THE

ONTARIO WEEKLY REPORTER

VOL. 24 TORONTO, NOVEMBER 20, 1913. NO. 22

HON. SIR G. FALCONBRIDGE, C.J.K.B. JULY 4TH, 1913.

ST. CLAIR v. STAIR.

4 O. W. N. 1580.

Discovery—Affidavit on Production—Claim of Privilege—Dates and Authors of Documents for which Privilege Claimed to be Disclosed.

MASTER-IN-CHAMBERS *held*, 24 O. W. R. 707; 4 O. W. N. 1437, that where privilege was claimed in an affidavit on production for certain reports the date and author of such reports should in each case be given even though in so doing the names of witnesses are disclosed.

Marriott v. *Chamberlain*, 17 Q. B. D. 154, followed.

FALCONBRIDGE, C.J.K.B., reversed above order holding that it was not necessary here.

Appeal by the defendants the "Jack Canuck" Company from the order of the Master-in-Chambers, 24 O. W. R. 707; 4 O. W. N. 1437, directing the appellants to file a better affidavit on production.

R. McKay, K.C., for the appellants.

W. E. Raney, K.C., for the plaintiff.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—The learned Master did not have the opportunity of considering *Swaisland* v. *Grand Trunk Rw. Co.*, 3 O. W. N. 960, in the light of certain English cases, for the simple reason that they were not cited to him: *Taylor* v. *Batten* (1878), 4 Q. B. D. 85 (C.A.); *Bewicke* v. *Graham* (1881), 7 Q. B. D. 400, (C.A.); *Budden* v. *Wilkinson*, [1893] 2 Q. B. 432 (C.A.); in accordance with which the reports in question were sufficiently identified. As the Master said, the rule requiring the use of the word "solely" was not of universal application. There would be no question if the documents were title deeds, etc. With some diffidence, I am of the

opinion that it was not necessary here. Appeal allowed and order of the Master reversed. Costs here and below to the appellants in any event.

HON. MR. JUSTICE LENNOX. JULY 4TH, 1913.

CASEY v. KANSAS.

4 O. W. N. 1581.

Injunction—Interim Order—Refusal to Continue—Breach—Contempt of Court—Ignorance—Costs.

LENNOX, J., dissolved an interim injunction on ground that full justice could be done at trial.

Motion by the plaintiff to continue an interim injunction restraining the defendant from proceeding with the erection of a building, and to commit the defendant for contempt of Court in disobeying the injunction order.

E. E. Wallace, for the plaintiff.

W. C. Hall, for the defendant.

HON. MR. JUSTICE LENNOX:—The defendant is a foreigner; and it has been satisfactorily shewn that he did not understand his position until he consulted a solicitor, and he then went no further. He did not knowingly offend; but, as he has occasioned expense to the plaintiff, he must bear the costs of the branch of the motion relating to committal, fixed at $10. The plaintiff's counsel said that the work was now practically complete. There appears to be a *bona fide* dispute between the plaintiff and defendant; and there is nothing to shew, or even strongly suggest, that the plaintiff is more likely to be right in his contention than the defendant. It is a case in which full justice can be done at the trial, if the parties have not the good sense to come to an agreement meantime. It simply is not a case, as it has been developed, for continuing the interim injunction. Without hampering the action of the trial Judge in any way, the injunction should be dissolved, and the costs reserved for the trial Judge.

HON. MR. JUSTICE RIDDELL, IN CHRS. JUNE 17TH, 1913.

BERLIN LION BREWERY CO. v. LAWLESS.

4 O. W. N. 1486.

Judgment—Summary Judgment—Con. Rule 603—Action on Promissory Notes—Prima Facie Defence Shewn—Failure of Motion.

MASTER-IN-CHAMBERS (24 O. W. R. 745; 4 O. W. N. 1441) refused to give summary judgment upon two promissory notes where defendants swore that they were given for accommodation only.

Smyth v. *Bandel*, 23 O. W. R. 649, 798, followed.

RIDDELL, J., reversed above order and entered judgment for plaintiffs, but execution not to issue until after trial of defendant's counterclaim.

An appeal by the plaintiffs from an order of the Master-in-Chambers, 24 O. W. R. 745; 4 O. W. N. 1441.

W. H. Gregory, for the plaintiffs.

H. J. Macdonald, for the defendant.

HON. MR. JUSTICE RIDDELL, by consent allowed the appeal and directed judgment to be entered for the plaintiffs for the amount of the promissory notes sued upon, but execution thereon not to issue until the defendant had had an opportunity to have his asserted counterclaim tried and an account taken before the Local Master at Berlin, to whom a reference was directed.

Costs here and below to be in the discretion of the Local Master.

HON. MR. JUSTICE LENNOX, IN CHRS. JUNE 10TH, 1913.

CRUCIBLE STEEL CO. v. FFOLKES.

4 O. W. N. 1591.

Discovery—In Aid of Execution—Con. Rule 903—Scope of—Transfer Prior to Incurring of Debt—Action Pending against Transferees.

MASTER-IN-CHAMBERS *held*, 24 O. W. R. 791; 4 O. W. N. 1561, that judgment creditors have no right to examine transferees of the assets of the judgment debtor under Con. Rule 903 where the debt was incurred subsequently to the vote of the transfer to the said transferees.

LENNOX, J., affirmed above order.

An appeal by the plaintiffs, judgment creditors, from an order of the Master-in-Chambers, 24 O. W. R. 791; 4 O. W. N. 1561.

Harcourt Ferguson, for the plaintiffs.

J. A. Worrell, K.C., for the transferees.

HON. MR. JUSTICE LENNOX dismissed the appeal with costs.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION. OCTOBER 2ND, 1913.

OTTAWA AND GLOUCESTER ROAD CO. v. CITY OF OTTAWA.

5 O. W. N. 57.

Municipal Corporations—Liability for Repair of Bridge — Bridge between Township and City—Ownership in Road Company — Notice of Abandonment by—Validity of—General Road Companies' Act—R. S. O. 1897, c. 193, ss. 8, 50-103—Municipal Act, 3 Edw. VII., c. 19, s. 613, s.-s. 2—Devolution of Liability — Costs.

Action by a road company to determine the liability for use, maintenance and repair of a bridge crossing the Rideau river in the county of Carleton, and connecting the city of Ottawa and the township of Gloucester. Plaintiff had given the statutory notices of abandonment of the bridge section of the road, but the county refused to admit their validity and claimed plaintiffs were still liable for the maintenance of the same. The portion of the road within the city had been purchased from plaintiffs some time before, and this portion included part of the bridge.

KELLY, J., 24 O. W. R. 344, *held*, that the notices of abandonment given by plaintiffs were valid, and that the responsibility for the maintenance of the bridge devolved upon the county and the city and not upon the township, under the Municipal Act.

Reg. v. *Haldimand*, 38 U. C. Q. B. 396, distinguished.

SUP. CT. OF ONT. (2nd App. Div.), affirmed above judgment.

Appeal by the defendant municipality of the City of Ottawa from a judgment of HON. MR. JUSTICE KELLY, 24 O. W. R. 344; 4 O. W. N. 1015.

The appeal to the Supreme Court of Ontario (Second Appellate Division), was heard by SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

F. B. Proctor, for the appellant municipality.

J. Grayson Smith, for the other defendants.

G. F. Henderson, K.C., for the plaintiffs.

THEIR LORDSHIPS' judgment was delivered v. v., dismissing the appeal with costs.

HON. MR. JUSTICE MIDDLETON, IN CHRS. JUNE 20TH, 1913.

RUNDLE v. TRUSTS AND GUARANTEE CO.

4 O. W. N. 1488.

Discovery—Further and Better Affidavit on Production — Action to Re-open Accounts—Privilege—Necessity for—Prima Facie Case —Rule as to Discovery Generally—Costs.

MASTER-IN-CHAMBERS (24 O. W. R. 733; 4 O. W. N. 1438) in an action to set aside a release and for a re-opening of certain estate accounts, ordered that production should be made of the estate papers even though plaintiff had not established a *prima facie* right to the relief sought.

MIDDLETON, J., varied above order by directing production of certain documents and affidavit to be made that they were all such documents.

An appeal by the defendants from an order of the Master-in-Chambers, 24 O. W. R. 733; 4 O. W. N. 1438.

Casey Wood, for the defendants.

W. E. Raney, K.C., for the plaintiff.

HON. MR. JUSTICE MIDDLETON varied order of Master by directing the production of the documents mentioned in part 2 of schedule 1 of the defendants' affidavit on production. Affidavit to be made as to the documents produced being all the documents.

HON. SIR G. FALCONBRIDGE, C.J.K.B., IN CHRS.

JUNE 24TH, 1913.

ST. CLAIR v. STAIR.

4 O. W. N. 1562.

Pleading — Statement of Claim — Motion to Amend—Variation in Amendment—Costs.

MASTER-IN-CHAMBERS (24 O. W. R. 764; 4 O. W. N. 1486), refused plaintiff leave to amend his statement of claim in the manner desired, but ordered that he be permitted to amend in accordance with a form suggested by the learned Master.

Costs to defendant in cause.

FALCONBRIDGE, C.J.K.B., affirmed above order.

An appeal by the defendants from an order of the Master-in-Chambers, 24 O. W. R. 764; 4 O. W. N. 1486.

R. McKay, K.C., for the defendants, appellants.

W. E. Raney, K.C., for the plaintiff, respondent.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., dismissed the appeal with costs.

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION. OCTOBER 3RD, 1913.

TRUESDELL v. HOLDEN.

5 O. W. N. 58.

Malicious Prosecution—Illegal Seizure—Conversion—Three Actions Arising out of Same Facts—Findings of Jury—Perversity and Inconsistency—Reasonable and Probable Cause Found—Evidence —Reference—Costs.

MIDDLETON, J., 24 O. W. R. 419, dismissed with costs two actions by the same plaintiff against the same defendant for malicious prosecution and illegal seizure of a boat, disregarding in the former the inconsistent and precise findings of the jury upon the facts, and gave judgment for plaintiff for damages to be agreed upon as ascertained upon a reference in a third action brought by the defendant in the former actions against a bailee for conversion of the boat in question.

SUP. CT. OF ONT. (1st App. Div.), allowed the appeal with costs and directed judgment to be entered for plaintiff for $500, without costs.

