as destructive to the child life of its votaries as was that of the worshippers of Moloch in old time.

In each of the above countries the courts have had to deal with charges of manslaughter arising from the refusal of parents of this ilk to provide necessary medical treatment for their helpless children. In England in the case of *Reg.* v. *Senior* (1899) 1 Q.B. 283, (which dealt with one of the "Peculiar People" who hold views similar in many respects to the Christian Scientists); in Ontario, in *Rex* v. *Lewis*, 6 O.L.R. 132; and in the United States, in the case of *People* v. *Pierson*, recently decided by the New York Court of Appeals.

As our readers have access to the reports of the first two cases we need not take space to refer to them, except to say that the statutory law affecting the matter in England and in Canada is not as comprehensive or as full as in the State of New York. In the case decided there, the prisoner was tried, convicted and sentenced to a fine of $500 or 500 days imprisonment, for an offence which most parents would consider not far removed from the crime of murder. The conviction was based on a statute which makes it criminal to omit, without lawful excuse, the furnishing of food, clothing, shelter, or medical attendance to a minor. This conviction was sustained by the Court of Appeals. It appears that the prisoner persistently refused to call in a physician or to furnish or administer medicine for an adopted daughter who was suffering from pneumonia. He simply sat by the pain-tortured child and engaged in what he called prayer to, and communion with, the Almighty, without exercising the common sense and common humanity that the Almighty had given him, and deliberately sat there and saw the child die.

The American Court had no difficulties to contend with such as presented themselves in *Rex* v. *Lewis*, as to whether medical treatment was included in "necessaries," or whether, as in *Reg.* v. *Senior*, there was "neglect." The general result, however, was the

same, and the law as well as the common sense of the matter was expressed in very similar language in both cases.

In *Rex* v. *Lewis* Mr. Justice Osler in his judgment makes the following remarks: "Persons sui juris may by mutual consent, and within certain limits, practice upon each other what experiments of this kind they please, and in some instances and in some kinds of disorders, where the mind of the patient is responsive to the treatment, it may possibly be done with beneficial results. But it would be shocking if, in the case of infants or others incapable of protecting themselves, they and the community in which they lived were to be exposed to danger from contagious or infectious diseases which the instructed common sense of mankind in general does not as yet find or admit to be curable by means only of subjective or mental treatment."

Judge Haight in delivering judgment in the New York Court of Appeals expressed himself as follows: "The law of nature as well as the common law, devolves upon the parents the duty of caring for their young in sickness and in health, and of doing whatever may be necessary for their care, maintenance and preservation, including medical attendance, if necessary, and an omission to do this is a public wrong which the State, under its police powers, may prevent."

A writer in the *Law Notes* commenting on the above judgment pithily discusses the doings of this sect in these words: "They may go their way and practice these beliefs upon themselves and among themselves to their hearts' content. They may pray over a cancer, or work themselves up to the belief that appendicitis is not 'real,' and the law leaves them to what ordinary mortals believe to be their folly. The law simply says that helpless children shall not be immolated upon the altar of the faddists, or condemned to a life of suffering. A religious or a pretended religious belief offers no more excuse for neglecting a child than it does for the practice of polygamy."

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

WILL—CONSTRUCTION—FORFEITURE CLAUSE—ALIENATE OR INCUMBER—PETITION IN BANKRUPTCY BY LIFE TENANT.

In re Cotgrave Mynors v. *Cotgrave* (1903), 2 Ch. 705. The point for adjudication was whether the presentation of a petition in bankruptcy by a tenant for life under which he was adjudicated bankrupt had worked a forfeiture of his life estate, which was, under a will, subject to a gift over in the event of his "alienating or incumbering, or agreeing to alienate or incumber," his interest. Kekewich, J., following *Re Amherst*, L.R. 13 Eq. 464, decided that it had, because the petition had been followed by adjudication, which distinguished the case from *Re Lovell* (1901), 2 K.B. 16, 22, where Wright, J., held that the mere presentation of a petition in bankruptcy was not of itself an alienation.

TRUSTEE—APPOINTMENT OF NEW TRUSTEES—DONEE OF POWER TO APPOINT TRUSTEE APPOINTING HIMSELF—VALIDITY OF APPOINTMENT.

Montefiore v. *Guedalla* (1903), 2 Ch. 723, was an application to the Court by the executors of a will containing a power to the executors to appoint a new trustee of the testator's trust estate, for authority to appoint one of themselves and two others as new trustees in place of the deceased trustees. Buckley, J., held that where there is nothing in the power to indicate that some person other than the donees of the power is to be appointed, there is no rule of law preventing the court sanctioning the appointment of one of the donees, although it is an exercise of the power which should be resorted to only in special circumstances. He considered the circumstances of the present case such as to warrant the appointment, which he accordingly sanctioned.

EQUITABLE EXECUTION—RECEIVER—FUND IN COURT—FUND IN EXECUTOR'S HANDS—NOTICE OF RECEIVERSHIP ORDER—SUBSEQUENT MORTGAGEES AND JUDGMENT CREDITORS—STOP ORDER—PRIORITY.

In re Anglesey, De Galve v. *Gardner* (1903), 2 Ch. 727. A judgment creditor of a person entitled to an unascertained share of a fund, partly in court and partly in the hands of executors, obtained the appointment, by way of equitable execution, of a receiver of the debtor's share, of which notice was given to the executors. No stop order or charging order was obtained against the debtor's interest in the fund by this creditor. Subsequently the debtor mortgaged his interest in the fund, and other creditors recovered judgments against him and obtained a stop order and charging order against the debtor's interest in the fund. The Master in reporting on the claims of the creditors and mortgagees found that the creditor who had obtained the appointment of the receiver was entitled to priority over the subsequent mortgagees and creditors who had obtained the stop order and charging order. Eady, J., on appeal from the Master's report, affirmed his ruling, holding that although a receivership order does not constitute a creditor obtaining it a secured creditor or give him any specific charge or lien on the fund, yet it operates as an injunction against the debtor receiving it and prevents him dealing with it to the prejudice of the judgment creditor who has obtained the appointment of the receiver, and prevents any subsequent assignee or creditor from gaining priority over the creditor obtaining the order if at the date when the order is made the fund cannot be taken in execution by any other legal process. A charging order, he holds, is like a garnishee order, subject to the prior equities affecting the fund.

PRACTICE—ORDER—REVIEW—APPEAL—ERROR IN LAW ON FACE OF ORDER—ACTION TO REVIEW—JURISDICTION OF HIGH COURT TO REVIEW.

Bright v. *Sellar* (1904) 1 K.B. 6, deals with a nice little point of practice. The action was brought to review a charging order made in an action of *Sellar* v. *Bright & Co.*, on 20th December, 1901, purporting to create a charge on certain shares therein mentioned and also on a sum of £623 8s. 9d. cash. No appeal was brought from the order, and the present action was brought by the liquidator of Bright & Co. to review the order on the ground that it was erroneous on its face in so far as it purported to create

a charge on the sum of £623 8s. 9d. cash. The defendant pleaded that no cause of action was disclosed. Wright, J., gave effect to that contention, and dismissed the action. The Court of Appeal Collins, M.R., and Mathew, and Cozens-Hardy, L.JJ.) affirmed his decision, and in doing so, enter into an interesting discussion of the practice of review under the former Chancery practice, and come to the conclusion that an action of review will not lie where under the practice an appeal could have been had. That in short, the procedure by review is limited to cases where by reason of the subsequent discovery of fraud or of some new matter affecting the order complained of, the order is impeached.

