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THE LEGAL ASPECT OF RACE SUICIDE.

REX v. JACKSON.

At the May assizes held in Orangeville a man named Jackson pleaded guilty to the offence of unlawfully administering drugs to a woman with the intent of procuring a miscarriage. Under the Criminal Code of Canada he became liable to a maximum penalty of imprisonment for life, but as a matter of fact he was released on suspended sentence on giving a bond for $1,000 to appear when called upon. As the presiding judge said in addressing the jury, he "might never be called upon," and there can be little doubt that so long as he keeps himself clear of the criminal law in the future, no sentence will ever be imposed upon him.

A druggist, one Douglas, from whom the drugs are alleged to have been procured, is under indictment for the same offence, but it is stated that as he has already been used as a Crown witness against Jackson, no further proceedings will be taken against him. These circumstances have caused a good deal of excitement, and it is said some indignation, in Orangeville and the surrounding country, and assertions have been freely made in the newspapers that there has been, or is likely to be, a gross miscarriage of justice in the case of both Jackson and Douglas, and the Crown authorities have been admonished in no measured terms that the best thing they can do is to repair their alleged errors, as far as possible, by calling up Jackson to receive a punishment adequate to the crime of which he has pleaded guilty, and by proceeding against Douglas with the utmost rigour of the law. The case has unfortunately acquired to some extent a political importance, and assertions are freely bandied about by leading Toronto journals of both parties, one of which accuses the Attorney-General and the prosecuting counsel of giving an explanation which is "not only weak and inconsequent, but in every phrase of it sus-

picious," and assures its readers that "the people of Orangeville mock at this statement," and "refuse to rest assured that no consideration other than those of the interests of justice influenced the decision." The organs of the other party are not slow to retaliate on their opponents with accusations of adopting the methods of "yellow journalism" and discrediting for unworthy ends the fair fame of Canadian justice.

Into the political Donnybrook it need scarcely be said that this Journal does not propose to enter, but it is our duty to endeavour to point out as clearly as possible the true nature of the issues involved in a case like the present, which is so liable to be affected by the prejudices and passions of men.

We think, then, the public and profession will agree with us in repudiating any imputation that may have been cast upon the absolute good faith and integrity of the presiding judge and the prosecuting counsel, who were responsible for the Crown's action in the case of Jackson. The grounds of that action are not far to seek, and are such as have been not unfrequently acted upon in former cases of a similar nature, viz.: the great difficulty in obtaining satisfactory evidence of the crime, and the equally great difficulty of obtaining a conviction from a jury in such a case, even on the plainest evidence and the clearest instruction from the Bench. In this case the Crown counsel was disappointed in the evidence given by some important witnesses; and, as a conviction was apparently impossible, he thought it was better in the interests of the public that the prisoner should be allowed to plead guilty and then to go on suspended sentence, than that he should be acquitted and go free of the stigma of guilt, as well as its legal punishment. It may well be doubted whether upon the whole this mode of dealing with such cases is desirable, but it is one which has been often acted upon by those who have had in their guardianship the interests of British justice, by men whose characters are above suspicion and whose opinions are entitled to respect. Such bargains are in the public mind inconsistent with and detract from the dignity and forcefulness of the criminal law, but no hard and fast rule can be laid down.

As to the other branch of the case, viz.: the action of the Crown as regards Douglas, it would be impossible to say anything definite at present, as his case has not yet been disposed of.* It should be pointed out, however, that if, as appears to be the fact, Douglas was used as a Crown witness against Jackson before the grand jury, and in the proceedings for his extradition, it would not be in accordance with the traditions of British justice; nor, we may add, with the public policy on which these traditions are founded, that such a witness should thereafter be prosecuted, so long as it appeared that he had told the truth. It is no doubt lamentable that guilty persons should go free because they have assisted in bringing their associates in guilt to justice, but to all such considerations the honour of the Crown and the interest of the Commonwealth must be paramount.

One benefit which may result from the discussion of the painful and repulsive details of this case, is that it may call pulbic attention in a forcible way to the prevalence of certain evils, which were referred to by Chief Justice Falconbridge in his remarks to the jury when referring to the case, from the newspaper report of which we make the following quotation: "This is the sort of offence that is said to be very prevalent. It is said to be practised in the neighbouring republic and in our own country—that is what is known as race suicide. It is an abominable practice and those abetting it ought to consider their responsibility."

It is no part of our duty as editors of the *Law Journal* to discuss the subject of "race suicide" in its moral, social and religious aspects, and this is the less necessary as this great and vital question has been receiving of late much attention from the press and public, and from men of commanding influence such as President Roosevelt and others. There are indications not a few that the false delicacy which has so long hindered the full discussion of the pressing problems involved in the interpretation and application of the Sixth and Seventh Commandments, is being replaced, and not too soon, by the fearless utterances of men who see clearly that the present prevailing ignorance and

* NOTE.—Since the above was written, the Crown has taken the usual course and Douglas has been set at liberty.

low standard of public opinion with regard to these matters, is the fruitful nurse of evils, alike to the individual and the body politic, compared with which the deadly results of intemperance itself, terrible as they are, sink into insignificance.

It is here that we must look for the real cause of such failures of justice as have occurred in the Orangeville case and many others of similar nature. The remedy is to be found in a truer appreciation by the public and by individuals of the heinous nature of all such practices, and of the deep guilt of all who in any way aid or abet them. All such persons may well, as the judge says, "consider their responsibility" for acts which are not merely breaches of the Divine law which so sternly denounces them in the Decalogue, but also of the law of England which still echoes in prohibition and penalty the unchangeable command, "Thou shalt not kill." When the consciences of the "patients" as well as of doctors and druggists, and of those who are called on to do their part in the administration of justice as witnesses and jurymen, become more alive to these considerations, we shall have less fear of being confronted by such a glaring anomaly in the practical working out of our criminal law as the result of the Orangeville case.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Much has been said and written of late about the Judicial Committee of the Privy Council both as to its usefulness as the ultimate Court of Appeal for the colonies, and as to some defects in the procedure and the expense attending it.

It was not unnatural that these matters should have been referred to by the Premiers from over the sea at the gathering which has recently taken place in London—a conference by the way which will be a notable milestone in the history of the Empire. It will be interesting to those who have not kept track of these proceedings to read the following summary of the discussion in reference to the Judicial Committee taken from the issue of the *Law Times* for May 4:

"The Commonwealth of Australia proposed, through its representatives, the formation of an Imperial Court of Appeal.

The Government of Cape Colony suggested a resolution of much greater length calling for the establishment of a definite Code of rules and regulations, the removal of anachronisms and cause of delay, and the equalization of the conditions giving a right of appeal to His Majesty. It was also proposed that, to remove uncertainty and expense, some portion of the Royal prerogative to grant special leave to appeal should be delegated, under definite rules and restrictions, to the discretion of local courts. The Conference adopted the Australian proposition, and accepted substantially that of the Cape Colony. The suggestion, however, as to local courts was omitted General Botha supported the idea that when a Court of Appeal has been established for any group of colonies geographically connected, whether federated or not, to which appeals lie from their Supreme Courts, the Legislature of each colony can abolish any existing right of appeal to the Judicial Committee; that the decision of such Court of Appeal should be final as a rule, but that in special cases to be prescribed by statute a leave to appeal may be granted; and that the right of any person to apply to the Judicial Committee for leave to appeal to it should not be curtailed. This was also accepted. In these resolutions and in their acceptance we may find some explanation and justification of complaints not infrequently heard of late. Mr. Deakin was sufficiently explicit in his observation that the Privy Council was not altogether acceptable in Australia. Sir Joseph Ward on behalf of New Zealand indicated that there is insufficient knowledge of the colonial law here, and he suggested that a judge of the Supreme Court of the colony should sit with the Judicial Committee to strengthen and advise it in this particular. This point was naturally further pressed in the case of South Africa, where the Roman Dutch law prevails. The general upshot of the debate seems to be an admission that reforms are necessary, but that further consideration is requisite for adapting the machinery to the proposed changes. The Lord Chancellor expressed an opinion that the abolition of the Judicial Committee would not be an advantage, and that its fusion with the House of Lords had not been as yet adequately discussed. These debates will proba-

bly end in some modifications of the existing arrangements which may eventually lead the way to the formation of an Imperial Court of Appeal. While difficulties of substance must inevitably be discovered, it is to be hoped that artificial obstacles may not be thrown in the path of those who desire to see the Empire's legal affairs more co-ordinated and simplified."

It is manifest that some changes in procedure are necessary. It is also desirable that, as far as possible, there should be a lessening in the expense of going to the "foot of the throne"; some modifications moreover, may be required to meet the needs of different colonies. But whilst all this may be true we are strongly in favour of the continuance of the right of appeal now enjoyed—a right which has been a great benefit in the due administration of justice in the past, and which is an appropriate and helpful link in binding together the various parts of our great and strangely constituted Empire.

It seems strange, but it is a fact, that at this late date the English Courts cannot take judicial notice of colonial and Indian statutes in the same way as they do of those of the Mother Country. For many purposes colonial law is considered as being in the same position as foreign law and provable by evidence of a lawyer from that colony. The measure now before the English Parliament is that Government printers' copies of colonial and Indian statutes shall be received as evidence without further proof, and it is made a felony to print or tender in evidence a false copy of such law.

Those who are interested in the subject of appeals as to matters of fact in criminal cases will read with interest an article in the May number of the *Law Magazine and Review*. The writer intends this to be a reply to a pamphlet by Sir Harry Poland, K.C., and Mr. Herman Cohen on the English criminal appeal bill, 1906. We have already expressed our opinion on this matter and given our readers the benefit of what is spoken of in the article before us as the "great speech of Lord Alverstone" on this subject (see 42 C.L.J. 582).