Appeal by the plaintiff from a judgment of HON. MR. JUSTICE MIDDLETON, 24 O. W. R. 419, 4 O. W. N. 1138, dismissing an action for a malicious prosecution notwithstanding the finding of the jury in favour of the plaintiff for $500 damages.

The appeal to the Supreme Court of Ontario (First Appellate Division, was heard by HON. SIR WM. MEREDITH, C. J.O., HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, and HON. MR. JUSTICE MAGEE.

J. Birnie, K.C., for the plaintiff, appellant.

A. E. H. Creswicke, K.C., for the defendant, respondent.

THEIR LORDSHIPS' judgment was delivered v. v., allowing the appeal with costs and directing judgment to be entered for the plaintiff for $500 without costs.

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION. OCTOBER 1ST, 1913.

FIELD v. RICHARDS.

5 O. W. N. 57.

Injunction—Trespass and Cutting of Timber on Plaintiff's Lands—Evidence—Right of Successful party to Costs—Scale of —Damages.

KELLY, J., 24 O. W. R. 606, gave plaintiff $105 damages and an injunction as prayed in an action for damages for alleged trespass upon plaintiff's lands and the cutting of timber thereon and for an injunction.

A defendant cannot escape paying costs by saying, "I never intended to do wrong."

Cooper v. *Whittingham*, 15 Ch. D. 501, referred to.

SUP. CT. OF ONT. (1st App. Div.) affirmed above judgment.

Appeal by the defendant from a judgment of HON. MR. JUSTICE MIDDLETON, 24 O. W. R. 606; 4 O. W. N. 1301.

The appeal to the Supreme Court of Ontario (First Appellate Division, was heard by HON. SIR WM. MEREDITH, C. J.O., HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, and HON. MR. JUSTICE MAGEE.

J. E. Jones, for the defendant, appellant.

R. C. LeVesconte, for the plaintiff, respondent.

THEIR LORDSHIPS' judgment was delivered v. v., dismissing the appeal with costs.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION. OCTOBER 29TH, 1913.

WILSON v. SUBURBAN ESTATES CO.

Vendor and Purchaser—Sale of Land—Fraud and Misrepresentation —No Clear Proof of—Damage—Not Established—Dismissal of Action—Costs.

FALCONBRIDGE, C.J.K.B., 24 O. W. R. 825, dismissed an action for damages for alleged fraud and misrepresentation in connection with the sale to plaintiffs of two lots in Port McNicholl, Ont., holding that neither the fraud nor the damage had been clearly proven.

SUP. CT. OF ONT. (2nd. App. Div.), affirmed above judgment.

Appeal by the plaintiffs from a judgment of HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., 24 O. W. R. 825, 4 O. W. N. 1488, dismissing the action without costs.

The appeal to the Supreme Court of Ontario (Second Appellate Division), was heard by SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

J. P. McGregor, for the plaintiffs, appellants.

J. Grayson Smith, for the defendant, respondent.

THEIR LORDSHIPS' judgment was delivered v. v., dismissing the appeal with costs.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION. SEPTEMBER 23RD, 1913.

PLAYFAIR v. CORMACK.

5 O. W. N. 35.

Broker—Purchase of Stock through—Sale of Broker's Own Stock—Undisclosed Profit—Loss on Transaction—Third Party—Claim against—Costs.

MIDDLETON, J., 24 O. W. R. 501, *held*, that where the plaintiffs' brokers were employed by defendant to purchase certain stock, and sold him stock owned by themselves upon which they made a profit without first disclosing the fact, they could not recover from defendant a loss sustained upon such stock, although they claimed that the sale in question was permitted by the rules of the exchange.

Bentley v. *Marshall*, 46 S. C. R. 477, followed.

SUP. CT. OF ONT. (2nd App. Div.), affirmed above judgment.

Appeal by the plaintiffs from a judgment of HON. MR. JUSTICE MIDDLETON, 24 O. W. R. 501; 4 O. W. N. 1195.

The appeal to the Supreme Court of Ontario (Second Appellate Division), was heard by SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, and HON. MR. JUSTICE LEITCH.

W. N. Tilley, and Harcourt Ferguson, for the plaintiffs, appellants.

J. H. Gray, for the defendant Cormack.

W. C. McKay, for the defendant Steele.

THEIR LORDSHIPS' judgment was delivered v. v., dismissing the appeal with costs.

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISISON. OCTOBER 21ST, 1913.

GIBSON v. CARTER.

5 O. W. N. 145.

Judgment—Motion for, on Report of Referee—Appeal from Findings of Referee—Reduction in Amount Awarded—Dismissal of Appeal.

KELLY. J., 24 O. W. R. 821, varied a finding in favour of plaintiffs by J. A. C. Cameron, Esq., Official Referee, by reducing the amount awarded them from $2,700 to $2,690, but otherwise dismissed defendants' appeal from such report.

SUP. CT. ONT. (1st App. Div.), reduced amount found due by $75, and affirmed above order.

Appeal by the defendants from an order of HON. MR. JUSTICE KELLY, 24 O. W. R. 821, 4 O. W. N. 1565.

The appeal to the Supreme Court of Ontario (First Appellate Division, was heard by HON. SIR WM. MEREDITH, C. J.O., HON. MR. JUSTICE MACLAREN, and HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

R. S. Robertson, for the defendants, appellants.

Glyn Osler, for the plaintiffs, respondents.

THEIR LORDSHIPS' judgment was delivered v. v., varying the above order by reducing the amount found due by $75. In all other respects the above order was affirmed without costs of appeal.

INDEX

TO THE

Ontario Weekly Reporter, Vol. 24.

Tax sale—Action to set aside—Gross irregularities — Plaintiff continuing in possession as tenant of purchaser—Estoppel—Sec. 173 Assessment Act—Stay of execution. *Burrows* v. *Campbell*, 190.

BANKRUPTCY AND INSOLVENCY.

Assignment Act — Creditors' Relief Act—Interpleader order — Preference of contesting creditors. *Soper* v. *Pulos*, 526.

Assignments and Preferences Act —Chattel mortgage — Knowledge of insolvency on part of mortgagee—Evidence —Intention to defraud—Defective affidavit of execution—Necessity for precision—Absence of date—Costs. *Cole* v. *Racine*, 622.

BANKS AND BANKING.

Advances by bank to milling company — Security taken on timber under promise in writing to give security —Validity of security under s. 90 of the Bank Act—Company in liquidation—Issues to be determined—Forum for—Right of bank to defend action without leave and press claim to timber—Description of property—What is necessary to identify—Lien of bank for payment of Government dues—Rights of liquidator—Receiver—Action for injunction—Damages —Costs. *Imperial Paper Mills of Canada, Ltd.* v. *Quebec Bank*, 930.

Bank purchased its own shares in violation of Bank Act, s. 76—Shares transferred and promissory notes taken therefor—Action on notes by curator of bank — Defence—Illegality—Action dismissed — Appeal. *McMillan* v. *Stavert*, 936.

BILLS, NOTES AND CHEQUES.

Action on note—Agreement to renew—Not valid as defence—Money paid on account of defendant—Payment into Court—Costs. *Butler* v. *Butler*, 677.

Action on note given by deceased —Loss of note—Execution and delivery proven by secondary evidence—Reference to in will—Attempt to alter beneficiary by subsequent codicil — Costs. *King's College* v. *Poole*, 601.

Action on promissory notes—Alleged lack of consideration — Onus of proof—Evidence — Credibility. *Davison* v. *Thompson*, 604.

BONDS.

Fidelity bond — Tax collector of municipality — Embezzlement by—Statement by mayor to defendants—Answers to questions submitted — "Renewal or continuation" of bond — Materiality of alleged misstatements — Facts as to. *Arnprior* v. *The United States Fidelity and Guaranty Company*, 718.

BROKER.

Balance due by customer—Counterclaim — Alleged conversion—Purchase on 90-day "spread" — Tender — Few minutes late—Refusal — Reasonableness —Custom—Rules of exchange—Application—Evidence. *Warren, Gzowski & Co.* v. *Forst & Co.*, 806.

Conversion on mining shares—Two County Court actions and one High Court action—By consent, tried together in High Court—Method of dealing with stock—No evidence of conversion. *Long* v. *Smiley*, 826.

Purchase of stock through—Sale of broker's own stock—Undisclosed profit —Loss on transaction—Third party — Claim against—Costs. *Playfair* v. *Cormack*, 501, 988.

Purchase on margin — Refusal to deliver on tender of sum due—Liability of broker—Measure of damages—Value of shares at time of demand—Rate of commission. *Croft* v. *Mitchell*, 393.

BOUNDARY.

Alleged encroachment — Tearing down of fence—Original survey—Error in—Injunction—Damages. *McMenemy* v. *Grant*, 100.

CANCELLATION OF INSTRUMENT.

Accounting—Bank account—Moneys in joint names—Testamentary intention —Costs. *Vogler* v. *Campbell*, 680.

Fraudulent conveyance — Priority of mortgage—Will — Election — Costs. *Bancroft* v. *Milligan*, 915.

CHATTEL MORTGAGE.

Seizure under execution — Goods claimed by chattel mortgagee — Interpleader issue. *Pulos* v. *Soper*, 962.

COMPANY.

Action for breach of agreement Plaintiff company not in existence at date of agreement, nor assignee of — Right to maintain action. *Goldfields* v. *Mason*, 878.

Assignment for benefit of creditors—Sale by assignee — Action to set aside—Inspector interested in purchase—Absence of impropriety—Beneficial sale —Limits of equitable rule—Locus standi of plaintiff—Assignment of stock since winding-up—Validity of—Right of shareholder to represent company—Function of liquidator. *Shantz* v. *Clarkson*, 596.

Contributory — Evidence — Onus—Estoppel. *Re Empire Accident and Surety Co.* (*Faill's Case*), 208.

Contributory — Evidence — Receipt of dividends. *Empire Accident & Surety Co.* (*Barron's Case*), 211.

Directors — Reduction in number—Postponement of annual meeting—Validity of — Costs. *Clary* v. *Golden Rose Mining Co.*, 813.

Loan company — Action by shareholder for account — Prepaid shares—Special by-laws of company — Right of prepaid shares to share in gross earnings —Discretion of directors as to dividends —Transfer of assets to new company—Reconstitution of shares—Acquiescence by plaintiff in — Estoppel. *Leslie* v. *Canadian Birkbeck Co.*, 407.