LANDLORD AND TENANT—COVENANT TO PAY OUTGOINGS—YEARLY TENANCY —DEFECTIVE DRAIN—RECONSTRUCTION OF DRAIN—TENANT OVERHOLDING —IMPLIED AGREEMENT BY TENANT HOLDING OVER.

Harris v. *Hickman* (1904) 1 K.B. 13, was an action by a landlord against a tenant on a covenant of the latter to pay all "rates, taxes and assessments and outgoings whatsoever in respect of the said premises." It appeared that the defendant had been lessee of the premises under a lease for three years at a rent of £70 in which the covenant sued on was contained, and after the expiration of the three years he continued in occupation of the premises without any fresh agreement and paid rent at the rate reserved by the lease. During this occupation the lessors were served with notice under the Public Health Act that the drain of the premises was creating a public nuisance. The lessors gave the defendant notice to repair it, and on his refusing to do so, they reconstructed it, and now sued the defendant for £70 1s. 6d. the expense of so doing. Wright, J., who tried the action, dismissed it on two grounds, (1) that the lessors having done the work immediately on receipt of the notice of the nuisance and before the receipt of any notice requiring them to abate it, the expense incurred was voluntary and consequently not an "outgoing" within the meaning of the covenant; and (2) because even if it were an outgoing within the meaning of the covenant, it was not, having regard to the proportion which the expenditure bore to the yearly rent, a covenant which was applicable to a yearly tenancy, and that the defendant in holding over, could not be presumed to have become a yearly tenant on the terms of such an obligation. The action consequently failed.

MARRIED WOMAN — CONTRACT BY — MARRIED WOMEN'S PROPERTY ACT —(R.S.O. c. 163, ss. 4, 21) -JUDGMENT AGAINST WIDOW FOR DEBT CONTRACTED DURING MARRIAGE—SEPARATE PROPERTY—RESTRAINT AGAINST ANTICIPATION.

Brown v. *Dimbleby* (1904) 1 K.B. 28, very aptly illustrates the anomalous condition of the law under the present Married Woman's Property Act (R.S.O. 163). The Act it may be remembered while apparently giving women power to bind all their property present or future, by their contracts, contains however a reservation of property subject to a restraint against anticipation, which restraint, by the way, on the principle on which the Married Women's Property Act is based, is now a manifest anachronism, and, as this case demonstrates, a means merely of giving married women a fictitious credit which they ought not to have. The debt sued for in the present case was contracted by the defendant when she was a feme covert, she then had separate property which however was subject to a restraint against anticipation; at the time judgment was recovered she was a widow and the restraint, of course, had ceased to be operative. The plaintiff applied for a receiver of the defendant's interest in this property by way of equitable execution, but Walton, J., refused the application, and the Court of Appeal (Collins M.R. and Mathew, and Cozens-Hardy, L. JJ.) upheld his decision on the ground that the property in question was not bound by the contract at the time it was made (see R.S.O. c. 163, s. 21) and could not become so by reason of the restraint against anticipation subsequently ceasing to be operative; *Barnett* v. *Howard* (1900) 2 Q.B. 784 (noted ante vol. 37, p. 151), being held to be applicable notwithstanding the subsequent amendment made in England by the Act of 1893 (56 & 57 Vict. c. 63, s. 1) from which R.S.O. c. 163, s. 4, was derived.

MARRIED WOMAN—ANTE NUPTIAL DEBT—SETTLEMENT—RESTRAINT AGAINST ANTICIPATION—SEPARATE PROPERTY—MARRIED WOMAN'S PROPERTY ACT 1882 (45 & 46 VICT., C. 75) S. 19—R.S.O. C. 163, S. 21.)

Birmingham Excelsior Society v. *Lane* (1904) 1 K.B. 35, is another case which illustrates the effect of the restraint against anticipation as a means for defeating the recovery of debts against a married woman. In this case a feme sole contracted a debt and subsequently married, and then separated from her husband, who covenanted to pay her an annual sum subject to a restraint

against anticipation. The creditor recovered judgment against the defendant "to be payable out of her separate property whether subject to any restriction against anticipation or not, and not otherwise," and Ridley, J., granted by way of equitable execution a receiver of the moneys payable under the covenant. The defendant appealed both as to the form of the judgment, and the appointment of the receiver, and the appeal was sustained, the Court of Appeal (Mathew and Cozens-Hardy, L.JJ.) holding that the judgment should have followed the form settled in *Scott* v. *Morley* (1887) 2 Q.B.D. 120, and that the covenant was obviously not within the words "settlement or agreement for a settlement of a woman's own property to be made or entered into by herself" and therefore was effectual to protect the moneys payable under the covenant from the claims of creditors of the wife. It is worth while noting the remarks of the Court on *Robinson* v. *Lynes* (1894) 2 Q.B. 577 (noted ante vol. 30, p. 679) from which the plaintiff inferred that the judgment against a married woman for an ante-nuptial debt should be in the form in which it had been entered in this case; Cozens-Hardy, L.J., however, says that case does not touch the question what property can be made available by way of execution on a judgment for an ante-nuptial debt.

INSURANCE — VOYAGE POLICY — CONSTRUCTION — TIME — COMPUTATION — "DAYS" HOW TO BE RECKONED.

In *Cornfoot* v. *Royal Exchange Assurance Corporation* (1904) 1 K.B. 40, the Court of Appeal (Collins, M.R., and Mathew and Cozens-Hardy, L.JJ.) have affirmed the decision of Bigham, J. (1903) 2 K.B. 363 (noted ante vol. 39, p. 711). The short point was as to how a clause in a policy of insurance providing for the termination of the risk was to be construed. The clause in question provided that the insurance was to be for a voyage "and for 30 days in port after arrival." The ship arrived at her port at 11.30 a.m. on August 2, and Bigham, J., held that the thirty days were thirty periods of 24 hours to be computed from the hour of arrival, and the Court of Appeal agreed that this was correct.

RESTRAINT OF TRADE—COVENANT IN RESTRAINT OF TRADE—REASONABLENESS OF RESTRAINT—QUESTION OF LAW OR FACT.

Dowden v. *Pook* (1904) 2 K.B. 45, was an action brought to enforce a covenant in restraint of trade. The case was tried by Grantham, J., who left it to the jury to say whether the restrain

was wider than was necessary for the protection of the covantee and they found that it was. On subsequent consideration he came to the conclusion that the question of the reasonableness of the restraint was one for the judge and not for the jury, and he held that the restraint in question was reasonable, and gave the plaintiff an injunction as prayed. The defendant then moved for judgment in his favour, or for a new trial, contending that the judge had erred in his ruling of reasonableness, but the Court of Appeal (Collins, M.R. and Mathew and Cozens-Hardy, L.JJ.) affirmed his decision that the question was for the Court and not for the jury. As Cozens-Hardy, L.J., neatly puts it, "The question is really one of public policy, which is not a question of fact for a jury, but of law for a judge." The restraint in question, however, prohibited the defendant from carrying on business in any part of the world. The business in respect of which the covenant was given being a cider business carried on mainly in the particular locality in which the defendant was employed to act as manager. Under these circumstances the Court of Appeal held that the restraint was too wide, and on that ground reversed the decision of Grantham, J., and gave judgment for the defendant.

