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DEMOCRACY v. REPUBLICANISM.

The framers of the American constitution were careful to base it on the principle of *representation*—that is to say, that the voice of the people was to be expressed, and made effective, by persons specially chosen for that purpose, and not by the direct action of the people themselves. Thus the President, the chief of the executive government, was not to be elected by a direct vote of the people at large, but by a select body chosen by them to whom they intrusted the important duty of selecting the head of the Government. This principle prevails generally throughout the constitution, though, to a great extent, especially in the election of President, it has become an empty form, the purely party conventions having taken its place.

An equally important feature of the constitution was that which committed it to the protection of the Supreme Court whose duty it was to pronounce upon the validity or otherwise of any act or regulation which might seem to infringe upon the limits laid down by the document in which the constitution itself was set forth. Another important provision was that the judges during their term of office, whether appointed or elected by popular vote, were to be independent—their decisions might be appealed from to a higher court, but, in no other way could they be set aside.

In brief the three principles, viz.: representation—the power of the Supreme Court—and the independence of the judiciary, were the main pillars of the American constitution as originally set up, and which still form the basis on which it rests.

A party has now arisen in the United States of which ex-President Roosevelt is the leader, which holds that the people should not be bound by any such restrictions, but should be free to set them aside whenever they think their rights or their liberties are infringed upon—not by calling upon their representatives to

protect them, but by direct action taken by themselves. They would thus transform the republic founded upon representative government to one upon a purely democratic basis. The difference between these two forms of republicanism is thus defined by Mr. Madison, an early American publicist of note—"In a democracy the people meet and exercise the Government in person. In a republic they assemble and administer it by their representatives and agents." Clearly the framers of the constitution distinctly understood the difference between these two forms of government, and knew what they were doing when they adopted the latter. It is their wisdom then which is called in question in this controversy, and it is between them and Mr. Roosevelt that the people will have to decide.

The weapons with which the old constitution is to be assailed are the "initiative," the "recall," and the "referendum." By the "initiative" an agrieved portion of a community may require a vote to be taken upon the question submitted in the form of yes or no, without amendments and without reference to existing laws or authorities. As Mr. Nicholas Murray Butler, in an address given by him on this subject wittily remarks: "I submit this is very like having to answer the question 'have you left off beating your grandmother?'" If you answer 'yes' you embarrass yourself. If you answer 'no' you embarrass yourself still more."

The "recall" is simply a process by which a judge or other official who in his capacity as such has given offence to the community in which he acts, may by a vote of the electors be summarily dismissed from his office on the ground that they who elected or appointed him may unelect or disappoint him. The "referendum" is only another and perhaps more formal mode of the initiative equally liable to objection if put in force for a similar purpose.

Such are the means by which it is proposed to change the great republic into a Democracy in which the rule of the people shall be direct, untrammelled by the forms which the founders of the State thought necessary to combine freedom of action with reason and justice, and to prevent the passion of the moment

from being indulged in without present restraint or thought for the future.

In the stability and good government of the United States with which, whether we like it or not, we necessarily have constant intercourse, we are much interested, and we should therefore hope that this new movement may effectually be "turned down" by the good sense of the American people who when in their right senses are generally capable of arriving at wise conclusions.

It may be worth while here to compare the safeguards which our form of government provides to check hasty or ill-considered legislation, or any abuse of power on the part of our legislative bodies, with those adopted by the authors of the American constitution and which we have just been considering.

We, too, have a written constitution granted to us in the B.N.A. Act, which defines the powers of the different legislative bodies by which, or, to speak more accurately in the present state of affairs, *through* which we are governed.

To the Provincial Assemblies and to the Dominion Parliament jurisdiction is given over certain subjects, and with such subjects each has full power to deal free from interference by any other body. But should any of these bodies attempt to go beyond its proper sphere of action the Supreme Court, and finally the Privy Council may be called upon to decide whether such action is ultra vires or not. It is further provided for the protection of private rights, and to prevent legislation either unwise in itself, or which might be injurious to the general interests of the Dominion that the government of the latter may veto any Provincial Acts of this character; and, in the early history of the Dominion, this controlling power was frequently exercised. And further the legislation of the Dominion itself is subject to revision by the Imperial Government which will, as it has done, disallow any Act which trenches on the Imperial authority, or may affect injuriously Imperial interests, and then over all is the sense of Imperial responsibility and authority which checks all tendencies to individual action inconsistent with that Imperial idea which binds the Empire together.

For a time this carefully adjusted system of checks and balances

answered the purpose for which it was intended. Unfortunately it was not long before ill-judged interference in Provincial affairs by the Dominion authorities, largely prompted by party spirit, aroused a feeling of antagonism on the part of the Provincial authorities which, after a long contest, resulted in a doctrine being established, contrary to the spirit and intention of the B.N.A. Act, that so long as the Provincial legislature confined itself to dealing with subjects within its jurisdiction its authority could not be questioned. The safeguard provided by the constitution was thus swept awway, and no private rights as well as the general interests of the public are at the mercy of a party majority by means of which an unscrupulous minister can exercise a power as tyrannical as that of any European despot. He need not resort to an "initiative," a "recall," or a "referendum." He has simply to declare his will and an obedient majority will pass an Act to establish it. He need neither "re-elect" or "disappoint" the judges. He simply closes the doors of the courts to those who demand the protection of the law, and if vested interests or private rights come in the way of his favourite schemes he confiscates them without hesitation. There is no means of redress. The Dominion Government, also governed by party, will not—in fact dare not—do justice however much they may desire to do so. This is no fancy picture. It is a record of what has actually occurred. The power of disallowance still exists, but is as dormant as the prerogative of the Crown to veto Acts of the Imperial Parliament. If there is a question between public opinion and party interest the latter is sure to prevail.

This spirit of unrest, of impatience of restraint, of readiness to break through those rules which the experience of all ages has proved to be necessary to good conduct in both personal and public affairs, may not be so strongly felt among us as among our Southern neighbours but it is one which we should guard against all the more carefully when the legal restraints have been set aside.

This spirit is not one of progress. It leads directly to the state of barbarism, or of anarchy from which during centuries of real progress we have been striving to free ourselves. It goes backwards to the time when every man was a law unto himself, not

forward to the age of civilization when every man has to yield something of his own will for the good of the whole community and try to follow the golden rule of doing to others as he would they should do to him.

NEGLIGENCE--RULE OF THE ROAD.

A writer in the University of Pennsylvania *Law Review* discusses this subject in its March number. There are probably more cases of interest to us as to this in the United States than in England, as our rule conforms more to that of the former than of the latter. He writes as follows:—

A recent case raised the question of the rights and liabilities of drivers of vehicles on public streets. A wagon was proceeding along the left-hand side of a street, twenty feet wide. On the same side of the street there was a high board fence. The plaintiff, a boy of eleven years, was coming up behind the wagon on a bicycle, and started to pass between it and the fence on the left. As he was even with the front of the wagon, the horses swerved towards him; and before the driver could get them back, they had thrown the boy against the fence. The driver had not known that the boy was back of him, or that he was attempting to pass. The court affirmed a judgment for the plaintiff, upholding the trial judge, who had allowed the jury to say whether or not the conduct of the driver was negligent.

There were two points decided in the case. In the first place, the court had to consider whether negligence can be imputed from a violation of the so-called "Rule of the Road." The question was answered in the negative. This, it will be seen, is representative of the weight of authority. The authorities in England are confined to about a half-dozen short cases in the early part of the last century. The law as contained in them seems to be that a breach of the rule of the road is not per se negligence. Thus, it was held, in *Pluckwell* v. *Wilson* (1832), 5 C. & P. 375, that a person is not bound to keep to the customary side of the road, but that if he does not, he is bound

to use more care and diligence, and to keep a better lookout than would be requisite, were he on the proper side. Again, in *Wayde* v. *Lady Carr* (1822), 2 Dow. & Ry. 255, the court said: "In the crowded streets of a metropolis . . . situations and circumstances might frequently arise where a deviation from what is called the law of the road would be not only justifiable, but absolutely necessary." Of course, under some circumstances a violation of the rule of the road may mean the pursuance of a negligent course of conduct; but the mere fact of the violation is no negligence. In America, where the custom is to keep on the right, and to pass a team in front on the left, the majority of courts likewise hold that a breach of the rule of the road does not, in itself, spell negligence. So it has been decided that driving on the left-hand side of the road is not actionable negligence, nor contributory negligence. The same is true of passing a team in front on the right.

This, of course, does not mean that an observance of the customs of travelling is unnecessary. That is one of the many circumstances which the jury are to take into account in determining the question of negligence. The simple question is whether the driver is exercising the care required of him; and his position, relative to the middle of the road may be all-important.