Powers—Guarantee of indebtedness of waggon company—Guaranteeing company a lumber company—Ultra vires—Ratification impossible—Costs. *Union Bank of Canada, The, and A. McKillop & Sons, Ltd.*, 549.

University of Toronto—Liability of governors to action — Legal position as body corporate—Not crown officers—Fiat of Attorney-General — Effect of—Action for negligence—Workmen's Compensation for Injuries Act—Evidence — Damages. *Scott* v. *Governors of University of Toronto*, 325.

Voluntary society—Purposes of — Right to direct funds to other purposes —Ultra vires resolution — Injunction—Appeal. *Vick* v. *Toivonen*, 802 .

Winding-up — Contributory—Evidence — Onus—Estoppel. *Empire Accident & Surety Co., Faill's Case, Re*, 807.

Winding-up — Contributory — Subscription—Absence of fraud — Loss of patent—Evidence. *Re National Husker Co.* (*Worthington's Case*), 385.

Winding-up—Rival petitions—That of creditor preferred over that of shareholder— Leave to amend defective affidavit—Leave given to file extra-provincial license—Stay of order. *Re Canadian Fibre Wood & Mfg. Co.*, 635.

CONTEMPT OF COURT.

Motion to commit—Undertaking of Counsel—Breach of — Publication of defamatory matter concerning plaintiff — Payment of costs forthwith—Warning. *St. Clair* v. *Stair*, 45.

CONTRACT.

Breach—Measure of damage—Agreement to pay in part in kind —Authority of agent — Statute of Frauds—Evidence. *Cleveland* v. *Grand Trunk Rw. Co.*, 586.

Breach—Measure of damage—Agreement to purchase merchant's retail stock —Loss on resale—Misrepresentation — Right to charge for stocktaking and advertising. *Hutchinson Co.* v. *McGowan*, 969.

Building contract—Action by contractor—Location of building—Duty as to — Mistake by contractor — Power of clerk of works to bind employers—Certificate of architect not obtained—Condition precedent—Action premature — No evidence of mala fides on part of architect. *Vandewater* v. *Marsh*, 133.

Building contract—Action by subcontractor—Variation in plans—Tender —Disregard of specification — Progress certificates — Condition precedent to payment—Action brought prematurely—Costs. *Italian Mosaic and Marble Co.* v. *Vokes*, 970.

Building contract—Action for price —Question whether contract was abandoned—Onus of proof. *McKenzie* v. *Elliott*, 443.

Building of silo—Findings of trial Judge—Counterclaim—Damages for loss of crop—Evidence—Quantum of damage. *Rice* v. *Sockett*, 882.

Construction of—Purchase price—Part payment in kind — Return of — Settlement of judgment. *Sauerman* v. *E. M. F. Co.*, 637.

Guarantee—Goods supplied railway company—Guarantee of two directors of company—Alleged variation in amount of contract—Knowledge of defendants — Variation contemplated by contract. *Allen* v. *Grand Valley Rw. Co.*, 850.

Illegality of consideration — Refusal of Court to interfere with or enforce—Breach of promise of marriage—Subsequent marriage of plaintiff. *Pepperas* v. *Le Duc*, 563.

Mining location—Exclusive license—Grant by four joint owners out of six—Rescission of agreement—Evidence — Counterclaim—Reference costs. *United Nickel Copper Co., Ltd. and S. G. Wightman* v. *Dominion Nickel Copper Co., Ltd.*, 462.

Moneys paid at defendants' request—Clerk of Works—Construction of factory—Evidence. *Denison & Stephenson* v. *Gillett Co.*, 105.

Offer to sell machine—"In place"—Meaning of under circumstances—Alleged acceptance — "In place" therein defined as "on car"—Parties never ad idem—Interim injunction—Undertaking—Damages—Demurrage on cars—Agreement to accept. *Godson* v. *McLeod*, 565.

Place of delivery of goods—"Site of work"—Meaning of—Reformation of contract. *Wallberg* v. *Jenckes Machine Co.*, 788.

Proof of—Evidence—Signature of one partner—Partnership bound—Final adjustment not made—Action premature. *Finlayson* v. *O'Brien*, 727.

Rescission of — Conduct affirming—Action of deceit — Amendment refused. *Tucker* v. *Titus*, 687.

CONVERSION.

Wrongful seizure of saw-mill—Damages—Quantum of. *Smyth* v. *McLellan et al.*, 740.

COSTS.

Mortgage redemption action — Further directions—Payment into Court. *Geller* v. *Benner*, 875.

Scale of—Set-off by defendant—Balance found due in County Court jurisdiction—No assent to or agreement as to set-off—High Court scale proper scale. *Caldwell* v. *Hughes*, 498.

Security for — Action against peace officers—1 Geo. V. c. 22, s. 16—Defendants sued in public capacity — Amendment permitted—Order made. *Meredith* v. *Slemin*, 155.

Security for—Admission of liability by defendants—Counterclaim or set-off—Defendants in position of plaintiffs as to. *Trowbridge* v. *Home Furniture Co.*, 481.

Security for — Foreign company in liquidation — Amount of. *Bishop Construction Co.* v. *Peterborough*, 261.

Security for—Motion for further—Special circumstances — Order for $200 additional security. *Badie* v. *Astor*, 147, 441.

Security for—Next friend — Return to jurisdiction after long absence—Expressed intention to remain—Dower action—Place of trial—Change of — Con. Rule 529 (c.). *Stauffer* v. *London & Western*, 627.

Security for—Public authorities Protection Act, 1 Geo. V. c. 22, s. 16 — Action against police magistrate — Unofficial act—Motion to strike out statement of claim—Alleged frivolous action—Con. Rule 261—Jurisdiction. *Fritz* v. *Jelfs*, 610.

Security for — Temporary residence within jurisdiction—Intention—Evidence—Family outside jurisdiction—No assets in jurisdiction — Acknowledgement of claim. *Trowbridge* v. *Home Furniture & Carpet Co.*, 181.

Taxation—"Costs of and incidental to the reference"—Inclusion of costs of motion for appointment of referee. *Canadian Pacific Rw. Co.* v. *Walkerton*, 50.

COURTS.

County Courts—Removal of action to Supreme Court of Ontario—10 Edw. VII. c. 30, s. 22, s.-ss. 3, 5, 6, 23 and 29—"Fit to be tried in the High Court"—Meaning of. *Emmons* v. *Dymond Colonial Co., Ltd.*, 657, 735.

Division Courts Act—10 Edw. VII. c. 32, s. 106—Action over $100 — Evidence not taken down — New trial — Costs. *Smith* v. *Boothman*, 106.

Forum — Weekly Court — Criminal law—Jurisdiction. *Rex* v. *Stair*, 689.

CRIMINAL LAW.

Appeal from conviction—Inciting to strike—6-7 Edw. VII. c. 20, s. 60 — Industrial Disputes Act, 1907—No dispute prior to strike—Conviction quashed —Incitement after strike commenced — Conviction affirmed—Costs. *R.* v. *Holowaskawe*, 397.

Circulating obscene literature—Criminal Code, sec. 207—8 and 9 Edw. VII. c. 9 — Intention well-meaning — Public good not served—Onus on accused —Excess—Lawful justification or excuse —Conviction. *R.* v. *St. Clair*, 265.

Extortion by peace officer—Threats of prosecution—Bona fides — Certiorari. *R.* v. *Lapham*, 111.

Procedure—Motion to quash indictment—Crim. Code, s. 164—Disobedience to statute—Municipal Act—3 Edw. VII. c. 19, s. 193 (1) (b)—Putting unauthorized papers in ballot box — Penalty fixed by subsequent clause of statute — Act not illegal at common law—Motion dismissed. *R.* v. *Durocher*, 140.

DEBTOR AND CREDITOR.

Garnishee — Judgment recovered by debtor against garnishee—Stay of execution—No debt due in præsenti—Assignment of judgment. *Scully* v. *Madigan*, 251.

Garnishee—Judgment—Recovered by debtor against garnishee—Stay of execution—No debt due in præsenti—Assignment of judgment. *Scully* v. *Madigan*, 368.

DEED.

Absolute in form—Alleged to have been by way of security only—Evidence. *Stuart* v. *Bank of Montreal*, 118, 714.

Action to set aside—In defraud of creditors—Evidence — Costs. *Saturday Night* v. *Horan*, 80.

Assignment for benefit of creditors—Deed by assignee—Knowledge and assent of creditors—Revocability—Limitations Act, 10 Edw. VII. c. 34—Vendor and purchaser application. *Re Snell & Dyment*, 64.

In trust—Refusal to reconvey—Fraud —Statute of Frauds no defence—Amendment—Set-off — Reference. *Smith* v. *Benor*, 521.

DISCOVERY.

Affidavit on production—Claim of privilege — Dates and authors of documents for which privilege claimed to be disclosed. *St. Clair* v. *Stair*, 707, 981.

Examination of alleged assignor of chose in action — Con Rules 440, 441 and 454—Jurisdiction of Master-in-Chambers—Penalty for refusal to be examined—Right to punish party to action therefor—Costs. *Krehm* v. *Bastedo*, 616.

Examination of defendant—Shares in mining company—Dealings in—Collateral dealings—Questions as to—Order for re-attendance—Appeal. *Playfair* v. *Cormack*, 56.

In aid of execution — Con. Rule 903—Scope of—Transfer prior to incurring of debt — Action pending against transferees. *Crucible Steel Co.* v. *Ffolkes*, 791, 983.

Inspection — Mining property—Action by shareholder against other shareholders—Inspection of no assistance to plaintiff's case—Refusal of motion for. *Jackman* v. *Worth*, 506.

Inspection of plaintiff by physician—Motion for—Alleged mental and physical incompetence — Action to set aside agreements—Jurisdiction — Con. Rule 462—Damages from interim injunction—Particulars of—Motion premature. *Smith* v. *Stanley Mills*, 510.

Further affidavit on production —Action by agent for commissions on the sale of land—Sub-agents—Issue as to—Books of company—Partial inspection granted. *Grills* v. *Canadian General Securities Co.*, 289.

Further affidavit on production —Books of incorporated company — Alleged identity of company with defendant —Discovery not warranted by pleadings —Leave given to set up contention — Conditional order. *Antiseptic Bedding Co.* v. *Gurofsky*, 493.