MUNICIPAL ELECTION—ELECTION—NOMINATION AND ELECTION OF DISQUALIFIED PERSON—NOTICE OF DISQUALIFICATION—RIGHT TO SEAT.

In *Hobbs* v. *Morey* (1904) 2 K.B. 74, the Divisional Court (Kennedy and Darling, JJ.) have laid down a reasonable rule on a point of municipal election law. At the election in question two candidates were nominated. One of them who was disqualified by reason of being interested in a contract with the corporation, was elected. The fact that he was disqualified was unknown to the electors. The other candidate claimed the seat: but the Divisional Court held that although where a candidate is nominated who is known to be disqualified, his opponent who receives the fewer votes is nevertheless entitled to the seat; yet where the disqualification of the candidate is not known to the electors the case s different, and in the latter case there must be a new election.

HUSBAND AND WIFE—MARRIAGE SETTLEMENT—COVENANT TO SETTLE AFTER ACQUIRED PROPERTY—SPES SUCCESSIONIS—AMOUNT OF INDEMNITY.

In re Simpson, *Simpson* v. *Simpson* (1904) 1 Ch. 1, was an application by originating summons to determine whether certain property to which a wife had become entitled on the death of her

husband came within the terms of a covenant to settle after acquired contained in her marriage settlement. The deceased husband was a domiciled Scotsman, and on their marriage the settlement was made and the wife covenanted that if she should during the coveture acquire "any estate or interest in personal property," beyond a certain amount it should be settled upon the trusts declared by the settlement. After the marriage the parties separated, and a separation deed was executed by the husband, and by this deed he covenanted that on his death his wife's right in his estate should not be less than she would have been entitled to if he died a domiciled Scotsman, notwithstanding he may have been domiciled at the time of his death elsewhere. By the law of Scotland known as the jus relictae a right vests in a widow on the death of her husband, if there are children surviving, to one-third of his personal estate, a right which cannot be prejudiced by any will or mortis causa deed made by the husband, but which can be defeated by alienation of his personal estate in his lifetime and it is therefore until death a bare spes successionis. It was contended by the executors of the deceased husband that this right being fortified by the covenant of indemnity above mentioned was "property" within the meaning of the covenant and Buckley, J., so held, but the Court of Appeal (Williams, Romer and Stirling, L.JJ.) reversed his decision.

COMPANY — ARTICLES — QUORUM OF DIRECTORS — INTERESTED DIRECTOR — RESOLUTION.

In re Greymouth P.E. Ry., Yuill v. *Greymouth P.E. Ry.* (1904) 1 Ch. 32, the articles of a limited company provided that any director might enter into, or be interested in a contract with the company, but that no director should vote on any matter relating to any contract or business with the company in which he was interested; and that two directors should be a quorum of directors for the transaction of business. A resolution was passed at a meeting of three directors, two of whom were interested in the subject matter of the resolution; and it was held by Farwell, J., that it was invalid, that a *quorum* meant a quorum competent to vote.

SPECIFIC PERFORMANCE—VENDOR AND PURCHASER — DEFAULT BY PURCHASER AFTER JUDGMENT FOR SPECIFIC PERFORMANCE—COSTS.

In *Olde* v. *Olde* (1904) 1 Ch. 35, an action was brought by a vendor for specific performance and judgment had been pronounced appointing a day for payment of the purchase money and the

defendant had made default, and the plaintiff then moved to rescind the contract and to stay all proceedings except the recovery of the costs of the action. In *Jeffery* v. *Stewart* (1899) 80 L.T. 17, North, J., had declined to make the exception as to the costs, but Farwell, J., held that it was proper, following the form of order pronounced by Byrne, J., in *Westerman* v. *Pantlin*, noted in Seton, 6th ed., vol. 3, p. 2289.

We are all aware of the rapid development of our Canadian North-West. Until a very recent period, the only evidence, though it was a good one, of British law and order, was our most efficient Mounted Police. To-day it, that vast territory has its judiciary, its Bar and its Law Society. The summary of proceedings of this Society at its convocation recently held at Calgary, is a striking illustration of the development spoken of. Nine law libraries have been established in the Territory and many thousands of dollars have been expended in law books. At the meetings spoken of various amendments to the rules and regulations of the Society were passed; matters of discipline were considered, and a number of new members enrolled. That the Benchers consider the privilege of enrolment as a student of law is of some value, is evidenced by the fact the fee payable therefore is $400. The President for the ensuing year is N. D. Beck, K.C., of Edmonton; the Secretary-Treasurer is C. H. Bell, of Regina.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.] LANGELIER *v.* CHARLEBOIS. [Oct. 20, 1903.

Ownership—Lease—Sheriff's sale—Title to land—Insurable interest—Fire Insurance—Trust—Beneficiary—Principal and agent—Fraudulent contrivances.

C. sr. leased the Academy of Music at Quebec to his son C. jr., for the term of nine years at a rental of $700 per annum, and as the building was in great want of repair, it was agreed that the rent should be paid for in making the necessary repairs and improvements. In May, 1899, C. jr. had commenced the repairs and improvements and requested C. sr. to obtain insurance against fire for the protection of his workmen, and the expenses then being incurred, C. sr. effected an insurance in his own name, in trust, afterwards declaring to the insurance company that the trust was in favour of C. jr., the real beneficiary intended to be insured, and the premiums were paid to the company directly by C. jr. Subsequently C. sr. became financially involved and the theatre building was sold in execution, C. jr. becoming purchaser and obtained the title to the property under the sheriff's deed. C. jr. then applied to the same insurance company for further insurance on the property, and in issuing the new policy, the company recognized the validity of the first insurance still subsisting in his favour. The building was destroyed by fire in March, 1900, and C. jr. filed claims for the amount of the policies. At this latter date L. had become a judgment creditor of C. sr. and caused an attachment by garnishment to issue attaching the moneys due under the first policy in the possession of the insurance company. An intervention was filed by C. jr. claiming the amount due under the policy and the company with its declaration as garnishee referred to the declaration of trust and deposited the funds to be disposed of as the Court might direct. The policy had never been formally assigned to the son, but the insurance company admitted that he was considered to be the person thereby insured. The execution creditor contested the intervention and contended that the policy enured solely to the benefit of C. sr., notwithstanding the declaration of trust, and that the moneys were subject to attachment by his creditors. The trial Court, Charland, J., maintained the contestation and declared the attachment binding on the ground that the transactions between the father and the son, at the time the insolvency of the former was

imminent, must be reputed to have been made in fraud of creditors and that the declaration of trust could not effect a transfer of the policy. This judgment was reversed by the Court of King's Bench, which, on a different appreciation of the evidence, decided that there had been no proof to raise a presumption of fraud and that the intervenant was the true beneficiary under the policy and in the circumstances of the case.