The second point decided by the court was, that though a driver is not bound to keep to the proper side, if he does not do so he must use more care and keep a better lookout to avoid collision than would be necessary on the proper side. This is a harking back to the decision of *Pluckwell* v. *Wilson*, supra. It is significant, however, to note that in the latter case it does not appear whether the two vehicles were going in the same or in opposite directions. This, of course, is an essential fact, as the duty of a driver to one coming towards him may not be the same as that owed to one coming behind him. It is but reasonable to demand of one driving on the left side of a street that he keep a very sharp lookout for vehicles coming towards him on the same side, and upon meeting them to turn out. But can it be ex-

pected that he keep an equally sharp lookout for vehicles coming up behind him? The additional care, suggested as incumbent on the driver on the left side, as to vehicles behind him, can consist of nothing but a constant turning around to see if another driver is about to, or desirous of, passing. Yet this might readily amount to negligence to drivers in front of him or at his side, Again, passing a team is, to a certain extent, a hazardous undertaking—certainly, at least, when the street is as narrow as it was in the principal case. It seems just, therefore, that he who undertakes such a manœuvre should act with the greatest care; and it is not evident that such passage has been rendered more dangerous by the front driver's being on the left rather than on the right side of the street. In a practical question like this, the advisability of a rule of law should be measured by its efficiency; and it is difficult to see how travelling is made more safe by throwing the burden of additional prudence on th driver in front rather than on the one in the rear.

The court cites only one case in support of this rule, and that is a lower court decision. The prevailing view throws the peril on the party passing, regardless of the position of the driver in front. Of course, when the driver in front is aware of the desire and intention of the driver in the rear to pass, he owes him a duty to exercise reasonable care not to injure him. It seems, therefore, that the only ground upon which the court could rule that there was such evidence of negligence in the principal case as to warrant its being sent to the jury, was that the duty of the driver toward the plaintiff was so great, because of his presence on the left side, that his allowing the horses to swerve towards the fence, was a breach of it. This is open to serious criticism.

JEWISH DIVORCES.

It was recently stated in a Toronto newspaper that a Jewish Rabbi had, at the mutual request of a dying Jew and his wife, granted them a divorce, in order, so it was stated, to free the woman, who was childless, from the alleged obligation of the Mosaic law requiring her to marry her husband's brother. It is needless to say to lawyers that a divorce granted under such circumstances has no legal validity, and it may also be noted that the supposed obligation of the Mosaic law requiring a childless widow to marry her deceased husband's brother cannot be carried out in Ontario without a violation of the law of the land, which, based also on the Mosaic law as laid down in Leviticus, forbids such unions, without any exception.

Such a divorce as that above mentioned would not only have no legal validity whatever, but, notwithstanding it, the wife would appear to be still entitled to the status of wife and bound by all the obligations and entitled to all the legal rights which flow from that status.

The question of the effect of Jewish divorces is touched upon incidentally in the case of *Moss* v. *Smith*, 1 M. & Gr. 228, and a note of the reporter to that case on p. 233 seems to state the law on the subject correctly and succinctly. It is as follows: "By the civil law, divorces *a vinculo matrimonii* were allowed even under Christian emperors; but the canon law, founding itself on the evangelical precept, 'What God hath joined let no man put asunder,' though it allowed a separation, *a mensâ et thoro*, in cases of adultery, taught that a marriage, once validly contracted, could be dissolved only by the death of one of the parties. See this matter fully discussed in Pothier, *Traité du Contrat de Mariage* No. 464 and 486, etc., and see *Evans* v. *Evans*, 1 Hagg. 48. The law of England adopts the rule of the canon law in this respect. No divorce *a vinculo matrimonii*, where the marriage was once valid, can be obtained in England except by Act of Parliament—that is, by a new law made *pro hâc vice* to suit the particular occasion. It would, therefore, appear that either the law of England must be taken to be founded upon an erroneous con-

struction of the precept cited above, or else that a divorce bill containing permission to both, or to either of the parties, to re-marry whilst both are alive, is a proceeding in direct contravention of a divine command."

The note was written in 1840, before the establishment of the present English Divorce Court in 1858, but it correctly states what is still the law of Ontario on the subject.

With regard to the comment of the reporter on the permission granted by divorce bills to re-marry, there is this point to be noted: such Acts do not in any way require or command anyone to whom they apply to re-marry, they merely in effect remove the legal disability or punishment for their so doing. They leave it to the conscience of the party whether or not he or she will avail himself or herself of the permission; and as a rule people who exercise the statutory privilege are either ill-instructed on the subject or are not troubled with any qualms of conscience in such matters, and they have less regard for the laws of God than they have for the laws of man.

In Canada it is well for all classes to remember that the granting of divorces, and the annulling of marriages is not a matter within the competence of any religious organization.

ONTARIO LEGISLATION.

In our issue of July, 1911, Mr. W. J. Gorman, K.C., drew attention, in an article entitled "Stare decisis," to the unsatisfactory condition in the Province of Ontario as to the principles which govern where Divisional Courts and County Courts, respectively, differ on the same question. We note that this article has produced the desired result, for, by sec. 12 of the statute law Amendment Act, 1912, which has just become law, sec. 81 is repealed and the following substituted therefor:—

(2) It shall not be competent for any judge of the High Court in any case before him to disregard or depart from a prior known decision of any other judge of co-ordinate authority on any question of law or practice without the concurrence of the judge who gave the decision.

(3) If a judge deems the decision previously given to be wrong and of sufficient importance to be considered in a higher court, he may refer the case before him to a Divisional Court of the High Court or to the Court of Appeal.

(4) It shall be competent for any Divisional Court of the High Court, in any case before such Divisional Court, to disregard or depart from a prior known decision of any other Divisional Court of co-ordinate jurisdiction on any question of law or practice, whether it arose under section 74 or otherwise, without the concurrence of the Divisional Court or the judges thereof by whom the decision was given.

(5) If the first mentioned Divisional Court deems the decision previously given to be wrong and of sufficient importance to be considered in a higher court, such first mentioned Divisional Court may refer the case before them to the Court of Appeal, whose decision, if the case is not one arising under clause 1 of said section 74, shall be final and there shall be no further appeal.

(6) Where a case is so referred to the Court of Appeal, the registrar of the High Court shall transmit the papers to the registrar of the Court of Appeal, and the case shall be set down for hearing thereupon and notice of hearing given in like manner as in the case of an ordinary appeal to that court.

Sec. 5 of the same statute corrects also a serious defect in sec. 40 of the County Courts Act as follows:—

5. (1) Clause (*c*) of sub-sec. 1 of sec. 40 of the County Courts Act is amended by striking out, after the word "claim," in the second line, the words: "if the decision or order is in its nature final and not merely interlocutory."

(2) Sub-section 2 of the said section 40 is hereby repealed and the following substituted therefor:—

> "(2) This section shall not apply to an order or decision which is not final in its nature, but is merely interlocutory or where jurisdiction is given to the judge as persona designata."

DOES A WILL OPERATE FROM DEATH?

It is a common saying among practitioners that a will speaks from the death of the testator. That statement, however, is elliptical and inaccurate. Sec. 24 of Wills Act (1 Vict. c. 26) Imp. enacts in effect that a will shall be construed, with reference to the real estate and personal estate comprised in it, to speak as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. That section only applies to property and not to persons or objects; this was decided as long ago as *Bullock* v. *Bennett* (7 De G. M. & G. 283). In *Re Whorwood*; *Ogle* v. *Lord Sherborne* (55 T. Rep. 89; 34 Ch. Div. 446), where a testator bequeathed a silver cup to Lord S. and his heirs as an heirloom, and the person who was Lord S. at the date of the will died before the testator, leaving a successor to the title, it was decided by the Court of Appeal, affirming the decision of Mr Justice North, that the bequest lapsed. There are, however, various exceptions to this general rule, as, for instance, in gifts to persons holding an official position, or to classes, such as children. In those cases the persons answering the description at the testator's death take. With regard to property, the question what is a contrary intention within the meaning of sec. 24, so as to confine the gift to property existing at the date of the will, is not always an easy one. If the testator gives all the messuage and land now occupied by him, a close of land taken into occupation by him after the date of the will will not pass, notwithstanding the 24th section: (Hawkins on Wills, p. 20; and see *Re Willis*; *Spencer* v. *Willis*, 105 L.T. Rep. 295; (1911) 2 Ch. 563). But the word "my" alone is not always sufficient to shew a contrary intention. In *Goodlad* v. *Burnett* (1 K. & J. 348) a bequest of "my new 3¼ per cent. annuities" was held to comprise all the new 3¼ per cent. annuities that the testatrix held at her death. Vice-Chancellor Wood in that case said: "When I refer to a particular thing, such as a ring or a horse, and bequeath it as 'my ring' or 'my horse,' it seems to me there might be considerable difficulty in saying that the 'contrary intention' to which the Act in its 24th section refers does not appear on the face of the will; but when

a bequest is of that which is generic—of that which may be increased or diminished—then I apprehend that the Wills Act requires something more on the face of the will for the purpose of indicating such 'contrary intention' than the mere circumstance that the subject of the bequest is designated by the pronoun 'my.'" In the recent case of *Re Clifford; Mallam* v. *McFie* (1912) 1 Ch. 29) the facts were very shortly as follows: A testator, who died in Oct. 1910, by his will bequeathed "twenty-three of the shares belonging to me in the London and County Banking Company Limited." At the date of his will he held 104 original £80 shares; at his death he held 416 new £20 shares, each original £80 share having been sub-divided into four £20 shares. Held by Mr. Justice Swinfen Eady that, as the bequest was a definite specific bequest of a thing tl . could neither be increased nor diminished by events subsequent to the will, there was a sufficient contrary intention on the face of the will to exclude sec. 24, and that the bequest referred to the £80 shares existing at the date of the will; but held also that, as the twenty-three original shares, though changed in name and form substantially existed in the subdivided form, there was no ademption, and that ninety-two of the new shares passed by the specific request.—*Law Times.*

MECHANICS' LIENS — REPAIRING PROPERTY AT INSTANCE OF VENDEE IN CONDITIONAL SALE.