Further affidavit on production —Insufficiency of material. *Hay* v. *Coste*, 116.

Further affidavit on production —Material in support of motion. *Jarvis* v. *Lamb*, 220.

Further affidavit on production —Variation of statutory form — Con. Rules 469, 1224—Information obtainable on examination for discovery. *Kennedy* v. *Kennedy*, 875.

Further and better affidavit on production—Action to re-open accounts —Privilege—Necessity for—Prima facie case—Rule as to discovery generally — Costs. *Rundle* v. *Trusts & Guarantee Co.*, 733, 985.

Further discovery — Amendment of statement of claim — No substantial change in claim. *Becher* v. *Ryckman*, 108.

Further examination — Relevance —Mental condition of plaintiff. *Shantz* v. *Clarkson*, 145.

Further examination — Relevancy —Information for solicitor. *Moodie* v. *Hawkins*, 10.

Further examination of officer of company—Further affidavit on production—Motion premature. *North American Exploration Co.* v. *Green*, 449.

Motion for further examination —Refusal to answer—Issues not properly defined in pleadings—Amendment of. *Gascoyne* v. *Dinnick*, 865.

Motion to set aside appointment —Appointment taken out after trial begun and adjourned — Previous examinations had—Appointment set aside. *Schofield-Holden* v. *City of Toronto*, 377.

Place of examination—Convenience —Alimony action. *Jordan* v. *Jordan*, 842.

Practice as to deposit of documents—Inspection—Refusal to permit—Costs. *Grills* v. *Canadian General Securities*, 547.

Refusal to answer questions—Motion to dismiss action — Irrelevance. *Clark* v. *Robinet*, 399.

"Servant" of corporation—Meaning of—Sales agent examinable. *Clarke & Monds* v. *Provincial Steel Co.*, 287.

ELECTIONS.

Municipal elections — Hiring of team by respondent—Bribery—Evidence —Disqualification — Evidence — Taken down not read to or signed by witnesses —Municipal Act, ss. 245, 249, 220, 232 —Con. Rules 456, 457, 458, 494—Naming of witnesses in notice of motion essential—Relator guilty of corrupt practices — Effect on status — Notice to respondent as to charges—Sufficiency of— Appeal—Cross-appeal—Findings of Judge —Costs. *Rex ex rel. Sabourin* v. *Berthiaume*, 559.

EVIDENCE.

Commission—Refusal of one defendant to attend trial—Terms. *Carter* v. *Foley O'Brien; McIntosh* v. *Foley O'Brien; Smyth* v. *Foley O'Brien*, 114.

Estoppel—Passivity — Contract for sale of machinery—Repudiation of agent by principal—Laches. *Maple Leaf Portland Cement Co.* v. *Owen Sound Iron Works Co.*, 790.

Foreign commission — Alimony action—Request of plaintiff for travelling expenses—Refusal of. *Jordan* v. *Jordan*, 615.

Foreign commission — Necessity of evidence—Principles of granting—Terms. *Antiseptic Bedding Co.* v. *Gurofski*, 613, 881.

EXECUTION.

Attachment — Order for — Setting aside—No corroborative affidavits — 9 Edw. VII. c. 49, s. 4 — Irregularity. *Yolles* v. *Cohen*, 66.

Interest in unpatented mining claim—Certificate of record issued—Exigible under execution. *Clarkson* v. *Wishart*, 937.

EXECUTORS AND ADMINISTRATORS.

Action against executor—Charges of misfeasance—Consent — Judgment for reference — Abandonment of charges — Refusal of Master to investigate same. *Wood* v. *Brodie*, 505.

Action to set aside sale—Purchase by executrix—Plaintiffs joining in conveyance—Good price obtained—Laches—Shifting of onus—Action dismissed—Appeal—Costs. *Blaisdell* v. *Raycroft*, 867; *Raycroft* v. *Cook*, 867.

Action to set aside sale—Release—Estoppel—Accounts—Failure to appeal from order as to—Costs. *Shaw* v. *Tackaberry*, 630.

Continuance of investment—Loss on same—Liability of executors—Bar of action—10 Edw. VII. c. 34, s. 47—Application only to "action"—Reference—Costs. *Re Nicholls Estate*: *Hall* v. *Wildman*, 216.

Final winding-up of estate—Costs—Enquiry as to next of kin—Escheat to Crown. *Corr, Re*, 818.

Power to sell land—Infants—Application to Court—Vendors and Purchasers Act. *Burridge Estate, Re*, 962.

Report as to next of kin—Appeal—Evidence — Costs. *Corr, Felix, Re*, 103, 521.

FRAUD AND MISREPRESENTATION.

Lease—Subscription for shares—Managing director's acts—Liability of company—Rescission — Return of moneys paid. *Farah* v. *Capital Mfg. Co.*, 808.

Sale of business—Representation as to renewal of lease—Findings of jury—Counterclaim—Evidence. *Garrett et al.* v. *Gibbons et al.*, 247.

Sale of lands — Woodland Park, Wainwright, Alberta—Avoidance of contract—Return of moneys paid. *Pratt* v. *Roberft Hyland Realty Co.*, *Moore* v. *Robert Hyland Realty Co.*, 34.

GIFT.

Sum of money in bank standing to credit of deceased person—Money received from wife of deceased—Action by administratrix of wife to recover from estate of deceased husband—Assertion of gift from wife to husband—Evidence—Onus—Corroboration—Undue influence—Mental and physical weakness of wife. *McDougall* v. *Clovis Paille, Executor, etc.*, 912.

HUSBAND AND WIFE.

Alimony—Action to recover wife's separate estate—Presumption as to corpus—Different presumption as to income—Evidence—Alleged gift—Mental condition of wife—Prior consent—Judgment as to quantum of alimony—Refusal to re-open—Chattels — Judgment for delivery of—Costs. *Ellis* v. *Ellis*, 846.

Alimony—Desertion of husband by wife—Offer to return—Refusal to receive—Accusation of infidelity by husband—No evidence tendered in support—Custody of children—Welfare — Prior conviction of defendant — Paternal right—Access by mother—Terms. *Ney* v. *Ney*, 193, 873.

Alimony—Interim order — Penniless defendant—Order refused. *McNair* v. *McNair*, 390.

Alimony—Rate of—Custody of children—Right of defendant to visit—Costs. *Fitchett* v. *Fitchett*, 109.

Dower—Bar of, in mortgage—Extent of—Subsequent conveyance of equity to trustee for creditors—Dower not defeated—Reference. *McNally* v. *Anderson*, 182.

Marriage—Declaration of invalidity of—Jurisdiction of Supreme Court of Ontario. *Prowd* v. *Spence*, 329.

INFANTS.

Application by father for custody—Child in home of aunt from birth—Father separated from wife—Welfare of child—Right of access provided for. *Re Cameron*, 160.

Custody of child—Abandonment by father of paternal rights — Adoption in good home—Right of father to insist on his religion—8 Edw. VII. c. 59, s. 30—Welfare of child. *Kenna, Re Frederick*, 690.

Power to deal with lands—Jurisdiction of Court—Discretionary power—Advantage to infant. *Collier* v. *Union Trust Co., Re Leslie, an infant*, 761.

Right of father to custody of daughter—Alleged moral irregularities—Discretion of Court. *Phillips, Re Ethel Gladys, an infant*, 709.

Sale of lands of—Practice—1 Geo. V. c. 35—2 Geo. V. c. 17, s. 31—Con. Rules 960-970, 1308. *Re Sugden, an infant*, 212.

INJUNCTION.

Excavating earth from roadway No authorization therefor — Injury to plaintiff's access — Damages—Reference. *Taylor* v. *Gage*, 263.

Interim order — Affidavits—Service. *Tourbin* v. *Ager*, 748.

Interim order—Alleged uuisacce—Coal sheds—Balance of convenience — Damage not irreparable—Order refused. *Breed* v. *Rogers*, 864.

Interim order—Principles on which granted—Power of local Judge of High Court—Bona fide dispute as to rights — Balance of convenience—No irreparable loss—Injunction dissolved. *Baldwin* v. *Chaplin*, 860.

Interim order—Refusal to continue —Breach—Contempt of Court—Ignorance —Costs. *Casey* v. *Kansas*, 982.

Trespass and cutting of timber on plaintiff's lands—Evidence—Right of successful party to costs—Scale of—Damages. *Field* v. *Richards*, 606, 987.

INSURANCE.

Guarantee — Honesty of employee—Defalcation — Evidence — Technical defences—Reference. *Reichnitzer* v. *Employers' Liability Assce. Corp.*, 157.

Life insurance — Certificate payable to two beneficiaries—Death of beneficiary in lifetime of assured—Policy payable to survivor—Ontario Insurance Act—2 Geo. V. c. 33, s. 178, s.-s. 7. *Lloyd and A. O. U. W., Re*, 546.

Life insurance—Death of beneficiary —"Surviving children"—R. S. O. 1897, c. 203, ss. 151, 159—1 Edw. VII. c. 21, s. 2, s.-s. 7—4 Edw. VII. c. 15, s. 7—Phrase refers to death of testator and not death of beneficiary—Subsequent gift in general language in will ineffective. *Re Jannison*, 391.

Life insurance — Ontario Insurance Act—2 Geo. V. c. 33, s. 178 (7)—Construction of—Application to sole beneficiary. *Re Caiger*, 442.

INTERPLEADER.

Application for — Commission on sale of lands—Rival real estate firms—Possible double liability — Dismissal of motion. *Re Rankin & Winyard*, 63.

Issue directed — Plaintiff therein—Security by claimant—Practice — Leave to appeal. *Pallandt* v. *Flynn*, 95, 254.

Order of directions — Claimant made plaintiff — Dismissal of appeal. *Laidlaw Lumber Co.* v. *Cawson*, 978.

INTOXICATING LIQUORS.

Liquor License Act—Conviction for selling without license—Motion to quash —Notice of trial — Conviction in absence of accused—Service of notice of appeal—Severity of sentence. *Rex* v. *Gilmour*, 977.

Local option by-law — Motion to quash—Passage within one month of publication — Deputy Returning Officer strong advocate of by-law — Illiterate voter—Blind voter — Omission to take declaration—Consolidated Municipal Act, ss. 171, 204—Voters' list—Certificate of County Judge as to—Refusal to go behind—Costs. *Re North Gower Local Option By-law*, 489.