Held, affirming the judgment appealed from, that under the circumstances, the mere relationship of the father and the son did not give rise to a presumption of fraud in the transactions between them; that the purchase of the property leased by the lessee at the sheriff's sale put an end to the lease by vesting the title to the fee in the lessee, and at the time of the loss by fire, the execution debtor had no insurable interest in the property; that during the whole of the time that the policy of insurance in question was in force, the intervenant had an insurable interest in the property, first, as the lessee thereof, and afterwards as owner in fee, and that he alone was entitled to the moneys payable under the policy of insurance. Appeal dismissed with costs.

Beaudain, K.C., and *Gouin*, K.C., for appellants. *Brodeur*, K.C., and *Pelletier*, for respondent.

Que.] HILL *v.* HILL. [Oct. 20, 1903.

Action for account—Partition of estate—Requete civile—Amendment of pleadings—Supreme Court Act, s. 63—Order nunc pro tunc—Final or interlocutory judgment—Form of petition in revocation—Res judicata.

On a reference to amend certain accounts already taken, a judgment rendered Sept. 30, 1901, adjudicated on matters in issue between the parties and, on the accountant's report, homologated 25th October, 1901, judgment was ordered to be entered against the appellant for $26,316, on January 30, 1902. The appellant filed a requete civile to revoke the latter judgments within six months after it had been rendered, but without referring to the first judgment in the conclusions of the petition. It was objected that the first judgment had the effect of res judicata as to the matters in dispute and was a final judgment inter partes.

Held, that whether the first judgment was final or merely interlocutory the petition in revocation must be taken as impeaching both former judgments relating to the accounts upon which it was based, that it came in time as it had been filed within six months of the rendering of the said last judgment and that it virtually raised anew all the issues relating to the taking of the accounts affected by the two former judgments. A motion to amend the petition so as to include specifically any necessary conclusions against the judgment of Sept. 30, 1901, had been refused in the court below and was renewed on the appeal to the Supreme Court of Canada.

Held, that, as the facts set forth in the petition necessarily involved a contestation of the accountant's reports dealt with in the first judgment, the case was a proper one for the exercise of the discretion allowed by s. 63 of the Supreme Court Act and that the amendment to the conclusions of the petition should be permitted nunc pro tunc. Appeal allowed with costs.

Casgrain, K.C., and *Maclennan*, K.C., for appellants. *Beique*, K.C., and *Lighthall*, for respondents.

Que.] MELOCHE. *v.* DEGUIRE. [Oct. 26, 1903.

Conveyance of land—Description of property sold—Partition—Petition action—"Quebec Act, 1774"—Introduction of English criminal law—Champerty—Maintenance—Affinity and consanguinity—Parties interested in litigation—Litigious rights—Pacte de quota litis—Contract—Illegal consideration—Specific performance—Retrait successoral.

The heirs of M. induced several persons related to them either by consanguinity or by affinity to assist them as plaintiffs in the prosecution of a law-suit for the recovery of lands belonging to the succession of an ancestor and, in consideration of the necessary funds to be furnished by these persons, six of the respondents and the mis en cause, entered into the agreement sued on by which said plaintiffs conveyed to each of the seven persons giving the assistance one-tenth of whatever might be recovered should they be successful in the law-suit. In an action au petitoire et en partage by the parties who furnished such funds, for specific performance of this agreement;

Held, reversing the judgment appealed from Davies J. dissenting, that the agreement could not be forced as it was tainted with champerty, notwithstanding that the consanguinity or affinity of the persons in whose favor the conveyance had been made, might have entitled them to maintain the suit without remuneration as the price of the assistance.

2. That there could be no objection to the demande au petitoire being joined in the action for specific performance.

3. The defence of retrait de droits litigieux could not avail in favor of the defendants as it is an exception which can be set up only by the debtor of the litigious right in question. *Powell* v. *Watters*, 28 S.C.R. 133 referred to.

4. That as the conveyance affected a specific share of an immoveable the exception of retrait successoral could not be set up under art. 710 C.C. *Baxter* v. *Phillips*, 23 S.C.R. 317 and *Leclere* v. *Beaudry* 10 L.C. Jur. 20 referred to. Moreover, in the present case, the controversy does not relate to the succession and, in any event, the assignor cannot exercise the droit de retrait successoral.

Semble, however, that the retention of a fractional interest in the property might have the effect of preserving the right to retrait successoral.

5. That the laws relating to champerty were introduced into Lower Canada by the "Quebec Act, 1774," as part of the criminal law of England and as a law of public order the principles of which and the reason for which apply as well to the Province of Quebec as to England and the other provinces of the Dominion of Canada. *Price* v. *Mercier*, 18 S.C.R. 303, referred to. Appeal allowed with costs.

Beaudin, K.C., and *Martin*, K.C., for appellants. *Beique*, K.C., and *Robertson*, for respondents.

Que.] PAGNUELLO *v.* CHOQUETTE. [Nov. 10, 1903.

Vendor and purchaser—Misrepresentation—Fraud—Error—Rescission of contract—Sale or exchange—Dation en payment—Improvements on property given in exchange—Option of party aggrieved—Action to rescind—Actio quantum minoris—Latent defects—Damages—Warranty.

An action will lie against the vendor to set aside the sale of real estate and to recover the purchase price on the ground of error and of latent defects, even in the absence of fraud.

In such a case the purchaser alone has the option of returning the property and recovering the price or of retaining the property and recovering a portion of the price paid; he cannot be forced to content himself with the action quantum minoris and damages merely, upon the pretext that the property might serve some of his purposes notwithstanding the latent defects.

Where the vendor has sold, with warrant, a building constructed by himself he must be presumed to have been aware of any latent defects and in that respect, to have acted in bad faith and fraudulently in making the sale. The vendor, defendant, represented that a block of buildings which he sold to the plaintiff, had been constructed by him of solid stone and brick and so described them in documents relating to the sale. The walls subsequently began to crack and it was discovered that a portion of the buildings had been improperly built of framed lumber filled in and encased with stone and brick in a manner to deceive the purchaser.

Held, that the contract was vitiated on account of error and fraud and should be set aside, and that, as the vendor knew of the faulty construction, he was liable not only for the return of the price, but also for damages.

Held, further, that the action quantum minoris and for damages does not apply to cases where contracts are voidable on the grounds of error or fraud, but only to cases of warranty against latent defects if the purchaser so elects; the only recourse in cases of error and fraud being by rescission under art. 1000 of the Civil Code.

In the present case, the sale was made in part in consideration of vacant city lots given in payment *pro tanto*, and, during the time the

defendant was in possession of the lots he erected buildings upon them with his own materials.

Held, that even if the contract amounted to a contract of exchange, it was subject to be rescinded in the same manner and for reasons similar to those which would avoid a sale, and, if the contract be set aside for bad faith on the part of the defendant, the plaintiff has options similar to those mentioned in articles 417, 418, 1526 and 1527 of the Civil Code, that is to say, he may either retain the property built upon, on payment of the value of the improvements, or cause the defendant to remove them without injuring the property, or compel the defendant to retain the property built upon and to pay its value, besides having the right to recover damages according to the circumstances.

The judgment appealed from was reversed. Appeal allowed with costs.

Duclos, K.C., for appellants. *St. Louis*, K.C., for respondents.