REVIEW OF CURRENT ENGLISH CASES.

PROBATE—PRACTICE—COSTS.

Spiers v. *English* (1907) P. 22, was a probate action in which the plaintiff claimed revocation of the probate on the ground that the will had been obtained by undue influence. The plaintiff failed in the action, but claimed that the costs should be paid out of the estate because the defendant had obtained the will, and the onus of proving its validity rested on him. In disposing of this question Barnes, P.P.D., said that such an order is made in cases, viz., when the litigator is occasioned by the testator, or by persons interested in the residuary estate. But though the circumstances are such as to reasonably lead to investigation, then the Court leaves the costs to be born by those who have incurred them. In the present case the testatrix was supposed to be a pauper, and the will had been procured to be made by the defendant who was the relieving officer, under that supposition; but it had turned out after her death that she had some £1,200 in a savings bank. The costs were left to follow the event.

WILL—REVOCATION—INCONSISTENT WILLS — INTENTION — PROBATE.

Re Bryan (1907) P. 125, was an application for probate and the question was whether or not two inconsistent wills were to be together admitted to probate, or whether the later will was not to be regarded as revoking the prior will. The earlier will had disposed of the whole estate of the testatrix, but the later will while repeating some of the bequests contained in the former will was in other respects inconsistent with the first will, and did not dispose of the residue, and did not expressly revoke the earlier will. Barnes, P.P.D., held that the question as to whether there is, or is not, a revocation is to be gathered from a consideration of the substance and not merely the form of the testamentary documents, and where the intention remains in doubt upon the face of the documents, extrinsic evidence of the surrounding circumstances is admissible in order to place the Court as near as may be in the position of the testator at the time the last document was executed, but he also held that on the face of the documents alone in the present case, without resorting to any extrinsic evidence the second will impliedly revoked the earlier document.

COVENANT IN RESTRAINT OF TRADE—MASTER AND SERVANT—COMBINATION OF FIRMS—ENGAGEMENT OF SERVANT ON BEHALF OF COMBINATION—REASONABLENESS—INJUNCTION.

In *Leetham* v. *Johnston* (1907) 1 Ch. 323, the Court of Appeal (Farwell and Buckley, L.JJ.) have been unable to agree with the decision of Neville, J., (1907) 1 Ch. 189 (noted ante, p. 355. The Court of Appeal came in this conclusion on the ground that a covenant in restraint of trade cannot be validly made in gross, but only for the protection of the particular business in which the warrantee is employed as a servant; and that therefore notwithstanding the contract for service was made on behalf of the associated firms, yet it was a contract for the services of the defendant as a servant of only one of the subsidiary firms, and having regard to the business of that particular firm a restraint extending to the whole of the United Kingdom was too wide, and therefore wholly void.

SPECIALTY DEBT—MORTGAGOR—PAYMENT OF INTEREST BY DEVISEE OF MORTGAGED PROPERTY—TESTATOR'S GENERAL ESTATE—ACKNOWLEDGMENT — REAL PROPERTY LIMITATION ACT 1874 (37 & 38 VICT. c. 57), s. 8—(R.S.O. c. 133, s. 23).

In re Lacey, Howard v. *Lightfoot* (1907) 1 Ch. 330. The question raised in this case was whether the payment of interest to the mortgagee by a devisee of the mortgaged estate, would keep alive the mortgagee's claim as against the deceased mortgagor's general estate. Kekewich, J., thought that it would not, but the Court of Appeal (Williams, Farwell, and Buckley, L.JJ.) reversed his decision holding that such a payment was within the 37 & 38 Vict. c. 57, s. 8,—(R.S.O. c. 133, s. 23), and that the mortgagees were in consequence entitled to an order for the administration of the general estate.

TRUSTEE—BREACH OF TRUST—CHARGE ON SHARE OF BENEFICIARY —OMISSION TO GIVE NOTICE OF CHARGE TO TRUSTEE—ASSIGNMENT SUBJECT TO CHARGE—PAYMENT TO ASSIGNEE OF EQUITY OF REDEMPTION—NEGLECT OF TRUSTEE TO LOOK AT ASSIGNMENT—FRAUD—SOLICITOR—CONSTRUCTIVE NOTICE—JUDICIAL TRUSTEES ACT (59 & 60 VICT. c. 35), s. 3(1)—(62 VICT. c. 15, s. 1, ONT.).

In *Davis* v. *Hutchings* (1907) 1 Ch. 356, the plaintiff was a chargee on the share of a beneficiary in a trust fund, the equity

of redemption in this share had been assigned to the solicitor of the trustees, the assignment expressly reciting the prior charge of the plaintiff, no notice of which, however, had been given to the trustees. On the distribution of the estate the trustees relying on the statement of their solicitor that he was the assignee of the share, paid it over to him, without calling for, or examining the assignment under which he claimed: had they done so they would have had notice of the prior charge of the plaintiff. In these circumstances Kekewich, J., held that the trustees had been guilty of a breach of trust and were liable to make good to the plaintiff the amount of his charge, and that they could not be said to have acted reasonably so as to be entitled to relief from liability under 59 & 60 Vict. c. 35, s. 3(1). See Ont. Act, 62 Vict. (2) c .15, s. 1.

WILL—CHARITY—GIFT TO VICAR AND CHURCHWARDENS TO BE APPLIED "AS THEY SHALL THINK FIT."

In the case of *In re Garsard, Gordon* v. *Craigie* (1907) 1 Ch. 382, a testatrix by her will bequeathed £400 to the vicar and churchwardens for the time being of Kington to be applied by them in such manner as they in their sole discretion shall think fit. It was contended on behalf of the next of kin that this gift was void for uncertainty. Joyce, J., however, held that it was a good charitable gift for the benefit of the parish for ecclesiastical purposes.

LIFE TENANT — REMAINDERMAN — INVESTMENTS IN HAZARDOUS SECURITIES RETAINED BY TRUSTEES—INCOME.

In re Wilson, Moore v. *Wilson* (1907) 1 Ch. 394, was a case where a testator whose estate was largely invested in securities which would not be proper for trustees to invest in, bequeathed legacies, and his residue to a person for life. The trustees were expressly empowered to retain investments existing at the testator's death, and did so, and the question was whether the legatees and the tenant for life of the residue were entitled to the full amount of interest earned by the investments in hazardous securities, or only to interest at the rate of 4 per cent. per annum on moneys so invested. Eady, J., determined that so long as the trustees chose to retain the securities the legatees and tenant for life would be entitled to the full interest received in respect of such securities as were appropriated to the legacies, and residue respectively pursuant to a power in that behalf contained in the will.

WILL—RESIDUE—GIFT OF RESIDUE IN ALIQUOT SHARES—FORFEITURE CLAUSE—FORFEITED PART TO LAPSE INTO RESIDUE—DIVISION.

In re Wand, Escritt v. *Wand* (1907) 1 Ch. 391. A testator had disposed of his residue as follows as to 3/7th parts to a class of persons (hereafter called class A) as tenants in common, and 4/7th to another class of persons (hereafter called class B); and he provided that if a certain event happened in his lifetime the share of a certain member of class A should lapse and form part of his residuary personal estate. The event did happen and the question then arose in what proportions this lapsed or forfeited share should be divided, and Eady, J., held that it was divisible as follows, viz.: the remaining persons of class A were entitled to 3/7th and the members of class B were entitled to the remaining 4/7th of the share.

APPORTIONMENT—DIVIDENDS ON SHARES—COMPANY'S ARTICLES—EXPRESS STIPULATION AGAINST APPORTIONMENT—APPORTIONMENT ACT, 1870 (33 & 34 VICT. c. 35), s. 7—(R.S.O c. 170, s. 4).

In re Oppenheimer, Oppenheimer v. *Boatman* (1907) 1 Ch. 399. A testator bequeathed certain shares in a company to trustees to pay "the income arising therefrom" to his wife for life. The testator died on January 4, 1906. Sometime after his death a dividend for the financial year ending October 31, 1905, was declared. The full dividend for the next financial year had not been declared. The articles of the company declared that every dividend whether arising from past or current profits should "for all purposes be deemed to accrue and fall due upon the day on which it was declared," and that every dividend should belong and be payable to those members on the register when such dividend is declared. It was claimed that notwithstanding these provisions the Apportionment Act (33 & 34 Vict. c. 35), s. 7—(R.S.O. c. 170, s. 4) applied, and that the dividends were apportionable and that the testator alone could make an express stipulation against apportionment so as to exclude the Act, and this he had failed to do; consequently that the whole of the dividend for the year ending 1905 and also that portion of any future dividend arising in respect of profits earned prior to his death formed part of his undisposed of estate, and Eady, J., gave effect to this contention. Whether this effectuated the real intention of the testator may well be doubted.

PARTNERSHIP—PARTNERSHIP ARTICLES—CONSTRUCTION "PROFESSIONAL MISCONDUCT"—EVIDENCE—ORDER ERASING NAME FROM REGISTER—DENTIST'S ACT, 1878 (41 & 42 VICT. c. 33), ss. 13, 14, 15.