JUDGMENT.

Attaching order — Unpaid costs of solicitors—Cheque drawn on bank in favour of client—Lien on—Order refused as against bank. *Davis & Korn, Re*, 612.

Consent judgment—Division among beneficiaries—Right of step-children to share under Workmen's Compensation Act—Principle of division — Pecuniary loss sustained—Amount allowed for maintenance—Scheme of. *Brown* v. *Grand Trunk Rw. Co.*, 255.

Lands in name of debtor's wife—Evidence—Debtor found to have interest in—Judgment for payment or sale. *Macdonald, John, & Co., Ltd.* v. *Henry E. Teasdale and Helena Augusta Kate Teasdale*, 534.

Minutes of settling. *Wiley* v. *Trusts and Guarantee Co.*, 69.

Motion for—Default in delivery of statement of defence—Default—Deliberate—Prejudice to plaintiff — Judgment granted. *Pherill* v. *Henderson*, 819.

Motion for, on report of Referee —Appeal from findings of Referee — Reduction in amount awarded—Dismissal of appeal. *Gibson* v. *Carter*, 821, 989.

Motion to re-open—No appearance through inadvertence — Prima facie defence—Terms—Payment into Courts — Costs. *Union Bank* v. *Toronto Pressed Steel Co.*, 158.

Motion to vary—Refusal of motion. *Sheardon* v. *Good*, 753.

Refusal to vary—Costs. *Parks* v. *Simpson*, *Simpson* v. *Parks*, 71.

Refused to vary—Evidence. *Gray* v. *Buchan*, 70.

Speedy judgment—Action on bond —Con. Rule 603 — Good defence on merits alleged. *McPherson* v. *United States Fidelity*, 482, 690.

Summary judgment — Con. Rule 603—Action on promissory notes—Prima facie defence shewn—Failure of motion. *Berlin Lion Brewery* v. *Lawless*, 745, 983.

Summary judgment — Con. Rule 608—Application of — Special circumstances — Claim on overdue promissory notes. *Hayes & Lailey* v. *Robinson*, 789.

Summary judgment — Con. Rule 603—Prima facie defence shewn—Counterclaim. *Augustine* v. *De Sherbinin*, 115.

JUDICIAL SALE.

Order of Court—"Forthwith"—To satisfy a vendor's lien—Order of Court —Former nugatory sale—necessity of reserve bid — Early date for sale—Costs. *Leckie* v. *Marshall*, 92, 513.

LAND TITLES.

Action for possession — Purchase from sheriff — Defendant — Mentally incompetent—Judgment reserved—Appointment of guardian to be made—1 Geo. V. c. 20. *McPherson* v. *Ferguson*, 871.

Land Titles Act—Appeal from decision of Master—Sec. 140 of Act—Application to register objection to issuance of certificate of title—Applicants barred from bringing action for possession — "Action"—Meaning of. *Christie Brown* v. *Woodhouse*, 619.

LANDLORD AND TENANT.

Action for cancellation of lease and for arrears of rent—Judgment in default of appearance. *Canada Co.* v. *Goldthorpe*, 331.

Damages for overholding — Counterclaim—Conversion of tenant's fixtures —Degree of annexation—Bar cabinet—Costs. *Simons* v. *Mulhall*, 736.

Forfeiture of lease—Breach of covenants against subletting — Sublease in substance not in form—Evidence — No relief against—Judgment for possession. *Curry* v. *Pennock*, 357.

LIMITATION OF ACTION.

Prescription—Action for possession —Lost title—Deeds — Admission of evidence as to—Lost grant—Presumption of —Continuous user of property—Description in deed—"Bank of Lake Erie" — Meaning of—Interpretation by parties to —Tenancy—Estoppel to deny title—Appeal. *Poulin* v. *Eberle*, 792.

Statute of Limitations—Charge on land—Power of attorney—Laches—Forty years' delay. *Brown* v. *Thompson*, 967.

LIS PENDENS.

Order to vacate —Terms—Payment of proceeds into Court — Expedition of trial. *Kennedy* v. *Kennedy*, 626, 786.

LOCAL MASTER.

Report of — Appeal from—Improper admission and rejection of evidence — Effect on findings—Costs. *Empire Limestone Co.* v. *McCarroll*, 862.

Sale by Court—Default in completion —Re-sale—Reserve bid—Action for deficiency—Costs. *Leckie* v. *Marshall*, 979.

MALICIOUS PROSECUTION.

Assault — Reasonable and probable cause—Findings of jury. *Bigham* v. *Boyd*, 499.

Charge of theft—Complainant agent of defendant company—Liability of latter for—Authority of agent—Lack of express authority—Absence of emergency —No implied authority—Review of authorities — Nonsuit. *March* v. *Stimpson Computing Scale Co.*, 591.

Illegal seizure—Conversion — Three actions arising out of same facts—Findings of jury—Perversity and inconsistency — Reasonable and probable cause found—Evidence — Reference — Costs. *Truesdell* v. *Holden*; *Holden* v. *Collingwood Shipbuilding Co.*, 419, 986.

Municipal corporation — Liability for acts of mayor and board of control —Arrest of employe of power company —Charge of disorderly conduct—Costs. *Waters* v. *Toronto*, 746.

MASTER AND SERVANT.

Action for arrears of salary—Defence of dismissal—Validity of notice of same—Dual position as manager and director—Validity of—Circumstances justifying dismissal—Incompetence — Evidence—Counterclaim —Costs. *Bashforth* v. *Provincial Steel Co., Ltd.*, 334.

Contract of hiring — Action for wrongful dismissal—Sufficient cause — Acquiescence—Estoppel—Costs. *Wilson* v. *Sanderson-Harold Co., Ltd.*, 686.

Wrongful dismissal — No incompetence or misconduct — Unconditional agreement—Foreign domicil—Election of by contract—Jurisdiction of Courts — Con. Rule 162—Public policy — Costs. *Carveth* v. *Railway Asbestos Packing Co., Ltd.*, 151.

MECHANICS' LIEN.

Report of Master—Appeal and cross-appeal from—Remoteness of damage — Evidence—Disallowance of certain items —Costs. *Eadie Douglas, Ltd.* v. *H. C. Hitch & Co.*, 907.

Statement of claim—Lack of affidavit—Time for filing expired—Jurisdiction of Court — Vacation of lien. *Bruce* v. *National Trust*, 688.

MINES AND MINERALS.

Boundary of claim—Boundary as shewn on claim filed to govern—Boundary on Mining Recorder's map immaterial — Mining commissioner — Appeal from. *Olmstead and Exploration Syndicate of Ontario, Ltd., Re*, 974.

MONEY.

Moneys lent — Action to recover — Betting transactions — Illegality — Evidence — Receipt. *Scully* v. *Ryckman*, 221, 644.

MORTGAGE.

Action on covenant — Statute of Limitations—Default in payment of interest — Acceleration clause—Time of commencement of statute. *Cameron* v. *Smith*, 767.

Covenant by grantee to assume and indemnify grantor — Default—Enforcement of covenant—Payment not condition precedent. *Shaver* v. *Sproule*, 509.

Judgment for redemption or sale —Appeal from Master's report—Subsequent encumbrances—Who are—Subsequent purchasers — Evidence — Costs—Discretion of Master as to—Appeal dismissed. *Home Building and Savings Association* v. *Pringle*, 889.

Power of sale—Surplus proceeds—Payment into Court by mortgagee—Application by execution creditor for payment out — Payment to Sheriff—Costs. *Re Ferguson & Hill—Purse* v. *Ferguson*, 643.

Sale—Alleged improvidence — Sale en bloc instead of in parcels—Delegation of matter to careful solicitor by mortgagee —Local conditions — Printers' error in advertisement—Duties of mortgagees discussed—No evidence of mala fides. *Wilson* v. *Taylor*, 669.

Security for bonds of railway company—Interest in arrear—Acceleration of payment of principal—Action for principal and interest—Claim for foreclosure and possession—Payment of interest pendente lite—Right to possession —Receiver—Breaches of covenants—Default in payment of taxes—10 Edw. VII. c. 51, s. 6—Costs. *National Trust Co.* v. *Brantford Street Rw. Co.*, 787.

MUNICIPAL CORPORATIONS.

Apartment house by-law—Definition contained in earlier by-law—Definition in statute—Former definition adopted—2 Geo. V. c. 40, s. 10—"Private temperance hotel" —Mandamus granted for permit — Conditions—Undertaking. *Coleman* v. *McCallum & Toronto*, 470, 754.

Apartment house by-law—Injunction against locating—Actual work on ground prior to by-law—Evidence—Property fronting or abutting on street. *Toronto* v. *Stewart*, 323.

Apartment houses — By-law to restrain location of—2 Geo. V. c. 40, s. 10—Meaning of "location" — Effect of building permit—Terms—Costs. *Toronto* v. *Ford*, 351, 717.

By-law appointing Medical Officer of Health—Motion to quash—Public Health Act, 1912—Right of council to dismiss applicant—Municipal Act, s. 320. *Warren* v. *Whitby*, 317.

By-law striking tax rate—Refusal to quash. *Therriault* v. *Cochrane*, 964.

Early closing by-law — Motion to quash—Amendment of by-law—Application refused—Costs. *McCoubrey and City of Toronto, Re*, 904.

Liability for repair of bridge — Bridge between township and city — Ownership in road company—Notice of abandonment by—Validity of — General Road Companies Act—R. S. O. 1897, c. 193, ss. 8, 50-103, — Municipal Act, 3 Edw. VII., c. 19, s. 613, s.-s. 2—Devolution of liability — Costs. *Ottawa & Gloucester Road Co.* v. *City of Ottawa, et al.*, 344, 984.

Office of Water Commissioner — Quo warranto proceedings — Windsor Waterworks Act—37 Vict. c. 79, s. 39—61 Vict. c. 58, s. 24—Incorporated sections of Municipal Act—Municipal Act, ss. 207, 215a, 233—Contract with school board—Arrears of taxes—False declaration—New election—Claim by next highest candidate — Discretion of County Judge — Costs. *R. Ex rel. Martin* v. *Jacques*, 457.