The Georgia Supreme Court holds very properly that the rights of vendor in a conditional sale contract duly recorded cannot be affected by repair of property, whereby a lien would be otherwise acquired by a mechanic, even though the vendor have knowledge of the fact that the repairs are being made. *Baughman Automobile Co.* v. *Emanual,* 73 S.E. 511. Also it holds that the retaking of such property under the terms of the sale contract constitutes nothing by way of estoppel in acceptance of benefit of the labours of the mechanic.

The court points out, however, that there is a way open for mechanics, who repair property held by conditional sale, to enforce their lien for repairs and this is their right to pay the

balance of purchase money due and then proceed to subject the property to lien as the property of the vendee, at whose instance the repairs have been made.

This position concedes that a lien is in some sort acquired by the mechanic as to such property, but its enforcement merely cannot be proceeded with unless the title in the vendee is first made absolute.

Whether this manner of procedure pointed out by the court would be exclusive is to be doubted. Why should not the property be placed, when lien is recognized sub modo, in custodia legis and be sold with the vendor's balance to be deducted first from the proceeds, preferably even to costs, at least where it is reasonably apparent that the chance of the vendor of collecting his balance is not only not diminished, but increased?

Some courts may differ as to construction of mechanics' lien statutes being liberal or strict, but they seem quite one way that, as to enforcement, the former rule prevails. Here the court allows the lien to attach. The mechanic enhances the selling security. The article is of a character that will reasonably need repair. Equity, therefore, ought to assist towards a rule which is not only just, but operates to the interest of all concerned.—*Central Law Journal.*

CROSS-EXAMINATION AS TO CHARACTER.

On the 4th March last, the English Court of Criminal Appeal quashed the conviction of an appellant who had been found guilty of robbery with violence, upon the ground that the learned judge who presided at the trial wrongly admitted evidence of the prisoner's character. As is well known, the Criminal Evidence Act, 1898, s. 1 (*f*), provides that "a person charged and being a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to shew that he has committed, or been convicted of, or been charged with any offence other than that wherewith he is then charged, or is a bad character, unless (1) the proof that he has committed or been convicted of such other offence is admissible

evidence to shew that he is guilty of the offence wherewith he is then charged; (2) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character . . . or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution." The prisoner, whose defence was that the case was one of mistaken identity, had during his evidence cast aspersions upon the conduct of the police and other persons in connection with his identification and the taking of the charge at the police-station. Although none of those police or other persons were called at the trial the learned judge allowed the prisoner to be cross-examined as to his previous convictions. It would seem abundantly clear that the section above quoted only authorizes such a course to be taken when the questions are asked of, or imputations are made upon the character of, persons who are called as witnesses at some stage of the trial. It was also suggested that, inasmuch as a statement made by the prisoner before the magistrate, and put in by the prosecution, involved an attack upon the witnesses called against him in the police-court, the nature and conduct of his defence made the cross-examination admissible at the trial. The court, however, declined to accept that view. As stated in *Rex* v. *Preston* (21 Cox C.C. 773; 100 L.T. Rep. 303; (1909) 1 K.B. 568), "when the defence is so conducted, or the defence is of such a nature, as to involve the proposition that the jury ought not to believe the prosecutor or one of the witnesses for the prosecution upon the ground that his conduct . . . makes him an unreliable witness, then the jury ought also to know the character of the prisoner who either gives that evidence or makes that charge." It does not appear to have been clearly decided in any case yet reported whether the statute, or the above reasoning, applies in the case where an imputation is made against the prosecutor or his witnesses at the police-court, but not at the trial. It is the practice of prosecuting counsel to put in any statement made by the prisoner before the magistrate, which is, of course, evidence against him under the Indictable Offences Act, 1848, s. 18, if made after being duly cautioned,

and reduced to writing signed by the magistrate. The Court of Criminal Appeal appears to have decided that if such statement is put in at the trial and it discloses an attack upon the witnesses for the prosecution, it does not of itself justify the judge in allowing the cross-examination of the prisoner as to his character.

—*Law Times.*

THE MEANING OF "ADJOINING."

A word which, according to dictionaries of authority, is susceptible of a double meaning is scarcely one to be selected by the careful draftsman. But "adjoining" so commonly appears in legal instruments that one is almost prompted to believe that its ambiguity is frequently overlooked. It may mean lying next —that is to say, actually "contiguous"; or it may merely be synonymous with "adjacent" or neighbouring. In an article which appeared a few years ago in these columns, bearing the same title as the above (see 126 L.T. Jour. 299), we reviewed the numerous modern authorities which up to that time had dealt with this delusive word. The right conclusion, therefrom, seems to be, as we then observed, that while "adjoining" generally relates to objects lying so as to touch in some part, "adjacent" is applicable to objects lying near to, but not necessarily in actual contact with each other. The decision of Mr. Justice Phillimore in the recent case of *Cave* v. *Horsell* (106 L.T. Rep. 147) adds yet another to an already long list, rendering it even more abundantly apparent that the use of the word should forever be abandoned in favour of "contiguous"—if that is in contemplation, as is probably most generally the case— or of "adjacent," if a broader meaning is desired. For, as was said in the judgment of the Judicial Committee of the Privy Council in the case of *City of Wellington* v. *Borough of Lower Hutt* (91 L.T. Rep. 539; (1904) A.C. 773), "adjacent" is "not confined to places adjoining, and it includes places close to or near." But, quoting what we remarked in the article to which we have just referred, it is, having regard to the two decisions of the Court of Appeal in *Ind, Coope, and Co. Limited* v. *Hamblin* (84 L.T. Rep. 168) and *White* v. *Harrow; Harrow* v. *Marylebone*

District Property Company Limited (86 L.T. Rep. 4), "manifestly erroneous to read 'adjoining' in a legal instrument as having the same meaning as 'adjacent' unless . . . there is some special reason to the contrary in the circumstances of the case." That was the foundation of the decisions of judges of courts of first instance in several cases that are cited in our article. In each there was some special reason to the contrary. It is, indeed, the inherent objection to the word that the meaning to be ascribed to it must largely depend upon the circumstances of each particular case. On that very ground, Mr. Justice Phillimore in the present case attributed to the word its wider meaning, holding that it was sufficient to cover all the shops in a terrace, and not only those immediately adjoining the plaintiff's premises on either side. That a word which is in any degree likely to occasion doubt or difficulty should be consigned to oblivion by lawyers is a self-evident proposition. All the more when the absolute certainty of its so doing is demonstrated to the fullest extent.

—*Law Times.*

LAWYERS SOLICITING BUSINESS.—A correspondent of the *Law Notes* (a coloured man) takes exception to Law Associations condemning the above practice. He puts the matter in a new light. We give his argument in his own words: "All attorneys are officers of the courts. The laws are rules prescribing what to do, and what not to do. If this is true all business ought to be don in accordance with the laws. If then a lawyer is an officer of the courts, it is his duty to see to it, that this is don. If so, how can he except he tell the people, what the laws are; and how they business stand in accordance with the laws? A lawyer ought not stureup strife for money: But if telling a purson what the law is, sture up strife let it come, the lawyer has don his duty. It is as much a lawyer duty to tell he people what the laws is; as it is for a teach to tell a child what a book is made for. A preacher to tell the world what Hell is made for. When a purson is doing his duty he ought not be condemned by any one. Therefore I differ from these Associations.

REVIEW OF CURRENT ENGLISH CASES.

(Registered in accordance with the Copyright Act.)

DECLARATORY JUDGMENT—RELIEF AGAINST CROWN.