Clifford v. *Timms* (1907) 1 Ch. 420 was an action by the plaintiff for a declaration that the partnership between himself and the defendant as dentists had not been dissolved by a notice served by the defendant purporting to dissolve the same, and for an injunction to restrain the defendant from acting on such notice. The defendant alleged that the plaintiff had been guilty of professional misconduct and that under a provision in the articles of partnership he was entitled to, and had put an end to the partnership. The defendant tendered as evidence of the alleged "professional misconduct," the order of the Medical Council acting under the Dentist's Act to strike the name of the defendant off the register of Dentists for alleged professional misconduct, and a report of the Dental Committee on which the order was based: but it was held by Warrington, J., that neither the order nor the report were admissible to prove the alleged misconduct within the meaning of the articles, and on the facts he found that the plaintiff had not in fact been guilty of professional misconduct as alleged, judgment was therefore given in favour of the plaintiff. The learned judge however expressly refrained from any expression of opinion as to the propriety of the order of the Medical Council. The question and the facts before them being different from those presented in the present case.

FORECLOSURE ACTION—ACTION TO FORECLOSE PRINCIPAL CHARGE AND FOUR SUPPLEMENTARY CHARGES—OMISSION OF FIFTH SUPPLEMENTARY CHARGE—SUBSEQUENT ACTION TO FORECLOSE FIFTH CHARGE—RES JUDICAT.—SET-OFF OF COSTS—RULES 989, 1002(27)—(ONT. RULES 1161, 1165).

Bake v. *French* (1907) 1 Ch. 428 was an action to foreclose the equity of redemption in a charge on a reversionary interest of the defendant in certain property. The defendant had given a principal charge on the same reversionary interest and four other charges for subsequent advances and a prior action had been commenced to foreclose these charges, but by mistake the sixth charge now sued on had been omitted, a judgment had been pronounced in the first action for redemption or foreclosure and the defendant contended that this constituted a bar to the present

action and an application was made to stay the action, but Warrington, J., held that the former action in no way formed a bar to the present action and dismissed the application. Subsequently judgment was pronounced in this action for foreclosure and it was ordered to be consolidated with the prior action, and that the subsequent proceedings in both actions should be carried on as if they were one action. The plaintiff had previously applied to have the judgment varied in the first action by the inclusion of the sixth charge, but this application was dismissed with costs and he applied to Parker, J., to set-off the costs payable to him under the order of Warrington, J., in the second action, against the costs payable by him in the first action, but Parker, J., held that the two actions were independent proceedings up to the time of consolidation and that Rules 989, 1002(2) (Ont. Rules 1161, 1165) did not apply to costs incurred in independent proceedings so as to authorize a set-off to the prejudice of a solicitor's lien, but that the costs might be set-off against the costs payable under the consolidation order.

WILL—"BEQUEST OF PERSONAL PROPERTY DESCRIBED IN A GENERAL MANNER"—EXERCISE OF GENERAL POWER OF APPOINTMENT—GIFT OF STOCKS, SHARES AND SECURITIES—WILLS ACT, 1837 (1 VICT. C. 26, S. 27)—(R.S.O. C. 128, S. 29).

In re Jacob, Mortimer v. *Mortimer* (1907) 1 Ch. 445. A testatrix having general powers of appointment under a will, and marriage settlement over personal property which at the time of her death consisted of railway and colonial stocks bequeathed (subject to her husband's life interest) to her three sisters "all stocks, shares and securities which I possess or to which I am entitled." Her husband survived her, and the question presented for adjudication was whether or not the bequest in favour of the three sisters amounted under the Wills Act, 1837, s. 27—(R.S.O. c. 128, s. 29) to a valid execution of the powers in their favour as being "a bequest of personal property described in a general manner," and Parker, J., held that it was. He also held that the words "to which I am entitled" did not manifest a contrary intention, otherwise it would be difficult to apply s. 27.

FACTOR—MERCANTILE AGENT—AUTHORITY TO PLEDGE—CUSTOM OF PARTICULAR TRADE—FACTORS ACT, 1889, (52 & 53 VICT. C. 45) SS. 1, 2—(R.S.O. C. 150, S. 2).

In *Oppenheimer* v. *Attenborough* (1907) 1 K.B. 510 Chan-

nell, J., held that the authority given by the Factors' Act (52 & 53 Vict. c. 45), ss. 1, 2—(R.S.O. c. 150, s. 3), to a mercantile agent to pledge goods entrusted to him by the owner, is not restricted by the custom of a particular trade that a mercantile agent employed in that trade to sell goods shall have no authority to pledge them. And in the following case of *Oppenheimer* v. *Frazer* (1907) 1 K.B. 519, he further held that even though the agent obtain possession of the goods in circumstances amounting to larceny by a trick, yet a bona fide transferee would acquire a valid title as against the rightful owner. In the latter case the agent had represented to the plaintiffs that if he were entrusted with the goods in question he would take them to a prospective buyer and on that understanding they were entrusted to him. Instead, however, of taking them to the person he mentioned, he pledged part of them, and the rest he delivered to one Broadhurst to sell for him, and Broadhurst, though having ground for suspecting that the mercantile agent had improperly obtained possession, nevertheless sold the goods to a firm who purchased them in good faith, and agreed that the purchase should be on the joint account of Broadhurst and themselves. They accordingly debited him with half the price, and having resold at a profit, credited him with half the profit. The plaintiffs as rightful owners brought the action against the firm and Broadhurst for conversion, but it was held that the agent being in possession of the goods as a mercantile agent, it was immaterial that when he had obtained possession he intended to steal them: and that s. 2 applied and conferred a good title on the firm who had acted bona fide, but Broadhurst was liable to the plaintiffs for conversion. The fact that the firm had purchased on joint account with Broadhurst was held to be immaterial.

WORKMEN'S COMPENSATION ACT (60 & 61 VICT. C. 37)—"WORKMEN"—EXPERT DYER—(R.S.O. C. 160, S. 2(3)).

Bagnell v. *Levinstein* (1907) 1 K.B. 531 was an action under the Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), and the only point in it was whether the person in respect of whose death the action was brought was a "workman" within the meaning of the Act. It appeared that he was an expert who had taken a degree in science, and was employed by the defendants, a dye and chemical manufacturing company, as a skilled expert in the business. His employment involved manual labour on his part, and on this ground the County Court judge who

tried the action held that he was "a workman" within the Act. The Court of Appeal (Collins, M.R., and Cozens-Hardy, and Farwell, L.JJ.), however held that the occasional performance of manual labour was not the test. That the popular meaning must be given to the word "workman" in the Act, and to call a skilled expert a workman is to travel out of the ordinary meaning of that term: from this decision, however, Farwell, L.J., dissented.

MASTER AND SERVANT—COMMON EMPLOYMENT—ACTRESS—NEGLIGENCE OF FELLOW SERVANT—CONSTRUCTION OF CONTRACT.

Burr v. *Theatre Royal, Drury Lane* (1907) 1 K.B. 544 was an action brought by an actress employed by the defendants to recover damages for personal injuries sustained through the negligence of a fellow employee, a scene shifter. The contract of the plaintiff with the defendants expressly provided that notwithstanding the Employer's Liability Act, 1880, the defendants should not be liable to the plaintiff for injury occasioned her through the negligence of any person in the service of the defendants who is entrusted with superintendence, or to whose orders she was bound to conform. On behalf of the plaintiff it was contended (1) that the plaintiff was not a servant, but an artist engaged to exhibit her skill to whom the doctrine of common employment did not apply; and (2) that the clause in the contract above referred to rebutted the implication that the plaintiff undertook the risk of negligence by any fellow employee in the same employment; but the Court of Appeal (Collins, M.R., and Cozens-Hardy and Moulton, L.JJ.), were unanimous in affirming the judgment of Grantham, J., dismissing the action, on the ground that the plaintiff was an employee and as such bound by the doctrine of common employment, and that the clause of the contract relied on, in nowise rebutted the legal implication that the plaintiff must be presumed to have accepted the risks of negligence by any fellow employee.

FALSE IMPRISONMENT—EVIDENCE—SIGNING CHARGE SHEET.

Sewell v. *The National Telephone Co.* (1907) 1 K.B. 557 was an action for false imprisonment. The facts proved were that the plaintiff was arrested and taken to a police station by a police officer, and charged with stealing a piece of metal. He was detained in custody till the following day when he was brought before a magistrate, committed for trial and subsequently ac-

quitted. When at the police station the defendants' agent appeared and signed the charge sheet, but there was no evidence that the defendants had authorized the constable to make the arrest. On these facts Ridley, J., dismissed the action and his judgment was affirmed by the Court of Appeal (Collins, M.R. and Cozens-Hardy and Moulton, L.JJ.), on the ground that signing the charge sheet did not make the defendants responsible for the previous arrest, and what took place subsequently was done by a judicial officer and entailed no liability on the defendants.

WATERCOURSE—PUMPING—CAUSING WATER TO PERCOLATE OUT OF A STREAM.

English v. *Metropolitan Water Board* (1907) 1 K.B. 588 was an action brought by the plaintiff a riparian proprietor to recover damages against the defendants for an alleged interference with the waters of a stream. The act complained of consisted in the defendants having constructed a well near the stream in question from which they pumped water, which had the effect of causing water to percolate out of the bed and sides of the stream. It was found as a fact that the water which so percolated did not enter the defendants' well: but the effect of pumping from the well was that the general level of water in the adjacent soil was lowered to the extent of about twelve inches, with the result that the soil became dry and a portion of the water flowing down the stream leaked out through the bed and side of the stream, so that the volume of water in the stream was sensibly diminished. Lord Alverstone, C.J., who tried the action held that on these facts the plaintiff was not entitled to succeed on the ground that the case was not one of direct abstraction, but of the withdrawal of the support of subterranean water, for which no action would lie according to the case of *Popplewell* v. *Hodkinson*, L.R., 4 Ex. 248.