Que.] G.T.R. Co. *v.* MILLER. [Nov. 10, 1903.

Railways—Negligence—Braking apparatus—Railway Act (1888), s. 243—Sand valves—Notice of defects in machinery—Provident society—Contract indemnifying employer—Indemnity and satisfaction—Lord Campbell's Act—Art. 1056 C. C.—Right of action.

The "sander" and sand-valves of a railway locomotive, which may be used in connection with the brakes in stopping a train, do not constitute part of the "apparatus and arrangements" for applying the brakes to the wheels required by s. 243 of the Railway Act of 1888.

Failure to remedy defects in the sand-valves, upon notice thereof given at the repair shops in conformity with the company's rules, is merely the negligence attributable to the company itself; therefore, the company may validly contract with its employees so as to exonerate itself from liability for such negligence and such a contract is a good answer to an action under article 1056 of the Civil Code of Lower Canada. *The Queen v. Grenier*, 30 S.C.R. 42, followed.

GIROUARD, J., dissented on the ground that the negligence found by the jury was negligence of both the company and its employees.

Judgment of King's Bench, Q.R. 12 K.B. 1, affirming judgment in review, Q.R. 21 S.C. 346, reversed. Appeal allowed with costs.

Lafleur, K.C., and *Beckett*, for appellants. *R. C. Smith*, K.C., and *Montgomery*, for respondents.

Que.] WINTELER *v.* DAVIDSON. [Dec. 9, 1903.

Appeal—Amount in dispute—Future rights.

In an action en separation de corps, the decree granted separation and ordered the husband to pay $1,500 per year alimony. It was paid for some years and the husband having died his widow brought suit to enforce

payment from his universal legatees. The Court of King's Bench having reversed the judgment of the Superior Court in her favour she sought to appeal to the Supreme Court of Canada.

Held, that as she was only entitled to one year's alimony when the suit was commenced the appeal would not lie notwithstanding the fact that if she had succeeded in the King's Bench she could have executed the judgment for more than $3,000. The amount demanded establishes the right to appeal and if that is less than $2,000 it will not lie though more than $2,000 may be recovered.

Held, also, that future rights were not bound by the judgment appealed from by reason of its effect on her right to further payment of the alimentary allowance. Appeal quashed with costs.

Lafleur, K.C., for motion to quash. *Hibbard*, contra.

Que.] CITY OF MONTREAL *v.* LAND & LOAN CO. [Dec. 9, 1903.

Appeal—Amount in dispute—Assessment—Title to land.

In proceedings by the City of Montreal to collect the amount assessed on defendant's land an opposition to the seizure alleging that the claim was prescribed was maintained and the city sought to appeal to the Supreme Court.

Held, that there was nothing in controversy between the parties but the amount assessed on defendants' land and that being less than $2,000 the Court had no jurisdiction to entertain the appeal. Appeal quashed with costs.

Elliott, for motion to quash. *Atwater*, K.C., contra.

Province of Ontario.

COURT OF APPEAL.

Full Court] CANADIAN OIL FIELDS *v.* TOWN OF ENNISKILLEN. [Jan. 25.

Assessment Act—Piping—Scrap iron—Land of companies.

Held, that the provisions of section 18 of the Assessment Act as amended by 2 Edw. VII, c. 31, s. 1, relating to the assessment of the land of certain companies, only applies to companies of the specific description therein mentioned, and therefor do not apply to such a company as the Canadian Oil Fields Limited, carrying on the business of procuring and transmitting crude petroleum.

Shepley, K.C. for Company. *Hellmuth*, K.C. for Township.

HIGH COURT OF JUSTICE.

Cartwright—Master.] A. *v.* B. [Dec. 29, 1902

Particulars—In action for seduction—Before defence filed—Cross-examination on affidavit denying plaintiff's allegations.

In an action for seduction where the defendant denied upon affidavit the plaintiff's allegations, an order for particulars to be given by the plaintiff was made before the defence was filed.

Knight v. *Engle* (1889) 61 L.T.R. 780, followed.

Such affidavit being filed as an evidence of good faith only and it not being the duty of the Court to determine on the motion the truth of the facts deposed to an enlargement of the motion for cross-examination was refused.

Middleton, for the motion. *T. J. Blain*, contra.

Teetzel, J.] [Jan. 29.

RE ARBITRATION BETWEEN TOWNSHIP OF WATERLOO AND TOWN OF BERLIN.

Municipal corporations—Extension of sewers from one municipality to another—Acquisition of necessary land—Arbitration or agreement—Conditions precedent—Uncertainty—"Terms and Conditions" as between municipalities—Reference back.

Arbitrators appointed to determine under s. 555 of the Municipal Act 1903, 3 Edw. VII, c. 19 (O), the terms and conditions upon which the extension of sewers of a town into an adjacent township should be made and whether such extension should be permitted, awarded as follows:—"That the said town of B. may enter upon take and use any land in the adjacent or contiguous municipality of the said township of W. in any way necessary or convenient for the purpose of providing an outlet for the main outfall sewer of B. and for extending the main outfall sewer of B. into or through the Township of W. and for the purpose of establishing works or basins for the interception or purification for sewer in said township and for making all necessary connections therewith but subject always to the compensation to persons who may suffer injury therefrom."

Held, that the acquisition of lands in the adjoining township is not a condition precedent to the arbitration but that the arbitration or agreement between the municipalities as to terms and conditions is a condition precedent to the dominant municipality exercising the power of expropriation of private property in the servient municipality: But

Held, that the authority of the arbitrators under section 555 to pass upon the extension of a sewer into the territory of another municipality and also the terms and conditions of such extension is predicated upon the idea

that certain specific territory or course of the extension is contemplated and that the award was void for uncertainty: And

Held also, that the words "the terms and conditions" in section 555 upon which the extension is to be made means more than the mere provision for compensation to persons who may suffer injury therefrom, which is provided for in section 554, and that the arbitrators had ignored the provisions of the Act is not determining "the terms and conditions" as between the municipalities and had failed to decide on all the matters referred to them for determination and the award was bad, and was referred back to the arbitrators.

Du Vernet for the township. *Clement*, K.C., for the town.

Divisional Court] RUTTAN *v.* BURK, [Feb. 1.

Assessment and taxes—Omission to furnish list of lands to be sold—Limitation sections—Assessment Act, R.S.O. 1897, c. 224, ss. 208. 209—Port Arthur Special Act, 63 Vict. c. 86 (O.)—Conveyance by owner after sale—32 Hen. VIII. c. 9—Repeal of Act after action brought.

The omission of the treasurer of the municipality to furnish to the clerk a list of the lands liable to be sold for taxes is a fatal objection to the validity of a sale for taxes, and neither the limitation sections of the Assessment Act nor the provisions of the special Act, relating to sales for taxes in Port Arthur, 63 Vict. c. 86 (O.) are a protection to the tax purchaser.

The owners of land sold for taxes conveyed it after the tax sale to the plaintiff, who then brought an action against the tax purchaser to set aside the sale. The statute 32 Hen. VIII, c. 9, was in force when the conveyance was made, and when the action was brought but, was repealed before the trial of the action.

Held, that the prohibition of the statute applied, and that the action could not be maintained. Judgment of Ferguson, J., affirmed.