Dyson v. *Attorney-General* (1912) 1 Ch. 158. In this case the plaintiff claimed that certain returns demanded to be made by him by the Commissioners of Inland Revenue were not warranted by law, and he claimed a declaratory judgment to that effect. Horridge, J., following *Dyson* v. *Attorney-General* (1911) 1 K.B. 410 (noted ante, vol. 47, p. 190) made the declaration and the Court of Appeal (Cozens-Hardy, M.R., Moulton and Farwell, L.JJ.) affirmed his decision and a like conclusion was come to in *Burghes* v. *Attorney-General* (1912) 1 Ch. 173.

LANDLORD AND TENANT—COVENANT RUNNING WITH LAND—STATUTORY ASSIGNEE OF REVERSION—RIGHT TO SUE—32 HENRY 8. c. 34, s. 1.—(R.S.O. c. 330, s. 12).

Sunderland Orphan Asylum v. *River Weir Commissioners* (1912) 1 Ch. 191. In this case the defendants were lessees of certain premises for an unexpired term of ninety-nine years. The lands had subsequently to the lease, and subject thereto, been vested in the plaintiffs by a private Act of Parliament, and the plaintiffs as such assignees of the reversion brought the action to restrain threatened breaches of a covenant running with the land. The defendants contended that the plaintiffs were not entitled to sue because they had no assignment of the covenant, and were not grantees of the original lessor; but Warrington, J., held that the effect of the Act of Parliament was equivalent to a grant by the lessors and entitled the plaintiffs to enforce the covenants.

ADMINISTRATION—TESTATOR OF UNSOUND MIND—BANK ADVANCES FOR MAINTENANCE OF LUNATIC'S HOUSEHOLD—BANK CHARGES FOR OVERDRAFT—NECESSARIES—REPAIRS—STATUTE BARRED DEBT — EXECUTORS — ACKNOWLEDGMENT — LIMITATION ACT (21 JAC. I., c. 16) s. 3—(10 EDW. VII. c. 34 s. 49 (*g*) ONT.).

In re Beavan Davies v. *Beavan* (1912) 1 Ch. 196. This was an action for the administration of a deceased person's estate. The deceased who was a customer of a bank became of unsound

mind, and one of his sons arranged with the bank to continue the lunatic's banking account and to draw upon it on behalf of the lunatic for the maintenance of the lunatic and his family, and for the necessary outgoings of the estate. At the death of the lunatic his banking account was overdrawn, and the bank claimed to prove for the amount of the overdraft and for the usual bank charges for interest and commission. Neville, J., held that although the bank were not creditors of the lunatic they were entitled under the doctrine of subrogation to stand in the shoes of creditors paid by the son out of the moneys advanced by the bank for necessaries supplied to the lunatic and his family, and for the necessary outgoings of his estate; but not for interest and commission on the overdraft; also that necessaries might include moneys properly applied in payment of interest on mortgages, repairs, insurance and rent audit expenses. Another person claimed to prove in respect of a statute barred debt, which the executors had entered in the list of the testator's debts scheduled to their affidavits for probate. It was claimed that this amounted to an acknowledgment so as to prevent the bar of the Statute of Limitations. But Eve, J., held that to be effective the acknowledgment must be to the creditor, and the entry in the schedule therefore was not sufficient, and that *Smith* v. *Poole* 12 Sim. 17, to the contrary is not law.

WILL—DEMONSTRATIVE LEGACY—REVERSIONARY FUND—NO TIME OF PAYMENT FIXED BY WILL—TIME FROM WHICH INTEREST BEGINS TO RUN.

In re Walford, Kenyon v. *Walford* (1912) 1 Ch. 219. The question in this case was from what time interest began to run on a legacy. By his will the testator bequeathed to his sister in the following terms: "the sum of £10,000 as her sole and absolute property to be paid out of the estate and effects inherited by me from my mother." The testator died in 1903. All the property he was entitled to under his mother's will was reversionary expectant on the death of his father who died in 1910. Reversing the judgment of Joyce, J., the Court of Appeal (Cozens-Hardy, M.R., Moulton, and Farwell, L.JJ.) held that the legacy was demonstrative, and no time being named for payment, and nothing directing payment only when the reversion fell in, the legacy bore interest a year from the testator's death, notwithstanding that the fund out of which it was primarily payable was reversionary.

EQUITY OF REDEMPTION—ASSIGNMENT OF EQUITY OF REDEMPTION —IMPLIED OBLIGATION OF ASSIGNEE OF EQUITY OF REDEMPTION TO INDEMNIFY ASSIGNOR—EXPRESS COVENANT OF INDEMNITY—EXCLUSION OF IMPLIED INDEMNITY—CONTINGENT REVERSIONARY INTEREST—MORTGAGE.

Mills v. *United Counties Bank* (1912) 1 Ch. 231. This was an appeal from the decision of Eve, J. (1911) 1 Ch. 669 (noted ante, vol. 47, p. 424). The facts of the case were that the plaintiff being entitled to a contingent reversionary interest in an estate mortgaged it to the defendants, and subsequently to one Mobberley, and thereafter assigned his equity of redemption to the bank, and by the assignment it was provided that the plaintiff was to be released from the mortgage debt, but that the mortgage was to be kept on foot as a protection against Mobberley's mortgage; and it also provided that, upon realization of the plaintiff's contingent interest, the bank should first pay their own debt, then Mobberley's mortgage, and that the balance should belong to the bank absolutely. Before the reversionary interest fell into possession the present action was brought to compel the defendants to indemnify the plaintiff against the Mobberley mortgage. Eve, J., dismissed the action on two grounds, first, that an implied obligation to indemnify would not take effect in the case of a reversionary interest until it fell into possession; and second, that in the present case there was no implied obligation to indemnify, because there was an express stipulation as to the terms of the indemnity, and therefore no further indemnity could be implied. The Court of Appeal (Cozens-Hardy, M.R., and Moulton, and Farwell, L.JJ.) affirmed his decision on the second ground, but did not assent to his view that an implied obligation to indemnify in the case of a reversionary interest does not take effect until it has fallen into possession. They also express the view that the implied obligation by an assignee of an equity of redemption to indemnify his assignor is not in the nature of an implied covenant, but rather an equity which arises independent of contract.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—CONTRACT—STIPULATION FOR FORMAL CONTRACT—CONSTRUCTION.

Von Hatzfeldt, Wildenburg v. *Alexander* (1912) 1 Ch. 284 was an action for specific performance of an alleged contract for the sale of a leasehold interest in land. The contract relied on was claimed to be found in correspondence. The plaintiff,

the purchaser, had accepted an offer made by the defendant but her acceptance was made subject to, amongst others, a condition that her solicitor should "approve the title to, and covenants contained in the lease, the title of the freeholder and the form of contract." Parker, J., held that the latter stipulation indicated that the contract was not a complete one and that the stipulation as to the form of contract was not one that the purchaser could waive, and therefore that the letters relied on did not constitute a binding contract. The action therefore failed.

MORTGAGE—REDEMPTION—TENDER BY MORTGAGOR—STOPPAGE OF INTEREST—COSTS OF ATTAINING VESTING ORDER.

Webb v. *Crosse* (1912) 1 Ch. 323 was an action for redemption in which the question was whether there had been a sufficient tender before action to stop the running of interest, and whether or not the mortgagor was liable to pay the costs of obtaining a vesting order rendered necessary by reason of the disappearance of a trustee mortgagee in whom the legal estate was outstanding. The acting trustees who were the mortgagees gave notice to the mortgagor on March 29, 1911, to pay off the mortgage, in order to put themselves in a position to exercise the power of sale contained in the mortgage. On June 29, 1911, the solicitor of the mortgagors called on the solicitors of the mortgagees and saw their managing clerk and informed him that they were ready to pay off the mortgage and undertook to pay the costs of reconveyance, but objected to pay any extra costs necessary to obtain a vesting order consequent on one of the former trustees in whom the legal estate was outstanding having disappeared. A reconveyance was tendered for execution to which the absconding trustee was a party. The tender was made without any previous notice to the mortgagees' solicitors. Parker, J., held that it was not sufficient to stop interest, although conceding that a tender of mortgage money which would have that effect need not necessarily be a legal tender, yet he found the tender in question insufficient because a reasonable notice had not been given of the intention to make it, it was not made to a person entitled to receive the money, it did not allow a reasonable time to the mortgagees to procure the execution of a reconveyance, or the obtaining of a vesting order, and furthermore the mortgagors had expressly refused to pay the costs of obtaining a vesting order which he held the mortgagor would be liable to pay.

ANNUITY — ARREARS — INTEREST — ADMINISTRATION ACTION — RULES 824, 825—(ONT. JUD. ACT, ss. 114, 116).