LANDLORD AND TENANT—COVENANT RUNNING WITH THE LAND—COVENANT BY SUB-LESSOR TO PERFORM COVENANTS OF HEAD LEASE OR INDEMNIFY SUB-LESSEE—COVENANT FOR QUIET ENJOYMENT—32 HEN. VIII. C. 34, S. 2—(R.S.O. C. 330, S. 13).

Dewar v. *Goodman* (1907) 1 K.B. 612, was an action by an assignee of an under-lessee for breach of covenant by the under-lessor to perform the covenants of the head lease. The under-lease

under which the plaintiff claimed contained a covenant for quiet enjoyment free from interruption by the under-lessor, and also a covenant by the under-lessor to perform the covenants of the lessee in the head lease so far as they related to the premises not demised by the under-lease; or in default to indemnify the under-lessee. The under-lessor made default in performing the covenants of the head lease, by reason whereof the superior lessor re-entered and ejected the plaintiff. The under-lessor had assigned his reversion to the defendant, and it was contended for the plaintiff that the effect of the covenant of the under-lessor to perform the covenants of the head lease so far as they affected lands not demised by the under-lease, was to enlarge the covenant for quiet enjoyment into an absolute covenant for quiet enjoyment, so as to include the case of disturbance of the enjoyment of the plaintiff by the superior landlord for breach of the covenants which the under-lessor had covenanted to perform, and that such covenant so enlarged ran with the land and the defendant was consequently bound by it, and liable in damages for the breach. But Jelf, J., who tried the action, came to the conclusion that the covenant had not that effect, but was a mere collateral covenant binding only the covenantor, and that the plaintiff as assignee of the under-lessee was not entitled to the benefit, nor was the defendant as assignee of the under-lessor liable to the burden of it. He therefore dismissed the action, but not without "considerable doubt."

SHIP—CHARTER PARTY—DEMURRAGE — DELAY IN DISCHARGING CARGO—STRIKE PREVENTING DISCHARGE.

Elswick SS. Co. v. *Montaldi* (1907) 1 K.B. 626 was an action by ship owners for demurrage against the charterer. The charter party provided that the charterer was not to be liable for delays in unloading caused by strikes. In the course of unloading a strike occurred which had the effect of delaying the unloading, but prior to the strike an avoidable delay had occurred, and it was held by Bigham, J., that the defendant could not rely on the strike as an excuse for the delay except to the extent to which the delay was actually attributable thereto. He therefore held that as, prior to the strike, less than one half the cargo had been discharged whereas a great deal more ought by that time to have been discharged, and it was physically impossible for the defendant to have discharged the other half within

the prescribed time; therefore the defendant could not rely on the strike except as to that portion of the cargo which would properly have remained undischarged when the strike began had previously carried on the discharge at the stipulated rate per day.

EMPLOYER AND WORKMAN—INJURY—DEFECTIVE PLANT—STEVEDORE—UNLOADING SHIP—DEFECT IN SHIP'S TACKLE—EMPLOYER'S LIABILITY ACT, 1880 (43 & 44 VICT. C. 42), S. 1(1): S. 2(1)—R.S.C. C. 160, S. 3(1), S. 6(1).

Biddle v. *Hart* (1907) 1 K.B. 649 was an action by a workman against his employer, a stevedore, to recover compensation for an injury sustained by the plaintiff in the course of his employment. The defendant was engaged to unload a vessel, and the plaintiff was one of the men employed by the defendant to do the work, and in the course of the unloading a bale fell owing to a defect in the ship's tackle which was being used in the work of unloading, and injured the plaintiff. The judge of the County Court held that the defendant was not liable for injuries caused by the defect in the ship's tackle, and a Divisional Court (Lord Alverstone, C.J., and Darling and Ridley, JJ.), affirmed his decision (Ridley, J., dissenting). The Court of Appeal (Barnes, P.P.D., and Farwell and Buckley, L.JJ.), however unanimously reversed the decision, holding that the defendant, if he chose to use the ship's tackle, owed a duty to the plaintiff to see that it was efficient and free from defects, and that it was for a jury to say whether or not he had discharged that duty; a new trial was therefore ordered.

SHIP—CONTRACT OF AFFREIGHTMENT—BILL OF LADING—EXCEPTION—DEVIATION.

In *Thorley* v. *Orchis SS. Co.* (1907) 1 K.B. 660 the Court of Appeal (Collins, M.R., and Cozens-Hardy and Moulton, L.JJ.) have affirmed the judgment of Channell, J. (1907) 1 K.B. 243 (noted, ante, p. 283), to the effect that a deviation from the voyage mentioned in a charter party has the effect of preventing the shipowners from setting up an exception clause relieving them from liability for negligence; as Collins, M.R., points out the undertaking not to deviate has the effect of a condition precedent the non-performance of which displaces the contract.

SHIP—SEAMAN—CONTRACT FOR SERVICE FOR ORDINARY VOYAGE—CARRIAGE OF CONTRABAND—REFUSAL TO PROCEED TO BELLIGERENT PORT—WAGES.

In *Carrie* v. *Palace Steam Shipping Co.* (1907) 1 K.B. 670 two or three points of interest are determined by the Court of Appeal (Collins, M.R., Cozens-Hardy, and Farwell, L.JJ.). (1) That a seaman in time of war entering into a contract in England for service on board the ship of an English ship carrying contraband of war for an ordinary commercial voyage, may lawfully refuse to proceed to a belligerent port; and (2) That the conviction and imprisonment of a seaman in such circumstances for refusing to proceed to a belligerent port, by a marine magistrate in a foreign port is no estoppel, on the seaman recovering his wages in an English Court, and (3) That the seaman in such circumstances is entitled to his wages not only up to the time of his return to England, but also, under s. 134, of the Merchants Shipping Act 1894, up to the final adjudication of his claim, which in this case, was up to the delivery of the judgment of the Court of Appeal.

SALE OF GOODS—CONTRACT TO INSURE GOODS AGAINST "ALL RISKS"—WARRANTY IN POLICY AGAINST "DETENTION"—SLAUGHTER OF CATTLE IN CONSEQUENCE OF GOVERNMENT PROHIBITION AGAINST LANDING.

In *Yuill* v *Scott* (1907) 1 K.B. 685, the plaintiffs had purchased a quantity of cattle from the defendants for shipment to Durban it was a term of the contract that the defendants should insure the cattle "against all risks." The defendants handed to the buyers a policy which was an ordinary "all risks" Lloyd's policy, but which in accordance with the usual practice contained a warranty against "capture, seizure, detention and consequences thereof." Disease broke out among the cattle in the voyage, and on arrival at Durban the authorities forbade their landing, and the cattle were consequently slaughtered. The insurers having refused to pay the loss thus sustained, as one not covered by the policy, the present action was brought to recover damages for breach of contract to insure against "all risks," and Channell, J., held that the plaintiffs were entitled to recover, the policy not having been a proper performance of the covenant, and that what was understood as an "all risks" policy by insurance brokers and underwriters, was not an "all risks" policy under the covenant as between the plaintiffs and defendants.

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

From Clute, J.] [March 14.

REX *v.* CENTRAL SUPPLY ASSOCIATION.

Criminal law—Conspiracy in restraint of trade—Crim. Code s. 520—Evidence.

Held, per MOSS, C.J.O., MACLAREN, and GARROW, JJ.A. (OSLER and MEREDITH, JJ.A., dissenting), that the defendants were to be judged and condemned, if condemned at all, upon the acts proved to have been committed by them after incorporation, but in weighing and estimating these acts the Court might look at the immediately and approximately antecedent acts of the individuals now comprising the corporation and directing its operations: and the acts occurring after incorporation were, in view of their history, origin, and apparent purpose sufficient to uphold the trial Judge's conclusions.

Per GARROW, J.A.—It was not a sound objection to the indictment that it would not lie against any corporation except those named in s. 520, nor that there must be at least one natural person as distinct from a corporation indicted as a co-conspirator.

Per OSLER, J.A.—The conviction was bad and the appeal should be allowed because evidence was wrongly introduced comprising the bulk of the record of unlawful acts and conspiracy committed by individual members of the old unincorporated supply association years before the corporation came into existence, and such evidence evidently affected the result; while any evidence there was of anything done or completed by the defendants after incorporation was too slight and flimsy to support the conviction.

Per MEREDITH, J.A.—The evidence in regard to the misconduct of the supply association in tendering was especially objectionable.

Held, also, per MEREDITH, J.A., that the conviction was also bad because there was no evidence of any concluded agreement, legal or illegal on the part of the supply association; and also,

because the supply association was not within the provisions of s. 520, not being one of the corporations named; and the word "person" was used in its ordinary sense and not as including a company.

Watson, K.C., and *W. W. Denison*, for appellants. *Cartwright*, K.C., and *DuVernet*, for the Crown.

Full Court.] [March 14.

MUMA *v.* CANADIAN PACIFIC RY. CO.

Railway—Work train—Rule as to protecting by flagmen, unless otherwise sufficiently protected — Other precautions—Absence of air brakes—Voluntarily incurring risk—Contributory negligence—Absence of liability at common law—Liability at common law—Liability under Workmen's Act.