Plans and surveys—City and suburbs plans Act—2 Geo. V. c. 43—No objections filed by city corporation within 21 days—Right of O. R. & M. board to give effect to later objections—Necessity for evidence—Remission to board—Costs. *Canadian Building & Loan Association and City of Hamilton, Re*, 858.

NEGLIGENCE.

Collision with street car—Injury to automobile — Depreciation—Personal injury—Quantum. *Macdonald* v. *Toronto Rw. Co.*, 281.

Death of employe — Caught in revolving shaft—Defective system — Common Law liability—Negligence of superintendent — Liability under Workmen's Compensation for Injuries Act—Damages—Apportionment. *Hicks* v. *Smith's Falls Electric Power Co.*, 556.

Death of fireman on snow plough—Employment of incompetent signalman—Breach of statutory duty — Common employment no defence—Charge to jury — Alleged misdirection to be read as whole—Absence of direct evidence as to proximate cause—Right of jury to rely on inferences. *Jones* v. *Canadian Pacific Rw. Co.*, 917.

Death of telephone lineman — —Contact between electric wire and telephone wire—Negligent construction and inspection of electric wire — Telephone wire subsequently placed—No legal liability on electric company—Dangerous substance — Statutory authority—Liability for wrongful act of the third party. *Roberts* v. *Bell Telephone Co. and Western Counties Electric Co.*, 428.

Evidence of—Hostler—Horse stepping on—Negligence not proven — Pure accident — Action dismissed. *Eagle* v. *Meade*, 811.

Fatal Accidents Act—Death of boy struck by motorcycle—Quantum—Reasonable pecuniary expectation. *Beahan* v. *Nevin*, 712.

Fatal Accidents Act—Death of employee — Unexplained accident—Varying theories—Nonsuit — Contributory negligence — Findings of jury. *Falconer* v. *Jones*, 18, 672.

Fatal Accidents Act — Pedestrian killed by street car—Contributory negligence—Continuance of—Ultimate negligence—Jury's findings—No evidence to warrant—Evidence. *Long* v. *Toronto Rw. Co.*, 39.

Fatal Accidents Act — Right of attorney of parents to sue — Infant—Powers to act as attorney—Con. Rules. 259, 261, 298—Amendment—Limitation of action—Reference to Judge in Court. *Luciani* v. *Toronto Construction Co.*, 319.

Fatal Accidents Act — Right of those entitled to sue under to appoint attorney to sue for them—Action by infant by next friend—Action brought in own right—Letters of administration — Refusal of stay to obtain—Statutory limitation—Dismissal of action. *Luciani* v. *Toronto Construction Co., Ltd.*, 381.

Flooding—Surface water—No interference with watercourse—Costs. *Ollman* v. *Hamilton*, 454.

Highway—Non-repair — Findings of trial Judge—No reasons assigned for — Appeal—New trial—Evidence—Contributory negligence. *Patterson* v. *Township of Aldborough*, 638.

Injuries from broken wire—Findings of jury—Vagueness and uncertainty —Possible liability of third parties — New trial. *Hudson* v. *Smith's Falls Electric Power Co., Ltd.*, 539.

Injury to brakeman—Shunting of car — Negligence of fellow-servant in charge of operations—"Person in charge or control of engine"—Findings of jury. *Simmerson* v. *Grand Trunk Rw. Co.*, 403, 816.

Injury to employee—Kicking horse —Volenti non fit injuria—Discussion of doctrine—Non-suit—New trial—Amendment of pleadings — Costs. *Valci* v. *Small*, 529.

Injury to hostler—Horse stepping on—Negligence not proven — Pure accident—Action dismissed. *Eagle* v. *Meade*, 259.

Master and servant — Fatal Accidents Act—Fall down — Uncovered — "Winze" of mine—Statutory duty — Contributory negligence—Finding of jury —No evidence to support—Rejection of finding by trial Judge. *Pressick* v. *Cordova Mines*, 631.

Master and servant — Personal injuries to brakesman—Contributory negligence — Damages. *Sturgeon* v. *Canada Iron Corporation, Ltd.*, 684.

Master and servant—Volenti non fit injuria—Exhaustive discussion of doctrine of—Defective appliances — Common law liability—Right of deceased to engage in work—Duties of deceased—Contributory negligence — Apportionment of verdict. *Fairweather* v. *Canadian General Electric Co.*, 164.

Non-repair of highway—Lack of guard-rail — Dangerous place in road—Evidence. *Barclay* v. *Township of Ancaster*, 60.

Private international law — Foreign tort — Negligence—Personal injuries —Law of Quebec—Damages—Forum for measure of—Findings of jury. *Story* v. *Stratford Mill Building Co.*, 552.

Repair of pavement — Dangerous material—Public place — Lack of safeguards—Improper implement—Unskilled workman — Independent contractor — Want of notice of action—Liability of corporation. *Waller* v. *Sarnia*, 204.

Ships—Management of — Damage to grain elevator—By steam barge—Breaking moorings—Caused by another vessel —Damages—Loss of profit. *Playfair* v. *Meaford Elevator Co., Ltd.*, 946; *Meaford Elevator Co., Ltd.* v. *Montreal Transportation Co. Ltd.*, 946.

Street railways—Collision between street cars—Injury denied—Evidence—New trial—Costs. *Rose* v. *Toronto Rw. Co.*, 84, 520.

Street railway—Death of pedestrian —Gross contributory negligence—Vagueness in answers of jury—Non-suit—Motion for granted. *Ramsay* v. *Toronto Rw. Co.*, 953.

Street railway — Plaintiff crossing street—Struck by street car—Contributory negligence—Evidence. *Myers* v. *Toronto Rw. Co.*, 452.

Teamster using saw to procure firewood—Loss of fingers — Improper use of saw — Orders of bookkeeper—Plaintiff not bound to conform to—Perverse findings of jury—Non-suit. *Wyers* v. *Winlow*, 401.

Workmen's Compensation for Injuries Act, s. 3, s.-s. 5—Steam shovel on temporary track—"Locomotive engine or machine or train upon a railway"—Meaning of—Findings of jury. *Dicarllo* v. *McLean*, 749.

PARTIES.

Third party—Order of directions—No right to appeal reversed—Amendment of orders—Con. Rules 312 and 640—Terms—Costs — Indemnity. *Swale* v. *Can. Pac. Rw. Co.*, 479.

PARTNERSHIP.

Accounting—Denial of agreement—Statute of Frauds—Evidence — Meaning of "Division" of profits. *Bindon* v. *Gorman and Murray*, 98, 769.

Dealing in land—Method of accounting—Construction of agreement — "Advance" and "Profits"—Meaning of. *Galbraith* v. *McDougall*, 233.

Taking of accounts—Mode of procedure — Simplest methods to be adopted. *Haney* v. *Miller*, 354.

PATENT.

Action for infringement—Combination of parts—Prior patent—Novelty—Utility—Trade name—Injunction—Damages. *United Injector Co.* v. *Morrison*, 608.

Action for royalties—Patented envelope—Non-compliance with postal regulations—Substitution of different envelope—Refusal of defendants to accept—Failure of consideration—Departure from specification—Granting of inconsistent licenses — Dismissal of action. *Neostyle Envelope Co.* v. *Barber Ellis Ltd.*, 885.

PLEADING.

Action for breach of promise — Allegation of seduction—Claim for support of child—Pleadable in aggravation of damages — As substantive claim — Statutory requirements to be set out—R. S. O. c. 169. *Morris* v. *Churchward*, 313.

Contract made with agent of undisclosed principal—Election—Necessity of — Discovery of new material—Amendment—Costs. *Phillips* v. *Lawson*, 655.

Motion to strike out—Action for conspiracy—Former employees — Breach of contracts of employment — Right of plaintiff to present his case in most effective manner — Separate trials refused. *Grip Limited* v. *Drake*, 333.

Motion to strike out—Paragraph—Irrelevance—Allegation as to particular theatrical performance — General character of performances not pleadable — Costs. *St. Clair* v. *Stair*, 450.

Motion to strike out paragraph of statement of claim — Incompleteness—Defendants sufficiently notified of plaintiff's claim — Object of pleadings. *Rogers* v. *National Portland Cement*, 361.

Particulars — Rescission of contract — Fraudulent misrepresentations alleged — Specific particulars to be pleaded. *Murray* v. *Thames Valley Garden Land Co.*, 52.

Particulars—Statement of claim — Action upon alleged verbal promise — Necessity of particulars of consideration —Costs. *Harris* v. *Elliott*, 143.

Reply—Motion to strike out—Embarrassment—Function of reply considered. *Regan* v. *McConkey*, 138.

Statement of claim—Claim to set aside release—Other claims which release would bar—Con. Rules 298, 531—Motion to strike out dismissed. *Broom* v. *Dominion Council Royal Templars*, 62.

Statement of claim—Delivery nine months late—Motion to set aside—Action for personal injuries—Alleged incompetence of plaintiff to instruct solicitor—Con. Rules 312, 353 — Pleading validated—Terms. *Youell* v. *Toronto Rw. Co.*, 57.

Statement of claim — Motion to amend—Claim for assault and false imprisonment—Barred by lapse of time—10 Edw. VII. c. 34, s. 49 (j). *Jordan* v. *Jordan*, 525.

Statement of claim — Motion to amend—Variation in amendment—Costs. *St. Clair* v. *Stair*, 764, 985.

Statement of claim — Motion to set aside — Irregularity — *Hudson* v. *Fernyhough*, 61 L. T. 722, distinguished. *Browne* v. *Timmins*, 187, 290.

Statement of claim — Motion to strike out—Paragraphs — Particulars—Necessity of—Costs. *Murray* v. *Thames Valley Garden Land Co.*, 161.

Statement of claim — Motion to strike out paragraph — Claim as shareholder of company on behalf of company —Personal claim against company—Inconsistency — Order made. *Jackman* v. *Worth*, 252.

Statement of claim — Motion to strike out portions—Irrelevancy—Embarrassment—Re-opening of order—Acquiescence in—Leave to appeal. *Wall* v. *Dominion Canners*, 13, 117.

Statement of claim—Order for particulars. *Eastern Construction Co.* v. *J. D. McArthur Co.*, 628.

Statement of claim—Particulars—Order for. *Morgan* v. *Thames Valley Garden Land Co.*, 163.