In re Salvin, Worseley v. *Marshall* (1912) 1 Ch. 332. This was an administration action. A debt was proved against the estate for arrears of annuity payable under a covenant made by the testator whose estate was being administered. By a certificate of the Master dated April 30th, 1908, the arrears were found to amount to £2,158 6s. 6d., and the whole arrears were not finally paid until August 24, 1910. It was claimed that no interest was payable on the arrears of the annuity. Eve, J., held that under Rules 824, 825 (see Ont. Jud. Act, ss. 114,116), interest at the legal rate was payable on the £2,158 6s. 6d., from 30th April, 1908, as upon a judgment, and that interest on the subsequent arrears was payable until the actual date of payment. The rule that interest is not payable on arrears of an annuity only applies in foreclosure or redemption actions and as against property charged therewith, but has no application in an action to administer the estate of the grantor of an annuity.

WILL—CONSTRUCTION—CHARITY—REAL ESTATE—ABSOLUTE GIFT WITH COMMON LAW SUBSEQUENT CONDITION—RULE AGAINST PERPETUITIES—GIFT OVER—VOID CONDITION—UNCERTAINTY.

In re Da Costa, Clarke v. *Church of England Collegiate School* (1912) 1 Ch. 337. In this case a testator had devised all his real estate in South Australia upon trust for successive tenants for life, and on the falling in of the last life tenancy, to convey the estate to the defendants. But this disposition was made subject to a condition that the defendants published annually a statement of payments and receipts. and, in case of default for six calendar months in the publication of such statements, the disposition in favour of the defendants was to cease and the property was to go over to such person or such public purposes as the Governor in chief of South Australia should direct. Eve, J., held that the gift over and the condition were both bad. The gift over not being good as a charitable gift; and the condition subsequent being obnoxious to the rule against perpetuities. *Re Hollis Hospital* v. *Hague* (1899) 2 Ch. 540, followed.

WILL — CONSTRUCTION — PERPETUITY — STRICT SETTLEMENT — POWER TO TRUSTEES TO ENTER DURING MINORITY OF TENANT IN TAIL.

In re Stamford and Warrington, Payne v. *Grey* (1912) 1 Ch. 343. This case deals with the construction of a will whereby the

testator devised estates, in strict settlement, under which an infant was now tenant in tail. The will contained a provision, that when any infant became entitled as tenant in tail, it should be lawful for the trustees to enter into possession of the rents and profits and apply them to keep up the mansion house and manage the property, with power to hold manorial courts, and maintain the infant and apply the surplus in a specified way. Warrington, J., held that the effect of this clause was to vest a legal estate in the trustees anterior to the estate tail, and that this estate would continue during the whole of the limitations of the will, and was consequently void for perpetuity; and he was induced to come to this conclusion because without the legal estate the trustee would have had no power to hold the manorial court; but the Court of Appeal (Cozens-Hardy, M.R., and Moulton, and Farwell, L.JJ.) overruled his decision holding that the provision amounted to a power which could be exercised without having any legal estate, and that the inclusion of a power to hold manorial court, which could not be exercised did not operate so as to change the whole character of the settlement, and therefore that the minority clause was valid.

Correspondence

MODERN COLLECTION METHODS.

To the Editor, CANADA LAW JOURNAL:

SIR,—In this day and age, when the tendency towards systematization along commercial lines is so marked, it is not surprising that from the collection departments of large corporations, and from the numerous agencies, bureaus, bonding companies, clearing houses, etc., who make a specialty of the collection and adjustment of accounts, should be heard the last word in new and up-to-date methods of collection. Two examples of these methods have recently been brought to the attention of the writer, an examination of which will prove decidedly interesting.

The first is in that form of circular letter with which we are all familiar, and the effectiveness of which depends to a large extent upon its close similarity to a personal typewritten communication. It issues forth from the Toronto branch of a certain collection agency, whose head office is located in the United States. The words "Investigation Department" appear in red

letters at the top, followed by the date. Substituting fictitious names and figures, for obvious reasons, the communication is as follows:

MR. JOHN DOE,

..........................., Ont.

Dear Sir:— IN RE NOAKES & STYLES, $50.

You have neglected to answer our previous letter to you in regard to the above claim.

We have allowed you an opportunity of adjusting this matter with us before a thorough investigation of your habits, mode of living, income, social standing, and general reputation is made. If we are compelled to take this course, our records will contain the full report of this investigation. It is necessary for us to make it when debtors fail to pay their accounts, as an aid to our legal department in determining what action will be necessary to obtain settlement. If you desire to stop further proceedings, let us hear from you by return mail.

Yours truly,
RICHARD ROE,
Investigator.

In order that the poor delinquent may be fully apprised of the scope and nature of the investigation referred to, a printed form of report is enclosed, marked "For Office Use Only." In comparison with its comprehensive breadth and thoroughness, the Bertillon System and the Third Degree combined would resemble nothing so much as an oral examination in a kindergarten. These are merely a few of the headings into which the report is divided and subdivided:—

REPUTATION WITH

Grocer (name and address) with whom he deals..........
Family physician..........
Nearest neighbours (name and address)..........

CAUSES OF DELINQUENCY.

Drink? Women? Men? Gambling? Moral indifference?..........
Does debtor's employer..........
Does debtor's grocer.......... } *Know debtor does not pay his or her bills?*
Does debtor's wife or husband
Does debtor's physician..........
Does debtor's wife or husband
Does debtor's employer.......... } *Know debtor's habits?*..........
Where does debtor spend evenings?..........
To what Union does debtor belong? (Name and address)..........
Has debtor ever been arrested?..........
Upon what charge?..........*When?*..........*Results?*..........

The whole concludes with the following certificate, which in itself is calculated to create in the mind of the debtor visions of blue serge, brass buttons and prison bars:—

I do hereby certify that the answers herein above are true and correct to the best of my knowledge and belief.

Signed..........
Investigator No..........

The other example to which reference is made above consists of a very remarkable document, so framed as to closely resemble some form of process issued by the Division Court. In reality it is nothing more or less than a notice issued by the collection department of a certain manufacturing company, but so skilfully has it been prepared that at first glance even the practiced eye is deceived. With the necessary omissions and substitutions, it stands confessed as follows:—

FINAL NOTICE
BEFORE
SPECIAL SUMMONS.

Amount of Claim, $50.00. *No. 1234.* *Dec. ...., A.D. 1911.*
Province of Ontario
County of....................
Between:—

X MANUFACTURING COMPANY, LIMITED,
Plaintiff,

Collection Dept.
X Mfg. Co., Ltd.,
......................Ont.

and
JOHN DOE,
Defendant.

To the above-named defendant:—

TAKE NOTICE *that the above-named plaintiff claims you are indebted to them in the sum of Fifty Dollars, as shewn by their particulars of claim herewith following, that is to say, for note past due and costs thereon.*

IT BEING FURTHER SET FORTH *by the plaintiff that although duly and regularly demanded, the defendant has not made payment of the said claim.*

NOW THEREFORE NOTICE IS HEREBY GIVEN *to the above-named defendant that unless within fifteen days after the service hereof, that is to say, on or before the 10th day of January, A.D. 1912, at 2.30 o'clock P.M., you do appear in person for payment of said claim, or otherwise make provision for satisfactory adjustment and settlement thereof, action will be entered in Court and suit brought against the above-named defendant for recovery of the total amount, together with the costs and disbursements of the said action or actions as may be necessary.*

DATED *at...24th day of December, A.D. 1911.*

RICHARD ROE.
C. D. Clerk.

If the amount of the claim be paid at once no further proceedings will be taken. Remittance may be made direct to the plaintiff or to the C. D. Clerk, Box 123, ..., Ont.

The skeleton form of this notice is printed on white paper of foolscap size, bearing a red marginal line. The words "Special Summons" are in red-ink letters nearly half an inch in height, and the memorandum at the foot of the notice is also in red. The words "Collection Dept. X Mfg. Co., etc.," occupy a modest position, as indicated, and are printed in very much finer type than appears elsewhere in the document. The signature of the "C. D. Clerk" is an actual signature, not a facsimile. Names,

dates and amounts are inserted in typewritten characters. In the case which came under the writer's observation some $4 had been added to the amount owing, to cover "costs."

It would be safe to say that hardly one layman in fifty, upon being "served" with a paper in this form, through the medium of the post-office, would observe that it is not styled in any particular court, or would connect the mystic words "C. D. Clerk" with the Collection Department to which so modest a reference is made. Perhaps the fiftieth, if he were unusually observant or very familiar with Division Court proceedings, would call the bluff, pay the "plaintiff" the amount owing without "costs," and voice, in no uncertain words, his opinion of such methods; but to the other forty-nine, the style of the document, the legal phraseology employed, and the signature of the "C. D. Clerk," would be convincing proof that they had fallen into the toils of the law.

The sympathies of the legal practitioner are not, speaking generally, with that large class of the community known as "delinquent debtors." The man who boasts that he is "execution proof" and who sums up his creed in the time-honoured phrase, "you can't get blood out of a stone," is found in every city, town and hamlet. Frequent encounters with this type have a tendency to exert a hardening influence on our hearts, and we are apt to regard the class as a common enemy. But if we must fight this enemy, let us fight fairly, so that our hands, at least, may be clean. To set up and maintain an arbitrary ethical standard in this matter would be a task attended with great difficulty and one which few would care to undertake. In the stress of modern commercialism the question seems to have resolved itself into the comparatively simple one of legality or illegality. But when we are brought face to face with methods such as the two which have been illustrated above, grave doubts arise in our minds as to whether or not, after all, that criterion is the true one.