Clute, K.C., for appellant. *Anglin*, K.C., for respondent

Trial, Meredith, C. J. C. P.] COULTER *v.* EQUITY FIRE INS. CO. [Feb. 2.

Fire insurance—Interim receipt—Estoppel—Statutory conditions—R.S.O. 1897, c. 203, s. 168.

Action on an interim receipt of the defendants to recover in respect of a fire which occurred Oct. 23, 1902. The plaintiffs through an agent of the defendants verbally applied, Nov. 7, 1901, for an insurance for one year, and the defendants accepted the risk for one year, at a premium of $33.60, and gave an interim receipt, which however, provided in terms that the insurance should be for 30 days only. On Nov. 30, 1901, the plaintiffs paid a full year's premium to the agent, and believed themselves insured for the whole year. According to his usual course of dealing with the defen-

dants, the agent did not pay over the premium to the latter till Jan. 20, 1902, who accepted, knowing for what it was paid. They did not, however, issue a policy, and after the fire had occurred repudiated liability, on the ground that they had only insured the plaintiffs for 30 days.

Held, that the defendants were liable, for if they intended to treat the insurance as terminated at the end of 30 days, it was their plain duty to have so informed the plaintiffs, and returned them a proper proportion of the premium paid, and not having done so they were legally, as well as morally liable both by virtue of the second statutory condition, R.S.O. 1897, c. 203, s. 168. (2). and also on the ground of estoppel.

Riddell, K.C , and *John Greer*, for plaintiffs. *Watson*, K.C. for defendants.

Ferguson, J.] IN RE BAR *v.* MCMILLAN [Feb. 8.

Division Courts—Judgment summons—Form of affidavit—R.S.O. 1897, c. 60, s. 243—Prohibition.

An affidavit, by a plaintiff in a Division Court action desiring to issue a judgment summons, stating that "the sum of $65.10 of the said judgment remains unsatisfied as I am informed and believe", the judgment being for more than $65.10, is not such an affidavit as is required by s. 243, of the Division Courts Act, R.S.O. 1897, c. 60, and prohibition will lie to restrain proceedings upon a judgment summons issued pursuant to such an affidavit.

Middleton, for defendant. *Gamble*, for plaintiff.

Divisional Court] CITY OF TORONTO *v.* TORONTO RAILWAY CO. [Feb. 9.

Interest—Contract—Sum certain—Rental of track—Interest by way of damages—Demand of payment.

By the agreement in question in the action the defendants agreed to pay to the plaintiffs $800 per annum per mile of single track and $1600 per mile of double track occupied by the defendants' railway, not including "turnouts", in four equal quarterly instalments on the 1st of January, April, July and October in each year. Disputes arose between the parties as to the meaning of the word "turnouts" and as to what tracks were to be measured and as to the manner in which they were to be measured, and this action was brought in reference to these questions and was finally determined on appeal to the Judicial Committee. In the result the contention of neither party was given effect to, the mileage in respect of which rental was payable being held to be less than that contended for by the plaintiffs and greater than that contended for by the defendants. The plaintiffs had from time to time demanded payment of the sums payable

to them according to their construction of the agreement. The mileage and the sums consequently payable were fixed by the Master in accordance with the principles laid down in the judgment.

Held, that the defendants were bound at their peril to ascertain the sums properly payable and to pay or tender these sums to the plaintiffs; that not having done so the plaintiffs were entitled to interest upon these sums from the times at which they should have been paid; not, under s. 114 of the Judicature Act, R.S.O. 1897, c. 51, as being sums certain payable by virtue of a written instrument at certain times capable of ascertainment by arithmetical computation, but upon the ground that the case was one in which it would have been usual for a jury to allow interest and therefore within section 113 of that Act.

Bicknell, K.C., for defendants. *Fullerton*, K.C. and *Chisholm*, for plaintiffs.

Divisional Court] IN RE SYDENHAM SCHOOL SECTIONS. [Feb. 12.

Public schools—Alteration of school sections—Appeal from township council—Powers of arbitrators—By-law altering school sections—Description of lots.

An appeal by the petitioners from the judgment of STREET, J., reported 6 O.L.R. 417, was argued before a Divisional Court (MEREDITH, C.J.C.P., MACMAHON and TEETZEL, JJ., on Feb. 12, 1904, and at the conclusion of the argument for the appellants was dismissed, the Court agreeing with the reasons given in the judgment appealed from.

Tucker, for appellants. *Rowell*, K.C. for respondents.

Boyd, C., Ferguson, J., Meredith, J.] [Feb. 12.

FENSON *v.* C.P.R. Co.

Railways—Cattle on track—Fences—Running at large—Crown lands—53 Vict., c. 28, s. 2 (D).

The Act respecting Railways, 53 Vict., c. 28, s. 2, (D). enacts that, if in consequence of the omission or neglect of a railway company to erect, complete and maintain a fence, "any animal gets upon the railway from an adjoining place where under the circumstances it might properly be, then the company shall be liable to the owner of every such animal for all damages in respect of it caused by any of the company's trains or engines."

The plaintiff's cattle running at large in a municipality under one of the by-laws of which they were permitted so to do got upon Crown lands, and from the Crown lands on to the railway and were killed on the track by one of the defendant's trains.

Held (MEREDITH, J., dissenting), that by virtue of the by-law permitting running at large, the cattle were properly on the Crown lands, and hence the defendants were liable under the above enactment. Such a by-law affects all unenclosed lands, and under it cattle may properly depasture and ramble over all open lands, wastes or commons, even if owned by the Crown, if no objection is taken thereto and no barrier or fences be erected against them.

Per MEREDITH, J., Municipal bodies have no such ownership or control over private property or Crown lands as to enable them to give a right to the cattle in question to be upon the lands from which they strayed on to the railway track, and the cattle were trespassers thereon and the defendants therefore not liable. There are no commonable rights in Crown lands.

J. H. Clary, for plaintiffs. *D'Arcy Scott*, for defendants.

ELECTION CASES.

Maclennan, J.A.] IN RE HURON VOTERS' LISTS. [Jan. 27.

Parliamentary elections—Voters' lists—Revision of lists—Correction of lists—Complainant—Posting up lists—Time for objecting—Deputy registrar of deeds.

A person resident in, and entitled to be placed upon the manhood suffrage register for a town forming part of an electoral district is entitled to require the revision, under s. 13 of the Ontario Voters' Lists Act, R.S.O. 1897, c. 7, of the voters' lists for another municipality forming part of the same electoral district, and is also entitled to require the subsequent revision of such lists provided for by ss. 22 and 23 of the Ontario Voters' List Act, R.S.O. 1897, c. 7.

A deputy registrar of deeds is not entitled to vote at an election of a member of the Legislative Assembly of Ontario for the electoral district in which he is acting as such deputy registrar, and is not entitled to be placed on the voters' lists in such district.

The date mentioned by the clerk of the municipality in the advertisement published by him pursuant to s. 12 of the Ontario Voters' Lists Act, R.S.O., 1897, c. 7, as that upon which the voters' lists have been posted up in his office, is the date from which the time for taking proceedings, limited by s. 17, runs, even though the clerk has in fact posted up the lists some days before the date named in the advertisement.

Proudfoot, K.C., appeared for certain electors interested.