Statement of defence—Action for assault and forcible ejectment from premises—Defence of police constable — Alleged instructions from superior—Plaintiff alleged to have been drunk and disorderly—Failure of motion. *Fritz* v. *Jelfs and Green*, 643, 807.

Statement of defence—Motion to strike out paragraphs—Enforcement of rights of stranger to action sought. *Davidson* v. *Thompson*, 621.

Statement of defence—Motion to strike out paragraphs—Relevancy. *Cantin* v. *Clarke*, 146.

Statement of defence—Motion to strike out paragraphs as irrelevant — Paragraphs relevant to support counterclaim—Amendment. *Re McLaulin, McDonald* v. *McLaulin*, 448.

PRINCIPAL AND AGENT.

Agent of insurance company — Breach of definite instructions—Liability for—Evidence — Damages. *Independent Cash Mutual Fire Ins. Co.* v. *Winterborn*, 6.

Commission — Concluded agreement repudiated by purchaser—Alleged misrepresentation—Agreement for commission based on voided agreement—Later sale—"Introduction"—Necessity of—Quantum meruit. *Strong* v. *London Machine Tool Co.*, 365.

Commission on sale of land—Introduction of purchaser by agent—Purchase of other property not listed with agent — Agent's right to commission. *Moody* v. *Kettle*, 676.

Moneys due by agent — Counterclaim — Evidence — Reference—Costs. *Canadian Lake Transportation Co.* v. *Browne*, 150.

Real estate broker—Action for commission — Efforts of plaintiff not causa causans of sale—Amendment. *Hubbard* v. *Gage*, 184.

Real estate broker—Action for commission—Purchaser agreed to pay—Evidence. *Chapman* v. *McWhinney*, 189.

Real estate broker—Sale by former employee—Claim for commission—Terms of interpleader order—Evidence. *Rice* v. *Proctor*, 527.

Secret profits—Purchase by agent—Measure of damages. *Millar* v. *Hand*, 523.

PRINCIPAL AND SURETY.

Bond for due performance of work by contractor—Verbal change in contract unknown to sureties—Materiality — Alleged variation by subsequent agreement—Release of dubious claim—Advances made on account of contractor—Completion of work by contractor—Liability of sureties—Reference. *Niagara & Ontario Construction Co.* v. *Wyse and U. S. Fidelity & Guaranty Co.*, 302.

PROCESS.

Writ of summons—Motion to set aside—Issued in name of deceased sovereign—Not a nullity—Con. Rule 1124—Amendment—Costs. *Bank of Hamilton* v. *Baldwin*, 21.

Writ of summons—Strvice outside jurisdiction — Order for motion to set aside—Entry of conditional appearance—Enlargement of time for delivery of defence—Waiver—Costs. *Richardson* v. *Allen*, 405.

RAILWAYS.

Action for conversion of goods entrusted to them — Railway Act (Can.) s. 345—Sale to realize charges—Negligence of auctioneer—Loss—Third parties—Limitation of liability—Want of endorsement of bill of lading—Right of third parties to set up—Damages—Assessment of — Set-off—Costs. *Swale* v. *Canadian Pacific Rw. Co. & W. J. Suckling & Co. (third parties)*, 224.

Expropriation of lands—Application for warrant of possession—Dom. Ry. Act R. S. C. c. 37, s. 217—Proceedings irregular—Defective material—Dismissal of motion—Costs. *Strong and the Campbellford, Lake Ontario & Western Rw. Co., Re*, 966; *Strong and the Ontario & Quebec Rw. Co., Re*, 966.

Loss of goods in transit—Evidence—Damages. *Pagliai* v. *Canadian Pacific Rw. Co.*, 518.

SALE OF GOODS.

Action for breach of implied warranty—Defective cartridge in box—Box of well-known maker sold sealed—Guarantee of maker—No reliance on vendor's skill or judgment — Review of authorities—Stay. *Hill* v. *Rice Lewis*, 270.

Action for price—Payment — Promissory notes given for price discounted—Counterclaim — Costs. *Krehm Bros. Fur Co.*, v. *Bastedo & Co.*, 820.

Conditional Sales Act—Conversion—Evidence—Weight of—Vendor's lien—Damages—New trial — Refusal of—Appeal. *Greer* v. *Armstrong*, 960.

Damages for non-acceptance — Sample rejected—Tender of other sample —Refusal to accept—Sample sent not in accordance with contract—Variation of contract. *Graham Co.* v. *Canada Brokerage*, 277.

Partial failure of consideration —Defective condition of motor car—How far a defence to action—Damages—Costs. *Automobile Sales Limited* v. *Moore*, 26.

Specific performance — Mill and machinery—Mutual mistake as to locus and possession—Inequitable conduct of plaintiff—Costs. *Hamilton* v. *Smythe*, 809.

SCHOOLS.

Township continuation school — Resolution of township council—Guarantee of school board debts—Ultra vires—Injunction—Costs. *McFarlane* v. *Fitzgerald*, 230.

SOLICITOR.

Bill of costs taxed and unpaid—Moneys in Court—Lien on. *Canada Carriage Co.* v. *Lea*, 976.

Negligence — Failure to issue writ against municipality in time—Evidence —Lack of instructions—Damages—Mistaken opinion of solicitor as to law. *Howse* v. *Shaw*, 283.

STATUTES.

Construction of—City and Suburbs Plans Act — 2 Geo. V., c. 43 — Rule against retroactivity. *Toronto* v. *William J. Hill*, 388.

Construction of Municipal Waterworks Act—R. S. O. 1897, c. 235, s. 41 — To be read and construed as part of Municipal Act — Waterworks Commission — Grounds for disqualification—Incumbent high school trustee—Quo warranto. *R. Ex rel. Gardhouse* v. *Irwin*, 466.

Validity of marriage—1 Geo. V. c. 32—Constitutionality of—Evidence—Refusal to make order. *Malot* v. *Malot*, 714, 884.

TRESPASS TO LANDS.

Action for possession of lands—Non-termination of existing tenancy — Proof of title. *Laporte* v. *Wilson*, 543.

Injunction—Dispute as to boundaries —Interim injunction — Scope of—Damages sustained under — Trivial nature of —Reference refused. *Douglass* v. *Bullen*, 890.

Mandatory injunction — Damages —Costs. *Singer* v. *Prosky*, 353.

TRIAL.

Jury notice — Appeal from order striking out—Con. Rule 1322—Effect of —Exercise of discretion by Judge in Chambers—No appeal from. *Cornish* v. *Boles*, 877.

Jury notice — Equitable relief only sought—Notice struck out — Con. Rule 1322. *Kelly* v. *McKenzie*, 711.

Jury notice—Motion to strike out—Action for rescission of land purchase—Con. Rule 1322. *Murray* v. *Thames Valley G. L. Co.*, 311.

Jury notice—Striking out—Practice. *Stanzel* v. *Case Threshing Machine Co.* 369.

Motion to have actions tried together—Leave to serve jury notice—Identity of issue — Question as to—Application to trial Judge. *Rogers* v. *Wahnapitae Power Co.*, 766; *Rogers* v. *Imperial Portland Cement Co.*, 766.

Motion to postpone — Absence of alleged material witness—Disregard of Con. Rule 518—Nature of expected evidence not divulged—Matter left to discretion of trial Judge—Terms.—*Cinnamon* v. *Woodmen of the World*, 379.

No tender of evidence—Dismissal of action—Motion to adjourn—Absence of material witness—Witness in question hopelessly insane and confined in asylum—Particulars not complying with order—Action of Crim. Con. — Odious charge—lack of bona fides on part of plaintiff—Delay. *Haines* v. *McKay*, 1.

Postponement—Absence of necessary and material witness—Custody of child—Jurisdiction as to terms—Costs. *Armstrong* v. *Armstrong*, 633.

Postponement—Granted on terms—Leave to sell land pendente lite. *Topper* v. *Birney*, 246.

Postponement—Reasons for—Terms. *Grocock* v. *Allen & Co. Limited*, 702.

TRUSTS AND TRUSTEES.

Director and secretary of company—Option taken in own name—Option by company allowed to lapse—Reference—Costs. *North American Exploration and Development Co.* v. *Green*, 843.

Relief funds—Forest fire sufferers — Surplus on hand — Establishment of hospitals with—Provision for maintenance by municipalities. *Re The Trusts of the Northern Ontario Fire Relief Fund*, 459.

VENDOR AND PURCHASER.

Action for balance due—Alleged satisfaction—Evidence — Appeal—Allowance of. *Malcolmson* v. *Wiggin*, 855.

Application under Vendor and Purchasers Act—Prospective litigation —Not to be forced on purchaser. *Pigot & Kern, Re*, 863.

Claim of municipality as to arrears of taxes — Dispute as to — Right of purchaser to make deduction. *Phillips* v. *Monteith*, 743.

Contract for sale of land—Objection to title—Outstanding interest—Vendors and Purchasers Act. *Mackenzie and Hamilton, Re*, 965.

Covenant—Running with land—Purchaser from covenantor—No right to enforce covenant. *Hoodless* v. *Smith*, 67.

Deficiency—Abatement of purchase money — Vendor and purchaser application—Jurisdiction—Mention of survey in agreement—Printed form — Absence of mala fides—Specific parcel intended. *Re Paterson & Canadian Explosives*, 486.

Fraud and misrepresentation—No clear proof of—Damage—Not established —Dismissal of action—Costs. *Wilson* v. *Suburban Estates Co.*, 825, 987.

Misrepresentation as to depth of lot—Acceptance of deed — Estoppel — "More or less"—View of property — Boundaries pointed out by agent—Rights of third parties—Damages. *Wishart* v. *Bond*, 199.

Objection to title — Agreement authorizing agents to sell registered — Registry Act, 10 Edw. VII. c., 60—Cloud on title — Removal of. *Rosenberg* v. *Bochler*, 59.

Reformation of agreement for sale—Evidence—Terms. *Kling* v. *Lyng*, 738.

Rescission of contract — Sale of lots in "Glenelm Park," Regina—Fraud and misrepresentation—Liability of principal for fraud of agent. *Scobie* v. *Wallace*, 130, 641.

Satisfaction of objection to title —Right of way—Conveyance — Costs. *Barthelmes and Cherry Re*, 979.

Specific performance — Agreement for exchange of lands—Delay of plaintiff in closing—Time of essence—Reciprocal obligations—No attempt by defendant to fulfil his obligations—Waiver of tender—Waiver of right of rescission by conduct. *Norman* v. *McMurray*, 532.