The deceased, who was in charge of a gang of labourers, employed in removing earth from a cutting on the defendants' railway, acting, as he believed, in the company's interests, to prevent the loss to them of the labourers' time, by the work train engaged in the work being kept at a siding, induced the conductor in charge of the train to move it on to the main track, and to proceed to the cutting, by backing the train slowly thereto. By one of the company's rules, the train should not have been moved, —unless other sufficient precautions were taken,—until flagmen were placed at stated intervals in front and rear of the train. No such flagmen were so placed here; but the conductor took the precaution of standing himself as a look out on the top of the van, and for a like purpose placed the deceased in the cupola, while he instructed the engine driver to keep a strict look out towards him so as to observe his signals and to act upon them. When the train was distant some 600 yards from another work train approaching them, also moving slowly, the conductor signalled the engine driver to stop, and had he done so, a collision which occurred, whereby the deceased was killed, would have been avoided.

Held, that the company were liable under the Workmen's Compensation for Injuries Act, for the deceased's death; and for the damages recoverable under that Act.

Deyo v. *Kingston and Pembroke R.W. Co.* (1904) 8 O.L.R. 538 distinguished.

Liability was claimed at common law by reason of the train not being furnished throughout with air brakes.

Held, that no such liability existed, for, even if under the Railway Act, such brakes were necessary, it not being a passenger train, the accident did not occur through the want of such brakes, but by reason of the engine driver's failure to see and act on the conductor's signal.

It was also contended that there could be no recovery here, in that the deceased had voluntarily incurred the risk, and was guilty of contributory negligence; but, as these matters were not raised in the pleadings, or questions thereon submitted to the jury, the objections were not given effect to.

G. T. Blackstock, K.C., and *Angus MacMurchy*, for the defendants, appellants. *J. Harley*, K.C., for the plaintiff, respondent.

Full Court.] [April 22.

HAWTHORNE *v.* CANADIAN CASUALTY CO.

Insurance—Sprinkler leakage insurance—Loss from frost—Statement by agent—Authority of—Statement made in application and interim receipt—Condition in policy.

Under instructions from the plaintiffs to obtain for them an insurance against loss by accidental leakage from their sprinkler system of fire protection, an insurance broker attended at the company's office and was informed by the accountant in charge that such insurance covered frost damage, and he thereupon applied for such insurance; the rate was subsequently fixed, no mention being made, as was the fact, of there being an extra rate of cover such frost damage. An interim receipt was issued insuring the plaintiffs against such accidental leakage, etc., but merely stating that the insurance was subject to the directors' approval, etc., and afterwards a written form of application which had been delayed through lack of information, was completed. In answer to a question as to the protection against freezing, it was stated that the pipes were frost proof to roof, and building steam heated. A couple of months afterwards the account for the premium was rendered to the agent who forwarded it to the plaintiffs, who paid the same; but in the meantime a loss had occurred through leakage occasioned by the bursting of frozen pipes. A policy had also been issued, but had not been received by the plaintiffs, in-

suring the plaintiffs against such accidental leakage, one of the conditions stating that the policy did not cover damage resulting from exposure, rupture, collapse or leakage from steam pipes or steam boilers, or resulting from any interruption of business or stoppage of any work or plant, or from freezing or from fire, or violation of law, etc. In an action to recover for the loss sustained by the plaintiffs,

Held, that the plaintiffs were entitled to recover, that as to the interim receipt the only limitation therein was that the application was subject to the directors' approval, and that they had signified such approval by the issuing of the policy; that the statement made by the insured in the application as to the pipes being frost proof was immaterial, if, as the defendants contended, damage by frost was not insured against; and, as to the condition in the policy, not only had the plaintiffs never seen the policy, but the exception as to frost was not expressed in terms sufficiently clear to exonerate the defendants.

Watson, K.C., for defendants, appellants. *Blackstock*, K.C., for respondents.

From Divisional Court.] [April 22.

METALLIC ROOFING COMPANY *v.* JOSE.

Trades union—Strike—Combined action—Intention to inflict damage—Actionable wrong—Indorsement and aid of other association—Injunction.

Appeal by the defendants from the judgment of the Divisional Court reported, 12 O.L.R. 200, dismissed.

O'Donoghue and *T. J. W. O'Connor*, for the appeal. *Tilley* and *Parmenter*, contra.

HIGH COURT OF JUSTICE.

Riddell, J.] MILLS *v.* SMALL. [March 11.

Chose in action—Assignment of claim of several contractors to one—Action in name of one for payment of all.

The plaintiff a contractor in Canada and two contractors in the United States had performed some work on a theatre in Canada for which the owner refused to pay. The foreign con-

tractors at the instance of their solicitors, but without the knowledge of the plaintiff assigned all their claims to him absolutely with a view of collecting the amounts due in the name of the plaintiff. This was communicated to the plaintiff who assented to the arrangement and he was indemnified against costs and guaranteed payment of his claim. At the trial, it was

Held, on objection taken, that this was not an "absolute assignment" within s. 58, sub-s. (5) of the Judicature Act R.S.O. 1897, c. 51, but leave to amend by adding the foreign contractors as plaintiffs, was granted.

H. H. Bicknell, for plaintiff. *J. L. Counsell,* for defendant.

MacMahon, J.] JONES *v.* SHORTREED. [April 11.

Mortgage—Subsequent sale of part charged with whole mortgage —Proceeding to sell under the mortgage—Rights of subsequent mortgagee of the part sold—Redemption or assignment—Dower—Election under will.

In 1889 plaintiff's husband mortgaged the west half of a lot containing 100 acres to a loan company plaintiff joining for the purpose of barring dower, with a provision that the company and its assignees could from time to time release portions without affecting the remainder or the covenants in the mortgage. In 1900 the husband sold the property (reserving 15 acres on the north-west corner) subject to the mortgage to the loan company, the amount of which was deducted from the purchase money and which the purchaser covenanted to pay off and he received from the purchaser a mortgage for $350 on the 85 acres sold. The husband died in 1903 having bequeathed to his wife all his personal property, stock, vehicles, life insurance and the $350 mortgage "on the south-west 85 acres," etc., also the north-west 15 acres "while she lives and remains unmarried" and after to his son. The plaintiff had become the owner of a further $290 mortgage by the purchaser. She married again. The son who was entitled to the 15 acres on his mother's remarriage received a notice from the loan company demanding overdue interest and threatening sale proceedings and then arranged with the defendant to obtain an assignment of the loan company's mortgage and to proceed to foreclose in order to free his 15 acres from that mortgage and make the 85 acres satisfy it. The assignment was

obtained and notices of sale were given when the plaintiff offered to pay off the loan company's mortgage on condition of getting an assignment of it which was refused, but she was offered a discharge on an assignment of the debt covering the 85 acres with the 15 acres freed which also was refused. In an action subsequently brought to compel an assignment or redemption,

Held, that the plaintiff's rights were confined to the 85 acres; and that she was not entitled to a conveyance or assignment of the whole 100 acres.

Held, also that the design of the testator as evidenced by his will was to give the 15 acres to his son free from his mother's dower and that her conduct in accepting the mortgage receiving her husband's insurance, and selling the stock was a clear election to take under the will.

Leitch v. *Leitch* (1901) 2 O.L.R. 233 followed.

Strathy, K.C., for plaintiff. *Hewson*, for defendant.

Mabee, J.] [April 15.

IN RE BROWN AND CORPORATION OF OWEN SOUND.

Municipal corporation—Compensation for lands injuriously affected—Closing road—"Advantage derived from contemplated work"—Construction.

Appeal from award of County Court judge.

Under s. 437 of the Con. Mun. Act, 1903, Edw. VII. c. 19, every council shall make to the owners of real property taken by the corporation, or injuriously affected by the exercise of its powers, due compensation for any damages necessarily resulting from the latter "beyond any advantage which the claimant may derive from the contemplated work."

Held, that this means the "contemplated work" of the corporation alone, and that one injuriously affected by the closing of a road which was part of a scheme for granting facilities to a certain lumber company, was entitled to compensation without any diminution of the amount of such compensation by reason of the fact that the erection of the mills of the lumber company greatly enhanced the value of the said lands.

Hodgins, K.C., and *Frost*, for appellants. *Sampson*, for respondent.

Anglin, J.] [April 17.

RE CANADIAN HOME CIRCLES.

Insurance—Varying apportionment—Postponing payment till after full age—Ineffective provision.

In an insurance certificate Eliza J. Smith designated Augustus Smith as a beneficiary to the extent of $500. By her will she reapportioned her insurance reducing his interest to $250, and further directed that he should not be paid his share till the age of twenty-five. Augustus Smith was now twenty-one, and the order of Canadian Home Circles applied for leave to pay the $250 into Court to which he objected, claiming the right to immediate payment.

Held, that even if s. 160 of the Insurance Act as to altering or varying apportionments in respect to insurance moneys authorized the postponing of the period of enjoyment by any preferred beneficiary beyond the time of his attaining twenty-one years, such provision was ineffective, for it is well established that all persons who attain twenty-one are entitled to enter upon the absolute enjoyment of property given to them by will notwithstanding any direction by the testator to the contrary, unless between twenty-one and the latter age specified by the testator, the property is given for the benefit of another or so clearly taken away from the devisees up to the time of their attaining a greater age as to induce the Court to hold that there has been an intestacy as to the previous rents and profits. It is impossible to distinguish between such a provision in regard to insurance and a like provision in regard to personal property bequeathed by will.

Dowler, K.C., for Canadian Home Circles. *W. J. T. Lee*, for Augustus Smith.

Divisional Court.] REX *v.* CHISHOLM. [May 6.

Municipal corporation—By-law—Regulating weight of bread—Criminal law—Mens rea.

Motion to quash conviction for selling bread in loaves lighter than the proper weights contrary to a by-law of the City of Toronto entitled "A By-law to Provide for the Weight and Sale of Bread."