Province of Manitoba.

KING'S BENCH

Perdue, J.] MACNEER *v.* SANFORD. [Jan. 12.

Principal and agent—Misrepresentation of authority of agent—Liability for—Measure of damages.

Action against executors for specific performance of alleged agreement for the sale of land by them to plaintiff, and in the alternative against Riley, one of the executors for damages for misrepresentation of his authority to make a contract of sale that would be binding on all the executors who were three in number. The learned judge found the facts as follows: The property in question was valued by the executors at $750 and they were offering it for sale at that price. An offer in writing to buy it for that sum was made on behalf of the plaintiff to Riley who accepted the offer and caused a formal agreement of sale by the executors to the plaintiff to be drawn up on a form used by the executors and embodying the full terms and conditions of the sale. This agreement was forwarded in a letter signed by Riley to the plaintiff to be executed by him. The plaintiff did so and returned it to Riley with a cheque for the cash payment agreed on. It afterwards turned out that Riley had no power to bind the executors; but if he had there was an agreement of sale sufficient u der the Statute of Frauds to bind the executors. The executors refused to carry out the sale as the land had increased in value.

Held, that Riley was liable to the plaintiff for the damages suffered by him in consequence of his relying on the misrepresentation of Riley that he had authority to make a sale for the executors.

Collen v. *Wright*, 7 E. & B. 301; 8 E. B. 647; *Halbot* v. *Lens* (1901) 1 Ch. 344, and *Starkey* v. *Bank of England* (1903) A.C. 114, followed.

Held, also, that such damages were to be measured by the loss of the profit that the plaintiff would have realized if the sale had been carried out, with an additional allowance for his time and trouble expended in the matter. Judgment for payment by Riley of $150 damages and costs of the action, without any set off of costs by either defendants; and action dismissed without costs as against the other executors.

Anderson and *Hudson*, for plaintiffs. *Aikins*, K.C., for Riley. *Robson*, for executors.

Province of British Columbia.

SUPREME COURT.

Irving, J.] [Oct. 28, 1903.

BYRON N. WHITE CO. *v.* SANDON WATER AND LIGHT CO.

Act of incorporation—Taking possession—Consent—Laches—Injunction not proper remedy.

The defendants were an incorporated company for the purpose of supplying water and electric light for the town of Sandon. They went to plaintiffs' property and erected dams, flumes and tanks for water power purposes. The manager, the men and local officers of the plaintiffs passed by from day to day the works of the defendants on such grounds without objection being taken. The act of incorporation authorized the defendants to go upon the lands of all persons for the purpose of their works after they had complied with s. 9, as follows: "but the powers (other than the powers to enter, survey, and set out and ascertain what parts thereof are necessary for the purposes aforesaid or for making the plans hereinafter mentioned) conferred by this section shall not be exercised or proceeded with until the plans and sites of the said works have been approved by the Lieutenant-Governor in Council." This sanction the defendants did not obtain until March 25, 1902, but prior to this action being commenced. Sec. 13 of the act of incorporation further provided for the ascertaining by arbitration of the amount of all damage done.

Held, notwithstanding the above provision as to taking possession, that the defendants did take possession of the property in dispute in the fall of 1897 and erected an electric light plant to supply the town of Sandon with light, and that no objection was taken by plaintiffs until the spring of 1902. "And further that I think the plaintiffs were guilty of laches, having stood by and permitted the defendants to incur expense. It is quite apparent that what the plaintiffs wish to do is to remove the defendants off their ground in order to take advantage of its favourable situation. An injunction cannot be granted because the defendants are now in a position by virtue of the permission obtained from the Lieutenant-Governor in Council to take possession of that property. Since the 25th of March they are rightfully in possession of this property. The plaintiffs should have appointed an arbitrator under the provision of the defendants' act, and in that way have determined the value of the property taken from them." Action dismissed with costs.

John Elliott and *R. S. Lennie* for plaintiffs. *S. S. Taylor*, K.C., for defendants.

Full Court] ELLYN *v.* CROW'S NEST PASS COAL CO. [Nov. 6, 1903.

Practice—Test action.

Appeal from an order of Forin, Lo. J., consolidating this and 43 other actions with one other action, which had been selected out of 29 other similar actions for trial as a test action. Forty-four actions were brought by different persons against defendants for damages caused by the death of relatives in an explosion extending over a large area of defendants' coal mine, and plaintiffs applied to consolidate these actions with twenty-nine other actions, one of which had been chosen as a test action. On account of workmen who were killed not all being of the same class and also on account of the different conditions in the different parts of the mine where death occurred the defendants contended that one action would not be a fair test of all the others.

Held, that the defendants should have the right to select four actions as test actions for those of the same class. Order of Forin, Lo. J. set aside. Appeal allowed, costs in the cause.

Bodwell, K.C., for appellants. *S. S. Taylor*, K.C., for respondents.

Full Court.] HOPKINS *v.* GOODERHAM. [January 25.

Master and servant—Dismissal of servant—Breach of contract—Damages—Action before expiration of term for which engagement was made—Practice — Condition precedent — Rule 168—Evidence—Wrongful rejection of—Duty of counsel to put evidence squarely before judge—New trial.

Appeal from judgment in plaintiff's favour in an action for damages for wrongful dismissal. The plaintiff, who had been engaged for one year from August, 1902, by defendants at a monthly salary, was dismissed wrongfully, as the jury found, in December. He sued for damages for breach of contract, and the action was tried in May, 1903:—

Held, by the Full Court, affirming the judgment entered at the trial, that plaintiff was entitled to recover damages covering the unexpired term of his engagement.

The statement of claim alleged a contract of hiring plaintiff as superintendent of a mill arising from two letters, without setting them out, and without alleging the continuance of the construction of the mill, which was one of the conditions stated by defendants in their second letter. The defence denied the allegations in the statement of claim, and alleged the contract was contained in the second letter.

Held, that it was not necessary for the plaintiff to prove the continuance of the construction of the mill.

Where a party seeks a new trial on the ground of wrongful rejection of evidence he should shew that the evidence sought to be adduced was put squarely before the judge so that his mind was applied to the point. Appeal dismissed.

A. C. Galt, for appellant. *C. R. Hamilton*, for respondent.

Full Court.] SILLA *v.* CROW'S NEST PASS COAL CO. [January 25.

Practice—Test actions—Consolidation of actions—Plaintiffs in some actions outside jurisdiction—Security for costs—Waiver.

Appeal by plaintiff from an order for security for costs of action. Twenty-nine actions by different plaintiffs were commenced against defendants at one time, and subsequently forty-four similar actions were commenced. One action known as the *Leadbeater* action was ordered to be tried as a test action for the twenty-nine, and afterwards by consent four actions out of the forty-four were consolidated, by order of the Full Court, with the *Leadbeater* action and ordered to be tried as test actions for the whole seventy-three. In the *Leadbeater* action, and in one of the four remaining test actions, the plaintiffs resided in the jurisdiction and in the other three they resided outside the jurisdiction:—

Held, by the Full Court, reversing Irving, J., that the plaintiffs outside the jurisdiction should not be required to give security for costs.