Specific performance — Alleged right to withdraw—Exercise of same — Fraud — Equitable jurisdiction. *Sheardown* v. *Good*, 658.

Specific performance — Attempt to rescind — Time of essence—Waiver—Account—Reference. *Dahl* v. *St. Pierre*, 705.

Specific performance — Attempted rescission—Duty to tender conveyance —. Terms of contract — General Rule negatived — Conduct of parties — Death of party after trial and before judgment —Con. Rule 394. *Snell* v. *Brickles*, 28.

Specific performance—Authority of agent — Variation from authorized terms —Sale for all cash instead of part on mortgage—Dismissal of action. *Levitt* v. *Webster*, 191.

Specific performance — Inequitable conduct by plaintiff — Refusal of relief. *Beckman* v. *Wallace*, 263.

Specific performance — No completed agreement — Parties never "ad idem" — Disparity in intelligence of parties. *Sheriff* v. *Aitcheson*, 614.

Specific performance—Objections by purchaser — Right to rescind—Outstanding mortgage — Not matter of title — Statute of Frauds—Memorandum to satisfy—Amendment of pleadings — Deficiency in area—Right of purchaser to accept—Appeal—Allowance of. *Dixon* v. *Dunmore*, 774.

Specific performance — Option in lease—Consideration for — Right to revoke—Acceptance of new lease — Not waiver of option—Alleged inadequacy of consideration — Power of attorney — Authority of agent. *Matthewson* v. *Burns*, 834.

Specific performance — Option in lease—Exercise of same—Tender—When to be made—"End of demised term"—Dies non — Defect in title—Life interest only—Specific performance with compensation—Damages — Acquiescence in permanent improvements by lessees—Reference—Costs. *Ontario Asphalt Block Co., Ltd.* v. *Mantreuil*, 838.

Specific performance — Term of mortgage—Claim that no agreement as to —Waiver — Evidence. *Graydon* v. *Gorrie*, 23.

Specific performance — Vendor to prepare deed — Default as to — Tender of deed from registered owner—Attempted rescission by vendor — Specific performance decreed. *Knibb* v. *McConvey*, 731.

Specific performance—Verbal condition not inserted in agreement — Refusal of plaintiff to perform—Action dismissed. *Ellis* v. *Zilliax*, 48.

Will—Power of executors to sell land for payment of debts—Contract for sale of land by executors—Objection to title—Application under Vendors and Purchasers Act—Costs. *Mackay and Nelson, Re*, 963.

VENUE.

Change—Inflamed condition of public mind—Terms. *Meredith* v. *Slemin*, 315.

County Court action — Con. Rule 529 (*b*)—Order made. *Ferguson* v. *Anderson*, 68.

Motion to change—Action of negligence by workman—Place of accident proper place of trial—Lack of means of plaintiff — Terms as to transportation, etc. *Bickell* v. *Walkerton Electric Light Co.*, 446.

Motion to change—Balance of convenience. *Baughart Bros.* v. *Miller Bros.*, 629.

Motion to change — Balance of convenience — Delay — Jury notice — Unfairness of — Order made on terms of abandonment of jury notice. *White* v. *Hobbs*, 483.

Motion to change — Convenience—Witnesses — Books of company—Terms. *Blackie* v. *Seneca Superior Silver Mines*, 371.

Motion to change—Delay in trial—Plaintiff responsible for — Order refused —Costs. *Chwayka* v. *Canadian Bridge Co.*, 250, 370.

WATER AND WATERCOURSES.

Boom company—Alleged obstruction of river by — Evidence—Reasonable conduct by defendants—Dismissal of action. *Rainy River Navigation Co.* v. *Watrous Island Boom Co.*, 905.

Dam—Easement to pen back water—Flooding of servient tenements—Evidence —Necessity of literally continuous adverse user—Extent of right acquired — Alleged raising of dam—Prolongation of period of flooding—Improved methods of water conservation—Damages — Injunction—Costs. *Cardwell* v. *Breckenbridge*, 569.

Ditches and Watercourses Act—Appeal from drainage referee—Report of engineer—Alleged not independent opinion—Fees of solicitors and engineers—Charge on work — Refusal to interfere with. *Bright and Township of Sarnia, Re*, 817; *Wilson and Township of Sarnia, Re*, 817.

Flooding of plaintiff's lands—Unnatural collection of surface water—Defendant railway company—Water from locomotives — Claim to be acting under statutory powers — Municipal corporation—Liability of — Injunction — Stay. *Niles* v. *Grand Trunk Rw. Co.*, 73.

Improvement of highway—Closing of cove — Injury to plaintiff's land by flooding—Defective work—Action—Arbitration—Amount of damages — Appeal. *Martin* v. *Middlesex*, 869.

Obstruction of flow — Injury to navigation — Damages to navigation company—Quantum of. *Rainy River Navigation Co.* v. *Ontario and Minnseota Power Co.*, 897.

Obstruction of river by logs—Saw Logs Driving Act—R. S. O. 1899, c. 43 —Crown grant—Reservation of one chain on bank—Riparian rights—High water mark—Location of—Trespass — Evidence —Injunction — Damages—Reference — Costs. *Ireson* v. *Holt Timber Co.*, 433.

WAYS.

Closing of street—Illegal by-law—Liability for—Order of Dom. Ry. Board —Work done by railway — Liability of town — Closing or "deviation"—Damages—Permanent injury—Costs. *Seguin* v. *Hawkesbury*, 695.

Dedication—Evidence—Acceptance—Registration of plan not shewing high-

way—Consent of council to estoppel—Inadvertence—Object of action of council—Lack of knowledge of facts—Land Titles Act R. S. O. 1897 c. 138, ss. 26, 109, 110—Municipal Act 1903, c. 19, ss. 29, 630, 632. *Larcher* v. *Town of Sudbury*, 659.

Disrepair of bridge on highway—Injury to motor truck by breaking through—Liability of county — Highway Improvement Act 1912—Damages—Quantum—Loss of use of truck—Liability for. *Armstrong Cartage Co.* v. *County of Peel*, 372.

Obstruction—Injunction restraining —Public user over 30 years—No special damage to plaintiff. *O'Neil* v. *Harper*, 88.

Public street—Alleged encroachment thereon—Street laid out on unregistered plan—Innocent purchaser—Registry Act —Streets excepted from conveyance—Estoppel—Locus standi—Costs. *Peake* v. *Mitchell*, *Mitchell* v. *Peake*, 291.

Right of way—Title by prescription —Evidence as to—Claim of title—Interim injunction — Damages. *Salter* v. *Everson*, 757.

WILLS—CONSTRUCTION.

After acquired lands—"Money and securities"—Date of construction—Annuity—Direction of payment out of certain funds—Insufficiency of funds—Right to resort to other assets—Arrears of annuity — Statute of Limitations not applicable to—Trust. *Mackenzie Estate*, *Re*, 678.

"**Cash in bank**"—Moneys on deposit in loan company — Inclusion of—Gift to enumerated class — Wrongful enumeration — Disregard of—Suggested mistake of testator as to description of class. *Cooper Estate*, *Re Francis*, 665.

Charge on lands—Annuity—Provision for—Firewood and medicine — Arrears. *Honsinger* v. *Honsinger & Small*, 218.

Codicil—Overriding of terms of will by—Annuity—Corpus. *Re Smith*, 476.

Division of surplus — "Between," meaning of—Possible meaning of more than two—Intention as gathered from whole instrument. *Davies*, *Re*, 321.

"**Foundling children**"—Charitable bequest. *Re Gilbert*, 71.

Gift durante vidintate—Vested interest taken—Subject to divesting. *Re Lacasse*, 300.

Gift of all benefits—Absolute interest. *Sheard*, *Re Joseph*, 716.

Gift to foreign missions of Roman Catholic Church in Canada—No separate Canadian church — Gift to general church. *Re Upton*, 54.

Gift to married woman—Separate estate—Restraint on alienation—Validity during coverture but not thereafter—Costs. *Harrison Estate*, *Re*, 824.

Gift to nine legatees—Certain of legatees related, others unrelated to testatrix—"Aforesaid heirs"—Meaning of —"Heirs" construed strictly. *Re Phillips Estate*, 185.

Insurance moneys—Disposition of—Earlier and later clauses—Derogation—Identification of policy. *Fillingham*, *Re*, 682.

Life estate in residence given to widow—Annuity "as long as estate will pay same" — Not payable out of funds derived from sale or mortgage of residence—Costs. *Re Erskine*, 15.

Particular land charged with portion of debts—Exoneration pro tanto of residue — Special fund created—Expense of administration to be borne by fund itself. *Re Samuel Wilson Estate* 214.

Partnership assets — Direction to value same and to permit of use by partnership—Appreciation in value—Right of beneficiaries to receive. *Paterson*, *Re*, 752.

Postponed gift—Vesting — Lapse—Member of class dying before date of will —No gift to. *Vining Estate*, *Re*, 814.

Precatory trust. *Re Soulliere and McCracken*, 400.

Precatory trust—Mere expression of desire does not create—Absolute interest not cut down—Review of cases. *Johnson* v. *Farney*, 244.

Reference to charge — No creating section—Reference ignored—Direction for creation of trust fund—Amount not stated — Reference to other sections to ascertain amount — Insufficiency of assets—Abatement. *Re Campbell*, 30.

Testamentary exercise of power of appointment—Rule against perpetuities—Reading of instruments together—Income—Payment to guardian—Surplus over maintenance — Vesting of shares. *Eliot, Re*, 494.

Trust for upkeep of residence — No time limit — Infringement of rule against perpetuities — Estoppel by prior action. *Kennedy* v. *Kennedy*, 943.

Use of printed form—Clumsy sentence lacking grammatical form—Intention of testator. *Dorward, Re*, 545.

Vendor and purchaser application—Contingent gift to two devisees "or" her heirs—"Or" meaning "and"—Doubtful title not to be forced on purchaser—Principles applicable. *Edgerley and Hotrum, Re*, 800.

Vendor and purchaser application — Gift of life estate and absolute power of appointment—Gift over on default—Time of vesting in appointee. *Re Mara & Wolfe*, 144.

Vesting—Postponement of enjoyment—Life interest. *Brown, Re*, 701.