Edwin W. Kearney.

Haileybury, Ont.

REPORTS AND NOTES OF CASES.

England.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Lord Chancellor (Earl Loreburn),
Lords MacNaghten, Atkinson, [Jan. 16.
Shaw and Robson.]

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

Federal and provincial railways—Through traffic—Powers of railway commissioners—B.N.A. Act.

Appeal from the Supreme Court of Canada.

Held, that under ss. 91 and 92 of the British North America Act a provincial railway is not subject to the jurisdiction of the Board of Railway Commissioners of Canada in respect of its through traffic with a federal railway; and s. 8, sub-s. 6, of the Railway Act of Canada, purporting to deal with such through traffic, is therefore ultra vires.

Judgment of the court below affirmed.

Atwater, K.C., for the appellant corporation. *Newcombe,* K.C., for the Attorney-General for Canada, intervening. *Sir R. Finlay,* K.C., *Meredith,* K.C., and *Geoffry Lawrence,* for the respondent company. *Geoffrion,* K.C., *Hamar Greenwood,* and *Horace Douglas,* for the Attorney-General for the Province of Quebec, intervening.

Dominion of Canada.

SUPREME COURT.

Que.] THE KING *v.* COTTON. [Feb. 20.

Succession duties—Quebec Law—Movable property out of province. —Domicile.

The wife of C. domiciled in Quebec, died at Boston, Mass.,

leaving movable property locally situated at the latter place. Later C. died in Cowansville, Que., also leaving movables in Boston. At the period of the wife's death the law of Quebec imposed a duty on transmission of property situated in the province belonging at his death to a person domiciled therein. Prior to the death of C. the law was amended by imposing the duty on all movable property transmitted "wherever situate" of persons so domiciled.

Held, 1, reversing the judgment of the Court of King's Bench (Q.R. 20 K.B. 164), DAVIES and ANGLIN, JJ., dissenting, that the property of C. was liable to duty.

2. That the property of the wife of C. was not liable to duty, affirming such judgment by an equal division.

Appeal allowed in part.

Aime Geoffrion, K.C., for appellant. *T. Chase-Casgrain*, K.C., for respondents.

Sask.] MCKILLOP *v.* ALEXANDER. [Feb. 20.

Sale of land—Conflicting purchases—Equities—Priority—Caveat—Approval by original vendor.

A railway company signed an agreement for the sale of land to G. on condition that no assignment by G. should be valid unless it was for his entire interest and should receive the approval of the company. G. sold half the land to A., who paid part of the purchase price and later sold the whole to other parties. A. filed a caveat under the provisions of the Land Titles Act and some time after it was filed the subsequent purchasers from G. paid the balance of purchase money due and obtained the approval of the railway company to the sale to them. A. brought suit for specific performance of his contract with G. and to restrain the company from conveying to the other parties except subject to his interest.

Held, affirming the judgment appealed from (4 Sask. L.R. 111, sub nom. *Alexander* v. *Gesman*), DUFF, J., dissenting, that the approval of the company to the conveyance to the subsequent purchasers having been given after the caveat was filed, and the parties being on equal terms as to equities, the prior equity must prevail. Therefore the caveat protected A's rights, and he was entitled to the decree asked for.

Per IDINGTON, J., that the condition in the original sale to G. could only be invoked by the parties to it.

Appeal dismissed with costs.

Ewart, K.C., for appellants. *Chrysler*, K.C., for respondent.

Que.] [Feb, 20.

SHAWINIGAN HYDRO-ELECTRIC CO. v. SHAWINIGAN WATER & POWER CO.

Municipal corporation—Establishment of site for electric plant—Site beyond limits—Purchase on credit—By-law—Sinking fund—Cities and Towns Act, s. 5668.

The council of Shawinigan Falls passed a by-law authorizing the purchase of land with a power house and plant thereon situate outside the limits of the town. Part of the purchase money was to be paid in yearly instalments secured by promissory notes and the balance to the holder of a hypothec on the land. The by-law contained no provision for the levy of a rate to meet the interest and establish a sinking fund to pay off the principal.

Held, affirming the judgment of the Court of King's Bench (Q.R. 19 K.B. 546), ANGLIN, J., dissenting, that the by-law was invalid.

Per DAVIES, IDINGTON and DUFF, JJ., that the town had no authority to purchase land beyond its limits.

Per ANGLIN, J., that under the special legislation and surrounding circumstances, it might have such power.

Per DAVIES, J., the by-law was invalid for want of a provision, either in itself of a contemporary by-law for fixing a rate to meet the interest and establish a sinking fund.

Per IDINGTON, J. The assent of the ratepayers was necessary before the by-law could be passed.

Per ANGLIN, J. It was incumbent on the council to provide for meeting the payment of the purchase money and interest, but the insertion of a provision in the by-law for the purpose was not necessary. An annual rate could be levied until it was paid.

Appeal dismissed with costs.

Aime Geoffrion, K.C., for appellants. *F. Meredith,* K.C., and *Holden,* for respondents.

Province of Ontario.

HIGH COURT OF JUSTICE.

Clute, Latchford and Sutherland, JJ.] [March 8.

RICE *v.* GALBRAITH.

Principal and agent—Commission on sale of land—Parties brought together by agent—Sale affected by vendor.

Appeal of plaintiff from a judgment of Denton, Co.J., Co. York, dismissing an action brought to recover commission by an agent for the sale of land. The plaintiff brought the property to the attention of a person who subsequently became the purchaser, but the sale was actually effected by the defendant. It was found upon the evidence that the sale would not have been brought about, but for the fact of the introduction.

The trial judge found for the defendants on the authority of *Locators* v. *Clough*, 17 Man. L.R. 659 (C.A.), where Phippen, J.A., held that a mere introduction of the property to the purchaser without the agent endeavouring to negotiate or in fact negotiating the sale is not an earning of an agreed commission.

Held, dissenting from the above judgment, that where the agent brings the parties together and a sale is effected by his intervention the commission is payable, notwithstanding the fact that the vendor carried on the negotiations with the purchaser without the assistance of the agent and without the knowledge that the agent had been instrumental in bringing the parties together.

Kilmer, K.C., for appellants. *J. J. Maclennan*, for respondent.

[NOTE.—The above cases might perhaps be distinguished; but the finding of Mr. Justice Phippen is, in our opinion, in view of the requirements of modern business practices in reference to the sale of land by agents one that ought to be followed rather than the judgment of the Ontario court; and in matters of this kind judge made law is very desirable. In fact there would seem to be no protection against the ingenious schemes of unscrupulous agents for securing commissions except the rule that they should not be collectable unless the agent could produce a written authority therefor.—Ed. C.L.J.]

Latchford, J.] RE WOLFE AND HOLLAND. [March 22.

Will—Life estate with power of appointment amongst class.

Held, that the words "I leave my property to my wife, to share with the children as she sees fit" in a devise of lands, passes to the widow merely a life estate with a power of appointment among the children; such bequest imposes an obligation on the devisee to divide or share the property among his children at her death.

Burrell v. *Burrell* (1778), 1 Ambl. 660, and see Theobold on Wills, 7th ed., 327, 482.

W. C. Greig, for the vendors. *W. Greene*, for the purchaser. *A. C. T. Lewis*, for the Official Guardian.

Master in Chambers.] NEY *v.* NEY (No. 2). [March 22.

Parties—Defendant joined in alimony action as to collateral relief—Joinder—Cause of action not affecting a co-defendant.

Held, 1. While a claim for the custody of the children may be joined in an action by the wife against the husband for alimony, another person taking care of the children under the defendant's directions cannot be made a co-defendant for the purposes of the relief sought as to the custody of the children.

2. Two separate causes of action, in one of which one of the defendants has no concern, cannot be joined.

McLarty, for plaintiff. *Phelan*, for defendants.

Middleton, J.] [March 23.

RE MATTHEW GUY CARRIAGE AND AUTOMOBILE CO.

Company—Capital stock—Illegal issue at discount—Cancellation—Estoppel—Shareholder attending meeting.

Held, 1. It is competent to a company, upon discovering that it has, under a mistake of law, been illegally issuing its shares at a discount, to return the subscriptions and cancel the allotment. and the issue of stock so made.

2. A shareholder's attendances, as such, at the meetings of the company may estop him from denying that he is a shareholder, but do not estop him from denying that he is a shareholder in respect of a greater number of shares than were covered by the

certificates issued to him and on which alone his vote at the shareholders' meeting would be based.

Kilmer, K.C., for the liquidator. *McBrayne*, for R. W. Thomas.