Held, that under s. 580, sub-ss. 10, 11 and 583, sub-s. 1, of the Con. Mun. Act, 1903, 3 Edw. VII. c. 19, the city had power to pass the by-law, and the same was not ultra vires as creating a criminal offence or otherwise.

Held, also, that no evidence of mens rea was necessary to conviction, the word "wilfully" not being used in the statute or by-law.

Mackelcan, for city. *DuVernet*, for defendant.

Britton, J.] REX *v.* O'GORMAN. [May 7.

Criminal law—Change of venue—Convenience—Prejudice.

The principle on which a change of venue (in a criminal case) will be ordered is that there is fair and reasonable probability of partiality and prejudice in the district, county or place within which the indictment would otherwise be tried: and

On a motion to change the venue notwithstanding that a strong case was made out for the change if the balance of convenience was to be considered still as it was not shewn that there was or was likely to be any prejudice against the accused and certainly no more where the indictment was found than in the place to which it was proposed to change the venue the motion was refused.

Johnston, K.C., for the motion. *Lynch-Staunton*, K.C., for the Crown.

Cartwright, Master.] HYSLOP *v.* OSTROM. [May 9.

Practice—Signing judgment for want of statement of defence—Necessity for affidavit.

An affidavit is necessary and should be made and filed when judgment is signed for want of statement of defence after filing and service of statement of claim and a judgment entered without such affidavit may be set aside.

Paterson, K.C., for the motion. *Geo. Kerr, Jr.*, contra.

DIVISION COURTS.

THIRD DIVISION COURT, COUNTY OF HALTON.

FRAZER *v.* MCGIBBON.

Innkeeper—Liability for loss of property by guest.

The plaintiff went as a guest to defendant's hotel; took off his overcoat, and hung it in the usual place, but called no one's attention to it. Owing to a fair in the town, the hotel was crowded. A special cloak-room had been provided, and a notice to that effect had been put in the public sitting-room. The plaintiff did not see this notice; nor a notice in the hotel register book that the proprietor would not be responsible for coats, etc., unless checked. The coat was not to be found when the plaintiff left the hotel in the evening:—

Held, that the defendant was liable for the value of the missing article.

Discussion of the legal status, rights, duties and liabilities of innkeepers.

[MILTON, April 9, 1907.—Gorham, Co.J.

The plaintiff claimed from the defendant, an hotelkeeper, the sum of $20.00 as the value of an overcoat, and other articles of clothing lost at the defendant's hotel when the plaintiff was a guest there, owing to the alleged default of the defendant. The defendant disputed the plaintiff's claim. The plaintiff on Oct. 2nd travelled from Milton, his place of residence, to Georgetown for the purpose of attending a fair there. The defendant was proprietor of the Clark House in Georgetown and carried on the business of an innkeeper. The plaintiff reached the defendant's hotel in the morning and when he entered the hotel he intended to enter his name in the hotel register, a book kept on the office counter for that purpose, but, owing to being interrupted or turned from his intention by meeting some friend, failed to do so. Shortly after going into the hotel he took off his overcoat and hung it up where he had been in the habit of hanging it and where he saw others do the same. He did not ask anyone to take charge of his coat, nor call the attention of anyone to it. The defendant admitted that others hung their coats where plaintiff hung his and that he knew this. The hotel was on that day thronged and he had in consequence provided a cloak room and a man in charge of same, who received coats, etc., from guests

and gave "checks" for same. He also put up a notice, or notices in the public sitting room that such a room had been provided. Plaintiff says he did not see this notice, nor did he know there was such a room and that, had he known, he would have put his coat in that room and taken a check. Defendant admits that he did not tell the plaintiff there was such a room until plaintiff told him of the loss of his coat, when the defendant for the first time learned that the plaintiff had brought an overcoat into the hotel. There was a notice at the top of each page in the hotel register book to the effect that the proprietor will not be responsible for coats, etc., unless "checked." The plaintiff says he did not see this notice and knew nothing of it. The plaintiff, after hanging up his coat as mentioned, remained about the hotel until noon when he had dinner for which he paid on coming from the dining room. After his return to the hotel in the evening he remained there until he was ready to start for home when he, for the first time since he had hung up his coat in the hotel, looked for it where he had hung it. It could not then, and has never since been found.

Plaintiff in person. *W. A. F. Campbell*, for defendant.

GORHAM, Co. J.—The law to be considered in this class of cases is very old. Some judges and text writers find great similarities between the civil law and the common law, but at the same time shew great dissimilarities. Others do not hesitate to say the law applicable is the "law and custom of England" without reference to the civil law—that it is peculiar to the English law. This law and custom of England—the common law—originally imposed upon an innkeeper certain liabilities to prevent him from acting in collusion with the bad characters who in old times infested the roads, and to protect wayfarers and travellers who on their journeys, brought goods into the inn. The wayfaring guest had no means of knowing the neighbourhood or the character of those whom he met at the inn. It was therefore thought right to cast the duty of protecting the guest upon the host. Knowing that this is one of his duties, one of the liabilities he incurs, the innkeeper can make such charge for the entertainment of his guest as will compensate him for the risk. It may be observed, that, unless the law cast upon him this burden, a dishonest innkeeper might be tempted to take advantage of a wealthy traveller. With that view the innkeeper was

placed in the position of an insurer of the goods of his guest and correlative to his liability is his right of lien upon the goods which the guest brings with him into the inn.

The innkeeper must be the keeper of a common inn, that is one who makes it his business to entertain wayfarers, travellers and passengers and provide lodgings and necessaries for them, their horses and attendants and receive compensation therefor. He must admit and entertain to the extent of his accommodation all persons of the class for whose entertainment he holds out his house and against whom no reasonable objection can be shewn. He may exclude such as are not sober, orderly, able to pay his reasonable charges, or such as ply his guests with solicitations for patronage in their business, or whose filthy condition would annoy other guests. It appears that he may limit his accommodation and entertainment to a certain class. Persons other than guests are said prima facie to have the right to enter an inn without making themselves trespassers; for there is an implied license for the public to enter, though such license is in its nature revocable and those thus entering become trespassers when they refuse to depart when requested. An innkeeper by opening his house—his inn—offers it to the use of the public as such, and thereupon the common law imposes on him certain duties and gives him certain rights. These duties and rights as well as the attendant liabilities have been changed, in some respects made heavier and in some respects made lighter, by statute. In the Province of Ontario the statutes bearing directly on these duties, rights and liabilities are the Liquor License Act and the Act Respecting Innkeepers. That an innkeeper may not be licensed under the Liquor License Act does not change the character of the business of him who entertains travellers, etc. The possession of such a license does not make, nor the want of it prevent a person from being, an innkeeper at common law. It is his business alone that fixes the status of a person in this respect. A license saves the innkeeper from liability to certain penalties imposed by the Act, but neither the possession nor the want of it will save him from liability to his guests. Here it may be noted that "inn" and "hotel" are synonymous. Ordinarily in Ontario "tavern" is also used synonymously with "inn"; in England though, it appears to signify a house where food and drink without lodgings may be obtained. To those who may be curious about the origin of these words and the origin of the business of hotel keeping I would recommend the careful reading of *Cromwell* v. *Stephens*, 2 Daly (N.Y.C.P.) 15.

It is necessary to consider who is a guest and at what point of time the relation of inn keeper, or landlord, and guest arises. A guest is one who resorts to, and is received at an inn for the purpose of obtaining the accommodation which it purports to afford. He may be a wayfarer, traveller or passenger who stops at, or patronizes an inn as such. He may come from a distance or live in the immediate vicinity. He comes for a more or less temporary stay, without any bargain for time, remains without one and may go when he pleases, paying only for the actual entertainment received. His stay and entertainment may be of the most transient kind. One who goes casually to an inn and eats, or drinks, or sleeps there, is a guest, although not a traveller: *York* v. *Grindstone*, 1 Salk. 388; *Bennett* v. *Mellor*, 5 T.R. 273; *Orchard* v. *Bush* (1898), 2 Q.B. 284; *McDonald* v. *Edgerton*, 5 Barb. (N.Y.) 560. And a party continues a guest though he goes to view the town for any time, or to view any spectacle in the town; *Gelley* v. *Clerk*, Cro. Jac. 188; *McDonald* v. *Edgerton*, supra; or goes out and says he will return at night; *Whites Case*, Dyer 158 b. The liability of the innkeeper as such will continue during the temporary absence of the guest: *Day* v. *Bather*, 2 H. & C. 14. Note the following cases, *Brown Hotel Co.* v. *Buckhardt*, 13 Cole. App. 59; *Grinnell* v. *Cook*, 3 Hill (N.Y.) 485; *McDaniels* v. *Robinson*, 26 Vt. 316. If the relation of landlord and guest be once established, the presumption is that it continues until a change of that relation is shewn: *Whiting* v. *Mills*, 7 U.C. Q.B. 450.

"It is important to ascertain when the relation of innkeeper and guest commences, in cases involving liability for the loss of, or injury to, the guest's effects. This is a question of fact, the solution of which generally depends on the facts of each case. It is obvious that when a person goes to an inn as a traveller or wayfarer, and the innkeeper receives him as such, the relation of landlord and guest attaches at once. The intention to avail himself of the entertainment, that is, to obtain refreshments, or lodging, or both, is material, and if the party should engage and pay for a room merely to secure a safe place for the deposit of his valuables, or without any intention of occupying it, he would not be a guest. Under some circumstances too, the relation may commence before the party actually reaches the inn." Am. & Eng. Ency. of Law, vol. 16, page 520.