S. S. Taylor, K.C., for appellant. *E. P. Davis*, K.C., for respondents.

Full Court] LEADBEATER *v.* CROW'S NEST COAL CO. [Jan. 25.

Practice—Examination of solicitor—Order for—Summons—Affidavit in support—Rule 383.

Appeal from an order of Irving J., requiring the plaintiff's solicitors S.S. Taylor and W.R. Ross to attend for examination as to whether either of them had any interest in the subject matter of the suit.

There were several actions for damages brought against colliery owners by relatives of miners killed in an explosion and the defendants applied to add the plaintiffs' solicitors as parties, and while the summons was pending they obtained under r. 383 an order on summons, in support of which no affidavit was filed, for the examination of the solicitors as to what interest they had in the subject matter of the action.

Held, that the summons should have been supported by an affidavit shewing that it was probable that the solicitors had some interest in the subject matter of the litigation, and the order should not have been made as of course.

A subpoena under r. 383 cannot be issued without an order therefor. Appeal allowed, Drake, J. dissenting.

S.S. Taylor, K.C., for himself and co-appellant. *E. P. Davis*, K.C., for respondents.

Book Reviews

Commentaries on the Law of Master and Servant, by C. B. Labatt, B.A. (Cantab.) in three volumes. Vols. I. and II,—Employers' Liability; Vol. III,—Relation, Hiring and Discharge, Compensation, Strikes, etc. Canadian edition. Lawyers' Co-operative Publishing Co., Rochester, N.Y.; Canada Law Book Co., Toronto, Canada, 1904.

This "monumental work" is reviewed at length in our editorial columns by Mr. N. W. Hoyles, K.C., Principal of the Ontario Law School. Words of commendation from such a master of the subject and from such an impartial critic are indeed words of praise. A correspondent, himself an author of repute, referring to the above work makes this observation:—"Mr. Labatt's book is a splendid thing. I am amazed at such industry."

H. O'BRIEN.

A Text Book of Legal Medicine and Toxicology, edited by Frederick Paterson, M.D., and Walter S. Haines, M.D. Vol. II. Philadelphia, New York, and London: W. B. Saunders & Co. 1904. 1,500 pages.

We have already reviewed the first volume of this excellent work. (See ante vol. 39, p. 640). The editors and contributors occupy such a high position in the medical world that their names are a guarantee that the information given will be of the most accurate and useful character. The contributors to the second volume are twenty-four in number, each dealing with subjects in which they are recognized experts. Carefully executed illustrations lend their aid to the value of the work. Part I. discusses sexual disorders, infanticide, marriage and divorce, malpractice, etc. The concluding portion of the first part has a chapter on the medicolegal relations of the X-rays, a new subject, but one of great importance. Part II. treats of poisons, defining and classifying them, stating the conditions affecting their action, tests, etc., together with papers on post mortem examinations, medicolegel examination of blood stains and a variety of other subjects. Toxicology is discussed at great length and with careful minuteness and thorough research. Even to the layman this part of the work is of much interest, whilst to professional men, who, in the course of their practice, have occasionally to read up matters treated of in this work, the information given is invaluable

The American Law of Landlord and Tenant, by John N. Taylor, 9th ed., revised by Henry F. Buswell. Vols. I. and II. Boston: Little, Brown & Co. 1904. 1,130 pages.

Little need be said as to the value of such a well-known standard text book as this. Similarity of circumstances between ourselves and our

friends south of us renders treatises on this important and every day subject almost as useful in Canada as in the United States, especially when the English authorities are called. We think the author, or rather the present editor, might with great advantage to his readers, have used material to be found in our Canadian reports, but this he does not seem to have done. This edition has been subjected to a critical revision, and many of the notes have been collated and condensed. For fifty years this book has held a foremost place; and the modern development of the law of landlord and tenant may be interestingly noticed by a comparison between the various editions.

Obituary.

EDWARD MARTIN, K.C. D.C.L.

This well known and highly esteemed gentleman, who died at Hamilton, Ontario, on the 14th ult. was the son of Richard Martin, M.A. T.C.D., for many years Sheriff of the County of Haldimand. The family to which he belonged was one of the oldest and most respected in the County of Galway, Ireland. The deceased was born in 1834 at Derryclare, his father's residence. Choosing the legal profession, he was called to the Bar in 1855, and up to the time of his death was in active practice in the City of Hamilton. Mr. Martin was appointed a Queen's Counsel for Ontario in 1876, and for the Dominion in 1885. He was one of the oldest Benchers of the Law Society for Upper Canada, and President of the Hamilton Law Association since 1890. Not only was Mr. Martin well known as a learned and successful lawyer, but he took a deep interest in matters connected with the affairs of the Church of England of which he was a member; and was appointed the first Chancellor of the Diocese of Niagara in 1876, an office which he held until his death. He was also a member of the Corporation of Trinity University. A man of independent mind and thought, he joined the Equal Rights movement of which such men as the late Dalton McCarthy, K.C., Col. O'Brien, Principal Caven, E. Douglas Armour, K.C., were some of the exponents. His five sons followed their father's choice of a profession: Kerwan Martin of Hamilton, Mr. Justice Archer Martin of Victoria, B.C., Darcy Martin of Hamilton, Alexis Martin of Victoria, B.C., and Frederick Martin of Sault Ste. Marie. At a special meeting of the Hamilton Law Association, a resolution was carried expressing their regret at the death of their late President who "for many years presided with care and judgment over the affairs of this Association and gave much valuable time and services to the promotion of its interest. . . . His high character and great legal ability were recognized throughout the whole Province, and his reputation placed him in a prominent

position amongst the members of the Ontario Bar". Of his personal character it is truly recorded in one of the papers in his own City that he was "one of the most companionable men, and his natural dignity blended well with the geniality and the gentle courtesy that endeared him to a large circle of friends and acquaintances. He was one of the men who radiate kindness and who win respect by modest worth". A high-minded honorable man and a staunch and genial friend his loss will be great to those who knew him.

Flotsam and Jetsam.

Lord Alverstone and the Colonial Secretary:—It is useless for any British statesman to attempt to persuade us that Lord Alverstone treated our Commissioners with courtesy and fairness, or that he did not depart from the letter of his oath to render a judicial decision on the point at issue. For some time we suspended judgment. Mr. Aylesworth and Sir Louis Jette had made their serious and formal accusation over their signatures in the most official and public manner; and we, with sensible self-restraint, awaited his reply. But when he refused to accord us the courtesy of an explanation, we no longer suspended judgment; and now our opinion has hardened into an historic certainty that two islands were taken from us and given to the Americans by the British Commissioner in violation of his oath and with the purpose of propitiating the big Republic at our expense. Thus, the best thing that Colonial Secretaries in future can do is to leave the matter alone. A full explanation from Lord Alverstone now would be late, but it would be listened to. Nothing else, however, can make any headway at reopening the case. Least of all we are in a mood to hear with patience eloquent praise of the intellectual qualities and high character of Lord Alverstone. We had rather judge for ourselves these intellectual qualities in the defence of his conduct which he should have written long ago, as we have already formed our opinion of the high character of a man who takes an oath to give a judicial decision, and then does nothing of the kind, and who agrees with two Canadian colleagues to pursue a certain definite course, and then takes another without even letting them know of his intended breach of faith.—*Toronto News.*