Master in Chambers.] [March 28.

TAYLOR *v.* TORONTO CONSTRUCTION CO.

Venue—Change—Failure to serve notice of trial.

While there may be jurisdiction to change the place of trial, after notice of trial, a plaintiff may not correct his own mistake in failing to give notice of trial by a motion to change the venue.

F. Morison, for plaintiff. *Chisholm*, K.C., for defendants.

Province of Quebec.

KING'S BENCH—APPEAL SIDE.

Archambault, C.J., Trenholme,
Lavergne, Cross and Carroll, JJ.] [March 15.

VILLAGE OF MARBLETON *v.* RUEL.

Waters—Building dam—Lower riparian owners—Injunction.

Held, 1. A municipal corporation may not place a dam at the outlet of a lake for the purpose of raising the level thereof when such action diminishes the enjoyment of the mill owners having rights to the waters flowing from such lake by depriving them of their usual quantity of water at certain seasons.

2. Riparian owners have a right of action to compel the removal of a dam which seriously interferes with their riparian rights and to compel the restoration of the former status in quo so that the waters may escape from the lake at their natural level and this without prejudice to their claim for damages.

C. Walter Cate, K.C., for appellant. *J. A. Leblanc*, K.C., for respondent.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] CONLEY *v.* PATERSON. [April 8.

Vendor and purchaser—Specific performance—Agreement of sale—Reference to more formal contract to be subsequently prepared—Statute of Frauds.

A receipt given by the vendor's agents to the purchaser for the cash deposit on the sale of land subject to the approval of the vendor, if it contains all the terms of the contract and is sufficiently executed to satisfy the Statute of Frauds, and if the sale is subsequently approved by the vendor, will be binding on him, and the purchaser will be entitled to enforce specific performance notwithstanding the provision: "$1,500 to be paid in cash *on execution of the necessary agreement of sale*" in the receipt there being no more formal agreement of sale executed afterwards. *Von Hatzfeldt* v *Alexander* (1912), 1 Ch. 289; *Winn* v. *Bull*, 7 Ch. D. at 32; *Rossiter* v. *Miller*, 3 A.C. 1124, and *Munroe* v. *Heubach*, 18 M.R. 450, followed.

The signing of the receipt by the agents as "agents for owner" was sufficient to satisfy the Statute of Frauds, although the name of the owner was not stated in it. *Rossiter* v. *Miller*, 3 A.C. at p. 1140, followed.

O'Connor and *Dysart*, for plaintiff. *Galt*, K.C and *C. S. Tupper*, for defendants.

Full Court.] [April 8.

MCNERNEY *v.* FORRESTER.

Negligence—Fall of wall of damaged building—Liability of owner for damages caused by.

Appeal from judgment of Metcalfe, J., noted vol. 47, p. 625.

Held, that the owner of a damaged house whose walls are, to his knowledge, in danger of falling is bound to exercise the utmost diligence and cannot delegate to others, whether contractors, architects or engineers, the duty of taking effectual means of preventing the falling of the wall to the injury of persons occupying adjoining land or their property, and it is no excuse that he placed the matter in the hands of an architect or a building inspector upon whose skill he relied and that he, in good faith,

acted upon their advice that the walls were not in danger of falling. *Jolliffe* v. *Woodhouse*, 10 T.L.R. 553; *Valiquette* v. *Fraser*, 39 S.C.R. at p. 4; *Ainsworth* v. *Lakin*, 57 L.R.A. 132; *Hughes* v. *Percival*, 8 A.C. 445; *Attorney-General* v. *Heatley* (1897), 1 Ch. 560; *Todd* v. *Flight*, 9 C.B. N.S. 377; *Tarry* v. *Ashton*, 1 Q.B.D. 314; *Bower* v. *Peate*, 1 Q.B.D 321; *Dalton* v. *Angus*, 6 A.C. 740, and 3 *Halsbury*, p. 315, followed.

Appeal allowed with costs.

Phillipps and *Chandler*, for plaintiffs. *O'Connor* and *Dysart*, for defendants.

KING'S BENCH.

Mathers, C.J.] [April 2.

BRANDON ELECTRIC LIGHT CO. *v.* CITY OF BRANDON.

Damages—Settlement of claim on discovery of facts—Fraud—Omnia praesumuntur contra spoliatorem—Waiver of right to rescind contract—Formal acceptance of settlement.

Held, 1. If one party makes a claim upon another in the existence and amount of which he has an honest belief and the other party agrees to pay it without further investigation, the latter will be bound by his agreement: *Dixon* v. *Evans*, L.R. 5 E. & I. App. 606. And that is so even although the claim put forward turned out afterwards to be wholly unfounded. *Callister* v. *Beschaffsheim*, L.R. 5 Q.B. 449, and *Cook* v. *Wright*, 1 B. & S. 559, followed.

2. The plaintiffs, by the voluntary payment of five successive cheques extending over five months, had waived any right to rescind the settlement even if there had been any evidence of fraud or duress. *Doll* v. *Howard*, 11 [illegible] R. 577, and *Ormes* v. *Beadel*, 2 DeG.F. & J. 333, followed.

Wilson, K.C., and *Kilgour*, for plaintiffs. *O'Connor* and *Mackay*, for defendants.

Robson, J.] SELLICK *v.* TOWN OF SELKIRK. [March 23.

Trial—Notice of trial—Close of pleadings—Unserved co-defendant—Dismissal and discontinuance—Failure to serve co-defendant.

Held, 1. A notice of trial is irregular unless the pleadings are closed as to all parties including a co-defendant not served with the statement of claim within the time prescribed for service. *Ambroise* v. *Evelyn*, L.R. 11 C.D. 759, followed.

2. Where one of two defendants has appeared and pleaded, but the other defendant has not been served within the time limited for service, the appearing defendant is not entitled to treat the action as having been abandoned as against his co-defendant and to himself serve notice of trial; he should first inquire of the plaintiff as to the intention to proceed against the unserved defendant, and if it appears that the action is being informally abandoned as to the unserved defendant without service of a discontinuance, the appearing defendant may make an interlocutory application to strike out the name of his co-defendant.

Hannesson, for plaintiff. *Heap*, for Town of Selkirk. *Guy*, for Winnipeg Ry. Co.

Robson, J.] SELLICK *v.* TOWN OF SELKIRK. [March 23.

Practice—One defendant serving notice of trial before service of statement of claim on other defendant—When cause at issue—Abandonment by plaintiff of proceedings against one of several defendants.

Where there are two defendants, one of whom has not been served with the statement of claim, the cause is not at issue, although the time allowed by the Rule for such service has expired, for it is possible that plaintiff might succeed on an application under Rule 176 for leave to make the service. The defendant who has been served cannot, therefore, under such circumstances, bring on the action for trial, and a notice of trial served by him on the plaintiff should be set aside. *Ambroise* v. *Evelyn*, 11 Ch.D. 759, followed. *Vandusen* v. *Johnson*, 3 C.T.L. 505, not followed.

The proper course for the appearing defendant to take is to apply to strike out the name of the other defendant on the ground of abandonment after first inquiring as to the plaintiff's intention: *Ambroise* v. *Evelyn*, supra, and *Foley* v. *Lee*, 12 P.R. 371.

Hannesson, for plaintiff. *Heap*, for Town of Selkirk. *Guy*, for other defendant.

Province of British Columbia.

SUPREME COURT.

Gregory, J.] EDMONDS *v.* EDMONDS. [March 8.

Divorce and separation—Acts of cruelty—Evidence.

Held, that the cruelty charged in a suit for divorce in British Columbia must be such as would cause danger to life, limb or health, or a reasonable apprehension of it.

Russell v. *Russell*, [1895] P. 315, and *Tompkins* v. *Tompkins* (1858), 1 Sw. & Tr. 108, followed.

2. In a suit for divorce on the ground of adultery, corroboration of the fact will be required in addition to proof of an admission of adultery made by the defendant unless the admission is entirely free from suspicion.

Maclean, K.C., for petitioner. No one for the respondent.

Province of Saskatchewan

SUPREME COURT.

Full Court.] MAHONEY *v.* LESCHINSKI. [March 9.

Intoxicating liquors—Sale during prohibited hours—Serving two persons at same time—Separate sales.

Where a bar-tender of a licensee, permitted to sell intoxicating liquors, sold, during prohibited hours, two separate orders for intoxicating liquors to two individuals both present at the same time and place, each man paying for the liquor furnished him, this constitutes two separate and distinct violations of the Saskatchewan liquor license law, and the holder of the license is liable to two separate penalties.

Apothecaries' Co. v. *Jones*, [1893] 1 Q.B.D. 89, and *R.* v. *Scott*, 33 L.J.M.C.15, distinguished.

A. Ross, for appellant, informant. *J. F. Bryant*, for respondent.

Bench and Bar.

OSGOODE HALL, TORONTO.