In the United States it has been decided that when a traveller arrives at a station, and is met by the porter of an hotel and the traveller delivers to the porter his baggage or the check for

getting the same from the railway authorities, the traveller is thereby so far constituted a guest as to render the proprietor liable for the safe keeping or re-delivery of the baggage. The liability of the proprietor, it was said, commences from the time of the delivery of the baggage or check to the porter: *Goskery* v. *Nagle*, 20 Am. St. R. 333 and *Sasseen* v. *Clark*, 37 Ga. 242, and *Williams* v. *Moore*, 69 Ill. App. 618, and *Eden* v. *Drey*, 75 Ill. App. 102.

In England and Ontario there being, so far as I can ascertain, no direct authority on the point as to the moment of the commencement of the relation of landlord and guest, one may, I think, infer from the reasoning in the arguments of counsel and in the judgments in the reported cases that, as the innkeeper is under an obligation at common law to receive and afford proper entertainment to everyone who offers himself as a guest, if there be sufficient room for him in the inn and no good reason for refusing him, the relation commences the moment the person presents himself and is accepted. While the presenting of himself must be a positive act on the part of the would-be guest, the acceptance on the part of the innkeeper need not be, in fact the mere want of active objection on the part of the innkeeper to the person so presenting himself, may be taken as evidence that the innkeeper has accepted him as guest. So that, if a person goes to an inn as a wayfarer or traveller with the intention of becoming a guest, which intention may be evidenced only by the act of the person in so presenting himself, and the innkeeper does not actively object to, or refuse him at once, it may well be, that he, on the very moment of such presentation and non-objection, becomes the accepted guest of the landlord at his inn, and then the relation of landlord and guest, with all its rights and liabilities is instantly established between them.

The relation of innkeeper and guest having been established it becomes the duty of the innkeeper to keep such goods as the guest brings with him into the inn safely night and day. And this although the guest does not deliver his goods to the innkeeper or his servant, nor acquaint him with them: *Calye's Case*, 8 Coke 32; 1 Sm. L.C. 10th ed. 115. This it has been said, is necessary for the protection of those resorting to the inn, from the negligence and dishonest practices of innkeepers and their servants: *Holder* v. *Soulby*, 8 C.B.N.S. 254. As will appear hereafter, it is not necessary at common law that the guest's goods should be in the special keeping of the innkeeper, it is

generally sufficient that they are within the inn under his implied care, and as soon as the goods are brought into the inn, though there is no actual delivery of the goods, nor any notice of them given to the innkeeper, this custody begins. If he desires to avoid liability for their loss on injury he must give the guest direct notice. Hanging up a coat in the place allotted for that purpose is placing it infra hospitium, that is in charge of the innkeeper and under the protection of the inn, though it is done in the absence of the landlord and his servants: *Orchard* v. *Bush* (1898), 2 Q.B. 284; *Norcross* v. *Norcross*, 53 Me. 163. Wills, J., in his judgment in the *Orchard Case* remarked, "I think a guest is a person who uses the inn, either for a temporary or a more permanent stay, in order to take what the inn can give. He need not stay the night. I confess I do not understand why he should not be a guest if he uses the inn as an inn for the purpose of getting a meal there," and further "The innkeeper's liability is said to arise because he receives persons causâ hospitandi. I cannot see why he receives them less causâ hospitandi if he gives them refreshment for half a day, receiving them in the same way as other persons are received, than if they stay the night at his inn. It makes no difference that he receives a large number of people who only take a meal at the inn. He does receive them, and as an innkeeper, and his liability as an innkeeper thereupon attaches in respect of them"; and Kennedy, J., remarked, "I agree that, on the facts of this case, the plaintiff was a traveller; but apart from the question whether he was a traveller or not, I am of opinion that if a man is in an inn for the purpose of receiving such accommodation as the innkeeper can give him he is entitled to the protection the law gives a guest at an inn."

In *Norcross* v. *Norcross*, 53 Me. 163, the facts were very much the same as in the case before. It was decided that plaintiff was a guest and that the innkeeper, the defendant, was liable for the loss of the coat; that if a guest, in the absence of the landlord and his servants, hang up his coat in the place in an inn allotted for that purpose, it is infra hospitium.

In *Bennett* v. *Mellor*, 5 T.R. 273, the plaintiff's servant took goods which he had been unable to sell at the weekly market, to the defendant's inn, and asked the defendant's wife if he could leave them till the week following. She answered she could not tell, for they were full of parcels. The plaintiff's servant then sat down in the inn and had some liquor. He put the goods on the floor behind him, whence they were stolen. It was

decided that the plaintiff's servant had by sitting down and partaking of refreshment become a guest and that it became the duty of the innkeeper to protect his goods or answer for their loss.

In *McDonald* v. *Edgerton*, 5 Barb. (N.Y.) 560, the plaintiff sued defendant, an innkeeper, to recover the value of an overcoat. Plaintiff stopped at defendant's inn on general training day, about 7 o'clock in the morning; soon after the plaintiff came he took off his overcoat; he gave the overcoat to the barkeeper; he treated a number of people at the bar and paid for the liquor; he then went out; in the evening he came back and asked for his coat; it could not be found; the defendant was held liable. In giving judgment the Court remarked, "The purchasing of the liquor was enough to constitute the plaintiff a guest": Citing *Bennett* v. *Mellor*, 5 T.R. 273; 2 Kent's Com. 593; *Clute* v. *Wiggins*, 14 Johns. 175. Again, "It is fairly to be inferred from the evidence in the case that the plaintiff lost his coat before he started to leave the town to go home, and if he was only out to see the town or to view the training, intending to return to the defendant's before he left for home and get his coat, then, I think, he was still to be considered as a guest of the defendant": Citing 2 Crokes R. 189 and 1 Comyns Dig. 421, 413 and *Grinnell* v. *Cook*, 3 Hills R. 490.

An innkeeper cannot discharge himself of the duty imposed upon him by the common law by a general notice. If he desires to limit his liability in anyway he must give the guest express notice, that is the notice must be brought home to the guest. The posting up of, or the putting upon the hotel register book, a notice is not sufficient unless it can be shewn that the guest saw it and read it: *Richmond* v. *Smith*, 8 B.C. 9; *Packard* v. *Northcraft*, 2 Met. (Ky.) 442. In *Bernstein* v. *Sweeny*, 33 N.Y. Super. Ct. 271, it was decided that the signing of a register under a printed heading containing an agreement that the innkeeper shall not be responsible for the loss of valuables unless deposited in the safe, is not the contract of the guest in the absence of any proof that it was seen or assented to by him.

In *Morgan* v. *Ravey*, 6 H. & N. 265, the plaintiff was staying at an hotel in London. In his bedroom was hung up a notice, that, in consequence of robberies having taken place at night in London hotels, the proprietor requested visitors to bolt their doors and leave their valuables at the bar, otherwise he would not be responsible. This notice plaintiff saw, but swore he read only

the word "Notice." He did not bolt his door (because, as he said, he did not know how), nor did he leave his watch or other valuables at the bar; next morning they were gone; the jury having found that there was no negligence on his part, the Court refused to disturb the verdict for the plaintiff.

The defendant by holding himself out as an hotel, or innkeeper, and his house as a common inn, invited the plaintiff as one of the travelling public to become a guest. The plaintiff accepted that invitation and entered the hotel with the intention of becoming such. He did not see or learn of any notice nor have any knowledge that the defendant had provided a room and a man in charge where and with whom he could leave his coat, but seeing others whom he speaks of as guests, hanging their coats on hooks evidently provided for that purpose in the office or public room, hung his coat there also. The defendant must be taken to know that the plaintiff had accepted the invitation and offered himself as a guest and hung his coat where he did. There was no need for the defendant to by any act or word, signify that he accepted the plaintiff as a guest. If he did not wish to accept him as such he should have, when the plaintiff entered the inn, so notified him. It appears to me that the plaintiff became a guest from the moment he entered the defendant's hotel with the intention of becoming such, which intention, I think, was well shewn by the plaintiff's conduct. He was a traveller, as such he entered the hotel, took off and hung up his coat, thus shewing an intention to remain which he did and had his dinner. No stronger evidence of intention is required. It was not necessary that he should enter his name in the hotel register. If there was any doubt of his intention, or of him being accepted as a guest up to the time of having his dinner it was then removed and that act, I think, if it be necessary, related back to his entrance into the hotel and his hanging up of his coat. The relation of landlord and guest having once been established the presumption is that that relation continued up to the time in the evening when he declared his intention to, as a traveller, leave the inn and not return again. Having his evening meal puts beyond doubt the continuation of the relation of landlord and guest.

The hanging of his coat on one of the hooks in the public room, even though the hotel was thronged with people, does not prove negligence on the part of the plaintiff. The hooks were evidently, I think, provided for such a purpose and invited such an act. The defendant knew they were being used for that purpose on that day by his guests and if he did not wish them so

used he should have either removed them or insisted on the plaintiff placing his coat elsewhere—in the check room for instance. If then the plaintiff resisted the defendant's insistence and in turn insisted on his coat remaining where he hung it, it may be that the defendant would be free from liability. The defendant cannot be heard to say that he did not know that the plaintiff hung his coat where he did. It was his duty to know, his duty to move it to a place of safety or to safely guard it where it hung. The plaintiff continuing to be a guest up to the time in the evening when he left the hotel to return home had the right to leave the inn for the purpose of seeing the town or any spectacle therein, and to leave his coat where he had hung it, relying on the defendant guarding it safely during his temporary absence.

On the evidence submitted in this action I find that the defendant was on the second day of October, 1906, the keeper of a common inn, known as the Clark House, in the Village of Georgetown; that the plaintiff on that day was a traveller and became a guest at the said inn and that the relation of landlord and guest was established between them; that the plaintiff by hanging up his coat where he did, placed it infra hospitium, that is in the custody of the defendant as innkeeper; that the plaintiff's coat was in the defendant's charge and under the protection of the defendant's inn at the time of its loss; that the plaintiff had no notice of any intention or desire on the part of the defendant to limit his common law liability; that the plaintiff was not guilty of negligence in hanging up his coat and leaving it where he did.

Lest it may be thought I have overlooked the Liquor License Act and the Innkeepers Act I may say they do not bear upon the question in this action.

Province of New Brunswick.

SUPREME COURT.

Barker, J.] GAULT BROS. *v.* MANELL. [March 22.

Bills of Sales Act—Secret agreement—Power to seize goods and book debts of debtor.

Plaintiffs in 1898 agreed to supply M. & S. with goods under an agreement in writing that such goods should remain the plaintiffs' property, and that should the plaintiffs at any time con-

sider that the business of M. & S. was not being conducted in a proper way or to the plaintiffs' satisfaction, plaintiffs should be "at liberty to take possession of our stock, book debts and other assets, and dispose of the same, and after payment in full of any amount then owing to you by us, whether due or to become due, the balance of the proceeds shall be handed to us." The agreement was not filed under the Bills of Sale Act. Goods were supplied from time to time under the agreement. On Feb. 17, 1905, the business not being conducted to the plaintiffs' satisfaction, and M. & S. being insolvent, plaintiffs entered the store of M. & S. by force and took possession of all the stock and effects on the premises, and of the book of account. The stock seized was made up of goods supplied by the plaintiffs of the value of $5,000.00, and of goods supplied by other unpaid creditors of the value of upwards of $10,000. The account book shewed debts due M. & S. of the estimated value of $2,000. Later on the same day M. & S. made an assignment for the general benefit of their creditors.

Held, 1. Plaintiffs were not limited to taking possession of goods supplied by themselves.

2. As to goods supplied by the plaintiffs as the property therein did not pass to M. & S., the agreement was not within the Bills of Sales Act, and that as to goods not supplied by plaintiffs as the agreement was not intended to operate as a mortgage, but as a license to take possession the Act did not apply.

3. While the license in the agreement to take possession of the book debts did not amount to an assignment, and the power given by it had not been exercised by notice to the debtors, plaintiffs were entitled to them as against M. & S.'s assignees.

M. G. Teed, for plaintiffs. *A. I. Trueman*, K.C., and *J. K. Kelley*, for defendants.

Province of Manitoba.

KING'S BENCH.

Macdonald, J.] [April 25.

CANADA PERMANENT MORTGAGE CORPORATION *v.* SCHOOL DISTRICT OF EAST SELKIRK, No. 99.

Duty of new treasurer of municipality to obey precept served on his predecessor by sheriff—Inability to obey the order not always a reason for refusing mandamus.

Under s. 263 of Public Schools Act, R.S.M. 1902, c. 143, for

the purpose of realizing on the execution placed in his hands in this action, the sheriff caused the treasurer of the Rural Municipality of St. Clements, W. R. Young, to be served on 23rd August, 1906, with a precept to levy the necessary rate upon the lands situated in the defendant school district. On 29th October following, Mr. Young resigned and Thomas Bunn was appointed treasurer. Mr. Bunn thereafter made out the general tax roll without including the levy directed by the sheriff. He said he had no knowledge of the proceedings against the municipality until March, 1907, but admitted knowing of the judgment. He had been a member of the municipal council during 1906.

Held, on application for a mandamus to compel Mr. Bunn to levy the rate, that as a member of the council, he should have had knowledge of the proceedings taken, and the plaintiffs were entitled to the order asked for, as the duties of the treasurer upon whom the precept had been served devolved upon his successor in the office.

Held, also, that the inability of the treasurer to obey the mandamus for lack of some preliminary steps required by law to be attended to by other officers of the municipality, over whom he had no control, was not a sufficient answer to the application. *London and Canadian* v. *Morris,* 9 M.R. 377 followed.

A. C. Ewart, for plaintiffs. *Heap,* for defendants.

Mathers, J.] ROSEN *v.* LINDSAY. [May 1.

Deceit—Damages—Liability to make representation good.

Action for damages for deceit in the sale of a hotel property as a going concern. The defendants had represented that the average net profits of the business were $85 a day and that the net yearly profits would be at least $10,000 and produced a book purporting to contain a daily record of the cash receipts for upward of seven months preceding the day of sale, shewing figures in support of such representations. The book, however, had been fabricated for the purpose and the entries in it as well as the representations referred to were false.

After running the hotel for eleven months, during which he made a profit out of the business of over $3,000, the plaintiff sold the property at an advance of $3,000 on the price he had paid defendants for it.

Counsel for the defendants contended that the plaintiff, having lost nothing, had sustained no damage and could not recover.

Held, following *Steele* v. *Pritchard*, ante, p. 258, that the deceived party was entitled to be placed in the same position, so far as damages could do it, as he would have been in if the representations on which he had acted had been true, or, in other words, a man who makes a false representation, intending another to act on it, is bound to make that representation good if the other does act upon it, and that in this case the plaintiff was entitled to recover as damages the difference between the profits which the defendants represented to the plaintiff that he might reasonably expect to make and the profits which he actually did make, making due allowances for differences in management and other circumstances. Verdict for plaintiff for $1,500 and costs.

Hagel, K.C., and *Manahan*, for plaintiff. *A. B. Hudson*, and *A. V. Hudson*, for defendants.

Province of British Columbia.

SUPREME COURT.

Hunter, C.J.] [April 9.

CHANG SHEE HO CHONG v. CULLEY.

Endorsement on writ—Statement of claim setting up different cause of action—Directions—Discretion.

The endorsement on the writ asked for the delivery up and cancellation of a certain document, dated the 24th of April, 1906. The statement of claim, when delivered, shewed in effect that the document sought to be declared void was dated Sept. 20, 1906, and was of a different purport.

Held, on an application to strike out the statement of claim as going beyond the endorsement on the writ, that the endorsement was defective and erroneous, but that it might be amended and re-delivered on payment of costs.

Pugh, for plaintiff. *Woodworth*, for defendant.

Irving, J.] REX v. BRIDGES. [April 30.

Summary conviction—Habeas corpus—Canada Shipping Act, R.S.B.C. c. 113, s. 287—Disclosure of offence in warrant of commitment.

It is essential in a conviction to state that the act charged was

wilfully committed, and the omission to do so is fatal to the validity of the conviction. *The King* v. *Tupper* (1906) 11 C.C.C 199, and *Ex parte O'Shaughnessy* (1904) 8 C.C.C. 186 followed.

Lowe, for the motion. *Morphy*, contra.

Book Reviews.

The Lawyers' Reports Annotated, New series, Book 6, BURDETT A. RICH, HENRY P. FARNHAM, Editors. 1907: Rochester, N.Y. The Lawyers' Co-operative Publishing Company. Canada Law Book Company, Limited, 32 Toronto Street, Toronto.

We are in receipt of the above volume which continues this excellent series. We have already referred to these publications at some length. They are a boon to the profession; and are largely in use.

Bench and Bar.

THE BENCH AND THE PRESS.

We have received the following letter from a prominent lawyer in Western Ontario in reference to our criticism of a newspaper which contained some libellous remarks in connection with a recent judgment of the Judicial Committee of the Privy Council. It is given as a sample of the views of the profession on this subject:—"Allow me to compliment you on your article in the current number of your Journal on 'The Bench and the Press.' In these days when every penny-a-liner considers himself equally competent with the judges to interpret the law, it was high time that some such fearless expression of opinion on the subject be given utterance to in an authoritative manner."

Comments of the press outside of Toronto run in the same line. For example, a leading journal in the metropolis of the Dominion says:—"The recent hysterical outbreaks of the newspapers of Toronto against the Judicial Committee of the Privy

Council, because of that tribunal's decision in favour of the Street Railway Company and against the city, prompts the *Canada Law Journal* to read the Toronto daily newspapers a much needed lesson as to the manner in which they should accept the decision of the highest court in the Empire. The *Law Journal* is quite right on the general principle; but we are afraid that, published as it is itself in the City of Toronto, it does not quite realize the real folly of the childish spleen of the Toronto dailies over this street railway decision. One has to live at a distance to understand the true attitude of the Toronto press towards the street railway. It is their one safe topic of abuse, the one subject upon which they can unite without fear of political differences and it would be a pity to deprive them altogether of this hobby horse, even if its riding does involve disrespect for the judges of Canada and of the Empire's court of final appeal."

As might be expected, a Toronto journal comes to the rescue of its brother in these words:—"Following this is an article by the editor of the *Canada Law Journal* on 'The Bench and the Press' in which some of the Toronto daily newspapers are censured for criticising the decision of the Privy Council of the Street Railway action. The *Law Journal* is aghast." The only inaccuracies in the above are, (1) the Toronto daily newspapers were *not* censured for criticising the decision referred to; but for their libellous abuse of the judges. (2) The *Law Journal* was *not* "aghast." It was only disgusted; as were all respectable readers of the newspaper referred to. Other papers in the Province have published the article in full with approval.

JUDICIAL APPOINTMENTS.

David Grant of the City of Vancouver, B.C., to be junior judge of the County Court of Vancouver. (May 9, 1907.)

COURT OF APPEAL—ONTARIO.

Those who may be interested will please note that the sittings of this Court after the long vacation, have been fixed for September 16 and November 11, instead of September 3 and November 12.