The formal opening of the addition to the buildings which are the headquarters of the Law Society of Upper Canada and the Law Courts of Ontario, was the occasion of an address of welcome to the Bar of that Province, by Sir Charles Moss, Knt., Chief Justice of Ontario, at the first sitting of the Court of Appeal in their magnificent new court room.

Addressing Sir Æmilius Irving, Treasurer of the Law Society, and the members of the Bar who were present, the Chief Justice said:—

"My colleagues and I think that before proceeding with the business of the court it would be proper to make a brief reference to the new conditions and surroundings in which the court is about to enter upon the work of the sitting now commencing. It is, we think, of some interest to the members of the profession who frequent the Court of Appeal, as well as of moment to the judges themselves, that after a considerable period—a somewhat long-drawn-out period, at all events—of comparative unrest, we are to be hereafter housed in these comfortable rooms; and that we are for the future to hold the sittings of the court in this commodious and handsome chamber. It is nearly a quarter of a century now since the court, constituted substantially as it is to-day under the legislation of 1874, took up its quarters in the chambers which lay almost immediately to the south of where we are to-day; and there it continued its work until the manifest inconvenience from want of proper light and ventilation—and lately from want of even sufficient space—led the Government of Ontario to decide upon the erection of this present building, into the possession of which, after a temporary lodgment elsewhere of nearly two years, we enter this morning. It may be assumed, I suppose, that this building, which we trust remedies the defects complained of—well lighted, well ventilated and spacious as it is—will continue hereafter to be for many years the domicile of the court, so that it may be truly said that to-day marks the entry upon a new stage and the commencement of a new epoch in the history of the court. My colleagues and I entertain the belief that the relations between the Bench and the Bar, which have ever been of the most cordial and satisfactory nature in the

past, will continue and be fully maintained in the future. On behalf of my colleagues and myself, and through you, Sir Æmilius, I tender to the Bar a cordial welcome to this new building; and we are fully assured that the members of the Bar will do all that lies within their power, as they always have done I think, in the maintenance of the traditions of the Bar, to perpetuate and maintain the becoming decorum and dignity which should always surround, and has hitherto surrounded, the administration of justice in His Majesty's courts."

Sir Æmilius Irving then addressed the court as follows:—

"You have been good enough to refer to this handsome chamber in the course of the very appropriate remarks that you have made on this auspicious occasion; and I think I may use that term without using it aimlessly. I think it might have been well had those who are more particularly responsible for the details that have been worked out—for instance the Minister of Public Works, the architect, and indeed the Attorney-General himself—been present here to-day; they would have been much gratified to have heard the laudatory remarks that Your Lordship has thought proper to utter with reference to the building in which we are now placed. With reference to the court itself, one finds here a fitting home for the purpose; and, speaking of course not as an expert dealing with architecture, but as one struck with the simplicity, with the perfect good taste that this room presents, one cannot refrain from referring to those qualities, and to its admirable proportions. I think those are matters of great importance, and of satisfaction, not only to the judges themselves who adorn this court, but to the members of the Bar who practice and of the public generally, in knowing that the result of the expenditure by the country upon this very necessary building has been followed by such successful completion. Your Lordship was pleased to speak about the relations between the Bench and the Bar. With reference to the relations of the Bench I do not think it is at all becoming for me from this position to speak. The Bench has always been the great honour of this Province, and it has, accordingly, invariably received that tribute from not only the Bar, but from the public as well. With reference to the Bar, it is upon that point that we can speak. We have no doubt that the Bar will on its part follow out the traditions of the members of the Bar who have preceded us; and we will always remember that the highest tribute to the Bar would be to follow in the footsteps of those great men who have been at the Bar—some of whom have been on the Bench. I beg leave, on behalf

of the Bar present, and of those who are not here—who, I am sure, would be glad to be here did convenience permit— to thank Your Lordships for the welcome that you have given us, and the kind hearing extended."

JUDICIAL APPOINTMENTS.

William Legh Walsh, of the City of Calgary, in the Province of Alberta, K.C., to be a Puisne Judge of the Supreme Court of the said Province. (April 3.)

Alexander Haggart, of the City of Winnipeg, in the Province of Manitoba, K.C., to be a Judge of Appeal in the Court of Appeal for the said Province. (April 3.)

Toussaint Hector Chauvin, of the City of Hull, in the Province of Quebec, Advocate, to be a Puisne Judge of the Superior Court for the said Province. (April 3.)

Louis Arthur Audette, of the City of Ottawa, in the Province of Ontario, K.C., to be Assistant Judge of the Exchequer Court of Canada. (April 4.)

Flotsam and Jetsam.

"So you want a divorce, do you?" said the lawyer, peering over his glasses at the worried little man in front of him.

"Yes, sir, I've stood about all I can; my wife has turned suffragette, and she is never at home."

"It is a pretty serious thing to break up a family, you know. Don't you think you had better try to make the best of it for a while? Perhaps it is only a passing fad."

"That's what I have been doing, but there are some things a man can't stand. I don't mind the cooking and I haven't kicked on washing the dishes, but I do kick on having pink ribbons run into my nightshirt to try to fool the babies."

After twenty-two years' service on the Bench of the King's Bench Division, Mr. Justice Lawrance has resigned. Owing to illness, he has been absent since December last. Though perhaps not conspicuous for his purely legal attainments, the learned judge was a man of sound common sense, and had a great fund of genial humour.

Mr. Lewis, the assistant of Mr. Wickersham, Attorney-General of the United States, was recently elected to a membership in the American Bar Association by the executive committee. Mr. Lewis, being a coloured man, racial difficulties arose after the election, bringing up for discussion the most embarrassing problem in the United States. The end of the race question in that country is not yet; but a writer in the *Central Law Journal* appears to deal with it in a wise and statesmanlike manner when he says: "It is certainly unfortunate that such a problem should have been thus thrust upon the American Bar Association without any warning and without a full disclosure of the real situation. We have no wish to discuss the question of social equality of the races. There have been many wise words and some very unwise words used by parties discussing this, at least very delicate, problem. The consensus of opinion, north and south, and concurred in by the best leaders of the coloured race, is that for the present at least it will be for the best interest of both races to remain separate and distinct socially and that politically and industrial liberty and equality is all that can be expected under present conditions. With this apparent solution of a difficult problem acquiesced in by conservative statesmen and leaders in both races, it is hardly less than a calamity for anyone to reopen this controversy without greater occasion therefor than was presented by the facts in the Lewis case."

We notice that a newspaper published in the Canadian metropolis has decided to reject in the future all patent medicine advertisements. We are glad to hear that other newspapers are likely to follow their example. Everything tending to clean newspapers is worthy of note and commendation.

A strange scene was enacted in Dundee police court, recently. The prisoner, upon receiving a sentence of nine months' hard labour, clapped his hands and began a step dance in the dock which he kept up until he was stopped. Addressing the judge, he said, "Thank you, my lord, may ye live long and die happy. I'm perfectly satisfied."

Crawford—"I don't believe in the execution of boy murderers."

Crabshaw—"There's no fear of that. They're old men before the courts have finally decided their cases."—*Brooklyn Life.*

The case of William Thompson, which was referred to the Court of Criminal Appeal this week by the Home Secretary, was perhaps even a more extraordinary instance of the miscarriage of justice than that of Mr. Adolph Beck. No less than twenty-one witnesses, against whose good faith not one word could be said, had positively identified the accused as the man who had committed the frauds in question, while apparently the watch-chains of the two men were identical. It has now been established beyond a doubt that the man convicted was not the man who was guilty, and the convictions obtained have been quashed and the appellant released. As was only to be expected, every assistance was furnished by the police and the Treasury to unravel the whole affair once a reasonable doubt had been established, but the case is another instance of the difficulty that always arises where identity is in dispute.—*Exch.*

DEFENDANT RESTS.—The soldier was up on a summary court-martial before the Colonel on a charge of neglect of duty. When the prosecution was in, the Colonel turned to the accused and growled at him:—

"Have you any witnesses?"

"No, n-o," muttered the accused.

"You rest then, do you—you want to rest then, do you—you want to rest?" yelled the Colonel.

"Yes—yes—I would like to, Colonel," he replied, glancing around behind him. "My legs are pretty tired—I would like to rest, yes, sir; but I don't see any place to sit down."—*Green Bag.*

SENT BACK TO COURT.—Sir William Wightman held office in the old Court of Queen's Bench, in London, far beyond the prescribed time, and at last, on the eve of the "long vacation," he took a sort of farewell of his brother judges. However, when the summer was over, he turned up smiling at Westminster Hall. "Why, Brother Wightman," said Sir Alexander Cockburn, "you told us that you intended to send in your resignation to the Lord Chancellor before the end of August." "So I did," said Sir William, "but when I went home and told my wife, she said, 'Why, William, what on earth do you think that we can do with you messing about the house all day?' So, you see, I was obliged to come down to court again."—*Ex.*